

ALASKA LEGISLATURE COMMITTEE FILES 1961-1982 8672

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insuring population maintenance growth, this would lead to uncontrolled sealing on the high seas. Mr. President, such action would wreak a devastating impact on the fur seal population, and bring irreparable harm to the Aleut people in the Pribilofs.

One of the most interesting studies I did in my legal career was to go back and trace the history of pelagic sealing in the case taken to the World Court concerning the actions of the United States and its effort to halt pelagic sealing.

Mr. President, this protocol will allow continuation of a widely recognized successful conservation and management program in the Pribilofs. In addition, this harvest effort provides the major source of livelihood to the Aleut people.

This treaty enforces a controlled and humane harvest that is restricted to the taking of bachelor male seals ensuring a growing and healthy breeding stock.

Mr. President, I would like to clear up a point of misunderstanding about this harvest that bears consideration. Comments have been made to me in the past several weeks about the "inhumane harp seal killing in Alaska." Such statements, although completely ignorant to the facts of this harvest, can be harmful. The Senator should take notice that the harp seal harvest in Canada is a totally different matter from that before us today. The seal harvest in the Pribilofs is closely monitored and controlled by the Federal Government. The fivefold increase in the fur seal population attests to the great success of this management effort.

Mr. President, I intend to support the understanding that Senator Levin has introduced. I am happy to yield to my colleague from Alaska at this point.

Mr. MURKOWSKI. Mr. President, I appreciate my colleague, the senior Senator from Alaska, yielding me this time.

I would also like to commend the Senator from Michigan for working so diligently in resolving what has amounted to an amendment to the text of the resolution for ratification.

Mr. President, today the Senate is considering the resolution for ratification of the Interim Convention on Conservation of the North Pacific Fur Seal. I think it is interesting to note that the National Audubon Society considers—and I quote:

The response of the northern fur seal population to the protection on the high seas, and the controlled harvest in the Pribilof Islands, required by the provisions of the 1911 convention between and among the United States, Canada, Japan, and the Soviet Union, to be one of the outstanding wildlife conservation success stories of the last seven decades.

I have also, as have the rest of my colleagues, received confirmation of the Sierra Club's support of the continuation of the convention as negotiated. I will also add to the Record a letter from Secretary of State, Alexander Haig, supporting the convention as negotiated.

Mr. President, I would like to commend the chairman of the Foreign Relations Committee, Senator Percy, and the committee members for dealing with this measure in a timely manner. Mr.

President, the Foreign Relations Committee approved the continuation of the convention unamended, with a unanimous vote of 15 to 0. The committee's decision, made after hearing testimony from every concerned party interested in this convention bolsters the credibility and value of the convention.

As my colleague, Senator STEVENS, pointed out, when the convention went into effect in 1911, the North Pacific fur seal herd numbered approximately 300,000. At that point, Mr. President, extinction seemed imminent. Today, with the help of the convention and controlled harvest, the herds are approaching 2 million seals. The present count is approximately 1.7 million, to be exact. This type of biological rebound rarely occurs in our society today. Clearly, the convention which is responsible for this rebound should be continued.

Mr. President, there has been some confusion on the Pribilof Island fur seal harvest and I would again like to echo the comments of my colleague, the senior Senator from Alaska. The harvest taking place in my home State does not involve any taking of females or baby seals. This type of harvesting is strictly forbidden. The only seals that are taken are the excess bachelor male seals that are not able to be involved in the reproductive process of the rookery. The harp seal harvest in Canada has no relation whatsoever to the fur seal herd in the Pribilof Islands.

Mr. President, I support the further study of the Bering Sea ecosystem to more fully understand the effect of the North Pacific fur seals. The studies currently being carried out by our Government should continue and be extended as necessary. Without these crucial studies we will not be able to ascertain the healthy level of the fur seal herd.

Mr. President, in summary—I urge the Senate to ratify this treaty as a wise and effective means of managing the fur seal herd. It has the unanimous support of the Foreign Relations Committee. If we were not to continue this sound wildlife management vehicle, we will surely be endangering the North Pacific fur seal herd as well as adversely affecting the socioeconomic status of the Pribilof Island people.

Mr. President, I ask unanimous consent that several supporting documents be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

U.S. SENATE,  
Washington, D.C.

DEAR COLLEAGUE: Several weeks ago, the Foreign Relations Committee approved an extension of the Interim Convention on the Conservation of North Pacific Fur Seals by a 15-0 vote, after turning back a proposed reservation directing the United States to renegotiate the Convention. The purpose of renegotiation would have been the reduction in the harvest of fur seals by the United States and would amount to a "rejection of the protocol we have proposed for ratification", according to the State Department.

Ratification of the Convention by the Senate is of great importance to Alaska and to the effective management of the fur seal herd, and we urge you to reject any effort on the floor to require renegotiation.

The North Pacific Fur Seal harvest has been identified as one of the most successful conservation and wildlife management programs in the world. In 1912, before the Convention was in place, the herd numbered about 300,000 but today it is about 1.7 million animals. The annual U.S. harvest takes place only on the Pribilof Islands, by the Pribilof people, who have been carrying out this harvest for years. No pups or females are taken, only bachelor male seals. This harvest should not be confused with the Canadian harp seal harvest that has engendered much emotional publicity.

In the absence of a treaty the fur seal herd would be greatly endangered. The treaty prohibits pelagic sealing, which is the taking of seals at sea. This type of harvesting is harmful because it is unregulated and results in many wasteful killings since many seals killed in this manner are unretrievable.

Both the Sierra Club and the National Audubon Society have supported this treaty. And the Administration remains committed to it. We have included copies of letters setting forth this support for your information.

We would be happy to respond to any questions you may have about the fur seal convention and hope that you agree that it is appropriate to ratify it for another four years.

Sincerely,

FRANK H. MURKOWSKI,  
TED STEVENS,

U.S. Senators.

NATIONAL AUDUBON SOCIETY,  
Washington, D.C., March 12, 1981.

HON. CHARLES H. PERCY,  
Chairman Committee on Foreign Relations,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The National Audubon Society wishes to comment on proposed renegotiation of the 1911 international convention to conserve northern fur seals on the Pribilof Islands, Alaska. We strongly support renegotiation of said convention and commend you and your committee for addressing this important issue in international wildlife conservation.

I can summarize our principal points as follows:

(a) National Audubon considers the response of the northern fur seal population to the protection on the high seas, and the controlled harvest in the Pribilof Islands, required by the provisions of the 1911 Convention between and among the United States, Canada, Japan and the Soviet Union, to be one of the outstanding wildlife conservation success stories of the last seven decades;

(b) We oppose the resumption of pelagic sealing that could occur if the present convention is not renegotiated and, therefore, strongly oppose termination of the convention;

(c) We have a deep concern that renegotiation of the international convention should assure that the interests both of the northern fur seal and of the Native peoples on the Pribilofs, who obtain part of their livelihood through participation in the carefully controlled harvest of surplus 3-to-8-year old bachelor males, are fully protected; and

(d) We support intensified research to learn more of fur seal population dynamics and behavior and to better assure that the most humane means of harvesting the bachelor males is being applied.

Mr. Chairman, surely it is incontrovertible that the northern fur seal population had sunk to dangerously low levels by the turn of the century, that it was still declining when the Convention was signed, that the Convention was intended to bring an end to pelagic sealing, that it did so, and that the fur seal population has rebounded as a result.

The present harvest is well designed to

take only surplus males. If pelagic sealing were to be resumed, there is no way to limit the harvest at sea to only bechelor males, no practical way to limit the total take. Thus we would be returning to indiscriminate harvesting, including the taking of pregnant females and pups (juveniles of the year). If pelagic sealing were to be resumed, we would also have great difficulty administering any kind of controlled harvest, since pelagic sealing goes on simultaneously, well out at sea, and we could not ensure that the number taken in any one year was not in excess of the population surplus. The seals' migrations take them far beyond the 200-mile zone.

In addition to the need for treaty protection of the seal population, there is a most serious need to provide greater long term protection to the marine environment of the Bering Sea and to the nationally and internationally significant marine bird colonies on the Pribilof Islands. A first step has been the inclusion of critical portions of the Pribilofs in the Alaska Maritime National Wildlife Refuge created by the Alaska National Interest Lands Conservation Act of 1980.

We urge your Committee to explore ways in which existing international agreements can be strengthened, and new agreements forged with Pacific rim countries, to better protect marine waters of the Bering Sea from dangerous pollution and overutilization of resources, particularly fish on which marine birds and mammals rely for sustenance. These are by far the more serious threats to the future welfare of fur seals, as well as of other marine mammals and of seabirds.

I'd appreciate your including this letter in the hearing record on the fur seal treaty. This is a very important conservation issue, and we shall welcome further opportunity to help see it resolved in the best interests of all concerned nations, the proud people of the Pribilof Islands, and the fur seals.

Sincerely,

ELVIS J. STAIN,  
Senior Counselor.

SIERRA CLUB,  
Washington, D.C., May 12, 1981.

MEMBERS,  
Senate Foreign Relations Committee,  
Washington, D.C.

DEAR MEMBERS: The Sierra Club endorses a four year continuation of the International Fur Seal Treaty, as negotiated, and would appreciate your support on this matter.

Sincerely,

JOHN A. McCOMB,  
Director of Operations.

#### RESOLUTION No. 2

The Sierra Club Alaska Chapter Conservation Committee requests the Alaska Chapter to adopt the following:

Whereas, under the Interim Convention on Conservation of North Pacific Fur Seals, the Pribilof Islands' fur seal harvest has been well-managed for many years, and

Whereas, the Native subsistence use of the fur seals under this management has been successful both for the Native population and for the continued viability of the fur seal population, and

Whereas, abolition or non-renewal of the Convention would allow resumption of the pelagic harvest of the fur seals, which was a major cause of the fur seals' population decline prior to the Convention, thereby endangering both the species' survival and the Native subsistence culture.

Be it resolved that the Alaska Chapter of the Sierra Club supports the renewal of the Interim Convention on Conservation of North Pacific Fur Seals and supports the humane harvesting of the seals by the Pribilof Islanders as guided by the Convention.

#### Note to Sierra Club Board of Directors:

This resolution was adopted by the Alaska Chapter Conservation Committee on November 18, 1979, Lin Sonnenberg, Chair, at Fairbanks, Alaska.

The resolution was endorsed by the Alaska Chapter at Anchorage, Alaska, on January 14, 1980, to be forwarded to the National Wildlife Committee and Board of Directors.

JAMES K. BARNETT,  
Alaska Chapter Chairman.

THE SECRETARY OF STATE,  
Washington, D.C., May 11, 1981.

Hon. CHARLES H. PERCY,  
Chairman, Committee on Foreign Relations,  
U.S. Senate.

DEAR MR. CHAIRMAN: The Protocol amending the Interim Convention on Conservation of North Pacific Fur Seals, was signed by the United States on October 14, 1980 and will come before the Senate Foreign Relations Committee for approval on May 12, 1981.

The Protocol extends the Convention for four years. The Convention has been in force since 1957, replacing a 1911 agreement, and provides for the protection and management of North Pacific Fur Seal stocks. We believe these agreements have served both our conservation and economic objectives. Under these agreements, the seal population has grown from 300,000 animals around the turn of the century to about 1.7 million at the present time. Further, the Convention prohibits killing seals at sea, a major cause of the earlier depletion. Lastly, the Aleut people on the Pribilof Islands have continued hunting seals under these agreements as they have done since the 1700's; sealing is part of their tradition and provides a subsistence harvest and a major source of their income. Furthermore, I understand the harvesting is conducted as humanely as possible.

A reservation has been proposed which directs the administration to renegotiate the Convention to allow the United States to reduce its harvest by approximately 70 percent. This reduction would purportedly allow the United States to continue its international obligations to Japan and Canada while foregoing its own harvest. It is our view that such an amendment is contrary to the intent of the Convention and runs counter to the will of other party members, which expect the U.S. to harvest a level of seals agreed upon under the terms of the Convention. The reservation is without scientific justification, and Department of Commerce scientists fear such precipitous action could have unforeseen effects on the fur seal stocks. Also such a proposal does not address the issue of the native subsistence harvest, nor the effects such a reduction would have on their lives.

I want to affirm the support of the Administration for the Protocol as negotiated and signed by the United States in October of last year, and my personal commitment to its objectives.

Sincerely,

ALEXANDER M. HAIG, JR.

#### UNANIMOUS-CONSENT AGREEMENT

Mr. BAKER, Mr. President, I understand that shortly debate on this treaty will conclude and almost certainly before the time allocated under the order has been utilized. I believe the unanimous consent request I am about to put has been cleared by the distinguished assistant leader, by all Members on this side, including the junior Senator from Alaska, and by the minority leader and Members on his side, as well, including the Senator from Michigan.

Mr. President, I ask unanimous consent that the vote on the treaty occur at 12:30 p.m. today. I further ask unani-

mous consent, Mr. President, and I understand this has been cleared, as well—that immediately after the vote on the treaty a vote occur on the confirmation of Myer Rashish, of the District of Columbia, to be Under Secretary of State for Economic Affairs, without an intervening period, and that that rollcall vote be a 10-minute vote.

Mr. ROBERT C. BYRD, Mr. President, reserving the right to object, and I do not think I will object, as I understand the circumstances, they are as follows:

A vote, without such an agreement, would probably occur shortly. I have a Member who would like to have the vote at 1:30 p.m. today. I have a Member or Members who would not make the vote if it were delayed beyond 12:30. So, being between a rock and a hard place as I have explained it, I think it is best for us to accede to the request.

Otherwise, the vote would occur now and my Member who would otherwise lose a vote by not being able to be here by 12:30 and would not be here until 1:30 would lose in any event.

Having made that statement for the record, Mr. President, I have no objection.

The PRESIDING OFFICER. Is there objection to the request of the majority leader? Hearing none, it is so ordered.

Mr. BAKER, Mr. President, I thank all Senators. I especially thank the minority leader. I would point out to him that it is my understanding that the Senators from Alaska and the Senator from Michigan and others have worked so well together in compromise that, indeed, the unanimous-consent agreement which was entered into earlier, which would provide for approximately 8 hours of debate, has now resolved itself to the place where we will vote momentarily were it not for this agreement.

The minority leader is absolutely correct. I believe the 12:30 agreement is the best accommodation on both sides.

Mr. STEVENS. If the majority leader will yield, I want to be sure that we are consistent with the understanding we have had with our friend from Michigan. His understanding is in the nature of an amendment to the resolution of ratification. I might inquire if the Senator from Michigan wants a vote on the adoption of that by rollcall.

Mr. LEVIN. That will not be necessary.

Mr. STEVENS. So we can adopt that by voice vote and then vote on the treaty. I thank the Senator.

I am mindful of what he told me about the old bulls from Alaska. We have been involved in a reproductive process here today. I am pleased to continue to be involved in that personally.

Mr. BAKER. I know that is a matter of great interest to the distinguished Senator from Alaska, speaking of old bulls, because I understand he is an expectant father.

Mr. STEVENS. That is right.

Mr. LEVIN, Mr. President, first of all I want to thank my colleagues from Alaska, Senators STEVENS and MURKOWSKI, for their cooperation and hard work in

trying to achieve a conclusion to this very, very difficult issue and very emotional issue.

I also want to pay a special tribute to Senator Dobb. When the convention came before the Foreign Relations Committee earlier this year, he put forth a tremendous effort and offered a reservation to the convention that was aimed at stopping a major portion of the annual slaughter of the North Pacific fur seals. The American people were extraordinarily well served by his efforts and I am personally indebted to him.

I think my friends know how I feel about this issue. I feel strongly that each year the taxpayers are spending over \$3 million to subsidize and operate a slaughter of 25,000 North Pacific fur seals, which no longer serves a legitimate purpose. The question, of course, that I, and those who take a similar position, face is how we can look at alternatives to this procedure.

Mr. President, the critical parts of this amendment to me, in terms of achieving the goal that I seek are really twofold.

First is the provision in the understanding that states that we will look at other means of promoting other mutually acceptable sources of employment for the Aleuts.

This is critical because unless the Aleuts have other employment, the pressure to take seals is going to continue. Indeed, even if there is other employment, the taking of seals may continue, but there is going to be less pressure to do so.

That is why the search for other means of employment, including the fishing alternative and the alternative involving tourism of a bird rookery which exists on those islands, are important alternatives. That is why other efforts are being made in this Congress, indeed today on the House side, to provide commitments to the Aleuts which will help develop those alternatives.

Both of those alternatives are absolutely essential if we are going to take pressure off the slaughter of the seals. That is why that provision in the first paragraph of the understanding, that in consultation with the Aleuts we are going to determine the impact of various mutually acceptable alternative sources of employment for those residents, is such an important provision, and why the language that we added, that we are also going to seek out possible means of promoting said sources of employment, is also an important language.

There is other language in here which I want to highlight briefly, and then the rest of the understanding, of course, will speak for itself, as indeed these provisions will.

The other significant language, as far as our goals are concerned, is the declaration by the Senate that the United States may initiate adjustments in the harvest level or the U.S. share thereof, providing any adjustments are in conformity with the terms of the interim convention, the health of the fur seal herd, and the rights of the Aleut people.

We believe that in this regard the statement of the Department of Com-

merce in their final position paper and discussion topics for the 1981 annual meeting of the North Pacific Fur Seal Commission, is important. That statement is that in their view the United States may forego annually all or a part of its share of the harvest.

That continues to be the position of the Department of Commerce. It is a position which, although not shared by the Secretary of State or the Department of State, is critical to our position that this amendment will allow the goal to be achieved which we seek to achieve, which is less pressure on the herds and the slaughter hereof.

Mr. President, a number of organizations have worked extremely hard to try to reduce and preferably eliminate the slaughter of these seals and the U.S. taxpayer subsidies for the slaughter of seals in Alaska. I want to mention some of those organizations. I cannot tell you that they are going to be satisfied with this understanding.

I know that a number of them have great questions about it and probably will not be satisfied with it, while perhaps others will be satisfied. I want to mention for the Record the organization that have worked so hard to bring public pressure to bear on this issue: American Cetacean Society, American Littoral Society, American Society for the Prevention of Cruelty to Animals, the Center for Action on Endangered Species, Committee for the Preservation of the Tule Ele, Connecticut Cetacean Society, Defenders of Wildlife, Friends of the Sea Otter, Friends of Wildlife, Fund for Animals, Greenpeace Foundation, Center for Environmental Education, Institute for Dolphin Research, International Dolphin Watch/USA, and Let Live.

One of the great leaders in this effort, of course, is the Humane Society of the United States.

Mr. President, I began my study of this issue with the goal of producing legislation which would require us to end the Government subsidized slaughter of the North Pacific Fur Seal. That is not what this understanding provides. But what it does provide for is very significant. It allows the United States to reduce that slaughter by as much as 70 percent provided that such a reduction is consistent with the terms of the convention, the health of the Fur Seals and the rights of the Aleut people of the Pribilof Islands.

I believe that such a reduction can and should take place. To understand why I have reached that conclusion, it is necessary to look at the history of this convention.

Year's ago, when the Alaskan lands were under the control of Russia, the sealing industry constituted a thriving economic resource. Seal skins were in great demand. Throughout the world, nations actively competed for the right to kill seals off the Pribilof Islands in Alaska.

In fact, it was to a significant degree the attractiveness of the sealing industry which motivated the decision of the United States to seek to buy Alaska.

Once that land became one of our possessions, however, we discovered that

the sealing industry was in danger. Other nations, in their search for seal skins had adopted, as a primary mode of hunting and killing seals, a practice called pelagic sealing. Pelagic sealing, the killing of seals in the open sea, threatened the very existence of the North Pacific fur seal herds. Inherent to the killing in open sea is the taking of a large number of females and pups. And, as a result of their deaths, the very survival of the herd was threatened.

The United States, in an effort to end this threat, negotiated an agreement in 1911 with the principle sealing nations—Japan and Great Britain and Russia—in which the United States and Russia guaranteed Great Britain and Japan a given number of fur seal skins if, in return, they agreed to end the practice of pelagic sealing. They agreed and our current approach to the slaughter of the seals was initiated.

Under this approach, the U.S. Government hires 80 Aleut Natives of the Pribilof Islands to slaughter seals. For 5 weeks a year, we spend over \$400,000 to have them kill seals and skin them. In addition to that \$400,000, we also provide over \$3 million as part of the Fur Seal Act of 1966, in direct subsidies which go to improving their living conditions, their housing and so on.

But we subsidize more than the Aleuts. In return for the promises made by Japan and now Canada not to kill seals of the open sea, we also give them title to 30 percent of each year's kill, 15 percent each. They contribute no money for the support of the Aleuts. They spend no money to pay their wages. All they do is promise not to kill seals on the open sea and, in return, receive 30 percent of the seal skins taken in the annual harvest.

Now in theory, this may all be defensible. Given the threat that Pelagic Sealing once represented to the continued existence of the herd, it sounds like it may make sense to make these kinds of expenditures in order to prevent their destruction. But the facts are that we no longer need the convention to prevent pelagic sealing. We no longer need to spend this money in order to protect this species.

In 1976, we expanded our territorial claims from 3 nautical miles to 200 nautical miles. And with that expansion, the practice of pelagic sealing lost its economic viability. It simply is no longer profitable to do pelagic sealing because the North Pacific Fur Seals do not move in any large numbers outside of the 200 mile limit.

That was the conclusion of Sidney J. Holt, professor of environmental studies at the University of California Santa Cruz and former senior advisor on marine affairs to the Department of Fisheries of the Food and Agriculture Organization of the United Nations. He testified before the House Merchant Marine and Fisheries Committee in April, 1980 and told them that it was his judgment that:

Pelagic sealing, if conducted beyond the extended zones of national jurisdiction, would be prohibitively expensive and technically quite difficult.

That is why, even though they are not bound by the convention, other nations which could have a sealing industry do not kill North Pacific Fur Seals. The costs of trying to kill them outside the 200 mile limit are simply too great.

But we have retained the Interim Convention. We have continued to spend \$3 to \$4 million of the taxpayer's dollars each year in an effort to persuade the other signatory nations not to kill seals on the open sea—something they would be convinced of anyway by sheer economics.

We have continued to slaughter tens of thousands of seals year after year under the illusion that somehow, as we beat them to death, we are saving them from a fate that no longer exists.

Now Mr. President, I must confess that I have no love for the act of slaughtering seals. But I must also confess that I am not philosophically or morally opposed to such an act if I believed it was either necessary or economically defensible. But, as I have indicated, there is no "need" to kill seals in order to save them from a worse fate.

And the plain truth is that this convention, and the subsidy it grants to the Aleuts and the other signatory parties, is the very antithesis of an economically defensible activity.

In this age where so much attention is focused on the free market and removing Government subsidies from the private sector, this harvest—this slaughter—of marine mammals is made possible only through Government support. And that, Mr. President, is really what I find indefensible.

I could accept the killing of seals. I can accept continuing Government support programs to make the life of the Aleuts better. But I cannot accept the link between the two. I cannot accept the fact that we subsidize Aleuts to kill seals and that only because of that subsidy are they being killed.

As a nation we have condemned the Canadian slaughter of baby harp seals. As a body, the Senate has gone on record as opposing that slaughter. Yet this Nation and this Senate is engaged in an even more indefensible act when we subsidize the needless slaughter of 25,000 North Pacific fur seals each year.

There is no economic justification for that payment.

There is no ecological rationale for that subsidy.

And there is no moral defense for the killing we sanction through it.

Mr. President, the understanding we are attaching to this protocol is designed to allow this U.S. Government-run and taxpayer subsidized seal slaughter to be reduced in a reasonable and a fair way.

As the understanding states, such a reduction can be initiated if it is consistent with the terms of the convention, the health of the herd and the rights of the Aleuts. I believe a reduction in the harvest of the U.S. share thereof would, in fact, be consistent with these three goals. Let me discuss each of them.

There are approximately 80 Aleuts who we pay 6 week's wages, \$250,000, to run the slaughter. The understanding I offer allows for a gradual reduction.

If any reduction takes place, and as the reduction takes place, I believe that the Aleuts can develop a more diversified and viable economy; one which can become independent of the slaughter. The Aleut's are working now to develop such an alternative economy.

They are engaged in a new commercial fishing venture which offers realistic and long-term employment opportunities to their people and income to their community corporations. They are also taking steps to develop the other natural attractions of the Islands which will be the source of tourism, particularly the bird sanctuary which the Congress has already authorized and should soon fund.

These and other activities are encouraging signs of economic independence. They are signs which I believe the Congress ought to encourage and support. And I am certainly ready to pledge my cooperation in continuing efforts to improve the economy of the region.

Other Members of Congress are also concerned about the Aleut community and are willing to support efforts to diversify it. I again note a portion of a letter from Congressman REGULA of Ohio who wrote to the chairman of the House Interior Appropriations Subcommittee about this issue earlier this month:

It is my understanding that the Aleuts in the Pribilof Islands have begun a small boat commercial fishery, which it is anticipated will, in combination with the Refuge and tourism, eventually replace harvesting seals as the primary source of employment on the Islands. The natives expect to utilize the monies received from the government in exchange for these lands to further develop the commercial fisheries and the tourism industry.

I therefore recommend that Congress appropriate \$7.6 in fiscal year 1982's budget to effectuate the contract which has been executed by the parties and previously ratified and authorized by act of Congress. With this money, and the establishment of the refuge, the Pribilof Aleuts will be able to develop an economic basis, other than sealing. They will thus be able to continue as viable economic units when National Marine Fisheries Service completes phasing out its Pribilof Islands program.

As it is my understanding that this contract is supported by all concerned groups it would make a great deal of sense to appropriate the funds, establish the Refuge and develop the alternative economy now.

In that way, the Aleuts will have an opportunity to establish profitable businesses based on foreseeable circumstances by the time the National Marine Fisheries Service phases out the services it provides on the islands.

This confidence about the viability of more diversified economies is also shared by those most directly concerned with the welfare of the Aleuts. In a letter addressed jointly to Senator STEVENS and myself, the attorney representing the Aleuts wrote that—

With the assistance of the U.S. Government, my clients will take all reasonable steps to diversify the economy of the Pribilof Islands to the end that sealing is no longer the principle source of employment.

Mr. President, I ask unanimous consent that the full text of that letter appear in the Record at this point.

There being no objection, the letter was ordered to be printed in the Record, as follows:

SMITH & GREENING, INC.,  
Anchorage, Alaska.

HON. TED STEVENS,  
U.S. Senate,  
Washington, D.C.  
HON. CARL LEVIN,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR STEVENS AND SENATOR LEVIN: This letter is in response to your requests that I write a letter explaining my clients, The Tanadgusk Corporation and the St. George Tanaq Corporation, concurrence with the "Understanding" which will be included in the Resolution of Ratification of the Interim Convention.

My clients understand the philosophical opposition to the harvesting of the Northern Pacific Fur Seal by groups in the United States and the effect that this pressure has on future alterations of the harvest, or the Convention. We understand the pressure for a reduction by many of these groups.

While my clients do not agree with the position of these groups, or to an alteration in the harvest, they do recognize the need to diversify the economic base of the Pribilof Islands so that sealing is not the only source of employment on the islands.

In that light, and as a result of the agreement of the Senate and others to take significant steps to provide the means of diversifying the economy, my clients agree to the Levin Understanding, as an amendment to the Resolution of Ratification of the Interim Convention.

We would expect that the future conduct of the harvest would be in accordance with the ecosystem research and based on sound scientific principles. With the assistance of the United States Government my clients will take all reasonable steps to diversify the economy of the Pribilof Islands to the end that sealing is no longer the principal source of employment.

Sincerely,  
JOHN ANTHONY SMITH.

IN. There is, then, Mr. President, a significant body of opinion which suggests that a reduction of the harvest or the U.S. share of that harvest can be accomplished in ways which are consistent with the needs of the Aleut residents of the Pribilof Islands.

A second consideration involves the relationship between a reduction in the harvest and the terms of the convention. I believe that the understanding I am offering does not—does not—violate our commitment to provide a given percentage of the skins to the Japanese or the Canadians, which amounted to 7,500 in 1980. We would continue to kill a significant number of seals to meet that obligation.

All my understanding provides is that we need not take those skins to which we are entitled, which amounted to 17,000 in 1980—and we need not kill the seals which would have provided us with those skins.

The Japanese and the Canadians still get the skins they were promised. Our contractual commitment to them is honored for the life of the treaty. But we also, through this understanding, can honor another commitment: A commitment not to needlessly support the slaughter of intelligent animal life.

I would advance three reasons to support my claim that such a reduction is consistent with the convention.

First, the Department of Commerce

believes that we already have—under the terms of the treaty—the right to unilaterally decide what to do with our allotment of seals. We can decide to kill them or we can decide not to. As long as we supply 30 percent of the projected harvest to the Canadians and the Japanese, we have met the terms of the treaty.

Let me quote the statement of the Department of Commerce on that issue. They said in their 1981 final position paper, and discussion topics for the 1981 annual meeting of the North Pacific Fur Seal Commission:

Should this issue be raised at the Commission meeting, the U.S. response will state that our preliminary view remains that the United States may forego annually all or a part of its share of the harvest. Reduction of the harvest is not contemplated for 1981.

This view has been reiterated as recently as June 8, 1981. Secretary of Commerce, Malcolm Baldrige, in a letter to Mr. Roger Kindler of the Humane Society, wrote that:

It is and has been our view that it may be possible for the United States to reduce its share of the harvest within the provisions of the interim convention on conservation of North Pacific Fur Seals.

Second, those who suggest that such a reduction would violate the treaty depend on an objection raised to an earlier version of this reservation by the Department of State. Now, Mr. President, that objection really is not persuasive.

The State Department comments on the earlier version of the reservation were not very precise. They wrote then that they believed the reservation was "contrary to the intent of the convention and . . . counter to the will of other party members."

Now Mr. President, I am getting used to dealing with State Department types and the language of diplomacy. They say that the reservation is contrary to the intent of the convention. But that does not mean that the reservation is a violation of the terms of the agreement.

I have been a lawyer long enough to know that there is a big difference between behavior which is argued as being contrary to the intent of a contract and behavior which violates the terms of a contract. The State Department letter, then, is really rather mild—especially when contrasted with the clear position of the Department of Commerce.

But finally, in terms of this question about whether or not the reservation violates the terms of the convention, I think it is important to note that the State Department bases half its case not on the terms of the convention itself but rather on the will of the other party members and their fear that this reservation would be counter to that will. The point is, however, that to the best of this Senator's knowledge, this issue has never been directly negotiated with the other parties. It has, however, been discussed. Let me share with you the report of the Department of Commerce on this discussion:

During consultations with party governments on the future of the Interim Convention on Conservation of North Pacific Fur Seals in October, 1979, the United States

questioned party governments regarding whether or not any party may unilaterally forego its share of the commercial harvest. The party governments noted that such an interpretation of the Convention had never been contemplated, but did not initially oppose this interpretation.

And in the same vein, Mr. President, I fail to see how a decision by the United States not to take its full allotment of the harvest would violate the intent of the convention when the Department of Commerce, as one party to the negotiation of the convention, very explicitly has indicated that it was their intent all along to give the United States the option to take any portion of its allotted share of the harvest.

It is not my intent, Mr. President, to violate the terms of the convention. It is simply my intent to allow the United States to exercise its rights under the terms of the convention and decline to kill or take the skins of all the seals to which it is entitled.

Finally, Mr. President, this understanding requires that any reduction be consistent with the health of the herd. I have already indicated that there is no threat of a return to pelagic sealing. And thus no threat from that quarter of the herd.

But I have sometimes heard those who disagree with me claim that whether or not the slaughter is needed to prevent a return to pelagic sealing, it is needed to allow us to better manage the seal population and protect the other sea life—and the fishing industry which needs that sea life—in the region.

I would begin by suggesting that there is at least something mildly presumptuous about the claim that we need to kill seals in order to protect them—that mankind is in a better position to control and balance nature than nature itself. I find it hard to accept the claim that we need to kill seals in order to save them.

The State Department also joins this argument and suggests that, as a result of the termination of the harvest at St. George Island, there may have been some damage done to the fur seal stock.

They wrote that the termination of the harvest resulted in a reduction in the female and pup population for reasons not fully understood.

Now that is an interesting argument in at least three senses.

First, it is an admission that we do not fully understand the environmental forces which have caused this alleged shift in population. Given that uncertainty, I find it hard to understand the degree of confidence the Department has in the ecological effects it predicts would result from a termination of the slaughter.

Second, the termination of the harvest at St. George was done on an experimental basis—and that experiment is not yet concluded. To that extent the Department is certainly prejudging the results of its experiment and leaping to conclusions.

And, third, I think that conclusion is at least mildly inconsistent with the fear that an end to the harvest would endanger the fishing industry by allowing the

fur seal population to grow and consume ever-increasing levels of commercially viable fish. How can a population that is arguably going to be reduced by the ending of the harvest at the same time develop an appetite voracious enough to increase its consumption of fish and endanger that industry? I just do not see how it can happen.

The argument that an end to the harvest would upset nature's balance or impact the commercial fishing industry is, then, one which simply does not have merit.

Mr. President, let me conclude these remarks by emphasizing the main issues I have tried to raise. Essentially I am saying that this slaughter can be phased out without doing real damage to the herds, the Aleuts, the economy of the region, or the terms of the treaty.

And, as importantly, I am saying that this slaughter should be phased out; it is economically inefficient and morally unacceptable. We should help the Aleuts. We can, if we need to, kill seals. But we cannot—and should not—needlessly continue a vicious circle in which we pay Aleuts to kill seals and we kill seals in order to have a reason to pay the Aleuts.

This understanding allows us—if we have the wisdom to make it, as I believe we will—to reduce this slaughter and break out of this circle.

We have an obligation, Mr. President, to treat this Earth and its resources with care and concern. We have an obligation to treat all creatures with compassion. And those are obligations which we have violated and will continue to violate if we perpetuate this needless and wasteful slaughter.

We can develop a diversified economy for the native population of the Pribilof Islands. We can honor our obligations to Japan and Canada. And we can do those things in ways which are consistent with environmental concerns and human compassion.

And I believe that adoption of this understanding allows us to make progress toward achieving those goals.

Finally, Mr. President, let me close these remarks by paying a brief tribute to Jim Cullow of my staff. He has worked for 6 hours on this issue and his advice and counsel have proven to be invaluable to me in this effort.

In the same way, I would like to express my appreciation to Mr. Milton Kaufman of the Fund for Animals for his work in coordinating the involvement of the environmental community in this effort.

And finally, I want to thank an old friend, Bill Broder, for his advice and counsel. His suggestions gave me the incentive to carry on in this effort.

Mr. President, again, I thank my colleagues from Alaska. I think we have reached a conclusion here which allows us to move in the direction which I have indicated.

At this time, Mr. President, I yield 5 minutes to my friend from Rhode Island (Mr. PELL) whom we have named as a cosponsor of this amendment.

Mr. PELL. Mr. President, I thank my colleague from Michigan.

Mr. President, I urge the Senate to

give its advice and consent to the 1930 Protocol Amending the Interim Convention on Conservation of North Pacific Fur Seals. The effect of the protocol is to extend for another 4 years the system of protection for and management of the North Pacific fur seal herd.

The Interim Convention, which, in the present form, dates back to 1927 and, in an earlier form, to 1911, has been a model of successful cooperation in the protection and management of migrating species. Under the convention, the nations without seal rookeries—Canada and Japan—share in the controlled harvest of the nations with such rookeries—the United States and the Soviet Union. In return, all powers agree to forego the extremely wasteful practice of pelagic—high seas—sealing. Since 1911, the fur seal population on the U.S.-owned Pribilof islands, which are the major breeding grounds, has increased from 200,000 to 1,250,000.

The North Pacific Fur Seal Convention, in spite of its past successes, cannot be an unchanging and unchangeable document. Circumstances have changed since the original agreement was negotiated in 1911, and indeed, have changed since the present convention was last extended in 1976.

Two important changes deserve comment. First, sealskins are no longer in great demand and hence the harvest is no longer profitable. Since 1970, the total cost of managing the Pribilof Island program has exceeded the revenue earned from sealskins.

In 1979, expenditures exceeded receipts by \$3,335,789. Second, the adoption of the 200-mile fishing zone has brought much of the fur seal's migration path under the provisions of the Marine Mammal Protection Act and, hence, has sharply reduced the potential damage of resumed pelagic sealing.

In response to these changed circumstances, I supported in committee a reservation offered by Senator Dodd to reduce the harvest on U.S.-owned rookeries by 70 percent by instructing the United States not to kill any of its quota. The Dodd reservation would have annually saved 10,000 seals from an uneconomical and cruel slaughter. The reservation did not impinge on Canada's and Japan's share of the harvest and, hence, was entirely consistent with the terms of the Convention. Regrettably, the Dodd reservation was rejected by the Foreign Relations Committee.

I am pleased, however, that a compromise has been worked out between the Senators from Alaska and Michigan, and I look forward to supporting it.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. Mr. President, I yield myself such time as I may need. It is my intention that we shall yield back the remainder of our time to my friend from Michigan, in a few minutes.

Mr. President, I think it is important to call the attention of the Senate to the fact that this Interim Convention is in fact the Protocol Amending the Interim Convention on Conservation of North Pacific Fur Seals. It was submitted to the President on October 31, 1980, by our

former colleague, former Secretary of State Edmund Muskie.

I ask unanimous consent that the letter of submittal from the Department of State to the President of October 31, 1980, be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF STATE,

Washington, October 31, 1980.

THE PRESIDENT,  
The White House.

MR. PRESIDENT: I have the honor to submit to you, with a view to transmittal to the Senate for advice and consent to ratification, the Protocol Amending the Interim Convention on Conservation of North Pacific Fur Seals, between the United States, Canada, Japan, and the Soviet Union, signed at Washington, on October 14, 1980 (the Protocol).

The Interim Convention was signed in 1937; it replaced an earlier convention on North Pacific fur seals dating back to 1911. Under the two conventions, the herds of fur seals have been protected and managed, and the population has increased from 300,000 animals to approximately 1.7 million. The Interim Convention was extended in 1963 and 1969. A 1976 Protocol further extended the Convention and amended it in order to provide greater protection for fur seals. This Protocol extends the Interim Convention for an additional four years, until 1984. It also reflects the four signatory nations' recognition of the extensions of fisheries jurisdictions which have occurred since the entry into force of the 1976 Protocol.

The Interim Convention bans pelagic sealing, which United States scientists consider a wasteful method of harvesting seals. Should the Convention not be extended, the Japanese have indicated they would return to the practice. The Convention also allows the management of fur seal stocks throughout their range. Without it, the United States could manage fur seals within its fishery conservation zone, but would not have any means of control over taking outside the zone. In addition, the Convention allows the continuation of traditional Aleut harvesting of seals for subsistence.

The Department of Commerce has drafted an environmental impact statement on the possibilities of renegotiating the Interim Convention and has concluded that a four-year extension of the present agreement is the course of action which will provide the best protection to North Pacific fur seals throughout their range. The Department of Commerce, which participated with the Department of State in the negotiation of this Protocol, concurs in the view that early ratification of the Protocol is most desirable. I recommend that the Protocol be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted,

EDMUND S. MUSKIE.

Mr. STEVENS. Mr. President, this is one of the most interesting records in history of an attempt to bring about the controlled utilization of a species. The activities of the United States commenced following the purchase of Alaska from Russia. Prior to that time, the Russians, who had discovered the Pribilofs in 1786, had initiated a very large sealing activity. The resource was practically annihilated by 1834 as the report of the Senate Foreign Relations Committee points out. The Russians then stopped the taking of females and the herds began to increase.

By the time the United States pur-

chased Alaska, the Pribilof fur seal herd had been restored to about 2½ million, according to the records of that time. We are not certain how accurate that count was.

In 1869, Congress set aside the Pribilofs as a special reservation for the seals, but did conduct sealing during the 20-year period that followed under a leasing arrangement that allowed the take of about 2 million seal skins. By 1910, only 200,000 seals were estimated to remain.

In 1911, the first treaty was entered into between our Government and Japan, Russian, and Great Britain acting on behalf of Canada. The success of this treaty has brought us to the point where there are now approximately 2 million seals. The estimate of the department was 1.7 million; I understand that is about 2 years old.

We have discontinued the taking of fur seals on St. George in a controlled experiment that commenced in 1973. It was done with the full consent of the Pribilof people in consultation with the State of Alaska.

In the last 7 years, there has been a rapid increase in the abundance of adult males and a decline in females and pups. It is obvious, I think, to anyone who has studied the past history of this treaty that the scientific management that has been applied to this fur seal herd has, in fact, revived it when it was close to extinction in 1910.

I believe that the State of Alaska and all Alaskans are most interested in securing the approval of the Senate for the extension of this treaty, primarily to assure that this species will be maintained under scientific management principles. We believe that the history of this treaty demonstrates what we have tried to bring about in the management of other species. It is to our sad regret that there are many who will not listen to us as we try to point out that other species could similarly be restored through scientific management. Unfortunately, we have a far different concept involved in the moratorium as far as ocean mammals are concerned right now. But this history demonstrates that when the welfare of the species is our first and foremost goal, the concept of scientific management does work.

Mr. President, I want once again to go on record as stating unequivocally that I think that the history of this program demonstrates that those of us who believe that man has a role in assisting in the preservation of the species such as the fur seal and utilizing a portion of the harvest to benefit mankind, are on the right course as far as wildlife is concerned. Wildlife management, to me, is demonstrated in its finest form in connection with the history of the fur seal treaty.

Mr. President, unless my friend seeks any more time, I am prepared to yield back the remainder of the time on our side.

Mr. CRANSTON. Mr. President, I support the language offered by Senator Levin to the resolution ratifying the 1980 Protocol Amending the Interim Convention on Conservation of North Pacific Fur Seals. While the language now be-

fore the Senate stops short of ending the U.S. take of fur seals—and ending that take was the course I advocated as a member of the Senate Foreign Relations Committee—I believe this modification, agreed upon in a spirit of comity by Senator LEVIN and the distinguished assistant majority leader (Mr. STEVENS), represents a significant and hopeful step in how we view the fur seal harvest and the U.S. involvement in carrying out the terms of the treaty.

I think it important to recognize that this language makes possible both a continued stand by the United States against pelagic sealing—that is, killing seals on the high seas—as well as a Senate directive to study fur seal feeding habits, food requirements, and migration and distribution patterns, about which we now have insufficient information. We also recognize the need for alternatives to sealing for the inhabitants of the Pribilof Islands. And we further declare that the Secretary of State should continue efforts to conform the Interim Convention with the purposes and policies of the Marine Mammal Protection Act, and we reiterate the right to adjust the U.S. share of the annual fur seal harvest.

Mr. President, I look forward to the day when we end U.S. involvement in the fur seal hunt. I believe that taxpayer-subsidized seal hunts are inconsistent with the wishes of a majority of Americans. Each year, Members of Congress are bombarded with communications from their constituents in specific reference to the Canadian harp seal hunts carried out under sanctions of that Government. More Americans are becoming aware that in the case of the fur seal, the United States not only sanctions, but pays for a similar slaughter—with taxpayers' money—over which our Government has direct control.

Let me say, Mr. President, that I believe conducting this hunt is an international embarrassment to the United States. It clearly lowers our credibility when we push for abolition of other seal hunts—which we do—and where extinction is a far more imminent threat.

I would also point out that the Senate Committee on Foreign Relations has previously expressed its concern about continuing the treaty without modification. In our 1978 report on the treaty, the committee pointed out that with the extension of U.S. jurisdiction out to 200 miles, it was unclear how much pelagic sealing other nations could undertake effectively. The committee urged the State Department to undertake a study of the situation and the possibility of negotiating a bilateral agreement with Canada on pelagic sealing which might be preferable to the present convention. In that report, the committee clearly implied that alternative means to conserve fur seals might be found.

Four years later, we find ourselves in the same quandary that faced us then, and I feel uncomfortable continuing this same arrangement for an additional 4 years without at least some indication by the Senate that we must make progress toward an alternative to the killing

of fur seals as an economic base for the Aleuts.

Mr. President, I believe the understanding Senators have reached on this issue offers much to alleviate the concerns expressed by me and by other Senators on the Foreign Relations Committee. I support the language now before the Senate.

Mr. President, I ask unanimous consent to have printed in the RECORD the additional views of Senators on the Foreign Relations Committee in which we discuss the reasons for our support of the original reservation specifying an end to the U.S. take of fur seals. The views provide background to the discussion here today.

There being no objection, the additional views were ordered to be printed in the RECORD, as follows:

ADDITIONAL VIEWS OF SENATORS FELL, BIDEN, SALANES, ZORINSKY, CRANSTON, AND DODD

During Committee consideration of the Protocol Amending the Interim Convention on Conservation of North Pacific Fur Seals, Senator Dodd offered the following reservation:

"It is the position of the United States that the United States is not obligated to harvest any of the quota of North Pacific Fur Seals assigned to the United States under the terms of the Interim Convention on Conservation of North Pacific Fur Seals. Approval of this Protocol is subject to the condition that the United States not harvest any of its quota of fur seals after January 1, 1981. The Senate directs the Administration to negotiate an arrangement with Canada and Japan so that Canada and Japan will receive seal-skins as provided under the terms of Article IX of the Interim Convention on Conservation of North Pacific Fur Seals, except that the total number of seal-skins provided annually to Canada and Japan shall be no greater in number than the number they would have received if the United States harvested its quota."

This reservation, which we supported, is similar to one suggested by Senator Levin in a letter to Committee Members (see appendix). The reservation requires the United States, as a condition of extending the Interim Convention on Conservation of North Pacific Fur Seals, to forgo harvesting its 70 percent share of the annual seal kill on the Pribilof Islands. The effect of the reservation would be to reduce the annual seal kill on the Pribilofs from the present level of 29,000 to approximately 7,800. We believe a United States decision not to harvest its quota of seals is entirely consistent with our obligations under the Interim Convention.

We believe United States participation in the annual seal kill is economically unsound, is inconsistent with the management and conservation criteria contained in the Marine Mammal Protection Act of 1972, and serves to undermine efforts to persuade other countries to better protect marine mammals. The Pribilof Island rookeries, which are home to approximately 1,330,000 of the estimated 1,760,000 North Pacific Fur Seals, are administered as a commercial venture by the Department of Commerce. In 1979 the Department of Commerce spent \$4,208,600 on the Pribilof Island program, of which \$444,000 were direct expenditures on fur seal harvesting and processing. While receipts from seal-skins (\$842,011) do cover direct costs, they are now far short of covering program costs. (By contrast, in 1980 seal-skins earned \$3,220,405 while total program costs were only \$1,720,402). Thus, at least indirectly, U.S. taxpayers are subsidizing the price of fur coats.

The Marine Mammal Protection Act of 1972 establishes strong standards for protecting and managing marine mammal populations. Were the management goals of this law—i.e., the goal of maintaining the species at optimum sustainable population—applied to the Pribilof Island rookeries, there would be no harvest. By eliminating the United States share of the harvest, we will be following management and conservation practices more in line with the objectives set out by Congress in the Marine Mammal Protection Act.

We share the concern of many Americans over the killing of whales and harp seals. United States Government participation in the seal kill on the Pribilofs strikes us as inconsistent with public and governmental goals in marine mammal protection and certainly weakens our ability to influence other nations.

In its comment on the proposed reservation, the State Department said it "appears to be, in effect, a rejection of the Protocol we have proposed for ratification." We strongly disagree. The Convention is a commercial arrangement allowing the parties without rookeries (Canada and Japan) a share of the land harvest in return for a prohibition on pelagic sealing. Nowhere in the text of the Convention is the United States required to harvest its quota and the proposed reservation explicitly protects the right of the treaty partners to their share.

Furthermore, we note the United States government has stated, both in the September 1980 Final Environmental Impact Statement and the Final Position Paper for the April 1981 annual meeting of the North Pacific Fur Seals Commission, its preliminary view that the United States may forego all or part of its share of the harvest under the terms of the present Convention. The other governments, when questioned on this position, did not object.

We recognize the economic hardships facing the Aleut peoples of the Pribilof Islands, and are concerned about their economic well-being. The Aleuts are a strong and proud people with a long heritage, who have endured a great deal of economic uncertainty. Their fate, now and in the past, has been linked to commercial sealing on their islands. However, this no longer needs to be the case.

Alternative employment opportunities do exist. The rich fisheries of the Bering Sea and the tourist attraction of the soon-to-be established Wildlife Refuge for birds can form the basis for a diversified and enduring economy.

We recognize that, even with a reduction in the seal harvest, Federal expenditures will be essential to provide the Aleuts with necessary services. We do believe that the alternative economies described above provide greater prospects for economic independence than the seal harvest. We hope the State of Alaska and the Federal Government will work with the Aleuts to achieve this independence.

Although the proposed reservation was not accepted by the Committee, we nevertheless supported the Convention of final passage. We believe that resumed pelagic sealing poses a potentially greater risk to the seal populations than the current harvest. We note, however, that the 200-mile fisheries zone provide greater protection to the North Pacific Fur Seals than that which existed at the time of the previous extension of the Interim Convention in 1978. Prior to renewal of the Convention in 1984, we request the Administration provide data on the economic prospects for pelagic sealing outside the 200-mile limit. We also urge the Administration to negotiate with our treaty partners for a reduction in the annual seal harvest.

Mr. LEVIN. Mr. President, I am prepared to yield back the remainder of my time.

Before doing so, I ask unanimous consent that the name of Senator from California (Mr. CRANSTON) be listed as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, I yield back the remainder of my time.

Mr. STEVENS. I yield back the remainder of my time, and ask that the amendment of the Senator from Michigan be considered at this time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Michigan (UP No. 150).

The amendment was agreed to.

Mr. STEVENS. Mr. President, I ask for the yeas and nays on the resolution of ratification, as amended.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HEINZ. Mr. President, I rise to support the protocol amending the Interim Convention on Conservation of North Pacific Fur Seals, a treaty which has been in force since 1957. Its ratification will certainly lead to continued protection for the fur seals of the Pribilof Islands.

In the past, I have been a strong advocate of bringing some sensibility to the Pribilof seal harvest program and it is with this in mind that I endorse the protocol as amended by Senator LEVIN.

What Senator LEVIN has proposed is to begin the slow process of getting the Federal Government out of subsidizing the fur seal harvest while still maintaining and strengthening our country's commitment to conducting the harvest in a humane fashion.

This proposal would direct appropriate studies to be undertaken in order to examine the effects of possible changes in the harvest of the Pribilof residents, the ecosystem, the Aleutian economy, and the fur seals themselves. I cannot emphasize enough the importance of adding substantive studies and useful data to the fur seal debate. We need to have some scientific basis on which to make decisions affecting the Pribilof Islands, its people, and the fur seals.

Four years ago, the Senate faced this same issue on the Interim Convention. Then, as now, insufficient information existed on the effects of proposed changes to the treaty. If we expect to make any reasonable modifications to the treaty, we simply must have this information.

The Interim Convention has been responsible for much of the resurgence in fur seal herds over the last 70 years. Our Nation and the other members of the Interim Convention have a right to be proud of this cooperative accomplishment.

However, the United States has an obligation to see that the harvest is conducted humanely under the protection of the Marine Mammal Protection Act of 1972. We owe it to ourselves to encourage

Japan, Canada, and the Soviet Union to comply with the principles of conservation and humane treatment of animals which this landmark law mandates.

Furthermore, the subsidization of the seal harvest by the Federal Government is a national embarrassment. During this period of budgetary austerity in our Government, we must make every effort to stop wasteful and unnecessary expenditures.

I am well aware of the importance of the seal harvest to the lives and the economy of the Aleuts and I would not propose to radically alter a tradition which is several hundred years old. However, the Federal Government cannot continue its financial support for this harvest. Our Government cannot afford it and the taxpayers will not stand for it.

The Pribilof seals are one of our Nation's great natural resources. We do have a responsibility for their continued well-being and protection. I look forward to the results of scientific studies on this region and the fur seals and to a rapid yet effective resolution of this problem.

RECESS UNTIL 12:25 P.M.

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate stand in recess until 12:25 p.m. today.

There being no objection, the Senate, at 11:50 a.m., recessed until 12:25 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. WARNER).

Mr. CRANSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The hour of 12:30 having arrived, the Senate will now vote on the resolution of ratification.

The question is on agreeing to the resolution of ratification, as amended, on Executive S, 98th Congress, 2d session, 1980 Protocol Amending the Interim Convention on Conservation of North Pacific Fur Seals.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS. I announce that the Senator from Oregon (Mr. HATFIELD), and the Senator from Nevada (Mr. LAXALT), are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Connecticut (Mr. DODD), the Senator from Ohio (Mr. METZENBAUM), and the Senator from Nebraska (Mr. ZORINSKY), are necessarily absent.

I further announce that, if present and voting, the Senator from Connecticut (Mr. DODD) and the Senator from Delaware (Mr. BIDEN), would each vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who wish to vote?

The yeas and nays resulted—yeas 94, nays 0, as follows:

[Rollcall Vote No. 148 Ex.]

YEAS—94

Abdnor	Garn	Morihan
Andrews	Glenn	Murkowski
Armstrong	Goldwater	Nickles
Baker	Gorton	Nunn
Baucus	Grassley	Packwood
Bentsen	Hart	Pell
Boren	Hatch	Percy
Boschwitz	Hawkins	Pressler
Bradley	Iwakawa	Proxmire
Bumpers	Heflin	Pryor
Burdick	Heinz	Quayle
Byrd	Heins	Randolph
Harry F., Jr.	Hollings	Riegle
Byrd, Robert C.	Huddleston	Roth
Cannon	Humphrey	Rudman
Chafee	Inouye	Sarbanes
Chiles	Jackson	Sasser
Cochran	Jepsen	Schmitt
Cohen	Johnston	Simpson
Cranston	Kassebaum	Specter
D'Amato	Kasten	Stafford
Danforth	Kennedy	Stennis
DeConcini	Leahy	Stevens
Denton	Levin	Symms
Dixon	Long	Thurmond
Dole	Lugar	Tower
Domenici	Mathias	Tsongas
Durenberger	Matsunaga	Wallop
Eagleton	Mattingly	Warner
East	McClure	Welcker
Exon	Melcher	Williams
Ford	Mitchell	

NOT VOTING—0

Biden	Hatfield	Motzenbaum
Dodd	Leahy	Zorinsky

The PRESIDING OFFICER. Two-thirds of those Senators present and voting having voted in the affirmative, the resolution of ratification, as amended, is agreed to.

DEPARTMENT OF STATE

NOMINATION OF MYER RASHISH, OF THE DISTRICT OF COLUMBIA TO BE UNDER SECRETARY OF STATE FOR ECONOMIC AFFAIRS

Mr. PERCY. Mr. President, the Committee on Foreign Relations voted 10 to 0 on April 28 in favor of the nomination of Myer Rashish to be Under Secretary of State for Economic Affairs. The position is an important one in the formation of U.S. policy on international economic matters. The Under Secretary of State for Economic Affairs is the fourth ranking officer of the Department of State, and is responsible for developing the Department's views on international energy policy, international financial affairs, North-South economic relations and trade. The Under Secretary is responsible for preparation for economic summit meetings.

Mr. President, the first economic summit meeting will be held in Ottawa, Canada little more than a month from now. There will be a larger summit meeting in Mexico in October which will focus on North-South relations. In view of these upcoming meetings and all the other pressing international economic issues, it is critical to have Myer Rashish confirmed today for the position of Under Secretary of State for Economic Affairs.

The Committee on Foreign Relations found Myer Rashish to be highly qualified for the position. The Under Secretary for Economic Affairs ought to have a background in economics or business in order to handle the many technical and sensitive international economic

# Alaska State Legislature

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STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3804  
(907) 465-3835

## Senate

### Committee on Resources

May 6, 1981  
1:30 p.m.

Beltz Room  
211 - Capitol

#### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Fischer  
Senator Bradley  
Senator Mulcahy  
Senator Gilman

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#### Hearing:

- SB 388 An Act relating to the Alaska Commercial Fishing and Agriculture Bank
- SCR 15 Relating to the gathering and evaluation of comprehensive information about salmon stocks in the Arctic-Yukon-Kuskokwim management area.
- SB 249 An Act relating to fisheries information planning and evaluation.
- SJR 43 Requesting the United States Senate to support continuation of the present fur seal harvest quota.

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Rosalcen Moore, Chairman of the Alaska Commercial Fishing and Agriculture Bank, stated that she supported the amendments to SB 388 by the United Fishermen of Alaska.

Pete Argetsinger, General Counsel for CFAB, discussed the issue of auditing CFAB. He stated that the legislative auditors are not bound to keep information confidential, while the banking auditors are covered by very strict federal and state requirements of confidentiality.

Larry Butterfield, Vice President, Spokane Bank of Cooperatives, stated that SB 388 clarifies CFAB's status as a private cooperative, and also, the confidentiality of CFAB's records. He stated that government oversight is necessary to make sure the intent of the original law is being carried out and that the state's investment is protected.

In response to the question, if SB 388 did not pass would you keep loaning CFAB money? Mr. Butterfield, stated that they would keep loaning money to CFAB. He indicated that if CFAB was challenged in court it might be declared a state agency.

Senator Mulcahy put forth the motion to move the amendments to SB 388 by United Fishermen of Alaska.

Senator Mulcahy put forth the following amendments to SB 388: page 4, line 1, delete "may" and insert "shall" in its place; page 4, line 4, between the words "or a" insert "may provide to"; page 5, line 8 starting with the word "However" and delete the sentence to line 11.

Senator Mulcahy put forth the motion to move SB 388 as amended with individual recommendations.

Senator Mulcahy stated that SCR 15 is the result of finding out that a lot of information is available in the Departments but there is a need for the gathering and evaluation of comprehensive information about the salmon stocks in the Artic-Yukon-Kuskokwim area.

Senator Mulcahy put forth the motion to move Committee Substitute for SCR 15 with individual recommendations.

Senator Mulcahy stated that SB 249 is the result of finding out that it is not easy to gather fisheries information because it is located in numerous locations. The Division of Commercial Fish spends most of its time on management of the fisheries and preparing for the Board of Fisheries meetings. They do not have enough time or employees to gather and put together the information addressed in the bill.

Senator Mulcahy put forth the motion to move CSSB 249 with individual recommendations.

Senator Mulcahy stated that the fur seals in the Pribilof Islands contribute to the economy and provide a subsistence food base. The United States Senate is proposing to cut the annual harvest down to 7800 fur seal. SJR 43 is directed to the U.S. Senate to encourage them to continue the present fur seal harvest quota.

Senator Fischer put forth the following amendment: on page 1 between lines 10 and 11 insert "WHEREAS a reduction of the annual take of adult male seals would endanger the population stability of the Pribilof fur seal herd;" The amendment was accepted.

Senator Mulcahy put forth the motion to move SJR 43 as amended with individual recommendations.

The Committee adjourned at 2:35 p.m.

# 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) 465-3935

## Senate

### Committee on Resources

May 6, 1981  
1:30 p.m.

Beltz Room  
211 - Capitol

#### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Fischer  
Senator Bradley  
Senator Mulcahy  
Senator Gilman

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#### Hearing:

- SB 388 An Act relating to the Alaska Commercial Fishing and Agriculture Bank
- SCR 15 Relating to the gathering and evaluation of comprehensive information about salmon stocks in the Arctic-Yukon-Kuskokwim management area.
- SB 249 An Act relating to fisheries information planning and evaluation.
- SJR 43 Requesting the United States Senate to support continuation of the present fur seal harvest quota.

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1 IN THE SENATE

BY MULCAHY

2 SENATE JOINT RESOLUTION NO. 43

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 Requesting the United States Senate  
6 to support continuation of the  
7 present fur seal harvest quota.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 WHEREAS the Pribilof fur seal population has remained stable under the  
10 management policy mandated by the North Pacific Fur Seal Convention; and

11 *→ a new Whereas*

12 WHEREAS the United States government has historically had a social and  
13 economic responsibility to the people of the Pribilof Islands; and

14 WHEREAS the economy of the Pribilof Islands is almost totally dependent  
15 on the continuation of the fur seal harvest at its present level; and

16 WHEREAS the proposed reduction of the fur seal harvest will have dire  
17 consequences for the social and economic well-being of the people of the  
18 Pribilof Islands;

19 BE IT RESOLVED BY THE ALASKA STATE LEGISLATURE that the United States  
20 Senate support the continuation of the present fur seal harvest quota of the  
21 North Pacific Fur Seal Convention.

22 COPIES of this resolution shall be sent to the Honorable Strom Thurmond,  
23 President Pro Tempore of the Senate; the Honorable Charles Percy, Chairman  
24 of the Senate Foreign Relations Committee; and to the Honorable Ted Stevens  
25 and the Honorable Frank Murkowski, U.S. Senators from Alaska.

By GEORGE BRYSON  
Daily News reporter

WASHINGTON — The future of the Pribilof Island fur seal industry darkened considerably Tuesday, as the Senate Foreign Relations Committee began consideration of a new international treaty that could reduce the fur seal harvest in Alaska by 70 percent.

If adopted by the committee next week and later by the full Senate, the amended treaty

could bring an immediate halt to the U.S. purchase of fur seals from the islanders. It would require only enough sealing in the Aleutians to provide the annual share of furs allotted to Canada and Japan — thus potentially reducing the Pribilof harvest from 28,000 seals to 7,800.

The federal sealing program provides the principal livelihood for 600 Aleuts on St. Paul and St. George Islands.

The Senate proposal came

Tuesday in the form of an amendment to the North Pacific Fur Seal Convention — a longstanding agreement between Japan, Canada and the U.S., which outlaws the killing of fur seals at sea, but permits an annual harvest in Alaska. The amendment has been scheduled for a committee vote May 5.

It was quickly criticized by Alaska Sens. Frank Murkowski and Ted Stevens — neither of whom is a member of the

committee — and also brought a letter of protest from Gov. Jay Hammond, who called the proposal a drastic blow to the Pribilof Islanders.

Backed by Sens. Christopher Dodd, D-Conn., Paul Tsongas D-Mass., and Alan Cranston D-Calif., the amendment appears to carry the full support of the committee's Democratic minority and needs only an additional Republican committee

See Back Page, AMENDED

Continued from Page A-1

member to win approval.

Proponents of the amendment say U.S. taxpayers shouldn't be asked to subsidize a "blood industry" that benefits only Aleuts and the furrier trade.

That sentiment was backed Tuesday by a full-page ad in the Washington Post, paid for by Friends of Animals, Inc. and entitled "An Open Letter to the Senate Foreign Relations Committee." The ad criticizes the expenditure of \$4 million in federal funds to pay for the killing of fur seals.

"The Canadian and Norwegian seal clubbers will continue to scoff at our nation's pleas to stop their senseless slaughter until we end our own bloody seal kill," the ad says.

Members of Alaska's congressional delegation said the ad distorts the issue, since the treaty does not allow the killing of pup seals and the herd has actually grown by six-fold this century.

According to the U.S. Fish and Wildlife Service, the North Pacific fur seal population prospered under the sealing program — growing from an estimated 300,000 seals to the present population of 1.7

million seals.

In his letter to Foreign Relations Committee chairman Charles Percy, R-Ill., Hammond terms the Pribilof seal harvest "a classic wildlife management success story," and adds that it's supported by several environmental organizations.

Democrats on the commit-

tee agreed to hold off a vote on the amendment for a week, in order to weigh its consequences further.

Murkowski said he is trying to arrange an emergency meeting with Secretary of State Alexander Haig and the Alaska delegation to discuss the treaty and secure the administration's opposition to the amendment.

# Researchers disagree on seal hunt cutback

A proposal to reduce the Pribilof Island fur seal harvest by as much as 70 percent is biologically and economically unsound, a federal official who oversees the annual hunt said Wednesday.

Walter Kirkness, director of the National Marine Fisheries Service's Pribilof Islands Program, said scientific studies indicate such a reduction in the number of male adult seals

taken could result in declining populations of female and pup seals. Only adult males are killed during the early summer harvest.

However, a researcher with the same agency said those findings are not conclusive.

Regardless of the studies, the proposed reduction would cause a severe economic depression among the Aleut people who live on the remote

islands of St. Paul and St. George, said Larry Merculieff, St. Paul village corporation president. The seal harvest is the islands' sole industry.

The harvest is operated under terms of an international treaty signed by Japan, Canada and the United States. The pelts taken by the Aleuts are divided among the three nations, with the U.S. getting 70 percent and Japan and Canada

getting 15 percent each. It is evidently the 70 percent U.S. share that would be eliminated by a proposed amendment now before the Senate Foreign Relations Committee.

Between 24,000 and 28,000 seals are taken annually under the present treaty. If the reduction proposal is approved, that number would be reduced to

See Back Page, RESEARCHERS

## Researchers differ on seal hunt cutback

Continued from Page A-1

about 8,000. The entire fur seal population is estimated at about 1.4 million animals.

The amendment — criticized by Alaska's congressional delegation and Gov. Jay Hammond — is scheduled for a committee vote May 5.

The fur seals migrate to the two Pribilof Islands of St. Paul and St. George each year. No seals have been harvested on

St. George since 1973.

Kirkness said studies of the St. George seal population show the number of female seals and pups have declined there, during a period when no male seals were killed.

However, Robert Delong, a fisheries service researcher, said studies have shown a similar decline on St. Paul, where the harvest has continued.

Merculieff, however, had no doubts about the effect of a harvest reduction on the people

of the Pribilofs.

"Seventy-three percent of the employment on the islands is due to the fur seal program," he said. "A reduction of that size would make the two villages unviable."

"We maintain that no reduction is fair," he said. "But if Congress is determined to phase out the harvest, it should be done gradually, by giving us time" to develop other means of supporting the Pribilof economy.

# Haig to back state on fur seal harvest

by Betty Mills  
Times Washington Bureau

Washington — Alaska Sens. Ted Stevens and Frank Murkowski today won the support of Secretary of State Alexander Haig in staving off a threat by Democratic senators to torpedo the annual Pribilof Island seal harvest.

Following a closed-door meeting with Haig, the senators said the administration will lobby to defeat a move by Sen. Christopher Dodd, D-Conn., to remove the United States from participating in the

North Pacific fur seal treaty.

The treaty between the United States, Canada, Japan and the Soviet Union was adopted in 1911. It was renewed last October and is now before the Senate for ratification. The pact bans open sea hunting of fur seals and allows a controlled annual harvest of 24,000 seals from the Pribilofs.

Earlier this week, the treaty was abruptly pulled from the schedule of the Senate Foreign Relations Committee after Dodd discussed his proposal. Further action on the treaty

by the committee has been postponed until May 12.

Dodd and other Democrats want to add a provision reducing the annual harvest by 70 percent and allowing the Aleuts to harvest only enough seals to supply the Canadian and Japanese share of the hunt.

Alaska's congressional delegation and Gov. Jay Hammond have denounced the proposal.

Stevens said today that the administration fully supports the treaty. He said Haig "will take action to demonstrate this. The form of

that action is up to the secretary.

"It would make all the difference in the world if the administration indicates real support for the treaty."

Murkowski conceded that the Alaskans would have lost if the Foreign Relations Committee had voted on the treaty this week as scheduled.

"But I don't think our cause is lost," said Murkowski, who plans to lobby senators individually. He has already written a letter to every member explaining the Alaskans' position that the harvest is controlled and consistent with management principles, as well as essential to the livelihood of the Aleuts.

Stevens and Murkowski said the opposition from the Democratic senators reflects the desire by animal protection groups to expose the

## Seals . . .

(Continued from page A-1)  
annual killing of baby seals in Canada and Newfoundland.

Stevens said the treaty is "the most significant conservation achievement of our country. It would be a total disaster if because of pressure from a group of extremists, the nation receded from a treaty which has brought the herd from 11,000 to

1.7 million animals.

"These people who are attacking the treaty are trying to attack the situation in Newfoundland. They are putting up a challenge to Canadian environmentalists. This is a different harvest and different circumstances. This management concept ought not to be destroyed."



The New York Times/Wallace Turner

The village on St. Paul in the Pribilof Islands off Alaska. Russian fur interests brought Aleuts here to hunt seals for them in the 18th century.

# Still Tied to Seal Hunt, 750 Aleuts Ponder Change

By WALLACE TURNER  
Special to The New York Times

ST. PAUL, Alaska, June 27 — On St. Paul and its companion island, St. George, small dots in the Bering Sea, the lemon-yellow Arctic poppies are blooming and the 700-pound seals the Aleuts call beachmasters are bellowing at other males challenging them for control of barem sites. These are signals that it is time for the annual fur seal hunt, but this year the hunt is taking shape as a new social order arises because of decisions made in the world beyond the Bering Sea.

The changes here in the Pribilof Islands are a result of the Alaska Native Claims Settlement Act of 1971. About 10,000 Alaska natives, including Eskimos and Indians, are also using the 1971 law to seek economic and social betterment and to fight racial discrimination. However, the serflike position once held by the Pribilof Aleuts has been called unique in the nation's relationships with its aboriginal peoples.

### Legacy of 18th-Century Russia

That relationship was inherited from czarist Russia of the 18th century. No one lived here before Gerasim Pribilof, a Russian explorer, discovered a huge fur seal population on the islands in 1786. Soon the Russians imported natives from the Aleutian Islands, 200 miles to the south, to hunt the seals for their pelts. The Russians treated them as serfs, a pattern continued by Americans for a century after 1867, when the United States bought Alaska from Russia.

The Aleuts had no life-supporting economy of their own, though the surrounding waters teem with fish. They were totally dependent on the fur seal harvest. In return for the pelts, a Government store doled out food and clothing.

Now, through their village corporation, the 750 Aleuts own the Pribilof Islands. They own their homes. And they are searching for economic alternatives to the seal hunt.

For a time this winter, it appeared that the hunt would be ended by revul-



The New York Times/June 27, 1981

It is these "bachelor bulls" that are the targets of the hunt, as it has evolved since 1911, when overkill reduced the herd to about 300,000 animals. Now the herd totals 1.5 million, about the optimum number.

"We run between them and the sea," said Mr. Melovidov. "Got to drive them upwind. If you can't go upwind, you have to wait."

He pointed to level ground above the beach. "That's the killing ground," he said. About 25,000 male seals will be killed on similar patches of grass here in the four-week season in July.

Long ago the Aleuts perfected the system of stunning the fur seals with blows to the head when they have been driven into a tight circle on the grass.

Mr. Melovidov's crew includes seven stunners, seven rippers, who open the abdomen of the unconscious animal, two stickers, who puncture the hearts, two bar men, who hold the animal's body firm, and six pullers, who strip off the pelt. With watchmen, beaters and so forth, there will be 38 jobs in all, for the biggest payroll in the islands, totaling about \$400,000.

economic degree from the University of Washington. His activities as head of the village corporation have made him a hero to older island residents.

"I admire that young man so much," said Gabe Stepetin, 70 years old, who has spent most of his life on this storm-battered, 35-square-mile island.

In 1939 Mr. Stepetin brought his wife, Zenia, to St. Paul from Akutan, in the Aleutians, where he had met her while working as a blubber stripper for a whaling company. He got back his job in the Government store here.

Zenia, the young bride, went to the store and began to pick things that attracted her off the shelves. Tears glistened in her eyes as she remembered it.

"I went over and told her, 'No, those things are for the white people,'" her husband said. "We put the things back and I went home and cried," said Mrs. Stepetin.

Mr. Stepetin remembers when the Aleuts were ordered to evacuate St. Paul and St. George in June 1942, a week after the Japanese capture of two Aleutian Islands, Kiska and Attu. The Aleuts were told to leave immediately, with what they could carry. Gabe Stepetin was the last person to board the military transport ship.

"Before I went on the ship I walked up to the church and prayed to God for our safety," he said. "I had such a terrible feeling of being the only Aleut left on the island."

For 18 months, the Pribilofians were quartered in an abandoned gold mine and a fish cannery in the Juneau area. Larry Merkulieff said, "We lost 25 percent of our people."

In 1964, United States Senator E.L. Bartlett of Alaska became concerned over Federal domination of the Aleuts' lives when a candidate for the Alaska Legislature was barred from campaigning on St. Paul Island. His bill, which became the Fur Seal Act of 1966, gave the Aleuts local government powers they had not had before. In 1977, St. Paul incorporated as an Alaska city.

The most important change here, in the judgment of many who remember

fear again, the specter of an end to the sealing. He said: "We would need more time before you eliminate sealing. I would want to keep it forever."

The Aleut society is homogeneous, close-knit, slow to accept outsiders and change. There is a mission at the edge of town, run by the Rev. Alvin Capener of the Assemblies of God and his wife, but after 15 years here, Mr. Capener said, "I have no congregation," not a single convert among Aleuts.

The Rev. Michael Lestenkof, 67 years old, is the Orthodox pastor. He was ordained at the age of 49 on St. George, where he grew up. His grandfather was ordained there in 1885, when the church was still Russian Orthodox. Expressing concern over alcoholism and sinfulness among the Aleuts, he said he had 120 families in his congregation. That is the number of Aleut families on St. Paul.

There are no dogs here. They would annoy the seals. One television channel comes in by satellite. Beer is sold at a tavern owned by the Community Council, which owns the Community Store. The Federal Government brings in the fuel oil and gasoline.

The unemployment rate is 80 percent. Islanders owe the Federal Government \$155,000 for electricity and \$124,517 for fuel oil. The Community Store, itself \$200,000 in debt to suppliers, holds unpaid bills of \$101,000.

The physical plant of the Government village the Aleuts now own is well-worn. The sewers and water lines are old. The electric system will cost 28 cents a kilowatt hour to operate, although the Government has been charging 14 cents.

### Hopes for Diversification

The Aleuts want to try commercial fishing, but there is no harbor. Two small boats that can be hauled out on the beach have been bought for experimental work this year. Tourism, involving showing bird watchers the island's 100 species, employs some islanders in the summer.

Years ago the Federal agents built a plant to cook the oil out of the seals.

That relationship was inherited from Czarist Russia of the 18th century.

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Now, through their village corporation, the 750 Aleuts own the Pribilof Islands. They own their homes. And they are searching for economic alternatives to the seal hunt.

For a time this winter, it appeared that the hunt would be ended by revisions in the International Fur Seal Treaty then being considered in the United States Senate. The annual kill had been attacked as inhumane by Friends of Animals and the Humane Society of the United States.

But Larry Merculieff, the 31-year-old president of the Tanadgusik Village Corporation, used the new Aleut body born of the Claims Settlement Act as the basis for lobbying to save the hunt. On June 11, the Senate affirmed the treaty for four more years, and preparations for this year's hunt went ahead.

#### How Hunt Is Conducted

"We begin June 29 with breakfast at 4:15 and we head out at 5 o'clock," explained Kalachi Melovidov, the 40-year-old foreman of the hunt, his 24th. He stood at a blind of rough planks behind the Reef rookery. Below the blind, the beachmasters quarreled with each other and attacked any bull that tried to push his way from the sea into the rookery.

The victors held to their four-yard-square patches of boulders, awaiting the cows, who will give birth to their appealing, big-eyed black-furred pups there and then be impregnated with next year's pups. The Aleuts believe fewer than half the pups survive.

"The bulls stay there on the rocks from now to November and never feed, never go to the water," said Mr. Melovidov. "They look so big and fat now. You see them when they leave and they're skin and bones."

The bulls who had lost the fight for harem space retreated to the sea. These are bulls seven years or older. The 3- and 4-year-old bulls, not yet sexually active, clustered on a sloping rock beach about 100 yards beyond the birthing rookery.

are the targets of the hunt, as it has evolved since 1911, when overkill reduced the herd to about 300,000 animals. Now the herd totals 1.5 million, about the optimum number.

"We run between them and the sea," said Mr. Melovidov. "Got to drive them upwind. If you can't go upwind, you have to wait."

He pointed to level ground above the beach. "That's the killing ground," he said. About 25,000 male seals will be killed on similar patches of grass here in the four-week season in July.

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Mr. Melovidov's crew includes seven stunners, seven rippers, who open the abdomen of the unconscious animal, two stickers, who puncture the hearts, two bar men, who hold the animal's body firm, and six pullers, who strip off the pelt. With watchmen, beaters and so forth, there will be 38 jobs in all, for the biggest payroll in the islands, totaling about \$400,000.

By Federal statute, only a Government employee can kill the seals for fur. In a system that has brought the Government profits over the last century, it pays the wages, maintains the utilities and ships in the fuel and gasoline. It sells the pelts to a fur processor, who markets them to furriers.

#### Dominance by Federal Agents

"A humane observer watches us," Mr. Melovidov said. "No animal bigger than 48 inches, got to do it quick, not too cruel. Things like that."

How does he feel about the killing? "It's our job to do and we're doing it the right way," he said.

The job was defined by the Bureau of Commercial Fisheries of the Fish and Wildlife Service and its successors, which ran the Pribilof Islands from 1911 until control gradually eroded in the 1960's and 1970's. After a pause to rebuild the herd, sealing resumed in 1918. The Aleuts remained in a client status, this time to the United States Government.

In "A Century of Servitude," published earlier this year, Dorothy Kneec Jones, a University of Alaska professor, writes of Federal agents using the threat of exile from the islands to keep the Aleuts under control. Instead of wages, the agents gave them food and clothing. If they behaved, Aleuts could live in the Government-owned houses. The officials restricted travel and refused admittance to unwanted outsiders, particularly those who might question the lack of political freedoms.

Larry Merculieff said, "While this was happening, the United States was making \$33 million in profits off the fur seal trade."

Mr. Merculieff returned to live in his birthplace in 1972, after earning his

Aleuts were told to leave immediately, with what they could carry. Gabe Stepetin was the last person to board the military transport ship.

"Before I went on the ship I walked up to the church and prayed to God for our safety," he said. "I had such a terrible feeling of being the only Aleut left on the island."

For 18 months, the Pribilofians were quartered in an abandoned gold mine and a fish cannery in the Juneau area. Larry Merculieff said, "We lost 25 percent of our people."

In 1964, United States Senator E.L. Bartlett of Alaska became concerned over Federal domination of the Aleuts' lives when a candidate for the Alaska Legislature was barred from campaigning on St. Paul Island. His bill, which became the Fur Seal Act of 1966, gave the Aleuts local government powers they had not had before. In 1977, St. Paul incorporated as an Alaska city.

The most important change here, in the judgment of many who remember the years of Federal domination, came in 1978, when ownership of the island passed to the Aleuts' village corporation, under provisions of the 1971 settlement. Last year, title to the lit'o houses they lived in passed to individuals.

"Now I'm a full-fledged citizen," Mr. Stepetin said. "Everybody is equal now. They have their freedom. But with freedom comes hazards."

He brought up the Pribilofians' great

The Federal Government brings in the fuel oil and gasoline.

The unemployment rate is 60 percent. Islanders owe the Federal Government \$155,000 for electricity and \$124,517 for fuel oil. The Community Store, itself \$200,000 in debt to suppliers, holds unpaid bills of \$101,000.

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Years ago the Federal agents built a plant to cook the oil out of the seals. Now it is being converted to a plant where the animals will be frozen, sawed into pieces and sold to a Korean company and to crab boat operators for use as bait. Mike Zacharof is the plant supervisor.

"If we didn't have the fur harvest, we on the Pribilofs wouldn't have anything," Mr. Zacharof said. "Once there were 15,000 Aleuts. Now there are 3,000, to 1.5 million seals. It's the Aleut people who are the endangered species."



Female seals in the Pribilofs. The Aleuts have depended on the annual seal hunt for survival for two centuries, but a search for an alternative is starting.

file

ON THE SENATE FLOOR

CONFERENCE REPORT ON THE BUDGET FOR FY 1982 - H.Con.Res. 115. Ratification of the conference report likely early this week, probably Tuesday in both houses. House acts first.

The conferees mostly split the difference between the Senate and House versions of the budget resolution, giving President Reagan the budget he wants. The resolution sets non-binding targets for budget authority (appropriations) and outlays (actual spending) for the several functions of the government during fiscal year 1982, which begins Oct. 1.

For energy, the conference report would allow FY 1982 budget authority of \$4.5 billion and outlays of \$6 billion. For environment and natural resources, the numbers are \$8.2 billion in authority and \$12.4 billion in outlays.

The resolution also contains binding reconciliation instructions to House and Senate committees directing them to amend existing laws, including both entitlements and authorizations, to save money in fiscal years 1982 through 1984. The deadline for committees to act is set for June 12.

For further details on the reconciliation process and the instructions, look for an ESC Fact Sheet this week. H.Rpt. 96-?.

POSSIBLE - PROTOCOL AMENDING THE INTERIM CONVENTION ON CONSERVATION OF NORTH PACIFIC FUR SEALS - Exec. S, 96th Cong., 2nd sess. Could come up Friday, but more likely after the recess.

This protocol would extend for four years an agreement between the United States, Canada, Japan and the Soviet Union that controls the harvest of fur seals in the North Pacific.

Under the convention, all four countries agree not to hunt seals at sea. Island populations are managed so that the greatest number of seals possible can be harvested from year to year. In recent years, the Soviets have harvested about 5,700 seals on the Commander and Robben Islands in the USSR, while Aleut natives have harvested about 26,500 seals on Alaska's Pribilof Islands. Proceeds from the Pribilof harvest are shared by the U.S., Canada, and Japan, with the U.S. receiving a 70 percent share.

Sen. Levin may offer a reservation to the protocol that would cut the harvest by an amount adequate to eliminate the 70 percent U.S. share. The Aleuts would be permitted to continue to harvest about 7,000-9,000 seals to provide Canada and Japan their revenues. A similar reservation was rejected by the Foreign Relations Committee by a 6-9 vote. However, the reservation offered in committee proposed an immediate termination of the U.S. share, while the Levin reservation may propose a phased reduction in the harvest over several years.

Groups such as the Humane Society and Fund for Animals support the Levin reservation. They argue that the seal harvest is primarily for pelts to be used in coats and, they say, most Americans are against killing seals for this purpose as indicated by the fact that there is no market for seal coats in this country.

Other conservation groups such as the National Wildlife Federation support the convention and oppose the Levin reservation. They note the large increase in the North Pacific seal population since the turn of the century and feel the existing management scheme is an effective conservation program.

The Reagan administration supports the extension of the protocol and argues

that the Levin amendment would be contrary to the intent of the convention. They contend that other parties to the convention expect the United States to harvest the number of seals set under the convention's terms.

In a February position paper, the administration argued that the U.S. could forego its share of the harvest under the terms of the present convention. In view of the administration's change in position, the Humane Society is asking the Commerce Department to prepare a supplementary environmental impact statement to assess this new position. The society feels consideration of the protocol should be delayed until completion of a supplementary impact statement. S.Rpt. 97-?

NOMINATION OF JOHN CROWELL TO BE AGRICULTURE ASSISTANT SECRETARY OF NATURAL RESOURCES AND ENVIRONMENT - Under a time agreement, the Senate will debate this nomination for one and a half hours on Tuesday, with an additional 30 minutes of debate on Wednesday, followed by a vote at noon.

Crowell, President Reagan's nominee to oversee the Agriculture Department's Forest Service, has a controversial background as former general counsel for the Louisiana-Pacific Corp., a major purchaser of federal timber.

Sens. Leahy and Kennedy have raised questions about the nomination. Leahy made a statement on the nomination in the May 14 Congressional Record (CR S 5097) and included 10 pages of correspondence and documents concerning allegations about Crowell's knowledge of the activities of Ketchikan Pulp Co., a Louisiana-Pacific subsidiary.

The crux of Crowell's problem with Ketchikan is a federal court preliminary finding in early April that Ketchikan was guilty of monopolistic, anticompetitive and price rigging practices in its activities in Tongass National Forest in Alaska.

Leahy feels the documents show that Crowell was aware of and active in many of Ketchikan's anticompetitive activities. In addition, Leahy feels that Crowell's failure to tell Senate Agriculture of his position as assistant secretary at Ketchikan in his financial disclosure statement may be a violation of the Ethics Act.

In a letter to Agriculture Chairman Helms, Crowell responds that he had "never been involved in the remotest way with any of the occurrences, negotiations or contracts out of which the plaintiffs' claims allegedly rose." He contends that his "only connection with the entire matter has been as a lawyer peripherally connected with the defense of one of the parties involved."

SUPPLEMENTAL APPROPRIATIONS AND REVISIONS FOR FY 1981 - HR 3512. Likely to come up this week, perhaps as early as Tuesday.

This Appropriations bill contains supplemental appropriations, and revisions and deferrals of money appropriated earlier, for programs throughout the government.

The bill hews more closely to the Reagan administration line than the version approved by the House last week. For most energy and environment programs, the committee accepted the administration's proposed revisions. The House in many cases had voted to convert revisions to deferrals. Both revisions and deferrals would reduce spending in FY 1981. But deferrals would force money to be spent next year, in some cases on programs which the administration proposes to eliminate.

SJR

45

COMMITTEE REPORT  
SENATE

FURTHER: None

5/11/81

Date: \_\_\_\_\_

Mr. President:

The Committee on RESOURCES has had SJR 45  
construction of Snettisham, II (Crater Lake) hydroelectric project

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 SJR 45  same title  
 new title
- and recommends ~~of This Rec.~~
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

David Bradley

Don Helman

Bill McCalister

Mike McLean

William Sturgeon

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DeWayne Johnson

CHAIRMAN

SPONSOR SUBSTITUTE SJR 45

Whereas the Department of Energy, Alaska Power Administration, recommended the Corps of Engineers proceed with the Crater Lake Stage of the Snettisham Hydroelectric Project; and

Whereas the Crater Lake Stage was authorized by the United States Congress through the Flood Control Act of 1962; and

Whereas the Crater Lake Stage is an economically, environmentally, and technically feasible renewable energy project which should be constructed as soon as possible; and

Whereas appropriations in the amount of \$4,400,000 are needed in FY 1982 in order that this project proceed in timely fashion;

Be it resolved that the Alaska State Legislature respectfully requests the United States Congress to appropriate the necessary funds to the Corps of Engineers to enable a FY 1982 construction start.

1 IN THE SENATE

BY RAY

2 SENATE JOINT RESOLUTION NO. 45

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 Relating to construction of the  
6 ~~Snnettisham II~~ <sup>CRATER LAKE</sup> hydro-  
7 electric project.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 WHEREAS the Army Corps of Engineers is requesting authorization and  
10 funding from the United States Congress to begin construction of the  
11 ~~Snnettisham II~~ <sup>CRATER LAKE</sup> hydroelectric project; and

12 WHEREAS the Alaska Power Authority would like work to begin on the  
13 Snnettisham II hydroelectric project as soon as possible; and

14 WHEREAS the ~~Snnettisham II~~ <sup>CRATER LAKE</sup> hydroelectric project is an economically,  
15 environmentally, and technically feasible renewable energy project which  
16 should be constructed as soon as possible;

17 BE IT RESOLVED that the Alaska State Legislature respectfully requests  
18 the United States Congress to favorably consider the request for authoriza-  
19 tion of the ~~Snnettisham II~~ <sup>CRATER LAKE</sup> hydroelectric project by the Army Corps of  
20 Engineers and to request the issuance of a license from the federal Energy  
21 Regulatory Commission for the Snnettisham II hydroelectric project.

22 COPIES of this resolution shall be sent to the Honorable Strom  
23 Thurmond, President Pro Tempore of the U.S. Senate; the Honorable Thomas P.  
24 O'Neill, Jr., Speaker of the U.S. House of Representatives; the Honorable  
25 MARK HATFIELD,  
26 Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the  
27 Honorable Don Young, U.S. Representative, members of the Alaska delegation  
28 in Congress, to Colonel Lee Nunn, Chief of Alaska District, United States  
29 Army Corps of Engineers; to Mr. John Kacz, Special Counsel to the Governor;  
30 and to Mr. Eric Yould, Executive Director, Alaska Power Authority.

# Alaska State Legislature

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



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

## Senate

### Committee on Resources

May 18, 1981  
1:30 p.m.

Beltz Room  
211 - Capitol

#### MEMBERS PRESENT

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

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#### Hearing:

- SJR 45 Relating to construction of the Snettisham II (Crater Lake) hydroelectric project.
- SB 370 An Act making a special appropriation to the Department of Community and Regional Affairs for a Bristol Bay Native Association gardening project.
- SB 401 An Act cancelling certain claims for reimbursement of state money granted to fair associations as state aid to fairs.
- HB 216 An Act authorizing the Alaska Agricultural Action Council to construct and dispose of grain terminals and elevators.

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Senator Sturgulewski put forth the motion to move SB 370 with individual recommendations.

Senator Gilman put forth the motion to move SB 401 with individual recommendations.

Staff suggested amending HB 216 inserting an effective date clause. Senator Mulcahy put forth the motion to add an immediate effective date clause starting on page 1, line 17 which was accepted. Senator Mulcahy put forth the motion to move HB 216, as amended, with individual recommendations.

SENATE RESOURCES COMMITTEE

Page: 2

May 18, 1981

Phil Holdsworth stated that SJR 45 recommends that the funds be expended to complete Phase II of the Snettisham hydroelectric project. Phase II needs to be completed because all of the new homes under construction in Juneau are electric. There are plans to build a transmission line to Hoonah, which will go near the Greens Creek mining operation. The existing facility will not be able to handle the extra usage.

Senator Eliason put forth the motion to add another "Whereas" to the resolution pointing out the plans for Hoonah and the Greens Creek mining operation.

Senator Mulcahy put forth the motion to move CSSJR 45 (res) with individual recommendations.

The Committee adjourned at 2:05 p.m.

SJR

48



ALASKA'S SURFACE COAL MINING PROGRAM

Susan Brody  
HOUSE RESEARCH AGENCY  
ALASKA STATE LEGISLATURE  
March 24, 1981

House Research Agency Report 80-8

## INTRODUCTION

Increasing development of Alaska's coal resources is anticipated in the near future both at the existing Usibelli mine and in the Beluga area on the west side of Cook Inlet. These operations will be affected by the State surface coal mining program which will be introduced for consideration by the legislature this session. This paper presents information on the development of the State surface mining program and its relationship to the federal Surface Mining Control and Reclamation Act.

This is the third in a series of papers being prepared by the House Research Agency for the State Legislature on the public policy implications of coal development in Alaska. Previous papers described potential markets for Alaska's coal and analyzed approaches to leasing and taxation; a subsequent paper will examine the use of coal to meet rural energy needs.

## SUMMARY

This paper reviews the progress made to date toward adoption of a State surface coal mining program under the federal Surface Mining Control and Reclamation Act of 1977 [PL 95-87]. The federal law was enacted to regulate surface coal mining throughout the U.S. for the purpose of controlling many of the adverse environmental effects associated with strip mining. Under the act, states must adopt their own surface mining programs incorporating federal standards or a federal program will be imposed by the Office of Surface Mining. As of March 1980, twenty-four states, including all the major coal producers, had submitted programs to the Office of Surface Mining for approval.

The Alaska Department of Natural Resources [DNR], in cooperation with the Departments of Environmental Conservation and Fish and Game, began preparing its own program for submittal to the federal government in early 1980. Alaska's program preparation was delayed primarily because DNR was awaiting the results of a special study which has been completed only recently. The study was commissioned by Congress in Section 708 of the federal Surface Mining Control and Reclamation Act to determine if any of the provisions of the law should be modified because of unique conditions in Alaska. The "708" study<sup>1</sup> was completed over a year late in October of 1980, and Alaska has therefore argued that it should not have to meet the same schedule for program submittal as other states.

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<sup>1</sup>Surface Coal Mining in Alaska: An Investigation of the Surface Mining Control and Reclamation Act of 1977 in Relation to Alaskan Conditions. Prepared by Committee on Alaskan Coal Mining and Reclamation, Board on Mineral and Energy Resources, Commission on Natural Resources, National Research Council, National Academy of Sciences. National Academy Press: Washington D.C., 1980.

A proposed State statute is being submitted to the legislature this session for consideration. If approved, the statute and implementing regulations would then be submitted to the Office of Surface Mining [OSM] for final review and approval. To date, OSM has chosen not to impose a federal program on the State, but this could happen if the State does not continue to make progress toward adopting its own program. Officials from the Denver regional Office of Surface Mining met with State Department of Natural Resources staff on January 15 of this year and indicated their general approval of the State's approach to program development.

## REQUIREMENTS OF THE LAW

The federal Surface Mining Control and Reclamation Act [PL 95-87] was signed into law in August of 1977. The act finds that "the expansion of coal mining to meet the Nation's energy needs makes...urgent the establishment of appropriate standards to minimize damage to the environment ...and to protect the health and safety of the public." It also recognizes that "because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for surface mining and reclamation operations to this Act should rest with the states."

An Office of Surface Mining Reclamation and Enforcement [OSM] was established in the Department of Interior to administer and enforce the act. The western regional office of OSM, to which Alaska must report, is located in Denver. The law also authorizes federal matching funds for one public college in each state to conduct research in mining and mineral resources. In Alaska's case, minerals research is centered at the Fairbanks campus of the University of Alaska.

Title IV of the act creates an "abandoned mine reclamation fund" into which all mine operators must pay 35 cents per ton for surface mined coal, 15 cents per ton for underground mined coal, or 10 percent of the mined value, whichever is less. Fifty percent [50%] of the funds collected are allocated to state reclamation programs, with the balance expended at the discretion of the Secretary of Interior for related purposes. The primary purpose of the Fund is to correct the environmental problems caused by poor mining practices in the past. Each state may submit a "state reclamation plan" and annual projects for reclamation of abandoned mines.

The most substantive provisions of the act are contained in Title V which establishes environmental standards, regulatory procedures and most of the requirements for state programs. State regulatory programs are to carry out the provisions of the federal act on all non-federal lands within the state. If a state regulatory program is not submitted by a specified date, a federal regulatory program will be prepared in its place. A federal program gives the Office of Surface Mining jurisdiction over surface mining regulation within the state. However, a state program may be submitted after a federal regulatory program is imposed, and, if approved, would supersede the federal program. The deadline for submittal of state programs has been extended several times by OSM. Originally, the deadline was February 3, 1979; then March 5, 1980; OSM recently indicated that the "bottom line" was January 3, 1981, although no action has been taken yet to impose a federal program.

Once a regulatory program [state or federal] is established, all operators of surface coal mines must apply to the regulatory authority for a permit. Permit terms are not to exceed five years and may be renewed. A permit may be terminated if the surface coal mine has not commenced operations within three years. All permit applications must contain a reclamation plan and a statement concerning the probable hydrological consequences of the proposed mining operations.

The act provides that all issued permits must comply with a broad range of environmental performance standards such as restoration of the land to its original or higher use; restoration of the land to its approximate original contour; prevention of erosion, siltation and pollution; and establishment of permanent vegetative cover on all disturbed areas. Under the act, the state or federal regulatory authority is required to make inspections on a monthly basis, monitor operations, and impose penalties when necessary.

Certain kinds of mining operations are exempted from the environmental performance standards of the act. These include operations of less than two acres in size or operations where the extraction of coal is by a landowner for his own non-commercial use.

Title V of the act also requires each state program to include a process whereby individual citizens may petition to have areas designated as unsuitable for coal mining. The criteria to be used in determining unsuitability include the following:

- reclamation is not technologically and economically feasible;
- mining would be incompatible with state or local land use plans;
- mining would adversely affect fragile or historic lands, long-range productivity of water supply, or natural hazard lands so as to endanger life or property.

The act prohibits surface coal mining [except existing operations] in national parks, wildlife refuges, wilderness areas and wild or scenic rivers.

Title VI of the act directs the Department of Interior to review federal lands within a state to identify areas unsuitable for the mining of other minerals or materials besides coal.

Title VII is the section of the act which mandates an in-depth study of surface coal mining conditions in Alaska to determine which provisions of the act should be modified for Alaska [referred to as the "708" study because the directive is contained in section 708 of the act].

## PROBLEM AREAS

A great deal of controversy has surrounded the implementation of the federal Surface Mining Control and Reclamation Act. One of the key issues is whether the regulations<sup>2</sup> promulgated by the Department of Interior go beyond the scope of the act's general requirements. In addition, the way in which the regulations have been enforced to date appear to severely limit a state's ability to vary its regulatory program from the federal regulations.

Substantial litigation has been brought by industry and other plaintiffs challenging various provisions of the federal permanent program regulations. As a result of this litigation, the Secretary of Interior voluntarily withdrew approximately 38 regulations; another 44 regulations were invalidated by the U.S. District Court, District of Columbia, in decisions issued in February and May 1980. An appeal of these decisions to the U.S. Court of appeals resulted in an order in July 1980 to remand the regulations to the Secretary of Interior for revision. Until the Office of Surface Mining makes the required changes, the district court has ordered them to disapprove portions of state programs which contain suspended or invalidated regulations. The uncertainty surrounding the status of the federal regulations has created a difficult situation for many states.

State court decisions are also having an impact on the adoption of state regulatory programs. Injunctions have been issued by courts in Kentucky, Alabama, Ohio, Pennsylvania and Virginia prohibiting those states from submitting or resubmitting surface mining programs to the Office of Surface Mining for at least one year. The Alabama court noted in its decision that the present confusion regarding statutory

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<sup>2</sup>30 CFR, Parts 700-845

and regulatory aspects of any state program prevent the state from accurately determining what must be done in order for the state to retain its jurisdiction.

The U.S. Supreme Court agreed in October 1980 to rule on the constitutionality of several key provisions in the Surface Mining Control and Reclamation Act, including the provisions dealing with the post-mining use of land. The Supreme Court justices will review rulings by federal district courts in Virginia and Indiana which invalidated portions of the surface mining law. The State of Alaska has joined with other states in filing an amicus brief on the case. The hearing will probably be held in April; a decision is not expected until the fall of 1981.

In response to many of the problems states have been experiencing, Senator Robert Byrd of West Virginia introduced legislation during the last session of Congress to revise the Surface Mining Act. The proposed amendments would have made it easier for states to vary their regulations from those issued by OSM. Almost a year earlier, the Senate had overwhelmingly approved similar legislation [S 1403] to amend the 1977 Act, but it died in House Committee when Representative Udall refused to hold hearings on the measure.

With the new Reagan administration, many states are hopeful that the federal regulations will be changed to allow states greater flexibility in developing their surface mining programs. Secretary of Interior, James Watt, recently indicated that federal regulations requiring strip mined land to be restored to its original contour will soon be changed to allow rough terrain to be used for farming or other purposes. It appears likely that the Reagan administration will propose changes only to the regulations and not to the law itself.

## FINDINGS OF THE "708" STUDY

The "708" study on surface coal mining in Alaska was conducted by the Committee on Alaskan Coal Mining and Reclamation and the National Academy of Sciences. It examines some key questions concerning the applicability of the federal surface mining laws to conditions in Alaska. The report was originally scheduled to be finished in August 1979; its actual completion date was October 1980. Don Crane, the regional director of the Office of Surface Mining, has indicated that it is unlikely that any changes in the federal act will be proposed on the basis of the 708 study. However, the State may use the study's findings and recommendations to justify variations from the federal regulations. The federal regulations currently contain a provision [30 CFR 731.13] which "permits states to request variations from the regulations...in order to develop regulatory programs to fit specific local requirements or local environmental or agricultural conditions of each state".

Major findings and recommendations of the "708" study are summarized on the following pages.<sup>3</sup>

### Findings

1. Most of Alaska's coal is similar to that of other western states; subbituminous, low in sulfur, and present in nearly horizontal seams.
2. Large quantities of Alaska's coal are strippable and could be mined and shipped using today's technology, especially in the Southcentral region.

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<sup>3</sup>None of these findings and recommendations necessarily reflect the views of the House Research Agency.

3. It is essential that mining and reclamation operations, such as stripping of overburden, excavation of coal, grading of spoils, control of water pollution, and revegetation, be carried out with special cognizance of climatic conditions in Alaska, especially the cold winter temperatures and short growing season.
4. Permafrost is the most unusual environmental condition in Alaska; some practices required by the Surface Mining Act could initiate thawing and cause unwanted subsidence and instability. Permafrost terrain dictates mining and reclamation techniques that are different from those envisaged by the act.
5. Tundra is dominant in the Arctic; natural revegetation with native species takes place slowly in tundra areas and may require decades to develop complete vegetation equilibrium.
6. Alaska's three major coal basins--in the Arctic, Interior, and Southcentral--have their own environmental profiles, different in climate, topography, vegetation, wildlife and culture.
7. The scientific data base for much of Alaska, particularly the permafrost areas, is inadequate to comply with the permitting requirements of the Surface Mining Act and inadequate for a predictive understanding of the response of Alaska's environment to mining and reclamation.
8. Mining and reclamation experience to date has been mainly at Healy in the Nenana coal basin in the Interior; operations at Healy demonstrate that surface mining, grading of spoils and revegetation in areas of discontinuous permafrost are controllable.
9. Limited coal mining operations in the Southcentral region show that natural revegetation of disturbed areas takes place slowly.

10. There is limited experience in revegetation of disturbed tundra. However, given favorable conditions and use of fertilizer, seeding with mixtures of native grasses and introduced species has succeeded in producing vegetative cover on disturbed sites.
11. Many provisions of the Surface Mining Act, such as those designed to protect prime farmland pertain to conditions not found in Alaska.
12. Designation by Congress of some federal land as national parks, wildlife refuges, wild and scenic rivers and wilderness areas will bar coal mining in large areas of Alaska.

#### Recommendations

The authors of the "708" study were somewhat hesitant to recommend specific modifications to the Surface Mining Act because of the limited mining and reclamation experience in Alaska. However, the study does "point out how appropriate mining and reclamation standards could be determined for areas in which unique environmental and socio-economic conditions prevail" and also suggests "where the standards of the act could be met, based on similarities between Alaskan conditions and conditions in coal mining areas in the conterminous United States."<sup>4</sup>

1. For Southcentral Alaska, the performance standards of the act can be achieved, but it is recommended that regulatory procedures focus initially on innovative and effective methods for meeting the act's environmental objectives instead of strictly following the act's prescribed practices. For the Nenana basin, it is recommended that

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<sup>4</sup>Surface Coal Mining in Alaska: An Investigation of the Surface Mining Control and Reclamation Act of 1977 in Relation to Alaskan Conditions, National Academy Press: Washington, D.C., 1980, page xxvii.

the standards be determined from results that can be achieved using the best available technology for dealing with discontinuous permafrost and other special conditions that characterize the region. For the North Slope, the mining and reclamation emphasis, apart from mining coal for local use, should be to obtain data on the effects of mining and reclamation practices on permafrost terrain.

2. The conditions in the Southcentral Region [Cock Inlet Basin] are similar enough to those in some of the conterminous United States to warrant initial regulation of surface coal mining under the provisions of the Surface Mining Act, and it is recommended that this be done. Results of actual operations, however, may show that certain mining and reclamation standards now in the act need modification for this region.
3. A "go-slow" policy for mining on the North Slope is recommended. Such a policy would involve initial small-scale operations for testing and developing techniques for mining and reclamation so standards feasible for commercial mining on a large scale can be determined. Such small-scale operations are not likely to be profitable, and government subsidy or partnership may be needed. In addition, it is recommended that appropriate variances be made in the act for small-scale coal mines whose output is needed for heating villages and towns on the North Slope.
4. Federal and State performance standards suitable for the Nenana basin should be developed in accord with the general objectives of the act, based initially on mining and reclamation results achieved at Healy. Conditions elsewhere in Interior Alaska may differ significantly from those at Healy, and performance standards for Healy may need to be modified for other areas, as experience dictates.

5. It is recommended that the potential effects of surface mining on wildlife be estimated so that mining can be permitted in a planning framework that protects areas designated as critical habitat, and so that procedures can be identified to mitigate on-site and off-site effects.
6. Regulatory procedures designed to protect populated areas from the hazards and nuisances of blasting and to meet the air quality requirements of the act should exercise no more than the level of control appropriate to local or regional conditions.
7. The effects of coal development in Alaska on Native subsistence economies should be assessed to determine how adverse effects can be mitigated and to comprehend how desires of Alaskan Natives can best be reconciled with planning for development of the State's coal resources.
8. The federal government should establish an authority to reconcile, coordinate, and implement policies and plans for coal development in Alaska, drawing on the broadest possible range of areas of interest to ensure the weighing of public goals.
9. Lands underlain by coal that can be readily mined by surface methods should be identified as "prime coal lands." The designation of prime coal lands would identify areas of significant resource potential and would provide basic information for weighing the mineral value of these lands against the actual or expected value of other current or anticipated uses.

## STATUS OF ALASKA'S PROPOSED STATE PROGRAM

The State Department of Natural Resources has prepared a proposed surface mining program for Alaska. This program includes a number of components: a statute (70 pages in length); draft regulations (350 pages); and additional materials relating to the coordination of permit issuance and an analysis of existing relevant Alaska statutes and regulations.

One of the primary tasks in developing the State program was to identify specific federal standards and regulations which were not applicable to Alaskan conditions. This identification of possible variances from the federal requirements was accomplished through meetings with State coal lessees in March of 1980 and through on-going consultation among the Departments of Natural Resources, Environmental Conservation, Fish and Game and the State's Surface Mining Advisory Committee.<sup>5</sup> In addition, preliminary negotiations were held with the Office of Surface Mining. According to a report recently prepared by Pedro Denton for the Division of Minerals and Energy Management (DMEM):

It was decided to closely follow the federal regulations except where substantive changes were necessary. . . It was felt that this procedure would minimize explanations to OSM and would considerably shorten preparation time. . .The unsuitability process (whereby lands are designated unsuitable for coal mining) required by Section 522 of the act has been one of the most troublesome to develop. . .The presently proposed process has a petition process patterned after the federal regulations. In addition, a process is provided by which coal lessees or other coal owners can petition the authority to have lands declared suitable for mining. (emphasis added).

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<sup>5</sup>The State Surface Mining Advisory Committee, appointed by the Governor, consists of Earl Beistline, University of Alaska; Richard Douglass, Alaska Conservation Society; Cole McFarland, Placer Amex, Inc.; Margaret Sagerser, Cook Inlet Region Inc.; Joe Usibelli, Usibelli Coal Mine Inc.; and Philip Waring, Kenai Peninsula Borough.

There are several respects in which the State program differs from the federal law and regulations. Most importantly, the State chose to put the environmental performance standards into regulation and not statute; the federal government, in contrast, incorporates these standards in the act itself. In addition, the proposed State regulations contain a clause which would allow a particular provision to be changed or declared unconstitutional without affecting the other regulatory provisions.

The regional Office of Surface Mining recently completed a preliminary review of Alaska's draft surface mining program and recommended that some changes be made prior to its official submittal. It appears unlikely that OSM will choose to impose a federal program on Alaska as long as the State demonstrates some progress toward completing the program. However, according to Don Crane, Regional Director of OSM, there are some actions which could trigger the imposition of a federal program, including an official protest or court action by a citizens' group.

At a meeting on January 20 in Anchorage, the Surface Mining Advisory Committee unanimously recommended that DNR proceed with program development and submit a proposed statute to the legislature for adoption this session. The Attorney General's office has just completed its final review of the draft statute and DNR plans to submit the program to the legislature within the next three weeks.

The legislature is extremely limited in the kinds of changes it can make to the proposed statute if it wants to have a program that will be approved by the federal Office of Surface Mining. However, if the legislature refuses to pass a State program which conforms to the federal requirements, the federal government has the authority to impose a program on Alaska. A federally imposed program is less likely than a State program to be responsive to the needs of Alaskan coal mine operations both in its content and its administration.

If a State surface mining statute is approved by the legislature, it will then be transmitted, along with the proposed regulations, to the Office of Surface mining for final review. According to Don Crane, OSM would then hold public hearings on the program in Alaska. Once the program is officially adopted by OSM, the State regulations will have the force of federal rulemaking.

Although Alaska currently has only one operating coal mine, expansion and new development activity is anticipated in the near future. The adoption of a State surface mining program will have an important influence on the future of coal development in Alaska.

DEPARTMENT OF THE INTERIOR  
OFFICE OF SURFACE MINING  
GUIDELINES FOR A STATE STATUTE  
UNDER THE SURFACE MINING CONTROL  
AND RECLAMATION ACT OF 1977

TITLE I

§ 101\* Findings: Optional.

Purpose: At a minimum, statute must state that its purpose is to implement and enforce P.L. 95-87 and OSM's permanent regulations as well as any amendments to either one; if details of § 102 are omitted, ensure that State statute elsewhere contains prohibition of mining where reclamation as required by P.L. 95-87 is not feasible.

TITLE II

Required for a State to provide authority to establish its regulatory authority and set forth its duties and responsibilities as in § 201; the State is free to determine how to accomplish its delegation. Also, authority and conflict of interest provisions are required (see § 517(g)). The State regulatory authority must also have authority to promulgate regulations (see § 501).

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\*/ Section numbers referenced are from the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87.

TITLE III

Not applicable.

TITLE IV

Optional for each State, however, there are funds which can be utilized by the State if its statute includes the following:

§ 401 Not applicable.

§ 402 Not applicable, except § 402(g)(2) second sentence which is optional.

§ 403 Priorities are required. See § 405(f).

§ 404 Eligibility - required.

§ 405(a), (c), (d), (h), (i) and (k) are not applicable.

§ 405(b) Submission of a reclamation plan and annual projects -- required.

(e) Amplifies (b) with contents of reclamation plan.

(f) Authority needed to apply for, receive and segregate the funds, as well as provide for the preparation and submission of the items listed in reporting requirement (j).

(g) Costs shall be inclusive of these provisions.

(j) Need reporting authority.

§ 406 Not applicable.

§ 407(a) Acquisition and reclamation of abandoned lands -- required.

§ 407(b) Required.

(c) Required.

- § 407(d) Required.
- (e) Authority needed to receive grants: required.
- (f) Not applicable.
- (g)(1) Required authority for the State to sell acquired lands.
- (g)(2) Required.
- (h) Required powers for the State reclamation program.
- § 408 Liens -- required.
- § 409 Filling voids and sealing tunnels -- optional.
- § 410 Not applicable.
- § 411 Reports -- required.
- § 412(a) Similar State authority provisions required.
- thru (e)

TITLE V

- § 501 Required powers to promulgate regulations consistent with Federal regulations; 30 days' advance public notice, public hearing, and public comment period should be included if not in the State administrative procedures act.
- § 502 Required to provide that mining cannot proceed without a permit and all operators must apply for new permits within two months after approval of a State program; revoke any prior statute which exempts some operators from permit requirements; the rest of § 502 is not applicable.

- § 503 Not applicable.
- § 504 Not applicable.
- § 505 Not applicable.
- § 506 Wording similar to all of § 506, without obvious Federal references, is required, and timing should be tied to approval of State program, as set forth in § 502(d); length of permits cannot exceed five years.
- § 507(a) A permit fee must be required as determined by the State regulatory authority; State regulatory authority should have authority to set fees and to establish procedures for fee payment.
- § 507(b) and (g)(if applicable) -- Permit applications -- required to include information as listed; this can be done by general statutory reference with more specific regulations except § 507(b)(11) and § 507(c) which are required to be in the statute; State could refuse to protect operator data as in 507(b)(17) and (e).
- § 507(c), (d), (e), (f) -- Required.
- § 508 Reclamation plan requirements -- required; but can be done by general statutory language and more specific regulations.
- § 508(a)(12) and (b) -- Proviso for confidentiality -- optional; States can refuse to protect this data from public review.

- § 509 Bonding -- required, except self-bonding is optional.
- § 510 Required -- delete obvious Federal references:
- § 510(b)(5) Only required for States west of 100th meridian; delete land exchanges which are only Federal.
- § 511 Permit revision -- required, but delete references to Federal program.
- § 512 Coal exploration -- required except (e).
- § 513(a) Required in general, but details can be in regulations.
- (b) Required.
- (c) Not applicable.
- § 514 Required but may be referenced to State administrative procedures act.
- § 515 Required except obvious Federal references. In the alternative, the detailed performance standards could be in State regulations with general enabling language as follows: "On or before [specific deadline], the [State regulatory authority,] shall promulgate regulations consistent with all of the environmental performance standards of Public Law No. 95-87 and the permanent regulations issued pursuant to that Act. All surface coal mining operations and coal exploration operations in [State] shall comply with all applicable performance standards of P.L. 95-87, of the permanent regulations issued by the Office of Surface Mining, this Act, and all regulations issued pursuant to this Act, as well as any amendments to any of these statutes or regulations."

- (c) Optional.
- (e) Optional.
- (f) Not applicable.
- § 516(a) Authority to regulate surface effects of underground mining -- required.
- (b) Required.
- § 516(c) Required.
- (d) Required, except obvious Federal references.
- § 517(a) Not applicable; State may wish to specify that no warrant is required for inspectors to enter.
- § 517(b) Right of entry required in statute; other items may be included in regulations or made conditions of all permits.
- (c),(d),(e) and (f) -- Required.
- (g) Conflict of interest -- required.
- (h) Not applicable. (*Now required*)
- § 518 Required but for obvious Federal references.
- § 519(c)-(f, h) -- Required; (a), (b), (d) and (e) could be included in statute with general terms and details provided in regulations, but statutory authority for releasing a bond in stages as in (c), the proviso of (c)(3), (f), and (h) are required for State statute.
- (g) Optional.
- § 520 Required; similar provisions as to standing and range of actions of the State regulatory authority subject to challenge must be in State statute.

- § 521 Required, except obvious Federal references; must include authority for State inspectors to issue cessation orders in the field.
- § 522 Required, except (b); State statute cannot apply to Federal and Indian lands.
- § 523 Not applicable except State regulatory authority must have authority to enter into cooperative agreement.
- § 524 Required.
- § 525 Required -- entity that conducts hearing may vary from State regulatory authority to appeals board; there must be independent administrative review, although the mechanism may vary depending on State law; that entity must be empowered, as in 525(e), to award costs and attorneys' fees.
- § 526 Only (e) is required. *Second half of (e) not required.*
- § 527 Wyoming only.
- § 528 Optional.
- § 529 Only Pennsylvania.
- § 601 Not applicable.

Definitions in §§ 701(1), (2), (8), (13), (15), (17), (20), (27), (28) and (29) are required; other definitions in § 701 may be utilized if applicable or revised in accordance with definitions of same terms in OSM's permanent regulations.

- § 702 Not applicable, but State may wish to consider seriously consequences of other State statutes like little NEPA as in § 702(d).
- § 703 Employee protection: optional.
- § 704 Optional. *required by permanent regs.*
- § 705 Not applicable.
- § 706 Not applicable.
- § 707 Severability provision -- required.
- § 708 Not applicable.
- § 709 Not applicable.
- § 710 Not applicable.
- § 711 Optional; State may need procedures and lines to apply for Federal approval.
- § 712 Not applicable.
- § 713 Cooperation between State agencies -- optional.
- § 714 Optional if State leases coal.
- § 715 Not applicable.
- § 716 Only Alaska.
- § 717 Required.
- § 718 Not applicable.
- § 719 Required.
- TITLE VIII Not applicable.
- TITLE IX Not applicable.

COMPARISON OF FEDERAL SURFACE MINING CONTROL AND  
RECLAMATION ACT WITH PROPOSED ALASKA SURFACE COAL  
MINING CONTROL AND RECLAMATION ACT

<u>Federal Law*</u>	<u>Proposed State Law</u>
Section 101	Section 2
Section 102 (b), (c), (d), (e), (i)	Section 2; 5(A) thru (H)
Section 102 (h)	2, 5 (H)
102 (m)	5 (h)
Section 201	3, 4, 5, 6, 7
Title 3	Inapplicable
Title 4;	
401	NA
402	NA
403	?
404	Section 29
405 (a), (c), (d), (f), (i) (k)	NA
405 (b)	29
405 (e)	29 (w/out details)
405 (f)	29
405 (g)	29
405 (j)	29
406	NA
407 (a)	30 (a)
407 (b)	30 (b)
407 (c)	30 (c)
407 (d)	30 (d)
407 (e)	29
407 (f)	NA
407 (g) (1)	30 (e)
407 (g) (2)	30 (e)
407 (h)	? (29)
408	31
409	Optional
410	32
411	29
412 (a) - (e)	29
 Title 501	 6
502	8 (b)
503	NA
504	NA
505	NA
506 (a)	8 (a)
506 (b)	9 (a)
506 (c)	9 (b)
506 (d)	10
507 (a)	11
507 (b) - (g)	13, 14

\* Unless designated "NA" (not applicable) all Federal Sections identified must have a State statutory equivalent

507 (c)	?
507 (d)	13
507 (e)	12 (a)
507 (f)	13
508	13
508 (a) 12	14
508 (b)	?
509	17
510	19
510 (b) (5)	19 (b) (5)
511	20
512	21
513 (a)	16 (a)
513 (b)	16 (b)
513 (c)	NA
514	16 (c) (d) (e) (f) (g)
515	22
516	23
517 (a)	NA
517 (b)	24 (a) (b)
517 (c) (d) (e) (f)	24 (c) (d) (e)
517 (g)	7
518	26
519 (a) , (b) , (c) , (d) , (e) , (f)	18 (a) thru (f)
519 (h)	?*
519 (c) (13)	18 (c) 3
520	38
521	25
522	28
523	NA 5 (17) ; 33 (a)
524	33 (b)
525	25 (b) (1) , (2) , (3) , (4)
526 (e) judicial review	?
527 Wyoming	
528	34
529-NA; 601. NA	
701	39
702	NA
703	Optional
704	Optional (?)
705	NA
706	NA
707	41
708	NA
710	NA
711	35
712	NA
713	Will be added

714  
715  
716  
717  
718  
719

Optional  
NA  
Should be clarified in statute  
36  
NA  
37

# 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

May 29, 1981  
1:30 p.m.

Beltz Room  
211 - Capitol

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#### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Sturgulewski  
Senator Bradley  
Senator Mulcahy  
Senator Gilman

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#### Hearing:

- SJR 48                    Relating to the implementation of the Surface Mining and Reclamation Control Act by the Secretary of the Interior
- SB 145                    An Act providing for free resident hunting and sport fishing licenses for disabled veterans; and providing for an effective date
- SB 573                    An Act relating to the sale and labeling of honey
- CSHJR 50 (Coal)        Expressing the sense of the Alaska Legislature that the state's coal resources be developed for sale and export

---

Phil Holdsworth stated that he was speaking in behalf of the state's coal lessees. The lessees approve of SJR 48. The resolution is necessary to notify the Department of the Interior that the state is working on a surface mining act and regulations.

Mr. Holdsworth stated that Section 708 of the federal Act allows for study and recommendations to take special conditions in Alaska into account. The Secretary of the Interior has not yet submitted those recommendations, and the Office of Surface Mining is undergoing changes in personnel and philosophy. It seems wise to delay adoption of an act until the next session of the Alaska Legislature.

Senator Sturgulewski put forth the motion to move SJR 48.

Senator Bradley stated that the State Affairs Committee substitute for SB 145 corrected a citation error and "degendered" the language in the original bill. The committee substitute also adds an effective date.

Senator Bradley stated that 38 states have free hunting and sport fishing licenses for disabled veterans, and that four states have legislation to this effect before their legislatures. There are 515 persons that would be eligible for free licences under the provisions of the bill.

Senator Mulcahy put forth the motion to move CSSB 145 (State Affairs) with individual recommendations.

Senator Fahrenkamp stated that there was an amendment proposed by the sponsor to SB 573, to delete the words "sold, offered for sale" from line 9, and to insert the word "distribute" in that place.

Don Magnusson (Alaska Retail Association) stated that he had suggested the sponsor's proposed amendment. The intention was to insure that retailers would not be liable for the content of labels on honey.

Senator Gilman put forth the motion to amend SB 573, deleting the words "for sale" from the title and the words "sold, offered for sale, or" from line 9.

Senator Mulcahy put forth the motion to move SB 573 as amended as CSSB 573 (Resources) with individual recommendations.

Senator Fahrenkamp stated that there was a proposed committee substitute for CSHJR 50 (Coal). After discussion, the Committee withheld action on the resolution.

The Committee adjourned at 2:07 p.m.

## Alaska Surface Coal Mining Program

By

Pedro Denton

### Introduction

Almost everyone recognizes that coal mining in Alaska requires different technology than in the other coal producing states. Alaska's remoteness, climatic extremes and sparse population obviously pose conditions not common to the other states. The differences were recognized by congress when it commissioned in Section 708 of PL 95-87 a special study to determine if any of the provisions of the law should be modified because of unique conditions in Alaska. Partly in anticipation of the results of this study and to accurately assess a program by which the State could assume jurisdiction over surface coal mining in Alaska, the Department of Natural Resources started preparing a draft program early in 1980. A preliminary draft of this program is nearly complete and ready for legislative, public and federal review. The purpose of this paper is to give an overview of Alaska's program development progress to date.

The opinions and interpretations in this paper are the author's and do not necessarily represent the opinions of the State or the Department of Natural Resources. The paper has not been reviewed by the state. The author has served as program development coordinator for the program since early in 1980 on a special project basis and is not a permanent employee of the State.

### Federal Act and Regulation :

The Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 91 Stat. 445 (30 U.S.C. section 1201 et. seq.)) is essentially an environmental law designed to regulate surface coal mining on a national scale. Its primary purpose is to prevent water and air pollution and other adverse environmental impacts and to require that disturbed areas be reclaimed to an appropriate postmining use. It pertains to all coal mining regardless of whether the coal is on federal, state or private lands. The Act recognizes that "the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations" should rest with the states. The act took the power to regulate coal mining from the states and provided a mechanism by which this power can be partially returned to the states upon approval by the federal Office of Surface Mining (OSM) of a state program incorporating minimum federal standards.

OSM reported in a news release dated March 5, 1980 "Twenty four States, including all of the Nation's major coal producers, have submitted plans to assume primary responsibility for regulating the surface effects of coal mining." States submitting plans were Maryland, Pennsylvania, Virginia, West Virginia, Kentucky, Tennessee, Alabama, Mississippi, Illinois, Indiana, Ohio, Arkansas, Iowa, Kansas, Missouri, Oklahoma, Texas, Louisiana, Colorado, Montana, New Mexico, North Dakota, Utah and Wyoming. Georgia, Washington and Alaska, none of which are considered major producers did not submit plans by the March 3, 1980 deadline for state program submittal. In this same news release, OSM Director Walter N. Heine noted that "The bottom line is approval by January 3, 1981. Where programs are not approved by that date a Federal

program is required." The foregoing statement would seem to indicate that Federal regulations will be applied to Alaska on Jan. 3, 1981. But, Alaska has argued that the special study by the National Academy of Sciences-National Academy of Engineering required by Section 708 of the Federal Act would dictate a different time frame for Alaska. This was noted by OSM in the May 16, 1980 Federal Register which states on page 32330:

Alaska did not submit a program and has asserted it does not have to do so at this time because the study of surface coal mining in Alaska being carried out by the National Academy of Sciences pursuant to Section 708 of the Act is not complete. OSM is currently examining what action should be taken with regard to Alaska.

The issue has not been resolved but obviously Alaska cannot design a final program until the results of the 708 study are made available. Even then the uncertainty of what changes will be made to the federal act could further complicate the time schedule.

The time frame for submittal under the Act is important for Alaska because the deadline for program submittal (March 3, 1980) has passed and OSM's position is that if a state fails to meet the deadline a federal program must be imposed before the state can apply for program approval. This is an extremely narrow and impractical interpretation of 30 CFR 731.12, but so far, the state has been unable to change OSM. It apparently does not matter that the 708 study is already over a year late and that both Alaska and OSM consider the 708 study a critical element in developing an Alaska program.

The following excerpt from OSM's 1979 annual report is a good indicator of OSM's recognition of the importance of the 708 study to developing Alaska's program:

A number of outstanding issues related to Alaska's program may have to await formulation and resolution until after completion of the Alaska Study and Departmental response mandated by the Act. Study scheduled for completion by May 31, 1980.

It should be noted that the Act required the study be completed no later than two years after the date of enactment or by Aug. 3, 1979.

The Federal Act is one of the most complex and detailed statutes ever written. If Alaska adopts a companion law, which it must if it wishes to regulate coal mining in Alaska, it will be one of the longest statutes on the books for such a special purpose containing over 50 pages. For instance, the Statute which regulates oil and gas operations in Alaska, AS 31, contains only 25 pages. But it is the regulations and their seemingly endless detailed requirements for procedural matters that has caused the most criticism. These regulations and their program submittal requirements are extremely tiresome to read and work with and require a very cumbersome and unwieldy process for approval of a state program. Alaska's draft of the regulations are nearly 350 single spaced pages and this includes many consolidations which OSM may not approve. The section on bonding alone contains over 40 pages. In addition, there will probably be two to three hundred additional pages of explanatory materials. In comparison, the Alaska Oil and Gas conservation regulations contain only 35 pages.

Much of the problem that the other states have had is in getting variations from the federal regulations. The federal act provides in section 101(f) that "because of the diversity in terrain, climate, biologic, chemical and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, issuing, and enforcing regulations..... should rest with the states." OSM has implemented this policy by regulations under 30 CFR 731.13 (called the state window) which provides for detailed state justification for any state variations to the federal regulations. Many states have complained that the window is closed, but one of the most interesting characterizations was by the United States Court of Appeals in a July 10, 1980 decision on the Peabody Coal Company case. In a footnote to a statement that the statutory scheme "leaves broad discretion in state officials while ensuring through federal oversight, that the minimum requirement of the Act are achieved." they make the following comment:

The Secretary insists that he has left this discretion intact through the so-called "state window" provision in the regulations. This section allows states to propose alternatives that are "consistent with the regulations" the Secretary has issued, 30 CFR 731.13(c)(1). The language of this provision, however, is deceptively comforting. Elsewhere, the regulations define "consistent with" as meaning "no less stringent than and meet(ing) the applicable provisions of the "regulations" the Secretary has issued. Id 730.5(b). Thus there is little room for states to maneuver. The "window" would be more accurately described as a one way mirror.

These characterizations could be alarming for Alaskans knowing that mining in Alaska will require different mining practices than in the other states if it were not for the 708 study. The 708 study could provide an open "window" for Alaska that will allow variations from the federal program to adjust to the unique conditions in Alaska. In this respect, Alaska could have it easier than some of the other states, but to accomplish this it must aggressively follow through on the 708 study to be sure there is appropriate response by the Secretary of Interior and Congress.

#### Program Development Progress

Alaska received a \$100,000 program development grant from OSM on March 11, 1980. The actual monies were received on April 8, 1980. The grant required that the state contribute \$25,000 to the program. The grant application was the beginning of the formal process to determine whether Alaska would assume control of surface coal mining in Alaska. Under this grant, the Department of Natural Resources hired the author full time early in the year to coordinate development of a state program including regulations, statute and other program submittal elements. Prior to that time several individuals had on a part time basis closely followed OSM activities and had analyzed how the program might impact Alaska. There was also considerable participation in the NAS-NAE hearings in Alaska and most of the general problems in applying the act and regulations were identified.

The program development grant provided for accomplishing the following:

1. A comprehensive review of existing Alaska statutes and regulations to identify current authorities relevant to the regulation of surface mining.
2. Draft legislation and regulations necessary to comply with PL 95-87.
3. Recommendations for a process by which lands could be determined to be suitable or unsuitable for surface mining.
4. Recommendations for the coordination of review and issuance of permits for surface coal mines among all state and federal permitting authorities.
5. Assembly of all the elements into a program submittal for the purpose of assuming state jurisdiction.

The proposal provided for an advisory committee to be appointed by the Governor to guide the Department of Natural Resources in developing a program and in deciding whether or not the state should assume jurisdiction over surface coal mining. The committee was appointed by the Governor in early April 1980 and consists of Earl H. Beistline of the University of Alaska, Richard Douglass of the Alaska Conservation Society, Cole E. McFarland of Placer Amex Inc., Margaret Sagerser of Cook Inlet Region Inc., Joseph E. Usibelli of Usibelli Coal Mine Inc. and Philip Waring of the Kenai Peninsula Borough. Since Earl Beistline was chairman of the NAS committee on Alaskan Coal Mining and Reclamation and to avoid any possible conflict of interest, Ernest N. Wolff has served on the committee on his behalf to the present time. Now that the report is complete, Mr. Beistline is back on the Advisory Committee. The first committee meeting was held on May 13, 1980 and two meetings have been held since then.

Perhaps the major task in developing the program was in identifying the specific federal standards and regulations which were not applicable to Alaska and determining what change would be necessary for Alaska. To accomplish this objective, the Department of Natural Resources invited all state coal lessees to a workshop in Anchorage on March 18, 19 and 20, 1980 to go through the federal regulations with the state section by section identifying the specific sections requiring a variance and the need for the variance. A state team composed of members of the Departments of Natural Resources, Fish and Game and Environmental Conservation was formed to participate in the workshop and to develop recommendations for a state position on the proposals. The proposals developed at this meeting and in subsequent meetings of the state team were reviewed by the involved state departments and the advisory committee and have been accepted for review purposes.

These proposals are the basis for the Alaska Regulations proposals which are presently nearly complete in review draft form. It was decided to closely follow the federal regulations except where substantive changes were necessary or where necessary to conform to Alaska regulation style requirements. It was felt that this procedure would minimize explanations to OSM and would

considerably shorten preparation time. A key to the success of this approach is the extent to which the 708 study will justify the need for the variance in Alaska and will provide the data necessary by the regulations to support a variance from the federal regulations. A summary of the substantive variances to the federal regulations is attached.

In a somewhat backwards process a proposed Alaska statute is also being drafted which would conform to the regulation variances and the federal requirements. This is of course a variation from the normal procedure, but in this case, it may be justified by the strict federal standards which leave very little latitude for statute or regulation drafting.

There are numerous other program elements which must be developed as a part of the program submittal 30 CFR 731.14. The most important of these relates to the organizational structure of the surface mining authority and how it will function, the process for determining lands suitable or unsuitable, and permit coordination and review, a compilation of existing state laws and regulations, a section-by-section comparison of proposed state laws and regulations with the federal, and the permit coordination and review process. The other submittal elements are largely narrative explanations of the regulatory process provided by the proposed state regulations and statistical information on Alaska past and projected coal activities.

It has been proposed and endorsed by the Advisory Committee that the surface mining authority be in the Department of Natural Resources. The authority would be with the Commissioner and he could delegate this authority to an appropriate director. The director would be supported by a technical advisory team of experts from other Departments or within the Department of Natural Resources. The proposed team would consist of a hydrologist, geological engineer, habitat biologist, environmental engineer, air quality engineer, agronomist, attorney and a coal mining engineer. The team would be available for permit review as well as special problems in enforcement and administration. The members would serve on an as needed basis. The coal mining engineer would be in charge of enforcing and administering the program. Total costs of such a program are estimated at about \$125,000 a year, half of which would be funded by the federal government under program administration grants. The Department of Environmental Conservation has countered this proposal with a proposal that the authority be in their Department.

The unsuitability process required by Section 522 of the act has been one of the most troublesome to develop. The requirements of the law and regulation are difficult to understand and people working with it generally have a problem in separating the planning type process required by the act from a process that would be used in leasing considerations. The data base and inventory requirements are also troublesome, primarily because of the lack of detailed data in Alaska. The presently proposed process has a petition process patterned after the federal regulations. In addition, a process is provided by which coal lessees or other coal owners can petition the authority to have lands declared suitable for mining. The primary objective of this provision is to provide a process by which determinations can be made as soon as possible so that long range land use and mine planning can be done with as much certainty as possible. Alaska already has programs in the Department of Natural Resources

which can be adapted to this process. Also additional program development funds have been requested from OSM to refine the process and to develop a data base and inventory system.

The permit coordination and review process is not complete but it probably will be patterned after existing programs requiring detailed review.

A preliminary draft of the section-by-section comparison of the regulations is also nearly complete. This should considerably facilitate review of the program by the public and others.

Alaska's program development has been easier than other states' in several respects. First, Alaska has not been on the same time schedule. This has allowed the utilization of other approved state programs as guides. The Texas and Montana programs, already approved, have served as models for much that has been done. Litigation by the National Coal Association/American Mining Congress (NCA/AMC) and others may also resolve many of the issues that would cause problems for Alaska. A long series of issues have been decided at the U.S. District Court and Court of Appeals level in industry's favor and generally in favor of more flexible regulations. The exact number is difficult to determine because of the interrelationship of so many of the issues, but a figure of 38 regulations withdrawn and 44 invalidated has been used by NCA/AMC. These issues have not been finally decided and how many of the federal regulations will be redrafted to address the court decision is not known. This problem is often characterized as a "shifting target". Allowing the "target" to settle down will make it easier in Alaska.

#### Summary

A preliminary draft of a program for Alaska to assume jurisdiction over the surface mining of coal is nearly complete. Within a few weeks, a complete package will be sent to the involved agencies for final review before going to the Surface Mining Advisory Committee for their review and help in resolving any differences. A complete program package should emerge ready for public, federal, or legislative review. It is difficult to determine how the draft program will be adjusted as a result of this process or what final decisions will be made. The issues are complex and understanding is complicated by extremely detailed procedural regulations; but, the decisions that will be made could have considerable impact on the development of Alaska's coal resources.

Proposed Significant Modifications  
to  
Federal Surface Coal Mining Regulations

<u>Federal Reg No.</u>	<u>Summary of Change to Federal Concept</u>
700.11(c)	Allow groups of individuals to mine cooperatively without permit, in excess of the 250 ton limitation where approved by the regulatory authority.
701.5	Allow exception from classifying waters with pH of less than 6 as "acid drainage" where a lower pH is natural for the area.
764.13(b), Part 765	Special procedures for determining lands unsuitable for mining in Alaska.
779.13(b) (3) 783.13(a) (3)	Allow exception in Alaska for requiring all hydrologic data in all cases.
780.15 816.95	To provide for Air Quality control in Alaska to be based on state and federal air quality standards.
785.14(c) (1)	Allow wildlife habitat as postmining use which could qualify for exceptions from restoring to original contour.
785.16(c) (4) (i)	To allow returning watershed to original condition as standard for getting exception to return to original contour rather than requiring improvement, the reg. and statute standard.
785.19(a)	Limits application of "alluvial valley floor" standards based on lack of agricultural potential. ALVs would not apply in the Northern, Nenana, Yentna, Susitna, Beluga and Matanuska fields.
786.25(b) (1)	Allow longer time for commencement of operations than provided by statute and regulation.
815.15(c) (1), (c) (2)	Provide special standards for exploratory roads.
815.15(f) (1)	To allow other than native species for revegetation for areas disturbed in exploration.
815.15(i) (3)	To allow leaving exploration equipment in the field where it will facilitate future exploration.
816.11(a)	To allow reduction of marker requirements where area is inaccessible.
816.21(b)	To allow mixing of topsoil with overburden where it will not be used in revegetation.

Federal  
Reg No.

Summary of Change to Federal Concept

- 816.22(e)(1) To allow exception from requirement to seek out and separate "best" material even if other material is adequate for revegetation.
- 816.22(e)(1)(ii) To not require trials and tests of topsoils being certified by a laboratory unless required by the state.
- 816.22(e)(1)(iii) To allow the state to use practices proven in other areas as guide in approving use of topsoil substitutes.
- 816.22(f)  
816.71(c) To allow leaving topsoil and vegetative cover in place where needed as insulating layer.
- 816.42(a) To allow alternate sediment control methods to sedimentation ponds and rely on federal and state water quality standards rather than OSM effluent standards.
- 816.42(c) To allow exception from treating all waters as "acid water" where natural conditions are less than a pH of 6.
- 816.57(a) To allow exception from the requirement to restore all streams to original channel without regard to importance.
- 816.64(a) Remove the requirement to publish blasting schedule and rely on notice to residents and agencies.
- 816.65(a) To relate blasting time to time of day rather than "sunrise" and "sunset".
- 816.71(a) To allow excess spoil to be placed in mined area to limit disturbed area.
- 816.83(a)  
816.89(b) Allow alternative to the requirement to make all waste banks impervious.
- 816.97(b) To allow discretion in reporting requirements for eagles because of numbers of eagles in some areas.
- 816.97(d)(2) To clarify that some interference with wildlife is inherent in any structure in remote areas and allow recognition of this in Alaska.
- 816.104(a) Remove the numerical relationship of final thickness to initial thickness because of difficulty in determining in permafrost areas.
- 816.104(b) To prevent redistribution of storage areas in permafrost areas where material condition is not adaptable to temporary storage methods.

Federal  
Reg No.

Summary of Change to Federal Concept

816.106	Allow discretion by regulatory authority in requiring repair of revegetated areas.
816.150-176	Special road building standards for Alaska.
825, New Section	Special performance standards for Alaska areas with natural cliffs and highwalls.
843.12(c)	Allow more time for abatement actions where needed because of remoteness or weather.
845.18(a)	To allow more time for service by mail.

administering, and enforcing State programs under this Act. Except as provided in subsection (c) of this section, such grants shall not exceed 80 per centum of the total costs incurred during the first year, 60 per centum of total costs incurred during the second year, and 50 per centum of the total costs incurred during each year thereafter.

(b) The Secretary is authorized to cooperate with and provide assistance to any State for the purpose of assisting it in the development, administration, and enforcement of its State programs. Such cooperation and assistance shall include—

State programs,  
assistance.

(1) technical assistance and training including provision of necessary curricular and instruction materials, in the development, administration, and enforcement of the State programs; and

(2) assistance in preparing and maintaining a continuing inventory of information on surface coal mining and reclamation operations for each State for the purposes of evaluating the effectiveness of the State programs. Such assistance shall include all Federal departments and agencies making available data relevant to surface coal mining and reclamation operations and to the development, administration, and enforcement of State programs concerning such operations.

(c) If, in accordance with section 523(d) of this Act, a State elects to regulate surface coal mining and reclamation operations on Federal lands, the Secretary may increase the amount of the annual grants under subsection (a) of this section by an amount which he determines is approximately equal to the amount the Federal Government would have expended for such regulation if the State had not made such election.

Annual grants,  
increase.

#### ANNUAL REPORT

Sec. 706. The Secretary shall submit annually to the President and the Congress a report concerning activities conducted by him, the Federal Government, and the States pursuant to this Act. Among other matters, the Secretary shall include in such report recommendations for additional administrative or legislative action as he deems necessary and desirable to accomplish the purposes of this Act.

Annual report to  
President and  
Congress.  
30 USC 1296.

#### SEVERABILITY

Sec. 707. If any provision of this Act or the applicability thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

30 USC 1297.

#### ALASKAN SURFACE COAL MINE STUDY

Sec. 708. (a) The Secretary is directed to contract to such extent or in such amounts as are provided in advance in appropriation Acts with the National Academy of Sciences-National Academy of Engineering for an in-depth study of surface coal mining conditions in the State of Alaska in order to determine which, if any, of the provisions of this Act should be modified with respect to surface coal mining operations in Alaska.

Contract.  
30 USC 1298.

(b) The Secretary shall report on the findings of the study to the President and Congress no later than two years after the date of enactment of this Act.

Report to  
President and  
Congress.

(c) The Secretary shall include in his report a draft of legislation to implement any changes recommended to this Act.

Draft legislation.

## Modifications.

(d) Until one year after the Secretary has made this report to the President and Congress, or three years after the date of enactment of this Act, whichever comes first, the Secretary is authorized to modify the applicability of any environmental protection provision of this Act, or any regulation issued pursuant thereto, to any surface coal mining operation in Alaska from which coal has been mined during the year preceding enactment of this Act if he determines that it is necessary to insure the continued operation of such surface coal mining operation. The Secretary may exercise this authority only after he has (1) published notice of proposed modification in the Federal Register and in a newspaper of general circulation in the area of Alaska in which the affected surface coal mining operation is located, and (2) held a public hearing on the proposed modification in Alaska.

## Publication in Federal Register. Hearing.

Interim regulations. *Ante*, p. 467.

(e) In order to allow new mines in Alaska to continue orderly development, the Secretary is authorized to issue interim regulations pursuant to section 501(b) including those modifications to the environmental standards as required based on the special physical, hydrological and climatic conditions in Alaska but with the purpose of protecting the environment to an extent equivalent to those standards for the other coal regions.

## Appropriation authorization.

(f) There is hereby authorized to be appropriated for the purpose of this section \$250,000; *Provided*, That no new budget authority is authorized to be appropriated for fiscal year 1977.

## STUDY OF RECLAMATION STANDARDS FOR SURFACE MINING OF OTHER MINERALS

## Contract. 30 USC 1299.

Sec. 709. (a) The Chairman of the Council on Environmental Quality is directed to contract to such extent or in such amounts as are provided in appropriation Acts with the National Academy of Sciences-National Academy of Engineering, other Government agencies or private groups as appropriate, for an in-depth study of current and developing technology for surface and open pit mining and reclamation for minerals other than coal designed to assist in the establishment of effective and reasonable regulation of surface and open pit mining and reclamation for minerals other than coal. The study shall—

- (1) assess the degree to which the requirements of this Act can be met by such technology and the costs involved;
- (2) identify areas where the requirements of this Act cannot be met by current and developing technology;
- (3) in those instances describe requirements most comparable to those of this Act which could be met, the costs involved, and the differences in reclamation results between these requirements and those of this Act; and
- (4) discuss alternative regulatory mechanisms designed to insure the achievement of the most beneficial postmining land use for areas affected by surface and open pit mining.

## Legislative recommendations, submittal to President and Congress.

(b) The study together with specific legislative recommendations shall be submitted to the President and the Congress no later than eighteen months after the date of enactment of this Act: *Provided*, That, with respect to surface or open pit mining for sand and gravel the study shall be submitted no later than twelve months after the date of enactment of this Act: *Provided further*, That with respect to mining for oil shale and tar sands that a preliminary report shall be submitted no later than twelve months after the date of enactment of this Act.

(c) There are hereby authorized to be appropriated for the purpose of this section \$500,000: *Provided*, That no new budget authority is authorized to be appropriated for fiscal year 1977.

Appropriation authorization.

INDIAN LANDS

Sec. 710. (a) The Secretary is directed to study the question of the regulation of surface mining on Indian lands which will achieve the purpose of this Act and recognize the special jurisdictional status of these lands. In carrying out this study the Secretary shall consult with Indian tribes. The study report shall include proposed legislation designed to allow Indian tribes to elect to assume full regulatory authority over the administration and enforcement of regulation of surface mining of coal on Indian lands.

Study report, submittal to Congress.  
30 USC 1300.  
Proposed legislation.

(b) The study report required by subsection (a) together with drafts of proposed legislation and the view of each Indian tribe which would be affected shall be submitted to the Congress as soon as possible but not later than January 1, 1978.

(c) On and after one hundred and thirty-five days from the enactment of this Act, all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by subsections 515(b) (2), 515(b) (3), 515(b) (5), 515(b) (10), 515(b) (13), 515(b) (19), and 515(d) of this Act and the Secretary shall incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands.

Compliance.

*Ante*, p. 486.

(d) On and after thirty months from the enactment of this Act, all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by sections 507, 508, 509, 510, 515, 516, 517, and 519 of this Act and the Secretary shall incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands.

*Ante*, pp. 474, 478, 479, 480, 486, 495, 498, 501.

(e) With respect to leases issued after the date of enactment of this Act, the Secretary shall include and enforce terms and conditions in addition to those required by subsections (c) and (d) as may be requested by the Indian tribe in such leases.

(f) Any change required by subsection (c) or (d) of this section in the terms and conditions of any coal lease on Indian lands existing on the date of enactment of this Act, shall require the approval of the Secretary.

Terms and conditions.

(g) The Secretary shall provide for adequate participation by the various Indian tribes affected in the study authorized in this section and not more than \$700,000 of the funds authorized in section 712(a) shall be reserved for this purpose.

(h) The Secretary shall analyze and make recommendations regarding the jurisdictional status of Indian Lands outside the exterior boundaries of Indian reservations: *Provided*, That nothing in this Act shall change the existing jurisdictional status of Indian Lands.

EXPERIMENTAL PRACTICES

Sec. 711. In order to encourage advances in mining and reclamation practices or to allow post-mining land use for industrial, commercial, residential, or public use (including recreational facilities), the regulatory authority with approval by the Secretary may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under sections 515 and 516 of this Act. Such departures may be authorized if (i) the experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required by promulgated standards; (ii) the mining operations approved for particular land-use or other purposes are not larger or

30 USC 1301.

*Handwritten notes:*  
7/20/77  
10/10/77  
11/10/77  
12/10/77

SJR

59

COMMITTEE REPORT  
SENATE

1/15/82

FURTHER: None

Date: 3/1/82

Mr. President:

The Committee on RESOURCES has had SJR 59

support for legislation establishing a National Garden Week

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 \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

[Signature]

[Signature]

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CHAIRMAN

SENATE RESOURCES COMMITTEE  
LEGISLATION CHECKLIST

BILL NUMBER SJR 59

IDENTIFICATION:

BILL NAME:

*support for*  
*re: legislation to establish National Garden Week*

SPONSOR(S):

*Colletta*

RELATED BILLS PENDING:

DATE INTRODUCED: *1-15-82*

REFERRALS *Resources*

INITIAL RESEARCH:

INITIAL BILL SUMMARY COMPLETED ✓

SUMMARY BY LEGAL DIVISION:  
DEPT. OF LAW SUMMARY:

SPONSOR CONTACTED FOR BACKUP  
MATERIALS:

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR  
REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPARATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET:

STAFF MEMO TO COMMITTEE:

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/CS DRAFTED:

*Memo from Colletta's office*

# 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 1, 1982  
1:30 p.m.

Beltz Room  
Capitol - Room 211

### MEMBERS PRESENT

Senator Fahrenkamp  
Senator Fischer  
Senator Gilman  
Senator Mulcahy  
Senator Sturgulewski

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### Hearing:

SB 730 An Act establishing the Aleksandr Baranov State Game Refuge.  
SB 731 An Act establishing the Shuyak Island State Park.  
SJR 59 Relating to support for legislation establishing a National Garden Week.

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### SB 730 and SB 731

Greg Vos, Alaska Department of Fish and Game, was present to answer questions.

Senator Mulcahy provided background. The bills are the result of negotiations between the Kodiak Island Borough and the Department of Natural Resources, as part of the municipal entitlement settlement. The proposed refuge is on the east side of Shuyak Island to protect the winter deer habitat. The proposed park is on the west side of the island, with the Kodiak Borough maintaining the core portion of the island and being provided with an easement.

Joyce Munson, representing the Kodiak Borough, spoke in support of SB 730 and 731, stating the Borough would oppose any amendments that would include tidal or submerged lands.

Senate Resources Committee

March 1, 1982

Page 2

Hilton Wolfe, Division of Parks, Department of Natural Resources,  
expressed support for SB 731

After discussion by the Committee concerning payment for survey work, Senator Fahrenkamp stated that Senate Bills 730 and 731 would be held until this question was answered,

SJR 59

Carol Burnside, Aide to Senator Colletta, was present to answer questions.

Senator Mulcahy moved the bill with individual recommendations.

The meeting was adjourned at 1:50 p.m.

LEGISLATION SUMMARY

SJR 59: "Relating to support for legislation establishing a National Garden week.

Resolves that the legislature request the Alaskan Congressional Delegation to support legislation establishing a National Garden week.

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PRIME SPONSOR: Colletta

SJR

600



# Our Nation and the Sea

A Plan for  
National Action

Report of the Commission  
on Marine Science,  
Engineering and Resources



PHOTO COURTESY

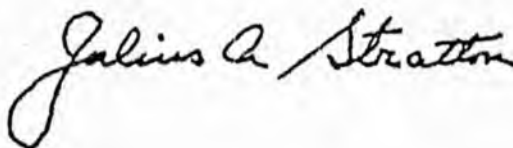
PHOTO COURTESY

To the President and the Members of Congress:

I have the honor to present the final report of the Commission on Marine Science, Engineering and Resources, the establishment of which was authorized by Public Law 89-454, enacted by Congress on June 17, 1966. The members of the Commission were appointed by the President on January 9, 1967.

In response to its mandate, the Commission has undertaken an intensive investigation of a broad array of marine problems ranging from the preservation of our coastal shores and estuaries to the more effective use of the vast resources that lie within and below the sea. The recommendations which have emerged from this study constitute a program which we believe will assure the advancement of a national capability in the oceans and go far towards meeting the inevitable needs of the future.

These recommendations are the product of nearly two years of study and discussion, and they express the combined judgment of the entire Commission. On all major issues there has been unanimous concurrence, although in formulating recommendations relating to government organization it has seemed proper for three members of the Commission to abstain—Undersecretary of the Navy, Charles F. Baird; Assistant Secretary, Water Pollution Control, Department of the Interior, Frank C. DiLuzio; and the Administrator, Environmental Science Services Administration, Department of Commerce, Robert M. White. These members were appointed as representatives from the Government but served on the Commission in their individual capacities as specified by statute. Their knowledge and experience in governmental and organizational problems were freely drawn upon by the Commission in its deliberations. However, recognizing that the organizational proposals of the Commission vitally affect the departments which they serve in their official roles, they have abstained from taking a position with respect to the final recommendations on these particular proposals as outlined in Chapter 7 and summarized or mentioned elsewhere in the report.



J. A. STRATTON  
*Chairman*

JANUARY 9, 1969

# Members of the Commission

## *Chairman*

Julius A. Stratton  
Chairman  
The Ford Foundation

## *Vice-Chairman*

Richard A. Geyer  
Head  
Department of Oceanography  
Texas A&M University

David A. Adams<sup>1</sup>  
Commissioner of Fisheries  
North Carolina Department of  
Conservation and Development

Carl A. Auerbach  
Professor of Law  
University of Minnesota

Charles F. Baird<sup>2</sup>  
Under Secretary of the Navy

Jacob Blaustein  
Director  
Standard Oil Company (Indiana)

James A. Crutchfield  
Professor of Economics  
University of Washington

Frank C. DiLuzio<sup>1</sup>  
Assistant Secretary-  
Water Pollution Control  
U.S. Department of the Interior

Leon Jaworski  
Attorney  
Fulbright, Crooker, Freeman,  
Bates and Jaworski

John A. Knauss  
Dean  
Graduate School of Oceanography  
University of Rhode Island

John H. Perry, Jr.  
President  
Perry Publications, Inc.

Taylor A. Pryor  
President  
The Oceanic Foundation

George E. Reedy<sup>1</sup>  
President  
Struthers Research and Development Corp.

George H. Sullivan, M.D.  
Consulting Scientist  
General Electric Reentry Systems

Robert M. White  
Administrator  
Environmental Science Services  
Administration  
U.S. Department of Commerce

## *Congressional Advisors*

Norris Cotton  
U.S. Senator

Warren G. Magnuson  
U.S. Senator

Alton A. Lennon  
U.S. Representative

Charles A. Mosher  
U.S. Representative

<sup>1</sup> Affiliation as of time of appointment.

<sup>2</sup> Appointed July 21, 1967 to succeed Robert H. B. Baldwin, former Under Secretary of the Navy, who served as a member of the Commission from Jan. 9, 1967 to July 21, 1967.

# Acknowledgements

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Those to whom the Commission has turned for information, for guidance, and for expert knowledge are so numerous that it is beyond our ability to thank individually all who have contributed so much to our efforts and to the preparation of this report. In reaching our conclusions, we have drawn upon the ideas and the material assistance of more than 1,000 people. They have included marine scientists and engineers, leaders of business and industry, members of the academic community, and many marine specialists of the Federal, State, and local governments. We are deeply indebted to them all.

The Marine Resources and Engineering Development Act of 1966 wisely made provision for Congressional advisers to the Commission. We are most grateful to Senator Warren G. Magnuson of Washington, Senator Norris Cotton of New Hampshire, Congresswoman Alton A. Lennon of North Carolina, and Congressman Charles A. Mosher of Ohio for their counsel, their encouragement, and their support.

This has been a working commission, and from the outset every member has been actively and continuously engaged. But the completion of a task of such magnitude and complexity could never have been accomplished without the aid of a staff that has worked skillfully, effectively, and with extraordinary dedication. From the beginning to the end, this entire endeavor has profited from the leadership of our Executive Director, Samuel A. Lawrence who has won the respect and admiration of all who worked with him. To Dr. Lawrence and to each member of our staff, the Commission expresses its profound thanks.

## I. OBJECTIVES OF FRAMEWORK

Any framework for exploring the living resources of the oceans must be judged by the extent to which it achieves the following objectives:

a. It must encourage the development of the vast food reserves of the sea at the lowest possible cost in order "to help end the tragic cycles of famine and despair."

b. It must promote the orderly and economically efficient exploitation of these living resources, with adequate regard for their conservation.

c. It must give the United States and its nationals a fair chance to engage in the exploitation of these resources and make it possible to rehabilitate our commercial fisheries.

d. It must otherwise promote national security and welfare by not interfering unduly with uses of the sea for purposes other than the exploitation of its living resources.

e. It must not provoke international conflict but should contribute positively to international order, welfare and equity.

f. It must be consistent with foreign policy objectives of the United States.

Judged by these standards, the panel concludes that the existing framework is seriously deficient.

## II. EXISTING FRAMEWORK

Each coastal State, unless limited by treaty, has permanent, exclusive access to the living resources found in its internal or territorial waters. While the freedom of fishing is one of the specified freedoms of the high seas, it is beclouded by the lack of agreement with respect to the breadth of the territorial sea and by the extravagant claims made by some States with respect to its breadth and that of the exclusive fisheries zone. The United States claims permanent, exclusive access to the living resources of the seas up to 12 miles from the baselines from which the breadth of the territorial sea is measured.

The freedom of fishing is also limited by bilateral and multilateral treaties and agreements

and restricted by the coastal State's recognized right of exclusive access to the living, sedentary species on the continental shelf.

Appendix B to the report describes the principal international treaties and other agreements relating to fisheries to which the United States is a party.

## III. EVALUATION OF EXISTING FRAMEWORK

### A. The Fishery Conventions

#### 1. United States Stake in Fishery Conventions to Which It Is a Party

The value of the total United States catch of fish and shellfish in 1967 was \$438.3 million.<sup>1</sup> It is difficult to estimate the value of the United States fishermen's catch in areas governed by international fishery conventions to which the United States is a party. But there is agreement that it accounts for a very appreciable portion of the value of the total United States catch and is growing in importance. Moreover, the fishery conventions also affect United States companies operating under foreign flags in areas covered by the conventions, as well as imports from these areas in which United States companies have no interest.<sup>2</sup>

#### 2. Objectives of Fishery Conventions

The dominant purpose of practically all the fishery conventions is to conserve the living resources of the sea. This purpose is variously stated as the attainment of the "maximum sustained catches year after year," "maximum sustained yield," "maximum sustainable productivity," "greatest harvest year after year." The Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas states its objective as the attainment of the "optimum

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<sup>1</sup> Fisheries in the U.S., 1967, at 3. (U.S. Department of the Interior, 1968).

<sup>2</sup> Seventy-one percent of the United States domestic supply of fishery products was imported in 1967. *Id.* at xx.

Processing capacity must be enlarged to handle the induced peaks in production and it remains under-utilized for much of the year. Higher storage costs are incurred and the risks involved in holding inventory over longer periods of time, borne initially by fish processors and marketers, ultimately result in lower prices to fishermen. Instead of enjoying a steady flow of fresh halibut, the consumer receives it in less desirable frozen form for much of the year.<sup>26</sup>

Finally, in some cases, exemplified by the earlier attempts to regulate Antarctic whaling, a total catch limit, by itself, may force the participants in the fishery competing for it to fix the limit at a level higher than that called for by sound conservation practice. (A quota somewhat less than that required by sound conservation practice has been agreed upon recently, but only after severe damage had been inflicted on the whale stocks).

From an economic point of view, the ideal regulations affecting mortality would include a total catch quota designed to maximize net economic return and restrictions on entry that would limit the number of operating units, each of maximum efficiency, to the minimum required to take the quota on a full time basis.<sup>27</sup>

b. The Abstention Doctrine The International Convention on the High Seas Fisheries of the North Pacific Ocean is the only fishery convention in which State parties agree to abstain from fishing for specified stocks of fish (salmon, halibut and herring) in specified areas of the high seas.<sup>28</sup> The International North Pacific Fisheries Commission is authorized to recommend, after study, that the abstention principle shall no longer apply to a

specified stock of fish in a specified area or that it shall apply to additional stocks of fish in additional areas.

There is no completely satisfactory answer to the problems raised by the abstention doctrine. It has been strongly advocated by the United States on the ground that the nation through whose efforts and money a high seas fishery has been developed, and through whose regulatory measures (and consequent restraints upon its fishermen) the fishery is being conserved, should have priority in its exploitation. If the stocks are being fully utilized, that Nation should even have the right to exclude others who made no similar contribution to the fishery.

Varied objections were voiced against the abstention doctrine when it was proposed by the United States and rejected during the deliberations that preceded the adoption of the Convention on Fishing and Conservation of the Living Resources of the Sea.<sup>29</sup> It was maintained that the doctrine discriminated against the developing nations and in favor of the developed nations; it conflicted with the principle of freedom of the seas; it was subject to abuse by nations which might claim incorrectly that certain fisheries had been developed to their maximum sustainable yield by their efforts alone; and it was based upon inadequate study of the relevant biological, economic, social and political factors.

★ It is most unlikely that the abstention doctrine will prove to be acceptable as a means of excluding new entrants from fisheries already being exploited fully. The controversies engendered by the application of the doctrine in the North Pacific Ocean attest to this conclusion. The United States has a strong case here. It has restrained its own fishermen for more than 50 years to rebuild the salmon runs; and it has spent hundreds of millions of dollars for pollution control, fish ladders, fish hatcheries, artificial propagation and research to protect and enhance the salmon population.

The Japanese do not deny that the United States should have certain special rights with respect to the salmon but argue that these rights should be commensurate with the United States

<sup>26</sup> *Ibid.* See also, Crutchfield and Zellner, note 5, *supra*; and Dodyk, Report on the International Law of Ocean Fisheries 20 (Prepared for National Council on Marine Resources and Engineering Development, 1967).

<sup>27</sup> Economic Aspects of Fishery Management, at 8.

<sup>28</sup> See Appendix B. For general discussion of the abstention doctrine, see Yamamoto, The Abstention Principle and its Relation to the Evolving International Law of the Sea, 43 Wash. L. Rev. 45 (1967); Herrington, Comments on the Principle of Abstention, Papers Presented at the International Technical Conference on Conservation of the Living Resources of the Sea, Rome 1955, U.N. Doc. A/Conf. 10/7, at 34-49; Van Cleve, The Economic and Scientific Basis of the Principle of Abstention, Law of the Sea, Official Record, U.N. Doc. A/Conf. 13/3, at 47-63.

<sup>29</sup> See generally, McDougal and Burke, The Public Order of the Oceans 956-60 (1962); Johnston, The International Law of Fisheries 275-82, 289-97 (1965). A good deal of the following discussion is based upon these sources, as well as the sources cited in note 28 *supra*.

investment and apply only to the stock of fish affected by its investment. They point out that none of this investment has been made in Alaskan rivers and streams, that they exploit only Alaskan spawned salmon on the high seas and that about 95 percent of the weight of this fish is gained while they are beyond the territorial waters of the United States. They argue, too, that they have by now borne part of the expense of salmon conservation by acceding to the abstention doctrine for more than 10 years and should be entitled to some share of the catch. They deny that because a coastal State prevents its fishermen from depleting a resource, it has an equitable claim to exclusive access to the resource, particularly when multinational conservation efforts are possible. Japan also maintains that evidence based upon scientific research does not indicate that more extensive exploitation of the salmon will not provide a substantial increase in yield that can be sustained year after year and therefore that the basic condition for the application of abstention under the Convention is not satisfied.

Finally, the abstention doctrine in the North Pacific may be jeopardized by the entry into the Convention area of the Soviet Union, South Korea and other nations which are not parties to the Convention. The Convention itself recognizes the inapplicability of the abstention doctrine to "any stock of fish which is harvested in greater part by a country or countries not party to the Convention." While the Soviet Union so far has demonstrated a tacit willingness to leave alone the salmon and halibut fisheries from which the Japanese have agreed to abstain, it is free to change its position at any time. Moreover, South Korea is participating in the salmon fisheries of the North Pacific. The resulting unfairness to the Japanese is apparent.

The impasse which has been reached in connection with Japanese proposals to eliminate the abstention doctrine reveals the difficulties that will be encountered in any attempt to replace it. However, it also reveals that abstention is not a viable principle in the long run. In many regions of the world, nations with distant-water fishing fleets are rapidly expanding their activities into some of the world's most valuable fisheries contiguous to the coasts of countries which need the protein but lack the technical and financial capacity to participate in these fisheries. These countries fear that,

by the time they have attained the necessary competence and capital, the abstention doctrine may bar them from these fisheries or be used as justification for admitting them on unfavorable terms. It should not be surprising, therefore, that these developing countries oppose the doctrine—as do all newcomers to a particular fishery—as one that seeks to preserve an inequitable status quo. It should be pointed out, too, that in time the United States itself may be a new entrant into the fisheries of many areas of the world.

As aquaculture progresses and capital and labor are invested to cultivate particular living resources of the sea artificially, there may be a place for the abstention doctrine to protect the investor's right of exclusive access to these resources.

c. Limited Power of Fishery Commissions The fishery commissions—the administrative agencies created by the fishery conventions to carry out their objectives—generally have only the power to make recommendations which must be accepted by all the States Parties to become effective. The Agreement between the United States and Canada respecting the sockeye and pink salmon fisheries is an exception to this general rule. Commission action to adjust emergency orders or the closing or opening of fishing periods and areas during any fishing season is not subject to approval of the two Governments. To become effective, however, such action must be voted for by at least two of the three Commissioners of each Government. The fact that the two governments need not formally approve such action is probably not significant because enforcement responsibilities under the agreement in question are vested in the national fishery agency of Canada and the Department of Fisheries of the State of Washington. Neither government is likely to enforce a Commission action of which it disapproves and the Commission will know, informally, whether its action will be approved and enforced before it takes it.

The Convention on Fishing and Conservation of the Living Resources of the Sea attempts to overcome the difficulties that stem from requiring unanimous approval of the States parties to an international fishery convention before a conservation regulation can become effective. In the first place, it forces consideration of the need for conservation of a fish stock if only one State