

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4201 SLAB SJR 45 - HB 5 1681



RECORDS CERTIFICATION



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James O. Smith
Signature of Camera Operator

11/24/89
Date

SJR

45

SJR 45: Summary

THIS MEASURE URGES CONGRESS TO REVISE THE PRESENT SYSTEM FOR COMPENSATING INJURED FISHERMAN, AND TO CREATE A SYSTEM OF COMPENSATION WHICH IS BOTH FAIR TO THE FISHERMAN AND AFFORDABLE TO VESSEL OWNERS.

THE US CONGRESS IS CURRENTLY DISCUSSING ALTERNATIVE COMPENSATION SYSTEMS FOR INJURED COMMERCIAL FISHERMAN, AND THE PASSAGE OF THIS RESOLUTION WILL COMMUNICATE OUR SUPPORT FOR THEIR EFFORTS. I URGE FAVORABLE CONSIDERATION BY THE BODY.

CHAIRMAN'S INFORMATION: SJR 45

1) BILL TITLE: "Relating to compensation for injuries to commercial fisherman."

a) Introduced: Senate Labor and Commerce Committee

b) Co-sponsors:

2) INTENT: This measure urges Congress to revise the present system for compensating injured fisherman, and create a system of compensation which is both fair to the fisherman and affordable to vessel owners.

FISCAL NOTE: 0 (We could put together an L&C Committee F/N if you would like.)

3) ADDITIONAL REFERRALS: Sen Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?

b) Assign to sub committee for further review?

c) Move from committee?

d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?

b) CS adoption?

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No.: SJR 45
 Title: Relating to compensation for injuries to commercial fisherman.
 Sponsor: Senate Labor and Commerce
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: None
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Michael Thill, Aide
 Division: Senate Labor and Commerce Committee

Phone: 465-3844
 Date: 6 April, 1986

Approved by Commissioner: Senator Zharoff, Chairman
 Agency: Senate Labor and Commerce Committee

Date: 7 April, 1986

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
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Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SJR 45: Summary

This resolution urges Congress to revise the present system for compensating injured commercial fisherman. The resolution finds that liability insurance for commercial fisherman is often unavailable, too expensive for many fisherman, and the method of compensation is inefficient. Additionally, the resolution references 3 studies which support the need for changes to the system of compensation for injured fisherman.

Introduced: 3/3/86
Referred: Labor and Commerce

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE SENATE

2

SENATE JOINT RESOLUTION NO. 45

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

Relating to compensation for injuries to

6

commercial fishermen.

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

8

WHEREAS the United States commercial fishing industry is facing a
9 crisis in the cost and availability of marine insurance; and

10

WHEREAS the Alaska commercial fishing industry is experiencing severe
11 economic costs as a result of these problems; and

12

WHEREAS these costs are having a detrimental impact on the people and
13 the communities of the state; and

14

WHEREAS the most troublesome part of the marine insurance crisis is
15 the method by which injured fishermen are compensated and the resultant
16 impact on the protection and indemnity insurance (P&I) policy; and

17

WHEREAS the system for compensating injured commercial fishermen is
18 established under federal law; and

19

WHEREAS a 1957 survey and study sponsored by the U.S. Fish and Wild-
20 life Service concluded that the system "...disregards completely the finan-
21 cial, economic, and operational characteristics of the industry"; and

22

WHEREAS the study also stated that "the system is unjust because it is
23 wasteful and slow and it fosters misunderstanding and bitterness between
24 employer and employees"; and

25

WHEREAS the study recommended that the system be replaced by a more
26 equitable one; and

27

WHEREAS a more detailed study sponsored by the National Oceanic and
28 Atmospheric Administration in 1976 recommended the consideration of an
29 alternative liability system; and

Introduced: 3/3/86
Referred: Labor and Commerce

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE SENATE

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SENATE JOINT RESOLUTION NO. 45

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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WHEREAS a more detailed study sponsored by the National Oceanic and
28 Atmospheric Administration in 1976 recommended the consideration of an
29 alternative liability system; and

1 WHEREAS a 1985 study sponsored by the National Council of Fishing
2 Vessel Safety and Insurance also recommends sweeping changes in the exist-
3 ing system of compensating injured fishermen and warns that "This is ...
4 probably the last time this issue will be presented before Congress.
5 Either the system will be changed, or the industry will not be strong
6 enough to return"; and

7 WHEREAS the Congress is presently evaluating the problem and consider-
8 ing possible solutions to it;

9 BE IT RESOLVED by the Alaska State Legislature that Congress is re-
10 spectfully requested to take whatever action is necessary to revise the
11 present system for compensating injured fishermen so that it will be fair
12 to commercial fishermen and affordable by the vessel owners.

Alaska State Legislature

Advisory Council Members
Senator Bennett, Chairman
Senator Abood
Senator Kerttula
Senator Sackett



P.O. Box V
State Capitol
Juneau, Alaska 99811
Phone: (907) 465-3114

Senate Advisory Council

MEMORANDUM

TO: Senator Fred Zharoff
Alaska State Legislature

FROM: Bill Hall, *Bill*
Senior Advisor

DATE: March 14, 1986

SUBJECT: SJR 45 regarding changes to Federal Maritime Law (Jones Act) as it relates to marine insurance.

Attached to this memo is a copy of a resolution under consideration by the Legislature of Hawaii regarding the above mentioned subject. The Hawaiian resolution (unlike our resolution) makes a specific recommendation to adopt a Federal workmen's compensation system for injured fishermen in place of the existing system.

I had recommended that the Alaska resolution (SJR 45) not contain any specific recommendations because I did not believe that we were well enough informed to make an intelligent decision at this time. I still believe that we need more information on this subject, but I am more convinced than ever that we should consider a workmen's compensation program as a possible solution. I say this with the knowledge that Al Burch of the Alaska Dragger's Association has testified at a Congressional hearing on the subject that a workmen's compensation system would not be acceptable because it would be unaffordable to boat owners. I am not convinced that this is true, and I am working with Paul Troeh, Deputy Director of the Division of Insurance to develop some cost data on the system.

Congressional hearings on this subject are scheduled to begin April 16. There are three probable options that will be considered regarding Congressional action. They are:

1. Maintain the existing system by doing nothing;
2. Modify the existing system, and;
3. Replace the existing system with a workmen's compensation program.

Senator Zharoff
March 14, 1986

I don't believe that there is support at this time for Option 1. However because of a study sponsored by the National Council of Fishing Vessel Safety and Insurance there is considerable interest in a proposed solution that would constitute Option Number 2. There is also some support developing for Option Number 3. Sources in Washington, D.C. do not believe that Congress will complete action on any maritime insurance legislation this year. However, the process of considering options will begin, and it is important that the needs of the Alaskan fishing industry be considered in that process.

Because this is such an important issue, I have been working with Jack Cadigan, Executive Director of UFA, and Craig Wiese of the Alaska Sea Grant Program in organizing a meeting on the subject to be held in Juneau on April 4 of this year. UFA will host the meeting, and will invite every fishermen's organization in the State (including those organizations not affiliated with them) to send a representative. It is hoped that this meeting will result in the development of an Alaskan Fishing Industry consensus as to what specific changes in Federal Maritime Law are the most desirable. It is also planned that the meeting will address the subject of insurance pools so that some indication of interest will be available regarding SB 442.

I will keep you informed on the results of these activities. Please let me know if you have any suggestions or requests.

Enclosure
AWH:er

(To be made one and seven copies)

THE SENATE
THIRTEENTH LEGISLATURE, 19 86
STATE OF HAWAII

S. R. NO.

SENATE RESOLUTION

REQUESTING THAT THE UNITED STATES CONGRESS AMEND THE JONES ACT TO EXCLUDE COMMERCIAL FISHERS.

WHEREAS, there are two chapters of federal law which apply to persons injured in the course of maritime employment; and

WHEREAS, the Longshoremen's and Harbor Worker's Compensation Act affords quick monetary compensation to all injured maritime workers except members of the crew and masters, while the Jones Act covers these two categories; and

WHEREAS, the two pieces of legislation appear to be mutually exclusive, in that workers covered under the Jones Act do not have access to the remedies available under the Longshoremen's and Harbor Worker's Compensation Act; and

WHEREAS, rising insurance rates for commercial fishers who are subject to the Jones Act have increased costs and slowed expansion in this vital industry; and

WHEREAS, the Jones Act, unlike the Longshoremen's and Harbor Worker's Compensation Act, has no provision rendering inoperative state laws which create parallel remedies such as workers' compensation; now, therefore,

BE IT RESOLVED by the Senate of the Thirteenth Legislature of the State of Hawaii, Regular Session of 1986, that the Legislature requests the United States Congress to amend the Jones Act to exclude commercial fishers and amend the Longshoremen's and Harbor Worker's Compensation Act to include commercial fishers; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Speaker of the United States

(To be made one and seven copies)

THE SENATE
THIRTEENTH
..... LEGISLATURE, 19 86

STATE OF HAWAII

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S.R. NO.

House of Representatives, the President of the United States
Senate, and to each member of Hawaii's congressional delegation.

OFFERED BY: _____

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House of Representatives, the President of the United States
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SJR 45: Summary

This resolution urges Congress to revise the present system for compensating injured commercial fisherman. The resolution finds that liability insurance for commercial fisherman is often unavailable, too expensive for many fisherman, and the method of compensation is inefficient. Additionally, the resolution references 3 studies which support the need for changes to the system of compensation for injured fisherman.



**SENATE ADVISORY COUNCIL
ALASKA STATE LEGISLATURE
POUCH V
JUNEAU, ALASKA 99811**

A REPORT ON THE COST AND AVAILABILITY
OF MARINE INSURANCE IN ALASKA

BY

A. W. HALL

SENIOR ADVISOR, SENATE ADVISORY COUNCIL

30 January 1986

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INTRODUCTION

The subject of this report is the Alaska commercial fishing industry and the problems it is experiencing in obtaining fishing vessel insurance. The report, which is based on research conducted over the past three and one half months, contains recommendations on solutions to these problems with specific attention to the subject of pools as a form of self insurance.

One important, and inescapable, conclusion that the research has produced is that the cost and availability of fishing vessel insurance in Alaska is not the only problem that needs to be addressed. Rather, it is a symptom of the real problem which is the poor safety record of the Alaskan fishing industry. This record documents the loss of too many human lives and fishing vessels. The cost of these losses in terms of human suffering and financial impact is unacceptable on any social scale and is certainly unaffordable on any economic scale.

The preceding statement is not intended to suggest that nothing can be done to improve the cost, the availability or the quality of fishing vessel insurance. There is room for improvement. However, improvement cannot occur without either an overall improvement of the safety record of the fishing industry, or the development of a means by which the safe fisherman can be distinguished from the unsafe fisherman. In the latter situation, the benefits of improved insurance would not be shared by the fishing industry as a whole, but only by those who could demonstrate that they were safe operators. From a social perspective it is obvious that such an approach by itself would not be acceptable. However, in addition to efforts to improve the entire Alaska fishing industry's safety record, it is an important part of any overall solution.

One fundamental fact is absolutely clear. The need for insurance is a function of the risk inherent in the activity to be insured. If there is no risk of loss then there is no need for insurance. Furthermore, the cost of insurance is determined by the magnitude of the risk. If the risk of loss can be reduced or eliminated then so can the need for (and the cost of) insurance. To the extent that risk is a function of human behavior, it will be influenced by any change in human behavior. The challenge then appears to be one of determining the best and most acceptable method available for changing human behavior.

I. BACKGROUND TO THE PROBLEM

There is no law or regulation that requires fishing vessel owners to purchase marine insurance. However, lenders such as banks or the State of Alaska Commercial Fishing Loan Program

require that a borrower purchase specified insurance coverage as a condition of the loan agreement which is required by the mortgage document. Because the majority of fishing vessels in Alaska are subject to a marine mortgage, they are required to have insurance. If a vessel owner does not or cannot obtain the required insurance, then he is in violation of his mortgage agreement which places him in default and subject to foreclosure proceedings.

Fishing vessel owners are required by their mortgage holders to obtain two types of marine insurance coverage. One is a form of property and casualty insurance called hull and machinery and the other is a form of liability insurance called protection and indemnity or P & I. These two types of insurance are defined in two separate policies and are often provided by different companies or groups of companies.

Beginning in 1985 Alaskan fishermen began experiencing problems with both the cost and the availability of marine insurance. Premiums for typical hull and machinery policies for the Alaska salmon fleet on the average increased by approximately 30% with increases in some areas as high as 50 percent. Premiums for P & I insurance increased an average of 50 percent. Furthermore, coverage for some classes of vessels such as older wood boats or some Bering Sea crab boats was, and still is, unavailable at any price. Also, some vessel owners found the amount of their coverage reduced at the same time that their premiums were increased.

II. REASONS FOR THE PROBLEM

A. THE FISHING INDUSTRY

Faced with a situation that threatens their livelihood, many fishermen have been asking questions such as "Why do we have this problem?", "Who is responsible?", "What can we as fishermen do to solve it?", and "What can government do to help us?". The answers to these questions can be found in an examination of the insurance industry with particular regard to marine insurance and the fishing industry with particular regard to its safety record. Factors and circumstances unique to both industries have combined to create a multifaceted problem the solution of which will require the cooperation of fishermen, insurance companies and government.

Fishing has historically been a high risk industry. However in recent years the loss record of the U. S. fishing industry in terms of both money and human lives has been deteriorating. A recent U.S. Coast Guard study has revealed that commercial fishermen have the worst safety record of all U.S. industries with a death rate of 7 times the national average for all industry groups. Loss rates for large fishing vessels are 5 to 7 times greater than loss rates for U.S. ocean going cargo ships with a total of 2,414 documented fishing vessels lost at sea during the twelve years from 1970 to 1982. Also during that

period, another 9,503 vessels were damaged at sea, and deaths from loss of vessel, damage to vessel, or accident onboard vessel, numbered 1,271.

There is reason to believe that these increases are the result of recent developments in two areas: the increased importance and value of fish as a food source, and the passage of legislation that extended the jurisdiction of the United States over its fisheries resources to 200 miles. With these two developments the number of fishermen employed in the U.S. fishing industry has increased from 140,538 in 1970 to an estimated 223,000 in 1983. For those same years the number of fishing vessels has increased from 87,161 to 127,100. These increases have had three consequences. One is an increase in the overall value of the U.S. fishing fleet. A second is an increase in the cost and sophistication of the typical fishing vessel, and the third is a shortage of experienced and qualified fishermen available to operate the increased number of vessels. These factors, combined with the instability inherent in the fishing industry as a result of fluctuations in the availability of fish stocks as well as their market prices, have contributed to a situation where the fisherman is often under great economic pressure to produce. He is therefor forced to expose himself to risks that he would normally avoid.

The fundamental problem is not the cost or unavailability of insurance. Rather it is the poor safety record of the fishing industry which has produced an unacceptably high loss of human life and financial investment. But, even with this high rate of losses it is theoretically possible to provide insurance coverage if the insurance companies could quantify the risk and had the financial capacity to cover the losses. However, the price that would have to be charged for such insurance would most probably be unaffordable, and that is in fact one of the facets of the present problem. So, one of the major reasons for recent increases in the cost of fish boat insurance is the high rate of losses experienced by the U.S. fishing industry. Also, at the present time the U.S. insurance industry because of heavy financial losses, has lost the capacity to write all the insurance for which there is a demand. This has also contributed to the increase in premiums as well as the decrease in availability. The functional aspects of this problem must therefor be examined in terms of the present structure and status of the insurance industry.

B. THE INSURANCE INDUSTRY

Regulation of the insurance industry has been delegated to the states by the federal government. The states have vested their regulatory powers in insurance commissioners who through a national organization have worked to promote uniformity in the regulatory process. One of the generally accepted uniform principals is the requirement that an insurance company must have one dollar in reserves for every three dollars of insurance

that it writes. The amount of reserves that a company has then determines its capacity to write insurance. If a company suffers a decrease of reserves through payment of claims or investment losses then it must reduce the amount of insurance that it writes.

Historically the insurance industry has been a cyclical business alternating from periods of profit to periods of losses. Unfortunately, as a result of a cycle begun in the late 1970's the industry is now going through a down cycle of unprecedented proportions. Consequently, its capacity to write insurance has been significantly diminished; forcing many companies to cut back or eliminate not only the amount but often the type of insurance that they were writing. This has impacted the insurance market in Alaska by reducing the number of companies writing marine coverage from over 30 to less than 5, and those companies have both raised their rates and limited the amount of coverage that they are writing.

One reason for this situation is the fact that fish boat insurance constitutes only one tenth of one percent of the business written by insurance companies in the United States. It is also a category of insurance that has not been very profitable. So, when insurance companies are forced to reduce the amount of insurance that they are writing as a result of their diminished capacity; they naturally eliminate those categories of coverage that were the least profitable and that generated the least amount of business.

It is expected that as underwriting companies replenish their reserves through increases in the premiums charged, the number of companies writing marine coverage will increase. However, it is not expected that premiums for hull and machinery coverage will be decreasing as they are presently at levels which are considered to be the minimums necessary to support the coverage being written at the rate that losses are being experienced.

C. FEDERAL MARITIME LAW

Marine insurance like other forms of insurance is regulated by the states. However, because federal maritime law governs the ownership and operation of documented fishing vessels, the extent and nature of insurance contracts and their application are also subject to federal law. This is particularly true in the area of liability insurance where federal law governs the method by which injured fishermen are compensated. Unfortunately this system of compensation which was designed to protect the well being of merchant seamen has not been well suited to the needs and capabilities of the nation's commercial fishing industry. A study sponsored by the federal government during the 1950's included the following criticism about this method of compensating injured fishermen.

... it disregards completely the financial, economic, and operational characteristics of the industry. Furthermore, the system in itself is unjust because it is wasteful and slow and it fosters misunderstandings and bitterness between employer and employees. Moreover, it encourages the use of dishonest methods by both parties because court awards often are not in proportion to the employee's injury or need.

This 30 year old criticism is still valid today and if anything, the situation is now even worse because of two developments. In 1981 the Reagan administration closed the Public Health Service Hospitals to commercial fishermen thereby eliminating the free medical care that they had previously received. As a result of this the burden for providing medical care fell on the boat owner who had to provide for it through his protection and indemnity insurance. This of course increased the amount of claims paid by insurance companies (which they had not anticipated). It also placed the injured fisherman in an adversarial relationship with his employer as a claimant under the insurance policy or as a plaintiff in a court of law. The second development has been the increasing number of personal injury claims being filed by fishermen in the courts. In this regard the fishing industry is not unlike other industries that are now seeking relief through legislation that would reform the nation's tort laws. However, unlike other industries, the fishing industry cannot obtain relief through changes in state law. It must seek changes in federal law which is a much more difficult challenge.

III. POSSIBLE SOLUTIONS

Because, as has previously been stated, the problem of fish boat insurance is a multifaceted one, there is no simple, comprehensive solution. However, there are opportunities for improving the situation if the problem is broken down into some of its constituent parts. This section is therefore organized into subsections each of which contains a definition of a problem with recommendations for possible solutions to that problem.

A. IMPROVE FISHING INDUSTRY SAFETY RECORD

If the costs associated with losses in the fishing industry can be reduced, then the costs that must be bourn by a system of insurance will be less. If the cost of providing insurance coverage decreases, then the cost to those purchasing the insurance should also decrease. One means to achieve a reduction in losses is to improve the safety record of the fishing industry, and this can only be done by changing human behavior. Options available for changing human behavior include changes through the force of law, changes through economic requirements, and changes through economic incentive.

Opportunities for legislating requirements for human conduct include a.) extending the jurisdiction of existing federal laws and regulations from the U.S. maritime industry to the fishing industry and b.) passage or modification of state laws and regulations governing the operations of the fishing industry.

At the present time the option of extending federal regulatory authority to the fishing industry is not a politically viable option. The coast guard has testified at recent congressional hearings that they do not presently have the funding available to pay for implementation of such a program, and in fact they have been threatened with substantial budget cuts by the Reagan Administration over the past several years. Now, with the problems created by passage of the Gramm-Rudman legislation which requires congress to balance the budget within the next several years, it appears that additional budget cutting will be necessary. It is unlikely that the coast guard will escape this process, and it is virtually certain that their budget will not be increased to fund a new program of fishing vessel safety.

Because federal law preempts state law in the jurisdiction of the nation's maritime industry (which includes the fishing industry), the states have limited authority to regulate. However, within that limitation, there does appear to be some opportunity for regulation in the form of requirements for safety equipment as a condition of receiving a commercial fishing license. The authority for the state to do this has not been definitively determined. But, based on court decisions over the past several years and the a refusal of the federal government to exercise their authority, there appears to be some opportunity for the state to act.

One area in which the state's authority to act is not in doubt is the existing body of laws and regulations governing commercial fishing in the state. There is evidence that regulations determining the opening and closing dates of fishing seasons, the areas to be fished, and the type or size of vessels licensed to fish all have an impact on the risk to which fishermen and their vessels are exposed. For this reason it would seem prudent that safety should be a required consideration in the development of such regulations and laws.

The option for changing human behavior as a condition of receiving insurance (which would be change through economic requirement) has been rejected by the insurance industry. This possibility had been suggested by representatives of the U.S. Coast Guard in testimony given to a congressional committee in Seattle last August. The coast guard had testified that they were unable and unwilling to begin regulation of the fishing industry, but that they were in the process of developing a set of voluntary safety standards. They suggested that the insurance industry could require compliance with the standards as a condition of obtaining insurance. The insurance industry representatives rejected this suggestion stating that the

promotion and enforcement of safety standards was not their business.

The last option for changing human behavior through economic incentives may be the best opportunity available to the commercial fishing industry. But, it is an opportunity only if a mechanism can be found for implementing it. That mechanism may very well be the formation of self insurance programs which would place the responsibility for regulation on the fishing industry itself. This approach has in fact worked very successfully for a number of fishermen pools that have been operating out of the state of Washington since the early 1940's. These pools, which refer to themselves as funds, insure many boats that operate in the Alaskan fisheries from Kodiak to Ketchikan. However, because they do not wish to be subject to the authority of state insurance regulatory agencies and their requirements, they studiously avoid referring to their activities as constituting a form of insurance. And in fact the bylaws of one such fund contains the following statement, "No insurance business of any kind shall be done as such business is understood under the statutes of the State of Washington." Notwithstanding the foregoing, the pools have successfully provided economic protection to fishing vessel owners for over 40 years, and they have had an extremely good record. The following quotation from the bylaws of one of these pools defines its purpose and serves to illustrate its contribution to the promotion of safety at sea.

The purpose of this organization is to create and maintain a fund for the reimbursement of marine losses suffered by members occasioned by perils of the seas or fire or by certain collision liabilities; to work for the elimination of careless and reckless operation of fishing vessels; to maintain staunch and seaworthy fishing vessels; and to afford assistance to fellow member's vessels in distress at a reasonable rate of compensation.

B. INSURANCE POOLS

The foregoing section regarding fishermen's insurance pools addresses the value of self insurance as a mechanism for changing human behavior as it relates to safety in the fishing industry. This value can be viewed as a long term social value that results from an ongoing program to reduce the loss of human lives and vessels to the Alaskan fishing community. However another potential value of insurance pools lies in the opportunity they offer for fishermen who are safe operators to differentiate themselves from fishermen who are unsafe operators. By so doing, the good operators will benefit from an insurance program the cost of which is based on their record of operations and not the record of the fleet in general. One additional advantage to such a program would be a lower cost due to the absence of the need for the program to generate profits for underwriters. These values can be viewed as short term economic values that improve the profitability of the Alaskan fishing community.

As previously stated, the Washington state based fishermen's insurance pools (as they are popularly called) have been operating in the Alaskan fisheries for over 40 years. However, in their present form, they are technically not in compliance with Alaskan law, and are therefore illegal. Nevertheless, they have been providing a valuable and a reliable service to the fishermen of both Washington and Alaska. And with the present crises that exists in the marine insurance industry, it would not be prudent to reduce the amount of protection available to the fishing industry. On the contrary, it would seem that a prudent course of action would involve passage of legislation that would permit the formation of Alaska based fishermen's insurance pools.

C. FISHERMEN'S COMPENSATION SYSTEM

The subject of marine liability insurance has been examined in the previous section of this report entitled "FEDERAL MARITIME LAW". That section outlined the inadequacies of the present system for providing fishermen's compensation and suggested the need for changes to the federal law that governs the system. It is important to note here that the problems associated with this situation are not new. They have been the subject of a number of congressionally funded studies going back as far as the early 1950's all of which have recommended changes to the federal law.

Now, once again, there is another congressionally funded study being conducted, and there are legislative solutions being considered. This latest effort is of greater importance than past efforts because of the increased liabilities (and therefore costs) to which boat owners are now exposed. The increased exposure of the vessel owner is the direct result of court decisions that have broadened the circumstances under which a boat owner is liable for accidents to crewmen both on and off the vessel. It is therefore extremely important that the fishing industry of each state participate in the development of a national fishing industry consensus on the best solution to this problem so that the appropriate legislation can be developed and passed by congress. Without some modification of the law, the cost of P & I insurance may very well become unaffordable.

There is also one area of Alaska's workmen's compensation law that has been identified as a problem for fishing vessel owners. As a result of a recent court decision, fishing vessel owners are subject to the requirements of the workmen's compensation laws in situations where their crewmen have shore side duties. The court decision stated that a fishing vessel crewman who was injured while performing duties on shore was eligible to collect under the law. With this judgement, crewmen enjoy a duplication of remedies where they can collect under the workmen's compensation no-fault system while at the same time

retaining the right to pursue existing remedies under maritime law. In order for a vessel owner to comply with the law and protect his investment, he must now obtain both P & I insurance as well as workmen's compensation coverage. This duplication is not necessary to protect crewman and it creates an unnecessary financial burden on the boat owner who may not be able to afford the increase costs.

IV. RECOMMENDATIONS

Preceding sections of this report have identified problems and made general suggestions for solutions. This section contains specific recommendations for action by the Alaska Legislature.

A. INSURANCE POOLS

It is recommended that legislation be passed that contains provisions to:

1. authorize the Director of Insurance to develop, with input from interested fishermen groups, a plan for the creation and implementation of marine insurance reciprocal associations for the purpose of providing property and casualty insurance coverage for commercial fishermen,
2. authorize the Director of Insurance to promulgate regulations necessary for the implementation and operation of marine insurance reciprocal associations,
3. authorize the Director of Insurance to set the level of surplus required of marine insurance reciprocal associations by regulation,
4. authorize approved marine insurance reciprocal associations to issue policies that are nonassessable,
5. appropriate to the Division of Insurance the funding necessary to accomplish the foregoing tasks.

Because of the present crises in insurance many groups are considering the possibilities of self insurance as a solution to their problems. This is true for many different kinds of insurance in many different parts of the nation. For all of these groups a fundamental question that they must answer is "Who will fund the program?". One group in New Jersey that is in the process of forming a fishermen's mutual insurance association with the assistance of a combined federal and state grant is considering the possibility of state loan guarantees as a back up to the contributions of policy holders. Other groups have indicated an interest in obtaining financial assistance from the government.

That is not the case in regard to this recommendation. For one reason, the recent decline in state oil revenues makes the availability of state funding unlikely. However, what is possibly a more important reason is the need to maintain the ability of any reciprocal to be selective in its choice of participants. If the use of public funds were to compromise this freedom of choice to any degree, it could threaten the success of the program.

The question still remains as to how a marine insurance reciprocal can be funded. The answer that offers the greatest promise at this time is through a combination of policy holder contributions in conjunction with excess insurance obtained from companies known as reinsurers. The important point to make is that persons expert in the field of marine insurance believe that it is possible to structure a marine insurance reciprocal program without the need for financial assistance from the state. However, the best method by which this can be done is not now known because more information needs to be developed as to the number of fishermen interested in such a program and the availability of reinsurers willing to participate.

The foregoing recommendation has therefor been developed because it offers a solution to the problem that provides the maximum flexibility at the lowest cost.

B. FISHERMEN'S LIABILITY INSURANCE

It is recommended that the Alaska Legislature hold hearings on the problems relating to the methods by which injured fishermen are compensated, and its impact on the cost and availability of protection and indemnity insurance. The purpose of the hearings would be to develop an Alaskan consensus on the best solution to the problem which would be communicated to the U.S. Congress in the form of a legislative resolution.

This subject is timely because a study has recently been completed on the problem which was funded by the National Council of Fishing Vessel Safety and Insurance. The study contains recommendations for congressional action (including amendments to the Jones Act) and will be considered by congress in the coming months. It is important that the recommendations of the report be examined to determine if they offer the best solution to the problem for Alaska's fishermen. Based on reactions to a preliminary version of this report there is reason to believe that there is some question as to whether or not it constitutes the best approach to the problem.

It is important to note here that the earlier recommendation for the formation of insurance pools for property and casualty insurance intentionally omits liability insurance. This is because the cost of a liability insurance program is difficult to quantify because of the system for determining awards for claims. This subjects liability insurance programs to great risk since the cost of the coverage is potentially open ended. A

fledgling self insurance program with limited capital reserves should not be subject to such risk. Fortunately, such insurance is obtainable from private insurance companies although at a high premium. If the present efforts to improve the system of providing compensation for injured fishermen are successful, then premium costs should be reduced.

C. THE ALASKA WORKMAN'S COMPENSATION LAW

It is recommended that an amendment be passed to the Alaska Workman's Compensation law that exempts commercial fishermen from the provisions of the act. This is desirable for the following reasons.

1. It was not the original intent of the act that commercial fishermen be covered by it.
2. Fishermen have access to a system of injury compensation under maritime law.
3. A duplication of programs is unnecessarily confusing and is unaffordably expensive.
4. Although described as inadequate, the existing system of compensating injured fishermen is presently under study for the purpose of possible congressional overhaul. A solution defined by federal law would be much more definitive and efficient than a system characterized by overlapping jurisdictions and duplications of effort and cost.

D. COMMERCIAL FISHERIES MANAGEMENT

It is recommended that a legislative resolution be passed requesting that safety be a factor to be considered in the development of all fishery management plans and regulations.

E. EDUCATION

It is recommended that the University of Alaska be directed to investigate the possibility of developing instructional programs on fishing vessel risk management or safety at sea that could be taught through the marine advisory program or community college system.

It is quite possible that a program such as this could be an important part of any organized effort to improve the safety record of the fishing industry. Like driver education programs it could be used as a means to improve individual abilities using reduced insurance premiums as an incentive.

F. MANDATORY SAFETY REQUIREMENTS

It is recommended that study and public hearings be conducted on the subject of state mandated safety requirements. According to information provided by the Legislative Affairs Division of Legislative Counsel, the state may have limited authority to require that certain safety equipment be carried on commercial fishing vessels as a condition of obtaining a commercial fishing license. This authority might also extend to requirements for demonstration of minimum competency or experience in the operation of commercial craft. This subject will most certainly generate considerable controversy, and therefor should be approached with great care for its potential impact on the commercial fishing industry.

V. CONCLUDING REMARKS

The present crises in marine insurance is a result of events that have occurred in both the fishing and the insurance industries. Some improvement in the cost and availability of marine insurance for Alaska's fishermen may occur as a result improving economic conditions in the insurance industry. However, substantial improvement in these areas cannot occur without a reduction in the loss of human life and the destruction of fishing vessels suffered by the commercial fishing industry.

Historically, the United States fishing industry has not been subjected to the extent of government regulation in the area of safety that other industries have had to endure. This freedom has been one of the attractions of the industry that has been valued and protected by many of its participants. However there are those who would now argue that fishermen should not have the right to be reckless with their own lives and certainly not the lives of others. Freedom in this sense may very well be defined by the song verse; "Freedom's just another word for nothing left to lose."

1 IN THE _____

2

3

BILL NO. _____

4

IN THE LEGISLATURE OF THE STATE OF ALASKA

5

FOURTEENTH LEGISLATURE - SECOND SESSION

6

A BILL

7

For an Act entitled: "An Act relating to marine insurance;
8 amending Alaska Statutes 21.75.020,
9 21.75.050, 21.75.200 and 21.80.020;
10 and providing for an appropriation."

11

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12

* Section 1. AS 21.75.020 is amended by adding a new
13 section to read:

14

(C) The Director shall specify by regulation the
15 types of marine risk a reciprocal may insure.

16

17

* Section 2. AS 21.75.050 is amended by adding a new
18 section to read:

19

(D) Notwithstanding the foregoing provisions and
20 the provisions of Section 21.75.230, if a reciprocal
21 insurer insures marine risks the level of surplus shall
22 be set by regulation by the Director.

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1 * Section 3. AS 21.75.200 is amended by adding a new
2 section to read:

3 (E) A reciprocal insurer that insures marine
4 risks as authorized by AS 21.75.020(C) may issue
5 policies that are nonassessable.
6

7 * Section 4. AS 21.80.020 is amended by adding a new
8 sentence to read:

9 A domestic reciprocal that insures marine risks is
10 exempt from the requirements of this chapter.

11 * Section 5.

12 The Legislature recognizes the crisis that has
13 arisen in the marine insurance market now faced by
14 persons who fish commercially in Alaskan waters. The
15 development of marine insurance reciprocals will help
16 remedy this crisis. The Legislature recognizes that,
17 particularly in light of the depression affecting
18 segments of the fishing industry, fishers are poorly
19 situated to bear the cost of developing marine insur-
20 ance reciprocals. The sum of \$200,000 is appropriated
21 to the Division of Insurance for the purpose of con-
22 tracting for legal and management services necessary to
23 develop marine insurance reciprocal pro forma documents
24 in compliance with A.S. 21.75.060, 21.75.080, 21.75.100,
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21.75.130, 21.75.170, policies and such other subscriber rules and management procedures as may be appropriate.

* Section 6.

This Act takes effect immediately in accordance with AS 01.10.070(c).

APPLICATION FOR MEMBERSHIP

United Marine Fund

HAROLD S. DNQSTAD, Manager

2400 N. W. 64th

SEATTLE, WASHINGTON 98107

DATE _____

CORPORATE NAME _____

APPLICANT INFORMATION: _____

NAME _____ PARTNER, IF ANY _____

ADDRESS _____ PARTNER'S ADDRESS _____

PHONE _____ YOUR AGE _____ YRS. OF FISHING _____ ON THIS BOAT _____

NAME OF PREVIOUS BOAT _____ EVER REFUSED BY A POOL? _____

EVER LOST A BOAT OR BAD CLAIM _____ IF YES, EXPLAIN _____

PRESENT HULL INSURER _____ AMOUNT _____

EXPIRATION _____ DATE TO BEGIN MEMEBRSHIP _____

MEMBERS OR DIRECTORS KNOWN _____
if additional space needed use reverse side

VESSEL INFORMATION:

VESSEL NAME _____ REG. LENGTH _____ O.A. LENGTH _____ BEAM _____

YEAR BUILT _____ WOOD, OR? _____ TYPE FISHING _____

AREA FISHED _____ HOME PORT _____

ENGINE(S) MAKE _____ H.P. _____ MODEL _____ YEAR INST. _____

LAST OVERHAUL (MAJOR) _____ DO YOU HAVE: BILGE ALARM? _____ FIRE ALARM? _____

NUMBER OF STATIONS (FIRE) _____ AUXILIARY CHARGING? _____

COVERAGE INFORMATION: _____

RESALE VALUE OR PURCHASE PRICE _____ AMT. DESIRED, THIS POOL _____

OTHER HULL COVERAGE TO BE CARRIED \$ _____ WHERE? _____

ALTERNATE SKIPPER, IF ANY _____

MORTGAGE TO _____ ADDRESS _____

MORTGAGE AMOUNT \$ _____ SIGNED _____

MORTGAGE RATE _____ % SOCIAL SEC. # _____

United Marine Fund

HAROLD S. ONGSTAD, Manager

2400 N. W. 64th

SEATTLE, WASHINGTON 98107

ENDORSEMENT # _____.

In consideration of premiums charged, it is hereby understood and agreed that;

(1) The _____ is the sole loss payee for all losses payable under this coverage.

(2) The assured(s) is without privilege of cancellation of this coverage without the prior consent of the _____.

(3) In the event of cancellation or modification of this coverage, the insurers will furnish _____ with twenty (20) days written notice of such cancellation or modification prior to the effective date thereof.

(4) The seaworthiness of the vessel insured by this coverage is admitted as between the mortgagee and the insurer and the interest of the mortgagee shall not be impaired or invalidated by any act or neglect of the mortgagor, owner, master, agent, or crew of the vessel insured by this coverage, or by any failure to comply with any warranty or condition over which the mortgagee has no control or over which the mortgagee has control but has not exercised such control.

This endorsement is attached to and forms part of the membership of the _____.

Signed at _____

Authorized Signature _____

Dated _____

United Marine Fund

HAROLD S. ONGSTAD, Manager

2400 N. W. 64th

SEATTLE, WASHINGTON 98107

INFORMATIONAL LETTER RE MEMBERSHIP IN THE UNITED MARINE FUND

PURPOSE AND COVERAGE: The purpose of the fund is to create and maintain a fund for the reimbursement of marine hull and machinery losses suffered by members. It is also to work for the careful and able operation of vessels. We offer the broadest coverage available and at reasonable rates with refunds to member as best possible.

MEMBERSHIP: To become a member of the fund you must submit an application with some references of people belonging to the fund to vouch for you. This application, then, is brought before the board of directors for approval. We can insure up to \$350,000 per vessel for hull and machinery. We take most every type of fishing vessel including seiners, halibut, trollers, draggers, and crab boats. Generally, we do not encourage boats under 30 or 35 feet in length or under \$20,000 in value.

MEANS OF OPERATION: The fund is managed by a manager and a board of directors. At the annual meeting, changes or policies are set and the board is elected by the members. All members have a vote.

RATES OF MEMBERSHIP: We charge a rate or premium of 5% of the amount carried in the fund. This is divided into quarterly payments payable at least by March 31st, June 30th, September 30th, and year end. In the last quarter, members will take lay-up credit for the whole year. That is any time their vessel was tied up over 15 days. With the lay-up off, the rate becomes some less than 5%, depending on the number of months tied up. Therefore, your actual rate would become:

With no lay-up at all	5.00%
With 2 months lay-up	4.58
With 4 months lay-up	4.16
With 6 months lay-up	3.75
with 8 months lay-up	3.33
with 10 months lay-up	2.91

This rate, after lay-up, is paid each year for four years. Each year a refund is set aside, depending on yours and the funds loss experience. In the fifth year you are still charged the 5% rate but your account is credited with the first year's refund. That means, then, that you are three years behind in your refunds and they come due in turn each following year. These refunds make up our reserves for bad years, if any-or for catastrophe. If you sell your boat, retire, etc., you will have three or four years refunds coming which are paid out by check.

REFUNDS: Over the more than fifty year experience of the fund, we have never failed to pay a refund. Some have been big and some have been small, but probably, on the average, have run about 70% for the whole 50 years or so. Lately, in the last ten years, they have been better with an average of about 85%. Our best have been 100% and lowest 40% or so.

STRENGTH: An important consideration when buying protection for your boat is the ability of the fund to pay. Lately, a few commercial insurance companies have gone broke, sometime in mid term for the insured and he has nothing for the money he

BYLAWS
OF
AMERICAN MARINE FUND

ARTICLE I

Name

The name of this organization shall be American Marine Fund.

ARTICLE II

Place of Business

The office and place of business of the Fund shall be in Seattle, Washington. All meetings of the members and of the Board of Directors shall be held in Seattle, Washington.

ARTICLE III

Purpose of Organization

The purpose of this organization is to create and maintain a fund for the reimbursement of marine losses suffered by members and to work for the elimination of careless and reckless operation of fishing vessels, to maintain staunch and seaworthy fishing vessels, and to give help to fellow members' vessels in distress, at a reasonable rate of compensation.

ARTICLE IV

Membership

1. Membership in the Fund shall be confined to owners of steel hull fishing vessels.

2. Continued membership is dependent upon the member being a fishing vessel owner with a record of careful and able operation of his vessel.

3. Any member wishing to enter more than one vessel with the Fund shall apply to the Board of Directors, which may at its discretion accept or refuse such entry.

4. A member whose membership is canceled for nonpayment of required contributions may be reinstated at the discretion of the Board of Directors upon payment of all delinquent contributions.

5. The widow or surviving children of a deceased member may retain his membership if the vessel is managed by a person approved by the Board of Directors.

6. All members shall have the same rights and privileges.

ARTICLE V

Membership Meetings

1. The annual meeting of members shall be held on the third Monday in January at 7:30 p.m. At each annual meeting the membership shall elect new directors in the place of those whose terms expire, in accordance with Article VI hereof. Their election shall be by ballot. Special meetings of the membership may be called by the majority of the directors or upon written demand by ten or more members served upon the manager, such demand to specify the particular business to be brought before such meeting.

2. Written notice of the annual meeting of members shall be mailed to each member in good standing by the Business Manager at least ten (10) days before the date of said meeting and similar notice shall be given of special meetings. The notice of special meeting shall state the business to be brought before such meeting. No business shall be brought before any special meeting if not stated in the notice thereof.

3. All members who have paid their contributions for the current quarter as provided in Article IX shall be entitled to express themselves at any meeting of the members, but only one vote may be cast for any one vessel, and only by members in person.

4. One-fifth of the total membership shall constitute a quorum at any annual or special meeting of the members.

ARTICLE VI

Administration

The affairs of this organization shall be administered by a board of seven (7) directors chosen in the following manner: At the time of organization three directors shall be chosen for three (3) years, two directors for two (2) years, and two directors for one (1) year. At each succeeding annual meeting vacancies shall be filled for three (3) year terms. Outgoing directors shall act as alternates for a term of one year.

ARTICLE VII

Board of Directors

1. The Board of Directors shall have the management of the organization and full control thereof as provided in these Bylaws and any amendments thereof.

2. All applications for membership shall be passed on by the Board. A quorum of the directors may approve or reject a particular application by a majority vote, and/or may freeze membership by not accepting any new applications. Upon the request of any director an application for membership may be decided by secret ballot.

3. The directors shall, from their own number, appoint a chairman who shall preside at all meetings of the Board and of the membership. They shall also appoint a vice-chairman to take the chairman's place in case of his absence or inability to act.

4. If a director becomes unable or unwilling to serve, the Board may appoint a new director to serve in his place until the next annual meeting.

5. The Board may meet from time to time as the directors themselves shall decide, and the chairman may call meetings of the Board at any time. Notice of such meetings shall be given in accordance with such rules as the Board itself adopts from time to time. Four (4) members of the Board shall constitute a quorum.

6. The Board shall have the authority to establish valuations and to survey any vessel entered in the Fund. The Board shall have the authority to limit the amount a member may enter in the Fund.

7. Upon written application by a member, the Board shall have authority to decide whether or not to cover a vessel operating south of Latitude 12° North down to Latitude 5° South. The Board shall also have authority to increase rates as it deems necessary on vessels authorized to operate in these waters.

8. The Board shall appoint a Business Manager, whose duties shall be as hereinafter provided. In case of the death, disability or resignation of the Manager the vacancy thus created shall be filled at once. The Manager need not be a member of the organization, nor shall the Board appoint an insurance agent as Manager.

ARTICLE VIII

Business Manager

1. The Business Manager shall furnish a Fidelity Bond in an amount of at least \$50,000.00 which shall be raised as the Fund increases, guaranteeing the faithful performance of all his duties.
2. The Manager shall be custodian of all funds belonging to the Fund. He shall deposit receipts in such depository or depositories as the Board of Directors shall designate. He shall disburse funds as approved by the Board.
3. The Manager shall keep an accurate record of all business transacted for this organization.
4. The Manager shall give the notices required for meetings of the Board of Directors and of the membership, and shall act as secretary at all such meetings.
5. The Manager shall be paid compensation in the amount of 5% of receipts of the organization.

ARTICLE IX

Rules for Conduct of Business

1. In all instances the Fund will record the agreed value of a vessel and also that part of the agreed value entered with the Fund. No entry with the Fund shall exceed \$100,000.00. That part of the agreed value of a vessel entered with the Fund shall be the basis upon which contributions are assessed and losses are prorated and reimbursed.
2. Losses of members shall be adjusted and reimbursed in accordance with the terms of the American Hulls Pacific [1938] form, but with the limitations otherwise stated in these Bylaws.
3. Members shall not be reimbursed for loss of power skiffs whether on board the member's vessel or otherwise.
4. The right to reimbursement under these Bylaws is subject to the following warranties, to the same effect as though they were incorporated in the American Hulls Pacific [1938] form:
 - (a) Territorial Limits. Vessels shall trade only from Latitude 12° North to Latitude 65° North, and east of Longitude 172° East.
 - (b) Stability Test. Vessels equipped with fish holding tanks must have aboard a current, approved stability letter or report from an approved naval architect.

(c) Bilge Alarm. All vessels shall be equipped with a bilge alarm system installed to warn of water entry above a safe level.

(d) Fire Alarm. All vessels shall be equipped with at least one fire alarm system.

(e) Survey. All vessels shall engage a professional surveyor every second year to survey the vessel and will provide the Fund with a copy of the survey. All of the surveyor's recommendations must be complied with.

5. Warranted free from particular average under \$10.00 per foot of the Vessel's registered length, but nevertheless, if the Vessel shall have been stranded, sunk on fire, or in collision with any other ship or vessel, the Fund shall pay damage occasioned thereby in accordance with Article IX, Section 8, of these Bylaws.

6. In case of accident, the member must notify the Manager or one of the directors promptly and before having repairs made to his own vessel. If another vessel is damaged, the member must notify the Manager or a director promptly so that the Fund can protect its interest.

7. In all cases of loss or damage involving a member's vessel, two of the directors, if available (or two members if no directors are available) may serve as surveyors to determine extent of damage and necessary repairs to be undertaken for the owner's account, and to prepare and approve specifications for repairs. In lieu of survey by directors or members, the Manager may engage a professional marine surveyor.

8. Any member claiming reimbursement for loss shall submit proof of loss, and the Board may require additional proof before taking action on the claim. The Board will notify the member of the action taken by the Board to adjust and approve or disapprove his claim. No member or other person interested in reimbursement shall be entitled to interest upon the amount which may be due from the Fund until 30 days after such notification.

9. Claims for losses shall be adjusted in accordance with the practice of marine underwriters at the port of Seattle at the date of loss. The Fund reserves the right to do its own surveying and adjusting.

10. No reimbursement shall be afforded if a vessel shall be sold, assigned, pledged, chartered or placed under new management, whether voluntary or otherwise, without prior notification to the Manager and written approval executed by him.

11. Contribution rates for members shall be five percent (5%) per year, with no allowance for layup time.

Each member who enters this organization before February 1, 1987 shall give the Fund a promissory note in the amount of \$10,000.00 or ten percent (10%) of that member's entry with the Fund, whichever is less. The note shall be payable to the order of American Marine Fund upon demand within two (2) years of the date of the note. The note shall be signed by the member and his spouse. The form of promissory note is attached hereto as Schedule A.

If the Fund receives payment of the promissory note given by a member as above provided, said payment shall thereupon become an indebtedness of the Fund in favor of the member and shall bear interest thereafter at the prime rate then charged by Seattle-First National Bank. Regardless of whether the Fund demands payment of the promissory note given by a member as above provided, the Fund shall reduce by \$500.00 the member's contribution for each of the first two (2) full years of membership following the expiration of the term of the note. The Fund may transfer or negotiate promissory notes made by members in such manner as is approved by the Board. The provisions of these Bylaws shall not be binding upon any holder of the said notes other than the Fund.

If a vessel is sold by a member, the Fund shall return that member's promissory note unless it has been negotiated. If the note has been negotiated, and if the purchaser of the vessel is approved by the Board for membership, the Board shall waive the requirement that the purchaser give a promissory note.

12. If a vessel is sold by a member, the prorated unexpired membership dues shall be refunded, or may be transferred to the new owner upon approval by the Board.

13. Membership contributions shall be paid quarterly in advance no later than the first days of January, April, July and October. Any member more than ninety (90) days delinquent in payment of his contribution shall be automatically canceled as a member.

14. The expiration date of all memberships shall be December 31 of each year. The first year the members to pay dues in full, the unexpired balance on December 31 to be credited to their new membership for the ensuing calendar year.

15. If a vessel is covered for a portion of a year and has a claim during that time, the member is liable for a full year's dues, and any balance due the Fund on account thereof shall be deducted from the amount due under the claim if sufficient to cover, and if not, shall be paid in full by the member.

16. Each member shall promptly notify the Manager or a director of any hull and machinery insurance which he carries on his vessel beyond the protection afforded under these rules.

17. Should the United States of America or any of its instrumentalities be deemed a member of this organization because of an interest as mortgagee, mortgage guarantor, or otherwise, in any vessel entered in this organization and be afforded reimbursement as a payee under these Bylaws, this organization shall have full rights of subrogation against the United States of America to the extent of any loss paid for which any member other than the United States of America could bring suit against the United States of America under the Suits in Admiralty Act, Public Vessels Act, Federal Tort Claims Act, or Tucker Act to recover for such loss, and notwithstanding the fact that the United States of America may be deemed to be a member of this organization and as payee or reimbursement of a loss, such loss shall be considered to have been paid to and sustained by any member other than the United States of America in the first instance.

ARTICLE X

Overhead Expenses

The directors are not allowed to exceed five percent (5%) on contributions to the Fund to defray necessary expense.

ARTICLE XI

Surplus

All surplus from contributions shall be credited to each individual member at the end of each year in proportion to his contribution to the Fund for the year. If any member has received any payment from the Fund during a year on account of losses, the amount to be credited to him from the surplus under the foregoing provisions shall be reduced by the amount or amounts so paid to him for losses, but no payments for losses for preceding years shall be so deducted. Each year's surplus shall at all times, until withdrawn as hereinafter provided, be available as a part of the Fund for the purpose of paying losses sustained by members, without regard to such credits; provided, however, that such surplus shall not be available for payment of future losses or any other disbursements in any year until the current year's contributions and income have been exhausted, and if in any year there is no current surplus, and further funds are required to pay claims, such further payments shall be charged against the yearly surpluses from the preceding four years in the inverse order of their establishment. Withdrawals from a year's surplus may be made after the fifth year of its establishment to such an extent as two-thirds of the membership in good standing shall decide.

The net earnings from investment of the members' current contributions and surplus shall be used to pay claims, expenses and taxes and the excess of such net earnings, if any, shall be set aside for the payment of future claims, expenses and taxes and shall not be credited or paid to the members. Upon a dissolution of the Fund, any net earnings remaining after the payment of all outstanding claims, expenses and taxes shall be distributed to such charitable, religious, educational, scientific and literary organizations (contributions to which are deductible for federal and State of Washington income tax purposes) and in such amounts as the directors shall select.

ARTICLE XII

Expulsion

1. The Board of Directors shall have full and complete authority to expel any member and thereby cancel all rights afforded by these Bylaws when in its sole discretion any member is detrimental to or does not abide by the purposes of the organization.

2. Expulsion of a member and cancellation of his membership shall be made in the following manner: The Board of Directors shall prepare specifications of any charge made against the member. A copy of such specifications together with a notice of hearing thereon before the Board of Directors shall be mailed by registered mail, return receipt requested, postage prepaid, to the member in question at his last address appearing on the books of the organization. Said notice shall be mailed at least ten (10) days before the hearing. It shall request the member to be present at the hearing. The member in question shall be given full opportunity to respond to the charge, and thereafter the Board of Directors shall vote by secret ballot upon expulsion. Expulsion shall require the votes of at least five (5) directors. If expulsion is approved by the Board of Directors the same shall become effective ten (10) days from the date of the vote thereon.

3. Any money due an expelled member shall be paid in accordance with the provisions of Article XI of these Bylaws.

ARTICLE XIV

Losses

No member, director, agent, servant, or attorney of this organization shall be liable for any loss suffered by any member, and no assessment shall be levied on any of them under any circumstances for the purpose of paying losses or for any other purpose, either directly or indirectly. If the fund created does not suffice to

reimburse for the aggregate losses during a year, the deficiency shall be prorated among all proven claims for the year during which the deficiency occurs after application of the surplus provided in Article XI. No insurance business of any kind must be done as such business is understood under the statutes of the State of Washington.

ARTICLE XV

Amendments

These Bylaws may be amended at the annual meeting of the members, or at any special meeting called for that purpose, by a majority of a quorum of the whole membership.

Schedule A

PROMISSORY NOTE

Dated at Seattle, Washington, _____, 198____. \$10,000.00

FOR VALUE RECEIVED, the undersigned promises to pay to the order of American Marine Fund upon demand made on or before two years from the date of this note, the sum of TEN THOUSAND DOLLARS (\$10,000.00), in lawful money of the United States. Payment to be made at such place as the holder may direct in writing.

If payment is not made promptly upon demand as above provided, this note shall bear interest at the rate of twelve percent (12%) per annum from the date of demand until paid, and if this note shall be placed in the hands of an attorney for collection or if suit shall be brought to collect any of the principal or interest of this note, the undersigned promises to pay any reasonable attorneys' fees and agrees that venue of suit may be laid in King County, State of Washington. The maker of this note executes the same as a principal and not as a surety and waives presentment, demand, protest, notice of protest, notice of dishonor, and notice of nonpayment. If this note is signed by more than one person the obligations of the signers shall be joint and several.

PACIFIC MARINE FUND
1977 to 1984

YEAR	PREMIUM	INTEREST	EXPENSES	INC. TAX	CLAIMS	DIVIDEND	YEAR PAID FEBRUARY	% RETURN TO MEMBERS W/O CLAIMS
1977	71,000	1,762	5,061	0	13,020	27,986	1981	48
1978	123,750	5,755	9,315	282	119,907	0		0
1979	125,000	9,244	6,644	1,017	37,289	74,648	1983	85
1980	111,340	18,778	6,896	1,597	0	111,340	1984	100
1981	134,510	26,980	10,052	3,036	10,071	122,935	1985	99
1982	136,375	49,632	9,648	4,331	5,475	130,899	1986	100
1983	154,028	52,793	13,687	8,223	5,000	149,028	1987	100
1984	311,337	64,478	24,445	7,993	15,834	295,503	1988	<u>100</u>
							AVERAGE	79

NOV 7 1985

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JAMES R WEBB	JULIE E BRYANT
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OF COUNSEL

HERBERT L FAULKNER (1982-1972)
FRANK M DOOGAN (1923-1977)

**ADMITTED IN WASHINGTON & ALASKA
OTHERS NOT ADMITTED IN WASHINGTON

November 19, 1985

A. W. Hall
Renewable & Natural Resources Advisor
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Bill:

It was a pleasure to meet you in Anchorage on November 14th. The "twilight zone" can reasonably effectively be removed from the Alaska Workers' Compensation Act by the addition of the following language.

No compensation under this Act shall be payable in respect of the death or disability of a master or member of a crew of any vessel.

This language is taken from the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Section 903(a)(1). If accompanied by appropriate legislative history concerning the intent of this language, it should clearly remove coverage for those engaged in the fishing industry who retain numerous federal maritime rights and whose remedies are only extended under the Alaska Act during such times as their vessels are tied up to wharves.

I would be delighted to assist in this project if any additional help is necessary.

Very truly yours,

FAULKNER, BANFIELD,
DOOGAN & HOLMES

By: 
Michael A. Barcott

MAB:kl
05601



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

HB

5

CSSSHB 5(Fin)am -- Additional Backup Material
for
Senate Labor and Commerce Committee

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- * Assorted articles from periodicals and newspapers

STATE OF ALASKA

MEMBER
FINANCE COMMITTEE
SPECIAL COMMITTEE ON FISHERIES



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PO BOX 1065
BETHEL ALASKA 99559
(907) 543 2922

REPRESENTATIVE JOHNE BINKLEY

MEMORANDUM

March 22, 1985

TO: Representative Al Adams

From: Representative Johne Binkley
Chair of Subcommittee on HB 5

A handwritten signature in black ink, appearing to read "Johne Binkley", with a large, stylized initial "B" to the right.

RE: House Bill 5

The subcommittee on House Bill 5 is recommending that the full committee adopt the proposed House Finance Committee Substitute with a revised fiscal note dated March 21, 1985.

This fiscal note would increase the contractual line item in order to hire two industrial hygienist for a two year period to carry out the survey program, particularly in small school districts, as the large districts have for the most part complied. Personal Services would be provided to hire a temporary industrial hygienist for the certification program for ten months to do regulations and start the program.

The Department of Labor will try to run the program with the FY87 amounts indicated in the fiscal note. The subcommittee indicated that if that amount was not sufficient additional funds should be requested in the FY 87 budget.

BREAKDOWN OF ASBESTOS PROJECTS
FUNDED FROM CHAPTER 24, SLA 1984

Cordova City Schools - \$48,870.79 - Asbestos Removal from Mt. Eccles Elementary School basement. PROJECT COMPLETE.

Delta/Greely School District - \$99,500 - Survey & Removal of asbestos at Delta Junction and Ft. Greely Schools. Final inspection and reinsulation.

Tanana City School District - \$285,104.25 - Removal of asbestos in main boiler room, classrooms, teachers lounge, bathroom, and fan room, above ceiling tiles, water lines and heating pipes. Reinsulation with fiberglass. Encapsulation of asbestos in hallway boiler room. Clean up and final inspections. PROJECT COMPLETE.

Petersburg City Schools - \$107,000 - Removal of asbestos from old high school building.

Alaska Gateway School District - \$75,206.26 - Specifications, technical, and professional services for the removal and encapsulation of asbestos containing material at Tok School. Final inspection. PROJECT COMPLETE.

Lake & Peninsula School District - \$6995.00 - Inspection of 14 school sites and abatement at three sites where asbestos was identified.

Kodiak Island Borough Schools - \$89,673.76 - Funds were spent as follows:

Kodiak Jr. High - demolition phase of remodel for asbestos removal.

Port Lions School - Removal of asbestos pipe insulation at elementary school.

Old Main Elementary - Removal of asbestos pipe insulation.

Kodiak High School - Removal of asbestos fireproofing from roof beam above Gym and cost estimate and analysis for total high school project.

ALL OF THE ABOVE PROJECTS ARE COMPLETE

Sitka Borough Schools - \$150,000 - Asbestos removal from boiler rooms at Sitka High School, Blatchley Jr. High and Etolin St. Elementary School.

Juneau Borough Schools - \$400,000 - Survey of 11 schools in the district and removal of all asbestos found.

Fairbanks North Star Borough School District - \$697,000 - Removal of all asbestos containing structural materials throughout the school district. Fairbanks has requested an additional \$500,000 for completion of this project.

Mat-Su Borough Schools - \$225,000 - Funds applied for 3/85 for asbestos abatement.

**OCCUPATIONAL HEALTH AND
ENVIRONMENTAL CONTROL**



**OCCUPATIONAL
SAFETY AND HEALTH
STANDARDS**

ALASKA DEPARTMENT OF LABOR
Division of Labor Standards and Safety

Jim Robison, Commissioner
Department of Labor

Bill Sheffield, Governor

BILL SHEFFIELD
Governor of Alaska

Jim Robison
Commissioner, Department of Labor
P.O. Box 1149, Juneau, Alaska 99802

**DIVISION OF LABOR STANDARDS AND
SAFETY**

Bob Bacolas, Director
P.O. Box 1149, Juneau, Alaska 99802

Field Offices

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Anchorage, Alaska 99510

675 - 7th Avenue, Station J
Fairbanks, Alaska 99701

326 Dock Street, Ketchikan, Alaska 99901

P.O. Box 1546, Kodiak, Alaska 99615

110 Trading Bay, Drawer 1091
Kenai, Alaska 99611

The standards prescribed in this subchapter are effective as of June 30, 1973, as amended February 19, 1984. Alaska safety codes and standards apply to all places of employment. Information relative to the safety codes will be furnished by the above offices.

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04.0102 Asbestos. (a) Definitions, for the purpose of 04.0102.

(1) "Asbestos" includes chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

(2) "Asbestos fibers" means asbestos fibers longer than five micrometers.

(b) Permissible exposure to airborne concentrations of asbestos fibers.

(1) Standard effective July 7, 1972. The 8-hour time weighted average airborne concentrations of asbestos fibers to which any employee may be exposed shall not exceed five fibers, longer than five micrometers, per cubic centimeter of air, as determined by the method prescribed in 04.0102(a).

(2) Standard effective July 1, 1976. The 8-hour time weighted average airborne concentrations of asbestos fibers to which any employee may be exposed shall not exceed two fibers, longer than five micrometers, per cubic centimeter of air, as determined by the method prescribed in 04.0102(a).

(3) Ceiling concentration. No employee shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers, longer than five micrometers, per cubic centimeter of air, as determined by the method prescribed in 04.0102(a).

(c) Methods of compliance.

(1) Engineering methods.

(A) Engineering controls. Engineering controls, such as, but not limited to, isolation, enclosure, exhaust ventilation, and dust collection, shall be used to meet the exposure limits prescribed in 04.0102(b).

(B) Local exhaust ventilation

(i) Local exhaust ventilation and dust collection systems shall be designed, constructed, installed, and maintained in accordance with the American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, ANSI Z9.2-1971, which is incorporated by reference herein.

(ii) See 1910.8 of the Federal Occupational Safety and Health Act concerning the availability of ANSI Z9.2-1971, and the maintenance of a historic file in connection therewith. The address of the American National Standards Institute is given in 04.0109.

(C) Particular tools. All hand-operated and power-operated tools which may produce or release asbestos fibers in excess of the exposure limits prescribed in 04.0102(b), such as, but not limited to, saws, scorers, abrasive wheels, and drills, shall be provided with local exhaust ventilation systems in accordance with 04.0102(c)(1)(B).

(2) Work practices.

(A) Wet methods. Insofar as practicable, asbestos shall be handled, mixed, applied, removed, cut, scored, or otherwise worked in a wet state sufficient to prevent the emission of airborne fibers in excess of the exposure limits prescribed in 04.0102, unless the usefulness of the product would be diminished thereby.

(B) Particular products and operations. No asbestos cement, mortar, coating, grout, plaster, or similar material containing asbestos shall be removed from bags, cartons, or other containers in which they are shipped, without being either wetted, or enclosed, or ventilated so as to prevent effectively the release of airborne asbestos fibers in excess of the limits prescribed in 04.0102.

(C) Spraying, demolition, or removal. Employees engaged in the spraying of asbestos, the removal, or demolition of pipes, structures, or equipment covered or insulated with asbestos, and in the removal or demolition of asbestos insulation or coverings shall be provided with respiratory equipment in accordance with 04.0102(d)(2)(C) and with special clothing in accordance with 04.0102(d)(3).

(d) Personal protective equipment.

(1) Compliance with the exposure limits prescribed by 04.0102(b) may not be achieved by the use of respirators or shift rotation of employees, except:

(A) During the time period necessary to install the engineering controls and to institute the work practices required by 04.0102(c);

(B) In work situations in which the methods prescribed in 04.0102(c) are either technically not feasible or feasible to an extent insufficient to reduce the airborne concentrations of asbestos fibers below the limits prescribed by 04.0102(b); or

(C) In emergencies.

(D) Where both respirators and personnel rotation are allowed by 04.0102(d)(1)(A), (B) or (C), and both are practicable, personnel rotation shall be preferred and used.

(2) Where a respirator is permitted by 04.0102(d)(1), it shall be selected from among those approved by the Bureau of Mines, Department of the Interior, or the National Institute for Occupational Safety and Health, Department of Health, Education, and Welfare, under the provisions of 30 CFR Part 11 (37 F.R. 6244, Mar. 25, 1972), and shall be used in accordance with 04.0102(d)(2)(A), (B), (C) and (D).

(A) Air purifying respirators. A reusable or single use air purifying respirator, or a respirator described in 04.0102(d)(2)(B) or (C), shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in 04.0102(b), when the ceiling or the 8-hour time weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed no more than 10 times those limits.

(B) Powered air purifying respirators. A full facepiece powered air purifying respirator, or a powered air purifying respirator, or a respirator described in 04.0102(d)(2)(C), shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in 04.0102(b), when the ceiling or the 8-hour time weighted average concentrations of asbestos fibers are reasonably expected to exceed 10 times, but not 100 times, those limits.

(C) Type "C" supplied-air respirators, continuous flow or pressure-demand class. A type "C" continuous flow or pressure-demand, supplied-air respirator shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in 04.0102(b), when the ceiling or the 8-hour time weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed 100 times those limits.

(D) Establishment of a respirator program.

(i) The employer shall establish a respirator program in accordance with the requirements of the American National Standards Practices for Respiratory Protection, ANSI Z88.2-1969, which is incorporated by reference herein.

(ii) See 1910.6 of the Federal Occupational Safety and Health Act concerning the availability of ANSI Z88.2-1969 and the maintenance of a historic file in connection therewith. The address of the American National Standards Institute is given in 04.0109.

(iii) No employee shall be assigned to tasks requiring the use of respirators if, based upon his most recent examination, the examining physician determines that the employee will be unable to function normally wearing a respirator, or that the safety or health of the employee or other employees will be impaired by his use of a respirator. Such employee shall be rotated to another job or given the opportunity to transfer to a different position whose duties he is able to perform with the same employer, in the same geographical area and with the same seniority, status, and rate of pay he had just prior to such transfer, if such a different position is available.

(3) Special clothing. The employer shall provide, and require the use of, special clothing, such as coveralls or similar whole body clothing, head coverings, gloves, and foot coverings for any employee exposed to airborne concentrations of asbestos fibers, which exceed the ceiling level prescribed in 04.0102(b).

(4) Change rooms.

(A) At any fixed place of employment exposed to airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in 04.0102(b), the employer shall provide change rooms for employees working regularly at the place.

(B) Clothes lockers. The employer shall provide two separate lockers or containers for each employee, so separated or isolated as to prevent contamination of the employee's street clothes from his work clothes.

(C) Laundering.

(i) Laundering of asbestos contaminated clothing shall be done so as to prevent the release of airborne asbestos fibers in excess of the exposure limits prescribed in 04.0102(b).

(ii) Any employer who gives asbestos-contaminated clothing to another person for laundering shall inform such person of the requirement in 04.0102(d)(4)(C)(i) to effectively prevent the release of airborne asbestos fibers in excess of the exposure limits prescribed in 04.0102(b).

(iii) Contaminated clothing shall be transported in sealed impermeable bags, or other closed, impermeable containers, and labeled in accordance with 04.0102(g).

(e) Method of measurement. All determinations of airborne concentrations of asbestos fibers shall be made by the membrane filter method at 400-450 X (magnification) (4 millimeter objective) with phase contrast illumination.

(f) Monitoring.

(1) Initial determinations. Within six months of the publication of 04.0102 every employer shall cause every place of employment where asbestos fibers are released to be monitored in such a way as to determine whether every employee's exposure to asbestos fibers is below the limits prescribed in 04.0102(b). If the limits are exceeded, the employer shall immediately undertake a compliance program in accordance with 04.0102(c).

(2) Personal monitoring.

(A) Samples shall be collected from within the breathing zone of the employees, on membrane filters of 0.8 micrometer porosity mounted in an open-face filter holder. Samples shall be taken for the determination of the 8-hour time weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(B) Sampling frequency and patterns. After the initial determinations required by 04.0102(f)(1), samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of employees. In no case shall the sampling be done at intervals greater than six months for employees whose exposure to asbestos may reasonably be foreseen to exceed the limits prescribed by 04.0102(b).

(3) Environmental monitoring.

(A) Samples shall be collected from areas of a work environment which are representative of the airborne concentration of asbestos fibers which may reach the breathing zone of employees. Samples shall be collected on a membrane filter of 0.8 micrometer porosity mounted in an open-face filter holder. Samples shall be taken for the determination of the 8-hour time-weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(B) Sampling frequency and patterns. After the initial determinations required by 04.0102(f)(1), samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of the employees. In no case shall sampling be at intervals greater than six months for employees whose exposures to asbestos may reasonably be foreseen to exceed the exposure limits prescribed in 04.0102(b).

(4) Employee observation of monitoring. Affected employees, or their representatives, shall be given a reasonable opportunity to observe any monitoring required by 04.0102 and shall have access to the records thereof.

(g) Caution signs and labels.

(1) Caution signs.

(A) Posting. Caution signs shall be provided and displayed at each location where airborne concentrations of asbestos fibers may be in excess of the exposure limits prescribed in 04.0102(b). Signs shall be posted at such a distance from such a location so that an employee may read the signs and take necessary protective steps before entering the area marked by the signs. Signs shall be posted at all approaches to areas containing excessive concentrations of airborne asbestos fibers.

(B) Sign specifications. The warning signs required by 04.0102(g)(1)(A) shall conform to the requirements of 20 inches by 14 inches vertical format signs specified in 02.0105 and to 04.0102(g)(1)(B). The signs shall display the following legend in the lower panel, with letter sizes and styles of a visibility at least equal to that specified in 04.0102(g)(1)(B).

<u>Legend</u>	<u>Notation</u>
Asbestos	1 in. Sans Serif, Gothic or Block
Dust hazard	X in. Sans Serif, Gothic or Block
Avoid breathing dust	X in. Gothic
Wear assigned protective equipment	X in. Gothic
Do not remain in area unless your work requires it.	X in. Gothic
Breathing asbestos dust may be hazardous to your health	14 point Gothic

Spacing between lines shall be at least equal to the height of the upper of any two lines.

(2) Caution labels.

(A) Labeling. Caution labels shall be affixed to all raw materials, mixtures, scrap, waste, debris, and other products containing asbestos fibers, or to their containers, except that no label is required where asbestos fibers have been modified by a bonding agent, coating, binder, or other material so that during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in 04.0102(b) will be released.

(B) Label specifications. The caution labels required by 04.0102(g)(2)(A) shall be printed in letters of sufficient size and contrast as to be readily visible and legible. The label shall state:

CAUTION
Contains Asbestos Fibers
Avoid Creating Dust
Breathing Asbestos Dust May Cause
Serious Bodily Harm

(h) Housekeeping.

(1) Cleaning. All external surfaces in any place of employment shall be maintained free of accumulations of asbestos fibers if, with their dispersion, there would be an excessive concentration.

(2) Waste disposal. Asbestos waste, scrap, debris, bags, containers, equipment, and asbestos-contaminated clothing, consigned for disposal, which may produce in any reasonably foreseeable use, handling, storage, processing, disposal, or transportation, airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in 04.0102(b), shall be collected and disposed of in sealed impermeable bags, or other closed, impermeable containers.

(i) Recordkeeping.

(1) Exposure records. Every employer shall maintain records of any personal or environmental monitoring required by 04.0102. Records shall be maintained for a period of at least 20 years and shall be made available upon request to the Assistant Secretary of Labor for Occupational Safety and Health, the Director of the National Institute for Occupational Safety and Health, and to authorized representatives of either.

(2) Employee access. Every employee and former employee shall have reasonable access to any record required to be maintained by 04.0102(i)(1) which indicates the employee's own exposure to asbestos fibers.

(3) Employee notification. Any employee found to have been exposed at any time to airborne concentrations of asbestos fibers in excess of the limits prescribed in 04.0102(b) shall be notified in writing of the exposure as soon as practicable but not later than five days of the finding. The employee shall also be timely notified of the corrective action being taken.

(j) Medical examinations.

(1) General. The employer shall provide or make available at his cost, medical examinations relative to exposure to asbestos required by 04.0102(i).

(2) Preplacement. The employer shall provide or make available to each of his employees, within 30 calendar days following his first employment in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination, which shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at one second (FEV_{1.0}).

(3) Annual examinations. On or before January 31, 1973, and at least annually thereafter, every employer shall provide, or make available, comprehensive medical examinations to each of his employees engaged in occupations exposed to airborne concentrations of asbestos fibers. Such annual examination shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at one second (FEV_{1.0}).

(4) Termination of employment. The employer shall provide, or make available, within 30 calendar days before or after the termination of employment of any employee engaged in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination which shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at one second (FEV_{1.0}).

(5) Recent examinations. No medical examination is required of any employee, if adequate records show that the employee has been examined in accordance with 04.0102(j) within the past one-year period.

(B) Medical records.

(A) Maintenance. Employers of employees examined pursuant to 04.0102(j) shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be retained by employers for at least 20 years.

(B) Access. The contents of the records of the medical examinations required by 04.0102(j) shall be made available, for inspection and copying, to the Assistant Secretary of Labor for Occupational Safety and Health, the Director of NIOSH, to authorized physicians and medical consultants of either of them, and, upon the request of an employee or former employee, to his physician. Any physician who conducts a medical examination required by 04.0102(j) shall furnish to the employer of the examined employee all the information specifically required by 04.0102(j) and any other medical information related to occupational exposure to asbestos fibers.

04.0103 Ventilation. (a) Abrasive blasting.

(1) Definitions applicable to 04.0103.

(A) Abrasive. A solid substance used in an abrasive blasting operation.

(B) Abrasive-blasting respirator. A continuous flow air-line respirator constructed so that it will cover the wearer's head, neck, and shoulders to protect him from rebounding abrasive.

(C) Blast cleaning barrel. A complete enclosure which rotates on an axis, or which has an internal moving tread to tumble the parts, in order to expose various surfaces of the parts to the action of an automatic blast spray.

(D) Blast cleaning room. A complete enclosure in which blasting operations are performed and where the operator works inside of the room to operate the blasting nozzle and direct the flow of the abrasive material.

(E) Blasting cabinet. An enclosure where the operator stands outside and operates the blasting nozzle through an opening or openings in the enclosure.

(F) Clean air. Air of such purity that it will not cause harm or discomfort to an individual if it is inhaled for extended periods of time.

(G) Dust collector. A device or combination of devices for separating dust from the air handled by an exhaust ventilation system.

(H) Exhaust ventilation system. A system for removing contaminated air from a space, comprising two or more of the following elements: (a) enclosure or hood, (b) duct work, (c) dust collecting equipment, (d) exhauster, and (e) discharge stack.

(I) Particulate-filter respirator. An air purifying respirator, commonly referred to as a dust or a fume respirator, which removes most of the dust or fume from the air passing through the device.

(J) Respirable dust. Airborne dust in sizes capable of passing through the upper respiratory system to reach the lower lung passages.

(K) Rotary blast cleaning table. An enclosure where the pieces to be cleaned are positioned on a rotating table and are passed automatically through a series of blast sprays.

(L) Abrasive blasting. The forcible application of an abrasive to a surface by pneumatic pressure, hydraulic pressure, or centrifugal force.

(2) Dust hazards from abrasive blasting.

(A) Abrasives and the surface coatings on the materials blasted are shattered and pulverized during blasting operations and the dust formed will contain particles of respirable size. The composition and toxicity of the dust from these sources shall be considered in making an evaluation of the potential health hazards.

(B) The concentration of respirable dust or fume in the breathing zone of the abrasive-blasting operator or any other worker shall be kept below the levels specified in 04.0101.

SUBCHAPTER 1 - GENERAL SAFETY CODE

ARTICLE 4 - PERSONAL PROTECTIVE EQUIPMENT

01.0401 General requirements. (a) Application. Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

(b) Employee-owned equipment. Where employees provide their own protective equipment, the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment.

(1) Other personal safety equipment or clothing, such as rubber gloves, rubber boots, leggings, aprons, hand pads, safety belts, life lines, buoyant vests, shall be furnished to the employees who are exposed to hazards where such device may be expected to prevent injury.

(c) Design. All personal protective equipment shall be of safe design and construction for the work to be performed.

(d) Sterilization. Goggles, rubber gloves, respirators and other protectors shall not be interchanged among employees unless they have been sterilized.

01.0402 Eye and face protection. (a) General.

(1) Protective eye and face equipment shall be required where there is a reasonable probability of injury that can be prevented by such equipment. In such cases, employers shall make conveniently available a type of protector suitable for the work to be performed, and employees shall use such protectors. No unprotected person shall knowingly be subjected to a hazardous environmental condition. Suitable eye protectors shall be provided where machines or operations present the hazard of flying objects, glare, liquids, injurious radiation, or a combination of these hazards.

(A) An employer must provide all employees working with acids, protective clothing, as well as any other equipment needed for safety purposes.

(B) Goggles, hard hats, masks, shields, or other prescribed face, eye and head protection shall be worn by employees who are engaged in welding, grinding, torch cutting, snagging or chipping, handling molten metals, caustics, or who are exposed to harmful rays, dust or flying materials of any kind.

(2) Protectors shall meet the following minimum requirements.

(A) They shall provide adequate protection against the particular hazards for which they are designed.

(B) They shall be reasonably comfortable when worn under the designated conditions.

(C) They shall fit snugly and shall not unduly interfere with the movements of the wearer.

(D) They shall be durable.

(E) They shall be capable of being disinfected.

(F) They shall be easily cleanable.

(G) Protectors shall be kept clean and in good repair.

(3) Persons whose vision requires the use of corrective lenses in spectacles, and who are required by this standard to wear eye protection, shall wear goggles of one of the following types:

(A) Spectacles whose protective lenses provide optical correction.

(B) Goggles that can be worn over corrective spectacles without disturbing the adjustment of the spectacles.

(C) Goggles that incorporate corrective lenses mounted behind the protective lenses.

(4) Every protector shall be distinctly marked to facilitate identification only of the manufacturer.

(5) When limitations or precautions are indicated by the manufacturer, they shall be transmitted to the user and care taken to see that such limitations and precautions are strictly observed.

(6) Design, construction, testing, and use of devices for eye and face protection shall be in accordance with American National Standard for Occupational and Educational Eye and Face Protection, Z87.1-1968.

01.0403 Respiratory protection. (a) Permissible practice.

(1) In the control of those occupational diseases caused by breathing air contaminated with harmful dusts, fogs, fumes, mists, gases, smokes, sprays, or vapors, the primary objective

shall be to prevent atmospheric contamination. This shall be accomplished as far as feasible by accepted engineering control measures (for example, enclosure or confinement of the operation, general and local ventilation, and substitution of less toxic materials). When effective engineering controls are not feasible, or while they are being instituted, appropriate respirators shall be used pursuant to the following requirements.

(2) Respirators shall be provided by the employer when such equipment is necessary to protect the health of the employees. The employer shall provide the respirators which are applicable and suitable for the purpose intended. The employer shall be responsible for the establishment and maintenance of a respiratory protective program which shall include the requirements outlined in 01.0403(b).

(3) The employee shall use the provided respiratory protection in accordance with instructions and training received.

(b) Requirements for a minimal acceptable program.

(1) Written standard operating procedures governing the selection and use of respirators shall be established.

(2) Respirators shall be selected on the basis of hazards to which the worker is exposed.

(3) The user shall be instructed and trained in the proper use of respirators and their limitations.

(4) Where practicable, the respirators should be assigned to individual workers for their exclusive use.

(5) Respirators shall be regularly cleaned and disinfected. Those issued for the exclusive use of one worker should be cleaned after each day's use, or more often if necessary. Those used by more than one worker shall be thoroughly cleaned and disinfected after each use.

(6) Respirators shall be stored in a convenient clean, and sanitary location.

(7) Respirators used routinely shall be inspected during cleaning. Worn or deteriorated parts shall be replaced. Respirators for emergency use, such as self-contained devices shall be thoroughly inspected at least once a month and after each use.

(8) Appropriate surveillance of work area conditions and degree of employee exposure or stress shall be maintained.

(9) There shall be regular inspection and evaluation to determine the continued effectiveness of the program.

(10) Persons should not be assigned to tasks requiring use of respirators unless it has been determined that they are physically able to perform the work and use the equipment. The local physician shall determine what health and physical conditions are pertinent. The respirator user's medical status should be reviewed periodically (for instance, annually.)

(11) Approved or accepted respirators shall be used when they are available. The respirators furnished shall provide adequate respiratory protection against the particular hazard for which it is designed in accordance with standards established by competent authorities. The U.S. Department of Interior, Bureau of Mines, and the U.S. Department of Agriculture are recognized as such authorities. Although respirators listed by the U.S. Department of Agriculture continue to be acceptable for protection against specified pesticides, the U.S. Department of the Interior, Bureau of Mines, is the agency now responsible for testing and approving pesticide respirators.

(c) Selection of respirators. Proper selection of respirators shall be made according to the guidance of American National Standard Practices for Respiratory Protection Z88.1-1969.

(d) Air quality.

(1) Compressed air, compressed oxygen, liquid air, and liquid oxygen used for respiration shall be of high purity. Oxygen shall meet the requirements of the United State Pharmacopoeia for medical or breathing oxygen. Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association, Commodity Specification G-7.1-1966. Compressed oxygen shall not be used in supplied-air respirators or in open circuit self-contained breathing apparatus that have previously used compressed air. Oxygen must never be used with air line respirators.

(2) Breathing air may be supplied to respirators from cylinders or air compressors.

(A) Cylinders shall be tested and maintained as prescribed in the Shipping Container Specification Regulations of the Department of Transportation (49 CFR Part 178.)

(B) The compressor for supplying air shall be equipped with necessary safety and standby devices. A breathing air-type compressor shall be used. Compressors shall be constructed and situated so as to avoid entry of contaminated air into the system and suitable in-line purifying sorbent beds and filters installed to further assure breathing air quality. A receiver of sufficient capacity to enable the respirator wearer to escape from a contaminated atmosphere in event of compressor failure, and alarms to indicate compressor failure and overheating shall be in-

stalled in the system. If an oil-lubricated compressor is used, it shall have a high-temperature or carbon monoxide alarm, or both. If only a high-temperature alarm is used, the air from the compressor shall be frequently tested for carbon monoxide to insure that it meets the specifications in 01.0403(d)(1).

(3) Air line couplings shall be incompatible with outlets for other gas systems to prevent inadvertent servicing of air line respirators with non-respirable gases or oxygen.

(4) Breathing gas containers shall be marked in accordance with American National Standard Method of Marking Portable Compressed Gas Containers to Identify the Material Contained, Z48.1-1954; Federal Specification BB-A-1034a, June 21, 1968, Air, Compressed for Breathing Purposes; or Interim Federal Specification GG-B-00675b, April 27, 1965, Breathing Apparatus, Self-Contained.

(e) Use of respirators.

(1) Standard procedures shall be developed for respirator use. These should include all information and guidance necessary for their proper selection, use and care. Possible emergency and routine uses of respirators should be anticipated and planned for.

(2) The correct respirator shall be specified for each job. The respirator type is usually specified in the work procedures by a qualified individual supervising the respiratory protective program. The individual issuing them shall be adequately instructed to insure that the correct respirator is issued. Each respirator permanently assigned to an individual should be durably marked to indicate to whom it was assigned. This mark shall not affect the respirator performance in any way. The date of issuance should be recorded.

(3) Written procedures shall be prepared covering safe use of respirators in dangerous atmospheres that might be encountered in normal operations or in emergencies. Personnel shall be familiar with these procedures and the available respirators.

(A) In areas where the wearer, with failure of the respirator, could be overcome by a toxic or oxygen-deficient atmosphere, at least one additional man shall be present. Communications (visual, voice, or signal line) shall be maintained between both or all individuals present. Planning shall be such that one individual will be unaffected by any likely incident and have the proper rescue equipment to be able to assist the other(s) in case of emergency.

(B) When self-contained breathing apparatus or hose masks with blowers are used in atmospheres immediately dangerous to life or health, standby men must be present with suitable rescue equipment.

(C) Persons using air line respirators in atmospheres immediately hazardous to life or health shall be equipped with safety harnesses and safety lines for lifting or removing persons from hazardous atmospheres or other and equivalent provisions for the rescue of persons from hazardous atmospheres shall be used. A standby man or men with suitable self-contained breathing apparatus shall be at the nearest fresh air base for emergency rescue.

(4) Respiratory protection is no better than the respirator in use, even though it is worn conscientiously. Frequent random inspections shall be conducted by a qualified individual to assure that respirators are properly selected, used, cleaned and maintained.

(5) For safe use of any respirator, it is essential that the user be properly instructed in its selection, use and maintenance. Both supervisors and workers shall be so instructed by competent persons. Training shall provide the men an opportunity to handle the respirator, have it fitted properly, test its face-piece-to-face seal, wear it in normal air for a long familiarity period, and, finally, to wear it in a test atmosphere.

(A) Every respirator wearer shall receive fitting instructions including demonstrations and practice in how the respirator should be worn, how to adjust it, and how to determine if it fits properly. Respirators shall not be worn when conditions prevent a mask to skin face seal. To assure proper protection, the facepiece fit shall be checked by the wearer each time he puts on the respirator. This may be done by following the manufacturer's face-piece fitting instructions. Conditions which could prevent a mask to skin face seal may be a growth of beard, sideburns, a skull cap that projects under the facepiece, or temple pieces on glasses. Also the absence of one or both dentures can affect the fit of a facepiece. The worker's diligence in observing these factors shall be evaluated by periodic check.

(B) Providing respiratory protection for individuals wearing corrective glasses is a serious problem. A proper seal cannot be established if the temple bars of eye glasses extend through the sealing edge of the full facepiece. As a temporary measure, glasses with short temple bars or without temple bars may be taped to the wearer's head. Wearing of contact lenses in contaminated atmosphere with a respirator shall not be allowed. Systems have been developed for mounting corrective lenses inside full facepieces. When a workman must wear corrective lenses as part of the facepiece, the facepiece and lenses shall be fitted by qualified individuals to provide good vision, comfort, and a gas-tight seal.

(C) If corrective spectacles or goggles are required, they shall be worn so as not to affect the fit of the facepiece. Proper selection of equipment will minimize or avoid this problem.

(f) Maintenance and care of respirators.

(1) A program for maintenance and care of respirators shall be adjusted to the type of plant, working conditions, and hazards involved, and shall include the following basic services:

- (A) Inspection for defects (including a leak check.)
- (B) Cleaning and disinfecting.
- (C) Repair, and
- (D) Storage

Equipment shall be properly maintained to retain its original effectiveness.

(2) Inspection of respirators.

(A) All respirators shall be inspected routinely before and after each use. A respirator that is not routinely used but is kept ready for emergency use shall be inspected after each use and at least monthly to assure that it is in satisfactory working condition.

(B) Self-contained breathing apparatus shall be inspected monthly. Air and oxygen cylinders shall be fully charged according to the manufacturer's instruction. It shall be determined that the regulator and warning devices function properly.

(C) Respirator inspection shall include a check of the tightness of connections and the condition of the facepiece, headbands, valves, connecting tube, and canisters. Rubber or

elastomer parts shall be inspected for pliability and signs of deterioration. Stretching and manipulating rubber or elastomer parts with a massaging action will keep them pliable and flexible and prevent them from taking a set during storage.

(D) A record shall be kept of inspection dates and findings for respirators maintained for emergency use.

(3) Routinely used respirators shall be collected, cleaned, and disinfected as frequently as necessary to insure that proper protection is provided for the wearer. Each worker should be briefed on the cleaning procedure and be assured that he will always receive a clean and disinfected respirator. Such assurances are of greatest significance when respirators are not individually assigned to workers. Respirators maintained for emergency use shall be cleaned and disinfected after each use.

(4) Replacement or repairs shall be done only by experienced persons with parts designed for the respirator. No attempt shall be made to replace components or to make adjustment or repairs beyond the manufacturer's recommendations. Reducing or admission valves or regulators shall be returned to the manufacturer or to a trained technician for adjustment or repair.

(5) Storage of respirators.

(A) After inspection, cleaning, and necessary repair, respirators shall be stored to protect against dust, sunlight, heat, extreme cold, excessive moisture, or damaging chemicals. Respirators placed at stations and work areas for emergency use should be quickly accessible at all times and should be stored in compartments built for the purpose. The compartments should be clearly marked. Routinely used respirators, such as dust respirators, may

be placed in plastic bags. Respirators should not be stored in such places as lockers or tool boxes unless they are in carrying cases or cartons.

(B) Respirators should be packed or stored so that the facepiece and exhalation valve will rest in a normal position and function will not be impaired by the elastomer setting in an abnormal position.

(C) Instructions for proper storage of emergency respirators, such as gas masks and self-contained breathing apparatus, are found in "use and care" instructions usually mounted inside the carrying case lid.

(g) Identification of gas mask canisters.

(1) The primary means of identifying a gas mask canister shall be by means of properly worded labels. The secondary means of identifying a gas mask canister shall be by a color code.

(2) All who issue or use gas masks falling within the scope of 01.0403 shall see that all gas mask canisters purchased or used by them are properly labeled and colored in accordance with these requirements before they are placed in service and that the labels and colors are properly maintained at all times thereafter until the canisters have completely served their purpose.

(3) On each canister shall appear in bold letters the following:

(A) Canister for _____
or Type N Gas Mask Canister.

SUBCHAPTER 1 - GENERAL SAFETY CODE

Article 1 - General Safety and Health Considerations

01.0101 Purpose and Scope. (a) This subchapter sets forth the occupational safety and health standards adopted by the Commissioner of Labor for the purpose of providing the Alaskan work force with a healthful and safe place to work.

01.0102 Employer Requirements. (a) The employer shall furnish to each of his employees, employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. This shall be implemented by the employer by complying with these regulations.

(b) The employer shall initiate and maintain accident prevention programs for the prevention of occupational illness and disease.

(c) Employers shall display a poster, furnished by the Alaska Department of Labor, in places where notices to employees are generally posted. The poster will outline appropriate provisions of AS 18.60.010 to AS 18.60.105.

01.0103 Employee Requirements. (a) Each employee shall comply with all regulations contained in this chapter which are applicable to his own actions while on the job.

(b) Employees shall conscientiously use all safety devices, procedures, and personal protective equipment required by these regulations.

01.0104 Reporting of Injuries. Occupational injuries shall be reported in accordance with AS 18.60.058.

01.0105 Accident-Prevention Program. (1) Program organization.

(1) Every employer shall start and maintain an accident prevention program. The program shall provide that personnel knowledgeable in the field of occupational safety and health shall make daily inspections of on the job equipment and activities. The employer shall insure that immediate action be taken to eliminate all hazards.

(2) Each employer shall adopt a code of safe practices and procedures which applies to his operation and which embraces the applicable provisions of these regulations. It shall be the obligation of the employer to have the safe practices code posted in a conspicuous location at each job site office.

(3) Each employer shall insure that the supervisory personnel shoulder their share of the responsibility for accidents. It is suggested that a written report be submitted by each supervisor associated with an accident. These reports should suggest a feasible means of avoiding future accidents of a similar nature.

(b) Recommendations.

(1) Each employer should display an interest in safety matters by:

(A) The display of safety posters and warning signs. A sign indicating how many consecutive accident free days have passed is often worth while.

(B) Considering the advisability of posting a list of all foremen who have kept their crews accident free for a certain period of time.

(C) Considering the advisability of establishing various forms of safety competition, including suitable rewards or recognition to individuals and crews with good records.

(c) General safety requirements.

(1) Anyone known to be under the influence of intoxicating liquor, narcotics or drugs shall not be allowed on the job while in that condition. Further, horseplay, scuffling, and other acts which tend to have an adverse influence on the safety or well-being of the employees shall be prohibited.

(2) No one shall knowingly be permitted or required to work while his ability and alertness is impaired by fatigue, illness, or other causes that might unnecessarily expose him or others to injury.

STATE OF ALASKA

DEPARTMENT OF LABOR

BILL SHEFFIELD, GOVERNOR

BOX 1149
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PHONE:
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January ²⁹31, 1985

The Honorable Max Gruenberg
Pouch V
Juneau, Alaska 99811

Dear Representative Gruenberg:

In response to your request during the January 25, 1985 hearing on Sponsor Substitute for House Bill No. 5, An Act Establishing an Asbestos Health Hazard Abatement Program, the department is providing you with the following information:

1. A copy of the State and Federal OSHA asbestos regulations dealing with worker protection.
2. We have contacted the states of Maryland and New Jersey which have requirements for certification of asbestos workers and asked them to send us copies of their laws, regulations and guidelines on this subject. We will send you copies as soon as we receive this material. We plan to study these materials to determine what type of guidelines should be adopted in Alaska.
3. There are some private training/consultation firms that will provide, for a fee, training in asbestos handling and abatement that employers could use to certify their workers. During the past 12 months, the department has been contacted by Sam Summeg who represents Polytechnic of 2023-2, Blueberry, Fairbanks, and by Phil Pleasant of 4437 East 7th Avenue, Anchorage, who represents Tenn-Tex Co., Inc. offering to provide asbestos health hazard training.

We have also contacted Alaska Health Project, a non-profit training and information provider, and they have indicated a willingness to provide such training. Lawrence D. Weiss, Executive Director of Alaska Health project, indicated that his organization would need approximately a \$80,000 grant or loan to properly develop such training. According to Mr. Weiss these monies would be needed for front end costs to hire a trainer and to procure the training materials necessary to develop the course. After the course is developed, Alaska Health Project, could recover most of these costs by charging a fee from those attending the course.

January 31, 1985

All of the above training would be available to both non-union and union employers and employees.

Several other organizations such as the Association General Contractors (AGC), the Laborer's Union and the Asbestos Workers Union also put on asbestos training. These courses, however, may be available only to members of these organizations. Another potential source of such training is the American Society of Safety Engineers who have sponsored various safety and health training courses in the past.

Also, the department as well as other government agencies such as EPA provide, on a very limited basis, training on asbestos. This training would, of course, be open to all interested persons.

4. We can assure you that all interested parties will have an opportunity to provide recommendations to the department when it develops its guidelines for the certification program. We will need the help of organizations such as AGC to come up with an effective, yet reasonable set of guidelines that will assure the protection of the worker, the student, the teacher, and the public when asbestos is identified and the hazard is abated in Alaska's school buildings.
5. The department will enter into an agreement with EPA so that it can assist school districts to comply with EPA regulations. No revision of the current legislation is required for the department and EPA to enter into such an agreement.

We appreciate the opportunity to work with you on this important bill and if there is any further information you require, please let us know.

Sincerely,

Robert W. Jordan, Deputy Comm.
for Jim Robison
Commissioner

Enclosure

TABLE Z-3—MINERAL DUSTS—Continued

Substance	Mppcf*	Mg/M ³
Amorphous, including natural diatomaceous earth	20	80mg/M ³
		%SiO ₂
Silicates (less than 1% crystalline silica):		
Mica	20	
Soapstone	20	
Talc (non-asbestos-form)	20 ^b	
Talc (fibrous). Use asbestos limit		
Tremolite (see talc, fibrous)		
Portland cement	50	
Graphite (natural)	15	
Coal dust (respirable fraction less than 5% SiO ₂)		2.4mg/M ³ or 10mg/M ³
For more than 5% SiO ₂		%SiO ₂ + 2
Inert or Nuisance Dust:		
Respirable fraction	15	5mg/M ³
Total dust	50	15mg/M ³

NOTE: Conversion factors—mppcf x 35.3 = million particles per cubic meter = particles per c.c.

*Millions of particles per cubic foot of air, based on impinger samples counted by light field technique.

^bThe percentage of crystalline silica in the formula is the amount determined from air-borne samples, except in those instances in which other methods have been shown to be applicable.

^cBoth concentration and percent quartz for the application of this limit are to be determined from the fraction passing a size-selector with the following characteristics:

^dContaining <1% quartz; if 1% quartz, use quartz limit.

Aerodynamic diameter (unit density sphere)	Percent passing selector
2	90
2.5	75
3.5	50
5.0	25
10	0

The measurements under this note refer to the use of an AEC instrument. The respirable fraction of coal dust is determined with a MRE; the figure corresponding to that of 2.4 Mg/M³ in the table for coal dust is 4.5 Mg/M³.

(Secretary of Labor's Order No. 8-76 (41 CFR Part 25059); 29 CFR Part 1911)

[39 FR 23502, June 27, 1974. Redesignated and amended at 40 FR 23073, May 28, 1975; 42 FR/22525, May 3, 1977; 43 FR 2600, Jan. 17, 1978; 43 FR 5963, Feb. 10, 1978; 43 FR 13567, Mar. 31, 1978; 43 FR 19624, May 5, 1978; 43 FR 27394, June 23, 1978; 43 FR 45909, Oct. 3, 1978; 43 FR 53007, Nov. 14, 1978; 43 FR 57602, Dec. 8, 1978; 46 FR 32022, June 19, 1981]

§ 1910.1001 Asbestos.

(a) *Definitions.* For the purpose of this section, (1) "Asbestos" includes chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

(2) "Asbestos fibers" means asbestos fibers longer than 5 micrometers.

(b) *Permissible exposure to airborne concentrations of asbestos fibers—(1) Standard effective July 7, 1972.* The 8-hour time-weighted average airborne concentrations of asbestos fibers to which any employee may be exposed shall not exceed five fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(2) *Standard effective July 1, 1976.* The 8-hour time-weighted average airborne concentrations of asbestos fibers to which any employee may be exposed shall not exceed two fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(3) *Ceiling concentration.* No employee shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(c) *Methods of compliance—(1) Engineering methods.* (i) *Engineering controls.* Engineering controls, such as, but not limited to, isolation, enclosure, exhaust ventilation, and dust collection, shall be used to meet the exposure limits prescribed in paragraph (b) of this section.

(ii) *Local exhaust ventilation.* (a) Local exhaust ventilation and dust collection systems shall be designed, constructed, installed, and maintained in accordance with the American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, ANSI Z9.2-1971, which is incorporated by reference herein.

(b) See § 1910.6 concerning the availability of ANSI Z9.2-1971, and the maintenance of a historic file in connection therewith. The address of the American National Standards Institute is given in § 1910.100.

(iii) *Particular tools.* All hand-operated and power-operated tools which may produce or release asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section, such as, but not limited to, saws,

scorers, abrasive wheels, and drills, shall be provided with local exhaust ventilation systems in accordance with subdivision (1) of this subparagraph.

(2) *Work practices*—(i) *Wet methods.* Insofar as practicable, asbestos shall be handled, mixed, applied, removed, cut, scored, or otherwise worked in a wet state sufficient to prevent the emission of airborne fibers in excess of the exposure limits prescribed in paragraph (b) of this section, unless the usefulness of the product would be diminished thereby.

(ii) *Particular products and operations.* No asbestos cement, mortar, coating, grout, plaster, or similar material containing asbestos shall be removed from bags, cartons, or other containers in which they are shipped, without being either wetted, or enclosed, or ventilated so as to prevent effectively the release of airborne asbestos fibers in excess of the limits prescribed in paragraph (b) of this section.

(iii) *Spraying, demolition, or removal.* Employees engaged in the spraying of asbestos, the removal, or demolition of pipes, structures, or equipment covered or insulated with asbestos, and in the removal or demolition of asbestos insulation or coverings shall be provided with respiratory equipment in accordance with paragraph (d)(2)(iii) of this section and with special clothing in accordance with paragraph (d)(3) of this section.

(d) *Personal protective equipment*—(1) Compliance with the exposure limits prescribed by paragraph (b) of this section may not be achieved by the use of respirators or shift rotation of employees, except:

(i) During the time period necessary to install the engineering controls and to institute the work practices required by paragraph (c) of this section;

(ii) In work situations in which the methods prescribed in paragraph (c) of this section are either technically not feasible or feasible to an extent insufficient to reduce the airborne concentrations of asbestos fibers below the limits prescribed by paragraph (b) of this section; or

(iii) In emergencies.

(iv) Where both respirators and personnel rotation are allowed by paragraphs (d)(1) (i), (ii), or (iii) of this section, and both are practicable, personnel rotation shall be preferred and used.

(2) Where a respirator is permitted by paragraph (d)(1) of this section, it shall be selected from among those approved by the Bureau of Mines, Department of the Interior, or the National Institute for Occupational Safety and Health, Department of Health, Education, and Welfare, under the provisions of 30 CFR Part 11 (37 F.R. 6244, Mar. 25, 1972), and shall be used in accordance with subdivisions (i), (ii), (iii), and (iv) of this subparagraph.

(i) *Air purifying respirators.* A reusable or single use air purifying respirator, or a respirator described in paragraphs (d)(2) (i) or (iii) of this section, shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed no more than 10 times those limits.

(ii) *Powered air purifying respirators.* A full facepiece powered air purifying respirator, or a powered air purifying respirator, or a respirator described in paragraph (d)(2)(iii) of this section, shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average concentrations of asbestos fibers are reasonably expected to exceed 10 times, but not 100 times, those limits.

(iii) *Type "C" supplied-air respirators, continuous flow or pressure-demand class.* A type "C" continuous flow or pressure-demand, supplied-air respirator shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed 100 times those limits.