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COASTAL STATES
AND
THE U.S. EXCLUSIVE ECONOMIC ZONE

Coastal States Organization
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The Coastal States Organization, a nonprofit, nonpartisan association, represents the collective views and interests of 35 coastal State and Territorial governors in U.S. ocean and coastal affairs. Established in 1970, CSO encourages cooperation among its member States in the resolution of national ocean and coastal issues which affect the Gulf, oceans and Great Lakes of the U.S. and also serves as a forum for debate, review and assessment of ocean and coastal management practices, problems and progress.

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PREFACE

Over the last several decades, events have recast the status of ocean resources within 200 miles of the world's coastline. International law now clearly acknowledges the authority of coastal nations to manage ocean resources, living and nonliving, within two hundred nautical miles of their shorelines. These 200-mile exclusive economic zones encompass roughly 80% of the world's fisheries resources, most of the offshore hydrocarbon deposits, and many potentially valuable hard mineral resources.

On March 10, 1983, President Reagan established by proclamation an Exclusive Economic Zone (EEZ) for the United States and thereby joined 58 other coastal nations declaring jurisdiction over the ocean resources adjacent to their land masses. The coastal States have a strong interest in the protection, conservation and development of the coastal and ocean resources bordering their shorelines since they are closest to both the problems and the opportunities inherent in their use. Hence, in January 1985 the Coastal States Organization (CSO), a non-profit representative organization of the 35 coastal States, Territories and Possessions of the United States, undertook a study of the implications of the new U.S. EEZ and the role that the States should play in its development.

The U.S. EEZ is the largest, and probably most valuable, in the world. The protection, conservation and development of the resources of this new zone are of great importance to both the Nation and the coastal States. Coastal States are already actively involved in managing the 90,000-mile U.S. shoreline and coastal zone which together constitute an essential part of the ocean resources development equation. Without efficient access to and interconnections with ports and harbors, shoreside logistical support, land-based processing and storage facilities, markets, and the countless other needs that accompany offshore development, the exploitation of ocean resources would be impossible.

The rational management of ocean resources is a difficult matter for two fundamental reasons: our present complex system of ocean governmental jurisdictions, and the nature of the ocean itself. The challenge, therefore, is to design and implement an equitable and efficient ocean resource management system in the face of the nation's jurisdictional complexities and the ocean's complex nature.

This report, made possible through a grant from the William H. Donner Foundation, presents the Coastal States Organization's findings and conclusions regarding the role of the coastal States in partnership with the federal government in managing the resources of America's Exclusive Economic Zone. CSO has embodied its conclusion in a proclamation and policy statement, developed during the course of the study and based on the considerations and findings discussed in this report. The proclamation is a clear assertion of the rights and responsibilities that the coastal States have in the protection, conservation and development of the U.S. EEZ resources. The policy statement is intended to guide CSO and its individual member governments in formulating an equitable and efficient management system for America's Exclusive Economic Zone.

TABLE OF CONTENTS

PROCLAMATION OF THE COASTAL STATES

AN ASSERTION OF RIGHTS AND RESPONSIBILITIES PERTAINING
TO THE PROTECTION, CONSERVATION AND DEVELOPMENT OF RESOURCES
OF THE UNITED STATES EXCLUSIVE ECONOMIC ZONE

WHEREAS the Presidential Proclamation of March 10, 1983 established sovereign rights over living and nonliving resources within a 200-mile U.S. Exclusive Economic Zone; and

WHEREAS these marine resources, both known and yet to be discovered, are of vital importance to the United States; and

WHEREAS full realization of the benefits of the Exclusive Economic Zone for present and future generations of Americans depends upon an enhanced capability to protect, conserve and develop these marine resources; and

WHEREAS the impacts of the development of the Exclusive Economic Zone fall disproportionately on the coastal States, affecting the general welfare of their citizens; and

WHEREAS the marine, coastal and terrestrial environments are an interdependent system that must be managed in a manner that transcends existing Federal-State boundaries; and

WHEREAS recognized principles of international law distinguish this Nation's defense and foreign policy interests from its domestic resource management regime within the U.S. Exclusive Economic Zone; and

WHEREAS the Coastal States have substantial expertise and experience in protecting, conserving and developing ocean and coastal resources;

THEREFORE, THE COASTAL STATES do hereby assert and proclaim, on behalf of their citizens, direct and inherent rights and responsibilities pertaining to the protection, conservation and development of the living and nonliving resources now under domestic jurisdiction within the U.S. Exclusive Economic Zone. In recognition of these rights and responsibilities, the coastal States do hereby resolve that they must be full partners in the management of U.S. Exclusive Economic Zone resources and share in an equitable division of benefits derived from their development.

"As general purpose governments with existing resource management competence, the coastal States are directly responsible for acting on behalf of the ocean interests of their citizens, and the citizens of the country as a whole."

POLICY STATEMENT OF THE COASTAL STATES

The U.S. Exclusive Economic Zone was established in 1983. With this action the United States acquired internationally recognized "sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, both living and nonliving, of the seabed and subsoil and the superjacent waters." The Exclusive Economic Zone (EEZ) extends 200 nautical miles seaward of the Nation's coasts, bringing an area more than one and a half times larger than the land mass of the United States under exclusive U.S. resource management authority.

Vast reserves of known resources, and the promise of tremendous reserves yet to be discovered, exist within the EEZ. All Americans stand to benefit from the proper management of these marine resources. Early national attention should be given to the creation of an appropriate management regime for this important new ocean area. There are existing regulatory regimes that manage oil, gas, and fishery resources. However, full economic and social benefits of other EEZ resources will be realized only if an orderly and stable regulatory framework is in place — one in which all affected parties are effectively represented in the decision-making process.

International law recognizes a 200-mile zone (the EEZ) within which coastal nations have sovereign and exclusive rights over living and nonliving resources. Exploration and exploitation of these resources are thus separate and distinct from other ocean uses, such as navigation and overflight, within international jurisdiction. Resource management in the U.S. EEZ is now a domestic issue. As such, it is the joint concern of the coastal State and federal governments. Therefore, the legitimate roles of the federal and State governments in the management of these resources must now be re-examined.

Given their proximity to, and reliance on, the sea, and the extent that development of these marine resources will affect their economy and environment, the coastal States have direct and inherent interests pertaining to the protection, conservation and development of the living and nonliving resources of the EEZ. It is neither feasible nor desirable for the national government to attempt to represent all of the public interests in ocean activities beyond the territorial sea. As general purpose governments with existing resource management competence, the coastal States are directly responsible for acting on behalf of the ocean interests of their citizens, and the citizens of the country as a whole. The present statutorily created dividing line between State and federal jurisdiction in the ocean — the seaward limit of the territorial sea — measures only the current division in the management authority over the ocean resources. The coastal States' interests, rights and responsibilities extend well beyond this statutorily created, yet arbitrary, limit.

Because the marine, coastal and terrestrial environments are one interdependent ecological system, the EEZ resource management regime must be an integrated one. Ocean management is a logical extension of coastal management, forming a unified whole. The management regime must have the capacity to account for the use and development of various resources. The single-purpose approach to ocean management now in use has generated conflicts rather than resolving them, and will become increasingly ineffective in handling multiple uses in the EEZ.

The diversity of the resources of the EEZ and their vital importance to present and future generations of Americans requires that careful attention be paid to maintaining a proper balance between protection, conservation and development in the EEZ. A primary goal of EEZ resource management should be to maintain the health and viability of the ocean ecosystems in order to ensure sustained long-term benefits to the people of the Nation.

The extension of sovereign rights over the resources of the EEZ carries with it a public trust duty to conserve and ensure the availability of these resources for present and future generations. Since the citizens of the coastal States will be directly affected by the discharge of this duty (or a failure to do so), coastal State governments have a special responsibility to ensure that this duty is fully incorporated into EEZ management decisions.

Because of this responsibility, there must be shared decision-making with the federal government on all ocean activities affecting the interests of citizens of coastal States. Long-term commitments of fixed ocean and shoreside space and potential long-term impacts to coastal and ocean resources often require the mutual consent of the federal government and the affected coastal State governments.

Coastal States also have a responsibility to assure that State and local participants in any ocean activity receive an equitable share of responsibility, better advance information on value and distribution of ocean resources must be in the State government's hands before decisions are made. This will ensure that the public receives a fair return for the use or sale of their resources.

The establishment of the U.S. EEZ brings great new opportunities and challenges to the coastal States. The coastal States have a legitimate right in the management of the resources of the EEZ in concert with the federal government. Certain fundamental principles have guided the coastal States in arriving at their Proclamation of rights and responsibilities pertaining to the management of the resources within the EEZ. These principles include: shared decision-making on all ocean activities affecting the interests of the citizens of the coastal States; an equitable division of the costs and benefits of the development of these ocean resources; full recognition of the duty to future generations to protect their interests; and an appreciation that effective ocean management must be based upon solid research and environmental protection.

The coastal States are committed to shaping national policy for the protection, conservation and development of U.S. EEZ resources in accordance with this Proclamation and Policy Statement.

"The single-purpose approach to ocean management now in use has generated conflicts rather than resolving them, and will become increasingly ineffective in handling multiple uses in the EEZ."

"The adversarial relationship that has developed between the federal government and coastal States in certain ocean matters is seen as unfortunate, unnecessary, and not in the public interest."

SECTION I
INTRODUCTION

The coastal States have a great interest in the ocean resources lying beyond State waters, an interest that started long before the President's 1983 proclamation establishing a U.S. Exclusive Economic Zone (EEZ). Since the late 1960s several States have been involved with the development of offshore oil and gas. For the past ten years the coastal States have acted with the federal government and the private sector in managing the fisheries resources of the 200-mile fishery conservation zone created by the Magnuson Fishery Conservation and Management Act. Several federal ocean resource laws permit coastal States to participate to varying, but often limited, degrees in certain types of ocean decision-making beyond the territorial sea.[1]

Although limited opportunities exist for State participation in ocean resource management, certain recent developments have strained Federal-State relations. Department of the Interior plans to lease large areas of the outer continental shelf (OCS) for oil and gas exploration beginning in 1981 was of significant interest to a number of States. Failure of the Department of Commerce (NOAA) to promulgate federal consistency regulations clearly defining coastal State interests in federal decisions beyond State waters also concerned coastal States. Aggressive moves by the Federal government to begin leasing the potentially rich ocean mineral deposits off California, Oregon, and Hawaii also called attention to the weak role of the coastal States.

When the President issued the EEZ proclamation in March, 1983, and called for increased development of EEZ resources, the coastal States were quick to initiate a reexamination of the roles of the federal and State governments in ocean resource management.[2] From the onset of this study, the orientation of the coastal States has been positive and forward-looking. The adversarial relationship that has developed between the federal government and coastal States in certain ocean matters is seen as unfortunate, unnecessary, and not in the public interest. In embarking on this study, the coastal States sought new and more effective ways of preserving, conserving and developing America's newest and largest resource zone — the EEZ.

SECTION II
THE IMPORTANCE OF THE U.S. EEZ

America's Exclusive Economic Zone covers a vast area of ocean.

Generally speaking, it extends 200 nautical miles from the coastline, having a breadth of 197 nautical miles beyond the three-mile U.S. territorial sea (see Figure 1). The U.S. EEZ is nearly 4 billion acres, or about 1.7 times the land area of the United States. Except for highly migratory species of tuna, the United States now possesses exclusive authority over all resources, living and nonliving, within this very large area.[3]

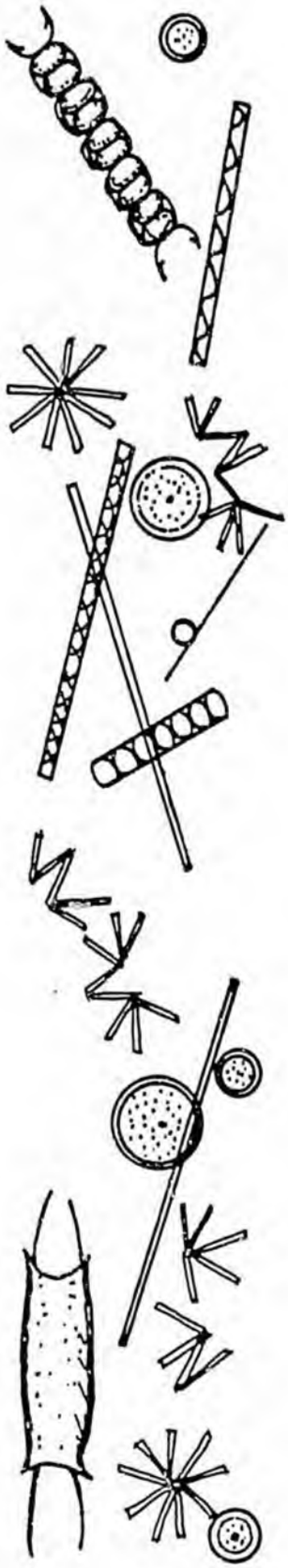
America's EEZ is the largest, and probably most valuable, in the world. The fisheries in the Gulf of Mexico, off New England, the West Coast and Alaska are among the richest in the world. Oil and gas deposits of considerable magnitude exist in the Gulf of Mexico, off California and northern Alaska. New discoveries are likely elsewhere along the U.S. coastline. Promising areas for ocean minerals are present offshore North Carolina, Georgia, Florida, California, Oregon, Alaska and Hawaii, and in the vicinity of some of our Pacific Island territories. Economically important marine sand and gravel deposits exist off much of the Eastern seaboard, and the Gulf and Alaska. Recently, cobalt-rich crusts have been discovered near the Hawaiian archipelago and in the vicinity of Johnston Island in the Pacific. These resources, and others, are of great national interest. A closer look shows why.

• **FISHERIES** — The United States leads all other nations both in abundance and diversity of fish and shellfish off its coasts. It is estimated that 15 to 20% of the world's living resources are within the U.S. EEZ. Nonetheless, the United States ranks only fourth (after Japan, the U.S.S.R., and China) among the fishing nations of the world. In fact, less than half the potential yield from U.S. fisheries is harvested and processed in this country. The remainder is either caught by U.S. fishermen but sold to foreign processors, or caught by fishing fleets of more than a dozen other countries, or left unused.[4]

Clearly, the potential exists for further growth of our domestic fishing industry. To the extent that the United States moves toward the goal of self sufficiency in fishery products, an important component in the present trade imbalance will be reduced or eliminated.

Fish and shellfish are an important source of nutrition and recreation, contributing to the economy and health of the coastal States and the Nation. In gross terms, U.S. fishermen produce 10 billion pounds of food annually, or nearly 50 pounds for each person in the United States. Another 750 million pounds are caught each year by recreational fishermen Counting all subsidiary effects, U.S. coastal fisheries contribute over $23 billion to the economy each year, providing employment for over a million people.[5]

• **OFFSHORE OIL & GAS RESOURCES** — Petroleum products are the single most economically significant resource in the U.S. EEZ, and most likely will continue to be for the foreseeable future. The product value alone of oil and gas from both State and federal waters is nearly $26 billion annually. In addition, the federal government receives over $7 billion per year in revenue from federal leases on the outer continental shelf (OCS).[6] In 1984, offshore wells produced 12% of the Nation's total oil and 25% of the total natural gas. The United States Geological Survey estimates that up to 41% of the oil and 30% of the natural gas yet to be discovered in the United States lies in the EEZ.[7] These offshore supplies of oil and gas will be of vital national importance as the present onshore sources become depleted.



• **HARD MINERALS** — Although commercial recovery of hard minerals is still in its infancy, the U.S. EEZ is likely to hold bright prospects for a number of hard mineral resources. Six types of potentially economic hard mineral resources have been identified: 1) sand and gravel, 2) heavy-mineral placer deposits (containing tin, titanium, gold, platinum), 3) phosphorites, 4) manganese nodules, 5) cobalt-rich manganese crusts, and 6) polymetallic sulfides. Several of these resources contain critical and strategic minerals as referred to in the Strategic and Critical Materials Stock Piling Act.[8] The U.S. presently imports over 60 strategic and critical minerals (see Figure 2). This is an important consideration in the development of these marine minerals.

Ocean mining of cobalt crusts is only in the preliminary planning stages. Cobalt-rich manganese crusts occur on the flank areas of numerous U.S. Pacific Islands and on the tops of many central Pacific seamounts within the U.S. EEZ. An environmental impact statement (EIS) for ocean mining off Hawaii and Johnston Island is in preparation by a joint Minerals Management Service (MMS) — State of Hawaii task force. Commercial mining operations, however, are not likely to begin until the mid-to-late 1990's. The strategic importance of the cobalt component in these crusts and the fact that a single seamount could provide the United States with a three-year supply, could make mining of these crusts a national priority.

Polymetallic sulfides, another important potential EEZ resource, have been discovered in many parts of the Eastern Pacific Ocean. Polymetallic sulfides exist at several seafloor spreading centers, some with active hydrothermal vents, including the Gorda Ridge 125 miles off northern California and southern Oregon. Other promising areas for hydrothermal activity within the EEZ include the Aleutian arc in Alaska and the Marianas Islands in the Central Pacific.[9]

• **OCEAN ENERGY** — Although not yet tested on a commercial scale, the feasibility of producing electrical energy from the temperature differences between warm surface water and much colder deep water has been demonstrated. Ocean thermal energy conversion (OTEC) technology is ideally suited to islands or coastal areas with thermal gradients of 20 degrees centigrade or more between the surface waters and depths of 1000 meters. Numerous potentially attractive locations for OTEC facilities exist in the coastal zones and EEZ of Puerto Rico, Virgin Islands, Hawaii, Guam, and the other U.S. territories in the tropical Pacific.[10] Should oil prices again rise, the work remaining to be done to prove the commercial viability of OTEC should be completed to open the way for the application of this promising technology in the U.S. EEZ.

• **WASTE DISPOSAL IN THE OCEAN** — The use of the ocean for waste disposal is likely to continue, and perhaps increase. Although the ocean does have some assimilative capacity for some wastes, ocean waste disposal should not be a first choice option. In the case of non-toxic substances, ocean disposal may be judged less dangerous to the environment than alternative land disposal options. On the other hand, the tendency of some organisms to concentrate toxic substances (bio-accumulation), potential loss of habitat, and the possibility of toxics making their way back through the food chain to humans must be taken into account in such decision making. Before ocean disposal is utilized, all other feasible options must be evaluated. Site specific information must also be collected to ensure that adverse impacts to water quality and aquatic habitat are minimized.

At present, two issues — at-sea incineration of toxic wastes and ocean disposal of radioactive wastes — seem to be increasingly prominent. The safe disposal of highly toxic liquid wastes such as polychlorinated biphenyls (PCBs) and high and low level nuclear wastes are vexing national problems. Satisfactory solutions must be found since significant quantities of these dangerous materials continue to accumulate. Without doubt, emergency contingency plans, storage and transshipment within coastal areas, and the possible use of the EEZ (and perhaps the more remote deep seabed [11]) for waste disposal will be studied and debated in the coming years.[12]

• **QUALITY OF THE MARINE ENVIRONMENT** — The rich life and relatively pristine marine environment within the EEZ is perhaps its most valuable resource. The affects of pollution in the near-shore waters due to runoff from land are less pronounced in the EEZ, although ocean disposal of municipal sewage and industrial wastes places added strains on marine environmental quality. Only by maintaining and improving the environmental quality of the EEZ is it possible to maximize the value of its other resources, such as fisheries, marine wildlife, oxygen production, pharmaceuticals, recreation, and the basic security of a healthy, rich community of marine life.

The U.S. EEZ is home to a rich variety of marine life, inhabiting a range of arctic to tropical marine ecosystems. Abundant fisheries, marine mammals, reptiles, sea birds, coral reefs, chemosynthetic communities of hydrothermal vents and cold water seeps, kelp forests, and other plant and animal life are among the great diversity of life within the U.S. EEZ. There is an obvious strong coastal State interest in maintaining this resource.

• **ADDITIONAL USES OF THE EEZ** — The U.S. EEZ has many other uses beyond the major ones listed above. Sport fishing, diving, and boating make the offshore areas attractive to growing numbers of recreationists. Ocean-borne commerce is a regular use of the U.S. EEZ, including the specialized traffic lanes that extend into the EEZ that increasingly guide passage to and from U.S. coastal ports. Finally, military "exclusion zones" represent yet another use of ocean space that is of national importance and which sometimes competes with resource-related activities.

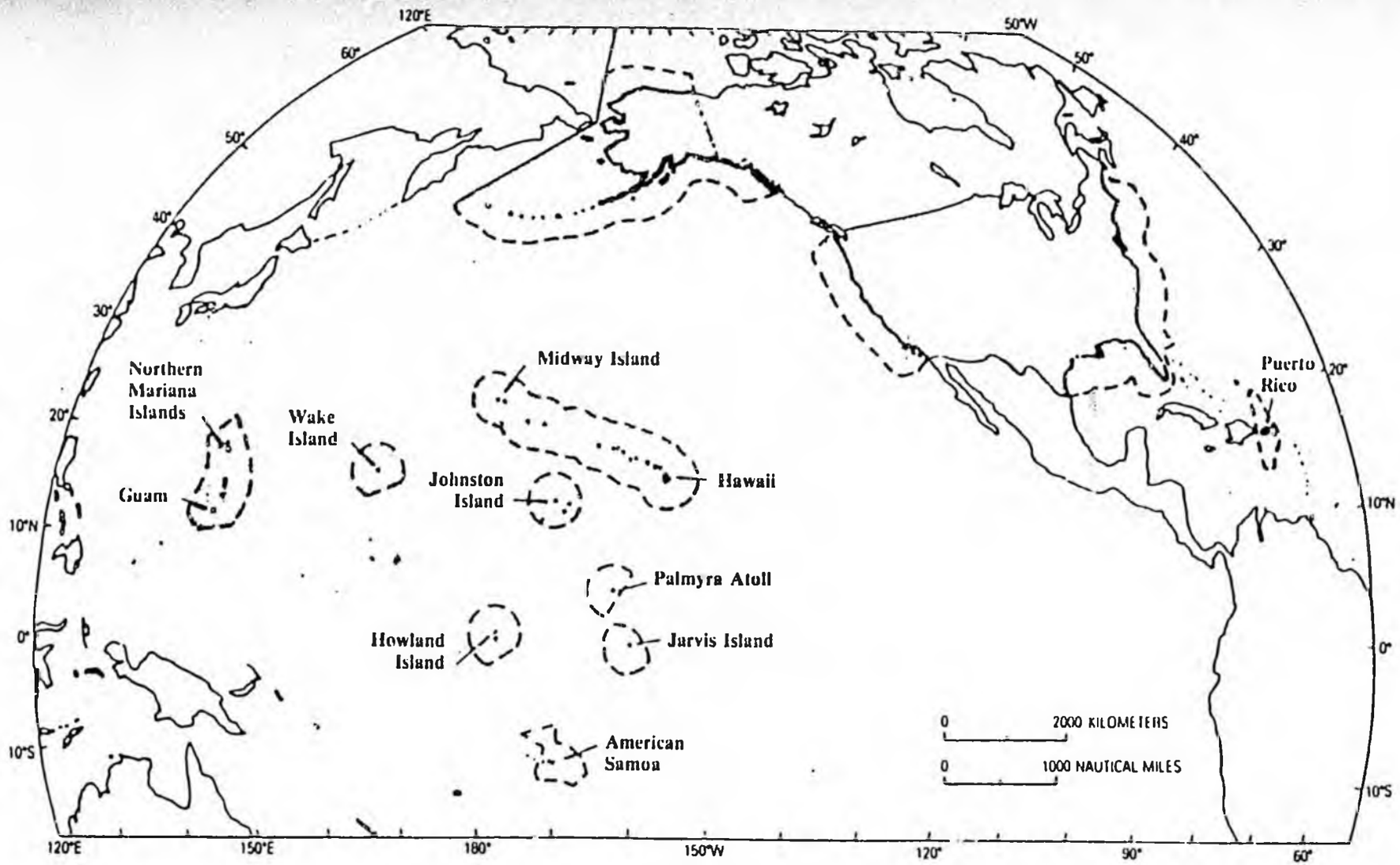


Figure 1.— Exclusive Economic Zone (EEZ) of the United States, Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, and United States overseas territories and possessions (outlines of map are approximate). Acreage now deemed within the U.S. EEZ includes: United States proper, 2.787 billion acres; Commonwealth of Northern Mariana Islands, 0.299 billion acres; territories and possessions, 0.839 billion acres.

Source: Rowland, R.W., M.R. Goud and B.A. McGregor, *The U.S. Exclusive Economic Zone - A Summary of its Geology, Exploration and Resource Potential* (U.S. Department of the Interior, Geological Survey Circular 912, 1983).

Table 2-6.—Sources of U.S. Chromium Imports

Country	1979-82 (percent)	1982 (percent)
Chromite:[a]		
South Africa	48	59
Soviet Union	17	6
Philippines	13	11
Turkey	7	6
Albania	6	1
Finland	4	7
Madagascar	4	9
Ferrochromium:		
South Africa	61	35
Zimbabwe	12	25
Yugoslavia	12	12
Brazil	4	11
Sweden	4	4
Turkey	2	4
West Germany	2	3
Japan	1	—
China	1	4
Other	1	2

[a]Chromite = chromium ores

NOTE: Major world producers of chromite and their contribution to world supplies in 1982 were: Soviet Union (34 percent); South Africa (22 percent); Albania (12 percent); Brazil (10 percent); Zimbabwe, Philippines, Turkey, and Finland (4 percent each); India (3 percent). See table 5-4 of ch. 5 for more detail, and for information on reserves.

SOURCE: U.S. Department of the Interior, Bureau of Mines, *Minerals Yearbook*, 1980, 1981, 1982, and 1983.

Table 2-8.—Sources of U.S. Cobalt Imports

Country	1979-82 (percent)	1982 (percent)
Zaire	37	39
Zambia	13	9
Canada	8	12
Belgium-Luxembourg[a]	8	5
Finland	7	6
Japan[a]	7	8
Norway[a]	7	7
Botswana	3	3
France[a]	3	3
Other	7	8

[a]Processes cobalt ore originating from other countries.

NOTE: Major world producers of primary cobalt and their contribution to world supplies in 1982 were: Zaire (45 percent); Zambia (13 percent); Australia (9 percent); Soviet Union (9 percent); and Canada (6 percent). See table 5-16 of ch. 5 for more detail, and for information on reserves.

SOURCE: U.S. Department of the Interior, Bureau of Mines, *Minerals Yearbook*, 1980, 1981, 1982, and 1983.

Table 2-10.—Sources of U.S. Manganese Imports

Country	1979-82 (percent)	1982 (percent)
Manganese ore:		
South Africa	30	52
Gabon	27	21
Australia	22	17
Brazil	13	3
Mexico	4	1
Morocco	4	4
Other	—	2
Ferromanganese:		
South Africa	43	49
France[a]	26	21
Mexico	6	7
Brazil	3	6
Australia	2	1
Other[a]	20	16

[a]Processes manganese ore originating from other countries.

NOTE: Major world producers of primary manganese ores and their contribution to world supplies in 1982 were: Soviet Union (41 percent); South Africa (23 percent); Gabon (7 percent); China (7 percent); Brazil (6 percent); Australia (5 percent); Mexico (2 percent). See table 5-22 of ch. 5 for further details, and for information on reserves.

SOURCE: U.S. Department of the Interior, Bureau of Mines, *Minerals Yearbook* 1980, 1981, 1982, and 1983.

Table 2-12.—Sources of U.S. Platinum Group Metal Imports

Country	1979-82 (percent)	1982 (percent)
South Africa	56	48
U.S.S.R.	16	16
United Kingdom	11[a]	13
Other	17	23

[a]PGM production from the United Kingdom is from ores originating in South Africa and Canada and from secondary materials.

NOTE: Major world producers of PGM and their contribution to world supplies in 1982 were: Soviet Union (54 percent), South Africa (40 percent), and Canada (4 percent). See table 5-33 of ch. 5 for further details and for information on reserves.

SOURCE: U.S. Department of the Interior, Bureau of Mines, *Minerals Commodity Summaries*, 1983 and 1984.

Figure 2.— Sources of Strategic Metals for the United States

Source: *Strategic Materials: Technologies to Reduce U.S. Import Vulnerability* (Washington, D.C.: U.S. Congress, Office of Technology Assessment, OTA-ITE-248, May 1985).

"Because major segments of their coastal populations can be affected, coastal State governments have strong interests in how these governmental roles are performed in the EEZ."

SECTION III

FEDERAL & STATE INTERESTS IN THE EEZ

Federal and coastal State interests in the EEZ rest in part on the legitimate and necessary functions of government in the offshore area. The manner of administration of these functions affects national and coastal State interests. Table 1 lists six broad purposes which government serves in the ocean. The top two are clearly "national" in nature and must be carried out by the federal government. However, to assure citizens that the duties and responsibilities of State governments are carried out, the remaining roles require coastal State involvement.

Important sectors of coastal State economies depend directly on the EEZ and its resources. In Louisiana, for example, the oil and gas, and commercial fishing, industries depend heavily on the EEZ. Coastal States and their local governments — the planners and managers of the Nation's coastal zones — oversee the ports, harbors, and shore space that are essential to ocean development. Physical linkage inextricably couples the shoreland to the sea. Through the bonds of common air basins, the actions of waves and currents on the shoreline, and the effects of rivers and run-off on ocean water quality, the land and the sea are joined together in an inseparable relationship. Thus, an equitable governance scheme for the EEZ must acknowledge the quality of interests — national and State — that exist in the U.S. EEZ.

Because major segments of their coastal populations can be affected, coastal State governments have strong interests in how these governmental roles are performed in the EEZ. Coastal States are "home" to most users of the EEZ. Their citizens have major economic interests in the conservation and rational development of the EEZ. Coastal States have important public trust responsibilities within their jurisdictions. They are concerned with "spillovers" and other adverse environmental effects emanating from poorly regulated uses in the adjacent EEZ that could damage State resources. New EEZ-related activities compete with other ocean ac-

TABLE 1
GOVERNMENTAL ROLES IN THE EXCLUSIVE ECONOMIC ZONE

Role	Function
1. INTERNATIONAL RELATIONS	—Insure consistency with foreign policy goals
2. NATIONAL SECURITY	—Maintain the national defense
3. INTERSTATE & FOREIGN COMMERCE	—Regulate commerce between the States and other countries
4. PROPRIETARY	—Secure maximum earnings for the public
5. PUBLIC TRUST	—Conserve resources for present and future generations
6. REGULATORY	—Protect the public welfare, prevent and solve conflicts

tivities of economic interest to the coastal States. For example, access to valuable and limited coastal space for necessary shoreside facilities (ports, processing plants, etc.), is often at the expense of the traditional users. Coastal States are proprietors of the ocean resources in their State waters, and are concerned with possible reductions in the value of State resources, such as the drainage of State oil and gas fields or overfishing in the EEZ of fish stocks that also exist in State waters.

Given these interests, the coastal States are naturally concerned with the actions of federal agencies taken in connection with the governmental purposes set out in Table 1. The degree of coastal State interest depends upon the nature of the demands placed upon State and local resources as well as on EEZ resources. Some of the possible effects (positive and negative) of the development of EEZ resources are listed in Table 2 below.

"Without effective local participation in the decision-making process, no amount of 'national interest' justification is likely to overcome local opposition."

TABLE 2
POSSIBLE EFFECTS OF OFFSHORE (EEZ) DEVELOPMENT

National Benefits
—improved domestic supply of strategic and critical resources
—reduced trade deficit
—improved food supply
—increased national security
—enhanced economic growth
—increased federal revenues

Regional/Local Benefits
(some public, some private)
—increased jobs
—increased investment earnings
—increased tax revenue

Offshore Environmental Impacts
—deterioration of marine water quality
—deterioration of air quality
—addition of toxins to the environment, and possibly the food chain
—visual disturbance
—potential accidents

Onshore Environmental Impacts
—increased risk of accidents
—degradation of coastal esthetics
—reduction in quality of coastal recreation experience
—reduction in tourism

Offshore Displacement Impacts
—prevention or disruption of usual fishing patterns
—interference with commercial and recreational navigation

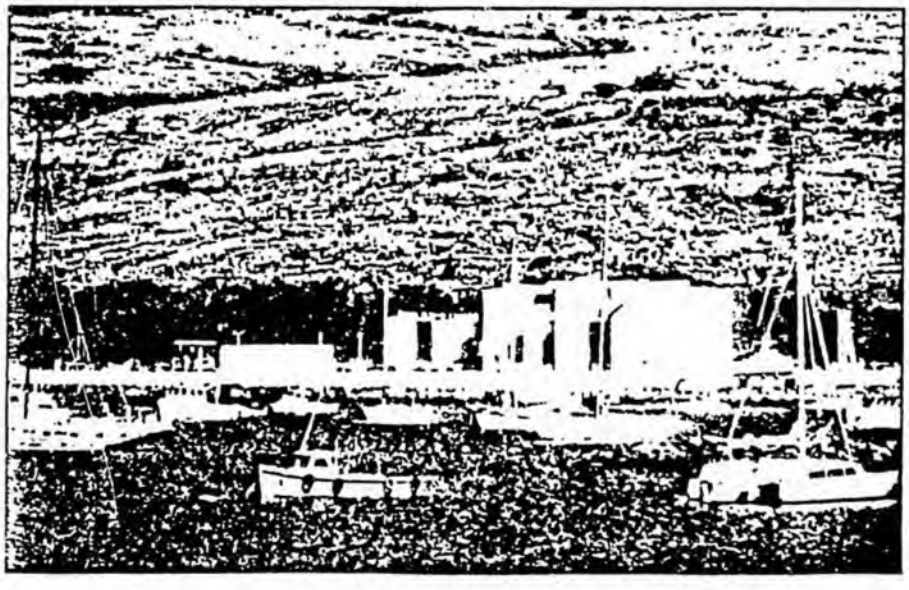
Onshore Displacement Impacts
—competition for limited commercial and recreational port and harbor space
—competition for sites for processing, storage and transportation facilities
—competition for limited recreational beach space

Onshore Socio-economic Impacts
—increased population
—public facilities and infrastructure
—public services
—housing, water supplies
—additional requirements on local government planning processes

For any particular activity in the EEZ, one would have to evaluate each of the possible effects listed in Table 2 to obtain the cumulative impact. Generally, the impact will be greater from EEZ activities closer to the coastal zone, when activities of greater importance to the State are displaced, and when significant, yet uncompensated, demands are placed on local public infrastructure due to increases in population. Perhaps, in the long run, the economic benefits associated with a new EEZ activity could partially or even totally offset these social, i.e. non-economic, costs. But this fails to address the importance of the non-economic aspects of local decision-making, i.e., the need for "self-determination."

A community, or State, will be the recipient of the costs and benefits, both economic and non-economic, of development in the EEZ off of its shores. Without effective local participation in the decision-making process, no amount of "national interest" justification is likely to overcome local opposition. Nor would the best interest of the community, State or nation be served by the resulting delay in the orderly development of these resources due to the forseeable political obstacles or, worse, protracted litigation. Thus, a true Federal/State partnership in the decision-making process is clearly necessary for the management of the living and nonliving resources in America's EEZ.

The establishment of a true Federal/State partnership, founded on cooperation and mutual benefit, requires an equitable sharing of both the benefits and costs derived from the development of EEZ resources. The sharing of benefits, including revenues, from EEZ resource development is a natural extension of shared decision-making. It is both realistic and just to recognize the interests of the federal government and the States in the EEZ while bearing in mind the possible effects of EEZ development.



SECTION IV

RECENT DEVELOPMENTS IN INTERNATIONAL LAW AFFECTING THE ROLE OF STATES IN EEZ RESOURCE MANAGEMENT

Prior to World War II:

International ocean law has undergone significant change in the past four decades. Prior to World War II the ocean waters beyond a nation's territorial sea were nearly universally regarded as "high seas." Within these waters any nation was free to do whatever it chose, including navigate, fish, conduct research, drill for oil, perform military maneuvers or any of the other high seas freedoms, unless it agreed otherwise by international agreement or treaty. But in waters that were once pure high seas that are now EEZs, there has been a fundamental change.

1945-1983:

In 1945 President Truman proclaimed U.S. jurisdiction and control over the resources of the continental shelf adjoining the United States.[13] Other nations quickly followed suit, asserting various forms of national control over ocean resources off their coasts. Mexico, also in 1945, asserted similar jurisdiction over its continental shelf. Argentina in 1946, and Peru and Chile in 1947 asserted jurisdiction over not only the sea bottom of the continental shelf, but also the water above it. Honduras, in 1951, established a 200-mile "resource protection zone," the first such zone that would later be referred to as an exclusive economic zone. In the next 30 years over 50 nations claimed varying degrees of jurisdictional authority over ocean resources out to 200 miles from their shores. As a result, the international recognition of the "high-seas" character in these 200-mile zones became less and less pronounced.

Overlapping the last decade of this period the nations of the world negotiated the United Nations Law of the Sea Convention (LOS Convention), culminating in 130 nations signing the treaty in 1982. The LOS Convention is the sole internationally recognized text defining the legal parameters of exclusive economic zones. Although the United States announced that it would not sign the LOS Convention, the President's EEZ Proclamation conforms closely to the LOS articles on exclusive economic zones.[14] In addition, the President announced that the United States would act in accordance with the provisions of the LOS Convention relating to "traditional uses of the oceans — such as navigation and overflight."[15]

After the 1983 U.S. EEZ Proclamation:

The EEZ Proclamation fundamentally altered the legal character of the 200 mile zone around the United States. Prior to the Proclamation, the body of U.S. law pertaining to this zone, while asserting U.S. jurisdiction in piecemeal fashion over select resources, nonetheless continued to apply in the internationally recognized regime of "high seas."

"Prior to World War II the ocean waters beyond a nation's territorial sea were nearly universally regarded as 'high seas.' But in waters that are now EEZs, there has been a fundamental change."

"The EEZ Proclamation fundamentally altered the legal character of the 200 mile zone around the United States."

"Unless another country's recognized rights are impinged upon, no other nation can question the management decisions of the United States concerning its EEZ resources."

Although the pure concept of the "high seas" was eroding within 200 miles of this country and others, the status of ocean resources in this zone did not unequivocably change from high seas resources to U.S. domestic resources until the U.S. EEZ Proclamation. At the same time, in accordance with international law, the high seas rights of non-resource related activities, such as navigation and overflight, among others, are expressly recognized and preserved in the President's Proclamation.

The United States now has sovereign rights over the living and nonliving resources within its EEZ. How to exercise these rights is an internationally recognized sovereign, i.e. domestic, question. That is, unless another country's recognized rights are impinged upon, no other nation can question the management decisions of the United States concerning its EEZ resources. In terms of U.S. federal law, this is a fundamental change with potentially profound domestic consequences.

"For decades the U.S. Supreme Court has consistently ruled that only the federal government possessed full and paramount authority to manage the natural resources outside the territorial sea. However, the legal basis upon which these cases rest no longer applies."

Supreme Court Rulings, International Law and EEZ Resource Management

For decades the U.S. Supreme Court has consistently ruled that only the federal government possessed full and paramount authority to manage the natural resources outside the territorial sea. In fact, until Congress passed the Submerged Lands Act in 1953, the Court ruled that even within the three mile "marginal sea" the federal government had full and paramount natural resource management authority. However, the legal basis upon which these cases rest no longer applies.

In the landmark case *United States v. California*[16], the court ruled against California's assertion of "dominion" over the submerged lands within its three nautical mile zone of State ocean waters. The court based its decision on the rationale that:

> "But whatever any nation does in the open sea, which detracts from its common usefulness to the nations, or which another nation may charge detracts from it, is a question for consideration among nations as such, and not their separate governmental units."[17]

As a result, the Court ruled that because marine resource management could affect international relations, the "Federal Government rather than the state has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area."[18]

This rationale is the basis for a series of Supreme Court rulings that followed. In 1950, in *United States v. Louisiana,*[19] the Court rejected Louisiana's claim of rights over the resources in, and beyond, the three mile zone, holding that "The ocean seaward of the [three mile zone] is perhaps even more directly related to the national defense, the conduct of foreign affairs, and world commerce than is the marginal sea. Certainly it is not less so."[20] The same year, in *United States v. Texas,*[21] the Court also rejected Texas' claim to the resources in its three mile zone of ocean waters. Texas argued that because it was an independent Republic prior to admission to the Union it thus held full authority over these resources. The Court, however, ruled that upon entering the Union Texas was placed on an "equal footing" with all other States.

and that "The United States then took her place as respects foreign commerce, the waging of war, the making of treaties, defense of the shores, and the like. In external affairs the United States became the sole and exclusive spokesman for the Nation."[22]

Congress reacted to these Supreme Court cases by passing the Submerged Lands Act of 1953,[23] signed into law by President Eisenhower, that vested in the States title to the seabed of their ocean waters. Later the same year Congress passed a companion act, the Outer Continental Shelf Lands Act (OCSLA).[24] The OCSLA provided that the waters above the continental shelf are recognized as high seas[25], while establishing exclusive federal jurisdiction over the continental shelf seaward of the territorial limit of the States.

Nonetheless, in 1969, in *United States v. Maine,*[26] 13 Atlantic States challenged the federal government's paramount rights over the submerged lands beyond State waters, claiming that as successors to the Crown of England (or Holland in the case of New York) they possessed full authority over the seabed beyond the three mile State waters. The Supreme Court, rejecting this argument, reaffirmed the rulings *California, Lousiana* and *Texas,* and ruled that the international character of these waters required the federal government to retain full dominion over the seabed of the continental shelf beyond the three mile line.

These rulings, both before and after the Submerged Lands Act or the OCSLA were implemented, were based on the Supreme Court's determination that the ocean area beyond State territory was international in character, and thus the management of these resources could affect relations with foreign nations. Because the U.S. Constitution expressly grants to the federal government all powers to conduct foreign affairs, the States had no role to play in marine resource management beyond their ocean waters.[27] This has changed.

A Sea Change with the EEZ Proclamation

With the EEZ Proclamation, resource management within the EEZ is no longer international in character, but rather is a purely domestic matter. The basis upon which the above Supreme Court cases rest no longer applies. The EEZ is no longer an "open sea." No other nation can charge that a resource management decision by the United States detracts from the "common usefulness" of this zone. The resources of the U.S. EEZ are not to be managed for their international "common usefulness," but rather for the usefulness of the United States. Thus, domestic management of U.S. EEZ resources has become a question for consideration by the "separate governmental units," i.e. the federal government and the coastal States. This does not mean that the coastal States automatically acquired resource management authority in the EEZ with the issuance of the presidential EEZ Proclamation. It simply means that no constitutional barrier now exists to deny States their proper role in sharing the responsibilities and benefits of resource-management authority with the federal government.

Thus, to the extent that management of the resources of the U.S. EEZ does not directly affect the rights of other nations, this management is now purely a domestic question, a question that can be answered only with full participation by both the coastal States and the federal government.

"With the EEZ Proclamation, the EEZ is no longer an 'open sea.' The resources of the U.S. EEZ are not to be managed for their international 'common usefulness,' but rather for the usefulness of the United States. Thus, domestic management of U.S. EEZ resources has become a question for consideration by the 'separate governmental units,' i.e. the federal government and the coastal States."

"The orderly development of EEZ resources would be impossible without efficient access to, and interconnections with, ports, harbors, shoreside support, processing and storage facilities, markets, transportation routes and the countless other needs that accompany offshore development."

SECTION V
THE OCEAN GOVERNANCE CHALLENGE

JURISDICTIONAL COMPLEXITIES

The human side of the equation governing America's ocean resources can be stated in five parts: local authorities, State governments, the federal government, the private (commercial) sector, and the general public. Local authorities control the location and operations of facilities, such as ports and harbors. State governments control environmental aspects, such as air and water quality, as well as protection, conservation and development of resources in State ocean waters. The federal government has authority over the international aspects of the EEZ, such as law enforcement and national security, as well as, currently, dominant authority in the management of the living and nonliving resources. The private sector is often the prime mover in offshore development. What does, or does not, happen offshore, and at what pace, usually depends on market conditions and the judgment of corporate officials. And finally, the general public has an important role in the decision-making process. Public hearing are a legal requirement in many resource-use decisions, at both the federal and State levels.

Because the orderly development of EEZ resources would be impossible without efficient access to, and interconnections with, ports, harbors, shoreside support, processing and storage facilities, markets, transportation routes and the countless other needs that accompany offshore development, it is clear that all five parts of the ocean governance equation must participate in the decision-making process.

The jurisdictional division between levels of government — Three separate bands of jurisdiction divide the coastal and ocean area — local and State governments generally control shoreline use; in most cases State government has jurisdiction in the belt of ocean from the tidemark out to the three-mile limit; and the federal government has general jurisdiction from three out to two hundred miles.[28] The problems thus created for the planning and management of these activities are:

—most important ocean activities involve all three jurisdictions, a major complexity; and
—the benefits and costs of ocean resource exploitation frequently fall on different, or multiple, jurisdictions.

The jurisdictional division in the management of different ocean resources/uses — Within the two offshore jurisdictions (federal and State), each resource/use is typically under the jurisdiction of a different agency operating under a different legislative framework. For example, a specific federal agency manages offshore oil development, while another agency handles water quality and related matters. The problems created by this single purpose approach include:

—difficulty in advance planning for heavily used ocean areas;
—lack of early identification and resolution of conflicts among users;
—few opportunities for accommodating alternative or competing uses; and
—difficulty for general purpose local governments to relate to single purpose offshore agencies.

Ocean Complexity

In addition to these human factors, the nature of the ocean itself must be considered. The ocean's fluid and dynamic properties mean that effects from activities at one offshore location can spread quickly to other locations, including the shoreline. Further, the complex relationship of ocean and coastal ecosystems — between interdependent organisms and their habitats and the larger dynamic environment upon which they depend — together with our incomplete knowledge of these systems, virtually guarantees that any ocean development activity will produce unexpected effects well removed from the project itself. As a result, predicting the impacts of an ocean use is exceptionally difficult. The management problems that arise include:

—unintended, unforeseeable consequences of ocean exploitation;
—uncertainty over the fate and effects of discharges; and
—uncertainty about the geographic extent and duration of impacts.

Congress has wrestled with the jurisdictional and natural complexities of ocean and coastal resource governance. In October of 1972, recognizing the fundamental importance of the coastal zone of the United States, the Congress enacted the Coastal Zone Management Act of 1972 (CZMA). This legislation authorized the coastal States to develop and implement coastal zone management programs for the shorelines of the United States, including the State ocean waters. Building on significant coastal management efforts already underway in California, Oregon, Delaware, Washington, Rhode Island, North Carolina, Michigan, Wisconsin, and Minnesota, most coastal States took the federal legislative challenge seriously, completing and obtaining federal government approval of their coastal zone management programs. At present, 29 States and territories have federally approved programs, covering more than 90% of the U.S. shoreline.

A major objective of these State coastal zone management programs is to provide a coordinated decision-making mechanism to reconcile conflicting uses of the coastal zone. Congress intended that through this mechanism, coastal areas and resources requiring protection would receive that protection while water-dependent activities that must exist in the coastal zone would receive priority consideration. At the same time, the mechanism fosters public participation and streamlines the decision process.

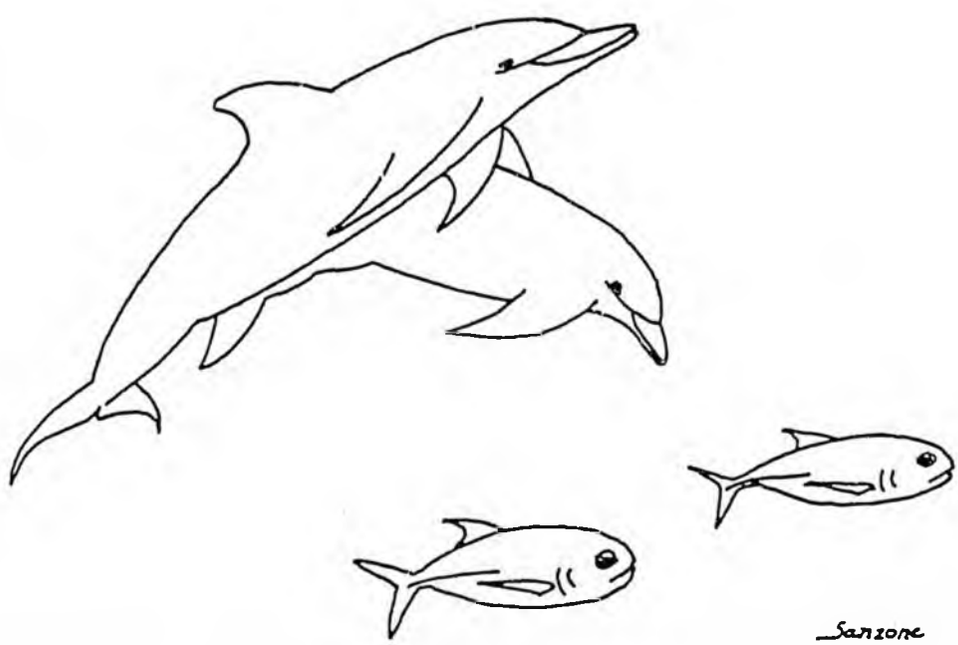
Central to the entire process is the requirement of "consistency" with a federally approved State coastal zone management program. Generally, any federal agency, or any person operating under a federal permit or license, that conducts an activity that affects a State's coastal zone must do so in a manner

"The ocean's fluid and dynamic properties mean that effects from activities at one offshore location can spread quickly to other locations, including the shoreline."

consistent with a State's approved management plan. While the CZMA has only been in effect for 15 years, it is generally accepted that State coastal zone management programs are performing rather well and program improvements are occurring on a regular basis.[29]

The coastal zone management process has been very effective in reconciling the multiple interests associated with most coastal uses. Yet from the coastal State perspective, even beyond recent efforts to reduce or terminate federal coastal zone management funding assistance, there are some serious shortcomings with the present system, especially when viewed against the new challenges posed by America's new Exclusive Economic Zone.

Up to 1982, tensions between the coastal States and the federal government had largely focused on offshore oil. The prospect of ocean incineration of toxic wastes, seabed disposal of decommissioned nuclear submarines, and plans for ocean mining have also provoked additional coastal State concern. In each of these instances, the concern is fueled by two factors; 1) uncertainty as to the effects of the proposed activity on the marine and coastal environments, and 2) the feeling of coastal States and communities that they lacked the legal authority needed to participate in the formal decision-making processes. In light of increasing pressure to develop and use the resources of the EEZ, the coastal States view these concerns as harbingers of potential conflict unless some important changes are made in present ocean governance arrangements.



SECTION VI
FORGING THE PARTNERSHIP

The geographic range of State and national interests in the oceans bears relatively little resemblance to the extent of formal State and federal jurisdiction. Strong national interests (e.g., security and interstate commerce) exist throughout the entire ocean area. Similarly, as discussed in the previous section, strong State-local interests exist well beyond the limit of State waters. In State ocean waters, the State government has jurisdiction and ownership of resources; hence State agencies have been delegated management authority over those resources. This authority, however, must be carried out in manner that acknowledges and protects co-existing national interests in these same waters. Similarly, federal agencies that are delegated authority to manage resources in the EEZ, must, we believe, take account of State and local interests that, in many cases, co-exist with national interests beyond the three-mile limit. There is nothing in the concept of legal jurisdiction over resources in a given area that leads to the non-recognition of valid "outside" interests that also exist in the management of those resources.

It is implicit, therefore, that a set of duties and responsibilities accompanies the benefits of ownership and exploitation of publicly held ocean resources. One important element of the governmental presence in the oceans, therefore, is made up of both the management of the benefits that flow from sovereign rights and the discharge of the duties and responsibilities associated with the exercise of those rights.

In the Exclusive Economic Zone, three different duties fall to federal resource managers:

Duties to the Nation: includes maximizing the financial benefits that flow from control of the resources, while minimizing the impacts from such exploitation to other ocean users, resources and the environment.

Duties to the international community: maintaining navigational and other high seas freedoms for the world community in compliance with international law. Also, a duty exists to prevent pollution in the U.S. EEZ from spilling over to the high seas or into the EEZs of adjacent nations.

Duties to adjacent coastal States: to prevent, reduce or compensate for pollution and other effects shown in Table 2 that affect resources under State ownership or control.

A similar set of duties falls on the coastal State ocean resource manager, including:

Duties on behalf of the State's citizens: to maximize earnings while minimizing environmental impacts.

Duties to the Nation: Prevention of pollution entering the EEZ; protection of endangered species and marine mammals; facilitation of interstate commerce and safe navigation, acting consistent with national security interests.

"There is nothing in the concept of legal jurisdiction over resources in a given area that leads to the non-recognition of valid 'outside' interests that also exist in the management of those resources."

"In the past, the interests of the States and local communities have usually been projected from the shoreland seaward. A more appropriate approach is to start from the location of the activities in the EEZ and project the effects and impacts shoreward."

Duties to the coastal local governments: Prevention of air and water pollution that would affect them, assistance in dealing with planning and socio-economic impacts.

Of course, federal and State resource management agencies operate under the terms of ocean resources management law. However, two additional norms generally guide public decision-makers: agency policy and public duties. But, only a portion of these are ever formally written into law.

The law: a framework of procedures and processes duly adopted by a legislative body guiding decision-making in a given area, not necessarily predetermining every outcome, usually not exhaustive, usually not eliminating all discretion in decision-making.

Agency policy: the objectives that a particular governmental agency wishes to achieve during its tenure, working within the broad limits established by the law. Usually not so comprehensive or all inclusive as to eliminate discretion in dealing with matters not directly in conflict with agency objectives.

Public duties: an inherent part of the execution of public tasks, related to norms of fairness and justice, that flow from considerations of equity. On a par with the law, sometimes spelled out in the law, sometimes not.

Much of the difficulty associated with the operation of the present OCS oil and gas leasing program, for example, centers around the different weights that various interests tend to give to these three norms.

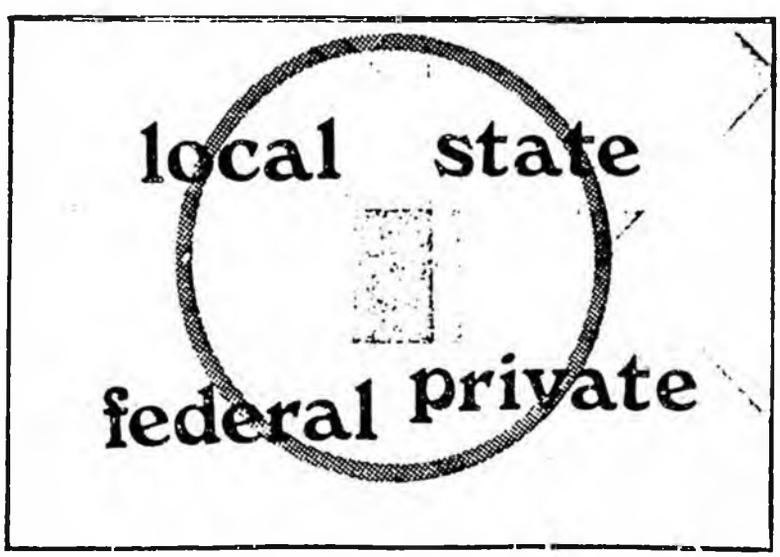
In the past, the interests of the States and local communities have usually been projected from the shoreland seaward, and terminated arbitrarily at the boundary of State ocean waters. A more appropriate approach, however, is to start from the location of the activities in the EEZ and project the effects and impacts shoreward to the State coastal zone and shorelands. This lends a more accurate view of the range and extent of the State interests that need to be protected in State-Federal arrangements governing the EEZ.

Furthermore, the concept of "shore-linked" impacts of ocean development is useful in gauging the roles of the State and federal governments in ocean development. Long-term commitments for the exclusive use of ocean space, and the resultant long-term commitment of the shoreside support facilities, require the concurrent approval of both the federal government and the involved coastal States. The Deepwater Ports Act and the Ocean Thermal Energy Act set a precedent for shared decision-making in the case of ocean developments of this type.

An efficient EEZ management process will also have to address the uncertainty due to the complexity of ocean processes. Given our incomplete understanding of ocean dynamics, accurate predictions of effects of a given ocean activity are usually not possible. Nonetheless, new ocean developments will not be held back until all of the necessary knowledge about ocean processes is known. Improved ways are clearly needed to deal with these uncertainties.

To minimize uncertainty, operationally-linked monitoring programs should be used. Prior to the start-up of a new ocean activity, baseline studies should be performed. Then, agreement should be reached among the potentially affected interests, on levels (thresholds) of key parameters that, if reached, would trigger pre-agreed changes in the operation of the activity (or full shut-down, in the worst case situation). Too often there is no mandated connection between monitoring and the operation of the program. Operational rules and procedures are established at the onset of a new ocean program, based on the best information available at that time. The tendency is for these procedures to remain fixed throughout the operation despite the fact that a properly designed monitoring effort could be providing highly relevant and useful information to the ongoing program.

In some ocean situations, we know too little to design an operationally-linked monitoring program. If the gaps in our understanding are of that magnitude, an even more conservative approach should be adopted (e.g., a scaled-down project) until the needed basic research has been completed and a proper monitoring program can be designed. Too little effort has been put into this aspect of the ocean management problem. The result has been unprofitable debates over the likely consequences of a proposed ocean development activity and final decisions that are often largely political rather than technical in nature. Even our current understanding of ocean science should permit us to do better than that.



"Whether the words are 'consultation,' 'joint participation,' or 'concurrent authority,' the message is the same — the process of managing America's EEZ resources must involve all who are affected."

"Our goal is to establish an effective, joint participatory process with the federal government that recognizes the legitimate interests of the coastal States and their citizens, and best serves the interests of the Nation."

SECTION VII
CONCLUSION

Whether the words are "consultation," "joint participation," or "concurrent authority," the message is the same — the process of managing America's EEZ resources must involve all who are affected.

The coastal zone will continue to be "home" for land-based facilities — ports, piers, warehouses, docks, and processing plants — so integral to EEZ activities. As these activities expand and intensify in the future, the need for coastal support facilities will also increase and with it, the growth of associated and necessary local "infrastructure" — roads and related municipal and county services. The construction and operation of these facilities and urban infrastructure will place financial, social and environmental demands on coastal governments and their citizens. Likewise, the environmental impacts offshore from ocean resource development are of direct interest and concern to the citizens of the coastal States. These citizens therefore must be part of the EEZ resource management process.

There is some statutory precedence for involving coastal States in ocean resource management. For example, consultation authority is available to coastal State governors and local governments under the Outer Continental Shelf Lands Act. A joint participation mechanism is available under the Fisheries Conservation and Management Act, where the federal government, coastal States, commercial and recreational fishing interests are all involved. Coastal State concurrent authority is available under the Deepwater Ports Act. But all too often the degree of involvement of coastal State governments in the EEZ resource decision-making process does not match the impacts of the EEZ resource activity on the coastal States.

Our proclamation, asserting the rights and responsibilities pertaining to the protection, conservation and development of resources of the United States Exclusive Economic Zone, and the accompanying policy statement speak to this process and partnership. The coastal States' Proclamation does not, however, call for an extension of State boundaries, or more water or submerged land "ownership." An extension of the State waters boundary to 12 miles, while it may have specific benefits, would not address the larger issue of effectively managing this vast interdependent ecological system.

Rather, our goal is to establish an effective, joint participatory process with the federal government that recognizes the legitimate interests of the coastal States and their citizens, and best serves the interests of the Nation. The elements of this joint participatory process include: an equitable division of EEZ resource development costs and benefits, full recognition of the duty to future generations, the need for ocean research

and environmental protection, and shared decision-making for all ocean activities affecting the interests of the citizens of coastal States. These elements will be our guide as we actively seek to improve the existing piecemeal, and all too often confrontational, approach to EEZ resource management. An effective intergovernmental process must, and can be achieved if this nation is to reap the full benefit of its EEZ resources.

The coastal States have already been active in pursuing this EEZ partnership with the federal government through proposed EEZ hard mineral mining legislation and national oil spill liability and compensation legislation. Other proposals being considered include: completion of comprehensive State Coastal Zone Management programs for the territorial sea, coordination of State ocean management agencies and policies, greater ocean awareness through Coastweeks and other public education programs, examination of an equitable EEZ revenue sharing formula, development of legal agreements between the coastal States and the federal government regarding the exchange of ocean research data and information, strengthening of State concurrence authority over federal ocean activities having direct effects on coastal States, and enactment of legislation establishing a national ocean policy commission.

The coastal States are committed to taking their rightful place as full partners with the federal government in managing the resources of the U.S. EEZ. Together, our nation will move forward to meet the challenges and develop the potential of its ocean heritage.

"An effective intergovernmental process must, and can be achieved if this nation is to reap the full benefit of its EEZ resources."

Footnotes

1. For example, the Coastal Zone Management Act grants States the authority to require federal activities that are in a State's coastal zone, and activities that are federally licensed or permitted that directly affect a State's coastal zone, to be "consistent" to "the maximum extent practicable" with that State's coastal management program. 16 U.S.C.§1456 (c).

   The Outer Continental Shelf Lands Act provides for limited input by a State Governor regarding the size, timing or location of a proposed lease sale. A Governor "may submit recommendations to the Secretary" of the Interior Department, and the Secretary must "communicate to the Governor, in writing, the reasons for his determination to accept or reject" the Governor's recommendations. 43 U.S.C.§1345.

   The Deepwater Ports Act requires the approval of a Governor of an "adjacent coastal State" before the Secretary of Transportation can issue a license for a Deepwater Port. Further, the Secretary is required to condition a Deepwater Port license, upon such notification by the Governor, "so as to make [the license] consistent with" State programs "relating to environmental protection, land and water use, and coastal zone management." 33 U.S.C.§1508.
2. On behalf of the coastal States, Michael Fischer, then Executive Director of the California Coastal Commission, drafted a proposal outlining the parameters of such a study and approached the William H. Donner Foundation of New York City regarding funding. After a period of negotiation, the Donner Foundation provided a grant to the CSO to undertake the EEZ study.
3. The Magnuson Fishery Conservation and Management Act provides that the exclusive management authority of the U.S. "shall not include, nor shall it be construed to extend to" species of tuna. 16 U.S.C.§1813. The Proclamation likewise expressly provides that "highly migratory species of tuna ... are not subject to United States jurisdiction and require international agreements for effective management."
4. Gordon, W.G., and R.E. Gutting, Jr., Winter 1984/85. "The Coastal Fishing Industry and the EEZ," *Oceanus*, Vol. 27, No. 4.
5. Id.
6. Watkins, Joel S., 1984. "Petroleum Exploration and Production in the EEZ," Chapter 4 of *Symposium Proceedings, A National Program for the Assessment and Development of the Mineral Resources of the United States Exclusive Economic Zone.* Sponsored by the Department of the Interior.
7. Curlin, J.W., 1984. "Technology and Oil and Gas Development in the Exclusive Economic Zone," in *Exclusive Economic Zone Papers*, reprinted from *Proceedings of Oceans '84*, Washington, D.C., Sept. 1984.
8. 50 U.S.C. Sec.§98-98h.
9. *See* Ballard, R.D., and J.S. Bischoff, 1984, "Assessment and Scientific Understanding of Hard Mineral Resources in the EEZ," in *Symposium Proceedings, A National Program for the Assessment and Development of the Mineral Resources of the United States Exclusive Economic Zone.* Sponsored by the Department of the Interior.
10. Champ, M.S., and N.A. Ostenso, Winter 1984/85. "Future Uses and Research Needs in the EEZ," *Oceanus*, Vol. 27, No. 4.
11. *See* Sandia National Laboratories, 1984. The Subseabed Disposal Program: 1983 Status Report. Report No. SAND 83-1387, Albuquerque, New Mexico.
12. *See* Booz-Allen, 1980. "Hazardous Waste Generation and Commercial Hazardous Waste Management Capacity: An Assessment." U.S. GPO No. SW894.
13. Presidential Proclamation 2667 of September 8, 1945.
14. Compare Part V, United Nations Convention on the Law of the Sea, with the March 10, 1983 U.S. EEZ Proclamation.
15. Statement by the President on the Executive Economic Zone of the United States (March 10, 1983).
16. 332 U.S. 19 (1947).
17. Id. at 35.
18. Id. at 38-39.
19. 339 U.S. 699.
20. Id. at 705.
21. 339 U.S. 707.
22. Id. at 718.
23. 43 U.S.C.§1301 *et seq.*
24. 43 U.S.C.§1331 *et seq.*
25. 43 U.S.C.§1332 (2)
26. 420 U.S. 515.

27. Note that Florida and Texas have federally recognized boundaries in their Gulf of Mexico waters out to 3 marine leagues, or roughly 10 miles.
28. Id.
29. "A review conducted by NOAA's Office of Ocean and Coastal Resource Management (OCRM) of Federal consistency actions during 1982 indicated that the states reviewed approximately 300 direct Federal activities under Section 307(c) (1) with non-concurrences in about 3 percent of the cases. Approximately 7500 Federally licensed and permitted activities were reviewed under Section 307(c)(3)(A) and the states objected in about 2 percent of the cases. Approximately 500 Federally licensed activities described in detail in OCS plans under Section 307(c)(3)(B) were reviewed by the states with nonconcurrences in about 0.5 percent of the cases. Finally, the states reviewed approximately 600 Federal assistance proposals to state and local governments under Section 307(d) and objected in about 0.5 percent of the cases. These numbers are approximate since precise data was unavailable in a few cases; but they also reflect a tremendous level of success under existing mechanisms.

"the litigation history of the consistency provisions provides further evidence that the Federal consistency system works. NOAA's research indicates that in the twelve years since the passage of the CZMA 23 lawsuits have been brought against Federal agencies on consistency grounds. Of these, 9 of the cases involved OCS leasing, 2 involved fishery management plans, 5 involved activities on Federal enclaves within the coastal zone, and 7 involved activities, including permits located within the coastal zone." CZM Federal Consistency, H.R. Rep. No. 98-52, 98th Cong. 2d Sess., 59, March 27 and June 26, 1984.

APPENDIX A

History of the Coastal States Organization's Exclusive Economic Zone Project

The two year course of the work, commencing in January 1985, can be divided into six segments:

1. **January to May 1985 — Preparation of a draft report for use at the EEZ Symposium**

   The 300-page report included a description of current and projected EEZ activities, a discussion of national and State interests in the EEZ, an analysis of the fundamental problems of ocean resources management, and an assessment of the presently available legal tools for protecting coastal State interests.

2. **June 24 to 26, 1985 — The CSO-Sponsored EEZ Symposium, Orcas Island, Washington.**

   The Symposium involved about 60 participants representing a range of ocean users, levels of government, and academic specialties. The meeting focused on the significance of the EEZ proclamation, resources and uses of the EEZ, current and emerging problems in the management of ocean resources, present tensions between State and federal levels of government, and options for improved management.

3. **July to August 1985 — Formulation of a Set of EEZ Policy Options for the Coastal States**

   Five sets of options were formulated: strengthening the fundamentals of the existing CZM system; strengthening the financial base of State coastal programs; improving the effectiveness of Federal-State working relations; changing the basic ground rules through legislative amendment; and developing an enhanced ocean education, awareness, and planning effort. These were complied in a report prepared for a CSO meeting in Bar Harbor, Maine, in August 1985.

4. **September to December 1985 — Consideration of a Tentative CSO Plan of Action Based on the Policy Options Discussed at the Bar Harbor Meeting.**

   The tentative plan included general recommendations in four areas: strengthening of the existing CZM program; developing an ocean awareness program; legislative action to better define the coastal State role in major EEZ development activities; and seeking support for a legislatively-created national ocean policy commission.

5. **March to August 1986 — Development of a Modified Approach: Emphasis to be on a Proclamation of States' Rights and Responsibilities in the EEZ and an Accompanying Policy Statement.**

   Based on discussions at CSO meetings in Corpus Cristi, Texas (December 1985), Washington, D.C. (January 1986), and Seattle, Washington, (March 1986), a coastal State proclamation and a supporting policy statement were prepared as the more appropriate way of expressing the present policy positions of the coastal States with regard to the EEZ.

6. **September to December 1986 — Completion of a Final Report, Including Final Versions of the Proposed Coastal State Proclamation and the Accompanying EEZ Policy Statement.**

   Preparation of the present report and submission to the annual meeting of the CSO membership in Florida in December 1986.

   Much of the work of the study was accomplished in a series of meetings between the Consultant, the EEZ Steering Committee, and the Executive Committee of CSO. These meetings were held every two to three months during the course of 1985 and 1986.

   The Consultant's final report was submitted to CSO in late October 1986. After consideration by the Steering and Executive Committees, the report was presented to the CSO Governing Board during its annual meeting in December.

7. **December 1986 — April 1987 — Adoption of Final Report.**

   The Proclamation and Policy Statement, as revised, were adopted by the CSO Governing Board at the 10th Annual CSO meeting, with the understanding that the Executive Committee give final approval on the balance of the report at its March 1987 meeting. The CSO Executive Committee approved the full final report, giving direction for its publication by early April 1987.

APPENDIX B

CSO EEZ STEERING COMMITTEE

Arthur J. Rocque, Jr.
Chairman
Connecticut

Richard F. Delaney
Massachusetts

Robert Grogan
Alaska

John Hunter
California

Rod Mack
Washington

Jim Ross
Oregon

Murray Towill
Hawaii

EEZ Steering Committee Staff

R. Gary Magnuson
Director

David C. Slade
Counsel

Catherine B. Nash
Assistant to the Director

HJR

73

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

House L&C:

April 12, 1988

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/28/88 FURTHER REFERRALS:

DATE: 4/12/88

The Labor & Commerce Committee has considered HJR 73

Urging the Federal Home Loan Bank Board to consider extension of assistance to Alaska financial institutions similar to the board's "Southwest Plan."

RECOMMENDS:

[X] replace with CS HJR 73 (L+C) [X] the same title
[ ] a new title

[ ] attached amendment(s)

[ ] do pass
[ ] do not pass
[ ] no recommendation
[X] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact
[X] zero fiscal note
[ ] zero with analysis
[ ] same as previous fiscal note published _____
[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

Mike Kopman

C.S. Bunkelman

SIGNING OTHER RECOMMENDATIONS:

W Hurussace

Dave Donley

Dave Donley

Chairman's signature

5-2038B
Chenoweth
4/12/88

Original sponsor: Rules/House Members of the Joint Committee on Economic Recovery

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 73 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

Urging the Federal Home Loan Bank Board to consider extension of assistance to Alaska financial institutions similar to the board's "Southwest Plan."

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

WHEREAS some areas of the state are experiencing a severe economic crisis, as evidenced by bankruptcies, foreclosures, business failures, and the loss of homes and property values; and

WHEREAS the state's financial system has been severely strained by the extraordinary economic events precipitated by the collapse of world oil prices; and

WHEREAS several banks have closed, to the disadvantage of the families and businesses that banked and borrowed at those banks; and

WHEREAS further erosion of the state's banking system is not in the best interests of the state's businesses, homeowners, and a competitive banking system; and

WHEREAS the economic distress because of the unprecedented economic contraction within the state is not unlike the economic distress that has been experienced by other petroleum-producing states, notably those in the South and Southwest; and

WHEREAS, among other responses to the economic downturn in the South and Southwest, the Federal Home Loan Bank Board, the federal agency that regulates and supervises the federal home loan banks that provide a flexible credit reserve for member savings institutions as a principal financing source for lending institutions, has determined that the region, comprising

the states of Arkansas, Louisiana, Mississippi, New Mexico, and Texas, warrants special assistance due to its economic difficulties; and

WHEREAS the board has fashioned and implemented a "Southwest Plan" that has provided economic and noneconomic assistance to thrift institutions in that region, partially offsetting the effects of the economic slump; and

WHEREAS one of the principal purposes of the "Southwest Plan" is to lower costs for both the Federal Home Loan Bank Board and the lending institutions through an infusion of capital, while preserving adequate services, competition, and basic structure; and

WHEREAS the reforms proposed within the "Southwest Plan" should assist thrift institutions in that region to reduce operating costs while maintaining a competitive environment, and improve public confidence in those institutions during a period of economic difficulty; and

WHEREAS extension of a program similar to the "Southwest Plan" initiatives by the Federal Home Loan Bank Board to Alaska, including infusion of capital from the Federal Home Loan Bank Board to assist Alaska thrift institutions to maintain and improve their loan portfolios, would similarly benefit Alaska institutions and would sustain public confidence in those institutions and the banking system generally;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the Alaska delegation in Congress to request the Federal Home Loan Bank Board to consider extension of assistance to financial institutions in Alaska similar to the "Southwest Plan."

COPIES of this resolution shall be sent to M. Danny Wall, chairman, and Roger F. Martin and Lawrence J. White, members, Federal Home Loan Bank Board; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HJR 73
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Resolution - FHLB Board Southwest Plan
Sponsor: Rules Committee
Requester: _____

Agency Affected: Commerce & Econ. Dev.
BRU: _____
Components: Banking & Securities

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

L.P. Carroll

Prepared by: Lawrence P. Carroll, Acting Director
Division: Banking, Securities & Corporations
Phone: 465-2521
Date: 4/11/88

Approved by Commissioner: J. Anthony Smith
Agency: Department of Commerce & Economic Development
Date: 4/12/88

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

1386D-3/041188a

SB

15

STATE OF ALASKA
THE LEGISLATURE

POUCH V · STATE CAPITOL
JUNEAU, ALASKA 99811
907·465·3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

House Labor and Commerce:

March 15, 1988

(7)

HOUSE COMMITTEE REPORT

Date referred: 3/20/87 FURTHER REFERRALS: Judiciary

DATE: 3/15/88

The Labor & Commerce Committee has considered CSSB 15(Jud)

"An Act relating to trade secrets."

RECOMMENDS:

[ ] replace with _____ [ ] the same title

[ ] attached amendment(s) [ ] a new title

[ ] do pass

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[X] zero fiscal note (NEW FISCAL NOTE ATTACHED)

[ ] zero with analysis

[ ] same as previous fiscal note published _____

[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Wfurnish no rec

WO REC

no rec

Dave Dowley No Rec

Dave Dowley

Chairman's signature

Alaska State Legislature

APR 8 1987

PRESIDENT
907-465-3755

JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

April 6, 1987

MEMORANDUM

TO: Representative Dave Donley, Chairman
House Labor and Commerce Committee

FROM: Senator Jan Faiks
President of the Senate

SUBJECT: Background on Senate Bill 15
An Act relating to trade secrets

Senate Bill 15 has been referred to your committee for consideration. This bill proposes the enactment of the Uniform Trade Secrets Act in Alaska.

The purpose of the act is to provide statutory protection for persons who develop and own trade secrets in Alaska. By protecting trade secrets, the person who develops and owns them obtains a competitive advantage which is different from, but in addition to, protection allowed under the federal patent and copyright laws.

Trade secrets are identified by an element of secrecy. A trade secret is not merely the privacy in which an ordinary commercial business is carried on; rather, it is something known to only one or a few, which is kept from the general public, and not susceptible of general knowledge. The nature of a trade secret is such that so long as it remains a secret it is valuable property to its possessor, who can exploit it commercially to his own advantage.

The classic example of a trade secret is the formula for Coca-Cola. Had the company sought a patent on the formula, it would have been kept a secret from the public for a period of seventeen years. Upon the expiration of the patent, all the

OUT OF SESSION
6060 YUKON DRIVE ANCHORAGE, ALASKA 99516 907-274-6611

world would have access to the formula, thus extinguishing the monopoly that the Coca-Cola Company has had to produce its beverage. Instead, by keeping the formula as a trade secret, the company has had exclusive use of it for almost one hundred years.

A patent is best described as a contract between the inventor and the public, providing a seventeen-year monopoly for disclosure of the idea.

The protection of ideas depends on the nature of the idea. If the product itself can be used to determine the invention, then protection by patent should be used. For example, if the invention contained in a marketed product can be ascertained by taking the product apart, then patent law will provide the inventor with a monopoly of his idea for a period of seventeen years. To properly qualify for patent protection, the material must merit such monopoly.

However, if the idea can be kept a secret even if it is marketed, as in the example of Coca-Cola, then trade secret protection should be sought.

Technical innovation and its development into marketable products can take place only in surroundings that encourage the development of new ideas and protect the right of developers to grow and profit from their work. The protection provided by trade secret legislation is essential to an innovative society.

Given the unusual geographical and climatic conditions in our state, Alaskans have historically been innovative in developing unique means and methods to solve unusual and challenging construction and industry problems. As such, Alaskans should be afforded protection from misappropriation of their efforts, which are of value to the public at large.

Senate Bill 15 proposes the following:

Section 1. AS 45.50 is amended to add the Alaska Uniform Trade Secrets Act (AS 45.50.910 - 45.50.945)

AS 45.50.910 (a). A court may enjoin actual or threatened misappropriation of trade secrets. An injunction will be terminated when the trade secret has ceased to exist, or within a reasonable time thereafter to eliminate commercial advantage that would otherwise be derived from such misappropriation.

AS 45.50.910 (b). The court may issue an injunction which conditions future use of a trade secret upon payment of a reasonable royalty, should it determine that it would be unreasonable to prohibit such future use.

AS 45.50.910 (c). The court may order affirmative acts to protect a trade secret.

AS 45.50.915 (a) The complainant may recover for unjust enrichment and damages for the actual losses caused by the misappropriation.

AS 45.50.915 (b). Exemplary damages in an amount up to twice the actual damages may be awarded for willful and malicious misappropriation.

AS 45.50.920. The court shall preserve the secrecy of an alleged trade secret by reasonable means.

AS 45.50.925. An act for misappropriation must be brought within three years of discovery of the misappropriation.

AS 45.50.930(a). This act displaces conflicting tort, restitutionary, and other state laws which effect civil liability for misappropriation of a trade secret.

AS 45.50.930 (b). This act does not affect contractual or other civil liability or relief that is not based upon misappropriation of a trade secret, or criminal liability which may arise from such misappropriation.

The Committee Substitute prepared by the Senate Judiciary Committee adds additional language to exempt the investigation and prosecution of antitrust and consumer protection cases by the Attorney General, as the Department of Law felt that this legislation might have an adverse effect on its enforcement in these areas.

AS 45.50.935. This act shall be applied and construed to make the laws consistent with respect to trade secret legislation enacted by other states.

AS 45.50.940. Definitions of relevant terms.

AS 45.50.945. This act shall be named the Alaska Uniform Trade Secrets Act.

I would appreciate the committee's consideration of this legislation at its earliest convenience. Should you need any additional information, please let me know.

Thank you.

6 tft

APR 27 1987

LAW OFFICES
JENSEN, HARRIS & ROTH
A PROFESSIONAL CORPORATION
1029 WEST THIRD AVENUE, SUITE 600
ANCHORAGE, ALASKA 99501

KENNETH O. JENSEN
R. EVERETT HARRIS
JEFFREY H. ROTH

SCOTT H. FINLEY
TIMOTHY C. VERRETT
KENNETH W. LEGACKI

TELEPHONE
(907) 277-3533

TELECOPIER
(907) 279-0335

April 24, 1987

Representative Dave Donley
Chairman, Labor & Commerce Committee
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley:

Congratulations on your assuming the Chairmanship of the House Labor & Commerce Committee. Your legal training and experience will undoubtedly prove to be of great benefit in fashioning legislation to guide the state in these troubled economic times.

In connection with the Cowper administration's efforts to create fertile soil for the planting and growth of new and fruitful private industry, I write to urge your support of Senate Bill 15, the Uniform Trade Secrets Act, which has passed the Senate unanimously and is now in your committee for consideration.

As you may know from your own law practice or experience, trade secret protection is not a substitute for patent protection under the federal patent laws. It is primarily aimed not so much as protection of a particular device or invention, but from wrongful appropriation of any information which is unique in some way and provides an economic advantage because it is not generally known.

Trade secret information can include a device or invention (whether eventually patentable or not); an improvement on a device; a process of manufacturing or a method of manufacturing; customer lists; computer software; knowledge of particular economic information (such as feasibility and marketability and/or demand for a particular products or services); engineering data; recipes; etc.

Usually trade secret disputes arise where a competitor to an individual possessing such information engages in industrial espionage of some kind or type, either through contact with a competitor's employers or by other means, or, very often, through an employee who either learns of or simply appropriates one's employers trade secret information and

utilizes it for the benefit of him or herself, or seeks to market it to a competitor.

It is only fair that the possessor of trade secret information be protected, with at least a statute which defines generally the nature of a trade secret and what constitutes misappropriation. S.B. 15 is such a statute. It is only fair that individuals who might be tempted to take and utilize information of another be apprised by statute as to the standards of conduct to which they will be held by law. It is also only fair that people who receive trade secret information (even though themselves not culpable), be apprised by law of the risks of receiving and benefiting from such information under circumstances where the information has been misappropriated.

The leading authority on trade secret law in this country is Roger M. Milgrim, author of Milgrim on Trade Secrets, published by Matthew Bender & Co. We have contacted Mr. Milgrim, a member of the New York Bar, about the possible enactment of a uniform trade secrets act in Alaska and he has commented that there are three principal reasons why the act should be passed in Alaska.

First, Mr. Milgrim believes that passage of the act would be helpful in attracting industry, particularly high-tech industry, which is acutely conscious of the value of and the need for protection of trade secret information. Second, Mr. Milgrim suggests that by enactment of the act, the state would have not merely the benefit of the act itself, but the case law which exists from other jurisdictions directly interpreting the terms of the act. Finally, Mr. Milgrim comments that enactment of the act would put Alaska in the vanguard of progressive states which are recognizing the needs for trade secret legislation in light of modern emerging industrial needs.

There are also several general salucory benefits to be gained from passage of the Uniform Trade Secrets Act. First, legislative definition of the standards of business and personal conduct which are the subject of the act will avoid having those definitions made by the Supreme Court of Alaska on a case by case basis. Secondly, the objectives of the Uniform Trade Secrets Act are totally consistent with the announced policies of the Cowper administration to plant, nurture and tend imaginative, inventive private enterprise in Alaska. Finally, the Uniform Trade Secrets Act will not cost the state treasury one dime. In fact, because it will define the parties' rights in this field, it may very well discourage litigation.

At present, there is no statutory or case law in Alaska with regard to trade secrets. That void necessarily means that in a given case the parties must craft from the common law the basic principals of appropriate relief in each and every case. Passage of the act should mitigate the necessity for litigation and in the event of litigation reduce the costs of deciding what law is applicable.

Should you or any other member of the committee desire further information on the nature and history of the Uniform Trade Secrets Act, please do not hesitate to call or write with your questions and concerns.

Thank you for your consideration.

Very truly yours,

JENSEN, HARRIS & ROTH

Scott A. Sterling
Rule 44, Legal Intern

SAS:bmg

Official Business

COMMITTEE:
HOUSE LABOR & COMMERCE

DATE: March 15, 1988

SIGN-IN

Subject of meeting:

A presentation on the Alliance Bank and the proposed Hallwood Stabilization Trust.
HJR 64 "Relating to Alaska's participation in the bottomfish fisheries in the exclusive economic zone."
SB 15 "An Act relating to trade secrets."
HB 482 "Appropriation loan to the Alaska Power Authority."
HB 483 "An Act relating to loans from the Railbelt energy fund; and providing for an effective date."
SB 322 "An Act relating to workers' compensation and ~~providing for an effective date.~~"

PLEASE PRINT **NAME** & TITLE	**REPRESENTING**	**ADDRESS** & ZIP	**PHONE**	DO YOU WANT TO TESTIFY?	SUBJECT: BILL #
Steve Rehnberg	Labor-Management Ad Hoc Task Force	8230 Pioneer Dr Anch AK 99504	H 337-4698 W	✓	work Comp
Erika Mahaney	Injured Worker	PO Box 671495 Chugiak	H W 338 4506	✓	WC
			H W		
			H W		
			H W		
			H W		
			H W		
			H W		
			H W		
			H W		
			H W		

Official Business

COMMITTEE:
HOUSE LABOR & COMMERCE

DATE: March 15, 1988

SIGN-IN

Subject of meeting:

A presentation on the Alliance Bank and the proposed Hallwood Stabilization Trust.
HJR 64 "Relating to Alaska's participation in the bottomfish fisheries in the exclusive economic zone."
SB 15 "An Act relating to trade secrets."
HB 482 "Appropriation loan to the Alaska Power Authority."
HB 483 "An Act relating to loans from the Railbelt energy fund; and providing for an effective date."
SB 322 "An Act relating to workers' compensation and providing for an effective date."

PLEASE PRINT **NAME** & TITLE	**REPRESENTING**	**ADDRESS** & ZIP	**PHONE**	**DO YOU WANT TO TESTIFY?** YES / NO	SUBJECT: BILL #
City Manager Nancy Gross	City of Unalaska	POBox 89 Unalaska 99685	H W 581-1251	HJR64	
			H W		
TONY GUMBINER	CHAIRMAN OF THE BOARD THE HALLWOOD GROUP	767 Third Avenue NY NY 10017	H W		
JIM CAIRNS	CHAIRMAN OF THE BOARD ALLIANCE BANK	MINNESOTA/Benson Blvd Anc AK	H W		
GARY DAILY	CITY of UNALASKA	Box 89 Unalaska AK 99685	H 581-1682 W 581 1250	HJR64	HJR64
Barbara Shienberg	State Div. of Governmental Coordin.	PO Box AEW 99811	H W		
C.S. Christensen	Sen Faiks	Capitol Bldg Rm 107	H W 3755	IF NEEDED	SB 15
			H W		
			H W		
			H W		

No. 121

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

SENATE
BILL VERSION: CSSB 15(Jud)
PUBLISH DATE: 3/13/87

REQUEST:

Revision Date:

Title: "An Act relating to trade secrets."

Sponsor: Senator Faiks
Requestor: Senate Labor and Commerce

Agency Affected: Department of Law
BRU: Legal Services, Consumer Protection
Components: Antitrust, Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS:

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director — Phone: 465-3672
Division: Administrative Services — Date: Jan. 27, 1987

Approved by Commissioner: Ronald W. Lorensen, Acting Attorney General — Date: Jan. 27, 1987
Agency: Department of Law

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

No 121

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB15 Jud

This legislation could have an adverse impact on the Department of Law's enforcement of both the Restraint of Trade Act (AS 45.50.562) and the Consumer Protection Act (AS 45.50.471). Under both of these statues, the attorney general routinely subpoenas information which could be classified as "trade secret" under SB15. Consequently, prospective defendants could use SB15 to block or delay our investigations.

The cost of investigations and prosecution of antitrust and consumer protection cases could go up as a result. Because it is difficult to quantify increased cost, any estimate on our part would be speculative at best. More importantly, enactment of the bill in its present form could seriously delay the state's ongoing antitrust activities. It is therefore recommended that the bill be amended by adding a clause exempting investigations and prosecutions by the attorney general.

No.41

JAN 28 '87 14:27 ACA 2ND JUD DIST FAX276-6342

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: SENATE CS SB 15 Jud
Publish Date: 2/12/87

Revision Date:
Title: An Act Relating to Trade Secrets
Sponsor: Faiks & Kertula
Requestor: Senate Labor & Commerce

Agency Affected: Alaska Court System
BRU: Trial Courts
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Personal Services	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Contractual	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Equipment	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
REVENUE	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS:

No fiscal impact.

Prepared by: Robert G. Fisher, Fiscal Officer
Division: Alaska Court System
Phone: 264-8215
Date: 1-27-87

Approved by: Stephanie J. Cole, Deputy Director
Agency: Alaska Court System
Date: 1-27-87

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management & Budget
- Impacted Agency(ies)
- Senate Secretary

Alaska State Legislature

PRESIDENT
907-465-3755

JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

January 30, 1987

MEMORANDUM

TO: Senator Tim Kelly, Chairman
Senate Labor and Commerce Committee

FROM: Senator Jan Faiks
President of the Senate

SUBJECT: Background on Senate Bill 15
An Act relating to trade secrets

Senate Bill 15 has been referred to your committee for consideration. This bill proposes the enactment of the Uniform Trade Secrets Act in Alaska.

The purpose of the act is to provide statutory protection for persons who develop and own trade secrets in Alaska. By protecting trade secrets, the person who develops and owns them obtains a competitive advantage which is different from, but in addition to, protection allowed under the federal patent and copyright laws.

Trade secrets are identified by an element of secrecy. A trade secret is not merely the privacy in which an ordinary commercial business is carried on; rather, it is something known to only one or a few, which is kept from the general public, and not susceptible of general knowledge. The nature of a trade secret is such that so long as it remains a secret it is valuable property to its possessor, who can exploit it commercially to his own advantage.

The classic example of a trade secret is the formula for Coca-Cola. Had the company sought a patent on the formula, it would have been kept a secret from the public for a period of

OUT OF SESSION
4760 YUKON DRIVE ANCHORAGE, ALASKA 99518

seventeen years. Upon the expiration of the patent, all the world would have access to the formula, thus extinguishing the monopoly that the Coca-Cola Company has had to produce its beverage. Instead, by keeping the formula as a trade secret, the company has had exclusive use of it for almost one hundred years.

A patent is best described as a contract between the inventor and the public, providing a seventeen-year monopoly for disclosure of the idea.

The protection of ideas depends on the nature of the idea. If the product itself can be used to determine the invention, then protection by patent should be used. For example, if the invention contained in a marketed product can be ascertained by taking the product apart, then patent law will provide the inventor with a monopoly of his idea for a period of seventeen years. To properly qualify for patent protection, the material must merit such monopoly.

However, if the idea can be kept a secret even if it is marketed, as in the example of Coca-Cola, then trade secret protection should be sought.

Technical innovation and its development into marketable products can take place only in surroundings that encourage the development of new ideas and protect the right of developers to grow and profit from their work. The protection provided by trade secret legislation is essential to an innovative society.

Given the unusual geographical and climatic conditions in our state, Alaskans have historically been innovative in developing unique means and methods to solve unusual and challenging construction and industry problems. As such, Alaskans should be afforded protection from misappropriation of their efforts, which are of value to the public at large.

Senate Bill 15 proposes the following:

Section 1. AS 45.50 is amended to add the Alaska Uniform Trade Secrets Act (AS 45.50.910 - 45.50.945)

AS 45.50.910 (a). A court may enjoin actual or threatened misappropriation of trade secrets. An injunction shall be terminated when the trade secret has ceased to exist, but within a reasonable time thereafter to eliminate commercial advantage that would otherwise be derived from such misappropriation.

AS 45.50.910 (b). The court may issue an injunction which conditions future use of a trade secret upon payment of a reasonable royalty, should it determine that it would be unreasonable to prohibit such future use.

AS 45.50.910 (c). The court may order affirmative acts to protect a trade secret.

AS 45.50.915 (a) The complainant may recover for unjust enrichment and damages for the actual losses caused by the misappropriation.

AS 45.50.915 (b). Exemplary damages in an amount up to twice the actual damages may be awarded for willful and malicious misappropriation.

AS 45.50.920. The court shall preserve the secrecy of an alleged trade secret by reasonable means.

AS 45.50.925. An act for misappropriation must be brought within three years of discovery of the misappropriation.

AS 45.50.930(a). This act displaces conflicting tort, restitutionary, and other state laws which effect civil liability for misappropriation of a trade secret.

AS 45.50.930 (b). This act does not affect contractual or other civil liability or relief that is not based upon misappropriation of a trade secret, or criminal liability which may arise from such misappropriation.

AS 45.50.935. This act shall be applied and construed to make the laws consistent with respect to trade secret legislation enacted by other states.

AS 45.50.940. Definitions of relevant terms.

AS 45.50.945. This act shall be named the Alaska Uniform Trade Secrets Act.

IF You have questions, this guy is an expert on SB21

DENNIS R. BOWDEN

INVESTIGATOR III

LICENSING ENFORCEMENT UNIT

STATE OF ALASKA

DEPARTMENT OF LABOR

LABOR STANDARDS & SAFETY DIVISION

675 SEVENTH AVENUE, STATION J

FAIRBANKS, ALASKA 99701

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319 U.S. 312

ADAMS et al. v. UNITED STATES et al.

No. 889.

Argued May 10, 1943.

Decided May 24, 1943.

1. United States ⇐3

The act providing for acquisition by United States of land, and of jurisdiction exclusive or partial, thereover, was aimed at giving broad discretion to the various federal agencies in order that they might obtain only the necessary jurisdiction. 40 U.S.C.A. § 255.

2. United States ⇐3

The act providing for acquisition by United States of land, and of jurisdiction exclusive or partial, thereover, created a definite method of acceptance of jurisdiction so that all persons could know whether the government had obtained no jurisdiction at all or partial jurisdiction or exclusive jurisdiction. 40 U.S.C.A. § 255.

3. Statutes ⇐219

Where the Army and the Department of Agriculture had co-operated in developing the act providing for acquisition by United States of land and of jurisdiction exclusive or partial thereover, their views on meaning of the act were entitled to great weight. 40 U.S.C.A. § 255.

4. United States ⇐3

Under act providing for acquisition by United States of lands and of "jurisdiction, exclusive or partial," thereover by filing of notice with Governor, notice is required in order to give United States any jurisdiction, whether exclusive, partial or concurrent over such land. 40 U.S.C.A. § 255.

See Words and Phrases, Permanent Edition, for all other definitions of "Jurisdiction, Exclusive or Partial".

5. Criminal law ⇐97(4)

Where federal government had not given notice of acceptance of jurisdiction over land acquired by it in Louisiana, and used as military camp at time rape was allegedly committed at such camp by soldiers, the federal district court was without jurisdiction of prosecution for alleged crime though Louisiana statute had authorized United States to take jurisdiction. Cr. Code §§ 272, 278, 18 U.S.C.A. §§ 451, 457; 40 U.S.C.A. § 255; Act La. No. 12 of 1892, § 2, as amended by Act No. 31 of 1942, § 1.

On Certificate from the United States Circuit Court of Appeals for the Fifth Circuit.

Richard Philip Adams, John Walter Brodenave, and Lawrence Mitchell were convicted of rape of a civilian woman at Camp Claiborne, La., a government military camp, and they appealed to the Circuit Court of Appeals for the Fifth Circuit, which certified two questions of law for answer by the Supreme Court pursuant to Jud.Code § 239, 28 U.S.C.A. § 346.

Questions answered.

Mr. Thurgood Marshall, of New York City, for Adams et al.

Mr. Robert L. Stern, of Washington, D. C., for the United States et al.

Mr. Justice BLACK delivered the opinion of the Court.

The Circuit Court of Appeals for the Fifth Circuit has certified to us two questions of law pursuant to § 239 of the Judicial Code, 28 U.S.C.A. § 346. The certificate shows that the three defendants were soldiers and were convicted under 18 U.S.C. §§ 451, 457, 18 U.S.C.A. §§ 451, 457, in the federal District Court for the Western District of Louisiana, for the rape of a civilian woman. The alleged offense occurred within the confines of Camp Claiborne, Louisiana, a government military camp, on land to which the government had acquired title at the time of the crime. The ultimate question is

313

whether the camp was, at the time of the crime, within the federal criminal jurisdiction.

The Act of October 9, 1940, 40 U.S.C. § 255, 40 U.S.C.A. § 255, passed prior to the acquisition of the land on which Camp Claiborne is located, provides that United States agencies and authorities may accept exclusive or partial jurisdiction over lands acquired by the United States by filing a notice with the Governor of the state on which the land is located or by taking other similar appropriate action. The Act pro-

vides further: "Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted." The government had not given notice of acceptance of jurisdiction at the time of the alleged offense.[1]

The questions certified are as follows:

"1. Is the effect of the Act of Oct. 9, 1940, above quoted, to provide that, as to lands within a State thereafter acquired by the United States, no jurisdiction exists in the United States to enforce the criminal laws embraced in United States Code, Title 18, Chapter 11, and especially Section 457 relating to rape, by virtue of Section 451, Third, as amended June 11, 1940, unless and until a consent to accept jurisdiction over such lands is filed in behalf of the United States as provided in said Act?

"2. Had the District Court of the Western District of Louisiana jurisdiction, on the facts above set out, to try and sentence the appellants for the offense of rape committed within the bounds of Camp Claiborne on May 10, 1942?"

Since the government had not given the notice required by the 1940 Act, it clearly did not have either "exclusive or partial" jurisdiction over the camp area. The only possible

314

reason suggested as to why the 1940 Act is inapplicable is that it does not require the government to give notice of acceptance of "concurrent jurisdiction." This suggestion rests on the assumption that the term "partial jurisdiction" as used in the Act does not include "concurrent jurisdiction."

[1,2] The legislation followed our decisions in James v. Dravo Contracting Co., 302 U.S. 134, 58 S.Ct. 208, 82 L.Ed. 155, 114 A.L.R. 318; Mason Co. v. Tax Commission, 302 U.S. 186, 58 S.Ct. 233, 82 L.Ed. 187; and Collins v. Yosemite Park Co., 304 U.S. 518, 58 S.Ct. 1009, 82 L.Ed. 1502. These cases arose from controversies concerning the relation of federal and state powers over government property and had pointed the way to practical adjustments. The bill resulted from a cooperative study by government officials, and was aimed at giving broad discretion to the various agencies in order that they might obtain only the necessary jurisdiction.[2] The Act created a definite method of acceptance of jurisdiction so that all persons could know whether the government had obtained "no jurisdiction at all, or partial jurisdiction, or exclusive jurisdiction."[3]

[3,4] Both the Judge Advocate General of the Army[4] and the Solicitor of the Department of Agriculture[5] have construed the 1940 Act as requiring that notice of acceptance be filed if the government is to obtain concurrent jurisdiction. The Department of Justice has abandoned the view of jurisdiction which prompted the institution of this proceeding,

315

and now advises us of its view that concurrent jurisdiction can be acquired only by the formal acceptance prescribed in the act. These agencies co-operated in developing the act, and their views are entitled to great weight in its interpretation. Cf. Bowen v. Johnston, 306 U.S. 19, 29, 30, 59 S.Ct. 442, 83 L.Ed. 455. Besides, we can think of no other rational meaning for the phrase "jurisdiction, exclusive or partial" than that which the administrative construction gives it.

[5] Since the government had not accepted jurisdiction in the manner required by the Act, the federal court had no jurisdiction of this proceeding. In this view it is immaterial that Louisiana statutes au-

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[1] Exclusive jurisdiction over the lands on which the Camp is located was accepted for the federal government by the Secretary of War in a letter to the Governor of Louisiana, effective January 15, 1943.

[2] In the words of a sponsor of the bill, the object of the act was flexibility, so "that the head of the acquiring agency or department of the Government could at any time designate what type of jurisdiction is necessary; that is, either exclusive or partial. In other words it definitely contemplates leaving the question of extent of jurisdiction necessary to the head of the land-acquiring agency." Hearings, House Committee on Buildings and Grounds, H.R. 7293, 76th Cong., 1st Sess., p. 5.

[3] Ibid., 7.

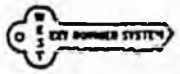
[4] Ops.J.A.G. 650.2.

[5] Opinion No. 4311, Solicitor, Department of Agriculture.

thorized the government to take jurisdiction, since at the critical time the jurisdiction had not been taken.[6]

Our answer to certified question No. 1 is Yes and to question No. 2 is No.

It is so ordered.



319 U.S. 432

TOYOSABURO KOREMATSU v. UNITED STATES.

No. 912.

Argued May 11, 1943.

Decided June 1, 1943.

1. Criminal law ⇐982

A "probation" order is an authorized mode of mild and ambulatory "punishment", the probation being intended as a reforming discipline. 18 U.S.C.A. §§ 724, 725, 727.

See Words and Phrases, Permanent Edition, for all other definitions of "Probation" and "Punishment".

2. Criminal law ⇐982

"Probation", like "parole", is intended to be a means of restoring offenders who are good social risks to society; to afford the unfortunate another opportunity by clemency. 18 U.S.C.A. §§ 724, 725, 727.

See Words and Phrases, Permanent Edition, for all other definitions of "Parole".

3. Criminal law ⇐1023(2)

The judgment is "final" for purpose of appeal when it terminates the litigation on the merits and leaves nothing to be done but to enforce by execution what has been determined.

See Words and Phrases, Permanent Edition, for all other definitions of "Final Judgment".

4. Criminal law ⇐1023(9)

An order of the district court suspending the imposition of sentence, but placing on probation a defendant convicted of remaining in a military zone in violation of statute and orders issued thereunder, was "final" and appealable. 18 U.S.C.A. §§ 97a, 724, 725, 727; Jud.Code § 128, 28 U.S.C.A. § 225; Executive Order Feb. 19, 1942, No. 9066.

See Words and Phrases, Permanent Edition, for all other definitions of "Final Order".

On Certificate from the United States Circuit Court of Appeals for the Ninth Circuit.

Fred Toyosaburo Korematsu was convicted in the District Court of remaining in the City of San Leandro, California, in violation of 18 U.S.C.A. § 97a, and the orders issued thereunder. The District Court placed him on probation and ordered that pronouncing of judgment should be suspended and the defendant appealed to the Circuit Court of Appeals for the Ninth Circuit, which certified to the Supreme Court the question whether the District Court's order was a final decision reviewable on appeal.

Certified question answered in the affirmative.

Mr. A. L. Wirin, of Los Angeles, Cal., for Korematsu.

Mr. John L. Burling, of New York City, for the United States.

Mr. Justice BLACK delivered the opinion of the Court.

Korematsu was found guilty by the District Court for the Northern District of California of remaining in the City of San Leandro, California, in violation of 18 U.S.C. § 97a, 18 U.S.C.A. § 97a, and the orders

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[6] Dart's Louisiana Stat. (Supp.) § 2898, Act La. No. 12 of 1892, § 2, as amended by Act No. 31 of 1942, § 1. In view of the general applicability of the 1940 Act it is unnecessary to consider the effect of the Weeks Forestry Act, 16 U.S.C. § 480, 16 U.S.C.A. § 480, and the Louisiana statute dealing with jurisdiction in national forests, Dart's Louisiana Stat. § 3823, Act La. No. 90 of 1922, § 10, as amended by Act No. 71 of 1924, § 1, even though the land

Chapter 19, SLA 1976, not violative of Alaska Constitution. — Once congressional consent was secured, the Alaska legislature, in agreeing to the disposition of the land and mineral rights by ch. 19, SLA 1976, was not violating any specific provision of the Alaska Constitution. State v. Lewis, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Congress cannot limit supreme court's power to discipline Alaskan lawyers either directly or by continuing in force the provision of a territorial statute claimed to have that effect. In re Mackay, Sup. Ct. Op. No. 279 (File No. ABA 8), 416 P.2d 823 (1966), rehearing denied, 385 U.S. 890 (1966).

[HOUSE OF REPRESENTATIVES MEMBERSHIP]

SEC. 9. The State of Alaska upon its admission into the Union shall be entitled to one Representative until the taking effect of the next reapportionment, and such representative shall be in addition to the membership of the House of Representatives as now prescribed by law; *Provided*, That such temporary increase in the membership shall not operate to either increase or decrease the permanent membership of the House of Representatives as prescribed in the Act of August 8, 1911 (37 Stat. 13) nor shall such temporary increase affect the basis of apportionment established by the Act of November 15, 1941 (55 Stat. 761; 2 U. S. C., sec. 2a), for the Eighty-third Congress and each Congress thereafter.

[NATIONAL DEFENSE WITHDRAWALS; JURISDICTION]

SEC. 10. (a) The President of the United States is hereby authorized to establish, by Executive order or proclamation, one or more special national defense withdrawals within the exterior boundaries of Alaska, which withdrawal or withdrawals may thereafter be terminated in whole or in part by the President.

(b) Special national defense withdrawals established under subsection (a) of this section shall be confined to those portions of Alaska that are situated to the north or west of the following line: Beginning at the point where the Porcupine River crosses the international boundary between Alaska and Canada; thence along a line parallel to, and five miles from, the right bank of the main channel of the Porcupine River to its confluence with the Yukon River; thence alone a line parallel to, and five miles from, the right bank of the main channel of the Yukon River to its most southerly point of intersection with the meridian of longitude 160 degrees west of Greenwich; thence south to the intersection of said meridian with the Kuskokwim River; thence along a line parallel to, and five miles from the right bank of the Kuskokwim River to the mouth of said river; thence along the shoreline of Kuskokwim Bay to its intersection with the meridian of longtitude 162 degrees 30 minutes west of Greenwich; thence south to the intersection of said meridian with the parallel of latitude 57 degrees 30 minutes north; thence east to the intersection of said parallel with the meridian of longitude 156 degrees west of Greenwich; thence south to the intersection of said meridian with the parallel of latitude 50 degrees north.

(c) Effective upon the issuance of such Executive order or proclamation, exclusive jurisdiction over all special national defense withdrawals established under this section is hereby reserved to the United States, which shall have sole legislative, judicial, and executive power within such withdrawals, except as provided hereinafter. The exclusive jurisdiction so established shall extend to all lands within the exterior boundaries of each such withdrawal, and shall remain in effect with respect to any particular tract or parcel of land only so long as such tract or parcel remains within the exterior boundaries of such a withdrawal. The laws of the State of Alaska shall not apply to areas within any special national defense withdrawal established under this section while such areas remain subject to the exclusive jurisdiction hereby authorized: *Provided, however,* That such exclusive jurisdiction shall not prevent the execution of any process, civil or criminal, of the State of Alaska, upon any person found within said withdrawals: *And provided further,* That such exclusive jurisdiction shall not prohibit the State of Alaska from enacting and enforcing all laws necessary to establish voting districts, and the qualification and procedures for voting in all elections.

(d) During the continuance in effect of any special national defense withdrawal established under this section, or until the Congress otherwise provides, such exclusive jurisdiction shall be exercised within each such withdrawal in accordance with the following provisions of law:

(1) All laws enacted by the Congress that are of general application to areas under the exclusive jurisdiction of the United States, including, but without limiting the generality of the foregoing, those provisions of title 18, United States Code, that are applicable within the special maritime and territorial jurisdiction of the United States as defined in section 7 of said title, shall apply to all areas within such withdrawals.

(2) In addition, any areas within the withdrawals that are reserved by Act of Congress or by Executive action for a particular military or civilian use of the United States shall be subject to all laws enacted by the Congress that have application to lands withdrawn for that particular use, and any other areas within the withdrawals shall be subject to all laws enacted by the Congress that are of general application to lands withdrawn for defense purposes of the United States.

(3) To the extent consistent with the laws described in paragraphs (1) and (2) of this subsection and with regulations made or other actions taken under their authority, all laws in force within such withdrawals immediately prior to the creation thereof by Executive order or proclamation shall apply within the withdrawals and, for this purpose, are adopted as laws of the United States: *Provided, however,* That the laws of the State or Territory relating to the organization or powers of municipalities or local political subdivisions, and the laws or ordinances of such municipalities or political subdivisions shall not be adopted as laws of the United States.

(4) All functions vested in the United States commissioners by the laws described in this subsection shall continue to be performed within the withdrawals by such commissioners.

(5) All functions vested in any municipal corporation, school district, or other local political subdivision by the laws described in this subsection shall continue to be performed within the withdrawals by such corporation, district, or other subdivision, and the laws of the state or the laws or ordinances of such municipalities or local political subdivision shall remain in full force and effect notwithstanding any withdrawal made under this section.

(6) All other functions vested in the government of Alaska or in any officer or agency thereof, except judicial functions over which the United States District Court for the District of Alaska is given jurisdiction by this Act or other provisions of law, shall be performed within the withdrawals by such civilian individuals or civilian agencies and in such manner as the President shall from time to time, by Executive order, direct or authorize.

(7) The United States District Court for the District of Alaska shall have original jurisdiction, without regard to the sum or value of any matter in controversy, over all civil actions arising within such withdrawals under the laws made applicable thereto by this subsection, as well as over all offenses committed within the withdrawals.

(e) Nothing contained in subsection (d) of this section shall be construed as limiting the exclusive jurisdiction established in the United States by subsection (c) of this section or the authority of the Congress to implement such exclusive jurisdiction by appropriate legislation, or as denying to persons now or hereafter residing within any portion of the areas described in subsection (b) of this section the right to vote at all elections held within the political subdivisions as prescribed by the State of Alaska where they respectively reside, or as limiting the jurisdiction conferred on the United States District Court for the District of Alaska by any other provision of law, or as continuing in effect laws relating to the Legislature of the Territory of Alaska. Nothing contained in this section shall be construed as limiting any authority otherwise vested in the Congress or the President.

[MOUNT McKINLEY NATIONAL PARK; MILITARY, NAVAL, ETC., LANDS; CIVIL AND CRIMINAL JURISDICTION]

SEC. 11. (a) Nothing in this Act shall affect the establishment, or the right, ownership, and authority of the United States in Mount McKinley National Park, as now or hereafter constituted; but exclusive jurisdiction, in all cases, shall be exercised by the United States for the national park, as now or hereafter constituted; saving, however, to the State of Alaska the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said

State, but outside of said park, and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said park; and saving also to the persons residing now or hereafter in such area the right to vote at all elections held within the respective political subdivisions of their residence in which the park is situated.

(b) Notwithstanding the admission of the State of Alaska into the Union, authority is reserved in the United States, subject to the proviso hereinafter set forth, for the exercise by the Congress of the United States of the power of exclusive legislation, as provided by article I, section 8, clause 17, of the Constitution of the United States, in all cases whatsoever over such tracts or parcels or land as, immediately prior to the admission of said State, are owned by the United States and held for military, naval, Air Force, or Coast Guard purposes, including naval petroleum reserve numbered 4, whether such lands were acquired by cession and transfer to the United States by Russia and set aside by Act of Congress or by Executive order or proclamation of the President or the Governor of Alaska for the use of the United States, or were acquired by the United States by purchase, condemnation, donation, exchange, or otherwise: *Provided*, (i) That the State of Alaska shall always have the right to serve civil or criminal process within the said tracts or parcels of land in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed within the said State but outside of the said tracts or parcels of land; (ii) that the reservation of authority in the United States for the exercise by the Congress of the United States of the power of exclusive legislation over the lands aforesaid shall not operate to prevent such lands from being a part of the State of Alaska, or to prevent the said State from exercising over or upon such lands, concurrently with the United States, any jurisdiction whatsoever which it would have in the absence of such reservation of authority and which is consistent with the laws hereafter enacted by the Congress pursuant to such reservation of authority; and (iii) that such power of exclusive legislation shall rest and remain in the United States only so long as the particular tract or parcel of land involved is owned by the United States and used for military, naval, Air Force, or Coast Guard purposes. The provisions of this subsection shall not apply to lands within such special national defense withdrawal or withdrawals as may be established pursuant to section 10 of this Act until such lands cease to be subject to the exclusive jurisdiction reserved to the United States by that section.

Opinions of attorney general. — Alaska's fish and game laws are applicable as federal law on military reservations, except for the licensing of military personnel who hunt on military reservations. 1964 Op. Att'y Gen., No. 2.

Any hunting or fishing at a military reservation must be in accord with Alaska laws regulating seasons, bag limits, methods of taking, etc., even though military personnel are not required to comply with Alaska's licensing requirements while on the reservation. 1964 Op. Att'y Gen., No. 2.

Alaska and the federal government have concurrent jurisdiction over federal military reservations by the terms of (1) of this subsection. 1964 Op. Att'y Gen., No. 2.

Subsection (b) (ii) grants to Alaska and the federal government concurrent jurisdiction to enforce Alaska's fish and game laws and regulations on federal military reservations. 1964 Op. Att'y Gen., No. 2.

Only on a military reservation under the exclusive legislative jurisdiction of the federal government could enforcement of game and fish laws be in the hands of the federal government exclusively. 1964 Op. Att'y Gen., No. 2.

The state has subject matter jurisdiction over sewage disposal in Petroleum Reserve No. 4. June 28, 1977, Op. Att'y Gen.

Until Congress expressly exercises its latent power of exclusive jurisdiction, the state has concurrent jurisdiction over Petroleum Reserve No. 4. June 28, 1977, Op. Att'y Gen.

[JUDICIAL AND CRIMINAL PROVISIONS]

SEC. 12. Effective upon the admission of Alaska into the Union —

(a) The analysis of chapter 5 of title 28, United States Code, immediately preceding section 81 of such title, is amended by inserting immediately after and underneath item 81 of such analysis, a new item to be designated as item 81A and to read as follows:

"81A. Alaska";

(b) Title 28, United States Code, is amended by inserting immediately after section 81 thereof a new section, to be designated as section 81A, and to read as follows:

"§ 81A. Alaska

"Alaska constitutes one judicial district.

"Court shall be held at Anchorage, Fairbanks, Juneau, and Nome.";

(c) Section 133 of title 28, United States Code, is amended by inserting in the table of districts and judges in such section immediately above the item: "Arizona * * * 2", a new item as follows: "Alaska * * * 1";

(d) The first paragraph of section 373 of title 28, United States Code, as heretofore amended, is futher amended by striking out the words: "the District Court for the Territory of Alaska,": *Provided*, That the amendment made by this subsection shall not affect the rights of any judge who may have retired before it takes effect;

(e) The words "the District Court for the Territory of Alaska," are stricken out wherever they appear in sections 333, 460, 610, 753, 1252, 1291, 1292, and 1346 of title 28, United States Code;

(f) The first paragraph of section 1252 of title 28, United States Code, is further amended by striking out the word "Alaska," from the clause relating to courts of record;

(g) Subsection (2) of section 1294 of title 28, United States Code, is repealed and the later subsections of such section are renumbered accordingly;

(h) Subsection (a) of section 2410 of title 28, United States Code, is amended by striking out the words: "including the District Court for the Territory of Alaska,";

HOUSE LABOR AND COMMERCE COMMITTEE
ALASKA STATE LEGISLATURE
P.O. BOX V, JUNEAU 99811
(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

REVISED

May 11-16, 1987
(* indicates first public hearing)

Capitol Rm. 17 465-3892 T-Th. 1:30 p.m.

Tuesday, May 12, 1987 1:30 - 4:30

*HB 283 "An Act prohibiting certain employers from testing employees for drugs or other substances consumed by employees."

SB 187 "An Act relating to minimum electrical standards; and providing for an effective date."

*HB 304 "An Act relating to group disability insurance." (PENDING REFERRAL)

SB 21 "An Act relating to construction contractors."

SJR 23 "Endorsing the application of the Department of Commerce and Economic Development for a rural development assistance demonstration grant." (PENDING REFERRAL)

Proposed committee legislation.

Thursday, May 14, 1987

SCR 20 "Relating to National Tourism Week."

HB 195 "An Act excluding services provided by certain taxicab operators from the definition of employment for unemployment compensation coverage; and providing for an effective date."

*HB 305 "An Act relating to transportation of pupils; and providing for an effective date." (PENDING REFERRAL)

OVER

House Labcr and Commerce
May 11-16, 1987

SB 36 "An Act relating to Amateur Radio Week."

SB 93 "An Act relating to investments by financial institutions.

SB 113 "An Act relating to the Artic Winter Games; and providing for an effective date."

SB 15 "An Act relating to trade secrets."

SB 39 "An Act relating to the Real Estate Commission; and providing for an effective date."

Bills previously heard on Tuesday, May 12.

Proposed committee legislation.

8,014 ALASKAN 85-86' Contractors
2,963 87' "
#300 Million Fed. Contracts '87

Proposed Amendment to SB 21

AS 08.18.161(7)

As written:

"This chapter does not apply to: (7) construction, alteration or repair, carried on within the boundaries of a site under the legal jurisdiction of the Federal Goveinment;

Proposed:

Delete

Discussion:

Research by the Attorney General's office indicates the assumption of site is under the "legal jurisdiction" of the Federal Government because of identifying features, i.e. a military post or national park is false. For the Federal Government to have "legal juridiction" over a site, an "assumption of jurisdiction" must be filed with the Office of the Governor for each site the Federal Government desires to exercise jurisdiciton. In the absence of an Assumption of Jurisdiction and without a conflicting Federal statute, State law prevails. A limited investigation of the Staff Judge Advocates office at Ft. Wainwright and Eielson AFB and at the Office of the Governor in Juneau disclosed no one familiar with the concept of "an assumption of jurisdiction". This indicates that the process is a rare occurance. The language of bid packets from the Federal Contracting Office require "...will be responsible for and will obtain, prior to building operations..licenses and other permits...in compliance with applicable laws, codes and regulations," "comply with the provisions of all Federal, State and local statutes...," and "...shall comply with provisions of all applicable federal, state and local laws, ordinances, rules, and regulations and particularly those pertaining to the protection of the environment, construction, sanitation, and licenses or permits to do business." (emphasis added) Converstion with contracting officers at the Bases indicate as long as the guidlines "of right to work" laws are not infringed upon, State requirements in the contractor registration area could be enforced on the Bases.

~~AS 08.18.171(2)~~

~~As written:~~

~~"'Contractor' means,..., and 'specialty contractor' is a contractor whose operations do not fall within the definition of 'general contractor'."~~

Proposed:

~~"Submit a bid or work as a contractor "means..., and a 'specialty contractor' is a contractor whose operations are restricted to those specified on their certificate of registration."~~

Bill No. Committee Substitute for Senate Bill 21 (Finance)

Date March 3, 1987

Title "An Act relating to construction contractors."

Contact: Eileen Plate
465-2700

Tom Stuart, Jr.
465-4870

Committee Substitute for Senate Bill 21 seeks to strengthen and clarify the contractor licensing law which is enforced by the Department of Labor and the Department of Commerce.

Specifically, this bill:

1. Extends the prohibition against contracting with unlicensed persons to speciality contractors. Under present law, only a general contractor is prohibited from contracting with an unlicensed person.

2. Provides that a specialty contractor may work only in those areas of contracting for which he/she is specifically licensed, as evidenced by the specialities listed on the certificate of registration.

3. Makes it unlawful for a contractor who is not properly registered to advertise as a contractor.

4. Requires that the Department of Commerce list on the certificate of registration issued to a specialty contractor each specialty area of contracting that is covered by the certificate; and

5. Clarifies the information that is required on a contractor's business documents and advertising.

Each of these amendments to the contractor licensing law has merit. However, of particular significance is the amendment to AS 08.18.011(b) which makes it unlawful for all contractors to contract with unlicensed persons. Presently only a general contractor is subject to remedial action for contracting with an unlicensed person. It will therefore preclude the use of the speciality contractor licensing classification as a means of circumventing the law. The amendment will also render the contracting licensing law more equitable, with both general and specialty contractors sharing the responsibility for assuring that the persons who contract with them are properly licensed.

The Department of Labor supports Committee Substitute for Senate Bill 21. It will not have a fiscal impact on the Department.

APPROVED:

Jim Sampson, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version : CSSB 21 (Fin)
Publish Date :

Revision Date:
Title : " An Act relating to construction contractors."
Sponsor : Coghill
Requestor : House Labor and Commerce

Agency Affected : Labor
BRU : Labor Standards and Saftey

Components : Wage & Hour Administration
Mechanical Inspection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER.						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Richard Stabler for Tom Stuart, Director
Phone : 465-4870
Division : Labor Standards and Saftey
Date : 2/25/87

Approved by Commissioner : Jim Sampson
Date : 2/25/87
Agency : Labor

Distribution (by preparer) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

No. 20

STATE OF ALASKA 1987 LEGISLATIVE SESSION

FISCAL NOTE SENATE

BILL VERSION: SB 21a
PUBLISH DATE: 2/2/87

REQUEST:

Revision Date:
Title: An Act relating to construction contractors.
Sponsor: Senator Coghill
Requestor:

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The bill makes various amendments to strengthen and clarify the construction contractor statutes, AS 08.18, however new funding is not required to implement the bill.

Prepared by: Jennifer Strickler, Management Analyst
Phone: 465-2144
Division: Occupational Licensing
Date: 1-22-87

Approved by Commissioner: J. Anthony Smith
Date: 1/27/87
Agency: Commerce and Economic Development

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HCS CSSB 21(L&C)
PUBLISH DATE: 5/15/87

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to construction contractors.
Sponsor: Senate Labor & Commerce Committee
Requestor: _____

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
_____
Components: _____
_____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The bill makes various amendments to strengthen and clarify the construction contractor statutes, AS 08.18; however, new funding is not required to implement the bill.

RCPB

Prepared by: Jennifer Strickler, Mgnt. Analyst — Phone: 465-2144
Division: Occupational Licensing — Date: January 22, 1988

Approved by Commissioner: J. Anthony Smith — Date: 1-26-88
Agency: Commerce and Economic Development

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

5-0210L
Bannister
5/13/87

Original sponsor: Coghill

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 21 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to construction contractors."

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

* Section 1. AS 08.18.011(b) is amended to read:

(b) A [GENERAL] contractor may not allow a person required to be registered under this chapter to work for the [GENERAL] contractor as a [SPECIALTY] contractor unless the person is registered under this chapter.

* Sec. 2. AS 08.18.011 is amended by adding new subsections to read:

(c) A specialty contractor may not submit a bid or work as a contractor in an area of contracting specialty unless the specialty is listed on the contractor's certificate of registration.

(d) A person may not advertise as a contractor in the state without being registered under this section.

* Sec. 3. AS 08.18.031 is amended by adding a new subsection to read:

(c) The commissioner shall list on the certificate of registration issued to a specialty contractor each area of contracting specialty that is covered by the certificate.

* Sec. 4. AS 08.18.051(b) is amended to read:

(b) All advertising, contracts, correspondence, cards, signs, posters, papers and documents prepared by a contractor for the contracting business shall show the contractor's name, <u>business</u> mailing address <u>or</u> [, AND] address of the contractor's principal place of business <u>in Alaska, and</u> [. ADVERTISING AND CONTRACTS SHALL ALSO INCLUDE THE CONTRACTOR'S] registration number.

* Sec. 5. AS 08.18.161(7) is repealed.

* Sec. 6. This Act does not apply to contracts that are entered into before the effective date of this Act.

Senator John B. (Jack) Coghill

Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 488-0862

TO: HOUSE LABOR AND COMMERCE COMMITTEE
FROM: SENATOR JACK COGHILL
DATE: MAY 12, 1987
RE: SB 21 "An Act relating to construction contractors"

SPONSOR'S STATEMENT

I believe that this bill would do much to benefit local hire in Alaska. It would accomplish this by making it harder for out of state contractors to do business in Alaska. Out of state contractors are much more prone to not only hire out of state residents, they are also more apt to perform substandard work and pay substandard wages.

This bill has the support of both the Department of Labor and various associations of contractors. I urge you to support its passage.

The following is a brief sectional analysis of SB 21.

Section 1 (b) - This is one of the main points of the bill, and basically extends the prohibition against contracting with unlicensed persons to specialty or subcontractors. Under present law only a general contractor is prohibited from contracting with unlicensed persons. Often, illegitimate subcontractors hire non-resident, unlicensed additional subcontractors, who, due to the present law's language, become the responsibility of the general contractor for any bad debts or illegal activities.

Section 2 (c) - This provides that a specialty contractor may work only in those areas of contracting for which he/she is specifically licensed, as evidenced by the specialties listed on the certificate of registration.

(d) - Makes it unlawful for a contractor who is not properly registered to advertise as a contractor.

Section 3 (c) - Requires that the Department of Commerce list on the certificate of registration issued to a specialty contractor each specialty area of contracting that is covered by the certificate.

Section 4 (b) - Clarifies the information that is required on a contractor's business documents and advertising.

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/27/87 FURTHER REFERRALS: Judiciary

DATE: 5/14/87

The Labor & Commerce Committee has considered CSSB 21(Fin)

"An Act relating to construction contractors."

RECOMMENDS:

[ ] replace with HCS CS SB 21(L&C) [ ] the same title

[ ] attached amendment(s) [ ] a new title

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[X] same as previous fiscal note published 2/2/87

[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

Cliff Davidson

Otto Kossina

Dave Donley

SIGNING OTHER RECOMMENDATIONS:

J. Ellis no rec.

W Furnace NO Rec.

Dave Donley

Chairman's Signature

No 01

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

SENATE
BILL VERSION: SB 216
PUBLISH DATE: 2/2/87

REQUEST:

Revision Date:

Title: "An Act relating to construction contractors."

Sponsor: Coghill

Requestor: Senate Labor and Commerce

Agency Affected: Labor

BRU: Labor Standards and Safety

Components: Wage & Hour Administration
Mechanical Inspection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director — Phone: 465-4870
Division: Labor Standards and Safety — Date: 1/27/87

Approved by Commissioner: Jim Sampson — Date: 1/27/87
Agency: Labor

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

April 1,

APR 3 1987

Dear Mike,

I have highlighted the operable portions of the enclosed references. These were the basis of both the AG and DA reasoning that contractor registration could be enforced on the federal enclaves within the state.

They have both since reversed their positions based on the exemption #7 contained in AS 08.18.161. The rational being the exemption made the above references vague and ambiguous and since we are dealing with criminal offences the benefit of the doubt had to go to the defendant.

Deleting exemption #7 would allow statewide enforcement of contractor registration.

As the majority of "new construction" forecast is to be done federally, enforcement of contractor registration would impact on local hire in two ways. First, an established Alaskan contractor would have an inside track on federal projects within the state since it is just as unlawful to bid unregistered as it is to work unregistered. Therefore, speculation bidding by non-resident contractors would be virtually eliminated, givin the cost of registration, bonding, and insurance required by the contractor registration statutes. Alaskan contractors in the main have a local labor force. The more contracts they are awarded, obviously, the more their local labor force will be employed. Secondly, with exemption #7 in the book, any fly-by-night can buy a Alaskan business license, declare himself a contractor that restricted his work to those covered by exemption #7 and proceed to the federal enclaves to go to work. Without the overhead the Alaskan contractor has to include in his bids, the fly-by-night has an unfair edge in the bid competition, and eliminates the resident contractor's opportunities.

In my original correspondence with Senator Coghill,, I recommended we delete exemption #7. However, at that time I felt it was the least compelling change. The current economical forecasts have changed my priorities. If we don't get this thru this year we will be way behind the power curve on enforcement in this area. At the time exemption #7 (1976) was passed, the violation of contractor registration was not a criminal offence. This did not take place until 1985. Once the offence became criminal, exemption #7 should have been eliminated to allow enforcement concurrently as is spelled out in the attached references.

Thank you for taking the time to address this. Anything you can do to force the issue will be greatly appreciated by every one concerned. I hope at the May AGC luncheon I can describe how we were able to get this measure thru at the last minute.

Denny,

DKB

Bill No. Committee Substitute for Senate Bill 21 (Finance)

Date March 3, 1987

Title "An Act relating to construction contractors."

Contact: Eileen Plate
465-2700

Tom Stuart, Jr.
465-4870

5 -1987

Committee Substitute for Senate Bill 21 seeks to strengthen and clarify the contractor licensing law which is enforced by the Department of Labor and the Department of Commerce.

Specifically, this bill:

1. Extends the prohibition against contracting with unlicensed persons to speciality contractors. Under present law, only a general contractor is prohibited from contracting with an unlicensed person.

2. Provides that a specialty contractor may work only in those areas of contracting for which he/she is specifically licensed, as evidenced by the specialities listed on the certificate of registration.

3. Makes it unlawful for a contractor who is not properly registered to advertise as a contractor.

4. Requires that the Department of Commerce list on the certificate of registration issued to a specialty contractor each specialty area of contracting that is covered by the certificate; and

5. Clarifies the information that is required on a contractor's business documents and advertising.

Each of these amendments to the contractor licensing law has merit. However, of particular significance is the amendment to AS 08.18.011(b) which makes it unlawful for all contractors to contract with unlicensed persons. Presently only a general contractor is subject to remedial action for contracting with an unlicensed person. It will therefore preclude the use of the speciality contractor licensing classification as a means of circumventing the law. The amendment will also render the contracting licensing law more equitable, with both general and specialty contractors sharing the responsibility for assuring that the persons who contract with them are properly licensed.

The Department of Labor supports Committee Substitute for Senate Bill 21. It will not have a fiscal impact on the Department.

APPROVED:

Jim Sampson, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : CSSB 21 (Fin)
Publish Date :

REQUEST:

Revision Date:
Title : " An Act relating to construction contractors."
Sponsor : Coghill
Requestor : House Labor and Commerce

Agency Affected : Labor
BRU : Labor Standards and Saftey

Components : Wage & Hour Administration
Mechanical Inspection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by : Tom Stuart, Director
Phone : 465-4870
Division : Labor Standards and Saftey
Date : 2/25/87

Approved by Commissioner : Jim Sampson
Date : 2/25/87
Agency : Labor

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

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FRONTIER CONSTRUCTION INC.

Licensed • Bonded • Insured

WE BUILD ALASKA

UCA UTILITY CONTRACTORS OF ALASKA INC

APR 9 1987

April 7, 1987

Representative Dave Donley
Capitol, Room 13
House of Representatives
P. O. Box V
Juneau, AK 99811

Dear Representative Donley:

I am writing to urge you to support Senate Bill #21 which has passed the Senate and is now in the House.

As a general contractor, we do not feel we should be responsible when a subcontractor who does work for us leaves the State without paying his bills. In addition, the paperwork involved in monitoring their payments is a heavy burden and cost for us.

Senator Jack Coghill has recognized this hardship in introducing this bill and I strongly urge you to support it with an affirmative vote.

Thank you.

Sincerely,

FRONTIER CONSTRUCTION, INC.

Edward J. Neuser
President

EJN:sk

8001 Petersburg Street, Anchorage, Alaska 99507-3130 Telephone (907) 522-1161