

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988
4978 HRES HB 454 - HB 459 8672

350

Summary of 1988 Experiences

Generally, the positive experience from addressing legislative intent has provided the cornerstone for the FY 89 FRED Division budget strategy, which proposes to move operation of four hatcheries to the PNPs and yet keeps the state as owners and managers. The private-sector users are guaranteed a direct voice in cooperative planning and operations of the facility, yet continued state ownership assures that legal requirements for management, regulation, and use of capital construction bond funds are met. With the fishermen taking a more direct financial responsibility for operating hatcheries that are currently producing fish, FRED Division can use available general funds to address critical program inefficiencies, such as underutilized hatcheries and to develop sockeye salmon enhancement, which puts Alaska in a more advantageous economic position.

To comply with legislative intent, FRED Division proposed the use of contracts with regional associations. Without the contracts, the budget required for fish production in FY 89 would be at least \$1.3 million higher than the proposed FY 89 Governor's budget. The Legislature urged the public and private aquaculture sectors to attempt to keep in operation those hatcheries that ultimately would have been closed on July 1, 1987. For those legislators who place priority on hatchery production in their districts, it gave an additional opportunity to support those activities. These efforts provided guidance in exploring the options for short- and long-term relief to the general fund and in defined roles and responsibilities of the participants.

The enhancement funding work group addressed various options that were also discussed at meetings with PNP boards of directors, regional planning teams, and the public. From these discussions emerged three short-term and long-term solutions:

1. Contract operations of some commercial fish production hatcheries to the private sector. The state would retain ownership and management responsibility.
2. Review current use of raw fish tax revenue and make recommendations as to how that tax might be applied differently to relieve general fund support of fishery enhancement.
3. Further explore implementation of an Enhancement Authority on a regional or statewide basis.

As was previously stated, the FY 89 FRED Division budget proposed a short-term strategy developed after evaluation of state-private cooperative ventures, work-group efforts, and socio-economic considerations. Four hatcheries would be contracted to the private sector, allowing use of ongoing general fund appropriations to maximize existing state hatchery potential and

further sockeye salmon production technology that will contribute more to the state's economy. This approach allows the continuation of current salmon production and the increase of future production without increasing capital or operational expenditures of general funds. It provides recognition of the unique roles of the public and private aquaculture sector.

The legislative intent statements of almost nine months ago and the efforts of the enhancement funding work group have set the aquaculture sectors on a clear road. The state should continue to be ultimately responsible for the hatchery salmon enhancement program the people of Alaska mandated through legislation and bond referendums. The public and private sectors have distinct yet shared roles in aquaculture development and maintenance. The raw fish tax allocation should be reviewed as a source of fishery enhancement funding, and the salmon Enhancement Authority may provide a vehicle for future fiscal support of enhancement activities.

MAJOR CONCLUSIONS OF THE LEGISLATIVE INTENT STUDIES

This report has offered an overview of the legislative intent, stated in the FY 88 FRED Division budget, and the results of the intent assignments. Proposed solutions to the main task, which are analysis and implementation of innovative funding techniques, have been included in the "Results" section of this report. The major conclusions of this report follow.

The present and projected fish catches as well as the net benefits and impacts of the statewide fishery enhancement program are very large.

In the commercial fishery, the net benefits, or profits from these projects, accrue primarily to the fishermen who own limited entry permits; however, the impacts of the program ripple through the general state economy, and Alaskans in almost all regions of the state realize increases in personal income in not only the fishing sector, but also the fish processing sector, government sector, and through service, wholesale and retail trade sectors. The impacts in terms of personal income to resident Alaskans are greater than the dollar-for-dollar impacts of typical state expenditures from the general fund, capital projects, and the permanent fund disbursements.

There was a clear consensus among fishermen user groups and in the work group at large that the FRED Division should receive full funding for hatcheries from the general fund as a first priority.

Most work group members acknowledged that this was the most secure way of continuing the economic net benefits of enhancement projects.

A key issue in the funding discussions was whether primary users should pay a greater share of fishery enhancement than now.

Two contrasting opinions were discussed in the working group on this subject.

1. As noted in the result section of this report, fishermen groups were unanimously opposed to tax and license fee mechanisms that might increase their contribution to the state treasury for fishery enhancement. The regional association representatives and fishing leaders have pointed out that existing tax revenues from the fishing industry are already large and approximately offset general fund expenditures for fishery management and enhancement. Fishermen also assert that they are large contributors to the general fund, and there should not be additional fees imposed on them. The fishing leaders explain that any additional costs of fishing may impose financial hardships on a fleet already saddled with many costs.

2. The second view presented to the work group states that the salmon fishery is a common property fishery that belongs in part to all Alaskans. As with the royalty oil taxes, the residents of Alaska have a right to collect rents to the state treasury that are equal to or in excess of the amount required to manage and enhance the fishery or to find other methods of sharing costs of enhancement among the primary beneficiaries.

It is not the intent of the FRED Division or this report to suggest which view is appropriate. The Legislature has to determine the social and economic goals it wishes to achieve with fishery enhancement. The availability of funding for statewide enhancement as well as the net benefits from the state fishery enhancement program could be dramatically effected by legislative action on user financing. The timing is also critical in that a phased reduction of the General Fund with appropriate legislation will avoid a major discontinuity of the economic benefits of hatchery production.

The corner stone of this division's short term and incremental approach to future funding is the FY 89 proposed budget strategy of contracting operations of state hatcheries to the private sector.

The concept of contractual agreements in the FY 89 budget represents a small but significant shift toward a greater user participation in hatchery funding and hatchery decision making. They allow for greater user participation in financing in return for considerable additions in future harvests, net benefits to fishermen, and personal income and employment in Alaska's economy. These benefits derive from reprogramming funds that would otherwise be spent to operate conventional, commercial fish production hatcheries. None of the parties involved in the various meetings listed in Appendix C actively opposed the use of contracting out hatcheries to the regional aquaculture associations as a short-term solution.

The "Results" section of this report details the approach FRED Division will take to develop competitive bids for contracting hatchery operations. The success of this process will depend on legislative approval of the FY 89 budget, bidding/award procedures, the active interest of participating regional associations, and bids with no direct contract costs.

Since the contracts for state hatchery operation are innovative, legal or administrative obstacles may delay or stop the process. The fishing industry and the entire state economy would suffer both short- and long-term losses if the targeted hatcheries were shut down or other FRED programs were put in "mothball" status. Perhaps the Legislature could suggest other solutions to avoid these losses, such as an exemption from the new procurement code or an amendment to the PNP statutes.

Fulfilling the requirements of the FY 87 legislative intent has been a highly interactive and revealing process for all participants. On one hand, the interacting with varied interests in the work group as well as developing the analytical information, has allowed us to examine funding methods open to government. On the other hand, it has shown us that implementation of effective and innovative funding methods must be incremental in nature and will require patience and cooperation of government, user groups, and the Legislature. In the final analysis, it may be possible in FY 89 and, perhaps, FY 90 to promote increased user participation in funding fishery enhancement. Other measures have been taken to reduce FRED Division's dependence on the general fund and generate program receipts. However, in the short term, there remain no other legal and politically acceptable quick fixes that would result in larger scale reductions in FRED's operating budget without significant reductions in enhanced salmon production and considerable dislocation in the general economy.

The FRED Division believes this report should not be the end point for the funding investigation process. The division intends to continue work group effort in designing longer term solutions.

ACKNOWLEDGEMENTS

We would like to acknowledge all of the members of the Enhancement Funding Work Group for assisting in carrying out the legislative intent and completing this report. Special thanks to Brad Pierce, Ken Leon, and Sid Morgan for comments and editorial assistance and Shaleen Harrison for editing and typing the report.

MEMORANDUM

State of Alaska

TO: Tom Krom, Chief of Operations
Division of Fisheries Rehabilitation
Enhancement and Development
Department of Fish and Game

DATE: January 7, 1988

FILE NO:

TELEPHONE NO:

THRU:

SUBJECT: Fish Hatchery Site
Visitation

FROM: Mary B. Klugherz, Marketing Coordinator
Division of Tourism
Department of Commerce &
Economic Development

MK

RECEIVED
JAN 12 1988
F.R.E.D.
ANCHORAGE REGIONAL OFFICE

The purpose of this memo is to outline my preliminary observations and identify issues regarding the development of Crooked Creek Fish Hatchery and Elmendorf Fish Hatchery as revenue generating visitor facilities. These comments are based upon my discussions with you, Tim McDaniel and your staff at both these facilities, and my site visitation the week of December 14.

Overview

The Legislature has put intent language on your division's budget to work with the Division of Tourism to begin developing the potential for generating tourist receipts within the state hatchery program. Since many of the state operated hatcheries already receive many thousands of visitors each year, both resident and nonresident, program receipts generated as the result of a fee charged could represent several thousand dollars. In addition, these hatcheries are not marketing themselves as visitor facilities, yet are still attracting substantial numbers of visitors, particularly those on the highway system. It is within the realm of possibility that visitation of selected sites could increase dramatically with some basic marketing efforts. However, marketing these sites should not occur until basic visitor amenities are provided at these sites. The question then becomes, which sites should be targeted for potential development and what will be the cost for the development. In addition, how does your division collect fees both before and after development.

In our discussions, we reviewed the location and facilities of the state operated hatcheries and agreed to concentrate on those facilities on the

road system with large numbers of current visitors, and potential to attract more visitors. During my recent trip to Anchorage, I was able to visit the Crooked Creek Hatchery and the Elmendorf Hatchery. I will discuss each individually.

Crooked Creek Hatchery

This site, located approximately 12 miles south of Soldotna, receives approximately 50,000 visitors per year. This facility currently has no road signage, visitor parking, restroom facilities, or interpretive displays to speak of, yet still receives this large number of visitors each year, primarily between June and August. Visitors are both resident and nonresident, as many residents bring visiting friends and relatives to see the hatchery. This represents several hundred visitors each day.

The current situation at the hatchery, with this high visitation and no visitor facilities, raises several issues which the state should address. It is understandable that the state sees an opportunity here to generate revenue from the hatchery visitor. In order to charge for a visit, though, the facility should offer the visitor something - whether it is a self-guided tour with interpretive displays, or a tour guided by a knowledgeable individual. In addition, several improvements should be considered for both safety and ease of visitor flow. Among these improvements are a parking lot, restroom facilities and visitor paths.

During our visit, the manager of the Crooked Creek site indicated that several years ago a consultant was hired from Washington State to look at several hatchery sites and make recommendations for development of visitor facilities. The recommendations for Crooked Creek included drawings of a parking lot, pedestrian bridge, visitor information center and interpretive displays. These drawings and recommendations should be located and studied to see if they can be used today. In addition, costs associated with developing such facilities may be included to give an idea of investment capital necessary to pursue this direction. At a minimum, this facility needs a parking lot and restroom facilities, just to handle the current visitor volume.

Then there is the issue of generating revenue. Unless there is a controlled situation, where there is one entrance with an attendant to collect the fees, visitor donations must be relied upon. This could be as simple as a donation box with adequate signage requesting donations and explaining their use (i.e. donations help maintain the facility, etc.). The donation box must be in a secure place, so as not to encourage vandalism and theft. The recommended amount of donations or fees needs to be discussed as well.

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The Crooked Creek Hatchery site has tremendous potential as a visitor facility, but it is in desperate need of visitor facilities. It has the potential to accommodate more people than are currently visiting the site, with some minimum site improvements. It is up to the Department of Fish and Game as to whether the capital investment is worth the revenue generated.

Elmendorf Hatchery

This hatchery, located five minutes from downtown Anchorage, also has tremendous potential for visitor use. The site has no road signage, no interpretive displays, or restroom facilities. It does have a parking lot, however. The large viewing area for the waterfalls to observe the fish jumping is ideal for large groups of visitors. However, for safety, the area needs additional railing and handicapped accessible paths, as well as interpretive displays and perhaps a self-guided tour.

As with the Crooked Creek Hatchery, this site receives thousands of visitors (approximately 30,000), with no marketing efforts. Given its proximity to downtown Anchorage, this site's potential for visitor use is tremendous. Recommendations for visitor facility development were also made by the Washington State consultant regarding this site. These should be located and studied as well.

This site could immediately install a donation box in a secure area to begin to generate program receipts while it is undergoing further development.

Issues

During my site visitations and discussions with the staff, several issues came to mind with regard to the development of state operated fish hatcheries as a visitor attraction. The development of this resource into a visitor attraction has many positive benefits including providing additional visitor attractions, generation of program receipts and providing a means to educate the public (both resident and non-resident) about the state's valuable fisheries resource. Several concerns come to mind, however, which need to be addressed. These are as follows:

1. **Fee collection** - Until the fish hatchery facilities have a controlled situation, collection of a fee from individuals is very difficult. An interim measure is a donation box, located in a safe, secure area. To collect a fee, the facility should offer something to the visitor, such as a self-guided tour and interpretive displays at a minimum. In addition, basic visitor amenities should be provided (i.e. restrooms).

Who do you charge for fees? Visitors only? Visitors and residents? It is my understanding that many residents visit the fish hatcheries regularly. Do you charge them for each visit? Do you risk damaging relationships with local residents who may consider, as taxpayers, that they already support the hatchery? Other state agencies have faced a similar situation - that is, the need to generate revenues and have instituted fees (i.e. Alaska State Museum in Juneau). Lessons can be learned from these agencies by contacting them and discussing the challenges and issues they faced when initiating fees.

How much do you charge? What is the value of the experience? Do you charge adults one fee, children another, senior citizens another?

Requiring fees from tour operators who may feature a fish hatchery on an itinerary is a sensitive issue. While tour operators may understand the need for a fee to be charged, that fee gets passed along to the consumer and eventually increases the cost of the tour. As tour operators get charged more and more fees by state and federal agencies, the cost of tours increases and lends to the image that Alaska is a high-priced destination. In the long run this is not constructive for anyone in the industry. However, tour operators should be kept informed of the possibility that fees for fish hatchery visitation may be implemented. These operators should be encouraged to include the hatchery on itineraries and at the same time a negotiated agreement with regard to fees could be worked out. Ketchikan is a good example of a fee structure that meets everyone's satisfaction. In addition, the planning cycle for tour operators should be acknowledged when discussing fees. Most large operators are finalizing their summer 1989 tariffs (retail tour rates) by February and March of 1988. If operators are not informed until May 1989 that a fee for hatchery visitation for summer 1989 is to be charged, they will not only be upset, but also may drop the hatchery from the itinerary. This doesn't serve anyone's purpose.

2. Capital Investment Needed - It is clear that the two facilities visited need some capital improvements to serve current visitors as well as encourage increased visitation. In addition, due to the large number of visitors at Crooked Creek, without improvements or limitations on visitation, the state may be faced with a liability problem. Improvements can be made in stages, with the initial investment kept to a minimum and

January 7, 1988

subsequent improvements made out of revenue generated. Whether money is available for improvements prior to revenue generation is a question which I can't answer. However, I would encourage creative solutions to this situation, (i.e. local service clubs providing assistance with project development, etc.).

3. Staffing - The current staff at the fish hatchery sites have become very involved in dealing with the visitor. Some enjoy it, some don't. Spending time with visitors may decrease the time the staff should spend on their primary function. The self-guided tour is one solution to this situation. Another is to utilize university students as guides - either tourism students or fisheries students. Train them and pay them out of program receipts. This could not only provide a positive visitor experience, but also valuable job training and experience for Alaska's future tourism and fisheries professionals.

Next Steps

Since most fish hatchery sites were not built with generating visitor traffic in mind, each site poses unique challenges. The following next steps are recommendations to the FRED Division for proceeding with these challenges.

1. Address issues - I've pointed out a few issues which need to be addressed in the context of each site. In addition, you may have identified additional areas of concern.
2. Previous Plan - It is important to find the previous consultants' visitor development plans for the facilities analyzed at that time. These plans may provide many answers to questions regarding improvements and costs.
3. Other States - There are several other states who have built fish hatcheries and incorporated visitor flow into their facilities (Oregon and Washington in particular). A review of their work would be worthwhile.

From these steps, you can formulate plans unique to each site which can be implemented soon. Focus must be kept on the main objective, which is to generate revenue through program receipts. Program receipts can't be generated without some site improvements. Once site improvements are made and a little marketing is done, program receipts should increase, therefore accomplishing the main objective.

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Appendix B.

ENHANCEMENT FUNDING WORK GROUP

Allee, Brian - ADF&G, Juneau.
Amend, Don, - Southern Southeast Regional Aquaculture Association, Ketchikan.
Blake, Bob - United Fishermen of Alaska, Cordova.
Bruce, Geron - United SE Alaska Gillnetters, Juneau.
Burkett, Bob - ADF&G, Juneau.
Cole, Bob - Representative Peter Goll's Office, Juneau.
Daisy, Dave - ADF&G, Anchorage.
Esquiro, Pete - Northern Southeast Regional Aquaculture Association, Sitka.
Good, Gale - Alaska Trollers Association, Juneau.
Graham, Kate - United Fishermen of Alaska, Juneau.
Hartman, Jeff - ADF&G, Juneau.
Heinkel, Harold - ADF&G, Juneau.
Holm, Oliver - Kodiak Regional Aquaculture Association, Kodiak.
Kron, Tom - ADF&G, Juneau.
Madden, Jerry - ADF&G, Juneau.
Massey, David - DCED, Juneau.
Mears, Tom - Cook Inlet Aquaculture Association, Soldotna.
Muse, Ben - CFEC, Juneau.
Pierce, Brad - House Research Agency, Juneau.
Schelle, Kurt - CFEC, Juneau.
Sele, Brad - ADF&G, Juneau.
Sommerville, Ron - Territorial Sportsmen, Juneau.
Suzumoto, Bruce - Prince William Sound Aquaculture Corporation, Cordova.
Troxell, Nick - Kodiak Regional Aquaculture Association, Kodiak.
Wright, Tom - Representative Swackhammer's Office, Soldotna.

Appendix C.

FRED DIVISION MEETINGS WITH CONSTITUENCY GROUPS

The following meetings with the listed parties were held during 1987 by Dr. Brian Allee, FRED Division Director, and/or FRED staff to discuss legislative intent on FRED funding.

- April 10 - Southern Southeast Regional Aquaculture Association (SSRAA) Board of Directors, Ketchikan, Alaska
- May 7 - Kodiak Public Meetings, Kodiak, Alaska
- May 15 - Kodiak Regional Aquaculture Association (KRAA) Board of Directors, Kodiak, Alaska
- May 16 - Cook Inlet Regional Aquaculture Association (CIAA) Board of Directors, Soldotna, Alaska
- June 6 - Prince William Sound Aquaculture Corporation (PWSAC) Board of Directors, Cordova
- August 30 - Interagency Enhancement Funding Meeting, Juneau, Alaska
- September 15/16 - Interagency/Fisherman Organizations Enhancement Funding Meeting, Juneau, Alaska
- October 2 - SSRAA Board of Directors, Ketchikan, Alaska
- October 12 - Northern Southeast Regional Aquaculture Association (NSRAA) Executive Committee, Sitka, Alaska
- October 13 - Prince William Sound Regional Planning Team, Cordova, Alaska
- October 14 - PWSAC Executive Committee, Cordova, Alaska
- October 15 - KRAA Board of Directors, Kodiak, Alaska
- October 15 - Kodiak Regional Planning Team, Kodiak, Alaska
- October 16 - Cook Inlet Regional Planning Team, Soldotna, Alaska
- October 17 - CIAA Board of Directors, Soldotna, Alaska
- October 20 - Northern Southeast Regional Planning Team, Juneau, Alaska
- October 21 - Southeast Gillnetters Federation, Juneau, Alaska

- October 22 - Southern Southeast Regional Planning Team,
Ketchikan, Alaska
- October 23 - United Fishermen of Alaska, Anchorage, Alaska
- October 28 - Southeast Seiners Association, Seattle,
Washington
- October 29 - Southeast Alaska Gillnetters, Seattle,
Washington
- November 13 - NSRAA Board of Directors, Petersburg, Alaska
- December 2 - Enhancement Work Group, Juneau, Alaska
- December 8 - Bristol Bay Regional Planning Team and
Bristol Bay Aquaculture Association, Public
Meeting, Anchorage, Alaska
- December 9 - Public Meeting, Juneau Alaska

MEMORANDUM

State of Alaska

TO: Bev Reaume
 Director
 Division of Administration

DATE: December 11, 1987

FILE NO:

TELEPHONE NO: 465-4160

FROM: Brian J. Allee
 Director
 Division of FRED

SUBJECT: Compliance With
 Legislative Intent

1. IT IS THE INTENT OF THE LEGISLATURE THAT THE FISHERIES REHABILITATION AND ENHANCEMENT DIVISION, USING UP TO \$150,000 IN INTERAGENCY RECEIPTS, WILL WORK WITH THE DEPARTMENT OF CORRECTIONS TO DEVELOP A CORRECTIONAL INDUSTRIES PROGRAM AT DIVISION HATCHERIES. THE DIVISION SHALL ENTER INTO A COOPERATIVE AGREEMENT WITH CORRECTIONAL INDUSTRIES FOR THE USE OF INMATES FOR ON SITE NON-SKILLED LABOR AND FOR THE PROCESSING OF NON-SALEABLE EXCESS FISH FOR ANIMAL FOOD AND INDUSTRIAL PRODUCTS. A REPORT ON THIS PROGRAM SHALL BE SUBMITTED TO THE LEGISLATURE ON THE TENTH DAY OF THE 1988 SESSION.

- o Inmate Work Program: The division entered into the agreement with the Department of Corrections to use minimum security inmates for on-site, non-skilled labor. A total of 12-14 inmates were involved in work at five separate sites.

Corrections Processing of Unsalable, Excess Fish: An agreement to supply food-quality salmon to the Department of Corrections did not materialize since it was primarily based on the harvest of sockeye salmon returning to Tustumena Lake. Unfortunately, the concept of state-sponsored cost recovery met with strong opposition from the Cook Inlet fishing industry. FRED Division did supply Corrections with good quality sockeye and coho salmon broodstock carcasses for experimenting with alternate food products. A total of \$50,000 was transferred from the Department of Corrections to FRED Division to compensate for joint-venture activities.

2. IT IS THE INTENT OF THE LEGISLATURE THAT THE DEPARTMENT, THE GOVERNOR'S OFFICE, THE AQUACULTURE ASSOCIATIONS, THE PUBLIC, AND FISHERMAN'S GROUPS MEET TO DEVELOP INNOVATIVE POLICIES FOR THE GENERATION OF REVENUES TO OFFSET THE DECREASING AVAILABILITY OF GENERAL FUNDS. THE DEPARTMENT SHALL REPORT ITS RECOMMENDATIONS TO THE LEGISLATURE BY THE TENTH DAY OF THE 1988 SESSION.

- o An interagency technical work group has been formed to address directly the issue of decreasing revenues. All parties listed in the intent were invited to participate.

CORRECTION

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

MEMORANDUM

State of Alaska

TO Bev Reaume
Director
Division of Administration

DATE December 13, 1987

FILE NO

TELEPHONE NO 465-4160

FROM Brian J. Allee
Director
Division of FRED

SUBJECT Compliance With
Legislative Intent

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- o An interagency technical work group has been formed to address directly the issue of decreasing revenues. All parties listed in the intent were invited to participate.

The technical work group held two meetings to develop revenue alternatives. These alternatives were reviewed by the expanded group, including aquaculture associations and fishery user group representatives. Presentations were made to user group and aquaculture association board meetings and to regional planning teams. All participants reached consensus on content of an outline for preparing a report. The outline was the topic of two scheduled, advertised, and centrally located public discussions.

3. THE BUDGETED HIDDEN FALLS NET BARRIER CONTRACT REIMBURSEMENT FEES ARE INTENDED FOR USE AT THE HIDDEN FALLS HATCHERY.
 - o Under a cooperative agreement with the department, two southeast Alaska seine boat user group associations harvested \$95,469.90 worth of chum salmon. This amount was dedicated to operating the barrier net.
4. IT IS THE INTENT OF THE LEGISLATURE THAT THE DIVISION WILL WORK WITH THE DEPARTMENT OF COMMERCE, DIVISION OF TOURISM, TO PROMOTE TOURS OF FRED DIVISION HATCHERIES, AND THAT FEES WILL BE CHARGED FOR SUCH TOURS.
 - o Because the budget cycle begins essentially during the peak of the tourist season in Alaska, FRED Division was not able to organize and implement formal tour projects at hatchery facilities in the region during the first half of FY 88. FRED Division staff are currently working with the Division of Tourism to determine which hatcheries can accommodate tourist viewing systems and what fees are reasonable.
5. IT IS THE INTENT OF THE LEGISLATURE THAT THE PROGRAM RECEIPTS REQUIRED OF THE DEPARTMENT SHALL INCLUDE BUT NOT BE LIMITED TO FUNDS DERIVED FROM THE FOLLOWING SOURCES: EGG SALES, HATCHERY TOURS, RENT RECEIPTS AND RAINBOW TROUT FINGERLING SALES. THE DEPARTMENT SHALL WORK TO DEVELOP AND EXPAND THESE REVENUE-PRODUCING ACTIVITIES.
 - o Egg Sales: Eggs were sold from three hatcheries and will have generated \$63,202.75 when all funds have been received.

Hatchery Tours: Tours of two hatcheries will have generated approximately \$37,000 in donations or fees.

Rent Receipts: The FRED hatchery rental program is being operated in-house, and all receipts will be used to offset general funds to support the program.

Trout Fingerlings: All rainbow trout fingerlings are produced at FRED facilities supported by federal funding and cannot be marketed.

Carcass Sales: Carcasses were sold from five hatcheries. Income from carcass sales was approximately \$80,000.

6. IT IS THE INTENT OF THE LEGISLATURE THAT THE DIVISION ENTER INTO AGREEMENTS WITH COOK INLET AQUACULTURE ASSOCIATION, THE PRINCE WILLIAM SOUND AQUACULTURE ASSOCIATION, AND THE KODIAK REGIONAL AQUACULTURE ASSOCIATION TO PROVIDE ASSISTANCE IN THE OPERATION OF TUTKA BAY, CANNERY CREEK, AND KITOI BAY HATCHERIES, RESPECTIVELY, ON A COOPERATIVE BASIS. A REPORT OF THIS EFFORT WILL BE PROVIDED TO THE LEGISLATURE BY THE TENTH DAY OF THE 1988 SESSION.

o Agreements were formalized with the three associations. Cooperative operations occurred at Kitoi and Cannery Creek Hatcheries allowing both to continue operating in spite of General Fund shortfalls, and each being filled to the maximum with eggs for FY 88. The Legislature determined to fund Tutka fully, so Cook Inlet Aquaculture Association did not participate.

7. IT IS THE INTENT OF THE LEGISLATURE THAT THE REVENUE PRODUCING ACTIVITIES ONGOING AT TUTKA, KITOI, AND CANNERY CREEK WILL BE EVALUATED AS MODELS FOR ADDITIONAL REVENUE GENERATING ACTIVITIES WITH THE INTENT OF MAINTAINING THE STATE'S CONTINUING OWNERSHIP, MANAGEMENT AND OPERATION OF F.R.E.D. DIVISION HATCHERIES. A REPORT WILL BE SUBMITTED TO THE LEGISLATURE BY THE TENTH DAY OF THE 1988 SESSION.

o Through experience with Kitoi and Cannery Creek, the division has determined it can enter into long-term contracts with regional aquaculture associations to operate these hatcheries. Also under consideration is contracting-out operation for partial operation of Hidden Falls and Trail Lakes Hatcheries. Ownership would remain with the state, and major goals and objectives of the operations would be arrived at jointly through a management planning process approved by the Commissioner of the Department of Fish and Game. The specific terms of the contracts are still to be negotiated.

8. IT IS THE INTENT OF THE LEGISLATURE THAT THE DIVISION WILL INCREASE ITS ACTIVITIES ASSOCIATED WITH MAINTENANCE OF NATURAL FISH RUNS AND WILL WORK WITH THE SPORTFISH, COMMERCIAL FISH, AND HABITAT DIVISIONS TO IDENTIFY NEEDS AND DEVELOP PROJECTS.

o The fishery division directors have scheduled a series of meetings to jointly review the fishery program of the three divisions and to examine areas where coordination

can be improved and conflict or duplication eliminated. These meetings include presentations on ongoing projects and proposed changes, discussion of issues and differences, and examination of future joint efforts to address fishery unit needs.

Bev, I hope this meets the needs for your coordinated response. If you have questions, contact me or Jerry Madden.

cc: Jerry Madden

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE


P.O. BOX Y, JUNEAU 99811

(907) 465-3892

February 25, 1988

M E M O R A N D U M

To: Representative Sam Cotten, Co-Chair
Representative Adelheid Herrmann, Co-Chair
House Resources Committee

From: Representative Dave Donley, Chair 
House Labor and Commerce Committee

Re: HB 454 - Operation of state hatcheries

On Tuesday, February 23, the House Labor and Commerce passed out a committee substitute for HB 454, relating to the operation of state hatcheries. The measure is now before the House Resources Committee.

HB 454 authorizes the state to contract out the operation of state owned hatcheries to regional non-profit associations. As explained to our Committee, there are currently four hatcheries whose operating costs are not included in the FY 89 budget. Without passage of HB 454 and the opportunity for contracting with private non-profits, we were told that these hatcheries would be closed, resulting in the loss of the facility to the state and loss of jobs currently held by state employees who work for the hatcheries.

The House Labor and Commerce Committee responded to the urgency of the issue by passing out HB 454 so that it could be considered by the Resources Committee in a timely manner. However, we did so with extreme reservations about the question of "privatization" of state facilities and the effect on current state employees.

A representative from the APEA offered an amendment to HB 454 that would have required private non-profits to give a hiring preference to state employees displaced by the transfer of the operation of a state-operated facility to the private sector. Our Committee chose not to adopt the proposed amendment because of significant legal questions over imposition of a hiring preference on private non-profits and the sense of urgency described above.

Therefore, I am submitting this letter at the request of the Committee so that the record is clear that we do not endorse the wholesale "privatization" of state facilities without clear statutory guidelines that include protection for current public employees.

To further complicate matters, the Senate version of HB 454 (SB 410) was before the Senate today, held over from the February 24 calendar because

of debate over the question of requiring a hiring preference for displaced workers. SB 410 passed unanimously without amendment but with a Letter of Intent offered by senators Eliason and Duncan that addresses the issue of displaced workers. We understand that the APEA representative has withdrawn their request for the hiring preference amendment in lieu of the Senate Letter of Intent.

SB 410 should come to the House early next week and will be referred directly to the House Resources Committee. The House Labor and Commerce Committee urges the House Resources Committee to adopt the Senate Letter of Intent with the additional language (as per attached) directing the Department to retain displaced workers for deployment in other hatcheries.

LETTER OF INTENT FOR CS SB 410 (Resources)
Offered by Senator Eliason and Duncan

It is the intent of the Legislature to encourage any entity which enters into a contract with the state to operate a state hatchery, to hire the employees who were laid off from the hatchery as a result of assumption of operation by the contractor. Those state employees not hired by the new operator should be retained by the Department and redeployed to provide better management of our renewable fisheries resources.

FISCAL NOTE

REQUEST:

Revision Date: 2/22/88
Title: An Act relating to the operation of state hatcheries
Sponsor: Eliason
Requestor: Eliason

Agency Affected: Fish and Game
BRU: FRED
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						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
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:  Phone: 465-4160
Division: F.R.E.D. Date: 2/22/88
Approved by Commissioner:  Date: 2/22/88
Agency: Fish and Game

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

REPRESENTATIVE
BEN GRUSSENDORF

P O Box 928
SITKA, ALASKA 99835
(907) 747-8458

RULES COMMITTEE
LEGISLATIVE COUNCIL

DISTRICT 3
ELFIN COVE
PELICAN
PORT ALEXANDER
SITKA
TENAKEE

Alaska State Legislature



WHILE IN JUNEAU
P O Box V
JUNEAU, ALASKA 99811
(907) 485-3824
(907) 485-3720

House of Representatives SPEAKER OF THE HOUSE MEMORANDUM

To: Rep. Dave Donley
Chairman
House Labor & Commerce Committee

From: Rep. Ben Grussendorf
Speaker of the House

Date: February 22, 1988

Subject: Proposed committee substitute for House Bill 454
"An Act relating to the operation of state hatcheries."

Attached to this memorandum is a proposed substitute for House Bill 454, a measure authorizing the Commissioner of Fish & Game to contract for the operation of state-owned hatcheries that the department has determined it can no longer operate. The bill provides that the aquaculture association located in the same region as an affected hatchery will be given a preference right in the operator selection process. Should a regional aquaculture association be unable to meet the criteria established by Fish & Game, the department would then select an operator through the procurement process provided for in AS 36.30.

The proposed substitute for House Bill 454 differs only slightly from the original. The substitute allows the Commissioner of Fish & Game to waive the submission of an application for a permit to operate a hatchery. This lengthy permit process is normally required prior to the opening of a new hatchery, a situation not contemplated by this legislation. The substitute bill also deleted the word "transfer" from section one, and instead uses the phrase "provide for" the operation of the hatchery. This change clarifies the fact that the State of Alaska

retains all ownership rights in the hatchery, as well as the right to manage the resource.

House Bill 454 and Senate Bill 410 are an appropriate response by the Department of Fish & Game to intent language placed in the FY 1988 budget that required the department to develop ways to relieve the burden on the general fund caused by state hatchery operation. If the Legislature enacts either bill in short order, the Department of Fish & Game will have enough time to contract for the operation of some hatcheries prior to the start of Fiscal Year 1989, and more importantly before the Spring salmon runs. With the provisions in the legislation which allow operating cost recovery through the limited harvest of excess salmon, at least some of the new operators will be able to begin operation with no impact on the general fund in FY 89.

I hope the House Labor & Commerce Committee will consider this proposed substitute for adoption and will act on the legislation in an expeditious manner.

5-1885B
Bannister
2/22/88

Original sponsors: Grussendorf and Sund

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 454 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the operation of state hatcher-
7 ies; and providing for an effective date."

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

9 * Section 1. AS 16.10 is amended by adding a new section to article 8
10 to read:

11 Sec. 16.10.480. CONTRACTS FOR THE OPERATION OF STATE HATCHERIES.

12 (a) If the department determines that it is unable to continue op-
13 erating a state-owned hatchery or that it is in the best interest of
14 the state to provide for the operation of the hatchery by another
15 person or by another person in cooperation with the state, the depart-
16 ment may enter into a contract for the operation or cooperative opera-
17 tion of the hatchery.

18 (b) Notwithstanding AS 36.30, when selecting a contractor under
19 (a) of this section, the department shall give a preference to the
20 regional association organized under AS 16.10.380 that is located in
21 the region in which the hatchery is located. If the department deter-
22 mines that the preferred regional association does not meet the crite-
23 ria established by the department for the contract, the department may
24 not award the contract to the preferred regional association and shall
25 procure the contract under AS 36.30 after considering the recommenda-
26 tions of the preferred regional association.

27 (c) A contract entered into under this section must provide that
28 the hatchery will be operated under AS 16.10.400 - 16.10.445 and
29 16.10.460 - 16.10.470 and the regulations adopted under those

1 sections.

2 (d) The department may issue to a contractor who operates a
3 hatchery under this section a permit to harvest adult salmon during
4 the term of the contract in a quantity sufficient to allow the con-
5 tractor to recover all or part of the contractor's costs of operating
6 the hatchery.

7 (e) A contract under this section for the operation of a
8 hatchery may not affect the state's ownership of the hatchery and does
9 not affect the state's responsibility to manage the resource.

10 * Sec. 2. AS 16.10.400(a) is amended to read:

11 (a) The commissioner or a designee may issue a permit, subject
12 to the restrictions imposed by statute or regulation under AS 16.-
13 10.400 - 16.10.470, to a nonprofit corporation organized under
14 AS 10.20, after the permit application has been reviewed by the re-
15 gional planning team, for

16 (1) the construction and operation of a salmon hatchery;

17 (2) the operation of a hatchery under AS 16.10.480.

18 * Sec. 3. AS 16.10.400(b) is amended to read:

19 (b) The application for a permit under this section shall be on
20 a form prescribed by the department and be accompanied by an applica-
21 tion fee of \$100. The commissioner may waive the submission of an
22 application for a permit to operate a hatchery under AS 16.10.480.

23 * Sec. 4. AS 16.10.400(e) is amended to read:

24 (e) A qualified regional association formed under AS 16.10.380,
25 if it has become a nonprofit corporation under AS 10.20, has a prefer-
26 ence right to a permit under (a)(1) of this section if its proposed
27 hatchery is provided for in the comprehensive plan for that region
28 developed under AS 16.10.375 and the fresh water source exceeds one
29 cubic foot per second minimum flow. Another [ANY OTHER] local

1 nonprofit hatchery corporation approved by a qualified regional asso-
2 ciation has an identical preference right.

3 * Sec. 5. AS 16.10.410(c) is repealed and reenacted to read:

4 (c) The hearing shall be conducted by the department. At a
5 hearing for a permit under AS 16.10.400(a)(1), the applicant shall
6 present a plan for the proposed hatchery, describing the capacity of
7 the hatchery and other relevant facts that may be of interest to the
8 department or the public. Interested members of the public shall be
9 afforded an opportunity to be heard.

10 * Sec. 6. AS 16.10.450 is amended to read:

11 Sec. 16.10.450. SALE OF SALMON AND SALMON EGGS BY HATCHERY.

12 (a) Except as otherwise provided in a contract for the operation of a
13 hatchery under AS 16.10.480, a [A] hatchery operator who sells salmon
14 returning from the natural waters of the state, or sells salmon eggs
15 to another hatchery operating under AS 16.10.400 - 16.10.470, after
16 utilizing the funds for reasonable operating costs, including debt
17 retirement, expanding its facilities, salmon rehabilitation projects,
18 fisheries research, or [FOR] costs of operating the qualified regional
19 association for the area in which the hatchery is located, shall
20 expend the remaining funds on other fisheries activities of the qual-
21 ified regional association.

22 (b) Fish returning to hatcheries and sold for human consumption
23 shall be of comparable quality to fish harvested by commercial fisher-
24 ies in the area [,] and shall be sold at prices commensurate with the
25 current market.

26 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).
27
28
29



The five incubation boxes at 31 Mile Creek on the Klehini River have a capacity of 850,000 chum eggs. Egg to fry survival in 1986-87 was 95 per cent.



Photo by Carl Peterson

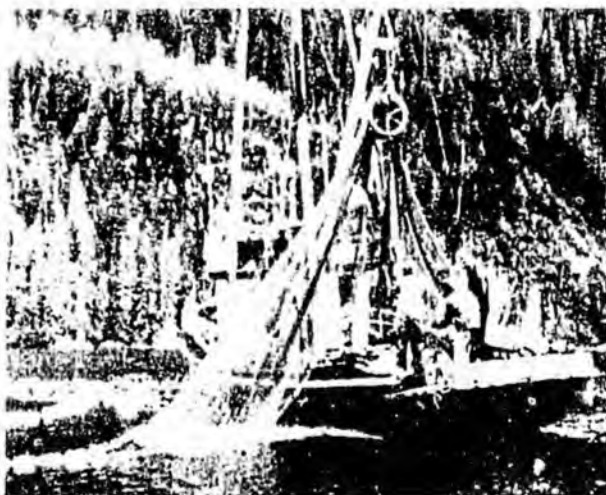


Photo by Hans Wienberg

NSRAA



**Northern
Southeast
Regional
Aquaculture
Association**

103 Monastery Street
Sitka, Alaska 99835
(907) 747-6850

NSRAA Projects

Project	Projected Returns at Capacity
Medvejie Hatchery	25,000 chinook 90,000 chum
Deep Inlet Release Site	720,000 chum
Coho Lake Rearing	50,000 coho
Takatz Bay Release Site*	720,000 chum
Haines Spawning Channel ¹	20,000 chum
Haines Incubation Boxes	8,000 chum
Port Camden Incubation Boxes	100,000 chum
Slippery Creek Stocking*	coho unknown
St. John Creek Stocking*	coho unknown
Redoubt Lake Incubation	sockeye unknown
Earl West Cove*	12,000 chinook 16,000 coho 240,000 chum

*Cooperative Projects

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
UNEAU ALASKA 99511
907 465 3800

MEMORANDUM

February 22, 1988

SUBJECT: Sectional analysis of proposed
CSSB 410 (Resources)
(version 5-1821 L)

TO: Senator Dick Eliason

FROM: Theresa L. Bannister ^{TS}
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Sec. 16.10.480(a) authorizes the Department of Fish and Game under certain circumstances to contract with another person for the person to operate a state-owned hatchery or for the person to operate the hatchery cooperatively with the state.

Sec. 16.10.480(b) requires the department, when selecting a contractor to operate a state-owned hatchery, to give a preference to the regional association organized under AS 16.10.380 that is located in the region of the hatchery. Directs the department not to contract with the preferred regional association if it determines that the association doesn't meet its criteria, and in that case, to procure the contract under AS 36.30 after considering the association's recommendations.

Sec. 16.10.480(c) requires that the operation contract provide that the hatchery will be operated in accordance with certain statutes and regulations.

CORRECTION

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



The five incubation boxes at 31 Mile Creek on the Klehini River have a capacity of 850,000 chum eggs. Egg to fry survival in 1986-87 was 95 per cent.



Photo by Carl Peterson

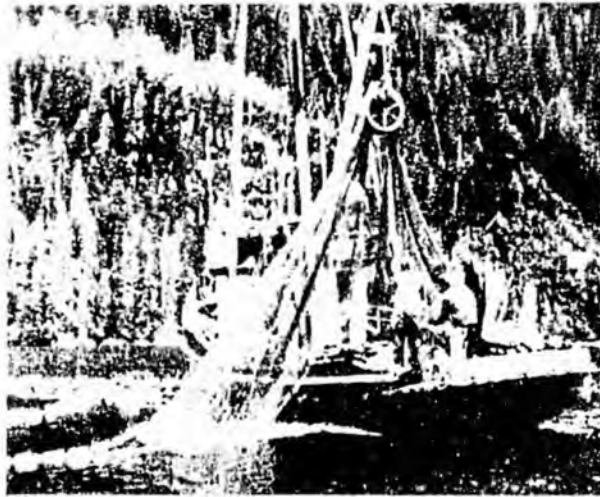
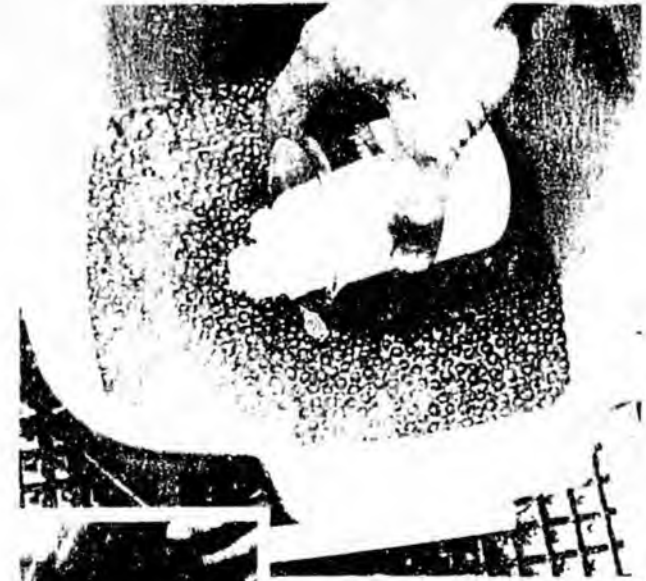


Photo by Hans Wienberg

NSRAA



Northern
Southeast
Regional
Aquaculture
Association

103 Monastery Street
Sitka, Alaska 99835
(907) 747-6850

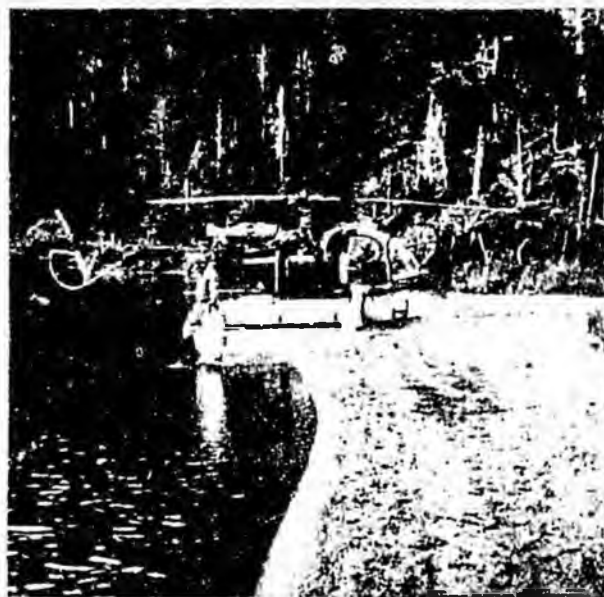
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*Cooperative Projects

Northern Southeast Regional Aquaculture Association (NSRAA) is a private non-profit cooperative established to increase salmon returns to benefit commercial and other users. NSRAA was established through an election of limited entry salmon permit holders where the majority voted in favor of establishing the Association and taxing themselves 3 percent of their gross landings to support the organization. All limited entry permit holders in Southeast Alaska are members of NSRAA. Revenues collected through the enhancement tax are passed from the State to NSRAA.

NSRAA has a mix of enhancement projects designed to aid the gillnet, seine and troll fisheries of Northern Southeast Alaska (Petersburg north to Haines). These projects include the Medveje Hatchery near Sitka, the coho lake rearing program, the Takatz remote release project, the spawning channel near Haines, and remote incubation boxes near Haines and Port Camden. In 1987, NSRAA participated in the release of over 50 million fry and smolts.



The coho lake rearing program stocks coho fry in barred lakes not otherwise accessible to anadromous fish. After rearing in the lakes for a year, the smolts migrate to sea, and in another year return for fishermen to catch.

The enhancement projects undertaken by NSRAA are approved by a Board of Directors composed of commercial fishermen and other salmon user groups. User group representatives are appointed, while commercial fishermen (who compose a majority of the Board) are nominated and elected by limited entry permit holders. Funding for these projects comes from the enhancement tax, hatchery loans and from cost recovery. The State makes loan funds available to private non-profit hatcheries for hatchery construction and operation. Cost recovery involves the sale of a portion of the returning fish that enter a special harvest area near the release site. Cost recovery allows loan payback and the continuation of the project on a self-supporting basis.

All of NSRAA's activities are reviewed and approved by the Alaska Department of Fish & Game (ADF&G). As with all enhancement activities in the state, NSRAA works to find projects that are compatible with the continued health of wild stocks. Many projects are undertaken in cooperation with ADF&G, the U.S. Forest Service, and Southern Southeast Regional Aquaculture Association.

NSRAA's main office is located at 103 Monastery Street in Sitka. If you have questions about any of our activities, please contact us. Our phone number is (907) 747-6850.



Ailen Edsall, a fish culturist for the Northern Southeast Regional Aquaculture Association, feeds chum fry shortly before their release last May from Deep Inlet. Photo by Bruce Bachen.



The Haines Spawning Channel, located on a small tributary of the Chilkat River, near Mile 24 of the Haines Highway, provides ideal spawning habitat for chum salmon. In 1987 the first return to the channel showed 5,000 chums spawning there, compared to 1,500 in previous years.



Medveje Central Incubation Facility near Sitka has a capacity for 825,000 chinook smolts; 1,280,000 coho fry for the lake rearing program and 28,000,000 chum eggs.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 22, 1988

SUBJECT: Sectional analysis of proposed
CSSB 410 (Resources)
(version 5-1821 L)

TO: Senator Dick Eliason

FROM: Theresa L. Bannister ²⁵
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Sec. 16.10.480(a) authorizes the Department of Fish and Game under certain circumstances to contract with another person for the person to operate a state owned hatchery or for the person to operate the hatchery cooperatively with the state.

Sec. 16.10.480(b) requires the department, when selecting a contractor to operate a state-owned hatchery, to give a preference to the regional association organized under AS 16.10.380 that is located in the region of the hatchery. Directs the department not to contract with the preferred regional association if it determines that the association doesn't meet its criteria, and in that case, to procure the contract under AS 36.30 after considering the association's recommendations.

Sec. 16.10.480(c) requires that the operation contract provide that the hatchery will be operated in accordance with certain statutes and regulations.

Senator Dick Eliason
Page 2
February 22, 1988

Sec. 16.10.480(d) allows the department to issue to the contractor during the contract an adult salmon harvest permit that will be sufficient to allow the contractor to recover all or part of its hatchery operating costs.

Sec. 16.10.480(e) prohibits a contract for the operation of state-owned hatchery from affecting the state's ownership of the hatchery. Declares that the contract does not affect the state's responsibility to manage the resource.

Section 2 allows the commissioner of the department to issue a permit subject to certain restrictions for the operation of a hatchery under sec. 16.10.480.

Section 3 allows the commissioner to waive the submission of an application for a permit to operate a hatchery under AS 16.10.480.

Section 4 clarifies that the subsection does not apply to a permit to operate a hatchery under AS 16.10.480.

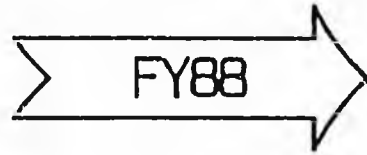
Section 5 clarifies that an applicant for a permit to operate a state-owned hatchery under AS 16.10.480 does not have to provide certain information about the hatchery at the hearing for the permit.

Section 6 exempts the operator of a state-owned hatchery under sec. 16.10.480 from the sale requirements of the subsection to the extent that the operation contract provides differently than the section.

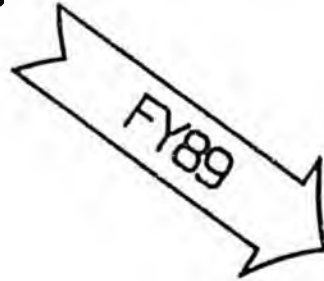
Section 7 provides the bill with an immediate effective date.

TLB:gc
WKG1:104

HIDDEN FALLS
KITOI BAY
CANNERY CREEK
TRAIL LAKES



Operated by State on \$1.4 million
General Funds and \$0.5 million in
other funds. Level of operation
not optimal.



Operated by State at optimal levels
on \$2.4 million in General Funds

State not operating but reprogramming \$1.4 million in General
Funds into areas of deficiency in program.

Snettisham chum salmon increase -\$271.2
StateWide Sockeye -\$351.4

Snettisham Sockeye CIF
Gulkana Expansion

Main Bay Hatchery Sockeye -\$151.5

Russell Creek Hatchery -\$293.7

Crooked Creek Hatchery replace -\$194.1

Interagency funding

Tutka Hatchery Program -\$ 90.0

Fish and Game reconsiders sole-source hatchery contract

By KIRK McALLISTER

1/21/88
The Office of the Ombudsman has sharply criticized the Alaska Department of Fish and Game for trying to award a sole-source contract to an aquaculture group that wants to manage a state-owned fish hatchery on Baranof Island.

Fish and Game wanted to transfer management of the Hidden Falls Hatchery to the Sitka-based Northern Southeast Regional Aquaculture Association as part of an effort to cut the cost of the statewide hatchery program.

But the ombudsman's concern about running afoul of the new state procurement code caused Fish and Game to reconsider the sole-source contract, said Brian Allee, director of the Division of Fisheries Rehabilitation En-

hancement and Development.

The department will now put the management of Hidden Falls out to competitive bid, along with three other hatcheries in Prince William Sound, Kodiak Island and Cook Inlet. Contracts are expected to be final by July 1.

"There's a funding crisis in ocean ranching and turning over the management of these four facilities is a response to that," Allee said. "Our thinking was that the aquaculture associations have the financial wherewithal and expertise to operate these hatcheries."

Hidden Falls, which raises mainly chum salmon for the commercial seine fishery, is widely considered one of the best hatcheries in the state's system, which includes 19 hatcheries, 23 fish ladders, two spawning channels and four laboratories. Alaska's salmon hatchery system is

the largest in North America and one of the most technologically advanced in the world.

In 1987, state hatcheries produced about 6 million salmon, while the private non-profit hatcheries contributed about 19 million fish, according to a FRED division report. But the division has suffered a 30 percent funding cut since 1985.

"The Alaska salmon ocean ranching program has generated \$75 million and 2,000 jobs so it is also an economic development program," Allee said. "It's been a biological and economic success so we're doing what we can to keep it going."

Since 1984, Hidden Falls has produced more than 500,000 chum salmon per year, worth about \$2.5 million to the commercial seine fleet, which harvests most of the

fish. Hidden Falls was built in 1978 and began operating in 1979. The \$3 million initial construction cost was funded by a statewide bond issue.

When the ombudsman reviewed Fish and Game's justifications for asking for a sole-source contract, the legislative watchdog agency didn't buy off on the department's reasoning.

"... It is doubtful that the Northern Southeast Regional Aquaculture Association is the only organization with the expertise and knowledge to operate the Hidden Falls Hatchery," wrote Acting Ombudsman Bruce Aronson in a letter to Fish and Game commissioner Don Collinsworth. "Circumventing the procedures for soliciting a professional services contract by requesting an exempt

Please turn to Page 8

Hatchery...

Continued from Page 1

tion from Alaska Statutes not only leaves your department open to just criticism but also possible successful legal action."

In his letter to Collinsworth, Aronson suggested that the commissioner "... take a long pause before proceeding with negotiations on this contract." Aronson also said the ombudsman may consider at a later date "investigating the significant issues raised by the complainant."

The ombudsman's letter was prompted following a complaint from Dale Young, who is no stranger to the hatchery business, having served as Southeast regional hatchery manager for Fish and Game from 1976-82.

"We're not trying to stir up trouble, we just want the state to follow the rules," said Young, who along with some partners is trying to develop a hatchery-salmon farm at Baranof Warm Springs.

Jim Cochran, who has served as the hatchery manager of Hidden Falls since it first opened, said the facility has four full-time, eight seasonal and two support workers who could lose their jobs if the state transfers management of the hatchery. He said that doesn't seem fair to him since their apparent reward for making Hidden Falls the state's top hatchery is to lose their jobs.

"It may or may not be a good management decision to contract the management of the hatchery, but what concerns me more than anything is that I can't find any justification for putting 14 employees out of work," Cochran said.

Cochran and Young have discussed submitting a bid for managing Hidden Falls, which is now possible since the bids will now be open to anyone.

Meanwhile, the change of heart by Fish and Game has left some confusion with NSRAA, which had been negotiating for months on a contract for managing Hidden Falls.

Pete Esquiro, general manager of the aquaculture association, said NSRAA would continue to pursue the Hidden Falls contract and planned to submit a bid under the new competitive process. Under their management plan, some of the 14 current hatchery employees could keep their jobs, he said.

Esquiro said his group was interested in Hidden Falls because of its value to commercial fishermen, who control the board of the aquaculture association.

"An added benefit to this is that if the state doesn't have to spend general fund money managing Hidden Falls, it can increase chum and sockeye production at Snettisham (hatchery), which would help the gillnet fleet," he said.

THE PRIVATE NONPROFIT HATCHERY PROGRAM

Background

The 1974 Alaska State Legislature authorized the Commissioner of ADF&G to issue permits to PNP corporations for the operation of salmon hatcheries for ocean ranching. The intent of the program was to allow private ownership of salmon hatcheries that would contribute to the state's salmon fisheries. The cost of constructing and operating these hatcheries was to be derived from the sale of a portion of the returning fish.

The PNP Program is administered by ADF&G, FRED Division, in cooperation with the department's fisheries management divisions, to carry out statutory and regulatory responsibilities pertaining to public and private aquaculture in Alaska.

The PNP Program is responsible for:

- strategic salmon production planning;
- administration of the permitting process for PNP salmon hatcheries, scientific/educational aquaculture programs, and private shellfish farms;
- development of annual operations management plans for all public and private salmon hatcheries;
- administration and coordination of the statewide fish transport permit system;
- coordination of technical assistance to PNP hatcheries; and
- coordinating the development of and ADF&G relations with qualified regional aquaculture associations.

Regional Associations

The 1976 Alaska State Legislature authorized creation of regional aquaculture associations by the Commissioner of ADF&G. Regional associations are comprised of representatives of commercial fishermen and other user groups in the region, including sport fishermen, subsistence fishermen, and members of local communities. Seven regional associations have been formed:

1. Southern Southeast Regional Aquaculture Association (SSRAA)
2. Northern Southeast Regional Aquaculture Association (NSRAA)
3. Prince William Sound Aquaculture Corporation (PWSAC)

4. Cook Inlet Aquaculture Association (CIAA)
5. Lower Yukon/Kuskokwim Regional Aquaculture Association (LY/KRAA)*
6. Bristol Bay Regional Aquaculture Association (BBRAA)
7. Kodiak Regional Aquaculture Association (KRAA)

These associations cooperate with the department in developing and maintaining regional salmon production plans and in the implementation of various salmon rehabilitation and enhancement activities.

Strategic Planning

The 1976 law authorized the Commissioner to designate regions of the state for the purpose of enhancing salmon production. This same law also established the formation of regional planning teams (RPT) to develop regional salmon plans. Each RPT consists of six voting members, with three department personnel appointed by the Commissioner and three appointed by the board of directors of the appropriate regional aquaculture association. The duties and responsibilities of the RPTs have been mandated in a formal charter from the Commissioner. The responsibilities of the RPTs in developing regional comprehensive salmon plans, including provisions for public involvement in the planning process, are described in regulations. The Commissioner may also request the involvement of representatives of other federal and state agencies.

The status of planning by region follows:

1. Southern Southeast

The southern Southeast regional plans have been approved, and the team is in the plan-maintenance process.

2. Northern Southeast

The northern Southeast regional plans have been approved, and the team is in the plan-maintenance process.

3. Yakutat

No formal salmon planning activities have occurred in Yakutat since the approval of the regional plan. The plan has been accepted by the USFS as a basis for the development of land management plans applicable to the region.

* Indicates inactive regional association

4. Prince William Sound

The Prince William Sound regional plans have been approved. The team has proceeded into the plan maintenance and updating process.

5. Cook Inlet

The planning team efforts in Cook Inlet are presently directed toward watershed system planning, with a goal of assessing the capacity of specific systems to sustain and maintain significant, naturally occurring salmon stocks. Watershed system planning also includes an identification of opportunities for salmon enhancement techniques designed to strengthen existing runs and create new runs. Provisions for user-group access and harvest preferences are given primary consideration in this planning process.

6. Kodiak

The Kodiak regional plans have been approved and the RPT has proceeded into the plan-maintenance process.

7. Bristol Bay

The Bristol Bay RPT has completed the final draft of the comprehensive salmon plan for Bristol Bay. The plan is unique in that, unlike plans for other salmon production regions in Alaska, it does not concentrate on fisheries enhancement through such strategies as hatcheries; rather, it emphasizes maintenance and restoration of fish habitat and effective management practices.

8. Lower Yukon/Kuskokwim

No formal salmon planning activities are presently occurring in the Lower Yukon/Kuskokwim region.

PNP Hatchery Funding

Since 1977, funding necessary for the implementation of salmon rehabilitation and enhancement activities by PNP corporations has been obtained primarily through the Fisheries Enhancement Revolving Loan Fund administered by the Alaska Department of Commerce and Economic Development (DCED). The loan program has gone through several modifications by the Legislature, the most recent occurring in 1987. The maximal loan amount available for an individual project is \$10 million, with a payback period of up to 30 years at approximately a 9.5% interest rate. Payments and accrual of interest on these loans can be deferred for 6 to 10 years. Loans for projects not endorsed by the regional aquaculture association may also have these terms, except that they are limited to a maximum of \$1 million. Loans are available for the purpose of planning, construction, and operation of salmon rehab-

ilitation and enhancement projects, primarily salmon hatcheries. These loans are secured through collateral that may include returning hatchery fish and assessments of commercial fishermen.

A cooperative agreement between ADF&G and DCED addresses an interagency/review and coordination process regarding PNP hatchery permit applications, the alteration of previously issued PNP hatchery permits, loans related to PNP hatchery operations, or other rehabilitation and enhancement activities.

Table 6 presents cumulative state loans secured by corporations for capital construction and operations, cumulative enhancement funds returned to the regional aquaculture associations, and revenue generated during 1987 by corporate sales of returning hatchery fish. Through July 1987, \$54.5 million has been borrowed by PNP corporations. Another \$20.1 million has been generated through assessments. In 1987, PNP operators sold fish worth more than \$6.5 million to recover the cost of building and operating their hatcheries.

Program Implementation

The application procedures and standards for issuance of PNP salmon hatchery permits are defined by regulations issued in 1985.

These regulations require the completion of a management feasibility analysis by ADF&G prior to the submission of a PNP hatchery application. This analysis must be completed within 30 days after the applicant provides the information requested in 5 AAC 40.130 of the regulations. The application process takes approximately 135 days and is designed to comply with the coastal zone consistency review process established by the Governor's Office of Management and Budget.

The appropriate RPT reviews each application and makes a recommendation to the Commissioner on the application's compatibility with the regional comprehensive plan. The RPT uses review criteria that are defined in the PNP regulations.

PNP permit holders may request alterations of their permits and basic management plans, based on accumulated experience and changing conditions. The RPT may review and make a recommendation to the Commissioner on a permit alteration request. The team's review is conducted in accordance with performance standards identified in the PNP regulations.

Since the inception of the PNP Program, 25 salmon hatchery permits have been issued, and 33 applications have been either denied or withdrawn. Eighteen of the permitted PNP hatcheries are in operation and 15 had returns of adult salmon during 1987. Currently, there are eight preliminary or final applications for PNP hatchery permits under consideration. In addition, 31 scientific/educational permits for PNP research projects or

school district aquaculture programs were issued in 1987 by the Commissioner. These permits are administered by the PNP Program.

Regulations and application forms for shellfish farm permits are in the final stage of development.

Locations of operational PNP programs and remote release sites are illustrated in Figures 7, 8, and 9.

Hatchery Production

In 1987, PNP corporations estimated that 19.1 million adult salmon originally released as juveniles from corporate facilities were either harvested in common-property fisheries or returned to hatchery special harvest areas (Table 7). In Prince William Sound, returns to PNP hatcheries were estimated by the operators to have contributed over 12.6 million pink salmon to the commercial fishery. SSRAA estimates its hatcheries at Neets Bay and Whitman Lake contributed over 280,000 chum, coho, and chinook salmon to the common-property fisheries in Southeast.

Statewide production data since 1975 for combined species, including adult returns and harvests, are presented in Table 8. Preliminary estimates by the PNP corporations indicate that common-property harvests of the 1987 return were over 13.4 million fish. This represents a 200% increase over 1986 in common-property harvests. Cumulative data for chum salmon produced by PNP corporations since 1975 are presented in Table 9. Similar data for sockeye, pink, coho, and chinook salmon are presented in Tables 10, 11, 12, and 13, respectively.

Egg takes and fry or smolt stocking are regulated by ADF&G through fish transport permits (FTP), which are administered by the PNP Program. During 1987, fry and smolt releases increased to 461 million juvenile fish, an increase of over 80 million (or 21%) from 1986 levels (Table 14). 1987 egg takes for PNP hatcheries totaled over 868 million green eggs, up 346 million (or 66%) from 1986 levels. The largest egg take of 1987 was at Esther Lake Hatchery where over 314 million green pink, chum, coho, chinook, and sockeye salmon eggs were taken for incubation (Table 15). This was followed by the Valdez Fisheries Development Association's (VFDA) Solomon Gulch Hatchery with over 167 million pink, chum, and coho salmon eggs, and the PWSAC's Armin F. Koernig Hatchery with over 125 million pink salmon eggs. In southeast Alaska, the SSRAA took nearly 82 million eggs of all five species for its three hatcheries, and DIPAC took nearly 62 million pink, chum, and coho salmon eggs for its three facilities.

Significant progress was made in initiating hatchery-originated sockeye salmon production from PNP hatcheries. Releases of juvenile sockeye salmon totaled 750,000 in 1987. Sockeye salmon egg takes totaled 1.3 million eggs, an increase of 270,000 over 1986 levels. Significant increases in pink, chum, and coho

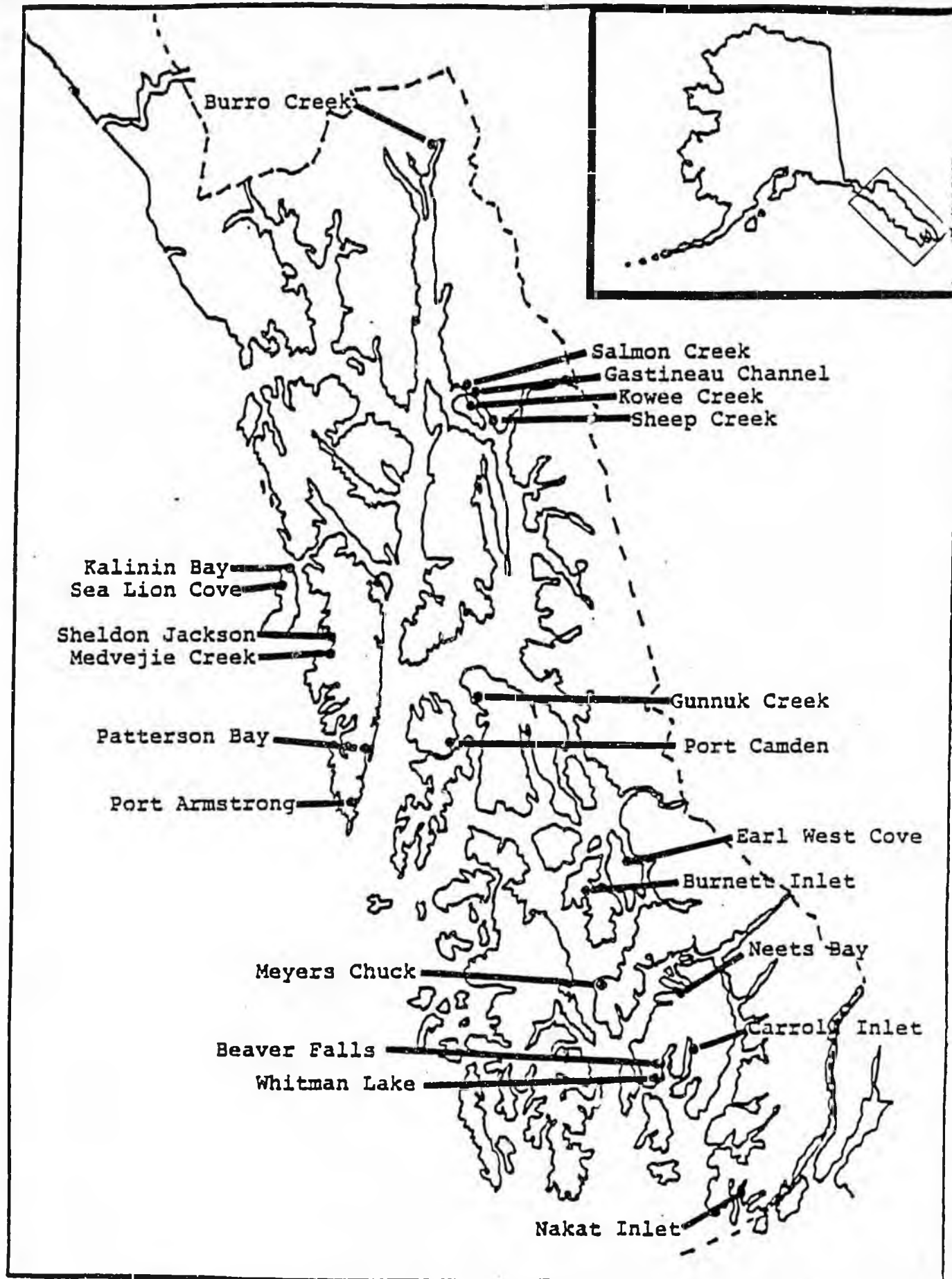


Figure 7. Locations of operational PNP hatcheries and remote release sites in southeast Alaska.

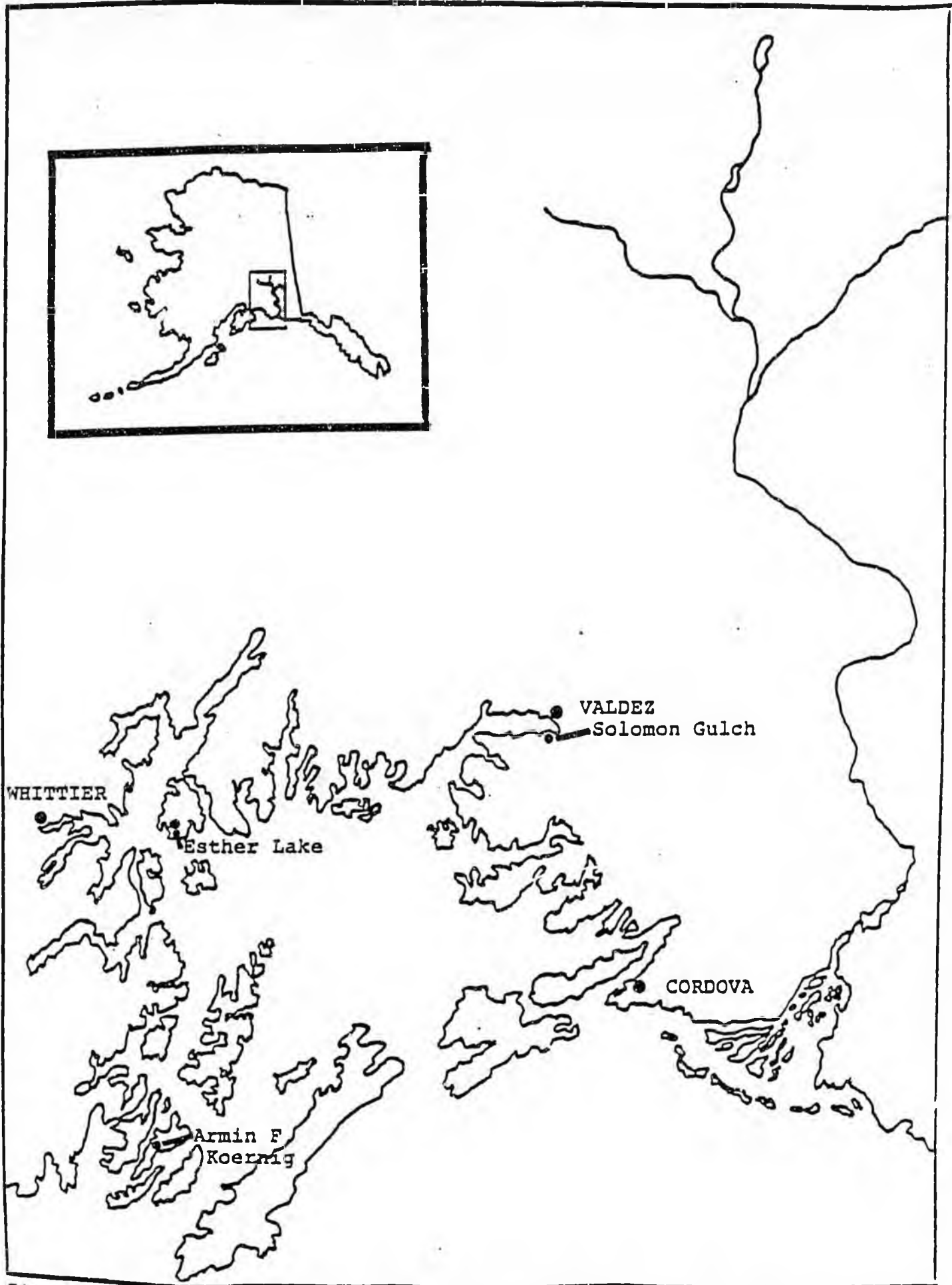


Figure 8. Locations of operational PNP hatcheries and remote release sites in Prince William Sound.

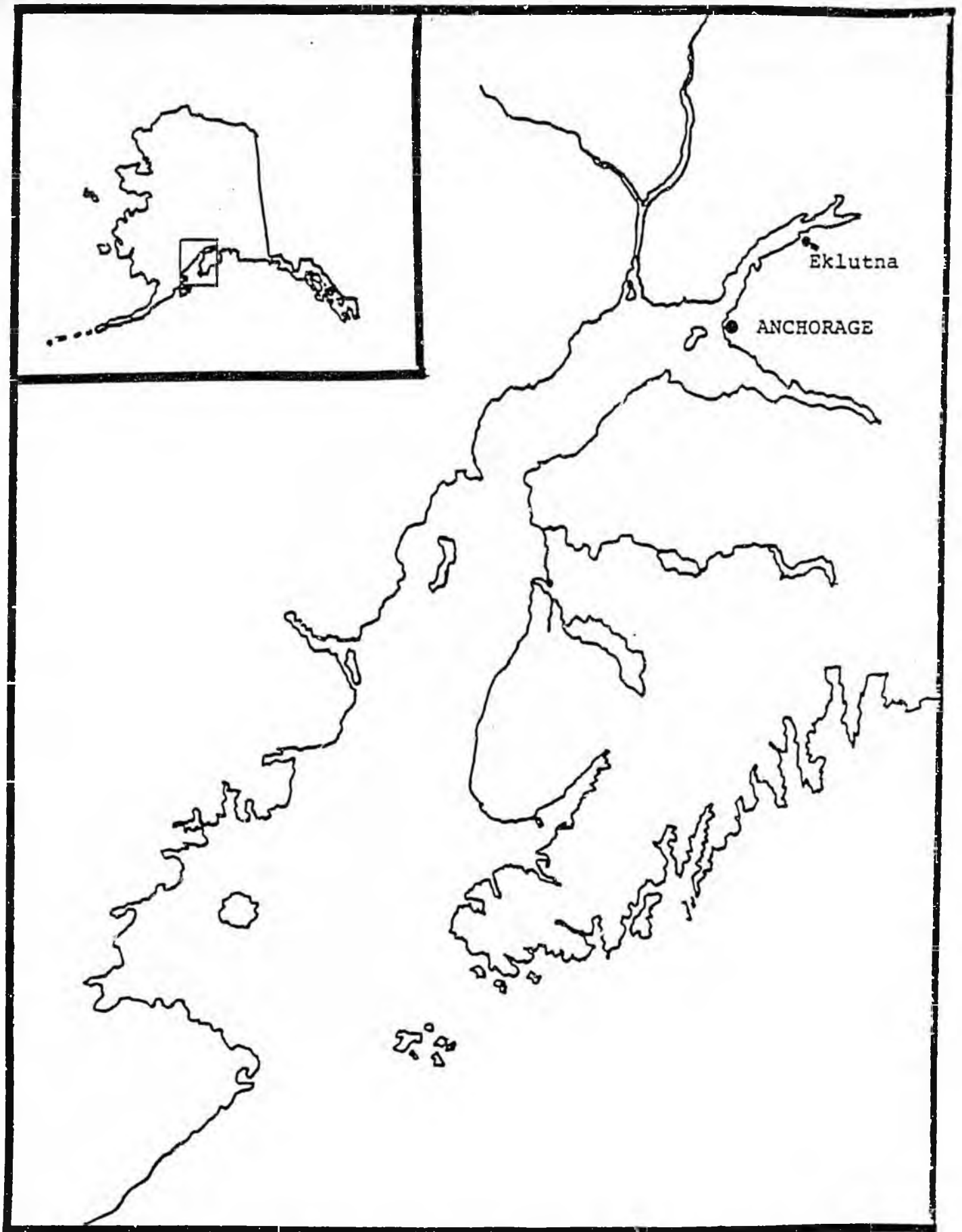


Figure 9. Location of operational PNP hatcheries in Cook Inlet.

salmon production also were made in 1987. Pink salmon egg takes increased by 293 million or 90% over 1986 levels as the Esther Lake, Solomon Gulch, and DIPAC facilities came up to capacity. Chum salmon egg takes increased by 53 million, or 29%, over 1986 levels; coho salmon egg takes increased by nearly 1.0 million, or 11%, over 1986 levels. Chinook salmon egg takes decreased for the first time in five years due to poor egg-take conditions in southeast Alaska.

Many PNP hatcheries are currently in the process of broodstock development and, consequently, have not reached their permitted capacities. Permitted capacities for PNP hatcheries now total over 1.26 billion eggs, an increase of over 129 million from 1986 levels (Table 16). Potential returns from statewide PNP hatchery-originated production at the 1.3 billion-egg level should exceed 20 million adults, assuming FRED standard assumptions of hatchery and marine survival. Exceptional marine survival, similar to that experienced during recent years, could boost adult production considerably over these estimates. Under the existing permits, approximately 52% of hatchery capacity is scheduled for pink salmon, 43% for chum salmon, and 5% for sockeye, coho, and chinook salmon.

For the 1988 season, projected returns to PNP facilities in southeast Alaska are expected to include approximately 43,000 chinook salmon, 240,000 coho salmon, 1,446,000 chum salmon, and 663,000 pink salmon, assuming standard survival conditions. Returns to PNP facilities in Prince William Sound are projected at 13,500,000 pink salmon, 343,000 chum salmon, and 14,500 coho salmon for 1988.

Significant hatchery special harvests are expected at the Armin F. Koernig, Esther Lake, Solomon Gulch, Sheldon Jackson College, Sheep Creek, Neets Bay, Port Armstrong, Burnett Inlet, and Medvejie Creek Hatcheries. Common-property terminal harvests by commercial gear groups are expected at the Neets Bay and Whitman Lake (Nakat Inlet, Carroll Inlet, and Earl West Cove) Hatcheries.

Annual Management Plans

The PNP regulations require that ADF&G prepare, in conjunction with PNP permit holders, an annual management plan (AMP) to guide hatchery operations for the succeeding calendar year.

AMPs will be developed for each state and PNP hatchery facility prior to the 1988 operating season. The AMPs will be reviewed by both the department and the RPTs before final approval by the Commissioner. The AMPs outline expected operational activities at each facility, including wild and hatchery egg takes, proposed fish and egg transports and releases, anticipated adult returns, anticipated impacts on the management of mixed-stock fisheries, and terminal-harvest management strategies. Also included are anticipated facility broodstock requirements and, in the case of PNP facilities, hatchery cost-recovery plans that identify legal

gear types for hatchery harvest and the number of fish required in order to meet capital and operating expenses.

HB

459

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

February 23, 1988

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE (907) 465-3600

The Honorable Mike Davis
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

RE: HB 459 -- liability for
release of hazardous sub-
stances


Dear Representative Davis:

At your request this office has examined HB 459. The bill would amend the provisions of AS 46.03.822 regarding liability for release of hazardous substances. The bill retains the present law, that persons owning or controlling a hazardous substance that is released are strictly liable for the damages that result. But it amplifies and clarifies who is potentially liable, to include owners and operators of the facilities from which a release occurred; persons who originally received the substances at the facility; persons who owned the substance and contracted with another for its disposal; and persons who transported it to a disposal facility which they themselves chose. These provisions parallel those in §107 of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which was intended to require all persons who handle hazardous materials to bear appropriate responsibility for its safe disposition.

HB 459 appears to be an appropriate clarifying and strengthening amendment to current Alaska law.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Douglas K. Mertz
Assistant Attorney General

DKM/dlm

cc: Hon. Dennis Kelso
Commissioner, ADEC

Hon. Mike Davis

February 23, 1988
Page 2

bcc: Arthur H. Peterson
Assistant Attorney General

Bob Evans
Office of the Governor



Alaska Environmental Lobby, Inc.

907-586-2345

HB 459: Strict Liability for Hazardous Substance Release

The problems and risks associated with hazardous wastes in Alaska have only gradually begun to surface in recent years. Serious human health effects, surface and ground water contamination, and air pollution problems have resulted from improper disposal or abandonment of hazardous substances. In many cases it is difficult to assign liability.

The most recent development in Alaska's long-term strategy for hazardous waste was the introduction of legislation by Representative Mike Davis requiring strict liability for hazardous substance release. The bill would strengthen Alaska statutes in regard to liability, and more clearly define the responsibility for hazardous substance release. Current statutes do not clearly attach liability to anyone except the person who owns or operates the facility at the time of release. This allows the original owner or producer of the waste to escape responsibility, in which case the state or local community may incur the cost of clean-up.

The intent of this bill is to more directly connect the responsible parties, the owner, operator, transporter, or disposer of waste, to the release, in order to encourage proper disposal. The bill is modeled after the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), which is the law that created the federal superfund in 1980. This legislation will allow the same laws used in federal court to be applied to state courts.

Alaska faces unique problems with hazardous wastes and there is still much to be learned about the impacts of hazardous substances in arctic and subarctic environments. The Alaska Environmental Lobby supports the proposed legislation and believes this is an important step toward developing safeguards and regulations necessary for preventive solutions.

Issue paper prepared by Kelly Kavanaugh 2/12/88

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER, SIERRA CLUB • JUNEAU GROUP SIERRA CLUB • SITKA GROUP SIERRA CLUB
KNIK GROUP SIERRA CLUB • DENALI GROUP SIERRA CLUB • ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY
DENALI CITIZENS COUNCIL • ALASKA FRIENDS OF THE EARTH • JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY
KENAI PENINSULA AUDUBON SOCIETY • KODIAK AUDUBON SOCIETY • LYNN CANAL CONSERVATION • ALASKA WILDLIFE ALLIANCE
SITKA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER • SOUTHEAST ALASKA CONSERVATION COUNCIL

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

STEVE COWPER, GOVERNOR

POSITION PAPER
HB 459 HAZARDOUS SUBSTANCE CLEANUP LIABILITY

FEBRUARY 24, 1988

Effect of the bill

The bill would make the state's requirements for liability for hazardous substance spills explicit. The current statute refers to a "person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state . . ." The bill would explicitly expand the coverage of this liability provision to include other parties that have responsibility for hazardous substances, including those who generate them, those who have control over the site where they are spilled or disposed of, and those who transport them in cases where the transporters select the destination. These parties are currently liable under the common law, but the proposed statute would clarify this liability and reduce the need for litigation.

Department position

The Department supports the bill. We believe that this clarification is appropriate and would be helpful. This will assist us in carrying out the mandates of HB 470, passed two years ago to establish the Oil and Hazardous Substance Release Response Fund. The bill provides a proper scope of liability. The bill would affect generators and transporters who allow their wastes to be taken to improper or marginal operators who do not provide for proper disposal.

Fiscal effect

The Department has provided a zero fiscal note on this bill. Over time, this bill could reduce litigation costs and probability of recovery of cleanup and related costs.

Dennis D. Kelso, Commissioner



TELECOPY COVER SHEET

KENAI PENINSULA INFORMATION OFFICE

(SOLDOTNA)

TO: HRES FOR: HR459 2/24 meeting PHONE: _____
FROM: C. Roser / Soldotna PHONE: 262-4232

ADDITIONAL INSTRUCTIONS: Please enter in meeting records

DATE/TIME SENT: 2/24 9:26 PLEASE ACKNOWLEDGE RECEIPT: _____

DISPOSAL OF ORIGINAL: _____ THROW AWAY _____

_____ HOLD FOR PICK UP

NUMBER OF PAGES: _____ (NOT COUNTING COVER SHEET)

Arlene





Alaska State Legislature

Please enter into the record my testimony to the Resources and Judiciary
committee name

committee on HB 459 , dated 2-11-88
bill/subject

I WOULD LIKE TO SEE H.B. 459
PASSED. THE ONES THAT PUT THE
HAZARDOUS SUBSTANCES IN
THE GROUND SHOULD PAY FOR
THE CLEAN UP, AND ALL OTHERS
~~THAT~~ THAT ARE INVOLVED.

Signed: E. ROSE
Testifier

Representing (Optional)

P.O. Box 172, SOLDOTNA

Address:

262-4232

Phone No.

TELECOPY COVER SHEET

KERAL PENINSULA INFORMATION OFFICE

(SOLDOTNA)

TO: HRES FOR: HB459 PHONE: _____

FROM: Coral Allen - Soldotna PHONE: _____

ADDITIONAL INSTRUCTIONS: Please enter into record
for HB 459 2/24 meeting.

DATE/TIME SENT: 2/24 10.00 PLEASE ACKNOWLEDGE RECEIPT:

DISPOSAL OF ORIGINAL: _____ THROW AWAY _____

_____ HOLD FOR PICK UP

NUMBER OF PAGES: 1 (NOT COUNTING COVER SHEET)

Arlene



Alaska State Legislature

Please enter into the record my testimony to the Resource and Technology
Committee on HB 459 dated Feb. 24, 1988.

committee on HB 459 dated Feb. 24, 1988
bill/subject

Please pass HB 459 which is a good start to prevent groundwater contamination. We on the peninsula know from experience what happens from improper hazardous waste management. We have had problems at Sterling, Poppy Lane and Soldotna Garbage Dump. Monitoring wells at Soldotna Garbage Dump show Trichloroethane and Dichloroethylene.

Signed: Carol Miller
Testifier

Self
Representative

215 W. Soldotna, Alaska 99669
Address

864-0065

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

February 17, 1988

The Honorable Sam Cotten
Attn: Ms. Lisa Weissler
P.O. Box V
Juneau, Alaska 99811

Dear Lisa:

Below and attached are the combined responses of the Divisions of Oil and Gas and Land and Water Management and Mining to your questions regarding bonding:

1. Process for bond approval - The decision whether to require a bond, and the amount, and type of bond are made on a case by case basis, though some standard amounts have been set by practice for some permits. The bond level is set at an amount that (a) is sufficient to detrimental activity; (2) approximates the costs of restitution and cleanup; (3) will require the bond guarantor to be concerned enough about the risk of indemnity to deny bonds to a questionable party and (4) is a sufficient risk to the guarantor to pressure the bonded party to remedy any breach.
2. Statutory and regulatory requirements - For surface activities, other than coal leases, there are no set amounts or categorical requirements for bonds as a condition of lease or permit. 11 AAC 96.060 authorizes the department to require a bond, but does not establish an absolute requirement or a set dollar value for required bonds.
3. There are no existing Hazardous Waste Facilities in Alaska. The injection wells on the slope are waste injection wells. Hazardous Waste is defined by EPA, and oil field waste does not fall into the hazardous category (it is exempted). The current bond for the injection wells is one million dollars. If any company were to apply for a hazardous waste site on state land, an appropriate bond would be applied. An added note...If a company loses a bond through revocation, it is the bonding company that pays and as such the company will no longer be bondable by any bonding agency as they will be considered a bad risk. If a

The Honorable Sam Cotten
Ms. Lisa Weissler

February 17, 1988

company cannot be bonded, they will be effectively barred from doing business in the state in that they will not be able to acquire any contracts, hold any leases, or conduct any activity that requires bonding.

4. Penalties for unapproved activities on leases - The penalty for unapproved activity is lease revocation. In addition, other judicial remedies, such as money damages for breach of contract are available. Also bond forfeiture is a remedy (though the bond proceeds would go into the general fund). Leases have been terminated, but not in the case of North Slope surface leases. It is in the public interest to keep leases in effect to collect rent and to enforce clean up terms.

5. Childs situation - The Childs tract is being cleaned up, and the cleanup is nearly complete. However, the cleanup was paid for by ARCO, not by the lessee. Hazardous wastes were left on the leasehold and have been removed, except for contaminated gravel.

6. Prevention - More policing, more enforcement (including attorney support), a mechanism to capture bond proceeds so that they can be used to clean up the mess (rather than having to get a separate appropriation), such as a program receipts appropriation for bond proceeds.

Sincerely,



Lawrence Ostrovsky
Special Assistant

Attachment

MEMORANDUM

State of Alaska

TO: Larry Ostrovsky
Special Assistant
Office of the Commissioner
Department of Natural Resources

DATE: February 17, 1988


FILE NO:

TELEPHONE NO: 465-2400

THRU:

SUBJECT: Bonds

FROM: Gerold Gallagher
Director
Division of Mining
Department of Natural Resources



In response to the February 5, 1988 inquiry regarding bonding requirement for state leases, I have collected the following information related to mining:

1. Approval of appropriate bonds: For coal and offshore lease bonds, the minimum bond is \$5.00 per acre or \$5,000 whichever is greater. For coal mining under ASMCRA, bonds are an estimate of the full reclamation cost. These bonds range from 7 to 50 million dollars. Bonding for activities on state mining claims are handled on a case to case basis.
2. Are requirements in statute on regs:
Lease Performance Bonds - AS 38.05.130
11AAC 82.600
11AAC 85.245
11AAC 96.060
ASMCRA Bonds - AS 27.21.16
11AAC 90.201 - 213
3. Hazardous Waste:
Does not apply
4. Penalties: Failure to comply could result in termination of the lease. No leases have ever been terminated by mining. Under ASMCRA, penalties range up to \$10,000 per day fines and cessation order can be issued.

T.G. Gottstein

4 March 1988

TO: Members of the House Resources Committee
RE: HB 459

Since your subcommittee hearing tomorrow will not be teleconferenced, I have elected this format to comment on this crucial piece of legislation.

The importance of strict liability for toxic substances as an incentive for safety cannot be overemphasized. Too often, in the area of toxics, we find ourselves in the position of "playing catch-up", having to spend literally millions of dollars on clean-up, which, in the end, may be only partially effective at reversing the devastating results of toxic disasters. With this legislation, you, as legislators, have the unique opportunity to make giant strides in the area of PREVENTION. Not only is this a more cost-effective approach to the management of hazardous substances, but it can spare the often irreversible damage to the public health, subsistence habitats, commercial fishing, and the environment in general which is frequently the result of mis-handling toxics.

Following are my specific comments on the bill:

1) The bill makes reference several times to the responsibilities of the "owner," "operator", and "person having control over the hazardous substance. While these references are, indeed, necessary, there is one serious omission in these references to those who should bear the responsibility for a toxic disaster: the GENERATOR of the substance. Who better than the person who creates/generates the substance, to be responsible for any damage it might later cause? This would help to create an incentive to find other, less hazardous alternate methods/processes for dealing with hazardous substances. And who would be more familiar with a substance's hazardous properties and potential for damage than the person who generates it?

As a minimum, the bill should include some language about the responsibility of the GENERATOR to at least WARN others who may end up being responsible for a substance about the toxic nature of a hazardous substance, and its potential for damage.

2) In the section of the bill which relieves someone of strict liability, you, once again, have a golden opportunity to provide

a very simple incentive for safety [Sec. 46.03.822 (b) (2)]. Many times, some of the devastation caused by toxics could be minimized if an incident were merely reported in a more timely manner, but this isn't done for fear of liability. With this bill, you have a chance to reverse that.

If, on Page 2, Line 29, you were to add a letter (2) (C), to read:

(B)....;and

(C) upon discovery of the release or threatened release, immediately reported it to the Alaska Department of Environmental Conservation.

3) On Page 2, Line 18, the words "due care" should be strengthened, perhaps to "preventive care".

4) On Page 2, Line 20, the word "reasonable" should be changed to "necessary", to eliminate some of the ambiguity.

Thank you for this opportunity to comment on the bill. I will be watching its progress with interest.

Sincerely,



Terrie Gottstein

6201 West Tree Drive
Anchorage, Alaska 99516
(907) 258-4040

CORRECTION

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

a very simple incentive for safety [Sec. 46.03.822 (b) (2)]. Many times, some of the devastation caused by toxics could be minimized if an incident were merely reported in a more timely manner, but this isn't done for fear of liability. With this bill, you have a chance to reverse that.

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Thank you for this opportunity to comment on the bill. I will be watching its progress with interest.

Sincerely,



Terrie Gottstein

6201 West Tree Drive
Anchorage, Alaska 99516
(907) 258-4040

THEODORE PAUL HUNTER
ATTORNEY AND COUNSELOR AT LAW

PIONEER BUILDING, SUITE 612
600 FIRST AVENUE
SEATTLE, WASHINGTON 98104

TELEPHONE
(206) ~~682-3330~~
628-0700

January 25, 1988

Ms. Marilyn Heiman
c/o Representative Mike Davis
P.O. Box V
Juneau, Alaska 99811

Dear Marilyn:

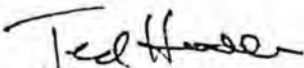
Thank you for the copy of your legislative proposal on liability for hazardous waste cleanup costs. I have reviewed it quickly and have two comments:

1. The phrase on p. 1, lines 11 and 12 "to the extent not preempted by federal law" should be removed. Ordinarily, a phrase of this nature is no problem because it states a constitutional truth: state law is not effective if preempted by federal law. However, in the hazardous waste area this phrase could create a difficulty because so much of the law in the federal area is currently being developed by the courts. For example, the federal Superfund law does not expressly provide for strict, joint and several liability; federal courts determined that was the intent of Congress. If state actions must wait for federal court determinations of the meaning of law, a defendant in an action brought by the state could argue possible preemption of the state law by federal law and thus cloud the enforcement authority of the state. Deleting the phrase would remove doubts about state authority.

2. There is a need to define "release" and "substantial threat" of release. This may exist in other sections of Alaska law. Would those definitions also apply here? Is release broadly defined as in federal law (for example, "allowing to seep")? Does "substantial threat" mean to the public health (a broad community) or to human health (one person)? Since liability would hinge on these definitions it would be useful to attempt to address them legislatively rather than allow the courts to define if that can be done politically.

It was a pleasure "meeting" you on the phone. If I can assist you in any way on this issue, please don't hesitate to call.

Sincerely,


Ted Hunter

P.S. Look for my article on Hazwa in the March issue of the Northwest Environmental J.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 21, 1988

SUBJECT: Sectional analysis of CSHB 459()
(3/11/88 draft)

TO: Representative Mike Davis

FROM: Edward H. Hein *EHA*
Legislative Counsel

Section 1 rewrites AS 46.03.822, which establishes strict liability for damages resulting from the release of hazardous substances. Under existing law, only the owner or person having control over the released substance is strictly liable. CSHB 459() expands this liability to cover not only the owner or person having control, but also the owner and the operator of a facility, including the disposal site, or vessel from which the substance was released, even if it had been abandoned; a previous owner of the facility or vessel, if the person owned it at the time the substance was delivered to the facility or vessel; the person who owned the hazardous substance, and arranged for someone else to transport, treat, or dispose of the substance at a facility or incineration vessel owned by the other person; and the person who transported or accepted the substance for transport to the place from which it was released, if the transporter was the one who selected the facility, vessel, or site to which it was delivered. Subsection (a) also makes clear that the strict liability is joint and several, and specifically includes damage to the natural resources of the state and costs incurred by the state or a municipality for responding, containing, removing, or taking remedial action for a release, and for responding to a substantial threat of a release of a hazardous substance.

CSHB 459() also makes some changes to the defenses available to strict liability. Subsection (b) provides (at page 2, lines 9 - 11) that the standard of proof for proving that a person should be relieved from strict liability is "clear

and convincing evidence." This is a higher (or more burdensome) standard of proof than the usual "preponderance of the evidence" standard of civil cases. The bill removes negligence by the state or the federal government as a defense to strict liability. The bill also requires that for the negligent or intentional act of a third party to relieve a person of strict liability, the person must prove that he or she exercised due care with respect to the substance and that he or she took reasonable precautions against the third party's act and its consequences. In addition, the third party and its employees cannot be in privity of contract with or employed by the person who is seeking to be relieved from strict liability.

Subsection (c) at page 3, lines 1 - 20, spells out the circumstances under which a third party or its employees will be considered in privity of contract. Essentially, the circumstances include being a party to a land contract, deed, or other transfer of the facility from which the hazardous substance release occurred after the substance was placed at the facility. In addition, to establish a lack of privity (and thus avoid strict liability) the defendant must prove by a preponderance of the evidence that (1) the defendant has satisfied the requirements of (b)(1)(B)(i) and (ii) (at page 2, lines 18 - 21) and (2) one or more of the three circumstances listed at page 3, lines 11 - 20, exist.

Subsection (d) provides that in order to establish that the first of these three circumstances exists, the defendant can show that he or she had no reason to know that the hazardous substance was at the facility by proving that at the time the defendant acquired the facility he or she made the appropriate inquiries into the previous ownership and use of the facility. The subsection also specifies particular factors that the court should consider to determine whether the defendant in fact had reason to know that the hazardous substance was at the facility.

Subsection (e) provides that the bill does not diminish the liability of a previous owner or operator of the facility if the person would otherwise be liable. In addition, the bill specifically holds the previous owner strictly liable if he or she knew about a hazardous substance release at the facility and transferred ownership without disclosing that fact. In such a case, the previous owner could not claim the defense under (b)(1)(B).

Representative Mike Davis
Page 3
March 21, 1988

Subsection (f) states that the bill does not affect the liability of the person who caused or contributed to the release or threatened release of the hazardous substance.

Subsection (g) provides that a person may not avoid strict liability through an agreement with another person to indemnify or hold harmless. It makes clear, however, that such agreements, as well as insurance and subrogation agreements, are not prohibited.

Section 2 adds a definition of "facility", which includes not only the building or structure where a hazardous substance was contained, but also any disposal site.

EHH:bb
wkb4/031



Alaska Environmental Lobby, Inc.

907-586-2345

HB 459: Strict Liability for Hazardous Substance Release

The problems and risks associated with hazardous wastes in Alaska have only gradually begun to surface in recent years. Serious human health effects, surface and ground water contamination, and air pollution problems have resulted from improper disposal or abandonment of hazardous substances. In many cases it is difficult to assign liability.

The most recent development in Alaska's long-term strategy for hazardous waste was the introduction of legislation by Representative Mike Davis requiring strict liability for hazardous substance release. The bill would strengthen Alaska statutes in regard to liability, and more clearly define the responsibility for hazardous substance release. Current statutes do not clearly attach liability to anyone except the person who owns or operates the facility at the time of release. This allows the original owner or producer of the waste to escape responsibility, in which case the state or local community may incur the cost of clean-up.

The intent of this bill is to more directly connect the responsible parties, the owner, operator, transporter, or disposer of waste, to the release, in order to encourage proper disposal. The bill is modeled after the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), which is the law that created the federal superfund in 1980. This legislation will allow the same laws used in federal court to be applied to state courts.

Alaska faces unique problems with hazardous wastes and there is still much to be learned about the impacts of hazardous substances in arctic and subarctic environments. The Alaska Environmental Lobby supports the proposed legislation and believes this is an important step toward developing safeguards and regulations necessary for preventive solutions.

Issue paper prepared by Kelly Kavanaugh 2/12/88

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER, SIERRA CLUB • JUNEAU GROUP SIERRA CLUB • SITKA GROUP SIERRA CLUB
PRINCE OF GEORGE GROUP SIERRA CLUB • DENALI GROUP SIERRA CLUB • ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY
DENALI CITIZENS' COUNCIL • ALASKA FRIENDS OF THE EARTH • JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY
DENALI PENINSULA AUDUBON SOCIETY • KODIAK AUDUBON SOCIETY • LYNN CANAL CONSERVATION • ALASKA WILDLIFE ALLIANCE
SITKA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER • SOUTHEAST ALASKA CONSERVATION COUNCIL

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 23, 1988

The Honorable Mike Davis
House of Representatives
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

RE: HB 459 -- liability for
release of hazardous sub-
stances

Dear Representative Davis:

At your request this office has examined HB 459. The bill would amend the provisions of AS 46.03.822 regarding liability for release of hazardous substances. The bill retains the present law, that persons owning or controlling a hazardous substance that is released are strictly liable for the damages that result. But it amplifies and clarifies who is potentially liable, to include owners and operators of the facilities from which a release occurred; persons who originally received the substances at the facility; persons who owned the substance and contracted with another for its disposal; and persons who transported it to a disposal facility which they themselves chose. These provisions parallel those in §107 of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which was intended to require all persons who handle hazardous materials to bear appropriate responsibility for its safe disposition.

HB 459 appears to be an appropriate clarifying and strengthening amendment to current Alaska law.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Douglas K. Mertz
Assistant Attorney General

DKM/dlm

cc: Hon. Dennis Kelso
Commissioner, ADEC

Hon. Mike Davis

February 23, 1988
Page 2

bcc: Arthur H. Peterson
Assistant Attorney General

Bob Evans
Office of the Governor



KENAI PENINSULA BOROUGH

144 N. BINKLEY • SOLDOTNA, ALASKA 99669
PHONE (907) 262-4441

DON GILMAN
MAYOR

POSITION PAPER

HB 459 - Hazardous Substance Clean-up Liability

The administration of the Kenai Peninsula Borough supports HB 459. We believe this bill will provide the necessary incentive for proper disposal of hazardous wastes, by attaching clear responsibility to generators and transporters of wastes as well as owners and operators of disposal sites.

As you are aware, the occurrence of hazardous waste problems on the Kenai Peninsula is rapidly increasing, as evidenced by the Governor's recent request for \$955,000 in his supplemental appropriation bill.

In many of those cases the parties responsible for the release of hazardous substances are either bankrupt or no longer in business. Because current law does not allow for the attachment of liability to generators, other than those who own or operate the facility at the time of release, the original owner or producer may escape responsibility for clean-up. In these instances, the state or local governments many times have to bear that cost and responsibility.

A specific example is the Sterling special waste site on the Kenai Peninsula. The site was originally permitted by DEC as a special waste site for the disposal of drilling muds and other special wastes. The land is owned by the Kenai Peninsula Borough and was leased by a private company who contracted with producers of special wastes for disposal. After a number of years of operation, the contractor filed bankruptcy and abandoned the pit. The Kenai Peninsula Borough now bears total cost and responsibility for closure and clean-up of the site. It is uncertain exactly what has been disposed of in the pits, and now must be treated and closed as a hazardous waste site.



Alaska State Legislature

Representative Mike Davis

District 19

P.O. Box V
Juneau, Alaska 99811
(907) 456-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708
(907) 456-8161

TO: All members of the press
From: Rep. Mike Davis
Date: February 11, 1988

PRESS RELEASE

FOR IMMEDIATE RELEASE

Today, Rep. Mike Davis (Fairbanks) will introduce HB 459, legislation to strengthen the Alaska statutes and more clearly define the responsibility for hazardous substance releases.

"I'm introducing this bill to assure that producers of hazardous substances handle and dispose of substances properly. If producers are strictly liable it will encourage proper disposal of waste," said Mike Davis the bill's sponsor.

"Last spring the Department of Environmental Conservation discovered solid and hazardous waste on property leased from the state on the North Slope. The contractor had declared bankruptcy and the state had essentially no recourse for recovering the clean up costs of almost a half million dollars. HB 459 would tie the clean up responsibility to the producers of the waste."

In many instances the state and local communities end up paying the cost of clean up because the state statutes in effect do not clearly attach liability to anyone except the person who owns or operates the facility at the time of release.

Under existing law, if the release occurs after the site is abandoned or a contractor improperly handles or disposes the waste, the original owner or producer may escape liability.

HB 459 mirrors the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) which is the law that created the federal superfund in 1980. The bill will allow the same laws to be used in state court as are used in federal court.

###



Alaska State Legislature

Representative Mike Davis

District 19

P.O. Box V
Juneau, Alaska 99811
(907) 456-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708
(907) 456-8161

MEMORANDUM

TO: House Resources Committee

FROM: Rep. Mike Davis

RE: Strict liability for hazardous substance releases

DATE: February 24, 1988

Attached is a bill which would strengthen the Alaska statutes in regard to liability and more clearly define the responsibility for hazardous substance releases.

Many times the state and local communities are paying the cost of clean-up of hazardous substance releases. This is because the state statutes presently in effect do not clearly attach liability to anyone except the person who owns or operates the facility at the time of the release. If the release occurs after the site is abandoned or a contractor improperly handles or disposes the waste, the original owner or producer may escape responsibility.

The intent of this bill is to more directly tie the responsible parties ie: the owner, operator, transporter, or disposer of waste to the release and encourage proper disposal of waste.

The bill is modeled after the Federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) which is the law that created the federal superfund in 1980. This will provide the same laws used in Federal Court to be used in State courts.

devisees?

1 IN THE HOUSE

BY DAVIS, KOPONEN, NAVARRE,
SWACKHAMMER, GOLL, SUND,
DAVIDSON, ULMER AND BROWN

2

HOUSE BILL NO. 459

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to liability for releases of hazardous substances."

7

8

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

9

* Section 1. AS 46.03.822 is repealed and reenacted to read:

10

Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS

SUND →

11

SUBSTANCES. (a) Notwithstanding any other provision of law, and to the extent not preempted by federal law, the following persons are strictly liable for damages to persons or property, public or private, including the costs of response, containment, removal, or remedial action incurred by the state or a municipality, resulting from a release of a hazardous substance or, with respect to response costs, the substantial threat of a release of a hazardous substance:

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(1) the owner and the person having control over the hazardous substance at the time of the release or threatened release;

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(2) the owner and the operator of the facility or vessel from which the release occurred or was threatened to occur; in the case of an abandoned facility or vessel, the owner, the operator, and any other person who controlled activities at the facility or on the vessel immediately before the abandonment;

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(3) a person who owned or operated the facility or vessel from which the release occurred or was threatened to occur at the time the hazardous substance was received by the facility or vessel;

26

27

Sam

28

(4) a person who owned or controlled the hazardous substance and who, by contract, agreement, or otherwise, arranged for

29

2/24 - Mertz - resp'y w/ last owner, but 2nd transfer wd mean 1st owner.
 didn't hv. any more resp'y. (Mainly has WA state law re fed/state litig coverage)
 Sund wants haz's substances. - wd inc. paints etc.? - any state resp'y
 to help prov. sites for dry cleaning agents etc. - Insurance problems/avail'g in AK.
 does it cover individuals buying creosote
 Sund had a language problem on p. 2 that I missed cuz Marilyn was talking to me
 DNR lease terms. DEC needs to work on them - Mertz didn't own or control
 reg's wr. diff. - led to CD's. that.
 Mertz - need to create incentives. Denny - the bill doesn't create new resp'y, just clarifies
 where it lies -
 Mertz - rmv. administrative on p. 1 -

1 another party or entity to transport, store, dispose of, or treat the
 2 hazardous substance, regardless of whether title to the hazardous
 3 substance was transferred to the other party or entity as part of the
 4 transaction; and

5 (5) a person who transported or accepted the hazardous
 6 substance for transport to the facility, vessel, or site from which
 7 the release occurred or was threatened to occur, if the person select-
 8 ed the facility, vessel, or site.

9 (b) In an action to recover damages, a person otherwise liable
 10 is relieved from strict liability if the person proves by clear and
 11 convincing evidence

12 (1) that the release or threatened release of the hazardous
 13 substance to which the damages relate occurred solely as a result of

14 (A) an act of war;
 15 (B) an intentional or negligent act of a third party,
 16 other than a party or its employees in privity of contract with,
 17 or employed by, the person, and that the person

18 (i) exercised due care with respect to the haz-
 19 arduous substance; and

20 (ii) took reasonable precautions against the act
 21 of the third party and against the consequences of the act;
 22 or

23 (C) an act of God; and

24 (2) in relation to (1)(B) or (C) of this section, that the
 25 person, within a reasonable period of time after the act occurred,

26 (A) discovered the release or threatened release of
 27 the hazardous substance; and

28 (B) began operations to contain and clean u the
 29 hazardous substance.

Sund - buying prop'y ably holding wastes? - liability for subseq. disc's of wastes

1 (c) An indemnification, hold harmless, or similar agreement or
2 conveyance is not effective to transfer liability under this section
3 from the owner or operator of a vessel or facility or from a person
4 who may be liable for a release or substantial threat of a release
5 under this section. This subsection does not bar an agreement to
6 insure, hold harmless, or indemnify a party to the agreement for
7 liability under this section. This subsection does not bar a cause of
8 action that an owner or operator or other person subject to liability
9 under this section, or a guarantor, has or would have, by reason of
10 subrogation or otherwise against a person.

11 * Sec. 2. AS 46.03.826 is amended by adding a new paragraph to read:

12 (8) "facility" includes a

13 (A) building; structure; installation; equipment; pipe
14 or pipeline, including a pipe into a sewer or publicly owned
15 treatment works; well; pit; pond; lagoon; impoundment; ditch;
16 landfill; storage container; motor vehicle; rolling stock; or
17 aircraft; or

18 (B) site or area at which a hazardous substance has
19 been deposited, stored, disposed of, placed, or otherwise locat-
20 ed.

1 NEW SECTION. Sec. 4. STANDARD OF LIABILITY. (1) Except as
2 provided in subsection (3) of this section, the following persons are
3 liable with respect to a facility:

4 (a) The owner or operator of the facility;

5 (b) Any person who owned or operated the facility at the time of
6 disposal or release of the hazardous substance;

7 (c) Any person who owned or possessed a hazardous substance and
8 who by contract, agreement, or otherwise arranged for disposal or
9 treatment of the hazardous substance at the facility, or arranged
10 with a transporter for transport for disposal or treatment of the
11 hazardous substance at the facility, or otherwise generated hazardous
12 waste disposed of or treated at the facility;

13 (d) Any person (i) who accepts or accepted any hazardous
14 substance for transport to a disposal, treatment, or other facility
15 selected by the person, from which facility there is a release or a
16 threatened release for which remedial action is required, unless the
17 facility, at the time of disposal or treatment, could legally receive
18 the substance; or (ii) who accepts a hazardous substance for
19 transport to such a facility and has reasonable grounds to believe
20 that the facility is not operated in accordance with chapter 70.105
21 RCW; and

22 (e) Any person who both sells a hazardous substance and is
23 responsible for written instructions for its use if (i) the substance
24 is used according to the instructions and (ii) the use constitutes a
25 release for which remedial action is required at the facility.

26 (2) Each person who is liable under this section is strictly
27 liable, jointly and severally, for all remedial action costs at or
28 associated with the facility and for all natural resource damages
29 resulting from the releases or threatened releases of hazardous
30 substances. The attorney general, at the request of the department,
31 may recover all costs and damages from persons liable for them.

32 (3) The following persons are not liable under this section:

33 (a) Any person who can establish that the release or threatened
34 release of a hazardous substance for which the person would be
35 otherwise liable was caused solely by:

36 (i) An act of God;

Sec. 4

1 (ii) An act of war; or

2 (iii) An act or omission of a third party (including but not
3 limited to a trespasser) other than (A) an employee or agent of the
4 person asserting the defense, or (B) any person whose act or omission
5 occurs in connection with a contractual relationship existing,
6 directly or indirectly, with the person asserting this defense to
7 liability. This defense applies only where the person asserting the
8 defense has exercised the utmost care with respect to the hazardous
9 substance, the foreseeable acts or omissions of the third party, and
10 the foreseeable consequences of those acts or omissions;

Innocent
landowner
provision →

11 (b) Any person who is an owner, past owner, or purchaser of a
12 facility and who can establish by a preponderance of the evidence
13 that at the time the facility was acquired by the person, the person
14 had no knowledge or reason to know that any hazardous substance, the
15 release or threatened release of which has resulted in or contributed
16 to the need for the remedial action, was released or disposed of on,
17 in, or at the facility. This paragraph (b) is limited as follows:

18 (i) To establish that a person had no reason to know, the person
19 must have undertaken, at the time of acquisition, all appropriate
20 inquiry into the previous ownership and uses of the property,
21 consistent with good commercial or customary practice in an effort to
22 minimize liability. Any court interpreting this paragraph (b) shall
23 take into account any specialized knowledge or experience on the part
24 of the person, the relationship of the purchase price to the value of
25 the property if uncontaminated, commonly known or reasonably
26 ascertainable information about the property, the obviousness of the
27 presence or likely presence of contamination at the property, and the
28 ability to detect such contamination by appropriate inspection;

29 (ii) The defense contained in this paragraph (b) is not available
30 to any person who had actual knowledge of the release or threatened
31 release of a hazardous substance when the person owned the real
32 property and who subsequently transferred ownership of the property
33 without first disclosing such knowledge to the transferee;

34 (iii) The defense contained in this paragraph (b) is not
35 available to any person who, by any act or omission, caused or
36 contributed to the release or threatened release of a hazardous

1 substance at the facility;

2 (c) Any person who uses a hazardous substance lawfully and
3 without negligence for any personal or domestic purpose in or near a
4 dwelling or accessory structure when that person is: (i) A resident
5 of the dwelling; (ii) a person who assists the resident in the use of
6 the substance; or (iii) a person who is employed or retained by the
7 resident;

8 (d) Any person who, without negligence and in accordance with all
9 federal and state laws, applies pesticides or fertilizers for any of
10 the following purposes: (i) Producing any crops, farm animals, or
11 any other farm product; (ii) growing Christmas trees; (iii) growing
12 any nursery plant; or (iv) growing trees, including trees for the
13 production of timber. This exemption also extends to any owner of
14 land leased to such person and an applicator with whom such person
15 enters into a contract for the application of the pesticide or
16 fertilizers, so long as the application is without negligence and is
17 in accordance with all federal and state laws. This exemption does
18 not apply to aquaculture; or

19 (e) Any person with respect to the release or threatened release
20 of used motor oil collected by the person for recycling, if the oil
21 (i) is not mixed with any other hazardous substance; and (ii) is
22 collected, stored, and maintained by the person in compliance with
23 all federal and state laws and without negligence. Unless the person
24 has reason to believe the contrary, it shall be presumed that used
25 motor oil that has been removed from a vehicle by the owner and
26 delivered to the person for recycling has not been mixed with any
27 other hazardous substance.

28 (4) Nothing in this chapter affects or modifies in any way any
29 person's right to seek or obtain relief under other statutes or under
30 common law, including but not limited to damages for injury or loss
31 caused by a hazardous substance. No settlement by the department or
32 remedial action ordered by a court or the department affects any
33 person's right to obtain a remedy under common law or other statutes.

34 NEW SECTION. Sec. 5. PETROLEUM. (1) Petroleum, including crude
35 oil or any fraction thereof, is covered only by the provisions of
36 subsection (2) of this section and section 11(2) of this act, and by

DELIN
INBOX

SENT 02/24/88 10:26

SUBJECT: HRES;FS;HB459;2-24-88

FROM: LTCCFBX

FOLDER:

SECURITY LEVEL: 2

RETENTION PERIOD: PERM

.....2.....3.....4.....5.....6.....7.....8.....

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*****ORIGINAL STATEMENTS*****

DATE: FEBRUARY 24, 1988
SITE: FAIRBANKS
SPONSOR: HOUSE RESOURCE
SUBJECT: HB 459 - HAZARDOUS SUBSTANCE CLEAN-UP
NOMINATOR: FRANK

APPROXIMATE NUMBER OF PARTICIPANTS: 3
TESTIFIED: 3
OBSERVED: 0
TOTAL: 3

*****ORIGINAL STATEMENTS*****

SUBJECT: HRES;FS;HB 459;2-24-88

FROM: LTCCFBX

FOLDER:

SECURITY LEVEL: 2

RETENTION PERIOD: PERM

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001/19
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001/26
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APPROXIMATE NUMBER OF PARTICIPANTS: 3
TESTIFIED: 3
OBSERVED: 0
TOTAL: 3

APPROXIMATE NUMBER OF PARTICIPANTS: 3
TESTIFIED: 3
OBSERVED: 0
TOTAL: 3

SUBJECT: FS 2-20-88 SRES GUIDES
FROM: LIOCMAT
FOLDER:

SENT 02/20/88 14:40

SECURITY LEVEL: 2 RETENTION PERIOD: 3

UNABLE:	4	001/31
OBSERVED:	6	001/33
TOTAL:	14	001/36

START TIME 11:00 AM - 2:10 PM

SUBJECT: HRES, HB 459, 2/20
FROM: LIOCMAT
FOLDER:

SENT 02/24/88 10:51

SECURITY LEVEL: 2 RETENTION PERIOD: 3

*** FINAL TELECONFERENCE STATISTICS ***

UNABLE:	0	001/01
OBSERVED:	0	001/02
TOTAL:	0	001/03

DATE: FEBRUARY 24, 1988
SITE: ANCHORAGE
TOPIC: HRESOURCES
SUBJECT: HB 459, HAZARDOUS WASTE CLEANUP
LOCAL NODE: LIOCMAT

TESTIFIED	NAME REPRESENTING	ADDRESS	PHONE #	
				001/04
				001/05
				001/06
				001/07
				001/08
				001/09
				001/10
				001/11
				001/12
				001/13
				001/14
				001/15
				001/16
				001/17
				001/18

SUBJECT: HRES, HB 459, 2/20
FROM: LIOCMAT
FOLDER:

SENT 02/24/88 10:51

SECURITY LEVEL: 2 RETENTION PERIOD: 3

*** FINAL TELECONFERENCE STATISTICS ***

UNABLE:	0	001/19
OBSERVED:	0	001/20
TOTAL:	0	001/21

TESTIFIED	NAME REPRESENTING	ADDRESS	PHONE #	
	PATTI CHANDLER	CRUSTEAL FOR AR,	725 CHRISTENSEN, #1 79501	001/22
	ARLENE BENSON	AK OPR FOR THE ENVIT.,	700 N 20, #1 97501	001/23
	DAVID WIGLEWORTH	AK HEALTH PROJECT,	151 W 7TH	001/24

TESTIFIED:	3	START TIME 8:00AM	001/25
OBSERVED:	0	END TIME 10:00AM	001/26
TOTAL:	3		001/27

SUBJECT: JT, 452, ANR HEARING, 2/23/88
FROM: LIOCMAT
FOLDER:

SENT 02/24/88 10:51

SECURITY LEVEL: 2 RETENTION PERIOD: 3

*** FINAL TELECONFERENCE STATISTICS ***

UNABLE:	0	001/28
OBSERVED:	0	001/29
TOTAL:	0	001/30

HOUSE COMMITTEE REPORT

(9)

Date referred: 2/11/88

FURTHER REFERRALS: Judiciary

DATE: 3-22-88

The Resources Committee has considered HB 459

"An Act relating to liability for releases of hazardous substances."

RECOMMENDS:

- replace with CS HB 459 (Res) the same title
- attached amendment(s) a new title
- 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 same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

Jan C

Adelheid Herrmann

Ch Davidson

Mike Varane

SIGNING OTHER RECOMMENDATIONS:

Lynn Hoffman Noble

Jan C

Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 150
PUBLISH DATE: 2/11/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to liability for releases of hazardous substances
Sponsor: Rep. Davis et al
Requestor: Rep. Patten

Agency Affected: DEP
BRU: Environmental Quality
Components: _____

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: _____ Phone: _____
Division: _____ Date: _____

Approved by Commissioner: _____ Date: _____
Agency: _____

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