

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5475 SRES SB 454 - SB 465

1047

**APPLICATION FOR  
THE OFFSHORE FISHERIES BUSINESS TAX REVENUE SHARING  
PILOT PROJECT**

**State of Alaska  
Steve Cowper, Governor**

**Department of Community and  
Regional Affairs  
David G. Hoffman, Commissioner**

**Municipal and Regional Assistance Division  
Marty Rutherford, Director**

## APPLICATION INSTRUCTIONS

In order to participate in the Offshore Fisheries Business Tax Revenue Sharing Pilot Project, you must fill out this application and return it post marked by April 15, 1987 to:

Pilot Project  
Department of Community and Regional Affairs  
P.O. Box BH  
Juneau, AK 99801

Although the regulations provide for a March 15 application deadline, they also provide that the Commissioner may extend the deadline for "good cause." Because of the short length of time that would be available to complete and submit the application based upon a March 15, the Commissioner has extended the deadline to April 15. Consequently, the entire process will be set back about a month so that determination letters will not be sent out until some time after mid-April, rather than on April 15 as set out in regulation. It is anticipated that payments will be sent out in June, after review of determinations by applicants, resolution of any appeals, and calculation of entitlements.

Please note that the year in which impacts must be experienced and from which population increase is to be measured is calendar year 1985. That is the most recent year for which required catch data is available.

An effort has been made to keep the application form and requirements simple. Apart from "significant impacts" and "population increase," the required items on the facing SUMMARY SHEET are self explanatory. Greater detail on those two questions is set out in the instructions facing page 2 and page 3.

Please note that a resolution certifying the "population increase" is required. A sample resolution form is enclosed for your convenience.

Funds received under this program are subject to single audit requirements contained at 2 AAC 45.010.

A copy of the pilot project regulations sent to the Attorney General for review and filing by the Lieutenant Governor is attached. Although the regulations will not become effective until 30 days after filing, in an effort to expedite the administrative process, applications have been distributed and will be processed to make payments as soon as possible after the effective date of the regulations.

If you have any questions, please call Paul Cunningham at 465-4750.

OFFSHORE FISHERIES BUSINESS TAX  
REVENUE SHARING PILOT PROJECT

SUMMARY SHEET

1. Name of Municipality \_\_\_\_\_
2. Mailing Address \_\_\_\_\_
3. Telephone Number \_\_\_\_\_
4. Contact Person \_\_\_\_\_

5. Did your municipality experience "significant impacts" from the offshore commercial fishing industry in 1985? \_\_\_\_\_  
(If yes, please complete page 2.) You must answer "yes" to be eligible to participate in the distribution of funds under this project.

6. What, if any, was the "population increase" reasonably related to the offshore fish processing industry of your municipality during a fishing season during 1985? \_\_\_\_\_  
(Please complete page 3 documenting and describing the method used to determine population increase.)

7. ANSWER AFTER COMPLETING YOUR APPLICATION: Do you feel that the approach taken in this pilot project adequately addresses your concerns regarding the impact of the offshore fish processing industry on your community? \_\_\_\_\_ Why or why not?

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8. CERTIFICATION AND ASSURANCES: To the best of my knowledge and belief, the information in this application is true and correct. The applicant agrees to comply with the laws and regulations under which this program and program funds are administered.

Signature of Mayor \_\_\_\_\_

DATE \_\_\_\_\_

## INSTRUCTIONS FOR PAGE 2

In order to qualify to receive funds under this program, you must demonstrate that your community experienced significant impacts from the offshore fish processing industry in 1985. Your explanation should show 1) what the impact or impacts were, 2) that the impact(s) were "significant", and 3) that the impact(s) were related to the offshore fish processing industry. You may include photographic evidence, but it must be supported by an explanation of how the demonstrated impact is related to the offshore fish processing industry. You may attach additional information if needed. "Impacts" and "significant impacts" are defined at 19 AAC 33.070 of the enclosed regulations.



### INSTRUCTIONS FOR PAGE 3

Your municipal population increase reasonably related to the offshore fish processing industry in 1985 is an element used to calculate your entitlement (see 19 AAC 33.030 and 19 AAC 33.040 of the enclosed regulations). It is intended to indicate the level of impact on your municipality during calendar year 1985 from the offshore fish processing industry. The persons included in this population increase may include transient people connected in any way with the offshore fish processing industry. The population increase is not an indicator of permanent residents, but rather an indicator of impact, representing a peak level of service demand, resulting from the offshore fish processing industry. It may be calculated by taking the highest level of persons within municipal boundaries at any time during a fishing season in 1985, less any non-fish processing related population increase, less the DCRA certified population for July 1, 1985 (used to calculate your FY 1986 State Revenue Sharing entitlement).

You may use any relevant statistics of population that can be documented. Some examples are: labor statistics, retail sales activity, water hook-ups, bulk fuel sales, electric consumption, motel/hotel rate of occupancy, employment data from the offshore fish processing industry, criminal or other public safety statistics, and so on. However, population increase due to tourism, construction activity not related to the offshore fish processing industry, onshore processing, and so on, must not be included in the population increase used to calculate your entitlement. As provided by regulation: "Unverifiable, unsupported estimates will not be accepted" (19 AAC 33.030.)

Population increase is defined in regulation at 19 AAC 33.070(h) (see enclosed regulations).

Paul Cunningham, our department demographic specialist in Juneau at 465-4750, is available to give you assistance in developing a method of estimation.

NOTE THAT YOU MAY STILL RECEIVE AN ENTITLEMENT IF YOU HAD NO POPULATION INCREASE OR ARE UNABLE TO REASONABLY CALCULATE THE SIZE OF THAT INCREASE. However, you will not receive funding under the per capita portion of the formula.



### INSTRUCTIONS FOR RESOLUTION

A resolution certifying the population increase, which will be used for the formula calculation of the per capita share of each municipal payment, is required. The facing resolution form is included for your convenience. The numbered blanks should include the following information:

1. Name of the municipality,
2. Amount of population increase,
3. Governing body of municipality,
4. Signature of the mayor or presiding officer of the governing body,
5. Signature of the clerk.

RESOLUTION

A RESOLUTION OF THE \_\_\_\_\_ (1)  
authorizing participation in the Offshore Fisheries Business  
Tax Revenue Sharing Pilot Project and adopting a determination  
of the population increase reasonably related to the offshore  
fish processing industry.

WHEREAS, the \_\_\_\_\_ (1) experiences  
significant impacts from the offshore fish processing industry;  
and

WHEREAS, this municipality is an applicant to participate in  
the Offshore Fisheries Business Tax Revenue Sharing Pilot  
Project authorized by chapter 98, SLA 1985; and

WHEREAS, the governing body of the municipality must pass a  
resolution adopting a population increase reasonably related to  
the offshore fish processing industry;

NOW THEREFORE BE IT RESOLVED THAT the governing body finds that  
in 1985 the population increase reasonably related to the  
offshore fish processing industry as defined in regulation  
was \_\_\_\_\_ (2).

PASSED AND APPROVED BY THE \_\_\_\_\_ (3)  
on the \_\_\_\_\_ day of \_\_\_\_\_, 1987.

BY: \_\_\_\_\_ (4)

ATTEST: \_\_\_\_\_ (5)

19 AAC is amended by adding a new chapter to read:

CHAPTER 33. OFFSHORE FISHERIES BUSINESS TAX  
REVENUE SHARING PILOT PROJECT

19 AAC 33.010 ELIGIBILITY. To be eligible for payment under this chapter, an applicant must:

(a) be a municipality incorporated under the laws of the State of Alaska;

(b) be located in the coastal area; and

(c) demonstrate significant impacts from the offshore fish processing industry during the reference year. (Eff. / / , Register )

Authority: AS 44.47.050,  
Sec. 26, Chapter 98,  
SLA 1985

19 AAC 33.020. APPLICATION PROCEDURE. (a) The department will distribute applications to all potential applicants that the department believes may be eligible for assistance. Additional applications may be obtained from the department.

(b) In order to participate in the program, an applicant must submit a completed application to the department postmarked by March 15 of the application year on an application form prescribed by the department.

(c) For good cause, the commissioner will, in his or her discretion, extend the application deadline. (Eff. / / , Register )

Authority: AS 44.47.050,  
Sec. 26, Chapter 98,  
SLA 1985

19 AAC 33.030. DETERMINATION OF POPULATION INCREASE. A municipality must include with its application an estimate of its population increase during fishing season which is reasonably related to the offshore fish processing industry. The estimate must be certified by the mayor and adopted by the governing body of the municipality by resolution. The estimate must include an explanation of how it was determined and must be supported by relevant indices of population. Unverifiable, unsupported estimates will not be accepted. (Eff. / / , Register )

Authority: AS 44.47.050,  
Sec. 26, Chapter 93,  
SLA 1985

19 AAC 33.040. ALLOCATION. (a) The department will allocate available funds to each commercial fisheries management area in the proportion of the weight of commercial species processed offshore within each area divided by the total weight of commercial species processed offshore statewide. For the purposes of this section, management areas R and O will be combined.

(b) One-half of each commercial fisheries management area allocation will be distributed equally among all participating municipalities within the area. The other half of the area allocation will be distributed to participating municipalities within the area proportionate to the population increase within each municipality divided by the total population increase of participating municipalities within the area. (Eff. / / , Register )

Authority: AS 44.47.050,  
Sec. 26, Chapter 98,  
SLA 1985

19 AAC 33.050. APPEAL PROCEDURE. The department will make a determination of eligibility and population of each applicant and mail the determination to the applicant by April 15 of the application year. An applicant may appeal a determination of eligibility or population to the commissioner. The appeal must be in writing to the commissioner and must be postmarked within 30 days after receipt of notice of determination. The appeal must include the relevant evidence in support of the applicant's claim. The commissioner will review the appeal and notify the applicant of the decision on the appeal within 30 days of receipt of the appeal. (Eff. / / , Register )

Authority: AS 44.47.050,  
Sec. 26, Chapter 98  
SLA 1985

19 AAC 33.060. AGREEMENTS. A municipality and its officers and employees shall, upon request of the department, furnish available information and assistance required by the department in securing accurate information upon which to base the department's determinations. (Eff. / / , Register )

Authority: AS 44.47.050,  
Sec. 26, Chapter 98  
SLA 1985

19 AAC 33.070. DEFINITIONS. For the purposes of this chapter:

(a) "application year" means the state fiscal year for which a municipality submits an application for funding under 19 AAC 33;

(b) "coastal area" means the nine regions defined in AS 44.19.891(a)(1) from which members of the Alaska Coastal Policy Council are chosen, as set out in the annexed map (Attachment A).

(c) "commercial fisheries management area" means an area established by the Alaska Department of Fish and Game for management and statistical reporting purposes pursuant to AS 16.05.251(a)(2) and as shown on the annexed map (Attachment B).

(d) "commissioner" means the Commissioner of the Department of Community and Regional Affairs.

(e) "department" means the Department of Community and Regional Affairs.

(f) "fishing season" means that period in the reference year during which any species of fish, including shellfish, may be commercially taken under the regulations of the Alaska Department of Fish and Game, which is occurring in the commercial fisheries management area in which the municipality is located.

(g) "impacts" include ecological (such as the impacts on natural resources and the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health effects; and may be of the following types:

(1) direct impacts that are caused by, or are reasonably attributable to an activity or action and occur at the same time and place;

(2) indirect impacts that are caused by an action and are later in time or farther removed in distance; these may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems; or

(3) cumulative impacts or the impacts on the human/physical environment that result from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency, industry, or person undertakes such other actions; these can result from individually minor but collectively significant actions taking place over a period of time;

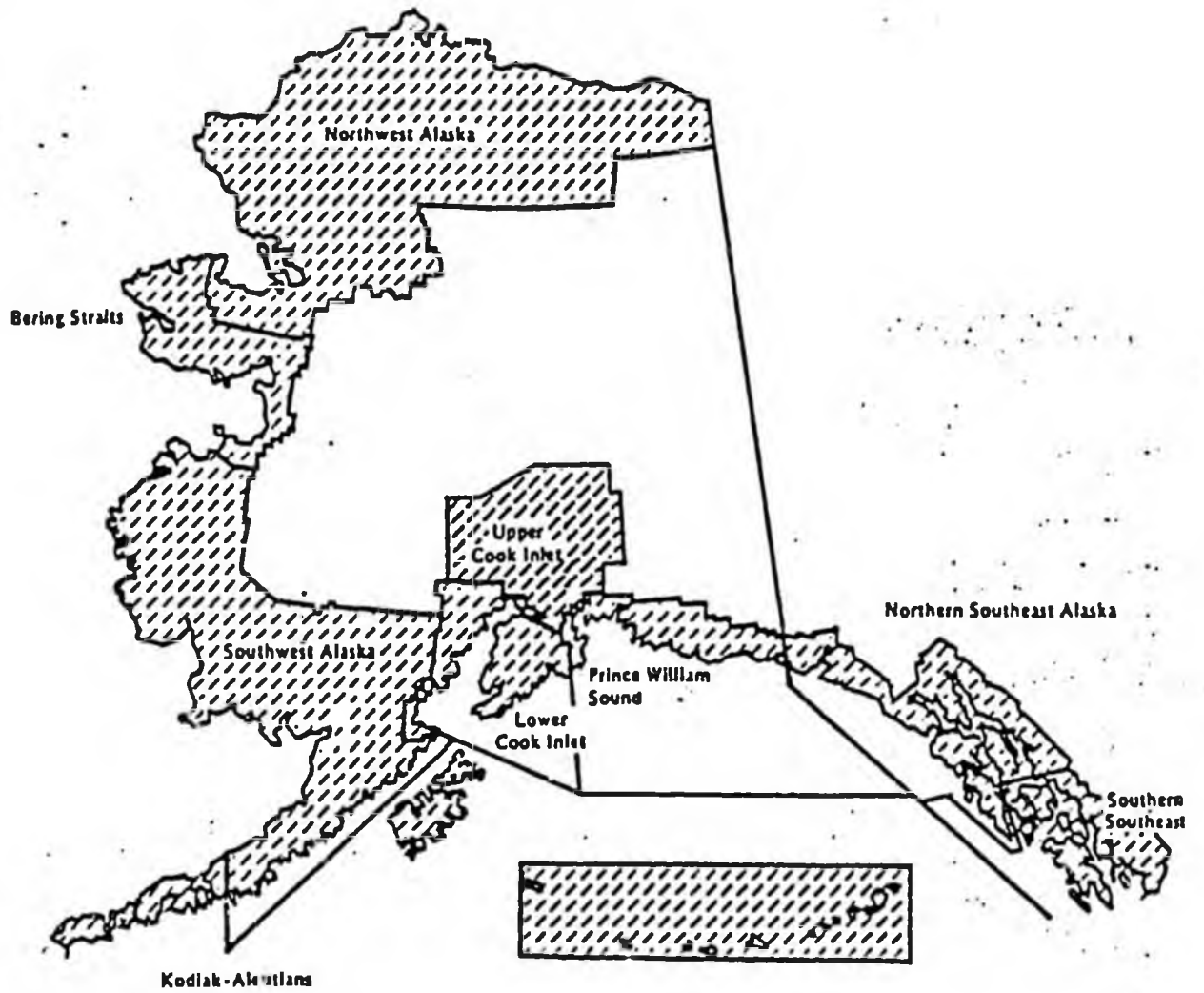
(h) "population increase" means the increase in population which is reasonably related to the offshore fish processing industry within municipal boundaries during the reference year above the municipal population determined by the Department of Community and Regional Affairs for the State Revenue Sharing Program pursuant to AS 29.60.020 for July 1 of the reference year; persons included in the population increase may be transient and need not have permanent ties with the community, but rather represent a peak level of demand on city services;

(i) "reference year" means that year from which population and fish weight data are drawn and in which the claimed significant impacts must have occurred; it is the calendar year immediately preceding the application year;

(j) "significant impact" means an impact of which the overall cumulative primary and secondary consequences significantly alter the quality of the human environment, curtail the choices of beneficial uses of the human environment, or interfere with the attainment of long-range human environmental goals; the word "significant" is intended to imply a threshold of importance and impact that must be met;

(k) "weight of commercial species" means the total pounds of ex-vessel commercial production of fish and shellfish within state waters as determined by the Alaska Department of Fish and Game for the reference year. (Eff. / / , Register )

Authority: AS 44.47.050,  
Sec. 26, Chapter 98,  
SLA 1985



**NINE REGIONS FROM WHICH ELECTED OFFICIALS ARE  
SELECTED TO SERVE ON THE COASTAL POLICY COUNCIL**

SOURCE: Alaska Department of Community and Regional Affairs. 1979. District Program Guidebook Series. Vol. 1. Coastal Management: What It Is And How It Works. Anchorage: DCRA.



#### ALASKA COMMERCIAL FISHERIES REGIONS AND AREAS

##### REGION I: SOUTHEASTERN: Dixon Entrance to Cape Suckling

- Areas: A. Juneau & Yakutat  
 B. Ketchikan  
 C. Petersburg  
 D. Sitka

##### REGION II: CENTRAL: State Third Judicial Division Northern Boundary to Cape Suckling to Cape Douglas to Cape Newenham

- Areas: E. Prince William Sound  
 H. Cook Inlet  
 T. Bristol Bay (salmon and herring catch; all fish and shellfish production)

##### REGION III: ARCTIC-YUKON-KUSKOKWIM (AYK): North of State Third Judicial Division Northern Boundary which ends at the west at Cape Newenham including Nunivak, St. Matthew, and St. Lawrence Islands

- Areas: W. Kuskokwim  
 X. Kotzebue  
 Y. Yukon  
 Z. Norton Sound

##### REGION IV: WESTERN: Cape Douglas to Unimak Pass to Cape Newenham including Kodiak and Aleutian Islands

- Areas: K. Kodiak  
 L. Chignik  
 M. Alaska Peninsula  
 O. Dutch Harbor  
 Q. Bering Sea  
 R. Adak & W. Aleutians  
 T. Bristol Bay (fish other than salmon and herring catch; and shellfish catch)

# MEMORANDUM

# State of Alaska

Hon. Mary Nordale, Commissioner DATE January 18, 1985  
Department of Revenue

FILE NO: 366-313-85

TELEPHONE NO: 465-3600

FROM Norman C. Gorsuch  
Attorney General

SUBJECT Fish tax revenue  
sharing

By: *Martha A. Fox*  
Martha A. Fox  
Assistant Attorney General

You have asked whether, under the revenue sharing provisions of AS 43.75.130, the Department of Revenue (department) should distribute a percentage of the fisheries business taxes collected for processing that takes place outside of municipality, city, and borough boundaries. On examining the pertinent statutes, we conclude that there is no statutory basis for the department to distribute this revenue.

The department is currently distributing a percentage of the fisheries business tax it collects for processing that takes place within municipality or borough boundaries, but not for processing activities outside those boundaries. The department has been asked to review this practice in light of floating processors or shore-based vessel processors that are processing in waters outside of municipality or borough boundaries, but that are making use of local facilities and services.

The department is charged with administering the tax laws established by statute. AS 43.05.040. Any action it takes in administering the tax laws is limited by the terms and scope of the underlying statutes involved.

There has been a revenue sharing provision of some form in the fisheries business tax statutes since at least 1962. (Sec. 6, ch. 155, SLA 1962.) Apparently the general purpose of this revenue sharing was originally to provide educational funds for communities, and later to assist in financing other services including fisheries enhancement. (Papers in 1979 Senate C & RA Committee File on SB 132, Legislative Research Library, Juneau.) AS 43.75.130, the fisheries business tax revenue sharing provision, states:

The commissioner of revenue shall pay  
(1) to each municipality unified under AS 29.68.240 - 29.68.440, and to each city located in the unorganized borough, 50 percent of the

amount of tax revenue collected in the municipality from taxes levied by this chapter;

(2) to each city located within a borough, 25 percent of the amount of tax revenue collected in the city from taxes levied by this chapter; and

(3) to each borough

(A) 50 percent of the amount of tax revenue collected in the area of the borough outside cities from taxes levied by this chapter; and

(B) 25 percent of the amount of tax revenue collected in cities located within the borough from taxes levied by this chapter.

The pertinent language in the section requires the department to share a percentage of the tax revenue collected "in the municipality," "in the city," or "in the ... borough" from the fisheries business tax. There is no basis in this wording for sharing tax revenues from processing activities that take place outside of a local government area.

Under a literal reading of the statute, revenue sharing is only applicable to tax revenues collected in the municipality or borough. As a practical matter, actual collection of the tax will often not take place in the municipality, city, or borough in which the processing takes place. The department has interpreted AS 43.75.130 to mean that revenue sharing is applicable to tax revenue collected for processing that takes place in the municipality, city or borough.

This interpretation is apparently one of longstanding, and we believe that it is the correct interpretation of the revenue sharing statute. Given the purpose of revenue sharing, it is reasonable to assume that the legislature intended revenue sharing to go to communities that were affected by the processing activity rather than the place the tax was collected. The nature of the fisheries business tax also supports this interpretation. This is because the fisheries business tax is a tax on the activity of processing. <sup>1/</sup> The tax is imposed on "[a] person engaged in a fisheries business," (AS 43.75.015), which is defined as

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<sup>1/</sup> AS 43.75.100 imposes a tax on the taking of a fishery resource if it is not otherwise taxed under other provisions of AS 43.75. This section is intended to cover fisheries resources that are harvested but not processed in the state.

a person who engages in processing fisheries resources for sale by freezing, cooking, salting, or other method and includes but is not limited to canneries, cold storages, freezer ships, and processing plants;

AS 43.75.140(3). The tax is levied on a percentage of the value of the fisheries resource processed. Therefore, tax revenue collected from the fisheries business tax in a local government area would be from processing.

The statute makes no provision, however, for sharing revenues from taxes collected for processing that takes place outside of the local government area. We recognize that there may be some situations where these local governments are providing the types of services to processors that revenue sharing is generally intended to assist in financing. However, the department cannot take administrative action without underlying statutory authority, and there is no statutory authority for that type of revenue sharing in AS 43.75.130. 2/

Please let us know if we can be of any additional assistance.

MAF/mf

cc: Martin J. Richard  
Director of Audit

Steven R. Kettel  
Chief, Audit Services

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2/ The question presents additional issues concerning a proper method of allocating shared revenues among local governments when a processor impacts more than one community. With the statute silent on the issue of sharing revenues from processing outside of local government boundaries, there is no guidance on how to allocate. If the statute were changed to allow this type of revenue sharing, it should also give guidance on the allocation issue.

# On Annexation — Clarks Point, Dillingham see no common ground

BPT  
10/3/86

by Bruce Baltar  
BayTimes Staff

City officials from Clarks Point and Dillingham met this week to seek common ground on the cities' conflicting annexation claims. But they could not come closer than an "agreement to disagree" on the main issue of annexing the waters of Nushagak Bay.

Both cities have filed annexation petitions with one major goal in mind: to tap more than \$500,000 in raw fish taxes that floating processors in Nushagak Bay pay the state each year. Although municipalities receive half of the raw fish taxes paid by processors within their boundaries, the migration of processors off shore in recent years has deprived the cities of much of this revenue.

Clarks Point city council members and city administrator Sharon Clark met with Dillingham officials at city hall Tuesday to prepare for Local Boundary Commission hearings, which are scheduled in both communities tomorrow.

The meeting was friendly, but no compromise was reached. The stumbling block is that the processors congregate in a relatively small area off Clarks Point, the area Clarks Point councilman Mike Walker called "the money bag in the seine." Without giving up that most lucrative part of the Bay, there was little either side could offer by way of compromise.

Despite their inability to agree on bound-

See ANNEXATION Page 3

October 3, 1986 Bristol BayTimes Page 3

## Annexation, Cont'd from Page 1

...danes, officials did agree to cooperate in seeking legislation to distribute some of the fish taxes locally if both an-

...nexasion efforts fail.

That is a distinct possibility. The boundary commission's

staff has recommended complete rejection of the Clarks Point petition, and rejection of all of Dillingham's claim except for lands north of the city to about 13.5 mile on the Lake Road.

Clarks Points' petition asks that its boundary be extended to include upper Nushagak Bay from Clarks Point to Kakanak and Saguyak Corporation lands on both side of the bay. Officials said Tuesday that they will not reduce the area sought.

Dillingham's original petition asked for the entire Nushagak fishing district, shorelands down the west side of the Bay, and a large expanse of land north and west of the existing city limits including Snake Lake and most of the land between Aleknagik and Dillingham.

City officials agreed to reduce their claims after a pair of meetings with Chugach, Ltd.'s board last week. The village corporation, the largest landowner in the area, had objected to the extent of the annexation claims, partly because it feared possible future taxation of its undeveloped land.

As revised, the Dillingham annexation petition would extend the existing city boundary one mile to the west and northward for several miles on either side of the Lake Road to about 12 Mile. The state's proposed Wood River land disposal area near Belt Creek would be included, as would the state open-to-entry land to the west of 11 Mile. To the south, the city would abandon its claim to shorelands along the western side of the bay, and would claim only the bay itself to the mean low water mark.

City officials plan to present the reduced boundary as an addendum to its petition at its hearing on October 4.

The public hearings will be held at the Clarks Point School gym at 1:00 p.m. and at the Senior Citizens Center in Dillingham at 7:00 p.m.



Clarks Point City Administrator Sharon Clark responds to a question from Mary Ellen Darling of the Dillingham City Council. Others Clarks Point council members attending Tuesday's annexation meeting included (from left) Manuel Floresta, Mike Walker, Thomas Gardner, Irene Clark, Lori George and (not pictured) Joe Clark.

(9)

Legislative Update

X  
President Reagan recently signed two bills impacting the fishing industry. H.R. 3674, signed on December 29, renews for two years the Governing International Fisheries Agreement between the U.S. and Japan, and implements Annex V of MARPOL (International Convention for the Prevention of Pollution from Ships) which prohibits the dumping at sea of all garbage within 12 miles of the U.S. shore and the dumping of plastic garbage anywhere in the U.S. 200-mile zone. U.S. vessels are prohibited from dumping plastic even outside 200 miles and ports are required to provide onshore disposal facilities. Additionally, NOAA must identify the damaging effects of plastics on the marine environment and the Environmental Protection Agency must identify landbased sources of plastic pollution and other garbage and recommend methods of reducing them. The bill also reauthorizes the Sea Grant Program for \$45 million in FY1988, \$58 million in FY1989, and \$64 million in FY1990, and creates a grant program to improve marine affairs and resource management curricula at colleges and universities. A Strategic Marine Research Program also is created to concentrate on critical resource and environment areas not currently provided with adequate funding. Finally, the bill implements the Driftnet Fishing Control Act of 1987 which requires the Secretary of Commerce, through the Secretary of State, to negotiate monitoring and enforcement agreements with foreign countries whose fleets fish with high seas driftnets in the North Pacific, and to develop recommendations on a driftnet marking and registration system, a driftnet fishing vessel tracking system, and the use of biodegradable materials in driftnets.

H.R. 2598, the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, was signed by the President on January 11, 1988. The bill includes provisions to prohibit foreign-built vessels applying for U.S. documentation after July 28, 1987 to be used for fish processing and places restrictions on foreign ownership and crews aboard U.S. fishing, fish processing and fish tendering vessels engaged in the fisheries in the navigable waters of the U.S.

Bering Sea and Aleutians Groundfish SEIS Work/Scoping Meeting

The National Marine Fisheries Service has determined that a Supplemental Environmental Impact Statement (SEIS) will be required to analyze the effect of raising the upper limit of the optimum yield range for groundfish in the Bering Sea and Aleutian Islands. The SEIS will be prepared by a workgroup composed of scientists from the National Marine Fisheries Service, U.S. Fish and Wildlife Service, Minerals Management Service, and North Pacific Fishery Management Council. A combined working session and National Environmental Policy Act scoping meeting will be held on February 16 in Anchorage and the concerned public is encouraged to attend. Please contact Denby Lloyd at the Council office for further details.

Joint Ventures May Fish Roe-bearing Rock Sole This Year

The Council was asked by the Alaska Factory Trawlers' Association to use permit conditions this year to restrict joint ventures from targeting on roe-bearing rock sole in the Bering Sea before April 1. This is a very valuable fishery for U.S. catcher/processors and the market apparently is limited to around 15,000 mt. Implementing such a permit condition based solely on economic allocation may require a 30-day public comment period which

# ALEUTIANS EAST BOROUGH

SERVING THE COMMUNITIES OF

■ KING COVE ■ SAND POINT ■ AKUTAN ■ COLD BAY ■ FALSE PASS ■ NELSON LAGOON

March 14, 1988

The Honorable Fred Zharoff  
Alaska State Senate  
P.O. Box V  
Juneau, Alaska 99811

RE: SB 454

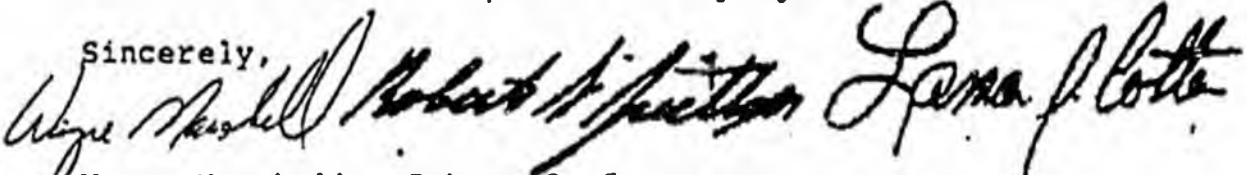
Dear Senator Zharoff:

The City of King Cove supports the adoption of ~~SS #314~~ <sup>SB 454</sup>, an act relating to the allocation of fisheries business taxes to municipalities. The bill establishes a concrete program which the State can use to share taxes collected from the offshore processing industry with affected municipalities. King Cove directly benefited from the State's FY 87 pilot program on these taxes, and would like to continue receiving revenues from this source. The City uses the revenues to help pay the increased costs the City incurred to provide additional public services needed to mitigate the negative impacts from offshore fishing industry activities.

The City also advocates adopting a suggested change to use fish management regions, rather than areas, to determine the amount of monies each affected municipality receives. Implementation of the pilot program unearthed gross inequities in impact monies respective communities received when fish management areas were used to determine each municipality's share. The use of management regions should mostly correct this problem and provide a better and fairer system for determining the amount of monies a community will receive for the amount of impact experienced.

The City supports the institutionalization of the fish tax pilot project that will occur through SS ~~314~~. We hope the bill is adopted and that the legislature also allocates the revenues needed to implement the program for FY 89.

Sincerely,



Wayne Marshall  
City Manager  
King Cove

Robert S. Juettner  
City Administrator  
Sand Point

Lamar Cotten  
Borough Administrator  
Aleutians East Borough

1007 W. 3rd, Suite 201  
Anchorage, Alaska 99501  
274-7555



# CITY OF DILLINGHAM

P.O. Box 889  
Dillingham, Alaska 99576

CITY HALL (907) 842-5211  
FIRE RESCUE (907) 842-2288  
PLANNING (907) 842-5200  
PUBLIC WORKS (907) 842-5148

## POLICY POSITION - - CITY OF DILLINGHAM

### Senate Bill 454 and House Bill 314

For the past three legislative sessions, one of the City's top legislative priorities has been the issue of sharing raw fish taxes collected from floating processors with local governments impacted by those processing activities.

Perhaps a brief bit of background information on this issue would be helpful in framing the public policy issues surrounding this tax matter. Since Statehood, it has been the policy of the State of Alaska to share raw taxes with incorporated communities in or near the area in which the fishery resource is harvested and processed.

When the raw fish tax statute was originally implemented, the vast majority of fish processing facilities was located onshore. However, with the passage of time, advent of new technology, and changing economics of fishery resource processing, an ever-increasing amount of processing is taking place offshore, outside of municipal government boundaries. The net effect of this trend is that onshore communities which serve as staging areas for the offshore processing bear the brunt of the impacts created by the processing activities. However, the impacted communities do not receive any of the taxes paid to the State by the offshore processing facilities. We believe this is an inequitable situation which must be addressed; passage of S.B. 454 or H.B. 314 would correct this long-standing policy inequity.

Further, as a matter of public policy, we believe that any bill which passes the Legislature must incorporate the following elements:

1. Incorporated governments located on or within ADF&G Commercial Fishing Management Areas which are impacted by a fishery should be eligible for any funds which are distributed under this proposal. In situations in which more than one incorporated community lies within the boundary of an ADF&G management area, funds should be distributed among the eligible communities on a per capita basis, utilizing the annual Certification of Population Report issued by the Department of Community and Regional Affairs as base line data for population counts.

2. There are several distribution methods which could be used to determine how any funds available under this project should be shared. However, we believe the most equitable method is as follows:

- A. Determine the amount of taxes paid to the State by the floating processors

in each commercial fishing management area.

B. On a pro-rata, per capita basis, share the available funds based on the amount of taxes paid by the floating processors in each management area with the eligible communities within each management area.

3. Information regarding the amount of taxes paid by the floating processors to the State should be developed by the Department of Revenue. In addition, eligible local governments should be given an opportunity to provide such information to the Department of Revenue. For example, in the past, the City of Dillingham has developed information in this area by working directly with the floating processors operating near the community.

4. As a condition of sharing in this pool of previously unshared taxes, a participating local government must agree to use these funds to reduce the impacts created by adjacent fisheries on the community.

S.B. 454 and H.B. 314 each addresses these critically important policy criteria, and therefore we support their passage.

In closing, we want to stress that passage of this legislation will accomplish the following public policy objectives:

1. It corrects what appears to be an inequity in current state law which adversely affects local governments which absorb the impacts created by the offshore processors, but receive no financial assistance to cope with those impacts.

2. It discourages a recent trend by local governments to implement "creative alternatives" to capture tax revenues from floating processors, such as creating new governmental entities or annexing bays with boundaries drawn to include areas where floating processors now operate.

3. It holds the promise of giving local governments access to a long-term, stable source of income which will exist after Prudhoe Bay oil revenues have dried up.

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

CS Fox  
BILL VERSION: Senate Bill 454 (C+RA)  
PUBLISH DATE: Senate 3/30/88

FISCAL NOTE

REQUEST:

Revision Date: March 17, 1988  
Title: "An Act relating to the allocation of fisheries business taxes"  
Sponsor: Zharoff  
Requestor: Community & Regional Affairs

Agency Affected: Revenue  
BRU: Income and Excise Audit  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
<b>OPERATING</b>						
PERSONAL SERVICES	-	17.0	17.0	17.0	17.0	17.0
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	10.2	3.2	3.2	3.2	3.2
SUPPLIES	-	.5	.5	.5	.5	.5
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	27.7	20.7	20.7	20.7	20.7
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	(4,500)	(5,000)	(5,000)	(5,000)	(5,000)

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND	-	27.7	20.7	20.7	20.7	20.7
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	-	27.7	20.7	20.7	20.7	20.7

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME	-	-	-	-	-	-
PART-TIME	-	1	1	1	1	1
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

The estimated loss of general fund unrestricted revenues would result in additional revenue sharing to municipalities under SB 454. Estimates are based on FY 87 actuals and reflect current price/catch assumptions in future years.

Prepared By: Steven E. Kettel *Steven E. Kettel* Phone: 465-2320  
Division: Income and Excise Audit Division Date: March 17, 1988

Approved by Commissioner: Hugh Malone *Hugh Malone* Date: March 17, 1988  
Agency: Department of Revenue

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

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An act..fisheries business taxes to municipalities..effective date."  
Sponsor: Zharoff  
Requestor: \_\_\_\_\_

Agency Affected: Community & Regional Affairs  
BRU: Local Government Assistance

Components: Local Government Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		23.1	23.9	24.7	25.5	26.3
TRAVEL		2.0	2.0	2.0	2.0	2.0
CONTRACTUAL		3.0	3.0	3.0	3.0	3.0
SUPPLIES						
EQUIPMENT		1.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		29.1	28.9	29.7	30.5	31.3

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		29.1	28.9	29.7	30.5	31.3
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jim Plasman, Deputy Director  
Division: Municipal & Regional Assistance

Phone: 465-4750  
Date: 3/22/88

Approved by Commissioner: David G. [Signature]  
Agency: Community & Regional Affairs

Date: 3-22-88

Distribution (by preparer):

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

SB

459





**SENATOR FRED F. ZHAROFF**  
**ALASKA STATE LEGISLATURE**

P.O. BOX 405, KODIAK, ALASKA 99815 (907) 486-5259

DURING SESSION:


P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

**DISTRICT N**

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAN'' • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Jack Coghill  
Chairman  
Senate Resources Committee

FROM: Senator Fred F. Zharoff 

DATE: March 21, 1988

RE: Amendment to SB 459 (Confidentiality of shellfish surveys)

---

I respectfully request that the Senate Resources Committee make the following amendments to SB 459, "An Act relating to the confidentiality of shellfish stock abundance surveys conducted by the Department of Fish and Game; and providing for an effective date."

On page 2, line 19-23 delete existing language and insert the following:

(c) Crab stock abundance survey information that reveals crab catch by sampling location is confidential and is not subject to inspection or copying under AS 09.25.110 - 09.25.120 until the close of the fishing season for which the survey was conducted.

The title of the bill also would need to be changed to reflect this amendment.

This amendment was suggested by the Department of Fish and Game as a way to more specifically describe the information we wish to keep confidential. Also, the amendment inserts "crab" in place of "shellfish". This more specifically targets the bill to the problem I am trying to solve -- disclosure of crab survey information, not shellfish in general.



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

**BILL ANALYSIS**

DEPARTMENT <b>Fish &amp; Game</b>	DIVISION <b>Commercial Fish.</b>	BILL NUMBER <b>SB 459</b>	SPONSOR <b>Zharoff</b>
SHORT TITLE OF BILL <b>Confidentiality of shellfish stock abundance surveys</b>			
DEPARTMENT POSITION <b>Neutral</b>			
PREPARED BY <b>Al Didier</b>	DATE <b>3/16/88</b>	COMMISSIONER'S SIGNATURE <i>A. Didier</i>	DATE <b>3-16-88</b>

**SUMMARY**

OTHER AGENCIES AFFECTED BY BILL <b>None</b>	CONSTITUENT GROUPS AFFECTED BY BILL <b>Unknown</b>
ORGANIZATIONAL SUPPORT FOR BILL <b>Unknown</b>	ORGANIZATIONAL OPPOSITION TO BILL <b>Unknown</b>

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

**This bill would make confidential until the end of the current fishing season, all information from shellfish abundance surveys which show the abundance of shellfish by sampling location.**

ANALYSIS OF BILL/PROGRAM EFFECTS

**See Attached**

AMENDMENTS PROPOSED

**(c) Shellfish stock abundance survey information that reveals shellfish catch by sampling location is confidential and is not subject to inspection or copying under AS 09.25.110 - 09.25.120 until the close of the fishing season for which the survey was conducted.**

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

### Analysis of Bill/Program Effects

PRO: This bill may permit the department to open seasons in areas which have small, localized shellfish populations. If the locations of these populations are publicized prior to the fishing season, effort could be concentrated and the department would be reluctant to allow a fishery. If some fishermen are not aware of these concentrations, effort may be more dispersed and a short opening might be possible without the risk of overharvest.

CON: Assessment surveys are often used to set guideline harvest levels prior to a fishery. The public has always had the opportunity to critique these surveys and confirm the validity of the guideline harvest levels before the season. This process will not be possible under the proposed legislation.

Shellfish populations are generally not highly mobile and shellfish surveys often indicate the availability of recruitment in future years. Since this information will only remain confidential during the current season, a fisherman could refer to the survey conducted the previous year to identify probable shellfish concentrations. This may tend to dilute the possible benefits cited above.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Confidentiality of shellfish  
abundance surveys  
Sponsor: Zharoff  
Requestor: Senate Resources

Agency Affected: Fish and Game  
BRU: Commercial Fisheries  
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: Al Didier  
Division: Commercial Fisheries

Phone: 465-4120  
Date: 3/16/88

Approved by Commissioner: *William H. Steyer*  
Agency: Fish and Game

Date: 3-16-88

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

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Confidentiality of shellfish  
abundance surveys  
Sponsor: Zharoff  
Requestor: Senate Resources

Agency Affected: Fish and Game  
BRU: Commercial Fisheries  
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: Al Didier  
Division: Commercial Fisheries

Phone: 465-4120  
Date: 3/16/88

Approved by Commissioner: *Wm. H. Kelly*  
Agency: Fish and Game

Date: 3-16-88

Distribution (by preparer):

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



**SENATOR FRED F. ZHAROFF**  
**ALASKA STATE LEGISLATURE**

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

**DISTRICT N**

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

**SECTIONAL ANALYSIS**

Senate Bill 459 - "An Act relating to the confidentiality of shellfish stock abundance surveys conducted by the Department of Fish and Game; and providing for an effective date."

**SECTION 1** CONFIDENTIAL NATURE OF CERTAIN REPORTS AND RECORDS. Adds references to new paragraph (c) in the statutes that describe which Department of Fish Game information is confidential and which is public information.

**SECTION 2** New paragraph (c). Shellfish stock abundance survey information that reveals the location of shellfish harvests is confidential until after the close of the fishing season for which the survey was conducted. This information is specifically exempted from the public records statutes, AS 09.25.110 - 09.25.120.

**SECTION 3** Immediate effective date.

5-1837B  
Hein  
3/22/88

Original sponsor: Zharoff

1 IN THE SENATE BY THE RESOURCES COMMITTEE  
 2 CS FOR SENATE BILL NO. 459 (Resources)  
 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 confidentiality of crab stock  
 7 abundance survey information held by the Department  
 8 of Fish and Game; and providing for an effective  
 9 date."

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

11 \* Section 1. AS 16.05.815 is amended to read:

12 Sec. 16.05.815. CONFIDENTIAL NATURE OF CERTAIN REPORTS AND  
 13 RECORDS. (a) Except as provided in (b) and (c) of this section,  
 14 records required by regulations of the department concerning the  
 15 landings of fish, shellfish or fishery products, and annual statis-  
 16 tical reports of buyers and processors required by regulation of the  
 17 department are confidential and may not be released by the department  
 18 except that the department may release

19 (1) any of its records and reports to the National Marine  
 20 Fisheries Service as required for preparation and implementation of  
 21 the fishery management plans of the North Pacific Fishery Management  
 22 Council within the fishery conservation zone; however, information  
 23 released to the National Marine Fisheries Service under this paragraph  
 24 may not disclose the identity of individual fishermen or their ves-  
 25 sels;

26 (2) any of its records and reports to the Department of  
 27 Revenue and to the Commercial Fisheries Entry Commission to assist  
 28 them in carrying out their statutory responsibilities;

29 (3) records or reports of the total value purchased by each

1 buyer to a municipality that levies and collects a tax on fish, shell-  
2 fish, or fishery products if the municipality

3 (A) requires records of the landings of fish, shell-  
4 fish, or fishery products to be submitted to it for purposes of  
5 verification of taxes payable; and

6 (B) maintains the confidentiality of reports and  
7 records that it receives under this paragraph;

8 (4) such records and reports as necessary to be in confor-  
9 mity with a court order;

10 (5) on request, the report of a person to the person whose  
11 fishing activity is the subject of the report; and

12 (6) fish tickets and fish ticket information to the divi-  
13 sion of fish and wildlife protection, Department of Public Safety.

14 (b) Except as provided in (c) of this section, records [RECORDS]  
15 or reports received by the department which do not identify individual  
16 fishermen, buyers, or processors or the specific locations where fish  
17 have been taken are public information.

18 \* Sec. 2. AS 16.05.815 is amended by adding a new subsection to read:

19 (c) Crab stock abundance survey information that reveals crab  
20 catch by sampling location is confidential and is not subject to  
21 inspection or copying under AS 09.25.110 - 09.25.120 until the close  
22 of the fishing season for which the survey was conducted.

23 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).  
24  
25  
26  
27  
28  
29

S B

465

SENATE AMENDMENT

BY Senator Dick Eliason

To: \_\_\_\_\_ SENATE BILL No. 465

To: \_\_\_\_\_ HOUSE BILL No. \_\_\_\_\_

PAGE:                      LINE:

1

13

After "Forest." add the following:

The management plan established by the commissioner under AS 41.17.230 for the Yakataga State Forest may not permit an activity within the rivers, streams, lakes, or estuaries of the Yakataga State Forest that results in a detrimental change in water quality, quantity, temperature, or other natural habitat conditions of the Yakataga State Forest.

TESTIMONY OF JULIE KOEHLER  
REPRESENTING THE SOUTHEAST ALASKA CONSERVATION COUNCIL  
IN SUPPORT OF SB 465, ESTABLISHING THE YAKATAGA STATE FOREST  
BEFORE THE SENATE RESOURCES COMMITTEE  
APRIL 13, 1988

Mr. Chairman, members of the Committee, thank you for the opportunity to testify today in support of SB 465 which would establish the Yakataga State Forest.

My name is Julie Koehler. I represent the Southeast Alaska Conservation Council, a coalition of 13 community-based conservation groups from 11 communities in Southeast Alaska, including Yakutat. All together, our member organizations represent thousands of Alaskan conservationists.

SEACC supports SB 465 because the coastline and resources between Icy Bay and Cape Suckling are deserving of wise, multiple-use management. State forest designation would require the adoption of a management plan before logging could take place.

Presently, this area is economically and traditionally important to the residents of Cordova and Yakutat for subsistence, commercial fishing of all five species of Pacific salmon, sport fishing, big game guiding, and wilderness lodges.

Because there has been no management planning to date, portions of this area have already been subjected to irresponsible, poorly administered state timber sales. Since the 1960's, the Alaska Department of Natural Resources (DNR) has authorized two massive timber sales from Icy Bay to the White River, with very little oversight or control. The result is one clearcut 13 miles long and one 5 miles long. What timber was left standing along streambanks was quickly blown down and then harvested as a salvage sale. Furthermore, much of the logged areas lack regeneration of either spruce or hemlock.

PROPOSED AMENDMENT TO SB 465  
YAKATAGA STATE FOREST LEGISLATION

\* Section 5. For all stream systems, lakes, and estuaries containing anadromous fish species or their habitat within the Yakataga State Forest, the Commissioner shall permit no activity that results in a detrimental change in water quality, quantity, temperature, or other natural habitat conditions.

# **CORRECTION**

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

TESTIMONY OF JULIE KOEHLER  
REPRESENTING THE SOUTHEAST ALASKA CONSERVATION COUNCIL  
IN SUPPORT OF SB 465, ESTABLISHING THE YAKATAGA STATE FOREST  
BEFORE THE SENATE RESOURCES COMMITTEE  
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SEACC supports SB 465 because the coastline and resources between Icy Bay and Cape Suckling are deserving of wise, multiple-use management. State forest designation would require the adoption of a management plan before logging could take place.

Presently, this area is economically and traditionally important to the residents of Cordova and Yakutat for subsistence, commercial fishing of all five species of Pacific salmon, sport fishing, big game guiding, and wilderness lodges.

Because there has been no management planning to date, portions of this area have already been subjected to irresponsible, poorly administered state timber sales. Since the 1960's, the Alaska Department of Natural Resources (DNR) has authorized two massive timber sales from Icy Bay to the White River, with very little oversight or control. The result is one clearcut 13 miles long and one 5 miles long. What timber was left standing along streambanks was quickly blown down and then harvested as a salvage sale. Furthermore, much of the logged areas lack regeneration of either spruce or hemlock.

These timber sales not only violate Title 16 (which protects fisheries) -- we believe they violate the principles of sustained yield management which are guaranteed in the state constitution. If such timber mismanagement is allowed to extend down the coast, all other uses of the lands between Cape Yakataga and Cape Suckling will be destroyed.

Logging can only co-exist with other valuable resources if it is done rationally, according to a multiple-use plan. However, ADF&G has not yet even catalogued all the fish streams in this area. Studies of this area are imperative to the development of a management plan which would consider all of the resources and their present uses.

By requiring a management plan prior to any further logging, SB 465 would ensure that the people in Cordova and Yakutat have a chance to influence management of this area. SB 465 would give local people a chance to participate in their own economic future.

Mr. Chairman, although SEACC supports SB 465, we would like to suggest one strengthening amendment. We would like to see a section added to specifically prohibit any detrimental change in water quality, quantity, temperature, and natural conditions in anadromous fish habitat. We believe the fish resources of this area warrant strict protection.

In closing, we would like to thank Senator Eliason for taking a strong stand for wise resource development by introducing SB 465. We urge you to pass this bill with the amendment I have described. Thank you again for this opportunity to testify.

PROPOSED AMENDMENT TO SB 465  
YAKATAGA STATE FOREST LEGISLATION

\* Section 5. For all stream systems, lakes, and estuaries containing anadromous fish species or their habitat within the Yakataga State Forest, the Commissioner shall permit no activity that results in a detrimental change in water quality, quantity, temperature, or other natural habitat conditions.

TELECONFERENCE PARTICIPATION

SPONSOR (5) RES

DATE/TIME 4/13 1:30-3:30

SUBJECT SB 386-APUC  
SB 465 - YAKUTAGA st. forest

LIO'S  
(moderator)

	TESTIFY	OBSERVE	TESTIFY	OBSERVE
ANCHORAGE ( )	✓ Charles Nash University		PETERSBURG * ( )	
BARROW * ( )			SITKA ( )	
BETHEL ( )			SOLDOTNA ( )	
DELTA JUNCTION * ( )			VALDEZ * ( )	
DILLINGHAM * ( )			LTC'S	
FAIRBANKS ( )			HOMER	
GLENNALLEN * ( )			WRANGELL	
JUNEAU ( )			OFFNETS	
KETCHIKAN ( )			OFF1	YAKUTAGA (John VALE Larry Powell)
KODIAK ( )			OFF2	CORDOVA Pete + Belle nicholson Dale Ranney
KOTZEBUE ( )			OFF3	
MAT-SU ( )			OFF4	
NOME ( )			OFF5	
			OFF6	

VTS'S ON BACK

\* SESSION ONLY

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM

April 13, 1988

SUBJECT: Yakataga State Forest: valid existing rights  
(SB 465)

TO: Senator Dick Eliason

FROM: Richard A. Bradley *R*  
Legislative Counsel

Sheila Peterson has asked that I comment on some issues that have arisen in the context of the enactment of the bill.

She notes that there may be a timber contract in place on land that will become a part of the Yakataga State Forest. I have advised her that contracts that were in place before the enactment of SB 465 would continue in effect because those contracts have created valid existing rights. They would continue in effect until they expire or are sooner terminated by mutual agreement of the parties.

Of course, the corollary of that premise is also correct--that any contracts entered into after the effective date of SB 465 would be subject to the provisions of SB 465.

If I may be of further assistance, please advise.

RAB:bb  
b4/131

April 12, 1988

Mr. Chairman, Honorable Members of the Senate;

~~My name is Don Bremner~~, I'm a Tlingit Indian from Yakutat, Alaska. I'm (37) years old and was born and raised in Yakutat.

I'm here to speak in support of the formation of the Yakataga State Forest. I'm here to speak on behalf of myself and as Chairman of the Yakutat Fishermen's Association, representing the Commercial Fishermen of Yakutat.

My testimony is based upon clear, concise and sound facts. These facts are in areas of Yakutat Tlingit Traditions and customs; clear and concise physical, biological and economical management considerations regarding the Yakataga land, fur, fish, and game of the Yakataga area. As I continue these facts will portray how this Yakataga area from Cape Suckling to Icy Bay is a part of the life-style and livelihood of Yakutat residents.

My second round of facts will pertain to present negative and adverse management practices taking place by the State of Alaska.

My third round of facts will address weaknesses of present land, fur, fish and game management practices of the Yakataga area.

I will close my testimony today by requesting and encouraging your support in the formation of the Yakataga State Forest.

Therefore, in reverting back to the past and present Yakutat Tlingit Traditional and customary uses of the Yakataga area which compel our fishermen and residents of Yakutat to desire the State Forest protection of this land are:

1. From time immemorial, my fathers tribe, the Ginexqwan, lived in this area around the Tsiu and Kaliakh Rivers. My fathers tribe migrated from the upper Copper River into this area and in time, eventually migrated to the present community area of Yakutat. We do not presently have legal title or control of this area as a tribe, and I won't argue this point here, but, in our minds and hearts, and in real life, many of our Grandfathers and Grandmothers are buried in this part of our country. We in Yakutat recognize and respect this traditional historical fact and request that this area be protected and preserved on these grounds.
2. Parallel to this fact is that in the past and present, my fathers tribe and residents of Yakutat, Cordova and Anchorage have established customary hunting and fishing uses of the area for subsistence, commercial fishing, hunting and guiding, and tourism uses of this area. This area has also been an area for trapping of fur-bearing mammals.

# **CORRECTION**

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

TELECONFERENCE PARTICIPATION

SPONSOR (5) RES

DATE/TIME 4/13 1:30-3:30

SUBJECT SB 386 - APUC  
SB 465 - YAKATAGA st. forest

LIO'S  
(moderator)

	TESTIFY	OBSERVE	TESTIFY	OBSERVE
ANCHORAGE ( ) <i>Charles Nash University</i>			PETERSBURG * ( )	
BARROW * ( )			SITKA ( )	
BETHEL ( )			SOLDOTNA ( )	
DELTA JUNCTION * ( )			VALDEZ * ( )	
DILLINGHAM * ( )			LTC'S	
FAIRBANKS ( )			HOMER	
GLENNALLEN * ( )			WRANGELL	
JUNEAU ( )			OFFNETS	
KETCHIKAN ( )			OFF1	<i>YAKATAGA</i> } <i>John VALE</i> <i>Larry Powell</i>
KODIAK ( )			OFF2	<i>CORDOVA</i> } <i>Pete + Belle nicholson</i> <i>Dale Ranney</i>
KOTZEBUE ( )			OFF3	
MAT-SU ( )			OFF4	
NOME ( )			OFF5	
			OFF6	

VTS'S ON BACK

\* SESSION ONLY

VTS'S	U	T	O	TOTAL		U	T	O	TOTAL
AMB - AMBLER					MET - METLAKATLA				
ANA - ANAKTUVUK PASS					MOS - MOSQUITO LAKE				
AND - ANDERSON					NAK - NAKNEK				
ANG - ANGOON					NEN - NENANA				
CAN - CANTWELL					NEW - NEWHALEN				
CHS - CHISTOCHINA					NIK - NIKISKI				
CHI - CHITINA					NOR - NOORVIK				
COP - COPPER CENTER					NOT - NORTH TONSINA				
COR - CORDOVA					NOW - NORTHWAY				
CRA - CRAIG					PEL - PELICAN				
DOT - DOT LAKE					PTH - POINT HOPE				
EAG - EAGLE					SAV - SAVOONGA				
FTY - FT. YUKON					SDP - SAND POINT				
GAK - GAKONA					SEW - SEWARD				
GAL - GALENA					SLW - SELAWIK				
GAM - GAMBELL					SHS - SHISHMAREF				
HNS - HAINES					SLA - SLAWA				
HEA - HEALY					SKG - SKAGWAY				
HOO - HOONAH					STP - ST. PAUL				
HPB - HOOPER BAY					TOG - TOGIAK				
HYD - HYDABURG					TOK - TOK				
KAK - KAKE					OOK - TOOKSOOK				
KAT - KAKTOVIK					UAK - UNALASKA				
KEN - KENNY LAKE					UNK - UNALAKLEET				
KLA - KLAWOCK					WAI - WAINWRIGHT				
MEN - MENTASTA					YAK - YAKUTAT				

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

April 13, 1988

SUBJECT: Yakataga State Forest: valid existing rights  
(SB 465)

TO: Senator Dick Eliason

FROM: Richard A. Bradley  
Legislative Counsel *RAB*

Sheila Peterson has asked that I comment on some issues that have arisen in the context of the enactment of the bill.

She notes that there may be a timber contract in place on land that will become a part of the Yakataga State Forest. I have advised her that contracts that were in place before the enactment of SB 465 would continue in effect because those contracts have created valid existing rights. They would continue in effect until they expire or are sooner terminated by mutual agreement of the parties.

Of course, the corollary of that premise is also correct--that any contracts entered into after the effective date of SB 465 would be subject to the provisions of SB 465.

If I may be of further assistance, please advise.

RAB:bb  
b4/131

April 12, 1988

Mr. Chairman, Honorable Members of the Senate;

~~My name is Don Bremner~~, I'm a Tlingit Indian from Yakutat, Alaska. I'm (37) years old and was born and raised in Yakutat.

I'm here to speak in support of the formation of the Yakataga State Forest. I'm here to speak on behalf of myself and as Chairman of the Yakutat Fishermen's Association, representing the Commercial Fishermen of Yakutat.

My testimony is based upon clear, concise and sound facts. These facts are in areas of Yakutat Tlingit Traditions and customs; clear and concise physical, biological and economical management considerations regarding the Yakataga land, fur, fish, and game of the Yakataga area. As I continue these facts will portray how this Yakataga area from Cape Suckling to Icy Bay is a part of the life-style and livelihood of Yakutat residents.

My second round of facts will pertain to present negative and adverse management practices taking place by the State of Alaska.

My third round of facts will address weaknesses of present land, fur, fish and game management practices of the Yakataga area.

I will close my testimony today by requesting and encouraging your support in the formation of the Yakataga State Forest.

Therefore, in reverting back to the past and present Yakutat Tlingit Traditional and customary uses of the Yakataga area which compel our fishermen and residents of Yakutat to desire the State Forest protection of this land are;

1. From time immemorial, my fathers tribe, the Ginexqwan, lived in this area around the Tsiu and Kaliakh Rivers. My fathers tribe migrated from the upper Copper River into this area and in time, eventually migrated to the present community area of Yakutat. We donot presently have legal title or control of this area as a tribe, and I won't argue this point here, but, in our minds and hearts, and in real life, many of our Grandfathers and Grandmothers are buried in this part of our country. We in Yakutat recognize and respect this traditional historical fact and request that this area be protected and preserved on these grounds.
2. Parallel to this fact is that in the past and present, my fathers tribe and residents of Yakutat, Cordova and Anchorage have established customary hunting and fishing uses of the area for subsistence, commercial fishing, hunting and guiding, and tourism uses of this area. This area has also been an area for trapping of fur-bearing mammals.

3. We have an established Traditional and Customary use of the area which needs State Forest protection, but, on the other hand, it has been identified that a large number of animals use the area for food, shelter, mating and rearing of their species. This includes large game animals such as moose, black and brown bear, wolves, wolverine, mountain goat and sheep. There are many smaller fur-bearing mammals in the area such as land otter, beaver, mink, marten, and other smaller mammals.
4. It has also been identified that many birds use the area for food, shelter, mating and rearing of their young. Such birds include swans, Canadian Geese, ducks, Arctic Terns, gulls, and other mainland birds common to Alaska. It's important to note that our State Bird, the Ptarmigan uses the area as well as our National Symbolic Bird the Bald Eagle and other raptors such as various species of hawks. All of these mammals and birds need this form of State protection and I mention this in their interest.
5. Finally, many species of salmon such as Coho, Reds, and Pinks use many of the rivers and streams in this area for migration routes, spawning and rearing of their young. It has been identified that other in-stream fish such as trout and steelhead use rivers and streams in the area for migration routes, spawning and rearing. All of these fish species need this State Forest protection as an advantage over man-made and naturally imposed survival of the fittest efforts taking place within the area.
6. This concludes the number of Traditional and Customary facts I chose to support my testimony at this time. It should be obvious from present State of Alaska records which are weak in recording such information as presented, that there is a large volume of Traditional and Customary uses in the area which need this State Forest protection.

In the area of clear and concise physical facts which support my testimony mainly refer to physical land boundary uses by residents of Yakutat. They are:

1. Yakutat residents have established traditional, customary and commercial fishing uses of the land from Cape Suckling to Cape Spencer. Evidence of this use is documented in numerous Tlingit History journals, local common knowledge, Federal Government Commercial Fish and Game research and studies, State of Alaska Commercial Fish and Game research and studies, both the Federal Government and State of Alaska has documented the Yakutat residents subsistence use of the land from Cape Suckling to Cape Spencer.
2. These physical land boundaries used by Yakutat residents are recorded in all of the mentioned documents and are commonly recognized by Yakutat residents, the Federal Government and State of Alaska.

3. As a result, it would not be a new issue to the residents of Yakutat to attempt in protecting our historical physical land boundaries in the Yakataga area with this State Forest Status. Even though our Yakutat physical land boundaries are Historically established, this State Forest Status is needed as a current modern protection mechanism to help preserve the land and its resources for future established uses and residents.

There is a clear and concise biological ecosystem within the area with a clear chain of interaction between the fur, fish, fowl, birds and land in consideration. Its not my position to represent myself as a Fish and Game biologist, but, to emphasis the important biological relationship and interaction of the fur, fish, game and birds with the land. For example;

1. There cannot be or won't be an optimal yield or survival rate of each species without proper land, resources, and habitat, so that these fish and game species could survive in a state of least resistance against man-made and natural predation.
2. The land, habitat and residual resources become the food, shelter and rearing area for each species. This State Forest Status will enhance current protection mechanisms in a positive manner.

There is an established Historical economic environment based on fish and game within the area;

1. My Tlingit ancestors and current residents of Yakutat, Cordova, and Anchorage make an economic living on a yearly basis from the fish and game within the area. This income is a large portion of the only form of money to be made throughout the year.
2. If anyone has even spent one day in Yakutat it would be evident that the economic mainstay of our community is commercial fishing.
3. It's common knowledge in Yakutat and there are written documents which provide evidence that Yakutat Tlingits have always used the fish and game in the area as a form of livelihood. This continues on today in the form of commercial salmon set-netting and trolling. These fisheries take place within the rivers and streams within the area and on adjacent tidal zones of influence.
4. Commercial trollers from all around the State of Alaska and Washington benefit from the proper protection and management of the salmon species which spawn and are reared within the area.
5. Many of the salmon species, shellfish and bottomfish use the rivers, streams and adjacent coastal waters for migration and are transboundary resources.
6. As a result, it would be beneficial to have this State Forest Status to help protect the survival of these fish and game species.

7. This will in turn protect an established economic livelihood for residents of Yakutat, Cordova, Anchorage, and commercial trollers from other communities in Alaska and Washington.

As mentioned earlier, my second round of facts will pertain to past and present negative adverse Forest Management practices taking place within the area of consideration. What we in Yakutat see as past and present negative adverse Forest Management practices are in two areas;

1. The first area concerns the past and present adverse logging taking place within the area. These timber cutting sales have encompassed approximately (13) miles of continuous land and (275,000,000) Board Feet of trees. This in our eyes reflects and amounted to a weak and unregulated, unmonitored logging program in a high energy coast prone to winds, high seas, erosion and blowdown.
2. As a result, it has been identified that the land, fur, fish and game has already been damaged by this large adverse clear-cut logging.
3. The second area which influences and affects this adverse logging is the weakness of the Alaska State Forest Practices Act and the lack of intergovernmental coordination which does not take place when such development is being considered or during the time development is taking place. This Alaska Forest Practices Act was master-minded by the timber development industry and is compatible for the logging industry as a legal veil for unregulated and unmonitored logging.
4. This Alaska Forest Status will act as a supplemental form of protection from unchecked adverse development to protect the land, fur, fish and game habitat from irreparable harm.
5. All of these facts are on record with State Agencies as official complaints filed by various groups and individuals at various legal public hearings throughout the State. At this time such practices by the logging industry and State of Alaska are in the process of being sued for their negligent and improper management of the forest environment of the area.
6. Yakutat fishermen and residents encourage the protection of the remaining forest environment in the area of consideration for its future uses and residents.

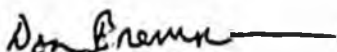
The past and present weaknesses of the fur, fish and game management practices refer to circumstances within the Alaska Department of Fish and Game and Federal Fish and Game Management Agencies. These weaknesses are;

1. The Alaska Department of Fish and Game, Alaska Coastal Policy Council and City of Yakutat has recognized the Biophysical Boundaries of the Yakutat Region to be from Cape Suckling to Cape Spencer under various management plans.
2. The Yakutat Region from Cape Suckling to Icy Bay encompasses approximately (80) linear miles of land, and with areas of direct influence, land in-ward with an indirect influence on the coastal zone, a corresponding coastal zone, and coastal ocean waters with direct interaction with the coastal zone.
3. This total area encompasses approximately (2800) square miles of land and water.
4. Within this area numerous Alaska and Federal Government Agencies manage the many species of fur, fish, game, fowl, land, water, habitat and subsurface.
5. There is a total of (27) State Agencies and (21) Federal Agencies which have an influence on the management of the Yakutat Region in consideration.
6. The weakness of this intergovernment multiagency control results in neglect, overlapping legal authority with little interagency coordination and consistency reviews of plans or management.
7. The most important point to make is that all of these Agencies have an in-office, paper legal authority to control or manage a real resource, but, these agencies lack the time, money, personnel and equipment to properly survey, catalogue, implement, and monitor each resource properly under a sustained yield or optimal yield program.
8. As a result, the resources, land and habitat is irreparably harmed from mismanagement.
9. At least, this State Forest Status will provide up-front common management protections for the land, resource, and habitat.

In conclusion, based on these preliminary facts the Yakutat Fishermen's Association, members and residents of Yakutat encourage your support in the formation of the Yakataga State Forest.

Because of our historical, cultural, and economic ties to the Cape Suckling/Yakataga area Yakutat has a long history of planning, monitoring and influencing what happens in those areas and by our presence here have set a goal to continue to do so.

Thank-You,



Don Bremner, Chairman  
Yakutat Fishermen's Association

Mr. Chairman and members of the Senate Resources Committee, ~~my name is Hank Porter~~ and I'm Chairman of the Yakutat Fish and Game Advisory Committee.

I'm here today to represent the feelings of our group concerning the desperate need of the creation of the Yakataga State Forest which includes state owned lands between Icy Bay and Cape Suckling. This is an area of the state that is rich in fish and game resources and natural beauty. However, you will see as the public testimony proceeds much of this area's natural resources have already been damaged by large scale timber clear cuts that were poorly planned and you will see that this poor planning process continues to happen by the Alaska Department of Natural Resources.

First I would like to stress the importance of this area for its commercial fishing value. As many of you are probably aware, Yakutat is a community that relies heavily on commercial fishing for its economic backbone as many other areas of the state do. There are 160 set net permits in Yakutat that are permitted to fish this area and 15 set net permits from the Cordova area. The area under consideration produces over a half million dollars annually to the set gillnet fishermen. This does not include the additional employment that is created for aircraft that fly the fish to Yakutat and Cordova and the additional employment for cannery workers.

There are also about twenty trollers that work the coast line in this area, mainly on the silver salmon stocks that spawn in the numerous rivers and streams that cover this land.

Also there are numerous sportfishermen from Anchorage and other areas of Alaska that utilize this area. During August and September twin otter aircraft bring plane loads of sportsfishermen in from Anchorage on a daily basis, as weather permits, to fish.

This area, or what's left of it, is also critically important habitat for moose, bear, mountain goats and numerous other fur bearing animals that are important for big game commercial guiding, sport and subsistence hunting, and for tourists who want to see these animals in their natural environment.

All of the values I have mentioned generate revenue for residents of Alaska and have the possibility of doing so for many years into the future. Much of this area is already ruined by poorly planned logging practices, and much of the remaining area is threatened by continued timber harvest.

At this time Mr. Chairman, I would like to pass around a few pictures that clearly illustrate the timber harvest at its worst. I had hoped to have more pictures for you, however some are presently being used to write articles about this area.

As you can clearly see from these pictures the size of the clear cuts are unbelievable. The largest clear cut in this area runs for approximately thirteen miles. Thin leave strips were left along some rivers and streams but due to the high wind velocity they were blown right over and of course timber salvage sale was put in place to log right up to rivers and streams. Now as you look at these pictures you can clearly see that this is no way to manage the state's resources for multiple-use management.

What we have happening is short term gains for the timber industry at the cost of many other user groups whose uses could go on indefinitely if this area is properly managed.

I did not come here on behalf of the Yakutat Fish and Game Advisory Committee to debate the pros and cons of the 37,777 acre timber transfer rights from DNR to the University of Alaska for logging purposes. However, I feel compelled to point out some of the problems with this large scale transaction which continues to threaten other beneficial uses of resources through multiple-use management.

1. Jim McAllister from the Department of Natural Resources has informed myself and others that Seal River will be used as a log transfer facility for the harvest area between Cape Suckling and Seal River which contains the most timber in the proposed harvest. Seal River is an anadromous system that contains some important fish populations, among them sockeye salmon. The idea of using an anadromous river for a log transfer site is appalling and dangerous. Branches, bark, sawdust and other waste products will be carried up Seal River by the tidal influences.
2. There are numerous salmon spawning systems in the area between Cape Suckling and Icy Bay that have not yet been classified as anadromous systems. Our area finfish management biologist, Greg Thomason, has stated that it would probably take two ADF&G staff personnel with the use of helicopters a full summer to complete this task. Without this knowledge, how can you plan a timber harvest and ensure that you won't be damaging important fisheries habitat?
3. At a public meeting held by the City of Yakutat on November 13, 1987, Rick Reed, Region 1 Supervisor, Habitat Division for ADF&G stated that they were very short in manpower and budget and seriously doubted that they could conduct the proper on-site ground evaluations of these areas to ensure proper protection of fish and game resources.
4. The area between Icy Bay and Cape Suckling is situated in a position in the Gulf of Alaska that is subject to extreme high velocity southeast winds. This has already been proven by the blown over leave strips along rivers and streams in the area that has already been logged. If you look at a map of the Gulf of Alaska, you will see that this is even more true in the area between Cape Suckling and White River. Once this area is opened up to logging a great deal of additional timber will be blown down, especially along the thin leave strips of anadromous rivers and streams which are also important habitat to game populations. To the best of my knowledge this problem hasn't even been studied. However, the possibility is mentioned in a memorandum from Greg Thomason to Rick Reed.

One final point I would like to make concerning the timber transfer from DNR to the University of Alaska is that the benefit to the state treasury is only \$78.41 per acre. Just imagine the damage that has already been done to this area and the additional damage that could be done for only \$78.41 per acre, and all the other uses of important resources that will be subject to long

term damage. Many of the trees in this area are two to three hundred years old.

Mr. Chairman and members of the Senate Resources Committee, we cannot ask you to correct the severe damage that has already been done to this area. However, you have it within your power to start the process in motion to make the area between Icy Bay and Cap. Suckling a state forest which would require a management plan which would include a lot of public input and save what's left of this beautiful and bountiful area for true multiple-use management.

Thank you for the opportunity to present our concerns today.



# UNITED FISHERMEN OF ALASKA

211 4th Street, Suite 106  
Juneau, AK 99801  
907-586-2820

April 12, 1988

To: Members of Senate Resources Committee

At its annual meeting in February, the board of directors of United Fishermen of Alaska passed a resolution concerning timber harvest plans for the land addressed in this bill.

The UFA board believes that logging and fishing can coexist in the same area. We realize, however, that some foresight must be used to accomplish this.

Our reasons for supporting Senate Bill 465 are the same as the reasons expressed in our resolution asking that the transfer of the area's timber rights to the University of Alaska be postponed.

Specifically we are asking that accommodations be made for the existing commercial activities in the area. We think it will not be of economic benefit to the state to allow a new activity to displace industries already in operation.

By postponing logging until a management plan is in place, as stipulated in this bill, you will be allowing all of us to work within the system you have already mandated in statute. You will be allowing all those interested in the resources of the area to work out mutually acceptable agreements.

We urge your support of SB 465.



# UNITED FISHERMEN OF ALASKA

211 4th Street, Suite 106  
Juneau, AK 99801  
907-586-2820

## UNITED FISHERMEN OF ALASKA

### Resolution 88-10

WHEREAS Alaska's Department of Natural Resources recently conveyed to the University of Alaska the rights to harvest the standing timber on 37,500 acres of land along the Gulf of Alaska between Icy Bay and Cape Suckling, Alaska; and

WHEREAS the transfer action did not fully address the other land and water uses in the area; and

WHEREAS this area also contains abundant and valuable fisheries resources which have not been inventoried and which have been inadequately surveyed; and

WHEREAS some major waterways appear to have been granted some protection but there is no assurance that tributaries important for salmon spawning and rearing habitat have even been officially identified let alone protected; and

WHEREAS the primary species produced by the area is coho salmon which must have calm, protected waters such as beaver ponds for overwintering to ensure successful survival and these areas have not been clearly identified and provisions for their protection have not been made; and

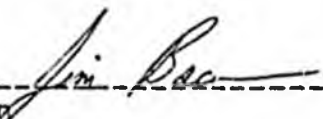
WHEREAS this process did not adequately solicit information from users already economically dependent on other renewable resources in the transfer area; and

WHEREAS related timber harvest activities, such as areas for log storage and transfer facilities, that may conflict with traditional fisheries activities should be subject to greater public review to mitigate such conflicts; and

WHEREAS the fishermen of Yakutat and Cordova are extremely concerned about the impacts on the area's fisheries that may occur as the result of these actions;

NOW THEREFORE BE IT RESOLVED that United Fishermen of Alaska requests Governor Steve Cowper to hold in abeyance all actions relating to the transfer of timber harvest rights to the University of Alaska until a full public review has been held including public notices, public hearings and an extensive public comment period; and

BE IT FURTHER RESOLVED that this public review take place in a timely fashion so as not to occur during the summer fishing season.

  
-----  
Jim Bacon  
President

3-1-88  
-----  
Date



# CORDOVA DISTRICT FISHERMEN UNITED

P.O. Box 939

Cordova, Alaska 99574

(907) 424-3447

April 11, 1988

Senator John B. Coghill, Chairman  
Senate Resource Committee  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, AK 99811

Dear Senator Coghill:

Cordova District Fishermen United supports SB 465, an Act establishing the Yakataga State Forest.

We feel that all uses of the resources in Yakataga should be considered, especially commercial fishing, subsistence, hunting and recreational, before clear-cut logging is permitted. We also feel that it is important that the DNR not permit logging within the Yakataga State Forest until a management plan has been adopted.

We appreciate your attention to this matter of importance to all commercial fishermen.

Sincerely,

CORDOVA DISTRICT FISHERMEN UNITED

*Gerald McCune*  
Gerald McCune  
President

GM/mb1

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1798  
PHONE: (907) 465-2400

March 9, 1988

The Honorable Jack Coghill  
Chair, Senate Resources Committee  
P.O. Box V  
Juneau, AK 99811

Dear Senator Coghill:

Subject: Senate Bill 465, an act that will establish the Yakataga State Forest.

Position: Language that prohibits management activity within the State Forest until a management plan is adopted runs contrary to obligations existing from the settlement arrived at between the Department of Natural Resources and the University of Alaska.

Background: The establishment of a State Forest will commit state-owned lands between Cape Suckling and Icy Bay to long term public retention. The land will be managed for multiple use and sustained yield. There are approximately 460,000 acres within the area of which an estimated 87,000 acres are highly productive forest lands. Currently this area produces 40 Alaskan jobs and \$650,000 dollars in timber royalties to the state annually. The annual gross sales receipts of the timber operators at Icy Bay is between 3 to 5 million dollars.

Since 1970, 210 million board feet of timber has been harvested within the proposed State Forest. At present the state has a contractual obligation to provide a total of 60 million board feet of timber through the end of 1990. In addition, the state is in the process of transferring the timber rights to 444 million board feet of timber to the University of Alaska as part of the University of Alaska - Municipality of Anchorage Settlement. This transfer is now under litigation. Also, the state has millions of dollars invested in roads, bridges, landing strip and barging facility at Icy Bay that require annual maintenance. The landing strip and road system also serves the growing need of the mining industry located in the area and access for recreationists and hunters.

Senator Coghill

- 2 -

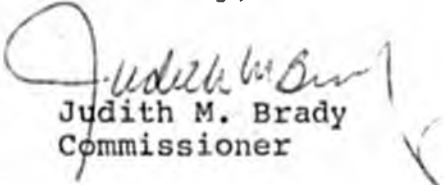
March 9, 1988

Specifically, the department is concerned about language in this bill which may limit the department's ability to meet the obligations it presently has in this region.

The Fiscal Note reflects the need for an added planner to coordinate the planning, one resource forester to gather and analyze resource data, and dollars to complete forest data base automation. These positions would be needed for the timely planning of this area.

We look forward to working with the committee and staff as this bill progresses.

Sincerely,



Judith M. Brady  
Commissioner

cc: Committee Members  
Bill Sponsors  
Rod Swope  
Bob Evans

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: SB 465  
PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: March 8, 1988  
Title: Creation of Yakataga State Forest  
Sponsor: Eliaison  
Requestor: Senate Resource Committee

Agency Affected: DNR/Div. of Forestry  
BRU: Forest Management  
Components: Forestry

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		92.7	92.7	92.7	92.7	
TRAVEL		12.0	12.0	12.0	12.0	
CONTRACTUAL		50.0	50.0	50.0	50.0	
SUPPLIES		10.0	10.0	10.0	10.0	
EQUIPMENT		2.0	2.0	2.0	2.0	
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		166.7	166.7	166.7	166.7	

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

REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		166.7	166.7	166.7	166.7	
FEDERAL FUNDS						
OTHER						
TOTAL		166.7	166.7	166.7	166.7	

POSITIONS:

FULL-TIME		2	2	2	2	
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The creation of the Yakataga State Forest will provide opportunities for Forest Management by having a dedicated resource base for forest management.

Prepared by: John Galea Phone: 465-2491  
Division: Forestry Date: March 9, 1988  
Approved by Commissioner: [Signature] Date: 3.9.88  
Agency: \_\_\_\_\_

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

Position Title Forester II		No. of Positions 1	Range/Step 16A	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location Juneau		Election District 92
Type of Expenditure		Justification SB 465		
		Funding for a 12-month position to be stationed in Juneau. The Forester will be responsible for the completion of a forestry data base in order that accurate data can be used in the planning process. This position will also be responsible for generating output maps, files to aid decisions on the plan. Also to provide technical assistance in running computer programs utilized in the planning process. The Forester will aid the planner as needed in plan development.		
Amount				
1	2	3		
Salary	2702 x 12	32.4		
Benefits	910 x 12	10.9		
Premium Pay				
Other				
Total Personal Services		43.3	43.3	
Travel		2.0		
Contractual		30.0		
Commodities		5.0		
Equipment		2.0		
Other				
Tot. Cost		82.3		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	82.3		
GF Program Receipts	1005			
Other				

**Request For  
New Position**

Agency Natural Resources  
 BRU Forest Management  
 Component Forest Management

Page 2 of 3  
 Revised Date

**FY 89**

Position Title <b>Natural Resource Manager I</b>			No. of Positions 1	Range/Step 18A	Org. Unit GCU
Time Status PFT	Staff Months 12		Location Juneau		Election District 92
Type of Expenditure			Justification SB 465		
		Amount	<p>This position will coordinate the development and implementation of State Forest Management Plans within the Southeast Region. Incumbent will be responsible for organizing and chairing Interagency planning teams for gathering pertinent planning information, for preparing draft plans, for arranging and conducting public hearings, and for preparing the final plan for submission to and approval of the commissioner. Subsequent to management plan completion incumbent will be responsible for coordinating implementation of the plans. Incumbent will coordinate development of operating plans for Interagency review. Will review and recommend amendments to plan and will coordinate preparation of plan updates.</p>		
1	2	3			
Salary	3113 x 12	37.4			
Benefits	1000 x 12	12.0			
Premium Pay					
Other					
Total Personal Services		49.4			
Travel		10.0			
Contractual		20.0			
Commodities		5.0			
Equipment					
Other					
Total Cost		84.4			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	84.4			
GF Program Receipts	1005				
Other					

**Request For  
New Position**

Agency Natural Resources  
 BRU Forest Management  
 Component Forest Management

Page 3 of 3  
 Revised Date

**FY 89**

ALASKA STATE LEGISLATURE . SENATE

SENATOR RICHARD I. ELIASON

RULES COMMITTEE, CHAIRMAN  
LABOR & COMMERCE COMMITTEE, VICE CHAIRMAN  
LEGISLATIVE COUNCIL  
RESOURCES COMMITTEE  
FISHERIES SUBCOMMITTEE, CHAIRMAN



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M E M O R A N D U M

TO: Senator Jack Coghill, Chair  
Senate Resources Committee

FROM: Senator Dick Eliason *Dick*

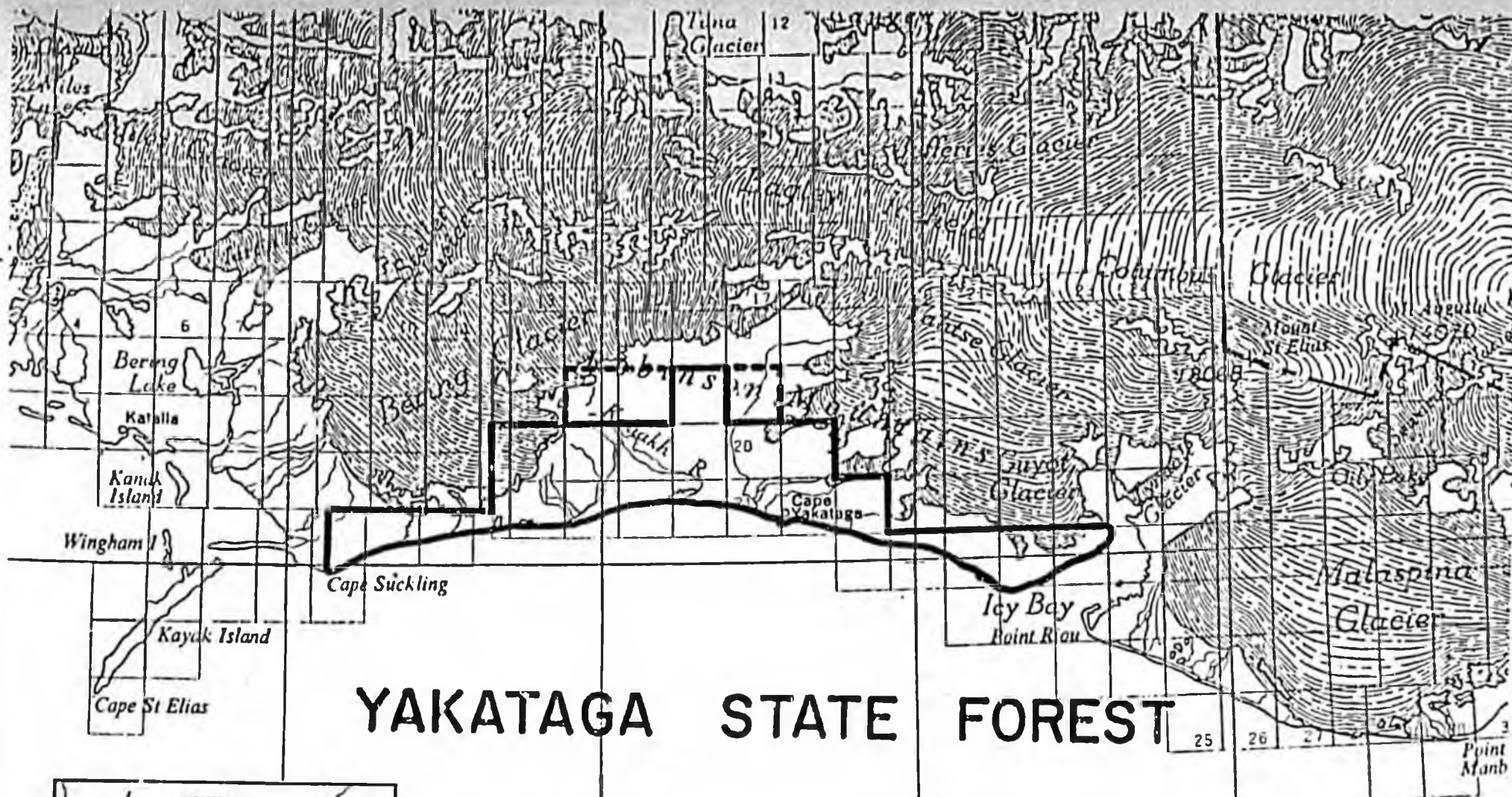
RE: SB 465 - An Act establishing the Yakataga State Forest

DATE: March 14, 1988

Senate Bill 465 would establish the Yakataga State Forest along the coast of the Gulf of Alaska, between Cape Suckling and Icy Bay.

Approximately 460,000 acres of state owned land are included in the proposed state forest. Designating this land as a state forest will commit the state to managing the land for multiple use under a long-term development plan.

The Commissioner of Natural Resources shall prepare a management plan consistent with AS 38.04.005 within three years of the establishment of the state forest. Until the management plan has been adopted, no logging within the proposed Yakataga State Forest is allowed.



LOCATION MAP

- FOREST BOUNDARY
- - - - - ADDITIONS IF NATIVE RELINQUISHED



### RATIONALE FOR A STATE FOREST SYSTEM

Historically, the forests of Alaska have provided its inhabitants with building materials, fuel, recreational opportunities, diversity of wildlife and untold other benefits. Recent rapid shifts in ownership patterns and single-use allocations of that land have severely hampered public availability of these resources and stifled the development of a viable forest products industry, especially in the interior of Alaska.

The full impact of these encroachments on the public use of the land, if allowed to continue, will not be fully realized for years and possibly decades. Continued pressures to further reduce the publicly owned forest land available for multiple-use management is eroding this base.

It is in the best interest of the State to legislatively designate large tracts of primarily forested lands for long-term public retention and management for a multiplicity of resources, as envisioned by the framers of the Constitution of the State of Alaska.

Simple classification of the land as "forested" does not assure that this diversity of benefits, so needed by Alaska, will remain available for future generations.

Forest land in private ownership might well produce the forest products necessary for the development of the State, but not allow the use of the land for its other resource values by the general public.

A state forest system is a use-oriented concept. It would not only provide the incentive to develop a stable forest products industry capable of reducing the amount of lumber being imported to meet our needs (some 75% of the sawn lumber used in the Interior), but also provide access for hunting, fishing, camping, berry picking, etc. State forests are not a lockup, but a dependable year-after-year source of all the renewable resources of the State, for all the residents of the State.

# FISHING & FLYING

Outfitters Transporters

Box 2349  
Cordova, AK 99574

January 10, 1988

Steve Cowper  
Office of the Governor  
Juneau, Alaska 99811

Dear Governor Cowper;

This letter is in reference to the University of Alaska land trade with the DNR, specifically the section granting timber rights to the University in the Cape Yakataga and Cape Suckling areas.

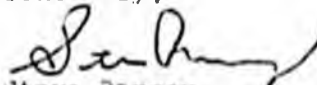
My family and I are long time users of this area, as commercial fishermen and now also as a commercial outfitter, providing aircraft charter and other services to the people that use this area. We have seen a rapid, healthy growth in the area as the commercial and sport fisheries, hunting and tourist industries have expanded, greatly aiding the local economies. For its size, this area is possibly the richest in the state in fish and wildlife values, with its much sought after Silver Salmon, Moose, Bears and Mountain Goats all extremely numerous. As directly adjacent to the Wrangell St. Elias Park, this coastal plain will continue to become an increasingly popular destination as tourists seek out its spectacular scenery.

These completely renewable natural resource industries are now to be replaced with a single timber industry. Yet, we the users of the area have had no chance to even voice our concerns as this huge 400 million board ft. sale was rushed through. Several key Fish and game officials charged with managing the area were not even aware of all or parts of the sale. There has been no effort on the part of DNR to even attempt to contact affected users of the area, and more importantly, no attempt has been made to draw up an overall plan for the area or even recognize critical areas to habitat.

While timber harvest has its important place in the Alaska economy, it should not be done at the expense of other much needed jobs. Also, due to the extremely long growth cycle in this area, it should be done with planning and with consideration for the areas other valuable resources.

I am requesting that this timber sale be stopped, and future sales adequately involve the users and general public.

Sincerely,



Steve Ranney

907-424-3324

## LAND DESCRIPTION: CAPE SUCKLING TO ICY BAY

The land basically is divided by Cape Yakataga geographically. From Icy Bay to Cape Yakataga, a gradually narrowing lowland is backed by steep, near-vertical cliffs that give way to glaciers and icefields. At Cape Yakataga, the entire area is basically the forelands and drainage of the eastern face of the Bering Glacier. The entire beach is sandy, with constant surf.

All rivers in the area are short, due to the area being surrounded by icefields. Between Icy Bay and Cape Yakataga, they are mainly small and glacial. Westward there are larger rivers. Nearly all are salmon producers. For their size, they are some of the best silver producers in the state.

In general, the area is probably the most productive and prolific spot in the state for wildlife, considering its small size.

The trees in the area vary greatly. It is not a highly forested area. Between White River and Icy Bay, it was generally predominantly spruce with mixed hemlock. There were also large swamp and muskeg areas. Towards Cape Yakataga, the trees are mainly located on the slopes, with muskeg at the bottom. The Yakataga River valley has considerable growth of mixed spruce/hemlock. There are only three major stands of primarily spruce between there and eastern Tsiu River. Otherwise, there are large stands of willow and cottonwood and muskeg. The entire Tsiu drainage, to Seal River is a mixture of widely scattered spruce, willow, cottonwood, rolling grassy hills, sand dunes and sandy areas. At Tashalich River there is a moderately wide band of old growth spruce that runs to Kiktukh River. This stretch is fronted by huge rolling, grass-covered sand dunes that run from Seal River to Cape Suckling. Suckling Hills is basically surrounded by a narrow strip of mixed spruce and hemlock on steep slopes.

Animal life, as previously mentioned, is extremely rich. At one time, Icy Bay was claimed by Fish and Game to have the highest concentration of Mountain Goats in the state. The area between Icy Bay and Cape Yakataga was particularly prolific. While they have declined significantly, they are still numerous in the Cape Yakataga vicinity (Brower Ridge) and increasingly in the Suckling Hills as well as virtually all the river drainages. The moose have arrived relatively recently and are faring extremely well. Some claim that it is the fastest growing moose herd in the State, but it is hard to tell, as there have not been any moose counts for several years. The moose are extremely numerous on both sides of the Suckling Hills and the Tsiu and Kaliahk drainages. They extend to Cape Yakataga in fair numbers. Only a few are seen east to Icy Bay. I have never seen

a moose in the regrowth areas. Bears, both Black and Brown, are also very populous. In the Fall when the salmon are running, the banks of some of the rivers are literally covered with tracks. One hunter saw 16 black bears on the Suckling Hills in one day! A large scale big game guide claims never to have sent a client home without his bear in four years (Spring and Fall) with only one exception. The area is also rich with coyotes, wolves and furbearers. A large population of swans, geese, eagles, and other birds nest in the area.

Fish are found in nearly all the water. Kiktukh River supports a considerable run of silvers and trout and is fished in good years commercially. Tashalich River has a good run of silvers; Seal River has a run of both sockeye and silvers. Mid-Timber Lake is usually landlocked and has landlocked silvers and trout. Tsiu River has an extremely large silver run as well as sockeye and steelhead. Kaliahk and Ducktoth have excellent silver runs as well as some pink, chum, and king salmon. The Tsiu and Kaliahk are both fished commercially and the Dukttoth occasionally. The rest of the streams to Icy Bay have not even been properly indexed. However, several are fished commercially on occasion.

#### PRESENT COMMERCIAL USE

Fishing, by both sport and commercial fishermen, brings in the most revenue for the area. This area is an overlap area for a joint-use between Yakutat setnet fishermen and Prince William Sound setnet fishermen. Trollers are working the area in increasing numbers. (This is their northern boundary.) This is the most lucrative fishing area for Yakutat fishermen for silvers, mainly on the Tsiu and Kaliahk. This year approximately 50 permits fished the area. (Roughly half the active Yakutat permits.) The Tsiu River alone contributes up to 600,000 pounds of fish to the commercial catch. Sport fishermen have discovered the area, mainly concentrating on the Tsiu and Kiktukh Rivers. There are two outfitters that work the area as well as fly-in operators. (This includes Ryan and Era using 19-passenger aircraft!)

Fish-hauling is another source of employment as fish must be hauled to either Cordova or Yakutat for processing. Aircraft ranging from the Cessna 180 to C-46s are used.

Big game hunting is also a big use. There are seven big game guides registered in this joint use area. Two are active with one running a very large operation. With a trophy hunt bringing between \$5,000 and \$10,000, it is definitely big business. Two outfitters also bring people in on hunting trips, utilizing mainly the Suckling Hills, Kaliahk, and Cape Yakataga areas. A guide used to operate in the Mundy Creek area but was forced out by the logging. The area is also used by outdoorsmen and women as it is truly Alaska at its finest. Cape Suckling is a favorite spot due to its scenic beauty, sandy beaches and great beachcombing!

Trapping has been the mainstay of the area's longest permanent residents, now in their second generation.

Mining is also conducted in the area, mainly in the White River and Cape Yakataga areas. This is for gold and there are several active claims.

There has been oil exploration in the past, mainly to test the offshore potential. This has been inactive for many years. (I believe since the early sixties.)

#### AREA RESIDENTS

There have been people living at Cape Yakataga for a long time. It is an abandoned Federal Aviation Administration station and White Alice station. (Currently, both the FAA and Alascom maintain equipment at Cape Yakataga.) There are currently three people that live there permanently and several more in the summer.

## FAST LOGGING ACTIVITY

The logging activity in the Icy Bay area started in 1969. A twenty year contract was awarded for 206 million board feet of spruce and hemlock. A later contract in approximately 1983 awarded another 40 million board feet. Timber was originally sold to Kenai Lumber. In a court fight that eventually ended up in Supreme Court, they were allowed to export in the round.

The logging is essentially one huge clearcut that starts roughly one mile west of Icy Bay, and runs to White River. The western end is currently being logged and there are several small parcels that were left out at the request of Fish and game. These may come up for logging later. Logging has for the most part proceeded westward, with the timber being trucked to a launch site near Carson Creek in Icy Bay. Bundles are then towed to a storage area and loaded onto a ship.

The logging camp has never drawn on the local communities for either labor or supplies. With South-Central Timber, the previous operator, the workforce was mainly from Salmon Idaho.

The clearcut is the largest and most destructive that I've seen. Now totaling nearly 25 miles in length, the first 20 are unbroken by leave strips. Particularly in the eastern end, the cut is piled high with slash as only the best timber was pulled out. At places leave strips of negligible width were left. These promptly blew down, and then the timber would be logged as salvage after only a short delay.

It should be noted that the area is buffeted by extreme winds. This, combined with the thin topsoil makes the blowdown of the minimal leave strips almost guaranteed. Regrowth is also fairly slow.



# Southeast Alaska Conservation Council

SEACC • P.O. Box 021692 • Juneau, Alaska 99802 • (907-586-6942)

January 4, 1988

Ms. Judith M. Brady  
Commissioner  
Department of Natural Resources  
State of Alaska  
P. O. Box M  
Juneau, Alaska 99811

RE: University Land Settlement  
ADL 223456  
Final Finding and Decision (12/4/87)

## PETITION FOR RECONSIDERATION

Dear Commissioner Brady:

On behalf of the Southeast Alaska Conservation Council (SEACC); The Alaska Center for the Environment (ACE); Fishing and Flying, Inc., an Alaska corporation based in Cordova, Alaska; and Henry Porter, a resident of Yakutat, Alaska, we hereby request your withdrawal for reconsideration of the decision referenced above. We further request that the portions of this decision conveying logging rights on parcels 20 (Yakataga), A148 (Cape Suckling) and A154 (White River) be immediately eliminated from your decision.

If these parcels are not immediately removed from the settlement, we respectfully request that you then refer this matter to a hearing officer and order further information gathering by DNR, including public hearings in Yakutat, Cordova, Anchorage and Juneau to complete the administrative record and provide a solid basis to support a new decision based on a thorough re-examination of all the relevant evidence.

Reasons supporting our request are set forth below.

## PETITIONERS' IDENTITY AND INTERESTS

SEACC is a coalition of twelve member groups from ten communities in Southeast Alaska, as well as over 750 individual members. SEACC is dedicated to ensuring maximum protection for the unique natural environment of Southeast and Southcentral Alaska, including the area between Icy Bay and Cape Suckling. The use and enjoyment of these public lands by members of SEACC will be adversely impacted by the decision appealed herein.

ACE is a nonprofit environmental education and advocacy organization based in Anchorage, representing approximately 750 members. ACE's purpose is to influence public attitudes and government policy to bring about sound environmental decisions and to promote the conservation of Alaska's natural resources. The use and enjoyment of the area between Icy Bay and Cape Suckling by members of ACE will be adversely impacted by the decision appealed herein.

Fishing and Flying, Inc., is an Alaska corporation based in Cordova, Alaska, engaged in the business of air taxi service, outfitting and guiding. Fishing and Flying does a substantial portion of its business in the area between Icy Bay and Cape Suckling. The use and enjoyment of these public lands by Fishing and Flying and its business interests conducted thereon will be adversely impacted by the decision appealed herein.

Henry Porter is a resident of Yakutat, Alaska. Mr. Porter is a commercial fisherman who does a significant portion of his fishing in the area between Icy Bay and Cape Suckling. The use and enjoyment of these public lands by Mr. Porter as a commercial fisherman and as a resident of the State will be adversely impacted by the decision appealed herein.

STATEMENT OF REASONS IN SUPPORT OF  
PETITION FOR RECONSIDERATION

A. DNR Lacks Legal Authority to Include Logging Rights in the University Land Settlement

The decision by DNR to include timber rights on the parcels in Yakataga, White River and Cape Suckling in the university land settlement is clearly in excess of the statutory authority granted the department under the Alaska Constitution and statutes and is, therefore, illegal. It is an axiom of administrative law that agencies are bound in their actions by the authority granted them under applicable statutes. Yet, in this case, DNR went well outside of its existing authority to dispose of timber, failing to follow proper procedures, and creating a new, unprecedented category of state timber sales. This ultra vires action cannot withstand judicial scrutiny and should be withdrawn.

DNR cites a number of authorities at page two of the Final Finding which, it purports, provide ample authority for the actions taken. However, careful examination of these statutes reveals that they do not authorize or contemplate the conveyance of logging rights at all.

For example, DNR cites former AS 29.18.206 (now AS 29.65.060). This statute only authorizes identification and conveyance of "general grant land," not timber interests. The statute specifically defines the term "general grant land" as patented or tentatively approved land. See AS 29.65.130(3)(A). Nowhere does the statute contemplate or authorize the sale of timber.

DNR also cites AS 38.05.810 as authority supporting this decision. This section, dealing with conveyances of state land or resources to charitable institutions or public agencies for public service purposes, is misapplied in an effort to justify this action. The conveyance of logging rights by DNR to the University provides no general public benefit or service. It envisions a purely commercial interest, for profit, to benefit not the general public, but the University itself. Surely, not even DNR would attempt to argue that some public good is being provided to the people by the removal of 448 million board feet of timber. Moreover, the statute requires the agency seeking state land to make an application for such land. The University has not submitted any such application here; understandably, since they intend no public benefit operation. Again, the statute relied upon by DNR fails to support the action.

Sections 38.05.185(a); 38.05.035(e) and others cited similarly fail to grant DNR the authority to bypass normal timber sales procedures outlined in AS 38.05.110-120. Indeed, other DNR land disposal authority must be read in the context of these specific statutes dealing with timber sale procedures. See, e.g., 2A Sand, Sutherland Statutory Construction, 53.01; State v. GLP, 590 P.2d 65 (Alaska 1979) (statutes should be construed harmoniously). Nothing in the general authorities cited by DNR bypasses or nullifies the clearly delineated timber sale procedures in sections 38.05.110-120. DNR failed to follow these required legal procedures in this decision.

B. DNR's Action Violates Article VIII,  
Sections 4 and 10, of the Alaska Constitution

DNR's action in regard to the timber parcels, essentially allowing a timber sale outside of legal channels, violates Article VIII, sections 4 and 10, of the Alaska Constitution. Section 4 requires that state renewable resources be managed for sustained yield. Section 10 requires that no disposal of public resources be made without such "safeguards of the public interest as may be prescribed by law." DNR's action violates both provisions.

Article VIII, Section 4, has been defined by the Alaska Supreme Court as "permitting timber cutting at a level that cannot be sustained over a forest rotation period only in unusual circumstances." SEACC v. State, 665 P.2d 544, 548 n.12 (Alaska 1983). Such unusual circumstances are not present here, but the DNR decision requires logging of over 448 million board feet of timber over a period of between 20 and 40 years. We believe this clearly indicates a violation of the sustained yield provisions of the Constitution.

Nowhere does this decision discuss the annual sustained yield capacity of the areas proposed for logging, or even the general area between Icy Bay and Cape Suckling. We also note that state timber sales and development here apparently have already proceeded without benefit of comprehensive land planning or classification as required by AS 38.05.300 and other statutes. This area has already been subjected

to extremely heavy cutting over a relatively short term with insufficient state involvement. Additional logging of the scope envisioned here, in the brief time frame allowed, appears highly likely to exceed the sustained yield capacity of the land.

Moreover, the DNR decision does not place limitations on how quickly these state lands can be logged. There is no safeguard to insure sustained-yield management of these state timber lands by the University. Indeed, there is a countervailing disincentive to conservation in the time limits for completion of logging contained in Appendix I. Thus, under DNR's terms, a prudent manager would attempt to cut as much as possible as quickly as possible in order to avoid forfeiture of logging rights.

Finally, the action by DNR, setting up a timber sale outside of legislatively approved procedures and safeguards violates Article VIII, Section 10, because it bypasses the "safeguards of the public interest" contained in AS 38.05.110-120, and related regulations.

AS 38.05.110, for example, requires that state timber sales be preceded by cruises of timber and an assessment of supply and demand to determine the appropriate amount of timber to provide. DNR has not done this for the logging parcels included in its university land settlement. AS 38.05.115 requires that sales include provisions providing for sustained yield. As explained above, this also has not been accomplished. AS 38.05.120 requires competitive bidding of state timber sales. No bids have been taken here. AS 38.05.118 allows negotiated sales, without bidding, but only where there is a high level of local unemployment, underutilized timber manufacturing capacity, and an underutilized allowable cut. No such findings have been made here. In sum, the public interest has not been protected.

C. DNR's Action Fails to Consider Traditional Uses as Required by AS 38.05.830

DNR's decision makes findings under AS 38.05.830 regarding impacts to traditional use of the land for a number of the parcels involved in the university land settlement, but fails to make such findings for the three logging rights parcels in Yakataga, White River and Cape Suckling.

This error is particularly egregious here, where so many important traditional uses are at stake. The areas subject to logging under the DNR decision provide exceptional wildlife and fisheries habitat, perhaps unparalleled in Alaska, for a variety of species, including Alaskan brown (grizzly) bear, black bear, moose, wolf, wolverine, bald eagles, waterfowl, and substantial salmon populations. These resources support a large commercial fishing fleet, subsistence and sport hunting and fishing, wilderness outfitting and guiding, and other significant economic and social activity. Further, these lands have become increasingly important for recreation and tourism. Yet nowhere does the DNR decision catalog these uses, or discuss with any degree of specificity how or if they will be impacted by the proposed

massive industrial logging program, including by our rough estimates about 20,000 acres of clearcuts and perhaps as much as 200 miles of logging roads. We question whether DNR has collected adequate information on which to determine impacts to traditional use.

DNR also seems to assume that the few wildlife protection measures contained in the Final Finding cover all the potential conflicts with traditional uses. However, it is highly unlikely that this is the case. We question the efficacy of the measures included in the logging rights conveyance for protection of the goat, moose and fish populations.

First, the boundaries of the riparian zones that are less than 1/4 mile in width are unlikely to be windfirm in an area where winter winds regularly exceed hurricane force (greater than 75 knots). Thus, they will eventually blow down and be harvested as salvage and provide no buffer for fish habitat protection. Second, there is no indication that moose habitat needs are limited to the riparian areas. We have no idea, nor can we determine from the decision, where DNR got this idea. Finally, Fish and Game Department memos indicate their belief that goats use areas below the 200' contour on the Suckling Hills in severe winters. Thus, the habitat protection provisions do not protect critical habitat.

Worse yet, the Fish and Game Department also points out that a full stream survey of the areas subject to logging under this settlement has never been performed. Indeed, the Yakutat area biologist apparently was never consulted about this proposal and was reduced to submitting comments after DNR's final decision. Thus, DNR cannot assure adequate protection of fish habitat in this agreement because it lacks even basic knowledge of which streams or watercourses are sensitive, need special protection, or even contain fish.

Finally, although goat, brown bear, and moose are important game species on which traditional uses depend heavily, no mention whatsoever is made, nor is any mitigation provided for, the deleterious impacts of logging activities and logging roads on these species. Industrial development of this pristine area poses a grave threat to its goat, moose and brown bear populations. Road access, human occupancy, noise and traffic, illegal hunting and defense of life and property killings all result from operations of the scale proposed here. DNR's decision simply fails to even discuss this problem, much less propose effective mitigation. We cannot imagine how DNR could ignore such a crucial factor in its decisionmaking process.

D. DNR Erroneously Determined That Its Action Was Consistent With the Alaska Coastal Management Program (ACMP)

The Alaska Coastal Management Program requires that state land use actions be consistent with the standards set forth in 6 AAC 80. For many of the reasons set forth above, as well as due to other significant data gaps, erroneous information, or simple mistakes made by DNR,