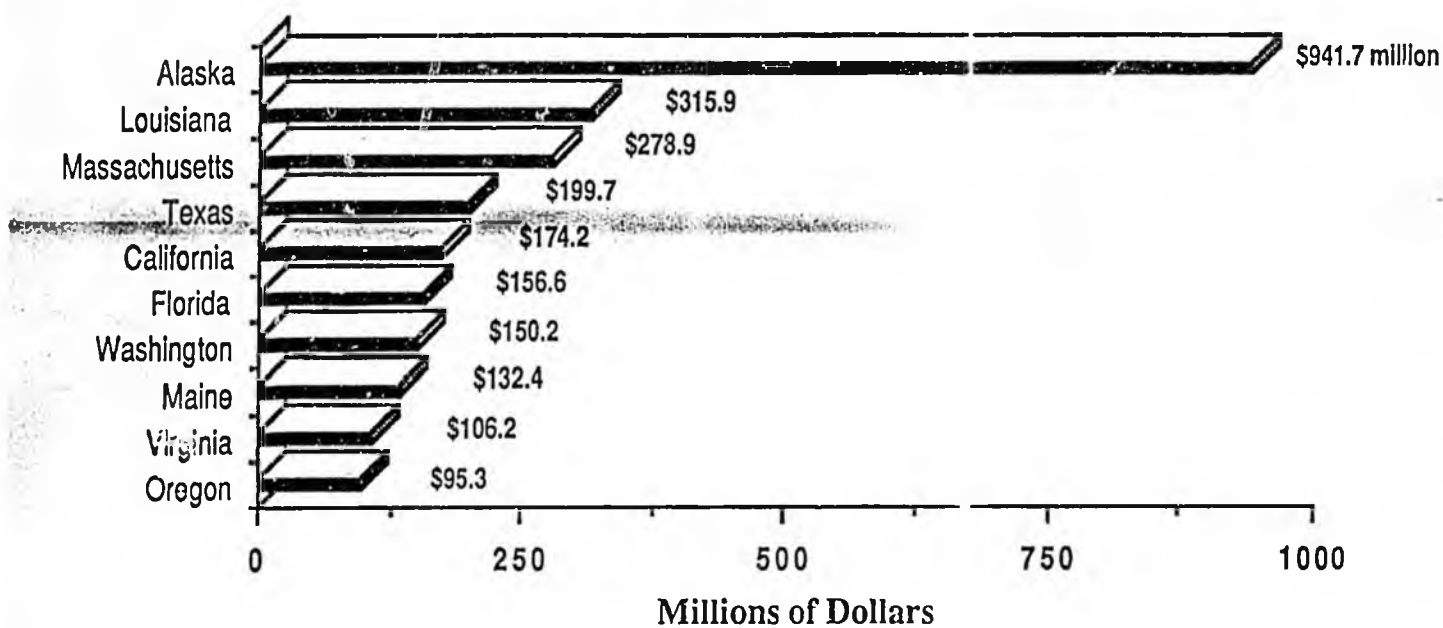


ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
5948 HOUSE RESOURCES

357

## Value of U.S. Commercial Seafood Landings By States, 1987



Source: Fisheries of the United States, 1987. National Marine Fisheries Service. Does not include the JV harvest.

# EXXON COMPANY, U.S.A.

P.O. BOX 188601 • ANCHORAGE, ALASKA 99518-6601 • (907) 561-6331

DONALD E. CORNETT  
ALASKA COORDINATOR

April 7, 1989

Ms. Merry Tuten, Director  
Alaska Seafood Marketing Institute  
1111 West Eighth  
Juneau, Alaska 99801

Dear Ms. Tuten:

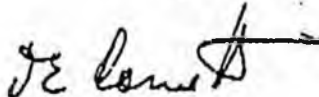
I'm deeply concerned about the potential impact of the Valdez oil spill on Alaskan seafood markets at home and abroad. It is vital to our state economy, now and in the future, that we act immediately to reassure seafood consumers and wholesalers.

I'm certain you agree with me that the Prince William Sound has many valuable fisheries and is a very important source of fish. But, it would only compound the current tragedy if we let consumers and wholesalers believe that the supply or quality of Alaskan seafood will be affected.

I am proposing that we work together to protect the immediate and long-term future of the families that depend upon the Prince William Sound for their livelihood. As a first step, we need your in-depth analysis of the potential negative impact on Alaskan seafood markets. Based on your analysis, we want your recommendations, and budget figures, for an appropriate marketing response. The ASMI would have control of program implementation and Exxon would be willing to provide appropriate funding. We are sincerely interested in helping to protect the future of the fisheries of Prince William Sound.

I would appreciate your prompt attention to this request and look forward to working with you.

Cordially,



DEC:jlp/195

c: Douglas B. Bailey, State Attorney General  
Governor Steve Cowper  
Alaska Seafood Marketing Institute Board  
Alaska State Legislature  
The Honorable Ted Stevens  
The Honorable Frank Murkowski  
The Honorable Don Young

---

# TEN FACTS

*you should know*  
*about the recent oil spill*  
*in Alaska*

---

- 1.** In 1988 Alaska produced over 5 billion pounds of seafood from 15 areas in the state. This multi-million dollar bounty provides the marketplace with nearly 530 million pounds of salmon, 190 million pounds of shellfish and over 4 billion pounds of whitefish.
- 2.** The March 24 oil spill affected ONE of these areas, Prince William Sound. This area produces herring, salmon, and a small amount of blackcod (sablefish), shellfish, halibut and other finfish.
- 3.** There was NO commercial fishing taking place in Prince William Sound (except for a small local pot shrimp fishery) when the oil spill occurred.
- 4.** Since the oil spill, NO new fishing activity has been permitted in Prince William Sound. The spring herring roe fisheries and the blackcod fishery scheduled to open in early April in Prince William Sound have been closed.
- 5.** Seafood products currently in the marketplace were harvested and processed PRIOR to the oil spill.
- 6.** The State of Alaska will continue to monitor and test environmental quality conditions to safeguard the fisheries of Prince William Sound. Monitoring through the Department of Fish and Game (ADFG) and Department of Environmental Conservation (ADEC) will include water analysis, pre-fishery sampling for wholesomeness and safe products, and product testing in seafood plants.
- 7.** When Alaska commercial fisheries managers determine that Prince William Sound can be opened to commercial fishing, all seafood products will be carefully examined by ADEC State Seafood Inspectors to ensure that all products entering the marketplace are WHOLESOME and SAFE.
- 8.** ADEC has a STRICT MONITORING AND INSPECTION SYSTEM for seafood in place. These procedures will be supplemented by the very successful inspection program developed for the Cook Inlet oil spill two years ago. Absolutely no contaminated seafood was permitted to leave Alaska—and none did.
- 9.** It is still too early to determine whether the oil spill in Prince William Sound will have any effect on pricing or availability of Alaska seafood.
- 10.** Wholesalers/Distributors/Buyers can rest assured that no contaminated products will reach the marketplace. The consumer will be able to enjoy PURE Alaska seafood with the same confidence as in the past.

---

*Alaska Seafood*  
MARKETING INSTITUTE

P.O. Box DX, Juneau, Alaska 99811-0800 • Tel: (907) 586-2902

**Alaska Seafood  
Industry Study**  
*A Summary*

*prepared for*

**Alaska Seafood Industry  
Study Commission**  
Anchorage, Alaska

*by*

**The McDowell Group**  
A Division of Data Decisions Group, Inc.  
Economic and Market Consultants  
Juneau, Alaska

March 1989

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**Authors**

Eric McDowell, Jim Calvin

**Contributing Author**

Neal W. Gilbertsen

**Editorial Board**

Mary Gore, Shocky Greenberg, Bill Hall,  
Sue Keller, Gunnar Knapp, Rick Lauber,  
Loretta Lure, Sheila Nickerson, Paul Peyton

**Designers**

Kurt Byers, Karen Lundquist

**Production Assistant**

Pamela Orr

**Typesetters**

Cappelletti's Typesetting, Juneau

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Contents, early morning seiners, John Hyde, Alaska Department of Fish and Game (ADF&G); p. 3, clockwise from top left: ADF&G technicians taking scale samples, J. Hyde, ADF&G; woman handling salmon net, Marion Stirrup; two women, man holding salmon, and two men with iced salmon, all from Alaska Seafood Marketing Institute (ASMI); p. 5, salmon cannery, J.E. Thwaites collection, Alaska State Library; p. 6, halibut on dock, p. 7, herring eggs and herring fleet, and p. 8, groundfish in net bag, all by J. Hyde, ADF&G; p. 9, purse seiner, Donald Kramer, Alaska Sea Grant Marine Advisory Program (MAP); p. 10, unloading halibut, ASMI; p. 12, shrimp, Deborah Mercy, MAP; p. 12, crab, J. Hyde, ADF&G; p. 13, container vessel, and p. 14, Kodiak Harbor, both by M. Stirrup; p. 17, woman in salmon cannery, D. Mercy, MAP; p. 19, Sitka Harbor, J. Hyde, ADF&G; p. 20, crab pots, Craig Wiese, MAP; p. 21, chum salmon and salmon fry, both by J. Hyde, ADF&G; p. 22, stacking seine web, ADF&G.

# Introduction

The *Alaska Seafood Industry Study: A Summary*\* has two purposes. The first is to highlight the effects of the state's largest private basic industry on the economy of Alaska. There is a general lack of standard economic data for the seafood industry, and research and analysis performed for this study fills that void.

The second purpose is to describe this complex and diverse industry to the Alaskan public. Most of Alaska's population and economy is concentrated in a few urban areas. In contrast, most of the seafood industry is conducted in coastal areas well away from the population centers. As a result, Alaskans are uninformed about the seafood industry. This document is designed to increase awareness and knowledge.

The Alaska Seafood Industry Study Commission is a cooperative organization formed to produce this study. Selected to conduct the study was The McDowell Group of Juneau, Alaskan economic and market consultants who have conducted 300 studies of the economy, industries and businesses of Alaska over the past 17 years. A comprehensive (technical) document supporting this summary, the *Alaska Seafood Industry Study: A Technical Report*, was also produced by the study team. Both documents are available from the University of Alaska Sea Grant College Program.

The study, conducted from July to December of 1988, included surveys of processors, factory trawlers and seafood organizations and agencies. Volumes of existing data from state, federal, international and private sources were collected and analyzed, the most important data being provided by the Commercial Fisheries Entry Commission. Finally, methods were developed for measuring harvest employment and payroll and the role of the industry in the economy.

#### Commission members:

Alaska Commercial Fishing and Agriculture Bank  
Alaska Department of Commerce and  
Economic Development  
Alaska Department of Fish and Game  
Alaska Department of Labor  
Alaska Druggers Association  
Alaska Factory Trawlers Association  
Alaska Fisheries Development Foundation  
Alaska Longline Fishermen's Association  
Alaska Seafood Marketing Institute  
Alaska Seiners Association  
Alaska Trollers Association  
Bering Sea Fishermen's Association  
Bristol Bay Driftnetters Association  
Commercial Fisheries Entry Commission

Copper River Fishermen's Cooperative  
Cordova District Fishermen United  
Kenai Peninsula Fishermen's Association  
Northern Southeast Regional Aquaculture Association  
Pacific Seafood Processors Association  
Petersburg Vessel Owners Association  
Prince William Sound Aquaculture Corporation  
Seafood Producers Cooperative  
Southeast Alaska Seiners Association  
United Fishermen of Alaska  
United Fishermen's Marketing Association  
United Southeast Alaska Gillnetters  
University of Alaska Institute for Social  
and Economic Research  
University of Alaska Marine Advisory Program  
University of Alaska Sea Grant College Program

\* Sources of data in this summary can be found in the complete report, *Alaska Seafood Industry Study: A Technical Report*. Both publications are available free of charge from the Alaska Sea Grant College Program, Communications Office, 138 Irving II, Fairbanks, AK 99775-5040. Telephone (907) 474-7086.

# Summary

**Jobs:** The seafood industry is Alaska's largest private basic industry employer, providing nearly 70,000 seasonal jobs and 33,000 direct, indirect and induced year-round jobs.

**Payroll:** The total seafood industry payroll in 1987 was the largest among private basic industries, estimated at \$596 million.

**Revenue:** The seafood industry is the second largest revenue generator in the state. The industry paid \$27 million in fish taxes during 1987 and is the major contributor to the \$5 million marine fuel tax.

**Expenditures:** Expenditures in Alaska on goods and services in support of processing and harvesting are nearly \$300 million.

**Harvest Value:** Alaska leads the nation in value of commercial seafood landings. The 1987 Alaska seafood harvest was worth \$1.1 billion, and the estimate for 1988 is a record \$1.8 billion. The salmon fishery is the most important, bringing in 42% of all harvest income.

**Wholesale Value:** The 1987 Alaska seafood harvest was worth \$1.9 billion at the first wholesale level, after primary processing. It rose to \$3 billion in 1988.

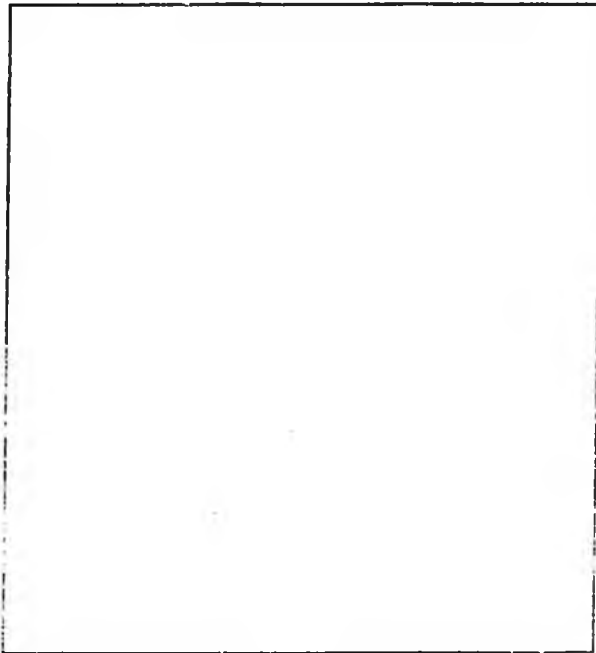
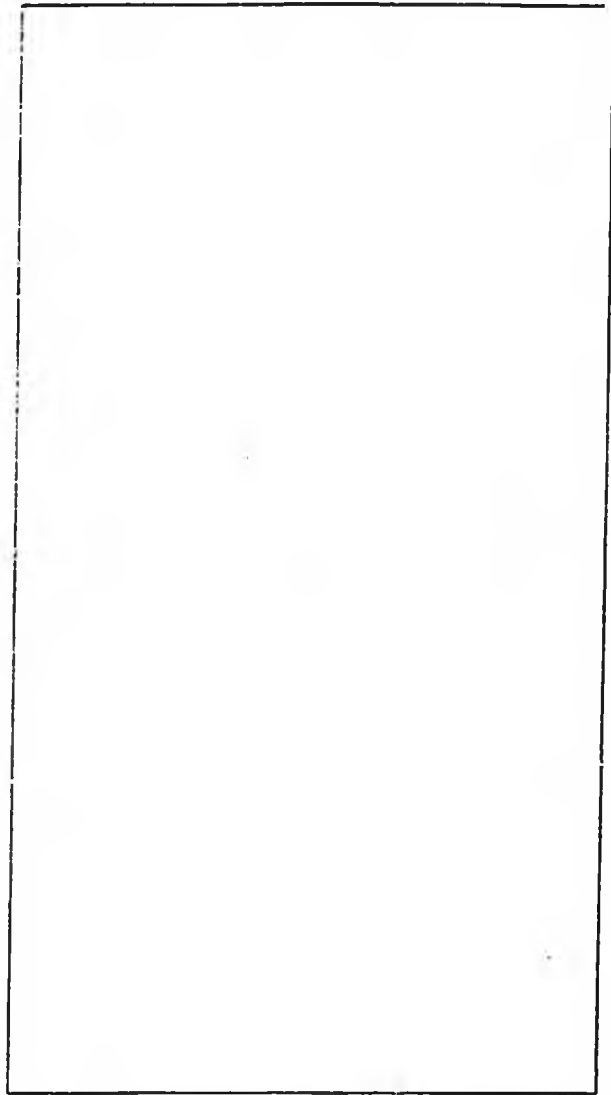
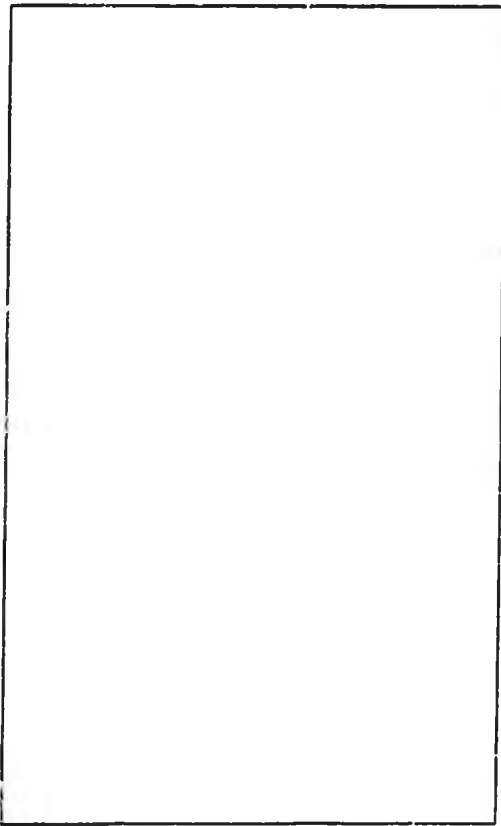
**Exports:** Alaska exported \$561 million in seafood during 1987, a third of all U.S. seafood exports. Japan received 95%.

**Capital Assets:** Total investment by the Alaska seafood industry is estimated at \$4 billion.

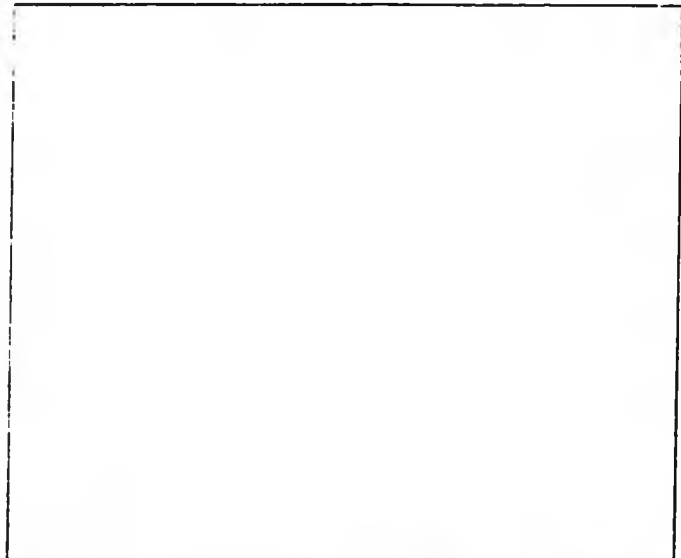
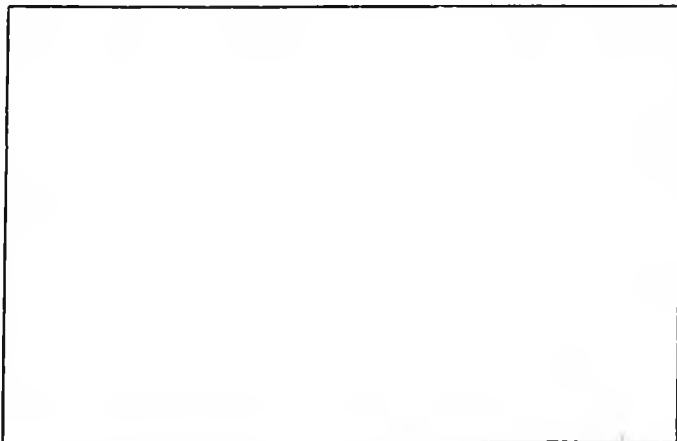
- The salmon fleet has a capital investment of \$800 million in vessels and onboard equipment, and \$900 million in permits.
- The offshore groundfish industry accounts for \$500 million, and crabbers account for \$400 million in capital investment.
- The value of processing plants and tenders is estimated at \$1 billion.

**Regional Impacts:** The Alaska seafood industry is the most important employer in five regions of the state — Southeast, Kodiak, Aleutians, Bristol Bay and Northwest Alaska.

**Community Impacts:** The leading beneficiaries of seafood harvesting are Kodiak, where residents earned \$86 million in 1986; Dillingham, \$46 million; and Anchorage, \$31 million.

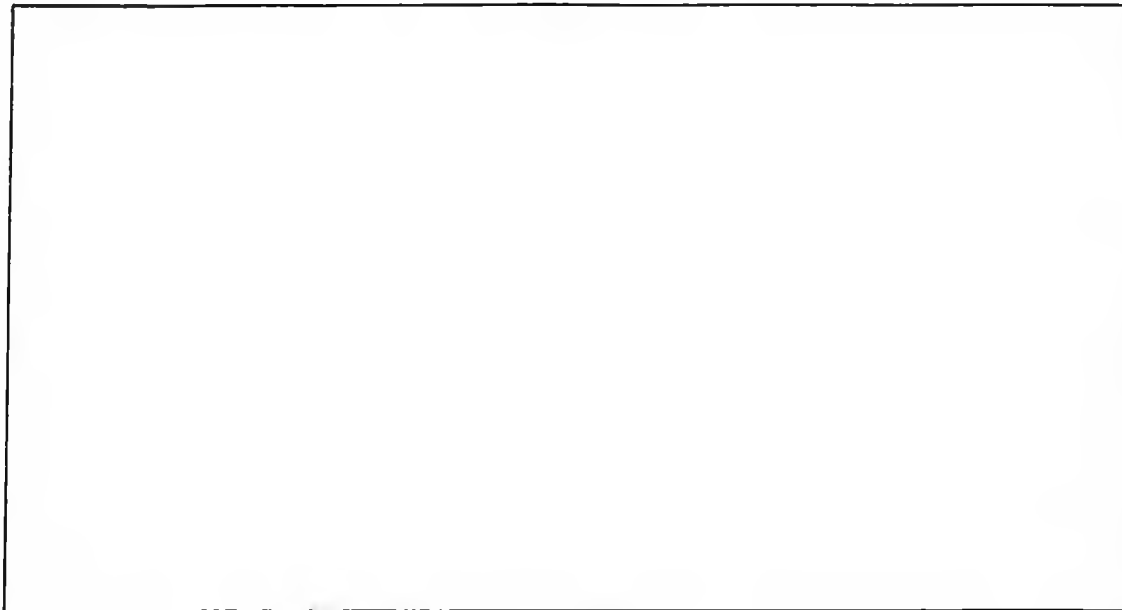


*The men and women of  
Alaska are the lifeblood of  
the state's commercial  
fishing industry.*



**MAP**

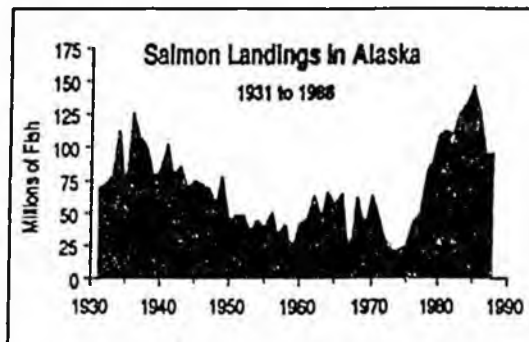
# History of Alaska's Fisheries



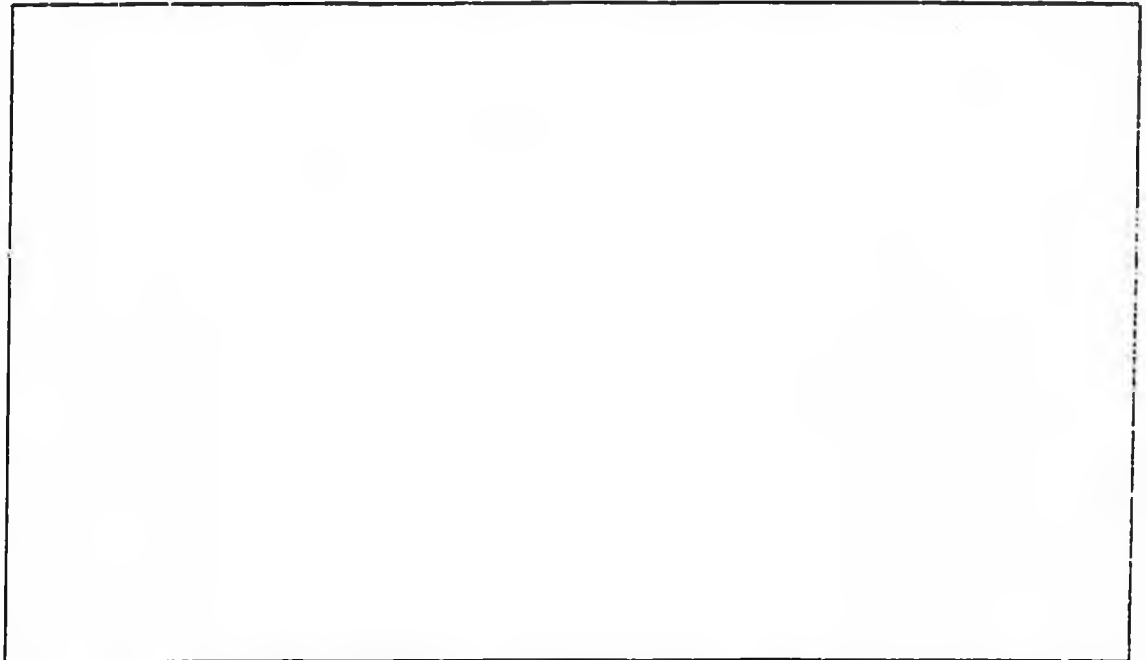
Alaska's history as a commercial seafood producer can be divided into three phases: Alaska's territorial phase, statehood, and most recently, extended jurisdiction in U.S. waters. The territorial days were characterized by fish traps, canneries, resource over-exploitation, long distance federal management and political conflict. With statehood in 1959, Alaskans assumed responsibility for management of their nearshore seafood resources. This period was marked by responsible biological management, limited entry for the salmon fishery, and full recovery of the once-depleted salmon resource. Alaska recently entered a third phase with the 1976 enactment of the Magnuson Act. This act transferred to the U.S. government jurisdiction of the fisheries in the Exclusive Economic Zone (EEZ), which extends from 3 to 200 miles offshore. This area includes the vast groundfish resource of the Gulf of Alaska and Bering Sea.

## Salmon

Exploitation of Alaska's salmon resource dates back to the first canneries in Alaska in 1878. Over the next 50 years the Seattle-based salmon canneries developed into the dominant force in Alaska's seafood industry. By 1929, there were 159 canneries operating in Alaska. When Alaska became a state, it took over management of the salmon fishery. Under state management, Alaska's salmon



*The 1987 halibut catch from Alaska waters totaled 57 million pounds and earned an estimated \$70 million for harvesters.*



*Halibut on dock awaiting transport to processor. Over 10,000 skippers and crew earned \$70 million for their 1987 halibut catch.*

harvest fell to an all-time low of 22 million fish in 1974 and climbed to a high of 147 million fish in 1985.

The Alaska salmon fishery, conducted from Ketchikan to Kotzebue, harvests five species of salmon — king (chinook), red (sockeye), silver (coho), chum (dog) and pink (humpy). The fishery employs about 25,000 skippers and crew members. Four types of gear are used — seine, gillnet, set-net and troll — depending on the area and species targeted.

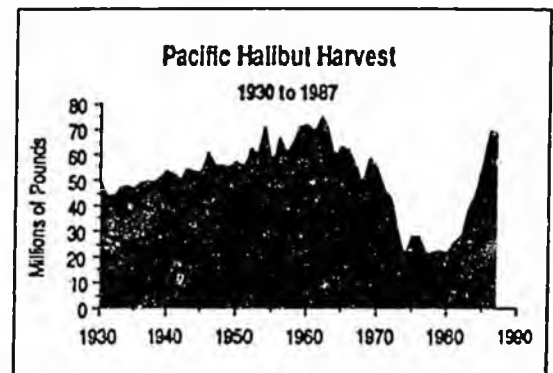
The salmon fishery is Alaska's most valuable. The 1988 harvest was worth an all-time high of \$742 million ex-vessel, a 50% increase over the 1987 total of \$478 million (fish sales by harvesters are expressed as ex-vessel values). About 65% of Alaska's salmon harvest was marketed fresh or frozen (and a small amount salted) in 1987, continuing a trend away from canned salmon.

Sockeye accounted for about 50% of Alaska's fresh, frozen and salted production weight in 1987, at just under 123 million pounds. Chum salmon was next at 44 million pounds. Coho production was 16 million pounds, pink salmon 35 million pounds, and king salmon 10 million pounds.

## Halibut

Commercial harvest of Alaska's halibut began about 1910 when the Puget Sound schooner fleet ventured into northern waters. The total Pacific halibut harvest peaked at 75 million pounds in 1962 but declined to 21 million pounds between 1974 and 1978. The halibut harvest has since climbed back to near-record levels, though the 24-hour halibut derbies bear little resemblance to the longer fishing seasons of years past.

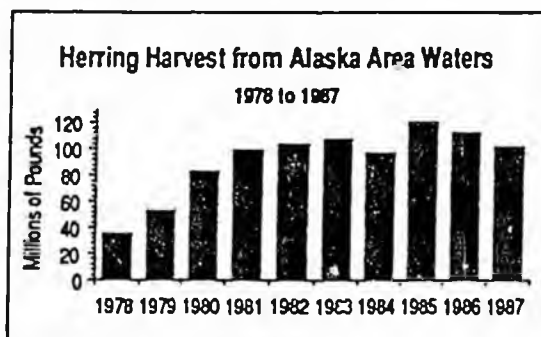
With 10,200 skippers and crew, the halibut fishery attracts more participants than any fishery except salmon. Halibut fishermen use longline gear with baited hooks.



The 1987 halibut catch from Alaska waters totaled 57 million pounds and earned an estimated \$70 million for harvesters. The 1987 catch was down slightly from 1986 in pounds harvested but up about 10% in ex-vessel value.

## Herring

The Alaska herring fishery dates back to the saltery days of the 1890s. The fishery was reborn in the mid-1970s with development of a Japanese market for herring sac roe (eggs), valued highly as a holiday delicacy. When herring eggs are ripe for spawning in spring, the allowable quota is usually caught in a matter of hours with seine and gillnet gear. Skippers and crew number nearly 7,000.

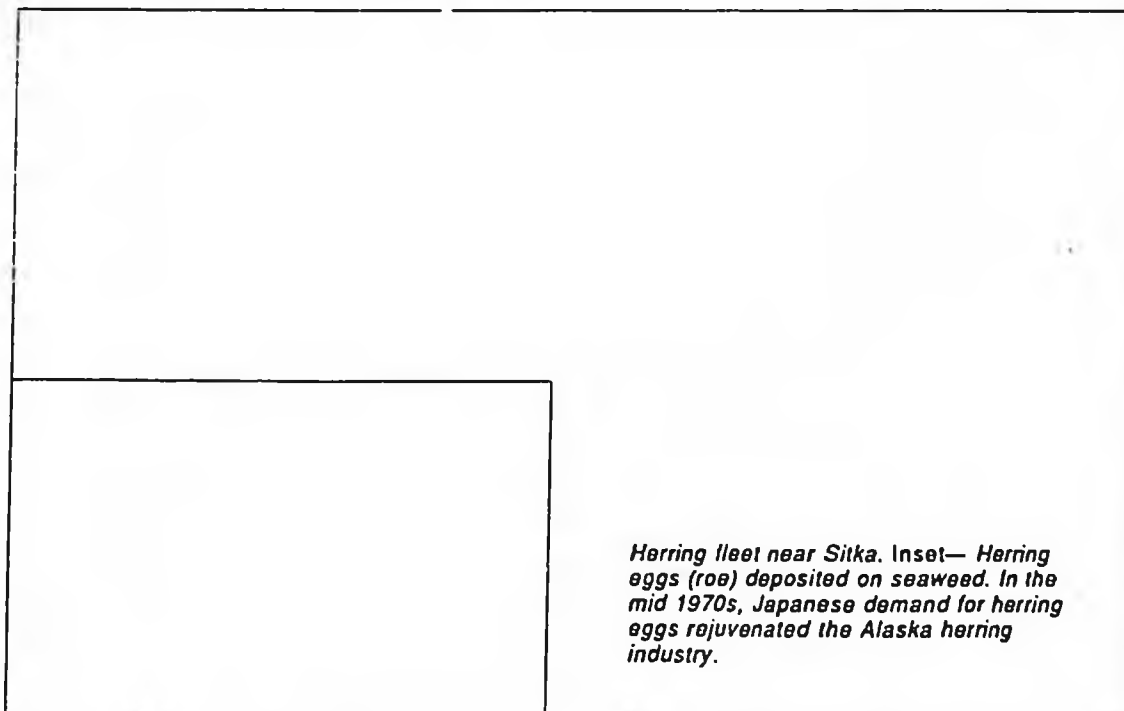


In 1987, sac roe, food and bait herring harvested from Alaska waters were worth an estimated \$43 million ex-vessel. Alaska sac roe herring harvest peaked in 1985, but the value of the harvest is still on the rise. The value of the 1988 harvest reached an estimated \$56 million, the highest ever.

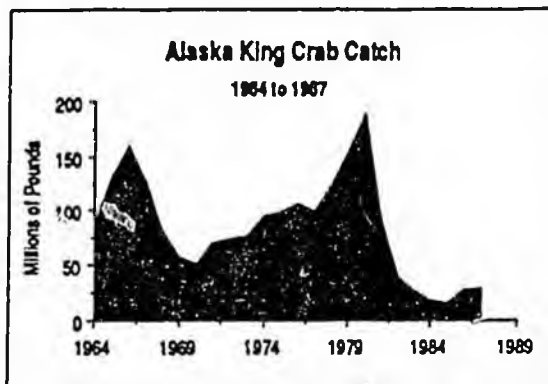
## Shellfish

The shellfish fisheries — king, tanner and Dungeness crab, shrimp and scallops — are conducted along most of the Alaska coast by 3,800 skippers and crew. Baited wire mesh pots are set along the bottom, trapping the crab inside. Shrimp are usually caught by dragging trawls along the bottom.

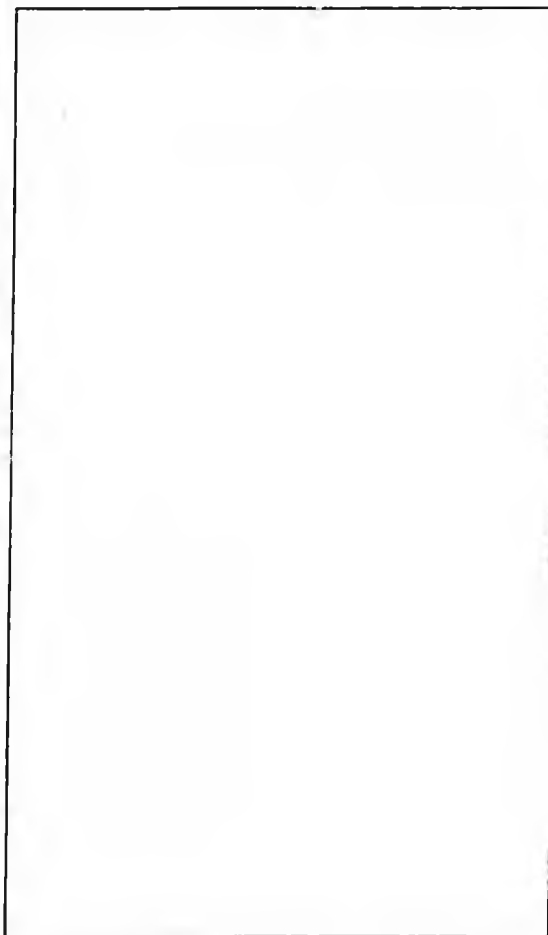
The king crab fishery evolved from a primarily Japanese and Soviet fishery in the 1930s and 1940s into an important domestic fishery in the 1950s. The domestic Alaska king crab harvest increased from just 5 million pounds in 1953 to 188 million pounds in 1980, with a value greater than the Alaska salmon harvest. But the king crab harvest collapsed to 15 million pounds only 5 years later. Now the king crab fishery may be on the rebound.



*Herring fleet near Sitka. Inset— Herring eggs (roe) deposited on seaweed. In the mid 1970s, Japanese demand for herring eggs rejuvenated the Alaska herring industry.*



The 1987 shellfish harvest was worth an estimated \$214 million ex-vessel. The tanner (snow) crab harvest accounted for about two-thirds of the total Alaska shellfish catch. The king crab harvest represented about one-fifth of the total. Alaska's shellfish harvest has increased over 80% since the industry's low in 1984, but is still well below the peak years of the early 1980s.

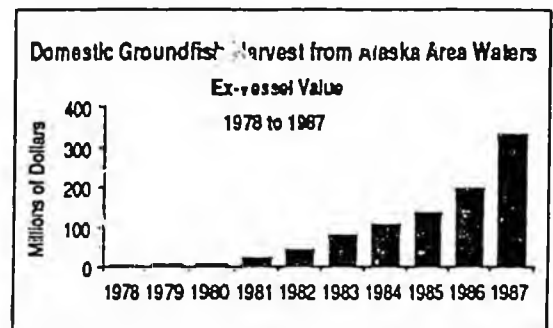


## Groundfish

Today, only a small fraction of the groundfish taken off Alaska is harvested by foreign operators. Joint venture (JV) operations, where American catchers sell to foreign processors at sea, accounted for the majority of the offshore groundfish harvest in 1988, while domestic operations accounted for the majority in 1989.

In order of value, groundfish species are pollock, Pacific cod, sablefish (black cod) and rockfish. Most groundfish are taken in the Bering Sea using trawl gear, open-ended sock-shaped nets. In 1988, the groundfish fleet consisted of 100 trawlers with about 5,000 workers.

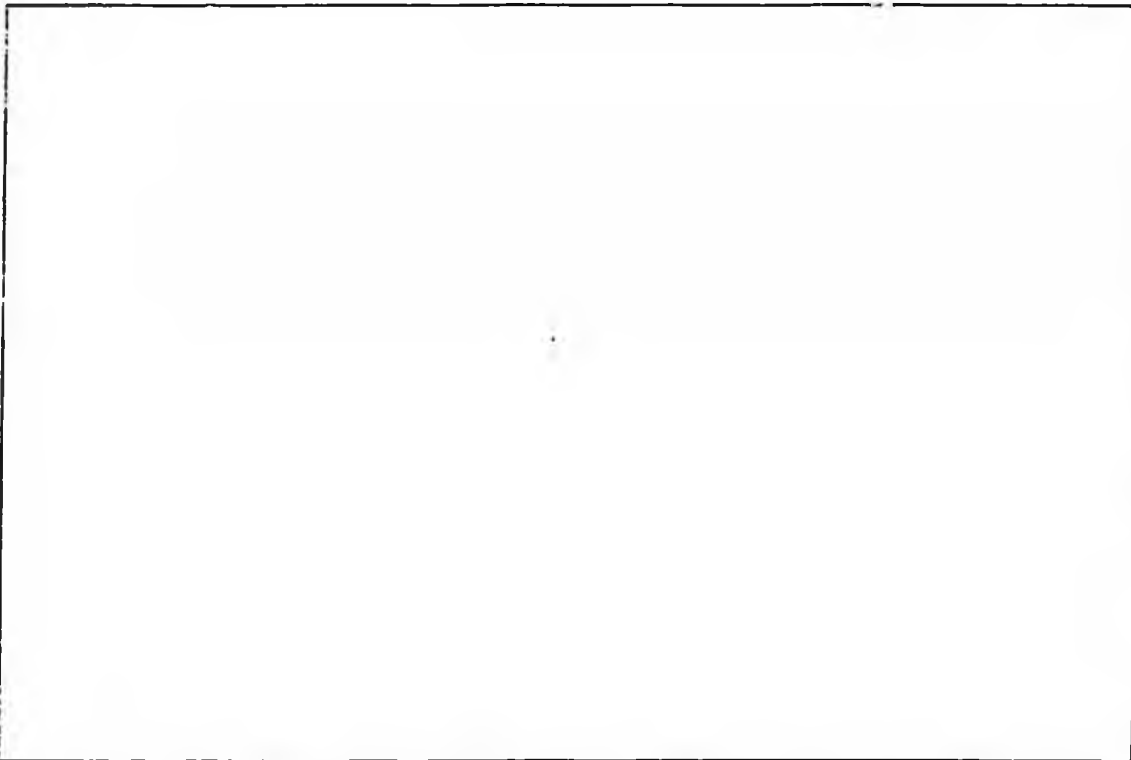
For the 1987 Bering Sea and Gulf of Alaska groundfish harvest, JV operators accounted for about 78% of the total catch. The value of the 1987 domestic and JV groundfish harvest reached an estimated \$331 million ex-vessel, 67% higher than the value of the 1986 harvest.



Though three-fourths of the 1987 groundfish harvest was foreign processed, an increasing share is being processed by domestic seafood producers. In 1987, the total domestic groundfish production value at the first wholesale level was estimated at \$472 million, 50 times that in 1980. The value of groundfish processed on shore in Alaska has increased remarkably from \$49 million in 1986 to \$147 million in 1987.

*Groundfish include pollock, cod, flatfish, sablefish (also known as black cod), and rockfish. As a result of Americanization of the Bering Sea and Gulf of Alaska groundfish fishery, the 1987 total domestic groundfish wholesale production value was 50 times greater than in 1980.*

# Overview of Alaska's Seafood Industry



*A salmon seiner in Prince William Sound. Small boats like this are usually owner-operated, and most skippers and crews are Alaska residents. Overall, Alaskans hold 70% of Alaska's seafood harvesting jobs.*

The Alaska fishing industry can be divided into two parts — the small boat, nearshore fisheries and the offshore highly capitalized fisheries. The small boat, nearshore fleets concentrate on seasonal salmon, herring, halibut, black cod and to a lesser extent on Dungeness, king and tanner crab. Vessels are mostly 30 to 45 feet long and valued under \$500,000. Participants in these fisheries tend to be resident Alaskans, and the majority of these fisheries are managed by the State of Alaska. Time, areas, and gear fished are regulated in nearly all of these fisheries. The historical and regulatory patterns in these nearshore fisheries have cre-

ated a climate suited almost exclusively to owner-operated fishing businesses.

The highly capitalized groundfish fishery and most of the king and tanner crab harvests are conducted well offshore in the Bering Sea and western Gulf of Alaska and are subject to federal management. These fisheries demand much larger vessels, substantial capital investments and large crews. Vessel values range from less than \$1 million to \$40 million for large factory trawlers. Nonresidents dominate these fisheries, and ownership tends to be corporate. Time, areas, gear, harvests and participation are far less limited than in the nearshore fisheries.

*The Alaska seafood industry is based on a natural resource that is the common property of the people.*

*Resident harvesters concentrate in the traditional fisheries, especially salmon, where they hold nearly 80% of the permits.*

## Residency

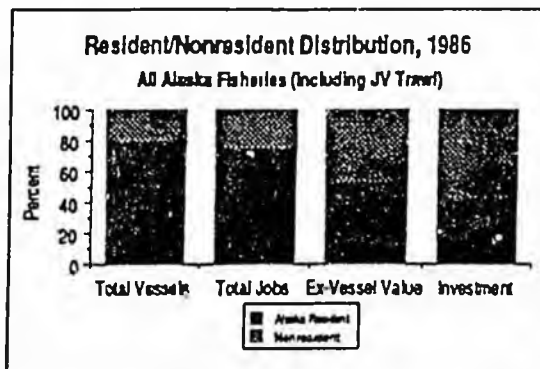
Both residents and nonresidents participate in the Alaska seafood industry. In seafood harvesting, where most of the employment occurs, 70% of the participants are Alaskans, compared to the 77% average resident composition for all Alaska private industry. In seafood processing, 47% of the participants are Alaskans.

Resident harvesters concentrate in the traditional fisheries, especially salmon, where they hold nearly 80% of the permits. Residents also are concentrated in the small boat and subsistence-oriented fisheries.

Nonresident harvesters are more likely to dominate the heavily capitalized and large boat fisheries. Thus, while Alaskans own most of the vessels and permits and hold most of the harvesting jobs, nonresidents have a higher level of investment and, on average, produce more than residents.

Obviously, the more resident participation and catch value, the greater the benefits to the Alaska economy because residents spend their take-home pay in the state. However, the process by which Alaskans might acquire more permits and make greater investments in vessels and equipment is not apparent, especially in the highly capitalized offshore fisheries.

Apart from the JV and factory trawl fisheries, nonresidents hold 21% of the permits and captured 40% of the gross harvest earnings in 1986. Alaska permit holders participate in more fisheries than nonresidents, but nonresidents net greater yield per fishery.



*Offloading chilled halibut. This popular species is managed by a joint U.S./Canadian commission. Overharvest seriously reduced halibut stocks in the 1970s, but since then strict controls have helped return halibut harvests to near record levels.*

## Management of the Fisheries

The Alaska seafood industry is based on a natural resource (fish and shellfish) that is the common property of the people. The management responsibilities of the state government are defined by the state constitution and statutes. The fisheries management responsibilities of the federal government are primarily defined by the Magnuson Act which gave the United States authority over the living resources in the EEZ and on the continental shelf.

Management of Alaska's fisheries is a complex, sometimes fragmented process with responsibility sprinkled among state, national and international bodies. Alaska Department of Fish and Game (ADFG) manages most fisheries up to three miles off-

shore. A lay Board of Fisheries sets regulations for fisheries in state waters. The EEZ is managed by the National Marine Fisheries Service (NMFS) which is directed by the North Pacific Fishery Management Council (NPFMC). NMFS manages the emerging groundfish fishery. Halibut decisions are made by the International Pacific Halibut Commission which includes representatives from Canada, Alaska and Washington. For all king salmon and minor amounts of sockeye in southeast Alaska, decisions are made by the International Pacific Salmon Fisheries Commission, which administers the terms of the U.S./Canada Pacific Salmon Treaty. Other bodies such as the International North Pacific Fisheries Commission deal with concerns of nations that use North Pacific resources, including Japan, Canada and the United States.

### Markets for Alaska's Seafood

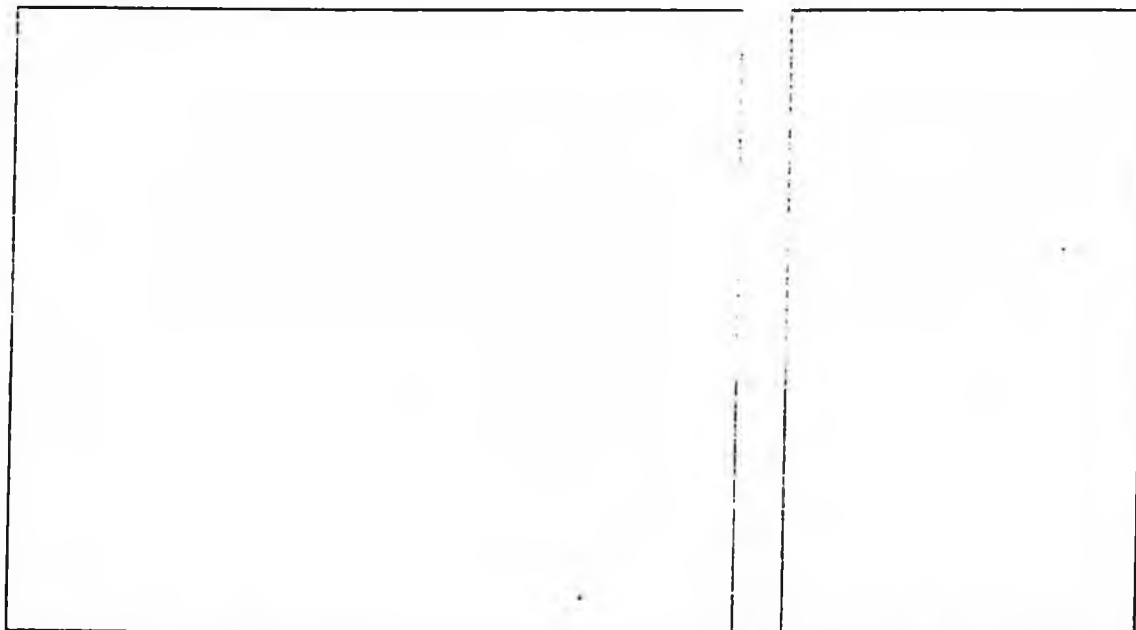
Alaska's seafood industry is enjoying the benefits of unprecedented increases in per capita seafood consumption by health conscious consumers worldwide, and of a declining U.S. dollar that has made Alaska products very attractive. But changing con-

sumer preferences combined with new products from competing producers are challenging Alaska seafood in the marketplace. However, the Alaska seafood industry is now producing many bottom fish products that once were only foreign produced. Examples of new products include frozen cod and pollock fillets, frozen headed and gutted cod and pollock, pollock roe, frozen flatfish fillets, and pollock surimi, used to make foods such as imitation crab.

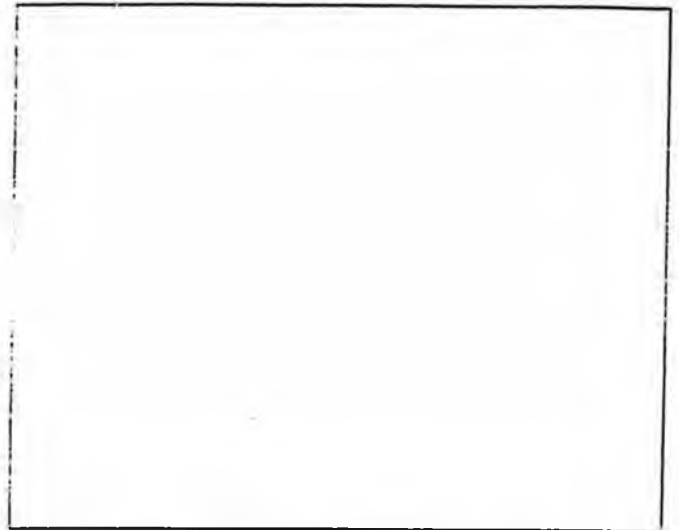
Alaska's seafood processors and the state of Alaska are responding to change in the seafood market with aggressive private and public/private cooperative efforts to promote seafood products. Indeed, Alaska seafood processors spent an estimated \$6 million on promotion and advertising in 1987. These efforts have been directed at maintaining existing markets and developing new markets for Alaska's variety of seafood products.

One-third of all U.S. seafood exports is shipped directly from Alaska. Over half a billion dollars worth of seafood was exported from Alaska to foreign nations in 1987, twice the value of direct exports in 1984. In addition, a significant portion of Alaska's seafood is shipped to the state of

*One-third of all U.S. seafood exports is shipped directly from Alaska.*



Left— Broiled pollock. This white fish, a member of the cod family, is harvested extensively in the Bering Sea and Gulf of Alaska. Right— Japan is Alaska's leading seafood customer, buying from Alaska nearly \$530 million in seafood in 1987.



Left— Shrimp. Right— Dungeness crab. Alaska's 1987 shrimp harvest totaled almost 3 million pounds. The 1987 shellfish harvest produced over \$213 million in gross income for fishermen.

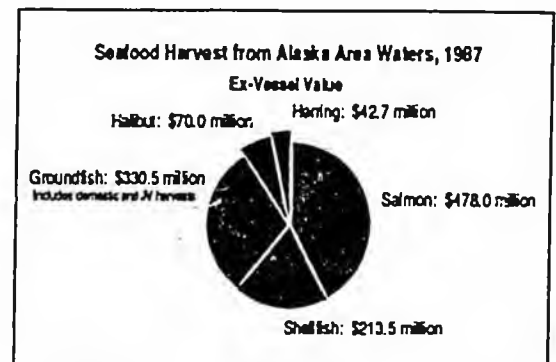
Washington before being exported. Overall, the United States exported 783 million pounds of seafood products in 1987, valued at \$1.58 billion.

Alaska's leading export customer is Japan, which in 1987 received about 95% of Alaska's direct seafood exports, valued at \$530 million. The second largest direct customer is Korea, purchaser of \$20 million in Alaska seafood products in 1987. Canada is third with \$9 million in purchases of Alaska seafood.

## Selected Trends

### Harvest Value

The late 1970s and 1980s have been a period of dramatic change in Alaska's commercial fisheries. Salmon production recovered from the all-time lows of the early and mid-1970s to the sustained highs of the 1980s. Both the herring and halibut fisheries saw a steady growth in value, while Alaska shellfish production collapsed in the 1982-1985 period and then started to recover. Finally, the dramatic events surrounding the increase in U.S. fisheries operations in the EEZ has seen groundfish production become the largest component of total U.S. harvest. Total harvest value rose from \$493 million to \$1.1 billion, including the offshore groundfish fishery, over the 1978-1987 period.



### Diversification

In 1978, salmon and shellfish accounted for 92% of the total Alaska fisheries harvest by value. With halibut, this percentage rises to 98%, leaving a meager 2% for herring and groundfish combined. The dependence on salmon and shellfish in 1978 left the Alaska fisheries vulnerable to biological and economic fluctuations. Fortunately, herring and groundfish development diversified the industry to partially offset the 1984 shellfish failure.

Though salmon was still the most important income source in 1987 at \$478 million, groundfish (\$331 million), shellfish (\$213 million) and halibut (\$70 million) all contributed heavily. Even herring, the least significant of the five major fisheries, brought \$43 million in gross earnings to harvesters.

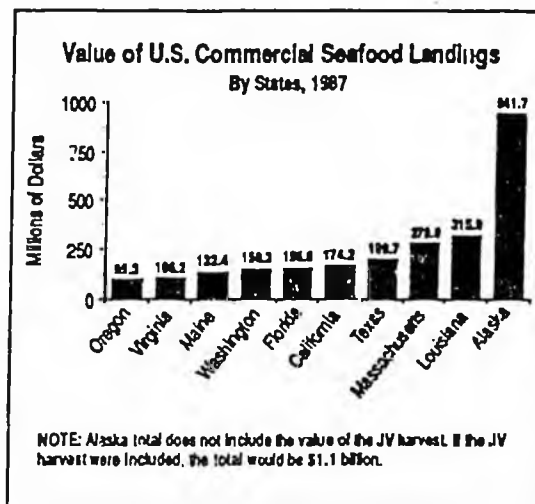
## Alaska's Role In the U.S. and World Seafood Industries

Had Alaska been an independent nation in 1986, it would have ranked eleventh in world fisheries production by volume, and probably much higher in value. While it lagged far behind such giants as Japan and the Soviet Union, whose distant water fleets roam the oceans of the world, Alaska out-produced such well known fishing nations as Norway, Denmark, Iceland and Canada. Although Alaska harvests accounted for only 2% of the world's total catch by volume, they represented 24% of North and Central American seafood production, and 46% of total U.S. production.

The 1987 total value of Alaska's commercial seafood landings at \$942 million is over three times that of Louisiana, which ranks second. Alaska accounted for over 30% of the total value of U.S. seafood landings in 1987. If the value of the harvest rises at the current rate, Alaska will soon account for over 50% of the total U.S. production by volume, and 40% of the total value of U.S. commercial fisheries.

Four Alaska communities were among

the nation's top ten commercial fishing ports in 1987, in value of seafood landings. Kodiak leads the nation with 1988 landings valued at \$166 million. Dutch Harbor-Unalaska (4), Cordova (9) and Petersburg (10) were also among the nation's top ten in 1987. Sitka was 15th on the list with \$34 million in seafood landings and Ketchikan was 24th with landings valued at \$23 million.



*A container vessel at Kodiak. New seafood products and international marketing helped spur the sale of over half a billion dollars in Alaska seafood to foreign countries in 1987.*

*Had Alaska been an independent nation in 1986, it would have ranked eleventh in world fisheries production by volume....*

**PHOTO OF KODIAK**

# Economic Contribution of the Seafood Industry

## Importance to Alaska's Economy

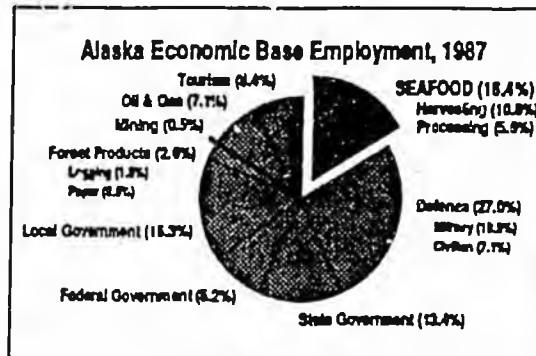
The seafood industry is Alaska's largest private basic industry employer and ranks second to defense among Alaska basic industries. Nearly one-sixth of all Alaska basic industry employment and payroll is in the seafood industry.

Alaska's basic economy produces goods and services for export, meeting demand originating outside the state. Alaska's basic industries are — in order of average annual employment — national defense, seafood, the portions of local and state government that result from oil and gas tax revenue, tourism, civilian federal government serving national interests other than defense, oil and gas, forest products and non-petroleum mining.

The seafood harvesting average monthly wage is higher than average at an estimated \$3,135. Seafood processing is lower at \$1,572. The highest paying industry is oil and gas extraction at \$5,273 per month, double the basic industry average, while tourism pays least at \$1,354 per month.

### Indirect and Induced Employment

Thousands of jobs are created in Alaska's service and supply sector in support of seafood industry activities. For example, the



seafood industry indirectly generates jobs in Alaska's transportation industry, which handles nearly \$2 billion in seafood products each year. Coastal communities see employment created in marine hardware stores, shipyards, fuel suppliers, equipment repair and service businesses, and in many other sectors of the economy.

One step removed from the harvester and processor, but still the result of the seafood industry's presence in Alaska, is the employment created in support of seafood industry workers and their families. These jobs, which in economic jargon are termed "induced," are in grocery stores, clothing stores, schools, gas stations, doctors' offices, banks and local and state government — virtually all across the economy. Together, indirect and induced jobs comprise support industry employment. Alaska's 1987 basic

### Estimates of Alaska Seafood Industry Employment, 1987

Average Annual Employment in Harvesting and Processing	19,232
Indirect and Induced Employment	13,800 to 18,950
<b>Total Average Annual Direct, Indirect and Induced Employment Attributable to the Alaska Seafood Industry</b>	<b>33,032 to 38,182</b>

Nearly 48,000 people participate in Alaska's billion dollar seafood harvest....

industry employment of 117,284 generated support employment of 126,700, for a total employment of 243,984, including seafood harvesting.

**Seafood Harvesting Employment and Payroll**

Nearly 48,000 people participate in Alaska's billion dollar seafood harvest, not counting the decreasing number of foreign operators in the offshore groundfish harvest. Included in the total are 13,310 active permit holders, 31,159 crew members, and an estimated 3,000 participants in the domestic and JV groundfish industries.

Estimated employment and payroll for Alaska's seafood harvesting industry is presented in the accompanying table. The salmon fisheries provide most of the employment in Alaska's seafood harvesting industry, employing over 20,000 people.

However, most of these 20,000 people do not work year-round in seafood harvesting. Thus, spread over one year, their total months worked are equal to 6,836 full-time

jobs. Economists call this the *average annual equivalent*.

Of the various gear groups involved in salmon fishing, drift gillnetters account for the annual equivalent of 2,502 jobs, seiners 1,690 jobs, setnetters 847 jobs, power trollers 655 jobs, hand trollers 198 jobs. Other salmon fisheries account for an annual equivalent of 944 jobs.

Significant growth in employment is occurring in Alaska's offshore groundfish fisheries. Employment on catcher/processors increased about 50% in 1988, and a similar increase is expected between 1988 and 1989.

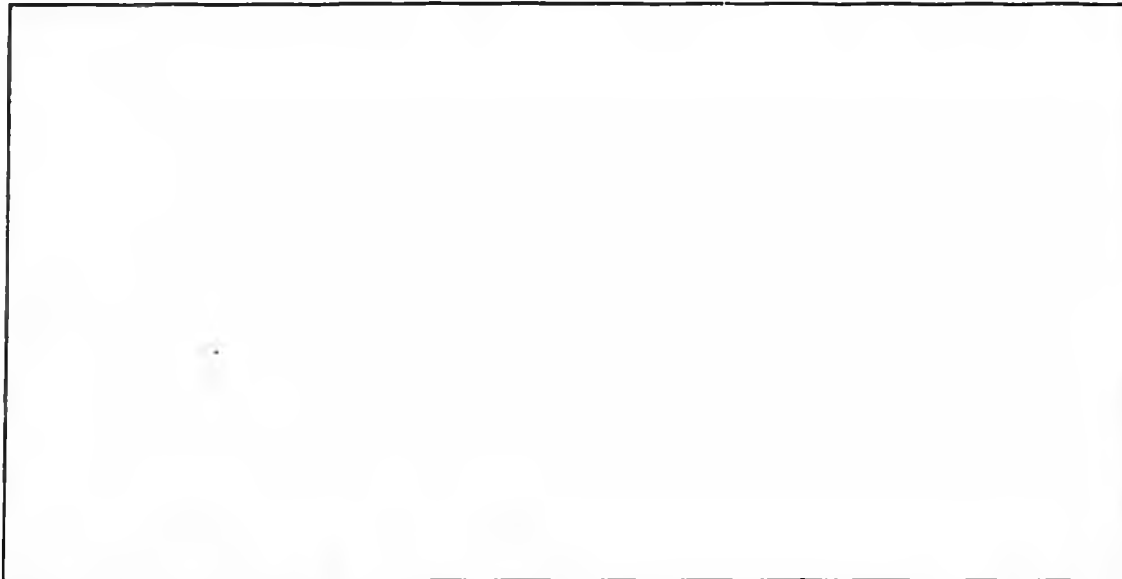
**Seafood Processing Employment and Payroll**

Employment in Alaska's seafood processing industry reached a 6-year high in 1987 with an annual equivalent employment level of 6,611 jobs. Peak seasonal employment was 14,970 workers. Total seasonal participation in seafood processing in Alaska probably exceeded 21,000 workers earning \$125 million, the highest processing payroll to date.

**Employment and Payroll in Alaska's Seafood Harvesting Industry, 1986**

Fishery	Permits Fished	People Employed	Annual Equivalent Employment	Estimated Payroll (\$ million)
Salmon	10,228	24,979	6,836	185.0
Herring	1,855	6,844	571	22.2
Halibut, Black Cod and other	4,013	13,516	1,357	80.6
Shellfish	1,174	3,794	1,857	84.7
<b>SUBTOTAL<sup>1</sup></b>	<b>17,270</b>	<b>47,469</b>	<b>10,621</b>	<b>372.5</b>
Groundfish (Offshore, 1987)				
Domestic & JV Trawl	110 vessels	900	600	56.2
Catcher/Processors	35 vessels	2,100	1,400	42.4
Total		3,000	2,000	98.6
<b>GRAND TOTAL</b>		<b>49,569</b>	<b>12,621</b>	<b>\$471.1</b>

<sup>1</sup>Totals eliminate double counting of harvesters active in more than one salmon fishery. Therefore, totals are not sums.



*Employment in Alaska's seafood processing industry reached a 6-year high in 1987....*

*Woman in salmon cannery. The number of seasonal jobs in canneries is decreasing, but increased shore-based groundfish processing is creating more year-round employment and higher average salaries.*

Seafood processing employment in Alaska peaked in 1981 at 7,065 jobs. Employment declined to a low of 5,417 in 1984. The crash of the king crab stocks accounted for some of the decline, but a major factor was the shift from canned to fresh/frozen product, which requires less labor. The increase in shore-based groundfish production in Alaska is partly responsible for a trend toward greater year-round employment even as peak season employment declines. More year-round business in the seafood processing industry means greater stability, more resident participation and higher average salaries.

Kodiak led Alaska communities in seafood processing employment in 1987 with 1,996 jobs and an annual average of 1,495 jobs. Dutch Harbor recorded 1,063 with an annual average of 880 seafood processing jobs, an indication of year-round stability. Petersburg led Southeast in seafood processing employment with a summer peak of 806 jobs and an annual average of 330, reflecting a dependence on the seasonal salmon fisheries.

Among all basic industries in Alaska, seafood processing has the largest component of nonresidents in its workforce. In 1987, an estimated 46.5% of the 23,676 food processing workers in Alaska were nonre-

sidents. Though most seafood processing companies operating in Alaska actively recruit resident workers, the seasonal nature of processing jobs and the low wages discourage some residents. Further, many processing operations are remote and local labor cannot meet demand. The Department of Labor states that the processing industry places more job orders than can be filled by the Alaska labor force.

### **Importance to Regional Economies**

The seafood industry is the largest private sector employer in five of the seven Alaska regions discussed below. In the Kodiak, Bristol Bay and Aleutian regions, seafood is the dominant basic industry. In southcentral Alaska, which contains over half the state's economy, seafood employs three-fourths as many people as the oil and gas industry and nearly half as many as state government.

The following table shows the distribution of permit ownership and earnings in Alaska. Residents of southcentral Alaska earned the most in 1986, \$131 million before expenses and boat and permit payments. Residents of the city of Kodiak grossed \$86 million, highest of any community.

*Anchorage...is  
Alaska's third  
largest seafood  
harvesting  
money earner.*

**Southeast:** The seafood industry, with average annual employment of 3,993, is southeast Alaska's largest private industry. Southeast is the state's largest seafood region in employment, just ahead of Southcentral. Twenty-one percent of the state's seafood jobs are in southeast Alaska. Based on 1986 gross harvest earnings Southeast ranks second with \$109 million, compared to \$131 million earned by Southcentral residents.

**Southcentral:** This region is the economic heart of Alaska with over half of the state's employment. Anchorage serves as the transportation, finance and trade center for most of Alaska and alone is Alaska's third largest seafood harvesting money earner.

The seafood industry employs 3,735 in Southcentral. Residents earn more from seafood harvesting (\$131 million) than any other Alaska region. Another \$30 million in net income is earned by seafood processing workers in Southcentral. Southcentral residents earn 28% of all resident seafood harvesting gross income and 24% of all processing wages.

**Kodiak:** Kodiak is one of three Alaska regions in which the seafood industry is the

dominant economic activity. With an average annual employment of nearly 2,600, Kodiak's seafood industry accounts for 55% of private sector employment and 38% of total employment. The Kodiak region accounts for nearly one in four of the state's seafood processing jobs and 14% of all seafood employment.

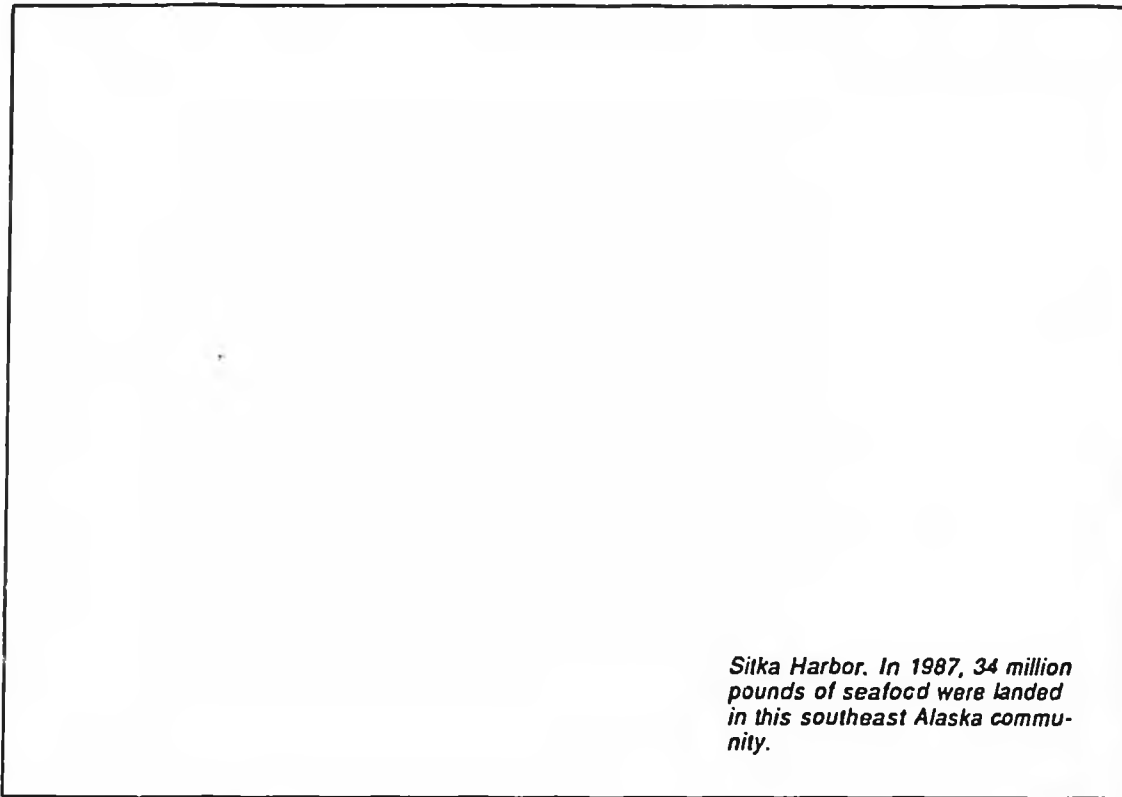
**Aleutians:** The Aleutian region has a very sparse population and an economy dominated by the seafood industry, which employs 64% of all private sector workers. The Aleutian seafood industry has an annual average employment of 2,989, 36% of the total regional employment.

The Aleutian share of the Alaska seafood industry accounts for 16% of all seafood employment and 17% of the processing workforce. In 1986 Aleutian residents captured \$47 million in gross harvesting earnings. These harvesters are the state's most productive.

**Bristol Bay:** This region of the legendary salmon runs is more dependent on the seafood industry than any other. Over 70% of the region's private industry employment is in seafood with an annual average of 2,550 people employed in 1987. Seafood domi-

**Seafood Harvesting Participation and Earnings, 1986**  
by Region of Residence

Region	Permit Holders	Permits Fished	Pounds Harvested (millions)	Gross Earnings (\$ million)
Southeast	2,724	4,725	162.5	109.3
Southcentral	2,977	4,125	172.7	130.6
Anchorage	873	1,015	36.1	30.8
Kodiak (region)	811	1,563	161.2	95.2
Aleutians	326	556	57.2	46.7
Bristol Bay	1,178	1,431	49.1	55.9
Northwest	2,251	2,460	33.7	19.2
Other Alaska	242	261	3.4	3.5
Fairbanks	101	112	2.0	2.1
<b>TOTAL ALASKA</b>	<b>10,496</b>	<b>15,121</b>	<b>639.8</b>	<b>\$460.6</b>



*Sitka Harbor. In 1987, 34 million pounds of seafood were landed in this southeast Alaska community.*

*...101 Fairbanks resident permit holders grossed \$2.1 million in 1986 fishing elsewhere in the state.*

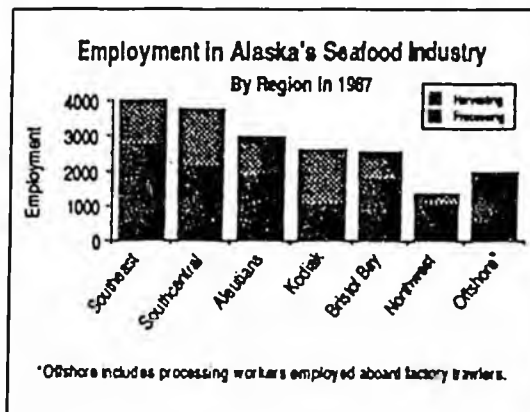
nates the Bristol Bay economy with 51% of all employment. Residents earned \$56 million in harvesting gross income in 1986, or about 12% of the Alaska total.

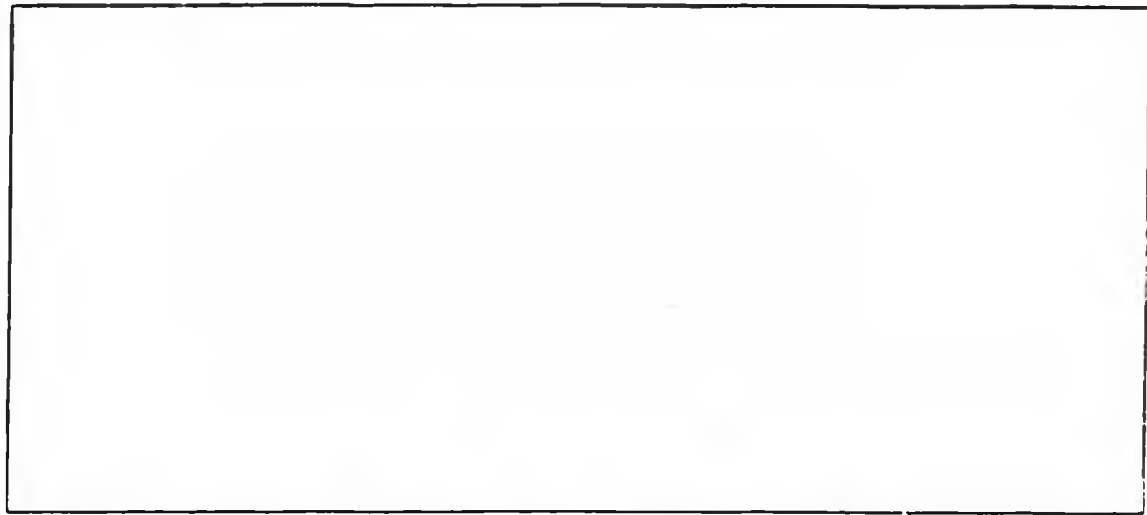
**Northwest:** In the Northwest region, one of four private sector jobs is in seafood harvesting or processing. The seafood industry directly accounts for 13% of the nearly 11,000 average annual total employment.

The seafood harvesting industry in the Northwest region is very labor intensive. Residents earned \$19 million in harvesting gross income in 1986, and processing workers took home paychecks totaling over \$5 million in 1987.

**Interior/Northern:** This region has no significant commercial fishery. However, the 242 residents who earned nearly \$4 million in harvesting gross income (about 1% of the Alaska total) hold permits for fisheries located in other areas of the state. For example, 101 Fairbanks resident permit holders grossed \$2.1 million in 1986 fishing elsewhere in the state.

**Offshore and Undetermined:** This category consists of the estimated 2,000 average annual employment in the offshore and domestic trawl fisheries, which account for about 10% of Alaska's seafood industry employment. These jobs have little effect on Alaska's economy because workers are mostly non-residents and spend little or no time ashore in Alaska. There are also 2,037 other jobs that have no specifically determined geographic location in Alaska.





*Stacked king crab pots and floats. Alaska crabbers have a capital investment of about \$400 million.*

### Capital Investment

Investment in Alaska's seafood industry is estimated at \$4 billion. Investment in fishing vessels in Alaska's nearshore and offshore fisheries is between \$1.8 billion and \$2.0 billion, plus an additional \$200 million to \$300 million in onboard equipment. The salmon fisheries account for an estimated \$800 million of this total, and the offshore groundfish industry accounts for \$500 million. Harvesters have invested another \$900 million in permits for Alaska's limited entry salmon fisheries. Investment in other types of permits adds another \$100 million to the total. Investment in seafood processing plants and equipment may approach \$1 billion, measured in insured or assessed value.

### Expenditures in Alaska

In-state expenditures by processors exceeded \$90 million in 1987, not including fish purchases or payroll. This spending is on such goods and services as fuel, electrical power,

transportation, hardware, repair services, supplies and food.

An estimate of expenditures by harvesters places in-state spending on goods and services in support of Alaska's harvesting fleets at about \$190 million, including \$33 million from the factory trawl fleet. Fleet support expenditures are spread throughout the economy and include repair and maintenance services, insurance, food, gear, equipment, fuel, crew transportation, bait, ice, professional services and many other items.

In total, spending on goods and services in support of harvesting and processing may reach \$300 million or more.

The industry paid raw fish taxes of \$27 million in 1987 and is the major contributor to the \$5 million marine fuel tax. Harvesters also tax themselves in excess of \$4 million annually for support of regional aquaculture programs. License fees and local sales and property taxes generate millions from seafood industry activities.

#### Estimated Capital Investment in Alaska's Seafood Industry, 1988

Investment in Harvesting Vessels and Onboard Equipment	\$2.0 billion to \$2.3 billion
Investment in Commercial Fishery Permits	\$900 million to \$1.0 billion
Investment in Seafood Processing Plants and Equipment	\$800 million to \$1.0 billion
<b>Total Capital Investment In Alaska's Seafood Industry</b>	<b>\$3.7 billion to \$4.3 billion</b>

## Seafood-Related Agencies and Organizations

Important to any major industry are the support organizations and government agencies which regulate and serve that industry. In Alaska, these entities make a substantial contribution to the state's economy in general, and to the seafood industry in particular.

For example, among government agencies the Alaska Department of Fish and Game operates hatcheries that contribute to common property fisheries. The University of Alaska offers education, training, basic and applied research, and field advisory services in support of the industry. The National Marine Fisheries Service performs biological and technical research, as well as enforcement services to protect Alaska's fisheries. One unique and beneficial program is the cooperative marketing program financed jointly by the State of Alaska, the federal government and the industry through

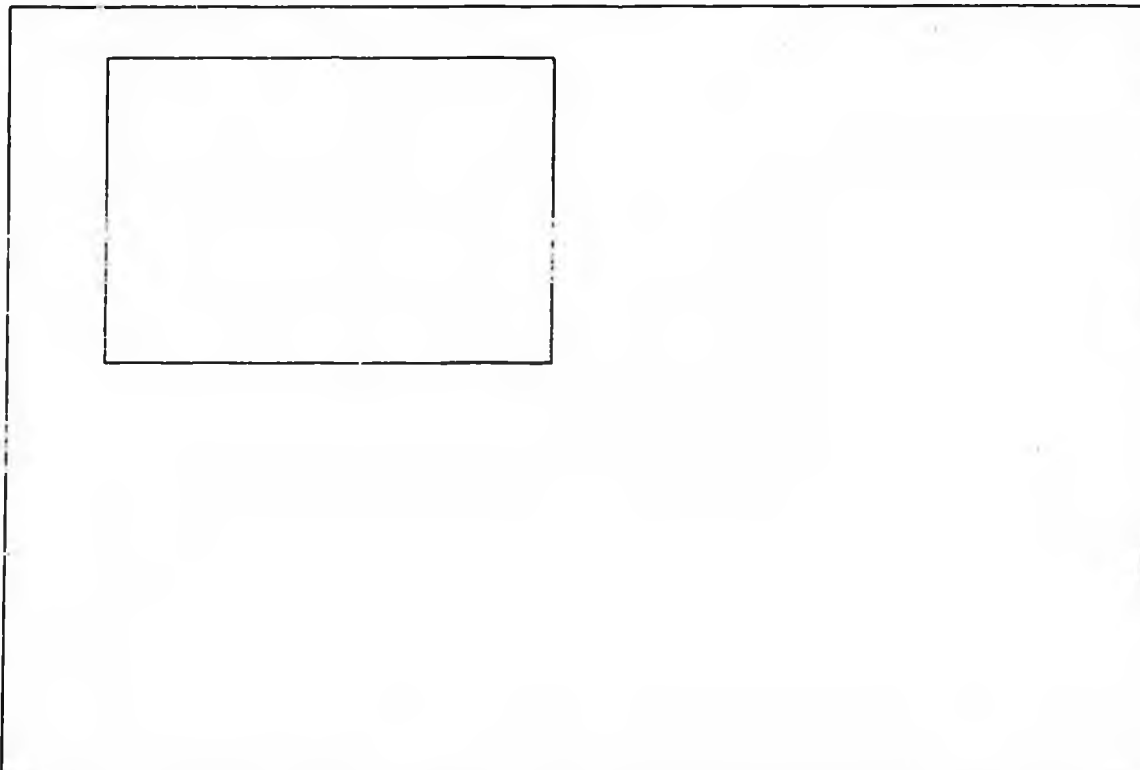
the Alaska Seafood Marketing Institute.

Both state-run hatcheries and private non-profit hatcheries produce fish for the common property fishery. These fish are worth many times the costs of hatchery production.

Other groups, such as harvester and processor organizations, lobby for programs and legislation on behalf of the entire industry.

While these industry benefits are great, the economic benefits to the state are also significant. The agencies and organizations are both support sector (education, research, lobbying) and basic sector (fish production) contributors to the economy. Agencies and organizations directly related to the seafood industry in Alaska contribute a minimum of 1,100 jobs in average annual employment; an annual payroll of at least \$40 million; and a total annual budget in support of the seafood industry of \$82 million, the majority of it State of Alaska money.

*Agencies and organizations directly related to the seafood industry in Alaska contribute... an annual payroll of at least \$40 million....*



*Hatchery-spawned chum salmon. In 1986, 24% of the total Alaska commercial and sport fishing salmon harvest originated in Alaska's state-run and private non-profit hatcheries. Inset— Pink salmon yolk fry. At this early development stage, salmon rely on nutrients stored in their yolk sacs, and are especially vulnerable to environmental contaminants. Cooperative state and federal research programs find more productive ways to ensure a consistent supply of healthy hatchery salmon.*

## Conclusion

The Alaska seafood industry is a diverse and evolving giant in the Alaska economy and its rhythms underlie the lifestyles of communities throughout the state. It provides jobs and income for more Alaskans and in more locations than any other private industry. Economic benefits of this multi-billion dollar industry are distributed from Ketchikan to Kotzebue, in urban and remote areas.

The industry's politics and management span Juneau, Anchorage, Washington, D.C. and other states and countries, and its markets are widespread. The sometimes exasperating political web often helps (and sometimes hinders) the industry's growth.

Extending U.S. fishing efforts into the Exclusive Economic Zone is a national success, and it is now Alaska's challenge to make it a state success. Marketing can be an effective means of improving the appeal of the industry's products. Hatchery production, limited entry, rejuvenated salmon runs, a bank devoted to seafood industry finance, and reductions in foreign interception are other examples of political and regulatory successes.

Finally, the lifeblood is the individual drive of the men and women who harvest, process, distribute, transport, market, and support Alaska's largest renewable resource.

# ASMI assures nervous seafood buyers

CHUCK WLEESCHULTE

ALASKA EMPLOYER 4-4-89

Some 20,000 fish brokers, seafood wholesalers, restaurants and markets in the United States are getting a letter in the mail today telling them there is nothing to fear from buying Alaska seafoods.

The Alaska Seafood Marketing Institute prepared the mailing on Monday as the first part of a possible multi-faceted campaign to prevent the damage from the Prince William Sound oil spill from rubbing off onto the state's fishing industry and possibly staining its reputation.

Merry Tuten, executive director of the quasi state-private marketing agency, said Monday that ASMI has been receiving a number of inquiries from wholesalers, retailers and restaurants wondering about the effects of the 10.1-million-gallon oil spill on Alaska seafood. She said those inquiries like-

ly will increase with the decision Monday to close the sound's \$12 million to \$15 million herring fishery.

The bad news Tuten said is that the spill is prompting wholesaler concern about Alaska fish stocks - unwarranted concerns since all of the fish currently available for sale were caught long before the March 24 spill.

"Outside of some pot openings there was no fishing going on in the sound at the time of the spill and there won't be any for a while," said Tuten. The Copper River red salmon season, on the east side of the sound that so far hasn't been affected by the spill, usually doesn't open until mid to late May.

The good news, Tuten said, is that "soft" public opinion polls during the past 10 days conducted by ASMI and funded by the fish processing industry show that consumers in key markets around

the nation have yet to begin questioning the purity or wholesomeness of Alaska seafood.

"Most all of the polls show the public is concerned about the environmental damage in Alaska and about the captain of the tanker, but the public so far hasn't extended its concerns about environmental protection to concerns about the quality of our fish," said Tuten.

She said the state and industry, however, need to be prepared to respond should the opinion polls begin to shift.

ASMI, she said, already has crafted a multi-phased public opinion program to counteract any resistance to Alaska fish sales, should they develop. She said the program includes holding press conferences around the country and in Europe, issuing press releases, sending out direct mail bulletins to fish buyers.

Tuten said ASMI is currently

preparing a cost estimate for what its total advertising campaign might cost, if it is needed, hoping then to find a source for the needed cash.

"We are very wary, however, of getting out in front. There isn't a perception among the public yet that there is a problem with our fish and we don't want to do anything that might equate the oil spill with fish quality in their mind," she said.

She said it was necessary for the agency to spend about \$20,000 on Monday's direct mailing, in an effort to prevent rumors from weakening Alaska fish sales and thus prices heading into the new season.

Gov. Steve Cowper last week asked lawmakers for a \$20 million supplemental appropriation to pay for state expenses in combating the oil spill, Cowper expecting all the money to eventually be reimbursed by Exxon.

**BRIEFING -  
DEPARTMENT  
OF NATURAL  
RESOURCES -  
MINING  
ROYALTIES,  
6(i)**

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

October 19, 1988

Mr. Richard Hughes  
President  
Alaska Miners Association, Inc.  
Suite 203  
501 West Northern Lights Blvd.  
Anchorage, AK 99503

Dear Mr. Hughes:

Thanks for expressing the views of the Alaska Miners Association concerning the leasing of Alaska's mineral resources. As you may know, we are currently evaluating the legal, fiscal, and practical aspects of implementing Section 6(i) of the Statehood Act, and your comments will be helpful.

As you are aware, the right of self-initiation is recognized and guaranteed by Article VIII, Section 11 of the Alaska Constitution. I do not intend to make, and I will argue against, any changes to the fundamental way in which mineral rights are initiated on State land. The traditional discovery, location, and reclamation system recognizes the unique nature of mineral deposits as well as the needs of the prospector.

I understand the need for long-term tenure of State mining claims because of the very long lead time that may be required to bring a mineral prospect into production. This is especially true in Alaska. I concur with your position and do not believe a "use or lose" provision is a good idea.

The question of "fair" rent or royalty is subjective, but I want to assure you that this administration does not view resolution of this issue as an opportunity to maximize revenue or adversely affect the industry. As you know, we are currently working on this issue and look forward to continued discussions with the AMA.

The question of whether the leasing requirement should apply to all State lands or just those lands "known to be mineral in character at the time of State selection" is of primary importance to any discussion of the 6(i) matter. The opinions of the Alaska Supreme Court and the U.S. Solicitor General demonstrate that this issue remains to be resolved.

Mr. Richard Hughes

- 2 -

October 19, 1988

I believe it is in the State's interest to address this issue in a manner which minimizes the risk of lengthy and expensive litigation. A cloud over the mining law and the title of every State mining claim is not good for the State or the mining industry. I have asked Mr. Jerry Gallagher, Director for Department of Natural Resources' Division of Mining, to review your proposed definition of mineral-in-character and discuss it with you directly.

Again, thanks for writing to me. You can count on my administration to work cooperatively with you on this important matter. I look forward to seeing you in Anchorage on October 29 when I am scheduled to address your Association during your fall conference.

Sincerely,

Steve Cowper  
Governor

cc: Commissioner Judith M. Brady  
Department of Natural Resources  
Jerry Gallagher, Director  
Division of Mining

A.001

F

September 8, 1988

Ms. Jeanine Kennedy  
Executive Director  
Rural Alaska Community  
Action Program, Inc.  
P.O. Box 200908  
Anchorage, AK 99520

DEPARTMENT OF  
NATURAL RESOURCES

SEP 09 1988

COMMISSIONER'S OFFICE  
ANCHORAGE

Dear Ms. Kennedy:

Thanks for your letter of August 16 expressing the consolidated views of various conservation, Native, and fishing organizations concerning the leasing of Alaska's mineral resources. As you may know, we are currently evaluating the legal, fiscal, and practical aspects of implementing section 6(i) of the Statehood Act, and your thoughts will be helpful.

The question of whether the leasing requirement should apply to all state lands or just those lands "known to be mineral in character at the time of state selection" is of primary importance to any discussion of the 6(i) matter. The opinions of the Alaska Supreme Court and the U.S. Solicitor General demonstrate that this issue remains to be resolved. I believe it is in the state's interest to address this issue in a manner which minimizes the risk of lengthy and expensive litigation. A cloud over the mining law and the title of every state mining claim is not good for the state or the mining industry.

This administration is currently considering a variety of options for mining rents and royalties. However, I must disagree with your statement that "the whole idea is to maximize revenue." Our plan is to develop a proposal that fully complies with section 6(i), is fair to all concerned, and encourages the continued growth of Alaska's mining industry.

Ms. Jeanine Kennedy

- 2 -

September 8, 1988

We will consider your comments on the need for statutory reclamation requirements as we develop our proposal. For your information, however, every operator on a state mining claim is required by permit stipulations to salvage topsoil, regrade tailings, and stabilize stream channels. I have asked Jerry Gallagher, Director of the Department of Natural Resources' Division of Mining, to provide you with a copy of these stipulations. We would welcome your review of our current reclamation requirements.

Thanks again for writing to me about this matter. We look forward to developing a solution to the 6(i) problem that meets the needs of all Alaskans.

Sincerely,

S/S Steve Cowper

Steve Cowper  
Governor

1012

6(i) Briefing Book  
for  
House Resources Committee  
January 12, 1989

Prepared by  
Alaska Department of Natural Resources  
Division of Mining  
Gerald Gallagher, Director

6(i) BRIEFING BOOK

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EXECUTIVE SUMMARY  
6(i) Mining Rent/Royalty Issues

Section 6(i) of the Statehood Act (P.L. 85-508) provides:

All grants made or confirmed under the Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: Provided, that any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

The State and the legislature have since 1980 been aware that the State's mining laws (AS 38.05.185 - .275) may not fully comply with section 6(i). In 1982, the legislature adopted AS 38.05.207, creating the requirement for a miner to apply for a "Production License" prior to the commercial production of minerals. This license requires a public notice and was enacted in hopes of curing the 6(i) deficiencies.

In 1983, a coalition of environmental, Native and fishing groups challenged in State Court that Alaska's mining laws were not in compliance with section 6(i). On May 1, 1987, the Alaska Supreme Court found that:

\* Alaska's mining leasing system violates section 6(i) because it does not require the payment of cash rents or royalties; and

\* Section 6(i) applies only to lands known to have been mineral-in-character at the time of state selection. (The Supreme Court specifically avoided the issue of what constitutes state selection and the meaning of the term mineral-in-character.)

All parties asked the U.S. Supreme Court to review the Alaska Supreme Court's decision. The State argued primarily that the State court should not have allowed these private interest groups standing to argue the case. The Trustees for Alaska, on behalf of the conservation groups, argued primarily that the term "mineral lands" refers to all State land. The U.S. Department of Justice submitted a brief which argued that 1) the Alaska Supreme Court erred in limiting the 6(i) lease requirement to lands that were known to be mineral-in-character at the time of State selection, and 2) that the Alaska court decision was advisory and final resolution could occur only in the federal courts. On May 1, 1988, the U.S. Supreme Court declined to consider this case.

Legislative action will be necessary to cure this defect. The significant questions to be addressed are:

1. Should the proposal include only "mineral lands" or all state land?
2. Should the proposal include rent, or royalty, or both?
3. What are the appropriate levels of rent and/or royalty?

(Prepared by: DNR/DOM 9/1/88)

Constitution of Alaska  
Art. VIII

**Section 11. Mineral Rights.** Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which, upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery, location, and filing, as prescribed by law, shall establish a prior right to these minerals and also a prior right to permits, leases, and transferable licenses for their extraction. Continuation of these rights shall depend upon the performance of annual labor, or the payment of fees, rents, or royalties, or upon other requirements as may be prescribed by law. Surface uses of land by a mineral claimant shall be limited to those necessary for the extraction or basic processing of the mineral deposits, or for both. Discovery and appropriation shall initiate a right, subject to further requirements of law, to patent of mineral lands if authorized by the State and not prohibited by Congress. The provisions of this section shall apply to all other minerals reserved to the State which by law are declared subject to appropriation.

Alaska Statehood Act (P.L. 85-508)  
Section 6(i)

(i) All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express conditions that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: *Provided*, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

**ALASKA LAWS AND REGULATIONS  
FOR STAKING MINING CLAIMS,  
PROSPECTING SITES AND LEASEHOLD  
LOCATIONS ON STATE LAND**

**Steve Cowper  
Governor**

**Judith M. Brady  
Commissioner  
Department of Natural Resources**

**June 1988**

MINING CLAIM, PROSPECTING AND LEASEHOLD LOCATION RIGHTS

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MINING RIGHTS

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**Sec. 38.05.185. Generally.** (a) The acquisition and continuance of rights in and to deposits on state land of minerals which on January 3, 1959, were subject to location under the mining laws of the United States shall be governed by AS 38.05.185 — 38.05.275. Nothing in AS 38.05.185 — 38.05.275 affects the law pertaining to the acquisition of rights to mineral deposits owned by any other person or government. The director, with the approval of the commissioner, shall determine that land from which mineral deposits may be mined only under lease, and, subject to the limitations of AS 38.05.300, that land which shall be closed to mining. State land may not be closed to mining or mineral location unless the commissioner makes a finding that mining would be incompatible with significant surface uses on the state land. State land may not be restricted to mining under lease unless the commissioner determines that potential use conflicts on the state land require that mining be allowed only under written leases issued under AS 38.05.205 or the commissioner has determined that the land was mineral in character at the time of state selection. The determinations required under this subsection shall be made in compliance with land classification orders and land use plans developed under AS 38.05.300.

(b) The failure on the part of a mining lessee or a locator to comply strictly with AS 38.05.185 — 38.05.275 and regulations adopted under those sections does not invalidate the rights of a mining lessee or a locator if it appears to the satisfaction of the commissioner that the mining lessee or the locator complied as nearly as possible under the circumstances of the case, and that no conflicting rights are asserted by any other person.

(c) Unless otherwise provided, the usages and interpretations applicable to the mining laws of the United States as supplemented by state law apply to AS 38.05.185 — 38.05.275. (§ 1 art IX ch 169 SLA 1959; am § 19 ch 61 SLA 1960; am § 1 ch 123 SLA 1961; am § 1 ch 108 SLA 1981)

**Revisor's notes.** — In 1984, the phrase "the mining lessee or" was inserted following "the satisfaction of the commissioner that" in (b) of this section under AS 38.05.185(1)(b)(7); and the former last sentence of (b) was designated as subsection (c).

**Cross references.** — For location and development of mining claims on federal public domain, see AS 27.10.

**Effect of amendments.** — The 1981 amendment added the fourth through sixth sentences of subsection (a).

**Collateral references.** — 54 Am. Jur. 2d, Mines and Minerals, §§ 23, 167.

58 C.J.S., Mines and Minerals, § 4 et seq.

**Sec. 38.05.190. Qualifications.** (a) The right to acquire exploration and mining rights under AS 38.05.185 — 38.05.275 may be acquired or held only by

- (1) citizens of the United States at least 18 years of age;
  - (2) legal guardians or trustees of citizens of the United States under 18 years of age on behalf of the citizens;
  - (3) persons at least 18 years of age who have declared their intention to become citizens of the United States;
  - (4) aliens at least 18 years of age if the laws of their country grant like privileges to citizens of the United States;
  - (5) corporations organized under the laws of the United States or of any state or territory of the United States and qualified to do business in this state, except that if more than 50 percent of the stock of a corporation is owned or controlled by aliens who are not qualified, the corporation is not qualified to acquire or hold the rights;
  - (6) associations of persons described in (1) — (5) of this subsection.
- (b) An unqualified person who acquires an interest in exploration or mining rights by operation of law shall be allowed two years in which to become qualified or to dispose of the interest to a qualified person. (§ 2 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 2 ch 93 SLA 1984)

**Revisor's notes.** — In 1984, former (a)(5) and (a)(6) of this section were reorganized as (a)(6) and (a)(5) respectively. A corresponding change in the internal reference in present (a)(6) was made.

**Effect of amendments.** — The 1984

amendment, in subsection (a), substituted "18" for "19" in paragraphs (1)-(4), "the" for "such" near the end of paragraphs (2) and (6), and "persons described in (1) — (6) of this subsection" for "such persons" in paragraph (5).

**Sec. 38.05.195. Mining claims.** Rights to deposits of minerals subject to AS 38.05.185 — 38.05.275 in or on state land that is open to claim staking may be acquired by discovery, location and filing as prescribed in AS 38.05.185 — 38.05.275. The locator has the exclusive right of possession and extraction of the minerals subject to AS 38.05.185 — 38.05.275 lying within the boundaries of the claim. A location may not exceed 1,320 feet in its longest dimension, and the boundaries of a claim located after January 1, 1985 shall run in the four cardinal directions unless the claim is a fractional claim or the commissioner determines that staking in compliance with this section is impractical because of local topography or because of the location of other claims. A location shall be distinctly marked on the ground in the manner prescribed by the commissioner and a notice of location shall be posted on the claim in the manner and containing the information required by the commissioner. Within 90 days after the date of posting

the notice of location on the claim, the locator shall file for record in the recording district where the claim is located a certificate of location. The certificate of location shall contain the information required by the commissioner. Locations may be amended in the manner and with the effect prescribed in AS 38.05.200. Annual labor shall be performed and statements of annual labor recorded as prescribed in AS 38.05.210 — 38.05.235. (§ 3 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 3 ch 93 SLA 1984)

**Effect of amendments.** -- The 1984 amendment, effective January 1, 1985, inserted "subject to AS 38.05.185 — 38.05.280" in the second sentence and "of a claim located after January 1, 1985" in the third sentence, added "unless the claim is a fractional claim or the commissioner determines that staking in compliance with this section is impractical because of local topography or because of the location of other claims" at the end of the third sentence, and made a series of technical changes throughout the first three sentences.

**Opinions of attorney general.** -- The filing of a prima facie valid application for an offshore prospecting permit under AS 38.05.250 acts to segregate the land from the public domain, thereby precluding a later mining claimant from obtaining any right to the minerals in that land, even where the offshore prospecting permit application subsequently is declared void, is withdrawn, or is denied. February 23, 1984, Op. Att'y Gen.

#### NOTES TO DECISIONS

Cited in Moore v. State, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

**Sec. 38.05.200. Changes in locations and amended notices.** Notices may be amended at any time and monuments changed to correspond with the amended location but a change may not be made that interferes with the rights of others. Whenever monuments are changed or an error is made in the notice or in the certificate of location, an amended certificate of location shall be filed for record in the same manner and with the same effect as the original certificate. (§ 47-3-34 ACLA 1949)

**Collateral references.** — 54 Am. Jur. 58 C.J.S., Mines and Minerals, § 12 et seq. 2d, Mines and Minerals, § 25 et seq.

**Sec. 38.05.205. Mining leasing.** (a) Prior discovery, location and filing shall initiate prior rights to mineral deposits subject to AS 38.05.185 — 38.05.275 in or on state land, other than submerged land, which is open to mining leasing. Locations shall be made and certificates of location recorded in accordance with AS 38.05.195. If the located land is available only for leasing, the director shall publish in a paper of general circulation in the area of the location, notice of the filing of the location and notice that a mineral lease will be issued. The notice may be combined with notices of locations either in the same general area or statewide. Unless a conflicting location exists, no later than two weeks after publication of the notice, an application form for a mining lease shall be mailed to the locator by the director. A lease application shall be filed with the director by the locator within 90 days after receipt of the form. If the located land is not available for leasing, notice shall be given by the director and the locator's prior rights shall terminate. A mining lessee has the exclusive rights of possession and extraction of all minerals subject to AS 38.05.185 — 38.05.275 lying within the boundaries of the lease or location. Mining

leases may be issued for one location or for a group of contiguous locations held in common. Minerals may not be mined and marketed or used until a lease is issued, except for limited amounts necessary for sampling or testing.

(b) Beginning on the date established by the commissioner under AS 38.05.210 there shall accrue an annual rental for each leasehold location or portion thereof whether or not under lease, not less than the value of annual labor improvements required for mining claims. The value of work done on, or for the benefit of, the leasehold in compliance with AS 38.05.210 may be credited against the rental.

(c) A mining lease shall be for any period up to 55 years, and the lessee has a right to a new lease at the end of each lease period. The commissioner may make reasonable adjustments of the rental rate at the end of each 20 year period, based upon changed conditions in production costs and markets. A valid mining claim located and held under AS 38.05.195 may be converted to a lease at any time upon application by the owner, and issuance by the commissioner. No rights granted by a mining lease may be exercised until the lease has been filed for record in the recording district where the land is located. (§ 4 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 2 ch 108 SLA 1981; am § 39 ch 152 SLA 1984)

**Effect of amendments.** — The 1981 amendment in subsection (a), added "the director shall publish in a paper of general circulation in the area of the location, notice of the filing of the location and notice that a mineral lease will be issued" at the end of the third sentence, added the present fourth sentence, added "unless a conflicting location exists, no later than two weeks after publication of the notice" at the beginning of the fifth sentence, deleted "upon request or upon receipt of notice that the location has been made on lands open only for leasing" at the end of the fifth sentence, substituted "the locator's" for "his" preceding "prior rights" in the sixth sentence and added "or location" following "lease" in the seventh sentence

The 1984 amendment substituted "commissioner" for "director" in the third sentence in subsection (c).

**Editor's notes.** — Section 5, ch. 108, SLA 1981, as amended by § 1, ch. 90, SLA 1983, provides: "SPECIAL PROVISION FOR MINING LEASE LOCATIONS Notwithstanding AS 38.05.205(a), until December 31, 1985, minerals may be mined, marketed, or used on a location for mineral leasing under AS 38.05.205 on state land upon discovery, location, and recording in accordance with AS 38.05.195. However, this section does not apply to a locator who does not file an application for a lease within 90 days after receipt of the application form as required by AS 38.05.205."

#### NOTES TO DECISIONS

Cited in *Moore v State*, Sup Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P2d 8 (1976).

**Collateral references.** — 54 Am. Jur. 2d, Mines and Minerals, §§ 97 to 101, 120 to 147.

58 C.J.S., Mines and Minerals, § 164 et seq.

"Mine" as used in written instrument, 92 ALR2d 868.

**Sec. 38.05.207. Production license.** (a) An application for a production license must be filed with the commissioner when a locator of a mining claim under AS 38.05.195 or a lessee of a mining location under AS 38.05.205 is prepared to produce minerals for sale in commercial quantities. The application shall state under oath the location of the land and ownership of the mineral deposits involved in the mining operation and the date production began or is expected to begin. Upon receipt of an application, the commissioner shall publish in a paper of general circulation in the area of the location notice of the application and notice that a production license will be issued. The notice may be combined with notices of other applications either in the same general area or statewide. Pending completion of this public notice requirement and issuance of the production license, the locator or lessee has the right to produce minerals from the property.

(b) If the commissioner determines under AS 38.05.185(b) that a locator or lessee has complied as nearly as possible under the circumstances of the case with the provisions of AS 38.05.185 — 38.05.275 and that no conflicting rights are asserted by any other person, the commissioner shall issue a transferable production license for mineral extraction. If conflicting rights are asserted the commissioner may resolve the conflict. (§ 2 ch 87 SLA 1982)

**Cross references.** — For purpose and legislative finding, see § 1, ch. 87, SLA 1982, in the Temporary and Special Acts and Resolves.

**Opinions of attorney general.** — The production license requirement of this sec-

tion apply to riverbeds that the state claims to own under § 6(m) of the Statehood Act as well as to lands tentatively approved to the state under § 6(a) and (b) of the Statehood Act June 10, 1982, Op. Atty Gen.

**Sec. 38.05.210. Annual labor.** (a) Labor shall be performed or improvements made annually on or for the benefit or development of each mining claim on state land except that where adjacent claims are held in common, the expenditure may be made on any one claim. The commissioner shall establish the date of the commencement of the year during which the labor or improvements are to be performed. Labor shall be performed at the annual rate of \$200 per claim. If more work is performed than is required by this section to be performed in any one year, the excess work up to a value of \$800 may be applied against labor required to be done during the subsequent year or years.

(b) During the year in which the performance of annual labor is required or within 90 days after the close of that year, the owner of the mining claim or some other person having knowledge of the facts shall file for record with the recorder of the district in which the claim is located a signed statement setting out the information, as may be required by the commissioner, concerning the annual labor of the preceding year and any labor in excess of that required for the preceding year. The statement, properly filed, is prima facie evidence of the performance of the labor. The failure of one of several co-owners to contribute the proportion of the expenditures required for annual labor from the co-owner shall be treated in accordance with AS 38.05.215 — 38.05.235.

(c) The statement of annual labor required in (b) of this section may be amended within two years of the date by which the annual labor statement was required to be filed. An amended statement shall be filed for record in the same manner as the original statement. Addi-

tional labor claimed in an amended statement may not be applied against labor required to be done during a subsequent year.

(d) AS 38.05.240 and 38.05.242 apply to this section. (§ 5 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 1 ch 88 SLA 1970; am § 4 ch 93 SLA 1984)

**Revisor's notes.** — Subsection (c) was enacted as (b) and renumbered in 1984 and a corresponding change was made in the internal reference in (c). The balance of the

section was reorganized into subsections (a), (b) and (d) in 1984 for clarity.

**Effect of amendments.** — The 1984 amendment added subsection (c).

#### NOTES TO DECISIONS

**Express statement not required.** — Neither this section nor the regulations concerning the contents of an affidavit of annual labor require an express statement that excess labor will be carried over to be applied against labor required to be done during the subsequent year or years. *Ashbrook v. O'Harra*, Sup. Ct. Op. No. 1661 (File No. 2702) 581 P.2d 218 (1978).

**Express statement that excess labor will be carried over would serve no**

function since one can readily determine from the affidavit whether the value of the labor set forth is greater than the minimum required to maintain each claim for the year in question. *Ashbrook v. O'Harra*, Sup. Ct. Op. No. 1661 (File No. 2702), 581 P.2d 218 (1978).

Cited in *Moore v. State*, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

**Collateral references.** — 54 Am. Jur. 2d, Mines and Minerals, §§ 68 to 75.

**Sec. 38.05.215. Notice to co-owners to contribute to cost of annual labor or improvements and forfeiture for failure to contribute.** If one of several co-owners fails to contribute the proportion of the expenditures required for annual labor from the co-owner, the co-owners who have performed the labor or made the improvements may, at the expiration of the annual labor year, give the delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days. If at the expiration of 90 days after the service of the notice in writing, or 90 days after the completion of the publication the delinquent fails or refuses to contribute the required proportion of the expenditures, the interest of the delinquent co-owner in the claim is forfeited to the co-owners who have made the expenditures. (§ 47-3-56 ACLA 1949)

**Sec. 38.05.220. Recording the notice to contribute and affidavits.** (a) Within 120 days after personal service, or within 120 days after the completion of publication of the notice provided for in AS 38.05.215, the co-owner who claims the forfeiture shall file for record in the office of the recorder of the recording district in which the claim is located a copy of the notice with the following affidavits attached:

(1) an affidavit of the person serving the notice giving the time, place and manner of service and by whom and upon whom the service was made or, if service was made by publication in a newspaper, an affidavit of the editor, publisher, printer or foreman of the newspaper giving the name of the newspaper, the place where, and the time during which the notice was published and the number of insertions;

(2) an affidavit of the co-owner who claims the forfeiture stating that neither the delinquent co-owner nor any person acting for the delinquent co-owner has paid or tendered to the affiant the delinquent's proportion of the expenditures for annual labor or improvements.

(b) The record of the notice and affidavits or a certified copy of it is prima facie evidence of the facts contained in it. (§ 47-3-57 ACLA 1949)

**Sec. 38.05.225. Lienholder may perform the annual labor.** A person who holds a claim to or lien upon an unpatented mining claim under a certificate of sale, mortgage, attachment, levy, judgment, or other lien may, when necessary for the protection of the lien or claim, go upon the mining claim and perform or cause to be performed the annual labor required by law to prevent forfeiture. Before performing the labor the claimant or lien holder shall mail a written notice of intent to perform the annual labor on the claim to the owner of the claim at the last known address of the owner of the claim. (§ 47-3-58 ACLA 1949)

**Sec. 38.05.230. Lien for performance of annual labor.** (a) The person performing or causing to be performed annual labor upon an unpatented mining claim as provided in AS 38.05.225 shall have a lien upon the claim for the assessment work, including the reasonable cost of transportation to and from the claim incurred in doing the work. The lien is enforced either as in other suits for the foreclosure of liens upon real property or as supplemental accruing costs in an action, if any, then pending in which the claim has been levied upon by attachment, execution or other court process.

(b) A person claiming a lien under this section shall, within 90 days after the completion of the annual labor for which the lien is claimed, file for record in the office of the recorder of the recording district in which the property on which the lien is claimed is situated a notice of claim of lien, verified by the oath of the person claiming the lien or that of some other person having knowledge of the facts, and stating the name of the owner or reputed owner of the property, the amount of the claim, the time of the performance of the annual labor for which the lien is claimed, the nature of the labor done or improvements made, and the amount of the claim, including costs of transportation, after deducting all just credits and offsets.

(c) An independent suit or action brought to enforce a lien under this section shall be commenced within six months after the filing for record of the notice of claim of lien. (§ 47-3-59 ACLA 1949)

**Collateral references.** — 54 Am. Jur. 2d, Mines and Minerals, §§ 256 to 259  
58 C.J.S., Mines and Minerals, §§ 259 to 269.

Assertion of statutory mechanic's or materialman's lien against oil or gas produced or against proceeds attributable to oil and gas sold, 59 ALR3d 278.

**Sec. 38.05.235. Lien for annual labor is independent of other liens.** The lien given for the performance of annual labor by AS 38.05.230, if the work is done in good faith and necessarily for the protection either of possession under a certificate of sale or of an attachment, levy, mortgage, judgment or other lien, remains in effect notwithstanding the contemporaneous or subsequent vacation, dissolution, or setting aside of, or redemption from, the certificate of sale, attachment, levy, mortgage, judgment or other lien. (§ 47-3-60 ACLA 1949)

**Sec. 38.05.240. Labor defined for AS 38.05.210 — 38.05.235.** In AS 38.05.210 — 38.05.235, "labor" includes geological, geochemical, geophysical, and airborne surveys conducted by qualified experts and verified by a detailed report filed in the recording district office in which the claim is located which sets out fully (1) the location of the work performed in relation to the point of discovery and boundaries of the claim, (2) the nature, extent, and cost of it, and (3) the name, address, and professional background of the person conducting the work. The commissioner, by regulation, shall define the nature of

acceptable survey work and the qualifications of a person competent to perform this work. The airborne surveys, however, may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim, and each of those surveys shall be nonrepetitive of any previous survey on the same claim. (§ 47-3-61 ACLA 1949; added by § 1 ch 67 SLA 1960; am § 2 ch 88 SLA 1970; am § 5 ch 93 SLA 1984)

**Effect of amendments.** — The 1984 amendment deleted the former second sentence, which read "Basic survey finds shall be filed in the central recording office of the Department of Natural Resources, but kept confidential and released only if the claim or prospecting site lapses," and, in the first sentence, substituted "In AS 38.05.210 — 38.05.235, 'labor' includes" for "The term 'labor' where used in §§ 210 — 235 of this chapter includes, without being limited to" and "of it" for "thereof" near the end, and deleted "or persons" following "person," also near the end.

**Sec. 38.05.242. Definitions for AS 38.05.210 — 38.05.240.** In AS 38.05.210 — 38.05.240

(1) "airborne survey" means a survey from the air for mineral deposits by the proper application of magnetometers, electromagnetic input systems, infrared detectors, side-looking radar, vertical and panoramic cameras and other devices as they relate to the search for and discovery of mineral deposits.

(2) "geochemical surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;

(3) "geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;

(4) "geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuances in geological formations;

(5) "qualified expert" means an individual qualified by education or experience to conduct geological, geochemical or geophysical surveys, as the case may be. (§ 47-3-62 ACLA 1949; added by § 1 ch 67 SLA 1960; am § 3 ch 88 SLA 1970)

**Revisor's notes.** — Formerly AS 1984, the section was reorganized to alpha 38 05 280. Renumbered in 1984. Also in beta to betize the defined terms.

**Sec. 38.05.245. Prospecting sites.** (a) Before the discovery of valuable minerals, an exclusive right to prospect by geophysical, geochemical and similar methods may be acquired by marking boundaries and posting a notice of location of a prospecting site in a manner and containing the information the commissioner requires. A prospecting site may not exceed 2,640 feet in its longest dimension and its boundaries shall run in the four cardinal directions. A certificate of location shall be filed for record in the recording district where the prospecting site is located within 90 days after posting the notice of location. The locator of a prospecting site has the exclusive right to stake mining claims or leasehold locations within the boundaries of the site.

(b) A prospecting site location may not include within its exterior boundaries, nor shall its boundaries be coincident with more than one boundary of any mining claim, mining leasehold location, or land under a mining lease, unless the locator of the prospecting site is also the owner, optionee or lessee of said mining property. If such mining property or area is so included or bounded, the prospecting site is void.

(c) A person may not hold more than eight prospecting sites in one township at one time. A prospecting site remains in effect for one year after the notice of location is posted and may, at the discretion of the director, be extended for one year periods. During each year, work of a type compatible with the purpose of this section and acceptable to the director shall be done. The minimum expenditure for the work shall be established by the commissioner uniformly for all prospecting sites. Where adjacent prospecting sites are held in common the expenditure may be made on any one or more locations. If a prospecting site expires, neither the locator nor a successor in interest of the locator may again hold the same prospecting site or any portion of it, as a prospecting site, for a period of one year following the date of expiration or abandonment; nor may the locator or a successor in interest of the locator, during the year, either directly or indirectly, obtain a beneficial interest in the same prospecting site or a portion of it. (§ 6 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am §§ 6, 7 ch 93 SLA 1984)

**Effect of amendments.** -- The 1984 amendment, in subsection (a), deleted "and a copy of the certificate shall also be mailed to the director within the 90 day period" at the end of the next-to-last sentence and made a series of technical changes throughout the rest of the subsection; and, in subsection (c), rewrote the first and last sentences, which formerly read "No person may locate more than six prospecting sites in one calendar year in one recording district" and "If a prospecting site expires, neither the

locator nor his successor in interest may again locate the same prospecting site or any portion of it, as a prospecting site, for a period of two years following the date of expiration or abandonment, nor may he, during the two years, either directly or indirectly, obtain a beneficial interest in the same prospecting site or a portion of it," respectively.

**Collateral references.** -- 54 Am. Jur 2d, Mines and Minerals, §§ 25 to 46  
58 C.J.S., Mines and Minerals, §§ 37 to 48.

**Sec. 38.05.250. Prospecting permits and leases on tide and submerged land.** (a) The exclusive right to prospect for deposits of minerals subject to AS 38.05.185 — 38.05.275 in or on tide and submerged state land may be granted by a permit issued by the director. Permits shall be granted to the first qualified applicant. A permit may not include an area larger than 2,560 acres, subject to the rule of approximation. Lands subject to a prospecting permit shall be as compact in form as possible taking into consideration the area involved. The term of the permit shall be 10 years. Prospecting permits shall be conditioned upon payment of rental against which credit shall be given for useful expenditures on land covered by the permit or group of contiguous permits under common ownership or assignment. Excess expenditures may be applied against rentals due for the following four years. The rental shall be \$3 per acre for the first two-year period of the permit, payable on the second anniversary of the permit and \$3 per acre for each following year, payable annually on the anniversary date of the permit. Minerals from land under a prospecting permit may not be mined and marketed or used, except for limited amounts necessary for sampling or testing. A person may not take or hold prospecting permits for minerals on state land under this section exceeding in the aggregate 300,000 acres. A person may not take or hold leases for minerals on state land under this section exceeding in the aggregate 100,000 acres.

(b) A noncompetitive lease shall be granted to a holder of a prospecting permit for so much of the land subject to the permit as is shown to the satisfaction of the director to contain workable mineral deposits. Submerged land containing known deposits of minerals subject to AS 38.06.185 — 38.05.275 may, in the discretion of the director, be offered by competitive bid. The land shall be leased to the qualified person offering the highest amount of cash bonus.

(c) Leases for submerged land shall be conditioned upon payment of an annual rental of \$3 an acre. Expenditures on or for the benefit of the leasehold may be credited against the rental. Rent shall be paid or a statement of annual labor shall be filed within 90 days after each anniversary date of the lease. All submerged land mining leases shall be for a period of up to 20 years, and for so long as there is production in paying quantities from the leased area. The commissioner may make reasonable adjustments of the rental rate at the end of each 10-year period, based upon changed conditions in production costs and market.

(d) The commissioner may, on the request of the lessee, assent to the suspension of operation and production under a lease whenever in the judgment of the commissioner the suspension is necessary to promote development of the lease or the lease cannot be successfully operated under its terms. The payment of acreage rental may be suspended during the period of suspension of operation and production. The suspension of the lease shall extend the term of the lease by adding the period of suspension to the lease. The commissioner may extend the term of a nonproducing lease on an application by the lessee accompanied by a showing that the lessee is reasonably close to attaining production and that, despite diligent good faith efforts by the lessee, the lessee is not able to produce due to force majeure, depressed market conditions, or other situations beyond the reasonable control of the lessee. A suspension or extension granted under this subsection may not exceed two years. (§ 7 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 1 ch 96 SLA 1966; am § 4 ch 87 SLA 1982; am §§ 8-12 ch 93 SLA 1984)

**Effect of amendments.** — The 1982 amendment, in subsection (a) substituted "seven years" for "10 years" at the end of the fifth sentence, added the present seventh sentence, substituted "\$3 per acre for each year" for "\$1 per acre for the first two-year period of the permit, payable at the end of the period, and \$1 per acre for each year thereafter" in the present eighth sentence, and added the present next-to-last and last sentences. In subsection (c), the amendment substituted "\$3 an acre" for "\$1 an acre" in the first sentence, substituted the language beginning "10 years" for "50 years, and the lessee has a right to a new lease at the end of each lease period" at the end of the fourth sentence, and substituted "10 year period" for "20 year period" in the last sentence.

The first 1984 amendment, effective July 1, 1984, in subsection (a), substituted "land" for "lands" in the first and ninth sentences, "Land" for "Lands" in the fourth sentence, "10" for "seven" in the fifth sentence, "four" for "two" in the seventh sentence and "the first two-year period of the permit, payable on the second anniversary of the permit and \$3 per acre for each following year, payable annually on the anniversary date of the permit" for

"each year, payable at the end of each year" in the eighth sentence; in subsection (b), deleted the former first sentence, which read "Upon discovery, the right to possess and extract the minerals may be acquired by noncompetitive lease," substituted "land" for "lands" in the second sentence and "The land" for "These lands" in the third sentence, and deleted "responsible" preceding "qualified," also in the third sentence; in subsection (c), substituted "land" for "lands" in the first sentence and "20" for "10" in the next-to-last sentence; and added subsection (d). The second 1984 amendment, effective January 1, 1985, in subsection (a), substituted "300,000" for "100,000" in the next-to-last sentence and "100,000" for "46,080" in the last sentence.

**Opinions of attorney general.** — The filing of a prima facie valid application for an offshore prospecting permit under this section acts to segregate the land from the public domain, thereby precluding a later mining claimant from obtaining any right to the minerals in that land, even where the offshore prospecting permit application subsequently is declared void, is withdrawn, or is denied. February 23, 1984. Op. Att'y Gen

## NOTES TO DECISIONS

There is no express statutory provision for the "full evidentiary hearing." State, Dept of Natural Resources v. Universal Educ. Soc'y, Inc., Sup. Ct. Op. No. 1701 (File No. 3324), 583 P.2d 806 (1978).

Subsection (b) does not compel a hearing on the issue of the conversion of an offshore prospecting permit to a mining lease. State, Dept of Natural Resources v. Universal Educ. Soc'y, Inc., Sup. Ct. Op. No. 1701 (File No. 3324), 583 P.2d 806 (1978).

But entitlement to full and fair opportunity to present case is implicit. — Entitlement to a full and fair opportunity to present his case to the director and the commissioner is implicit in the provision of subsection (b) which provides that the holder of a prospecting permit shall be granted a noncompetitive lease "for so much of the land subject to the permit as is shown to the satisfaction of the director to contain workable mineral deposits." State, Dept of Natural Resources v. Universal Educ. Soc'y, Inc., Sup. Ct. Op. No. 1701 (File No. 3324), 583 P.2d 806 (1978).

Only with a full and fair opportunity to present his case can the permit holder receive fair consideration of his application, and benefits of a full presentation by the permit holder inure to the state as well by providing comprehensive data for the decisions made by the director. State, Dept of Natural Resources v. Universal Educ. Soc'y, Inc., Sup. Ct. Op. No. 1701 (File No. 3324), 583 P.2d 806 (1978).

The responsibility for providing the data to the director is on the permit holder. State, Dept of Natural Resources v. Universal Educ. Soc'y, Inc., Sup. Ct. Op. No. 1701 (File No. 3324), 583 P.2d 806 (1978).

Need for flexible standard in granting noncompetitive lease. — By using the term "workable mineral deposit" in subsection (b) to define what must be "shown to the satisfaction of the director" in order to acquire a noncompetitive lease, the legislature was cognizant of the need for a flexible standard, and, in entrusting this determination to the director, the legislature took notice of the peculiar expertise required in making such decisions. State, Dept of Natural Resources v. Universal Educ. Soc'y, Inc., Sup. Ct. Op. No. 1701 (File No. 3324), 583 P.2d 806 (1978).

Test on review. — The reasonable basis test is the test required on review as to the propriety of decisions to grant or deny offshore leases pursuant to this section. State, Dept of Natural Resources v. Universal Educ. Soc'y, Inc., Sup. Ct. Op. No. 1701 (File No. 3324), 583 P.2d 806 (1978).

Applicable rules of law and procedure observed in denying application to convert offshore prospecting permit to mining lease. — See State, Dept of Natural Resources v. Universal Educ. Soc'y, Inc., Sup. Ct. Op. No. 1701 (File No. 3324), 583 P.2d 806 (1978).

**Sec. 38.05.252. Extralateral rights under shore, tide, and submerged land.** (a) Extralateral rights under shoreland, tideland, and submerged land are confirmed and granted to an owner of a lode mining claim located before January 3, 1959 under the mining laws of the United States.

(b) In this section, "extralateral rights" means rights given to an owner of a mining claim under 30 U.S.C. 26 to follow, and mine, any vein or lode the apex of which lies within the boundaries of the location of the surface of the mining claim, notwithstanding that the course of the vein or lode on its dip or downward direction may so far depart from the perpendicular as to extend beyond the planes which would be formed by the vertical extension downwards of the sidelines of the location. (§ 1 ch 20 SLA 1985)

Effective dates. — Section 2, ch. 20, May 10, 1985, in accordance with AS SLA 1985, makes this section effective 01.10.070(c).

**Sec. 38.05.255. Surface use of land or water.** Surface uses of land or water included within mining properties by owners of those properties shall be limited to those necessary for the prospecting for, extraction of, or basic processing of mineral deposits and shall be subject to reasonable concurrent uses. Permits for millsites and tailings disposal may be granted by the director. The permits shall be conditioned upon payment of a reasonable charge for the use and continuance of the limited use. Timber from land open to mining without lease, except timberland, may be used by a mining claimant or prospecting site locator for the mining or development of the location of adjacent claims under common ownership. On other land, timber may be acquired as provided in this chapter. Use of water shall be made in accordance with AS 46.15. (§ 8 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 102 ch 6 SLA 1984)

**Effect of amendments.** — The 1984 amendment added "of land or water" at the end of the catchline, substituted "AS 46.15" for "§ 260 of this chapter and rules and regulations adopted under it or in accordance with any law amending or superseding that section" in the last sentence, and made a series of technical changes throughout the rest of the section.

**Collateral references.** — 54 Am. Jur. 2d, Mines and Minerals, § 210.

What constitutes reasonably necessary use of the surface of the leasehold by a mineral owner, lessee, or driller under an oil or gas lease or drilling contract, 63 ALR3d 16.

Grant, reservation, or lease of minerals and mining rights as including, without expressly so providing, the right to remove the minerals by surface mining, 70 ALR3d 383.

**Sec. 38.05.260. Water rights where claim includes both banks of a stream.** [Repealed, § 2 ch 50 SLA 1966. For current law on water usage and appropriation, see AS 46.15.]

**Sec. 38.05.265. Abandonment.** Failure to (1) properly file for record a certificate of location or a statement of annual labor, or (2) file with the director within the time prescribed a lease application, or (3) pay rental or receive credit for rental, or (4) keep location boundaries clearly marked, all as required by AS 38.05.185 — 38.05.275 and by regulations adopted under these sections, constitutes abandonment of all rights acquired under the mining lease, location, or site involved, and it is subject to relocation by others. If a location is not relocated by another person within one year after the failure, the locator or claimant of the abandoned location, or a successor in interest, may return to relocate it as though it had never been located. A statement of annual labor which does not accurately set out the essential facts is void and of no effect. (§ 9 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 13 ch 93 SLA 1984)

**Effect of amendments.** — The 1984 amendment deleted "or a copy of a prospecting site location certificate" following "application" in the first sentence and, in the second sentence, substituted "within one year after the failure" for "with one year after such failure, or, in the case of a prospecting site, two years" and "a" for "his" preceding "successor."

**Opinions of attorney general.** — Requirement under AS 38.05.275 that

miners file a copy of the certificate of location if a state-owned riverbed is included in the location is a procedural requirement that should be followed but, if a miner fails to comply with the requirement, he does not forfeit his rights under state law. June 10, 1982 Op. Att'y Gen.

**Collateral references.** — 54 Am. Jur. 2d, Mines and Minerals, §§ 141 to 145. 58 C.J.S., Mines and Minerals, § 211.

**Sec. 38.05.270. Transfers.** The sale, lease or other transfer of mining property or interest in mining property shall be recorded or shall be approved by the director in compliance with such regulations as the commissioner may adopt. The heirs and assigns of mining property or interest in mining property have the same rights and duties as their predecessors. (§ 10 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961)

**Sec. 38.05.275. Recognition of locations.** Mining locations made on state land, including shorelands, tidelands or submerged land or state selected land, under AS 38.05.185 — 38.05.275 or in the manner described in AS 27.10 acquire for the locator mining rights under AS 38.05.185 — 38.05.275, subject to existing claims and to any denial of or restriction in the tentative approval of state selection or patent of the land to the state. If shorelands, tidelands or submerged land is included in a mining location or within the projected boundaries of a mining location made in accordance with this section, the locator shall file a certificate of location under AS 38.05.195. The certificate of location must identify the position of the mining location in the system of rectangular or protracted surveys. If the mining location is made in the manner described in AS 27.10, the commissioner may require that the locator amend the mining location to conform with AS 38.05.185 — 38.05.275 and thereafter to comply with the requirements of AS 38.05.185 — 38.05.275. (§ 1 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 3 ch 96 SLA 1966; am § 14 ch 93 SLA 1984)

**Effect of amendments.** — The 1984 amendment, in the first sentence substituted "land" for "lands" in the first three places it occurs and "or patent of the land" for "of in the patent of the lands," and, in the second sentence, substituted "land is" for "lands are" and "shall file a certificate of location under" for "is required to file a certificate of location with the division of lands within 90 days following the date of posting the notice of location, in addition to filing a certificate of location as required by," and added the last sentence.

**Opinions of attorney general.** — This section was intended to provide a solution to the problem presented by miners staking state claims on top of other miners' federal claims in riverbeds where title to the riverbed as between the state and federal government is unresolved. June 10, 1982, Op. Att'y Gen.

This section protects valid federal

mining claims which include a state-owned riverbed from top-staking under state law. June 10, 1982, Op. Att'y Gen.

Federal locators have rights under state mining law pursuant to this section if they have complied with all federal requirements under AS 27 of the Alaska Statutes. June 10, 1982, Op. Att'y Gen.

Requirement under this section that miners file a copy of the certificate of location if a state-owned riverbed is included in the location is a procedural requirement that should be followed but, if a miner fails to comply with the requirement, he does not forfeit his rights under state law. June 10, 1982, Op. Att'y Gen.

**Collateral references.** — 54 Am. Jur. 2d, Mines and Minerals, §§ 53 to 56

58 C.J.S., Mines and Minerals, §§ 49 to 56



**CHAPTER 86.  
MINING RIGHTS**

**Article**

1. **General Provisions**  
(11 AAC 86.100-11 AAC 86.155)
2. **Staking, Recording and Maintaining Claims and Leasehold Locations**  
(11 AAC 86.200-11 AAC 86.230)
3. **Upland Mining Leases**  
(11 AAC 86.300-11 AAC 86.325)
4. **Prospecting Sites**  
(11 AAC 86.400-11 AAC 86.435)
7. **Mining Production Licenses**  
(11 AAC 86.700-11 AAC 86.750)
8. **General Prospecting Permit and Lease Provisions**  
(11 AAC 86.800-11 AAC 86.815)

Editor's Note: The mineral-leasing regulations in chapters 82, 83, 84, 86 and 88 of this title, effective September 5, 1974, and distributed in Alaska Administrative Register 51, constitute a comprehensive reorganization and revision of this material, and thus the history line at the end of each section does not reflect the history of the provisions before September 5, 1974, and the section numbering may or may not be related to the numbering before that date.

**ARTICLE 1.  
GENERAL PROVISIONS**

**Section**

100. **Applicability**
105. **Discovery defined**
110. **Existing mining claims, federal leases and permits**
115. **Locations before tentative approval**
120. **Conditional mining leases and locations**
125. **Failure to comply**
130. **(Repealed)**
135. **Mineral deposits open to location**
140. **Drawing of prior existing locations**
145. **Surface use**
150. **Plan of operations instead of land use permit**
155. **Sale, lease, or other transfer**

**11 AAC 86.100. APPLICABILITY.** The provisions of this chapter apply to the acquisition of mineral rights under AS 38.05.185 - 38.05.280. (Eff. 9/15/74, Reg. 51)

Authority: AS 38.05.020(h)(1)

**11 AAC 86.105. DISCOVERY DEFINED.** "Discovery" means a finding of valuable mineral as would justify an ordinarily prudent person in expending further time, labor, and money upon the property with a reasonable expectation of developing a paying mine. (Eff. 9/5/74, Reg. 51)  
Authority: AS 38.05.020(b)(1)  
AS 38.05.185(b)

**11 AAC 86.110. EXISTING MINING CLAIMS, FEDERAL LEASES AND PERMITS.** Nothing in 11 AAC 86 and 11 AAC 88 adversely affects the continued validity of any lease, permit, license, location, or contract, or any rights arising thereunder, granted or issued by the United States, or any rights acquired or being exercised pursuant to the mining laws of the United States, before the land was acquired by the State of Alaska. (Eff. 9/5/74, Reg. 51)  
Authority: AS 38.05.020(b)(1)

**11 AAC 86.115. LOCATIONS BEFORE TENTATIVE APPROVAL.** (a) Locations made on state-selected land that has not received tentative approval by the United States for conveyance to the state are made at the locator's risk. Because the state does not have management authority over the land until the selection has been tentatively approved, and cannot authorize exploration work or mining until that time, the locator is responsible for obtaining any necessary permits from the federal land manager and other permitting authorities.

(b) Locations made on state-selected land in accordance with this chapter create prior rights against subsequent locators. Subject to the state's ultimate receipt of patent to the land, locations made on state-selected land in accordance with this chapter become valid mining claims, leasehold locations, or prospecting sites as soon as the federal government tentatively approves the state's selection, unless the tentative approval restricts or bars the locations, or a state mineral closure is in effect on the date of tentative approval. If a leasing restriction is in effect on the date of tentative approval, prior locations are subject to that restriction. If the land is closed to mineral entry or restricted to leasing after the date of tentative approval, valid prior locations are unaffected.

(c) The provisions of AS 38.05.210 - 38.05.240 do not apply to locations made on

state-selected land until the state receives tentative approval of the selection from the federal government. The first labor year for a mining claim, and the first rental year for a leasehold location, made on state-selected land begins at noon on the first September 1 after the date the federal government tentatively approves the selection. (Eff. 9/5/74, Reg. 51; am 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.185  
AS 38.05.275

**11 AAC 86.120. CONDITIONAL MINING LEASES AND LOCATIONS.** (a) The director may issue conditional mining leases, or locations may be made, on land the state selects under various federal land grants and on which it has received tentative approval prior to the state's receipt of patent. Leases issued and locations made on tentatively approved land shall be cancelled in whole or in part if the state is denied patent to that land. Rentals prepaid in cash on land to which patent is denied the state may not be refunded except for that pro rata portion of the unexpired lease year.

(b) A lessee or locator on tentatively approved land shall hold the state harmless for damages done by him, or for any claim of any third party, or for any claims that may arise from ownership. If the state receives patent to the land under lease or location, the conditional lease or location has the same standing, force, and effect as an unconditional lease or location issued or made under this chapter. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

**11 AAC 86.125. FAILURE TO COMPLY.** (a) The failure on the part of a mining lessee or locator to comply strictly with the provisions of this chapter and the applicable statutes does not invalidate his rights if it appears to the satisfaction of the director that the locator or lessee complied as nearly as possible under the circumstances and that no conflicting rights are asserted by any other person. Upon application, the director or his authorized representative, with the concurrence of the commissioner, may issue a certificate of substantial compliance which states the specific failure on the part of the lessee or locator and the relief granted. The certificate does not cure any defect not

specifically referred to in the certificate. The certificate, when granted, must be recorded in the recording district where the located or leased land is located.

(b) An application for a certificate of substantial compliance must include the name and address of the owner, the name of the location, any serial number assigned by the department to the location or lease, a statement of the specific failure to comply, the reasons for the failure, and any other information the director considers necessary to determine the circumstances of the case. (Eff. 9/5/74, Reg. 51; am 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.185

**11 AAC 86.130. FILING AND RECORDING.**  
Repealed 12/31/82.

**11 AAC 86.135. MINERAL DEPOSITS OPEN TO LOCATION.** (a) Rights in and to deposits of locatable minerals, except on tide and submerged land as specified in (c) of this section, may be acquired by making a mineral location in conformance with AS 38.05.185 – 38.05.275 and 11 AAC 86, unless the deposits are in or on state land that is closed to location. To constitute a valid location, both discovery and posting of the location notice must occur during a time when the land is open to location.

(b) This section constitutes the commissioner's finding, in accordance with AS 38.05.185(a), that selling, leasing, or otherwise disposing of any interest in land other than a locatable mineral interest, with the mineral rights reserved to the state, creates potential use conflicts requiring that mining be allowed only under written leases. If the land remains open to location, any location made on that land after the disposal is a leasehold location.

(c) Rights in and to deposits of locatable minerals on tide and submerged land may be acquired only under the provisions of AS 38.05.250 and 11 AAC 86.500 – 11 AAC 86.570, except that tide and submerged land may be included in a location under AS 38.05.275 if two corners are on or above the line of mean high tide.

(d) If the land upon which a location is made is restricted to mining under lease before the discovery date or the date the location notice was posted, the locator has prior rights only to a lease.

(e) Notice will be given under AS 38.05.945 before an order closing land to mining or mineral location or restricting it to mining under lease is issued, amended, or revoked. (Eff. 9/5/74, Reg. 51; am 5/30/85, Reg. 94)

Authority: AS 38.05.020 AS 38.05.275  
AS 38.05.185 AS 38.05.300

**11 AAC 86.140. DRAWING OF PRIOR EXISTING LOCATIONS.** The requirement under 11 AAC 86.210(4), 11 AAC 86.215(a)(6), 11 AAC 86.410(a)(4), and 11 AAC 86.410(b)(6) that a locator show the relationship of his location to adjacent and contiguous mining claims, leasehold locations, and prospecting sites held by other parties is for informational purposes only. It is not an admission by the locator of the proper location and maintenance, good standing, or validity of those other claims, locations, or sites. (Eff. 9/5/74, Reg. 51; am 12/31/82, Reg. 84)

Authority: AS 38.05.020(b)(1)

**11 AAC 86.145. SURFACE USE.** (a) The following provisions apply to land for which the state owns the surface:

(1) A locator does not have exclusive use of the surface of the location. A locator may restrict public access to the surface of the location only if authorized to do so under an approved plan of operations or land use permit, to

(A) protect public safety; or

(B) prevent unreasonable interference with the rights of the locator.

(2) A surface structure built or placed within the boundaries of a mining property must be necessary for mineral prospecting, development, extraction, or basic processing, or for the storage of mining equipment. The building or placing of surface structures, and the use of surface structures other than during periods of mining or development, must be approved through a plan of operations or a land use permit. Factors used

by the director in approving the structures or uses will include: access to the property, remoteness of location, security of the operation, planned level of operation, and the current level of activity.

(3) A classification or designation indicating that timber and other forest products of significant value are included within a mining property is prima facie evidence that the land on which the property is located is considered to be "timberlands" for purposes of AS 38.05.255. The division of forestry must be contacted before using or clearing timber from timberlands.

(b) If the surface estate or interests in the surface estate are owned by a third party, with the minerals reserved to the state under AS 38.05.125, the locator must make provisions under AS 38.05.130 to pay the owner of the surface interests for any damage that may be caused by the use or development of that location. (Eff. 5/30/85, Reg. 94)

Authority: Art. VIII, sec. 11, Alaska Const.  
AS 38.04.058  
AS 38.05.020  
AS 38.05.035  
AS 38.05.130  
AS 38.05.255  
AS 38.05.965

**11 AAC 86.150. PLAN OF OPERATIONS INSTEAD OF LAND USE PERMIT.** A person intending to conduct mineral exploration or development activities that would require a land use permit under 11 AAC 96 may file a plan of operations for approval instead of applying for a land use permit. The plan of operations must meet the requirements of 11 AAC 86.800. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.850

**11 AAC 86.155. SALE, LEASE, OR OTHER TRANSFER.** (a) The rights held under a mining location on state land, or any interest in an undivided location, may be sold, leased, or otherwise transferred without the approval of the director. However, the sale, lease, or other transfer must be recorded within 90 days after the date of the transaction and the transfer

document must include the current mailing address of all involved parties.

(b) Before a portion of a mining location may be sold or granted, the original location must be physically divided by amending it to reduce its size. A new location must be created on the remaining ground in accordance with this chapter. The original discovery and location dates apply only to the amended location and not to the newly created location. Any sale or grant of rights under either the amended location or the new location must comply with (a) of this section. (Eff. 9/5/74, Reg. 51; am 12/31/82, Reg. 84; am 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.270  
AS 38.05.920

Editor's Note: 11 AAC 86.155 replaces former 11 AAC 86.230 which was repealed 5/30/85, Register 94. The history note for 11 AAC 86.155 includes the history of the repealed section.

## ARTICLE 2. STAKING, RECORDING AND MAINTAINING CLAIMS AND LEASEHOLD LOCATIONS

### Section

- 200. Discovery required
- 205. Marking boundaries
- 210. Posting location notice
- 215. Certificate of location
- 220. Annual labor
- 225. Service of notice on co-owners
- 230. (Repealed)

**11 AAC 86.200. DISCOVERY REQUIRED.** No mining claim location is complete until after the discovery, as defined in 11 AAC 86.105, of locatable minerals within the limits of the claim. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020  
AS 38.05.195

**11 AAC 86.205. MARKING BOUNDARIES.** The discoverer of a mining claim or leasehold location shall designate the location by erecting at each corner of the location substantial monuments of stone or setting posts, not less than three feet in height nor less than three inches in diameter hewn and marked with the name of the location, the number of the monument beginning with number 1 at the northeast corner and

proceeding in a clockwise direction around the claim, and by cutting out, blazing, or marking the boundary lines so that they can readily be traced. Where it is impracticable to place a monument in its true position, a witness monument shall be erected and marked so as to indicate the true position of the corner. Where locations under common ownership have common corners, a common corner monument may be used. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020  
AS 38.05.195  
AS 38.05.205

**11 AAC 86.210. POSTING LOCATION NOTICE.** The locator of a mining claim or leasehold location shall personally, or through an agent, post a notice on the monument at the northeast corner of the location. The notice must contain

(1) the name or number of the mining claim or leasehold location;

(2) the date of the locator's discovery and the date of posting the notice of location;

(3) the length and width of the mining claim or leasehold location in feet;

(4) a sketch depicting, to the best of the locator's knowledge, the relationship of the mining claim or leasehold location to adjoining and contiguous mining claims, leasehold locations, and prospecting sites, and;

(5) the name and current mailing address of each locator and the signature of each locator or of the locator's agent. (Eff. 9/5/74, Reg. 51; am 12/31/82, Reg. 84; am 5/30/85, Reg. 94)

Authority: Art. VIII, sec. 11, Alaska Const.  
AS 38.05.020  
AS 38.05.195  
AS 38.05.205

**11 AAC 86.215. CERTIFICATE OF LOCATION.** (a) The locator of a mining claim or leasehold location on state land shall, within 90 days after the date of the posting of the notice of location, record a certificate of location in conformance with AS 38.05.195. The certificate of location must be recorded on a form provided by the division, a copy of that form, or a form approved by the director, and must

(1) contain the name or number of the location;

(2) contain the date of the locator's discovery and the date of posting the notice of location;

(3) contain the length and width of the location in feet;

(4) contain the name and current mailing address of each locator and the signature of each locator or of the locator's agent;

(5) indicate the recording district in which the claim is located;

(6) include a map at an indicated scale of 1:63,360 (1 inch = 1 mile) or a more detailed scale which shows the boundaries of the claim or leasehold location, the dominant physical features of the land, the protracted or surveyed section lines surrounding the location and, to the best of the locator's knowledge, the relationship of the location to adjacent and contiguous mining claims, leasehold locations and prospecting sites; if more than one contiguous location is being recorded simultaneously, a single map showing all of the locations may be attached to one of the certificates of location if the document to which the map is attached is cross-referenced on each certificate of location; and

(7) indicate every township, range, meridian, section, and quarter section in which the claim is located.

(b) Failure to file for record a certificate of location within the time specified in (a) of this section, constitutes an abandonment of the claim or leasehold location.

(c) Repealed 5/30/85.

(d) Repealed 5/30/85.

(e) Repealed 5/30/85. (Eff. 9/5/74, Reg. 51; am 12/31/82, Reg. 84; am 5/30/85, Reg. 94)

Authority: AS 38.05.020 AS 38.05.205  
AS 38.05.195 AS 38.05.265  
AS 38.05.200 AS 44.37.025

**11 AAC 86.220. ANNUAL LABOR.** (a) Except as provided in 11 AAC 86.115, the first

labor year begins at noon on the first September 1 following the date a location notice is posted under 11 AAC 86.210. Each subsequent annual labor year begins at noon on September 1.

(b) Work performed outside the boundaries of the location must develop or benefit the location to qualify as annual labor. Transportation of workers or equipment to or from the location does not qualify as annual labor. Drilling or excavating, including ore extraction, or geological, geochemical, geophysical, or airborne surveys, as provided for in AS 38.05.240, may qualify as annual labor.

(c) During each year in which the performance of annual labor is required or within 90 days after the close of that annual labor year, the owner of each mining claim or leasehold location on state land or some other person having knowledge of the facts, shall make and file for record an affidavit describing the performance of the labor or the making of improvements for the immediately preceding assessment year and any labor in excess of that required for the preceding year that is to be applied to the subsequent year or years. The affidavit must state

(1) the name or number of the mining claim or leasehold location, a description of where it is situated, and the name and current mailing address of each owner;

(2) the number of days' work done and the character and value of the improvements made;

(3) the dates of performance of the labor and of the making of improvements, and the name and mailing address of the person who did the work;

(4) the actual amount paid for the work and improvements, and, if the work was not done by the owner or the owner's lessee, a statement of who paid.

(d) An affidavit required by this section may be made before any officer authorized to administer oaths, or, when no official empowered to administer oaths is available, in the manner provided by AS 09.63.020.

(e) Repealed 5/30/85.

(f) Repealed 5/30/85.

(g) An affidavit of annual labor may be amended under AS 38.05.210(c). However, an affidavit that does not set out the essential facts is void under AS 38.05.265 and may not be amended. (Eff. 9/5/74, Reg. 5; am 12/31/82, Reg. 84; am 5/30/85, Reg. 94)

Authority: AS 27.05.010	AS 38.05.242
AS 38.05.020	AS 38.05.265
AS 38.05.210	AS 44.37.025
AS 38.05.240	

**11 AAC 86.225. SERVICE OF NOTICE ON CO-OWNERS.** The service of written personal notice authorized by AS 38.05.215 shall be made by certified mail only. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020  
AS 38.05.215

**11 AAC 86.230. RECORDATION OF SALE, LEASE, OR OTHER TRANSFER.** Repealed 5/30/85.

### ARTICLE 3. UPLAND MINING LEASES.

#### Section

- 300. Preference right by leasehold location
- 305. Application for lease
- 308. Rental
- 309. Showing of discovery
- 310. (Repealed)
- 311. Survey of exterior boundary
- 312. Lease duration
- 315. (Repealed)
- 320. (Repealed)
- 321. Surrender
- 325. (Repealed)

**11 AAC 86.300. PREFERENCE RIGHT BY LEASEHOLD LOCATION.** The preference right to a lease that is acquired by establishing and maintaining a leasehold location remains in existence until a lease is issued or denied, the leasehold location is adjudicated and found invalid, the leasehold location is abandoned, or the state's selection of the land is rejected or relinquished. (Eff. 9/5/74, Reg. 51; am 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.205

**11 AAC 86.305. APPLICATION FOR LEASE.**

(a) When the division receives a copy of a certificate of location for a location on state land restricted to mining under lease, the division will notify the locator of the leasing requirement.

(b) The division will publish the notice required by AS 38.05.205(a) and subsequently mail a lease application form to the locator only when

(1) it learns that the leasehold locator is ready to begin production or, if authorized by sec. 5, ch. 108, SLA 1981, as amended by sec. 1, ch. 90, SLA 1985, is already producing;

(2) the leasehold locator requests a lease application form; or

(3) the owner of a mining claim requests a lease application form.

(c) The application must include a sworn affidavit stating, for each mining claim or leasehold location,

(1) that discovery, location, and filing were performed as required by law;

(2) the type and nature of the mineral discovery; and

(3) the position of the discovery in relation to the northeast corner of the location.

(d) A lease application will be rejected and the location will be void if the director determines, after a review of all filing documents, a field examination, or analysis of other information, that

(1) the requirements of AS 38.05.185 -- 38.05.275 have not been met;

(2) the land was not open to location when the mining claim or leasehold location was made; or

(3) the land is closed to mining.

(e) A lease application received for a location on state-selected land that has not received tentative approval by the United States for conveyance to the state, or on other land to which

the state does not hold title to the locatable mineral estate, will be rejected.

(f) If conflicting rights are asserted by another locator and the director decides not to adjudicate the conflict, the lease application will be rejected and the parties advised to resolve the conflict. A new application may be filed after the conflict has been resolved. The director will also send a copy of the notice by certified mail to the holders of apparent conflicting rights, as shown on state land records, that a lease application is being processed.

(g) An application that does not meet the requirements of this section, or that otherwise deviates from the form provided by the division, will not be adjudicated and will be returned to the applicant with an explanation of the reason. A new application may be filed later. (Eff. 9/5/74, Reg. 51; am 12/31/82, Reg. 84; am 5/30/85, Reg. 94)

Authority: AS 38.05.020

AS 38.05.205

AS 38.05.035

AS 38.05.265

AS 38.05.185

**11 AAC 86.308. RENTAL.** (a) Rental for a leasehold location or leasehold must be made payable to the Alaska Department of Revenue and be tendered to the accounting office of the Department of Natural Resources in Anchorage. It must be accompanied by a statement containing the owner's name and address, any serial number assigned by the department to the leasehold location or lease, and, if applicable, the name of the leasehold location. If more annual rental is paid, or work performed instead of rental, than is due under this section, the excess value up to \$800 per leasehold location may be applied against rental due during subsequent years; excess value accrued for a leasehold location may be applied against rental due after conversion to lease.

(b) The following provisions apply to rental payments for leasehold locations:

(1) The annual rental is \$200 per leasehold location;

(2) The rental year is the same as the annual labor year established under 11 AAC 86.220(a);

(3) If work done on or for the benefit of the

leasehold location is to be credited against the rental, it must be done before the end of the rental year and must be work acceptable under 11 AAC 86.220:

(4) Within the time specified in 11 AAC 86.220(c), the holder of a leasehold location shall meet the rental obligation by paying the rental due, or by recording an affidavit in the same form and manner as required under 11 AAC 86.220 documenting work done within the rental year to be credited against rental, or by a combination of the two. A previous filing of excess work instead of rental does not relieve the leasehold locator of the obligation to record an affidavit in order to receive credit against the rental due:

(5) If the leasehold locator fails to make either the timely rental payment or the timely recording of an affidavit of work instead of rental, the leasehold location automatically terminates as abandoned under AS 38.05.265:

(6) If a rental payment is timely submitted to the department, or an affidavit of work in lieu of rental is timely recorded, but the director finds that the payment made or the expenditures creditable against rental are less than \$200 per leasehold location, the locator will be granted 30 days after receipt of a notice from the director to submit the additional rental due. If the default is not corrected by the locator within 30 days, the leasehold location automatically terminates without further notice.

(c) The following provisions apply to rental payments for leaseholds.

(1) The rental year begins on the effective date of the lease;

(2) Rental is \$10 per acre during the first five years of the lease, increasing to \$15 per acre during the next five years of the lease, and increasing again to \$20 per acre during the next 10 years:

(3) Rental must be paid, or an affidavit of work submitted to the department, within 90 days after the anniversary date of the lease;

(4) An affidavit of work performed instead

of rental must meet the requirements of 11 AAC 86.220(b) - (g), except that it need not be recorded:

(5) If the lessee fails to make either the timely rental payment or the timely recording of an affidavit of work instead of rental, the lease automatically terminates as abandoned under AS 38.05.265:

(6) If a rental payment or affidavit of work is timely submitted to the department, but the director finds that the payment made or the expenditures creditable against rental are less than the amount due, the mining lessee will be granted 30 days after receipt of a notice from the director to submit the additional rental due. If the default is not corrected by the mining lessee within 30 days, the lease automatically terminates without further notice. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020	AS 38.05.205
AS 38.05.035	AS 38.05.210
AS 38.05.185	AS 38.05.265

#### 11 AAC 86.309. SHOWING OF DISCOVERY.

(a) The director will, in his or her discretion, at any time, require a showing of discovery for each mining claim or leasehold location included within a leasehold or listed in a lease application.

(b) The showing of discovery required of a lessee must relate to the discovery originally sworn to in the application for a lease. However, the showing may be supported with subsequently acquired data.

(c) The statement of discovery sworn to in a lease application is not confidential, but any supplemental geological, geophysical, or engineering data supplied in support of a showing of discovery will, upon the lessee's request, be kept confidential by the state and by any agents or experts consulted or retained by the state to assist in the determination of the existence of a discovery.

(d) A mining claim or leasehold location determined by the director to lack a discovery is void and will be excluded or removed from the

leasehold or the lease application. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.205

11 AAC 86.310. BOND. Repealed 5/30/85.

11 AAC 86.311. SURVEY OF EXTERIOR BOUNDARY. (a) Unless otherwise specified by the director, within 10 years after the effective date of the lease, the exterior boundary of the leasehold must be surveyed in accordance with 11 AAC 53 and instructions issued by the department.

(b) The leasehold's exterior boundary must be kept brushed or, in treeless terrain, flagged or otherwise marked so as to be reasonably visible, until the survey is completed. It is not necessary to clear interior boundaries if mining claims or leasehold locations included within the leasehold adjoin each other. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.205

11 AAC 86.312. LEASE DURATION. A lease will be issued for a term of 20 years, subject to renewal as provided in AS 38.05.205(e). However, the director will, in his or her discretion, set a different term if justified on the basis of the expected mine life. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.205

11 AAC 86.315. TERMINATION. Repealed 5/30/85.

11 AAC 86.320. RELINQUISHMENT. Repealed 5/30/85.

11 AAC 86.321. SURRENDER. Unless otherwise specified by the director, 11 AAC 82.635 applies to the surrender or relinquishment of an upland mining lease. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.205

11 AAC 86.325. TRANSFERS. Repealed 5/30/85.

#### ARTICLE 4. PROSPECTING SITES

##### Section

- 400. Purpose and rights acquired
- 405. Boundaries and corners
- 410. Prospecting site location notice and certificate of location
- 415. (Repealed)
- 420. (Repealed)
- 425. Prospecting work
- 430. Extension
- 435. Staking claims on expired permits

11 AAC 86.400. PURPOSE AND RIGHTS ACQUIRED. (a) A prospecting site may be located at the option of the prospector and nothing in this chapter requires that a prospecting site location must be made before any prospecting work may be done on state land.

(b) The holder of a prospecting site on state land has the exclusive right, subject to any prior rights, to use the surface within the boundaries of the location for performing work acceptable as prospecting work under 11 AAC 86.425 and also has the exclusive right to stake mining claims or leasehold locations within the boundaries of the prospecting site. The exclusive right begins when the corners and boundaries are marked and the location notice posted as required in 11 AAC 86.405 and 11 AAC 86.410 and terminates as provided in 11 AAC 86.420. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020  
AS 38.05.245

11 AAC 86.405. BOUNDARIES AND CORNERS. Boundaries and corners of a prospecting site must be marked in accordance with 11 AAC 86.205. (Eff. 9/5/74, Reg. 51; am 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.245

11 AAC 86.410. PROSPECTING SITE LOCATION NOTICE AND CERTIFICATE OF LOCATION. (a) On a monument at the northeast corner of the prospecting site location, the locator shall post a notice. The notice must state

(1) the name or number of the prospecting site location;

- (2) the date of posting the notice of location;
- (3) the length and width of the prospecting site location in feet;
- (4) a sketch depicting, to the best of the locator's knowledge, the relationship of the prospecting site to adjacent and contiguous prospecting sites, mining claims, and leasehold locations; and
- (5) the name and current mailing address of each locator and the signature of each locator or of the locator's agent.
- (b) The holder of a prospecting site location shall, within 90 days after the date of posting the location notice, file for record a certificate of location in the recording district in which the location is made. The certificate of location must
- (1) contain the name or number of the prospecting site location;
- (2) contain the date of posting the notice of location;
- (3) contain the length and width of the prospecting site location in feet;
- (4) contain the name and current mailing address of each locator and the signature of each locator or of the locator's agent;
- (5) indicate the recording district in which the prospecting site is located;
- (6) include a map at an indicated scale of 1:63,360 (1 inch = 1 mile) or a more detailed scale which shows the boundaries of the prospecting site, the dominant physical features of the land, the protracted or surveyed section lines surrounding the prospecting site and, to the best of the locator's knowledge, the relationship of the prospecting site to adjacent and contiguous mining claims, leasehold locations, and prospecting sites; and
- (7) indicate every township, range, meridian, section, and quarter section in which the prospecting site is located.

(c) Failure to file for record a certificate of location within 90 days, as provided in (b) of this section, constitutes abandonment of all rights in the prospecting site location. After abandonment the site becomes open to location by others. If no other person relocates that site within one year, the original locator or that locator's successor in interest may return to relocate it as though it had never been located.

(d) Repealed 5/30/85.

(e) Repealed 5/30/85.

(f) Repealed 5/30/85.  
(Eff. 9/5/74, Reg. 51; am 12/31/82, Reg. 84; am 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.245  
AS 38.05.265

**11 AAC 86.415. RECORDATION OF SALE, LEASE, OR OTHER TRANSFER.** Repealed 5/30/85.

**11 AAC 86.420. DURATION.** Repealed 5/30/85.

**11 AAC 86.425. PROSPECTING WORK.** (a) Within one year after the date of posting the location notice for a prospecting site, acceptable work amounting to at least \$5 per acre for the area enclosed within the prospecting site location must be performed. The amount of work required per acre during the first extension is also \$5; but, if further extensions are granted, the amount of work required during each additional year is \$10 per acre.

(b) The only prospecting work acceptable for holding prospecting sites is

(1) drilling or excavating; or

(2) geological, geophysical, or geochemical work by persons qualified to do the work. (Eff. 9/5/74, Reg. 51; am 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.245

**11 AAC 86.430. EXTENSION.** (a) A request for extension of a prospecting site must be filed in writing with the division before the prospecting site expires.

(b) The request for extension must

(1) contain the name and current mailing address of the locator;

(2) contain the name and any serial number assigned by the department to the prospecting site;

(3) state why an extension is needed; and

(4) be signed by the owner or the owner's agent.

(c) The director will, in his or her discretion, request that additional information be supplied to support the request for extension.

(d) If an extension is granted, the prospecting site locator shall, within 90 days after receiving the notice of extension, record the notice in the recording district in which the site is located. (Eff. 9/5/74, Reg. 51; am 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.245

**11 AAC 86.435. STAKING CLAIMS ON EXPIRED PERMITS.** The expiration of a permit does not prevent the locator or his successor from staking a mining claim or leasehold location in the area formerly covered by his prospecting site location if no intervening locations have been made by others. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020

#### ARTICLE 6. MILLSITES

Section  
600. Millsites

**11 AAC 86.600. MILLSITES.** If a mining claimant, lessee, locator, or assignee of a leasehold desires to construct a mill, reduction plant or provide tailing disposal on state land not covered by a claim or leasehold, upon application, the director shall grant him a use permit for the necessary land upon satisfaction of the requirements of the division. A reasonable rate

or fee schedule shall be charged for all such use. A permit remains in good standing as long as the fees are paid and the land is not used for a purpose other than that for which the permit is granted. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020  
AS 38.05.255

#### ARTICLE 7. MINING PRODUCTION LICENSES

##### Section

- 700. Applications for production licenses
- 705. Application review
- 710. Public notice
- 715. Review after public notice
- 720. Commissioner's determination to adjudicate
- 725. Adjudication by commissioner
- 730. No adjudication by commissioner
- 735. Interim mining
- 740. Transfer of a production license
- 745. Expiration of a production license
- 750. Definitions

**11 AAC 86.700. APPLICATIONS FOR PRODUCTION LICENSES.** (a) An application for a mining production license is required of the owner or owners of a mining claim under AS 38.05.195 or a mining leasehold location or mining lease under AS 38.05.205 who are prepared to initiate or continue production of minerals for sale. An application is required for each state mining claim, mining leasehold location, or mining lease from which that production is anticipated. A group of contiguous mining claims, mining leasehold locations, or mining leases under common ownership may be included on one production license application. A license will be considered a license for each individual mining claim, mining leasehold location, or mining lease.

(b) An application for a mining production license must be on a form provided by the department or an exact reproduction of that form.

(c) An application must be made under oath by the holder of the mining claim, leasehold location, or upland mining lease and must contain

(1) the names and current mailing addresses of all owners of the mining claim, mining leasehold location, or mining lease;

(2) the name and serial number (if assigned by the division of minerals and energy management) of the mining claim, mining leasehold location, or mining lease;

(3) a description of the location of the mining claim, mining leasehold location, or mining lease, including the section, township, range, and meridian and such other detail as the commissioner requires in the application;

(4) the statement that either

(A) each mining claim or leasehold location has been discovered, located, filed, and maintained in accordance with AS 38.05.185 - 38.05.280, or

(B) a state mining lease has been issued under AS 38.05.205;

(5) a statement of the date that the applicant either began or expects to begin production of minerals for sale from that property; and

(6) a statement that the applicant or applicants are qualified to own the mining claim, mining leasehold location, or mining lease under AS 38.05.190.

(d) Applications which do not meet the requirements of this section or which otherwise deviate from the form provided by the department will be rejected and returned to the applicant with an explanation of the reason for rejection. An applicant may file another application after the rejection of a previous application. (Eff. 5/12/83, Reg. 86; am 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.207

#### 11 AAC 86.705. APPLICATION REVIEW.

(a) Upon receipt of an application for a production license for either a mining claim or a mining leasehold location, the commissioner will review the department's records to determine that location certificates and annual labor affidavits have

been properly filed. The sworn intent of the applicant to commence production is sufficient evidence to establish that a valuable discovery has been made for purposes of a production license issued under AS 38.05.207.

(b) Upon receipt of an application for a production license for a state mining lease, the commissioner will review the department's records to determine that the applicant has complied with the terms of the lease.

(c) If the commissioner discovers that a location certificate or an annual labor affidavit for a mining claim or leasehold location has not been properly filed, or the terms of a mining lease have not been met, processing of the application will be suspended until either the commissioner is satisfied that compliance has been achieved or the commissioner determines under AS 38.05.185(b) that the applicant has complied as nearly as possible under the circumstances of the case and that no conflicting rights are asserted. The commissioner will notify the applicant of any noncompliance that causes the suspension of processing of the application. The applicant may, within the time period specified in the notice, either demonstrate compliance or request a certificate of substantial compliance. The application will be rejected if the applicant does not timely respond to the notice or if the applicant neither demonstrates compliance nor satisfies the commissioner that a certificate of substantial compliance is justified.

(d) If the location is on state-selected land that has not received tentative approval by the United States for conveyance to the state, or is on land to which the state does not hold title to the locatable mineral estate, the application will be rejected. The commissioner will notify the applicant of the rejection of the application. (Eff. 5/12/83, Reg. 86; am 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.207

11 AAC 86.710. PUBLIC NOTICE. (a) Within 60 days after the commissioner is satisfied that the applicant is in compliance as provided in 11 AAC 86.705, the department will publish, in a paper of general circulation in the area of the mining claim, mining leasehold location, or mining lease, a notice which contains:

(1) the name of the applicant along with a description of the location of the area subject to the production license application identifying the township, range, and section of the applicant's claim, leasehold location, or lease;

(2) the statement that within 60 days the department intends to issue a production license to the applicant authorizing the production of minerals for sale, subject to other applicable statutes and regulations, unless the commissioner receives a written statement from a person asserting conflicting rights;

(3) the statement that any written assertion of conflicting rights

(A) must be sent to the commissioner at an address set out in the public notice so that it is received within 30 days after the date of the public notice; and

(B) must set out the nature of the conflicting rights and the basis for the assertion; at a minimum, the written assertion must refer to the serial numbers assigned to the mining claims, mining leasehold locations, or mining leases which form the basis for the conflicting rights, or must include copies of the certificates of location or leases for those mining claims, mining leasehold locations, or mining leases;

(C) may be submitted with any additional documents, affidavits, or information which may more fully set out for the commissioner the nature of the conflicting rights and the reasons why the person is asserting those rights; this additional information must be submitted to the commissioner before the expiration of the 30-day period, unless the commissioner authorizes late submission.

(b) The commissioner will, in his or her discretion, combine individual notices with notices of other applications either in the same general area or statewide.

(c) The commissioner will also send a copy of the notice to the holders of any apparent conflicting rights as indicated on state land records available to the department at the time the application is reviewed. The copy will be sent by

certified mail to the address of record in the department's files. If the copy of the notice is returned by the mail service, the department will assume no further obligation to notify the third party. (Eff. 5/12/83, Reg. 86; am 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.207

**11 AAC 86.715. REVIEW AFTER PUBLIC NOTICE.** (a) If no conflicting rights are asserted, the commissioner will issue the production license to the applicant between 30 days and 60 days after the date that the public notice of the application appears in the paper.

(b) If the commissioner receives an assertion of conflicting rights, the commissioner will send to the applicant a copy of the assertion within 10 days after receiving it. Within 30 days after receiving the assertion, the commissioner will send to the applicant, as well as to the party or parties asserting conflicting rights, the notice of the commissioner's determination, under 11 AAC 86.720, whether or not to adjudicate the matter. (Eff. 5/12/83, Reg. 86; am 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.207

**11 AAC 86.720. COMMISSIONER'S DETERMINATION TO ADJUDICATE.** (a) The commissioner will not adjudicate matters involving difficult and protracted conflicts between mining claimants or lessees. However, the commissioner will, in his or her discretion, adjudicate minor conflicts which do not involve complicated factual or legal issues. This discretionary authority will be used sparingly.

(b) If the commissioner determines that the assertion of conflicting rights is a minor conflict which does not involve complicated factual or legal issues, the commissioner will, in his or her discretion, adjudicate the matter following the procedures set out in 11 AAC 86.725.

(c) If the commissioner determines that the assertion of conflicting rights does involve complicated factual or legal issues, then the commissioner will follow the procedures set out in 11 AAC 86.730.

(d) Reconsideration and appeal of the commissioner's determination under this section may be requested and, if requested, will be conducted under the procedures set out in 11 AAC 88.155 - 11 AAC 88.185. (Eff. 5/12/83, Reg. 86)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.207

**11 AAC 86.725. ADJUDICATION BY COMMISSIONER.** (a) If the commissioner decides to adjudicate the matter concerning conflicting rights, the commissioner will request the applicant to respond in writing to the written assertion of conflicting rights submitted by a third party under the provisions of 11 AAC 86.710 within 30 days after mailing to the applicant notice of the commissioner's determination to adjudicate.

(b) The commissioner will issue his or her decision within 30 days after either the date of receipt of the applicant's response statement or the date that such a statement was due, whichever is earlier. The commissioner will, in his or her discretion, grant an extension of time for filing a statement requested under (a) of this section.

(c) If, upon review of written statements submitted to the commissioner under this section and 11 AAC 86.710, the commissioner determines that the matter of conflicting rights involves complicated factual or legal issues, the commissioner will decide not to adjudicate the matter and will follow the procedures set out in 11 AAC 86.730.

(d) Reconsideration of the commissioner's decision may be requested and, if requested, will be conducted under the procedures set out in 11 AAC 88.155 - 11 AAC 88.185. (Eff. 5/12/83, Reg. 86)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.207

**11 AAC 86.730. NO ADJUDICATION BY COMMISSIONER.** (a) If the commissioner decides not to adjudicate a matter concerning an assertion of conflicting rights, and the application for a production license does not involve an area which is the subject of a state mining lease or a mining production license held by a

person other than the applicant, then the commissioner will notify the parties that

(1) the commissioner has decided not to adjudicate the matter.

(2) the courts are the appropriate fora for resolution of the matter, and

(3) unless prevented by a court order, the commissioner will issue a production license to the applicant no sooner than 30 days but before 60 days after the date of mailing of the notice.

(b) If the commissioner decides not to adjudicate a matter concerning an assertion of conflicting rights, and the application for a production license involves an area which is the subject of a state mining lease or a mining production license held by a person other than the applicant, then processing of the application for the production license will be suspended until the conflict with the state mining lease or mining production license held by a person other than the applicant is resolved, and the commissioner will notify the parties that

(1) the commissioner has decided not to adjudicate the matter;

(2) the courts are the appropriate fora for resolution of the matter; and

(3) until the conflict with the state mining lease or mining production license held by a person other than the applicant is resolved, the commissioner will not issue a production license to the applicant. (Eff. 5/12/83, Reg. 86)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.207

**11 AAC 86.735. INTERIM MINING.** After filing an application, and pending completion of the public notice requirement and the issuance of the production license, the applicant may, at his or her own risk, produce minerals for sale from the property unless either the application is rejected under 11 AAC 86.700(d) or the applicant is notified that processing of his or her production license has been suspended or rejected under 11 AAC 86.705 or 11 AAC

86.730(b). (Eff. 5/12/83, Reg. 86; am 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.207

**11 AAC 86.740. TRANSFER OF A PRODUCTION LICENSE.** (a) A mining production license passes with a conveyance of the mining claim, mining leasehold location, or mining lease that is the subject of the production license.

(b) If a production license covers multiple mining claims, mining leasehold locations, or mining leases, and not all of the claims, leasehold locations, or leases are transferred, the original production license will be amended to include only those claims that have been retained by the original holder of the production license, and a second production license will be issued covering the transferred claims, leasehold locations, or leases. (Eff. 5/12/83, Reg. 86; am 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.207

**11 AAC 86.745. EXPIRATION OF A PRODUCTION LICENSE.** (a) A production license will be issued for an indeterminate period of time but will expire when

(1) the mining claim or mining leasehold location for which the production license was issued is abandoned, or

(2) the mining lease for which the production license was issued expires or is terminated or relinquished.

(b) If individual mining claims or mining leasehold locations within a contiguous block included in a multiple production license are abandoned, the abandoned claims or leasehold locations will no longer be covered by the multiple production license. (Eff. 5/12/83, Reg. 86)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.207

**11 AAC 86.750. DEFINITIONS.** As used in 11 AAC 86.700 - 11 AAC 86.750

(1) "conflicting rights" means ownership interests in the locatable mineral rights which are to be the subject of the production license;

(2) "production of minerals for sale" means

(A) any production from a mining operation, other than an exploration project, on a mining claim, mining leasehold location, or mining lease, or a contiguous group of mining claims, mining leasehold locations, or mining leases of 30 or more days during an assessment year; or

(B) any production, including production during exploration, from a mining claim, mining leasehold location, or mining lease, or contiguous group of mining claims, mining leasehold locations, or mining leases of gross value greater than \$10,000 during an assessment year. (Eff. 5/12/83, Reg. 86)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.207

Editor's Note: Other definitions applicable to 11 AAC 86.700 - 86.750 appear in 11 AAC 88.185.

## ARTICLE 8. GENERAL PROSPECTING PERMIT AND LEASE PROVISIONS.

### Section

- 800. Plan of operations
- 805. Bond
- 810. Suspension and termination
- 815. Transfers

**11 AAC 86.800. PLAN OF OPERATIONS.** (a) A plan of operations that describes the activities proposed to take place under an upland mining lease, offshore prospecting permit, or offshore mining lease must be submitted to and approved by the director before activities may occur under the prospecting permit or lease. An approved plan of operations takes the place of the land use permit or miscellaneous land use permit that would be required under this title for unleased land. If proposed lease or permit activities are so minor that they could take place

without a land use permit on unleased land, a plan of operations is not required.

(b) The plan must show how the operator proposes to comply with performance standards, stipulations, or conditions applicable to the prospecting permit or lease. The proposed plan of operations must address the areas to be mined, location and design of settling ponds, tailings disposal, overburden storage, permanent or temporary diversions of water, access routes, reclamation plans, and other actions necessary to conduct the operation. The plan must include statements and maps or drawings setting out the following, as applicable:

(1) the sequence, schedule, and duration of the proposed operations;

(2) size and purpose of the operations;

(3) number of pieces of equipment and people working on the project;

(4) amount of material to be handled, processed, or removed, and how the material will be processed;

(5) method of tailings disposal;

(6) area of timber to be cleared, amount to be used, and clearing methods;

(7) overland access routes to be used, and whether new roads, landing strips, or other new transportation facilities will be needed;

(8) reclamation that will be carried out, including a timetable for each step in the reclamation, an estimate of the cost, and a description of the measures to ensure that all debris is disposed of in a sound manner;

(9) the actions to be taken to avoid or minimize detrimental effects on fish and wildlife and their habitats;

(10) amount and source of water to be used;

(11) location and size of camp facilities;

(12) any site the operator wants the division to close to public access in order to protect

public safety or to prevent unreasonable interference with the rights of the operator;

(13) how the operator's plans for compliance with other applicable laws and regulations, including size and location of required facilities or improvements, will affect resources under the jurisdiction of the department; and

(14) any additional information required by the director to assist in evaluating the proposed plan of operations.

(c) Any geological, geophysical, or engineering data supplied by the applicant as part of the plan of operations will be kept confidential at the applicant's request. Confidential data must be clearly identified by the applicant and separated from information not qualifying as confidential.

(d) The plan of operations may cover up to a ten-year period. If the approved work is not completed before the end of the stated period, the director will, in his or her discretion, allow an extension rather than requiring a new plan to be filed. An amendment must be filed for approval if the operator wants to deviate significantly from the approved plan. If the time period the operator chooses to cover in the plan is less than the intended life of the mine, the plan must show how the proposed operations relate to subsequent operations.

(e) The plan must be submitted to the department at least 50 days before operations under the prospecting permit or lease are proposed to begin. Before operations may begin, the plan must be approved in writing by the division after consulting with the Department of Fish and Game, Department of Environmental Conservation, and other affected agencies.

(f) For the operator's convenience, the proposed plan may include information needed to apply for approvals from other departments or local and federal agencies under other applicable laws and regulations, such as effects of the operation on air and water quality, disposal of toxic wastes, effects on navigation, and effects on anadromous fish habitat. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020  
AS 38.05.035

AS 38.05.205  
AS 38.05.250

11 AAC 86.805. BOND. (a) 11 AAC 82.600 applies to offshore prospecting permits, offshore mining leases, and upland mining leases. If a bond is required, the applicant, permittee, or lessee will be given notice of the requirement and its effective date. At least 30 days will be allowed to provide the bond.

accordance with 11 AAC 82.605 - 11 AAC 82.630. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020(b)(1)  
AS 38.05.270

(b) The director will, in his or her discretion, if a significant change in the scope of operations occurs, or before approving an assignment, alter the amount of the bond.

(c) A bond provided under this section will be released upon the following conditions:

(1) the expiration or relinquishment of the lease or prospecting permit; and

(2) the reclamation of the lease area or prospecting permit area as set out and approved in the plan of operations. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020            AS 38.05.205  
                 AS 38.05.035            AS 38.05.250  
                 AS 38.05.130

11 AAC 86.810. SUSPENSION AND TERMINATION. If the permittee or lessee fail to comply with applicable statutes and regulations, or to comply with the provisions of the prospecting permit or lease (except for failure to pay rental, which results in termination under AS 38.05.265), and the failure continues for 30 days after service of written notice and an opportunity to be heard, the director will, in his or her discretion,

(1) suspend production or operations leading to production until compliance is achieved, during which the obligation to pay rental continues, or

(2) terminate the permit or lease. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020            AS 38.05.250  
                 AS 38.05.185            AS 38.05.265  
                 AS 38.05.205

11 AAC 86.815. TRANSFERS. An offshore prospecting permit, offshore mining lease, or upland mining lease may be transferred in

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

TRUSTEES FOR ALASKA, NUNAM KITLUTSISTI, )  
DINYEA CORPORATION, VILLAGE OF MINTO, )  
ALASKA INDEPENDENT FISHERMEN'S )  
MARKETING ASSOCIATION, ALASKA CENTER )  
FOR THE ENVIRONMENT, SOUTHEAST ALASKA )  
CONSERVATION COUNCIL, FRIENDS OF THE )  
EARTH, )

Plaintiffs/Appellants, )

v. )

STATE OF ALASKA, ALASKA DEPARTMENT OF )  
NATURAL RESOURCES, ESTHER WUNNICKE, )  
Commissioner, Department of Natural )  
Resources, )

Defendants/Appellees, )

ALASKA MINERS ASSOCIATION, FAIRBANKS )  
NORTH STAR BOROUGH and JOSEPH E. VOGLER, )

Defendants-Intervenors/Appellees. )

File No. S-1142

O P I N I O N

[No. 3175 - May 1, 1987]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Douglas Serdahely, Judge.

Appearances: Eric Smith and Robert W. Adler, Anchorage, for the Appellants. Robert M. Maynard and Mark P. Worcester, Assistant Attorneys General, Anchorage, Harold M. Brown, Attorney General, Juneau, for Appellee State of Alaska, Alaska Department of Natural Resources, and Esther Wunnicke, Commissioner, Department of Natural Resources. James N. Reeves, Bogle & Gates, Anchorage, for Appellee Alaska Miners Association. Ronald A. Zumbrun, Robin L. Rivett, and James S. Burling, Pacific Legal Foundation,

Clerk of the Appellate Courts

Sacramento, California, and Michael B. Markham, Borough Attorney, Fairbanks, for Appellee Fairbanks North Star Borough. Thomas R. Wickwire, Fairbanks, for Appellee Joseph E. Vogler.

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton, and Moore, Justices.

MATTHEWS, Justice.

Alaska was granted the right to select 103,350,000 acres of land from the United States under section 6(a) and (b) of the Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339 (1958) (set out in a note preceding 48 U.S.C. § 21 (1982)). Mineral deposits in selected lands were also conveyed, subject to certain restrictions. Section 6(i) of the Act provides:

All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: Provided, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

This case presents issues concerning the meaning of the section 6(i) grant and restrictions, and of appellants' standing to bring an action in state court to construe the meaning of the Alaska Statehood Act.

I. PROCEEDINGS BELOW

The appellants are a coalition of environmental, Native, and fishing groups. They filed an action in superior court seeking a declaration that the state's mineral leasing system violates section 6(i) in that the state does not require payment of either rent or royalties in leases of lands subject to section 6(i), and that the state has incorrectly construed the section 6(i) restrictions to apply only to lands known to contain minerals at the time of state selection rather than to all selected lands which contain minerals.<sup>1</sup>

All parties moved for summary judgment. The trial court ruled that the appellants did not have standing, that section 6(i) is enforceable only by the Attorney General of the United States, and that the state's mineral management system does not violate section 6(i). The court did not rule on the question whether the section 6(i) restrictions apply to all state-selected lands containing minerals or merely to those known to contain minerals at the time of selection.

We conclude that appellants have standing to maintain this declaratory judgment action, that the state's mineral leasing system violates section 6(i) because it does not require

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1. Appellants also contend that section 6(i) has become part of the Constitution of Alaska, and has created public trust duties. Thus, appellants argue, to the extent that section 6(i) has been violated, so has the Alaska Constitution and the public trust.

the payment of rent or royalties on mining leases, and that section 6(i) applies only to those lands known to have been mineral in character at the time of state selection.

## II. STANDING TO MAINTAIN DECLARATORY JUDGMENT ACTION

### A. Standing

"Standing questions are limited to whether the litigant is a 'proper party to request an adjudication of a particular issue . . . .'" Moore v. State, 553 P.2d 8, 24 n.25 (Alaska 1976) (quoting Flast v. Cohen, 392 U.S. 83, 100-01, 20 L. Ed. 2d 947, 961 (1968)). Standing in our state courts is not a constitutional doctrine; rather, it is a rule of judicial self-restraint based on the principle that courts should not resolve abstract questions or issue advisory opinions. Id. The basic requirement for standing in Alaska is adversity. Id.

The concept of standing has been interpreted broadly in Alaska. We have "departed from a restrictive interpretation of the standing requirement," Coghill v. Boucher, 511 P.2d 1297, 1303 (Alaska 1973), adopting instead an approach "favoring increased accessibility to judicial forums." Moore v. State, 553 P.2d at 23; see also State v. Lewis, 559 P.2d 630, 634 n.7 (Alaska) (and cases cited therein), cert. denied, 432 U.S. 901, 53 L. Ed. 2d 1073 (1977). Our cases have discussed two different kinds of standing. One is interest-injury standing; the other is citizen-taxpayer standing.

Under the interest-injury approach, a plaintiff must have an interest adversely affected by the conduct complained of. Such an interest may be economic, Moore, 553 P.2d at 24; Wagstaff v. Superior Court, Family Division, 535 P.2d 1220, 1225 (Alaska 1975), or it may be intangible, such as an aesthetic or environmental interest. Lewis, 559 P.2d at 635. The degree of injury to the interest need not be great; "[t]he basic idea . . . is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation." Wagstaff, 535 P.2d at 1225 & n.7 (quoting Davis, Standing: Taxpayers and Others, 35 U. Chi. L. Rev. 601, 613 (1968)).

In the instant case, the appellants assert that they have standing as citizens or taxpayers, rather than because their interests are injured. In prior cases, we have often permitted taxpayers or citizens to challenge governmental action based on their status as taxpayers or citizens. In many such cases, standing has been assumed and not discussed.<sup>2</sup> We have, however,

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2. E.g., Thomas v. Bailey, 595 P.2d 1 (Alaska 1979) (land grant initiative challenged by citizens and taxpayers); Abrams v. State, 534 P.2d 91 (Alaska 1975) (taxpayer and citizen suit challenging legislative formation of Eagle River-Chugiak Borough); Boucher v. Engstrom, 528 P.2d 456 (Alaska 1974) (citizen suit to enjoin placement of capital move initiative on ballot); Boucher v. Bomhoff, 495 P.2d 77 (Alaska 1972) (citizen challenge to the wording of a referendum question); Jefferson v. Asplund, 458 P.2d 995 (Alaska 1969) (taxpayer suit challenging public professional service contract); Jefferson v. Greater Anchorage Area Borough, 451 P.2d 730 (Alaska 1969) (taxpayer suit

(Footnote Continued)

explicitly addressed taxpayer-citizen standing on other occasions. For example, in Cochill v. Boucher, 511 P.2d 1297 (Alaska 1973), registered voters (one of whom was also a poll watcher) were allowed to challenge certain proposed vote-counting procedures. In finding standing, we stated:

In the case at bar, we conclude that a retreat to restrictive notions of standing, as urged by appellee, would not advance the public's vital interest in maintenance of the integrity of vote-tallying procedures during statewide elections. Denial of standing to appellants in the instant case would have the effect of unduly limiting the possibility of a popular check upon executive control of the election process. If registered voters and poll watchers are foreclosed from seeking judicial review of administrative regulation of this sensitive aspect of our governmental system, then it may well be that any review of executive activity in this area would be completely foreclosed, particularly in the event that candidates or political parties were unwilling to challenge such administrative actions. We decline to restrict the

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(Footnote Continued)

challenging a bond issue); Suber v. Alaska State Bond Committee, 414 P.2d 546 (Alaska 1966) (taxpayer suit challenging public mortgage adjustment program); Walters v. Cease, 394 P.2d 670 (Alaska 1964) (citizen suit to enjoin referendum relating to formation of local government units); DeArmond v. Alaska State Development Corporation, 376 P.2d 717 (Alaska 1962) (taxpayer suit challenging the legality of public corporation); Starr v. Sjoglund, 374 P.2d 316 (Alaska 1962) (citizen suit to enjoin capital move initiative).

Some of these cases were subsequently recognized as taxpayer standing suits. See R & L Distributors, Inc. v. Murkowski, 486 P.2d 351, 353 n.1 (Alaska 1971) (characterizing Jefferson v. Asplund, 458 P.2d 995, and Greater Anchorage Area Borough v. Porter and Jefferson, 469 P.2d 360 (Alaska 1970), as taxpayer standing actions); Moore 553 P.2d at 24 n.26 (citing Jefferson v. Greater Anchorage Area Borough, 451 P.2d 730, as an example of taxpayer standing).

public's access to Alaska's courts in such a manner.

Id. at 1304.

We also discussed the question of taxpayer standing in Lewis, 559 P.2d 630. At issue was the legality of a three-way land trade between the state, the federal government, and a native regional corporation. Our characterization of the plaintiffs' interest in Lewis applies in this case. "Here, plaintiffs are seeking to protect mineral resources in land originally selected from the federal government under the Statehood Act. Their interest in the state's retention of mineral rights in state lands is no less significant than the aesthetic and environmental values sought to be vindicated in Sierra Club [v. Morton], 405 U.S. 727, 31 L. Ed. 2d 636 (1972) and [United States v.] SCRAP[,412 U.S. 669, 37 L. Ed. 2d 254 (1973)]." 559 P.2d at 635. We declined to decide whether standing should be allowed in all taxpayer or citizen actions, but we allowed taxpayer standing in Lewis. Several factors influenced our conclusion: the land transfer allegedly violated specific constitutional limitations, the transfer was significant in size and in its potential economic impact on the state, and no one seemed to be in a better position than the plaintiffs to complain of the illegality of the transaction. Id.

In Carpenter v. Hammond, 667 P.2d 1204 (Alaska), appeal dismissed, 464 U.S. 801, 78 L. Ed. 2d 67 (1983), we affirmed, in an alternative holding, the standing of a citizen to challenge

the reapportionment of a House District in which she did not reside or vote. We stated:

In the instant case, Carpenter alleges that District 2 violates a specific constitutional limitation and that the disputed transaction (the drawing of election district lines) arguably will have a significant impact on the state. Here the dispute over District 2 has been fully briefed, argued at trial and on appeal, and there is no one in a better position than Carpenter to litigate these issues. In our view, Carpenter also meets the standing criteria of Lewis.

Id. at 1210 (footnote omitted).

Gilman v. Martin, 662 P.2d 120 (Alaska 1983), involved a challenge to a municipal sale of land. We upheld taxpayer standing, stating that "[a]ny resident or taxpayer of a municipality has a sufficient interest in the disposition of a significant number of acres of the municipality's land to seek a declaratory judgment as to the validity of the disposition." Id. at 123.

In Hoblit v. Commissioner of Natural Resources, 678 P.2d 1337 (Alaska 1984), we held that plaintiff did not have standing as a taxpayer to challenge the sale of some twenty acres of state land. We distinguished Gilman on the grounds that the amount of acreage involved in Hoblit was not "significant." 678 P.2d at 1341. Similarly, we distinguished Lewis because the "'magnitude of the transaction and its potential economic impact on the State' which were determinative in Lewis are simply lacking here." Id. We remanded for a determination as to

whether or not the plaintiff had standing because of his status as an adjoining land owner. Id. at 1341-42.

This review of taxpayer-citizen standing in Alaska clearly demonstrates that taxpayer-citizen status is a sufficient basis on which to challenge allegedly illegal government conduct on matters of significant public concern. Taxpayer-citizen standing has never been denied in any decision of this court, except on the basis that the controversy was not of public significance,<sup>3</sup> or on the basis that the plaintiff was not a taxpayer.<sup>4</sup> However, Lewis and Carpenter suggested, without deciding, that taxpayer-citizen standing may be denied even in cases of public significance under certain circumstances.<sup>5</sup>

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3. Hoblit, 678 P.2d 1337.

4. Greater Anchorage Area Borough v. Porter & Jefferson, 469 P.2d 360.

5. The Utah Supreme Court relied in part on Lewis and adopted a discretionary denial approach in Jenkins v. Swan, 675 P.2d 1145, 1150-51 (Utah 1983):

If the plaintiff does not have standing under the first step [that is, interest-injury standing], we will then address the question of whether there is anyone who has a greater interest in the outcome of the case than the plaintiff. If there is no one, and if the issue is unlikely to be raised at all if the plaintiff is denied standing, this Court will grant standing. See, e.g., State v. Lewis, Alaska, 559 P.2d 630, 635 (1977). When standing is predicated on the assertion that the issues involve "great public interest and societal impact," we will retain our practical concern that the parties involved

(Footnote Continued)

In our view, taxpayer-citizen standing cannot be claimed in all cases as a matter of right. Rather, each case must be examined to determine if several criteria have been met. First, the case in question must be one of public significance.<sup>6</sup> One measure of significance may be that specific constitutional limitations are at issue, as in Carpenter and Lewis. That is not an exclusive measure of significance, however, as statutory and

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(Footnote Continued)

have the interest necessary to effectively assist the court in developing and reviewing all relevant legal and factual questions. The Court will deny standing when a plaintiff does not satisfy the first requirement of the analysis and there are potential plaintiffs with a more direct interest in the issues who can more adequately litigate the issues.

The third step in the analysis is to decide if the issues raised by the plaintiff are of sufficient public importance in and of themselves to grant him standing. The absence of a more appropriate plaintiff will not automatically justify granting standing to a particular plaintiff. This Court must still determine, on a case-by-case basis, that the issues are of sufficient weight, see Jenkins v. Finlinson, Utah, 607 P.2d 289 (1980), and that they are not more properly addressed by the other branches of government. Constitutional and practical considerations will necessarily affect our decisions in cases where a plaintiff who lacks standing under step one nevertheless raises important public issues. These are matters to be more fully developed in the context of future cases.

6. See, e.g., Carpenter, 667 P.2d at 1210; Gilman, 662 P.2d at 123; Lewis, 559 P.2d at 635.

common law questions may also be very important.<sup>7</sup> Second, the plaintiff must be appropriate in several respects. For example, standing may be denied if there is a plaintiff more directly affected by the challenged conduct in question who has or is likely to bring suit. The same is true if there is no true adversity of interest, such as a sham plaintiff whose intent is to lose the lawsuit and thus create judicial precedent upholding the challenged action.<sup>8</sup> Further, standing may be denied if the plaintiff appears to be incapable, for economic or other reasons, of competently advocating the position it has asserted.<sup>9</sup>

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7. See, e.g., *Coghill v. Boucher*, 511 P.2d 1297 (taxpayer's challenge of lieutenant governor's promulgation of regulations under elections statute).

8. See *Flast v. Cohen*, 392 U.S. 83, 100, 20 L. Ed. 2d 947, 962 (1968) ("federal courts will not entertain friendly suits . . . or those which are feigned or collusive").

9. One reason for the adversity requirement is to insure that the issues are well presented. As the Utah Supreme Court said, "When standing is predicated on the assertion that the issues involve 'great public interest and societal impact,' we will retain our practical concern that the parties involved have the interest necessary to effectively assist the court in developing and reviewing all relevant legal and factual questions." *Jenkins*, 675 P.2d at 1150-51.

In the analogous context of class action suits, one important criterion of a party's ability to effectively represent the class is its capacity, for economic and other reasons, to competently advocate its position. See 3B J. Moore and J. Kennedy, *Moore's Federal Practice* § 23.07[1.-1], at 23-215 (1985) (under Fed. R. Civ. P. 23(a)(4), "it has become routine to inquire into the competence, experience and vigor of the representative's counsel").

The instant case is undoubtedly one of public significance. If appellants prevail, the state must change its method of making state land available for mining. Some 50,000 existing mining claims may be affected. Under the current system, according to the appellants, the state is illegally giving up more than \$100,000 annually in royalties. Further, the state is at risk of forfeiting to the United States extensive areas of state lands. The state has correctly acknowledged the significance of this case.

We turn now to consider whether appellants are appropriate parties to bring this suit. They are well represented by competent counsel who have forcefully presented their position. They are not sham plaintiffs; their sincerity in opposing the state's mineral disposition system is unquestioned. On the other hand, the state argues that there is a potential plaintiff with a more direct interest in the validity of the state's system. The state contends that the Attorney General of the United States may bring a forfeiture proceeding under section 6(i) and that this possibility means that appellants lack standing.

In our view, the mere possibility that the Attorney General may sue does not mean that appellants are inappropriate plaintiffs. In Carpenter, a resident and voter of the House District in question would theoretically have been more interested in litigating the question whether the district was malapportioned than was the non-resident plaintiff in that case. However, no such person had filed suit. We noted that the issues

had been fully presented at trial and on appeal by the plaintiff, and held that she had standing. 667 P.2d at 1210. Similarly, in Coghill v. Boucher, we suggested that candidates or political parties might be more interested than registered voters and poll watchers in challenging the vote-counting procedures at issue. However, they had not done so. We noted that if the plaintiffs were not afforded standing, "it may well be that any review of executive activity in this area would be completely foreclosed." 511 P.2d at 1034. Thus, the crucial inquiry is whether the more directly concerned potential plaintiff has sued or seems likely to sue in the foreseeable future. The Attorney General has not sued nor are there any indications that he plans to do so.

Moreover, the appellants' interest in this suit is different than the Attorney General's would be if suit were brought in the United States District Court pursuant to section 6(i). Appellants are interested in preserving to the state the economic value of these lands. The Attorney General, however, would be bringing an action for forfeiture of these lands, contrary to appellants' interest.

For these reasons we conclude that appellants have standing as taxpayer-citizens to maintain this action.

B. A Declaratory Judgment Action Interpreting the Provisions of Section 6(i) May be Maintained.

There has been much litigation concerning the meaning and scope of various statehood act land grants and their

restrictions.<sup>10</sup> There have been frequent questions of ownership of the granted lands as between private or governmental contestants.<sup>11</sup> Much of this litigation has occurred in the state courts. The question presented in this case is whether Congress intended to preclude all litigation concerning the meaning of section 6(i) by enacting the proviso which reads:

That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

In our view, this question must be answered in the negative. It is clear that Congress intended that only the U.S.

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10. E.g., *Boyce v. Pima County*, 208 P. 419 (Ariz. 1922); *Jensen v. Dinehart*, 645 P.2d 32 (Utah 1982); cf. *State v. University of Alaska*, 624 P.2d 807 (Alaska 1981).

11. E.g., *Rodgers v. Berger*, 103 P.2d 266 (Ariz. 1940) (appeal from suit by private mining claimant against state and other private claimants to quiet title in mining claim on land granted under statehood act; in trial court, state alleged it was owner because land was a school section; state did not appeal trial court's judgment for plaintiff); *Texas Pacific Coal & Oil Co. v. State*, 234 P.2d 452 (Mont. 1951) (corporation's suit against state to quiet leasehold title to oil and gas deposits under certain school land acquired by state under state enabling act); cf. *Lassen v. Arizona*, 385 U.S. 458, 17 L. Ed. 2d 515 (1967) (appeal from Arizona Supreme Court ruling in case between two state executive agencies to compel compensation to trust created under New Mexico-Arizona Enabling Act); *State v. Walker*, 301 P.2d 317 (N. M. 1956) (suit between State Highway Commission and Commissioner of Public Lands concerning rights of way or easements over state trust lands granted under New Mexico Enabling Act); *Ross v. Trustees of University of Wyoming*, 222 P. 3 (Wyo. 1924) (suit between governor and trustees concerning land granted and confirmed by act of admission for university purposes).

Attorney General could bring forfeiture proceedings and that such proceedings could only be brought in the United States District Court for the District of Alaska. No inference can be drawn, however, from either the context or the history of the Statehood Act that forfeiture proceedings were meant to be the only means by which a judicial interpretation of the meaning of section 6(i) could be obtained.

The sole reference to the land grant forfeiture provision which we have found in the legislative history appears in the Senate Report accompanying a 1954 bill providing for the admission of Alaska into the Union, S. 50, 83d Cong., 2d Sess. (1954):

The Attorney General is authorized to take appropriate proceedings for forfeiture of any of the lands granted to the State which are disposed of contrary to these restrictions. In making the above provision, the committee has followed the practice prevalent in a number of mining States - a practice that has stood the test of time and experience.

S. Rep. No. 1028, 83d Cong., 2d Sess. 32 (1954). This reference is to the forfeiture clause of the Act of January 25, 1927 (commonly called the School Lands Act of 1927) 44 Stat. 1026, codified at 43 U.S.C. § 870(b (1982)), which extended to public land states grants of certain numbered school sections which were mineral in character.<sup>12</sup> This clause has not prevented judicial

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12. The proviso in the School Lands Act states:

(Footnote Continued)

interpretation of the School Lands Act in non-forfeiture proceedings.<sup>13</sup> We hold that the identical language in section 6(i) has a similar, non-preclusive effect. It would be unusual in the extreme if a state court could not construe the meaning of its state's Statehood Act. In the absence of any indication that Congress intended to bar our state courts from interpreting section 6(i), we conclude that appellants' declaratory judgment action seeking an interpretation of section 6(i) may be maintained.

III. THE STATE'S DISPOSITION OF MINERALS VIOLATES SECTION 6(i) OF THE STATEHOOD ACT

Having determined that appellants have standing to bring this declaratory action, we now turn to their arguments on the merits. Their arguments may be summarized as follows. Section 6(i) of the Statehood Act provides that the state must reserve to itself all of the minerals in the mineral lands

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(Footnote Continued)

That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located.

43 U.S.C. § 870(b) (1982). This proviso is discussed in more detail in part IIIB of this opinion, infra p. 21.

13. E.g., Rodgers, 103 P.2d 266; Jensen, 645 P.2d 32.