

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990
5993 HOUSE RESOURCES

8672

37

STATE CONTACTS

Agency	Contact	Tele. #
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California	Dick Reed	916/366-5207
Cheyenne, Wyo.	Connie Cook	307/637-6258
Connecticut	Scott Deshefy	203/566-4630
Florida	John Svec	904/488-0300
Iowa	Jim Horn	515/281-8964
Kentucky	Jim Jarman	502/564-6716
Maine	George Seel	207/289-2651 ✓
Manatoba	Dave Ediger	204/945-7039
Maryland	Bernie Bigham	301/974-2105
Massachusetts	Deirdre Doherty	612/292-5886
Montana	Jean Riley	406/444-2821
Nassau County, NY	David Bartow	516/566-5817
New Brunswick, Can.	Dr. Jim Shaffner	506/453-2861
New Hamshire	Jack Chwasciai	603/271-3503
New Mexico	(Gary Lasswell)-City	(505/768-2600)
New York	Russell Brauksieck	518/457-7363
North Carolina	Eric Motzno	919/733-3221
North Dakota	Gary Berreth	701/224-2366
Nova Scotia, Can.	Philip Nunn	902/424-5300
Ontario, Can.	Al MacIver	416/234-6030
Oregon	Larry Frost	503/229-5826 5769 ✓
Prince Edward Island, Can	Don Jardine	902/892-0311
Rhode Island	Leslie Gerundio	401/277-2234
Suffolk County, NY	Jim Pim	516/451-4634
Utah	Bob Ford	801/538-6170
Vermont	Paul Van Hollenbeke	802/244-8702
Wisconsin	Rex Colvin	608/266-7605
Wyoming		307/777-7781

INDEPENDENT CONTACTS

COMPANY	CONTACT	TELEPHONE #
Owens/Corning Fiberglas Corp.	Steve Macy	419/248-6362
Health Dept.-Plumbing Unit	Linda _____	612/623-5328
Steel Tank Institute	Jim Wisuri	312/498-1980
Fiberglass Petro. Tank & Pipe Inst.	E.C. Nieshoff	419/247-5412
Univ. of Wisconsin-Madison	John Quigley	608/262-0920
Colorado School of Mines - Golden, CO	Tom Zamis	303/273-3639
Georgia Tech Research Inst.-Atlanta	Dave Mayer	404/894-3806
Petcon	Alex Ralston	800/852-8374

Storage Tank Certification Program
Training Considerations

Broad -
These are just my
thoughts for our program.
I hope they help you.
- Beth L.

General Program Questions:

- 1) Should we just concentrate on underground tanks at this time and develop aboveground tank training in the future?
- 2) Define REPAIR, CONSTRUCT.
- 3) Possible exemptions: aboveground tanks; field constructed; tank testers; farm chemicals;

Training Options:

- 1) Different courses for different disciplines? For example: plumbers, installers, removers, repairers, aboveground vs. underground, piping installation vs. tank installation. (A similar procedure was used for certifying asbestos contractors, but the population to be certified was much larger.)
- 2) The same course for all disciplines (one certification class)
- 3) One week of courses with various distinct certification classes within the week. For example; to be certified as a remover you attend only the first day & take an exam at the end of the day. To be only an installer you attend only the last four days and take an exam covering only those days. To be certified as both an installer and a remover you attend all five days and take each of the exams.
- 4) Should there be some type of hands-on experience required during the training course?

(* Hands-on training is currently being offered by Georgia Tech and Colorado School of Mines)

- 5) If certification renewal is required every 2 years, should there be a shorter refresher course required for renewal?
- 6) Number of days for the training course?

Training Provider/Location:

- 1) Should the training be offered once each winter in 3-4 different locations around the state or should it be offered a few times each winter in just one central location?

Renewals:

- 1) How often? (* avg. = 2 years)

Experience/Apprenticeship:

- 1) How many months/years/# of installations or removals?
- 2) What criteria should be used to "grandfather in" persons already in

- the business?
- 3) What type of proof will they need to supply the agency for the agency to be able to make the decision that the experience is enough and applicable?

Bonding/Insurance?

- 1) Should it be required for certification?
- 2) Is it available?

Reciprocity:

- 1) Partial or complete acceptance of other courses offered by other states or organizations?
- 2) If we only require training based on a certain number of hours from "approved" courses, how do we decide what courses are approved?
- 3) Need to consider the possibility that if we're too lenient with the reciprocity we may not only be jeopardizing our goal to have qualified installers, but also spreading the target population so thin that it would no longer be cost effective for the Vo. Tech.s to provided training. Then we would be left with people trying to get training wherever they can find it.

Fees:

- 1) What costs are considered recoverable? The program must be self supporting.
- 2) Different charge for initial vs. renewal?

Advisory Board:

- 1) License revocation procedures(?)

Installer Obligations/Code of Ethics:

(* New Mexico and Maine both address this.)

Department of Commerce
& Economic Development / POSITION PAPER

CSHB 196 (Res.): An Act relating to persons who perform work relating to petroleum and chemical storage tanks.

HB 196 requires that a construction contractor, before that contractor can install, repair, or test petroleum or chemical storage tanks, must have received an endorsement on his or her registration authorizing such work on storage tanks.

It has been identified by state and federal environmental protection officials that there is an increasing potential for contamination of the country's ground water from aging, leaking underground storage tanks. In addition, it has become clear that damage is also occurring as a result of improperly installed tanks.

This bill will require contractors interested in providing installation, repair, or testing services to owners of storage tanks to first meet the training, education, and experience standards set by the Department of Environmental Conservation. These standards will be set by the Department of Environmental Conservation in regulation and will be developed in consultation with the Department of Commerce and Economic Development.

In addition, the bill requires that installation, repair, or testing of petroleum or chemical storage tanks must be performed by a construction contractor who has received the endorsement on his or her contractor registration. A person who violates this requirement is guilty of a class A misdemeanor.

The seriousness of the potential harm to Alaska's environment through contamination from aging or improperly installed storage tanks mandates the kind of protection provided for in this bill. We support passage of CSHB 196 (Res.).



Larry Merculieff, Commissioner
Department of Commerce and Economic
Development

Date: 3-8-1989

LM/; S/dgl3489D
030: 89c

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSHB 196 (Res.)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
Title: An Act relating to persons who BRU: Occupational Licensing
perform work relating to petroleum and chemical storage tanks;
Sponsor: House Resources Committee Components: Administration
Requester: House Resources Committee

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	3.1	3.1	3.1	3.1	3.1
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	.8	.8	.8	.8	.8
SUPPLIES	0	0	0	0	0	0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	3.9	3.9	3.9	3.9	3.9

CAPITAL	0	0	0	0	0	0
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REVENUE	0	3.8	0	3.8	0	3.8
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FUNDING: (Thousands of dollars)

GENERAL FUND	0					
FEDERAL FUNDS						
OTHER	0	3.9	3.9	3.9	3.9	3.9
TOTAL	0	3.9	3.9	3.9	3.9	3.9

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

The bill requires a construction contractor to obtain an endorsement on his or her certificate of registration prior to installing, repairing, or testing petroleum or chemical storage tanks.

(Continued on attached)

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
Division: Occupational Licensing Date: March 8, 1989

Approved by Commissioner: Larry Merculieff, Commissioner Phone: 465-2500
Agency: Department of Commerce & Economic Development Date: 3-8-89

Distribution (by preparer):

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

CONTINUATION OF FISCAL NOTE ANALYSIS

CSHB 196 (Res.)

Although the responsibility to establish requirements for the endorsement is given primarily to the Department of Environmental Conservation, the review of applications to determine eligibility in accordance with Department of Environmental Conservation requirements and the administration of the examination provided by the Department of Environmental Conservation is anticipated to be conducted by the Department of Commerce and Economic Development staff. Therefore, calculations in this fiscal note assume that licensees seeking the endorsement requirement, like all other licensing programs, will be responsible for sharing in the administrative costs of the division.

Based on 50 licensees, as provided by the Department of Environmental Conservation, the licensees seeking the endorsement will be responsible for covering .019% of the administrative costs. The .019% is derived by dividing the anticipated number of licensees (50) into the total number of licensees (26,995), not including business licensing.

The contractual costs will provide funding for public notices of the examinations; printing of applications, examinations and other material; and communication costs.

Revenues are based on the assumption that each applicant seeking the endorsement will pay an endorsement fee of \$75.00 ($50 \times \$75.00 = \3.8).

HB

201

HOUSE COMMITTEE REPORT

(9)

Date Referred: March 3, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3-29-89

The RESOURCES Committee considered:

HB 201

HOUSE BILL NO. 201 [TRANSFER ENTRY PERMITS/PENDING CHARGES]
"An Act relating to additional penalties for violation of commercial fishing laws and for theft of commercial fishing gear."

RECOMMENDATIONS:

- be replaced with CS HB 201 (255) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Clyde Davis

Scott Newland

Mike Brown

Richard Sobey

Bert Sharp

Mike

George

	Do Not Pass	No Rec	Amend

Clyde Davis

Chairman's signature

6-0861H ✓
Utermohle
3/22/89

Original sponsors: Foster, Jacko,
Goll, et al.

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 201 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to additional penalties for viola-
7 tion of commercial fishing laws and for theft of
8 commercial fishing gear."

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

10 * Section 1. AS 16.05.710(a) is repealed and reenacted to read:

11 (a) Upon a person's first or second conviction for violating a
12 federal or state commercial fishing law, the court may, in addition to
13 other penalties imposed by law, suspend any or all of the person's
14 commercial fishing privileges and licenses for a period of not more
15 than one year. Upon the person's third or subsequent conviction for
16 violating a federal or state commercial fishing law, the court shall,
17 in addition to other penalties imposed by law, suspend ^{any or} all of the
18 person's commercial fishing privileges and licenses for a period of
19 not more than three years.

20 * Sec. 2. AS 16.05.710(b) is amended to read:

21 (b) Upon a first conviction of a person for a violation of
22 AS 11.46.120 - 11.46.130 in which the property is commercial fishing
23 gear as defined in AS 16.43.990, the court shall, in addition to the
24 penalty imposed by law, ^{any or} suspend all [ORDER A SUSPENSION] of the per-
25 son's commercial fishing privileges and licenses for one year. Upon a
26 second or subsequent conviction, the court shall, in addition to the
27 penalty imposed by law, ^{any or} suspend all [ORDER A SUSPENSION] of the per-
28 son's commercial fishing privileges and licenses for two years.

29 * Sec. 3. AS 16.05.710(c) is amended to read:

1 (c) If proceedings in which commercial fishing privileges or
2 licenses may be suspended under this section are pending against a
3 limited entry permit holder, the permit holder's limited entry permit
4 may not be permanently transferred, unless allowed by order of the
5 court in which the proceedings are pending, and a permanent transfer
6 of the permit, unless allowed by order of the court, is void. During
7 the period for which a limited entry permit or the permit holder's
8 right to obtain a limited entry permit or to engage in an activity for
9 which a limited entry permit is required is suspended under [(a) OF]
10 this section, a permit card may not be issued to the permit holder and
11 the permit holder's permit may not be transferred or sold.

12 * Sec. 4. AS 16.05.710(d) is repealed and reenacted to read:

13 (d) In this section

14 (1) "commercial fishing license" means a limited entry
15 permit or a crew member license;

16 (2) "commercial fishing privilege" means the privilege of
17 participating in an activity for which a commercial fishing license is
18 required and the privilege of obtaining a commercial fishing license;

19 (3) "commercial fishing law" means a statute or regulation
20 that regulates the conduct of a person engaged in commercial fishing
21 activities by establishing requirements relating to fishing licenses
22 and permits; catch records and reports; size, nature, or use of fish-
23 ing vessels, sites, and gear; time, place, or manner of taking fishery
24 resources; possession, transportation, sale, barter, or waste of
25 fishery resources; or other aspects of commercial fishing;

26 (4) "limited entry permit" means an entry permit or an
27 interim use permit issued under AS 16.43.

28 * Sec. 5. AS 16.43.170 is amended by adding a new subsection to read:

29 (f) The permanent transfer of an entry permit is void if

1 proceedings in which commercial fishing privileges and licenses may be
2 suspended under AS 16.05.710 are pending against the permit holder at
3 the time of transfer unless the transfer of the entry permit is al-
4 lowed by order of the court in which the proceedings are pending.
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FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Additional penalties for violation of Comm. fishing laws
 Sponsor: Foster, Jacko, Goll, Menard
 Requestor: House Resources Committee

Agency Affected: Dept. of Fish and Game
 BRU: Commercial Fisheries (Limited) Entry Commission
 Components: Program Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: David A. Ingram Phone: 586-3456
 Division: Commercial Fisheries (Limited) Entry Commission Date: 3-13-89
 Approved by Commissioner: [Signature] Date: 3-13-89
 Agency: Commercial Fisheries (Limited) Entry Commission

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

MEMORANDUM**STATE OF ALASKA**

TO: House Resources Committee

DATE: March 28, 1989

FILE NO:

FROM: David A. Ingram *DAI*
Managing Hearing Officer
Commercial Fisheries
Entry Commission
M/S 0302
Tel. 465-4081

TELEPHONE NO:

SUBJECT: CS for House Bill
201/Penalties for
Fishing Violations

Herewith is a section by section analysis of the effect of Committee Substitute for House Bill 201, an act relating to additional penalties for violation of commercial fishing laws and for theft of commercial fishing gear.

Section 1

This section eliminates potentially confusing language in the act; broadens the court's abilities to suspend a violator's fishing privileges; and adopts language that is consistent with language used elsewhere in the act.

Section 2

This section makes it clear that a person's commercial fishing licenses as well as fishing privileges may be suspended if he steals another's fishing gear.

Section 3

This is the most critical part of the bill. It provides that a person who is facing potential suspension of his commercial fishing permits under AS 16.05.710(a) or (b) may not permanently transfer away his permits unless the trial court allows him to do so and further provides that if such a transfer is completed without the court's permission, it is void.

Section 4

This section provides definitions of "commercial fishing law" and "commercial fishing privileges," which are missing from the act as it now exists and also gives better definitions for the other terms defined.

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 28, 1989

The Honorable Curt Menard, Chair
House Resources Committee
Alaska State House of Representatives
P.O. Box V
Juneau, AK 99811

Re: CS for HB 201

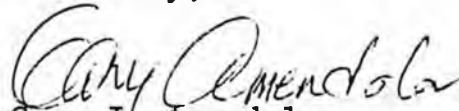
Dear Representative Menard:

You have asked this office to review CS for HB 201, which relates to "additional penalties for violation of commercial fishing laws and for theft of commercial fishing gear." The committee substitute is identical to the sponsor substitute that was reviewed by Assistant Attorney General Tom Koester in a March 20, 1989 letter to Representative Richard Foster. See attachment 1.

We note that CS for HB 201 essentially incorporates changes suggested by Assistant Attorney General Koester in a March 20 letter to Senator Fahrenkamp which reviewed SB 164, a bill in the Senate that deals with the same subject as HB 201. See attachment 2. As with the sponsor substitute, we conclude that CS for HB 201 presents no legal or constitutional problems.

If we can help in any other way, please let us know.

Sincerely,



Gary I. Amendola
Assistant Attorney General

GIA/bt

Attachments

REPLY TO:

1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
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1st NATIONAL CENTER
100 CUSHMAN ST
SUITE 400
FAIRBANKS ALASKA 99701-4679

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

March 20, 1989

The Honorable Richard Foster
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Re: HB 201

Dear Representative Foster:

You asked for a legal review of a proposed sponsor substitute for House Bill ("HB") 201, relating to "additional penalties for violation of commercial fishing laws and for theft of commercial fishing gear."

We have reviewed the proposed sponsor substitute, and conclude that it presents no legal problems.

We also have looked at Senate Bill ("SB") 164, relating to "additional penalties for violation of commercial fishing laws and forfeiture of limited entry permits and to transfer limited entry permits to avoid forfeiture." We have some technical drafting concerns with that measure, which we have transmitted to the chair of the Senate Resources Committee (copy enclosed), but believe it presents no constitutional or other insurmountable legal problems. We note, however, that it does go substantially farther in terms of imposing significantly greater penalties for commercial fishing violations than either HB 201 or the proposed sponsor substitute. As a consequence, it may be more controversial in terms of obtaining ultimate passage.

Attachment 1

The Honorable Richard Foster

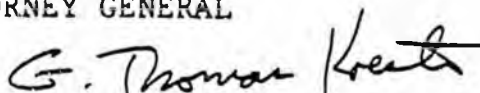
March 20, 1989
Page 2

We hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:



G. Thomas Koester
Assistant Attorney General

GTK:dlm

Enc.

cc w/o enc.: Representative Davidson
Representative Menard
House Resources Committee

Senator Fahrenkamp
Chairman of the Senate Resources Committee

Senator Zharoff

Bob Evans
Assistant Chief of Staff
Legislative Liaison
Office of the Governor

Bruce Twomley, Chairman
Commercial Fisheries Entry Commission

The Honorable Richard Foster

March 20, 1989
Page 3

bcc: Arthur H. Peterson.
Juneau AGO

Laurie Otto
Criminal Division

STATE OF ALASKA

STEVE COV. PER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE ALASKA 99501-1994
PHONE 1907 275-3550

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

March 20, 1989

P O BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE 1907 463-3500

The Honorable Bettye Fahrenkamp, Chair
Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Re: SB 164

Dear Senator Fahrenkamp:

We have reviewed Senate Bill ("SB") 164, relating to "additional penalties for violation of commercial fishing laws and forfeiture of limited entry permits and to transfer of limited entry permits to avoid forfeiture," and would like to bring a few matters to your attention.

First, under section 1, substantially different penalties would apply depending on whether the person held a limited entry permit at the time the violation occurred. If, as a policy matter, it is believed desirable to have different penalties apply based on that distinction, it would be helpful to have the record reflect the reasons such a distinction was made. For example, why should a permit holder, upon a first or second conviction, not have the person's right to obtain a limited entry permit suspended while a person not holding a limited entry permit could have that right suspended? It would be helpful if, in the legislative record, there is some justification for this disparity of treatment if, as a policy matter, it is believed that such a disparity is appropriate.

Second, under section 1, AS 16.05.710(a) would be repealed and reenacted to apply to "[a] person convicted of a misdemeanor for violating AS 16.05.440 -- 16.05.690 or federal or state commercial fishing statute or regulation." Proposed AS 16.05.710(a)(1)(A) and (B) and (2)(A) and (B), on the other hand, address convictions "for violating a commercial fishing statute or regulation." This might lead to some confusion because the language is not as explicit as that used earlier in the section. To clear up any confusion, the phrase "violating a commercial fishing statute or regulation" used in subsections (1)(A)

The Honorable **Bettye** Fahrenkamp

March 20, 1989
Page 2

and (B) and (2)(A) and (2) could be replaced by the phrase "such a violation," which would refer back to the earlier reference to "a misdemeanor for violating AS 16.05.440 -- 16.05.690 or a federal or state commercial fishing statute or regulation."

Finally, in section 6, the proposed new subsection (f) to be added to AS 16.43.170 includes the following sentence: "A person who falsifies an affidavit under this subsection is guilty of perjury under AS 11.56.210." It is a common practice in the state for notaries not to place a person under oath before signing an affidavit. Accordingly, the appropriate reference should be to unsworn falsification under AS 11.56.210, not perjury under AS 11.56.200.

We hope you find these comments helpful. If we can provide any additional information, please contact us at your convenience.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: *G. Thomas Koester*
G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Senator Zharoff
Representative Davidson
Representative Menard
Representative Foster

Bob Evans
Assistant Chief of Staff
Legislative Liaison
Office of the Governor

Bruce Twomley, Chairman
Commercial Fisheries Entry Commission

bcc: Arthur H. Peterson
Juneau AGO

Laurie Otto
Criminal Division
Juneau

MEMORANDUM

State of Alaska

Department of Law

TO Bruce Twomley, Chairman
Rich Listowski, Commissioner
Phil Smith, Commissioner
Commercial Fisheries Entry
Commission
Department of Fish and Game

DATE February 7, 1989
FILE NO 663-89-0233
TEL NO 465-3600
SUBJECT Can permit transfers be
suspended pending prosecution?

FROM G. Thomas Koester
Assistant Attorney General

FLS 10 1989

You asked whether the Commercial Fisheries Entry Commission ("the commission") has the authority to suspend the transferability of a permit pending criminal prosecution of the permit holder for a fish and game violation. The short answer is that the commission probably does not have such authority. In that event, you then asked whether the same end might be reached through some other procedure, such as requiring a permit holder, as a condition of release pending prosecution for a fish and game violation, to agree not to transfer a permit. The courts' liberal interpretation of their authority to impose conditions on the release of defendants pending trial suggests that the courts could require a defendant not to transfer a permit while the criminal proceeding is pending.

As a general matter, limited entry permits are freely transferable. If a permit holder follows the procedures set out in AS 16.43.170(b) and the commission's administrative regulations, and if the proposed transferee can demonstrate the present ability to participate actively in the fishery and the transfer agreement does not violate any provision of AS 16.43 or the commission's regulations, "the commission shall approve the transfer and reissue the entry permit to the transferee." Id. (in part). Under AS 16.043.170(b), then, the commission is under a mandatory statutory obligation to transfer the permit if the requisite procedures are followed and the required showing of ability to participate actively in the fishery is made.

There are specific statutory exceptions to this otherwise mandatory statutory obligation to transfer a permit. AS 16.05.710(a) provides that, upon conviction of a misdemeanor for violating AS 16.05.440 -- 16.05.690 or a federal or state commercial fishing statute or regulation, the court may suspend the permit holder's limited entry permit. AS 16.05.710(c) provides: "During the period for which a limited entry permit is

Bruce Twomley, Chairman, CFEC
Rich Listowski, Commissioner, CFEC
Phil Smith, Commissioner, CFEC
Our File No. 663-89-0233

February 7, 1989
Page 2

suspended under (a) of this section a permit card may not be issued and the permit may not be transferred or sold." Nothing in either AS 16.05.170 or 16.05.710, however, prohibits transfer of a permit prior to conviction.

Under AS 16.43.960(a), the commission has the authority to revoke, suspend, or transfer all of a person's entry or interim-use permits if the person knowingly provides or assists in providing false information or fails to correct false information provided to the commission for the purpose of obtaining a benefit. Under AS 16.43.960(c), a permit subject to commission proceedings to revoke, suspend, or transfer it may not be transferred until all administrative and judicial proceedings have been concluded. Nothing in AS 16.43.960, however, prohibits transfer of a permit pending a criminal prosecution.

Under AS 16.43.970(d), a permit holder charged by the state with a violation of AS 16.43 or a regulation adopted under it may not transfer the permit until after the final adjudication or dismissal of the charges. Nothing in that statute, however, prohibits transfer of a permit pending the outcome of criminal proceedings relating to the laws regulating commercial fishing.

Finally, AS 16.43.970(e) provides that a permit under suspension may not be transferred without the consent of the commission, but does not apply that requirement to a transfer request made by a permit holder who is the subject of a pending criminal prosecution for violating a law relating to commercial fishing.

In brief, there is no express exception to the otherwise mandatory statutory obligation to transfer the permit pending a criminal prosecution of the permit holder for a violation of AS 16.05.440 -- 16.05.690 or a federal or state commercial fishing statute or regulation. In the absence of explicit statutory authority to suspend the transferability of a permit pending such a prosecution, we believe the commission remains under the mandatory statutory obligation to transfer the permit if the requisite procedures have been followed.

We have discovered no cases directly addressing this question. 1/ In State Bd. of Medical Examiners v. Weiner, 172

1/ Judge Carpeneti apparently reached the same conclusion we
(Footnote cont.)

Bruce Twomley, Chairman, CFEC
Rich Listowski, Commissioner, CFEC
Phil Smith, Commissioner, CFEC
Our File No. 663-89-0233

February 7, 1989
Page 3

A.2d 661 (N.J. Super. Ct. App. Div. 1961), however, the State Board of Medical Examiners attempted to suspend temporarily a physician's license to practice medicine pending a criminal prosecution for manslaughter after 15 of his patients died. Under New Jersey law, the board had the authority to suspend a license to practice medicine for, inter alia, a "crime involving moral turpitude." Assuming that manslaughter was a crime involving moral turpitude, the court held that the board did not have the authority to suspend the license pending resolution of the criminal proceeding.

In reaching this conclusion, the court noted that the board might well have implied authority to suspend the license temporarily pending formal administrative proceedings before the board to suspend the license. The court refused, however, to find that such implied authority necessarily extended to a situation involving a criminal prosecution in court. The court reached this conclusion through a rigid statutory analysis, finding that the legislature intended the board's authority to suspend the license to be contingent on conviction of a crime of moral turpitude, but not upon an accusation (i.e., an indictment) standing alone.

If an Alaska court were to apply the same strict statutory analysis here, the commission would not have the legal authority to suspend a limited entry permit temporarily pending the outcome of a criminal prosecution. Under AS 16.05.710(a), the court has the authority to suspend a permit following conviction; under AS 16.05.710(c), the transferability of a permit is statutorily suspended only during the period of suspension ordered by the court.

It is not entirely clear that all Alaska courts would apply such a strict analysis, and there certainly are good public policy reasons why a court would not do so. Judge Carpeneti apparently did in the Stanbaugh case, however, and there can be

(Footnote cont.)

have reached when he entered a temporary restraining order prohibiting the commission from refusing to process a transfer request solely on the ground that there was a pending criminal prosecution of the permit holder on a fishing violation charge. Stambaugh v. Commercial Fisheries Entry Comm., 1 JU-88-1839 Civ. (Alaska Super., Nov. 18, 1988). Judge Carpeneti did not, however, include any legal analysis in his order, and one cannot determine the reasoning underlying it.

Bruce Twomley, Chairman, CFEC
Rich Listowski, Commissioner, CFEC
Phil Smith, Commissioner, CFEC
Our File No. 663-89-0233

February 7, 1989
Page 4

no argument that the commission's express statutory authority to suspend the transfer of permits temporarily appears limited to that appearing in AS 16.43.960(c) and 16.43.970(d) and (e). Under the express language of those statutes, the commission's authority to suspend transfers is triggered only by (1) the initiation of administrative proceedings before the commission relating to the revocation, suspension, or transfer of entry permits as a result of a person providing false information to the commission or a charge that the permit holder violated a provision of AS 16.43; or (2) a suspension of the permit.

While the commission does not have the express statutory authority to suspend a limited entry permit temporarily pending the outcome of a criminal prosecution in court, the same result might be reached through judicial imposition of conditions on the release of the permit holder pending the outcome of the criminal prosecution. AS 12.30.020(a) provides that a person charged with an offense shall

be ordered released pending trial on the person's personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the offense is an unclassified felony or class A felony or unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required, or will pose a danger to other persons and the community.

The offenses giving rise to judicial authority to suspend an entry permit are misdemeanors, so a person charged with one of those offenses would appear to be entitled to be released on his or her own recognizance or upon execution of an unsecured appearance bond unless the judicial officer finds either that release of the person will not assure his or her appearance or will pose a danger to other persons in the community.

The courts, however, appear to construe liberally their authority to impose additional conditions on the release of criminal defendants. Under AS 12.30.020(b)(6), in ordering a defendant to be released pending trial, the court may "impose any . . . condition considered reasonably necessary to assure the defendant's appearance as required and the safety of other persons and the community." An order imposing a condition of release is subject to appellate review under AS 12.30.030(b). The standard on review is whether the court abused its discretion.

Bruce Twomley, Chairman, CFEC
Rich Listowski, Commissioner, CFEC
Phil Smith, Commissioner, CFEC
Our File No. 663-89-0233

February 7, 1989
Page 5

The Supreme Court considered the issue of appropriate conditions of bail in Martin v. State, 517 P.2d 1389, 1398 (1974), and concluded that "trial judges have wide latitude in imposing suitable conditions for prehearing release, other than the denial of bail." The issue of bail conditions was also discussed in Gilbert v. State, 540 P.2d 485, 486 (1975):

Although he may not deny bail to an accused, prior to conviction, the trial judge can consider danger to the community as a factor in assessing the amount of bail or fixing the terms of a conditional release. He is in a far better position than an appellate court to assess the evidence and to determine, in the first instance, what alternatives are available, and the amount of bail that should be required.

Courts in Alaska impose a wide variety of bail conditions, and tailor the conditions to the facts of a particular case. For example, a court in an embezzlement case may order a defendant not to transfer funds or sell property while the case is pending. In a case where forfeiture of a motor vehicle is a possible penalty for driving while intoxicated, a court may order a defendant to give the title to the motor vehicle alleged to have been involved in the offense to the court and not to transfer title to the vehicle while the case is pending. 2/

Under AS 16.05.710, a possible penalty for a first or second violation of AS 16.05.440 -- 16.05.690 or a federal or state commercial fishing statute or regulation is suspension of a commercial fishing license or limited entry permit. Suspension is a mandatory penalty for a third or subsequent conviction of the above-listed offenses, or for any violation of AS 11.46.120 -- 11.46.130 in which the property is commercial fishing gear. After a limited entry permit is suspended under AS 16.05.710, a permit may not be transferred or sold.

It would be possible for a person to avoid the penalty provisions of the statute relating to permit suspension by transferring the permit prior to conviction. In this context, we believe a court has the authority to suspend transferability of a limited entry permit as a condition of bail pending trial.

2/ Forms of notice of forfeiture, acknowledgment of conditions, and order for this type of bail condition are attached.

Bruce Twomley, Chairman, CFEC
Rich Listowski, Commissioner, CFEC
Phil Smith, Commissioner, CFEC
Our File No. 663-89-0233

February 7, 1989
Page 6

We realize that the foregoing conclusions leave open the possibility that the transfer of a limited entry permit pending a criminal prosecution may preclude the sentencing judge, following conviction, from imposing one of the penalties authorized by the legislature -- i.e., suspension of the convicted defendant's permit under AS 16.05.710(a) -- if a suspension on transfer is not ordered as a condition of bail. At the same time, there is no express statutory basis for administratively suspending the transferability of a permit pending a criminal prosecution, although the legislature has authorized suspension of transferability during the pendency of administrative proceedings (AS 16.43.960(c)), following the charging of a violation of AS 16.43 (AS 16.43.970(d)), during any period of suspension under AS 16.05.710(a) following conviction (see AS 16.05.710(c)), or, without the consent of the commission, during any other period of suspension. (See AS 16.43.970(e)). Moreover, the court can guard against such a possibility by suspending transfer of the permit as a condition of release pending trial.

To the extent that our advice with respect to administrative suspensions of transfer by the commission conflicts with the intent of the legislature, the legislature is free to make appropriate statutory amendments. If you believe such amendments would be desirable, we suggest that you make such a recommendation to the legislature pursuant to your authority in AS 16.43.-980(a).

We hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

GTK:dlm
Attachments [3]

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
JOHN DOE)
)
Defendant.)
_____)
Case No. 1JU-S89-0000)

NOTICE OF INTENT TO FORFEIT MOTOR VEHICLE

The State of Alaska notifies the court and the defendant in the above-captioned case that upon the defendant's conviction for the crime of driving while intoxicated as charged in this case, the State will move, pursuant to AS 28.35.036, to forfeit the motor vehicle used by the defendant in the commission of this crime.

Year, Make and Model of Vehicle:

Vehicle License No.:

Vehicle Identification No. (V.I.N.):

DATED at Juneau, Alaska December 30, 1988.

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: _____
Laurie H. Otto
Assistant Attorney General

NOTICE OF INTENT TO FORFEIT

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 JOHN DOE)
)
 Defendant.)
)
 _____)
 Case No. 1JU-S89-0000

ACKNOWLEDGEMENT OF CONDITIONS OF RELEASE

I hereby acknowledge that, as a condition of my release on bail pending trial on the criminal charges in this case, the court has ordered that I may not drive or operate a motor vehicle. I acknowledge that the court has ordered me to give the court within 48 hours the title to the motor vehicle alleged to have been involved in the commission of the offense with which I am charged. I acknowledge that the court has ordered me not to sell or attempt to sell or transfer title to this vehicle while the above-captioned case is pending.

Year, Make and Model of Vehicle:

Vehicle License No.:

Registered Owner(s) of Vehicle:

Vehicle Identification No. (V.I.N.):

I understand that if I willfully fail to appear in court as ordered, or if I drive or operate a motor vehicle while this

case is pending, the court will order that the vehicle listed above be permanently forfeited to the state and that the title will be turned over to the state.

SIGNED, at Juneau, Alaska this _____ day of _____, 19____.

Defendant

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 JOHN DOE)
)
 Defendant.)
)

Case No. 1JU-S89-0000

ORDER OF CONDITIONS OF RELEASE

This matter having come before the court on the State's Notice of Intent to Forfeit Motor Vehicle, and the court being fully advised of the relevant facts,

IT IS ORDERED that, as a condition of his release on bail pending trial on the criminal charges in this case, the defendant shall comply with the following restrictions:

1. Defendant may not drive or operate a motor vehicle.
2. Defendant must turn in to the court no later than _____, 19____ the title to the motor vehicle alleged to have been involved in the commission of the offense with which he is charged.

3. Defendant shall not sell or attempt to sell or transfer title to the vehicle described below while the above-captioned case is pending.

Year, Make and Model of Vehicle:

ORDER

Vehicle License No.:

Registered Owner(s) of Vehicle:

Vehicle Identification No. (V.I.N.):

DATED at Juneau, Alaska this _____ day of _____,
19____.

DISTRICT COURT JUDGE

ORDER

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 ROSS GLEN STAMBAUGH,)
4 Plaintiff,)
5 v.)
6 COMMERCIAL FISHERIES ENTRY)
7 COMMISSION, STATE OF ALASKA,)
8 Defendant.)

FILED IN THE TRIAL COURTS
STATE OF ALASKA FIRST DISTRICT
AT

NOV 18 1988

By _____ PG Deputy

No. 1JU-88-1839 Civil

9
10 PRELIMINARY INJUNCTION

11 Plaintiff has moved for issuance of a temporary
12 restraining order. After notice, both sides were heard. The
13 CFEC, through counsel, has opposed the motion.

14 The court has considered the brief of plaintiff, the
15 evidence, and the arguments of counsel. The court finds that
16 the requirements for preliminary injunctive relief have been
17 fulfilled: AS 16.05.710 allows no other conclusion.

18 It is hereby ordered that the CFEC is enjoined from
19 suspending approval of the license transfer application
20 regarding Limited Entry no. S03T 55709U solely on the basis of
21 the proposed Transferor's pending criminal charges.

22 The CFEC is hereby ordered to process the application
23 in accordance with AS 16.43.170(b) and 20 AAC 05.1700 et seq.,
24 without regard to the possible consequences of the criminal
25 action.

This is not a mandatory injunction, and does not

1 compel transfer of the permit in question. It merely restrains
2 suspension of transfer proceedings because criminal charges are
3 pending against the transferor. Therefore, for example, if the
4 CFEC moves under AS 16.43.960, it clearly has the authority to
5 suspend the permit holder's ability to transfer the permit upon
6 issuance of a show cause order. AS 16.43.960(b)(5). There may
7 also be other bases for such an action, not addressed here.
8 This court rules only that the CFEC may not suspend transfer
9 because a charge is pending against the transferor. AS
10 16.05.710.

11 No bond is required.

12 IT IS SO ORDERED.

13 Done at Juneau, Alaska this 18th day of November, 1988.

14
15 Walter L. Carpenetti

16 WALTER L. CARPENETTI
17 Superior Court Judge

18 CERTIFICATION

19 The undersigned certifies that on the 18th day of
20 November, 1988, a true copy of this
21 document was served on the following attorneys:
Steven MARKS; GARY AMENDOLA

22 BY [Signature]

23
24
25
Attachment #2
(2 of 2)

will be personally accompanied while hunting by a person who is qualified under the terms of (a) of this section. A person who falsifies the required affidavit is guilty of perjury under AS 11.56.200.

(c) *[Repealed, § 27 ch 71 SLA 1986.]*

(d) A nonresident who violates (a) of this section, or who fails to furnish an affidavit under (b) or (e) of this section, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$5,060, or by both.

(e) An applicant for a nonresident big game tag for the taking of moose or caribou shall first furnish to the state, on a form provided by the state, an affidavit showing where the applicant will be hunting and what guiding, transportation, or other big game hunting services the applicant will be employing. A person who falsifies an affidavit under this subsection is guilty of perjury under AS 11.56.200. (§ 1 ch 86 SLA 1967; am §§ 39, 40 ch 59 SLA 1982; am § 1 ch 74 SLA 1982; am § 1 ch 111 SLA 1984; am §§ 24, 25, 27 ch 71 SLA 1986; am §§ 9, 10 ch 160 SLA 1988)

Effect of amendments. — The 1988 amendment, effective June 17, 1988, inserted "or (e)" in subsection (d) and added subsection (e).

Article 4. Licensing of Commercial Fishing Crewmembers and Vessels.

Section 710. Suspension of commercial license and entry permit	Section 722. Misdemeanor commercial fishing penalties
720 <i>[Repealed]</i>	
722. Strict liability commercial fishing penalties	

Sec. 16.05.710. Suspension of commercial license and entry permit. (a) A person convicted of a misdemeanor for violating AS 16.05.440 — 16.05.690 or a federal or state commercial fishing statute or regulation is, in addition to other penalties provided by law, subject to the following penalties:

(1) upon a first or second conviction the court may suspend, for a period of not more than one year,

(A) the person's commercial fishing license and the right to obtain a limited entry permit; or

(B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license; and

(2) upon a third or subsequent conviction the court shall suspend, for a period of not more than three years,

(A) the person's commercial fishing license and the right to obtain a limited entry permit; or

(B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license.

(b) Upon a first conviction of a person for a violation of AS 11.46.120 — 11.46.130 in which the property is commercial fishing gear as defined in AS 16.43.990, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for one year. Upon a second or subsequent conviction, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for two years.

(c) During the period for which a limited entry permit is suspended under (a) of this section a permit card may not be issued and the permit may not be transferred or sold.

(d) In this section

(1) "commercial fishing license" includes a crew member license;

(2) "limited entry permit" includes an interim use permit. (§ 11 art III ch 94 SLA 1959; am § 1 ch 112 SLA 1961; am § 1 ch 75 SLA 1966; am § 3 ch 73 SLA 1986; am §§ 1, 2 ch 46 SLA 1988)

Effect of amendments. — The 1988 amendment, effective May 25, 1988, repealed and reenacted subsection (a), which formerly related to the same subject matter, and added subsections (c) and (d).
Editor's notes. — Section 6 of ch. 46, SLA 1988, which amended this section, provides: "Notwithstanding the provisions of this Act, in a case pending on May 25, 1988 involving a commercial fishing violation that occurred before May 25, 1988, the court shall apply the law that was in effect on the date the violation occurred."

Sec. 16.05.720. Penalties. [Repealed, § 5 ch 46 SLA 1989.]

Sec. 16.05.722. Strict liability commercial fishing penalties. (a) A person who without any culpable mental state violates AS 16.05.440 — 16.05.690, or a regulation of the Board of Fisheries or the department governing commercial fishing, is guilty of a violation and upon conviction is punishable by a fine of not more than

(1) \$3,000 for a first conviction; and

(2) \$6,000 for a second or subsequent conviction.

(b) In addition, the court shall order forfeiture of any fish, or its fair market value, taken or retained as a result of the commission of the violation. For purposes of this subsection, it is a rebuttable presumption that all fish found on board a fishing vessel used in or in aid of a violation, or found at the fishing site, were taken or retained in violation of AS 16.05.440 — 16.05.690 or a commercial fisheries regulation of the Board of Fisheries or the department. It is the defendant's burden to show by a preponderance of the evidence that fish on board or at the site were lawfully taken and retained.

(c) A person charged with a violation under this section is entitled to a trial by court but not by jury, and is not entitled to representation at public expense. (§ 3 ch 46 SLA 1988)

will be personally accompanied while hunting by a person who is qualified under the terms of (a) of this section. A person who falsifies the required affidavit is guilty of perjury under AS 11.56.200.

(c) *[Repealed, § 27 ch 71 SLA 1986.]*

(d) A nonresident who violates (a) of this section, or who fails to furnish an affidavit under (b) or (e) of this section, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$5,000, or by both.

(e) An applicant for a nonresident big game tag for the taking of moose or caribou shall first furnish to the state, on a form provided by the state, an affidavit showing where the applicant will be hunting and what guiding, transportation, or other big game hunting services the applicant will be employing. A person who falsifies an affidavit under this subsection is guilty of perjury under AS 11.56.200. (§ 1 ch 86 SLA 1967; am §§ 39, 40 ch 59 SLA 1982; am § 1 ch 74 SLA 1982; am § 1 ch 111 SLA 1984; am §§ 24, 25, 27 ch 71 SLA 1986; am §§ 9, 10 ch 160 SLA 1988)

Effect of amendments. — The 1988 amendment, effective June 17, 1988, inserted "or (e)" in subsection (d) and added subsection (e).

Article 4. Licensing of Commercial Fishing Crewmembers and Vessels.

Section 710. Suspension of commercial license and entry permit	Section 723. Misdemeanor commercial fishing penalties
720. <i>[Repealed]</i>	
722. Strict liability commercial fishing penalties	

Sec. 16.05.710. Suspension of commercial license and entry permit. (a) A person convicted of a misdemeanor for violating AS 16.05.440 — 16.05.690 or a federal or state commercial fishing statute or regulation is, in addition to other penalties provided by law, subject to the following penalties:

- (1) upon a first or second conviction the court may suspend, for a period of not more than one year,
 - (A) the person's commercial fishing license and the right to obtain a limited entry permit; or
 - (B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license; and
- (2) upon a third or subsequent conviction the court shall suspend, for a period of not more than three years,
 - (A) the person's commercial fishing license and the right to obtain a limited entry permit; or
 - (B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license.

(b) Upon a first conviction of a person for a violation of AS 11.46.120 — 11.46.130 in which the property is commercial fishing gear as defined in AS 16.43.990, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for one year. Upon a second or subsequent conviction, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for two years.

(c) During the period for which a limited entry permit is suspended under (a) of this section a permit card may not be issued and the permit may not be transferred or sold.

(d) In this section

- (1) "commercial fishing license" includes a crew member license;
- (2) "limited entry permit" includes an interim use permit. (§ 11 art III ch 94 SLA 1959; am § 1 ch 112 SLA 1961; am § 1 ch 75 SLA 1966; am § 3 ch 73 SLA 1986; am §§ 1, 2 ch 46 SLA 1988)

Effect of amendments. — The 1988 amendment, effective May 25, 1988, repealed and reenacted subsection (a), which formerly related to the same subject matter, and added subsections (c) and (d).
 Editor's notes. — Section 6 of ch. 46, SLA 1988, which amended this section, provides: "Notwithstanding the provisions of this Act, in a case pending on May 25, 1988 involving a commercial fishing violation that occurred before May 25, 1988, the court shall apply the law that was in effect on the date the violation occurred."

Sec. 16.05.720. Penalties. *[Repealed, § 5 ch 46 SLA 1988.]*

Sec. 16.05.722. Strict liability commercial fishing penalties. (a) A person who without any culpable mental state violates AS 16.05.440 — 16.05.690, or a regulation of the Board of Fisheries or the department governing commercial fishing, is guilty of a violation and upon conviction is punishable by a fine of not more than

- (1) \$3,000 for a first conviction; and
 - (2) \$6,000 for a second or subsequent conviction.
- (b) In addition, the court shall order forfeiture of any fish, or its fair market value, taken or retained as a result of the commission of the violation. For purposes of this subsection, it is a rebuttable presumption that all fish found on board a fishing vessel used in or in aid of a violation, or found at the fishing site, were taken or retained in violation of AS 16.05.440 — 16.05.690 or a commercial fisheries regulation of the Board of Fisheries or the department. It is the defendant's burden to show by a preponderance of the evidence that fish on board or at the site were lawfully taken and retained.

(c) A person charged with a violation under this section is entitled to a trial by court but not by jury, and is not entitled to representation at public expense. (§ 3 ch 46 SLA 1988)

HB

205

HOUSE COMMITTEE REPORT

(4)
Date Referred: March 8, 1989

FURTHER REFERRALS: JUDICIARY
FINANCE

Date of Committee Action: 5-5-89

The RESOURCES Committee considered:

HB 205

HOUSE BILL NO. 205 [FOREST STEWARDSHIP AGREEMENTS]
"An Act relating to forest stewardship agreements."

RECOMMENDATIONS:

- be replaced with CS HB 205 (Res) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact 7+6 DNR fiscal note(s) _____
- zero fiscal note _____ zero fiscal note(s) _____
- zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

[Signature]
Bill Hudson
Rest Sharp

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>	X		
<u>Mike Savane</u>		X	
<u>Big Davidson</u>	✓		
<u>[Signature]</u>		X	

[Signature]
Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Fish and Game
 Title: Forest Stewardship
Agreement Bill
 BRU: _____
 Sponsor: Menard
 Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		181.8				
TRAVEL		6.0				
CONTRACTUAL		15.0				
SUPPLIES		2.0				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		204.8				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		4				
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *Frank Rue* Frank Rue, Director Phone: 465-4105
 Division: Habitat Date: 3/22/89
 Approved by Commissioner: *Thomas* Date: 3-28-89
 Agency: Department of Fish and Game

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

FISCAL NOTE ANALYSIS
Forest Stewardship Agreement Bill

This bill would allow state forest lands, which are currently required to be managed for multiple use and classified as to use under the state land planning process, to be administratively designated for forestry as a primary use by the Commissioner of ADNR, and transferred to a timber company for long-term management.

Resource conflicts which are currently resolved through the land planning, public review, and governmental decision making process would not be resolved through stewardship agreements. This would necessitate increased reliance on field monitoring and enforcement to protect anadromous streams and fish passage. Trying to resolve resource conflicts with the concessionaire is expected to be much more difficult because of the cost to the concessionaire. This would necessitate a substantial increase in ADF&G field staff.

FISCAL NOTE

REQUEST:

Revision Date: 4-27-89
 Title: An act relating to forest stewardship agreements
 Sponsor: Monard And Larson
 Requestor: House Resources

Agency Affected: Natural Resources
 BRU: Forest Management
 Components: Forest Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		157.7				
TRAVEL		21.0				
CONTRACTUAL		22.5				
SUPPLIES		2.5				
EQUIPMENT		28.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		228.7				

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		228.7				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		3				
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached

Prepared by: George K. Hollett *GKH*
 Division: Forestry

Phone: 465-2491
 Date: 5-5-89

Approved by Commissioner: *[Signature]*
 Agency: _____

Date: 5/5/89

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

CS HB 205 (RES) ANALYSIS

Assumptions: Regulations will have to be developed to establish the requirements of a forest stewardship agreement as well as those of determining a qualified bidder.

Several new plans must be developed and taken through the public review process.

Program Summary: The Natural Resource Manager I positions to be located in Anchorage and Fairbanks along with a Logging Engineer position will develop the regulations and new plans and take them through the review process.

The public review process called for will be very extensive and require travel to many communities in order to have acceptance of the proposed FSA. As new plans are developed they must be taken public requiring a large printing and distribution.

There will be a need for new vehicles for the positions in order to travel to the field in developing the necessary data. On the ground inspection is necessary to be able to comment and review on any plans submitted by a FSA holder.

Development of new forest industries will have good effects on the state and local government economy by bringing in additional revenue and creation of jobs. The local government will also benefit by increase in demand for other products and supplies thereby adding additional jobs within the communities.

1.	POSITION TITLE Natural Resource Manager I				RANGE/STEP 18/A	BARG. UNIT CG	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 7	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION:					
	ADDITION			x						
4.	TYPE OF EXPENDITURE			AMOUNT						
	1			2		3				
PERSONAL SERVICES										
5.	Salary 12 x 3113			37.4						
6.	Benefits 12 x 1119			13.4						
7.	Supplemental Benefits									
8.	Fixed Benefits									
9.	TOTAL PERSONAL SERVICES			01		50.8				
10.	Travel			02		8.0				
11.	Contractual			03		10.0				
12.	Commodities			04		1.0				
13.	Equipment			05		10.0				
14.	Other									
15.	TOTAL COST					79.8				
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004			79.8					
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
KEY NUMBER - - - - -										

JUSTIFICATION:

This position will be the lead person responsible for drafting required regulations and taking through the public review process with the Anchorage Area.

Prepare a plan for administration oversight of a FSA within the Mat-Su valley and take it to the affected state agencies.

Develop actions necessary to prepare one FSA and take it through the review process to completion.

Work with Logging Engineer and Northern NRM I in developing the required contract and any additional plans that must be developed.

REQUEST FOR
NEW POSITION

AGENCY Natural Resources

BRU Forest Management

COMPONENT Forest Management

Page 1 of 1

Revised Date _____

FY 90

1.	POSITION TITLE Logging Engineer				RANGE/STEP 18/A	BARG. UNIT CG	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 7	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION:					
4.	TYPE OF EXPENDITURE			AMOUNT	<p>This position will be the Division of Forestry field Engineer. In order to know what can and what can not be done in road development this position will be working on the ground with the NRM I's. Transportation information is needed to work into the appraisals and will be necessary for the agency and public review.</p> <p>Access development is necessary in any areas that may be purposed as FSA's and will become a part of the selection process of a concessionaire. The Division does not have this capability at present.</p>					
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	12 x 3113	37.4							
6.	Benefits	12 x 1119	1.4							
7.	Supplemental Benefits									
8.	Fixed Benefits									
9.	TOTAL PERSONAL SERVICES		01	50.8						
10.	Travel		02	5.0						
11.	Contractual		03	2.5						
12.	Commodities		04	0.5						
13.	Equipment		05	8.0						
14.	Other									
15.	TOTAL COST			66.8						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004			66.8					
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
	FOR B&M USE ONLY									
	KEY NUMBER - - - - -									

REQUEST FOR
NEW POSITION

AGENCY Natural Resources
BRU Forest Management
COMPONENT Forest Management

Page 1 of 1
Revised Date

FY 90

1.	POSITION TITLE Natural Resource Manager I				RANGE/STEP 18/A	BARG. UNIT GG	PAGE/LINE	GOV.	APPROV.	DISAPP	
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT 20	LEG.			
3.	CONTINUATION LEVEL				JUSTIFICATION:						
4.	TYPE OF EXPENDITURE										
	1		2		3						
	PERSONAL SERVICES										
5.	Salary	12 x 3237			38.8						
6.	Benefits	12 x 1194			14.3						
7.	Supplemental Benefits										
8.	Fixed Benefits										
9.	TOTAL PERSONAL SERVICES		01	53.1							
10.	Travel		02	8.0							
11.	Contractual		03	10.0							
12.	Commodities		04	1.0							
13.	Equipment		05	10.0							
14.	Other										
15.	TOTAL COST				82.1						
	RECEIPT CODE				FUNDING SOURCE						
16.					Federal Receipts 1002						
17.					G.F. Match 1003						
18.					General Funds 1004 82.1						
19.					I-A Receipts 1005						
20.					Program Receipts 1028						
21.					Other						
FOR B&M USE ONLY											
KEY NUMBER - - - - -											

JUSTIFICATION:

This position will help develop the required regulations and take them through the public review process in the Fairbanks area.

Prepare a plan for administrative oversight of a FSA within the Northern Region and take it to the affected State Agencies.

Develop actions necessary to prepare one FSA and take it through the review process to completion.

Work with the Logging Engineer and Southcentral NRM I in developing the required contact and any additional plans that must be developed.

REQUEST FOR
NEW POSITION

AGENCY Natural Resources

BRU Forest Management

COMPONENT Forest Management

FY 90

Page 1 of 1

Revised Date _____



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Habitat	BILL NUMBER	SPONSOR Menard
SHORT TITLE OF BILL Forest Stewardship Agreements			
DEPARTMENT POSITION Oppose			
PREPARED BY Frank Rue, Director	DATE 3/21/89	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 3/20/89

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Dept. of Natural Resources Dept. of Environmental Conservation See attachment	CONSTITUENT GROUP(S) AFFECTED BY BILL Timber industry, Municipalities, tourist industry, Aircharter See attachment
ORGANIZATIONAL SUPPORT FOR BILL Redcor Resource Development Council	ORGANIZATIONAL OPPOSITION TO BILL Susitna Valley Association Environmental groups

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

See attachment

ANALYSIS OF BILL/PROGRAM EFFECTS

See attachment

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS
Forest Stewardship Agreement

OTHER AGENCIES AFFECTED BY BILL

Department of Revenue, Department of Law

CONSTITUENT GROUP(S) AFFECT BY BILL

businesses, Native corporations, commercial fishing industry, lodge owners, guides, sport fishermen, local property owners

BACKGROUND/LEGISLATIVE INTENT

The stated intent of the draft FSA bill is that the natural resources associated with woodland biomes in the state be protected and enhanced while making the resources available for maximum sustained use, consistent with the public interest; the cost of managing state forest land be transferred to the private sector; and that entering into forest stewardship agreements with a private concessionaire is the best way to achieve the aforementioned objectives.

ANALYSIS OF BILL/PROGRAM EFFECTS

Forest Stewardship Agreements (FSAs) would allow the Commissioner of the Department of Natural Resources to turn over large tracts of multiple-use, state-owned land to be managed by a timber company for silviculture and timber harvest. There is no mention of protection of other resources, uses, or industries such as the commercial fishing industry, recreational industry, tourism, subsistence or any other use. The following points raise specific problems with this bill.

1. The bill makes forestry the primary use on lands where it is applied regardless of the value of those lands for other resources or uses. It does not provide any process for resolving conflicts or excluding lands where forestry would be incompatible with a more or equally important public value. There is also no requirement for ADNR to identify and mitigate potential impacts to fish and wildlife habitats, and other forest user groups such as commercial fishermen, lodge owners, guides, subsistence users and include mitigative measures as part of any FSA.
2. There are no standards in the bill which require an analysis showing net public benefit before entering into a FSA. It negates the state's land use planning and classification process by allowing state lands to

STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS
Forest Stewardship Agreement

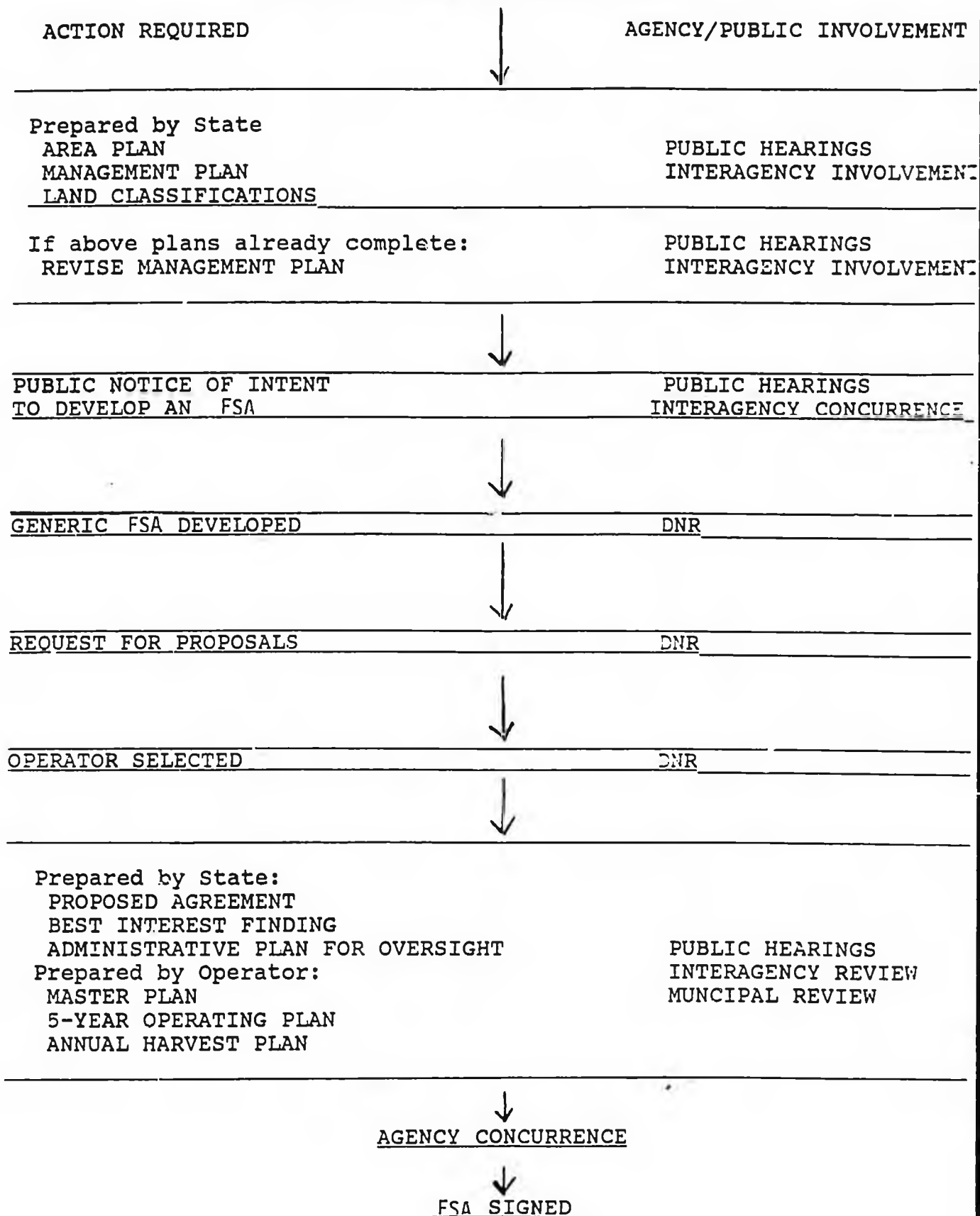
be included in FSAs regardless of classification value for other uses or public interests. Through the public planning process, many forested lands have been classified with forestry as a co-primary use, a secondary use, or even as a prohibited use. This bill could reverse ten years of public planning.

3. By substituting a private timber company for state management it removes agencies and the public from future decisions on public lands.
4. As written, FSAs would tend to perpetuate themselves regardless of the degree of public benefit they provide. Once infrastructure and jobs have been created there will be tremendous pressure to perpetuate an agreement even if it becomes obvious that the social, economic, and environmental costs outweigh the benefits and that a public subsidy is necessary to perpetuate the activity. Further, the long-term tenure and options for renewal would make it difficult to get out of an FSA or substantially change it if it appears that continuation is not in the public interest.
5. FMAs are relatively new concepts (since 1980) which have only been used in Canada. Although there are several papers criticizing FMAs as a constraint to efficient forest management (attached), there is very little written information on the effect of these agreements on fish and wildlife habitat resources and uses. However, there is no indication that the Canadians made any analysis or impact assessment before or after adopting FMAs as a means of managing forest lands.
6. The FSA holder would be interested in maximizing profit. Because it takes approximately 80 to 120 years to grow a mature tree in Alaska's boreal forest, there is limited incentive for a concessionaire to make substantial investments in reforestation, or to forego timber harvest to protect other resources unless he was reimbursed by the state in the form of reduced stumpage fees or other subsidies. The extremely long rotation time for the boreal forest (80-120 years) raises serious questions about any potential investors' willingness to invest in optimal forest management. It makes harvest of old-growth forest attractive but offers little if any incentive for maintenance of fish and wildlife habitat and other forest based resources.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS
Forest Stewardship Agreement

7. Assuming the FSA concept could be amended to address resource values other than timber, the Department of Fish and Game would have to either increase its staff of planners and field staff to evaluate proposed FSAs to monitor timber harvest and silviculture activities or run the risk that significant long-term degradation of fish and wildlife would occur. The Department of Natural Resources will also have to increase its staff to ensure that the state will receive fair value for its timber, and that the concessionaire complies with the terms of the agreement. This could increase rather than reduce costs to the state.

FOREST STewardSHIP AGREEMENT PROPOSED



CS HB 205 FOREST STEWARDSHIP AGREEMENTS

Goals for forest stewardship agreement legislation:

- Improve public involvement/notice
- Improve inter-agency coordination
- Provide for extensions of an agreement
- Provide for purchasers credits
- Provide for a multiple variable bid process
- Specify items to be included in an agreement
- Provide incentive for improved management practices

PUBLIC PROCESS

To assure public participation in a forest management agreement the following would be required:

- 1) public notice of the intent to enter into a forest stewardship agreement;
- 2) public notice given and hearings held prior to the Commissioner entering into an agreement and whenever the agreement comes up for an extension.

The Commissioner would make available for review:

- 1) a master plan for the term of the initial agreement;
- 2) an operating plan for the first five years;
- 3) an annual harvesting plan for the first two years of operation;
- 4) the proposed contract; and
- 5) a best interest finding prepared by the Commissioner.

INTER-AGENCY COORDINATION

To assure the involvement of the Departments of Fish and Game and Environmental Conservation and Commerce and Economic Development in a forest stewardship agreement, the Departments should:

- 1) be consulted prior to the Commissioner announcing a potential sale;
- 2) review the best interest finding, proposed agreement and the master, operating and harvest plans prior to the Commissioner entering or extending an agreement; and
- 3) be consulted when an extension is being considered.

CONTRACT EXTENSION

The "evergreen" clause would provide for extensions to the existing long-term agreement. Extensions could also be applied for once the initial agreement has expired and the contractor is operating on an existing extension.

In applying for an extension, a contractor would submit a five-year operating plan for the next five years and an amended master plan covering the extension.

Prior to granting an extension the Commissioner would:

- 1) prepare a best interest finding;
- 2) review existing and proposed operations;
- 3) consult with the Commissioners of environmental conservation and fish and game;
- 4) find that the operator has complied with state law and the terms of the forest management agreement; and
- 5) provide for public notice and hearings.

PURCHASERS CREDITS

A credit may be applied against future stumpage payments for replacement of a road or other infrastructure that was damaged by natural causes or if the operator provides items which do not directly contribute to the management or harvest of timber (i.e., scenic turnouts or parking areas).

MULTIPLE VARIABLE BID PROCESS

Present law requires the Commissioner to award timber sales to the highest qualified bidder. Since forest stewardship agreements involve more than stumpage value, a multiple variable bid process should be instituted.

In reviewing bids received the Commissioner would consider:

- 1) the stumpage payments proposed by the bidder;
- 2) the amount of the investment in plant and facilities proposed by the bidder;
- 3) the utilization standards proposed by the bidder;
- 4) the number of jobs to be provided by the bidder;
- 5) the relevant experience of the bidder;
- 6) road construction, reforestation and recreation improvements requested by the Commissioner; and
- 7) other items requested by the Commissioner or offered by the bidder.

ITEMS TO BE INCLUDED IN AN AGREEMENT

An agreement for the harvest of state timber under this section shall provide for

- 1) the term of the initial agreement, not to exceed 20 years, and conditions for an extension of the term;
- 2) the stumpage prices to be charged for the timber;
- 3) penalties for violation of the terms of the agreement and termination of the agreement;
- 4) public use of state land involved in the agreement except that the contractor may limit access in an area that is being harvested or where hazardous conditions exist;
- 5) the protection of compatible and noncompatible uses such as mining and recreation;
- 6) a bond from the purchaser to protect the interests of the state;
- 7) protection of state-owned land within 100 ft. of rivers, lakes, or streams to provide soil stability and protect fish habitat, although more state land may be protected as necessary for these purposes;
- 8) the preparation of reports required by the Commissioner; and
- 9) other terms, conditions, and limitations determined to be in the public interest by the Commissioner.

INCENTIVE FOR IMPROVED MANAGEMENT PRACTICES

If an operator is able to increase the allowable annual cut through his management techniques, the incremental volume should be made available at the same or a reduced rate.

The present bill provides:

At any time during an agreement, if the forest inventory data indicate an increase in the allowable annual cut resulting from the management activities of the contractor, the Commissioner may make the incremental stumpage available to the contractor at the same or a reduced rate.

CS HB 205 FOREST STEWARDSHIP AGREEMENTS
SECTIONAL ANALYSIS

Section 1. INTENT. It is the intent of the legislature that the Commissioner provides areas within and near lands subject to a forest stewardship agreement for the harvest of timber by small independent operators.

Section 2.

Sec. 41.17.500. PURPOSE. The purpose of a Forest Stewardship Agreement is to allow for an agreement between the state and a private party for the cooperative management of public forest land. A FSA may relieve the state of some of the administrative responsibility associated with developing and managing timber sales.

In an FSA a contractor might be responsible for developing; a plant and facilities or providing services such as road construction and maintenance, reforestation, recreation improvements and protection of other uses of state land.

An FSA does not permit the avoidance of other state laws or regulations affecting environmental conservation, timber practices, fish and game or any other resource or use of a resource.

Sec. 41.17.510. FOREST STEWARDSHIP AGREEMENTS. The Commissioners of environmental conservation, fish and game and commerce and economic development must concur with the commissioner of natural resources before entering into a forest stewardship agreement. The Commissioner must also consult with affected municipalities.

A FSA is subject to any changes in existing state and federal laws and regulations.

Sec. 41.17.520. PLANS. A forest stewardship agreement must be consistent with the Alaska Coastal Management Program and existing area and management plans and land classifications adopted by the Commissioner. If no plans exist they must be developed prior to the development of an FSA. If a management plan is in place for an area it must be revised to allow for an FSA.

Before the Commissioner enters into an agreement, the Commissioner must prepare a plan for administrative oversight of the agreement in consultation with other affected state agencies.

Also, before the Commissioner enters into an agreement, the operator must prepare a master plan, a five-year operating plan and an annual harvesting plan. These will be reviewed by the public and other agencies.

Sec. 41.17.530. NOTICE OF INTENT TO DEVELOP AN AGREEMENT. After the area plan, management plan and land classifications are developed by the state and the Commissioner determines it is feasible to develop a FSA, the Commissioner will notify the public and affected private landowners of the intent to consider a FSA for an area. The Commissioner will hold public hearings in affected communities.

Sec. 41.17.540. REQUIREMENTS OF FOREST STEWARDSHIP AGREEMENTS. Items which must be addressed in a forest management agreement: term of the contract, stumpage prices and adjustments, penalties for violations, update of the five-year operating plan and annual harvesting plan, public access, protection of other uses, purchaser bond, protection of buffer strips, maximum allowable cut, minimum and maximum development requirements, preparation of reports required by the Commissioner and other items in the public interest as determined by the Commissioner.

Regulations must be established by the Commissioner for the requirements for access development, harvest, management and reforestation.

The Commissioner may require from the purchaser: a reimbursable service agreement for monitoring and enforcing the terms and conditions of the agreement and state law, compensation for scaling services, construction and maintenance of access roads and designation of timber volume for small operations.

Sec. 41.17.550. CREDITS. Allows for purchasers credits to be granted against future stumpage payments under specific conditions. The credit given may not exceed the value owed to the state.

Credits for construction are subject to the Commissioner's authorization, interagency review and public notice.

Sec. 41.17.560. MOST QUALIFIED BIDDER. Establishes the items to be considered in a multiple variable bid process. The Commissioner must develop minimum qualifications for a bidder through regulation.

The Commissioner must adopt regulations detailing the bidding procedure and the method of determining the most qualified bidder.

Sec. 41.17.570. REVIEW AND PUBLIC NOTICE. Before the Commissioner enters into or extends an agreement or issues a final best interest finding, the Commissioners of DEC, F & G and CED and affected municipalities must review the proposed agreement, the proposed best interest finding, the master plan, 5-year operating plan, annual harvest plan and the plan for administrative oversight. The Commissioner shall provide public notice before adopting the finding and plans and hold appropriate public hearings.

Sec. 41.17.580. BEST INTEREST FINDING. Before entering into or extending an agreement the Commissioner must issue a written finding that the proposed agreement is in the best interest of the state.

Sec. 41.17.590. INCREMENTAL VOLUME AVAILABLE. If the Commissioner determines the contractor has increased the annual allowable cut through his management techniques, the incremental volume may be made available to the contractor at the same or a reduced rate if it is consistent with other objectives of the agreement.

Sec. 41.17.600. EXTENSIONS OF FOREST STEWARDSHIP AGREEMENTS. An agreement may be extended each fifth year of the agreement. An extension may not exceed five years. Extensions may continue to be applied for and granted after the initial term has expired and the contractor is operating under the extension.

In the extension process the contractor must submit a proposed operating plan for the next five years of operation and amend the management plan as the Commissioner deems necessary.

Before granting an extension the Commissioner must find that the operator has complied with the terms of the agreement through review of existing and proposed operations and consultation with affected agencies and municipalities. The Commissioners of DEC, F&G, CED must concur with the Commissioner.

Before granting an extension the Commissioner must adopt a best interest finding, provide public notice and hold appropriate public hearings.

Sec. 41.17.610. ACCOUNTING. Money collected under this section must be accounted for separately by the Commissioner of administration. The annual estimated balance may be appropriated to DNR by the legislature to carry out the purposes of this Act.

Sec. 41.17.620. OTHER AUTHORITIES UNAFFECTED. An FSA does not affect the authority of the Department of Fish and Game, the Board of Fisheries, the Board of Game, The Department of Environmental Conservation or other state agencies and municipalities.

Sec. 41.17.630. EXEMPTION. Exempts this section from the provisions of the procurement code, AS 36.30.

Sec. 41.17.640. DEFINITIONS.

Section 3. Amends AS 38.05.120 to allow timber to be disposed of under this section.

ENCLOSURE 2

Section 1 It is not clear if the intent statement covers all forest resources or just timber. Fish and wildlife resources are managed for optimum rather than maximum sustained use, and it is reasonable to expect timber to be harvested for optimum rather than maximum sustained yield as well. Otherwise logging can be expected to have a disproportionately negative impact on fish and wildlife.

Section 2 Even though the private sector would be given state-owned timberlands to manage, in reality, the state would still pay the costs of management indirectly through reduced stumpage fees or some other mechanism. There would also be a need for the state to maintain a staff of foresters, auditors, and other experts to ensure that concessionaires are living up to the terms of their agreements.

Section 3 To our knowledge, FMA's have never been used in the United States. Montana considered but rejected the idea (enclosed). We have not seen any information which demonstrates that an FMA is the best way to manage state-owned timber, or that it will not have a very negative impact on the production and management of other public resources. Some Canadian economists and foresters believe that FMAs are an impediment to efficient forest management.

Section 41.17.092(a) This section states that the commissioner may enter into an FSA "with a person doing business in the state for the purpose of protecting, enhancing, or using the natural resources of the state." It is unclear whether the FSA is limited to forestry or includes natural resources such as fish and wildlife, sand and gravel, or oil and gas. It is also unclear what rights the concessionaire would be given to these resources and what the legal basis would be for doing so. The intent of this section and its scope are not evident.

(b) This section allows the imposition of FSAs on any state lands except for state parks. This would appear to include lands where forestry may not be an allowed use or a primary use under the state land classification system. There is not any provision for public review to see if the public wants these lands managed under a FSA, or for a process to determine what impacts an FSA would have on other resources and industries. There is also a question of whether the commissioner could enter into an agreement designating a very large tract of land to a single use without legislative approval.

(c) The reason and justification for a 20-year term is not indicated. It seems irrelevant if the commissioner is required to extend the contract five years in perpetuity for "faithful performance." It seems that there should be a requirement for the commissioner to determine if renewal is in the public interest, regardless of how the concessionaire has performed. Because economic factors change, and new environmental information becomes available, the commissioner should have the discretion to renew or not.

(d) The commissioner should be required to also (1) apply any pertinent terms and conditions from state land use plans in the area, and (2) conduct a pre-FSA analysis to determine what site-specific mitigation measures are necessary to protect fish and wildlife habitats and other forest resources and uses. This analysis and public review should consider whether the area should be leased under an FSA and what tracts should be deleted because a FSA would be incompatible with existing uses and resources.

(f) This section appears contradictory. It requires a five-year allowable cut determination, but allows the annual harvest to exceed up to five times the annual allowable harvest. It appears that the concessionaire could cut his five-year allowance in one year and then sit idle for four years. It also seems that this section allows the concessionaire to exceed the annual allowable cut for a longer period of time if there is a reason for doing so. This section should require the commissioner to calculate the optimal harvest level which would be the annual allowable cut minus any volume that is required to buffer fish streams, maintain important wildlife habitats, protect water quality, maintain recreational quality, and other factors. This annual allowable cut should not be exceeded because of its effect on other resources.

(i) The requirement to set aside 20 percent of the land subject to an FSA for competitive bidding seems inconsistent. There appears no reason to include this land within an FMA at all, since it wouldn't be managed by the concessionaire. It is unclear why the state should pay for improvements to forest lands that the state didn't request.

(j) Although there is a requirement to provide public access, restrictions of such access that were deemed necessary by logging companies have been a criticism of Canadian FMAs. A company may try to protect itself by blocking public access to all bridges and facilities which might incur liability. Specific criteria should be included specifying when it is not acceptable to block public access.

Section 14.17.094 The commissioner should not prepare a list of areas suitable for FSAs without a public planning process and public hearings. A social, economic, and environmental analysis should be done before including any area on this list.

Section 41.17.096(b) Because members of the Board of Forestry have a financial interest in the forest products industry, there is some question about the propriety of their participating in the selection process.

(d) The meaning and intent of Section (d) is not clear. It is unclear what is meant by "cooperative resource management and development agreement" and how it differs from an FSA.

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4100

March 29, 1989

The Honorable Curt Menard
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Dear Representative Menard:

The Alaska Department of Fish and Game (ADF&G) has reviewed the draft Forest Stewardship Agreement Bill. Based on our analysis of the proposed bill, and a review of the available literature on Forest Management Agreements, we believe that this legislation would deleteriously affect existing land use allocations and the current land management decision-making process. This, in turn, could prevent our department from fulfilling its statutory mandate to protect, preserve, maintain and, where possible, enhance fish and wildlife resources on state lands covered by these agreements.

The ADF&G cannot support a statute that would administratively designate timber harvest and silviculture as the primary use on large tracts of state land, and then further remove these lands from the existing multiple use decision-making process by turning them over to a concessionaire for long-term management. Through the state's land use planning process, many state forest lands have already been classified for other uses, or forestry has been designated as a co-primary use with fish and wildlife, recreation, and other uses. Forest Stewardship Agreements (FSAs) would circumvent the current land classification and balancing process, which helps to ensure that all important land uses are compatible. It would also make it very difficult to resolve serious conflicts should they arise.

Additionally, the department questions whether the proposed legislation would shift the financial burden of administering forest land to the private sector. To the contrary, we believe that ADF&G would have to maintain substantial staff to review plans and monitor timber harvesting to ensure compliance with Title 16 statutes and whatever fish and wildlife mitigation might be included in the agreements. The Alaska Department of Natural Resources (ADNR) would have to maintain a staff of foresters and

March 29, 1989

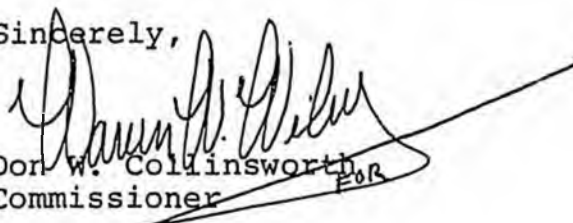
auditors to ensure that the concessionaire was complying with the terms of the agreement and the public's interest was being served.

Enclosed is a more detailed analysis of the draft bill (Enclosure 1), specific comments on some of the provisions contained in the proposed legislation (Enclosure 2), and a fiscal note which is based upon a hypothetical FSA for state forest lands in the Susitna Valley (Enclosure 3). Also enclosed are four papers discussing various aspects of Forest Management Agreements (Enclosure 4).

We believe that the ADNR existing timber sales statutes and regulations are adequate and flexible enough to allow the department to offer a reasonable supply of public timber to industry. The proposed legislation is not necessary to meet the need for timber and will make it more difficult to balance the needs of the timber industry and other economically, socially, and environmentally important uses of public forest lands.

Thank you for the opportunity to comment on the draft Forest Stewardship Agreement Bill. If you have any questions about the department's comments, please contact Frank Rue or Bruce Baker of our Habitat Division.

Sincerely,



Don W. Collinsworth
Commissioner

Enclosures

March 7, 1989

DEPARTMENT OF NATURAL RESOURCES
POSITION PAPER

Subject: Forest Management Agreements

Position: The department currently does not support forest management agreements. The state's resource inventory and management infrastructure is insufficient to support FMA's. Other options which provide for diversification should be explored.

Background: The State of Alaska, Department of Natural Resources, Division of Forestry is responsible for forest management on ten million acres of forest lands.* Most of these lands lie between Anchorage and Fairbanks and contain large quantities of both hard and soft woods. Much of the forested land is inaccessible and inadequately inventoried. The state is currently using small short-term sales for the sale of fuelwood, house logs and salvage logging. Longer term sales have been used to market larger volumes.

"Forest Management Agreements" (FMA's) have been suggested as a means to encourage the development of a stable forest industry. An agreement may be a long-term negotiated contract where some of the terms require the contractor to provide for the management and reforestation of an area. In return the contractor is guaranteed a long-term source of timber.

The possibility of enacting FMA's as a means to promote a stable industry while providing acceptable forest management has been explored both by the department and the 15th and 16th Legislatures.

The following attributes support forest management agreements:

- 1) FMA's promote a stable industry. Industry must have a long-term assured supply of raw material. A long-term contract would provide stability and an assured resource.

* See attached land-use breakdown.

- 2) FMA's may provide cost savings to the state by placing the management expense on the contractor.
- 3) FMA's may not always show a substantial return to the state but they may provide steady employment and help establish a stable economy.

The following points have been made by land managers and others in opposition to forest management agreements:

- 1) While a contractor would presumably bear the cost for management, the state would still be responsible for overseeing the contract and enforcing its terms. This would require additional staff and considerable expense on the part of the state. Many people experienced with FMA's assert there are no savings to the government.
- 2) Once a forest management agreement is established it is highly unlikely it would be terminated even if there were a substantial breach of the contract.
- 3) FMA's would commit large amounts of land and resources to one contractor. If that contractor fails, the contract fails and the entire economy built on this one long-term contract will collapse.
- 4) The existing infrastructure (i.e. transportation, access and facilities) is inadequate to meet the need of a developing forest industry. There exists the question of who will develop, fund and maintain the necessary construction.
- 5) FMA's eliminate competitive bidding for the state's forest resources, raising substantial policy questions for decision makers.
- 6) FMA's transfer management of state multiple use land to a private contractor who manages primarily for timber.

Recommendation:

1. As funding permits, the Division of Forestry will begin an evaluation of the existing land base to provide a current inventory by species and volume, long-term timber production potential and timber sales options.

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BUSINESS DEVELOPMENT

STEVE COWPER, GOVERNOR

P.O. BOX EE
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2017

March 10, 1989

Honorable Curt Menard
Alaska State Legislature
House Resource Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Menard:

RE: Comments on Forest Stewardship Agreement Legislation

I have reviewed the proposed Forest Stewardship Agreement legislation and offer the following comment per your request.

The concept of devoting or dedicating a portion of forest land for the express purpose of intensive timber management is one that has proven successful in other areas of the world, most notably Canada and the Scandinavian countries. In Canada the driving philosophy was one of settling large tracts of basically unpopulated land and providing a means by which people could exist on them. In the Scandinavian countries the basis was a recognition of a finite resource base that demanded intensive management if it were to meet both the social and economic needs of the population. The success of these efforts rests largely on the determination of the government(s) to make them work. While such approaches to forest industry development are criticized from some quarters, it can be said that these programs have succeeded in inducing the forest products industry to commit financially to infrastructure development, primarily in the form of manufacturing facilities, and that this commitment has resulted in an overall economic benefit to the respective areas. Additionally, in the Scandinavian experience, it has fostered the development of the most advanced silvicultural techniques employed in forest management and a concomitant industry that develops and manufactures state-of-the-art timber harvesting and wood processing equipment.

The thrust of this bill is consistent with the Governor's Memorandum of July, 1988 wherein he calls for efforts to "encourage the sale, long-term lease, or contractual management of state-owned forest land

for the development of a forest products industry consistent with the public interest and multiple use concepts." It is important to note that while the timber industry in Southeast Alaska has enjoyed a healthy rebound in the past two and one-half years, development of northern forests in the Southcentral and Interior regions of the state has lagged behind. This may in some way reflect the general economic decline of the areas but perhaps more importantly reflects the total lack of infrastructure necessary for the industry to flourish. The intent of the proposed legislation does address this aspect of the overall development but could go further.

My comments on specific points in the proposed bill are as follows:

Sec. 41.17.092

(c) The proposed 20 year term of the initial agreement includes review and evaluation of the performance at 5 year intervals. This seems appropriate however this section might be extended to include language that requires annual reporting of certain achievements in addition to the periodic review. Such reporting procedures would include but not be limited to volume harvested, acres planted, thinned, etc., road construction accomplishments and so on. Each 5 years these annual progress reports could be compiled and analyzed as a measure of performance and compliance with the management objectives.

(d) It seems appropriate that the Forest Practices Act recently revised (but not yet promulgated) would apply to the land designated under the agreement. Part of the monitoring of the performance of the concessionaire would include habitat protection measures, etc., provided for by statute, regulation and BMP in the Forest Practices Act. This portion of the monitoring would be conducted continuously and not at 5 year intervals.

(f) The basis for annual harvest limitations or restrictions must be carefully considered. The method for establishing harvest levels must be sensitive to the financial scheme the concessionaire develops in terms of amortization and recovery of investment. This section might include language that allows for stepped or progressive levels of harvest that are linked to a progressive schedule of manufacturing capacity installation. Increasing manufacturing capacity over time to achieve a design capacity may allow the operator and the state the flexibility needed during a start-up phase.

March 10, 1989

(g) The area transportation plans referred to in this section must be coordinated well in advance of operations and in all cases reviewed from a regional standpoint to assess compatibility with regional transportation plans. This process would identify opportunities for timber haul road construction to also service other resource development while minimizing overall impact.

(i) Any forest management proposal must attempt to balance the needs of various sized operators already established and present opportunities for new entrants. Additionally, the mix of operators and businesses including the concessionaire must not be placed in a do-or-die position when competing for the available timber. This legislation should work toward encouraging a mix of harvesting and manufacturing entities that are compatible and to the degree possible, capable of operating independently.

As a final point, it should be noted that timber inventory data for Southcentral and Interior Alaska is in most cases outdated. I feel certain that thorough and comprehensive inventory work in areas contemplated for stewardship agreements is needed and that it will add greatly to the probability of success of this approach to management of forest land in the state.

Quite recently federal agencies undertook to reevaluate a statewide forest inventory study originally conducted in 1967. One thrust of this report, which is available in draft form only, was to examine the commercial forest resource in terms of the current ownership pattern, something that had not been done since the advent of state selections, land claims and various federal land legislation. While general in nature, this report will be of assistance in future planning efforts on lands of varied ownership. Of particular interest to the issue of forest stewardship, the report points out that the State of Alaska now owns the highest volume areas in the interior, averaging 1,155 cubic feet per acre and totaling 4.9 billion cubic feet. This statistic has generic value only, in that it provides some perspective of the magnitude of the resource base.

Sincerely,



Gerry Engel, Program Manager
Minerals & Forest Products

GE/cw0776A
31089a



RESOLUTION 89-9

RECEIVED MAR 3 1 1989



HOUSTON, ALASKA
A BICENTENNIAL COMMUNITY

A RESOLUTION OF THE CITY OF HOUSTON SUPPORTING THE CONCEPT OF REDCOR'S PROPOSED FOREST STEWARDSHIP AGREEMENT ACT.

WHEREAS, the City of Houston contains one of the State's largest forests; the Susitna Forest; and

WHEREAS, the State is not properly managing the Susitna Forest; and

WHEREAS, the lack of proper management is allowing the forest to deteriorate; and

WHEREAS, the lack of proper management is restricting the amount of timber harvesting; and

WHEREAS, proper stewardship of the Susitna Basin Forest will improve multiple use management of the forest; and

WHEREAS, the Regional Economic Development Corporation has proposed legislation for the proper stewardship of all forests in Alaska; and

WHEREAS, the Matanuska-Susitna Borough Agricultural and Forest Advisory Board supports the proposed legislation; and

WHEREAS, the City of Houston Planners support the proposed legislation.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Houston strongly supports the concept of the Forest Stewardship Agreement Act as proposed by the Regional Economic Development Corporation.

PASSED AND APPROVED by the City Council of the City of Houston, this 23rd day of February, 1989.

ATTEST:

Marcella Padde
Mayor

Linda L. Padde
City Clerk



CITY OF WASILLA

290 E. HERNING AVE.
WASILLA, ALASKA 99687
PHONE: 373-9050

RESOLUTION NO. WR89-02

A RESOLUTION OF THE CITY COUNCIL OF WASILLA, ALASKA supporting legislation pertaining to Forest Stewardship Agreements that will be considered by the Alaska State Legislature.

WHEREAS, world economics and technology now allows for the profitable harvesting and conversion of Alaska timber to meet world market demands for plywood, lumber, furniture stock, paper and pulp, and,

WHEREAS, skillful management of Alaska's forests will allow for increased timber growth, improved animal habitat, new recreational opportunities and expanded road networks; and,

WHEREAS, the development of a timber industry that will attract investment for mills, factories and equipment depends on the ability of State agencies to enter into long term, large volume forest stewardship agreements.

NOW, THEREFORE BE IT RESOLVED that the Wasilla City Council urges legislative action to adopt rules and regulations that will enable and encourage State agencies to enter into forest stewardship agreements which provide for private sector professional management of State owned or controlled forested lands.

I certify that a resolution in substantially the above form was passed by a majority of those voting at a duly called and conducted meeting of the governing body of the City of Wasilla this ____ day of _____, 1989.

ATTEST:

APPROVED:

Erling P. Nelson, C.M.C.
City Clerk

John C. Stein, Mayor

(Seal)

CITY OF PALMER, ALASKA

RESOLUTION NO. 812

A RESOLUTION SUPPORTING THE FOREST MANAGEMENT CONCEPT.

WHEREAS, the need to develop a viable timber industry in the Matanuska-Susitna Borough is a long-term goal, and

WHEREAS, the Matanuska-Susitna Borough contains one of the state's largest unmanaged timber areas, and


WHEREAS, the legislation allowing for the continued harvesting of the resource is lacking, and

WHEREAS, the establishment of a forest management plan will allow this timber area to be harvested for perpetuity, and

WHEREAS, a forest management plan will help to guarantee permanent jobs associated with the timber industry,

NOW, THEREFORE BE IT RESOLVED that the City of Palmer supports the forest management concept of timber harvest.

Passed and approved by the City Council of the City of Palmer this 28th day of February, 1989.



GEORGE W. CARTE, MAYOR

DAVID L. SOULAK, CITY CLERK

My name is Don Loesche. I live at mile 51, Parks Highway near Big Lake. I work in the sport fishing lodge business. I have also worked and lived with the Great Boreal Forests of Alaska for over 40 years.

I am here before you to discuss the merits of HB 205 and try to prove that the bill needs to be passed into law this session. The subjects I will briefly address are: The Dying Boreal Forest, the Railbelt Economy, the forest industry potential, the risk of a single base economy, value added products, the archaic practices of our forestry department, and what is merchantable timber. I was not able to bring my library with me, but I believe I have sufficient data to prove my point.

The Tongass and the state forest at Haines will not be on my subject list because they are not a true Boreal forest but a northern extension of a southern forest made possible by the warm Japanese current that supplies the warm air to cause it's existence.

*The subject will be the Great Boreal Forests of the Susitna Valley, Copper Center and the Great Interior. The hundreds and hundreds of million board feet or cubic feet as you may prefer are virtually unmeasurable, any figure you choose to use will probably be conservative. These forests are in a serious state of decay because they have not been harvested or managed. The only management has been my Mother Nature in the form of fires. I believe that Forester David Orr presented you with facts on the Beetle kill throughout Alaska; Dr. William Wood has given much data on the over mature condition of our forest, the Great Tiaga as he refers to it. I have given similar information on March 11 in Wasilla. So do we all agree that these are facts or would some one like more information?

The Railbelt Economy from Anchorage to Fairbanks and on to the Canadian border is also a serious economic disaster that I'm sure you are aware of. So do we all agree that this does exist?

The Forest Industry potential is great, we have the known markets, we have the resource well inventoried and identified. We have the available manpower, however, we do not have in Alaska the technology or the capital to put this technology to work. We can't build the pulp mills, the plywood plants, Wisa wood plants or any of the other plants necessary to put our resource on the market. Round log export can not achieve anything in the Boreal Forest because it causes 70% waste and exports the jobs to other countries. Everything that is cut in Alaska must be shipped in a value added form. This is the only way that we can utilize the resource and the manpower to the maximum. I'm sure that when you all see a lumber yard full of dimensional lumber you think of the timber industry. When you see a train load of logs going to the docks for export you think of the timber industry. When the Department of Forestry talks of the forest industry they say if a tree isn't 24" at the butt or 10" at the small end, it is not merchantable, so this is what they think of when they talk of the timber industry. This is archaic! How many of you think of the timber industry when you use a tooth pick or light a match, use chop sticks, play a guitar, put on a rayon shirt or set in a chair, or for that matter, review the papers before you or the paper that I am reading. Now this is the timber that will save our Boreal Forests. It will take all of these industries, knitted to each other to do the job and the job is very big. Therefore, HB 205.

We have just had a very big fact brought before us at Valdez. Here suddenly popped up Murphy's Law and the worst scenario all at once. However, because of the magnitude of it all we were very, very, luck. It was a very clear warning to me that we had better do something to diversify our economy. Years ago a worker dropped a crescent wrench on a steel floor and blew up a pump station, an activist tried to blow up the pipe line at Fox, fortunately he didn't know how and just made a big bang. Any one of these things, or a drunken or drugged worker, a fire or an earthquake could bankrupt the state. We hang by a very fine thread over a very deep pit. We had better get more diversified and do so soon. The pipeline is already older than it's original expected lifespan. Again HB 205.

According to Dr. Kimm from the University of Alaska has spoken to all of us on the subject of value added products in both the fishing industry and the timber industry to mention ~~only two.~~ We have already given our fishing industry away, let's not do it to our forest industry. I would like to talk a bit on value added products. Through long term timber leases, as addressed in HB 205, our first value added product is the resource itself by using modern forest practice techniques we will have an improved forest of higher yield and better quality product or added value. Nurseries, seeding, farms, scarification, re-planting, and thinning are value added. Improved game habitat, stream enhancement, aquaculture, recreation facilities, increased tourism, improved life styles, infrastructure, more wild berries, mushrooms, game birds, moose, caribou, bear and the list goes on and on. These are all value added products. Under our current practices, none of these things can be achieved. At the present time a black spruce tree is absolutely

valueless. It's not pretty to look at, it is not desirable to use as firewood, it can't be used in round log export, it is just there, useless and unsightly. Black spruce milled in a Wisa wood mill is the most valuable wood in Alaska, bringing in \$1,500 a thousand on the U.S. and Pacific Rim markets.

White birch is the most valuable plywood and one of the most valuable toy and cabinet stock material. Clear white interior spruce is the most desirable wood in the world for acoustical instruments and therefore the most valuable. Aspen and cottonwood brings the highest pulp price not to mention the many side products (i.e., furniture, cabinet stock, etc.). These products can all be a reality and should be, but they never will be possible until we can provide long term timber supplies to an investing product producer. No one is going to invest 3 or 4 hundred million dollars in Alaska if they can't see how they can amortize the investment over a 20 year period or longer.

It's the second cut from an enhanced forest that will make it all worth while. That, Gentlemen, is the value added product.

In reference to our archaic forest practices that I aforementioned, the DNR and the Department of Forestry still consider that timber sales are a disposal of a resource instead of the enhancement and development of a resource. They still judge merchantable timber as having a 24" butt or a 10" small end. Because they believe that dimensional lumber is the only marketable product (the 2x4 syndrome), they still compare the Tongass to the Great Boreal forest of the interior. They still use the Scribner Decimal Scale on most timber sales which also supports the 2x4 syndrome. Other scales used are by the cord for firewood or cubic feet on junk wood for chips, of which we have no producing industry in the

Boreal Forest supplies. We need to take a giant step forward and traverse two centuries; from the 21st Century and beyond with total utilization and forest enhancement. Everything in the forest biome must be enhanced by utilization and that is what conservation is. HB 205.

As far as a diversified economy is concerned, we can realize more dollars from the Boreal Forest than we can recover from the oil industry. The big difference is that in 100 years, we will have a better resource producing more in the Tiaga, while the Alaska oil industry will be in history books if the present production continues. Synthetic fuel will power our cars and heat our homes and this synthetic fuel will be a by-product of agriculture and the forest. This may all seem confusing but the time has come to take our place in the world now and in the future. The oil industry, the forest, and our people are telling us we must start now, even next year could be to late.

* The object of HB 205 is not to dispose of a resource but rather to develop and enhance our resource along with enhancing wild life and all other things in the forest biomes. This might sound like a dream, as Dr. Wood's puts it, but it can be a reality. We can only look back to see what we have done and not make the mistakes of the past.

FOREST MANAGEMENT AGREEMENTS
AN OVERVIEW

Presented by
M.R. Dick, Jr.
Alaska State Forester

6 April 1989

FOREST MANAGEMENT AGREEMENTS (FMA's)

INTRODUCTION

The State of Alaska owns several million acres of timberland which grow varying levels of merchantable or potentially merchantable timber. Controversy surrounds land management, or lack thereof, and who should be responsible for that management. Several management options exist.

The land could be divested into private ownership. This option is not at issue in this discussion and will not be reviewed.

The land base could be retained in state ownership with management and timber sales contracted to the private sector.

The land base could be retained in state ownership and management with the timber being sold at auction.

This paper will review these management options with special emphasis on the state ownership/private management option.

LAND MANAGEMENT OPTIONS

The State of Alaska has three forest management options:

- 1) No change. Lands would not be managed or receive little active management. This management option allows extraction with little or no management. Timber cannot be viewed as a reliably renewable resource under this option.
- 2) Active management. The state actively would manage its forest lands to provide a variety of natural resources. The state would provide management responsibilities and expertise. Planning processes would determine various land uses for specific parcels; regulatory processes would provide resource protection.

3) Contractual Management. The state would relinquish Management responsibilities to a contractor. Appropriate regulatory processes would be established with the Forest Practices Act being used as a base regulatory level.

This contracted relinquishment would take one of two forms: a volume based contract or an area based contract.

The options are discussed below.

No Change Option

The "no change" option is an extension of the present program. Existing Alaska Forest Management is minimal. SE Alaska forest management would suffer the least under this option due to normally excellent natural regeneration. Significant forest management opportunities are being lost, however, because of minimal management.

Interior Alaska forests need more attention to produce a commercially useful forest. A coordinated program of harvest, site-preparation, species selection, regeneration, stocking control and insect/disease management are critical to perpetually produce a forest crop. The present system provides barely adequate regeneration and none of the other management functions. An extension of the present system will guarantee a non-productive boreal forest.

Active Management Option

This option presumes the state will bear management responsibility. Management level would vary, depending on state commitment. The existing DNR Division of Forestry would be empowered and funded to provide pre-determined management functions. Those functions could encompass six categories:

- 1) Proprietary Management would provide management activities to grow and manage the forest.
- 2) Forest Protection would provide fire protection. Insect and disease control would come under Forest Management;
- 3) Timber Sales would provide timber marketing abilities. This includes area identification and layout, cruising, appraising and sales.
- 4) Forest Regulation and Conservation would provide regulation administration for all appropriate private and public lands.
- 5) Resource Management would provide technology to maintain and enhance forest resources productivity.
- 6) Administration and program support would provide leadership and support services, e.g. budgeting and accounting services.

The above program would be expected to at least pay its own way through sales receipts. The program must be funded through an initial start-up period after which it would be expected to generate significant revenues for the state.

Contractual Management (Forest Management Agreements)

As previously noted, contractual management is based on two forms: volume control vs area control.

Volume Control

Volume control systems require the landowner to retain inventory, fire control and some management functions e.g. reforestation. The contract holder "buys" a given timber volume encumbered with varying management functions e.g. road construction. The volume purchased can be contracted by species, grade or both.

Volume control has the benefit of offering the landowner more management flexibility and the opportunity to sell trees to more than one purchaser in any given area. Volume control problems surround volume and grade misunderstandings, lack of accurate estimates and involvement of more than one purchaser operating in the same locale - frequently on the same site.

Area Control

Area control presumes the landowner relinquishes most management control to a contract holder, for a given unit(s) of land. This is the classic Forest Management Agreement.

The Landowner collects a modest "stumpage" fee*.

The area control system advantages occur because the contract holder becomes the "de facto" landowner. The contract holder is staffed to provide management functions. Managers treat the land as "theirs" and become quite protective towards the land base. The above advantage also presents the biggest negative. If the true landowner represents a public e.g. the State of Alaska, the proprietary nature of the FMA precludes public input on land management. The contract holder typically dictates who may/not use land, how much it will cost to use it, how it's used, etc.

* Stumpage (defined): The value of a standing tree. Value is determined by taking an end product value (logs, lumber, plywood, pulp, etc.) and removing all production costs, including profit/risk. The value remaining is the stumpage value or value of the standing tree.

Stumpage typically is measured in dollars/thousand board feet which in many Canadian FMA's is about \$10/thousand board feet. This low value reflects the lack of management costs to the landowner.

FMA's: GENERAL COMMENTS

FMA's have been used for several decades. Canada (Alberta) has successful FMA's dating to the mid-1950's. Several characteristics are apparent in successful FMA contracts or "licenses.

- ° A stable, dedicated land base is essential. FMA's, or any other management system, will fail without a stable land base.
- ° A flexible government/industry relationship is essential. Conditions dramatically change over the typical 20 year contract terms. A flexible system is necessary to deal with radical market, economic and political changes.
- ° Industry/Government division must be well defined. Government involvement in the manufacturing process doomed previously successful FMA's in Saskatchewan.

Selected comments from Government/Industry sources:

Industrial Manager (Alberta)

- ° In forest management terms: concept good. Good system, 20 year tenure gave the chance to amortize a multi-hundred million dollar plant.
- ° Public benefits provided - good roads, regeneration, etc.
- ° FMA's "incredibly controversial"
- ° Canadians previously more willing to "let Government handle things". Less so today. Fundamental social change occurring.
- ° Lots of frustration on industry side with changing rules, fluid land base, etc.

- ° Alaska must solve its land base/use/ownership problems before a FMA or any system will work.
- ° Alaska ownership pattern may not lend itself to FMA's

Government Manager, British Columbia

- ° Licensed lands (under FMA's) better managed with more responsible harvest patterns.
- ° Area license superior to volume license (this same comment was made by everyone interviewed)
- ° Land base/use problems must be solved prior to any successful management system.
- ° 25% of BC annual cut is under license. BC Government would like to increase to 60% or 70% but receiving substantial public opposition.

Industry Manager (formerly from Saskatchewan)

- ° Concept good. Lets industry build infrastructure in return for minimum stumpage.
- ° In Manitoba: stumpage \$10-\$30/thousand board feet. Stumpage indexed to the market.
- ° Saskatchewan FMA's failed. Numerous reasons some problems within industry, some government.
- ° Tried FMA in Alberta. Didn't work - sold out.

Government Manager (Alberta)

- ° Takes some time to develop an effective FMA. Alberta's most successful FMA dates to 1954.
- ° Government involvement extensive.

FMA's vs PUBLIC MANAGEMENT: THE GREAT DEBATE

FMA's can work given the right circumstances. The right philosophical environment is one in which the populace is willing to "let government do it" Government is given a relatively free hand in building and maintaining the government/industry interface. This has been achievable in a country like Canada. Canada has had an historically comfortable government/industry relationship. This relationship appears to be undergoing fundamental change as Canadian citizens become more involved in the decision making process.

The right political environment is one in which land base/use is stable. Forest management is a business of decades, even centuries. A fluid land base reduces or eliminates the contract holder's ability to invest with a reasonable certainty of recovering the investment. Land base instability has killed several existing/potential Canadian FMA's.

The right technical/economic environment is one in which the technical ability exists to manage the resource; income is adequate to provide the financial means to fund resource management.

Successful public land management by a public agency must operate within the same constraints or environments as FMA's. The right philosophical environment is one in which the public will accept public land ownership and management.

The right political environment is one which provides a stable land base and commitment to adequately fund public land management. The right technical/economic environment must exist as with FMA's.

Which system is better?

It depends

Many factors are common: land base, funding, technical ability, proper staffing. The wild card is constituent philosophy. A constituency inclined to leave decisions to government will likely allow a successful Government/Industry relationship. A constituency inclined to distrust government will likely not allow that relationship to become successful for either partner.

HPB

209

HOUSE COMMITTEE REPORT

(9)

Date Referred: March 8, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 4-7-89

The RESOURCES Committee considered:

HB 209

HOUSE BILL NO. 209

[APPROP: TOURISM/RECREATION PROJECTS]

"An Act making special appropriations for tourism and recreation related projects, grants, and expenses of state government; and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
- [] have attached amendment(s) [] a new title
- [] do pass
- [] do not pass
- [X] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____
- [] zero fiscal note _____
- [] zero with analysis _____

- [] fiscal note(s) _____
- [] zero fiscal note(s) _____
- [] zero fn/analysis _____

SIGNING DO PASS:

[Signature]
Mike Davis

SIGNING:

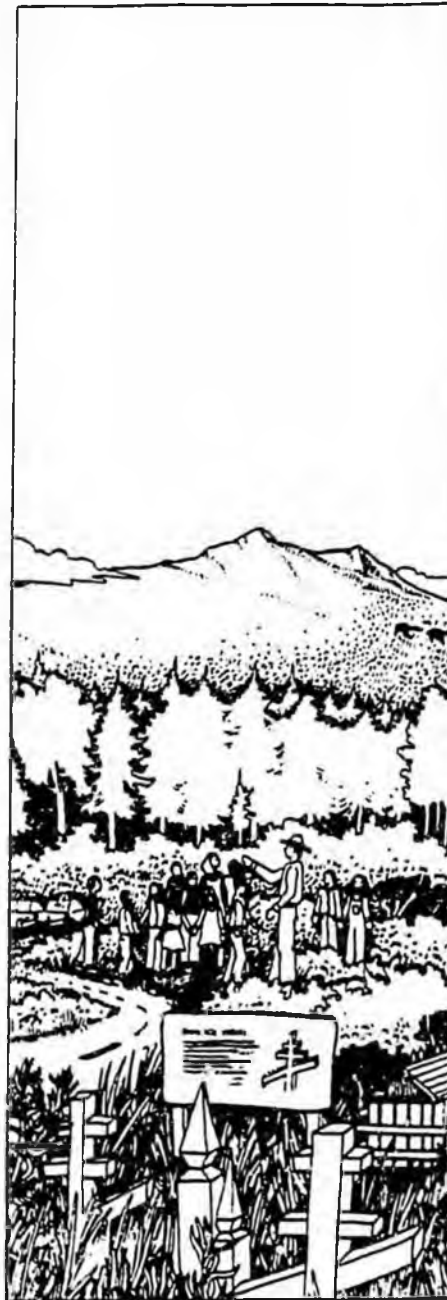
(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>[Signature]</i>		X	
<i>Mike [Signature]</i>		X	
<i>Bill [Signature]</i>		X	
<i>Best [Signature]</i>	X		

[Signature]

 Chairman's signature

STATE PARK TOURISM IMPROVEMENTS



MARCH
1989

STATE PARK TOURISM IMPROVEMENTS

March 1989

PAGE	HOUSE BILL REF.	PROJECT NAME
1	209(1), 227(20)	DNR Historic Preservation Grants
2	209(2), 227(21)	Alaska Conservation Corps
3	209(3), 227(22)	DNR/Highway Interpretive Signs Program
4, 5	209(4), 227(23)	Chena River State Recreation Area
6	209(5), 227(24)	Chena River State Recreation Site
7	209(6), 227(25)	Chena Hot Springs Winter Trail
8, 9	209(10), 227(27)	Anchor River State Recreation Area and Bing's Landing State Recreation Site Improvements
10	209(15), 227(31)	Finger Lake State Recreation Site
11	209(16), 227(32)	Willow Creek State Recreation Area Road Access
12	209(17), 227(33)	Eagle River Greenbelt Access
13, 14	209(18), 227(34)	Eagle River Visitor Center Improvements
15	209(19), 227(35)	Turnagain Arm Scenic Corridor Improvements
16	209(20), 227(36)	Chugach State Park Safe Drinking Water Supplies and Toilet
17	209(21), 227(37)	Toilsome Drive By-Pass Road Design
18, 19	209(29), 227(42)	South Anchorage Hillside State Park Access Development