

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6004 HOUSE RESOURCES

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required to implement Federal control of such activities.

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Subpart C - General Requirements

30.30 Licenses, permits, harvest tickets, tags, and fees

(a) All persons engaged in subsistence activities must comply with State procedures and conditions regarding licenses, permits, harvest tickets, tags, and the payment of fees.

(b) No person may refuse, upon request from a State or Federal law enforcement officer, inspection of licenses, permits, harvest tickets, tags, or other pertinent documents, or any apparatus designed to be, or capable of being used, to take fish or wildlife.

30.31 Rural residents

(a) Subsistence activities conducted pursuant to the provisions of this part are limited to rural Alaska residents, as defined in Section 30.4(b)(1) of this part and in accordance with supplementary criteria established for this purpose by the Federal Board.

(b) In units of the National Wildlife Refuge System and the National Park

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System in Alaska, subsistence activities shall be further limited to local rural residents, as designated by the appropriate Federal land management agency.

30.32 Aircraft use

(a) Except as otherwise provided in this section or in regulations established by Federal land management agencies, the use of aircraft of any type for access to or from public lands for subsistence activities is prohibited. This prohibition applies to all aircraft use, including access to areas to be used; transportation of participants, equipment, supplies, and fish or wildlife taken; and searching for available fish or wildlife.

(b) In extraordinary cases where no reasonable alternative exists, Federal land management agencies may permit, subject to specified terms and conditions, an eligible subsistence user to use aircraft for access to or from public lands for subsistence activities. Such an exception may be granted only in extraordinary cases where no reasonable alternative exists, based upon a determination that the location of the subsistence resources depended upon and the difficulty of surface access, or other emergency situation, requires such relief. Such extraordinary cases will be rare and shall not permit aircraft to become a routine means of access to subsistence resources.

30.33 Commercial activities

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No person may purchase, sell, or barter fish, wildlife, or the parts or products thereof if the fish or wildlife was taken in subsistence activities, except as follows:

(a) Handicraft articles made of nonedible byproducts of fish or wildlife taken for personal or family consumption may be sold.

(b) Fish or wildlife or their parts may be bartered for other fish or wildlife or their parts for personal consumption; for other food; or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

(c) Customary trade not constituting a significant commercial enterprise shall be permitted, subject to the provisions of such regulations as may be necessary to further define customary trade.

30.34 Penalties

A person who is convicted of violating a provision of any regulation in Subparts C, D, E, or F of this part shall be subject to the penalties prescribed by Federal laws or regulations applicable to the lands on which the violation occurred.

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Subpart D - Subsistence Hunting and Trapping

30.50 Definitions

(a) The following definitions shall apply to all regulations contained in this subpart:

(1) "Airport" means an airport listed in the Federal Aviation Agency Alaska Airman's Guide and chart supplement.

(2) "Animal" means those species with a vertebral column (backbone).

(3) "Bag limit" means the number of any one species permitted to be taken by any one person in the unit or portion of a unit in which the taking occurs; however, additional numbers of a species may be taken in another designated open unit or portion of a unit where a greater limit on that species is prescribed. In no case may the total or cumulative bag for one person exceed the limit set for the unit or portion of a unit in which the additional animals are taken; a subsistence bag limit and a general bag limit for the same species are not cumulative.

(4) "Big game" means black bear, brown and grizzly bear, bison, caribou, deer, elk, mountain goat, moose, musk oxen, mountain or Dall sheep, wolf and wolverine.

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(5) "Bow" means long bow, recurve bow, or compound bow, but not crossbow.

(6) "Broadhead" means an arrowhead with two or more steel cutting edges having minimum cutting diameter of not less than seven-eighths inch.

(7) "Brow tine" means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

(8) "Bull moose" means any male moose.

(9) "Closed season" means the time when wildlife may not be taken.

(10) "Cub bear" means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

(11) "Dire emergency" means a situation in which a person

(i) Is in a remote area.

(ii) Is involuntarily experiencing an absence of food required for sustenance.

(iii) If wild game food is not immediately taken and consumed, will be unable to perform the functions necessary for survival, leading to a high risk of death or serious and permanent health problems; and

(iv) Cannot expect to obtain alternative food sources in time to avoid the consequences described in (iii) of this sub paragraph.

(12) "Domicile" means the location of a person's primary residence;

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evidence of domicile may include, but is not limited to, the following:

(i) Statements made to obtain a license to drive, hunt, fish, or engage in an activity regulated by a government entity.

(ii) Affidavit of the person, or of other persons who may know of that person's domicile.

(iii) Place of voter registration.

(iv) Location of residences owned, rented, or leased.

(v) Location of storage of household goods.

(vi) Location of business owned or operated.

(vii) Residence of spouse and minor children or dependents.

(viii) Governments to which taxes are paid.

(ix) Whether the person has claimed residence in another location for the purpose of obtaining benefits provided by the governments in that location.

(13) "Drawing permit" means a permit issued in a limited number to people who are selected by means of a lottery held for all people submitting valid applications for such permits and who agree to abide by the conditions specified for each hunt.

(14) "Falconry" means the sport of taking wildlife by means of trained raptors.

(15) "Full curl horn" means the horn of a mature male mountain or Dall sheep, the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side.

(16) "Fur animal" means coyote, arctic fox, red fox, lynx, raccoon, red squirrel, wolf, or wolverine, except domestically raised fur animals; "fur animals" is a classification of animals subject to taking with a hunting

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license.

(17) "Fur bearer" means beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, sea otter, raccoon, red squirrel, flying squirrel, marmot, wolf or wolverine.

(18) "Highway" means the driveable surface of any constructed road.

(19) "Household" means that group of people domiciled in the same residence.

(20) "Hunting area" for a species means that portion of a game management unit where a season and a bag limit for that species are set.

(21) "Motorized vehicle" means a motor-driven land, water or air conveyance.

(22) "Open season" means the time when wildlife may be taken; each period prescribed as an open season includes the first and last days of the period prescribed.

(23) "Permit hunt" means a hunt for which permits are issued on a drawing or registration basis.

(24) "Person" means a natural person and does not include a corporation, company, partnership, firm, association, organization, business trust or society.

(25) "Poison" means any substance which is toxic or poisonous upon contact or ingestion.

(26) "Registration permit" means a hunting permit issued to a person who agrees to the conditions specified for each hunt; permits are issued in the order applications are received and are issued:

(i) Beginning on a date announced by the Alaska Department of Fish and Game and continuing throughout the open season, or until the season is

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closed by emergency order when a harvest quota is reached; or

(ii) Beginning on a date announced by the Alaska Department of Fish and Game and continuing until a predetermined number of permits have been issued.

(27) "Regulatory year" means July 1 through June 30.

(28) "Sealing" means placing a mark or tag on a portion of an animal by an authorized representative of the Department of Fish and Game; "sealing" includes collecting and recording information concerning the conditions under which the animal was harvested and measurements of the specimen submitted for sealing or surrendering a specific portion of the animal for biological information.

(29) "Seven-eighths curl horn" means the horn of a mature mountain sheep, the tip of which has grown through seven-eighths of a circle (315 degrees), described by the outer surface of the horn, as viewed from the side.

(30) "Skin" means any tanned or untanned hide of an animal, including its claws.

(31) "Small game" means all species of grouse, hares, rabbits, ptarmigan and waterfowl, cranes and Wilson or jacksnipe.

(32) "Tine" or antler point refers to any point on an antler whose length is at least one inch, and, is greater in length than in width, measured in a straight line across the base.

(33) "Transport" means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export.

(34) "Unclassified game" means all species of game not otherwise classified in the definitions.

(35) "Unit" means one of the 26 geographical areas listed under game

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management units in the Alaska Department of Fish and Game's codified hunting, trapping and guiding regulations and the Game Management Unit Map of Alaska.

(36) "Year" means calendar year unless another year is specified.

30.51 Methods of taking wildlife.

(a) All big game may be taken as follows:

(1) With a shotgun, muzzle-loading rifle, or rifle or pistol using center-firing cartridges.

(2) With a crossbow, except that a crossbow may not be used to take big game in areas restricted to taking by bow and arrow only.

(3) With spears that are hand held or thrown.

(4) With a longbow, recurve bow, or compound bow capable of casting a broadhead-tipped arrow at least 175 yards horizontally, which collectively are termed "bow and arrow" for the purposes of these regulations. Arrows must be tipped with broadheads, and arrow and broadhead together must weigh at least one ounce (437.5 grains). Broadheads may not be barbed.

(5) Black bears may be taken with the use of bait; however

(i) Only biodegradable materials may be used for bait; only the heads, bones, viscera, or skin of legally harvested fish and wildlife may be used for bait.

(ii) No person may use bait within one-quarter mile of a publicly maintained road or trail.

(iii) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground or developed

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recreational facility.

(iv) A hunter using bait shall clearly mark the bait station with a sign which displays the hunter's name and current address, phone number, and hunting license number.

(v) A hunter using bait shall remove litter and equipment from the bait station site when hunting is completed.

(6) Black bears may not be hunted using dogs.

(7) A motor driven boat underway may be used in taking wolves and coyotes in all units, and caribou in Unit 23.

(b) Small game and unclassified wildlife may be taken by any method unless prohibited in paragraph (f)

(c) Fur animals may be taken while hunting by any method unless prohibited in paragraph (f)

(d) Fur bearers may be taken while trapping by any method unless prohibited in paragraph (f), Section 30.54 of this part, or in State regulations.

(e) Waterfowl, snipe and cranes may be taken only:

(1) With a shotgun not larger than 10 gauge, and which is plugged to a three shell capacity, or less.

(2) With a bow and arrow.

(3) With a trained raptor, controlled by a falconer who holds a permit under State regulations.

(f) The following methods of taking game are prohibited:

(1) By shooting from, on, or across a highway.

(2) With the use of poisons except with the written consent of the Federal Board.

addition to the prohibitions in Section 30.51 of this part:

- (a) With the use of a dog, trap snare, net or fish trap; or aircraft.
- (b) By disturbing dens.

30.54 Unlawful methods of trapping fur bearers.

The following methods and means of trapping fur bearers are prohibited in addition to the prohibitions in State regulations:

- (a) Disturbing or destroying dens (except that muskrat pushups or feeding houses may be disturbed in course of trapping).
- (b) Disturbing or destroying beaver houses.
- (c) Taking beaver by any means other than steel traps or snares, except that firearms may be used to take beaver in Unit 18 from April 1 through June 10, and in Units 8 and 23.
- (d) Taking beaver by persons under 11 years of age.
- (e) Taking river (land) otter with steel traps having a jaw spread of less than five and seven-eighths inches during the closed season on mink and marten in the same game management unit.
- (f) With the use of a dog, net or fish trap (except a blackfish or fyke trap).
- (g) Trapping by methods other than with a snare, trap, mesh, or other implement designed to entrap animals other than fish.

30.55 Unlawful methods of hunting waterfowl, snipe, and cranes.

(a) The following methods and means of taking waterfowl, snipe, and cranes are prohibited in addition to the prohibitions in Section 30.51 of this part:

(1) With a rifle or pistol.

(2) From a motor-driven boat unless the motor has been completely shut off and the boat's progress from the motor's power has ceased.

(3) From any mechanical vehicle; however, a power or sailboat may be used as a means of retrieving dead or injured birds.

(b) A hunter may pluck waterfowl in the field, but must leave one fully feathered wing or the head attached while transporting the waterfowl.

(c) No person may take waterfowl from sunset to one-half hour before sunrise.

30.56 Local restrictions on taking wildlife.

(a) In addition to statewide restrictions on taking wildlife, the following restrictions apply locally as specified:

(1) In Units 1 through 5, no person may take big game, except wolves, from a boat.

(2) In Jim Creek in Unit 14(C) upstream from the confluence of the Swan Lake outlet stream, no person may take waterfowl or transport waterfowl, parts of waterfowl, waterfowl hunters, or waterfowl hunting gear, with the use

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of a motorized vehicle.

(J) No person may take a wolf in Units 12 and 20(E) during April and October with a steel trap or snare smaller than 3X.

30.57 Unlawful possession or transportation of wildlife.

(a) No person may possess, transport, or place into the possession of another, any wildlife or parts of wildlife that the person has taken in violation of these regulations.

(b) No person may possess or transport wildlife or parts of wildlife received from a person who took the items contrary to these regulations, if the person receiving the items knows, has reason to know, or should know that the item was taken in violation of these regulations.

(c) No person may possess or transport wildlife or parts of wildlife that the person knows were taken in violation of these regulations.

30.58 Evidence of sex and identity.

(a) No person may possess or transport a mountain sheep unless both horns accompany the animal.

(b) If the taking of an animal, except sheep, is restricted to one sex,

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no person may possess or transport the carcass of the animal which does not have sufficient portion of the external sex organs attached to indicate conclusively the sex of the animal. However, this section does not apply to the carcass of a big game animal which has been cut and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(c) If a moose bag limit includes an antler size or configuration requirement, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler must leave the antlers naturally attached to the unbroken, uncut skull plate; however, this paragraph does not apply to a moose carcass or its parts that has been cut and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

30.59 Marked or tagged wildlife.

A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify State or Federal officials with the date when, and the place where, the animal was killed. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required, and in all cases any identification equipment must be returned.

30.60 Sealing of bear skins and skulls.

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(a) No person may possess, transport, or export from Alaska, the skin or skull of a bear, whether taken inside or outside of Alaska, unless the skin and skull have been sealed by an authorized representative within 30 days of the taking, or a lesser time if requested. Seals must remain on the hides while in Alaska or until the tanning process has commenced. A brown bear taken in Unit 8 may not be transported from that unit until it has been sealed.

(b) A person who possesses a bear skin and skull must bring the skin and skull for sealing to an authorized representative and must complete a report on the appropriate form provided. A skin and skull accompanied by a completed temporary sealing form signed by the person who took the bear shall be considered properly tendered for sealing if it is received by an authorized representative within 30 days from the time of taking.

(c) The hide and skull of a bear must accompany each other until a rudimentary premolar tooth has been removed from the skull and both the skull and the hide have been sealed.

(d) As used in this section, "bear" means brown and grizzly bear in all units, and black bear (including the cinnamon and blue color phases) in Units 1 through 7, 11 through 16, and 20.

(e) No person may falsify any information required to be set forth, either on the sealing form provided or on the temporary sealing form.

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(a) No person may possess, transport, or export from the state, the unanned skin of a marten (in Units 1 through 5 only), or the untanned skin of a lynx, river (Lead) otter, wolf or wolverine, whether taken inside or outside the state, unless each skin has been sealed according to the following schedule:

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SPECIES/METHOD OF TAKING	LATEST DATE FOR SEALING
Wolf and wolverine by hunting	60th day from date of taking.
Wolf and wolverine by trapping	30th day following close of trapping season for the species in the unit where taken.
Lynx by hunting	30th day following close of lynx hunting season in the unit where taken.
Marten (Units 1-5 only), Lynx, and River (Land) Otter, by trapping	30th day following close of trapping season for the species in the unit where taken.

(b) The sealing periods in (a) of this section may be reduced.

(c) A person who takes a species listed in (a) of this section must bring the skin for sealing and must complete a report on a form. The long bones of the left front leg (radius and ulna bones) must remain naturally attached to the hide of any wolf taken in Units 20, 23, 24, and 26 until the hide is sealed.

30.62 Wildlife as animal food or bait.

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(a) The use of wildlife as food for dogs or fur bearers, or as bait, is prohibited except for the following:

(1) The hide, skin, viscera, or bones.

(2) The skinned carcass of a bear, fur bearer, or fur animal.

(3) Hare, rabbit, and red squirrels.

(4) Legally taken unclassified wildlife.

30.63 Salvage of meat, furs, and hides.

(a) Subject to additional requirements set out for a specific unit, the following parts of any carnivore taken must be salvaged for human use:

(1) The hide of a wolf, wolverine, coyote, fox, or lynx.

(2) The hide and skull of a brown/grizzly bear.

(3) The hide and skull of a black bear taken in a game management unit in which sealing is required.

(4) Either the hide or the meat of a black bear taken in any game

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management unit in which sealing is not required by regulation.

(b) Any animal killed or injured by a vehicle is the property of the State. The operator of a motor vehicle that collides with a big game animal resulting in death or injury to the animal must notify the State Troopers or Division of Fish and Wildlife Protection as soon as possible.

(c) The meat of caribou taken in Units 22 through 26, and in Units 18 and 21 north of the Yukon River, must be removed immediately from the field.

(d) Salvage of meat from wildlife (1) The following definitions shall apply to this paragraph:

(i) "Wild fowl" means species of wild fowl for which seasons or bag limits have been established by State or Federal Law.

(ii) "Edible meat" means, in the case of big game animals, the meat of the ribs, rack, brisket, front quarters as far as the juncture of the humerus and radius-ulna (knee), hindquarters as far as the distal joint of the tibia-fibula (stifle joint) and that portion of the animal between the front and hindquarters; in the case of wild fowl, the meat of the breast; however, "edible meat" of big game or wild fowl does not include: meat of the head; meat that has been damaged and made inedible by the method of taking; bones, sinew and incidental meat reasonably lost as a result of boning or a close trimming of the bones; or viscera.

(2) It is unlawful for a person who kills an animal or species of wild fowl to fail to salvage for human consumption the edible meat of the animal or fowl. Failure to salvage from a big game animal at least the hindquarters as

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far as the distal joint of the tibia-fibula (stifle joint) will result in the imposition of additional fines and penalties.

(3) Failure to salvage or possess the edible meat may not be a violation if due to circumstances beyond the control of a person, including theft of the animal or fowl, unanticipated weather conditions or other acts of God, or unavoidable loss in the field to another wild animal.

(4) It is unlawful for a person to possess the horns or antlers of a big game animal that was killed after the opening of the current or most recent lawful season for that animal unless the person also possesses the edible meat of the animal. However, this does not apply to the acquisition of the horns or antlers as a gift after the edible meat of the big game animal was salvaged, or the edible meat is no longer present due to personal consumption.

30.64 Feeding of Wildlife.

No person may intentionally feed a bear, wolf, fox or wolverine, or intentionally leave human food or garbage in a manner that attracts these animals. This does not apply to bait used for trapping fur bearers or hunting black bears consistent with this subpart.

30.65 Taking cub bears and female bears with cubs prohibited.

No person may take a cub bear or a female bear accompanied by a cub bear.

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30.66 Emergency taking of wildlife.

Nothing in this subpart prohibits a person from taking wildlife for food during a closed season in case of dire emergency. Whenever it is reasonable to do so, all edible portions of the meat of an animal so taken must be salvaged and all portions surplus to the alleviation of the dire emergency must be surrendered to the State.

30.67 Taking of wildlife in defense of life or property.

(a) Nothing in this subpart prohibits a person from taking wildlife in defense of life or property if:

(1) The necessity for the taking is not brought about by harassment or provocation of the animal or an unreasonable invasion of the animal's habitat;

(2) The necessity for the taking is not brought about by the improper disposal of garbage or a similar attractive nuisance; and

(3) All other practicable means to protect life and property are exhausted before the animal is taken.

(b) Wildlife taken in defense of life or property is the property of the State. A person taking such wildlife is required to salvage immediately the meat, or, in the case of a black bear, wolf, wolverine, or coyote, the hide and surrender it to the State immediately. In the case of brown or grizzly

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bear, the hide and skull must be salvaged and surrendered to the State immediately. The person taking the wildlife must notify the Alaska Department of Fish and Game of the taking immediately and must submit a written report of the circumstances of the taking of wildlife in defense of life or property to the Department within 15 days of the taking.

(c) As used in this section, "property" is limited to:

- (1) A dwelling, permanent or temporary.
- (2) An aircraft, boat, automobile, or other means of conveyance;
- (3) A domesticated animal.
- (4) Other property of substantial value necessary for the livelihood or survival of the owner.

30.68 Endangered species.

(a) The following wildlife species are endangered in Alaska:

Eskimo curlew

Numenius borealis

Aleutian Canada goose

Branta canadensis leucopareia

American peregrine falcon

Falco peregrinus anatum

Arctic peregrine falcon

Falco peregrinus tundrius

Short-tailed albatross

Diomedea albatrus

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Subpart E - Subsistence Fishing

30.80 Subsistence fishing permitted.

Aquatic plants and finfish other than salmon may be taken for subsistence purposes at any time on public lands, by any method, unless restricted by the regulations in this part. Salmon may be taken for subsistence purposes only as provided in this part.

30.81 Types of legal gear.

- (a) All gear shall be operated in a manner conforming to its basic design.
- (b) The size of meshes of a gill net shall be substantially consistent.
- (c) All references to mesh size in the regulations are considered to be "stretched measure."

(d) Unless otherwise provided, the following are legal types of gear for subsistence fishing:

(1) A gill net is a net primarily designed to catch fish by entanglement in the mesh and consisting of a single sheet of webbing hung between cork line and lead line, and fished from the surface of the water.

(2) A set gill net is a gill net that has been intentionally set, staked, anchored or otherwise fixed.

(3) A drift gill net is a drifting gill net that has not been intentionally staked, anchored or otherwise fixed.

(4) A purse seine is a floating net designed to surround fish and

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which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

(5) A hand purse seine is a floating net designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

(6) A beach seine is a floating net designed to surround fish which is set from and hauled to the beach.

(7) Power gurdy troll gear consists of a line or lines with lures or baited hooks which are drawn through the water by a gurdy.

(8) Hand troll gear consists of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing or other types of trolling, and which are retrieved by hand power or hand powered crank and not by any type of electrical, hydraulic, mechanical or other device or attachment.

(9) A fishwheel is a fixed, rotating device for catching fish which is driven by river current or other means of power.

(10) A ring net is a bag-shaped net suspended from a circular or rectangular frame.

(11) A longline is a stationary buoyed or anchored line or a floating, free drifting line with lures or baited hooks attached.

(12) A fyke net is a fixed, funneling (fyke) device used to entrap fish.

(13) Diving gear is any type of hard hat or skin diving equipment.

(14) A grappling hook is a hooked device with flukes or claws and attached to a line and operated by hand.

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(15) A dip net is a bag-shaped net suspended from a frame, which may not exceed five feet in diameter, the frame is attached to a single handle and is operated by hand.

(16) Jigging gear consists of a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and are drawn through the water by hand.

(17) A spear is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and is operated by hand.

(18) A lead is a length of net employed for guiding fish into a seine or a length of net or fencing employed for guiding fish into a fishwheel, fyke net or dip net.

(19) An abalone iron is a flat device used for taking abalone and which is more than 1 inch (25 mm) in width and less than 24 inches (61 cm) in length and with all prying edges rounded and smooth.

(e) Gill nets used for subsistence fishing for salmon may not exceed 50 fathoms in length, unless otherwise specified by the regulations in particular areas.

(f) Taking or molesting fish by any means, or for any purpose, is prohibited within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction.

(g) The use of explosives and chemicals is prohibited.

(h) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Kotzebue-Northern, Norton Sound-Port Clarence, Yukon, Kuskokwim and Bristol Bay areas.

(i) Each subsistence fisherman shall plainly and legibly inscribe his

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first initial, last name, and address on his fishwheel, or on a keg or buoy attached to gill nets and other unattended subsistence fishing gear.

(j) No person may use a gill net web that contains less than 30 filaments in the taking of salmon for subsistence purposes.

30.82 Unlawful possession of subsistence finfish.

No person may possess, transport or place into the possession of another person, raw or unprocessed subsistence-taken fish or their parts that the person has taken contrary to State or Federal law or regulation.

30.83 Bristol Bay area

(a) Description. The Bristol Bay area consists of all waters of Bristol Bay including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(b) Fishing seasons / weekly fishing periods. (1) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Bristol Bay area.

(2) Within any district, salmon may only be taken during open weekly commercial salmon fishing periods except as follows:

(1) During the period from June 15 through 9:00 a.m., July 17, salmon for subsistence purposes may be taken in the Nusliagak district from the Department of Fish and Game regulatory marker two statute miles below Bradford

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Point to a marker at Red Bluff on the west shore of Wood River, only during the following periods: 9:00 a.m. Monday to 9:00 a.m. Tuesday, 9:00 a.m. Wednesday to 9:00 a.m. Thursday, 9:00 a.m. Friday to 9:00 a.m. Saturday.

(ii) During the period from June 23 through 9:00 a.m. July 17, salmon for subsistence purposes may be taken in the Naknek, Egegik and Ugashik rivers only during the following period: 9:00 a.m. Tuesday to 9:00 a.m. Wednesday and 9:00 a.m. Saturday to 9:00 a.m. Sunday.

(3) Subsistence fishermen should check with the National Park Service before fishing in Naknek Lake.

(c) Lawful gear and gear specifications. (1) Within any district, salmon, herring, and capelin may only be taken by drift and set gill nets.

(2) Outside the boundaries of any district, salmon may only be taken by set gill net, except that salmon may also be taken by spear in the Togiak River excluding its tributaries.

(3) The maximum lengths for set gill nets used to take salmon are as follows:

(i) In the Naknek, Egegik and Ugashik Rivers, and in Naknek Lake as described, set gill nets may not exceed 10 fathoms in length.

(ii) In the remaining waters of the area, set gill nets may not exceed 25 fathoms in length.

(4) No part of a set gill net may be operated within 300 feet of any part of another set gill net, except that in the Nushagak district from the Department of Fish and Game regulatory marker two statute miles below Bradford Point to a marker at Red Bluff on the west shore of Wood River, no part of a set gill net may be operated within 100 feet of any part of another set gill

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net.

(5) No set gill net may obstruct more than one-half the width of a stream.

(6) Each set gill net must be staked and buoyed.

(7) No person may operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(d) Waters closed to subsistence fishing. (1) Except for the western shore of the Newhalen River, waters used by salmon are closed to the subsistence taking of fish within 300 feet of a stream mouth.

(2) Gill nets are prohibited in that portion of the Naknek river upstream from Sovonaski.

(3) Subsistence fishing with nets is prohibited in the following waters and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14:

Lower Talarik Creek	Roadhouse Creek	Nick G. Creek
Middie Talarik Creek	Alexi Creek	Copper River
Upper Talarik Creek	Tazimina River	Kakhonak River
Pete Andrew Creek	Young's Creek	Gibraltar River
Zacker Creek	Chakok Creek	Dennis Creek
Newhalen River	Tomokok Creek	Belinda Creek

(e) Subsistence fishing permits. (1) Salmon, trout and char may only be taken under authority of a subsistence fishing permit.

(2) Only one subsistence fishing permit may be issued to each

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household per year.

(3) Subsistence salmon fishing permits for the Naknek River drainage will be issued only to those persons domiciled in the Naknek and Kvichak River drainages.

(4) Subsistence salmon fishing permits for the Iliamna-Lake Clark drainages will be issued only to persons domiciled in the Iliamna-Lake Clark drainages.

(f) Marking of subsistence taken salmon. After August 20, no person may possess coho salmon for subsistence purposes in the Togiak River section and the Togiak River drainage unless the head has been immediately removed from the salmon. It is unlawful to purchase or sell coho salmon from which the head has been removed.

(g) Subsistence bag and possession limits. The total annual possession limit for a subsistence salmon fishing permit issued for the fisheries described is 200 sockeye salmon.

30.84 Aleutian Islands area

(a) Description. The Aleutian Islands area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172 degrees E., and south of 54 degrees 36' N.

(b) Fishing seasons. (1) In the Unalaska district, salmon may be taken at any time except within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50 mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence

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fishing permit.

(2) In the Akutan, Umnak and Adak districts, salmon may be taken at any time.

(3) Fish other than salmon may be taken at any time unless restricted under the terms of a subsistence fishing permit.

(c) Lawful gear and gear specifications. (1) Salmon may be taken by seine and gill net, or with gear specified on a subsistence fishing permit.

(2) Fish other than salmon may be taken at any time unless restricted under the terms of a subsistence fishing permit.

(d) Waters closed to subsistence fishing. The waters of Unalaska Lake (at Unalaska Village), its drainages and the outlet stream, and within 500 yards of its terminus are closed to subsistence fishing.

(a) Subsistence fishing permits. (1) Salmon, trout and char may be taken only under the terms of a subsistence fishing permit, except that a permit is not required in the Akutan, Umnak and Adak districts.

(2) Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(3) A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned.

30.85 Alaska Peninsula area

(a) Description. The Alaska Peninsula area includes all Pacific Ocean waters of Alaska between a line extending southeast (135 degrees) from the tip

of Kupreanof Point and the longitude of the tip of Cape Sarichef, and all Bering Sea waters of Alaska east of the longitude of the tip of Cape Sarichef and south of the latitude of the tip of Cape Menshikof.

(b) Fishing seasons. (1) Salmon may be taken at any time except within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50 mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(2) Fish other than salmon may be taken at any time unless restricted under the terms of a subsistence fishing permit.

(c) Lawful gear and gear specifications. (1) Salmon may be taken by seine and gill net, or with gear specified on a subsistence fishing permit.

(2) No set gill net may exceed 100 fathoms in length.

(d) Waters closed to subsistence fishing. The following waters are closed to subsistence fishing for salmon:

(1) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon.

(2) Trout Creek and within 500 yards outside its mouth.

(3) Inshore of a line from the Pacific Pearl dock to Black Point including the inlet and Humboldt Creek.

(e) Subsistence fishing permits. (1) Salmon, trout and char may be taken only under the authority of a subsistence fishing permit.

(2) Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(3) A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned no later than October 31.

30.86 Chignik area

(a) Description. The Chignik area includes all waters of Alaska on the south side of the Alaska Peninsula enclosed by 156 degrees 20'13" W., (the longitude of the southern entrance to Imuya Bay near Kilokak Rocks) and a line extending southeast (135 degrees) from the tip of Kupreanof Point.

(b) Fishing seasons. Fish may be taken at any time, except as may be specified by the subsistence fishing permit.

(c) Lawful gear and gear specifications. Salmon may be taken by seines and gill nets, or with gear specified on a subsistence fishing permit, except that in Chignik Lake, salmon may not be taken with purse seines.

(d) Waters closed to subsistence fishing. Salmon may not be taken in the Chignik River, upstream from the weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(e) Subsistence fishing permits. (1) Salmon, trout and char may only be taken under the authority of a subsistence fishing permit.

(2) Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(3) A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned no later than October 31.

30.87 Kodiak area

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(a) Description. The Kodiak area includes all waters of Alaska south of a line extending east from Cape Douglas (58 degrees 52' N.), west of 150 degrees W., north of 55 degrees 30' N.; and east of the longitude of the southern entrance of Inuya Bay near Kilokak Rocks (156 degrees 20'13" W.).

(b) Fishing seasons. Salmon may be taken for subsistence purposes from 6:00 a.m. until 9:00 p.m. from June 1 through July 30.

(c) Lawful gear and gear specifications. (1) Unless restricted by this section or under the terms of a subsistence fishing permit, fish may be taken by gear listed in Section 30.84(d) of this part.

(2) Salmon may be taken only by gill net and seines.

(3) Subsistence fishermen must be physically present at the net at all times the net is being fished.

(d) Waters closed to subsistence fishing. The following locations are closed to the subsistence taking of salmon:

(1) All waters of Mill Bay and all those waters bounded by a line from Spruce Cape to the northernmost point of Woody Island, then to the northernmost point of Holiday Island, then to a point on Near Island opposite the Kodiak small boat harbor entrance and then to the small boat harbor entrance.

(2) All freshwater systems of Little Afognak River and Portage Creek drainage in Discoverer Bay.

(3) All waters closed to commercial salmon fishing in the Barbara Cove, Chiniak Bay, Slatery Cove, Pasagshak Bay, Monashka Bay and Anton Larsen Bay and all waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek and north and west of a line from the tip of Last

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Point to the tip of River Mouth Point in Afognak Bay.

(4) All waters 300 yards seaward of the terminus of Monks Creek.

(e) Subsistence fishing permits. (1) A subsistence fishing permit is required for taking salmon, trout and char for subsistence purposes.

(2) A subsistence salmon fishing permit allows the holder to take 25 salmon plus an additional 25 salmon for each member of the same household whose names are listed on the permit. An additional permit may be obtained if it can be shown that more fish are needed.

(3) All subsistence fishermen shall keep a record of the number of subsistence fish taken each year. The number of subsistence fish taken shall be recorded on the reverse side of the permit. The record must be completed immediately upon landing subsistence caught fish and must be returned by February 1 of the year following the year the permit was issued.

30.88 Cook Inlet area

(a) Description. The Cook Inlet area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58 degrees 52' N.) and a line extending south from Cape Fairfield (148 degrees 40' W.).

(b) Description of district and subdistricts. (1) Districts and subdistricts are as described in State regulations, 5 AAC 21.200.

(2) In addition to (1) of this paragraph, the Tyonek subdistrict includes those waters of the Northern district within mean lower tide from a point one mile south of the southern edge of the Chuitna River south to the easternmost tip of Granite Point.

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(c) Fishing seasons and weekly fishing periods. (1) Unless restricted or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Cook Inlet area.

(2) Salmon may be taken for subsistence purposes only as follows:

(1) In the Tyonek subdistrict:

(A) From June 1 through June 15 from 4:00 a.m. to 8:00 p.m. on Tuesdays, Thursdays and Fridays.

(B) From June 16 through October 30 from 6:00 a.m. to 6:00 p.m. on Saturdays.

(C) The season described in (B) of this subparagraph shall not open until July 1 if 4,200 king salmon are taken before June 16.

(ii) In the Port Graham subdistrict from June 1 through June 15, from 6:00 a.m. Monday until 6:00 a.m. Wednesday, and from 6:00 a.m. Thursday, until 6:00 a.m. Saturday.

(d) Lawful gear and gear specifications. (1) Salmon may be taken only as follows:

(i) In the Tyonek subdistrict by set gill nets not exceeding 10 fathoms in length, six inches in mesh size and 45 meshes in depth.

(ii) In the Port Graham subdistrict by set gill nets not exceeding 35 fathoms in length, six inches in mesh size and 45 meshes in depth.

(iii) No part of a set gill net may be set or operated within 600 feet of any part of another set gill net.

(2) No person may operate or assist in the operation of subsistence salmon net gear on the same day that person operates or assists in the operation of commercial salmon gear.

(3) Smelt may be taken only with gill nets and dip nets. Gill nets

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used to take smelt may not exceed 50 feet in length and two inches in mesh size.

(4) Gill nets may not be used in fresh water, except for the taking of whitefish in the Tyonek River drainage.

(e) Waters closed to subsistence fishing. (1) All salt water is closed to the taking of finfish, except for the Tyonek and Port Graham subdistricts.

(2) Salmon may not be taken in waters described in 5 AAC 39.290.

(3) Trout, grayling, char, and burbot may not be taken in fresh water.

(f) Subsistence fishing permits. (1) Only one subsistence salmon fishing permit may be issued to each household per year.

(i) Subsistence salmon fishing permits for the Tyonek subdistrict will be issued only to those persons domiciled in the village of Tyonek.

(ii) Subsistence salmon fishing permits for the Port Graham subdistrict will be issued only to those persons domiciled in the villages of Port Graham and English Bay.

(2) Whitefish may be taken only in the Tyonek River drainage.

(g) Marking of subsistence taken salmon. (1) No person may possess salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) have been immediately removed from the salmon.

(2) It is unlawful to purchase or sell salmon from which both lobes of the caudal fin (tail) have been removed.

(h) Subsistence bag and possession limits. The total annual possession limit for each subsistence salmon permit is as follows:

(1) There is no total annual possession limit for holders of Port Graham subdistrict subsistence salmon fishing permits; subsistence salmon

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catches must be recorded.

(2) Twenty-five (25) salmon for the head of household and 10 salmon for each dependent of the permit holder.

(3) In addition to the limits in (2) of this paragraph; the holder of a Tyonek subdistrict subsistence salmon fishing permit may take 70 king salmon.

30.89 Prince William Sound area

(a) Description. The Prince William Sound area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(b) Description of districts and subdistricts. The Upper Copper River District consists of all waters of the mainstem Copper River from the mouth of Slana River downstream to an east-west line crossing the Copper River at the upstream side of Haley Creek as designated by regulatory markers:

(1) The Chitina Subdistrict consists of waters of the Upper Copper River District downstream of the downstream edge of the Chitina-McCarthy Road Bridge and the east side of the Copper River from the upstream edge of the bridge to a regulatory marker located one quarter of a mile upstream of the bridge.

(2) the Glennallen Subdistrict consists of all remaining waters of the Upper Copper River District.

(c) Fishing seasons. (1) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Prince William Sound area.

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(2) Salmon may be taken in the Upper Copper River District only as follows:

(i) In the Glennallen Subdistrict, from June 1 through September 30.

(ii) In the Chitina Subdistrict, only when that subdistrict is open to personal use salmon fishing.

(iii) When the Copper River subsistence fishery is closed or restricted because of an inadequate escapement of sockeye or chinook salmon. The fishery may be reopened September 1 for the taking of coho salmon.

(d) Lawful gear and gear specifications. (1) Salmon may be taken only by the following types of gear:

(i) In the Glennallen Subdistrict by fishwheels or dip nets.

(ii) In the Chitina Subdistrict by dip nets when the personal use salmon fishery is open in that subdistrict.

(2) Fishwheels used for subsistence fishing may not be rented, leased, or otherwise used for personal gain. Subsistence fishwheels must be removed from the water at the end of the permit period. Each permittee may operate only one fishwheel at any one time. No person may set or operate a fishwheel within 75 feet of another fishwheel. No fishwheel may have more than two baskets.

(3) The permit holder (permittee) must personally operate the fishwheel or dip net. A subsistence fishwheel or dip net permit may not be loaned or transferred.

(4) A wood or metal plate at least 12 inches high by 12 inches wide, bearing the permit holder's name and address in letters and numerals at least one inch high, must be attached to each fishwheel so that the name and address

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are plainly visible.

(e) Waters closed to subsistence fishing. (1) All tributaries of the Copper River and waters of the Copper River not in the Upper Copper River District are closed to the taking of salmon.

(2) Crosswind Lake is closed to all subsistence fishing.

(3) Salmon may not be taken in any area closed to commercial salmon fishing.

(4) Salmon may not be taken in the Chitina Subdistrict, or in any portion of the subdistrict, when those waters are closed to personal use salmon fishing.

(5) Salmon may not be taken on the east side of the Copper River from the upstream edge of the Chitina-McCarthy Road Bridge upstream to the ADF&G regulatory marker located one quarter of a mile upstream of the bridge.

(f) Subsistence fishing permits. (1) Except as provided in this paragraph, fish other than salmon and freshwater fish species may be taken for subsistence purposes without a subsistence fishing permit.

(2) Salmon and freshwater fish species may be taken only under the authority of a subsistence fishing permit.

(3) Only one subsistence fishing permit will be issued to each household per year.

(4) Subsistence salmon fishing permits for the Upper Copper River District will be issued only to persons domiciled in Game Management Units 11, 13-A, 13-B, 13-C and 13-D as described in State regulation, (5 AAC 90.010), in the Jacksina River drainage to its confluence with the Nabesna River, and in the communities of Tetlin, Northway, Dot Lake, Tanacross, and Tok. The following apply to Upper Copper River District subsistence salmon fishing

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permits:

(i) Only one type of gear may be specified on a permit.

(ii) Only one permit per year may be issued to a household.

(iii) Permits must be returned to the department no later than October 31, or a permit for the following year may be denied.

(5) The total annual possession limit for an Upper Copper River District subsistence salmon fishing permit is as follows:

(i) Thirty (30) salmon for a household with one person.

(ii) Sixty (60) salmon for a household with two persons.

(iii) Ten (10) salmon for each additional person in a household over those specified in (ii) of this subparagraph.

(iv) Upon request, permits for additional salmon will be issued with the following limits:

(A) No more than a total of 200 salmon for a permit issued to a household with one person.

(B) No more than a total of 500 salmon for a permit issued to a household with two or more persons.

(g) Marking of subsistence taken salmon. No person may possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit unless the dorsal fin has been immediately removed from the salmon.

(h) Subsistence bag and possession limits. (1) Possession limits for salmon in the Upper Copper River District are described in subparagraph (f) (5) of this section.

(2) In locations open to commercial salmon fishing and in conformance with commercial salmon fishing regulations, the annual subsistence salmon

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Limit is as follows:

- (i) Fifteen (15) salmon for a household with one person.
- (ii) Thirty (30) salmon for a household with two persons.
- (iii) Ten (10) salmon for each additional person in a household over those specified in (2) of this subsection.
- (iv) No more than five king salmon may be taken per permit.

30.90 Yakutat area

(a) Description. The Yakutat area includes all waters of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(b) Fishing seasons. (1) Unless restricted in this part, or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Yakutat area.

(2) Salmon may not be taken during the period commencing 48 hours before an opening until 48 hours after the closure of an open commercial salmon net fishing season. This applies to each river or bay fishery individually.

(c) Lawful gear and gear specifications. Fish may be taken by gear listed in Section 30.81 (d) of this part, unless restricted in this section or under the terms of a subsistence fishing permit.

(d) Subsistence fishing permits. Salmon, trout and char may be taken only under authority of a subsistence fishing permit.

(e) Marking of subsistence taken salmon. Subsistence fishermen must remove the dorsal fin from subsistence caught salmon when taken.

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30.91 Southeastern Alaska area

(a) Description. The Southeastern Alaska area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(b) Description of districts and sections. Districts and sections are as described in State regulation (5 AAC 33.200).

(c) Fishing seasons. Unless restricted in this section or under the terms of a subsistence fishing permit, fish may be taken in the Southeastern Alaska area at any time.

(d) Lawful gear and gear specifications. Fish may be taken by gear listed in Section 30.81 (d) of this part, except as may be restricted under the terms of a subsistence fishing permit and except as follows:

(1) In District 13, Redoubt Bay, gill net or seine gear may not be used to take salmon in any waters of the bay closed to commercial salmon fishing.

(2) Set gill nets may not be used to take salmon except in the mainstream and side channels, but not the tributaries, of the Chilkat River from the latitude of Zimovia Point to one mile upstream of Wells Bridge.

(3) Beach seines and gaffs only may be used to take coho salmon from Salt Lake and Mitchell Bay from August 1 through October 31.

(e) Waters closed to subsistence fishing. The following waters are closed to subsistence salmon fishing.

(1) District 1:

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(1) Mahoney Creek in George Inlet.

(11) Naha Bay: Roosevelt Lagoon and within one statute mile of the falls at the outlet of Roosevelt Lagoon.

(2) District 11: The Taku River drainage.

(3) In District 15: Lynn Canal including Chilkat, Chilkoot and Litak inlets, during the closed period of the commercial salmon net fishery in the district.

(f) Subsistence fishing permits. (1) Salmon, trout and char may be taken only under authority of a subsistence fishing permit.

(2) Permits will not be issued for taking king or coho salmon, except for king and coho salmon in the Chilkat River adjacent to Klukwan and for coho salmon as provided in subparagraph (d) (3) of this section.

(3) In the Chilkat River north of the latitude of Zimovia Point, the subsistence fishing permit holder shall be physically present at the net while it is fishing.

(4) Subsistence salmon fishing permits for the fishery provided for in subparagraph (d) (3) of this section will be issued only to those persons domiciled in Angoon and only one permit will be issued for a household. The number of coho salmon that may be taken on a permit will be specified by the Alaska Department of Fish and Game after it has assessed the level of effort that will be involved in that fishery.

(5) Permits may be issued specifying times, areas, species and numbers of fish that may be taken.

(g) Marking of subsistence taken salmon. Subsistence fishermen shall remove the dorsal fin from all salmon when taken.

(h) Subsistence fishing policy for the Juneau, Petersburg, Wrangell, Sitka

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and Katchikan road systems. Salmon streams flowing across or adjacent to the road systems of Juneau, Petersburg, Wrangell, Sitka and Katchikan support only limited runs of salmon. Harvestable numbers of salmon in excess to the spawning escapement needs for those streams are normally of such a small magnitude that these numbers alone are not sufficient to support the consumptive demands of those communities. Therefore, permits allowing the use of nets shall not be issued for streams along the road systems of those communities.

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Subpart F - Procedures for Issuance of Annual Regulations

30.100 General provisions

(a) Purposes and scope: The rules of this subpart apply to the issuance of annual regulations establishing seasons and bag and possession limits for subsistence activities. The rules in this part are supplemented by 36 CFR Part 13 and 50 CFR Part 36, containing subsistence regulations specific to the National Park System and the National Wildlife Refuge System, respectively.

(b) Regulation development: The Federal Board shall recommend to the Secretary of the Interior annual regulations governing subsistence activities. The Federal Board will develop regulations in consideration of the following:

(1) The policies established by ANILCA to provide for a preference for subsistence uses of fish and wildlife, as set out in Section 30.3 of this part.

(2) Public input, scientific information, and recommendations received from the general public and from agencies and bodies such as local advisory committees, park and park monument subsistence resource commissions, regional councils, the State Boards of Fisheries and Game, the Alaska Department of Fish and Game, and Federal land management agencies.

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(3) Applicable non-conflicting State and Federal laws and regulations.

30.101 Subsistence hunting and subsistence trapping seasons and bag limits.

This section provides for annual hunting and trapping seasons and bag limits on big game, small game, fur animals, fur-bearers and unclassified game, and the units portion of units to which they apply.

Note: For Federal Register citations affecting annual regulatory schedules for this section, see the List of CFR Sections Affected in the Finding Aids section of this volume.

30.102 Subsistence fishing seasons and taking and possession limits.

This section provides for annual fishing seasons and taking and possession limits for aquatic plants and finfish, and the areas to which they apply.

Note: For Federal Register citations affecting annual regulatory schedules for this section, see the List of CFR Sections Affected in the Finding Aids section of this volume.

HB

291

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 291
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 25-Apr-89 Agency Affected: Natural Resources
Title: An Act relating to use of water BRU: Land & Water Mgmt
for certain salmon hatcheries.
Sponsor: Kertulla and Szymanski Components: Land & Water Mgmt
Requestor: Senate Resources

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	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: ^{AD} Larry Ostrovsky Phone: 465-2400
Division: Commissioner's Office Date: 25-Apr-89
Approved by Commissioner: Lennie Gorsuch Date: 25-Apr-89
Agency: Department of Natural Resources

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Act relating to use of water
for certain salmon hacheries....
Sponsor: Kerttula and Szvmanski
Requestor: Senate Resources

Agency Affected: Fish and Game
BRU: FRED
Components: _____

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						

FUNDING: (Thousands of Dollars)

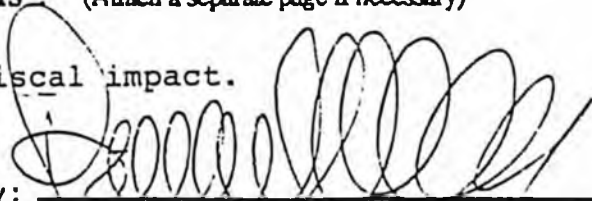
GENERAL FUND						
FEDERAL FUNDS						
JTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.



Prepared by: _____
Division: ADF&G, FRED Division

Phone: 465-4160
Date: 4/25/89

Approved by Commissioner: Orin Celisworth
Agency: ADF&G

Date: 4/25/89

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

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 291

PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to use of water for
certain salmon hatcheries as a preferred...
Sponsor: Keretula and Szymanski
Requestor: _____

Agency Affected: Alaska Power Authority
BRU: _____
Components: _____

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						
CAPITAL						
REVENUE		*	*	*	*	*

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The fiscal impact of this bill is directly related to the amount of water reappropriated from hydroelectric projects to hatcheries. In the case of the Solomon Gulch Hydroelectric project, the annual cost impact of the reappropriation of one cubic foot per second of water is about \$65,000.

There will be other costs related to agency personal services, not only within the Power Authority.

Prepared by: Brent N. Petrie Phone: 361-7877
Division: ALASKA Power Authority Date: April 26, 1989

Approved by Commissioner: _____ Date: _____
Agency: _____

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

* Will be affected to varying degrees depending on amount of water reappropriated.

but other State regulatory agencies which will need to amend or reissue permits.

There will be a cost impact to Four Dam Pool rate payers who will need to pay increased rates related to loss of capability to generate power hydroelectrically and need to make up that loss by additional diesel generation.

VALDEZ FISHERIES
DEVELOPMENT ASSOCIATION, INC.

P.O. BOX 125
VALDEZ, ALASKA 99686
835-4874



April 28, 1989

Representative Cliff Davidson
Co-Chairman Resources
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Dear Representative Davidson:

I write in support of House Bill 291, an Act relating to the use of water for nonprofit salmon hatcheries as a preferred use of water. This bill, as submitted to the Senate by Senator Kerttula, would help remedy the water resources problem faced by the Valdez Fisheries Development Association in its attempts to maintain a secure water source for our hatchery, which is located on Solomon Gulch in Valdez, below the Solomon Gulch hydroelectric facility.

This bill is tightly drafted to give private nonprofit fish hatcheries a preferred water right over State-owned hydroelectric projects. Under this bill, in order to obtain a water appropriation preference, a private nonprofit hatchery must demonstrate that they have received a permit to construct a salmon hatchery and have received a loan from the Department of Commerce and Economic Development to construct a hatchery, and that a State-owned hydroelectric project with a prior water appropriation right will either prevent or substantially interfere with the hatchery's use of water. Only then would the nonprofit hatchery receive a preferred use of the water over the State-owned hydroelectric project.

For more than a decade it has been of the policy of the State of Alaska to promote the enhancement of the State's fisheries. One of the ways in which the State implements this policy is by providing long-term, low interest loans for the construction and operation of nonprofit salmon hatcheries. The

DEDICATED TO THE UTILIZATION, CONSERVATION,
AND REHABILITATION OF ALASKA'S FISHERY RESOURCE
WITHIN THE 200 MILE LIMIT

purpose of these salmon hatcheries is to enhance and rehabilitate salmon resources in Alaska.

The Valdez Fisheries Development Association has constructed a private nonprofit fish hatchery on Solomon Gulch near Valdez. Our hatchery is currently permitted to incubate one hundred fifty-six million pink eggs, three million chum, two million coho, and three hundred thousand chinook. From humble beginnings in Valdez, we have grown to the major salmon producer in the Valdez Arm area.

However, our ability to maintain the propagation of salmon on Solomon Gulch and our commitment to rebuilding salmon populations recently devastated in Prince William Sound by the oil spill, is substantially interfered with by our inability to secure a constant source of water on Solomon Gulch for our fish. The Solomon Gulch hydroelectric facility, which is a State constructed facility operated by the Copper Valley Electric Association, has a prior water appropriation right to the water in Solomon Gulch. During periods of low water flow (for example between December and June) the supply of water in Solomon Gulch is reduced such that the dam can retain water, putting us in the position of having to buy water from the dam's operators. The prospect of making large payments for water, which our salmon fry and smolt need to survive, makes our hatchery's financial outlook questionable because these payments for water are not included in our State loan repayments.

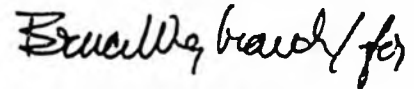
By adopting this bill, the Legislature makes a policy decision to grant a preferred use to nonprofit fish hatcheries over State-owned hydroelectric projects. This is a laudable policy for two major reasons. First, it is an implicit recognition by the Legislature that there are alternative means of generating electricity (for example by diesel generation conservation, or interties), but that there are not alternative means of obtaining fresh water for salmon hatcheries if water is cut-off. Second, the Legislature acknowledges that it deems private nonprofit fish hatcheries to be an integral part of the State's fisheries policy. This policy is all the more important, particularly in Prince William Sound where the salmon fishing industry has been knocked to its knees by the recent oil spill there.

I look forward to providing you with any information you would care to have from the hatchery on why we support this bill and addressing the concerns of any other member of the

Page 3

House Resources Committee or the Legislature. Please do not hesitate to contact me if you have any questions or if I can provide additional information.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jason C. Wells".

Jason C. Wells
Executive Director

JCW/lmw/5688i

AGENCY POSITION PAPER REGARDING
SENATE BILL NO. 290 - AN ACT ENTITLED:

"An Act relating to the use of water for
certain salmon hatcheries as a preferred use of water;
and providing for an effective date."

General Background

This bill would establish that use of water by salmon hatcheries operated under AS 16.10.400, Permits for Salmon Hatcheries, and receiving financial assistance under AS 16.10.500-560, Fisheries Enhancement Loan Program, is preferred over the use of water for a state-owned hydroelectric facility. Furthermore, under this bill, that preference would be granted over a prior appropriation to a state-owned hydroelectric project.

Constitutionality

The Power Authority asserts its belief that adoption of this bill violates Section 15 of the State Constitution which is as follows:

Section 15. Prohibited State Action. No bill of
attainder or ex post facto law shall be passed. No law
impairing the obligation of contracts, and no law making

any irrevocable grant of special privileges or immunities shall be passed. No conviction shall work corruption of blood or forfeiture of estate.

The basis for this belief is that this bill would impair fulfillment of obligations of long-term power sales agreements between the Alaska Power Authority and each of the Four Dam Pool utilities committing to deliver power on the basis of existing, lawful entitlements of water use. We believe that, in itself, the questionable constitutionality of this bill is enough to disqualify it from consideration for adoption. However, there are additional practical considerations, which, when duly examined, should compel the Legislature to not consider adoption.

Loss of Revenue

The Solomon Gulch Hydroelectric project, which is the project that this bill is directed toward, has actually produced an average of 37,000 megawatt-hours of energy. At the current wholesale rate of 5.6 cents a kilowatt hour, total power sales average about \$2.1 million per year. On an annual basis, each cubic foot per second (cfs) of water used for generation is worth \$22,100. Each cfs used for power generation re-appropriated for hatchery use would result in this amount of lost revenue. Furthermore, this loss would have to be made up by generation by diesel plants. The replacement cost of diesel generation for each cfs of hydroelectric ability lost based on the current cost of 16 cents per kilowatt-hour would be \$62,300. Therefore, the true cost of the

loss of one cfs of water used for generation at this facility is about \$85,000 per year. This cost, of course, would need to be passed on to the rate payers served by the Four Dam Pool utilities. The loss of the use of water does not relieve the State or utilities from paying operation and maintenance costs and debt service that would have been paid out of the revenue stream dependent upon hydroelectric generation.

Permits and Licenses

The Federal Energy Regulatory Commission License for the Solomon Gulch Hydroelectric project, and any other project, is issued on the basis of a strict set of circumstances. To obtain a license, the applicant must demonstrate that he has, or can obtain a water right that makes it possible to construct and economically operate a plant of stated capacity. Any deviation from stated output and configuration of the plant may require an amendment of the FERC license. It is conceivable that, if the capacity, or the annual energy output of the plant is adversely affected to a very great degree, a license amendment would not be granted.

In addition, to obtain a significant license amendment, there would need to be consultation and review with state and federal agencies, similar to that which is required for the initial license application. This would put additional burdens on state agencies, which are already short on funding and staff. Of course, there is a cost associated with preparation of the amendment exhibits required by FERC.

State permits will also need to be amended. Again, this poses an additional burden on an already strained agency regulatory mechanism.

Legal Precedent

It is our belief that if this bill could be adopted it would establish a precedent of a most undesirable nature where persons or parties could unfairly usurp the water rights of another without ample justification nor due compensation.

Conclusion

We recommend that the Legislature, in its sense of fairness and recognition of the State Constitution, not enact such a law that has far reaching effects, essentially into the homes of every electric rate payer served by state-owned hydroelectric generation facilities in this State.

RESOLUTION 89-28

A RESOLUTION OF THE PROJECT MANAGEMENT COMMITTEE
OF THE FOUR DAM POOL RECOMMENDING REJECTION OF SENATE BILL NO. 290

WHEREAS, the State of Alaska through the Alaska Power Authority, has developed four hydroelectric projects providing power to the communities of Kodiak, Valdez, Glennallen, Wrangell, Petersburg and Ketchikan, which are collectively known as the Four Dam Pool and are served respectively by the Kodiak Electric Association, Copper Valley Electric Association and municipal utilities of Wrangell, Petersburg and Ketchikan; and

WHEREAS, the Alaska Power Authority has constructed the four hydroelectric projects and entered into long-term contracts with each of the Four Dam Pool utilities to deliver power to these utilities on the basis of existing, lawful entitlements to water use.

WHEREAS, these communities share all costs of electric power generated by the four hydroelectric facilities; and

WHEREAS, Senate Bill 290, "An act relating to the use of water for certain salmon hatcheries as a preferred use of water" would have the possible effect of increasing the current cost of operating the Solomon Gulch Hydroelectric project and may increase the future cost of other Four Dam Pool projects; and

WHEREAS, the increased operating costs would impact all ratepayers in Four Dam Pool communities, and

WHEREAS, the water supply to the hydroelectric projects provides a clean renewable energy source, which, if displaced, would require replacement with oil-fired generation; and

WHEREAS, the licensing arrangements and water flow requirements for these hydroelectric projects were the result of considerable state and federal review and permission; and

WHEREAS, existing contractual arrangements for use of these project facilities have been relied upon by power purchasers to meet their residential and commercial customer requirements and would be disrupted if SB 290 passed into law;

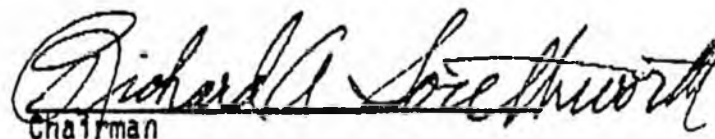
NOW, THEREFORE, be it resolved by the Four Dam Pool Project Management Committee, representing the communities as follows:

Section 1. The Project Management Committee hereby advises the Legislature that Senate Bill No. 290 will result in increased power costs to residents of all Four Dam Pool communities.

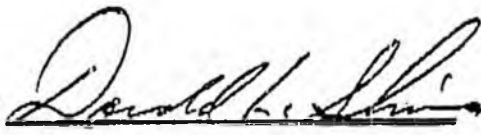
Section 2. Senate Bill No. 290 would change the water availability that is the legal basis of the Federal Energy Regulatory Commission licenses to construct and operate the state-owned hydroelectric projects.

Section 3. Senate Bill No. 290 would abrogate the power sales agreement between the State of Alaska - Alaska Power Authority, and each of the Four Dam Pool utilities, and invite litigation against the State of Alaska - Alaska Power Authority, to enforce the terms of the Power Sales Agreement.

Section 4. The Project Management Committee requests that the Legislature reject Senate Bill No. 290.


Chairman

ATTEST:

Secretary 

Approved at the PMC Meeting held April 25 - 26, 1989.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99801
(907) 457-3800

MEMORANDUM

April 25, 1989

150

SUBJECT: Constitutionality of SB 290; An Act relating
 to the use of water for certain salmon
 hatcheries as a preferred use of water

TO: Senator Jay Kerttula

FROM: George Utermohle *GU*
 Legislative Counsel

This memorandum is in response to a question posed by Paula Terrel of your staff as to whether HB 290 is constitutional.

There is nothing on the face of the bill to suggest that it is not constitutional.

HB 290 provides that the state will surrender its rights as a prior appropriator of water for use in a state-owned hydroelectric project to a later qualified applicant who will use the water for a private nonprofit hatchery. The state as owner of specific water rights may relinquish those rights to that water. There is no constitutional provision that prevents the state from relinquishing its rights to use water.

If HB 290 attempted to redistribute property rights in water held by a private person, corporation, or municipality, then there could be an unconstitutional taking of property rights. Under the United States and Alaska constitutions, the state may not take private property without compensating the owner. The state would have to compensate the owner of water rights for the value of those rights taken away. However, as I mentioned, this situation does not exist under HB 290.

Under Article VIII, sec. 13 all surface waters of the state are subject to appropriations and priority of appropriation gives prior rights to the water. This prior right to water gives the appropriator a property right in the use of the

Senator Jay Kerttula
Page 2
April 25, 1989

water. However, the holder of this property right may relinquish those rights. Under SB 290, the state is agreeing to relinquish its existing rights to use water for hydroelectric projects to a later qualified appropriator who wants to use the water for a private nonprofit hatchery.

If I can provide further assistance, please advise.

GU:gc
WKG9/117

HB

293

HOUSE COMMITTEE REPORT

4/29

(9)

Date Referred: April 17, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 4-29-89

The RESOURCES Committee considered:

HB 293

HOUSE BILL NO. 293 [INCREASE CIVIL PENALTIES: OIL DISCHARGE]
 "An Act increasing civil penalties and removing a cap on total civil penalties that can be assessed for certain oil discharges."

RECOMMENDATIONS:

- be replaced with CS HB 293 (RES) the same title a new title
- have attached amendment(s)
- 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) |
| <input type="checkbox"/> fiscal impact _____ | <input type="checkbox"/> fiscal note(s) _____ |
| <input checked="" type="checkbox"/> zero fiscal note DEC _____ | <input type="checkbox"/> zero fiscal note(s) _____ |
| <input type="checkbox"/> zero with analysis _____ | <input type="checkbox"/> zero fu/analysis _____ |

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

Signature	Name	Signature	Name	Do Not Pass	No Rec	Amend
<i>Cliff Davidson</i>	DAVIDSON	<i>Bill Hudson</i>	HUDSON			<input checked="" type="checkbox"/>
<i>S. J. Williams</i>	MENARD	<i>Sen Mary Sharp</i>	SHARP			<input checked="" type="checkbox"/>
<i>Mike Davis</i>	M. DAVIS	<i>William FURMAN</i>	FURMAN			<input checked="" type="checkbox"/>
<i>Richard Foster</i>	FOSTER					
<i>Jacko</i>	JACKO					
<i>Navarre</i>	NAVARRE					

Cliff Davidson
 CO - Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: DEC
 Title: An Act increasing civil penalties and removing a cap on total penalties... BRU: _____
 Sponsor: Representative Brown Components: _____
 Requestor: House Resources

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						

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Amy D. Kyle Phone: 465-2600
 Division: Commissioner's Office Date: _____

Approved by Commissioner: A. D. Kyle Date: 4/28/89
 Agency: Department of Environmental Conservation

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

Original sponsors: Brown, M.Davis,
Ellis, et al.

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 293 (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 civil penalties that can be
7 assessed for certain oil discharges; allowing the
8 state to recover full reasonable attorney fees and
9 costs in certain actions; and amending Rule 82,
10 Alaska Rules of Civil Procedure."

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

12 * Section 1. AS 46.03.758(b) is amended to read:

13 (b) No later than the 10th day after the convening of the Second
14 Session of the Sixteenth [TENTH] Alaska State Legislature, the depart-
15 ment shall submit to the legislature regulations establishing the
16 following schedule of fixed penalties for discharges of oil:

17 (1) Subject to (2) of this subsection, the penalties for
18 the following categories of receiving environments may not exceed

19 (A) \$50 [\$10] per gallon of oil which enters an anad-
20 romous stream or other freshwater environment with significant
21 aquatic resources;

22 (B) \$25 [\$2.50] per gallon of oil which enters an
23 estuarine, intertidal, or confined saltwater environment; and

24 (C) \$10 [\$1] per gallon of oil which enters an uncon-
25 fined saltwater environment, public land, or freshwater environ-
26 ment without significant aquatic resources.

27 (2) For discharges of oil which are caused by the gross
28 negligence or intentional act of the discharger, or when the court
29 finds that the discharger did not take reasonable measures to contain

1 and clean up the discharged oil, or where the discharger did not re-
2 spond according to an approved contingency plan, the penalty shall be
3 determined by multiplying the penalty established under (1) of this
4 subsection by a factor of five.

5 * Sec. 2. AS 46.03.758(e) is amended to read:

6 (e) If [AFTER APRIL 19, 1978, IF] a discharge of oil in excess
7 of 18,000 gallons not permitted under applicable state and federal law
8 occurs within the territorial jurisdiction of the state, or into or
9 upon the adjacent outer continental shelf of the state, the following
10 persons, in addition to the person causing or permitting the dis-
11 charge, are jointly and severally liable to the state, in a civil
12 action, for the full amount of penalties established in the regu-
13 lations adopted under this section: [, OR \$100,000,000, WHICHEVER IS
14 LESS,]

15 (1) if the discharge occurs from any commercial or indus-
16 trial facility other than a vessel or offshore platform, the owner,
17 lessee or permittee, and operator of the facility;

18 (2) if the discharge occurs from a vessel,

19 (A) the owner and operator of the vessel; and

20 (B) the owner of the oil carried as cargo on the
21 vessel at the time the vessel was loaded, if the loading occurred
22 within the territorial jurisdiction of the state, or at a deep-
23 water port or other offshore storage facility adjacent to the
24 state; however, if the owner of the oil temporarily transfers
25 ownership of the oil to another person, and the transfer has the
26 purpose or effect of evading the vicarious liability imposed by
27 this section, the transferor will be considered the owner of the
28 oil for the purposes of this subsection; and

29 (3) if the discharge occurs from an offshore platform, the

1 lessee or permittee of the tract or acreage upon which the platform is
2 situated, and the operator of the platform.

3 * Sec. 3. AS 46.03.758(f) is amended to read:

4 (f) The court shall deduct from the penalties for which the
5 person charged is liable under (e) of this section that amount of oil
6 which was removed from the environment as a result of a cleanup opera-
7 tion undertaken in conformity with applicable state and federal law,
8 unless the oil was removed by an agency of state, local or federal
9 government. The dispersal of oil through the use of chemical agents,
10 biological additives, burning or sinking agents, or other means is not
11 considered removal for the purposes of this subsection. The court may
12 estimate the amount of oil removed.

13 * Sec. 4. AS 46.03.758(g) is amended to read:

14 (g) Except as provided in (f) and (j) of this section, the
15 entire penalty specified in the regulations shall be imposed [, EXCEPT
16 THAT A PERSON WHO DISCHARGES OIL INTO A RECEIVING ENVIRONMENT MAY
17 DEMONSTRATE, BY A PREPONDERANCE OF EVIDENCE, THAT MITIGATING CIRCUM-
18 STANCES RELATING TO THE EFFECTS OF THE DISCHARGE WOULD MAKE IMPOSITION
19 OF THE FULL PENALTY INAPPROPRIATE. IN DETERMINING WHETHER MITIGATING
20 CIRCUMSTANCES EXIST, THE COURT SHALL RECOGNIZE THAT SCIENTIFIC KNOWL-
21 EDGE PERTAINING TO OIL SPILLS IS VERY LIMITED AND IF THERE IS INSUFFI-
22 CIENT KNOWLEDGE EITHER TO PREDICT A BASE CASE OR TO SHOW MITIGATING
23 CIRCUMSTANCES VARYING FROM THAT BASE CASE, THE ADMINISTRATIVELY ESTAB-
24 LISHED SCHEDULE OF PENALTIES SHALL APPLY. IF MITIGATING CIRCUMSTANCES
25 ARE PROVEN BY A PREPONDERANCE OF THE EVIDENCE, THE COURT MAY REDUCE OR
26 TOTALLY ELIMINATE THE PENALTY, IN ACCORDANCE WITH THE PURPOSES OF THIS
27 SECTION].

28 * Sec. 5. AS 46.03.780(a) is amended to read:

29 (a) A person who violates a provision of this chapter, AS 46.04,

1 or AS 46.09, or who fails to perform a duty imposed by this chapter,
2 AS 46.04, or AS 46.09, or violates or disregards an order, permit, or
3 other determination of the department made under the provisions of
4 this chapter, AS 46.04, or AS 46.09, respectively, and thereby causes
5 the death of fish, animals, or vegetation or otherwise injures or
6 degrades the environment of the state is liable to the state for
7 damages, all reasonable attorney fees and costs incurred by the state
8 in collecting the damages, and all reasonable attorney fees and costs
9 incurred by the state in collecting penalties for violations described
10 in this subsection.

11 * Sec. 6. AS 46.03.780(a), as amended by sec. 5 of this Act, has the
12 effect of amending Rule 82, Alaska Rules of Civil Procedure, by allowing
13 the state to recover all reasonable attorney fees and costs in certain
14 actions.

15 * Sec. 7. APPLICABILITY. (a) AS 46.03.758(b), as amended by sec. 1 of
16 this Act, applies to a discharge of oil that occurs on or after the effec-
17 tive date of the regulations required to be submitted to the legislature
18 under AS 46.03.758(b), as amended by sec. 1 of this Act. Regulations
19 adopted under AS 46.03.758 remain in effect until superseded by regulations
20 adopted under AS 46.03.758, as amended by sec. 1 of this Act.

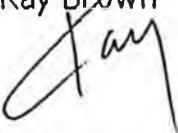
21 (b) AS 46.03.758(e) - (g), as amended by secs. 2 - 4 of this Act,
22 apply to a discharge of oil that occurs on or after the effective date of
23 this Act.

Kay Brown

Alaska State Legislature House of Representatives

TO: Representative Cliff Davidson, Co-Chair
Representative Curt Menard, Co-Chair

FROM: Representative Kay Brown

DATE: April 28, 1989 

SUBJ: HB 293/Civil Penalties for Oil Spills

Thank you for scheduling HB 293, legislation that would amend the civil penalty provisions in existing state law to increase civil penalties for oil spills.

The legislation before the Resources Committee today has two fundamental purposes:

- 1) to compensate for the actual but unquantifiable damages attributable to a spill; and
- 2) to provide appropriate incentive through financial penalties for potentially responsible parties to ensure the safe handling of oil and make appropriate response efforts.

As reflected by the statement of legislative findings found in present state statutes regarding civil penalties for the discharge of oil, even minute quantities of oil released into the environment may cause a wide range of serious short- and long-term damages (AS 46.03.758). Some of the more obvious concerns include such things as increased mortalities among larval and juvenile life stages of important commercial fish species; contamination of food chains; or impacts on salmon migration patterns. The Department of Fish and Game and the other state and federal agencies are only now beginning the kinds of investigations that will give insight into the extent of damage that has been done to Prince William Sound.

Unfortunately, the exact nature and extent of oil pollution impacts can not, in many cases, be documented with great certainty or precisely quantified. Moreover, there are a great number of values such as lost recreational opportunities and the impact to Alaska's efforts to attract tourists that also defy quantification. The state's civil penalty provisions are intended to provide compensation for these real but largely unquantifiable impacts, while also providing appropriate incentive for the safe handling of oil.

The current penalties scheme clearly fails to meet either of its fundamental objectives. The Prince William Sound oil spill (and other incidents such as the Cook Inlet oil spill) make it painfully clear that the state's existing oil spill civil penalties are grossly inadequate. Preliminary estimates of the civil penalties that will result from the disaster are on the order of \$14 million, a figure that confirms the inadequacy of existing law to compensate adequately for the disastrous natural resource damages to Prince William Sound. Nor, as is evident from the failure of Exxon and Alyeska to mount a reasonable response effort, does the present penalty scheme provide the kind of incentive needed to ensure safe handling or appropriate response.

HB 293 would increase the civil penalty schedule found in present law to a level that would more appropriately provide both reasonable compensation and the necessary incentive for the safe handling of oil products.

Proposed Committee Substitute

In addition to the statutory changes included in HB 293 as introduced, additional provisions are offered in a proposed Committee Substitute. The proposed CS would include the following provisions:

- increased base penalty amounts
- elimination of the \$100,000,000 cap on liability in present law
- inclusion of a provision that a five-fold penalty increase would apply where the "discharger did not respond according to an approved contingency plan"
- language to clarify that the credit for removal of oil does not apply to dispersal by way of chemical agent or other means including use of

"biological additives, burning or sinking agents" (Note: dispersal agents do not remove oil at all but rather breaks down, dilutes, or pushes the oil under the surface or into the water column where it continues to create harm.)

- deletion of language in existing law that allows for the reduction or elimination of penalties in the event of "mitigating circumstances"

- additional language to clarify that the state's litigation costs are recoverable

It is important to realize that the current civil penalty provisions in state are a product of a 1977 legislative effort by the Hammond Administration to put in place a meaningful civil penalty provision prior to the start up of Prudhoe Bay. A review of the legislative history of this bill reveals that the legislation originally introduced was the subject of intensive oil industry lobbying that succeeded in severely compromising the bill before it finally achieved passage. The Prince William Sound oil spill makes it abundantly clear that the state's existing civil penalty provisions are completely unacceptable. The proposed CS would address these deficiencies.

* * * * *

Again, I appreciate your scheduling of HB 293. I look forward to the Resource Committee's consideration of this measure.

TO: Representative Kay Brown
FROM: Eric F. Myers *efm*
DATE: 4/27/89
SUBJ: HB 293/Civil Penalties for Oil Spills

This memorandum provides a summary of HB 293 as it was introduced, a brief overview of the state's existing civil penalties provisions relating to oil spills and discusses the issues that have emerged during consideration of SB 271 and appropriate changes for inclusion in HB 293.

SUMMARY OF HB 293 AS INTRODUCED

Section 1

Amends existing law at AS 46.03.758 (b) regarding base civil penalties for the discharge of oil to increase the existing schedule of penalties as follows:

→ \$50/gallon [up from \$10/gallon] of oil which enters an anadromous stream or other freshwater environment with significant aquatic resources

\$25/gallon [up from \$2.50/gallon] of oil which enters an estuarine, intertidal, or confined saltwater environment

\$10/gallon [up from \$1/gallon] of oil which enters an unconfined saltwater environment, public land, or freshwater environment without significant aquatic resources

The bill would direct the Department of Environmental Conservation to develop new regulations pertaining to the new fixed penalty schedule.

Section 2

— Based on intent

Amends existing law at AS 46.03.758 (e) to eliminate the existing \$100,000,000 cap on civil penalty awards.

DISCUSSION

State civil penalty statutes have two distinct and fundamental purposes:

- 1) to compensate for the actual but unquantifiable damages attributable to a spill; and
- 2) to provide appropriate incentive through financial penalties for potentially responsible parties to exercise due caution, take necessary safeguards, and make appropriate preventative investments.

2, — The state's civil penalty scheme is not intended for punitive purposes. Nor is the current civil penalty scheme in AS 46.03.758 is intended to provide compensation for actual quantifiable damages. Rather to compensate for actual unquantifiable damages (sometimes referred to as "natural resource damages"). That is, real damages, but damages that are very difficult, if not completely impossible, to prove or otherwise quantify empirically (eg, diminished phytoplankton productivity, larval mortality, food chain contamination, other forms of reduced biological productivity or other kinds of harm such as lost recreational opportunities which cannot be established precisely but exist and warrant compensation).

→ At the same time, the civil damages scheme is intended to provide an incentive for the safe handling of oil. Existing law provides that the penalties will be increased by a factor of five

- in the case of gross negligence, or
- when the discharger did not take reasonable measures to contain and clean up the oil.

A cap of \$100,000,000 is provided, although as a practical matter it is virtually impossible to conceive of an event that would yield penalties of this magnitude, given the dollar penalty levels in current law.

Reason cost

Further, the existing civil damages scheme in AS 46.03.758 only applies to spills above 18,000 gallons. Civil penalties for spills of less than 18,000 gallons are limited to actual damages as provided in AS 46.03.760(a), although qualified (somewhat confusingly) by AS 46.03.760(f)(4).

*reasonable compensation — adverse environ. ~~action~~ toxicity, degradability, dispersal and sensitivity of receiving environment
degreⁱⁿ charged degrades existing environmental quality.*

Structure of Existing Civil Penalty Statute

The current state statute under which civil liabilities may be assessed for oil spills (also referred popularly to as the "dollars per gallon" law) establishes "base penalties" which are further modified according to the receiving environment impacted and the characteristics of the oil (toxicity, degradability and dispersability). That is, the amount of the fine varies depending upon the type of oil spilled and the sensitivity of the receiving environment.

Existing statute establishes three levels of base penalties associated with three distinct categories of receiving environment:

1) \$10/gallon for spills into anadromous streams and freshwater environments with significant aquatic resources

2) \$2.50/gallon for spills into estuarine, intertidal, or confined saltwater environments

3) \$1/gallon for spills into and unconfined saltwater environment, public land, or freshwater environment without significant aquatic resources

The statute further recognizes that the characteristics of the oil spilled may vary and directs that the penalties accommodate these characteristics. Regulations for the law assign numerical factors to different types of oil on the basis of their toxicity, degradability and dispersability characteristics. See regulations as an attachment.

Legislative History of Present Law

The current statute was the product of 1977 legislation introduced by the Hammond Administration just prior to the start-up of Prudhoe Bay. Prior to 1977, state law provided for a civil penalty maximum of \$100,000 for an initial violation and \$5,000 for each day of continuing violation. The 1977 legislation (HB 137) which led to present law was introduced with the dual objective of ensuring that the state could receive adequate compensation for natural resources damages (ie, real but unquantifiable) for oil spills and that a sufficient financial incentive would exist to inspire appropriate handling of oil.

The bill underwent substantial changes during its consideration by the legislature and the final bill adopted was substantially weakened by oil industry pressure. Particularly significant changes to the bill during its consideration included:

- ✓ reduction in penalties: early versions of the bill had a penalty schedule of \$50-25-10 which was changed to the current \$10-2.50-1 schedule
- ✓ limit on damages: the \$100,000,000 cap was added
- ✓ reduced for penalties for oil cleaned up: a deduction in penalties was added for the amount of oil "removed from the environment" (qualified to specifically provide that the dispersal of oil did not constitute removal for purposes of a deduction)
- ✓ reduction in penalties for "mitigating" circumstances: language was included to allow a person who discharges oil "to demonstrate ... that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate" and allow the court to reduce or eliminate penalties accordingly

18,000 gallon exemption: fears about the potential impact of penalties on "small" handlers of oil led to the inclusion of an 18,000 gallon threshold exemption for application of the civil damages scheme while spills below this level are subject only to the "liquidated damages" provisions of AS 46.03.760(a)

In summary, the legislation that established the state's existing civil penalties scheme for large oil spills was enacted in 1977 after being substantially watered down by industry interests.

The Prince William Sound oil spill disaster has brought to light how inadequate existing law is in serving the dual purposes that led to the enactment of the law: providing for an appropriate level of compensation and to ensure safe operations. As an "estuarine, intertidal, or confined saltwater environment" the base penalty associated with Prince William Sound is \$2.50 per gallon, as modified by the factors for crude oil characteristics of toxicity, dispersability, and degradability (crude oil is considered "moderate" in all three categories). **The net per gallon penalty is approximately \$1.44/gallon.** In the case of the Exxon Valdez tanker, where roughly 11.3 millions gallons spilled, a penalty may be estimated accordingly

$$(\$1.44) \times (11,300,000) = \$16,200,000$$

The state recently asked Exxon to pre-pay the civil penalties associated with the spill in the amount of \$14 million. See news article attached. (Note: Even if the five-fold factor for gross negligence is applied, the penalty amount will only be \$81,000,000.)

The current penalties scheme clearly fails to meet either of its fundamental objectives. This level of financial penalty will neither compensate adequately for the natural resource damages. Moreover, it is evident from the failure of Exxon and Alyeska to mount a reasonable response effort that this penalty scheme did not provide anything like the kind of incentive needed to ensure safe handling or appropriate response.

ISSUES TO BE ADDRESSED BY HB 293

During the hearings in Senate Oil and Gas, Doug Mertz/Department of Law testified that it would be preferable to not take crude oil out of the existing civil penalty scheme and establish a separate schedule as proposed by SB 271. Rather he urged an increase in the existing penalty amounts to the levels that were proposed when the law was originally considered in 1977. He also recommended removing the \$100 million cap on liability that was added to the 1977 bill by the legislature before it was enacted. This initial testimony was the basis for the drafting HB 293 which reflects these two provisions.

Since that time, hearings on SB 271 have further explored the idea of a separate schedule for oil spill penalties and raised a number of issues that should be addressed in HB 293. During review of SB 271 in the Senate Resources Committee, the Administration offered a draft CS for consideration by the committee (copy attached).

This Administration draft CS incorporates the provisions of HB 293 and makes other changes as well. Key features of the draft CS include:

- ✓ - increased base penalty amounts (same as proposed by HB 293)
- ✓ - addition of provision that the five-fold penalty increase factor would also apply where "discharger did not respond according to an approved contingency plan"
- additional language added to existing statute to clarify that the credit for removal of oil does not apply to dispersal by way of

chemical agent or other means including use of "biological additives,
burning or sinking agents" (dispersal does not remove oil at all;
simply dilutes the oil and pushes it under the surface or into the
water column)

Out of sight . . .

- removal of language in existing law that allows for the reduction or
elimination of penalties in the event of "mitigating circumstances"

These proposals are all worth including. Further, the Administration intends
to offer additional language to make it clear that attorney fees are fully
recoverable.

RECOMMENDATIONS FOR HOUSE HEARING ON HB 293

The changes proposed by the Administration should all be incorporated into
a Resources CS along with language (forthcoming) from the Department of
Law that would address the attorneys fee cost recovery issue. This last
issue could perhaps be handled through an amendment. If there is time
before the hearing, I will have a draft prepared which includes all of the
Administration's proposed changes.

attachments

HB 293 (as introduced)

Administration work draft CS for SB 271 dated 4/21/89

news article

18 AAC 75.395

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18 AAC 75.305 —

18 AAC 75.500 ENVIRONMENTAL CONSERVATION 18 AAC 75.510

(1) "approved loading manual" means the manual including information regarding trim and stability, hullbending moment, and information meeting the requirements of 46 CFR § 45.105;

(2) "containment and exclusion equipment" means booms, logs, curtains, and other devices designed or constructed and deployed in order to control, concentrate and restrict the movement and spreading of oil;

(3) "discharge" means any spilling, leaking, pumping, pouring, sweating, emitting, emptying, or dumping;

(4) "lightering" means pumping or transferring of oil from cargo compartments of tank vessels to another vessel or storage container;

(5) "liquefied petroleum gas" means natural gas converted to a liquid state by pressure and cooling, butane, propane, and other light ends which at 70 degrees F. and atmospheric pressure revert to the gaseous state. (Eff. 9/9/81, Register 79)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

Editor's notes. — For the purposes of this chapter, the following terms are defined in AS 46.04.120: "department"; "off-shore exploration and production facility";

"oil"; "oil barge"; "oil terminal facility"; "operator"; "person"; "tank vessel"; "vessel."

Article 5. Schedule of Civil Penalties

Section	Section
500. Applicability	560. Dispersibility of petroleum, petroleum products, and byproducts
510. Freshwater environments	570. Schedule of civil penalties
520. Marine environments	580. Prosecutorial discretion
530. Public land environments	590. Annual report
540. Toxicity of petroleum, petroleum products, and byproducts	600. Definitions
550. Degradability of petroleum, petroleum products, and byproducts	

18 AAC 75.500. APPLICABILITY. 18 AAC 75.510 — 18 AAC 75.600 establish a schedule of civil penalties for the discharge of oil under AS 46.03.758. The schedule of civil penalties established by this chapter does not apply to discharges of oil which are specifically made subject to the penalty provisions of AS 46.03.760(a). (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.510. FRESHWATER ENVIRONMENTS. (a) For the purposes of AS 46.03.758(b)(1)(A), freshwater environments with significant aquatic resources are classified as follows:

(1) Critical freshwater environments include

(A) surface and subsurface water supplies for which the commissioner of natural resources has issued a water use permit under AS 46.15.040 *et seq.*, or which are in fact being used for a purpose that would qualify for a water use permit;

(B) rivers, lakes, and streams designated under AS 16.05.870(a) as important for the spawning, rearing, or migration of anadromous fish, and the water of lakes, streams, and rivers which flows or empties into those designated waters;

(C) lakes, streams, rivers, and freshwater wetlands within the boundaries of land administered under the National Wildlife Refuge System, and the water of lakes, streams, and rivers which flows or empties into those waters;

(D) lakes, streams, rivers, and freshwater wetlands within the boundaries of game reserve areas, refuges, critical habitat areas, and sanctuaries established under AS 16.05.255(1) or AS 16.20, and the water of lakes, streams, and rivers that flows or empties into those waters; and

(E) lakes, streams, rivers, and freshwater wetlands within the boundaries of fish reserve areas, refuges, critical habitat areas, and sanctuaries established under AS 16.05.251(1) or AS 16.20, and the water of lakes, streams, and rivers that flows or empties into those waters;

(2) Sensitive freshwater environments include

(A) lakes other than those classified in (1) of this subsection;

(B) freshwater wetlands other than those classified in (1) of this subsection; and

(C) subsurface freshwaters other than those classified in (1)(A) of this subsection.

(b) For the purposes of AS 46.03.758(b)(1)(C), all freshwater of the state not classified in (a)(1) or (2) of this section is classified as without significant aquatic resources. (Eff. 4/19/78, Register 66; am 8/6/87, Register 103)

Authority: AS 46.03.758

18 AAC 75.520. MARINE ENVIRONMENTS. (a) For the purposes of AS 46.03.758(b)(1)(E), estuarine, intertidal and saltwater environments are classified as follows:

(1) Critical marine environments include

(A) marine water within the boundaries of state game refuges established under AS 16.05.255(1) or AS 16.20;

(B) marine water within the boundaries of fish and game critical habitats established under AS 16.20;

(C) marine water within the boundaries of marine sanctuaries established under 33 U.S.C. 1401 *et seq.*, (P.L. 92-532);

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(D) marine water within the boundaries of areas administered under the National Wildlife Refuge System;

(E) marine water within one statute mile of the mouth of waters designated under AS 16.05.870(a) as important for the spawning, rearing or migration of anadromous fish;

(F) marine water within one statute mile of a seabird colony or marine mammal rookery or hauling ground identified by the Alaska Department of Fish and Game in Alaska's Wildlife and Habitat, January, 1973;

(G) high density sea otter habitat identified by the Alaska Department of Fish and Game in Alaska's Wildlife and Habitat, January, 1973; and

(H) marine water within the barrier island-lagoon ecosystems extending from the Colville River to Canning River, and seaward of the Copper River delta;

(2) Sensitive marine environments include

(A) the inside waters of Southeast Alaska not otherwise classified in (1) of this subsection;

(B) saltwater wetlands and other intertidal and estuarine areas not otherwise classified in (1) of this subsection; and

(C) Prince William Sound, and the bays, arms, fjords, ports and other inside marine waters of Prince William Sound; and

(D) all marine water within 10 statute miles of any point of those waters designated in (1) of this subsection.

(b) For the purposes of AS 46.03.758(b)(1)(C), marine water not classified in (a) of this section is classified as without significant aquatic resources. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.530. PUBLIC LAND ENVIRONMENTS. (a) For the purposes of AS 46.03.758(b)(1)(C), public land is classified as follows:

(1) Critical terrestrial environments include

(A) state game reserve areas, refuges and sanctuaries established under AS 16.05.255(1) or AS 16.20 *et seq.*;

(B) state parks, campgrounds and waysides;

(C) municipal parks and park reserves;

(D) national parks, preserves, wilderness areas, monuments, recreation areas and lands administered under the National Wildlife Refuge System;

(E) established campgrounds, scenic waysides and picnic areas; and

(F) national historical sites;

(2) Very sensitive terrestrial environments include

(A) land administered under the National Forest System not otherwise classified in (1) of this subsection;

(B) land underlain with continuous permafrost not otherwise classified in (1) of this subsection; and

(C) land in state forests and research areas not otherwise classified in (1) of this subsection;

(3) Sensitive terrestrial environments include land other than that classified in (1) or (2) of this subsection upon which continuous natural terrestrial vegetation cover is present.

(b) For the purposes of AS 46.03.758(b)(1)(C), all public land not classified in (a) of this section is classified as without significant terrestrial environmental resources. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.540. TOXICITY OF PETROLEUM, PETROLEUM PRODUCTS, AND BYPRODUCTS. For the purposes of AS 46.03.758(d), the toxicity of petroleum, petroleum products, and by-products is as follows:

(1) highly toxic

(A) numbers 1, 2 and Arctic diesel fuel and heating oil;

(B) jet aviation fuels A and B;

(C) motor gasoline including aviation gasoline;

(D) kerosene; and

(E) stationary turbine fuels;

(2) moderately toxic

(A) waste oil and waste oil mixtures;

(B) lubricating oil;

(C) jet fuels other than those specified in (1)(B) of this section;

and

(D) crude oil;

(3) less toxic

(A) bunker and residual fuel oils; and

(B) hydraulic fluids;

(4) relatively nontoxic

(A) asphalts;

(B) tars; and

(C) other petroleum, petroleum products, and byproducts not listed in (1) — (3) of this section. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.550. DEGRADABILITY OF PETROLEUM, PETROLEUM PRODUCTS, AND BYPRODUCTS. For the purposes of AS 46.03.758(d), the degradability of petroleum petroleum products and byproducts is as follows:

(1) low degradability

(A) asphalt;

- (B) tar;
 - (C) bunker and residual fuel oils; and
 - (D) other petroleum, petroleum products, and byproducts not otherwise listed in (2) or (3) of this section;
- (2) moderate degradability.
- (A) hydraulic fluids;
 - (B) lubricating oil;
 - (C) waste oils and waste oil mixtures; and
 - (D) crude oil;
- (3) high degradability
- (A) motor gasoline, including aviation gasoline;
 - (B) numbers 1, 2 and Arctic diesel fuel and heating oil;
 - (C) jet and stationary turbine fuels; and
 - (D) kerosene.

(Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.560. DISPERSIBILITY OF PETROLEUM, PETROLEUM PRODUCTS, AND BYPRODUCTS. For the purposes of AS 46.03.758(d), the dispersibility of petroleum, petroleum products, and byproducts is as follows:

- (1) highly dispersible
- (A) motor gasoline, including aviation gasoline;
 - (B) all jet fuels;
 - (C) kerosene;
 - (D) numbers 1, 2 and Arctic diesel fuel and heating oil;
 - (E) hydraulic fluids; and
 - (F) stationary turbine fuels;
- (2) moderately dispersible
- (A) emulsified oil mixtures;
 - (B) lubricating oils;
 - (C) waste oil and waste oil mixtures; and
 - (D) crude oils;
- (3) low dispersibility
- (A) bunker and residual fuel oils;
 - (B) asphalts;
 - (C) tars; and
 - (D) other petroleum, petroleum products, and byproducts not otherwise listed in (1) or (2) of this section. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.570. SCHEDULE OF CIVIL PENALTIES. The schedule of civil penalties for which a person may be held liable under AS 46.03.758(e) is established as follows:

(1) The base civil penalty for discharges into various receiving environments is as follows:

	Freshwater	Marine	Public Land
Critical environmental resources	\$10.00	\$2.50	\$1.00
Very sensitive environmental resources	N/A	N/A	.75
Sensitive environmental resources	5.00	2.00	.50
Without significant environmental resources	1.00	1.00	.25

(2) Toxicity, degradability and dispersibility factors are as follows:

	Factor
(A) toxicity*	
(i) highly toxic	1.0
(ii) moderately toxic	0.75
(iii) less toxic	0.5
(iv) relatively nontoxic	0.25
(B) degradability**	
(i) low degradability	1.0
(ii) moderate degradability	0.5
(iii) high degradability	0.25
(C) dispersibility	
(i) high dispersibility	0.15
(ii) moderate dispersibility	0.5
(iii) low dispersibility	1.0

(3) The net civil penalty which will be assessed per gallon of oil discharged is calculated by multiplying the base penalty established in (1) of this section by the arithmetic mean of the toxicity, degradability, and dispersibility factors established in (2) of this section. If a portion of the oil enters more than one receiving environment, the civil penalty will be based upon the most sensitive receiving environment which that portion of the oil enters. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

*To determine the toxicity factor for a particular oil, the factor from the table is multiplied by a fraction whose numerator is the percent concentration of aromatics in the oil and whose denominator is 45. In no event shall the toxicity factor exceed 1.0.

The toxicity factor in crude oil is .75 multiplied by a fraction whose numerator is the API gravity of the crude oil and whose denominator is 30.

**The degradability factor for crude oil is .5 multiplied by a fraction whose numerator is 30 and whose denominator is the API gravity of the crude oil.

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18 AAC 75.580 ENVIRONMENTAL CONSERVATION 18 AAC 75.600

18 AAC 75.580. PROSECUTORIAL DISCRETION. In appropriate cases, the department will, in its discretion, either settle actions out of court under AS 46.03.758 for less than the full penalty provided for under this chapter, or decline to file an action under AS 46.03.758. This section is intended to confirm the department's litigation discretion, and may not be construed as creating a reviewable decision. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.590. ANNUAL REPORT. Within 10 days after the convening of each regular legislative session, the department will report to the legislature on all actions brought during the preceding calendar year, and the status and disposition of those actions. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.600. DEFINITIONS. As used in secs. 500 — 600 of this chapter

- (1) "estuary" means a semienclosed, coastal body of water which has a free connection with the sea and within which seawater is measurably diluted with freshwater derived from land drainage;
- (2) "freshwater wetlands" means those environments characterized by rooted vegetation which is partially submerged either continuously or periodically by surface freshwater with less than .5 parts per thousand salt content and not exceeding three meters in depth;

(3) "inside waters of Southeast Alaska" includes all those marine waters lying inside the boundary line established in 33 C.F.R. secs. 82.1705-1730, 42 Federal Register 35791 (July 11, 1977);

(4) "marine water" means all saltwater environments, including saltwater wetlands, estuaries, and the intertidal zone;

(5) "permafrost" means soil or other earth material supporting vegetation with a temperature which remains below 0 degrees Celsius (32 degrees Fahrenheit) for two or more years;

(6) "Prince William Sound" includes all marine water lying inside the boundary line established in 33 C.F.R. sec. 82-1740, 42 Federal Register 35791 (July 11, 1977); and

(7) "saltwater wetlands" means those coastal areas along sheltered shorelines characterized by halophytic hydrophytes and macroalgae extending from extreme low tide to an area above extreme high tide which is influenced by sea spray or tidally induced water table changes. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

Article 6. General Provisions

Section
900. Definitions

18 AAC 75.900. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(1) "cleanup" means the removal of a hazardous substance from the land or water, and other measures which the regional supervisor or his designee considers necessary to mitigate or avoid environmental harm;

(2) "department" means the Department of Environmental Conservation;

(3) "discharge" means the entry of a hazardous substance into or upon the water or land of the state, regardless of causation;

(4) "facility or operation" means any offshore or onshore structure, improvement, vessel, vehicle, land, enterprise, endeavor or act;

(5) "hazardous substance" means an element or compound which, when it enters into or upon the water or surface or subsurface land of the state, presents an imminent and substantial danger to the public health or welfare or to fish, animals, vegetation, or any part of the natural habitat in which they are found, and includes, but is not limited to, poisons, pesticides, acids, caustics, infectious or pathological wastes, chemical toilet wastes, radioactive materials, solvent, toxic heavy metals, and oil;

(6) "oil" means a derivative of a liquid hydrocarbon and includes crude oil, lubricating oil, sludge, oil refuse or any other petroleum-related product or byproduct;

(7) "open burning" means the burning of any material such that the products of combustion are emitted directly into the ambient air without passing through a stack or flare;

(8) "person" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or any other entity whatsoever;

(9) "person in charge" includes, in addition to the person causing or permitting the discharge

(A) for vessels, the master;

(B) for vehicles, the operator; and

(C) the person exercising a possessory interest in the facility or operation at the time of the discharge, unless the possessory interest is being exercised solely for the purpose of providing a place of residence for the person;

(10) "pesticide" means any chemical or biological agent intended for preventing, destroying, repelling or mitigating plant or animal