

**ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672**  
**6478 SENATE RESOURCES**

ward movements in these pipelines even after the West Coast becomes a net importer of crude oil.)

6. U.S. crude-oil production is calculated as follows:
  - 6.1 For all pricing cases, non- West Coast production is ---
    - 6.1.1 Total U.S. production, calculated from the NPC lower-and upper-price trend cases, through use of the world-market pricing assumptions of this study and the imputed price-elasticity of supply for non-Alaska production, determined as in B.3, less
    - 6.2.2 Total projected California production under pricing case B.1.1.
  - 6.2 For each pricing case, total U.S. production is non-West Coast production, plus the West Coast production calculated for that case.
7. U.S. petroleum balances, net imports, and their balance-of payments impact, are projected as follows:
  - 7.1 Net U.S. oil imports are the difference between total U.S. petroleum-products consumption from 6. above and U.S. petroleum consumption as in 3. above.
  - 7.2 The net annual contribution of oil imports to the U.S. balance-of-payments deficit is projected as the product of net oil imports (in barrels per day), the assumed world-market price, and the number of days in the year.
  - 7.3 The effect of permitting ANS oil exports on the U.S. balance of payments is the reduction effected in the balance-of-payments deficit, as determined in 7.2.

#### D. WELL HEAD REVENUES

1. Alaska wellhead production revenues are the sum of:
  - 1.1 The product of ANS production volumes and the average Pump Station No. 1 netback price, and
  - 1.2 The product of the Cook Inlet production volumes and the average ANS netback value at Valdez. (This assumption requires that the higher refining value of Cook Inlet production is offset by scale economies in tanker shipments from Valdez.)
2. California wellhead revenues are assumed to be the product of California production and average California prices.
3. The reduction in wellhead values attributable to the export ban during the years 1981 through 1986 is estimated at \$4 per barrel for California production and Alaska production shipped beyond the West Coast, and \$2 per barrel for Alaska production processed in West Coast refineries.

## E. ROYALTY AND TAX REVENUES

1. The reduction in Alaska petroleum-production revenues attributable to the export ban during 1981 through 1986 are calculated from the sales-revenue losses in D.3 above on the basis of ---
  - 1.1 A royalty rate of 12.5 percent,
  - 1.2 A marginal production-tax rate (on an ex-royalty tax basis) of 15 percent, and
  - 1.3 The prevailing marginal corporate income-tax rate.
2. Alaska royalties, production taxes, and corporate income taxes are based on the price forecasts described in A., the production projections described in B., and the assumptions and methodology employed by the Alaska Department of Revenue, Division of Petroleum Revenue, in its quarterly Petroleum Production Revenue Forecast.
3. The reduction in federal windfall-profits tax ("WPT") receipts attributable to the export ban in 1981 through 1985 is calculated on the basis of a marginal rate of 70 percent for Prudhoe Bay production and zero for production from other ANS fields, and an average marginal rate of 52 percent for Cook Inlet.
  - 3.1 The basis for WPT is wellhead receipts excluding royalties.
  - 3.2 State production taxes are treated as a credit against WPT.
  - 3.3 No WPT receipts are assumed for 1986 or for the future under any of the pricing cases, because the first-sale price did not and is not projected to exceed the WPT threshold level.
4. Federal income-tax receipts for Alaska crude oil shipped beyond the West Coast are estimated for 1981 through 1986, and for 1987 forward, on the basis of prevailing marginal rates, after exclusion of royalties, severance tax, state corporate income tax, and WPT.
5. No change in net federal income-tax receipts is attributed to any change in wellhead prices for Alaska or California crude oil refined on the West Coast. It is unlikely that West Coast refiners will be able to pass through higher feedstock prices in their product prices; thus, higher income-tax receipts generated in production are likely to be just about offset by smaller receipts from transportation and refining.
6. No change in net federal income-tax receipts is attributed to production developed in during or after 1987. Under the old tax law, most minerals-extraction operations, including oil-and-gas production projects, could be and are structured so as to generate negative net income-tax revenues on a present-value life-cycle basis. (I.e., the present value of tax preferences on minerals extraction are typically greater than the present value of the stream of taxes on current income.) Pending a reexamination of

this issue under the new tax law, we have assumed net life-cycle tax revenues on new oil-and-gas investment to be zero.



Official Business

# Alaska State Legislature

P.O. Box V  
State Capitol  
Juneau, Alaska 99811

## MEMORANDUM

MAR 14 1989

To: All Senators  
From: Senator Jack Coghill  
Re: Export of Alaskan Oil  
Date: March 13, 1989

A handwritten signature in black ink, appearing to be "JC", written over the "From" and "Re" lines of the memorandum.

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Attached you will find a letter from the "Coalition to Keep Alaska Oil."

Although I do not agree with the point of view expressed through out most of the letter, I though I might draw your attention to the third to the last paragraph on page two.

It states:

"Of course, exports would allow Japan and other Pacific Rim countries to reduce their trade imbalance with the U.S. and to promote their own energy security. Exports would also help British Petroleum, the largest producer of Alaska North Slope oil, to increase its profits. And the State of Alaska would reap at least another billion dollar tax windfall. But the United States as a whole would be the loser."

I'm sure you don't agree that the United States would be the "loser" if Alaskan oil was exportable, but so long as we are looking for new revenue sources, "exports" look like they would have major revenue impacts.


## COALITION

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## TO KEEP

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January 23, 1989



The Honorable Greg Laughlin  
United States House of Representatives  
1022 Longworth House Office Building  
Washington, DC 20515

Dear Representative Laughlin:

## ALASKA

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## OIL

We urge you to support H.R. 567, introduced by Representatives Howard Wolpe and Olympia Snowe, to extend the current restrictions on exports of Alaska North Slope crude oil. Section 7(d) of the Export Administration Act of 1979, which contains these restrictions, is due to expire together with the rest of the Act on September 30, 1990. Congress has consistently extended and strengthened these restrictions since 1979 by large bipartisan margins. With your support, the restrictions will now be extended indefinitely, promoting U.S. economic, energy, and military security.

Since the original Alaska oil export restrictions were first enacted by Congress in 1973, they have provided important and enduring benefits for the nation. Today, all two million barrels per day of Alaska North Slope production (representing over 25 percent of total U.S. crude oil output) is consumed domestically -- providing enormous energy security benefits to our nation. Furthermore, the restrictions have encouraged the establishment of an efficient transportation infrastructure to move crude oil from Alaska to the lower 48 states and Hawaii.

We have also been able to reduce our reliance on OPEC and on unstable Persian Gulf oil supplies. West Coast consumers have saved billions of dollars at the pump. And our domestic merchant marine continues to help supply the essential oil requirements of domestic economy and foreign military operations. With all these benefits, it makes no sense to relax or eliminate these export restrictions now.

Our reliance on imported oil today has surpassed 40 percent of our daily needs and is predicted to exceed 50 percent by the early 1990s. Between 1990-95, exports of Alaska oil to Japan and other Pacific Rim countries would:

1667 K Street N.W.

Suite 660

Washington, D.C.

20006

(202) 775-1796



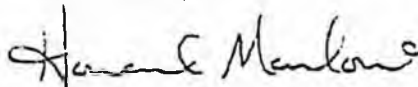
- \* Further increase U.S. dependence on oil from the unstable Persian Gulf region and necessitate the creation of a larger Strategic Petroleum Reserve at significant additional costs to the federal government;
- \* Increase consumer petroleum costs on the West Coast;
- \* Lead to the premature decline of the domestic tanker fleet, a development that will require the U.S. to rely more heavily on a foreign tanker fleet unable to cover U.S. shipping needs in the event of a national emergency;
- \* Force job losses in the maritime and related ship-supply industries on the West Coast;
- \* Not materially increase oil production in either Alaska or California, and thus not reduce our growing dependence on oil imports; and
- \* Cause net federal revenue losses.

Of course, exports would allow Japan and other Pacific Rim countries to reduce their trade imbalance with the U.S. and to promote their own energy security. Exports would also help British Petroleum, the largest producer of Alaska North Slope oil, to increase its profits. And the State of Alaska would reap at least another billion dollar tax windfall. But the United States as a whole would be the loser.

Having consistently strengthened the Alaska oil export restrictions, Congress should now extend them indefinitely beyond 1990. What has worked effectively to promote U.S. national energy and security interests in the past will continue to work well in the future.

On behalf of all the members of our Coalition, I urge you to cosponsor H.R. 567 by calling Carolyn Jecks of Rep. Wolpe's staff or Alex Stoddard of Rep. Snowe's staff. Should you need a fact sheet or other information on this subject, please do not hesitate to call me.

Sincerely,



Howard Marlowe  
Executive Director

Enclosure: List of Coalition Members

COALITION

TO KEEP

MEMBERS OF THE COALITION TO KEEP ALASKA OIL



ALASKA

OIL

- AFL-CIO
- American Institute of Merchant Shipping
- American Maritime Officers Service
- American Public Power Association
- Americans for Indian Opportunity
- Apex Marine Corporation
- Auto Workers, United
- CBI Industries, Inc.
- Celeron Corporation
- Citizen/Labor Energy Coalition
- Consumer Energy Council of America
- Consumer Federation of America
- Cove Maritime Companies, Inc.
- Dillingham Ship Repair
- Food and Allied Services Trades Department, AFL-CIO
- Industrial Union Department, AFL-CIO
- Inlandboatmen's Union of the Pacific
- Joint Maritime Congress
- Labor-Management Maritime Committee
- Ladies Garment Workers. International Union of
- Longshoremen's and Warehousemen's Union,  
International
- Machinists, International Association of
- Marine Engineers' Beneficial Association, National
- Marine Engineers' Beneficial Association, District 1
- Marine Engineers' Beneficial Association, District 2
- Maritime Institute for Research and Industrial  
Development
- Maritime Trades Department, AFL-CIO
- Masters, Mates & Pilots, International Organization
- National Council of Farm Cooperatives
- National Farmers Organization
- National Farmers Union
- National Maritime Council
- National Maritime Union
- Northville Industries
- Oil, Chemical and Atomic Workers
- OMI Corporation
- OSG Bulk Ships, Inc.
- Pacific-Texas Pipeline Company, Inc.
- Port of Portland, Oregon
- Steel Workers of America, United
- Seafarers International Union
- Shipbuilders Council of America
- Sonat Marine, Inc.
- Transportation Institute

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## JOHNSTON ABANDONMENT

## EXPORT RESTRICTIONS

At the appropriate place insert the following new sections:

"Sec. \_\_\_\_\_ CRUDE OIL EXPORT RESTRICTIONS.

"(a) Notwithstanding any other provision of law, no crude oil produced from lands in the Coastal Plain (except any such crude oil which (1) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in subsection (b) (1) (2) of this section, (2) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States, or (3) is transported to Canada, to be consumed therein, in amounts not to exceed an annual average of 50,000 barrels per day, in addition to exports under paragraphs (1) and (2) except that any ocean transportation of such oil shall be by vessels documented under section 22105 of title 46, United States Code) may be exported from the United States, or any of its territories and possessions, subject to subsection (b) of this section.

"(b) Crude oil subject to the prohibition contained in subsection (a) may be exported only if--

"(1) the President so recommends to the Congress after making and publishing express findings that exports of such crude oil, including exchanges--

"(A) will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

"(B) will, within 3 months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

- 2 -

"(C) will be made only pursuant to contracts which may be terminated if the crude oil supplies of the United States are interrupted, threatened, or diminished;

"(D) are clearly necessary to protect the national interest; and

"(E) are in accordance with the provisions of the Export Administration Act of 1979 (50 U.S.C. App. 2401 and following); and

"(2) the President includes such findings in his recommendation to the Congress and the Congress, within 60 days after receiving that recommendation, agrees to a joint resolution which approves such exports on the basis of those findings, and which is thereafter enacted into law.

"(c) Notwithstanding any other provision of this section or any other provision of law, the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency."

#### PURPOSE OF THE AMENDMENT

The amendment extends the export restriction provision of the Export Administration Act, currently applicable to oil transported by the Trans-Alaska Pipeline, to crude oil produced on the Coastal Plain. The amendment tracks the language of the Export Administration Act.

# Alaska State Legislature

## Senate Resources Committee

Senator Bettye Fahrenkamp, Chairman

Senator Jay Kertula, Vice Chairman  
Senator Dick Eliason  
Senator Steve Frank  
Senator Rick Hallford  
Senator Arliss Sturgulewski  
Senator Fred Zharoff



P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4907

### M E M O R A N D U M

TO: Committee Members, Senate Resources Committee  
FROM: Committee Staff *[Signature]*  
RE: Committee Meeting, February 13, 1989  
DATE: February 13, 1989

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On Monday, February 13 at 1:30 pm in the Butrovich Room, the Senate Resources will hear SB 33, Establishing the Willow Mountain Critical Habitat Area, and SB 60, Making a special appropriation to the Office of the Governor for activities to encourage the federal government to permit export of oil from the state.

SB 33 provides for the management of 22,720 acres of land near Hatcher Pass and Willow in Southcentral Alaska under the State Critical Habitat Area program. The Willow Mountain area supports unusually large concentrations of moose. The purpose of the bill is to preserve the high quality moose habitat supporting the high moose population.

SB 60 would appropriate \$1.5 million for a major lobbying and public relations effort to remove the current ban on exporting North Slope oil.

This session, the U.S. Congress will probably begin to focus on reauthorizing the Export Administration Act (EAA), which expires in 1990. Section 7(d) now effectively prohibits the export of crude oil transported through TAPS.

Arlon Tussing, an oil and energy consultant and adjunct professor of economics at the Institute of Social and Economic Research at the University of Alaska, will present an overview of the political climate in Washington, D.C. and the prospects for successful state efforts to remove the ban.

John Katz, Director of State/Federal Relations, Office of the Governor, testifying on the teleconference network from Washington, D.C., will present the administration's perspective on the proposed lobbying effort.

At a time when the state is seeking to increase revenues without adversely impacting individuals or industry, allowing the foreign export of oil would provide a positive alternative to other revenue enhancement proposals.

Because of the glut of ANS on the West Coast, Alaska currently delivers about one third of its oil through the Panama Canal to the U.S. Gulf coast. Due to the lower cost of shipping Alaska North Slope oil (ANS) to Pacific Rim markets rather than the U.S. Gulf coast, oil exported overseas would have a higher wellhead value. This increase would result in greater industry profits, increased state royalties and taxes, incentives for development of marginal fields, greater federal revenues and reduction of the trade imbalance with Japan, and more trade opportunities with Pacific Rim nations.

The current export ban depresses the value of all crude oil produced in Alaska (and California) by \$1.50 to \$4.00 per barrel. Any new development suffers the full \$4.00 penalty, and some analysts believe one effect of the ban is to reduce U.S. oil output by 500,000 barrels a day. An increase in wellhead value through removing the ban may make major projects in Alaska, such as West Sak Sands development, commercially viable.

Depending on the type and amount of exports allowed, additional revenues to the state are estimated to be anywhere from \$56 million up to \$1 billion per year.

Federal revenues would be expected to increase by about \$1 billion a year due to higher leasing and tax revenues.

Of course reducing deliveries of ANS to the U.S. Gulf coast would require those refiners to increase their imports of foreign oil, but the net result would be less reliance by both the U.S. and the world as a whole on OPEC imports. Removing the ban would likely reduce the U.S. balance of payments deficit by about \$3 billion per year.

In addition, the committee will take action on SJR 26, Urging adoption of a national energy strategy.

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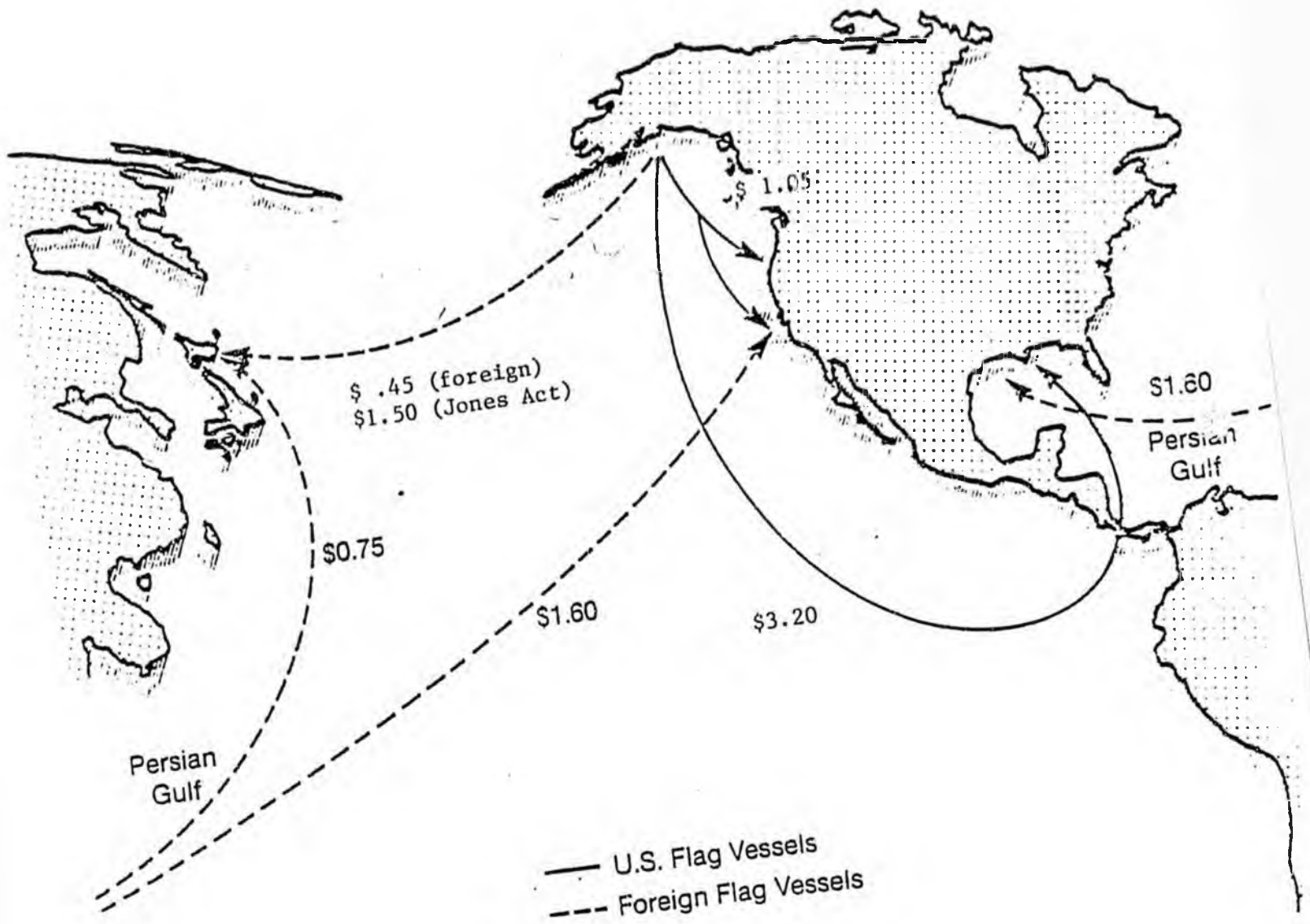
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Figure 1  
SHIPPING RATES  
(\$/Barrel)



SOURCE: Oil industry estimates.

#87-003162  
J- OAG - export of AK Oil

# Alaska State Legislature

JUN 26 1987

SENATE ADVISORY COUNCIL



Pouch V  
State Capital  
Juneau, Alaska 99811  
Phone: (907) 465-3114

MEMORANDUM

TO: Senator Don Bennett  
Alaska State Senate

ATN: Janice Adair

FROM: Lee Ann Lucas *AL*  
Senate Advisory Council

DATE: 2/5/87

RE: Oil Export Restrictions

Referencing your request that this agency determine if other states have an oil export restriction act similar to Alaska's, I offer the following.

Congress has placed a number of statutory restrictions on the export of U.S. crude oil. These restrictions are:

- \* Section 7 of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2406);
- \* Section 103 of the Energy Policy and Conservation Act (42 U.S.C. 6212);
- \* Section 28(u) of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Trans-Alaska Pipeline Authorization Act of 1973 (43 U.S.C. 1652);
- \* Section 201 of the Naval Petroleum Reserve Production Act of 1976 (10 U.S.C. 7430);
- \* Section 28 of the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1343).

The main reason for this legislation was Congressional concern about the adequacy of oil supplies for the U.S. domestic market and the maintenance of low oil prices under the then prevalent price controls. It was widely held that any exports of price-controlled crude would have to be replaced by higher priced imports, which would raise consumer prices and add to inflationary pressures. Congress was also concerned about growing U.S. dependence on foreign oil supplies and wanted to ensure that U.S. crude oil reserves were utilized to reduce import dependence.

Senator Bennett  
2/5/87  
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In 1973, Congress passed the Trans-Alaska Pipeline Authorization Act. In order to obtain Congressional support, the TAPS bill was amended to make Alaska North Slope (ANS) crude available only for domestic consumption. Subsequent legislation strengthened the export restrictions and no ANS crude has ever been available for export.

The Export Administration Act of 1979, as amended, is the principal statute that restricts the export of ANS crude oil. It applies the most stringent conditions of any legislation that restricts crude oil exports. Specifically, Section 7(d) of the EAA effectively prohibits the export of ANS crude oil unless it is pursuant to a bilateral international oil supply agreement entered into by the United States before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency. Section 7(d) does allow for ANS crude exports if the President makes certain findings and recommends to the Congress that exports be allowed, and thereafter obtains express Congressional approval within 60 days of the recommendation.

Congress recently passed the Export Administration Amendments Act of 1985 (EAAA). The EAAA continued and strengthened the restrictions on the export of ANS crude oil. While the EAAA runs for three years, the ban on ANS crude oil exports (Section 7(d)) was extended for five years.

Since Cook Inlet crude oil is not transported through TAPS, it does not fall under the above restriction. However, it is subject to the federal export restrictions generally applicable to domestic crude oil.

Section 103 of the Energy Policy and Conservation Act (EPCA) generally requires the President to prohibit the export of domestically produced crude oil, subject to certain possible exceptions. Should the President determine that the export of crude oil is in the national interest and consistent with the purposes of EPCA, a national interest finding may be made by the President and such oil can be exported.

In 1985, the Secretary of Commerce, with the concurrence of the Secretaries of State, Energy, and Treasury, determined that permitting the export of crude oil derived from Alaska's Cook Inlet is in the national interest and consistent with the purposes of the EPCA.

I contacted Steven Porter, Assistant Attorney General for the Department of Law in Anchorage. Mr. Porter has worked closely with DNR on oil issues. Attached is a copy of a memorandum written by Mr. Porter to Representative Szymanski in 1985 which summarizes federal restrictions on the foreign export of Alaska crude oil. The report by Congress on the export of Alaska North Slope crude oil mentioned on page 2 of Mr. Porter's memo is available in the Senate Advisory Council Library if you would like to review it.

Senator Bennett  
2/5/87  
Page 3

There does not appear to be any other statutory restrictions on the export of U.S. domestic crude oil as strigent as the Export Administration Act of 1979 and subsequent amendments which focuses on the export of Alaska North Slope crude.

If I can provide additional information or be of further service, please call me.

LAL:lal  
Attachments

## U.S. oil export ban involves costs that hurt economy, rein energy search

The U.S. makes too many economic tradeoffs in its ban on crude oil exports outside North America.

The ban, a product of the Trans-Alaska Pipeline Act and adjustments to the Export Administration Act, is grounded in assumptions that no longer are valid. And it creates unnecessary costs that thwart development of new energy supply and clog the economy.

**D**uring the hectic environment created by the 1973-74 Arab oil embargo, Congress adopted the view that the U.S. should let none of its own production be sold overseas. At a time when the industrialized world felt doomed to perpetual petroleum shortage, when the strategic importance of crude oil became glaringly apparent, that seemed sensible. But events since then—mainly a dramatic decrease in consumption leading to what appears to be an extended oil surplus that will be magnified by new discoveries off California—have overturned the enduring-shortage scenario.

Strategic considerations of domestic production remain important, but they involve more than concern over where U.S. oil is sold. The export ban has produced economic inefficiencies far more threatening than near term chances for a supply interruption. By allowing exports, the U.S. could correct those inefficiencies and thus promote vital economic growth. It also could spur domestic energy development. And the ban could always be reimposed if these shipments ever posed a threat to energy security.

The export ban mainly affects production from Alaska, natural markets of which are the U.S. West Coast and Asia. The West Coast needs only about one-half the oil shipped from Valdez, so the remainder crosses Panama or circuits South America to reach refiners on the Gulf and East Coasts and in the Caribbean.

Shipment to Asia—probably Japan—in exchange for crude from foreign sources closer to those markets would be cheaper. That's partly because the routes are shorter. Also, the Jones Act requires that cargoes moving between U.S. coasts be shipped in U.S. vessels with U.S. crews, both of which are expensive by international standards. Thus, by proscribing international

markets within easy reach of production, the U.S. creates a cost equal to the substantial difference between current shipping charges and what they would be if the less expensive alternative were legal. Ultimately, the cost is borne at the wellhead in the form of lower netbacks for North Slope production.

Depressed wellhead netbacks don't hurt just producers and Alaska. They limit exploration and development and thus reduce additions to U.S. oil reserves, which have much more to do with U.S. energy security than foreign sale of domestic production. Consumers, who have a great stake in energy supply security, therefore snare the cost of wellhead netbacks depressed by nonmarket forces.

In fact, the main beneficiaries of the export ban are the ship owners. They enjoy Jones Act protection from foreign competition as well as a guaranteed market, so long as the U.S. closes foreign markets to Alaskan oil. The Heritage Foundation estimates that the Alaskan oil shipping business accounts for one-half of Jones Act traffic. It's not surprising, therefore, that U.S. ship owners and their friends in Congress lead the opposition to changes in laws blocking Alaskan crude exports or in the Jones Act itself.

**O**ther groups could be hurt by an end to the export ban. Export of Alaskan crude might prove more profitable than movement of the oil inland from the West Coast via the proposed Northern Tier pipeline or alternative projects. Likewise, lifting of the export ban might encourage development of a North Slope LNG industry based on trade with Japan. That could doom the proposed gas pipeline from Alaska to the Lower 48. The Northern Tier oil pipeline and Alaskan gas line are major projects that would do much to facilitate U.S. energy transportation. But, if and when they are built, their economics shouldn't hinge on government market restrictions.

An end to the export ban might not trigger immediate exports to Japan because most North Slope producers already are committed to transportation arrangements linking U.S. markets. But it would encourage development of new petroleum supplies by opening market opportunities now closed by legalities that no longer serve U.S. economic or security objectives.

# Alaska's well-travelled oil



## America should sell it to the Japanese

Anybody seeking evidence that America could try harder to reduce its trade deficit with Japan need look no further than the Panama Canal. More than a third of the 1.8m-or-so barrels of oil gushing out of Alaska every day is shipped south to Panama, pumped through a pipeline across the isthmus, and reloaded on the other side bound for refineries on America's eastern seaboard. This tropical cruise is necessary because Congress forbids the export of Alaskan oil, choosing to ignore the first rule of salesmanship: do what your customers want. Since the 1970s, Japan has been begging to buy several billion dollars of Alaskan oil a year—enough to cut 5-10% off America's merchandise trade deficit with Japan.

It is true that most of the billions this would save from America's bilateral deficit with Japan would not reduce America's overall trade deficit as well. America now buys abroad one out of every three barrels it guzzles. So the crude sold to Japan would have to be replaced with stuff bought elsewhere. But the costs of America's present muddled policy are not really in dispute. Over half the crude now pumped from Alaska is used on America's west coast, where Alaska is indeed the cheapest source of supply. For the larger markets of America's east coast, Alaska plainly is not. According to guesses by America's

THE ECONOMIST MAY 23 1987

own Federal Trade Commission, it would be about \$800m a year cheaper to ship Alaskan oil to Japan, and supply America's east coast from South America or even the Middle East.

A main reason why America refuses to earn this money from Japan lies in a vague Congressional instinct that a ban on oil exports should make America more immune to OPEC's fiddling. This is the reverse of the truth. When the Americans entangle restrictive practices around their marketing of Alaskan oil, instead of sending it to the places where they could sell it most competitively, by definition they make the OPEC cartel's attempts at worldwide price-fixing easier. More immediately, much of the annual \$800m that would be saved by eliminating the long trek across Panama would boost oil companies' profit margins on Alaskan oil. That should encourage the development of the vast new tracts of Alaska now being opened for oil exploration, and damage OPEC by increasing America's domestic production.

## Two lobbies that weaken America

These facts are being hidden from the American public through hard lobbying by two special interest groups: merchant sailors and military planners. The sailors reckon 13

Alaskan oil exports would cost them jobs. The Jones Act requires cargoes bound from one American port to another, like Alaskan crude, to be carried in ships bearing the American flag. Cargoes bound for foreign ports escape the Jones Act, and are usually carried on foreign-flag ships at a fraction of the cost of sailing under the trade-unionised stars and stripes. The defence department wants to keep the flags flying because it has its eye on a fleet of American-flag tankers that could be commandeered in case of war. It prefers to tag the cost of maintaining that fleet on to oil consumers' bills rather than have the government pay it a subsidy directly.

Now that more of Alaska is being opened to oil

explorers, the need to remove the ban on exports has become more urgent. Fewer oilmen will bid to dig in those frozen wastes if they cannot sell any output where they want. Unfortunately, because the ban has been written into the Export Administration Act, new laws will be required to change it. With Congress in its present protectionist mood, introducing trade legislation is like poking a hornets' nest. But protectionists should note that letting Japan buy Alaskan oil could prove a more useful bargaining tool than tariffs in extracting trade concessions from it. Unlike tariffs, which raise prices in America, exporting Alaska's oil would bring new benefits and strengths to the United States.

f- oil export ban

# Lift Export Ban on Alaskan Crude

By ALAN BAYLESS

With U.S. oil production declining and imports rising, some legislators in Washington are casting about for ways to stimulate the oil industry. The best policy would be to lift the ban on the export of Alaskan crude.

The U.S. could learn from Canada's example. In 1983, Ottawa decided to phase out the export restrictions it had imposed in 1975. The restrictions, and a decision to leave some Alberta oil in the ground, made Canada increasingly dependent on imports—contrary to the government's goal. As the nearby graph illustrates, Canada, which was a net crude exporter in the early 1970s, became a net importer in 1975 and remained one until 1983.

Along with the restrictions, Ottawa forced Alberta crude to move through a subsidized pipeline to Montreal and from there by subsidized tankers to the Maritime provinces. "It was inefficient. The best netback for Alberta oil producers was to sell in Chicago," admits David Oulton, director general of the Oil and Emergency Planning Branch of Canada's Department of Energy, Mines and Resources.

To be sure, the turnaround since 1983 isn't due only to the lifting of the export restrictions. Deregulation and higher prices also stimulated the oil industry and encouraged Canadians to use much less crude. Even so, Canada's re-emergence as a net oil exporter amazed energy experts, who had underestimated the country's ability to respond to market forces.

Lifting the export ban on Alaskan crude won't make the U.S. a net oil exporter, but it could increase U.S. oil output by up to 500,000 barrels daily in the early 1990s, according to a recent study by Arlon Tussing, a Seattle-based energy consultant, and his colleague Samuel Van Vactor.

Asia is the natural market for Alaskan crude, but in 1973, before the state's huge Prudhoe Bay field was developed, Congress decided to keep the supplies for the domestic market to promote oil self-reli-

ance. Under the Jones Act of 1920, only high-cost, U.S.-flag tankers can carry Alaska crude to Panama, where it is unloaded, moved through an 80-mile pipeline, and reloaded onto more U.S.-flag tankers for shipment to Gulf Coast refineries.

Mr. Tussing, also an adjunct professor at the University of Alaska, and Mr. Van Vactor, formerly a senior economist with the International Energy Agency, say that removal of the ban would likely boost oil production by 300,000 barrels a day in Alaska and by 200,000 barrels a day in California, assuming world oil prices of about \$15 a barrel. The U.S. trade deficit would be cut by up to \$3 billion a year and the federal budget deficit by up to \$1 billion a year, while Alaska would gain \$1 billion a year and state and local governments in California would get \$500 million a year.

All this extra wealth would be created, they say, because the export ban depresses the wellhead value of all crude produced in Alaska and California by up to \$4 a barrel. California's crude prices are hurt because Alaska producers flood that market to minimize the costly transit through Panama. Moreover, Messrs. Tussing and Van Vactor conclude that the California-crude discounts benefit refiners, not consumers, because refined products aren't subject to trade restrictions and are closely linked to world prices.

Of course, exports of Alaskan crude would force Gulf Coast and East Coast refiners to increase imports of foreign crude,

a prospect that alarms many Americans even if there is a net trade benefit. From a security perspective, however, the U.S. has only exchanged one vulnerability for another, as demonstrated last month when a political strike closed the Panama pipeline for two days. Moreover, contracts could be worded to allow U.S. oil companies to divert Alaskan crude back to it-

tion by asserting that the export ban has little impact on U.S. crude production and prices, even though the marginal cost of shipping Alaskan crude to Japan is as little as 50 cents a barrel, according to Mr. Van Vactor, compared with \$3.50 or more to the Gulf Coast. The maritime industry also claims that a U.S.-flag tanker fleet is needed for national emergencies, but Mr. Tussing argues that an oil-supply crisis would create a surplus of foreign tankers, because higher world prices would reduce global oil demand. He says the foreign tankers—many of them controlled by U.S. companies—could readily be hired to serve U.S. interests on a commercial basis.

Although Alaska favors lifting the export ban, Gov. Steve Cowper is reluctant to press the issue, fearing it will hurt efforts to convince Congress that the Arctic National Wildlife Refuge should be opened to oil exploration. "People don't want to support the development of oil if it is going to be exported to foreign countries," he says.

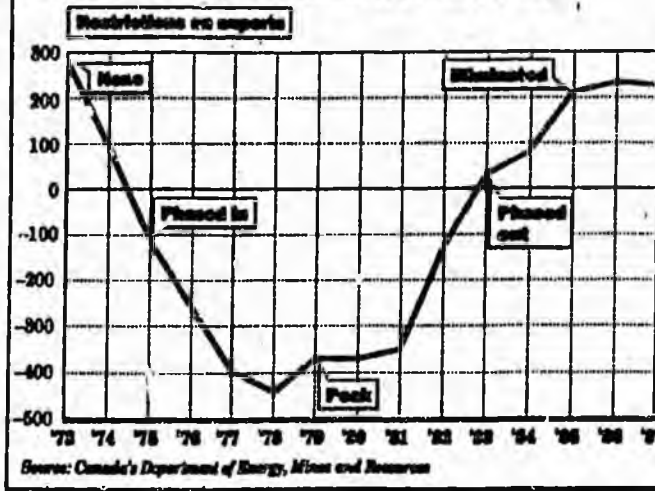
Nevertheless, the Reagan administration has managed to put one chink in the ban by permitting exports from Alaska's relatively small Cook Inlet oil deposit. A second chink is contained in the proposed U.S.-Canada Free Trade Pact, which would permit the sale to Canada of 50,000 barrels of Alaskan crude daily.

Even though the crude would first be landed in the lower 48 states and would use U.S. tankers, a pro-maritime lobby group called the Coalition to Keep Alaska Oil opposes the exports to Canada. In recent testimony before a congressional subcommittee, coalition spokesman Howard Mariowe expressed concern that the opening will set a precedent when the export ban comes up for review again next year.

Judging from Canada's experience and the political volatility in Panama, Congress should overlook the coalition's concerns and permit all Alaskan oil to be exported. The prospect of 500,000 barrels a day of additional crude production ought to outweigh the interests of the maritime industry.

## Canada's Oil-Trade Balance

Surplus and deficit, in thousands of barrels per day



Source: Canada's Department of Energy, Mines and Resources

domestic market if the U.S. faced a supply cutoff.

In any event, lifting the ban wouldn't lead to gas lineups, even in a crisis, as long as Washington didn't repeat the 1970s policy of imposing price controls and rationing. The U.S. would pay more for oil imports, but could charge more for exports. As with Canada, greater domestic production would be available before and during a crisis.

Removal of the U.S. export ban would hurt U.S. shipowners and seamen, since Alaskan crude could be moved less expensively in foreign tankers. Until now, the maritime industry has protected its posi-

## REVIEW & OUTLOOK

### Crude Question

When Japan's Prime Minister Yasuhiro Nakasone visits Washington next week, we hope he asks President Reagan when the U.S. is going to get serious about opening the Japanese market to American products. That's right. When is the U.S. going to allow American goods into Japan?

Under the Export Administration Act of 1979, crude oil from the North Slope of Alaska must be sold within the United States. Removing this export prohibition would simplify a Rube Goldberg system of oil transport and reduce the U.S.-Japan trade deficit, perhaps by several billion dollars.

Every day, 1.6 million barrels of crude flow through the Alaska pipeline into tankers at the port of Valdez. From there, 900,000 to one million barrels are transported to West Coast refineries, at a cost of about \$1.25 per barrel. Most of the remainder makes an unnecessarily long and expensive trip—by tanker to the West Coast of Panama, through a pipeline or the Panama Canal to Caribbean tankers, and thence to the U.S. Gulf Coast, at a cost of \$4.50-\$5.50 a barrel.

Without the export prohibition, one would expect much of the Gulf Coast oil to be sold to Asian countries, especially Japan. For one thing, transport costs across the Pacific are about 50 cents a barrel. For another, Japan wants to diversify its oil sources, to reduce its heavy dependency on the Persian Gulf. Meanwhile, it would be advantageous for Gulf Coast refiners to purchase more crude from Mexico and Venezuela (transport costs about \$1 per barrel), which incidentally, could use the foreign exchange.

For the U.S., exporting more oil to

Asia, importing more from the Caribbean, the balance of payments would be a wash. But trade tensions with Japan could be reduced. The U.S. would have more leverage in asking the Japanese not to underwrite Soviet development of energy resources in Sakhalin. And assuming 500,000 barrels a day of sales to Japan, at a wellhead price of \$20, the U.S.-Japan deficit could fall by \$3.65 billion.

It isn't clear that Japanese refiners would buy that much, of course. They have long-term contracts with existing suppliers, and their total demand for crude has been declining. Meanwhile, U.S. oil companies will want to recoup the investments they have made—in tanker fleets, the \$300 million Panama pipeline—under the assumption that the export ban would continue. But over time, it will make more logistic and economic sense to send Alaskan oil to the Far East than to the Gulf.

The export ban was originally enacted as a result of heavy lobbying by environmentalists who opposed the Alaska pipeline, and wanted to make sure it was built only for reasons of national energy independence. But today, the ban is primarily supported by maritime unions. Oil shipped across the Pacific would go in foreign bottoms; in the U.S. trade, under the Jones Act, cargoes must be carried in overmanned U.S.-flagships with overpaid U.S. seamen.

So perhaps Mr. Nakasone should ask Mr. Reagan whether his trade negotiators will jawbone the U.S. Congress and domestic maritime unions as much as they press against the Japanese government. In keeping the Japanese market closed, both sides are culpable.

f OIL EXPORT BAN

ANS EXPORT MODEL

Parameters:

Alaska Royalty Sales (MMb/d)	.10	} total Exported
Producer Sales (MMb/d)	.20	
Transportation Cost		
Valex to U.S. Gulf (s/b)	3.20	
Valex to U.S. West	1.05	
Valex to Japan Jones Act (s/b)	1.50	
Valex to Japan Foreign (s/b)	.45	
Current Price Difference West/Gulf (s/b)	1.20	
Post Export Price Difference West/Gulf	.00	
Proportion Gulf Coast Sales	.30	
ANS State Royalty %	.13	
Total ANS Production	1.95	
Average Severance Tax Rate	.12	

Calculated Parameters

West to Gulf Transport Differential	2.15
West to Japan Transport Differential Jones Act Tanker	.45

Without West Coast Price Effect (Millions \$)

With West Coast Price Effect (Millions \$)

Royalty

State Sales Jones Act	18.62	49.28
State Sales Foreign	30.11	60.77

Royalty Invalue and Priced at Invalue

Jones Act	2.74	7.26
Foreign	4.64	8.96

Severance Taxes

Jones Act	13.37	73.53
Foreign	21.62	81.78

Totals

	Unrestricted		Unrestricted	
Jones Act Royalty	21.36	16.02	36.54	42.40
Severance	13.37	13.37	73.53	73.53
Total Revenue	34.73	29.39	110.07	115.93
Foreign Royalty	34.55	25.91	69.73	52.30
Severance	21.62	21.62	81.78	81.78
Total Revenue	56.17	47.53	151.51	134.08

Council, compensation.

Travel expenses, etc.

80 Stat. 525, 5 USC 7321-7327.

Appropriation.

Report to President and Congress.

Expiration date.

(c) Each member of the Advisory Council who is appointed from private life shall receive \$100 a day for each day during which he is engaged in the actual performance of his duties as a member of the Council. A member of the Council who is an officer or employee of the Federal Government shall serve without additional compensation. All members of the Council shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties.

SEC. 8. Nothing in this legislation shall be construed to restrict or infringe upon the authority of any Federal department or agency.

SEC. 9. Subchapter III of chapter 73 of title 5, United States Code, shall apply to the employees of the Committee and the employees of the Advisory Council.

SEC. 10. There are hereby authorized to be appropriated for fiscal years 1970 and 1971 such sums as may be necessary to carry out the provisions of this Act, and any funds heretofore and hereafter made available for expenses of the Interagency Committee on Mexican-American Affairs established by the President's memorandum of June 9, 1967, shall be available for the purposes of this Act.

SEC. 11. The Committee shall, as soon as practicable, after the end of each fiscal year, submit a report to the President and the Congress of its activities for the preceding year, including in such report any recommendations the Committee deems appropriate to accomplish the purposes of this Act.

SEC. 12. This Act shall expire five years after it becomes effective.

Approved December 30, 1969.

Public Law 91-182

December 30, 1969 [H. J. Res. 1041]

JOINT RESOLUTION

Establishing that the second regular session of the Ninety-first Congress convene at noon on Monday, January 19, 1970.

91st Congress, Second session.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the second regular session of the Ninety-first Congress shall begin at noon on Monday, January 19, 1970.

Approved December 30, 1969.

Public Law 91-183

December 30, 1969 [H. R. 941]

AN ACT

To amend section 404(d) of title 37, United States Code, by increasing the maximum rates of per diem allowance and reimbursement authorized, under certain circumstances, to meet the actual expenses of travel.

Per diem, increase, 76 Stat. 472; 80 Stat. 1122.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 404(d) of title 37, United States Code, is amended by striking out "\$16" and "\$30", respectively, and inserting in place thereof "\$25" and "\$40".

Approved December 30, 1969.

Public Law 91-184

AN ACT

To provide for continuation of authority for regulation of exports.

December 30, 1969 [H. R. 4293]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Export Administration Act of 1969.

SHORT TITLE

SECTION 1. This Act may be cited as the "Export Administration Act of 1969".

FINDINGS

SEC. 2. The Congress makes the following findings:

(1) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

(2) The unrestricted export of materials, information, and technology without regard to whether they make a significant contribution to the military potential of any other nation or nations may adversely affect the national security of the United States.

(3) The unwarranted restriction of exports from the United States has a serious adverse effect on our balance of payments.

(4) The uncertainty of policy toward certain categories of exports has curtailed the efforts of American business in those categories to the detriment of the overall attempt to improve the trade balance of the United States.

DECLARATION OF POLICY

SEC. 3. The Congress makes the following declarations:

(1) It is the policy of the United States both (A) to encourage trade with all countries with which we have diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest, and (B) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other nation or nations which would prove detrimental to the national security of the United States.

(2) It is the policy of the United States to use export controls (A) to the extent necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of abnormal foreign demand, (B) to the extent necessary to further significantly the foreign policy of the United States and to fulfill its international responsibilities, and (C) to the extent necessary to exercise the necessary vigilance over exports from the standpoint of their significance to the national security of the United States.

(3) It is the policy of the United States (A) to formulate, reformulate, and apply any necessary controls to the maximum extent possible in cooperation with all nations with which the United States has defense treaty commitments, and (B) to formulate a unified trade control policy to be observed by all such nations.

Export controls.

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

Restrictive trade practices or boycotts.

(5) It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States, and (B) to encourage and request domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against another country friendly to the United States.

AUTHORITY

Sec. 4. (a)(1) The Secretary of Commerce shall institute such organizational and procedural changes in any office or division of the Department of Commerce which has heretofore exercised functions relating to the control of exports and continues to exercise such controls under this Act as he determines are necessary to facilitate and effectuate the fullest implementation of the policy set forth in this Act with a view to promoting trade with all nations with which the United States is engaged in trade, including trade with (A) those countries or groups of countries with which other countries or groups of countries having defense treaty commitments with the United States have a significantly larger percentage of volume of trade than does the United States, and (B) other countries eligible for trade with the United States but not significantly engaged in trade with the United States. In addition, the Secretary shall review any list of articles, materials, or supplies, including technical data or other information, the exportation of which from the United States, its territories and possessions, was heretofore prohibited or curtailed with a view to making promptly such changes and revisions in such list as may be necessary or desirable in furtherance of the policy, purposes, and provisions of this Act. The Secretary shall include a detailed statement with respect to actions taken in compliance with the provisions of this paragraph in the second quarterly report (and in any subsequent report with respect to actions taken during the preceding quarter) made by him to the Congress after the date of enactment of this Act pursuant to section 10.

(2) The Secretary of Commerce shall use all practicable means available to him to keep the business sector of the Nation fully apprised of changes in export control policy and procedures instituted in conformity with this Act with a view to encouraging the widest possible trade.

Presidential determination.

(b) To effectuate the policies set forth in section 3 of this Act, the President may prohibit or curtail the exportation from the United States, its territories and possessions, of any articles, materials, or supplies, including technical data or any other information, except under such rules and regulations as he shall prescribe. To the extent necessary to achieve effective enforcement of this Act, these rules and regulations may apply to the financing, transporting, and other servicing of exports and the participation therein by any person. Rules and

regulations may provide for denial of any request or application for authority to export articles, materials, or supplies, including technical data, or any other information, from the United States, its territories and possessions, to any nation or combination of nations threatening the national security of the United States if the President determines that their export would prove detrimental to the national security of the United States, regardless of their availability from nations other than any nation or combination of nations threatening the national security of the United States, but whenever export licenses are required on the ground that considerations of national security override considerations of foreign availability, the reasons for so doing shall be reported to the Congress in the quarterly report following the decision to require such licenses on that ground to the extent considerations of national security and foreign policy permit. The rules and regulations shall implement the provisions of section 3(5) of this Act and shall require that all domestic concerns receiving requests for the furnishing of information or the signing of agreements as specified in that section must report this fact to the Secretary of Commerce for such action as he may deem appropriate to carry out the purposes of that section.

Report  
Pres.

Report

(c) Nothing in this Act, or in the rules and regulations authorized by it, shall in any way be construed to require authority and permission to export articles, materials, supplies, data, or information except where the national security, the foreign policy of the United States, or the need to protect the domestic economy from the excessive drain of scarce materials makes such requirement necessary.

(d) The President may delegate the power, authority, and discretion conferred upon him by this Act to such departments, agencies, or officials of the Government as he may deem appropriate.

(e) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils, during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy, except to the extent required to effectuate the policies set forth in clause (B) or (C) of paragraph (2) of section 3 of this Act.

Agricul  
commodit  
exceptio

CONSULTATION AND STANDARDS

Sec. 5. (a) In determining what shall be controlled hereunder, and in determining the extent to which exports shall be limited, any department, agency, or official making these determinations shall seek information and advice from the several executive departments and independent agencies concerned with aspects of our domestic and foreign policies and operations having an important bearing on exports. Consistent with considerations of national security, the President shall from time to time seek information and advice from various segments of private industry in connection with the making of these determinations.

(b) In authorizing exports, full utilization of private competitive trade channels shall be encouraged insofar as practicable, giving consideration to the interests of small business, merchant exporters as well as producers, and established and new exporters, and provision shall be

made for representative trade consultation to that end. In addition, there may be applied such other standards or criteria as may be deemed necessary by the head of such department, or agency, or official to carry out the policies of this Act.

## VIOLATIONS

## Penalty.

SEC. 6. (a) Except as provided in subsection (b) of this section, whoever knowingly violates any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than \$10,000 or imprisoned not more than one year, or both. For a second or subsequent offense, the offender shall be fined not more than three times the value of the exports involved or \$20,000, whichever is greater, or imprisoned not more than five years, or both.

(b) Whoever willfully exports anything contrary to any provision of this Act or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any Communist-dominated nation, shall be fined not more than five times the value of the exports involved or \$20,000, whichever is greater, or imprisoned not more than five years, or both.

(c) The head of any department or agency exercising any functions under this Act, or any officer or employee of such department or agency specifically designated by the head thereof, may impose a civil penalty not to exceed \$1,000 for each violation of this Act or any regulation, order, or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed.

(d) The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed.

(e) Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c) shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty, within two years after payment, on the ground of a material error of fact or law in the imposition. Notwithstanding section 1346(a) of title 28 of the United States Code, no action for the refund of any such penalty may be maintained in any court.

(f) In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c), a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action, the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

(g) Nothing in subsection (c), (d), or (f) limits

(1) the availability of other administrative or judicial remedies

Communist-dominated nations, export prohibition; penalty.

62 Stat. 933;  
68 Stat. 589.

with respect to violations of this Act, or any regulation, order, or license issued under this Act;

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this Act, or any regulation, order, or license issued under this Act; or

(3) the authority to compromise, remit, or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

## ENFORCEMENT

SEC. 7. (a) To the extent necessary or appropriate to the enforcement of this Act or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1919, the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpoena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpoena issued to, any such person, the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (27 Stat. 443; 49 U.S.C. 46) shall apply with respect to any individual who specifically claims such privilege.

(c) No department, agency, or official exercising any functions under this Act shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the head of such department or agency determines that the withholding thereof is contrary to the national interest.

(d) In the administration of this Act, reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology. A detailed statement with respect to any action taken in compliance with this subsection shall be included in the first quarterly report made pursuant to section 10 after such action is taken.

67 Stat. 577.

63 Stat. 7,  
50 USC app.  
2021 note,  
Ante, p. 169.

Recordkeeping.

Subpoena power.  
Availability of records.

Self-incrimination, exception.

Disclosure of confidential information, prohibition.

EXEMPTION FROM CERTAIN PROVISIONS RELATING TO ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 8. The functions exercised under this Act are excluded from the operation of sections 551, 553-559, and 701-706, of title 5 United States Code.

INFORMATION TO EXPORTERS

SEC. 9. In order to enable United States exporters to coordinate their business activities with the export control policies of the United States Government, the agencies, departments, and officials responsible for implementing the rules and regulations authorized under this Act shall, if requested, and insofar as it is consistent with the national security, the foreign policy of the United States, the effective administration of this Act, and requirements of confidentiality contained in this Act—

(1) inform each exporter of the considerations which may cause his export license request to be denied or to be the subject of lengthy examination;

(2) in the event of undue delay, inform each exporter of the circumstances arising during the Government's consideration of his export license application which are cause for denial or for further examination;

(3) give each exporter the opportunity to present evidence and information which he believes will help the agencies, departments, and officials concerned to resolve any problems or questions which are, or may be, connected with his request for a license; and

(4) inform each exporter of the reasons for a denial of an export license request.

QUARTERLY REPORT

SEC. 10. The head of any department or agency, or other official exercising any functions under this Act, shall make a quarterly report, within 45 days after each quarter, to the President and to the Congress of his operations hereunder.

DEFINITION

"Person."

SEC. 11. The term "person" as used in this Act includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof.

EFFECTS ON OTHER ACTS

50 USC 86-88 note.

SEC. 12. (a) The Act of February 15, 1936 (49 Stat. 1140), relating to the licensing of exports of tinplate scrap, is hereby superseded; but nothing contained in this Act shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) The authority granted to the President under this Act shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934).

68 Stat. 848.

EFFECTIVE DATE

SEC. 13. (a) This Act takes effect upon the expiration of the Export Control Act of 1949.

Ante, p. 169.

(b) All outstanding delegations, rules, regulations, orders, licenses, or other forms of administrative action under the Export Control Act of 1949 or section 6 of the Act of July 2, 1940 (54 Stat. 714), shall, until amended or revoked, remain in full force and effect, the same as if promulgated under this Act.

50 USC app. 701 note.

TERMINATION DATE

SEC. 14. The authority granted by this Act terminates on June 30, 1971, or upon any prior date which the Congress by concurrent resolution or the President by proclamation may designate.

Approved December 30, 1969.

Public Law 91-185

AN ACT

December 30, 1969 [H. R. 14571]

To amend the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That—

Central Intelligence Agency Retirement Act of 1964 for Certain Employees, amendment.

SECTION 1. Section 211(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended (78 Stat. 1043; 50 U.S.C. 403 note), is further amended by striking out "Six and one-half per centum" in the first sentence and inserting "Seven per centum".

Average pay computation, 78 Stat. 1045.

SEC. 2. Section 221 of the Central Intelligence Agency Retirement Act (50 U.S.C. 403 note) is amended:

(a) by striking out in paragraph (a) "five consecutive years of service," and inserting "three consecutive years of service (or, in the case of an annuity computed under section 232 and based on less than three years, over the total service);";

(b) by striking out from the first sentence of paragraph (b) "or remarriage of such surviving wife or husband" and inserting "or upon remarriage prior to attaining age sixty of such surviving wife or husband";

(c) by striking out in paragraph (c) the items "40 per centum", "\$600", "\$1,800", "50 per centum", "\$720", and "\$2,160", and inserting "60 per centum", "\$900", "\$2,700", "75 per centum", "\$1,080", and "\$3,240";

(d) by adding new paragraph (g):

"(g) In the case of remarriage on or after age sixty an annuity shall be payable if remarriage has occurred on or after July 18, 1966, and

Remarriage provisions.

FEB 8 1989

FEB 8 1989

FRANK H. MURKOWSKI  
ALASKA



United States Senate

WASHINGTON, D. C.

February 6, 1989

The Honorable Betty Fahrenkamp  
Alaska State Senate  
P.O. Box V  
Juneau, AK 99811

Dear Betty:

I understand that you have introduced legislation to appropriate funds for the State of Alaska to use in lobbying Congress for the removal of the oil export ban.

I thought you might be interested in seeing my op-ed article on oil export and ANWR which will be published in the Friday edition of the Anchorage Times.

I hope you find it helpful.

Sincerely,

Frank H. Murkowski  
United States Senator

Enclosure

*Hope to talk to you @ your convenience*

EMBARGOED UNTIL 3:00 PM FRIDAY, FEBRUARY 10, 1989

IT WILL TAKE MORE THAN NEW LAW TO EXPORT OUR OIL

BY FRANK MURKOWSKI

THERE'S A SAYING THAT YOU CAN LEAD A HORSE TO WATER, BUT YOU CAN'T MAKE IT DRINK. ONE COULD USE IT TO SUM UP ALASKA'S EFFORTS TO EXPORT OUR OIL OVERSEAS.

HERE'S THE POSITION IN WHICH WE FIND OURSELVES REGARDING OIL EXPORT. FIRST, THERE'S THE 1912 JONES ACT WHICH REQUIRES THAT MARITIME COMMERCE BETWEEN TWO U.S. PORTS BE ABOARD U.S.-BUILT SHIPS AND CREWED BY U.S. SEAMEN. THEN THERE'S THE EXPORT ADMINISTRATION ACT AND THE PIPELINE AUTHORIZATION ACT THAT REQUIRE ALASKA'S OIL ONLY TO BE DELIVERED TO OTHER U.S. PORTS (NO EXPORT). OBVIOUSLY, THIS SCENARIO BODES WELL FOR THE U.S. MARITIME INDUSTRY -- FROM SHIP BUILDERS TO MARITIME UNIONS, WHO DEPEND HEAVILY ON THE ALASKA OIL TRANSPORTATION SYSTEM.

FROM THE STATE'S STANDPOINT, IF THE SITUATION WERE CHANGED AND OIL COULD BE EXPORTED OVERSEAS THE STATE OF ALASKA WOULD REALIZE AN INCREASE IN REVENUES. ON ONE HAND, THERE'S A GOOD CHANCE THAT OUR ROYALTY OIL (1/8 OF ALL PRODUCTION) WOULD SELL

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THIS IS SIGNIFICANT, BECAUSE FOR THE FIRST TIME SINCE 1973, WHEN CONGRESS PASSED THE OIL EXPORT BAN AS PART OF THE TRANS-ALASKA PIPELINE AUTHORIZATION ACT, CONGRESS HAS ALLOWED LIMITED EXPORTS OF ANS CRUDE OIL. THIS PARTICULAR PROVISION IN THE FTA WAS NOT WITHOUT ITS OPPONENTS. LEADING THE FIGHT AGAINST THE OIL EXPORT PROVISION WERE THE MARITIME INDUSTRY (INCLUDING SHIP OWNERS, SHIP BUILDERS, SHIP REPAIR FACILITIES, AND MARITIME UNIONS), WHO'S MEMBERS BENEFIT TREMENDOUSLY FROM THE CURRENT DOMESTIC COMMERCE REQUIREMENT. THE MOVEMENT OF ANS CRUDE, IN FACT, CONSTITUTES THE LARGEST SINGLE SOURCE OF EMPLOYMENT FOR THE U.S. MARITIME FLEET. IF THE EXPORT BAN WERE REMOVED, THE MARITIME INDUSTRY STANDS TO LOSE MORE THAN 2,000 JOBS.

THEIR LOBBYING DURING THE DEBATE OF THE FREE TRADE AGREEMENT WAS INITIALLY SUCCESSFUL. IN THE FIRST DRAFT TEXT OF THE AGREEMENT, LANGUAGE WAS INCLUDED THAT WOULD HAVE REQUIRED THE OIL TO BE SHIPPED FROM ALASKA TO A PORT IN THE LOWER 48 BEFORE BEING EXPORTED TO CANADA. THE ADDED TRANSPORTATION COST THAT WOULD HAVE RESULTED FROM THIS REQUIREMENT WOULD HAVE SUBSTANTIALLY REDUCED THE BENEFITS OF EXPORTING THE OIL TO CANADA. HOWEVER, AFTER A LONG AND DIFFICULT NEGOTIATING PROCESS, TED, DON AND I WERE SUCCESSFUL IN REPLACING THIS REQUIREMENT WITH ONE PERMITTING DIRECT SHIPMENT FROM VALDEZ TO CANADA ABOARD U.S. FLAG VESSELS. SO WE ARE MAKING PROGRESS!

THOSE OF US WHO HAVE BEEN WORKING TO REMOVE THE EXPORT BAN ENTIRELY HALLED THE PROVISIONS IN THE FREE TRADE AGREEMENT AS AN IMPORTANT FIRST STEP. HOWEVER, SINCE THE FTA ENTERED INTO FORCE, WE HAVE YET TO SEE ONE U.S. OIL COMPANY TAKE ADVANTAGE OF THE EXPORT OPPORTUNITY CREATED BY THIS AGREEMENT.

THIS UNDERLIES AN IMPORTANT POINT: FOR ALL OF THE EFFORTS THAT THE STATE OF ALASKA AND CITIZENS OF ALASKA PUT INTO EFFORTS TO LIFT THE EXPORT BAN, WE MUST KEEP IN MIND THAT NEITHER THE STATE, NOR ITS CITIZENS, CAN MANDATE TO THE PRODUCERS WHERE THAT OIL MUST GO. IN 1967, IN RETURN FOR \$900,000,000 AND 1/8 ROYALTY OF PRODUCTION, WE SOLD LEASES ON PRUDHOE BAY WHICH GAVE THE OIL COMPANIES THE RIGHT TO EXTRACT THE OIL, AND THE RIGHT TO MARKET THAT OIL AS THEY DETERMINED WOULD BE IN THEIR BEST INTEREST.

DESPITE OUR BEST EFFORTS. WE WON'T SEE ONE DROP OF ALASKA OIL CRUDE EXPORTED--TO CANADA OR ANYWHERE ELSE--UNTIL THE PRODUCERS DETERMINE THAT IT IS THEIR BEST INTEREST TO DO SO.

THERE IS SOME JUSTIFICATION FOR THE MAJOR OIL COMPANIES RELUCTANCE TO PUSH FOR THE OUTRIGHT REMOVAL OF THE EXPORT BAN. THEY HAVE MADE VERY SIGNIFICANT FINANCIAL INVESTMENTS IN TRANSPORTATION SYSTEMS, USING U.S. BUILT AND U.S. CREWED TANKERS AND WEST AND GULF COAST REFINERIES BASED ON THE PREMISE THAT THEY

PAGE 5

COULD ONLY SELL ANS CRUDE OIL ON THE DOMESTIC MARKET. IF THEY WERE TO EXPORT ANS CRUDE, SAY ON A BARREL FOR BARREL EXCHANGE FOR MEXICAN OIL, THEY WOULD HAVE TO RETROFIT THEIR REFINERIES TO PROCESS THE HEAVY MEXICAN CRUDE. IN OTHER WORDS, WERE THE BAN TO BE LIFTED, THE COMPANIES' INVESTMENTS COULD BE JEOPARDIZED.

THEREFORE, NOTWITHSTANDING THE INCREASED REVENUES THAT WOULD ACCRUE TO THE STATE AND FEDERAL GOVERNMENT IF THE EXPORT BAN WERE LIFTED TOMORROW, THERE REMAINS SOME QUESTION AS TO WHETHER OR NOT THE PRODUCERS OF THE OIL WOULD ACT IMMEDIATELY TO TAKE ADVANTAGE OF SUCH AN OPPORTUNITY.

DOES THIS MEAN THAT WE SHOULD GIVE UP OUR EFFORTS TO SEEK PASSAGE OF LEGISLATION THAT WOULD LIFT THE BAN? CERTAINLY NOT. ALLOWING MARKET FORCES TO DETERMINE WHERE ALASKA CRUDE OIL IS SOLD WOULD REMOVE A CUMBERSOME REGULATORY BURDEN AND GIVE U.S. PRODUCERS FLEXIBILITY TO RESPOND TO CHANGES IN THE INTERNATIONAL MARKET PLACE. BUT DO THE PRODUCERS WANT IT? SINCE ALASKA NORTH SLOPE OIL BEGAN PRODUCTION MORE THAN A DECADE AGO, I'VE YET TO SEE AN OWNER OF A PRUDHOE BAY LEASE OR ONE OF THE PRODUCERS REQUEST OF MY SENATE OFFICE A CHANGE IN THE LAW TO ALLOW THEM TO EXPORT ALASKA OIL.

PAGE 6

ANWR IS MOVING FAST. FROM MY PERSPECTIVE, ALASKA MIGHT WANT TO CONCENTRATE OUR LIMITED RESOURCES ON OBJECTIVES THAT WE KNOW CAN MEAN JOBS AND CONTINUED REVENUES AFTER THE RESERVOIR AT PRUDHOE BEGINS TO DWINDLE -- AND THAT'S OPENING ANWR. AN EFFORT TO LOBBY FOR OIL EXPORT WOULD BE USED BY THE OPPONENTS OF ANWR AS AN ARGUMENT THAT ALASKA OIL IS NOT NEEDED FOR THE COUNTRY'S NATIONAL ENERGY SECURITY, IF WE TURN AROUND AND EXPORT THE OIL TO JAPAN. WE DON'T NEED THAT ADDITIONAL HANDICAP FOR THE ANWR FIGHT, WHICH IS NOW UNDEPWAY. IF WE CAN GET ANWR OPENED UP IN THE NEXT FEW MONTHS, WE CAN THEN GO BACK AND CONCENTRATE OUR EFFORTS ON THE TASK OF REMOVING THE PROTECTIONIST BARRIERS ON MARKETING ALASKA RESOURCES TO THE MARKETS OF THE WORLD.

CALIFORNIA INDEPENDENT PETROLEUM ASSOCIATION

10231 SLATER AVENUE, #200 • FOUNTAIN VALLEY, CA 92708-4785  
(714) 963-8450 FAX (714) 963-9685

- CRUDE OIL
- NATURAL GAS
- GEOTHERMAL

FEB 23 1989

MEMORANDUM

DATE: February 7, 1989

TO: Charles H. Jones, Jr., Long Beach Oil Development  
 Douglas K. Brown, Mission Resources  
 David Kilpatrick, Santa Fe Energy  
 J.B. Williams, Santa Fe Energy  
 G. Neil Buttram, OXY USA, Inc.  
 William Stokes, Sun Exploration & Production  
 John Carmichael, ANGUS Petroleum Corp.  
 Murdock Baker, Seneca Resources  
 Jerry V. Hoffman, Berry Petroleum  
 Thomas C. Powell, Pennzoil Company  
 Lee C. McFarland, McFarland Energy, Inc.  
 Timothy Campbell, Campbell Energy Corporation  
 J. Russell Sherman, Atlantic Oil Company  
 Edward N. Gladish, Union Pacific Resources

FROM: Thomas Hunt, Executive Vice President

RE: Congressman Bill Thomas and Exports of ANS

The Congressman from Kern County plans to submit legislation which would effectively eliminate barriers now prohibiting export of ANS crude. As is the case with our association's view of this objective, it is one that requires a long term view, but nonetheless must have a start.

CIPA has supplied Congressman Thomas and his aide Mark Kirby with documents we have on file supporting the export of ANS, however, I would hope that your respective companies may have in house, or access to, other materials which would serve to support the Congressman and his staff in preparing a "Dear Colleague" letter, an instrument used to not only inform but also to solicit co-author interest as well. Particularly studies with California/USA economic impacts, environmental advantages, etc. would be beneficial.

Those type documents, or perhaps complementing them with supporting materials of your own company's view of this critical subject, to be sent to Congressman Thomas would be appreciated and useful.

# **CORRECTION**

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



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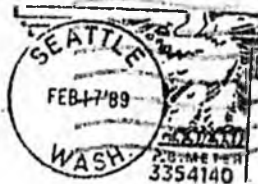
Those type documents, or perhaps complementing them with supporting materials of your own company's view of this critical subject, to be sent to Congressman Thomas would be appreciated and useful.

As CIPA focuses its attention on the lifting of this ban, copies of your letters and documents to my office would greatly advance our collective cause. Thank you for your attention to this matter. I welcome your calls as to direction and insights.

Enclosed is a copy of the ARTA report we sent to the Congressman today.

cc: J.C. "Chris" Hall, President  
Drilling & Production Company  
E.C. Kozlowski, Chairman  
Western Avenue Properties  
E. Del Smith, CIPA Washington, D.C.  
E. Del Smith & Company  
Arlon R. Tussing ✓  
Arlon R. Tussing & Associates  
ANS files

ARLON R. TUSSING & ASSOCIATES, INC.  
1001 Fourth Avenue • Suite 4730  
Seattle, Washington 98154



Senator Bettye Fahrenkamp  
Attn: Danny Consenstein  
Alaska State Senate Resources Committee  
Juneau, AK 99510

WILLIAM M. THOMAS

20TH DISTRICT, CALIFORNIA

FOR IMMEDIATE RELEASE: MARCH 1, 1989  
CONTACT: JEFF NELLIGAN (202) 225-2915  
THOMAS INTRODUCES MEASURE REPEALING RESTRICTIONS ON EXPORT OF  
ALASKAN NORTH SLOPE CRUDE OIL

Congressman Bill Thomas (R-California) has introduced legislation repealing the current restrictions on the export of Alaskan North Slope (ANS) crude oil, which would strengthen U.S. energy and national security.

"This bill solves a daisy-chain of inter-related problems," said Thomas. "The heart of the bill is stimulating domestic production by allowing the immediate export of ANS crude oil, crude which currently must be refined in the United States. This results in a glut of oil, principally in West Coast ports, which keeps oil prices artificially low. Low prices reduce U.S. domestic production by an estimated 500 million barrels a day. With the lifting of export restrictions, the glut would end, prices would stabilize and production would increase. Increased production would result in more federal tax revenues and a reduction of the U.S. budget deficit. The value of this bill is that it goes a long way toward solving a string of critical problems," he added.

Alaskan North Slope oil fields were opened in 1973 for production under the restriction that ANS crude not be exported. This restriction has led ANS producers to ship crude to be refined to the West Coast, or through Panama for Gulf Coast and East Coast destinations.

"Oil producers get caught by wildly fluctuating prices and are forced to shut down production. And producing oil is not like sipping soda through a straw. If we stop taking oil from wells already in operation, reservoirs will repressurize and we'll ultimately lose currently-recoverable energy," Thomas said.

"The opponents of ANS crude export have relied on emotionally charged, but timeworn and fallacious arguments. First there is the idea that export controls make the U.S. less reliant on imported oil. In fact, the opposite is true. Export restrictions, in fact, make the U.S. more reliant on oil imports because the controls cause an oil glut on the West Coast, which drives down Alaska and California wellhead prices. Low prices, in turn, reduce domestic production by an estimated 500 million barrels daily. This loss of domestic production can only be filled by an equivalent amount of imported crude, which increases U.S. reliance on imported oil. We must reverse this entire chain of events and my bill is the best way to do that," said Thomas.

The bill now goes to the House Foreign Affairs Committee's Subcommittee on International Economic Policy and Trade.

101ST CONGRESS  
1ST SESSION

# H. R. 1135

To remove the restrictions on the export of Alaskan North Slope oil.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 1989

Mr. THOMAS of California introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, Energy and Commerce, Interior and Insular Affairs, and Armed Services

---

## A BILL

To remove the restrictions on the export of Alaskan North Slope oil.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. EXPORT ADMINISTRATION ACT AMENDMENTS.

4 (a) REPEAL.—Section 7(d) of the Export Administra-  
5 tion Act of 1979 (50 U.S.C. 2406(d)) is hereby repealed.

6 (b) CONFORMING AMENDMENT.—Section 7(k) of the  
7 Export Administration Act of 1979 (50 U.S.C. App. 2406(k))  
8 is amended by striking out “For purposes of subsection (d) of  
9 this section, and for” and inserting in lieu thereof “For”.

## 1 SEC. 2. OTHER PROVISIONS OF LAW.

2       The export of domestically produced crude oil transport-  
3 ed by pipeline over right-of-way granted pursuant to section  
4 203 of the Trans-Alaska Pipeline Authorization Act (43  
5 U.S.C. 1652) shall not be subject to the restrictions con-  
6 tained in section 28(u) of the Mineral Leasing Act of 1920  
7 (30 U.S.C. 185), section 103 of the Energy Policy and Con-  
8 servation Act (42 U.S.C. 6212), section 28 of the Outer Con-  
9 tinental Shelf Lands Act (43 U.S.C. 1354), or section  
10 7430(e) of title 10, United States Code, or any regulations  
11 issued under any such provision of law.

○

April 11, 1989

LEGISLATIVE ADVISORY

Re: 1989 Expiration of ANS Export Ban

Concerning the Alaska Legislature's past efforts and current interests in the new revenues inherent in the export of ANS oil;

Dr. Arlon Tussing, UofA adjunct professor and former chief economist to the U.S. Senate Energy Committee, will be in Juneau April 15, 1989.

Tussing and his associates have, through the Legislature's auspices, effected substantial progress in impeaching the federal ban economically to various agencies of the federal government. The 1986 ISER study conducted by Tussing, and subsequent updates, have effected considerable support in the federal administration, and in the Congress, for permitting the ban to expire in September '89, rather than re-extend it.

In view of current developments, specifically the Exxon-Valdez disaster, Tussing will be available to discuss the ban with concerned Legislators.

To make such arrangements, please call ARTA (206) 447-0321 or Bob Clarke at 586-2031.

**S B**

**61**



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

RECEIVED MAR 3 1989

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Commissioner's Ofc.	BILL NUMBER SB 61	SPONSOR Senator Zharoff
SHORT TITLE OF BILL An Act relating to ADF&G employees' interest in fisheries			
DEPARTMENT POSITION Oppose			
PREPARED BY Warren W. Wiley <i>Warren W. Wiley</i>	DATE 3/1/89	COMMISSIONER'S SIGNATURE <i>Don W. Callensworth</i>	DATE 3.1.89

SUMMARY

OTHER AGENCIES AFFECTED BY BILL None	CONSTITUENT GROUP(S) AFFECTED BY BILL Employees of ADF&G
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT  
Unknown

ANALYSIS OF BILL/PROGRAM EFFECTS

Enactment of this legislation would prohibit an employee of the Department of Fish and Game from acquiring a financial interest in a commercial fishery managed by the department. If an employee presently holds an interest in a commercial fishery, the proposed legislation would require that employee to disclose such interest and, eventually, to relinquish that interest. Certain provisions of AS 39.52 (the Ethics Act) may already apply to this situation. At present, the department is attempting to enact an ethics policy which would address situations similar to those discussed in Senate Bill 61.

AMENDMENTS PROPOSED

It might be possible that amendments could be made to AS 39.52 which would address the issue of public employees of resource agencies participating in the commercial harvest of resources managed by the employing agency.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Fish and Game  
 Title: An Act prohibiting certain BRU: \_\_\_\_\_  
employees of ADP&G from...financial interests  
 Sponsor: Zharoff Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

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

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

*www/3/1/89*

Prepared by: Warren W. Wiley, Asst. Commissioner Phone: 465-4100  
 Division: Commissioner's Office Date: 3/1/89

Approved by Commissioner: *Don Callinworth* Date: 3.1.89  
 Agency: Fish and Game

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



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

P.O. BOX 406, KODIAK, ALASKA 99815 (907) 486-6259

DURING SESSION:


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

**DISTRICT N**

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CHARLEY/LAKE ILLIAMNA • Pribilof Islands • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Bettye Fahrenkamp  
Chair  
Senate Resources Committee

FROM: Senator Fred F. Zharoff 

DATE: April 19, 1989

RE: CS For Senate Bill 61 - "An Act prohibiting certain employees of the Department of Fish and Game from having certain financial interests."

The resource management decisions made by employees of the Alaska Department of Fish and Game have a major economic impact on Alaska's commercial fishermen and hunters.

In the fisheries -- my main area of concern -- these decisions include whether to have an opening or not, what areas or specific bays to open, how much to allow for escapement, etc. Each of these decisions could make or break a commercial fisherman's season. With the many management decisions that must be made during Alaska's fast-moving fishing seasons, opportunities exist for individual Fish and Game employees to favor certain fishermen or groups of fishermen over others.

It is absolutely important that Fish and Game personnel make their management decisions in the most fair and most impartial manner possible. This can not be accomplished if Fish and Game personnel have financial interests in the fisheries or the game resources they are managing.

SB 61 ensures this will never be a problem. The bill prohibits permanent full-time employees of the Department of Fish and Game from having financial interests in the fisheries or game resources they manage. This prohibition also extends to immediate family members.

In addition, the bill contains the following provisions:

-- It gives the department the power to extend the prohibition, by regulation, to other employees.

-- It allows employees to avoid discipline if they divest themselves of their financial interests.

-- It provides for discharge from the department and class B misdemeanor penalties for employees who violate the law.

SB 61 will help reassure Alaskan residents and visitors that management decisions are being made objectively and with fairness. It will allow the public to have a high level of confidence in the Department of Fish and Game.

Attached, as background information, is the Department of Fish and Game's bill analysis and fiscal note.



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

RECEIVED MAR 31 1989

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Commissioner's Ofc.	BILL NUMBER SB 61	SPONSOR Senator Zharoff
SHORT TITLE OF BILL An Act relating to ADF&G employees' interest in fisheries			
DEPARTMENT POSITION Oppose			
PREPARED BY Warren W. Wiley	DATE 3/1/89	COMMISSIONER'S SIGNATURE <i>W. Collinsworth</i>	DATE 3.1.89

SUMMARY

OTHER AGENCIES AFFECTED BY BILL None	CONSTITUENT GROUP(S) AFFECTED BY BILL Employees of ADF&G
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT  
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<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>						

**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Prepared by: Warren W. Wiley, Asst. Commissioner Phone: 465-4100  
 Division: Commissioner's Office Date: 3/1/89  
 Approved by Commissioner: *Don Collinsworth* Date: 3.1.89  
 Agency: Fish and Game

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

**Chapter 52. Alaska Executive Branch Ethics Act.**

**Article**

- 1. Declarations (§ 39.52.010)
- 2. Code of Ethics (§§ 39.52.110 — 39.52.190)
- 3. Disclosure and Action to Prevent Violations (§§ 39.52.210 — 39.52.260)
- 4. Complaints; Hearing Procedures (§§ 39.52.310 — 39.52.390)
- 5. Enforcement; Remedies (§§ 39.52.410 — 39.52.460)
- 6. General Provisions (§§ 39.52.910 — 39.52.960)

**Article 1. Declarations.**

**Section**

- 10. Declaration of policy

**Sec. 39.52.010. Declaration of policy.** (a) It is declared (1) that high moral and ethical standards among public officers in the executive branch are essential to the conduct of free government; and (2) that the legislature believes that a code of ethics for the guidance of public officers will discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities, will improve standards of public service, and will promote and strengthen the faith and confidence of the people of this state in their public officers. It is further declared that holding public office or employment is a public trust and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics.

(b) The legislature declares that it is the policy of the state, when a public employee is appointed to serve on a state board or commission, that the holding of such offices does not constitute the holding of incompatible offices unless expressly prohibited by the Alaska Constitution, this chapter and any opinions or decisions rendered under it, or another statute. (§ 1 ch 87 SLA 1986)

**Article 2. Code of Ethics.**

**Section**

- 110. Scope of code
- 120. Misuse of official position
- 130. Improper gifts
- 140. Improper use or disclosure of information
- 150. Improper influence in state grants, contracts, leases, or loans

**Section**

- 160. Improper representation
- 170. Outside employment restricted
- 180. Restrictions on employment after leaving state service
- 190. Aiding a violation prohibited

**Sec. 39.52.110. Scope of code.** (a) The legislature reaffirms that each public officer holds office as a public trust, and any effort to benefit a personal or financial interest through official action is a violation of that trust. In addition, the legislature finds that, so long as it does not interfere with the full and faithful discharge of an officer's public duties and responsibilities, this chapter does not pre-

## Act.

vent an officer from following other independent pursuits. The legislature further recognizes that

(1) in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without personal and financial interests in the decisions and policies of government;

(2) people who serve as public officers retain their rights to interests of a personal or financial nature; and

(3) standards of ethical conduct for members of the executive branch need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interests that are substantial and material.

(b) Unethical conduct is prohibited, but there is no substantial impropriety if, as to a specific matter, a public officer's

(1) personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs; or

(2) action or influence would have insignificant or conjectural effect on the matter.

(c) The attorney general, designated supervisors, hearing officers, and the personnel board must be guided by this section when issuing opinions and reaching decisions. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.120. Misuse of official position.** (a) A public officer may not use, or attempt to use, an official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person.

(b) A public officer may not

(1) seek other employment or contracts through the use or attempted use of official position;

(2) accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the state;

(3) use state time, property, equipment, or other facilities to benefit personal or financial interests;

(4) take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest; or

(5) attempt to benefit a personal or financial interest through coercion of a subordinate. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.130. Improper gifts.** (a) A public officer may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the officer's personal or financial interests, under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions, or judgment.

(b) Notice of the receipt by a public officer of a gift with a value in excess of \$50, including the name of the giver and a description of the gift and its approximate value, must be provided to the designated supervisor within 30 days after the date of its receipt if the public officer may take or withhold official action that affects the giver.

(c) In accordance with AS 39.52.240, a designated supervisor may request guidance from the attorney general concerning whether acceptance of a particular gift is prohibited.

(d) The restrictions relating to gifts imposed by this section do not apply to a campaign contribution to a candidate for elective office if the contribution complies with laws and regulations governing elections and campaign disclosure. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.140. Improper use or disclosure of information.**

(a) A current or former public officer may not disclose or use information gained in the course of, or by reason of, the officer's official duties that could in any way result in the receipt of any benefit for the officer or an immediate family member, if the information has not also been disseminated to the public.

(b) A current or former public officer may not disclose or use, without appropriate authorization, information acquired in the course of official duties that is confidential by law. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.150. Improper influence in state grants, contracts, leases, or loans.** (a) A public officer, or an immediate family member, may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan if the public officer may take or withhold official action that affects the award, execution, or administration of the state grant, contract, lease, or loan.

(b) The prohibition in (a) of this section does not apply to a state grant, contract, or lease competitively solicited unless the officer

(1) is employed by the administrative unit awarding the grant, contract, or lease or is employed by the administrative unit for which the grant, contract, or lease is let; or

(2) takes official action with respect to the award, execution, or administration of the grant, contract, or lease.

(c) The prohibition in (a) of this section does not apply to a state loan if

(1) the public officer does not take or withhold official action that affects the award, execution, or administration of the loan held by the officer, or an immediate family member;

(2) the loan is generally available to members of the public; and

(3) the loan is subject to fixed eligibility standards.

(d) A public officer shall report in writing to the designated supervisor a personal or financial interest held by the officer, or an immediate

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family member, in a state grant, contract, lease, or loan that is awarded, executed, or administered by the agency the officer serves. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.160. Improper representation.** (a) A public officer may not represent, advise, or assist a person in any matter pending before the administrative unit that the officer serves, if the representation, advice, or assistance is

(1) for compensation, unless the representation, advice, assistance, and compensation are required by statute, regulation, or court rule, or is otherwise customary; or

(2) without compensation, but rendered to benefit a personal or financial interest of the public officer.

(b) This section does not prohibit activities related to collective bargaining.

(c) This section does not preclude a nonsalaried member of a board or commission from representing, advising, or assisting in any matter in which the member has a personal or financial interest regulated by the board or commission on which the member serves, except that the member must act in accordance with AS 39.52.220. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.170. Outside employment restricted.** (a) A public employee may not render services to benefit a personal or financial interest or engage in or accept employment outside the agency which the employee serves, if the outside employment or service is incompatible or in conflict with the proper discharge of official duties.

(b) A public employee rendering services for compensation, or engaging in employment outside the employee's agency, shall report by July 1 of each year the outside services or employment to the employee's designated supervisor. During the year, any change in an employee's outside service or employment activity must be reported to the designated supervisor as it occurs. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.180. Restrictions on employment after leaving state service.** (a) A public officer who leaves state service may not, for two years after leaving state service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by that public officer, and in which the officer participated personally and substantially through the exercise of official action. For the purposes of this subsection, "matter" includes a case, proceeding, application, contract, or determination, but does not include the proposal or consideration of legislative bills, resolutions and constitutional amendments, or other legislative measures; or the proposal, consideration, or adoption of administrative regulations.

(b) This section does not prohibit an agency from contracting with a former public officer to act on a matter on behalf of the state.

(c) The head of an agency may waive application of (a) of this section after determining that representation by a former public officer is not adverse to the public interest. The waiver must be in writing and a copy of the waiver must be provided to the attorney general for approval or disapproval. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.190. Aiding a violation prohibited.** It is a violation of this chapter for a public officer to knowingly aid another public officer in a violation of this chapter. (§ 1 ch 87 SLA 1986)

**Article 3. Disclosure and Action to Prevent Violations.**

Section	Section
210. Declaration of potential violations by public employees	230. Reporting of potential violations
220. Declaration of potential violations by members of boards or commissions	240. Advisory opinions
	250. Advice to former public officers
	260. Designated supervisor's report and attorney general review

**Sec. 39.52.210. Declaration of potential violations by public employees.** (a) A public employee who is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190 shall

(1) refrain from taking any official action relating to the matter until a determination is made under this section; and

(2) immediately disclose the matter in writing to the designated supervisor.

(b) A public employee's designated supervisor shall make a written determination whether an employee's involvement violates AS 39.52.110 — 39.52.190. If the supervisor determines that a violation could exist or will occur, the supervisor shall,

(1) reassign duties to cure the employee's potential violation, if feasible; or

(2) direct the divestiture or removal by the employee of the personal or financial interests that give rise to the potential violation.

(c) A designated supervisor may request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a public employee is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.220. Declaration of potential violations by members of boards or commissions.** (a) A member of a board or commission who is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190 shall disclose the matter on the public record and in writing to the designated supervisor. The supervisor shall determine whether the member's involvement violates AS

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39.52.110 — 39.52.190. If a member of the board or commission objects to the ruling of the supervisor, or if the supervisor discloses an involvement requiring a determination, the members present at a meeting, excluding the involved member, shall vote on the matter. If the supervisor or a majority of the members voting determine that a violation will exist if the member continues to participate, the member shall refrain from voting, deliberating, or participating in the matter.

(b) The designated supervisor or the board or commission may request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a member of a board or commission is involved in a matter that may result in a violation of AS 39.52.110 — 39.52.190. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.230. Reporting of potential violations.** A person may report to a public officer's designated supervisor, under oath and in writing, a potential violation of AS 39.52.110 — 39.52.190 by the public officer. The supervisor shall provide a copy of the report to the officer who is the subject of the report, and shall review the report to determine whether a violation may exist. The supervisor shall act in accordance with AS 39.52.210 or 39.52.220 if the supervisor determines that the matter may result in a violation of AS 39.52.110 — 39.52.190. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.240. Advisory opinions.** (a) Upon the written request of a designated supervisor or a board or commission, the attorney general shall issue opinions interpreting this chapter. The requester must supply any additional information requested by the attorney general in order to issue the opinion. Within 60 days after receiving a complete request, the attorney general shall issue an advisory opinion on the question.

(b) The attorney general may offer oral advice if delay would cause substantial inconvenience or detriment to the requesting party.

(c) The designated supervisor or a board or commission shall make a written determination based on the advice of the attorney general. If the advice of the attorney general provides more than one way for a public officer to avoid or correct a problem found under AS 39.52.110 — 39.52.190, the designated supervisor or the board or commission shall, after consultation with the officer, determine the alternative that is most appropriate and advise the officer of any action required of the officer to avoid or correct the problem.

(d) A public officer is not liable under this chapter for any action carried out in accordance with a determination made under AS 39.52.210 — 39.52.240 if the officer fully disclosed all relevant facts reasonably necessary to the determination.

(e) The attorney general may reconsider, revoke, or modify an advisory opinion at any time, including upon a showing that material facts were omitted or misstated in the request for the opinion.

(f) A person may rely on an advisory opinion that is currently in effect.

(g) A request for advice made under (a) of this section is confidential.

(h) The attorney general shall publish in the Alaska Administrative Journal, with sufficient deletions to prevent disclosure of the persons whose identities are confidential under (g) of this section, the advisory opinions issued under this section that the attorney general determines to be of major import because of their general applicability to executive branch officers. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.250. Advice to former public officers.** (a) A former public officer may request, in writing, an opinion from the attorney general interpreting this chapter. The attorney general shall give advice in accordance with AS 39.52.240(a) or (b) and publish opinions in accordance with AS 39.52.240(h).

(b) A former public officer is not liable under this chapter for any action carried out in accordance with the advice of the attorney general issued under this section, if the public officer fully disclosed all relevant facts reasonably necessary to the issuance of the advice. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.260. Designated supervisor's report and attorney general review.** (a) A designated supervisor shall quarterly submit a report to the attorney general which states the facts, circumstances, and disposition of any disclosure made under AS 39.52.210 — 39.52.240.

(b) The attorney general shall review determinations reported under this section. The attorney general may request additional information from a supervisor concerning a specific disclosure and its disposition.

(c) The report prepared under this section is confidential and not available for public inspection unless formal proceedings under AS 39.52.350 are initiated based on the report. If formal proceedings are initiated, the relevant portions of the report are public documents open to inspection. The attorney general shall, however, make available to the public a summary of the reports received under this section, with sufficient deletions to prevent disclosure of a person's identity. (§ 1 ch 87 SLA 1986)

### Article 4. Complaints; Hearing Procedures.

#### Section

310. Complaints  
 320. Dismissal before formal proceedings  
 330. Corrective or preventive action  
 340. Confidentiality  
 350. Probable cause for hearing

#### Section

360. Hearings  
 370. Personnel board action  
 380. Subpoenas  
 390. Service

**Sec. 39.52.310. Complaints.** (a) The attorney general may initiate a complaint, or elect to treat as a complaint any matter disclosed under AS 39.52.210, 39.52.220, 39.52.250, or 39.52.260.

(b) A person may file a complaint with the attorney general regarding the conduct of a current or former public officer. A complaint must be in writing, be signed under oath, and contain a clear statement of the details of the alleged violation.

(c) If a complaint alleges a violation of AS 39.52.110 — 39.52.190 by the governor, lieutenant governor, or the attorney general, the matter shall be referred to the personnel board. The personnel board shall retain independent counsel who shall act in the place of the attorney general under (d) — (i) of this section, AS 39.52.320 — 39.52.350, and 39.52.360(c) and (d).

(d) The attorney general shall review each complaint filed, to determine whether it is properly completed and contains allegations which, if true, would constitute conduct in violation of this chapter. The attorney general may require the complainant to provide additional information before accepting the complaint. If the attorney general determines that the allegations in the complaint do not warrant an investigation, the attorney general shall dismiss the complaint with notice to the complainant and the subject of the complaint.

(e) The attorney general may refer a complaint to the subject's designated supervisor for resolution under AS 39.52.210 or 39.52.220.

(f) If the attorney general accepts a complaint for investigation, the attorney general shall serve a copy of the complaint upon the subject of the complaint, for a response. The attorney general may require the subject to provide, within 20 days after service, full and fair disclosure in writing of all facts and circumstances pertaining to the alleged violation. Misrepresentation of a material fact in a response to the attorney general is a violation of this chapter. Failure to answer within the prescribed time, or within any additional time period that may be granted in writing by the attorney general, may be considered an admission of the allegations in the complaint.

(g) If a complaint is accepted under (f) of this section, the attorney general shall investigate to determine whether a violation of this chapter has occurred. At any stage of an investigation or review, the attorney general may issue a subpoena under AS 39.52.380.

(h) A violation of this chapter may be investigated within two years after discovery of the alleged violation.

(i) The unwillingness of a complainant to assist in an investigation, the withdrawal of a complaint, or restitution by the subject of the complaint may, but need not in and of itself, justify termination of an investigation or proceeding. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.320. Dismissal before formal proceedings.** If, after investigation, it appears that there is no probable cause to believe that a violation of this chapter has occurred, the attorney general shall dismiss the complaint and prepare and file a confidential summary with the personnel board. The attorney general shall communicate disposition of the matter promptly to the complainant and to the subject of the complaint. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.330. Corrective or preventive action.** After determining that the conduct of the subject of a complaint does not warrant a hearing under AS 39.52.360, the attorney general shall recommend action to correct or prevent a violation of this chapter. The attorney general shall communicate the recommended action to the complainant and the subject of the complaint. The subject of the complaint shall comply with the attorney general's recommendation. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.340. Confidentiality.** (a) Before the initiation of formal proceedings under AS 39.52.350, information regarding an investigation conducted under this chapter, or obtained by the attorney general during the investigation, is confidential. The attorney general and all persons contacted during the course of an investigation shall maintain confidentiality regarding the existence of the investigation. A person who violates this section is guilty of a class A misdemeanor.

(b) It is not a violation of this section for a person to contact an attorney or to participate in a criminal investigation.

(c) The subject of the complaint may, in writing, waive the confidentiality protection of this section. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.350. Probable cause for hearing.** (a) If the attorney general determines that there is probable cause to believe that a knowing violation of this chapter or a violation that cannot be corrected under AS 39.52.330 has occurred, or that the subject of a complaint failed to comply with a recommendation for corrective or preventive action, the attorney general shall initiate formal proceedings by serving a copy of an accusation upon the subject of the accusation. The accusation shall specifically set out the alleged violation. After service, the accusation is a public document open to inspection. Except

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as provided in AS 39.52.370(c), all subsequent proceedings are open to the public.

(b) The subject of the accusation shall file an answer with the attorney general within 20 days after service of the accusation, or at a later time specified by the attorney general. If the subject of the accusation fails to timely answer, the allegations are considered admitted.

(c) If the subject of the accusation denies that a violation of this chapter has occurred, the attorney general shall refer the matter to the personnel board, which shall appoint a hearing officer to conduct a hearing.

(d) If the subject of the accusation admits a violation of this chapter, the attorney general shall refer the matter to the personnel board to impose penalties under AS 39.52.410, 39.52.440, and 39.52.450, as appropriate. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.360. Hearings.** (a) The hearing officer may convene a prehearing conference to set a time and place for the hearing, and for stipulation as to matters of fact and to simplify issues, identify and schedule prehearing matters, and resolve other similar matters before the hearing.

(b) The hearing officer may administer oaths, hold hearings, and take testimony. Upon application by a party to the hearing, the hearing officer may issue subpoenas under AS 39.52.380.

(c) The attorney general shall present the charges before the hearing officer. At a hearing, the attorney general has the burden of demonstrating by a preponderance of the evidence that the subject of the accusation has, by act or omission, violated this chapter.

(d) The parties to a hearing are the attorney general and the subject of the accusation. The subject of an accusation may be represented by counsel. Each party has an opportunity to be heard and cross-examine witnesses, who shall testify under oath.

(e) The Administrative Procedure Act does not apply to hearings under this section, except as provided in AS 39.52.380.

(f) Technical rules of evidence do not apply, but the hearing officer's findings must be based upon reliable and relevant evidence. All testimony and other evidence taken at the hearing must be recorded and the evidence maintained. Copies of transcripts of the hearing record are available to the subject of the accusation at the subject's expense; however, upon request, a copy of the recording of the hearing must be furnished without charge to the subject of the accusation.

(g) At the conclusion of the formal hearing, the hearing officer may direct either or both parties to submit proposed findings of fact, conclusions of law, and recommendation to be filed within 10 days after the conclusion of the hearing.

(h) Within 30 days after the conclusion of a formal hearing, the hearing officer shall serve a written report on the personnel board and

the parties, unless the personnel board grants an extension of time. The report must contain the officer's findings of fact, conclusions of law, and recommendation. The hearing officer shall submit the record to the personnel board. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.370. Personnel board action.** (a) Within 10 days after receipt of the hearing officer's report, either party may protest the officer's findings of fact, conclusions of law, and recommendation, and, if a protest is filed, shall serve a copy on the other party. Oral argument before the personnel board must be provided only if requested by either party. The board chair shall set the deadline for submission of requests for oral argument, and set the dates for submission of briefs and oral argument before the board, if requested.

(b) The board may issue subpoenas under AS 39.52.380, and may, for good cause shown, augment the hearing record, in whole or in part, or hold a hearing de novo.

(c) The personnel board shall review each report submitted by a hearing officer and shall either adopt or amend the findings of fact, conclusions of law, and recommendation of the officer. Deliberations of the personnel board must be conducted in sessions not open to the public.

(d) If the personnel board determines that a violation occurred, it may impose the penalties in AS 39.52.410, 39.52.440, and 39.52.450, as appropriate. If the board determines that no violation occurred, the board shall issue a written order of dismissal.

(e) The personnel board secretary shall promptly notify the parties and the public officer's designated supervisor of the board's action.

(f) The subject of the accusation may appeal the personnel board's decision by filing an appeal in the superior court as provided in the Alaska Rules of Appellate Procedure. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.380. Subpoenas.** (a) As provided in AS 39.52.310(g), 39.52.360(b), and 39.52.370(b), the attorney general, independent counsel retained under AS 39.52.310(c), a hearing officer, the subject of an accusation, and the personnel board may summon witnesses and require the production of records, books, and papers by the issuance of subpoenas.

(b) Subpoenas must be served in the manner prescribed by AS 44.62.430 and Rule 45 of the Alaska Rules of Civil Procedure. Failure or refusal to obey a subpoena issued under this chapter is punishable as contempt in the manner provided by law and court rule. The superior court may compel obedience to the subpoena in the same manner as prescribed for obedience to a subpoena issued by the court. (§ 1 ch 87 SLA 1986)

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**Sec. 39.52.390. Service.** Service of an accusation must be accomplished in accordance with Rule 4 of the Alaska Rules of Civil Procedure. Service of any other pleading, motion, or other document must be accomplished in accordance with Rule 5 of the Alaska Rules of Civil Procedure. (§ 1 ch 87 SLA 1986)

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**Article 5. Enforcement; Remedies.**

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Section	Section
410. Violations; penalties for misconduct	450. Payment of twice the financial benefit
420. Disciplinary action for violation	
430. Actions voidable	460. Criminal sanctions additional
440. Civil penalties	

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**Sec. 39.52.410. Violations; penalties for misconduct.** (a) If the personnel board determines that a public employee has violated this chapter, it

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- (1) shall order the employee to stop engaging in any official action related to the violation;
- (2) may order divestiture, establishment of a blind trust, restitution, or forfeiture; and
- (3) may recommend that the employee's agency take disciplinary action, including dismissal.

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(b) If the personnel board determines that a nonsalaried member of a board or commission has violated this chapter, it (1) shall order the member to refrain from voting, deliberating, or participating in the matter; (2) may order restitution; and (3) may recommend to the appropriate appointing authority that the member be removed from the board or commission. A violation of this chapter is grounds for removal of a board or commission member for cause. If the personnel board recommends that a board or commission member be removed from office, the appointing authority shall immediately act to remove the member from office.

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(c) If the personnel board determines that a former public officer has violated this chapter, it shall

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- (1) issue a public statement of its findings, conclusions, and recommendation; and
- (2) request the attorney general to exercise all legal and equitable remedies available to the state to seek whatever relief is appropriate.

(d) If the personnel board finds a violation of this chapter by a public officer removable from office only by impeachment, it shall file a report with the president of the Senate, with its finding. The report must contain a statement of the facts alleged to constitute the violation. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.420. Disciplinary action for violation.** (a) In addition to any other cause an agency may have to discipline a public employee, an agency may reprimand, demote, suspend, discharge, or otherwise subject an employee to agency disciplinary action commensurate with the violations of this chapter. This section does not prohibit the review of a disciplinary action in the manner prescribed by an applicable collective bargaining agreement or personnel statute or rule.

(b) An agency may initiate appropriate disciplinary action in the absence of an accusation under this chapter or during the pendency of a hearing or personnel board action. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.430. Actions voidable.** (a) In addition to any other penalty provided by law, a state grant, contract, or lease entered into in violation of this chapter is voidable by the state. In a determination under this section of whether to void a grant, contract, or lease, the interests of third parties who could be damaged may be taken into account. The attorney general shall give notice of intent to void a state grant, contract, or lease under this section no later than 30 days after the personnel board's determination of a violation under this chapter.

(b) In addition to any other penalty provided for by law, the state may require a state loan received in violation of this chapter to become immediately payable.

(c) Any state action taken in violation of this chapter is voidable, except that the interests of third parties and the nature of the violation may be taken into account. The attorney general may pursue any other available legal and equitable remedies.

(d) The attorney general may recover any fee, compensation, gift, or benefit received by a person as a result of a violation of this chapter by a current or former public officer. Action to recover under this subsection must be brought within two years after discovery of the violation. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.440. Civil penalties.** The personnel board may impose on a current or former public officer civil penalties not to exceed \$5,000 for a violation of this chapter. A penalty imposed under this section is in addition to and not instead of any other penalty that may be imposed according to law. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.450. Payment of twice the financial benefit.** The personnel board may, in addition to the civil penalties described in this chapter, require a current or former public officer who has financially benefited a person in violation of this chapter to pay to the state up to twice the amount that the person realized from the violation. (§ 1 ch 87 SLA 1986)

Sec. 39.52.460. Criminal sanctions additional. To the extent that violations under this chapter are punishable in a criminal action, that sanction is in addition to the civil remedies set out in this chapter. (§ 1 ch 87 SLA 1986)

Article 6. General Provisions.

Section

- 910. Applicability
- 920. Agency policies
- 930. Cooperation

Section

- 940. Construction
- 950. Regulations
- 960. Definitions

Sec. 39.52.910. Applicability. (a) Except as specifically provided, this chapter applies to all public officers within executive-branch agencies, including members of boards or commissions. This chapter does not apply to a former public officer of an executive-branch agency unless a provision specifically states that it so applies. This chapter does not apply to legislators covered by AS 24.60.

(b) The provisions of this chapter supersede the common law on conflicts of interests that may apply to a public officer of an executive-branch agency and any personnel rules relating to conflicts of interests, excluding nepotism, adopted under AS 39.25. However, nothing in this chapter precludes a prosecution under an applicable criminal statute nor prevents enforcement of any other state law that imposes a stricter standard of ethical conduct on public officers.

(c) The provisions of this chapter are not subject to negotiation by collective bargaining under AS 23.40. (§ 1 ch 87 SLA 1986)

Cross references. — For provisions related to nepotism, see AS 39.90.020.

Sec. 39.52.920. Agency policies. Subject to the review and approval of the attorney general, an agency may adopt a written policy that, in addition to the requirements of this chapter, limits the extent to which a public officer in the agency or an administrative unit of the agency may

(1) acquire a personal interest in an organization or a financial interest in a business or undertaking that may benefit from official action taken or withheld by the agency or unit;

(2) have a personal or financial interest in a state grant, contract, lease, or loan administered by the agency or unit; or

(3) accept a gift. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.930. Cooperation.** All agencies and instrumentalities of the state shall cooperate fully with the attorney general and the personnel board in the performance of their duties under this chapter. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.940. Construction.** This chapter shall be construed to promote high standards of ethical conduct in state government. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.950. Regulations.** The attorney general may adopt regulations under the Administrative Procedure Act necessary to interpret and implement this chapter. (§ 1 ch 87 SLA 1986)

**Sec. 39.52.960. Definitions.** In this chapter, unless the context requires otherwise,

(1) "administrative unit" means a branch, bureau, center, committee, division, fund, office, program, section, or any other subdivision of an agency;

(2) "agency" means a department, office of the governor, or entity in the executive branch, including but not limited to the University of Alaska, public or quasi-public corporations, and boards or commissions, but excluding the Alaska Railroad Corporation;

(3) "benefit" means anything that is to a person's advantage or self-interest, or from which a person profits, regardless of the financial gain, including any dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan or loan guarantee, promise to pay, grant, contract, lease, money, goods, service, privilege, exemption, patronage, advantage, advancement, or anything of value;

(4) "board or commission" means a board, commission, authority, or board of directors of a public or quasi-public corporation, established by statute in the executive branch, but excluding the Alaska Railroad;

(5) "business" includes a corporation, company, firm, partnership, sole proprietorship, trust or foundation, or any other individual or entity carrying on a business, whether operated for profit or non-profit;

(6) "child" includes a biological child, an adoptive child, and a step-child;

(7) "compensation" means any money, thing of value, or economic benefit conferred on or received by a person in return for services rendered or to be rendered by the person for another;

(8) "designated supervisor" or "supervisor" means

(A) the commissioner of each department in the executive branch, for public employees within the department;

(B) the president of the University of Alaska, for university employees;

(C) the attorney general, for the governor and lieutenant governor;

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(D) the executive director of a board or commission for the staff of the board or commission;

(E) the chair or acting chair of the board or commission, for the members and the executive director of a board or commission; and

(F) the governor, for commissioners and for other public officers not included in (A) — (E) of this paragraph; or

(G) a public officer designated by a commissioner, the university president, or the governor to act as the supervisor if the name and position of the officer designated has been reported to the attorney general;

(9) "financial interest" means

(A) an interest held by a public officer or an immediate family member, which includes an involvement or ownership of an interest in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit;

(B) holding a position in a business, such as an officer, director, trustee, partner, employee, or the like, or holding a position of management;

(10) "gain" includes actual or anticipated gain, benefit, profit, or compensation;

(11) "immediate family member" means a public officer's spouse, a relation by blood within and including the second degree of kindred, and a regular member of the officer's household;

(12) "instrumentality of the state" means a state agency or administrative unit, whether in the legislative, judicial, or executive branch, including such entities as the University of Alaska, the Alaska Railroad, and any public or quasi-public corporations, boards, or commissions; the term includes municipalities;

(13) "nonsalaried member of a board or commission" means a member of a board or commission who is not a public employee by virtue of membership on a board or commission; receipt of per diem, nominal compensation for attendance at meetings, and travel expense reimbursement does not make a member of a board or commission a public employee for purposes of this chapter;

(14) "official action" means a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer;

(15) "organization" includes a group, association, society, political party, or other entity made up of two or more persons, whether operated for profit or nonprofit;

(16) "parent" includes a biological parent, an adoptive parent, and a step-parent of the public officer;

(17) "person" includes a natural person, a business, and an organization;

(18) "personal interest" means an interest held or involvement by a public officer, or the officer's immediate family member or parent, including membership, in any organization, whether fraternal, non-profit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit;

(19) "personnel board" or "board" means the personnel board established in AS 39.25.060;

(20) "public employee" or "employee" means a permanent, probationary, seasonal, temporary, provisional, or nonpermanent employee of an agency, whether in the classified, partially exempt, or exempt service;

(21) "public officer" or "officer" means

(A) a public employee; and

(B) a member of a board or commission;

(22) "source of income" means an entity for which service is performed for compensation or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; if the person is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person, the person's spouse or child, or a combination of them, holds a controlling interest, the "source" is the client or customer of the proprietorship, partnership, or corporation; if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source. (§ 1 ch 87 SLA 1986)

## Chapter 90. Miscellaneous Provisions.

### Section

10. Obstruction of access to public information

### Section

20. Nepotism prohibited

### Sec. 39.90.010. Obstruction of access to public information.

(a) A public employee may not be dismissed, demoted, suspended, laid off or otherwise made subject to any disciplinary action for communicating matters of public record or information under AS 09.25.110 and 09.25.120.

(b) In this section, "public employee" means any employee receiving compensation for services provided to the state, including the University of Alaska, or any political subdivision of the state.

(c) A violation of this section is a misdemeanor. (§ 1 ch 151 SLA 1977)

Revisor's notes. — Formerly AS 39.51.020. Renumbered in 1987.

STANDARDS OF PROFESSIONAL CONDUCT  
DEPARTMENT POLICIES  
SUPERCEDES ALL PREVIOUS EDITIONS

PURPOSE

This policy, or Standards of Professional Conduct, will establish uniform standards of conduct for employees of the Department of Fish and Game and incorporate the requirements of AS 39.52 (Executive Ethics Act) and applicable state Personnel Rules. These Standards are adopted pursuant to AS 39.52.920.

OBJECTIVE

The objective of establishing Standards of Professional Conduct is to recognize and ensure the legal rights, privileges, and personal beliefs and activities of departmental employees while providing guidance regarding activities which, while not directly in violation of state or departmental policies, might substantially and materially call into question an employee's personal motivations and professional integrity. It is the intent of this policy to protect the rights and reputations of departmental employees by providing standards of conduct which will apply to all similarly situated employees of the department. Employees who engage in activities which appear to be outside the bounds of these standards may request a review of

such activities by the Designated Supervisor as defined in AS 39.52.960 (8)(A) and (G). Decisions regarding the activities of department employees will be made based only on AS 39.52, applicable Personnel Rules and the following Standards of Professional Conduct. Acceptance of employment with the Alaska Department of Fish and Game is an affirmation of acceptance on the part of the employee that the rights and obligations established in the Standards of Professional Conduct are necessary for both the employee and the department.

#### DISTRIBUTION

All SOP manual holders.

#### RATIONALE

The Alaska Department of Fish and Game is mandated to "manage, protect, maintain, improve, and extend the fish, game, and aquatic plant resources of the state . . ." AS 16.05.020 (a). The people of Alaska have thus placed in the hands of the employees of the Department of Fish and Game their faith and trust in the department's ability to meet its obligations of professional resource stewardship. Public acceptance of the department's programs depends, to a great degree, on how the public perceives the activities of employees, both in the workplace and to an extent in their personal lives. This high degree of public trust carries an obligation to maintain high

standards of professional conduct. If the public recognizes employees of the department as impartial and unbiased, regardless of their position within the department, the management programs developed by professional employees have a far better chance to be approved and publically accepted. As professional resource managers, employees of the department must accept that the public expects higher standards of them in conducting certain activities than is expected of other public employees. While some might see this as burdensome, it can be better seen as an indication of the public's high expectations and high degree of interest in the work of the department.

Employees generally recognize that it is difficult for many citizens of the state to see a department representative on one hand as a professional manager of a resource while on another occasion that same employee is seen engaged in a commercial activity involving the same resource. However, the extent and degree of this public perception varies widely. The department recognizes that substantial and material conflicts that call into question the integrity of the employee or the department must be prevented. Minor and inconsequential conflicts are unavoidable in a free society. Instances of perceived conflict will be individually evaluated pursuant to AS 39.52, pertinent Alaska Personnel Rules and the Standards of Professional Conduct, including the following considerations:

- A. The extent of management jurisdiction an employee may have over a department managed resource and the extent to which an employee may have access to information not generally distributed to the public.
- B. The potential an individual employee may have by virtue of his or her position in the department to effect or influence management decisions.
- C. The extent to which a conflict is real or immediate or whether it is insignificant, conjectural, or contrived.
- D. The extent to which a perceived conflict will adversely effect the credibility of the employee and the department. If the conflict is found to be genuine in nature and perception, but not a serious violation of the standards, the department and the employee will be called upon to determine a remedy that will remove or acceptably minimize questions regarding the credibility of either.

#### DEFINITIONS

Commercial Activities: Activities for which an employee receives compensation, as defined in AS 39.52.960(7).

Commercial Guiding: Accompanying or being present with a hunter or fisherman in the field, personally or through an assistant,

for direct financial compensation: "commercial guiding" does not include:

1. accompanying or being present with a hunter or fisherman guided by another person if the employee has also engaged the services of a guide; or
2. providing transportation to or from the field, if the persons providing transportation and the persons being transported do not stalk, pursue, track, kill, or attempt to harvest fish and wildlife resources; or
3. engaging in personal, lawful recreational or subsistence hunting or fishing, either alone or with friends or relatives, when such activities are not conducted for the purpose of, or with the intent of, receiving compensation (inconsequential compensation such as sharing expenses are not guiding, also see AS 39.52.130).

Commercial Harvest: An activity which an employee of the department engages in, which involves the taking or harvest of a resource managed by the department for compensation from a commercial processor, fur buyer, guide client, or retailer (also see Ethics Policy, department findings on exclusions to this definition).

Benefit: As defined in AS 39.52.960 (3).

Department Employee: A person with official status, holding a position control number and receiving compensation for work performed, but does not include the employee's spouse, children, siblings, or other family member for the purposes of this Ethics Policy. (Note: certain additional prohibitions extend to an employee's spouse, blood relation to the second degree of kindred, and members of the employee's household under the Executive Branch Ethics Act--See AS 39.52).

Designated Supervisor: The Commissioner or the Commissioner's designee.

#### PROFESSIONAL CODE OF CONDUCT

In an effort to maintain high professional standards of the department and to retain the public trust necessary for the department and its employees to meet statutory obligations, each department employee shall:

1. use sound biological information in an unbiased manner in recommending and making management decisions;
2. present information to the public and to peers factually, and impartially, and not let personal preference or bias interfere with this obligation;

3. recognize that some activities and actions may be perceived by the public as inappropriate for an employee of the department;
4. recognize that our activities associated with natural resource use, particularly commercial uses, are often viewed unfavorably by the public and peers;
5. refrain from commercial harvest activities unless specifically approved by this policy, or by the division director and the Designated Supervisor;
6. use the discretion expected of professional employees when conducting activities which might tend to call into question personal or departmental credibility, and consult with supervisors if there is any such doubt in an employee's mind;
7. obey fish and game laws and regulations;
8. not use their positions for personal financial gain or to give unwarranted benefit or treatment to any person or group, or to coerce subordinates for his or her personal or financial benefit; and
9. recognize that the off-duty activities of many department employees substantially benefit their job performance,

public acceptance and confidence expressed in the department. Fishing, hunting, trapping, photography, camping, and other similar activities provide employees the opportunity to obtain personal awareness and understanding of the public's involvement in the resources managed by the department. Membership in professional societies and community clubs and organizations, to the extent suggested by the standards, provides benefits to both the individual and the department.

#### INTERPRETATION

This policy will be interpreted in conformity with the Executive Ethics Act (AS 39.52). All employees are urged to read "Ethics-- A Handbook for Public Employees," available through personnel officers or from the Designated Supervisor. Provisions of the Standards of Professional Conduct will apply to all employees of the Department of Fish and Game.

Any departmental employee convicted of violating a state or federal fish and game law or regulation is subject to disciplinary action by the department. The violation will be reviewed by the appropriate Division Director, the Designated Supervisor, and the Commissioner.

Disciplinary action taken as a result of a violation of these standards may range from a verbal warning, to a written reprimand, to termination depending upon the severity of the violation and any extenuating circumstances.

Decisions regarding outside employment, possible conflicts with these standards and remedial actions taken to relieve conflict with the standards will be rendered only by division directors and the Designated Supervisor (also see Appeal Process).

All employees of the department, subject to provisions of the Ethics Policy, may not participate in commercial fishing, commercial game or fish guiding, trapping, mariculture, or aquaculture activities unless specifically approved by the division director and the Designated Supervisor. Provisions in the Ethics Policy do not apply to seasonal or temporary employees when they are on leave without pay status.

Employees may participate in secondary outside employment related to fish and game, providing the annual disclosure form has been completed, approved, and signed by the Designated Supervisor.

#### ETHICS POLICY

##### A. Commercial Activities

###### Exclusions

The department finds that no substantial and material conflict exists, and <sup>but</sup> ~~no~~ prior approval by the Designated Supervisor is required if:

1. employees participate in the commercial take of fish and game if those resources are not regulated by the department or the Boards of Fisheries and Game; or
2. employees act as a commercial guide if no harvest of fish or game is involved in such guiding activities; or
3. employees trap and their total annual compensation for sale of furs obtained from trapping does not exceed \$1,500.

Except for the above exclusionary findings, the prohibitions for commercial activities which relate to fish and game shall be based on divisional jurisdiction and region of employment.

Divisional Prohibitions (all employees)

Divisions of FRED, Commercial Fish, Sport Fish, External and International Affairs, and Commissioner's Office--no commercial harvest of fishery resources.

Division of Wildlife Conservation and Commissioner's Office--no commercial harvest of game resources, including the sale of furs of more than \$1,500 annually.

All other divisions-- commercial harvest approved subject to disclosure and prior approval.

Geographical Prohibitions (all employees)

In addition to jurisdictional (divisional) prohibitions, the following geographical prohibitions also apply.

Regional restrictions--no commercial harvest of fish or game resources within the region of employment, as defined by divisional geographic boundaries.

Headquarters' staff and staff located outside of Juneau with statewide responsibilities shall assume a regional prohibition of where they are stationed and/or where they primarily work.

B. Use of Information and Materials

1. Employees are encouraged to prepare job related general interest and technical papers on official and personal time. Employees may not, however, accept any compensation for an article, paper, or photograph produced on state time or with state equipment.

To maintain a high professional standard in published reports and papers, each division shall provide an in-house review of all such materials. The formal referee-review process required of scientific journals and symposia may substitute for a divisional review.

Policy oriented publications and non-technical articles not subject to formal referee-review procedures must be approved prior to publication or release at the regional supervisor level.

2. Department employees appearing as speakers at meetings where they are representing only themselves and not the department shall not use department materials without the approval of their immediate supervisor. In instances where the presentation might directly benefit the employee's personal or financial interests, the employee should carefully review the provisions of the Executive Ethics Act for guidance [AS 39.52.960(9)(18), and 39.120(b)].

C. Use of State Equipment and Facilities

1. Department employees shall not use state equipment or facilities in the pursuit of personal activities. Exceptions may be granted for employees stationed in field situations. Such exceptions may be approved by

the respective division director when in the judgment of the division director:

- a. no additional costs will be incurred by the state; and
- b. the activities will not occur when the employee is on state time; and
- c. the activities do not result in the employee's receiving compensation, as defined in AS 39.52.960.

D. Use of Photographs

1. Employment with the department may provide employees with unique photographic opportunities. Consequently, a significant potential exists for both real and perceived conflicts of interest. The department's policy is to allow employees to pursue an interest in photography while clearly distinguishing between ethical and unethical personal gain that may come from photographs taken while working for the department.
2. When photography occurs during normal or assigned working hours, and with the use of state equipment or film, the products of all such photography shall be considered property of the state. If personal

equipment or film is use, the photos may be kept for personal use, but shall not be commercially used.

3. Photography at times other than during normal or assigned working hours shall be considered a personal activity. If personal film and equipment are used, the photos shall be considered personal property and may be commercially sold or given to the state. However, if state equipment or film are used, the photos are state property and may not be used for personal or commercial gain.

E. Advisory Committees and Private Organizations

1. Department employees shall assist advisory committees and regional councils of the Alaska Boards of Fisheries and Game but shall not participate in nominating or voting on candidates for office nor vote on items before the committee or council when they attend such meetings representing the department. Department employees shall not serve as members or officers of an advisory committee or regional council except in the capacity of a non-voting recording secretary.
2. Department employees are encouraged to participate in private organizations with purposes related to fish and game resource use or conservation, and to make public

statements as long as the employee does not purport, or appear to purport, that he or she is speaking or acting in an official department capacity. All employees must recognize that in circumstances when their outside activities conflict with department positions or policies, the employee's credibility and/or job effectiveness may be jeopardized. Accordingly, employees should consult their regional supervisor for guidance to reduce potential conflicts.

Example 1: Ernie is a Fisheries Biologist working on the Kenai Peninsula. He has been asked by a local sport fishing club (of which he is a member) to testify at a public hearing about the need to allocate more fish for sport use. After consulting with his regional supervisor, Ernie determines that it would be professionally unethical for him to testify as a private person since the public's trust in his credibility as an unbiased department management biologist would likely be significantly reduced. He is encouraged, however, to testify as a department employee and provide biological data.

Example 2: Ann is a Habitat Biologist in interior Alaska. She has been asked by a professional society (The Ecological Society of America) to

testify before a House Agricultural Subcommittee in Washington, D.C. about the effects of a newly developed wastewater treatment system for placer mining on aquatic organisms (her area of expertise). Although the State of Alaska has endorsed this technology, after discussion of the request with her regional supervisor Ann decides to testify but limit her testimony to the biological tradeoffs associated with this treatment technology. Ann's testimony is presented as a professional scientist, not as a representative of the state, and further carefully avoids addressing the political or economic aspects of the issue.

Example 3: Bill is a Division of Wildlife Conservation Area Management Biologist who attends an advisory committee meeting where officers will be elected and regulations will be discussed. Because area biologists speak on proposals and are commonly viewed by the public to represent the department, Bill does not vote in the committee elections.

3. The department specifically encourages employees participation in professional societies and recognizes such organizations (e.g., The Wildlife Society, American Fisheries Society, Ecological Society of America, American Statistical Association, Professional

Secretaries International, etc.) as distinctly different from other special interest groups. In some situations it may be beneficial to the department for individuals to participate in activities of such societies on state time and requests to do so shall be made through their division director and the Designated Supervisor.

4. Department employees may not accept payment or reimbursement for travel or other expenses from a business, institution, organization, or association other than provided by AS 39.52.130. On a case by case basis, exceptions to this policy may be authorized by the Designated Supervisor when acceptance of travel or incidental expenses is in the overall public interest or required by law.

F. Patent/Copyright

The department will reserve and preserve all rights to any invention, discovery, material, equipment, or intellectual property designed, developed, and produced by department employees under the following circumstances:

1. during working hours; or

2. with a contribution by the department or the state of facilities, equipment, material funds, or of times and services of other state or department employees on official duty; or
3. which bears a direct relation to or is made in consequences of official duties of the inventor.

The department may, if allowed by law, award a percentage or other monetary award to the inventor or discoveror of such items.

#### DISCLOSURE

One of the best ways to avoid even the semblance of impropriety is for all department employees to provide full and detailed prior disclosure, in writing, of the precise nature of any association, relationship, business arrangement, or circumstances which suggest that decisions may be made contrary to the best interests of the general public, resources, or the department; for the employee's personal financial gain; or for reasons contrary to the department's statutory responsibilities. All such prior disclosures shall be done through division directors to the Designated Supervisor in accordance with 45 39.52.170(b).

Example 1: Carol is a clerk typist who wants extra money for the holidays and takes an after hours waitress job October thru December. ~~No~~ disclosure is necessary.

Example 2: Sid is permanent full-time technician working at the Fin Perfect Hatchery who builds and sells crab pots in his spare time. A disclosure is necessary.

REQUEST FOR AUTHORIZATION OR EXEMPTION

A. Department employees shall submit written requests for authorization to participate in commercial activities, or to conduct other activities identified in this policy, thru their director to their Designated Supervisor at least thirty working days before participating in the activity. Expedited requests will be considered by the designated supervisor in instances where the employee could not reasonably provide the 30 working day advance notice. Such requests must be accompanied by a written explanation of the factors which prohibited advance notice. The written request shall include:

1. type of activity;
2. duration or dates of activity;
3. approximate location of activity;

4. justification for authorization or exemption; and
5. name, address, and phone number of the employee.

Detailed and complete answers on the "Ethics Disclosure Form" shall satisfy this requirement.

- B. The Designated Supervisor shall indicate if an ethical problem exists with a request for authorization because of an employee's specific employment responsibilities, and recommend appropriate action in a memorandum to the employee, with a copy to the division director within ten working days upon receipt of a request.

#### APPEAL PROCESS

Department employees may utilize the grievance procedures in the Personnel Rules (2 AAC 07.435) if they disagree with the Designated Supervisor's decision.

#### CORRECTIVE ACTION

If a department employee is found to have violated the Executive Branch Ethics Act (AS 39.52), the State Personnel Rules (2 AAC 07), or these standards, the Commissioner may, by written memorandum: order the employee to stop engaging in the prohibited activity; temporarily or permanently reassign job

responsibilities to eliminate the potential conflict; order divestiture, establishment of a blind trust, restitution, or forfeiture; or take administrative disciplinary action against that employee. Disciplinary action, depending on severity, will range from: a verbal reprimand; a written reprimand placed in the employee's personnel file; suspension without pay; or termination of employment with the department [See AS 39.52.410(a)].

#### PUBLIC COMPLAINT PROCESS

Although the Commissioner has authority to take immediate action on ethics complaints, it is the intent of this policy that, unless special circumstances require, complaints will be handled initially by the division director who may reassign such responsibility to lower level supervisors, depending on the seriousness of the complaint.

A complaint concerning the ethical conduct of a department employee will be documented. Complaints will be handled according to provisions of AS 39.52.210 and AS 39.52.230.

Original sponsor: Zharoff

1 IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 61 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act prohibiting certain employees of the Depart-  
7 ment of Fish and Game from having certain financial  
8 interests."

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

10 \* Section 1.. AS 44.39 is amended by adding a new section to read:

11 Sec. 44.39.060. FINANCIAL INTERESTS PROHIBITED. (a) A perma-  
12 nent full-time employee of the department who makes or influences  
13 policy decisions concerning management of a fishery or a game re-  
14 source, or an immediate family member, may not have or acquire a  
15 financial interest in the fishery or game resource. An employee who  
16 has or acquires a financial interest in violation of this subsection  
17 shall immediately disclose the interest to the commissioner and begin  
18 procedures to become divested of the forbidden financial interest. An  
19 employee who knows that an immediate family member has a financial  
20 interest in violation of this subsection shall immediately disclose  
21 the interest to the commissioner.

22 (b) The department may, by regulation, extend the prohibition  
23 established in this section to other employees whose duties are relat-  
24 ed to a fishery or a game resource.

25 (c) An employee who has, or who knows that a member of the  
26 employee's immediate family has, a financial interest in violation of  
27 this section is subject to discipline including discharge from state  
28 employment. However, an employee who has promptly disclosed a forbid-  
29 den financial interest and who did not acquire the financial interest