

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6496 SENATE RESOURCES

900

5 AAC 41.210. PERMIT REQUIRED. A shellfish farm permit, issued by the commissioner, is required for the operation of a shellfish farm. (Eff. / / , Reg.)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.251
AS 16.05.340(b)

5 AAC 41.220. SHELLFISH FARM PERMIT APPLICATION. An applicant must submit a consolidated shellfish farm permit application and coastal project questionnaire to the nearest office of the Office of Management and Budget, Division of Governmental Coordination for purposes of complying with the project consistency review of the Alaska Coastal Management Program as identified in 6 AAC 50.010-6 AAC 50.190. (Eff. / / , Reg.)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.251
AS 16.05.340(b)

5 AAC 41.230. ADDITIONAL INFORMATION. If, after an application has been distributed to the department, and the department determines that information in the application is insufficient for an adequate evaluation of the proposed shellfish farm, the department will request additional information from the applicant. (Eff. / / , Reg.)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.251
AS 16.05.340(b)

5 AAC 41.240. REVIEW AND DETERMINATION. (a) The commissioner will review the recommendations resulting from the department's review of the application before rendering a decision on an application.

(b) The commissioner will render a decision on the application within 5 days after a determination on project consistency with the Alaska Coastal Management Program has been issued by the Office of Management and Budget. The commissioner's decision will be based on the following considerations:

(1) the physical and biological characteristics of the proposed location must be suitable for a shellfish farming operation;

(2) the proposed farm may not unreasonably or adversely affect management of natural stocks, and must not

require significant alterations in traditional fisheries or other existing uses of fish and wildlife resources;

(3) the proposed farm may not significantly affect fisheries, wildlife or their habitats in an adverse manner; and

(4) the proposed shellfish farm plans and staffing plans must demonstrate technical and operational feasibility.

(c) An application for a shellfish farm permit which has been denied by the commissioner will, in the commissioner's discretion, be reconsidered if the applicant provides new or additional information that may have altered the original decision. (Eff. / / , Reg.)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.251
AS 16.05.340(b)

5 AAC 41.250. PERMIT CONDITIONS. The commissioner will include conditions to the permit that are appropriate to ensure the shellfish farm does not significantly affect fisheries, wildlife or their habitats in an adverse manner. Permits will be issued for a period of three years. Permits may be renewed by submitting a request in writing to the commissioner. (Eff. / / , Reg.)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.251
AS 16.05.340(b)

5 AAC 41.260. INSPECTION OF A FARM. A permit holder shall allow inspection of the shellfish farm by department inspectors at any time the farm is operating. (Eff. / / , Reg.)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.251
AS 16.05.340(b)

5 AAC 41.270. ANNUAL REPORT. A person who holds a permit for a shellfish farm shall submit an annual report no later than December 15 to the department. The annual report form shall be distributed to permit holders by the department. (Eff. / / , Reg.)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.251
AS 16.05.340(b)

5 AAC 41.400. DEFINITIONS. In 5 AAC 41.200 -- 5 AAC 41.400

(1) "commissioner" means the commissioner of the Department of Fish and Game or his designee;

(2) "department" means the Alaska Department of Fish and Game;

(3) "farm" means a specific location where shellfish are raised in captivity or under positive control as in a pen, pond, raft, bottom culture or an area of water completely enclosed by a generally escape-proof barrier for the purposes listed in 5 AAC 41.200 -- 5 AAC 41.280;

(4) "shellfish" means any species of crustacean, mollusk, or other invertebrates, in any stage of their life cycle, found in or introduced into the state, consistent with the definition of "fish" in AS 16.10.296. (Eff. / / , Reg.)

Authority: AS 16.05.020
AS 16.05.092
AS 16.05.251
AS 16.05.340(b)

DOC 0062r

MEMO -- January 12, 1988

TO: Fisheries Cabinet

FROM: Paul Peyton

RE: Aquaculture socioeconomic studies

Legislators and others considering proposed regulation of aquaculture activities in Alaska have asked for additional information concerning the social and economic impacts of the various possible forms of development in Alaska. Central to most of the discussion is whether salmon can be profitably farmed in Alaska and compete in the marketplace with wild salmon and farmed fish from other areas. If farm production was to be permitted, what are the potential impacts to the existing common property fishery? What sort of commitment, in terms of time and dollars, would be required of the State to manage and support salmon farming activities?

The DCED has entered into a \$20,000 contract with the Sea Fare Group in Seattle to conduct a study of world salmon markets and evaluate the extent of market competition between wild and farmed salmon, including farmed salmon which potentially could be produced in Alaska. Principle investigator for this study will be Dr. James Anderson of the University of Rhode Island. Anderson is a recognized authority in the area and has authored several papers dealing with the market's response to increasing world supplies of farmed salmon. Market contacts, statistical research and report editing functions of the contract will be conducted by the Sea Fare Group which is a commercial consulting business operated by those people that put out the Seafood Leader magazine.

A second \$20,000 contract has been undertaken with the DPA group of Vancouver, B.C. DPA will evaluate the relative costs of farmed salmon production in major producing regions around the world, develop a proforma cost of production model for the Alaska situation and assess the sensitivity of major cost factors to overall costs of production. DPA has done similar work for the Government of British Columbia and others and has identified specific sources for the necessary data.

Both contracts call for an interim or progress report to be submitted about February 1st and the final report during the first week of March.

A third phase of the project, that of developing a policy options matrix will be postponed at least until preliminary results from the two contracted studies are reported. At that time we may elect to select a limited number of issues for policy option development and conduct the required work in-house or through an RSA agreement with ISER. There is about \$5,000 remaining in the project budget.



STATE OF ALASKA

STANDARD AGREEMENT FORM FOR PROFESSIONAL SERVICES CONTRACT

1. Agency Contract Number
2. ATN Number 88-0200
3. Service Code(s) 5950
4. Financial Coding 08751001
5. Agency Assigned Encumbrance Number 0881427
6. Vendor Number
7. AK Bus. Lic. #

This contract is between the State of Alaska.

8. Department of Commerce and Economic Development hereafter, the State, and

9. Contractor The DPA Group, Inc. hereafter, the Contractor

Mailing Address Street or P.O. Box City State Zip Code
601 West Cordova Street Vancouver, B.C. (Canada) V6B 1G1

10. ARTICLE 1. Appendices: Appendices referred to in this contract and attached to it are considered part of it.

ARTICLE 2. Performance of Services:
 2.1. Appendix A (General Provisions), Articles 1 through 14, governs the performance of services under this contract.
 2.2. Appendix B sets forth the liability and insurance provisions of this contract.
 2.3. Appendix C sets forth the services to be performed by the contractor.

ARTICLE 3. Period of Performance: The period of performance this contract begins December 21, 19 87, and ends March 15, 19 88. Performance may be extended for additional periods by the written agreement of the parties.

ARTICLE 4. Consideration:
 4.1. In full consideration of the Contractor's performance under this contract, the State shall pay the Contractor a sum not to exceed \$ 20,000 (U.S.) in accordance with the provisions of Appendix D.
 4.2. When billing the State, the Contractor shall refer to the ATN Number and send the billing to:

11. Department of Commerce and Economic Development	Attn: Division of Business Development
Mailing Address P.O. Box D, Juneau, AK 99811	Attention Larry Mercurieff

NOTICE: This contract has no effect as an offer by the Contractor until it is approved by the Department of Administration.

12. CONTRACTOR	14. APPROVAL BY THE STATE CONTRACTING AGENCY NOTICE: This certifies the availability of funds. I am aware that certifying false, inaccurate, or misleading documents constitutes an unsworn falsification punishable under AS 11.58.210
Name of Firm The DPA Group, Inc.	Signature of Head of Contracting Agency or Designee [Signature] Date 12/29/87
Signature of Authorized Representative [Signature] Date 12/23/87	Typed or Printed Name of Authorizing Official John D. Williams
Typed or Printed Name of Authorized Representative J. D. Williams	Title Deputy Commissioner

13. REQUESTING AGENCY #8751	15. APPROVAL BY THE DEPARTMENT OF ADMINISTRATION [Signature]
Department/Division Division of Business Development	
Signature of Project Director [Signature] Date 12/23/87	
Name of Project Director Larry Mercurieff	
Title Director	

APPENDIX A GENERAL PROVISIONS

Article 1. Definitions.
 1.1. In this contract and appendices, "Project Director" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
 1.2. "State Contracting Agency" means the Department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in signing this contract.

Article 2. Inspection and Reports.
 2.1. The Department may inspect, in the manner and at reasonable times it considers appropriate, all the Contractor's facilities and activities under this contract.
 2.2. The Contractor shall make progress and other reports in the manner and at the times the Department reasonably requires.

APPENDIX C
SERVICES TO BE PERFORMED

COST OF PRODUCTION MODEL FOR PEN-REARING
OF SALMON IN ALASKA AND CURRENTLY PRODUCING REGIONS
ATN No. 88-0200

This study will be conducted in two phases. In the first phase, The contractor will determine the relative costs of production in major pen-rearing regions. In the second phase, the contractor will develop a cost of production model for pen-rearing salmon in Alaska and assess the sensitivity of major cost factors to overall costs of production.

Phase I - Comparative Cost of Production Analysis

The steps to be undertaken by the contractor in Phase I are detailed as follows:

1. Discuss with representatives of the Department of Commerce and Economic Development to clarify the scope of the study.
2. Conduct a literature review of recent studies (to include Bjorndal, Salvanes, Ridley, Shaw, BIM, Anderson, Wurmman, Nasaka) on cost of production in the five major supply regions.
3. Develop profiles for B.C. and Chile from previous models developed by study team members to complete the comparison of costs of production.
4. From a literature review, determine the public support provided to the five major supply regions. The types of public support to be quantified will include the following:
 - final assistance;
 - research and development;
 - education; and
 - other services (for example, diagnostic and extension).

In addition, the type of tax structure established to pay for the support provided by governments in each country will be determined.

5. Prepare an interim report that summarizes the findings of Phase I (refer to reporting requirements in appendix D).

Phase II - Cost of Production Analysis for Alaska

The detailed steps that are to be undertaken by the contractor in Phase II are listed as follows:

1. Collect and analyze background information on likely general development areas. This activity will include a preliminary assessment of expected salmon farm development locations in the southeastern and southcentral areas, to guide the formulation of general biophysical assumptions for the production model. The assessment will include a brief examination of:

- location of logistic centers;
- transportation methods;
- probable areas excluded based on pollution, major alternate user groups, proximity to river mouths, excessive exposure to wind, etc.;
- location of existing potential smolt suppliers; and
- location of possible new hatchery locations.

These data will be collected in part during discussions with personnel in the Department of Commerce and Economic Development and the Department of Fish and Game.

2. Collect and review general biophysical data from selected development areas. This activity will include examination of:

- marine and freshwater temperature data;
- salinity data;
- location of major streams entering saltwater;
- phytoplankton data;
- important marine mammal concentrations; and
- location of major spawning streams and hatcheries.

These data will be obtained through discussion with personnel in government agencies and review of published data and additional unpublished data provided by government personnel. Agencies to be contacted will include:

- the Alaska Department of Fish and Game; and
- the National Oceanic and Atmospheric Administration, National Fisheries Service (Auke Bay Laboratory, Alaska, and Northwest and Alaska Fisheries Centre, Seattle, Washington).

3. Collect and review recent salmon culture activities in Alaska. This activity will include a review of recent state hatchery production data, particularly for chinook and coho salmon, and experimental marine farming results within the state (e.g., Little Port Walter Research Station). These data will be obtained through discussion with personnel in the government agencies identified in Step 2. This information will be used together with the biophysical data (especially temperature) collected in Step 2 to develop growth projections.
4. Prepare production criteria and assumptions for site areas suitable for pen-rearing of salmon. The information analyzed in Step 1 will be used to identify:

- theoretical average monthly temperatures;
- expected growth rates based on the average temperatures;
- seasonal differences in feed conversion rates;
- average monthly feeding rates; and
- stocking densities.

Where possible, the data will indicate the range of values or conditions that could exist within the study area. In addition, the analysis will identify:

- the likelihood of problems with phytoplankton outbreaks and predator populations; and
 - expected smolt acquisition, transportation and acclimation requirements and problems.
5. Adapt the British Columbia growth models to Alaska by estimating the impact of differences in temperature and other factors between B.C. and Alaska on the likely growth of pen-reared salmon.
 6. Estimate the cost of critical inputs for the selected areas for site development. The inputs would include the following:
 - capital costs (net cages, nets, etc.);
 - smolts;
 - fish feed;
 - labor; and
 - diagnostic services.
 7. Conduct sensitivity analyses to establish break-even points for pen-rearing salmon in Alaska. This would include an assessment of the following scenarios:
 - production at small and large scales;
 - with and without fish feed production within the state;
 - with and without direct transport to market; and
 - with constant and changing prices.
 8. Write and present to the Project Director a draft report of the study findings (refer to the reporting schedule in Appendix D). In addition, the contractor will supply the State with a computer diskette in JAVELIN format containing the cost of production model with supporting documentation. The draft report will also incorporate the findings of the interim report.
 9. After review by the project director, make required changes, if any, to the report and to the cost of production model.

APPENDIX D
CONSIDERATION, REPORTING SCHEDULE AND GENERAL CONDITIONS

COST OF PRODUCTION MODEL FOR PEN-REARING
OF SALMON IN ALASKA AND CURRENTLY PRODUCING REGIONS
ATN No. 88-0200

REPORTING SCHEDULE: The contractor will submit an interim project report in writing to the Project Director which summarizes the findings of Phase I (Comparative cost of Production Analysis) by February 1, 1988.

A draft of the final project report containing all study findings, including those findings contained in the interim report, will be submitted in writing to the Project Director for review and approval by February 23, 1988. At the same time the contractor will submit a computer diskette containing the cost of production model with supporting documentation. The contractor will incorporate changes to the draft material suggested by the Project Director and submit ten copies of the approved final report and two copies of the production model diskette on or before March 4, 1988. This schedule allows three days for the Project Director to complete his review of the draft report.

CONSIDERATION: The contractor will submit an invoice for payment with the interim project report on or before February 1, 1988 which reflects all expenditures and services rendered for that period of the contract. A second and final invoice for payment will be submitted with the final project report on or before March 4, 1988 which reflects all expenditures and services rendered for the remaining period of the contract. Payments on both the interim and final invoices are subject to the limitations and conditions described below. All invoice amounts will be stated in U.S. dollars and all payments will be made in U.S. dollars.

Fees charged for services performed by the contractor's various study team members will not exceed the rates shown in the schedule below. (All amounts are in U.S. dollars):

<u>Study team member</u>	<u>Per day</u>	<u>Per hour</u>
D. Egan	\$375	\$47
J. Dale	200	25
M. Winsby	350	44
T. Bjorndal	520	65

Upon acceptance of the interim and final project reports and receipt of the accompanying invoices by the Project Director, the State will pay the contractor within 30 days. Failure of the contractor to comply with the reporting provisions of this contract will result in the State withholding payment until such compliance is obtained.

If the total amount due on the contractor's interim invoice exceeds \$12,000 (U.S. dollars), the State will withhold payment of the excess until the final project report and model is received and accepted by the Project Director. Payment of any excess due on the interim invoice will be made at the same time as the final payment. Under no circumstances will the State be liable for total project costs in excess of \$20,000 (U.S. dollars).

If the State cancels the project at any time during the course of this contract, the Contractor shall submit a final billing based on actual expenses incurred up to the termination date.

CONTRACT DISPUTES: All contract disputes will be subject to the provisions of Appendix A, Article 3 of the Standard Form For Professional Services Contract, unless other specifically identified statutes and/or legal requirements apply.

REQUESTS FOR CONTRACT EXTENSION: Requests to extend the ending date for contract performance must be submitted in writing at least 21 days prior to March 4, 1988. The written request should specify the reason why the contract extension is requested and the proposed date to which extension is needed. Upon receipt of the requested extension, the Project Director will send contract amendment forms to the contractor. Contract amendment forms must be signed by the Contractor's authorized agent and returned to the Project Director at least 10 days prior to expiration of the contract. Requests for contract amendments will not be considered if such requests are not received within the time frames specified. Because the value of this study to the State is highly dependent on having the required reports completed according to the schedule specified above, it is unlikely that the Project Director will approve an extension of the contract.



STATE OF ALASKA

STANDARD AGREEMENT FORM FOR PROFESSIONAL SERVICES CONTRACT

1. Agency Contract Number	
2. ATN Number	88-0198
3. Service Code(s)	5950
4. Financial Coding	08751001
5. Agency Assigned Encumbrance Number	0881428
6. Vendor Number	
7. AK Bus. Lic. #	

This contract is between the State of Alaska.

8. Department of Commerce and Economic Development hereafter, the State, and

9. Contractor The Sea Fare Group hereafter, the Contractor

Mailing Address Street or PO Box City State Zip Code 3510 1st Avenue N.W. Seattle Washington 98107

10. ARTICLE 1. Appendices: Appendices referred to in this contract and attached to it are considered part of it.

ARTICLE 2. Performance of Services: 2.1. Appendix A (General Provisions), Articles 1 through 14, governs the performance of services under this contract. 2.2. Appendix B sets forth the liability and insurance provisions of this contract. 2.3. Appendix C sets forth the services to be performed by the contractor.

ARTICLE 3. Period of Performance: The period of performance this contract begins December 24, 1987, and ends March 30, 1988. Performance may be extended for additional periods by the written agreement of the parties.

ARTICLE 4. Consideration: 4.1. In full consideration of the Contractor's performance under this contract, the State shall pay the Contractor a sum not to exceed \$ 20,000 in accordance with the provisions of Appendix D. 4.2. When billing the State, the Contractor shall refer to the ATN Number and send the billing to:

11. Department of Commerce and Economic Development Attn: Division of Business Development

Mailing Address P.O. Box D, Juneau, Alaska 99811 Attention: Bonnie Jo Borchick

NOTICE: This contract has no effect as an offer by the Contractor until it is approved by the Department of Administration.

12. CONTRACTOR

Name of Firm The Sea Fare Group

Signature of Authorized Representative [Signature] Date 12/22/87

Typed or Printed Name of Authorized Representative Sandi McKenzie

Title President Employer I.D. No. (EIN) or SSN 91-1224431

13. REQUESTING AGENCY #8751

Department/Division DCED/Division of Business Development

Signature of Project Director [Signature] Date 12/29/87

Name of Project Director Larry Merculieff

Title Director

14. APPROVAL BY THE STATE CONTRACTING AGENCY NOTICE: This certifies the availability of funds. I am aware that certifying false, inaccurate, or misleading documents constitutes an unsworn falsification punishable under AS 11 56.210.

Signature of Head of Contracting Agency or Designee [Signature] Date 12/30/87

Typed or Printed Name of Authorizing Official J. Anthony Smith

Title Commissioner

15. APPROVAL BY THE DEPARTMENT OF ADMINISTRATION

[Handwritten initials: M/C]

APPENDIX A GENERAL PROVISIONS

- Article 1. Definitions.
 - 1.1. In this contract and appendices, "Project Director" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
 - 1.2. "State Contracting Agency" means the Department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in signing this contract.
- Article 2. Inspection and Reports.
 - 2.1. The Department may inspect, in the manner and at reasonable times it considers appropriate, all the Contractor's facilities and activities under this contract.
 - 2.2. The Contractor shall make progress and other reports in the manner and at the times the Department reasonably requires.

APPENDIX C
SERVICES TO BE PERFORMED

WORLD MARKETS FOR SALMON -- PEN-REARED SALMON IMPACTS
ATN No. 88-198

The purpose of this project is to evaluate the extent of potential market competition between wild and farmed Alaska salmon, and between Alaska salmon and farmed salmon from other states and countries.

Questions such as the following are of key concern and will be addressed by the contractor:

- Will world markets be able to absorb farmed Alaskan salmon, from 1990 (when the potential first harvests of Alaskan pen-raised salmon would take place) onward at a price that will be profitable for the producers?
- Will the amount of farmed salmon projected for production worldwide in this time frame dampen current markets for Alaskan wild salmon, and if so, to what extent?
- Would the Alaskan pen-raised salmon be directly competitive with Alaskan wild salmon or simply a part of the farmed salmon supply?

TASK 1: BASELINE MARKET AND PRICE INFORMATION

In-house files of recent and on-going studies of the contractor, Dr. James Anderson's sources and other existing information will form the basis of data for this task, however, some original data gathering will be performed. In particular, supermarket representatives and Japanese salmon buyers will be interviewed. Interviews will be conducted so that the data gathered is consistent with work performed by Dr. Anderson for New England food service groups.

The contractor will first outline the current distribution channels for farmed salmon and Alaskan wild production and describe the areas in which wild and farmed stocks may directly compete.

Next, historical prices will be examined for any trends relative to supply for both farmed and wild salmon. While average prices will be reported in this step, exceptions to the rule will be noted. Of particular interest are exceptions that reflect higher prices through unique marketing or product identification efforts, particularly where products are specifically identified as Alaskan.

A. Where are Alaska's King, Coho and Sockeye Salmon Marketed?

The contractor will present a thorough overview of the current market and marketing conditions for Alaskan king, coho and sockeye salmon. The overview will be specific as to species, product form, transportation modes, purchase arrangements, export assistance, tariff barriers, trade promotion activities and other information which will help to thoroughly describe the existing markets for Alaska wild salmon.

A survey will be performed for major institutional and retail market sectors to delineate the geographic sales distribution, utilization of various product forms, seasonality of sales, and usual distribution channels.

B. Price Levels Over the Past 10 Years for King, Coho and Sockeye Salmon.

The contractor will present an accurate historical description of market price trends for Alaskan salmon. Government and private seafood price data sources will be analyzed to determine domestic and export price and volume of sales information by major product form. The contractor will include supply level (landings) figures and a comparison by product form.

C. Existing Markets for Farmed Salmon.

The contractor will present a thorough and quantitative overview of the major world supply sources and markets for farmed salmon. The overview will be specific as to species, product form, transportation modes, purchase arrangements, export assistance, tariff barriers, trade promotion activities and other information which will help to thoroughly describe existing market conditions. This will be drawn in part from the contractor's in-house studies of domestic and world salmon farming activities and markets, such as recent work by Anderson and Brooks analyzing buyer preferences for farmed and wild salmon in the northeast. The contractor will expand the analysis to include other countries and geographic regions of the United States as part of this task. Particular emphasis will be given to the market in Japan. Additional information will be obtained from interviews with trading companies and other firms and individuals active in and knowledgeable about the salmon industry.

D. Price Levels of Pen-Reared Salmon Over the Past Five Years.

The contractor will describe and compare the prices and volumes of pen-reared salmon products over the past five years in all major world markets. .

E. Effects of the Exchange Rate and Supply Changes on Market and Price Distribution.

Exchange rate information will be collected and correlated with import/export figures and the price levels of major salmon products over the last five years. The contractor will compare the fluctuating value of the dollar to the price and volume of salmon products traded on the world market.

TASK 2: MARKET FORECASTS

Because farmed salmon production could not occur in Alaska for several years, forecasts of future market conditions are important to investment decisions. Forecasts of expected demand levels and prices will be presented by the contractor. Using information collected in Task 1, the relationship between wild and farmed products stocks will be examined.

A. Volume of Farmed Salmon Expected to Enter the Marketplace Over the Next 10 Years.

The contractor will review recent studies of farmed salmon production trends and projections for the next ten years. Where discrepancies are evident, the contractor will provide an evaluation of the accuracy of the studies presented.

B. Future Markets and Price Level Expectations for Potential Alaskan Farmed Salmon.

The contractor will develop a matrix of market size and price forecasts to be used in evaluating the effects of production increases expected over the next ten years. The matrix will be derived from available econometric work, interviews with industry, academic and government experts and research completed in the tasks above. The contractor will project a range of possible volumes of farmed Alaska salmon, and predict the effects on major markets, including the an analysis of the most likely market niches these salmon could occupy and the price ranges available. An analysis of the effects of possible exchange rate changes will be included.

C. Analyze the Degree of Overlap or Competition Between Alaskan Wild Salmon, Potential Alaskan Farmed Salmon and Other Farmed Salmon in Major Markets

The contractor will predict the degree of market competition expected in the future between Alaska wild salmon and potential farmed salmon products. The analysis will compare projected

prices, availability, product forms and characteristics (fresh/frozen, size, color, method of harvest and etc.), of the major Alaskan wild salmon fisheries and farmed salmon harvests. The major marketing attributes that may cause substitution or differentiation of the types of salmon will be analyzed in the particular areas where there might be market overlap or competition.

The contractor will suggest the probable outcome of any future market overlaps which are identified. This work will identify Alaska salmon products that may not be competitive in the marketplace and the characteristics which make them noncompetitive, which products would have advantages in specific markets and the reasons, and will analyze the possibilities of undertaking effective marketing programs to improve sales and maximize prices.

APPENDIX D
CONSIDERATION, REPORTING SCHEDULE AND GENERAL CONDITIONS

WORLD MARKETS FOR SALMON -- PEN-REARED SALMON IMPACTS
ATN No. 88-198

REPORTING SCHEDULE: The contractor will submit an interim project report in writing to the Project Director which summarizes the results of work completed to date by February 5, 1988, as described in Appendix C..

A draft of the final project report containing all study findings, including those findings contained in the interim report, will be submitted in writing to the Project Director for review and approval by February 25, 1988. The contractor will incorporate changes to the draft material suggested by the Project director and submit ten copies including the unbound original (for further duplication) of the approved final report on or before March 4, 1988. This schedule allows three days for the Project Director to complete his review of the draft report.

CONSIDERATION: The contractor will submit an invoice for payment with the interim project report on or before February 5, 1988 which reflects all expenditures and services rendered for that period of the contract for review and approval by the Department. A second and final invoice for payment will be submitted with the final project report on or before March 4, 1988 which reflects all expenditures and services rendered for the remaining period of the contract. Payments on both the interim and final invoices are subject to the limitations and conditions described below.

Fees charged for services performed by the contractor's various study team members will not exceed the rates of \$75 per hour. Upon acceptance of the interim and final project reports and receipt of the accompanying invoices by the Project Director, the State will pay the contractor within 30 days. Failure of the contractor to comply with the reporting provisions of this contract may result in the State withholding payment until such compliance is obtained.

If the total amount due on the contractor's interim invoice exceeds \$12,000, the State will withhold payment of the excess until the final project report and model is received and accepted by the Project Director. Payment of any excess due on the interim invoice will be made at the same time as the final payment. Under no circumstances will the State be liable for total project costs in excess of \$20,000 (twenty thousand dollars).

If the State cancels the project at any time during the course of this contract, the Contractor shall submit a final billing based on actual expenses incurred up to the termination date.

WORK PLAN: Work on the various segments of this contract will be shared by Dr. James L. Anderson and other individuals in The Sea Fare Group. The contractor will obtain written approval of the Project Manager, and if necessary an approved contract amendment, before any significant change is made in the following schedule:

TASK 1: BASELINE MARKET AND PRICE INFORMATION

Where are Alaska's king, coho and sockeye salmon marketed?

Sea Fare Group 90%
James L. Anderson 10%

Price levels over the past ten years for king, coho and sockeye salmon.

Sea Fare Group 98%
James L. Anderson 2%

Existing markets for farmed salmon

Sea Fare Group 70%
James L. Anderson 30%

Price levels of pen-reared salmon over the past five years

Sea Fare Group 98%
James L. Anderson 2%

Effects of the exchange rate and supply changes on market and price distribution.

James L. Anderson 100%

TASK 2: MARKET FORECASTS

Volume of farmed salmon expected to enter the market place over the next ten years.

Sea Fare Group 70%
James L. Anderson 30%

Future markets and price level expectations for potential Alaskan farmed salmon

James L. Anderson 100%

Analyse the degree of overlap or competition between Alaskan wild salmon, potential Alaskan farmed salmon and other farmed salmon in major markets.

James L. Anderson 100%

CONTRACT DISPUTES: All contract disputes will be subject to the provisions of Appendix A, Article 3 of the Standard Form For Professional Services Contract, unless other specifically identified statutes and/or legal requirements apply.

REQUESTS FOR CONTRACT EXTENSION: Requests to extend the ending date for contract performance must be submitted in writing at least 21 days prior to March 4, 1988. The written request should specify the reason why the contract extension is requested and the proposed date to which extension is needed. Upon receipt of the requested extension, the Project Director will send contract amendment forms to the contractor. Contract amendment forms must be signed by the Contractor's authorized agent and returned to the Project Director at least 10 days prior to expiration of the contract. Requests for contract amendments will not be considered if such requests are not received within the time frames specified. Because the value of this study to the State is highly dependent on having the required reports completed according to the schedule specified above, it is unlikely that the Project Director will approve an extension of the contract.

APPENDIX E

- A) For the purposes of this work it is understood that unless specified all data sources are secondary sources.
- B) Because of the tight schedule required by this contract, the final draft may be received chapter by chapter. Jim Anderson's original work may be part of the final draft.

Jim

Original sponsors: Zharoff, Eliason
and Duncan

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 HOUSE CS FOR CS FOR SENATE BILL NO. 297 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL
6 For an Act entitled: "An Act placing a moratorium until July 1, 1988, on
7 the issuance or granting of licenses, permits,
8 leases, or authorizations for commercial finfish
9 farming; providing for a bivalve spat collection
10 permit; and providing for an effective date."

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

12 * Section 1. FINFISH FARMING MORATORIUM. (a) Except as provided in
13 (b) of this section, the following licenses, permits, leases, or authoriza-
14 tions may not be issued or granted for the construction or operation of a
15 commercial finfish farm:

- 16 (1) authorization for use of an interim-use permit for the
17 experimental commercial taking of a fishery resource (AS 16.05.050(10));
- 18 (2) fish farming license (AS 16.05.340(a)(14));
- 19 (3) collection permit (AS 16.05.340(b));
- 20 (4) land use or tidelands permit (AS 38.05.035);
- 21 (5) a land lease (AS 38.05.070);
- 22 (6) fish transport permit (5 AAC 41.005);
- 23 (7) permit to appropriate water (11 AAC 93.120);
- 24 (8) temporary water use permit (11 AAC 93.210 - 11 AAC 93.220).

25 (b) A fish farming license and a fish transport permit may be issued
26 for commercial finfish farming in a privately owned freshwater body that
27 has no outlet to state water.

28 * Sec. 2. NO PREFERENCE INTENDED. A license, permit, lease, or au-
29 thorization described in sec. 1 of this Act that is issued or granted for a

1 purpose other than commercial finfish farming and that is in effect during
2 the period of the moratorium imposed by sec. 1 of this Act does not create
3 a right or preference with regard to the issuance, granting, or renewal of,
4 or conditions or limitations placed on, any license, permit, lease, or
5 authorization for aquatic farming after the period of the moratorium.

6 * Sec. 3. AS 16.05.340(b) is amended to read:

7 (b) The commissioner of fish and game may issue without cost a
8 permit to collect fish and game, including fur animals, subject to
9 limitations and provisions that are appropriate, for a scientific,
10 propagative, or educational purpose. The commissioner also may issue
11 a permit for the collection of bivalve spat for use in connection with
12 an aquatic farm. In addition, the commissioner shall issue a permit
13 for the collecting of wild fur animals for improving the genetic stock
14 of fur farm animals. Permits issued under this subsection shall be in
15 accordance with current sustained yield management practices for the
16 species of wild game for which the permit is requested. The annual
17 permit fee for an Alaska resident to collect wild fur animals for fur
18 farming purposes is the same as the fee for resident trappers.

19 * Sec. 4. Section 1 of this Act is repealed July 1, 1988.

20 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE LEGISLATURE . SENATE
SENATOR RICHARD I. ELIASON

5373

RESOURCES COMMITTEE CHAIRMAN
ECONOMICS AND COMMERCE COMMITTEE VICE-CHAIRMAN
LEGISLATIVE COUNCIL
RESOURCES COMMITTEE
FISHERIES SUBCOMMITTEE CHAIRMAN



P.O. BOX 143
SITKA, ALASKA 99835
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4916

May 11, 1987

Commissioner Don Collinsworth
Department of Fish and Game
P.O. Box 3-2000
Juneau, Alaska 99802

COMMISSIONER'S OFFICE
RECEIVED
MAY 12 1987

Dear Commissioner Collinsworth,

DEPARTMENT OF FISH AND GAME

Recently hearings on Senate Bill 106, an act relating to aquatic farming, were conducted by the Senate Resources Subcommittee on Fisheries at five different locations -- Dillingham, Kodiak, Anchorage, Ketchikan, and Sitka. The individuals testifying at the hearings raised many concerns which must be addressed fully prior to the Legislature taking any formal action on permitting aquatic farming in Alaska.

Some of the unanswered questions asked are as follows:

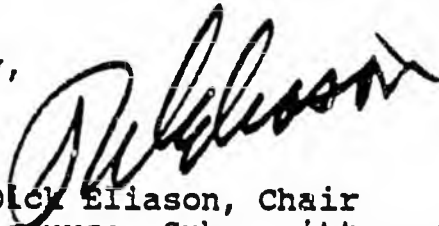
- 1) How will land use conflicts be resolved?
- 2) How can favoritism or the appearance of favoritism be avoided in the awarding of tide land permits?
- 3) What steps will be implemented to reduce tide land speculation?
- 4) What is the role of the non-profit hatcheries in the sea farming industry?
- 5) Will the role of a non-profit hatchery change if the hatchery chooses to rear pen salmon?
- 6) What will be the role of borough governments if a sea farm is within the borough's jurisdiction?
- 7) What will be the procedures in determining the monetary value for the tide land sites?

- 8) Will additional safeguards be established if the potential sea farm site is in a designated wilderness area?
- 9) How will the upland owners' concerns be resolved?
- 10) What exactly is known regarding any potential environmental danger in raising salmon in a concentrated area?

As these questions and other unresolved concerns regarding aquatic farming are reviewed and discussed during the interim by the Subcommittee on Fisheries, it will be most helpful if the various affected state agencies take an active role in the discussion. As chair of the interdepartmental work group on mariculture, the subcommittee looks forward to working with you and other members of the working group during the interim.

Commissioner Collinsworth, hopefully time will allow the subcommittee to meet with the agency representatives prior to adjournment in order to formalize plans for the next few months.

Sincerely,



Senator Dick Eliason, Chair
Senate Resources Subcommittee on Fisheries

cc: Senate Resources Committee Members
House Resources Committee Members

Suggested questions to be addressed
from the Office of Representative Herrmann

1 BIOLOGICAL CONSIDERATIONS

- 1) What is the potential disease and genetic threat to wild stocks?
- 2) How can these be controlled?
- 3) What type of oversight and supervision of mariculture operations is necessary to ensure that wild stocks are not threatened?
- 4) How should pens be stocked?
- 5) Who should regulate egg take?
- 6) Should Atlantic Salmon be allowed? and should other species be imported?
- 7) What are the potential effects on habitat for anadromous fish streams?

11 MARKET QUESTIONS

- 1) Is foreign marketing of pen-reared salmon currently effecting markets for Alaska's wild stocks?
- 2) If Alaska got into pen-rearing of salmon, would our pen-raised salmon be able to compete?
- 3) Could increased efforts at marketing the advantages of wild salmon give Alaska fishermen a competitive edge in certain markets over pen-reared salmon?
- 4) Would development of pen-reared salmon in Alaska displace fishermen? - If so, How many?
- 5) How valid is the statement that the world market will be glutted with salmon by the time Alaska is ready to get into the industry?

111 ECONOMIC FEASIBILITY & BENEFITS

- 1) What is the range of options for proceeding with mariculture operations?
 - A) What would be the economic costs and benefits if the state only permitted small operations? or only large operations? (How many jobs would be created? How much would they pay, How much revenue would be generated? How many people would be displaced? What would be the economic impacts to the state if the fishing industry experienced displacement? Would these operations be economically viable?
 - B) What would be the best way to proceed if the goal of the state was to maximize the revenues generated?

5/20/87

III. Government Involvement

- B. To what extent should the state be involved in necessary monitoring/oversight. What is the state required to do? (i.e. Federal NSSP requirements).
- C. To what extent should the state be involved in providing technical assistance in site selection and necessary environmental analysis?
 - 1. How much should the industry contribute to offset administrative costs?
- D. 2. To what extent should the industry be required to pay for the use of the public resources and the resulting externalities such as pollution and landscape alterations?
- E. What role should the state play in market development?
- F. Given the fiscal and technical policy impacts of the different options - should we proceed to encourage various mariculture operations, and if so, in what areas?
- G. What criteria should be established to determine a whether or not a permit applicant is "fit, willing and able".
 - 1. How do we avoid excluding small, locally owned operations?
 - 2. Should bonding be required to discourage speculation and protect the state in the case of failure? (Clean-up costs).
- H. How are permits going to be transferred? Who decides?
- I. To what extent should the state provide investment incentives? (State subsidization through loans, tax credits ect.) Several sources say that tax credit incentives are necessary to attract venture capital.
- J. How much should the industry pay for necessary regulation, monitoring and oversight?

- C) What would be the best way to proceed to create the most jobs and steady employment?
- D) What would be the best way to provide economic benefits to rural areas?
- E) What would be the best way to provide economic benefits to urban areas?
- F) What would be the best way to minimize the effects on fishermen who may be displaced
- G) What would be the comparative costs and benefits of not going ahead with mariculture but instead increasing marketing strategies so that wild salmon could compete?

1V LAND USE & SITING CONFLICTS

- 1) How should best interest findings be made?
- 2) What guidelines should be established to determine whether a site should be permitted if there are competing uses (some of which may not be permitted?)

V ENVIRONMENTAL IMPACTS

- 1) Water Quality
- 2) Land Use Impacts
- 3) Impacts on habitat for wild stocks

VI GOVERNMENT INVOLVEMENT

Will financial resources be diverted from other fisheries programs such as hatcheries, and economic development of other existing fisheries?

(See Attached)

5/20/87

INTERAGENCY WORKGROUP ON MARICULTURE

David Benton Department of Fish and Game	465-4100
Doug Donegan Department of Environmental Conservation	465-2609
Rick Focht Commercial Fisheries Entry Commission	465-4081
Kerry Howard Department of Environmental Conservation	465-2653
Mike Kaill Department of Fish and Game	465-4160
Amy Kruse Department of Environmental Conservation	789-3151
Diane Mayer Office of Management and Budget	465-3562
Bob Palmer Department of Natural Resources	465-3400
Paul Peyton Department of Commerce & Economic Development	465-2162
Rick Reed Department of Fish and Game	465-4290
Jim Wakefield Department of Labor	465-2700

POLLUTION ISN'T A SOUND POLICY

Should corporations use public waters for private profit?

By John de Yonge
P-I Columnist

Consider these things about floating fish farms:
■ A typical net-pen fish farming operation on Puget Sound produces pollutants "equivalent to untreated sewage from approximately 10,000 persons." That's what a state report says. The pollution comes from fish feces, urine and food pellets deposited in the water and on the bottom of the Sound.

■ There are 13 commercial pens now operating over 69 acres of aquatic lands leased from the state. These 13 operations daily deposit to the bottom of Puget Sound nearly six times as much oxygen-demanding fecal matter and other wastes than does Metro's Renton Waste Water Treatment Plant, which serves 430,000 people. Materials that deplete oxygen can radically change or kill off the life forms in an unpolluted environment.

■ Siting 27 more fish farms, now delayed by opposition from upland property holders, environmentalists and county officials, would add a pollution load to Puget Sound equal to that from building four new cities the size of Everett.

■ The "... proper siting of 100 farms would not have significant impact on the aquatic environment." So says the state's just-issued environmental impact statement on floating net pens.

Those 100 fish farms would produce 55 metric tons of oxygen-demanding waste per day. That's 18 more tons a day than Metro's Renton and West Point treatment plants together produce from the sewage of 1 million people.

Analysis

The environmental impact statement was prepared by three private organizations that supply fish-farm companies with paid expert witnesses.

Under Gov. Booth Gardner, state policy is to hasten any increase of fish farming in the state's waters and to downplay environmental problems that aquaculture may bring.

The official evangelist is the Department of Agriculture's Dr. John Pitts, veterinarian and former Jefferson County commissioner who appears at meetings and hearings - in one case, as a paid witness for a net-pen applicant - to pooh-pooh environmental objections raised by net-pen opponents.

Opponents are not just those who own shoreline property, who howl against a net pen being erected in their aquatic front yard. They've been fired up by what the state's environmental impact statement confirms: A new, nearby fish farm can give view property a one-time, financial knock.

Opponents include environmentalists like David Ortmann of Friends of the Earth, who says: "Why should we be happy about fish farms that dump tons of fish poop every day into Puget Sound?"

They include commercial fishermen like the Puget Sound Gillnetters, who know something that has largely escaped the notice of sport anglers.

Atlantic salmon, not a salmon but a sea-run trout of the Atlantic seaboard, have escaped by the thousands from net pens here and in British Columbia. The B.C. government booms fish farms with a gusto exceeding even the ta-ra-ra-boom-de-ays from Gardner's men and from Brian Boyle, the separately elected head of the Department of Natural Resources, which manages shore bottoms and other public lands.

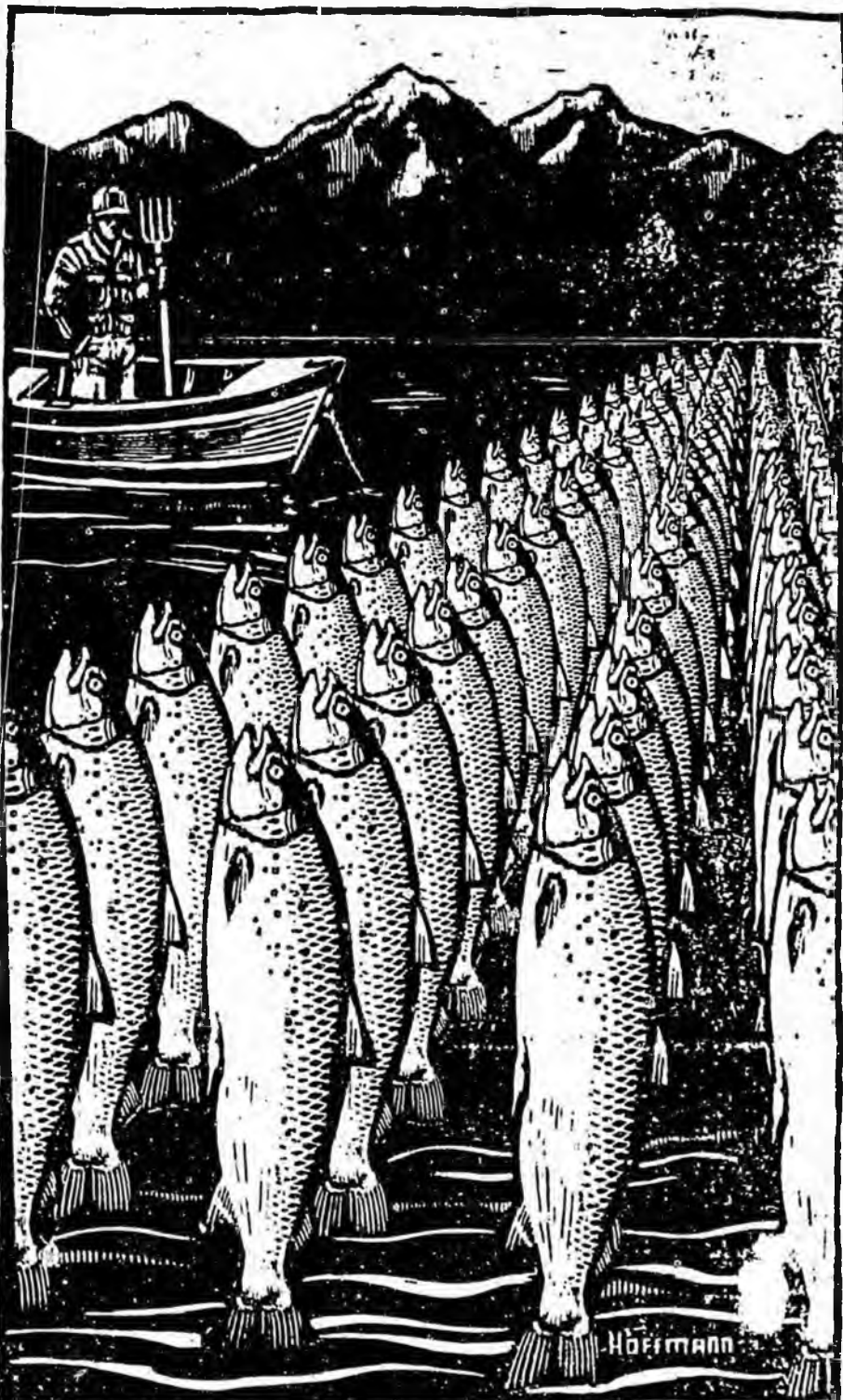
What's more, hundreds of thousands of Pacific salmon have also escaped from the pens, especially in British Columbia.

So what does that mean?

The state environmental impact statement points out that escaped exotic fish like the Atlantic salmon "could establish self-sustaining populations and compete with indigenous fish," such as steelhead trout.

That may not be far off. In the North Puget Sound last year, commercial and sports fishermen caught hundreds, probably thousands, of Atlantic salmon weighing up to 16 pounds.

More dangerous by far is that for the first time ever at least three sexually mature Atlantic salmon



can kill all fish in a pen in minutes.
In 1986 Commissioner of Public Lands Boyle limited new net pens to sites where the water is at least 40 feet deep at low tide, a mile away from other pens and with enough current to flush away food and fecal deposits. He also limited the surface area of new pens to two acres or less.

These requirements ended up in "Recommended Interim Guidelines" written for the departments of Agriculture, Ecology, Natural Resources and Fisheries, which share regulation of the fish-farm industry, with Agriculture and Pitts calling most of the shots.

With no force of law and offered to help county commissioners site pens under state law, the guidelines deliberately do not talk about navigation problems, use conflicts and, most important, esthetics.

operations at Port Angeles.
Both pen systems, clean, low in the water, quiet, full of fat, bright Pacific and Atlantic salmon, are barely noticeable in the working harbors that contain them.

But that's quite different than siting a pen in Frenchman's Cove on the west side of Hood Canal, as International Marine Farms Inc. proposes.

Or siting a pen, as Tailfin Inc. proposes in a main salmon and trout-fishing cove between East Point and Bells Beach on the west side of Whidbey Island, where from her home Margaret Johnston looks out across Saratoga Passage to Camano Island. She heads the Marine Environmental Consortium, made up of 20 citizen organizations that oppose fish and other floating farms.

Katz argues for having the state set standards for siting and operating net pens, to ensure that the pens do not harm the environment and to give fish net-pen operators a clear but flexible regulatory framework to live with. But Katz feels the industry getting a bad rap from people like Johnston, who says, simply don't want a net pen in their back yard.

"If the two sides could stop feuding and start talking about necessary standards, we could have a

If the two sides could stop feuding and start talking about necessary standards, we could

S B

198

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 2/2/89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

FIN

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 3/4/89

2/28/89

Mr. President:

RESOURCES

Committee considered

SB 198

authority of the commissioner of fish and game to modify certain sport fishing regulations

and recommended:

replace with CS _____ same title
 attached amendment(s) and new title

_____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) attached zero
 appropriation no FN attached

fiscal impact
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]
[Signature]
[Signature]

[Signature] *do pass*
Chairman signature and recommendation

Committee backup attached



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Sport Fish	BILL NUMBER SB 198	SPONSOR Senator Sturgulewski
SHORT TITLE OF BILL An Act relating to emergency regulation authority			
DEPARTMENT POSITION Support			
PREPARED BY Norval Netsch	DATE 3/3/89	COMMISSIONER'S SIGNATURE <i>Chris Cullensworth</i>	DATE 3.3.89

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Public Safety	CONSTITUENT GROUPS AFFECTED BY BILL Sport fishermen Lodge guides, outfitters, air taxi operators
ORGANIZATIONAL SUPPORT FOR BILL Alaska Sportfishing Association	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT
This bill would assist ADF&G in implementing management options that would better conserve the resource, provide the public increased fishing opportunities, and take advantage of unpredicted harvestable surplus. Management options would be exercised under criteria adopted by the Board of Fisheries.

ANALYSIS OF BILL/PROGRAM EFFECTS
Enactment of SB 198 would provide the Sport Fish Division of ADF&G with greatly increased flexibility to quickly respond to opportunities to increase bag limits if abundance of stocks warrant; restrict method and means of taking if a conservation problem is foreseen; and to otherwise quickly respond to management options which will serve to protect the recreational fishery resource while at the same time providing the maximum utilization of the resource to the public.

AMENDMENTS PROPOSED

*Distributed by
Senator Sturgulewski*

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An act relating to the authority of the commissioner of fish and game ..."
 Sponsor: Arliss Sturgulewski
 Requestor: _____
 Agency Affected: Fish and Game
 BRU: Sport Fish
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

It is anticipated that this bill would result in an increase in the number of emergency orders (EOs) and a decrease in the number of emergency regulations (ERs) issued. ERs require much more staff time to prepare than EOs. Development criteria to present to the Board of Fisheries (BOF) would require additional staff time, but savings should result because it is likely that fewer regulatory proposals would be submitted through the BOF process. Although it is likely that an overall cost savings should result from this bill, it cannot be accurately quantified.

Prepared by: Frank Van Hulle Phone: 465-4180
 Division: Division of Sport Fisheries Date: 3/3/89
 Approved by Commissioner: Doree Cullenworth Date: 3.3.89
 Agency: Fish and Game

Distribution (by preparer):

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

S B

205

SENATE COMMITTEE REPORT

FURTHER

FIN

4/7/89

DATE TURNED INTO OFFICE

3/2/90

Mr. President:

RESOURCES

Committee considered

SB 205

lease of certain tideland to nonresidents of the state

and recommended

- replace with _____ CS SB 205 (RES)) same title
- or adopt _____ CS _____) new title
- attached amendment(s) and _____) technical title change (HB only)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

- FISCAL NOTE(S) zero fiscal impact appropriation no FN
 new DNR updated previous
 same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signatures]

[Handwritten signature]

 Chairman signature and recommendation

Committee Backup attached

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

February 26, 1990

The Honorable Bettye Fahrenkamp
Chair
Senate Resource Committee
Alaska State Legislature
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Subject: Senate Bill 205, An Act relating to the lease of certain tideland to nonresidents of the state.

Position: The department supports the concept of this bill.

Background: The current committee substitute provides for two components, an administrative component and a revenue generating component. The administrative component provides that non-residents would pay the full administrative cost of the program, and residents would pay one-fifth that amount in recognition of other contributions of residents.

The committee substitute is revenue neutral which is mandatory, since this program is administered under program receipts. The department recommends SB 205 contain administrative flexibility to adjust rental fees to cover future costs of administering the program. The figures included in the committee substitute work with the current resident to non-resident ratio. If the ratio changes, the figures would not be revenue neutral.

Recommended language:

The director shall establish a rental fee for the lease to nonresidents of the state that includes a revenue generating component, plus the administrative cost to administer the program; the director shall establish a fee for the residents of the state that consists of a revenue generating component, plus 1/5 of the administrative costs. The revenue generating component is equal for both residents and non-residents.

I appreciate the opportunity to work with you and your staff on this legislation. We continue to be available if you have further questions.

Sincerely,


Lennie Gorsuch
Commissioner

cc: Committee Members
Bill Sponsor
Bob Evans
Denby Lloyd

bcc: Janet Burleson

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : SB 205
PUBLISH DATE :

FISCAL NOTE

REQUEST:

Revision Date: 26-Feb-90 Agency Affected: Natural Resources
 Title: An act relating to the lease of certain BRU: Land & Water Mgmt
tideland to nonresidents of the state.
 Sponsor: Zharoff Components: Land & Water Mgmt
 Requestor: Senate Resources Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE		210.5	210.5	210.5	210.5	210.5

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This program is run by program receipts. Revenue generated will first be used to fund the program to the authorized program receipts amount. These figures are based on the current CS using \$115.0 for residents in the revenue generating component and 1/5 of the administrative costs for residents.
See page 2.

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 26-Feb-90
 Approved by Commissioner: [Signature] Lonnie Gorsuch Date: 26-Feb-90
 Agency: Department of Natural Resources

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

February 26, 1990

DEPARTMENT OF NATURAL RESOURCES

SHORE FISH ANNUAL RENT

<u>RESIDENT</u>		<u>NONRESIDENT</u>	
\$ 115	Revenue Generating Component ⁽¹⁾	\$ 115	Revenue Generating Component ⁽¹⁾
\$ + 40	1/5 of Admin Costs ⁽²⁾	\$ + 200	100% of Admin Costs ⁽²⁾
\$ 155		\$ 315	
x 850	No. of Resident Lessees	x 250	No. of Nonresident Lessees
<u>\$131,750</u>	Revenue Derived from Residents	<u>\$78,750</u>	Revenue Derived from Nonresidents

Revenue Derived From Resident and Nonresident Lease Rent \$210,500

⁽¹⁾Revenue generating component is the same for residents and nonresidents and not discriminatory.

⁽²⁾Direct administration costs projected for FY 91 to be defrayed by lease rental of 1,100 lessees is \$212,500. Under present rent rate, total revenue derived is \$155,000.

CORRECTION

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

I appreciate the opportunity to work with you and your staff on this legislation. We continue to be available if you have further questions.

Sincerely,


Lennie Gorsuch
Commissioner

cc: Committee Members
Bill Sponsor
Bob Evans
Denby Lloyd

bcc: Janet Burleson

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : SB 205
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: 26-Feb-90 Agency Affected: Natural Resources
 Title: An act relating to the lease of certain BRU: Land & Water Mgmt
tideland to nonresidents of the state.
 Sponsor: Zharoff Components: Land & Water Mgmt
 Requestor: Senate Resources Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE		210.5	210.5	210.5	210.5	210.5

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This program is run by program receipts. Revenue generated will first be used to fund the program to the authorized program receipts amount. These figures are based on the current CS using \$115.0 for residents in the revenue generating component and 1/5 of the administrative costs for residents.
See page 2.

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 26-Feb-90
 Approved by Commissioner: [Signature] Lonnie Gorsuch Date: 26-Feb-90
 Agency: Department of Natural Resources

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

February 26, 1990

DEPARTMENT OF NATURAL RESOURCES

SHORE FISH ANNUAL RENT

<u>RESIDENT</u>		<u>NONRESIDENT</u>	
\$ 115	Revenue Generating Component ⁽¹⁾	\$ 115	Revenue Generating Component ⁽¹⁾
\$ + 40	1/5 of Admin Costs ⁽²⁾	\$ + 200	100% of Admin Costs ⁽²⁾
\$ 155		\$ 315	
x 850	No. of Resident Lessees	x 250	No. of Nonresident Lessees
<u>\$131,750</u>	Revenue Derived from Residents	<u>\$78,750</u>	Revenue Derived from Nonresidents

Revenue Derived From Resident and Nonresident Lease Rent \$210,500

⁽¹⁾Revenue generating component is the same for residents and nonresidents and not discriminatory.

⁽²⁾Direct administration costs projected for FY 91 to be defrayed by lease rental of 1,100 lessees is \$212,500. Under present rent rate, total revenue derived is \$165,000.



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

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

DURING SESSION:

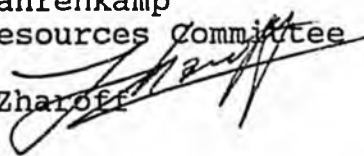
P. O. BOX V, JUNEAU, ALASKA, 99811 • (907) 465-3473 • 465-3474 • 465-3844 (Labor and Commerce Committee)

DISTRICT N

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

MEMORANDUM

TO: Senator Bettye Fahrenkamp
Chair - Senate Resources Committee

FROM: Senator Fred F. Zharoff 

DATE: February 13, 1990

RE: Senate Bill 205 - "An Act relating to the rental fee charged for shore fisheries leases."

I wish to request that a hearing be scheduled for SB 205 at the committee's earliest convenience.

SB 205 extends the same principle to shore leases for commercial set net sites that is now used for commercial fishing licenses, fisheries permit renewals, hunting and trapping licenses, and university tuition. That is, different fees charged to residents and nonresidents for the use of the resources and the services of the state.

The purpose of the differential contained in SB 205 is to capture a greater share of the cost that Alaskans bear year-round for the management of the tideland leasing program, the protection and regulation of the marine environment, and the management of our fisheries resource.

Constitutional questions were raised about SB 205 when it was heard in the Senate Judiciary Committee. The bill passed out with the understanding that Mr. Tom Koester, assistant attorney general, would provide the Senate with an alternate draft addressing the constitutional issues. Mr. Koester has provided me with the new draft language. I propose that the new draft of SB 205 (attached) be taken up as a Resources CS. The Department of Natural Resources will provide the committee with the dollar amount that should be inserted in the blank on page 1, line 29.

By copying the department with this memorandum, I wish to request a new position paper and fiscal note for the Resources Committee.

The following backup information is attached:

1. Letter from Mr. G. Thomas Koester, assistant attorney general, dated Jan. 19, 1990.

2. Department of Natural Resources position paper and fiscal note, dated March 31, 1989.
3. Letter from Ms. Larri Irene Spengler, assistant attorney general, dated Aug. 22, 1988, explaining why nonresidents may be charged higher fees than residents.
4. Memorandum from Mr. Richard A. Bradley, Legal Services Division, dated Dec. 23, 1988, giving the definition of a "resident".
5. List of current market values of Alaska salmon set net limited entry permits and the number of nonresidents holding those permits. Though not an exact measurement, permit values tend to reflect the level of profitability in a fishery.
6. State statutes.

cc: Mr. Larry Ostrosky
Department of Natural Resources

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

February 26, 1990

The Honorable Bettye Fahrenkamp
Chair
Senate Resource Committee
Alaska State Legislature
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Subject: Senate Bill 205, An Act relating to the lease of certain tideland to nonresidents of the state.

Position: The department supports the concept of this bill.

Background: The current committee substitute provides for two components, an administrative component and a revenue generating component. The administrative component provides that non-residents would pay the full administrative cost of the program, and residents would pay one-fifth that amount in recognition of other contributions of residents.

The committee substitute is revenue neutral which is mandatory, since this program is administered under program receipts. The department recommends SB 205 contain administrative flexibility to adjust rental fees to cover future costs of administering the program. The figures included in the committee substitute work with the current resident to non-resident ratio. If the ratio changes, the figures would not be revenue neutral.

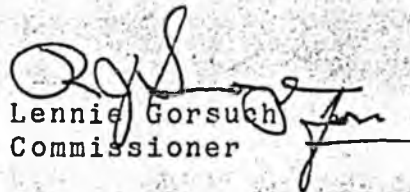
Recommended language:

The director shall establish a rental fee for the lease to nonresidents of the state that includes a revenue generating component, plus the administrative cost to administer the program; the director shall establish a fee for the residents of the state that consists of a revenue generating component, plus 1/5 of the administrative costs. The revenue generating component is equal for both residents and non-residents.

The CS SB 205 (Res) of 3/2/90
replaces the \$115 figure with this
lang. As you remember we were ready
to move the bill but needed Sen Zharov's ~~bill~~
approval.

I appreciate the opportunity to work with you and your staff on this legislation. We continue to be available if you have further questions.

Sincerely,


Lennie Gorsuch
Commissioner

cc: Committee Members
Bill Sponsor
Bob Evans
Denby Lloyd

bcc: Janet Burleson

March 6, 1989

SENATE JOURNAL

p. 644

SB 205

SENATE BILL NO. 205 by Senator Zharoff, entitled:

"An Act relating to the lease of certain tideland to nonresidents of the state."

was read the first time and referred to the Judiciary Committee, the Resources Committee and the Finance Committee.

April 7, 1989

SENATE JOURNAL

p. 1109

SB 205

The Judiciary Committee considered SENATE BILL NO. 205 (An Act relating to the lease of certain tideland to nonresidents of the state). Senator Szymanski, Vice-Chair, signed "do pass." Senator Halford signed "do pass after findings established." Senator Pearce signed "no recommendation."

Fiscal note published today from Department of Natural Resources.

SENATE BILL NO. 205 was referred to the Resources Committee.

March 5, 1990

SENATE JOURNAL

p. 2709

SB 205

The Resources Committee considered SENATE BILL NO. 205 (An Act relating to the lease of certain tideland to nonresidents of the state) and a majority of the committee recommended it be replaced with

CS FOR SENATE BILL NO. 205 (Resources), entitled:
"An Act relating to the rental fee charged for shore fisheries leases; and providing for an effective date."

and do pass. The report was signed by Senator Fahrenkamp, Chair, and concurred in by Senators Frank, Zharoff, Sturgulewski and Kerttula.

SB 205 cont'd

Fiscal note published today from Department of Natural Resources.

SENATE BILL NO. 205 was referred to the Finance Committee.

March 15, 1990

SENATE JOURNAL

p. 2865

SB 205

The Finance Committee considered SENATE BILL NO. 205 (An Act relating to the lease of certain tideland to nonresidents of the state) and a majority of the committee recommended that the Resources Committee Substitute offered on page 2709 be adopted and do pass. The report was signed by Senator Uehling, Co-Chair, and concurred in by Senators Duncan, Frank, Pearce, and Fischer.

Previous fiscal notes.

SENATE BILL NO. 205 was referred to the Rules Committee.

1990 LEGISLATIVE SESSION

BILL VERSION : CS SB 205 (Res)
 PUBLISH DATE : 3/5/90

FISCAL NOTE

REQUEST:

Revision Date: 26-Feb-90
 Title: An act relating to the lease of certain tideland to nonresidents of the state.
 Sponsor: Zharoff
 Requestor: Senate Resources Committee

Agency Affected: Natural Resources
 BRU: Land & Water Mgmt
 Components: Land & Water Mgmt

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE		210.5	210.5	210.5	210.5	210.5

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This program is run by program receipts. Revenue generated will first be used to fund the program to the authorized program receipts amount. These figures are based on the current CS using \$115.0 for residents in the revenue generating component and 1/5 of the administrative costs for residents. See page 2.

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 26-Feb-90
 Approved by Commissioner: [Signature] Lonnie Gorsuch Date: 26-Feb-90
 Agency: Department of Natural Resources

Distribution (by preparer) :

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

my Ostrovsky

February 26, 1990

DEPARTMENT OF NATURAL RESOURCES

SHORE FISH ANNUAL RENT

<u>RESIDENT</u>		<u>NONRESIDENT</u>	
\$ 115	Revenue Generating Component ⁽¹⁾	\$ 115	Revenue Generating Component ⁽¹⁾
\$ + 40	1/5 of Admin Costs ⁽²⁾	\$ + 200	100% of Admin Costs ⁽²⁾
<u>\$ 155</u>		<u>\$ 315</u>	
x 850	No. of Resident Lessees	x 250	No. of Nonresident Lessees
<u>\$131,750</u>	Revenue Derived from Residents	<u>\$78,750</u>	Revenue Derived from Nonresidents

Revenue Derived From Resident and Nonresident Lease Rent \$210,500

⁽¹⁾Revenue generating component is the same for residents and nonresidents and not discriminatory.

⁽²⁾Direct administration costs projected for FY 91 to be defrayed by lease rental of 1,100 lessees is \$212,500. Under present rent rate, total revenue derived is \$165,000.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 205
PUBLISH DATE: 4/7/89

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Natural Resources
 Title: An act relating to the lease of
certain tideland to nonresidents of the state. BRU: Land and Water Management
 Sponsor: Senator Zharoff Components: _____
 Requestor: Senate Judiciary Committee

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	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE		120.0	120.0	120.0	120.0	120.0

FUNDING: (Thousands of Dollars)

GENERAL FUND		0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL		0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This program is run by program receipts. Revenue generated will first be used to fund the program up to the authorized program receipt amount.

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 24-Mar-89
 Approved by Commissioner: Lennie Gorsuch Date: _____
 Agency: Department of Natural Resources

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

Page 2
SB 205

The current rental fee for set net leases is \$150.00 per year. SB 205 seeks to raise the rental rate for nonresidents to five times the rate charged to residents, which would equal \$750.00 per year. This would generate \$600.00 additional dollars for set net leases issued to nonresidents. The department estimates there are between 200 and 250 nonresident fishermen with set net leases. These figures are based on statistics from the Commercial Fisheries Entry Commission's annual report. Using the conservative estimate of 200, this would generate \$120,000 per year.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CS SB 205
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 26-Feb-90 Agency Affected: Natural Resources
 Title: An act relating to the lease of certain BRU: Land & Water Mgmt
tideland to nonresidents of the state.
 Sponsor: Zharoff Components: Land & Water Mgmt
 Requestor: Senate Resources Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE		210.5	210.5	210.5	210.5	210.5

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This program is run by program receipts. Revenue generated will first be used to fund the program to the authorized program receipts amount. These figures are based on the current CS using \$115.0 for residents in the revenue generating component and 1/5 of the administrative costs for residents.
See page 2.

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 26-Feb-90
 Approved by Commissioner: [Signature] Lonnie Gorsuch Date: 26-Feb-90
 Agency: Department of Natural Resources

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

February 26, 1990

DEPARTMENT OF NATURAL RESOURCES

SHORE FISH ANNUAL RENT

<u>RESIDENT</u>		<u>NONRESIDENT</u>	
\$ 115	Revenue Generating Component ⁽¹⁾	\$ 115	Revenue Generating Component ⁽¹⁾
\$ + 40	1/5 of Admin Costs ⁽²⁾	\$ + 200	100% of Admin Costs ⁽²⁾
<u>\$ 155</u>		<u>\$ 315</u>	
x 850	No. of Resident Lessees	x 250	No. of Nonresident Lessees
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Revenue Derived From Resident and Nonresident Lease Rent \$210,500

⁽¹⁾Revenue generating component is the same for residents and nonresidents and not discriminatory.

⁽²⁾Direct administration costs projected for FY 91 to be defrayed by lease rental of 1,100 lessees is \$212,500. Under present rent rate, total revenue derived is \$165,000.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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

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

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99801-0300
PHONE: (907) 465-3600

January 17, 1990

RECEIVED JAN 19 1990

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

Re: SB 205

Dear Senator Zharoff:

At an April 6, 1989 Senate Judiciary Committee meeting, we expressed some concern with Senate Bill ("SB") 205, a bill which you sponsored and which would charge nonresidents a rental fee equal to five times the fee charged residents for a shore fisheries lease. At that time, we indicated that we would get back to you with some language which we believe would accomplish your goal -- ensuring that nonresidents pay their full share of the costs of administering the shore fisheries leasing program -- without presenting constitutional problems.

The easiest way to do this would be to determine the administrative costs of the program, pro rate that cost over all existing shore fishery leases, require that nonresidents pay the full prorated cost for their individual leases, but require residents to pay only one-fifth that amount in recognition of their contributions to the cost of the program through other means (e.g., taxes, revenues from other state-owned lands, etc.).

The problem with this approach is that it would not be revenue neutral. AS 38.05.082(c) currently provides that the annual rental (for both residents and nonresidents) is the prorated cost of the program. Reducing the amount residents must pay also would reduce the total revenue.

A possible solution is to provide that the annual rental fee consists of two components: (1) a revenue-generating component, which both residents and nonresidents must pay; and (2) a prorated administrative cost component which nonresidents must pay while residents would be charged only one-fifth of that amount in recognition of their contributions toward payment of the administrative costs through other means.

Honorable Fred Zharoff


January 19, 1990
Page 2

For your consideration, we have enclosed a draft proposed committee substitute for SB 205 incorporating the foregoing concept. As you will note, we have left blank the amount of the revenue-generating component. We understand the Department of Natural Resources is currently recalculating the cost of the program, and will supply you with the necessary figure when it is available.

As always, the provision of this draft language should be considered a drafting service and not necessarily administration support for the bill.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

GTK:d1m

Enclosure

cc w/enc.: Honorable Lennie Gorsuch
Commissioner
Department of Natural Resources

Honorable Don Collinsworth
Commissioner
Department of Fish and Game

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

2
STEVE COWPER, GOVERNOR

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

March 31, 1989

The Honorable Jan Faiks
Chair
Senate Judiciary Committee
P.O. Box V
Juneau, AK 99811

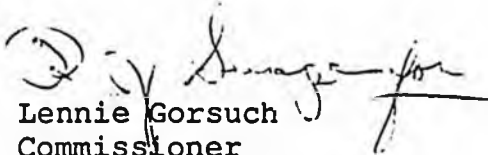
Dear Senator Faiks:

Subject: Senate Bill 205, an act relating to the lease of certain tideland to nonresidents of the state.

Position: The Department of Natural Resources is not opposed to the concept of this bill; however, there may be constitutional questions which need to be addressed by the Attorney General.

Background: This bill provides that the rental fee for set-net leases issued to nonresidents be five times the lease fee charged to residents of the state. The lease fee is currently \$150 per year. The set-net lease program is supported through program receipts, and this amendment will not incur additional costs to the department. Additionally, there will be new revenues generated, which are reflected in the attached fiscal note.

Sincerely,


Lennie Gorsuch
Commissioner

cc: Senator Fred Zharoff
Senate Judiciary Committee
Denby Lloyd, Special Staff Assistant
Office of the Governor
Bob Evans, Legislative Liaison
Office of the Governor
Gary Gustafson, Director
Division of Land and Water Management

Enclosure

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

August 22, 1988

The Hon. Fred Zharoff
Alaska State Legislature
720 Mill Bay Road, Room 231
Kodiak, AK 99615

AUG 29 1988

Re: Leases to non-state residents
Our file: 663-88-0480

Dear Senator Zharoff:

You have inquired whether the state could statutorily require that leases of state land for hunting or fishing lodges, for example, be limited to Alaska residents only, and whether non-state residents could be charged more for such leases than state residents. As discussed below, it appears likely that the state could limit leases of state lands to state residents, depending on what purpose was expressed. It also appears that the state might be able to charge non-state residents more for leases than state residents, but in practical effect that would probably result in state residents obtaining leases for less than fair market value, a policy choice which the legislature would obviously have to consider carefully.

Leasing land for purposes other than the extraction of natural resources is currently governed by AS 38.05.070 -- AS 38.05.105. The general guidelines for leasing are set out in AS 38.05.070, and leasing procedures in AS 38.05.075, neither of which contains a state resident limitation. There are no statutes governing leasing land for the specific purpose you use as an example in your opinion request, namely leasing land for hunting or fishing lodges.

With respect to AS 38.05.082, a specific statute governing leases for shore fisheries development that does not now limit issuance of state tidelands leases to residents of Alaska, this office has in the past expressed the view that it could be amended to add such a limitation. 1983 Op. Att'y Gen. No. 3 (April 21). We explained that such a limitation would have to be shown to be "reasonable, not arbitrary, and [it] must rest upon some ground of difference having a fair and substantial relation to the object of the legislation." *Id.*, at 6-7, quoting *Gilman v. Martin*, 662 P.2d 120, 125 (Alaska 1983), in turn quoting *State v. Wylie*, 516 P.2d 142, 145 (Alaska 1983). Our office noted with respect to the prospect of restricting shore fishery

STEVE COWPER, GOVERNOR

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100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679
- P.O. BOX K--STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

leases to residents that "since article VIII, section 17, of the Alaska Constitution requires that 'laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation,' it is especially important that any residency requirement be based upon valid constitutional and statutory objectives." 1983 Op. Att'y Gen. No. 3 (April 21), p. 7.

In Gilman v. Martin, 662 P.2d 120 (Alaska 1983), the Alaska Supreme Court was examining a land sale lottery ordinance of the Kenai Peninsula Borough which, among other things, restricted participants to residents of the borough. The court noted that the borough contended its discrimination against non-residents was not unconstitutional and that "one of the purposes of the state's grant of land to it was to permit the borough to sell the land to its residents." Id. at 126. The borough argued that thus "all boroughs may limit the sale of land received from the state to residents of the boroughs." Id. Unfortunately for the borough's argument, which the court said otherwise "might have been worthy of consideration," the ordinance did not state that to be its purpose. Id. Instead, it specifically indicated that its purpose was to "resolve existing controversies regarding access and title." Id. The court concluded that the decision by the borough to restrict the sale of its land through the lottery to borough residents -- "and thereby assist only 44 percent of the land owners in resolving existing controversies regarding access and title" -- was "unreasonable" and without "some ground of difference having a fair and substantial relation to the [avowed] object of the legislation, so that all persons similarly circumstanced [are] treated alike." Id. at 126-27 (brackets in original).

Thus, it is clear that in evaluating a statutory restriction of state land leases to state residents, a court would look closely at whether the purpose of the legislation amounted to a legitimate governmental objective, and secondly, whether the means chosen (the limitation to state residents) further the purported goals. Alaska Pacific Assurance Company v. Brown, 687 P.2d 264, 269-70 (Alaska 1984). An example of a goal which might well be considered legitimate by a court is one similar to the one mentioned by the court in Gilman, distribution of state land to state residents. That could be particularly persuasive if there was not sufficient land being made available for lease for all residents desiring to have some, at least if non-residents were also allowed to apply. On the other hand, if the purpose were, for example, to discourage newcomers from moving to

Alaska, the purpose might not be viewed as legitimate, given the United States Constitution's protection of interstate commerce.

You have also inquired whether it is possible to impose a different rate structure for nonresident leases, "similar to the one in place for hunting and fishing licenses whereby non-residents could be charged a higher fee." Under Alaska statutes, non-state residents can be charged up to three times the amount as state residents for engaging in commercial fishing. AS 16.05.480; AS 16.43.160. In that instance, we believe the fee differential is constitutional because the sum that nonresidents pay only compensates the state for their share of the state's expenses in conserving and managing its fisheries. The United States Supreme Court has explained that the "state is not without power...to charge nonresidents a differential which would merely compensate the state for any added enforcement burden they may impose or for any conservation expenditures." Toomer v. Whitsell, 334-US-385, 398-9 9 (1948).

In a broader context, the Alaska Supreme Court has noted that "freedom from disparate taxation is not a federally protected fundamental right for the purpose of equal protection analysis under the 14th Amendment." Williams v. Zobel, 619 P.2d 422, 427 (Alaska 1980). Logically, the same conclusion could be reached with respect to disparate leasing fees. Accordingly, the appropriate standard of review would be to determine whether the classification bears a fair and substantial relation to a legitimate governmental objective. Id. Thus, if some rationale exists for charging non-state residents higher fees than residents, it would appear that a differential leasing fee schedule could be authorized. For example, if non-state residents were escaping bearing their share of the leasing program's administrative costs, a differential compensating for that might well be justified. (In such a case, Alaska residents would be shouldering their share by money from their state's resources being allocated to pay the administrative costs.)

The possibility of different fees, however, raises a practical problem. Currently, under AS 38.05.075 and AS 38.05.840, in general land leased in Alaska is already required to be leased at fair market value. Since it would not be likely that non-state residents would wish to pay greater than fair market value for the lease of state land in Alaska, it appears that the only way to impose a fee differential based on residency would be to allow state residents to lease state land at less than fair market value. For example, currently AS 38.05.810 provides that state land may be leased (or otherwise disposed of) to a state or federal agency or a political

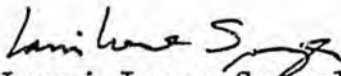
subdivision for less than the appraised value if that is determined by the Commissioner of Natural Resources to be "fair and proper and in the best interests of the public." Whether the legislature would wish to forego receiving the full fair market value for leases of state land to residents is obviously a policy choice. If the legislature determined that such a choice was desirable, it should explain its reasons, so that it is clear that the differential bears a substantial relationship to a legitimate governmental objective, as discussed above.

Another policy question that the legislature may wish to consider with respect to both alternatives--limitation of leases to residents and fee differentials--is whether subleasing by residents to nonresidents should be statutorily prohibited. If it were not, whatever purpose the legislature believed was being served by the basic enactment could be circumvented. Obviously, whether subleasing would pose a problem would depend on what purposes the legislature wanted to further. If use of state land by state residents was the purpose, the situation might be different than if the goal was to foster state residents making money off of state land.

In sum, with the proper legislative findings demonstrating the legitimacy of the ends, and the connection of the means to the ends, leases of state lands could be statutorily limited to state residents, or a higher fee could be charged to non-state residents for those leases.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Larri Irene Spengler
Assistant Attorney General

LIS:tg

cc: Judith Brady, Commissioner
Department of Natural Resources

Rod Swope, Special Assistant
Office of the Governor

Tom Koester, Assistant Attorney General
Department of Law

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM

December 23, 1988

SUBJECT: Fees for set net sites
(Work Order No. 6-0369)

TO: Senator Fred Zharoff

FROM: Richard A. Bradley
Legislative Counsel

The bill enclosed responds to your request.

I may say that we have not reexamined the constitutional question addressed in the attorney general's you provided to us.

I have not defined the term "resident". As such, the definition provided at AS 01.10.055. would apply; the section provides:

Sec. 01.10.055. RESIDENCY. (a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

(b) A person demonstrates the intent required under (a) of this section

(1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; and

(2) by providing other proof of intent as may be required by law or regulation, that may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

Senator Fred Zharoff
Page 2
December 23, 1988

(c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state.

If I may be of further assistance, please advise.

Enclosure

RAB:gc
WKG5/036

SET NET PERMIT PRICES AS OF JANUARY 31, 1990 AND THE NUMBER OF NONRESIDENTS HOLDING SET NET PERMITS AS OF DECEMBER 31, 1988.

<u>Set Net Permits</u>	<u>Average Value</u>	<u>Total Permits</u>	<u>Non-Residents</u>	<u>Percentage</u>
Yakutat	\$ 41,000	164	29	17.7
Prince William Sound	64,167	30	3	10.0
Cook Inlet	84,100	743	83	11.2
Kodiak	95,000	187	39	20.9
Alaska Peninsula	79,156	113	19	16.8
Bristol Bay	62,944	941	229	24.3
TOTAL		<u>2,178</u>	<u>402</u>	<u>18.4</u>

Source: Commercial Fisheries Entry Commission

Sec. 38.05.077. Classification and disposal of remote parcels. [Repealed, § 7 ch 103 SLA 1983. For current law see AS 38.09.]

Sec. 38.05.078. Purchase of land in a remote parcel. [Repealed, § 7 ch 103 SLA 1983. For current law see AS 38.09.]

Sec. 38.05.079. Remote cabin permit. (a) After September 1, 1980, the commissioner may issue a permit for the use of remote state land in a municipality for a cabin site if the land was classified for that purpose under former AS 38.05.047(a)(5)(B). After September 1, 1981, the commissioner may issue a permit for the use of remote state land outside a municipality for a cabin site if the land is classified for that purpose under the procedures required by AS 38.05.300 and 38.05.945.

(b) The fee for a remote cabin permit is \$100 a year. The commissioner shall establish regulations which specify the application procedures for and the terms and conditions of a remote cabin permit. A permit must be for a term of not less than 25 years, and may be assigned by the original permittee during the term of the permit.

(c) A remote cabin permit may be terminated by the commissioner before the expiration of the term of the permit if a permittee fails to use the land under permit in the manner required by the terms of the permit. After termination of a remote cabin permit, improvements or personal property on the land subject to the permit shall be managed in the same manner as required by AS 38.05.090.

(d) If land subject to a remote cabin permit is offered for sale or long-term lease, the commissioner shall first offer to sell or lease the land to the permittee or the assigns of the permittee. The land shall be sold for its fair market value. (§ 32 ch 85 SLA 1979; am § 98 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment made a series of technical and internal reference changes throughout subsection (a).

Sec. 38.05.080. Rejection of bids. Before the director signs the lease, the commissioner may reject all bids for leases when the best interest of the state justifies this action. (§ 2 art V ch 169 SLA 1959; am § 10 ch 61 SLA 1960; am § 3 ch 74 SLA 1961)

NOTES TO DECISIONS

Quoted in *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Sec. 38.05.082. Leases for shore fisheries development. (a) The director, with the approval of the commissioner, may lease tide and submerged land for fisheries development. Fisheries development

includes the utilization of shore gill nets or set nets for the taking of fish. Every lease issued under this section shall reserve to the public a right-of-way for access to navigable waters and other tide and submerged land.

(b) The director may classify land as subject to leases for fisheries development, and publicly invite applications for lease of the selected areas. Each application shall be accompanied by an affidavit to the effect that the applicant presently intends to personally utilize the leased area for fishing purposes the following season. If two or more applications are received for the same shore area, the director shall award the lease to the most qualified applicant. In determining the qualifications of applicants, the director shall consider the length of time during which the applicant has been engaged in set netting, the proximity of the past fishing sites of the applicant to the land to be leased, the present ability of the applicant to utilize the location to its maximum potential, and other factors relevant to the equitable assignment of the disputed area. If the director cannot determine a preference between conflicting applicants for the same lease site on the basis of qualifications, the director shall select between the applicants by lot. An aggrieved applicant may appeal to the commissioner within five days for a review of the director's determination.

(c) A lease for set net fishing may be issued for any period not exceeding 10 years. If the commissioner determines that the land is not being utilized for the purpose for which the lease is issued, the lease may be declared void. The director shall establish a reasonable rental for the lease, equal to the administrative costs involved in processing the leasehold applications.

(d) Subleasing and renewals of leases are governed by AS 38.05.095 and 38.05.102.

(e) The lease of submerged land conveys no interest in the water above the land or in the fish in the water. (§ 2 ch 93 SLA 1963; am § 99 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment changed the internal reference in subsection (d).

Opinions of attorney general. — This section, which authorizes shore fishery leases, does not create an exclusive right of fishery and therefore is not

unconstitutional under § 15, art. VIII, of the state constitution. 1983 Op. Att'y Gen. No. 03.

This section can be amended to limit the issuance of state tidelands leases for fisheries development to residents of Alaska. 1983 Op. Att'y Gen. No. 03.

Sec. 38.05.085. Term of lease. (a) The lease shall provide that

(1) for the initial 25-year period of the lease, the lessee shall pay the state a fixed base annual rent to be agreed upon by the parties in compliance with the provisions of this chapter;

(2) the fixed base annual rent to be paid by the lessee shall be readjusted when the initial 25-year period of the lease has expired and, thereafter, every 10 years; and

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(3) the readjusted annual rent may not exceed 10 per cent of the value of the property as determined in (b) of this section or 50 per cent more than the amount paid each year during the initial period or the preceding 10-year period, whichever is lower.

(b) When it becomes necessary to determine the fair market value of property as required by (a) of this section, the director shall have the property appraised by a qualified appraiser. If the lessee disagrees with the appraisal obtained by the director, the lessee may appoint a qualified appraiser to make an appraisal of the property in question. If the two appraisers agree upon the fair market value, the determination is binding on the parties. In the event the two appraisers are unable to agree, they shall appoint a third qualified appraiser who shall then make an appraisal of the property in question. When the third appraisal is completed, the two of the three appraisals which are nearest each other in their determination of the fair market value shall be averaged and the resultant sum shall be the fair market value of the property in question and absolutely binding on the parties. All costs incurred in making the appraisals provided for in this subsection shall be borne by the state and the lessee equally.

(c) The lessee shall make advance payments of the annual rent or portion of it as the director, with the approval of the commissioner, may require.

(d) A preference right lessee of grazing or forest land may follow the payment schedule established in the cancelled federal lease or grazing permit if the lessee so desires.

(e) Notice of all actions by the department affecting the rights of a lease or lessee shall be given to the lessee.

(f) A violation of a provision of this chapter or of a term or provision of a lease subjects the lessee to appropriate legal action, including, but not limited to, a forfeiture of the lease.

(g) In this section,

(1) "annual rent" means the amount of rent paid annually determined by multiplying the fair market value by the rental rate computed at the time of the initial 25-year period of the lease or of each subsequent 10-year period of the lease;

(2) "qualified appraiser" means a senior member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, a person meeting the requirements for certification as an appraiser II by the division of personnel, Department of Administration, or a person qualified according to regulations adopted by the commissioner under the Administrative Procedure Act (AS 44.62);

(3) "rental rate" means the rate, expressed as a percentage of fair market value, which a comparable class of privately owned property would bring in the open market with the same conditions of lease as offered by the state. (§ 3 art V ch 169 SLA 1959; § 11 ch 61 SLA 1960; § 4 ch 74 SLA 1961; am § 9 ch 138 SLA 1977; am §§ 8, 9 ch 182 SLA 1978)

BILL: SB 205

NAME:

TITLE: "An Act relating to the lease of certain tideland to nonresidents of the state."

PRIME SPONSOR: ZHAROFF

CURRENT STATUS: (S) RES THEN FIN

STATUS DATE: 04/07/89

HEARING:(S) RES FEB 26 01:30 PM BUTROVICH ROOM 205

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP	SUBJ	EXIT	MENU	TEXT	PRINT	BWD	FWD		FIRST	LAST	QUIT

Journal & Committee Action Page 2 of 2

Current Status: (S) RES

Date	Page	Action
1 03/06/89	644	(S) READ THE FIRST TIME - REFERRAL(S)
2 03/06/89	644	(S) JUDICIARY, THEN RESOURCES, FINANCE
3 04/06/89	N/A	(S) JUD AT 1:30 PM BUTROVICH ROOM 205
4 04/06/89	N/A	(S) MINUTE(JUD)
5 04/07/89	1109	(S) JUD RPT 2DP 1NR
6 04/07/89	1109	(S) FN PUBLISHED (DNR)
7 04/07/89	1109	(S) REFERRED TO RESOURCES
8 02/26/90	N/A	(S) RES AT 1:30 PM BUTROVICH ROOM 205

Senate Judiciary Minutes

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PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
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Committee Minutes

The first order of business was SB 205 (Lease of certain tideland to nonresidents of the state). Senator Szymanski explained that current law provides that the commissioner of the Department of Natural Resources may issue a lease for set net fishing, and the lease may be for a period not to exceed 10 years. DNR must establish a reasonable rental for the lease equal to the administrative costs involved in processing lease applications.

The current law does not distinguish between residents and nonresidents. SB 205 amends this law to provide that the rental for the nonresidents of the state shall be five times the fee charged for residents. The state will still be charging residents a fee that is equal to the administrative costs of processing an application, but nonresidents must pay five times that amount.

Number 010

Tom Koester, Assistant Attorney General, Department of Law,

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU		PRINT	BWD	FWD		FIRST	LAST	QUIT

Committee Minutes

said there is a similar nonresident fee differential statute which relates to the fees charged for applying and renewing limited entry permits. The courts will sustain the constitutionality of a differential fee between residents and nonresidents if it can be demonstrated that there reasonable relationship between the fee charged nonresidents and the added enforcement burden that they impose on the state because of their nonresidency. The Department of Law is defending the nonresident fee differential in the limited entry permit case on these grounds.

Koester said their sense is that they would prefer to wait until the Supreme Court resolves the limited entry fee differential case before another statute is enacted imposing a fee differential on nonresidents using the same justification. At the minimum, if the bill was to go forward, they would hope that the legislature would, in fact, develop through the hearing process data regarding the additional costs of enforcement with respect to

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Committee Minutes

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fee differential between residents and nonresidents in the tidelands leasing context.

Number 068

Senator Zharoff said he doesn't think the legislation sets any real precedents in what is done in other areas where fees are different for residents and nonresidents, particularly in the area of the fishing industry. The nonresident fee for a commercial license is substantially higher than what a resident pays.

Senator Zharoff's particular concern is with the Bristol Bay area where there are a large number of nonresidents that fish the area, who have been making substantial returns, and are leaving nothing in the state in return.

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BASIS					Committee	Minutes					

The revenues that's generated from the shore leases helps pay for that segment in DNR, and Senator Zharoff would like to increase those program receipts on the users that come in and utilize the services and then leave. Currently, the shore lease is approximately \$50. In order for the Department of Natural Resources to continue providing the service for that particular part of their budget, they have started a program to increase the shore leases for everybody up to \$150. He feels it is a resource that belongs to the people of the state and that some consideration should be given to Alaskan residents.

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Senator Szymanski said everyone wants to do this, but the key question is whether or not we can give the Department of Law, who would potentially have to defend the differential, the foundation to do so, because they don't believe that the findings contained in the bill would carry

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Senator Halford said he thought it was essential to get DNR's budget component in front of the committee and to establish a differential represents bringing nonresidents up to the total cost of providing the service. This could then be so stated in the findings of the bill, he said.

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There was some discussion on whether it would be better to

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Number 195

Senator Pearce referred to an opinion dated April 21, 1983, from Mr. Gissberg saying it would be legal to shut off the ability of nonresidents to receive tideland leases. Senator Zharoff said he didn't recall any of the discussion that may have taken place at that time, but he thought there would be constitutional problems if an attempt were made to exclude nonresidents from that type of activity. Koester added that he is not convinced that that earlier opinion was correct.

Number 218

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motion to move the bill from committee with a letter of transmittal to the next committee of referral requesting that a hearing be held that specifically addresses an appropriate findings section. Senator Halford suggested that Mr. Koester help in the drafting of the letter to outline what needs to be established. Koester agreed and said he would contact DNR and see that they have that information available for the next hearing on the legislation.

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SB 205 Journal & Committee Action Page 2 of 2

Table with columns: Date, Page, Action. Rows 1-8 showing dates from 03/06/89 to 02/26/90 and actions like 'READ THE FIRST TIME - REFERRAL(S)', 'JUDICIARY, THEN RESOURCES, FINANCE', etc.

Senate Judiciary Minutes

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Original sponsor(s): SEN. ZHAROFF

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 205 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the rental fee charged for shore
7 fisheries leases; and providing for an effective
8 date."

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

10 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that the
11 residents of the state are responsible for the general financial support of
12 the programs of state government and that the vast majority of support for
13 the programs of state government comes from taxes and revenue from state-
14 owned land. To a large extent, those who are nonresidents of the state do
15 not financially support the programs of state government that provide
16 services to both residents and nonresidents within the state. These ser-
17 vices include the administration of the various state departments and
18 agencies and their programs and specifically include the management of the
19 tideland leasing program. While the United States Constitution prevents
20 the state from discriminating in its delivery of services to nonresidents,
21 the Constitution does not prevent the state from charging nonresidents a
22 differential that compensates the state for the costs and expenses that
23 nonresidents impose on state government.

24 * Sec. 2. AS 38.05.082(c) is amended to read:

25 (c) A lease for set net fishing may be issued for any period not
26 exceeding 10 years. If the commissioner determines that the land is
27 not being utilized for the purpose for which the lease is issued, the
28 lease may be declared void. The director shall establish and may
29 revise a [REASONABLE] rental fee for the lease to nonresidents of the

1 state that includes a revenue generating component and [, EQUAL TO]
2 the administrative costs involved in processing the leasehold applica-
3 tions. The director shall establish and may revise a rental fee for
4 residents of the state that includes a revenue generating component
5 and one-fifth of the administrative costs involved in processing the
6 leasehold applications. The revenue generating component of the
7 rental fee established or revised by the director shall be equal for
8 residents and nonresidents.

9 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).
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6-0369H

Bradley

2/26/90

Original sponsor(s): SEN. ZHAROFF

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 205 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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[,] equal to \$115 plus the administrative costs involved in processing the leasehold applications. The rental fee for residents of the state is \$115 plus one-fifth of the administrative costs involved in processing the leasehold applications.

* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

DEPARTMENT OF REVENUE

STEVE COWPER, GOVERNOR

STATE OFFICE BUILDING
P.O. BOX SA
JUNEAU, ALASKA 99811-0400

To: Fisheries Business Tax Credit Applicants

The Department of Revenue recently learned that several very large and many small construction projects at shore based processing facilities would not be completed by December 31, 1989. In all cases, these projects had received prior approval from the Department for the fisheries businesses tax credit. At the time of credit approval, applicants fully intended to complete construction and installation of the processing equipment. In many instances, circumstances beyond the control of the fisheries business delayed project completion.

In 1986 when the original regulations pertaining to the credit program were written, the Department, in keeping with legislative intent, required that a project or installation be complete, and the processing equipment be placed into useful service before credit would be granted. Early on, many fish processing companies began aggressive construction projects, fully intending to have them completed by December 31, 1989. Delays in obtaining manufacturing equipment, short construction seasons and unforeseen problems in obtaining permits pushed back completion in several instances. Without a change in the Department's regulations, many fisheries businesses were faced with losing all potential tax credits for failing to meet the December deadline.

Because of the significant financial impact this would have on Alaska's shore based fish processing industry, the Commissioner of Revenue determined an emergency existed and adopted emergency regulations on December 20, 1989. A copy of his order and the emergency regulations are attached.

For those fish processors having construction projects which are "substantially complete" by December 31, 1989, which were approved in advance for the credit and which are placed into useful service by December 31, 1990, tax credits may be granted for expenditures made on the project by December 31, 1989.

If your business has made expenditures which were pre-approved for credit, and those improvements to or construction of a fisheries processing plant will not be completed by this year's end, the expenditures may still be eligible for credit.

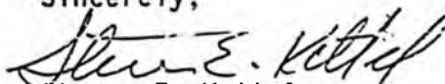
To obtain the credit, you must apply for a waiver of the placed in service rule and send us the following information:

- (1) the status of the construction and verification that construction is substantially complete as of December 31, 1989;
- (2) current status of the project at the time of application; and
- (3) an explanation of the facts and circumstances that delayed or postponed completion of the project beyond December 31, 1989.

This application should be made prior to March 31, 1990, preferably with your 1989 Fisheries Business Tax Return.

If you have any questions, please call or write us as soon as possible.

Sincerely,



Steven E. Kettel
Director
Income & Excise Audit Division
(907) 465-2320

FINDING OF EMERGENCY

The Department of Revenue, Income and Excise Audit Division finds that an emergency exists and the attached regulation is necessary for the immediate preservation of the public peace, health, safety or general welfare. The facts constituting the emergency are as follows:

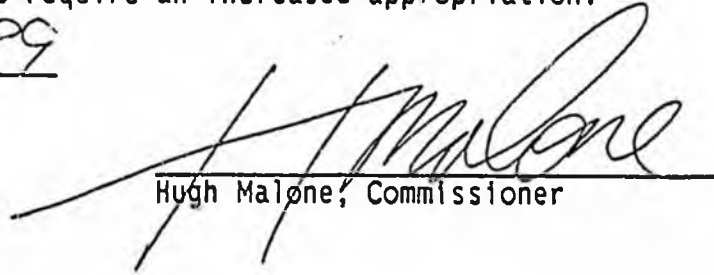
Taxpayers have made considerable capital expenditures in the State to construct fisheries processing facilities and acted in good faith to complete and place the facilities in service by December 31, 1989. Due to unforeseen circumstances, some taxpayers may be unable to fully complete construction of their facilities even though the facilities will be substantially complete by December 31. Since future investment decisions may be contingent on the availability of fisheries business tax credits and time is of the essence, tax credits available to taxpayers as of December 31 must be specified or fixed through this regulation.

ADOPTION ORDER

Under the authority of AS 43.05.080, the regulation is therefore adopted as an emergency regulation to take effect immediately upon filing by the lieutenant governor, as provided in AS 44.62.180(3).

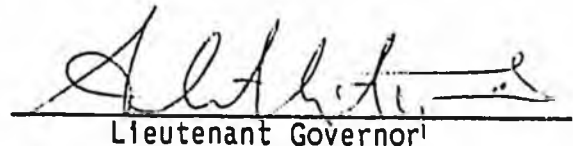
This action is not expected to require an increased appropriation.

DATE: Dec 21, 1989
Juneau, Alaska


Hugh Malone, Commissioner

FILING CERTIFICATION

I, Stephen McAlpine, Lieutenant Governor for the State of Alaska, certify that on December 22, 1989, at 11:30 a.m. I filed the attached regulations according to the provisions of AS 44.62.


Lieutenant Governor

Effective December 22, 1989.
Register 113, April 1990.

Expires April 20, 1990
unless made "permanent"
by the adopting agency.

15 AAC 75 is amended by adding a new section to read:

15 AAC 75.085. EXCEPTION TO PLACED IN SERVICE RULE. (a) A fisheries business is entitled to a credit for those expenditures actually made through December 31, 1989 and approved by the department for improvements made to depreciable property or for new plant construction, even though improvements or construction were not completed and the facility was not placed in service as of December 31, 1989 if the following conditions are met:

(1) the expenditures for the construction of new plant or plant improvements were substantially made on or before December 31, 1989;

(2) facts and circumstances beyond the control of the fisheries business taking the credit delayed or postponed the placing in service of the facility or improvements beyond December 31, 1989;

(3) completion of the improvements or construction, and placement of the improvements or facility into useful service are made prior to December 31, 1990; and,

(4) the fisheries business applies for and receives a waiver from the department as provided in this section from the placed in service rule as provided by 15 AAC 75.080.

(b) On or before the due date of its 1989 fisheries business tax return, a fisheries business shall apply in writing to the department for a waiver from the placed in service rule and provide the following information:

(1) the status of the construction and verification that construction of the facility was substantially complete as of December 31, 1989;

(2) the current status of the construction as of the time of applying for the waiver; and,

(3) a complete explanation of those facts and circumstances that delayed or postponed completion of the construction beyond December 31, 1989.

(c) A fisheries business is not entitled to a tax credit for expenditures made prior to December 31, 1989 if it fails to obtain a waiver from the placed in service rule

(1) prior to claiming credit for those expenditures on its fisheries business tax return; or,

(2) before the due date of the return, whichever is earlier.

(d) For purposes of this section, substantially complete means that more than 50% of the total expenditures for approved improvements or new plant construction were made by December 31, 1989.

(e) Credit is limited in all cases to those expenditures actually made prior to January 1, 1990. (Eff. 12/22/89, Register 113)

Authority: AS 43.05.080
AS 43.75.032
4

Expires April 20 1990
unless made "permanent"
by the adopting agency.

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209

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 3/9/89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 3/14/89

3/9/89

Mr. President:

RESOURCES

Committee considered SB 209

sale of organic and natural foods

and recommended:

- replace with CS SB 209 (Resources) same title
- attached amendment(s) and new title
- _____ letter of intent adopted

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

FISCAL NOTE(S) attached zero fiscal impact
 appropriation no FN attached Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

Arthur Stangorowski

Paul F. Z. [unclear]

[unclear]

OTHER RECOMMENDATIONS

J. Wilson no rec.

Arthur Stangorowski Do Pass
Chairman signature and recommendation

Committee backup attached