

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
6536 SENATE RESOURCES

940

Sec. 27.19. ---. EMERGENCY POWERS. (a) If the commissioner finds, after investigation, that a person engaged in a mining operation is causing, engaging in, or maintaining a condition or activity that presents an imminent or present danger to the health or welfare of the residents of the state or would likely result in irreversible or irreparable damage to the natural resources or environment of the state and the commissioner determines that it would be prejudicial to the interests of the residents of the state to delay action until an opportunity for a hearing can be provided, the commissioner may, by written notice, order that person immediately to discontinue, abate, or alleviate the condition or activity.

(b) On receipt of an order under (a) of this section, the person has the right to be heard and to present proof in opposition to the order of the commissioner.

(c) The commissioner shall schedule a hearing within 10 days of the receipt of the application for a hearing. The scheduling of the hearing does not stay the operation of the order of the commissioner.

(d) After the hearing, the commissioner may affirm, modify, or withdraw an order. The decision of the commissioner is subject to judicial review under AS 44.62.560, and judicial review does not stay the order unless the commissioner agrees.

10.) Consideration of an abandoned mines reclamation program would be worthwhile.

*Abandoned  
mines*

Bill Glude, 4-10-90

# 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

April 9, 1990

The Honorable Bettye Fahrenkamp  
Alaska State Senator  
P.O. Box V  
Juneau, AK 99811

Dear Senator Fahrenkamp:

We are pleased to offer our comments on SB 544, "An Act relating to reclamation of land and water within the state; and providing for an effective date."

The Department of Natural Resources is supportive of the Senate Resource Committee's intention to address the important issue of mine reclamation. Although reclamation language was adopted last session as part of the 6(i) bill (AS 27.05.250), many of the substantive provisions received too little discussion and deferred issues of major statewide importance to the regulation process. SB 544 addresses many of those issues directly.

The department supports the provision to include all lands (state, federal and private) in conjunction with the authority to enter into cooperative management agreements with state agencies, federal agencies or private land owners to implement this act. This should prevent duplication of permitting activities. We further support the inclusion both of locatable minerals and sand and gravel operations.

The department is supportive of the concept of a statutory standard for reclamation in statutes. However, we have not yet had the opportunity to discuss the specific language of AS 27.19.020 to determine if it meets the needs of all the agencies. Likewise, we believe the idea of an "exception for small operators" is good.

The department's major concern with SB 544 is the limitation on the bond. The language in SB 544 parallels that adopted last year (see AS 27.19.050), with the major difference that SB 544 caps the maximum bond at \$750 per acre. We believe this is

Senator Bettye Fahrenkamp

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April 9, 1990

potentially too low to reflect fully the actual reclamation costs should the state be forced to conduct reclamation upon a miner's default.

We look forward to working with you on this issue.

Sincerely,



Lennie Gorsuch  
Commissioner

Enclosure

cc: Commissioner Don Collinsworth  
Department of Fish and Game  
Commissioner Mark Hickey  
Department of Transportation and Public Facilities  
Denby Lloyd, Special Staff Assistant  
Office of the Governor  
Bob Evans, Legislative Liaison  
Office of the Governor

DATE: 4/5/90

FURTHER:

Date of 5-Day Notice: 4-5-90  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4-10-90

Resources

Committee considered

SB 544

Reclamation of land and water within the state; efd.

and recommended:

- replace with \_\_\_\_\_ CS SB544 (RES)  same title  
 new title
- attached amendment(s)
- \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

**ATTACHES NEW FISCAL NOTE(S):**

Department(s)/Date:

Department(s)/Date:

fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

zero fiscal note(s) DNR  
\_\_\_\_\_  
\_\_\_\_\_

appropriation-no fiscal note

Governor's bill w/fiscal note

**SIGNING DO PASS:**

[Signature]  
[Signature]  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_

**OTHER RECOMMENDATIONS:**

None  
NO REC  
~~\_\_\_\_\_~~  
\_\_\_\_\_  
\_\_\_\_\_

[Signature] do pass  
Chair: Signature (and Recommendation)

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

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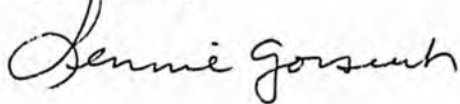
-2-

April 9, 1990

potentially too low to reflect fully the actual reclamation costs should the state be forced to conduct reclamation upon a miner's default.

We look forward to working with you on this issue.

Sincerely,



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Commissioner

Enclosure

cc: Commissioner Don Collinsworth  
Department of Fish and Game  
Commissioner Mark Hickey  
Department of Transportation and Public Facilities  
Denby Lloyd, Special Staff Assistant  
Office of the Governor  
Bob Evans, Legislative Liaison  
Office of the Governor

## FISCAL NOTE

**REQUEST:**

Revision Date: 5/6/90  
Title: Land and Water Reclamation  
Sponsor: Senate Resources Committee  
Requestor: Senate Resources Committee

Agency Affected: Natural Resources  
BRU: Minerals Management  
Components: \_\_\_\_\_

**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						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

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

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

**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared by: Carol Wilson Phone: 465-2400  
Division: Commissioner's Office Date: 5/6/90

Approved by Commissioner: *[Signature]* Date: \_\_\_\_\_  
Agency: Natural Resources

Distribution (by preparer):

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

FISCAL NOTE

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LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Carol Wilson Phone: 465-2100  
Division: Commissioner's Office Date: 5/6/90

Approved by Commissioner: [Signature] Date: \_\_\_\_\_  
Agency: Natural Resources

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

Changes in CS SB 544 (Res)  
have no fiscal impact. This  
fiscal note is appropriate.  
Projections of no fiscal impact  
would continue through 1996.

## FISCAL NOTE

**REQUEST:** \_\_\_\_\_

Revision Date: 4/10/90  
Title: An Act relating to the  
reclamation of land and water  
Sponsor: Resources Committee  
Requestor: \_\_\_\_\_

Agency Affected: Dept. of Fish and Game  
BRU: Habitat  
Components: Habitat

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

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

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

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

**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

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

**ANALYSIS :** (Attach a separate page if necessary) The department does not anticipate a fiscal impact from this bill, because it would allow staff to more effectively focus the attention they are already directing to mining operations. The department would, however, like to reassess the situation at the end of the first year following passage of the bill to determine if additional funding is needed after all. Frank Rue, Director *Frank Rue*

Prepared by: Habitat Phone: 465-4105  
Division: \_\_\_\_\_ Date: 4/11/90

Approved by Commissioner: *Walter J. Kelly* Date: 4/11/90  
Agency: Department of Fish and Game

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

20-0  
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SB 544 Relating to reclamation  
of land + water

(file enclosed) →

TALKING POINTS FOR FLOOR SESSION.

I INTRODUCED SB 544 PRIMARILY BECAUSE IT PROVIDES A REASONABLE STANDARD FOR RECLAMATION OF LAND AND WATER AND IT ESTABLISHES A REASONABLE BONDING REQUIREMENT ONLY IN THE EVENT THAT A MINING OPERATION FAILS TO FOLLOW AN APPROVED RECLAMATION PLAN.

THE SENATE RESOURCES CS CHANGES THE TITLE TO HELP ENSURE THAT IMPORTANT PROVISIONS OF THE BILL REMAIN INTACT.

IT ALSO ADDS WILDLIFE HABITAT TO THE ALLOWABLE USES TO WHICH THE LAND MAY BE UTILIZED AFTER THE MINING OPERATION OCCURS.

WITHOUT THIS BILL, THE DIVISION OF MINING HAS NO GUIDELINE TO FOLLOW WHEN WRITING REGULATIONS THAT WILL AFFECT THE MINING INDUSTRY.

ALSO, WE CAN EXPECT MINING WASTE TO BE ADDRESSED IN FEDERAL LAW WITHIN THE NEXT COUPLE OF YEARS. IT IS IMPORTANT THAT WE HAVE OUR PLAN IN PLACE.

FOR THOSE REASONS, IT IS IMPORTANT WE PASS THIS LEGISLATION. IT IS A STARTING POINT TO SET IN PLACE A PLAN WHICH CAN BE FINE TUNED THE NEXT LEGISLATIVE SESSION. WE SIMPLY DO NOT HAVE TIME TO DEVELOP THE LEGISLATION TO ADDRESS EVERY CONCERN ANYONE MAY HAVE.

I URGE YOUR SUPPORT FOR THIS BILL.

⊖ Fiscal note - DNR

## BRIEF HISTORY OF RCRA AND MINE WASTE REGULATORY DEVELOPMENT EFFORT

### RCRA History

- 1976 Resource Conservation and Recovery Act (RCRA) was enacted. Congress made a distinction between solid wastes, e.g. High volume, low hazard as in municipal wastes (RCRA Subtitle D) and hazardous wastes (RCRA Subtitle C).
- 1980 Comprehensive Environmental Response and Liability Act (CERCLA) and "Superfund" is enacted, which ultimately has affected several old mining facilities.
- 1980 Solid waste disposal act passes congress with the "Bevill Amendment" which specifically excludes mining wastes from regulation under RCRA Subtitle C until further studies by EPA.
- 1985 EPA provides congress with the report requested in 1980 (Report to Congress #1, Dec. 1985). Report describes the health and environmental effects from a group of mining segments, focusing on the largest waste generators.
- 1986 EPA publishes a regulatory determination that the following miners should be regulated as solid wastes under Subtitle D of RCRA: base and precious metals, phosphates, oil shale, asbestos and overburden from uranium.
- 1988 Western Governors' Association forms the Mine Waste Task Force to provide guidance to EPA on a suitable mine waste management framework and program.
- 1988 EPA distributes "Draft Strawman", an informal package of mining waste regulatory concepts. These were released to generate public discussion and input to EPA in regulatory development.
- 1989 WGA Mine Waste Task Force released for public response Recommended Changes to the EPA Strawman (March 21, 1989).

## Projections

- 1990 EPA plans to release a "Strawman #2" early 1990 and will very likely hold public discussions shortly after this release.
- 1990-91 Congress is expected to take up RCRA Reauthorization and pass an amended act with changes specifically dealing with mine waste.
- 1990-91 Based upon RCRA Reauthorization and the ongoing regulatory development, EPA projects it will publish Notice of Proposed Rulemaking for Mine Wastes late in the year.

**DRAFT**

**SUMMARY OF MAJOR MINE WASTE  
REGULATORY ISSUES:**

**A COMPARATIVE ANALYSIS**

**REVISED DECEMBER 18, 1989**

**Mine Waste Task Force  
Western Governors' Association**

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**SUMMARY OF MAJOR MINE WASTE  
REGULATORY ISSUES:**

**A COMPARATIVE ANALYSIS**

**Revised, December 18, 1989**

**INTRODUCTION**

During the summer of 1989, members of the Western Governors' Association's (WGA) Mine Waste Task Force met with representatives of their state's environmental community and industry associations to elicit comments on the Task Force's proposed changes to EPA's spring 1988 "Strawman" regulations for non-coal mining wastes.

As a result of these meetings and written comments which were also provided, a number of major mine waste regulatory issues and perspectives were identified. In late October 1989, the twenty-one state Mine Waste Task Force reconvened to discuss the comments they had received, and to reevaluate their recommendations to EPA.

This revised document updates an earlier draft dated October 16, 1989. Revisions to the earlier draft are noted in UPPERCASE. The revisions were made at the WGA Mine Waste Task Force meeting on October 23, 1989 after consideration of the comments provided by interested parties.

## REFERENCES

The documents, meeting notes and references listed below were used to compile the following issues analysis. Please note: Each reference identifies the individual who transmitted the comments, who that individual represents, to whom the comments were addressed and the date of the transmittal.

- |      |  |      |  |
|------|--|------|--|
| (1)  | Strawman Regulations for Mine Waste, U.S. Environmental Protection Agency, "Preliminary Working Draft", May 31, 1988.  | (13) | Gary W. Lynch, Oregon Department of Geology and Mineral Industries, memo to Debbie Welles and Don Ostler, "WGA/AMC Meeting", September 26, 1989.   |
| (2)  | Western Governors' Association (WGA), Mine Waste Task Force, "Draft States' Revisions to EPA Strawman", March 21, 1989.  | (14) | Bert Doughty, Cyprus Thompson Creek, letter and comments to John Moeller, Idaho Department of Health and Welfare, September 18, 1989.  |
| (3)  | "Addendum to WGA Mine Waste Task Force Revisions to EPA Strawman", September 30, 1989.   | (15) | Norm Greenwald Associates, memo to M.B. Donnelly, Newmont Mining, "Detailed Comments on Western Governors' Association Strawman Proposal", August 14, 1989.  |
| (4)  | Notes from EPA-Environmental Groups Network meeting of September 26, 1989, Denver, CO (R.D. Andrews)   | (16) | Gary Broetzman, Colo. Dept. of Health, memo to file, "Meeting with Colorado Mining Association on WGA Mining Waste Regs.", September 11, 1989.   |
| (5)  | Notes from EPA-Industry Representatives meeting of September 27, 1989, Denver, CO (R.D. Andrews)   | (17) | Gary Broetzman, Colo. Dept of Health, memo to Fred Banta, Colo. Mine Land Reclamation, "Meeting with National Environmental Representatives re: WGA Mining Waste Workgroup", August 29, 1989.  |
| (6)  | David B. Crouch, Homestake Mining Co., letter and comments to James Pompy, California Department of Conservation, July 6, 1989.  | (18) | Melinda Kassen, Environmental Defense Fund (EDF), memo/fax to D.G.Welles, WGA, October 13, 1989.   |
| (7)  | Jon B. Marshack, California Regional Water Quality Control Board, memo to Harold Singer, Land Disposal Branch, Division of Water Quality, May 10, 1989.  | (19) | Thomas W. Reese, representing Alaska Center for the Environment, Colorado Trout Unlimited, EDF, Greater Yellowstone Coalition, Manasota-88, Mineral Policy Center, National Audubon Society, Project Environmental Foundation, Sierra Club, Southwest Research and Information Center, and Wyoming Wildlife Federation, letter to Dave Bussard, EPA, October 13, 1989. |
| (8)  | Larry A. Drew, Hecla Mining Co., letter and comments to Debbie Welles, WGA, September 27, 1989.  | (20) | James E. Good, California Mining Association, letter to Darlene Ruiz, California State Water Resources Control Board, September 29, 1989.  |
| (9)  | Michael H. Gibson, Kennecott, Utah Copper, letter and comments to Kenneth L. Alkema, Utah Department of Health, September 20, 1989.  | (21) | Curtis McVee, Alaska Miners Association, Inc., letter to Gerald Gallagher, Alaska Department of Natural Resources, October 4, 1989.  |
| (10) | David C. Ridinger, Arizona Mining Association, letter and comments to Randolph Wood, Arizona Department of Environmental Quality, September 22, 1989.  |      |  |
| (11) | Leroy E. Kissinger, Arizona Department of Mines and Mineral Resources, letter to Mike J. Doyle, Arizona Department of Environmental Quality, September 25, 1989.   |      |  |
| (12) | "Comments of the Precious Metals Producers Regarding the Western Governors' Association Revision of the EPA Strawman Mining Waste Regulation", submitted by FMC Corporation (9/13/89), American Barrick Resource Corp, and Echo Bay Mines, Ltd. (8/17/89). |      |  |

(continued on next page)

## REFERENCES (continued)

- (22) James A. Joy, III, South Carolina Department of Health and Environmental Control and Patrick T. Walker, South Carolina Mining and Reclamation, memo to D.G. Welles and Richard Andrews, "Comments from Environmental Groups and Industrial Representatives on WGA Strawman (3/21/89)," October 13, 1989.
- (23) Krishna Parameswaran, ASARCO, letter to D. G. Welles, WGA, October 13, 1989. (incomplete review, received 10/16/89)
- (24) Robert Oringdulph, Colorado Aggregate Company, Subsidiary of Hecla Mining Company, letter to Richard Mitzelfelt, New Mexico Environmental Improvement Division, October 5, 1989. (also see reference (8), Hecla Mining)
- (25) Jeremy Craft, Florida Division of Resource Management, memo/fax to Debbie Welles, "Meeting with Industry (Phosphate)", October 16, 1989. (incomplete review, received 10/16/89).
- (26) Phil Hocker, Mineral Policy Center, telephone conversation with D.G. Welles, October 13, 1989.
- (27) Rob Walline, EPA, National Mine Waste Program Coordinator, personal communication with R.D. Andrews, August-October 1989.
- (28) David R. Cole, Colorado Mining Association, letter to Fred R. Banta, Colorado Mined Land Reclamation Division, October 4, 1989.
- (29) David P. Kimball, III, Gallagher and Kennedy for Cyprus Minerals Company, letter to Michael Doyle, Arizona Department of Environmental Quality, October 4, 1989. (same attachment as reference 14)
- (30) Scott A. Crozier, Phelps Dodge Corporation, letter and comments to Michael Doyle, Arizona Department of Environmental Quality, October 4, 1989.
- (31) Rick Englemann, Wyoming Land Quality Division, letter to D.G. Welles, WGA, October 11, 1989.
- (32) Jack Christiansen, Utah Mining Association, letter to Kenneth L. Alkema, Utah Department of Health, August 18, 1989.
- (33) Michael Doyle, tabular summary of comments received by State of Arizona on WGA strawman, received by WGA October 23, 1989.
- (34) Record of discussion and decisions made by full WGA Mine Waste Task Force, October 23-25, 1989 for incorporation into the Task Force's subsequent draft recommendations on EPA's "Strawman" regulations.

NOTE: Additional information on the American Mining Congress recommendations for a mine waste regulatory program can be found in the AMC document entitled "State Mining and Mineral Processing Waste Management Plans," July 1988.

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

**ISSUE: How should State Issued Permits or Approvals be structured?**

**REFERENCE: 40 CFR XXX, Section C and D.**

<b><u>EPA</u></b>	<b><u>WGA TASK FORCE STATES (*)</u></b>	<b><u>MINING INDUSTRY</u></b>	<b><u>ENVIRONMENTAL GROUPS</u></b>
Comprehensive multi-media permit;(1)	<u>No</u> comprehensive permit required except at state's option;(2)	<u>No</u> comprehensive permits;	Master or consolidated permit;
Referencing to other exiting permits is acceptable;(1)	Multiple permits or approvals can constitute a "permit";(2)	Incorporation of multiple permits by reference not necessary;	Other permits incorporated "by reference" is acceptable; State wide general permits or reference to control regulations are <u>not</u> acceptable;
Waste unit management permits rather than facility permits. (1)(27)	Waste unit or facility permits are both acceptable, at the option of states.(2)	Prefer facility wide permit, <u>not</u> waste unit permit;	Want waste unit specific permits.
	PERMITS SHOULD BE FEDERALLY ENFORCEABLE THROUGH STATE PLAN CODIFICATION BY EPA. (34)	Want life of operation permit with periodic review.	Permits must be federally enforceable. (4)(17)(19)

Note: \* The "WGA Task Force States" represented in this column include twenty-one states of the Mine Waste Task Force, many of them Western Governors' Association member states plus several additional states with significant mining activity.

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

**ISSUE: How should a State Plan be Approved?**

**REFERENCE: 40 CFR Part XXX, Sections B,C,D,E,F & J**

**EPA**

**WGA TASK FORCE STATES**

**MINING INDUSTRY**

**ENVIRONMENTAL GROUPS**

Requires lead agency (1) but concept under review (27).

No lead agency required; lead contact for EPA oversight and intrastate coordination (2).

Some prefer lead agency but others find lead contact acceptable (9); some want a single contact point which must be a state agency (21)

Lead agency is necessary, don't want a coordination entity or lead contact (4) (17).

STATE SELF-CERTIFICATION PROCESS PROPOSED WITH STATE PLAN DEVELOPED IN COOPERATIVE MODE WITH EPA. (34)

Support concept of state self certification (20).

Program approval criteria include interdepartmental coordination, joint decision making, conflict resolution and public participation elements (27).

REQUIRE FULL ARRAY OF PROGRAM, RESOURCES, AND LEGAL CRITERIA TO HAVE A CERTIFIABLE STATE PLAN; STATE FLEXIBILITY EMPHASIZED (34).

Only Part XXY, Subpart D (Performance Standards) should be relevant to state plan approval (15). Plan approval criteria need to allow flexibility and diversity from state to state.

States must demonstrate financial and staff resources to implement State Plan and show sufficient statutory/regulatory authorities (4)(19). States required to establish permit fees to cover permit review and compliance inspection costs (19).

State Plans must be resubmitted every 5 years for review (1) but review cycle is under review (27).

No periodic state plan revisions unless made necessary by changes in federal or state laws, rules or programs. (2)

Implied full plan; no mention of partially approved state plan.

STATES MUST DEVELOP FULL PLAN TO CERTIFY; ONLY PARTIAL PLAN SITUATIONS WOULD BE A RESULT OF EPA REVOCATION OF PART OF A STATE PLAN. (34)

Split opinion on whether a partial state plan should be allowed (5)(8).

Triennial state program review wanted (17).

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

**ISSUE: *What should be the nature and degree of EPA Oversight?***

**REFERENCE: 40 CFR XXX, Section G**

**EPA**

**WGA TASK FORCE STATES**

**MINING INDUSTRY**

**ENVIRONMENTAL GROUPS**

Individual permit review and veto (1). Consideration being given for EPA review of "major permits with EPA permits and enforcement in some limited cases (27).

EPA program oversight based upon state implementing Part XXY standards with mine waste facility site reviews for program evaluation, not for site enforcement; no permit by permit review by EPA or EPA veto. (2)(34)

No site specific review except as part of periodic program audit; (5)

Individual permit and program-wide EPA review, oversight and veto (4)(18).

Annual program audit (minimum frequency) including individual permit audits.(1) Moving toward non-designated periodic program audit frequency (27).

EPA PROGRAM AUDITS TO BE TRIENNIAL UNLESS STATE PLAN CALLS FOR A DIFFERENT FREQUENCY (34).

EPA audits no more frequent than annual (21).

Triennial program audit (minimum) (19).

EPA MUST INTEGRATE AUDITS UNDER THIS PROGRAM WITH OTHER EXISTING PROGRAM AUDITS (E.G. NPDES). (34)

EPA WILL FUND THE STATES FOR COSTS RELATED TO EPA PROGRAM AUDITS.(34)

Linkage of degree of federal oversight to federal funding is unacceptable (19).

Limit federal role to program review (not permits) with technical and fiscal support (20).

Citizen option to trigger an EPA audit is requested (26). Want National Applicant Violator System (4).

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

**ISSUE: How should a Federal Program for mine waste be implemented?**

**REFERENCE: 40 CFR XXX and new 40 CFR XXZ**

**EPA**

Not described.(1)

[A key issue under discussion is EPA enforcement of state standards; resolution will be important to EPA program definition.] (27)

**WGA TASK FORCE STATES**

FOR STATES WITHOUT CERTIFIED STATE PLANS UNDER PART XXX OR IN THE EVENT OF STATE PLAN REVOCATION, A SEPARATE 40 CFR PART XXZ IS PROPOSED TO DEFINE THE EPA STATE-SPECIFIC PROGRAM IMPLEMENTATION GUIDELINES (34).

PRINCIPLE ELEMENTS OF AN EPA IMPLEMENTED STATE PLAN ARE:

- EACH PLAN IS STATE-SPECIFIC, NOT GENERIC
- EPA DEVELOPS PLAN IN COOPERATION WITH STATE
- PLAN UTILIZES TECHNICAL CRITERIA OF PART XXY
- FEDERAL PLAN MUST NOT DUPLICATE ELEMENTS OF PLAN THAT ARE ALREADY EFFECTIVELY IMPLEMENTED BY STATE
- ENFORCES EXISTING STATE STANDARDS WHEN ADEQUATE OR MORE STRINGENT
- 10 YEAR LIFE RENEWABLE PERMITS
- PUBLIC NOTICES ON INITIAL PERMIT AND SUBSEQUENT MAJOR CHANGES, CLOSURE CERTIFICATIONS, AND PLAN DEVELOPMENT (34)

**MINING INDUSTRY**

Respondents split on whether partial or full programs should be allowed by states;

Federal program should only fill gaps not already adequately covered by states.(5)

Federal program should not be redundant of programs under other statutes (e.g. CWA, CAA). (5)(20)

Federal program should not be the de facto criteria for approved state programs. (15)(20)

**ENVIRONMENTAL GROUPS**

Federal implementation should include enforcement of state standards when state requirements are more stringent than minimum national standards or criteria. (4)(17)(19)

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

**ISSUE:** *How should the State Plan be Enforced?*

**REFERENCE:** *40 CFR XXX and new 40 CFR XYZ*

**EPA**

**WGA TASK FORCE STATES**

**MINING INDUSTRY**

**ENVIRONMENTAL GROUPS**

**Primacy State:**

EPA could enforce individual permits with 30-day notice to states if state did not act.

STATE ENFORCEMENT IS NORMAL MODE IN CERTIFIED PLAN STATES(34); EPA ENFORCES ONLY IN: (a) CASE OF IMMINENT AND SUBSTANTIAL THREAT TO HEALTH AND ENVIRONMENT, AND (b) WHEN STATE FAILS TO IMPLEMENT ITS STATE PLAN. NOTICE REQUIRED TO STATE BEFORE FEDERAL ENFORCEMENT. (34)

State enforcement in approved states; no federal duplicate enforcement except in imminent and substantial threat.

All state standards, program components, and permits must be EPA enforceable, administratively and through courts; want ability to sue in federal courts; third party suits allowed. (4)(18)

**Non-Primacy States:**

Not described.

EPA ISSUES PERMITS (34)

EPA MUST USE EXISTING STATE STANDARDS IN PERMITS WHEN THEY MEET PART XXY MINIMUMS.(34)

EPA only enforces elements not present in state programs (fills gaps in implementation and enforcement);

Not described explicitly.(4); EPA must enforce state standards even if stricter than federal standards;(18)

**Partial Approval State:**

Not described.

PARTIAL ENFORCEMENT BY STATE WOULD ONLY OCCUR IN EVENT OF A PARTIAL REVOCATION OF STATE PLAN BY EPA. NORMAL STATE CERTIFIED PLAN DOES NOT PROVIDE FOR PARTIAL STATE PLANS.(34)

Same as in non-primacy state.

Opposed to concept of partial approval. (18)(19)(26)

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

**ISSUE: How should Public Participation be structured?**

**REFERENCE: 40 CFR Part XXX and Part XXY**

**EPA**

No description of public participation in EPA administered program (1);

EPA considering requiring a hearing for projects with significant impact or high public interest. (27)

**WGA TASK FORCE STATES**

STATE TO PROVIDE PUBLIC NOTICE AND OPPORTUNITY FOR HEARING ON INITIAL PERMITS OR PROJECT AUTHORIZATIONS, AND FOR SUBSTANTIAL MODIFICATIONS TO PERMITS (34).

Provide for public concerns in corrective action process (2).

STATE TO PROVIDE PUBLIC NOTICE AND OPPORTUNITY FOR HEARING ON DEVELOPMENT OF AND REVISIONS TO STATE PLAN. (34)

STATE TO PROVIDE PUBLIC NOTICE PRIOR TO STATE ACCEPTANCE OF CERTIFICATION OF CLOSURE FROM OPERATOR.(34)

EPA TO PROVIDE PUBLIC NOTICE OF A STATE'S PLAN CERTIFICATION PRIOR TO EPA CODIFICATION OF THE STATE PLAN.(34)

EPA AUDITS OF STATE PROGRAMS MUST FOCUS ON STATE'S ABILITY TO SOLVE PROBLEMS. ONE MEASURE IS STATE RESPONSES TO CITIZEN COMPLAINTS. (34)

**MINING INDUSTRY**

Public participation generally adequate in most states now; notice or hearings on initial permits acceptable but not on renewal of permits if facilities are in compliance; public involvement with major permit changes but no hearings/notice necessary on minor permit modifications. (5)

Opportunity for public comment needed in developing state plans or amending plans. (21)

**ENVIRONMENTAL GROUPS**

Thorough public participation on state program approval, standards setting, individual permits, enforcement actions; states need judicial and administrative penalties; want third party consent orders provisions; expanded public notice on permits and violations and on modifications; open records. (4)(17)(19)

Also want public notice of state program audits and opportunity for public comment. (19)

Want right to: (a) petition EPA to modify, suspend or revoke state program approval or veto a state site specific permit; and (b) challenge any state site-specific permit enforcement action in state administration & judicial system.(19)

Want citizen option to petition/call for a mandatory site inspection with good reason. (26)

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

ISSUE: **What Mineral Segments & Activities should be covered?**

REFERENCE: 40 CFR XXY, Subpart B

**EPA**

Only extraction and beneficiation wastes from 1st Report to Congress (RTC) minerals; not including active phase of heap and dump leach; not including processing wastes. (1)

Make dump & heap leaching regulated activities; potentially include some non-hazardous processing wastes. (5)(27)

**WGA TASK FORCE STATES**

MINE WASTES TO BE REGULATED ARE: EXTRACTION, BENEFICIATION AND PROCESSING MATERIALS WITH A POTENTIAL TO CONTAMINATE WATER, AIR OR SOILS AND WHICH ARE NOT OTHERWISE REGULATED UNDER SUBTITLE C. WHICH MATERIALS DERIVED FROM METALLIC ORES OR MINERALS, INCLUDING URANIUM MINING (BUT NOT URANIUM BENEFICIATION OR PROCESSING), PHOSPHATE ROCK AND OIL SHALE (34)(2).

MATERIALS GENERATED FROM EXPLORATION ACTIVITIES ARE EXCLUDED. (34)

THE MINE WASTE DEFINITION INCLUDES BOTH OPERATIONAL AND CLOSURE PERIODS OF HEAP AND DUMP LEACH FACILITIES, AND STORED MATERIALS WITH A POTENTIAL TO POLLUTE, e.g. ORE PILES.(34)

**MINING INDUSTRY**

Extraction and beneficiation wastes, from minerals as listed in the EPA First RTC should be regulated.(5)(6)(8)(9)(12)(14)(15) Some also want processing wastes included which are still Bevill exempt. (9)(5)

All object to including active heap and dump leach until leaching is complete. (5)(6)(8)(9)(12)(14)(15)(20) One respondent accepts regulation of design of new heap and dump leach units but not operational regulation. (9) Several respondents object to regulation of ore or low grade ore stockpiles. (5)(12)(20) Some object to possible regulation of mine drainage. (6)

Notice and evaluation necessary before expanding scope beyond 1st RTC minerals. (5)(21)

Mine waste as backfill should be excluded. (21)

**ENVIRONMENTAL GROUPS**

No comment on specific mineral segments. (4)

Want heap and dump leach wastes regulated. (4)(17)(18)

Suggestion that exploration waste be covered. (4)

No comments yet on low grade ore stockpile inclusion as wastes.(4)

Favor including toxic mine drainage as waste. (18)(26)

Note: First Report to Congress (RTC) (Dec. 1985) includes extraction and beneficiation mine wastes from base and precious metals, phosphate, asbestos, uranium (overburden only) and oil shale.

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

**ISSUE: Which Operational Categories should be regulated?  
Active, Inactive, Abandoned ?**

**REFERENCE: 40 CFR Part XXY, Subparts B, C and others**

**EPA**

Regulate only new and existing active waste units, but not inactive or abandoned units.(1)

The option of regulation of inactive units on an active site is being considered. (27)

**WGA TASK FORCE STATES**

Regulate new units and existing units, including ONLY active operational status (34); definitions of active, inactive and new units are provided (34);

**ABANDONED AND INACTIVE MINE WASTES ARE NOT REGULATED UNDER THIS RECOMMENDATION UNLESS THE UNITS ARE REACTIVATED. HOWEVER, INACTIVE AND ACTIVE WASTE UNITS ON THE SAME SITE MAY REQUIRE REGULATION AS ONE UNIT IF INDIVIDUAL WASTE UNIT IMPACTS CANNOT BE DISTINGUISHED. (34)**

**THERE IS A NEED TO REMEDIATE SOME NON-COAL ABANDONED AND INACTIVE MINE WASTES. HOWEVER, RCRA, IN ITS CURRENT FORM, IS NOT SEEN AS THE APPROPRIATE LEGAL TOOL. THE STATES RECOMMEND MORE EVALUATION OF REGULATORY AND CORRECTIVE OPTIONS FOR NON-COAL ABANDONED AND INACTIVE MINE WASTE PROGRAMS. THE STATES AGREE THAT REMINING, MINE WASTE REPROCESSING, CLOSURE AND RECLAMATION PROGRAMS SHOULD BE ENCOURAGED. ANY NEW PROGRAMS SHOULD BE STATE OPERATED. (34)**

**MINING INDUSTRY**

Several respondents say regulate only existing active and new units, recognize differences in performance standards, criteria and closure requirements whether new, or existing (10) (20); don't regulate abandoned units. (5)(8)(21)

Some accept including inactive units but want flexible closure triggers (9) or clearly distinct standards/criteria (9) (14)

Need to encourage reprocessing and re-mining; don't treat old mining areas as new or require operators to bear entire responsibility for old areas when re-mining. (20)(21)

**ENVIRONMENTAL GROUPS**

Regulate all units at active sites; regulate inactive sites where responsible party is known; no statement on abandoned; (4)(17)(18)

Suggestion offered that exploration waste should also be covered. (4)

All active, inactive and abandoned units at a (active) site operated by a single permittee shall be subject to regulation. All units at an inactive site (not connected to active site) should be regulated when owner/operator is known. (19)

**Note: Others recommend that the regulations should not retroactively regulate waste units that were established under different rules; hence, do not include inactive or abandoned wastes and carefully consider how rules are applied to existing units.(11)**

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

**ISSUE: What should be the General Approach to Performance Standards?**

**REFERENCE: 40 CFR Part XXY, Subpart D**

**EPA**

Use concept of Performance Goals (1);

Include standards for ground water, surface water and air (1);

Considering including a performance standard for soils and putting structural stability requirements in design/operating criteria (Subpart E). (27)

**WGA TASK FORCE STATES**

Use performance standards not goals (2);

Include standards for ground water, surface water, air, soils, direct contact and structural stability.(2)

Broad flexibility in adopting existing state and federal standards with back up procedures in absence of existing state or federal standards.(2) ESTABLISH A CLEAR HIERARCHY FOR SETTING STANDARDS WHICH RELIES FIRST ON STATE SPECIFIC STANDARDS. USES SITE SPECIFIC RISK STANDARDS AS LAST CHOICE APPROACH. DEFERS TO EXISTING MEDIA SPECIFIC PROGRAM (e.g. CLEAN AIR ACT) STANDARDS.(34)

ALLOWS FOR DISTINCTION IN COMPLIANCE SCHEDULE BETWEEN EXISTING ACTIVE AND NEW MINE WASTE UNITS.

**MINING INDUSTRY**

Standards should focus on ground water, not surface water or air.

Several object to soils standards.

More beneficial use basis should be emphasized.

Object to including standards for surface water and air, duplication of existing federal media specific laws. (5)(20)

Concern that standard setting "checks & balances" of CAA, CWA, SDWA will be by compromised, particularly in air performance standards.(5)

Should allow flexibility, not prescribe national minimum standards. Should consider site-specific conditions and risks in setting performance standards. (20)

Should differentiate between "existing" and "new" facilities with standards. (20)

**ENVIRONMENTAL GROUPS**

Don't want MCL's since this pre-allows degradation. Prefer MCLG's or a non-degradation policy. Like inclusion of soils and stability standards.

Concern that "risk based assessment" process will not work due to lack of resources and information, process predicted to become snarled in fate and transport arguments. Seem to prefer more specific minimum national design and operating criteria. (4)(17)

Use performance standards in conjunction with minimum national design & operating criteria. (18)

States shall retain authority to adopt standards more stringent than EPA. (19)

"No migration of contaminants from any mining units throughout the life of facility and its post-closure period." (19)

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

**ISSUE: Should Performance Standards be Different for Different Operational Categories?**

**REFERENCE: 40 CFR Part XXY, Subparts D, E and others**

**EPA**

No distinction; EPA only proposes to regulate new and existing (active) waste units. (1)

No mention of inactive or abandoned waste units (not included in proposed regulation). (1)

EPA is considering different criteria and timing for different classes of units. (27)

**WGA TASK FORCE STATES**

Same standards apply to all new and existing units, but existing units have 5 years to meet standards; new unit must meet standards on effective date of regulations. (2) INACTIVE AND (34) abandoned units would not be regulated under this program (2) UNLESS UNITS ARE REACTIVATED. (34)

CONSIDERATION SHOULD BE GIVEN TO REGULATION OF INACTIVE WASTE UNITS FOR WHICH IMPACTS CANNOT BE SEGREGATED FROM ACTIVE WASTE UNITS. (34)

ALLOW FOR DISTINCTION IN COMPLIANCE SCHEDULE BETWEEN EXISTING ACTIVE AND NEW WASTE UNITS. THE CORRECTIVE ACTION PROCESS IS A PRIMARY MECHANISM TO DEAL WITH EXISTING ACTIVE UNIT COMPLIANCE. CORRECTIVE ACTION PROCESS RESULTS IN APPLYING BEST PRACTICABLE TECHNOLOGY FOR INDIVIDUAL SITES.(2)(34)

**MINING INDUSTRY**

Definite need to distinguish applicable standards between new, existing and inactive waste units; to apply "new" standards to existing units would be technically and economically impossible and sometimes environmentally unsound.

Strong objection to inactive closure trigger of 24 months; should be flexible or much longer, perhaps 10 years. (10)

Abandoned units should not be regulated under RCRA-D.

Cessation of activity should not trigger closure; it should be decision to abandon by operator. (21)

**ENVIRONMENTAL GROUPS**

Not commented on except that inactive and active units should both be regulated. (4)(17)

Do not want relaxation of standards for any operational category. (26)

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

**ISSUE: How should Ground Water Performance Standards be set?**

**REFERENCE: 40CFR Part XXY, Subpart D**

<b><u>EPA</u></b>	<b><u>WGA TASK FORCE STATES</u></b>	<b><u>MINING INDUSTRY</u></b>	<b><u>ENVIRONMENTAL GROUPS</u></b>
<p>Hierarchy established for standards:            (a) SDWA MCL's;            (b) Health based, risk assessment standard. (1)</p>	<p>Use state standards system or fall back to proposed EPA hierarchy to set standards if no state standards exist. (2)            Provides for standards based on beneficial uses, GW classification systems or other state GW quality protection control systems.(2)</p>	<p>Beneficial use and background quality must be accommodated. (5)</p>	<p>Preferred performance standard is "no discharge" to groundwater. Otherwise prefer MCLGs for new or expansion units, MCLs for units with existing contamination. (18) Prefer MCLG's over MCL's since goals do not include economic and technical factors. (4)</p>
<p>or            (c) Background concentration if MCL or risk based standard is exceeded in existing groundwater. (1)</p>	<p>Use background concentration WITH A ALLOWABLE STATISTICAL DEVIATION (34) as standard if STATE STANDARD MCL, or risk based standard is exceeded in existing ground water.(2)</p>	<p>Respondents object to using background concentration as standard when MCL or other standards do not exist. Need some flexibility from such an absolute limit.(5)</p>	<p>Don't accept existing condition as necessarily same as background due to problem of past contamination by mining. (4)(17)</p>
		<p>Should not require improvement over natural or ambient levels of contaminants. (21)</p>	<p>Natural background concentrations to be established at all mining waste units or, where technically or practically infeasible, apply best professional judgement. (19)</p>

Note: A. Others advise to protect the ground water resource by beneficial use based standards and non-degradation policies. States should be allowed flexibility to use different standards, other than MCL's which don't necessarily protect the resource and may result in degradation. (7)

B. MCL mean "maximum contaminant level".

C. MCLG means "maximum contaminant level goal".

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

**ISSUE: How should Surface Water and Air Performance Standards be set?**

**REFERENCE: 40 CFR Part XXY, Subpart D**

**EPA**

For surface water, defer to Clean Water Act based standards ("goals" in EPA Strawman) but provide for setting new standards in absence of existing standards. (1)

For air standards (EPA uses "goals"), refers to Clean Air Act SIP but also requires examination of other emissions, including fugitive dust, for other unregulated CAA pollutants. Uses health based risk assessment methods for new standards (implies site by site basis). (1)

**WGA TASK FORCE STATES**

For surface water defer to Clean Water Act state surface water quality standards, NPDES, and area wide management plans and don't duplicate. (2)

For air standards defer to Clean Air Act, and don't duplicate existing standards but provide for setting new standards in absence of CAA standards ON A PERMIT SPECIFIC BASIS. (34) Use health based or environmental risk assessment methods for any new standards on site by site basis. (2)(34)

**MINING INDUSTRY**

Most respondents recommend relying solely on existing federal and state programs, several suggest to delete air and surface water sections entirely. Most respondents are very concerned that RCRA should not be used to set air or water standards outside of the normal processes of media specific laws (CAA, CWA, SDWA). Concern is that established scientific, technical checks and balances could be ignored and invalid standards could result.(5)(20)

**ENVIRONMENTAL GROUPS**

Want the air and surface water media standards included. Incorporation of existing CAA, CWA standards by reference is OK. Desire ability to set standards beyond, CWA, CAA (NESHAPS or CAA criteria pollutants) if needed on site by site basis.(4)(17)

Must establish and enforce standards for mine process waters. (19)

Note: CAA means Clean Air Act; CWA means Clean Water Act; SDWA means Safe Drinking Water Act.

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

**ISSUE: How should Soils Performance Standards be established?**

**REFERENCE: 40 CFR Part XXY, Subpart, D and H**

**EPA**

Not included in original strawman.

Indications that it may be adopted as a media to regulate. (4)(27)

**WGA TASK FORCE STATES**

New section on soils added by WGA. (2)  
Focus is on on-site soil preservation and off-site prevention of contamination.(3)

SPECIFIC PROVISIONS ARE INCLUDED TO ALLOW AND REGULATE LAND APPLICATION OF MINE WASTES AS A SOIL AMENDMENT OR A WASTE TREATMENT PROCESS IF ALL PERFORMANCE STANDARDS ARE MET. (34)

Requirements provide for soil preservation for closure purposes. (3)

NO NATIONAL NUMERIC SOILS STANDARDS ARE TO BE SET. ALL SUCH STANDARDS WILL BE ESTABLISHED BY THE STATE, NORMALLY BASED ON SITE SPECIFIC EVALUATIONS. (34)

A PROVISION HAS BEEN ADDED TO RECOGNIZE AND ADJUST FOR NATURALLY OCCURRING ELEVATED CONCENTRATIONS OF CONTAMINANTS. (34)

**MINING INDUSTRY**

Some respondents agree that soil is a suitable media for performance standards (14) if limited to the post closure period (9).

Some feel soils standards should be deleted (10) (15) or only dealt with as reclamation material (16).

Some express concern that bio-accumulation and bio-concentration statements may not be achievable due to natural deep rooted plants which predominate in arid lands. (8)(6)  
Requirements may also conflict with existing reclamation and revegetation laws in states.

Regulations must accommodate natural background elevated levels of "contaminants" in mining areas. (8)

**ENVIRONMENTAL GROUPS**

Agree with including soils performance standards.(4)(17)

EPA and state program regulations must establish and enforce soil standards for both the mine waste processing unit and the mine reclamation site. (19)(26)

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

**ISSUE: How should Design and Operating Criteria be established?**

**REFERENCE: 40 CFR Part XXY, Subpart E**

**EPA**

EPA includes detailed design/operating criteria for specific types of mine waste units (e.g. impoundments, piles). (1)

No comment on mixing hazardous waste with mine waste. (1)

**WGA TASK FORCE STATES**

Most of EPA's detailed design and operating requirements for specific types of waste units are removed. (2)

Specific design and operating criteria for heap and dump leach units are included. (2)

The "location specific" criteria are retained to allow for state specific and site specific application. (2)

A "RESPONSE TO DESIGN FAILURE MECHANISM" HAS BEEN ADDED TO SUBPARTS F AND G. (34)

MIXING OF SMALL QUANTITIES OF HAZARDOUS WASTES OR OTHER HAZARDOUS WASTES WHICH ARE GENERATED OFF OF THE MINE WASTE FACILITY SITE WITH SUBTITLE D REGULATED MINE WASTES IS NOT ALLOWED. (34)

**MINING INDUSTRY**

Generally prefer WGA version over EPA version (5); suggest shortening "specific location" criteria to a general requirement for review of main WGA list of factors. (8)

No time limits should be set for attaining compliance. (21)

All wetland elements should be deleted (defer to existing programs).(21)

Concerned that floodplain limits would eliminate placer mining. (21)

Most respondents object to the hazardous waste admixture prohibition; they argue that mixing is a valid and acceptable disposal method.

One respondent suggests to only prohibit mixing of hazardous or small quantity generator wastes from off-site unrelated sources.

**ENVIRONMENTAL GROUPS**

Favor EPA or more detailed minimum national acceptable design & operating standards (BAT requirements); variances allowed on "performance equivalency assessment" basis; don't want to allow "controlled release", want "containment" philosophy in defining minimum acceptable design. (4)(17)

Need a "reponse to design failure" mechanism (which is seen as different from corrective action process); (4)(17)(19)(26)

Want more stringent, nationally defined siting (location specific) criteria (find WGA version too loose).(4)(17)(19)

No comment yet on mixing hazardous wastes with mine wastes.(4)(17)

Agrees with WGA position on prohibition of mixing hazardous waste with mining waste. (26)

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

**ISSUE: How should Monitoring and Verification be structured?**

**REFERENCE: 40 CFR Part XXY, Subpart F  
and related areas of Subpart D**

**EPA**

**WGA TASK FORCE STATES**

**MINING INDUSTRY**

**ENVIRONMENTAL GROUPS**

Original Strawman combined elements of corrective action with monitoring and media protection standards. (1)

Point of compliance is determined by regulatory authority. For groundwater this must be in the uppermost aquifer and within property boundary of facility. (1)

Point of compliance to be established site by site by regulatory authority at representative location(s) (2);

For groundwater, use of "uppermost aquifer" is eliminated as sole point of compliance since all groundwaters are of interest (2);

Property boundary is eliminated in favor of "close.. to preducted lifetime boundaries" of waste unit.(2)

No definite provisions are made for distinguishing "early warning monitoring" versus "compliance monitoring".(2)

A "RESPONSE TO DESIGN AND OPERATING CRITERIA SYSTEM FAILURE" MECHANISM HAS BEEN ADDED TO DETECT PROBLEMS AND RESPOND BEFORE MEDIA PERFORMANCE STANDARDS VIOLATIONS REQUIRE CORRECTIVE ACTION. (34)

Point of compliance to be determined site by site, proposed by operator, approved by regulatory agency based on all relevant factors (9);

Upper most aquifer should be GW point of compliance, not all groundwaters (8);

One respondent suggests an exemption for "zero discharge" facilities from GW monitoring (14)

One respondent is concerned with applying financial guarantees to corrective action (14).

Point of compliance at unit boundary (or disturbed area) or as close as reasonably feasible. (18)

Point of compliance: "the most likely points of discharge at the edge of the unit." (19)

Point of compliance as close to unit as possible rather than at "artificial distant point" which would allow for mixing zone and only detect violation after significant pollution had occurred. (4)

A "response to system failure mechanism" is needed to deal with problems which must be solved before they result in need for corrective action. (4)

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

**ISSUE: How should Corrective Action be Implemented?**

**REFERENCE: 40 CFR Part XXY, Subpart G**

**EPA**

Any exceedance (violation) of standard triggers corrective action study. (1)  
(originally found in Subpart F)

Corrective Action Standards (See Subpart F) are set at time of violation and can be different from performance standards in Subpart D. (1)

**WGA TASK FORCE STATES**

The original EPA Strawman is completely revised and reorganized. (2)(3)(34)

Any performance standard exceedance (violation) triggers a corrective ACTION. (2)

Similar CORRECTIVE ACTION REGULATIONS for all regulated media. (2)

Standards to be met in corrective action are same as performance standards for operation and closure.(2)

A NEW SECTION DEALING WITH CORRECTIVE ACTION FOR DESIGN AND OPERATING CRITERIA (SYSTEM FAILURES) HAS BEEN ADDED. (34)

RECOMMENDED REGULATIONS FOR SOILS AND STRUCTURAL STABILITY HAVE BEEN ADDED. (3)(34)

**MINING INDUSTRY**

Trigger for corrective action should be a "statistically significant" violation not just any violation of any standard. (8)(9)(12)

Violation consideration must consider background. (21)

Recommend determination that "violation" is real and significant before performing corrective measures study. (8)  
Acceptance of closure by regulatory authority should render corrective action program inapplicable. (12)

One respondent suggests study only be required in "verified significant" exceedance with "significant threat to human health & environment". (10)

**ENVIRONMENTAL GROUPS**

Too many "exit ramps" provided in WGA Strawman. Concerned that WGA corrective action process is too cumbersome, with too many opportunities for extension of compliance. (4)

Want greater public participation and notification of impacted parties (in and near contaminated zone). (4)

Concerned that regulatory agency releases without clean up could jeopardize subsequent CERCLA actions. (4)  
Clean up standards must not be just to MCL's which imply pollution up to worse than background, want more protective standards to apply. (4)

Trigger for remediation study to be "detection of any statistically significant levels above established natural ambient background levels." Remediation commences: (a) when necessary to meet standards or if standards not applicable, (b) when contaminant levels exceed risk level for remediation at hazardous waste sites. (19)

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

**ISSUE:** *How should Closure and Post Closure plans be structured?*

**REFERENCE:** *40 CFR Part XXY, Subpart H*

**EPA**

Separate plans required for closure and post closure. (1)

**WGA TASK FORCE STATES**

Closure and post closure plans ARE COMBINED INTO A SINGLE PLAN, as in many existing state programs. (2)

24 months of inactivity is the trigger on any regulated waste unit to require initiation of closure. (2)

CLOSURE PLANS MUST BE SUBMITTED WITHIN ONE YEAR AFTER STATE PLAN CERTIFICATION FOR EXISTING WASTE UNITS OR PRIOR TO CONSTRUCTION OF NEW WASTE UNITS. (2) TIME EXTENSIONS FOR EXISTING WASTE UNITS ARE ALLOWED WITH GOOD CAUSE AND WITH A DEFINITE APPROVED SCHEDULE. (34)

PUBLIC NOTICE BY STATE IS PROVIDED PRIOR TO STATE ACCEPTANCE OF CERTIFICATION OF CLOSURE BY OPERATOR. (34)

**MINING INDUSTRY**

Support combined closure and post closure plan concept. (9)

Oppose the 24 month inactivity trigger for closure. (8)(9)(10)(21) One respondent suggests a 10 year trigger is more realistic in the boom-bust mining industry. (10)

Suggestion that a "conceptual" closure plan is sufficient early in mine life with details submitted near actual closure time. (6)

Suggestion that closure time be determined by operator so long as compliance monitoring and enforcement continues. (8)(9)(12)(21)

Oppose continuation of liability despite release of surety and acceptance of closure. (8)(14)

Suggest closure trigger be "recommended" versus required. Need up to 10 yrs closure timelines. (21)

**ENVIRONMENTAL GROUPS**

Nothing in RCRA program should be construed to affect liabilities under CERCLA. (19)

Closure and post closure plans should be a component of initial program permit application for a site. As the operating plan is amended, and closure plan should be updated. Provide for 48 to 60 month inactivity on any waste unit to trigger closure initiation. (26)

- Notes: A. Other regulatory agency commenters note that closure completion approval by regulatory authority should not indicate any transfer of responsibility for environmental protection for owner/operator to regulatory authority. (7)
- B. Closure deadlines are considered unrealistic due to the wide fluctuation of mineral prices and normal swings of inactivity in the mining industry. (11)

**ANALYSIS OF COMMENTS ON THE WGA STRAWMAN REVISIONS**

**ISSUE:** *How should Financial Responsibility requirements be established?*

**REFERENCE:** *40 CFR Part XXY, Subpart I*

**EPA**

Requires financial responsibility coverage by owner/operator for closure, post-closure, and corrective action for known releases. Applies to new and existing mine waste units. (1)

Does not allow salvage value to be credited in closure cost estimate. (1)

**WGA TASK FORCE STATES**

WGA Task Force totally rewrote this Subpart. (2)

Includes "credible accident coverage" requirement plus planned closure and known corrective active surety coverage. (2) CREDIBLE ACCIDENT FINANCIAL ASSURANCE REQUIREMENTS DO NOT APPLY TO STATES THAT HAVE PROVIDED EQUIVALENT ALTERNATIVE FINANCIAL MECHANISMS FOR SUCH CORRECTIVE ACTIONS. (34)

Salvage value not credited in financial responsibility (since most mine salvage is associated with production units, not waste units). (2)

ALL FUNDS PROVIDED BY A SURETY MUST BE UTILIZED AT WASTE UNIT FOR WHICH SURETY WAS ESTABLISHED. (34)

A PREVIOUSLY RECOMMENDED FEDERAL MINE WASTE REMEDIAL ACTION FUND HAS BEEN DELETED SUBJECT TO FURTHER PROGRAM REVIEW FOR ABANDONED AND INACTIVE WASTES. (34)

**MINING INDUSTRY**

Strongly oppose the "credible accident" coverage. (6)(8)(9)(10)(12)(13)(14)(15) Suggest that CERCLA & other laws already cover the credible accident. (8) One respondent suggests a maximum of \$500,000 per operation for credible accident. (8)

Salvage value should be allowed as credit in closure cost estimates and surety determinations. (9)(14)

One respondent opposed all financial responsibility provisions. (10)

Suggested alternative to bonding-generate a "pay-as-you-mine" fund for each facility. (21)

**ENVIRONMENTAL GROUPS**

Surety instrument must not depend on operator payment of premium to be viable. Don't accept "self bonding". (4)

Prefer WGA version over original EPA strawman. (4)

Duplicate bonding avoidance is OK if releases of financial assurance are approved by all jurisdictional entities, no deferral of authority. (4)

Want acts of God covered by financial assurance. (4)

No specific comments on "credible accident". (4) (17)

Surety must cover "chronic releases of contaminants." (19)

Want public notice of proposed release of surety and forum for public objections. (19)

Original sponsor(s): Resources Committee

1 IN THE SENATE BY THE RESOURCES COMMITTEE  
2 HOUSE CS FOR CS FOR SENATE BILL NO. 544 (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 reclamation of land and  
7 water; and providing for an effective date."

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

9 \* Section 1. AS 27 is amended by adding a new chapter to read:

10 CHAPTER 19. RECLAMATION.

11 Sec. 27.19.010. ADMINISTRATION; APPLICABILITY. (a) The commis-  
12 sioner of natural resources shall implement this chapter.

13 (b) This chapter applies to state, federal, and private land and  
14 water subject to mining operations.

15 (c) Except as provided in AS 27.19.040(b), this chapter does not  
16 apply to an activity regulated under AS 27.21.

17 (d) This chapter does not alter or diminish the authority of  
18 another state agency under its laws and regulations.

19 (e) The owner of private land may establish requirements for  
20 reclamation in excess of those established by this chapter.

21 Sec. 27.19.020. RECLAMATION STANDARD. A mining operation shall  
22 be conducted in a manner that prevents unnecessary and undue degrada-  
23 tion of land and water resources and the mined area shall be reclaimed  
24 as contemporaneously as practicable with the mining operation to leave  
25 the site in a stable condition.

26 Sec. 27.19.030. RECLAMATION PLAN. (a) Except as provided in  
27 AS 27.19.050, a miner may not engage in a mining operation until the  
28 commissioner has approved a reclamation plan for the mining operation.

29 (b) In reviewing a reclamation plan under (a) of this section,

1 the commissioner may consider, after consultation with the commis-  
2 sioners of environmental conservation and fish and game and with the  
3 concurrence of the miner and landowner, uses to which the land may be  
4 put after mining has been completed, including trails, lakes, recrea-  
5 tion sites, fish and wildlife enhancement, commercial, and agriculture  
6 uses.

7 Sec. 27.19.040. RECLAMATION BONDING. (a) The commissioner  
8 shall require an individual performance bond in an amount not to  
9 exceed an amount reasonably necessary to ensure the faithful perfor-  
10 mance of the requirements of the approved reclamation plan. The  
11 commissioner shall establish the amount of the performance bond to  
12 reflect the reasonable and probable costs of reclamation but the bond  
13 may not exceed \$750 for each acre of mined area.

14 (b) The commissioner shall establish a statewide bonding pool  
15 for mining operations as an alternative to individual performance  
16 bonds. A miner participating in the bonding pool shall contribute an  
17 initial deposit not to exceed 15 percent of the reclamation bond plus  
18 an additional nonrefundable annual fee not to exceed five percent of  
19 the reclamation bond. The commissioner shall refund the 15 percent  
20 deposit upon satisfactory completion of the approved reclamation plan.  
21 If requested by the miner, the commissioner may apply the deposit to a  
22 new reclamation plan. The commissioner may allow the bonding pool to  
23 be used to meet the requirements of AS 27.21.160.

24 (c) If the commissioner determines that a miner has violated or  
25 permitted a violation of the approved reclamation plan or has failed  
26 to comply with a lawful order of the commissioner, the commissioner  
27 shall forfeit the performance bond and deposit the bond in the state-  
28 wide bonding pool. The commissioner shall use the reclamation and  
29 administrative costs recovered under AS 27.19.070(a) to supplement the

1 forfeited bond deposited in the statewide bonding pool for reclamation  
2 of the site subject to the forfeiture. If the commissioner is unable  
3 to recover the full cost of reclamation under AS 27.19.070(a), the  
4 commissioner may use the bonding pool to reclaim the site to the  
5 standards of this chapter.

6 Sec. 27.19.050. EXEMPTION FOR SMALL OPERATIONS. (a) AS 27.19.-  
7 030(a) and 27.19.040 do not apply to a mining operation

8 (1) where less than five acres are mined at one location in  
9 any year and there is a cumulative unreclaimed mined area of less than  
10 five acres at one location; or

11 (2) where less than 50,000 cubic yards of gravel or other  
12 material are disturbed or removed in any year.

13 (b) To obtain an exemption under (a) of this section, a miner  
14 shall file a letter of intent notifying the commissioner of the

15 (1) total acreage and volume of material to be mined;

16 (2) total acreage to be reclaimed; and

17 (3) specific reclamation measures to be used to comply with  
18 AS 27.19.020.

19 (c) A miner exempt under (a) of this section shall file an  
20 annual reclamation statement with the commissioner disclosing the  
21 total acreage and volume of material mined by the operation in the  
22 current year, the total acreage reclaimed, and the specific reclama-  
23 tion measures used to comply with AS 27.19.020. A miner does not  
24 qualify for an exemption under (a) of this section for subsequent  
25 operations unless the annual reclamation statement for the previous  
26 operation has been filed with the commissioner.

27 (d) A miner exempted from the requirements of AS 27.19.030(a)  
28 and 27.19.040 under (a) of this section that fails to reclaim a mining  
29 operation to the standards of AS 27.19.020 is required for two

1 consecutive years to conduct each subsequent mining operation, regard-  
2 less of size, under an approved reclamation plan and to post a perfor-  
3 mance bond.

4 Sec. 27.19.060. COOPERATIVE MANAGEMENT AGREEMENTS. The commis-  
5 sioner, on a determination that an agreement is in the best interest  
6 of the state, may enter into a cooperative management agreement with  
7 the federal government or a state agency to implement a requirement of  
8 this chapter or a regulation adopted under it.

9 Sec. 27.19.070. VIOLATIONS. (a) A miner who violates or per-  
10 mits a violation of an approved reclamation plan or fails to comply  
11 with a lawful order of the commissioner forfeits the reclamation bond  
12 or a portion of the bond and is liable to the state in a civil action  
13 for the full amount of reclamation and administrative costs incurred  
14 by the state related to the action. A miner exempted under AS 27.19.-  
15 050(a) is subject to civil action for the full amount of reclamation  
16 and administrative costs incurred by the state related to the action  
17 if the commissioner determines that reclamation was not conducted  
18 under AS 27.19.020.

19 (b) In addition to other remedies available under this chapter,  
20 the commissioner may suspend or revoke permits or approvals of op-  
21 erations not being conducted under the approved reclamation plan and  
22 deny future mining permits and approvals under this title and AS 38  
23 related to the mining operation for failure to reclaim the mining  
24 operation to the standards of this chapter.

25 (c) A miner who has forfeited a reclamation bond or has been  
26 held liable in a civil action under (a) of this section may conduct  
27 future mining operations only after posting a reclamation risk assess-  
28 ment fee equal to five times the bond liability for the proposed  
29 mining operation. The reclamation assessment fee shall be refunded

1 after two consecutive years of operation consistent with this chapter.

2 Sec. 27.19.080. ADMINISTRATIVE PROCEDURE ACT. The Administra-  
3 tive Procedure Act (AS 44.62) applies to this chapter.

4 Sec. 27.19.100. DEFINITIONS. In this chapter,

5 (1) "materials" means sand, gravel, riprap, rock, lime-  
6 stone, slate, peat, and other substances from the ground that are not  
7 taken through location or leasing;

8 (2) "mined area"

9 (A) means an active site of physical extraction,  
10 stockpiling, or the disposal of ore, overburden, tailings, or  
11 processed materials, stream diversions, bypasses, and settling  
12 ponds;

13 (B) does not include reclaimed areas approved by the  
14 commissioner;

15 (3) "miner" means the owner, operator, or leaseholder of a  
16 mining operation;

17 (4) "mining operation"

18 (A) means each function, work, facility, and activity  
19 in connection with the development, extraction, and processing of

20 (i) a locatable or leasable mineral deposit  
21 except oil, gas, or coal;

22 (ii) other materials or of a sand and gravel  
23 deposit; and

24 (iii) each use reasonable incident to the develop-  
25 ment, extraction, and processing of a locatable or leasable  
26 mineral deposit;

27 (B) includes the construction of facilities, roads,  
28 transmission lines, pipelines, and other support facilities;

29 (5) "reclamation plan" means a plan submitted by a miner

1 under regulations adopted by the commissioner for the reclamation of a  
2 proposed mining operation;

3 (6) "stable condition" means the rehabilitation of the  
4 physical environment of the site to a condition that allows for the  
5 reestablishment of renewable resources on the site within a reasonable  
6 period of time by natural processes.

7 (7) "state land" includes the land of the University of  
8 Alaska;

9 (8) "unnecessary and undue degradation"

10 (A) means surface disturbance greater than would  
11 normally result when an activity is being accomplished by a  
12 prudent operator in usual, customary, and proficient operations  
13 of similar character and considering site specific conditions;

14 (B) includes the failure to initiate and complete  
15 reasonable reclamation under the reclamation standard of AS 27.-  
16 19.020 or an approved reclamation plan under AS 27.19.030(a).

17 \* Sec. 2. The commissioner of natural resources shall adopt regulations  
18 implementing AS 27.19 as enacted in sec. 1 of this Act. The proposed  
19 regulations shall be forwarded on their preparation to the chairs of the  
20 resource committees of the legislature, but in any case not later than  
21 January 15, 1991. The commissioner may not adopt the regulations before  
22 October 15, 1991.

23 \* Sec. 3. AS 27.05.250 is repealed.

24 \* Sec. 4. Sections 2 and 3 of this Act take effect immediately under  
25 AS 01.10.070(c).

26 \* Sec. 5. Section 1 of this Act takes effect October 15, 1991.  
27  
28  
29







Reclamation

# Sitnasuak Native Corporation

Post Office Box 905 • Nome, Alaska 99762  
(907) 443-5296 • (907) 443-2632 • Fax: 443-3063

March 20, 1990

MAR 26 1990

Senator Bettye M. Fahrenkamp  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, Alaska 99811

Dear Honorable Fahrenkamp,

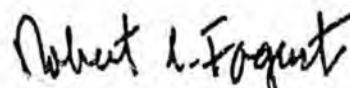
Our village corporation has heard that you may be introducing a bill to the Senate Resources Committee which we are concerned about. The proposed bill is on reclamation.

We were under the impression that the Department of Natural Resources would be developing regulations on reclamation. During the system of developing regulations, the public in general has a right to comment.

If you do propose a reclamation bill, please provide the opportunity of hearings. We would like to review your bill and have an opportunity to comment - prior to the vote by the Senate. We believe others would like this same opportunity.

Thank you for your consideration.

Respectfully,



Robert L. Fagerstrom  
President

RLF/IA

cc: Representative Richard Foster - Juneau  
Alaska Miners Association - Nome & Anchorage

**S B**

**545**

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL

DATE: 4/7/90

FURTHER:

Date of 5-Day Notice: 4-10-90  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4-20-90

Resources

Committee considered

SB 545

Establishing the Marmot Island Critical Habitat Area; efd.

and recommended:

- replace with \_\_\_\_\_ CS SB545 (Res)  same title
- attached amendment(s)  new title
- \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

\_\_\_\_\_  
*Curtis Sturgulowski*  
 \_\_\_\_\_  
*Paul J. Stangor*  
 \_\_\_\_\_  
*Mike ...* *via Chan*  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
*Rich Halford NO REC*  
 \_\_\_\_\_  
*Drone NO REC*  
 \_\_\_\_\_  
 \_\_\_\_\_

Chair: Signature and Recommendation

# 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

April 18, 1990

The Honorable Bettye Fahrenkamp  
Chair  
Senate Resource Committee  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Subject: Senate Bill 545, Marmot Island Critical Habitat Area.

Position: The Department of Natural Resources supports the establishment of the Marmot Island Critical Habitat Area and the protection of Steller sea lion rookery and concentrated haulout habitat on Marmot Island.

Background: The Steller sea lion rookeries on the east side of Marmot Island, the largest in Alaska, are in decline, according to the Alaska Department of Fish and Game (ADF&G) and the National Marine Fisheries Service. As a result, the Steller sea lion has been listed as a threatened species under the provisions of the federal Endangered Species Act.

Prior to the introduction of Senate Bill 545, the Department of Natural Resources, recognizing the important habitat of Marmot Island for Steller sea lions, proposed establishment of an administrative Special Use Area for the south and central portions of the east side of Marmot Island. The Special Use Area would be managed by the Division of Land and Water Management to protect and preserve this important sea lion habitat and to minimize human disturbance of the Steller sea lions, which use the eastern beaches of Marmot Island.

A special use area designation could provide an immediate and comprehensive administrative alternative to a legislative critical habitat designation. It would also allow for management flexibility to respond to changing conditions, and would remain in effect at least until the adoption of the proposed Kodiak Area Plan for state land (approximately five years).

# **CORRECTION**

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

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

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Prior to the introduction of Senate Bill 545, the Department of Natural Resources, recognizing the important habitat of Marmot Island for Steller sea lions, proposed establishment of an administrative Special Use Area for the south and central portions of the east side of Marmot Island. The Special Use Area would be managed by the Division of Land and Water Management to protect and preserve this important sea lion habitat and to minimize human disturbance of the Steller sea lions, which use the eastern beaches of Marmot Island.

A special use area designation could provide an immediate and comprehensive administrative alternative to a legislative critical habitat designation. It would also allow for management flexibility to respond to changing conditions, and would remain in effect at least until the adoption of the proposed Kodiak Area Plan for state land (approximately five years).

April 18, 1990

The Special Use Area proposal has already received extensive public and agency review, including a public meeting held in Kodiak last month. The proposal has the support of the borough and is now ready to be adopted if this legislation is not passed this session.

Technical Changes: The legal description does not include Section 7 of Township 23 South, Range 15 West, Seward Meridian, which, according to information supplied by ADF&G, is a major rookery pupping and concentrated haulout area. We recommend the addition of Section 7.

Please contact me or my staff if you have further questions regarding this legislation.

Sincerely,



Lennie Gorsuch  
Commissioner

Enclosures

cc: Bill Sponsor  
Committee Members  
Bob Evans, Legislative Liaison  
Office of the Governor  
Denby Lloyd, Special Staff Assistant  
Office of the Governor



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

**BILL ANALYSIS**

DEPARTMENT Fish and Game	DIVISION Habitat	BILL NUMBER CSSB545	SPONSOR Resources Committee
SHORT TITLE OF BILL Marmot Island Critical Habitat Area			
DEPARTMENT POSITION Support with amendments			
PREPARED BY Frank Rue, Director	DATE 4.21.90	COMMISSIONER'S SIGNATURE	DATE

**SUMMARY**

OTHER AGENCIES AFFECTED BY BILL Department of Natural Resources	CONSTITUENT GROUP(S) AFFECTED BY BILL Kodiak Island Residents, Wildlife enthusiasts, Commercial Fishermen
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The purpose of the bill is to establish the Marmot Island Critical Habitat Area and provide for an effective date.

ANALYSIS OF BILL/PROGRAM EFFECTS

1. Establishes the Marmot Island Critical Habitat Area for the purpose of protection and enhancement of fish and wildlife habitat and populations, especially Steller sea lions.
2. Directs the Commissioner of Fish and Game to report biennially on the status of Steller sea lions and the Marmot Island rookery.
3. Closes the area to mineral entry until the Steller sea lion population is removed from the threatened, endangered, and depleted species status under 16 USC 1531-1543.
4. Allows for historical, traditional and public uses, including hunting, trapping, mechanized and non-mechanized public access, grazing, trading, firewood harvesting, wildlife viewing, hiking, and berry picking to the extent the activities are compatible with the purposes for which the critical habitat area was established.
5. Repeals the critical habitat area July 1, 2005.

AMENDMENTS PROPOSED

The Department of Fish and Game supports the bill with the following amendments: (see attached).

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

Attachment to Bill Analysis CSSB 545

Amendments Proposed

(c) The commissioner shall report biennially to the legislature on the status of the Steller sea lions and the Marmot Island rookeries. The land and water described in (a) of this section is closed to mineral entry under AS 38.05.185-38.05.275 [UNTIL THE STELLER SEA LION POPULATION IS REMOVED FROM THREATENED, ENDANGERED, AND DEPLETED SPECIES STATUS UNDER 16 U.S.C. 1531-1543].

Proper protection and management of the Steller sea lions and their rookeries requires the closing of Marmot Island Critical Habitat Area to mineral entry to prevent surface disturbance and displacement of animals. These closures are essential for not only the recovery of Steller sea lion populations but for their long term maintenance and protection as well.

Amend AS 16.20.630 (d) as follows:

(d) The commissioner shall allow historical, traditional, and public uses, including fishing, hunting, trapping, mechanized and non-mechanized public access, [GRAZING, TRADING, FIREWOOD HARVESTING,] wildlife viewing, hiking, and berry picking to the extent the activities are compatible with the purposes for which the critical habitat area was established.

Grazing, trading and firewood harvesting should not be specifically listed. Grazing of hogs on Marmot Island is one of the threats to island habitat which generated interest in critical habitat area designation and is not an appropriate activity in the critical habitat area. Trading per se is not an activity which is known to occur in the area at this time. With only one part time resident living on the far side of the island, and with an abundance of firewood occurring on the island outside of the critical habitat area, firewood gathering inside the critical habitat area is not an essential use and should not be listed.

Omit Sec. 2. [AS 16.20.630, AS ENACTED IN SEC. 1 OF THIS ACT, IS REPEALED JULY 1, 2005.]

Proper protection and management of the Steller sea lions and their rookeries requires critical habitat area status for not only the recovery of Steller sea lion populations but for their long term maintenance and protection as well.

April 7, 1990

SENATE JOURNAL

p. 3286

SB 545

SENATE BILL NO. 545 by the Resources Committee, entitled:

"An Act relating to establishing the Marmot Island Critical Habitat Area; and providing for an effective date."

was read the first time and referred to the Resources Committee.

April 21, 1990

SENATE JOURNAL

p. 3503

SB 545

The Resources Committee considered SENATE BILL NO. 545 (An Act relating to establishing the Marmot Island Critical Habitat Area; and providing for an effective date) and a majority of the committee recommended it be replaced with

CS FOR SENATE BILL NO. 545 (Resources)

and do pass. The report was signed by Senator Kerttula, Vice-Chair, and concurred in by Senator Sturgulewski and Zharoff. Senators Halford and Frank signed "no recommendation."

Zero fiscal notes for SENATE BILL NO. 545 and the Committee Substitute published today from Department of Fish and Game.

SENATE BILL NO. 545 was referred to the Rules Committee.

# FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Dept. of Fish and Game  
 Title: An Act relating to establishing BRU: Habitat  
the Marmot Island Critical Habitat Area  
 Sponsor: Resources Committee Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

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
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

No impact on Fy 90 budget

Prepared by: Frank Rue, Director  
 Division: Habitat

Phone: 465-4105

Date: 4/12/90

Approved by Commissioner: [Signature]  
 Agency: Department of Fish and Game

Date: 4/13/90

Distribution (by preparer):

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

when available through 1990.

Changes in OS SB 545 (Res):  
 have no fiscal impact. This  
 fiscal note is appropriate.  
 Projections of no fiscal impact

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Dept. of Fish and Game  
 Title: An Act relating to establishing BRU: Habitat  
the Marmot Island Critical Habitat Area  
 Sponsor: Resources Committee Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

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

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

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

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

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

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

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

No impact on Fy 90 budget

Prepared by: Frank Rue, Director  
 Division: Habitat

Phone: 465-4105

Date: 4/12/90

Approved by Commissioner: [Signature]  
 Agency: Department of Fish and Game

Date: 4/13/90

Distribution (by preparer):

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



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
*National Marine Fisheries Service*  
P.O. Box 21668  
Juneau, Alaska 99802-1668

5

FOR IMMEDIATE RELEASE

April 5, 1990

### Steller Sea Lions Designated as a Threatened Species

Juneau . . . The National Marine Fisheries Service adopted an emergency regulation today that designates Steller sea lions as a "threatened" species under the Endangered Species Act. This action was taken in response to a dramatic decline in the number of Steller sea lions counted at major rookeries in central and western Alaska between 1960 and 1989.

The emergency regulation prohibits shooting at or near any Steller sea lion in U.S. waters, except for Native subsistence. It also prohibits boats from coming within three miles of certain Steller sea lion rookeries (locations where pups are born) and empowers the Secretary of Commerce to place observers on any fishing vessel in order to monitor the accidental capture of sea lions in fishing gear. In addition, the regulation restricts the number of sea lions which may be accidentally caught and killed during fishing operations west of 141 degrees W. longitude to 675 animals.

The National Marine Fisheries Service will immediately initiate work on a plan to guide the long-term recovery of the Steller sea lion population. The Service will also continue to investigate the cause of the decline of the sea lion population. Possible causes include shooting, accidental capture during



For Nancy



SENATOR FRED F. ZHAROFF  
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99815 (907) 486-5259  
DURING SESSION:  
P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 485-3473 • 485-3474

DISTRICT N

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

MEMORANDUM

TO: Dick Bradley  
Legal Services Division

FROM: Senator Fred F. Zharoff

DATE: April 19, 1990

RE: Changes for CS For SB 545

On behalf of the Senate Resources Committee and Chairperson Sen. Bettye Fahrenkamp, I wish to request the preparation of a Senate Resources Committee CS for SB 545. The bill will be brought back before the committee at 1:30 on Friday. The CS should include the changes described below.

In Section 1, the Department of Fish and Game reviewed the legal description and noted that some corrections and additions needed to be made. They are:

On page 1, line 18, the description for Section 36 should be E1/2 SE1/4, E1/2 W1/2, SE1/4.

On page 1, between lines 20 and 21, insert: "Section 7"

On page 1, between lines 27 and 28, insert: "Section 22"

On page 1, between lines 28 and 29, insert: "Section 24"

On page 1, line 29, insert: "water". So the sentence reads, "(5) the tideland and submerged land and water for a distance of one...."

On page 2, lines 11-12, delete: "from the boundary between Sections 22 and 23, Township 23 South, Range 16 West, Seward Meridian." In its place, insert: "along the western boundary of Section 22E1/2, Township 23 South, Range 16 West, Seward Meridian."

The purpose of the above is so the critical habitat area will match the boundaries on the attached map. Also, please see the attached copy of SB 545, as marked up by the Habitat Division.

On page 2, line 15, delete: "marine mammals and seabirds." In its place, insert: "Steller sea lions."

# **CORRECTION**

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



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
*National Marine Fisheries Service*  
P.O. Box 21668  
Juneau, Alaska 99802-1668

5

FOR IMMEDIATE RELEASE

April 5, 1990

### Steller Sea Lions Designated as a Threatened Species

Juneau . . . The National Marine Fisheries Service adopted an emergency regulation today that designates Steller sea lions as a "threatened" species under the Endangered Species Act. This action was taken in response to a dramatic decline in the number of Steller sea lions counted at major rookeries in central and western Alaska between 1960 and 1989.

The emergency regulation prohibits shooting at or near any Steller sea lion in U.S. waters, except for Native subsistence. It also prohibits boats from coming within three miles of certain Steller sea lion rookeries (locations where pups are born) and empowers the Secretary of Commerce to place observers on any fishing vessel in order to monitor the accidental capture of sea lions in fishing gear. In addition, the regulation restricts the number of sea lions which may be accidentally caught and killed during fishing operations west of 141 degrees W. longitude to 675 animals.

The National Marine Fisheries Service will immediately initiate work on a plan to guide the long-term recovery of the Steller sea lion population. The Service will also continue to investigate the cause of the decline of the sea lion population. Possible causes include shooting, accidental capture during



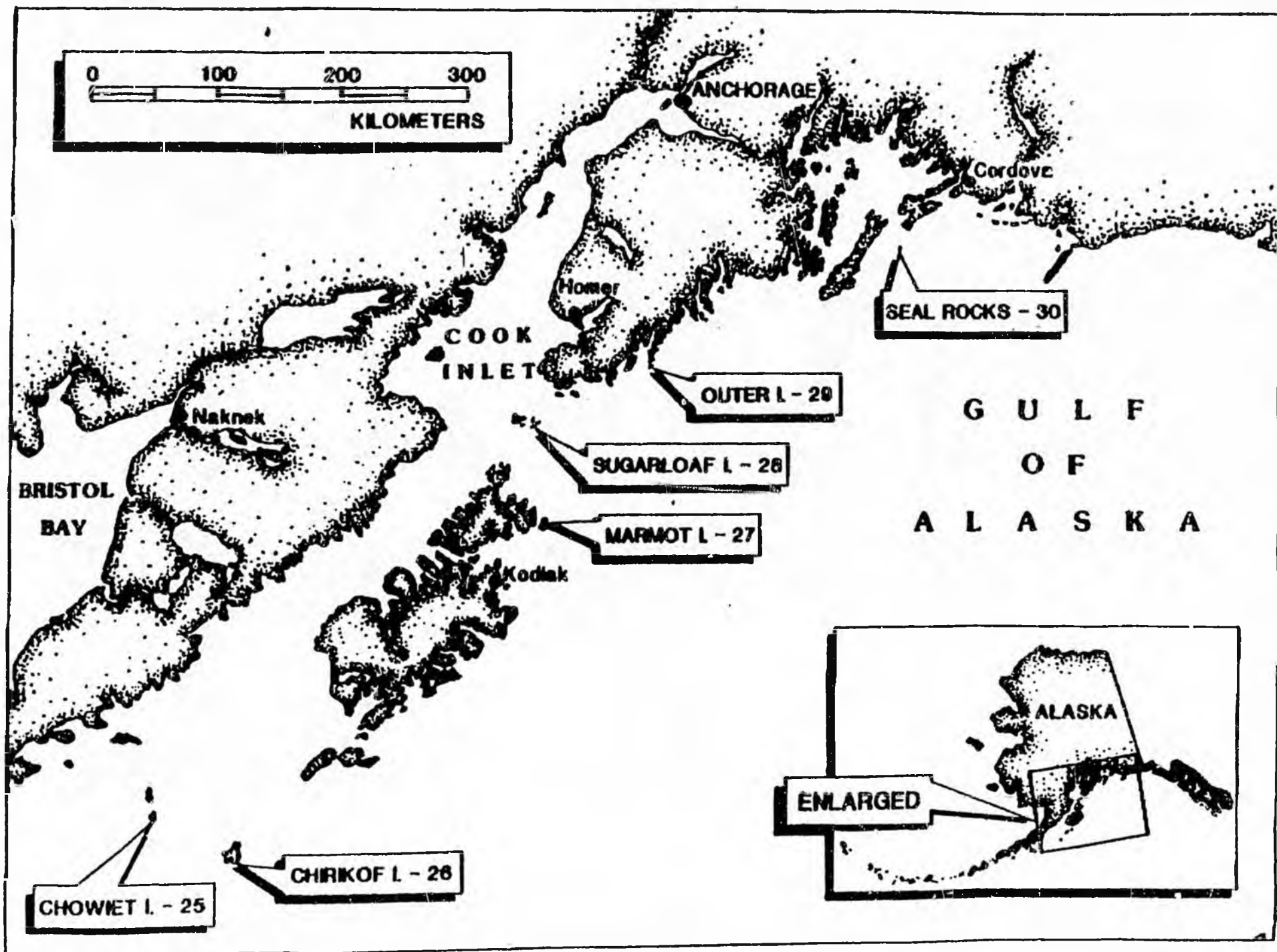


Figure 3: --- DRAFT ---

For Nancy



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

DISTRICT N

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

MEMORANDUM

TO: Dick Bradley  
 Legal Services Division

FROM: Senator Fred F. Zharoff

DATE: April 19, 1990

RE: Changes for CS For SB 545

On behalf of the Senate Resources Committee and Chairperson Sen. Bettye Fahrenkamp, I wish to request the preparation of a Senate Resources Committee CS for SB 545. The bill will be brought back before the committee at 1:30 on Friday. The CS should include the changes described below.

In Section 1, the Department of Fish and Game reviewed the legal description and noted that some corrections and additions needed to be made. They are:

On page 1, line 18, the description for Section 36 should be E1/2 SE1/4, E1/2 W1/2, SE1/4.

On page 1, between lines 20 and 21, insert: "Section 7"

On page 1, between lines 27 and 28, insert: "Section 22"

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The purpose of the above is so the critical habitat area will match the boundaries on the attached map. Also, please see the attached copy of SB 545, as marked up by the Habitat Division.

On page 2, line 15, delete: "marine mammals and seabirds." In its place, insert: "Steller sea lions."

Memo to Legal Services - page 2

On page 2, lines 17 and 19, correct spelling to read "Steller".

Insert new paragraph (d) in Sec. 1. The new paragraph should read:

(d) The department shall allow public uses, including fishing, hunting, trapping, mechanized and non-mechanized public access, grazing, trading, firewood harvesting, wildlife viewing, hiking, and berry picking to the extent the activities are compatible with the purposes for which the critical habitat area was established. The provisions of this statute apply only to the land and water designated as the Marmot Island Critical Habitat Area. Historical and traditional uses of the area outside the critical habitat area shall be permitted.



## SENATOR FRED F. ZHAROFF

### ALASKA STATE LEGISLATURE

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### SECTIONAL ANALYSIS

#### CS For Senate Bill 545 (Resources)

"An Act relating to establishing the Marmot Island Critical Habitat Area; and providing for an effective date."

#### SECTION 1

- (a) Legal description of the boundaries of the Marmot Island Critical Habitat Area.
- (b) Statement of purpose for the critical habitat area.
- (c) Requires the commissioner of the Department of Fish and Game to report to the legislature every two years on the status of the Steller sea lions and the Marmot Island rookeries. Closes the area to mineral entry until Steller sea lions are no longer classified as threatened, endangered, or depleted.
- (d) Requires the commissioner to allow historical, traditional, and public uses of the area provided they are compatible with the purpose of the area, which is primarily the protection of Steller sea lions.

#### SECTION 2

Sunset clause. The critical habitat area would return to its former land status on July 1, 2005 unless action is taken by the legislature to continue it.

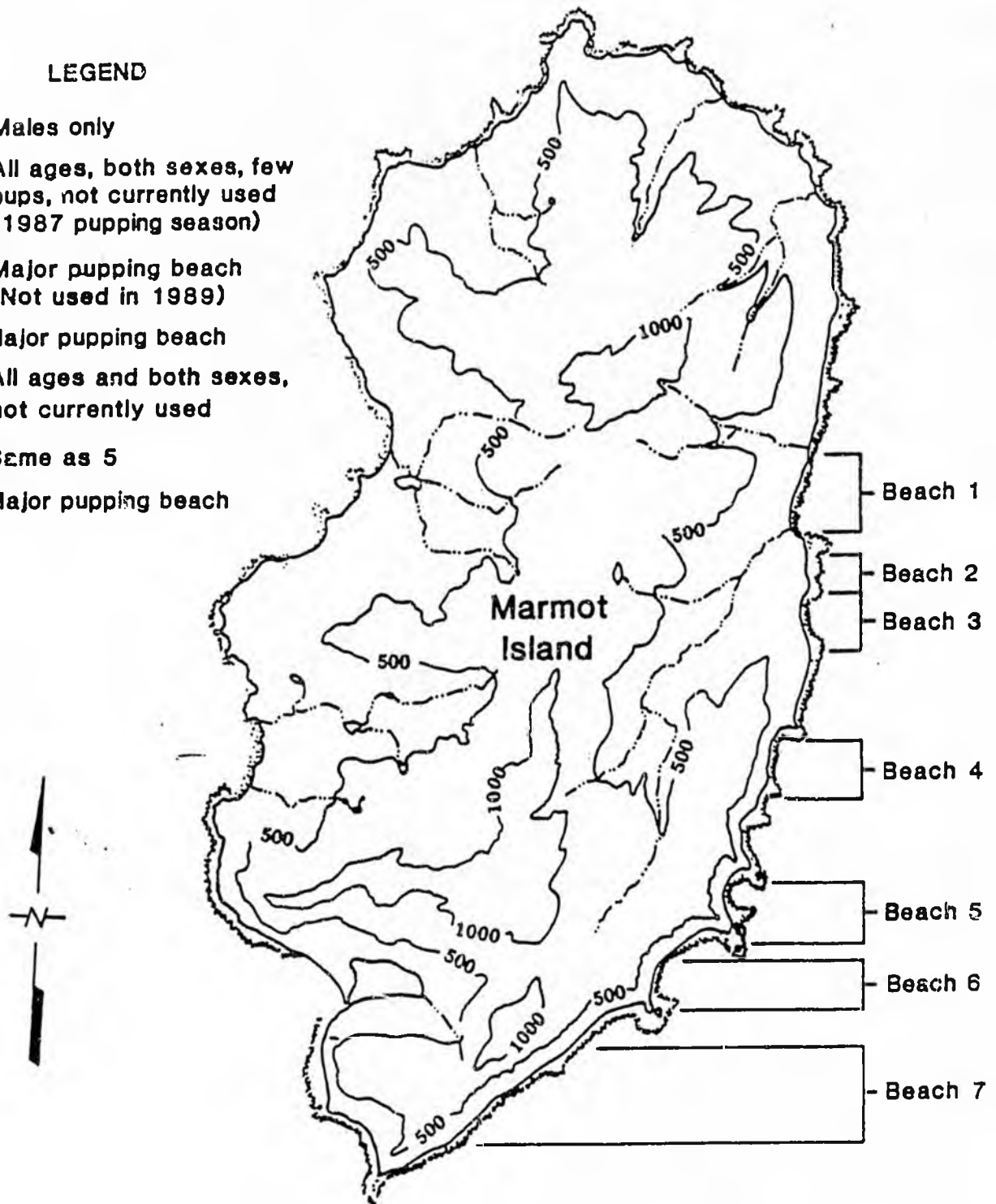
#### SECTION 3

Immediate effective date.

# Location of Marmot Island Northern Sea Lion Rookeries

## LEGEND

- Beach 1. Males only
- Beach 2. All ages, both sexes, few pups, not currently used (1987 pupping season)
- Beach 3. Major pupping beach (Not used in 1989)
- Beach 4. Major pupping beach
- Beach 5. All ages and both sexes, not currently used
- Beach 6. Same as 5
- Beach 7. Major pupping beach



# **CORRECTION**

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



## SENATOR FRED F. ZHAROFF

### ALASKA STATE LEGISLATURE

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## SECTIONAL ANALYSIS

### CS For Senate Bill 545 (Resources)

"An Act relating to establishing the Marmot Island Critical Habitat Area; and providing for an effective date."

#### SECTION 1

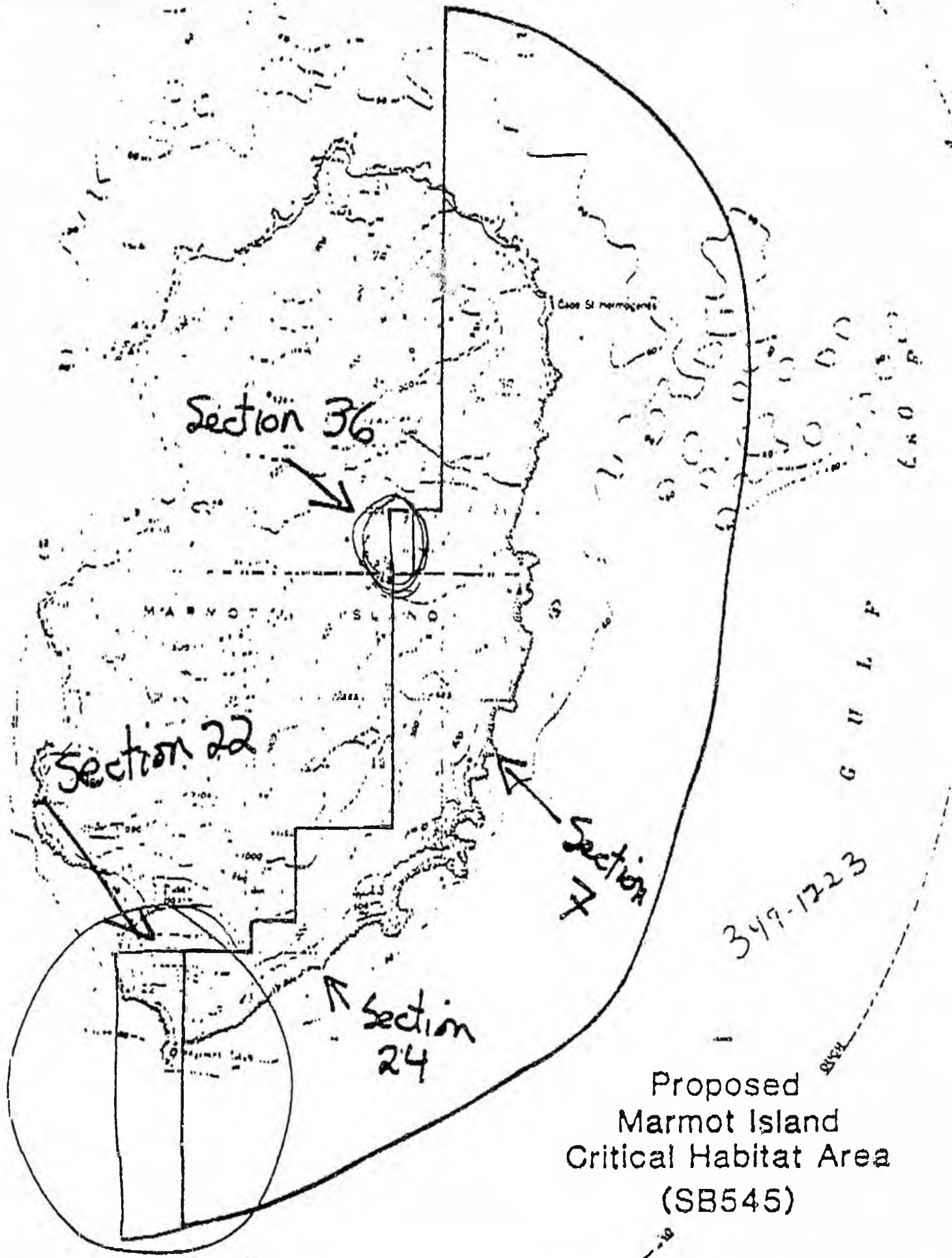
- (a) Legal description of the boundaries of the Marmot Island Critical Habitat Area.
- (b) Statement of purpose for the critical habitat area.
- (c) Requires the commissioner of the Department of Fish and Game to report to the legislature every two years on the status of the Stellar sea lions and the Marmot Island rookeries. Closes the area to mineral entry until Steller sea lions are no longer classified as threatened, endangered, or depleted.
- (d) Requires the commissioner to allow historical, traditional, and public uses of the area provided they are compatible with the purpose of the area, which is primarily the protection of Steller sea lions.

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#### SECTION 3

Immediate effective date.

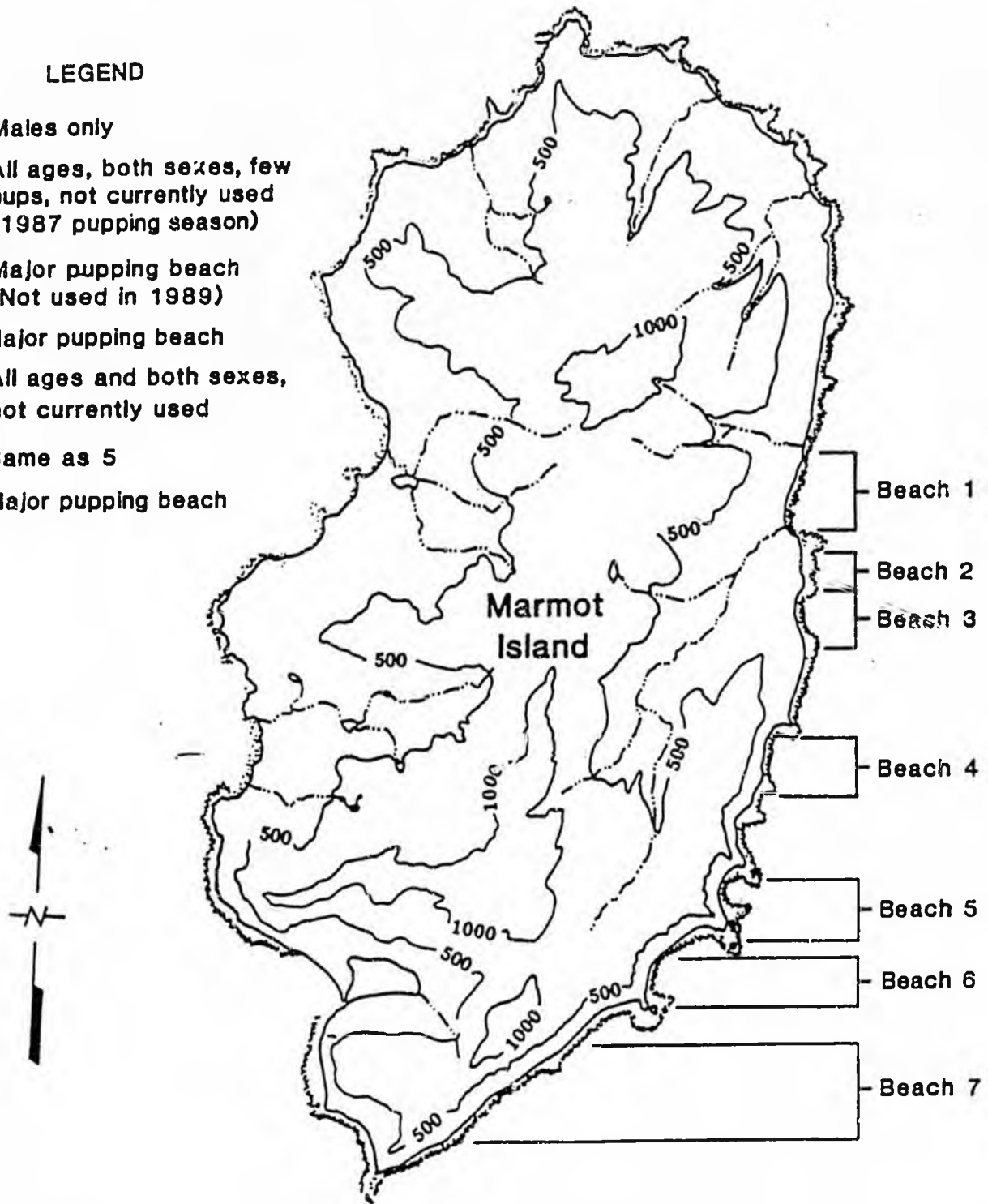


Proposed  
Marmot Island  
Critical Habitat Area  
(SB545)

# Location of Marmot Island Northern Sea Lion Rookeries

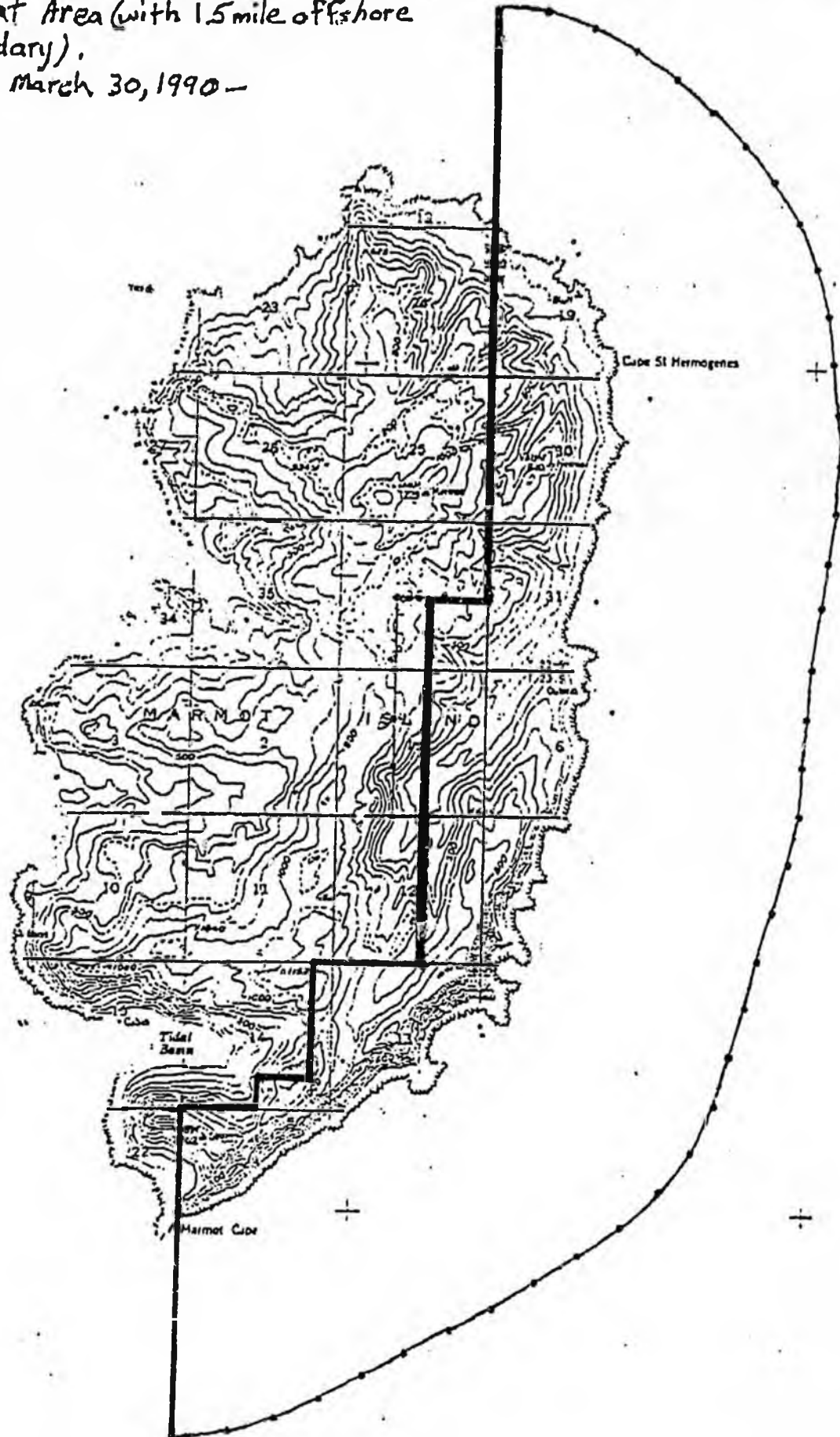
## LEGEND

- Beach 1. Males only
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- Beach 3. Major pupping beach (Not used in 1989)
- Beach 4. Major pupping beach
- Beach 5. All ages and both sexes, not currently used
- Beach 6. Same as 5
- Beach 7. Major pupping beach



2

Proposed Marmot Island Critical  
Habitat Area (with 1.5 mile offshore  
boundary).  
- as of March 30, 1990 -





SENATOR FRED F. ZHAROFF  
ALASKA STATE LEGISLATURE

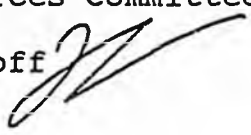
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MEMORANDUM

TO: Senator Bettye Fahrenkamp  
Chair - Senate Resources Committee

FROM: Senator Fred F. Zharoff 

DATE: April 17, 1990

RE: Senate Bill 545 - "An Act relating to establishing the Marmot Island Critical Habitat Area; and providing for an effective date."

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SB 545 establishes a critical habitat area on the east side of Marmot Island, which is northeast of Kodiak Island.

The east side of Marmot Island is the location of the largest sea lion rookeries in Alaska. The sea lion population in Alaska -- for unknown reasons -- has suffered a major population decline. The decline is so great that the National Marine Fisheries Service has placed sea lions on the Threatened Species List, under the Endangered Species Act.

With this listing, NMFS implemented a series of emergency protective measures. These measures fall most heavily on the fishing industry.

The creation of the Marmot Island Critical Habitat Area is a positive step the state can take to assist in the recovery of the sea lion population. The Department of Fish and Game would be the primary issuer of permits for all activities within the area. The department's priority would be to protect the sea lions from all harmful human activity.

The following backup information is attached:

1. Sectional analysis.
2. Map of the proposed Marmot Island Critical Habitat Area.
3. Map of the Marmot Island sea lion rookeries.
4. Map showing Marmot Island in relation to Kodiak Island and the Gulf of Alaska.
5. News release from the National Marine Fisheries Service.

1



SENATOR FRED F. ZHAROFF  
ALASKA STATE LEGISLATURE

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SECTIONAL ANALYSIS

Senate Bill No. 545

"An Act relating to establishing the Marmot Island Critical Habitat Area; and providing for an effective date."

SECTION 1

- (a) Legal description of the boundaries of the Marmot Island Critical Habitat Area.
- (b) Statement of purpose for the critical habitat area.
- (c) Requires the commissioner of the Department of Fish and Game to report to the legislature every two years on the status of the Stellar sea lions and the Marmot Island rookeries. Closes the area to mineral entry until Steller sea lions are no longer classified as threatened, endangered, or depleted.

SECTION 2

Sunset clause. The critical habitat area would return to its former status unless action is taken by the legislature to continue it.

SECTION 3

Immediate effective date.

Attachment to Bill Analysis for SB 545

Amendments Proposed

Amend AS 16.20.630(a) as follows:

(a) The following land and water is designated as the Marmot Island Critical Habitat Area:

- (1) Township 22 South, Range 15 West Seward Meridian  
Section 19  
Sections 30-31
- (2) Township 22 South, Range 16 West, Seward Meridian  
[SECTION 36: E1/2 E1/2 SE1/4 , E1/2 W1/2 E1/2 SE1/4]  
Section 36: SE/4 , E1/2 E1/2 SW1/4
- (3) Township 23 South, Range 15 West, Seward Meridian  
Sections 6-7  
Section 18
- (4) Township 23 South, Range 16 West, Seward Meridian  
[SECTION 1: E1/2 E1/2 , E1/2 W1/2 E1/2]  
Section 1: E1/2 , E1/2 E1/2 W1/2  
Section 12: E1/2 E1/2 , E1/2 W1/2 E1/2  
Section 13  
Section 14: E1/2 E1/2 E1/2 NE1/4 , E1/2 E1/2 E1/2 N1/2  
SE1/4, S1/2 SE1/4  
[SECTION 23]  
Sections 22-24
- (5) The State tideland, [AND] submerged land and water for a distance of one and one-half miles from the mean high tide line of the shoreline found on state land that is described in (1), (3), and (4) of this subsection; the boundary lines of the water described in this paragraph include the water of the state on the eastern shores of Marmot Island between lines extending
  - (A) one and one-half miles from the shoreline on a line extended northward from the boundary between Section 24, Township 22 South, Range 16 West, Seward Meridian and Section 19, Township 22 South, Range 15 West, Seward Meridian; and
  - (B) one and one-half miles from the shoreline on a line extended [SOUTHWARD] westward from the boundary between Sections 15 and 22 AND 23, Township 23 South, Range 16 West, Seward Meridian.

These changes are necessary to correct an error in the legal description (Section 7, Township 23 South, Range 15 West, Seward Meridian, and Section 24, Township 23 South, Range 16 West, Seward Meridian, were inadvertently omitted); to include important sea

lion haulouts on the southern tip of the island; and to include a critical access point along the boundary of the critical habitat area.

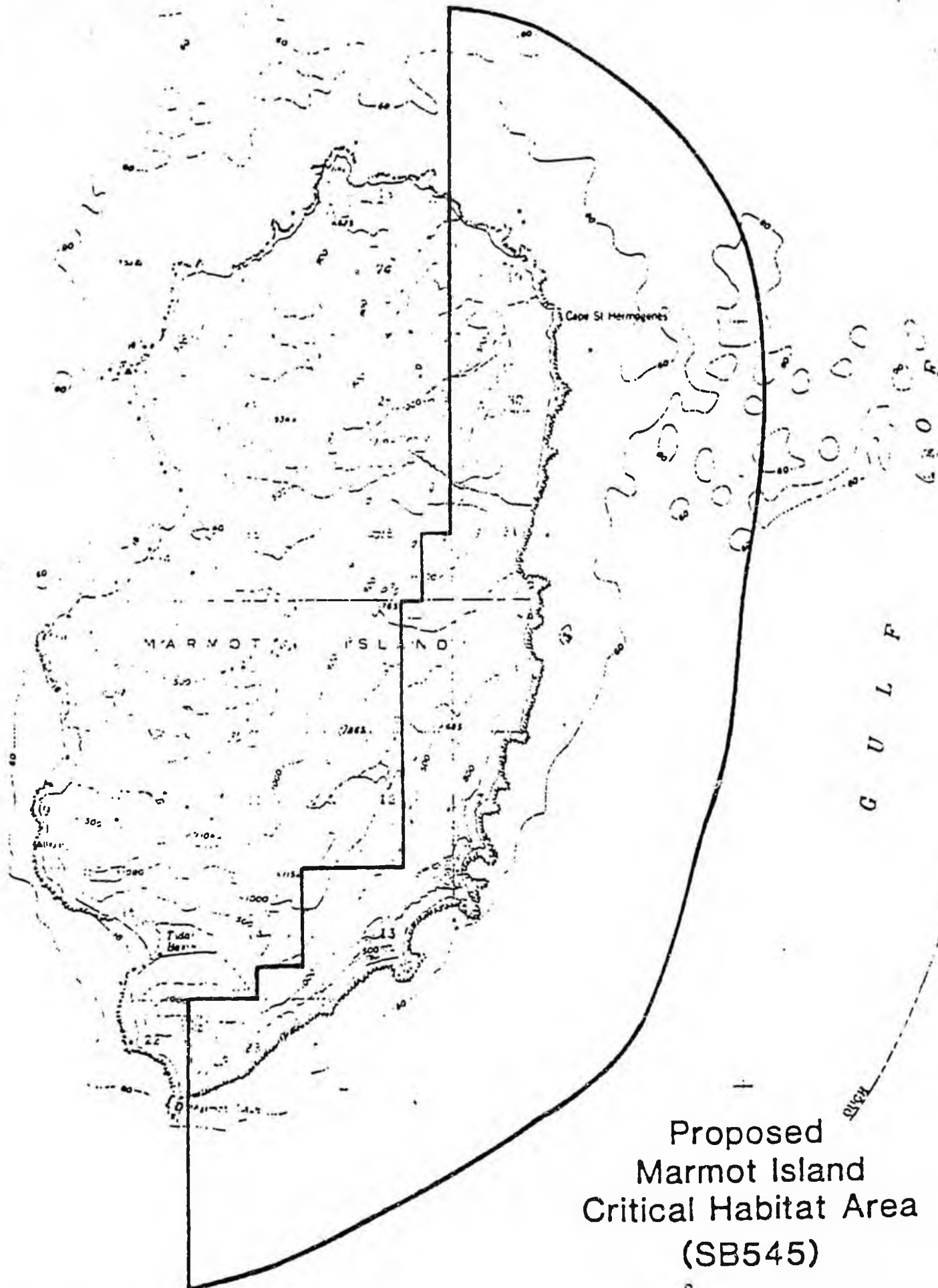
Amend AS 16.20.630(c) as follows:

- (c) The commissioner shall report biennially to the legislature on the status of the Steller sea lions and the Marmot Island rookeries. The land and water described in (a) of this section is closed to mineral entry under AS 38.05.185-38.05.275 [UNTIL THE STELLER SEA LION POPULATION IS REMOVED FROM THREATENED, ENDANGERED, AND DEPLETED SPECIES STATUS UNDER 16 U.S.C. 1531-1543].

Proper protection and management of the Steller sea lions and their rookeries requires the closing of Marmot Island Critical Habitat Area to mineral entry to prevent surface disturbance and displacement of animals. These closures are essential for not only the recovery of Steller sea lion populations but for their long term maintenance and protection as well.

Omit Sec. 2. AS 16.20.630, [AS ENACTED IN SEC. 1 OF THIS ACT, IS REPEALED JULY 1, 2005].

Proper protection and management of the Steller sea lions and their rookeries requires critical habitat area status for not only the recovery of Steller sea lion populations but for their long term maintenance and protection as well.



Proposed  
Marmot Island  
Critical Habitat Area  
(SB545)