

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990

8672

6581 SENATE RESOURCES

985

1 requested a written statement as to the reason for the inspection,  
2 including a statement as to whether pollution, contamination, or  
3 noncompliance is suspected; if pollution, contamination, or noncompli-  
4 ance is not suspected, an alternate and sufficient reason shall be  
5 given in writing; each inspection shall be commenced and completed  
6 with reasonable promptness; if the employee obtains any samples,  
7 before leaving the facility the employee shall give to the owner or  
8 occupier a receipt describing the sample obtained, and if requested a  
9 portion of each sample equal in weight or volume to the portion re-  
10 tained; if an analysis is made of the samples, the department shall  
11 provide a copy of the results of the analysis and a written summary of  
12 the findings of the inspection to the owner or occupier no more than  
13 15 days after the analysis is received; if samples were not taken, the  
14 department shall provide a written summary of the findings of the  
15 inspection to the owner or occupier no more than 30 days after the  
16 inspection is complete;

17 \* Sec. 2. AS 46.03.020 is amended by adding a new paragraph to read:

18 (14) to the extent permitted by the United States and Alaska  
19 Constitutions, at reasonable times enter and inspect a facility if the  
20 facility is pervasively regulated and is an oil terminal facility  
21 regulated under AS 46.04.030, a refinery, a crude oil or gas explora-  
22 tion, production, or transportation facility, a hazardous waste trans-  
23 portation, storage, or disposal facility regulated under AS 46.03.302,  
24 a major solid waste disposal facility, or a facility that is required  
25 to have both a waste disposal permit and an air emissions permit, and  
26 copy records that are required to be kept by this chapter, AS 46.04,  
27 AS 46.09, or by a substantially similar federal law or regulation, by  
28 a regulation, order of the department, permit, approval, or acceptance  
29 issued under this chapter, AS 46.04, AS 46.09, or a substantially

1 similar federal law or regulation, to investigate either actual or  
2 suspected sources of pollution or contamination or to ascertain com-  
3 pliance or noncompliance with this chapter, AS 46.04, or AS 46.09, or  
4 with a regulation, order of the department, permit, approval, or  
5 acceptance issued under this chapter, AS 46.04, or AS 46.09; the  
6 department shall maintain as confidential information and records  
7 relating to secret processes, methods of manufacture, financial and  
8 commercial information and records and, as agreed by the department  
9 and the owner or occupier of the property, other information and  
10 records discovered during the investigation; before undertaking an  
11 inspection, an authorized employee of the department must present to  
12 the owner or occupier of the facility appropriate credentials and a  
13 written statement as to the reason for the inspection, including a  
14 statement as to whether pollution, contamination, or noncompliance is  
15 suspected; if pollution, contamination, or noncompliance is not sus-  
16 pected, an alternate and sufficient reason must be given in writing;  
17 each inspection shall be commenced and completed with reasonable  
18 promptness; if the employee obtains any samples, before leaving the  
19 facility the employee shall give to the owner or occupier a receipt  
20 describing the sample obtained, and if requested a portion of each  
21 sample equal in weight or volume to the portion retained; if an analy-  
22 sis is made of the samples, the department shall provide a copy of the  
23 results of the analysis and a written summary of the findings of the  
24 inspection to the owner or occupier no more than 15 days after the  
25 analysis is received; if samples were not taken, the department shall  
26 provide a written summary of the findings of the inspection to the  
27 owner or occupier no more than 30 days after the inspection is com-  
28 plete; in this paragraph, "pervasively regulated facility" means a  
29 facility where commercial activities or operations are or were

1 conducted that affect a significant public interest, that is regulated  
2 by the department, and where the regulatory presence is sufficiently  
3 comprehensive and defined that the owner or occupier cannot help but  
4 be aware that the property will be subject to periodic inspections  
5 undertaken for specific purposes; the term does not include, by way of  
6 example only, single-family residences, restaurants, hospitals, health  
7 clinics fishing vessels, small placer mines, and service stations.

8 \* Sec. 3. AS 46.03.020 is amended by adding a new subsection to read:

9 (b) When the department has the authority to issue a permit  
10 under this chapter, AS 46.04, or AS 46.09 to a pervasively regulated  
11 facility as defined in (a)(14) of this section, the department may  
12 attach to the permit terms and conditions relating to access for the  
13 entry and inspection of property and premises and the copying of  
14 records that are required to be kept by this chapter, AS 46.04,  
15 AS 46.09, or by a substantially similar federal law or regulation, or  
16 by a regulation, order of the department, permit, approval, or accep-  
17 tance issued under this chapter, AS 46.04, AS 46.09, or a substantial-  
18 ly similar federal law or regulation.

19 \* Sec. 4. AS 46.03 is amended by adding a new section to read:

20 Sec. 46.03.761. ADMINISTRATIVE PENALTIES FOR POLLUTION. (a)  
21 The department may assess an administrative penalty against a person  
22 who violates or causes or permits to be violated a provision of this  
23 chapter, AS 46.04, or AS 46.09, or a regulation, order of the depart-  
24 ment, permit, approval, or certificate issued under this chapter,  
25 AS 46.04, or AS 46.09.

26 (b) Except for the adoption of regulations under AS 46.03.020  
27 and the right to de novo review under (d) of this section, AS 44.62  
28 does not apply to administrative proceedings conducted, but does apply  
29 to judicial review sought, under this section.

1 (c) An administrative penalty assessed under this section may  
2 not exceed \$15,000 a day for each violation. Each violation is a  
3 separate and distinct offense and where the violation continues from  
4 day to day, each day constitutes a separate violation.

5 (d) The department shall, on request, grant an adjudicatory  
6 hearing to a person against whom an administrative penalty is as-  
7 sessed. The adjudicatory hearing shall be conducted under 18 AAC  
8 15.200 - 15.310 as the regulations exist on the effective date of this  
9 Act. A person against whom an administrative penalty is assessed may  
10 appeal the decision of the department to the superior court. The  
11 superior court shall hear the appeal de novo on the record.

12 (e) Action by the department under this section does not limit  
13 or otherwise affect the authority of the department to enforce this  
14 chapter, AS 46.04, or AS 46.09, or to recover damages, restoration  
15 expenses, investigation costs, court costs, and attorney fees. The  
16 court shall set off the administrative penalty amount paid under this  
17 section against a civil penalty subsequently awarded by a court  
18 against the person for the same violation under AS 46.03.760.

19 (f) The assessment of an administrative penalty under this  
20 section does not affect the obligation of a person to comply with this  
21 chapter, AS 46.04, AS 46.09, or with a regulation, order of the de-  
22 partment, permit, approval, or certificate issued under this chapter,  
23 AS 46.04, or AS 46.09.

24 (g) If a person fails or refuses to pay an administrative penal-  
25 ty assessed under this section after the penalty has become final, the  
26 attorney general may bring an action to collect the penalty and the  
27 defendant is liable for

- 28 (1) the amount of the administrative penalty assessed; and  
29 (2) interest from the date the department assesses the

1 administrative penalty under (a) of this section.

2 (h) The department shall adopt regulations setting out a matrix  
3 of daily penalties for specific categories of violations with the  
4 amounts not to exceed those established under (c) of this section.  
5 The matrix must establish the penalty amounts based on the

6 (1) degree of environmental harm resulting from the vio-  
7 lation;

8 (2) degree of the respondent's culpability;

9 (3) prior history of violations;

10 (4) respondent's good faith cooperation and efforts to  
11 correct the violation;

12 (5) need for an enhanced penalty to deter future viola-  
13 tions;

14 (6) economic savings realized through noncompliance;

15 (7) respondent's ability to pay.

16 \* Sec. 5. AS 46.03.850 is repealed and reenacted to read:

17 Sec. 46.03.850. COMPLIANCE ORDER. (a) When the department  
18 finds after an investigation that a person is violating or is about to  
19 violate a provision of this chapter, AS 46.04, AS 46.09, or AS 03.05,  
20 or of a regulation, order of the department, permit, approval, or  
21 certificate issued under this chapter, AS 46.04, AS 46.09, or AS 03.-  
22 05, or is otherwise endangering or creating the potential of pollution  
23 of the surface or subsurface air, land, or water within the jurisdic-  
24 tion of the state, the department may issue a compliance order. The  
25 compliance order shall describe with reasonable specificity the nature  
26 of the violation and set out the nature of the required response  
27 measures and a deadline for compliance.

28 (b) The compliance order is effective 10 days after receipt. A  
29 request for an administrative hearing under (c) of this section does

1 not stay the provisions or deadlines set out in the compliance order.

2 (c) The department shall, on request, grant an adjudicatory  
3 hearing to a person against whom a compliance order is issued under  
4 (a) of this section. The adjudicatory hearing shall be conducted  
5 under 18 AAC 15.200 - 15.310 as the regulations exist on the effective  
6 date of this Act. A person against whom a compliance order is issued  
7 may appeal the decision of the department to the superior court. The  
8 superior court shall hear the appeal de novo on the record.

9 (d) Except for the adoption of regulations under AS 46.03.885  
10 and the right to de novo review under (c) of this section, AS 44.62  
11 does not apply to administrative proceedings conducted, but does apply  
12 to judicial review sought, under this section.

13 (e) A compliance order issued under this section is an order of  
14 the department for purposes of this chapter, AS 46.04, AS 46.09, and  
15 AS 03.05.

16 (f) The attorney general may seek enforcement of a compliance  
17 order by bringing an action in superior court.

18 \* Sec. 6. AS 46.03 is amended by adding a new section to read:

19 Sec. 46.03.861. ENVIRONMENTAL AUDITS. (a) As part of a judi-  
20 cial or administrative enforcement action, the department may request  
21 a person to conduct an environmental audit and to prepare and submit  
22 to the commissioner an environmental audit report. The person may  
23 decline to conduct an environmental audit.

24 (b) An environmental audit may be performed either by the person  
25 requested to conduct the audit or by an independent contractor select-  
26 ed by the person. The person performing the audit must meet reason-  
27 able qualifications established by the commissioner.

28 (c) In this section

29 (1) "environmental audit" means a systematic, documented,

1 and objective review of a person's operations, practices, and perfor-  
2 mance related to the specific environmental standards and require-  
3 ments, including permit conditions, relevant to the enforcement ac-  
4 tion;

5 (2) "environmental audit report" means a written report  
6 that presents findings from a review, conducted as part of an environ-  
7 mental audit, of a person's environmental operations, practices, and  
8 performance relevant to issues involved in the enforcement action.

9 (d) The department shall maintain as confidential all informa-  
10 tion and records obtained under an environmental audit.

11 (e) Penalties assessed in a judicial or administrative enforce-  
12 ment action may be set off against the reasonable costs of an environ-  
13 mental audit performed as part of the enforcement action.

14 \* Sec. 7. LEGISLATIVE INTENT. AS 46.03.020(b) as enacted in sec. 3 of  
15 this Act does not restrict any authority the Department of Environmental  
16 Conservation might have to establish access requirements in the permits of  
17 an entity that is not a pervasively regulated facility.

18 \* Sec. 8. AS 46.03 is amended by adding a new section to read:

19 Sec. 46.03.885. REGULATIONS. The commissioner shall adopt  
20 regulations under the Administrative Procedure Act (AS 44.62) to  
21 implement AS 46.03.020(a)(6), (a)(14), and (b), 46.03.761, 46.03.850,  
22 and 46.03.861.

23 \* Sec. 9. AS 46.03.761(d) and 46.03.850(c) have the effect of amending  
24 Rule 609 of the Alaska Rules of Appellate Procedure by requiring the supe-  
25 rior court to hear certain appeals de novo on the record.

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER  
PO BOX 0, JUNEAU, ALASKA 99811-1800

(907) 465-2600

February 7, 1990

### POSITION PAPER

#### House Bill 409

The Department strongly supports this legislation. As has been so aptly pointed out in the aftermath of the T/V Exxon Valdez, the key to dealing effectively with a major oil spill is prevention. An active role on the part of the regulatory agencies in preventing a spill is essential. This principle applies as well to preventing other kinds of environmental pollution. House Bill 409 would provide some of the necessary tools to streamline the enforcement processes and enable the Department to encourage compliance with existing regulatory safeguards.

This bill addresses four major issues: access, administrative penalties, compliance orders, and environmental audits. Each issue is addressed separately below.

#### ACCESS

The ability to inspect to determine whether pollution violations are occurring is a necessary component of a credible enforcement program. Current practices have prevented the Department from gaining access quickly when necessary. Current law requires the consent of the facility owner or obtaining a search warrant before possible violations can be investigated, often leading to the dissipation or dispersal of the pollution before the Department can enter and gather the evidence necessary to charge the polluter with a crime.

Section 1 of House Bill 409 adds to existing authority the right to copy records. Section 2 allows reasonable access to regulated facilities for the purpose of investigating actual or suspected pollution violations without the consent of the owner. The proposed changes in this bill should significantly improve the Department's ability to investigate violations.

#### ADMINISTRATIVE PENALTIES

Penalties are an important enforcement tool that reduces the economic incentive to violate existing environmental laws. The Department currently has two avenues to pursue when a violation

occurs: 1) issue or negotiate a compliance order requiring corrective action, or 2) commence a judicial enforcement action. The ability to assess administrative penalties would provide a process to impose a financial incentive to comply with the law.

Administrative penalties procedures already exist in 28 other states and are used extensively by the federal government. They have proven to offer an efficient and fair means of enforcement. Handling matters administratively, rather than judicially, is far more expeditious and cost effective for both industry and the Department. Development of sound administrative penalty criteria and establishment of a consistent track record when penalties are imposed adds fairness and certainty to the process. The administrative penalty process also allows for judicial review, should the violator choose to contest the decision.

#### COMPLIANCE ORDERS

An essential component of a sound, effective environmental enforcement program is the ability to issue compliance orders without cumbersome procedural delays. The Department cannot currently issue a compliance order to stop ongoing pollution or commence cleanup of a contaminated site without a lengthy hearing process.

Section 5 of House Bill 409 would allow compliance orders to be effective immediately, so that pollution will stop and clean up will commence. This process would prevent delays from being introduced when the goal is to promptly eliminate risks to the public health and environment.

A person's right to contest liability or seek contribution from other responsible parties is not curtailed under this section. An affected party has 30 days to request an administrative hearing which can be elevated to a judicial review if necessary. A request for an administrative hearing, however, does not affect the provisions and deadlines set out in the compliance order. In essence, this section provides that rights and liabilities can be litigated after the fact, while protection of the public health and environment must take place immediately. This is essentially a reversal of the existing situation. This is an important tool for the Department's enforcement program.

#### ENVIRONMENTAL AUDITS

This section would allow the Department, as part of an ongoing enforcement action, to require an environmental audit to be performed by an independent contractor selected by the person required to conduct the audit. The Department retains authority to approve the selection of the contractor.

Audits have proven to be beneficial to both industry and government because they insert a neutral, yet qualified party into the process. Environmental audits have also been a part of effective prevention programs because potential problems can be identified before reaching unmanageable or catastrophic proportions.

The four components of this bill will significantly add to the Department's ability to protect the public health and the environment through a more efficient, effective enforcement program.

# STATE OF ALASKA

## DEPARTMENT OF LAW

VIA FACSIMILE

OFFICE OF THE ATTORNEY GENERAL

Telecopier #456-1317  
April 2, 1990

Representative Ron Larson, Co-Chair  
Representative Lyman Hoffman, Co-Chair  
House Finance Committee  
P.O. Box V  
Juneau, Alaska 99811

Re: H.B. 409 access provisions

Dear Representatives Larson and Hoffman:

At last week's House Finance Committee hearing on H.B. 409, several questions arose regarding the types of facilities which would qualify as "pervasively regulated facilities." This memorandum responds to those questions.

Section 2 of H.B. 409 authorizes the Department of Environmental Conservation ("DEC") to enter and inspect at reasonable times a "pervasively regulated facility" in order to investigate actual or suspected sources of pollution or to ascertain compliance with DEC statutes and regulations. Section 2 defines "pervasively regulated facility" as

a facility where activities or operations are or were conducted that affect a significant public interest and that the department comprehensively regulates.

The above definition, which explicitly tracks the case law developed under both the United States and Alaska constitutions, contains two distinct components:

(1) the operations conducted at the facility must "affect a significant public interest." In other words, the nature of the activities conducted at the facility must present the potential for a substantial adverse environmental impact upon the public;

and

(2) the operations conducted at the facility must be subject to comprehensive regulation by DEC. In other words, the facility's activities must be subject to broad regulation and oversight by DEC.

102 10421C  
STEVE COWPER, GOVERNOR

REPLY TO:

103 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE (907) 276-3550

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

Phone: (907) 452-1568

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

Representative Ron Larson  
Re: HB 409 access provisions

April 2, 1990  
Page 2

In order to qualify as a pervasively regulated facility, the facility must satisfy both components of the definition. Hence, the vast majority of premises in Alaska will not fall under the definition. For example, private residences, restaurants, fishing vessels, small placer mines, gas stations, and most small businesses do not qualify. The activities conducted at these places are not subject to comprehensive DEC regulations. Furthermore, the activities conducted at most of these places do not have the potential to pose a significant environmental threat to the public. Likewise, the corporate headquarters of a large company would not qualify--even if other facilities owned by the company did satisfy the test. This is because the type of activities typically conducted at a corporate headquarters are not subject to broad DEC regulation and oversight.

Conversely, certain types of facilities would qualify as pervasively regulated facilities in most circumstances. Examples of such facilities include the Alyeska Pipeline Company's Valdez terminal, Trans-Alaska Pipeline pump stations, oil refineries, most permitted hazardous substance or hazardous waste disposal facilities, and hazardous waste temporary storage facilities. Such facilities usually will satisfy both components of the definition.

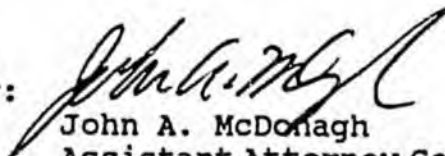
Under present law, before DEC may enter onto private property DEC must either obtain the property owner's consent or obtain a search warrant. As the above discussion demonstrates, H.B. 409 does not increase DEC's right to enter the vast majority of private property in Alaska. H.B. 409 would, however, allow DEC to take advantage of the narrow, judicially recognized, exception to the search warrant requirement for a limited group of facilities that have a particular potential to harm the health and welfare of Alaska's citizens.

If you have any further questions, or if I may be of further assistance, please contact me.

Sincerely,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By:



John A. McDonagh  
Assistant Attorney General

JAM:jah

# Alaska State Legislature

Legislative Research Agency



P.O. Box Y  
Juneau, AK 99811-3100  
Phone: (907) 165-3991  
Fax: (907) 163-3351

February 6, 1990

## MEMORANDUM

TO: Representative Mike Davis

ATTN: Barnaby Dow

FROM: Leola Weimer *LW*  
Legislative Analyst

RE: Administrative Penalties  
Research Request 90.156

You asked which Alaska state agencies have the authority to assess penalties for violations of their regulations and statutes. You also wanted to know if agencies in other state governments have this authority. Specifically, you asked how authority for imposing an administrative penalty has been granted to agencies similar to the Alaska Department of Environmental Conservation (DEC); if the Environmental Protection Agency (EPA) requires administrative penalty authority for Resource Conservation and Recovery Act (RCRA) certification; and what the fiscal impact of such programs might be.

### Summary

In Alaska, the authority to assess administrative penalties is granted to certain state agencies under Article 8 of the Administrative Procedure Act (AS 44.62.30-44.62.630). Under this section, the DEC has limited powers of administrative adjudication but does not have the general authority to assess administrative penalties.

Twenty-eight states and the federal government have administrative penalty systems for enforcing RCRA standards. States which have adopted administrative penalty systems have found them to save time and money; to be a more effective means of enforcement; and to be a more equitable means of punishment.

The Environmental Protection Agency (EPA) and the General Accounting Office (GAO) recommend that all states adopt administrative penalty systems to manage and enforce regulations concerning the environment.

### Administrative Penalty Authority

In Alaska, the authority to assess administrative penalties is granted to certain state agencies under Article 8 of the Administrative Procedure Act (AS 44.62.300-

44.62.630). The power of administrative adjudication is limited to the named functions of the agencies listed under AS 44.62.330(a) (see Attachment A).

Further restrictions are outlined in AS 44.62.330(d). According to the Attorney General, "The policy of § 44.62.330(d) is to limit the adjudication procedure set forth in the Act to procedural matters, and matters regarding which the agency must make substantial determinations of fact."<sup>1</sup> The purpose of this act is to prescribe a fair procedure for determinations of fact. The powers of administrative adjudication do not extend to situations where facts have been determined by the courts.

Administrative penalty authority is a power commonly assigned to both state and federal agencies. The Department of Public Safety's ability to issue traffic citations is a typical example of a state-level administrative penalty authority. The Environmental Protection Agency's ability to assess fines for pollution and hazardous waste violations is an example of federal administrative penalty authority. Some states have administrative law judges who determine the penalties for a variety of violations; others rely upon hearing officers assigned to specific agencies to assess penalties.

In general, the system of administrative law judges and hearing officers is preferred to civil or criminal court systems because less time and cost are involved. Administrative law judges and hearing officers are able to solve a greater number of cases in a shorter period of time. They are also able to correct a greater number of violations. Strict administrative procedures and penalty matrixes make enforcement procedures less arbitrary and more consistent. Like a person who intentionally parks in a no parking zone, companies know in advance what the penalties and procedure will be if they are found in violation of certain regulations.

Relying upon administrative law judges and hearing officers may foster a more cooperative atmosphere between industry and administrators than is found in a court room. However, if an agreement cannot be reached by the administrative process, the right of appeal to the higher courts is always available under administrative penalty procedures.

#### Department of Environmental Conservation (DEC)

The Alaska DEC has been given the powers of administrative adjudication under AS 44.62.330(a) sections (27), (30) and (44) with reference to AS 17.20 (Alaska Food, Drug, and Cosmetic Act), AS 18.35.010-18.35.090 (regulation of tourist and trailer camps, motor courts, and motels), and AS 46.03 respectively.

---

<sup>1</sup> 1963 Opinions of the Attorney General No. 10, pp. 2-3.

Representative Davis  
February 6, 1990  
Page 3

DEC procedure for determining violations and assessing penalties is outlined in AS 46.03. If an investigation or inspection uncovers a violation, the usual procedure is to first issue a notice of violation which spells out the statute or regulation violated and describes what needs to be done to come back into compliance. If this does not resolve the situation, or if a situation is more serious and complex, a compliance order is issued.

Compliance orders may be issued either with the consent of the violator or unilaterally by DEC. Compliance orders by consent are a binding contract where the violator agrees to meet a specified compliance schedule. An agreed amount of penalty may be levied as part of the compliance order or as punishment for not meeting the compliance schedule. Unilateral compliance orders, on the other hand, are not contractual in nature and do not include fines or penalties.

If a violator fails to follow either a consent or unilateral compliance order, DEC may then file civil or criminal charges. The commissioner of DEC also has the authority to put an immediate stop to a violation by issuing an Emergency Order. Emergency Orders are typically issued only once or twice a year and involve violations which have a high potential of causing a public health hazard (e.g., broken sewage line). If the violation is not grievous but nonetheless a relatively major problem (e.g. the discharge of muddy water into a spawning stream), the commissioner may seek an injunction from the court.

#### Other States

Twenty-eight states have adopted administrative penalty systems for the enforcement of their environmental protection statutes. The systems in three of these states is described below.

#### State of Washington

Washington State's Department of Ecology has authority to levy penalties of up to \$10,000 per day for violations of the state's environmental protection statutes. Once a violation is discovered, the commissioner issues a notice of violation describing the regulations violated and amount of penalty assessed. Accompanying the notice of violation is an order for corrective action to be taken. Refusal or failure to comply is considered a separate violation and allows for additional penalties. The violator has ten days to appeal his or her case to the Pollution Control Hearing Board. This board is appointed by the governor and is under the jurisdiction of the Department of Ecology. The Pollution Control Hearing Board then conducts a formal hearing and passes judgment as to the appropriateness and amount of penalty assessed. This decision may be appealed to the Washington Superior Court.

Representative Davis  
February 6, 1990  
Page 4

According to Jerry Ackerman, Assistant Attorney General for the Department of Ecology, most notices of violation and compliance orders are not appealed. The few cases that do go before the Pollution Control Hearing Board take an average of ten to twelve weeks to resolve (as compared to the previous judicial system that took an average of one and one half years to complete). Of those cases that receive hearings, approximately one quarter are appealed to superior court.

#### State of California

When a violation of the environmental laws of California is discovered, the Department of Health Services may issue simultaneously a corrective action order and an administrative complaint. The corrective action order is like a compliance order and outlines the specific steps that must be taken to come back into compliance. An administrative complaint is like a civil penalty with a maximum of \$25,000 per day. Upon receiving an order, a violator has ten days to request a hearing. Independent hearing officers are appointed from the Office of Administrative Hearings, Department of General Services. After receiving the hearing officer's decision, either party has thirty days within which to appeal for judicial review. Penalties and corrective action, however, are not postponed by either the hearing or appeals process.

California has three classes of penalties: 1) the "Toxic Ticket" is similar to a traffic ticket. For minor violations, inspectors may issue corrective action orders and administrative complaints of up to \$500 on site; 2) moderate violations are handled under the newly developed "Desk Order." After completing an inspection an investigator may fill out a more detailed report and issue a penalty of greater than \$500; and 3) "Correction Orders" are reserved for the major violations. They require greater documentation and carry heavier fines.

According to Bill Soo Hoo, Legal Council for California's Department of Health Services, in the past two years only four cases have received administrative hearings and one corrective action has been appealed to the courts. In FY 89 the department collected a total of \$1,147,000 from judicial penalties and \$2,926,500 from administrative penalties.

#### State of Oregon

Oregon has had a system of administrative penalties since the early 1970s. The Department of Environmental Quality (DEQ) has the power to issue a five-day warning letter and order of compliance and penalty. Five-day warning letters may be waived in cases where the public health is endangered. After receiving notice, a violator has twenty days to appeal its case to the Environmental Quality Commission. Members of this commission are appointed by the governor. Typically one hearing officer reviews the case and holds an informal trial with presentation of evidence and cross examination of witnesses. The hearing officer then has a maximum of 90 days in which to decide the final order. This decision

Representative Davis  
February 6, 1990  
Page 5

may be appealed within 30 days to the five-member board under the Environmental Quality Commission. Their decision may in turn be appealed to the Oregon State Court of Appeals.

According to Van Skollias, Director of Enforcement for the DEQ, only a few of the Environmental Quality Commission's decisions have been appealed to the state court. In an effort to make this system more efficient and equitable, a formal penalty matrix was adopted in March 1989 (see attachment B). The matrix classifies the severity of violation and takes into consideration such things as prior violations, economic gain, cooperation and economic conditions. Since the adoption of the matrix, both the number and amount of penalties collected has drastically increased. In 1988, Oregon DEQ recovered \$78,000 in penalties. After the adoption of the matrix, they collected \$392,000. The largest fine collected was \$80,000 in an asbestos case with multiple violations. The average fine was under \$10,000.

#### New Federal Requirement

Additional support for the adoption of administrative penalty systems has come from the Environmental Protection Agency (EPA) and the General Accounting Office (GAO).

Currently states may have either administrative or judicial penalty systems to qualify for Resource Conservation and Recovery Act (RCRA) authorization. According to Betty Wise, Director of Region Ten RCRA Programs, the EPA has decided to change this policy and make both administrative and judicial penalties a requirement. An announcement is expected to appear in the Federal Register in March or April of this year.

Last year the EPA held two conferences on the proposed RCRA rule changes. At both the East Coast Conference and West Coast Conference, administrative penalty systems were the major topic of discussion. In 1988 the GAO conducted an audit of EPA RCRA enforcement programs and found the lack of administrative penalty systems to be a major obstacle to implementing EPA's standards of "timely and appropriate."

According to Jeffery Mach, Chief of Solid & Hazardous Waste Management Program for DEC, Alaska intends to apply for RCRA authorization in early 1992. If these expected rule changes go into effect, Alaska will be required to adopt an administrative penalty system before it can receive RCRA authorization.

I hope this information answers your questions. If you would like additional information, please contact this agency.

Attachments

# CIVIL PENALTIES (ADMINISTRATIVE)

TABLE 13

## CIVIL PENALTIES UNDER HAZARDOUS WASTE LAWS

<u>State</u>	<u>Administrative Civil Penalties</u>	<u>Judicial Civil Penalties</u>
Alabama	\$25,000/day (\$250,000 "cap")	\$25,000/day (no "cap")
Alaska	None	\$100,000 plus \$10,000/day
Arizona	None	\$10,000/day
Arkansas	\$25,000/day	None
California	\$10,000/day  \$1,000-\$10,000/day (Porter-Cologne Act)	\$10,000/day \$25,000/day (intentional or negligent violation or violation of order)  \$25,000-\$20,000-\$15,000-\$10,000- \$5,000/day (Porter-Cologne Act)
Colorado	None	\$25,000/day
Connecticut	\$25,000/day	\$25,000/day
Delaware	"reasonable penalty" (viol. of law, permit, reg.) \$25,000/day (viol. of order)	\$25,000/day
District of Columbia	None	\$25,000/day
Florida	None	\$50,000/day
Georgia	\$25,000/day	None
Hawaii	\$10,000/day	\$10,000/day
Idaho	None	\$10,000/day

**Note:** Penalty amount shown is the maximum assessment per violation unless otherwise indicated.

**Note:** States that lack authority to impose administrative civil penalties absent a violator's consent receive a "None" in the administrative penalties column.

Table 13 (continued)

<u>State</u>	<u>Administrative Civil Penalties</u>	<u>Judicial Civil Penalties</u>
Illinois	\$25,000/day	\$25,000/day
Indiana	\$25,000/day	\$25,000/day (plus an additional \$500/hour for violating any emergency order)
Iowa	\$1,000/day	\$10,000/day
Kansas	\$10,000/day	\$10,000/day
Kentucky	None	\$25,000/day
Louisiana	\$25,000/day \$50,000/day (order violation)	\$25,000/day \$50,000/day (order violation)
Maine	None	\$25,000/day
Maryland	\$1,000/day (\$50,000 "cap")	\$10,000/day
Massachusetts	\$1,000/day \$25,000/day (for unauthorized release, handling without license, failure to report)	\$25,000/day
Michigan	None	\$25,000/day
Minnesota	\$10,000 per inspection (regardless of # violations or days; waived if corrected within 30 days of receipt of order)	\$25,000/day
Mississippi	\$25,000/day	None
Missouri	None	\$10,000/day
Montana	None	\$10,000/day
Nebraska	None	\$10,000/day
Nevada	None	\$10,000/day
New Hampshire	None	\$50,000/day

Table 13 (continued)

<u>State</u>	<u>Administrative Civil Penalties</u>	<u>Judicial Civil Penalties</u>
New Jersey	\$25,000 per violation (plus \$2,500/day after receipt of order)	\$25,000/day \$50,000/day (violation of order or failure to pay)
New Mexico	\$10,000/day	\$10,000/day
New York	\$25,000/day \$50,000/day (subs. violation)	\$25,000/day \$50,000/day (subs. violation)
North Carolina	\$10,000/day	None ( <i>de novo</i> review of admin. penalty)
North Dakota	None	\$25,000/day
Ohio	None	\$10,000/day
Oklahoma	\$10,000/day (but only for viol. of order)	\$10,000/day
Oregon	\$10,000/day	None
Pennsylvania	\$25,000/day	\$25,000/day
Rhode Island	\$10,000/day	\$10,000/day
South Carolina	\$25,000/day	\$25,000/day
South Dakota	None	\$10,000/day
Tennessee	\$10,000/day	None
Texas	\$10,000/day	\$25,000/day
Utah	None	\$10,000/day
Vermont	None	\$10,000/day
Virginia	None	\$10,000/day
Washington	\$10,000/day	None
West Virginia	None	\$25,000/day
Wisconsin	None	\$25,000/day
Wyoming	None	\$10,000/day



# ALASKA STATE LEGISLATURE

## HOUSE OF REPRESENTATIVES

Official Business

P.O. Box 1  
State Capitol  
Juneau, Alaska 99811

TO: House Members  
 FROM: Representative Mike Davis *Mike*  
 DATE: April 20, 1990  
 SUBJECT: CS HB 409 (Finance) - Nonconsensual Inspection Authorities

Section 2 of CS HB 409 (Finance) provides authority for nonconsensual (warrantless) inspections only in certain narrow circumstances for a very few specific types of facilities. Only a very few Alaska businesses -- those with major facilities posing a substantial public health or pollution risk -- would be affected by this provision.

*Specifically, the legislation expressly provides that nonconsensual inspections can take place only "to the extent permitted by the United States and Alaska Constitutions" consistent with the privacy protections provided by the federal and Alaska constitutions. Federal and state courts have identified "pervasively regulated facilities" as potentially subject to nonconsensual inspections.*

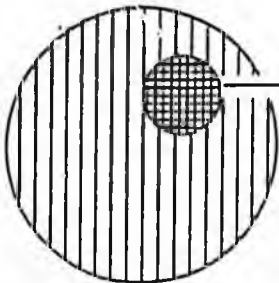
*However, not all pervasively regulated facilities in Alaska would be subject to nonconsensual inspections under CS HB 409 (Finance). The legislation further narrows the type of facilities in Alaska potentially subject to nonconsensual inspections. First, by limiting the department's authority to conduct nonconsensual inspections in the case of facilities that are pervasively regulated by DEC (it is not sufficient that the facility is comprehensively regulated by another federal or state agency). Second, by still further limiting such inspections to a specific type of facilities listed in Section 2 of the bill (see below).*

In summary, in order to use the nonconsensual inspection authority provided by CS HB 409 (Finance), a facility must meet two tests:

- 1) it must be "pervasively regulated" by the department and
- 2) be a type of facility specifically listed in the legislation.

CS HB 409 (Finance) also provides for keeping "trade secret" records confidential.

The types of facilities potentially subject to warrantless inspections is illustrated below.

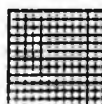


### FACILITIES SUBJECT TO A NONCONSENSUAL SEARCH (SECTION 2)

- Oil Terminal Facilities (AS 46.04.030)
- Refineries
- Crude Oil Exploration, Production, or Transportation Facilities
- Hazardous Waste Transportation, Storage or Disposal Facilities (AS 46.03.302)
- Major Solid Waste Disposal Facilities
- Facilities with Significant Air and Wastewater Emissions regulated by DEC



TOTAL NUMBER OF "PERVASIVELY REGULATED FACILITIES" POTENTIALLY SUBJECT TO CONSTITUTIONALLY SANCTIONED NON-CONSENSUAL SEARCHES UNDER STATE AND FEDERAL COURT DECISIONS.



FACILITIES POTENTIALLY SUBJECT TO NON-CONSENSUAL INSPECTIONS UNDER CS HB 409 (FIN). MUST BE 1) PERVASIVELY REGULATED BY DEC AND 2) SPECIFICALLY IDENTIFIED IN CS HB 409 (FIN) AS SUBJECT TO NON-CONSENSUAL SEARCHES

Our purpose: To present a balanced, accurate, impartial news report; to watchdog government and other institutions depending on the public for support; to provide wholesome family entertainment; and to support on our editorial page environmentally sound development of our natural resources and a diversity of other economic opportunities.

## Gestapo tactics

4-26-90

LAST YEAR'S oil spill in Prince William Sound was a terrible thing, as has been noted a million times since the tanker Exxon Valdez ripped open its bottom on the rocks of Bligh Reef.

But it truly is time for all of us to finally agree that the unfortunate accident did not mark the end of the world and that the global environment wasn't permanently polluted.

For that matter, the environmental beauty of Prince William Sound was not forever harmed, either.

All of us were angry and emotionally devastated when the tanker went aground and caused a terrible mess. But that is no reason for us now to suspend civil rights and the due process of law.

The truth is we can imagine no incident short of an all-out nuclear war — if even then — for which we as a free people should condone doing away with constitutional guarantees that are basic to our American liberties.

Yet that is provided for in legislation passed by the Alaska House the other day as one legislative response to last year's tanker accident.

THE BILL proposes the enactment of bad law — incredibly bad law, as a matter of fact.

And it's simply astonishing that 21 members of the House would vote in its favor.

If passed by the Senate and signed by the governor — two steps that will not be reached, if the Senate acts with wisdom and kills this measure — the state Department of Environmental Conservation will have the authority to enter oil industry buildings and conduct searches without a warrant.

What are these people thinking of? We would not even allow such action by agents of the Federal Bureau of Investigation, much

less Alaska State Troopers or officers of the Anchorage Police Department — all of whom, we suspect, boast more highly trained investigators than any environmental inspector on the state payroll.

Not only that, this legislation proposes that administrative fines of up to \$15,000 a day could be imposed by DEC for serious violations of environmental laws — as a means of avoiding what the authors of this bill describe as a way to avoid procedures that "are long, cumbersome and expensive."

### THIS IS Gestapo stuff.

A company that gets into even a month-long discussion with some high-minded bureaucrat over what constitutes a "serious violation" could well be facing a half-million dollar penalty.

Apply this to the Prince William Sound spill, which by anyone's definition was a serious event.

Until somebody decides that every last trace of the spill has been cleaned up should Exxon be facing a fine of \$15,000 a day — year after year — until finally some bureaucratic agency decides every speck of the sound is once again pure? This would be assessed, too, on top of the more than \$2 billion already spent on the cleanup effort.

We have courts for the assessment of this kind of penalty — and there are constitutional processes in place for the protection of individual rights, despite the "long, cumbersome and expensive" hoops through which the government must jump before it takes bureaucratic revenge.

Those safeguards supercede in importance any retribution some members of the legislature apparently still feel they need to seek against the oil industry. This legislation is an affront to constitutional freedoms — and deserves a quick death in the Senate.



## Court oversteps bounds on tax issue

WASHINGTON — Just 48 hours after the Supreme Court ruled, Missouri's Jack Danforth, one of the Senate's most judicious and least flamboyant members, proposed this constitutional amendment: "Neither the Supreme Court nor any inferior court of the United States shall have the power to instruct or order a state or political subdivision thereof, or an official of such state or political subdivision, to lay or increase taxes."

It is a measure of the imperiousness of today's imperial judiciary that if such language had been proposed to the constitutional convention in 1787, the language would have been dismissed as absurdly unnecessary. But last week the Court ruled that courts can impose taxation.

A lower court found Kansas City's school district guilty of operating a segregated system. The court, attempting to fine-tune the racial balance of schools by attracting white students, ordered as a remedy the expansion of "magnet schools." The court's plan, priced at upwards of \$700 million, included a 25-acre farm, a 25-acre wildlife area, animal rooms, a planetarium, 15 computers per classroom, a model United Nations wired for language translations, greenhouses and vivariums, movie-editing and screening rooms, a temperature-controlled art gallery, a dust-free diesel mechanics room, instruction in cosmetology and robotics, radio and television studios with editing and animation labs. All this and more, mind you, is supposedly mandated by the Constitution.

The lower court even ordered the hiring of a \$30,000 "public information specialist" to advocate the court's plan. Thus the court's plan involved extracting taxes from unwilling and unrepresented citizens and spending some of the money to fund expression of views the citizens disapprove.

The school district had neither sufficient money for all this nor



George F. Will is a Pulitzer prize-winning columnist for the Washington Post.

the power to raise it. Now the Supreme Court has held, 5-4, that a court has a right to do what was done in Kansas City: a right to order a government to increase taxes and to suspend a state constitutional limit on such increases.

The rationale for this radicalism is that the power of courts to discern unconstitutional behavior entails the power to decree remedies sufficient thereto. The anti-democratic extremism of this is apparent. This thought never crosses the extremists' closed minds:

Measures such as judicial taxation, measures incompatible with the most fundamental constitutional principles, measures that shred democracy's due processes and obliterate the separation of powers — such measures cannot be necessary responses to social conditions deemed incompatible with the Constitution.

The school desegregation era began 70 miles from Kansas City, in Topeka, with Brown v. Board of Education. There, children were being denied enrollment in particular schools because their skins were black.

In the era of judicial fiat for "racial balance," some black children in Kansas City have been denied admission to some schools because their skins are black: Admitting them would complicate some judge's pursuit of his preferred racial numbers. To fund such ugly lunacy, courts

are now driven to the anti-constitutional expedient of judicial taxation.

Justice Kennedy, joined in dissent by Rehnquist, O'Connor and Scalia, notes that when advocating ratification of the Constitution, Alexander Hamilton assured Americans that "the judiciary... has no influence over... the purse" (Federalist 78) and James Madison said that "the legislative department alone has access to the pockets of the people" (Federalist 48). Today a majority of the Court says, in effect, "Well, what did the Founders know about the intent of the Founders?"

Danforth's remedy may be unnecessarily drastic. Congress can by statute limit the jurisdiction of lower courts (as Congress did in the Norris-LaGuardia Act, stripping courts of the power to issue labor injunctions). Besides, the five justices in this benighted majority (White, Brennan, Marshall, Blackmun, Stevens) are the five oldest justices. Nature will change the Court.

Meanwhile, liberals applauding judicial taxation are in an interesting intellectual tangle. Regarding the conduct of foreign policy, a core function of the executive branch, they today take a tolerant view of Congress' claim to capacious powers. (Liberals thought otherwise until they lost confidence in their ability to elect presidents.) And now regarding the power to raise and disperse revenues — surely the core legislative function — liberals are pleased to see this power usurped by the judiciary. (Time was when liberals thought political decisions should be made by the political branches.)

By what principle can these liberal positions be reconciled? None, unless a consistency in sacrificing the Constitution to obtain preferred results can be called a principle. Liberalism has become intellectual mush precisely because it is so disreputably result-oriented. And one result is the political anemia of liberalism.

How about a Humanity Day celebration?

MAY 01 '90 07:11 EAGLE RIVER LEG  
**Gestapo tactics?**

## Attack on spill bill is pure propaganda

To hear some critics talk, you'd think a bill that passed the state House late last month heralded the second coming of Nazi Germany. The bill supposedly will let the Department of Environmental Conservation engage in "Gestapo" tactics.

But in reality, the critics are guilty of using another Nazi tactic to sink the bill: the Big Lie.

This hyperventilated anti-environmental rhetoric is par for what passes as public discourse in Alaska. Only in Alaska would laws that are standard operating procedure elsewhere draw such fire.

For the record, the measure at issue, HB 409, will not allow DEC to swoop into any oil industry business at any time. It will not allow DEC to fine a firm into bankruptcy with no due process.

The bill simply gives DEC two new powers. First, when DEC suspects a polluter is breaking the law, the agency could do an unannounced inspection. However, this power would be limited to facilities that DEC already regulates closely and that are named in the bill.

Second, DEC could fine polluters without getting a court order first. To preserve due process rights, those fines could be appealed in court.

If those powers make a police state, there are a lot of police states around. Thirty seven states have some version of this authority to inspect polluters. At least 16 states have roughly similar powers.

Alaska's bill would not, as charged, allow inspectors to invade a firm's headquarters unannounced. It would only allow inspectors to visit certain facilities where pollution is produced.

As for allowing agencies to levy pollution fines, 28 states have some version of that power. Indeed, the U.S. Environmental Protection Agency is about to require states to have that authority if they want to enforce federal hazardous waste laws.

Laws similar to HB 409 have survived court challenges at both federal and state levels and in Alaska. The bill is specifically crafted to comply with privacy rights set in the Alaska Constitution.

The critics' rhetorical distortions would be laughable if their opinions weren't shared widely in the Alaska Senate. For too many senators, DEC's main role is to be a whipping boy when environmental disaster strikes, as with the Exxon oil spill.

DEC's enemies would rather keep the environmental watchdog locked in a cage and fed on half-rations. Otherwise, DEC might not have to whine and plead with polluters. It actually might be able to do what it's supposed to do: stop pollution.

## Reason No. 1

The first in a series of reasons why



**A** FOREIGN COURIERS  
BRINGING HEROIN THROUGH  
ANCHORAGE INTERNATIONAL

**B** FOREIGN COURIERS  
BRINGING HEROIN THROUGH  
ANCHORAGE INTERNATIONAL

## Consider Lithuania

The following message, dated August 1776, has somewhat anachronistically been released to the world media.

It was addressed to colonials in America who had just issued their provocative and untimely declaration of independence.

To the Secessionary Colonials in America:

Your friends and supporters from afar send their warm good wishes in your time of national trial and personal suffering.

We sympathize with your desire to be free and independent.

We find much to agree with in your presentation of facts to a candid world.

However, the action taken by your representatives in general congress assembled on July 4 is precipitate and unwise.

If you have, as you suggest, "a decent Respect to the Opinions of Mankind," you will rescind or revoke this unilateral declaration at once, or at the very least suspend it.

Please understand that we take no position on the merits of your case for independence.



william sa

Certainly the gr  
you listed in great  
which you see as cau  
impelled you to Se  
— touch the heart.

Our message to  
purely practical.

Your timing is p  
sen. Seventeen seven  
the worst possible  
which to declare i  
dence.

Although King Ge  
has his shortcomings  
economic sphere, yo  
party" in Boston  
was a sensationalist  
fair derogation of  
policy.

He is a force for  
and order at a terri  
bulent time.

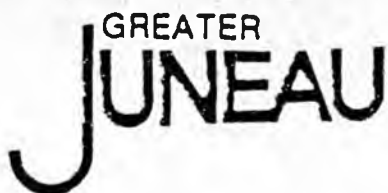
We happen to kn  
his court at St. Jarr

## Mail call: answers

It's time for another mail call. As you will note, I have only answered questions that were accompanied by a self-addressed envelope.

I read where Ivana Trump cannot go out on dates without Donald. If I take her out,





## Chamber of Commerce

1107 West 8th, No. 1 (907) 586-6420 Juneau, Alaska 99801

LEGISLATIVE "ALERT" 4/13/90

WE AS A BUSINESS COMMUNITY have a MAJOR problem brewing on the "Hill" and need you to make your feelings known to our State Legislators. It will only take a phone call to register your opinion, so take the minute and MAKE YOUR OPINION KNOWN. !!

1st WRITE DOWN YOUR OPINION, (50 words or less), Call 465-4648 (Legislative Information Office Network), and read your "Public Opinion Message". The following Legislators should be advised, Curt Menard, Cliff Davidson, Walt Furnace, Richard Foster, Bert Sharp, and our own legislative representatives. AT THIS TIME IT IS OUR BELIEF that the following house bills are not in the best interest of our business community.

HB 210, Supported by Ulmer, opposed by Hudson, would virtually stop any development by the private sector that uses streams for a water source.

HB 409, Sponsored by Ulmer, opposed by Hudson, contrary to what you may have heard, this is not "Oil Spill" legislation, and it would impact YOUR business.

HB 558, Sponsored by Ulmer, opposed by Hudson, would give the private citizen the right to sue companies directly on environmental issues.

IN HB 409, THE HOUSE FINANCE Committee has made substantial improvements to the original bill, but the fact is that anyone in business that has to be concerned with wastewater or emissions from their facility, (under current interpretation, EVERYONE, falls into this category), could be impacted by at LEAST two problems that exist with the current bill: One of which is the following interpretation:

The Department of Environmental Conservation (DEC), in select situations, would have the authority to demand immediate access and inspection of your place of business without a search warrant, if they EVEN SUSPECT that you are in violation of any aspect of the law. You would be subject to a \$15,000 per day fine (without limit). It has been labeled by some members of the lobby body as the "Gestapo" bill and it appears to certainly open the door for "witch hunts".

IF YOU COUPLE HB558 AND HB409 together, you could be under attack by ANY citizen that wishes to file suit against your business, (and you know how expensive it is to defend yourself in a court of law), if the citizen feels that the State hasn't adequately PROTECTED THEIR INTERESTS by exercising its authority to regulate, fine, etc. you.

THE JUNEAU CHAMBER OF COMMERCE ASK'S THAT YOU RESPOND TO THESE ISSUES BY REGISTERING YOUR VIEW THROUGH THE PHONE NUMBER NOTED ABOVE, AND EXPRESS YOUR VIEW. IF YOU DON'T TAKE THE TIME TO TELL THE LEGISLATOR'S WHAT YOU WANT, YOU LOSE !!



# Northern Alaska Environmental Center

218 DRIVEWAY  
FAIRBANKS, ALASKA 99701  
(907) 452-5021

20 February 90

RECEIVED

FEB 26 1990

Senator Bettye Fahrenkamp  
Chairman, Senate Resources Committee  
Box V  
Juneau, AK 99811

*File -  
FYI -  
Jann*

RE: HB409 (Authority of DEC)

Dear Senator Fahrenkamp:

The Board of the Northern Alaska Environmental Center feels that HB 409, which gives DEC the necessary teeth to enforce environmental regulations, is a significant piece of public-interest legislation.

This is a bill that the oil industry itself has necessitated. Alyeska's attempts to thwart and hinder DEC's legitimate inspections of the Valdez Pipeline Terminal have created a situation which must be corrected if DEC is to fulfill its mandate of environmental oversight and protection. Beyond that, however, we believe that the bill is fundamentally sound public-interest policy, providing the state's environmental agency with the authority it needs to carry out its responsibilities.

The bill, as you know, would strengthen DEC in three critical areas:

1. It would give DEC authority to inspect, without hindrance, major public facilities
2. It provides for assessment of administrative penalties sufficient to deter major violators (up to \$25,000 per day per violation) but with an appeal process that safeguards the rights of all
3. It eliminates the "pre-enforcement review" of DEC compliance orders (judicial review remains intact) which violators have used as a stalling tactic to delay or avoid compliance with environmental regulations.
4. It allows DEC to call for an environmental audit."

Some concern has been expressed by rural legislators about the administrative penalties section of HB 409, and (we understand) there is also a more diffuse concern that the bill confers gener-

ally) too much power on DEC. The Northern Center considers these objections to be unfounded:

1. The intent language clearly suggests (page 2, lines 23-27) that the penalties are aimed at egregious, persistent violators—not at villages whose landfills are in violation. If fines are deemed necessary to correct a situation, the power to levy them is reserved to the commissioner.
2. The appeals process in the bill carefully strikes a fair balance between the public's interest in environmental protection and the alleged violator's interest in fair process.
3. Twenty-seven other states have significant administrative civil penalties statues, including the oil-producing states of Texas, Louisiana, and Oklahoma; HB 409 relies on that precedent.

The Board members of the Northern Center urge your full support of this bill.

Sincerely,

June Weinstock  
President, Board of Directors

cc: Senator Steve Frank

f HB 409



# Alaska State Legislature

Representative Mike Davis

District 19

P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4930

Interim Office:  
P.O. Box 81435  
Fairbanks, Alaska 99708  
(907) 456-8161

TO: All Members  
House Resources Committee

FROM: Rep. Mike Davis

DATE: February 6, 1990

RE: CS for HB 409

HB 409 addresses the critical need for a stronger regulatory presence when it comes to pollution violations. In recent years the state has been plagued by hundreds of oil, chemical and hazardous waste spills, many of which the state has been forced to clean up at its own expense. During my visits to cleanup sites on the North Slope, in the Interior and in Prince William Sound, it became clear to me that tougher rules are desperately needed if we are going to keep industry to its obligation to clean up pollution.

After listening to the Oil Spill Commission's presentation to the House Resources Committee, I have proposed several changes which compliment recommendation #13 of the Commission's Executive Summary. HB 409 would accomplish the following:

- 1) Allow the DEC access to inspect regulated facilities without consent of the operator. DEC officials have expressed frustration at being barred or delayed from entering sites in order to make routine and specific investigations. This provision allows immediate entry at all reasonable times.
  
- 2) Allow the Commissioner of Environmental Conservation to levy administration penalties of up to \$25,000 per day for pollution violations and provide for an appeal process. Administrative penalties will provide for an economical, efficient and consistent system to deal with pollution matters. This is similar to federal law and may soon be required by the EPA.
  
- 3) Allow the Commissioner to require environmental audits, so that the state and industry can "Trouble shoot" pollution problems before they become unmanageable.

Rep. Mike Davis  
Page Three

4) Eliminate "pre-enforcement review" of compliance orders. Today, industry is allowed to challenge the orders before they go into effect, tying the hands of regulators and delaying timely solution of pollution problems. Under this change, stopping the pollution will get top priority. Challenges to the orders would get a hearing after correction has begun.

Special Note:

Criminal penalties included in the original HB 409 have been removed in the CS. Negotiations are underway to include them in HB 315.

I thank you for your consideration of this legislation.

## Sectional Analysis - CS to HB 409

### Section #1.

This section revises the DEC's present general access authority to include the right to copy records. This section also clarifies the present access provisions' scope. Note that it continues the present sections requirement that the DEC obtain consent for access from the owner of occupier of the premises.

### Section #2.

Allows the DEC access to "pervasively regulated facilities" to investigate suspected sources of pollution without the owners consent. Although access to facilities is required under most permits issued by the state, agencies have wound up in court over the particulars of when and where officials can investigate. These court delays have had the effect of limiting the states ability to enforce pollution laws. Constitutional law provides that a lessened expectation of privacy exists for pervasively regulated facilities and activities. A "pervasively regulated facility" is defined as a facility where the operations affect a significant public interest and are comprehensively regulated by the DEC.

### Section #3.

Are housekeeping measures.

### Section #4.

Establishes a new section creating an administrative penalties procedure for violation of DEC's statutes, regulations orders or permits. The amount may not exceed \$25,000 per day for each violation. Current procedures for addressing violators are long, cumbersome and expensive process that hamper the state's ability to deal with pollution problems. This section establishes an administrative review process, separate from the courts, that streamlines the process of adjudicating these claims. Many states already have administrative penalties procedures. The EPA may soon require states to have a similar process in place. Section #4 also provides for an administrative hearing and judicial review of the penalties ordered.

Section #5.

Allows for a compliance order to become effective immediately to start cleanup up of a contaminated site or to stop an ongoing pollution incident. Presently, industry can challenge compliance orders before implementation, causing substantial delays, to the detriment of the environment and public health. This section also provides for an administrative hearing and for judicial review of the hearing decision.

Section #6.

Allows the Commissioner to require environmental audits conducted by in independent contractor. An environmental audit is an objective and systematic analysis of a facility's operations to insure compliance with state environmental laws and to spot pollution problems before they become unmanageable. The EPA uses a similar process that has been very successful.

**HB**

**424**

SENATE COMMITTEE REPORT

DATE: 4/20/90

FURTHER:

DATE TURNED INTO OFFICE: 5-3-90

Resources

Committee considered

HB 424

Anchor River and Fritz Creek Critical Habitat Area management plan; efd.

and recommended:

[x] replace with 5 CS HB424 (Res)
[ ] or adopt CS

[x] same title
[ ] new title
[ ] technical title change (HB only)

[ ] attached amendment(s)
[ ] letter of intent adopted

- [x] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] further referral to

ATTACHES NEW FISCAL NOTE(S):
[ ] fiscal note(s) Dept/Date:
[ ] zero fiscal note(s)
[ ] appropriation-no fiscal note

APPROVES PREVIOUS:
[ ] fiscal note(s) Dept/Date:
[x] zero fiscal note(s) F+G DMR
[ ] Governor's bill w/fiscal note

SIGNING DO PASS:
[Handwritten signatures]

OTHER RECOMMENDATIONS:
[Blank lines]

Chair: Signature and Recommendation
[Handwritten signature]

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An act relating to the  
Anchor River Fritz Creek CHA  
Sponsor: Rules Committee  
Requestor: Governor

Agency Affected: Dept. Natural Resources  
BRU Division of Land & Water Mgmt.  
Components: Land & Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Lawrence Ostrovsky Phone: 415-2400  
Division: Commissioner's Office Date: 10/23/89

Approved by Commissioner: Jenni Jensen Date: 10/23/89  
Agency: DNR

Distribution (by preparer):

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

Changes in SCS CS HB 424 (Res)  
have no fiscal impact. This  
fiscal note is appropriate.  
Projections of no fiscal impact  
would continue through 1996.

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: HB 424  
PUBLISH DATE: HOUSE 1/18/90

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: Anchor River/Fritz Creek  
Critical Habitat Area Mgmt. Plan  
Sponsor: Rules Committee  
Requestor: Governor

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

Components: \_\_\_\_\_

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

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0					
TRAVEL	0					
CONTRACTUAL	0					
SUPPLIES	0					
EQUIPMENT	0					
LAND & STRUCTURES	0					
GRANTS, CLAIMS	0					
MISCELLANEOUS	0					
TOTAL OPERATING	0					

CAPITAL	0					
---------	---	--	--	--	--	--

REVENUE	0					
---------	---	--	--	--	--	--

**FUNDING:** (Thousands of Dollars)

GENERAL FUND	0					
FEDERAL FUNDS	0					
OTHER	0					
TOTAL	0					

**POSITIONS:**

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Frank Rue, Director Phone: 465-4105  
Division: Habitat Division Date: 10/19/89

Approved by Commissioner:  Date: 10/23/89  
Agency: Department of Fish and Game

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

would continue through 1990.

Changes in SCS CS HB 424 (RES)  
have no fiscal impact.  
This fiscal note is  
appropriate.

go0190hE  
Bradley  
5/1/90

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR HOUSE BILL NO. 424 (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 Anchor River and Fritz Creek  
7 Critical Habitat Area management plan; and providing  
8 for an effective date."

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

10 \* Section 1. AS 16.20.605(d) is amended to read:

11 (d) A management plan for the Anchor River and Fritz Creek  
12 Critical Habitat Area shall be adopted and may be revised [COMPLETED  
13 BY JULY 1, 1989,] by the Department of Fish and Game in consultation  
14 with the Department of Natural Resources under the Administrative  
15 Procedure Act (AS 44.62) [AND THE MANAGEMENT PLAN SHALL BE SUBMITTED  
16 TO THE LEGISLATURE FOR REVIEW. THE MANAGEMENT PLAN SHALL TAKE EFFECT  
17 WHEN APPROVED BY ACT OF THE LEGISLATURE]. The management plan shall  
18 reflect the concurrence of the Kenai Peninsula Borough as it applies  
19 to land committed by the borough to the Anchor River and Fritz Creek  
20 Critical Habitat Area.

21 \* Sec. 2. AS 16.20.605 is amended by adding new subsections to read:

22 (e) The department shall establish a citizens' advisory commit-  
23 tee to work with the department and advise on implementation and  
24 revisions of the management plan for the Anchor River and Fritz Creek  
25 Critical Habitat Area.

26 (f) Appointments to the citizens' advisory committee shall be  
27 recommended by the Kenai Peninsula Borough and shall include represen-  
28 tatives from

29 (1) industry and commercial users;

1                   (2) hunters, trappers, fishermen, cabin owners, and recrea-  
2                   tional users; and

3                   (3) officials representing the Kenai Peninsula Borough.

4           \* Sec. 3. The management plan for the Anchor River and Fritz Creek  
5 Critical Habitat Area adopted by the Department of Fish and Game dated June  
6 1989 is approved.

7           \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

go0190hE  
Bradley  
5/1/90

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR HOUSE BILL NO. 424 (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 Anchor River and Fritz Creek  
7 Critical Habitat Area management plan; and providing  
8 for an effective date."

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

10 \* Section 1. AS 16.20.605(d) is amended to read:

11 (d) A management plan for the Anchor River and Fritz Creek  
12 Critical Habitat Area shall be adopted and may be revised [COMPLETED  
13 BY JULY 1, 1989,] by the Department of Fish and Game in consultation  
14 with the Department of Natural Resources under the Administrative  
15 Procedure Act (AS 44.62) [AND THE MANAGEMENT PLAN SHALL BE SUBMITTED  
16 TO THE LEGISLATURE FOR REVIEW. THE MANAGEMENT PLAN SHALL TAKE EFFECT  
17 WHEN APPROVED BY ACT OF THE LEGISLATURE]. The management plan shall  
18 reflect the concurrence of the Kenai Peninsula Borough as it applies  
19 to land committed by the borough to the Anchor River and Fritz Creek  
20 Critical Habitat Area.

21 \* Sec. 2. AS 16.20.605 is amended by adding new subsections to read:

22 (e) The department shall establish a citizens' advisory commit-  
23 tee to work with the department and advise on implementation and  
24 revisions of the management plan for the Anchor River and Fritz Creek  
25 Critical Habitat Area.

26 (f) Appointments to the citizens' advisory committee shall be  
27 recommended by the Kenai Peninsula Borough *and the City of Homer* and shall include represen-  
28 tatives from

29 (1) industry and commercial users;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

(2) hunters, trappers, fishermen, cabin owners, and recreational users; and

(3) officials representing the Kenai Peninsula Borough <sup>and</sup>  
~~the City of Homer.~~

\* Sec. 3. The management plan for the Anchor River and Fritz Creek Critical Habitat Area adopted by the Department of Fish and Game dated June 1989 is approved.

\* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

# Alaska State Legislature

SENATOR BETTYE FAHRENKAMP  
CHAIRMAN, RESOURCES COMMITTEE  
119 N. CUSHMAN STREET, SUITE 201  
FAIRBANKS, ALASKA 99701  
OFFICE (907) 452-4882  
HOME (907) 456-2899



Senate

WHILE IN JUNEAU  
PO. BOX V  
JUNEAU, ALASKA 99811  
CAPITOL, ROOM 125  
OFFICE (907) 465-3834  
HOME (907) 760-6027

## SENATE RESOURCES COMMITTEE LETTER OF INTENT House Bill 424

It is the intent of the Senate Resources Committee that the Anchor River/Fritz Creek Critical Habitat Area Management Plan shall allow historical, traditional and public uses, including hunting, fishing, trapping, subsistence activities, photography, hiking, motorized and non-motorized public access, tree removal, timber harvesting, and grazing to the extent the activities are compatible with the goals of the critical habitat area.

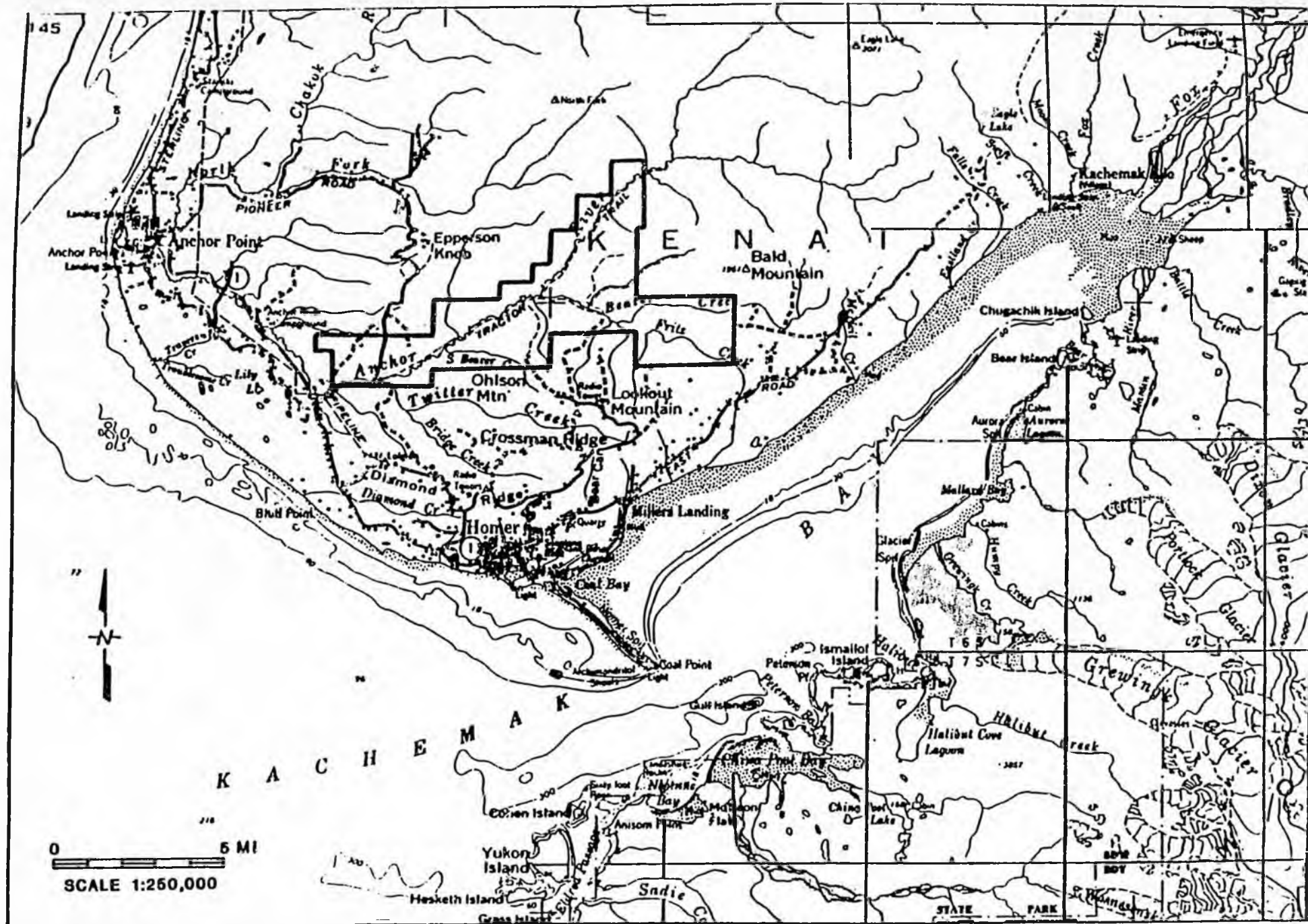
ANCHOR RIVER/FRITZ CREEK  
CRITICAL HABITAT AREA  
MANAGEMENT PLAN

JUNE 1989

Prepared by the  
Divisions of Habitat and Wildlife Conservation

Alaska Department of Fish and Game  
333 Raspberry Road  
Anchorage, Alaska 99518

Don W. Collinsworth, Commissioner



ANCHOR RIVER FRITZ CREEK CRITICAL HABITAT AREA

TABLE OF CONTENTS

..... 1

..... 4

..... 6

..... 9

n/Education..... 9

wildlife Habitat Enhancement..... 9

ts/Reservations..... 9

ess..... 9

..... 9

Vehicle Use..... 9

sition.....10

Selections.....10

oads.....10

ds.....10

ound Roads.....10

agement/Insect and Disease Management.....11

agement/Limited Tree Removal.....11

agement/Timber Harvest.....11

ement.....11

S.....11

xtraction.....11

inerals.....12

Minerals.....12

.....12

.....12

.....12

.....13

Inventory.....A1

## ACKNOWLEDGEMENTS

The Anchor River/Fritz Creek Critical Habitat Area was first proposed by the Kenai Peninsula Critical Habitat Task Force, a group of citizens concerned about the protection of this important area. It is largely through their support and the support of the citizens of Homer that the Anchor River/Fritz Creek Critical Habitat Area was established in 1985.

The Anchor River/Fritz Creek Critical Habitat Area Management Plan was prepared by a multi-agency planning team lead by the Department of Fish and Game (ADF&G). Planning team representatives are as follows:

Debra Clausen	ADF&G, Habitat Division
John Matthews	ADF&G, Wildlife Conservation Division
Dave Holdermann	ADF&G, Wildlife Conservation Division
Dave Watsjold	ADF&G, Sport Fish Division
Sandra Cosentino	Department of Natural Resources
Tim Rumfelt	Department of Environmental Conservation
Hank Hosking	U.S. Fish and Wildlife Service
Kevin Fenner	Kenai Peninsula Borough
Susan Regan	City of Homer
Tom Arminski	Alaska Power Authority

Other ADF&G staff have contributed significant time and expertise in developing this plan including Lance Trasky and Steve Albert of Habitat Division, Tom Schroeder of Commercial Fisheries Division, and John Westlund of Wildlife Conservation Division. Department of Natural Resources staff Helen Nienhueser, Division of Land and Water Management; Wade Wahrenbrock, Division of Forestry; Mitch Henning, Division of Mining; Bonnie Friedman, Division of Agriculture; and Leila Weiss, Division of Oil and Gas also deserve recognition for their contributions in the development of this plan.

The Alaska Department of Fish and Game operates all of its public programs and activities free from discrimination on the basis of race, religion, color, national origin, age, sex, or handicap. Because the department receives federal funding, any person who believes he or she has been discriminated against should write to: OEO, U.S. Department of the Interior, Washington, D.C. 20240.

## INTRODUCTION

Anchor River/Fritz Creek Critical Habitat Area, located in the southern Kenai Peninsula north of Homer, includes 19,000 acres of river bottoms, muskegs, upland spruce forests and subalpine meadows in the upper portions of the South Fork Anchor River and Fritz Creek drainages. The critical habitat area was established by the Alaska Legislature in 1985 for the purpose of protecting natural habitat critical to the perpetuation of fish and wildlife, especially moose. The critical habitat area contains portions of two of the most important moose ranges on the southern Kenai Peninsula.

The purpose of the Anchor River/Fritz Creek Critical Habitat Area Management Plan is to provide consistent long-range guidance to the Department of Fish and Game in managing the critical habitat area.

A variety of commercial and recreational activities have occurred in or been proposed for the critical habitat area. In order to evaluate the compatibility of these activities with the protection of fish and wildlife, their habitats, and public use of the critical habitat area, the Department of Fish and Game has undertaken this comprehensive critical habitat area management planning process.

The plan presents management goals for the critical habitat area and its resources and identifies policies to be used in determining whether proposed activities are compatible with the protection of fish and wildlife, their habitats, and public use of the area. The plan will guide management of the critical habitat area for the next ten years and will be reviewed after five years for necessary updates or amendments. The plan affects state lands only. Private lands within the boundaries of the area are not subject to critical habitat area authority. Harvest regulations for fish and wildlife populations are not addressed by this plan.

This document is the result of a public planning process led by the Department of Fish and Game. It was developed by a planning team represented by the following state, federal, and municipal agencies: the Alaska Departments of Fish and Game, Natural Resources, and Environmental Conservation; the Alaska Power Authority; Kenai Peninsula Borough; City of Homer; and the United States Fish and Wildlife Service. At the outset a public meeting was held in Homer to explain the planning process and solicit citizens' issues, interests, and concerns for the critical habitat area. Public input from this meeting was used by the planning team to formulate a list of issues to be addressed in the plan. At the same time resource information on the critical habitat area's fish and wildlife populations and their habitats, other natural resources, existing land use and land ownership was being collected and synthesized. This

information, presented in both map and narrative form comprises the plan's Resource Inventory.

Management goals and policies for the critical habitat area were developed by the planning team to address the identified issues. All policies were developed with consideration of their ability to meet the formulated management goals. In some cases alternative policies were developed. Each alternative policy was analyzed according to its ability to meet the management goals.

The draft plan went out for public review. Based on comments received during the public review process, the final plan was prepared. The plan is now being sent to the legislature for approval as directed in AS 16.20.605(d). Finally, the Commissioner of Fish and Game will adopt the plan for use by the department in managing the critical habitat area. At that point, the plan can be implemented by the Department of Fish and Game.

Future land use activities within the critical habitat area, including those proposed by the state, will be approved, conditioned, or denied on the basis of their consistency with the goals and policies provided in this plan as well as state laws and regulations. A Special Areas Permit is required for any habitat altering work, including any construction activity, in a designated Critical Habitat Area (5 AAC 95). A Special Areas Permit application form can be obtained from any Department of Fish and Game office and should be submitted to the Habitat Division Regional Office in Anchorage.

Future management activities of the Department of Fish and Game in the critical habitat area will also be directed by this plan. Research programs, public use facilities and other department projects will be consistent with the goals and policies presented in this plan.

Other state, federal, and local agencies have management responsibilities on critical habitat area lands as well.

Any use, lease or disposal of resources on state land in the critical habitat area requires Department of Natural Resources authorization. Activities affecting air or water quality require authorization from the Department of Environmental Conservation. The U.S. Army Corps of Engineers evaluates applications of the Department of the Army (DA) permits for discharging dredged and fill material in waters of the United States including wetlands. Various federal and state agencies, along with local governments, review proposals for DA permits, pursuant to the Fish and Wildlife Coordination Act (16 USC 661-666R). The Kenai

Peninsula Borough reviews and comments on all permit proposals within the coastal zone, including the Anchor River/Fritz Creek Critical Habitat Area.

This plan will be formally reviewed and, if appropriate, updated every ten years. Public participation will be solicited during the update process.

## Anchor River Fritz Creek Critical Habitat Area Management Plan

- ° On the initiative of local citizens and a grass roots effort, the Anchor River Fritz Creek Critical Habitat Area was established in 1985 to protect and preserve habitat and fish and wildlife populations, especially moose.
- ° The statute creating the critical habitat area directed that a management plan be prepared. The purpose of the plan is to provide consistent, long range direction in managing the critical habitat area.
- ° The planning process began with a public meeting held in December, 1987 to identify the issues that should be addressed in the plan.
- ° Department staff prepared a resource inventory of fish and wildlife and their habitats; public access; land use; and land ownership.
- ° The planning team composed of state, federal and local agency representatives with authority on critical habitat area lands developed the draft management plan based on the issues identified at the public meeting, critical habitat area resource values, the purpose for which the critical habitat area was established and other guidance provided in law.
- ° The draft management plan was sent out for public review and a public hearing was held to solicit comments.
- ° The final plan was prepared based on comments received during the public review period.
- ° The plan does not address harvest regulations, which are the authority of the Boards of Fish and Game.
- ° The plan applies only to state lands within the critical habitat area. (There are several private inholdings).
- ° The management plan is now awaiting implementation by Act of the legislature, as specified in statute.


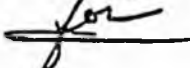
# MEMORANDUM

STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

TO: The Honorable Don Collinsworth . DATE: August 15, 1989  
Commissioner  
Department of Fish and Game FILE NO:

TELEPHONE: 465-2400

FROM:   
Lennie Gorsuch  
Commissioner 

SUBJECT: Anchor River/Fritz Creek  
Critical Habitat Area

In an August 2 memorandum, you requested my full endorsement of the Anchor River/Fritz Creek Critical Habitat Area Management Plan.

The Alaska Department of Natural Resources has assisted the Alaska Department of Fish and Game in preparing the Anchor River/Fritz Creek Critical Habitat Area Management Plan and does endorse its recommendations. This plan establishes policies that will guide land uses that the Department of Natural Resources must either permit or review. The Department of Natural Resources will use this plan as guidance in implementing its authorities under Title 38 of Alaska Statutes.

We appreciate the cooperation and assistance by your staff in working with us on this matter.

cc: Tom Hawkins, Assistant Commissioner  
Gary Gustafson, Director  
Division of Land and Water Management  
Frank Rue, Director  
Division of Habitat  
Department of Fish and Game



## KENAI PENINSULA BOROUGH

144 N. BINKLEY • SOLDOTNA, ALASKA 99669  
PHONE (907) 262-4441

DON GILMAN  
MAYOR

January 4, 1990

Debra Clausen  
Department of Fish & Game  
Habitat Division  
333 Raspberry Road  
Anchorage, Alaska 99518-1599

Dear Ms. Clausen,

I have reviewed the final draft of the Anchor River/ Fritz Creek Critical Habitat Area Plan and support adoption of this plan by the legislature.

The plan is consistent with the Borough's Concept Approved Coastal Management Program, and includes a good balance between environmental protection and human use and enjoyment of the area.

The Borough has requested relinquishment of the municipal selections in T5S, R13W as recommended in the plan.

Thank you for the opportunity to comment.

Sincerely,

Sylvia Spearow

Fischer

PROPOSED AMENDMENT TO HOUSE BILL 424

\* Sec. 2. AS 16.20.605 is amended by adding a new subsections to read:

(e) The Kenai Peninsula Borough shall establish a citizens' advisory committee to work with the department and advise on the development of policies and regulations that affect the Anchor River and Fritz Creek Critical Habitat Area.

(f) Appointments to the citizens' advisory committee shall be <sup>recommended</sup> ~~made~~ by the Kenai Peninsula Borough and shall include representatives from

- (1) industry and commercial users;
- (2) hunters, trappers, fisherman, cabin owners, and recreational users; and
- (3) officials representing the Kenai Peninsula Borough.

Renumber remaining sections accordingly.



**H B**

**432**

SENATE COMMITTEE REPORT

DATE: 4/19/90

FURTHER:

DATE TURNED INTO OFFICE: 5-6-90

Resources Committee considered CSHB 432 (Resources)

"An Act prohibiting finfish farming; and providing for an effective date."

and recommended:

- replace with \_\_\_\_\_ CS \_\_\_\_\_  same title
- or adopt \_\_\_\_\_ CS \_\_\_\_\_  new title
- attached amendment(s)  technical title change (HB only)
- \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

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

ATTACHES NEW FISCAL NOTE(S): Dept/Date:

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

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

appropriation-no fiscal note

APPROVES PREVIOUS:

fiscal note(s) Dept/Date: \_\_\_\_\_

zero fiscal note(s) FTG

Governor's bill w/fiscal note

SIGNING DO

*[Handwritten signatures]*

OTHER RECOMMENDATIONS:

*Articles Supplemental Note*

Chair: Signature and Recommendation

PF1 PF2 PF3 PF4 PF5 PF6 PF7 PF8 PF9 PF10 PF11 PF12
HELP EXIT MENU PRINT BWD FWD FIRST LAST QUIT
Page 1

Bill/Resolution History

BILL: HB 432
NAME: CSHB 432(RES)
TITLE: "An Act prohibiting finfish farming; and providing
for an effective date."

PRIME SPONSOR: GRUSSENDORF
CO-SPONSOR: ULMER, GOLL, DAVIDSON, NAVARRE, WALLIS, HUDSON, TAYLOR, DAVIS, C.
JACKO, KUBINA, MACLEAN, SWACKHAMMER, ZAWACKI, BOUCHER, FISCHER, HALFORD, SZYMANSKI
DUNCAN, BINKLEY, RODEY, KERTTULA, JONES, ELIASON, ZHAROFF, COGHILL

CURRENT STATUS: TRANSM TO GOVERNOR STATUS DATE: 05/14/90

Selection=>

PF1 PF2 PF3 PF4 PF5 PF6 PF7 PF8 PF9 PF10 PF11 PF12
HELP SUBJ EXIT MENU TEXT PRINT BWD FWD FIRST LAST QUIT
Page 2 of 4

Bill/Resolution Floor Action
Current Status: TRANSM TO GOVERNOR

Table with columns: Jrn-Date, Jrn-Page, Action. Rows 1-18 detailing legislative actions and dates.

Selection=>

PF1 PF2 PF3 PF4 PF5 PF6 PF7 PF8 PF9 PF10 PF11 PF12
HELP SUBJ EXIT MENU TEXT PRINT BWD FWD CMT/JRNL FIRST LAST QUIT
Page 3 of 4

Bill/Resolution Floor Action
Current Status: TRANSM TO GOVERNOR

Table with columns: Jrn-Date, Jrn-Page, Action. Rows 1-18 detailing legislative actions and dates.

Selection=>

PF1 PF2 PF3 PF4 PF5 PF6 PF7 PF8 PF9 PF10 PF11 PF12
HELP SUBJ EXIT MENU TEXT PRINT BWD FWD CMT/JRNL FIRST LAST QUIT
BASIS Journal Text

05/06/90 SENATE JOURNAL PAGE 4022

HB 432

The Resources Committee considered CS FOR HOUSE BILL NO. 432
(Resources) (An Act prohibiting finfish farming; and
providing for an effective date). Senator Fahrenkamp,
Chair, and Senator Sturgulewski signed "no recommendation."
Senators Eliason, Zharoff and Kerttula signed "do pass."

Previous House zero fiscal note.

The committee further attached the following Letter of
Intent:

Senate Resources Committee Letter of Intent
for

Selection=>

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

SENATE RESOURCES COMMITTEE LETTER OF INTENT TO HB 432

It is the intent of the legislature to support the concept of upland tank farming of non-salmon species. It is further the intent of the legislature that the Department of Fish and Game work with the Senate and House Resources Committees during the interim to develop environmental, siting and broodstock acquisition and ownership criteria, including identification of potential sources of broodstock, for the upland tank farming of non-salmon species for incorporation into legislation to authorize upland tank farming of non-salmon species for introduction in the 17th Legislature.

Alaska

# FINFISH FARMING TASK FORCE

REPORT

to the

ALASKA

LEGISLATURE

January 15, 1990

**Alaska Finfish Farming Task Force**

**REPORT TO THE ALASKA LEGISLATURE**

**January 15, 1990**

Alaska Finfish Farming Task Force  
P.O. Box AM  
Juneau, AK 99811  
907/465-3568

Sen. Tim Kelly, President of the Alaska Senate  
Rep. Sam Cotten, Speaker of the Alaska House of Representative  
Pouch V  
Juneau, AK 99811

Senator Kelly and Representative Cotten:

Transmitted herein is the final report of the Alaska Finfish Farming Task Force. The task force has met its charge as stated in Ch. 145 SLA 1988; the findings and recommendations included in this report reflect that mission.

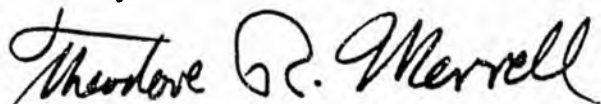
These findings and recommendations have resulted from our review of prior research, inspection of finfish farms, the testimony of experts, and public comments. This report represents the consensus of the entire task force. All of our findings and recommendations were agreed upon by every task force member.

The time constraint on the task force prevented us from considering every issue in great depth. We have focused our efforts on those issues over which there is the most controversy and on the issues for which more definitive answers are available. We hope that you will find this report useful to your deliberations.

With the submission of this report, the task force will cease to exist as a formal body. However, our project coordinator has been retained to be available as needed through the legislative session to assist in the deliberations of this important issue.

Finally, on behalf of the task force, I would like to take this opportunity to thank you for creating this opportunity to participate in an important public policy issue.

Sincerely,



Theodore R. Merrell, Chairman  
Alaska Finfish Farming Task Force

# **CORRECTION**

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

**Alaska Finfish Farming Task Force**

**REPORT TO THE ALASKA LEGISLATURE**

**January 15, 1990**

Alaska Finfish Farming Task Force  
P.O. Box AM  
Juneau, AK 99811  
907/465-3568

## THE ALASKA FINFISH FARMING TASK FORCE

### Members:

Ken Castner, Homer -- Representative of Commercial Fishermen  
Mary Lou Cooper Elton, Juneau -- Public Member  
Theodore Merrell, Juneau -- Fisheries Biologist, Chairman  
Brent Paine, Anchorage -- Aquatic Farming Advocate  
John Weddleton, Anchorage -- Private Economist

Staff: Jon Sherwood, Project Coordinator  
Martha Fischbach, Publication Specialist

The following individuals held the part-time clerical position:

Fran Armon  
Chris Clark  
Martha Fischbach

### Acknowledgements

Many individuals and organizations helped the task force in its efforts, and we gratefully acknowledge their efforts.

In addition, the task force would like to express its appreciation to Mike Nizich and the staff of the Office of the Governor, Division of Administrative Services for providing the task force with administrative support; to John Lucas and the staff of the Office of Management and Budget, Division of Audit and Management Services, particularly June Baker and Donna Voss, for providing office space and support for the task force staff; and Sen. Arliss Sturgulewski and her staff, for arranging conference rooms, recording equipment, and teleconferencing services for task force meetings.

Sen. Tim Kelly, President of the Alaska Senate  
Rep. Sam Cotten, Speaker of the Alaska House of Representative  
Pouch V  
Juneau, AK 99811

Senator Kelly and Representative Cotten:

Transmitted herein is the final report of the Alaska Finfish Farming Task Force. The task force has met its charge as stated in Ch. 145 SLA 1988; the findings and recommendations included in this report reflect that mission.

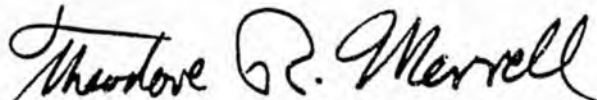
These findings and recommendations have resulted from our review of prior research, inspection of finfish farms, the testimony of experts, and public comments. This report represents the consensus of the entire task force. All of our findings and recommendations were agreed upon by every task force member.

The time constraint on the task force prevented us from considering every issue in great depth. We have focused our efforts on those issues over which there is the most controversy and on the issues for which more definitive answers are available. We hope that you will find this report useful to your deliberations.

With the submission of this report, the task force will cease to exist as a formal body. However, our project coordinator has been retained to be available as needed through the legislative session to assist in the deliberations of this important issue.

Finally, on behalf of the task force, I would like to take this opportunity to thank you for creating this opportunity to participate in an important public policy issue.

Sincerely,



Theodore R. Merrell, Chairman  
Alaska Finfish Farming Task Force

## TABLE OF CONTENTS

<u>Ch.</u>	<u>Title</u>	<u>Page</u>
1.	INTRODUCTION .....	1
2.	HEALTH OF THE FISHERIES .....	5
	Disease .....	5
	Genetics .....	7
3.	BROODSTOCK .....	11
	Sources of Broodstock .....	11
	Ownership of Broodstock .....	12
4.	SITING .....	15
	Environmental Impacts .....	15
	User Conflicts .....	16
5.	COST OF REGULATION .....	19
6.	ANALYSIS OF COSTS AND BENEFITS .....	21
	Costs and Benefits Accruing to Alaska and Its Residents .....	21
	Economic Viability of Finfish Farming in Alaska .....	23
7.	MARKETING .....	25
	Market Potential for Alaska Finfish Farm Products .....	25
	Competition between Farmed Fish and Alaska Commercial Fisheries .....	27
	Marketability of Alaska Salmon .....	28
8.	GENERAL FINDINGS AND RECOMMENDATIONS .....	31
	Summary of Recommendations .....	33
	APPENDIX A DESCRIPTION OF FINFISH FARM OPERATIONS .....	A-1
	APPENDIX B IMPACT OF ALASKA FARMED SALMON ON SALMON PRICES .....	B-1
	APPENDIX C SUMMARY OF ACTIVITIES/LIST OF PERSONS TESTIFYING .....	C-1
	APPENDIX D MINUTES OF MEETINGS .....	D-1
	APPENDIX E LIST OF PERSONS SUBMITTING COMMENTS ON DRAFT REPORT .....	E-1
	APPENDIX F BIBLIOGRAPHY .....	F-1

## Chapter 1

# INTRODUCTION

The viability and desirability of finfish farming in Alaska, particularly salmon, has long been a subject of controversy. The state is currently under its second finfish farming moratorium. This one expires on July 1, 1990.

The Alaska Finfish Farming Task Force was created by the Alaska Legislature in 1988 (Ch. 145 SLA 1988) to study the socioeconomic, biological, and environmental issues related to finfish farming. The task force was charged with addressing finfish farming in Alaska in freshwater, in marine environments, and in tanks or other upland structures containing marine water. In addition, the task force was to consider hatchery operations related to finfish farming.

By statute, the composition of the task force must represent a variety of perspectives. Specifically, the task force is comprised of one representative of the commercial salmon fishermen, one aquatic farming advocate, one private economist, one fisheries biologist, and one public member with no involvement in the seafood or aquatic farming industry. State employees were not eligible to serve on the task force.

Although the legislation authorizing the task force was passed in 1988, the Legislature did not fund the task force until its 1989 legislative session. In July 1989, Governor Cowper announced his appointments to the task force; the first meeting was held in late July.

This task force is not the first body in the state to consider the issue of finfish farming. During the Sheffield Administration, the Governor's Mariculture Advisory Committee was formed to look at the issue. In addition, the Alaska Legislature has considered various pieces of legislation pertaining to aquatic farming.

One of the first actions of the task force was to familiarize itself with the work that preceded it. In addition, it considered new information on social, environmental, and economic impacts that has recently become available from the operation of West Coast and foreign salmon farms. The world markets for salmon are changing dramatically; many assumptions regarding salmon farming economics and marketing that are based on historical data may not be relevant today.

In 1989, the State of Alaska implement its plant and shellfish mariculture regulations, giving state officials additional experience in the regulation of an industry that shares many of the characteristics of the proposed finfish farming industry.

To ensure that it evaluated finfish farming based upon the most current information available, the task force took testimony from experts on every major issue. In addition, the task force toured salmon farms and hatcheries in the Puget Sound area. It visited both salt water marine pen farms and fresh water smolt and pan-sized fish farms.

Due to the limited time available to the task force to perform its mandated tasks, it has focused on the specific issues set forth in Ch. 145 SLA 1988:

- protecting the health of the existing fisheries resource;
- siting of farms to protect the environment and minimize use conflicts;
- the supply of finfish farming broodstock;
- the cost of regulating finfish farming;
- the economic benefits and costs of finfish farming; and
- strategies for improving the marketability of Alaska salmon, particularly those species that compete with farmed salmon.

The task force has incorporated other concerns into its evaluation of these issues as appropriate.

The remainder of this report addresses the six major topics listed above. Each of these topics is divided into its component specific issues. Each issue is defined in broad terms, and a set of findings, briefly summarizing information pertaining to the issue that was collected by the task force, is provided. Where pertinent, the trade-offs associated with the different approaches to addressing each issue are discussed. Finally, the task force presents its recommendations as to the manner in which future State efforts should address each issue and some general conclusions and concerns about the role of finfish farming in Alaska.

The task force did not begin its work with any supposition that finfish farming is desirable or undesirable for Alaska. To address some of the issues included in the legislation authorizing the task force, however, it is necessary to presuppose the existence of a finfish farming industry. For example, one cannot determine the cost of regulating a finfish farming industry without assuming that an industry will exist. The reader should

not construe any finding or recommendation pertaining to a specific issue to be either endorsement or disapproval of finfish farming in Alaska.

For clarity, a brief explanation of a few terms used in this report and in the discussion of finfish farming is provided below.

- **Finfish** is used as a generic term for finfish indigenous to Alaska, except where noted.
- **Finfish farming** is the growing of fish to market size in an enclosed environment. **Aquatic farming** includes sea plants and shell fish as well as finfish.
- **Ocean ranching** is the release of hatchery-reared fish into the public waters for eventual recapture.
- **Aquaculture** is the cultivation of fish and plants in both fresh and salt water. However, in Alaska, the term is specific to the State's and private nonprofit hatcheries' ocean ranching programs.
- **Mariculture** is fish cultivation in salt water. However, in Alaska, the term is used to refer to all aquatic farming activities.

To avoid confusion, we have tried to be explicit in our references to finfish farming and ocean ranching by avoiding the more general terms, mariculture and aquaculture.

## Chapter 2

# THE HEALTH OF THE FISHERIES

Any effort to initiate finfish farming in Alaska must provide for the maintenance of the health of the state's existing commercial, recreational, and subsistence fisheries. There is continuing public concern regarding the effects of finfish farming on disease transmission and genetic alterations in wild stocks.

Finfish farming also could affect the health of existing fisheries through its impacts on the environment. This issue is addressed as the first concern in Chapter 4.

### DISEASE

#### Concern

Can diseases from finfish farms be transmitted to wild and hatchery finfish stocks, with substantive adverse impacts on those stocks?

#### Findings

- a. Fish raised in farms are subject to increased stress from handling and from the high density of fish per volume of water; this increased stress makes farmed fish more susceptible to disease than are fish in the wild.
- b. Diseases occurring in farmed stocks also occur in the marine environment and in wild stocks.
- c. Disease transmission between captive stocks and wild stocks is a two-way problem. Captive stocks are probably more susceptible to disease because of increased stress. The potential for disease transmission between captive and wild stocks exists in both ocean ranching operations and fish farm operations.
- d. The importation of nonindigenous stocks poses the risk of importing diseases that are not present in existing wild and hatchery stocks. To control the spread of disease,

the State has imposed strict regulations limiting the movement of salmon and their gametes within Alaska and prohibits the importation of live fish or gametes from outside the state.

- e. Disease pathogens can travel through the water table in land-based farming operations. Upland finfish farming can result in the contamination of the water table with pathogens that infect fish.
- f. The risk of disease transmission from captive to wild stocks increases in direct proportion to the degree to which captive fish and the water they use contact wild fish. Of the three alternatives for finfish farming (upland freshwater, upland marine, and marine pens), marine pens, with the certainty of fish escapement, pose the greatest risk of spreading disease.
- g. Upland marine and fresh water facilities pose less risk of contamination of natural waters than do marine pens.
- h. The addition of finfish farming to aquaculture activities in Alaska would increase the demand for the pathology services necessary to control disease. Providing these services to a finfish farming industry would strain existing State technical and financial resources.
- i. Pathology services are available in other fish farming regions from private laboratories.
- j. Pathological services can be provided by persons certified by the American Fisheries Society under State authority. This practice currently exists in the ocean-ranching program.<sup>1</sup>

### Recommendations

- 1. The finfish farming industry can be accommodated without significant threat of disease to wild and hatchery stocks if the State continues to meet its responsibilities in fish disease control and if monies are provided for additional health services or private pathological services are created.

---

<sup>1</sup> This finding is repeated in Chapter 5, as finding f.

2. Current policies prohibiting importation of live salmonids, including gametes, should be placed into statute and rigorously enforced.<sup>2</sup>
3. To ensure adequate control of disease in the finfish farming industry, the State will need to provide for the development of private pathology services or increase staff and funding for existing State services.
4. If the State allows private pathology services, there should be a licensing or certification process.
5. Water discharged from upland marine and fresh water facilities should be screened and the effluent treated.

## **GENETICS**

### **Concern**

Does escapement of farmed finfish pose a threat to the genetic integrity of wild stocks?

### **Findings**

- a. Each finfish stock has its own unique genetic characteristics. Therefore, the interbreeding of wild stocks with selectively bred farmed stocks could alter the genetic characteristics of wild stocks.
- b. Fish farmers would practice selective breeding to enhance characters that are best suited for the farm environment. Over time, farmed fish stocks will diverge genetically from the donor wild stocks; the characteristics for which farmed stocks are bred diminish their suitability to life in the wild.
- c. The greater the extent of fish escaping from fish farms, the greater the possibility that farmed fish will either interbreed with or compete with wild stocks.

---

<sup>2</sup> This recommendation is repeated in Chapter 2, as recommendation 2 in the section on genetics.

- d. The survival capacity of escaped farmed stocks is uncertain. While it is possible for farmed stocks to survive outside a farm environment, it is not clear what percentage would breed successfully.
- e. The genetic impact on stocks of wild fish resulting from interbreeding with escaped farm fish would depend on the ratio of farmed fish to wild fish of the same species in the stream.
- f. The State's genetic policy prohibits the importation of live salmonids into the state.
- g. The State's genetic policy does not allow for stocks to be transported between major geographic regions of the state.
- h. The State's genetic policy has been adopted to protect Alaska's diverse natural salmon and trout stocks; however, it is not always rigorously followed.
- i. Several options exist for protecting the genetic integrity of wild stocks, including: restricting farming to upland marine or fresh water tanks; using triploid farm stocks (fish that have a third set of chromosomes, rendering them sterile); and establishing wild stock genetic reserves.

### Recommendations

1. The existing State genetics policy is adequate to protect the genetic integrity of the state's fisheries and should be rigorously applied to fish farming.
2. Current policies prohibiting importation of live salmonids, including gametes, should be placed into statute and rigorously enforced.<sup>3</sup>
3. The State should not permit the siting of finfish farms within a 20 kilometer radius from the mouth of a stream that has significant production of the same species.
4. The task force concurs with the Alaska Chapter of the American Fisheries Society resolution on genetic sanctuaries:

---

<sup>3</sup> This recommendation is repeated in Chapter 2 as recommendation 2 in the section on disease.

One recommendation for the protection of wild stocks in the Genetic Policy is the establishment of wild stock sanctuaries. These sanctuaries would be areas in which no enhancement activity is permitted except gamete removal for broodstock development. Populations of fish in these areas would represent "gene banks" of wild-type genetic variability. Sanctuary status could also be a conservative use status for the protection of particular significant or unique wild stocks.

[Editor's Note: the task force uses the term reserve, instead of sanctuary, elsewhere in this report.]

5. The State should form an ad hoc committee to determine whether the State is strictly adhering to its genetics policy.

## Chapter 3

# BROODSTOCK

The major broodstock issues are the sources of donor broodstock for finfish farming activities in Alaska and the creation of finfish broodstock as privately-owned resources.

### OWNERSHIP OF BROODSTOCK

#### Concern

Should the State allow the private ownership of broodstock?

#### Findings

- a. Finfish broodstocks are a common property resource.
- b. Finfish farmers would need control over their broodstock to develop domesticated stocks most suitable for farming.
- c. Private ownership of broodstock could lead to the exportation out of state of gametes or live salmonids that are now unique to Alaska.
- d. Private ownership of broodstock could lead to patentable genetic alteration based on the indigenous species.
- e. A system of private nonprofit hatchery regulations could be designed that would allow farmers to develop pedigreed broodstock without losing State ownership.
- f. Finfish farming hatcheries would require a new statutory authorization for operation.

#### Recommendations

1. The State should not permit private ownership of broodstock.

2. All finfish gametes should remain in the ownership of the State by requiring that hatchery production for finfish farming be done under State permit and authority.<sup>4</sup>
3. All hatcheries within Alaska should be operated under nonprofit status.
4. A new permit allowing the cultivation of eggs and the sale of smolt to the finfish farming industry should be required. Existing hatcheries may be limited or precluded from participation by the conditions of their existing permits.
5. The State should create a new statutory authorization for the operation of finfish farming hatcheries.
6. There should be a statutory ban on the export of indigenous finfish stocks.

## SOURCES OF BROODSTOCK

### Concern

How can finfish farmers be provided secure sources of donor broodstock? How can finfish farmers be allocated broodstock to minimize the impact on the common property resource?

### Findings

- a. The State of Alaska owns all finfish broodstock; there are no privately-owned broodstock in Alaska.
- b. Current laws, policies, and aquaculture activities do not provide for a source of broodstock for finfish farming.
- c. Given current State policy on disease and genetics, the initial source of broodstock for finfish farming would have to come from State hatcheries, private nonprofit hatcheries, or wild stocks.

---

<sup>4</sup> This recommendation is included in Chapter 3 as part of recommendation 1 in the section on sources of broodstock.

- d. Existing genetic policy limits sources of donor broodstock to stocks found in the general vicinity of a net pen or upland tank farm.
- e. Sources of donor broodstock for enclosed freshwater systems can be less restrictive than broodstock for marine net pen farms, both in species and in stock selection, because of the lower potential for impacts on wild stocks from enclosed freshwater systems.
- f. Use of indigenous broodstock would provide finfish farms with stocks that are more resistant to naturally occurring diseases.
- g. Some broodstock sources are more desirable than others because of characteristics such as fish size, color of flesh, reduced tendency toward premature sexual development, and size of the donor population.
- h. Finfish farmers require a high degree of control over their selective breeding and husbandry practices in order to develop broodstock biologically and economically suited to farm operations.
- i. Finfish farmers eventually would be able to develop their own broodstock with State permits and could supply new farms with smolt.
- j. Current salmon management practices fully allocate returning adult salmon to either natural spawning escapements or to the sport, commercial, and subsistence fisheries.
- k. Salmon egg surpluses do occur in the State and private nonprofit hatchery systems; however, current statutes would prevent these surpluses from being used as sources of donor broodstock for finfish farming.
- l. Private nonprofit hatcheries harvest and sell fish to cover their costs. There is no provision in current statutes for private nonprofit hatcheries to sell eggs or smolt for cost recovery.
- m. Egg surpluses occur due to overescapement up rivers and streams. Overescapement is one source of broodstock for existing hatchery programs. Current statutes prohibit the use of overescapement as a source of broodstock for finfish farming.

- n. Direct sales from fishermen holding live fish transport permits would be the least desirable method of broodstock acquisition for finfish farming due to the lack of disease and genetic control.
- o. A single hatchery may maintain several genetically different broodstocks as long as each is segregated from the others.
- p. Sources of broodstock for finfish farming could be identified by Regional Planning Teams.

### Recommendations

1. All finfish gametes should remain in the ownership of the State by requiring that hatchery production for finfish farming be done under State permit and authority. Cultivation and in-state sale of broodstock and smolt by finfish farmers should not be prohibited.<sup>5</sup>
2. The finfish farming industry should develop its own stocks under new State provisions for nonprofit finfish hatcheries.
3. New private nonprofit hatcheries under State authority would be required to rear broodstock for finfish farming operations.
4. The preferred initial source of broodstock is surplus hatchery eggs. Other sources include overescapement, cost recovery fish, and allocation by the Board of Fisheries.

---

<sup>5</sup> Part of this recommendation is repeated in Chapter 3 as recommendation 2 in the section on ownership of broodstock.

## Chapter 4

# SITING OF FINFISH FARMS

Physical characteristics of finfish farm sites affect the degree to which farms alter the local environment, and farms may interfere with other users of water and adjacent uplands. Physical characteristics of sites also affect the economic viability of finfish farms.

### ENVIRONMENTAL IMPACTS

#### Concerns

What are the environmental impacts of finfish farms? How can they be minimized?

Will predator control measures by finfish farmers adversely affect populations of birds and mammals?

#### Findings

- a. Proper siting of finfish farming facilities is the most important element in minimizing the transference of disease, genetic interference with wild stocks, degradation of water quality, aesthetic degradation, and predation by marine mammals, and in avoiding conflicts with existing users and designated uplands uses.
- b. The primary environmental impacts of net pen farming stem from increased sedimentation, changes in the benthic infauna (bottom-dwelling organisms), and reduced water quality in the vicinity of the pens resulting from the deposition of fecal material and uneaten feed.
- c. The degree of impact of net pen farming varies inversely with the degree of flushing, which depends largely on water depth and current.
- d. The degree of impact of net pen farming varies directly with the surface area occupied by pens and the stocking density of the fish farms.

- e. Criteria for the siting and intensity of farming activities can be used to reduce the environmental impacts of marine pen farming in an area.
- f. Pre-site surveys and periodic monitoring of water quality and the benthic community beneath pens are essential to ensuring minimal environmental impacts.
- g. The primary environmental impacts from fresh water and marine upland tank farming operations stem from their use and disposal of water.

### Recommendations

1. The State should use existing siting guidelines to develop a set of criteria specifically applicable to finfish net pen farming in Alaska. These include the State of Washington's Recommended Interim Guidelines for the Management of Salmon Net-Pen Culture in Puget Sound and the Alaska Department of Natural Resources' Etolin Island Area Mariculture Pilot Project. Guidelines for siting should also reflect the Alaska Department of Fish and Game's disease and genetics policies.
2. The State should use the Consistency Review Process of the Alaska Coastal Management Program in permitting finfish farm sites. The Alaska Coastal Management Program provides "a framework for local and public participation in State decisions, and a mechanism for the resolution of conflicts between government agencies, individuals, and local communities." However, special provisions for public notice of finfish farming permit applications, including requirements for newspaper display ads with location maps and direct agency notification to interested parties, should be developed to encourage the greatest degree of public involvement.
3. Only nonlethal predator control measures, such as bird and mammal enclosure nets and electric fences, should be allowed for finfish farming.

### USER CONFLICTS

#### Concerns

Will the presence of finfish farms restrict, preclude, or degrade current or potential uses of sites and adjacent areas by others for commercial, recreational, and subsistence activities?

How can the State identify potential conflicts with existing uses of uplands and coastal areas, especially where those uses do not require State permits?

### Findings

- a. Net pen farms may have adverse aesthetic impacts on upland land owners or other users.
- b. An average finfish farm would take up one to two acres of surface area. Additional subsurface area would be required.
- c. Net pen farms may interfere with navigation around the site and restrict access to uplands.
- d. Finfish farms may preclude or interfere with other commercial and recreational uses of farm sites or adjacent uplands.
- e. Year-round commercial activities by finfish farms may be incompatible with use of uplands set aside for wild or scenic purposes, such as State and federal parks, monuments, and wilderness areas.
- f. The State does not have a complete inventory of existing uses of State waters other than those operating under a specific State permit, except for Etolin Island, Prince of Wales Island, and Prince William Sound. The use of State waters for navigation, sport and commercial fishing, water sports, or anchorage are activities for which State permits are not usually required.
- g. The State's consistency review procedure for coastal permitting and its existing aquatic farm permitting procedures provide some mechanisms for identifying and resolving user conflicts.
- h. The State's salmon enhancement program uses marine net pens, and they are routinely permitted under existing regulations.

### Recommendations

1. Area planning represents the best method of determining consistency of uses. However, where area plans do not exist, the consistency review process must allow

for expanded public review to ensure consistency with activities that do not require State permits.

2. Fish farms and ancillary use of adjacent uplands must be compatible with zoning and designated uses of the uplands. No finfish farming should be permitted in waters adjacent to State and federal parks.

## Chapter 5

# COST OF REGULATION

The development of a finfish farming industry in Alaska will require the development of some new regulatory programs and the expansion of some existing ones.

### Concerns

What is the cost of providing necessary regulation and oversight to a finfish farming industry? How could the finfish farming industry bear some of these costs?

### Findings

- a. Success of the finfish farming industry will require the support and cooperation of the government agencies charged with monitoring, permitting, and enforcement.
- b. The cost of conducting site evaluation, preparing adequate site plans, and other work anticipated in the permit application process is a significant front-end cost to finfish farmers.
- c. The Department of Environmental Conservation, the Department of Fish and Game, the Department of Natural Resources, and the Division of Governmental Coordination would all have regulatory responsibilities related to finfish farming.
- d. The task force estimates that approximately \$500,000 would be required annually by State agencies to regulate a finfish farming industry, assuming 10 to 15 permit applications per year requiring the equivalent of 5 additional full-time positions.<sup>6</sup>

---

<sup>6</sup> The exact cost of regulating finfish farming will vary according to the specific provisions contained in enabling legislation and the number of permit applications that are received. Recent draft estimates provided by State agencies project a cost of \$1.15 million to regulate an industry with 50 permit applications per year. The fiscal note to CSSB 106 (L&C) (1987) estimated that it would cost approximately \$640,000 to regulate all forms of aquatic farming.

Federal and local governmental agencies would also experience some costs associated with regulating finfish farming.

- e. The cost of administering regulatory requirements for hatcheries would be similar whether for ocean ranching or finfish farming.
- f. Pathology services can be provided by persons certified by the American Fisheries Society under State authority. This practice currently exists in the ocean ranching program.<sup>7</sup>

### Recommendations

1. The State should reduce its regulatory expenses by encouraging the use of private pathology services.
2. The finfish farming industry should pay economic rent for use of public resources. Forms of rent include local and State property taxes, State income taxes, sales taxes, permit fees, tideland leases, and a raw fish tax of three percent of the farm gate value.
3. Special provisions for public notice of finfish farming permit applications, including requirements for newspaper display ads with location maps and direct agency notification to interested parties, should be developed to encourage the greatest degree of public involvement. Applicants should bear the cost of these public notice provisions.

---

<sup>7</sup> This finding is repeated in Chapter 2 as finding j in the section on disease.

## Chapter 6

# ANALYSIS OF COSTS AND BENEFITS

Development of a finfish farming industry will provide economic benefits to finfish farmers, their suppliers and processors and, through taxation, State and local governments. At the same time, costs will accrue to State and local governments, and users of coastal marine waters, tidelands, and uplands. The costs and benefits to the state of this new industry must be weighed carefully.

In addition, it is important to look closely at the economics of finfish farming, to avoid making false assumptions about the economic viability of the industry.

## COSTS AND BENEFITS ACCRUING TO ALASKA AND ITS RESIDENTS

### Concerns

Do the socioeconomic, environmental, and biological costs associated with the introduction of finfish farming to Alaska outweigh its benefits?

Are the benefits associated with finfish farming likely to be concentrated among few individuals and businesses, who may or may not be Alaskan, while costs associated with finfish farming are likely to be borne by many Alaskans?

### Findings

#### Costs:

- a. The State's fishery management and limited entry programs, State and private nonprofit ocean ranching efforts, and federal management of the 200-mile economic zone have improved the economic health of the commercial salmon fisheries in Alaska.
- b. Allocation of broodstock to finfish farming could result in fewer smolt available for common-property ocean ranching programs.

- c. The commercial fishing industry could suffer economic loss from lower prices caused by the increase in supply of fish resulting from finfish farming. (See Appendix B for detailed estimates.)
- d. The existence of a finfish farming industry in Alaska would preclude the use of a marketing strategy that equates Alaska salmon with wild salmon and emphasizes its desirability as a natural product.<sup>8</sup>
- e. The costs associated with disease, genetic change, diminished water quality, loss of anchorages or recreational opportunities, and loss of other commercial opportunities can be mitigated through proper regulation of the finfish farming industry.
- f. Non-Alaskan investment in the finfish farming industry would lead to the exportation of profits.
- g. The costs associated with the finfish farming industry would not be evenly dispersed geographically.
- h. An indirect impact of finfish farms could be diminished public concern for protecting the habitat of wild stocks.

Benefits:

- a. The finfish farming industry would create jobs. Finfish farming might provide jobs in rural areas with otherwise limited employment opportunities.
- b. There would be a year-round supply of fresh salmon from Alaska, benefiting processors and consumers.
- c. Secondary industries, such as pathological services and transportation, would benefit from a finfish farming industry.
- d. Existing ocean-ranching facilities seasonally use large amounts of fish feed. Land-based fish processing plants in Alaska produce by-products suitable for the meal used

---

<sup>8</sup> This finding is repeated in Chapter 7 as finding g in the section on competition between farmed fish and Alaska commercial fisheries.

in fish feed. The addition of finfish farming could essentially bring fish feed demand to levels high enough to sustain in-state fish feed production.

- e. Current waste disposal practices by fish processors may not be tolerated by regulatory agencies in the future; development of in-state fish feed production for the finfish farming industry could utilize this waste. In addition, fish processors might purchase some currently underutilized species of fish for use in fish feed.
- f. Finfish farming could provide an alternative source of revenue for hatcheries, although the task force does not advocate State and private nonprofit hatcheries' moving away from their original purposes.
- g. Benefits from finfish farming would not accrue immediately upon authorizing the industry. If legislation were passed in 1990 allowing finfish farming, eggs would not become available until 1992 at the earliest because of the need to allocate eggs for that purpose. Fish would enter marine pens in the spring of 1993 and would not reach market size for another eighteen months. Therefore, finfish farms would not achieve a positive cash flow until late 1994, at the earliest. (See the time line in Appendix A for a complete explanation.)

#### **Recommendation**

- 1. The State of Alaska should not subsidize finfish farming beyond the amount needed to regulate the industry.

### **ECONOMIC VIABILITY OF FINFISH FARMING IN ALASKA**

#### **Concern**

Will the present economics of finfish farming constrain the ability of individuals to enter the industry?

#### **Findings**

- a. Finfish farming is a high-risk industry for which there are very few insurers.
- b. People with no experience in fish farming or cultivation will probably be uninsurable.