

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990

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








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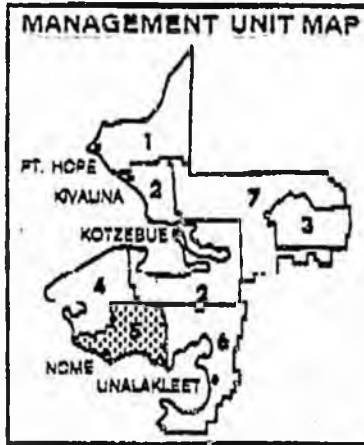
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# Northwest Area Plan

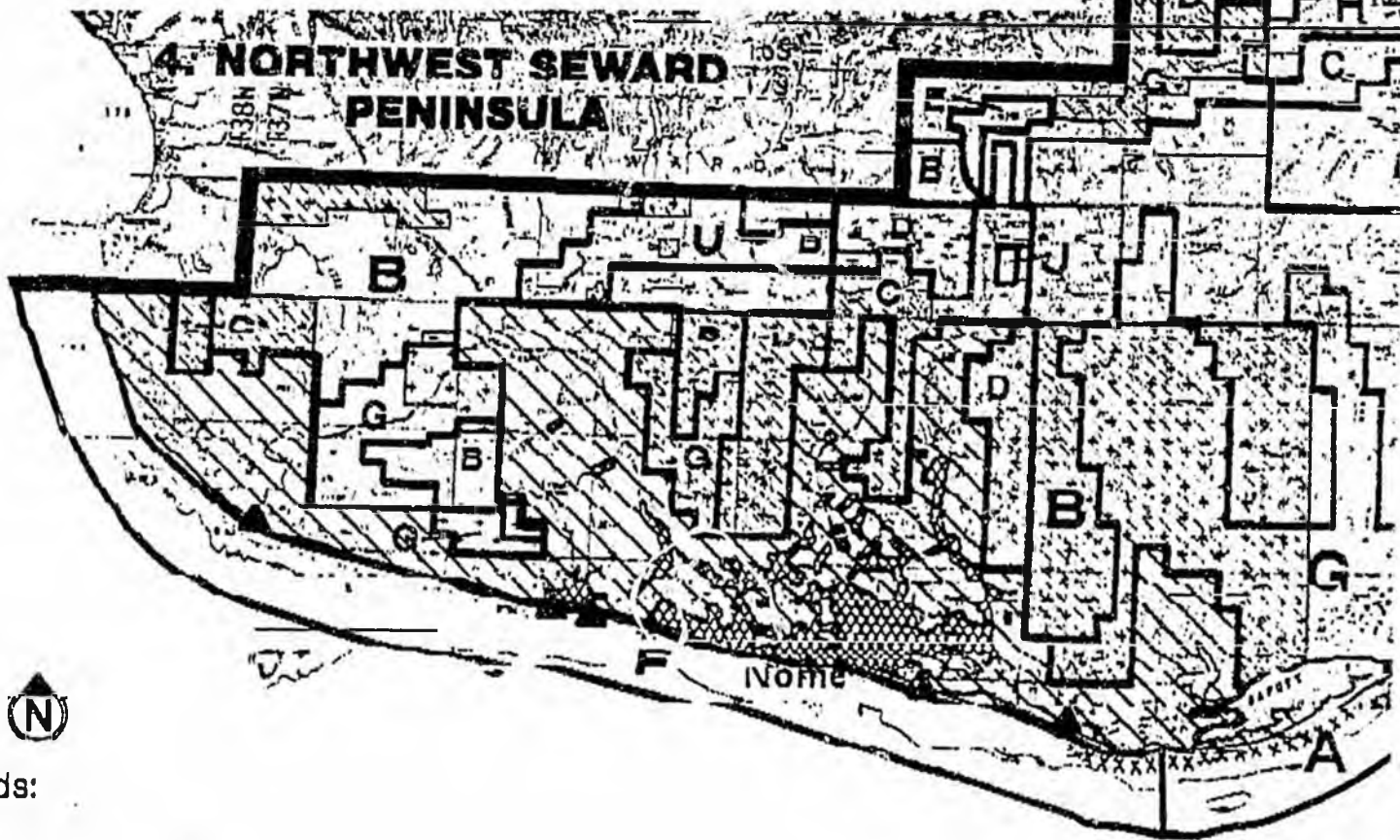
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## LEGEND

-  Management Unit Boundary
-  Subunit Boundary
-  State Owned
-  State Selected
-  Native Owned
-  Native Selected
-  Federal
-  Privately Owned
-  Bird rookeries on state-owned or state-selected uplands
-  Bird rookeries on non-state uplands
-  Anadromous stream mouths
-  Marine Mammal Haulouts



4



Map Scale: 1:500,000



U.S.G.S. Quads:  
 Wendleben  
 Nome  
 Solomon  
 Miller

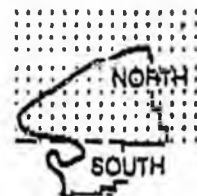
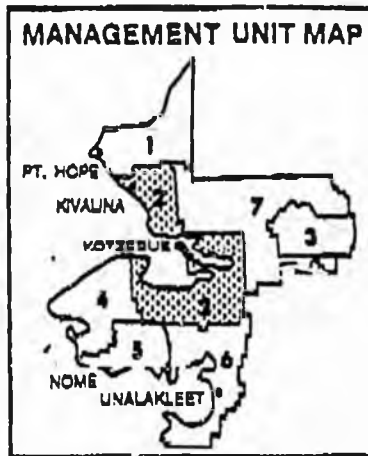
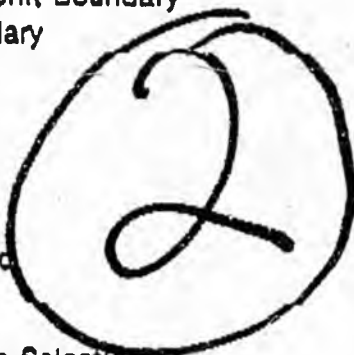
# Northwest Area Plan

## LEGEND

Management Unit Boundary  
 Subunit Boundary

State Owned  
 State Selected  
 Native Owned  
 Native Selected  
 Federal  
 Proposed State Selections

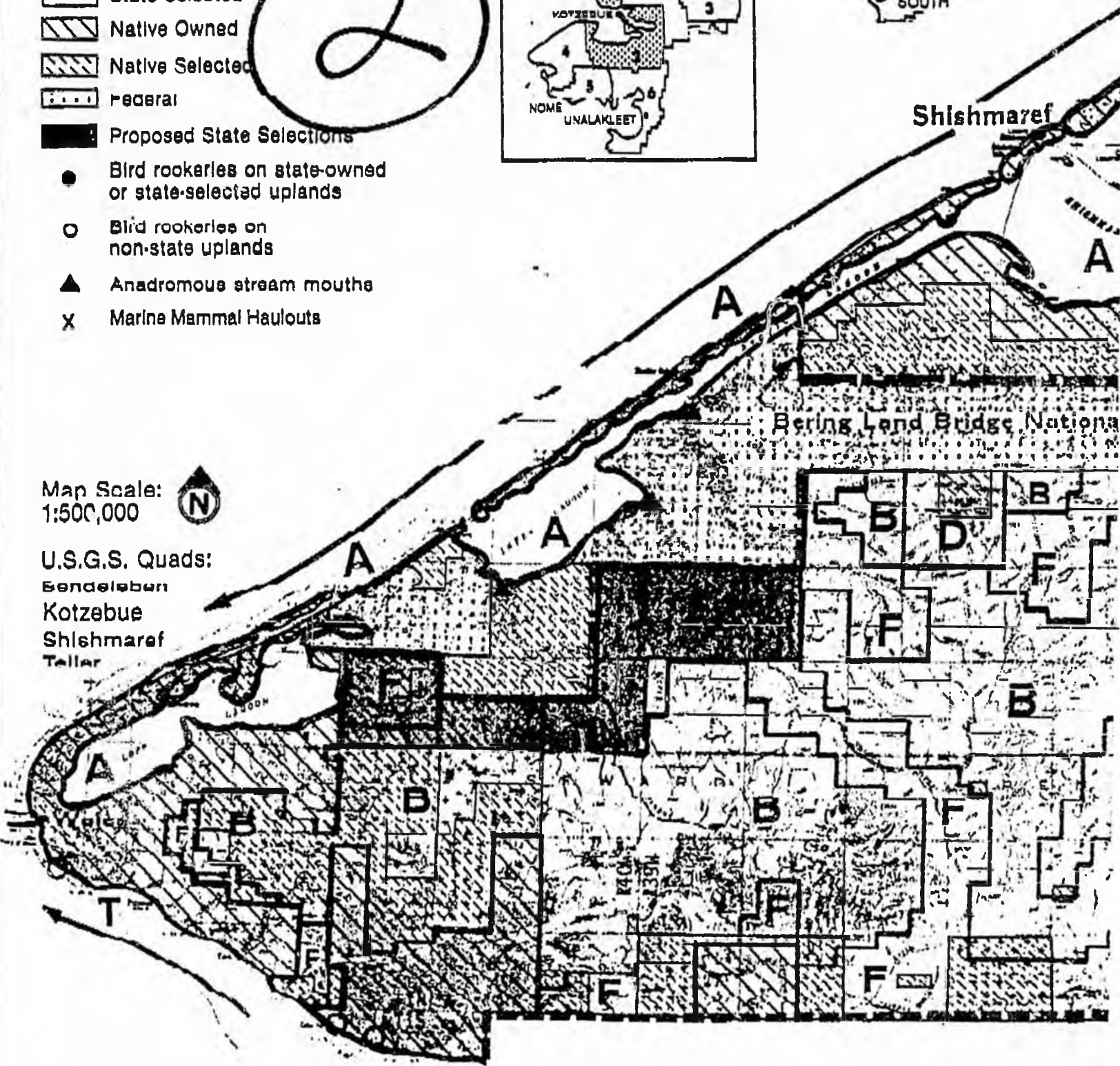
- Bird rookeries on state-owned or state-selected uplands
- Bird rookeries on non-state uplands
- Anadromous stream mouths
- Marine Mammal Haulouts



Map Scale:  
1:500,000



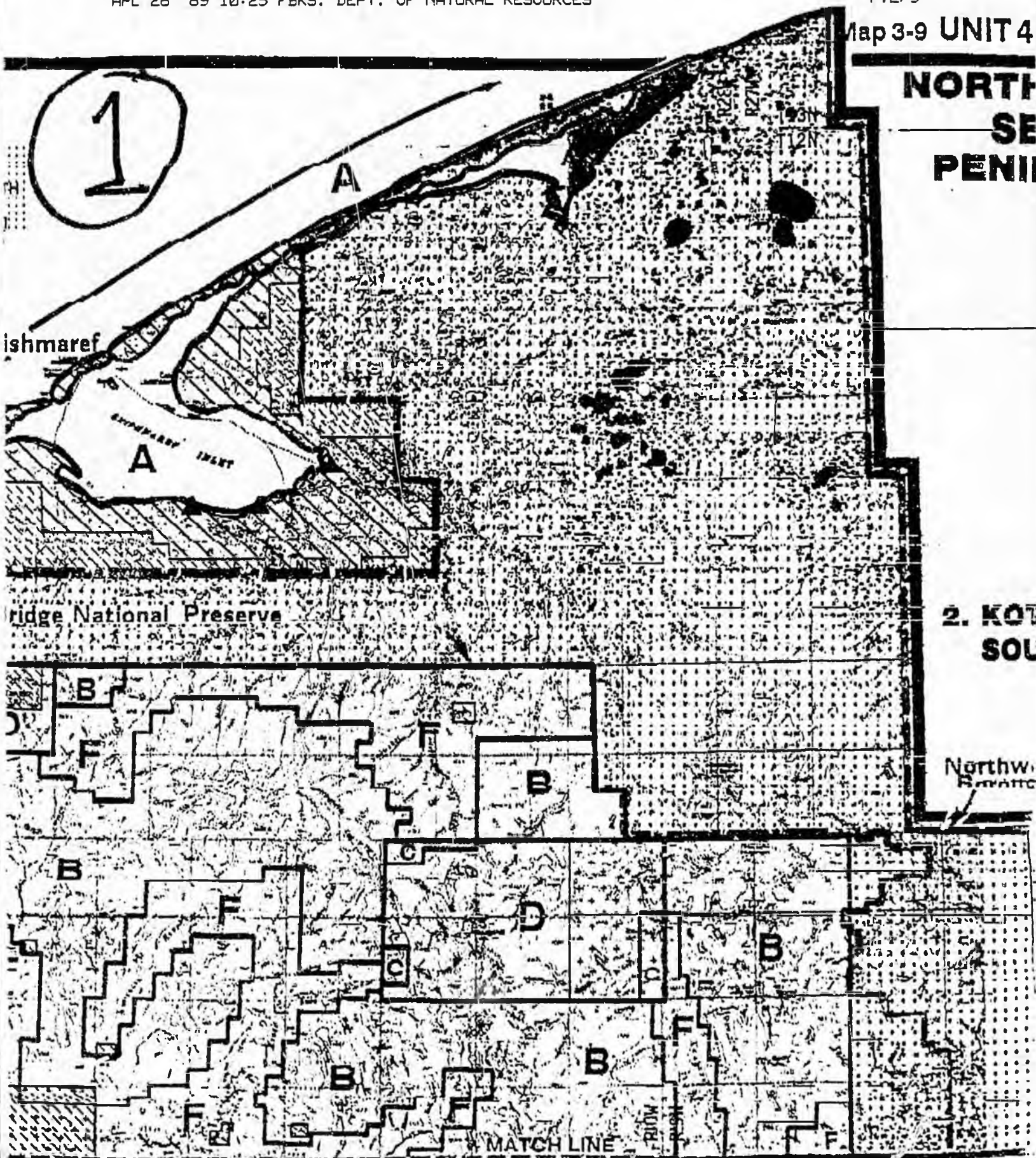
U.S.G.S. Quads:  
Eendeleben  
Kotzebue  
Shishmaref  
Teller



Map 3-9 UNIT 4

**NORTH  
SE  
PENII**

1



ishmaref

ishmaref INLET

ridge National Preserve

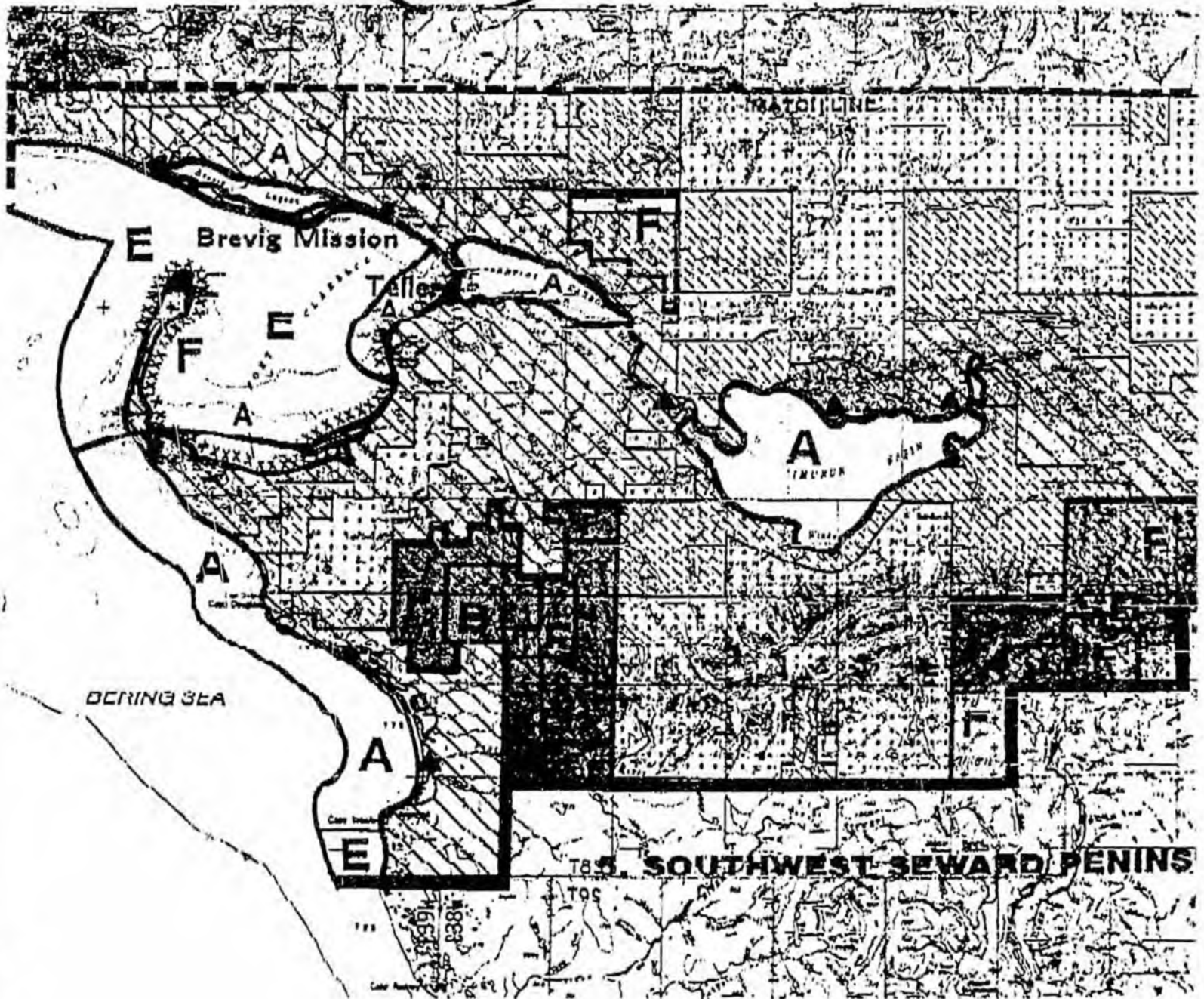
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Area Plan

3



# Northwest Area Plan

## LEGEND

Management Unit Boundary  
 Subunit Boundary

State Owned

State Selected

Native Owned

Native Selected

Federal

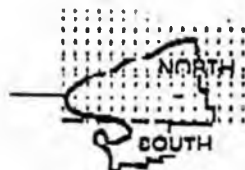
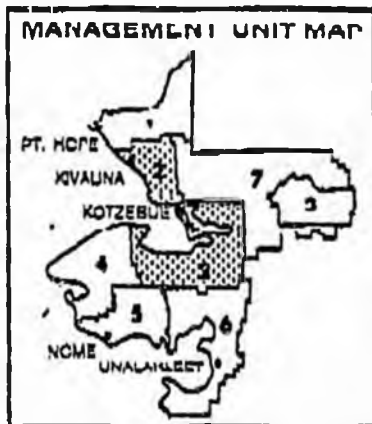
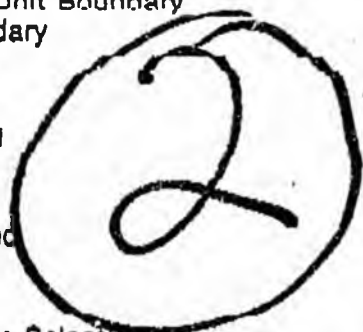
Proposed State Selections

Bird rookeries on state-owned or state-selected uplands

Bird rookeries on non-state uplands

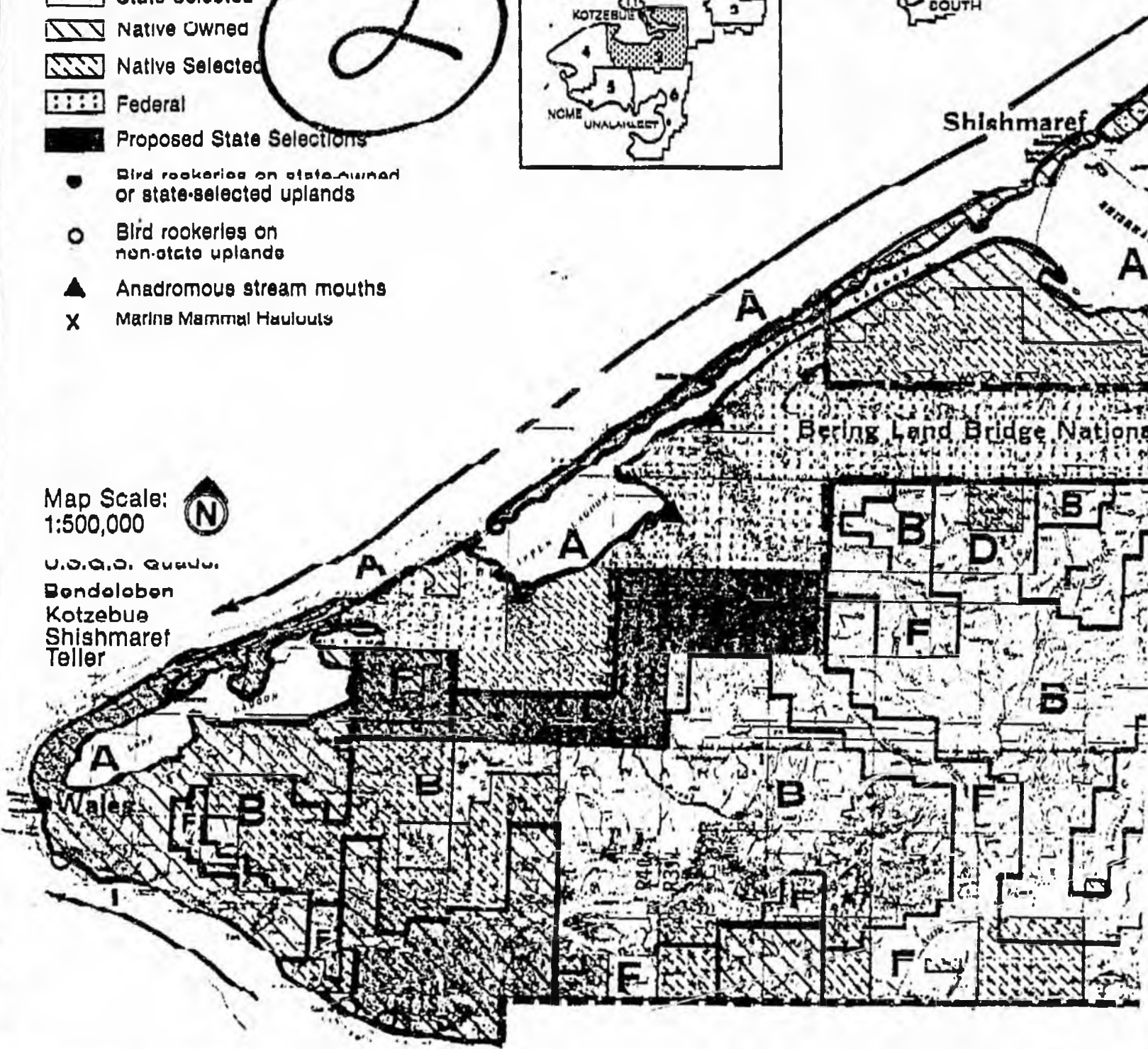
Anadromous stream mouths

Marine Mammal Haulouts



Map Scale: 1:500,000

U.S.G.S. QUAD:  
 Bendeloben  
 Kotzebue  
 Shishmaref  
 Teller





Official Business

# Alaska State Legislature

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

May 6, 1989

A biosphere reserve is an international designation made by UNESCO under their Man and the Biosphere Program. It is a program of international scientific cooperation dealing with people-environment interactions in the whole range of climatic and geographic situations.

Biosphere reserves are representative examples of land and coastal areas which have been internationally recognized for their potential value in providing the scientific knowledge, skills and human values to support sustainable development.

A key ingredient in the program is the involvement of decision makers and local people in research projects. Biosphere reserves encourage traditional uses as this illustrates the compatibility of indigenous populations and the land. Traditional uses reflect centuries of human affairs and can provide information of immense value in improving the productivity and sustainability of modern land use and management practices.



## INUIT CIRCUMPOLAR CONFERENCE

May 5, 1989

Representative Mike Davis  
P.O. Box V  
Juneau, Alaska 99811

Representative Davis:

We would like to convey our strong support for HJR 28, to establish a Biosphere Reserve in the Bering Straits.

The Inuit Circumpolar Conference (ICC) has initiated the Inuit Regional Conservation Strategy (IRCS) in an effort to further conservation and sustainable development, from a Native perspective, throughout the arctic region. The IRCS is modeled after the World Conservation Strategy, which was developed by the International Union for the Conservation of Nature and Natural Resources, United Nations Environment Program, World Wildlife Fund, the Food and Agriculture Organization, and the United Nations Educational, Scientific and Cultural Organization. The Biosphere Reserve legislation compliments our IRCS project and we are encouraged by the proposal.

Important initiatives such as this help to promote cooperation between circumpolar nations and peoples and they are critical to the development of shared understandings and responsibilities with respect to our arctic heritage, our way of life and the arctic environment. We would like to commend you for this constructive initiative, and further hope that it is supported by your colleagues in the Legislature.

Please let us know if you need any further assistance in this effort. We believe that our mutual aspirations with respect to environmental security in the arctic are advanced by developments such as the Biosphere Reserve.

Sincerely,

Dalee Sambo  
Special Assistant - ALASKA OFFICE

HEAD OFFICE:

REGIONAL OFFICES:

P.O. BOX 280, KUUVJUAQ, QUEBEC, CANADA J0M 1C0  
TELEPHONE: 819-964 2431

ALASKA: 429 'D' Street, Suite 202, Anchorage, Alaska 99501, tel: 907-258-6917  
GREENLAND: P.O. Box 204, DK 3900, Nuuk, Greenland, tel: 23632  
CANADA: 176 Clarendon St. Suite 204, Ottawa, K1R 0A6 tel: 613-561-2649



# Alaska State Legislature

Representative Mike Davis

District 19

P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4930/4941

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

TO: Senator Bettye Fahrenkamp  
FROM: Rep. Mike Davis *MD*  
DATE: April 11, 1989  
RE: Scheduling

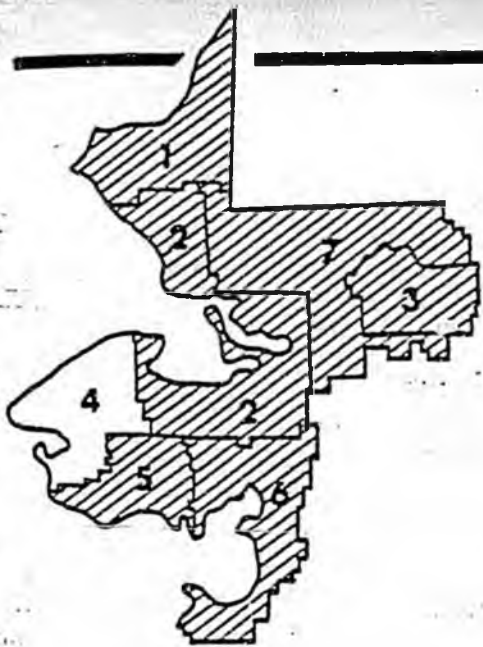
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I am requesting a hearing on HJR 28, a resolution in support of initial work towards establishment of the Beringia International Biosphere Reserve.

Your consideration is greatly appreciated.

## 4. NORTHWEST SEWARD PENINSULA SUBREGION

f- HJR 28



### Background

**Location and Land Ownership.** Management Unit 4 comprises lands on the Northwest Seward Peninsula from Cape Woolley to the boundary of the Northwest Arctic Borough just west of Cape Espenberg. The state owns the central part of the peninsula, the upper drainages of the Nuluk, Arctic, Serpentine, Kougarok, American, and Agiapuk rivers. There are overlapping state and Native selections on the southern edge of this block of state land, and on the western tip of the peninsula in the York Mountains. The state also owns all the tidelands and submerged lands along the outer coast and the protected inland waters in this region, such as Shishmaref Inlet, Arctic Lagoon, Lopp Lagoon, Port Clarence, Grantley Harbor, and Imuruk Basin. State lands also include the beds of the Kuzitrin, Agiapuk, Nuluk, Pinguk, Kaguerak, Kugrupaga, Arctic, and Serpentine rivers and other navigable waters. The remainder of the area, including nearly all uplands along the coast, are in Native or federal ownership. Federal lands on the northern half of the peninsula are within the Bering Land Bridge National Monument. A portion of the Alaska Maritime National Wildlife Refuge is located near Cape York.

**Resources and Land Use.** Shishmaref, Wales, Teller, and Brevig Mission are year-round communities within this area. Mary's Igloo (also called Kauwerak) was one of the first Native villages on the Seward Peninsula, but this area now is used seasonally, primarily by Teller residents. The most common use of state lands in this unit is the subsistence use of fish, wildlife, and other resources by residents of these communities and Nome. The extensive wetlands in this unit provide important nesting habitat for waterfowl, and coastal areas and lagoons are used extensively by marine mammals and fish. The adjacent uplands support moose, muskox, and bear, and reindeer winter range is scattered throughout the central part of the unit. The Imuruk area is also used for recreational activities, such as boating, beachcombing, and bird watching. A six-township area near Taylor and Ear Mountain supports numerous active placer mining claims and has the potential for significant tin mining. The Shishmaref area also was part of the past Hope Basin proposed oil and gas lease sale. This area is not on the current state five-year lease schedule, but may be offered at some time.

Access. Airports exist at the four major communities in the unit. Access to the southern portion of this unit occurs along the Nome-Teller road, and from the road by trail to the coast. The Kougarok Road ends in the eastern portion of the unit south of Black Dome, although trails continue to Serpentine Hot Springs. Much of the winter travel is by snow machines along the coast and on inland trails. Boat access is also common, particularly along the coast, along the Agiapuk River, and in Port Clarence. Port Clarence is the best anchorage in western Alaska north of Dutch Harbor. In addition, float and wheeled planes can land along much of the coastline on the beaches and lagoons. Much of the winter travel is by snow machine, along the coast and on inland trails.

## Management Intent

**General.** State lands in this unit will be kept in public ownership and managed for multiple use. All state lands in this unit will be available for leasing for coal or oil and gas. They will remain open to mineral entry, except within a quarter-mile radius of two seabird rookeries.

**Subunits.** There are five subunits in the Northwest Seward Peninsula management unit: 4a (habitat and harvest tidelands), 4b (general use uplands), 4c (mineral/habitat and harvest lands), 4d (mineral lands), 4e (general use tidelands), 4f (habitat and harvest uplands). The general management intent for these subunits is described on pages 3-5 to 3-7.

The *Resource Information Summary* chart for this unit highlights important resource values found in each subunit. The summary is based on information from the various resource reports prepared for the plan (see Appendices C and D).

The *Land Use Designation Summary* chart for this unit provides a quick picture of planned uses for each subunit. To get a complete description of management policy, the chart must be used with the statement of management intent and the management guidelines.

**Coastal Plans.** Most of the unit is within the Bering Straits Coastal Resource Service Area. Activities on state land will be consistent with the policies and guidelines of the Bering Straits Coastal Management Plan (CMP). The areas listed below have been designated as Important Use Areas in the Bering Straits CMP, with special policies in the CMP for these areas (see maps in Appendix J).

In addition, the Bering Straits CMP recommended two areas in this unit for AMSAs (Areas Meriting Special Attention) -- Port Clarence and Cape Prince of Wales. Part of the proposed Pilgrim River/Salmon Lake AMSA is also in this unit. When an AMSA plan is adopted for these areas, state land management will also be consistent with AMSA policies.

## Important Use Areas

## Subunit

Agiapuk River	4a - habitat and harvest tidelands
Arctic River	4a - habitat and harvest tidelands
Brevig Lagoon	4a - habitat and harvest tidelands
Cape Woolley	4a - habitat and harvest tidelands
Grantley Harbor, Imuruk Basin, and Tuksuk Channel	4a - habitat and harvest tidelands
Ikpek Lagoon and Nuluk, Pinguk, Kaguerak, and Kugrupaga Rivers	4a - habitat and harvest tidelands 4b - general use uplands, and 4f - habitat and harvest uplands
Kuzitrin River and Wetlands	4a - habitat and harvest tidelands
Lopp Lagoon, Cape Prince of Wales	4a - habitat and harvest tidelands
Lost River Area	4e - general use tidelands
Port Clarence	4a - habitat and harvest tidelands
Serpentine River	4a - habitat and harvest tidelands

## Management Guidelines

Subunits 4a, 4e and 4f: The following is a list of special management guidelines for the subunits 4a (habitat and harvest tidelands), 4e (general use tidelands), and 4f (habitat and harvest uplands).

Bird Rookeries and Subsurface Resources. Most state lands in this unit will remain open to new mineral entry. However, state tidelands with high or very high mineral potential within one-quarter mile of two seabird colonies--Cape York and King River--will be closed to new mineral entry to protect this important habitat. These colonies are shown on the *Subsurface Designation Summary Map*, page 2-61, and are described in detail in Appendix H: *Mineral Orders for the Northwest Area Plan*. Special guidelines apply to state land within one mile of these two seabird colonies and the other sites identified on the management unit map; see Chapter 2, *Fish and Wildlife Habitat* guideline K, page 2-10.

Mouths of Anadromous Streams or Enclosed Estuaries. *Fish and Wildlife Habitat* guideline J, on page 2-10, describes state management for mouths of anadromous streams and narrow openings of enclosed estuaries such as lagoons, inlets, or basins. These areas are shown on the management unit map. For many of these areas, the location of the opening is dynamic, and the guideline will apply to their location at the time of a proposed action. Within this subunit, this guideline applies to the following areas:

Agiapuk River	Arctic Lagoon
Arctic River	Bluestone River
Brevig Lagoon	Cobblestone River
Feather River	Grantley Harbor
Ikpek Lagoon	Kuzitrin River
Lopp Lagoon	Nuluk River
Pinguk River	Serpentine River
Shismaref Lagoon	Trout Creek
Tuksuk Channel	unnamed river west of Arctic River

Commercial Recreation Leases. Most state lands will be available for permits and leases for commercial recreation facilities. However, commercial recreation facilities will not be allowed in high value habitat areas (A1: seabird colonies, marine mammal haulout areas, mouths of anadromous streams and enclosed estuaries), reindeer fawning areas, or in special use areas identified by the coastal management plan for each area. The management unit map shows the A1 habitat areas, except reindeer fawning areas, which are shown in Appendix I. The coastal plan special use areas are shown in Appendix J.

**Subunits 4b and 4f:** The following is a list of recommendations for state selections for the subunits 4b (general use uplands) and 4f (habitat and harvest uplands)

Selections. State selections are recommended for three new areas -- along the Nome-Teller road, in the Kigluaik Mountains near Mt. Osborne, and northeast of Wales. The Nome-Teller Road area includes the right-of-way of the Nome-Teller road and lands along the road, many of which are also Native-selected. The road and trails that extend from the road to the coast provide important access in this region. The lands are proposed for selection because they are accessible, have mineral values, are used for grazing (including a fawning area), and are adjacent to other state lands.

The Mt. Osborne area includes lands proposed for state selection just north of the Nome-Kougarok Road in the Kigluaik Mountains. The area is very scenic. The subunit's south slope is a popular camping, hunting, and fishing destination for Nome residents. The northern slope is an important subsistence moose hunting area for Brevig Mission residents. The land should be selected because of its values for minerals, public recreation, subsistence, and accessibility. Half of the proposed selection would overlap with an existing Native selection.

The plan also recommends selections in the area east and north of Wales. These few isolated blocks of land are selected because of their mineral values and to consolidate land ownership patterns.

**General.** The complete set of areawide guidelines is presented in chapter 2. The *Resource Information Summary* charts for this unit identify important trails, known or probable heritage sites, and other resource values in specific subunits that are addressed by the appropriate guidelines in chapter 2. Any of the chapter 2 guidelines could apply to certain uses within this management unit. Those that are most likely to apply are:

- Coordination and public notice
- Fish and wildlife habitat
- Grazing
- Heritage resources
- Subsurface resources
- Trail management

# RESOURCE INFORMATION SUMMARY

## Management Unit 4: Northwest Seward Peninsula - Page 1 of 2

Resource	4a	4b	4c
Fire Protection	N/A	Limited north of Nuluk River and Budd Creek. Modified in southern portions to Amercian River. Full along Agiapuk River to Don Creek.	Limited
Fish and Wildlife	A1: 18 mouths of anadromous streams, inlets, and lagoons; two seabird rookeries (Cape Douglas and Cape Riley). A2/B1: marine mammals, marine fish, ducks, geese, brown bear, polar bear, moose, shorebirds, anadromous and resident fish.	B2: moose, brown bear.	B1: moose, brown bear, anadromous fish.
Forestry	Driftwood	None	None
Heritage Resources	Known or high probability sites along coast, especially near Shishmaref, Cape Prince of Wales, Brevig Mission, Teller, Imuruk Basin, Nuluk, Agiapuk and Serpentine Rivers.	Probable sites along Mint, Pinguk, Nuluk, American, and Serpentine Rivers.	Historic mining activity in the Ear Mtn. and Taylor areas.
Important Trails	Shishmaref to Serpentine Hot Springs; Nome to Teller (along coast); Brevig to Teller; Teller/Brevig to Shishmaref (two routes); Teller/Brevig to Wales (along coast and overland); Teller/Brevig to Point Spencer (across Port Clarence); Brevig to Serpentine Hot Springs (north from Mary's Igloo); From Nome-Teller Road to Cape Woolley (along Feather River or Tisuk River).	Trails inland along Pinguk, Nuluk, Kugrupaga, and Arctic Rivers; Dahl Creek-Candle Trail; Coco Creek trail; Brevig/Teller to Shishmaref (two routes); Mary's Igloo to Serpentine Hot Springs.	Kougarok River
Minerals	Low or not rated.	Low to very high.	High to very high; mineral claims present; active placer and potential for tin at Kougarok and Ear Mtn. mining areas.
Oil & Gas	Part of area in past-proposed Hope Basin sale.	No potential identified.	
Public Access	Coastal trails, wheelplane and floatplane landings in numerous locations along coast.	Airstrips at Harris and Black Domes; trail access; Kougarok Road; boat access along Kougarok River.	Mining trails along rivers and creeks.
Recreation	Some bird watching near Grantley Harbor, some camping and boating on Nugnugaluktuk and Serpentine Rivers; potential recreation on Nuluk, Pinguk and Arctic Rivers; beach combing along coast.	Unknown	Unknown
Reindeer Grazing	N/A	Almost entirely winter range, except for Portage Creek drainage and areas between Budd and Igloo Creeks. Subunits east and west of Ear Mountain within a fawning area. Fawning area in valley SE of Casseterite Peak.	Some winter range in the Taylor area.
Settlement Suitability	N/A	Low potential within 1 mile of access routes; remainder of unit unsuitable.	Low potential near access systems, remainder unsuitable.
Subsistence	Subsistence use in this unit has been documented by studies of the ADF&G, Subsistence Division, for the communities of Brevig Mission, Deering, and Shishmaref. Use by other communities--such as Mary's Igloo, Nome, Teller, and Wales--may exist, but has not been documented in studies for the NWP.		

# RESOURCE INFORMATION SUMMARY

## Management Unit 4: Northwest Seward Peninsula - Page 2 of 2

Resource	4d	Subunit 4e	4f
Fire Protection	Limited	N/A	North - limited; south and coastal - full; Inbetween -modified.
Fish and Wildlife	B2: moose, brown bear.	A1: three seabird colonies (one at Tin City, two at Cape York); A2: along coast for marine mammals, marine fish, ducks, geese (spring, fall, nesting), brown bear, polar bear, anadromous fish.	A2/B1: moose, brown bear, anadromous fish; some portions upgraded due to human use.
Forestry	None	Dr.:wood	None
Heritage Resources	Historic mining activity in the Taylor area.	Probable sites near Cape York.	High probability of sites along Mint, Pinguk, Nuluk, Agiapuk, American, and Serpentine Rivers.
Important Trails	Teller to Ear Mountain; Kougarok River Road trail; Mary's Igloo to Serpentine Hot Springs.	Coastal trails: Teller to Wales; Brevig/Teller to Port Clarence.	Shishmaref to Teller (2 routes); Dahl Creek to Candle; Kougarok River, Pinguk R., Nuluk R., Kugrupaga R., Arctic R.
Minerals	High to very high; mineral claims present.	Unknown	Very low to high; mining claims present.
Oil & Gas	No potential identified.	No potential identified.	No potential identified.
Public Access	Airstrips near Taylor and at Ear Mountain; mining trails along rivers and creeks; Kougarok Road to Taylor, Teller Road and overland trail to Ear Mountain.	Floatplane or wheelplane landing areas along coast; landing strips near Port Clarence, Tin City, Lost River; coastal trails.	Four community airstrips; Teller Road, Kougarok Road; Airstrips at Igloo; Dahl Creek to Candle trail; numerous inland trails along valley bottoms; Shishmaref - Teller trail along portions of Krueger and American Creeks; boat access along Kougarok R.
Recreation	Unknown	Birdwatching and beachcombing along coast and within lagoons.	Some camping along rivers, some scenic views.
Reindeer Grazing	Some winter range in Taylor area. Entire Ear Mountain area within a fawning area.	N/A	Some winter range; several fawning areas.
Settlement Suitability	Low potential near access systems, remainder unsuitable.	N/A	Low potential within 1 mi. of all access systems. Remainder of unit unsuitable. Some incapable areas in active floodplains along Pinguk, Nuluk, Arctic, Agiapuk, and American Rivers.
Subsistence	Subsistence use in this unit has been documented by studies of the ADF&G, Subsistence Division, for the communities of Brevig Mission, Deering, and Shishmaref. Use by other communities--such as Mary's Igloo, Nome, Teller, and Wales--may exist, but has not been documented in studies for the NWAP.		

See Appendix D for definition of ratings.

## LAND-USE DESIGNATION SUMMARY

### MANAGEMENT UNIT 4 - NORTHWEST SEWARD PENINSULA

SUBUNIT	LAND USE DESIGNATIONS			COMMENTS
	PRIMARY SURFACE USE <sup>1</sup>	PROHIBITED SURFACE USE <sup>2</sup>	SUBSURFACE <sup>3</sup>	
4a	Habitat & harvest tidelands	Remote cabins Commercial rec. leases in some areas	Open	
4b	General use uplands	Land disposals Remote cabins	Open	Portions of several townships proposed for state selection east of Lopp Lagoon, along Teller Road, and near Mt. Osborne.
4c	Minerals/ Habitat & harvest lands	Land disposals Remote cabins	Open	
4d	Mineral lands	Land disposals Remote cabins	Open	
4e	General use tidelands	Remote cabins Commercial rec. leases in some areas	Open, except tidelands within 1/4-mile of 2 seabird rookeries at Cape York and King River.	
4f	Habitat & harvest uplands	Land disposals Remote cabin Commercial rec. leases in some areas	Open	Portions of several townships proposed for state selection east of Lopp Lagoon, along Teller Road, and near Mt. Osborne.

<sup>1</sup>Secondary uses include: grazing in all subunits, and recreation in subunits 4a, 4e, and 4f. For more details, see the Resource Information Summary for this unit, and Appendix D.

<sup>2</sup>Other uses such as material sales, land leases, or permits, that are not specifically prohibited may be allowed. Such uses will be allowed if consistent with the management intent statement, the management guidelines of this unit, and the relevant management guidelines listed in Chapter 2.

<sup>3</sup>All areas are available for leasing for leasable minerals. Statements of whether or not the unit is open to mineral entry refer only to locatable minerals. See glossary in Appendix A for definitions of leasable and locatable minerals. See Appendix H for detailed descriptions of areas closed to mineral entry.

# Northwest Area Plan

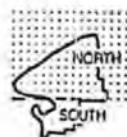
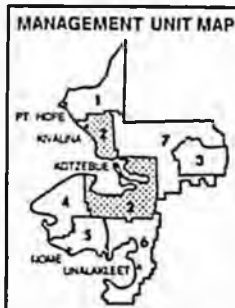
Map 3-9 UNIT 4 (NORTH)

## NORTHWEST SEWARD PENINSULA

### LEGEND

Management Unit Boundary  
Subunit Boundary

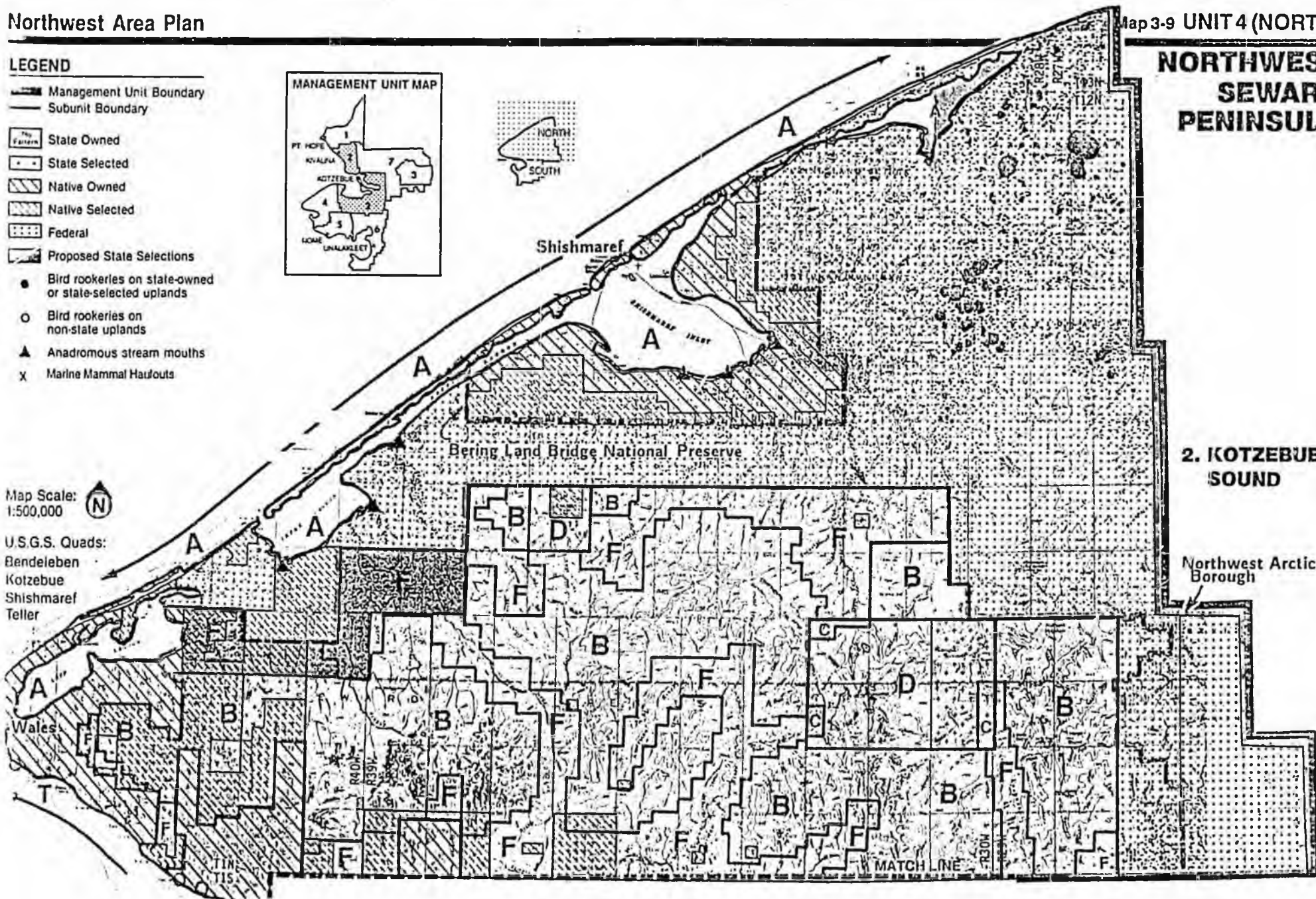
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- Marine Mammal Haulouts



Map Scale: 1:500,000

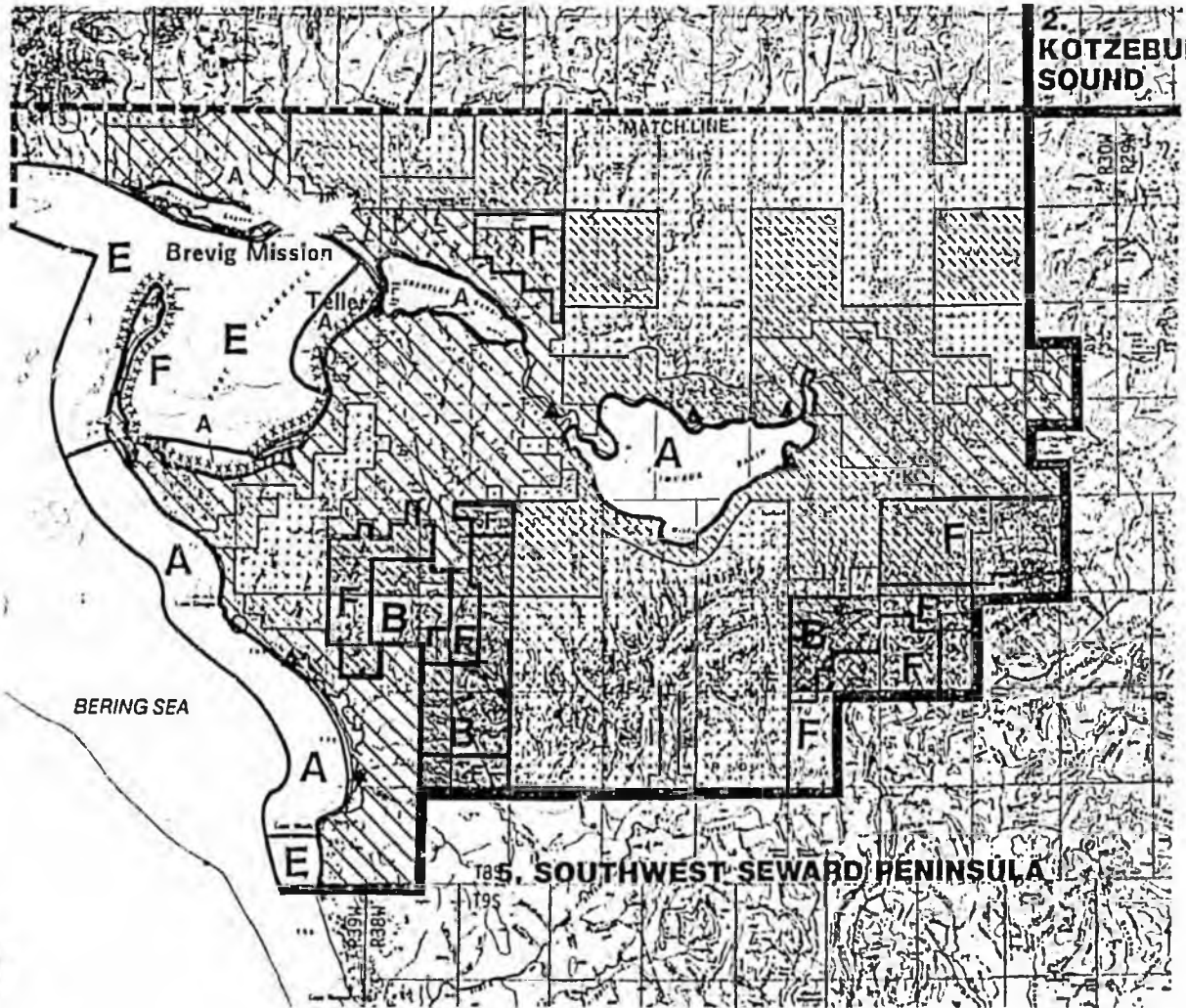


U.S.G.S. Quads:  
Bendeleben  
Kotzebue  
Shishmaref  
Teller



Northwest Area Plan

**NORTHWEST SEWARD PENINSULA**

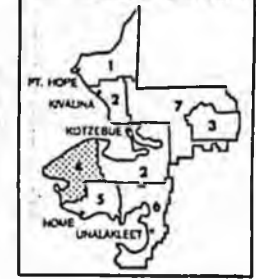


**LEGEND**

- Management Unit Boundary
- Subunit Boundary

- Bird rookeries on state-owned or state-selected uplands
- Bird rookeries on non-state uplands
- Anadromous stream mouths
- Marine Mammal Haulouts

**MANAGEMENT UNIT MAP**



Map Scale:  
1:500,000

U.S.G.S. Quads:  
Nome  
Teller



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## 5. SOUTHWEST SEWARD PENINSULA SUBREGION



### Background

**Location and Land Ownership.** This management unit is comprised of lands within drainages surrounding the north side of Norton Sound. Major waterways include the Sinuk, Nome, Eldorado, Solomon, Casadepaga, and Fish rivers. The unit also extends north along the Kougarok Road (Nome to Taylor). Most of the unit is gently rolling coastal lowlands. The tidelands of the unit extend from near Cape Woolley to Cape Darby, and include Golovnin Bay and Golovnin Lagoon.

Most of the land is in state ownership, with some state selections, and large areas of overlapping state and Native selections. The northeast portion of the unit is in federal ownership, including BLM lands and the Bering Land Bridge National Preserve. There are municipal uplands and tidelands in the City of Nome, and private lands belonging to the Sitnasuak, King Island, Solomon, White Mountain, Golovin, and Bering Straits Native corporations. Native lands include over half the coastline of the unit. However, the coastline from Safety Sound to Rocky Point includes some state-owned and state-selected lands. State ownership also includes the tidelands, except at Nome, and the beds of navigable rivers. Parts of the Alaska Maritime National Wildlife Refuge are within the boundaries of this unit.

**Resources and Land Uses.** The communities in this area -- Nome, Solomon, Council, White Mountain, and Golovin -- were established as mining towns. Solomon and Council are, for the most part, seasonal settlements. Mining has taken place since the late 1800s; the Fish River mining district was the first organized mining district in northwest Alaska. Many historic sites in this area are associated with past mining activity. Placer gold mining continues to be a major land use in this area.

Residents currently use lands in this area for hunting of land and sea mammals, subsistence and commercial fishing and crabbing, berry-picking, and reindeer herding. Most of the land is covered by low tundra and shrubs, which is good reindeer and moose habitat. The lowland areas include extensive wetlands, particularly north of Golovnin Lagoon and Safety Sound, and are important waterfowl nesting habitat. There is a small amount of forest land in the eastern part of the unit.

**Access.** Access to this unit is by air, sea, or overland along trails, including the Iditarod Trail. Roads within the unit extend from Nome north to Taylor, east to Council, and northwest to Teller. Trails provide local access within the unit. Many trails originated as mining routes. Boats are used mostly along the coast, in Golovnin Bay and Golovnin Lagoon, and on the Fish River. Airports exist at Council, Golovin, Solomon, and White Mountain. Remote landing areas for small planes are scattered throughout the unit.

## Management Intent

**General.** This unit will be managed for a variety of uses. Nearly all state lands will be kept in public ownership. State uplands and tidelands will be managed for multiple use, primarily mining, fish and wildlife habitat and harvest, reindeer grazing, recreation, and subsistence. Four areas are proposed for offering to private ownership over the next twenty years. Approximately 900 acres will be offered for sale in four areas north of Nome: Pilgrim, Grand Central, Christian Creek, and Golden Gate Creek. Actual acreage in each unit may be adjusted up or down when the land disposal process develops. Remote cabin permits will be allowed at very low densities in three areas--the upper Sinuk River drainage, upper Bonanza/Eldorado River, and upper Casadepaga River drainage.

Nearly all state land will remain open to mineral entry. Lands within proposed disposal areas will be closed to new mineral entry prior to sale. Uplands and tidelands adjacent to six important seabird rookeries along the coast from Safety Sound to Rocky Point will be closed to new mineral entry to protect the nesting areas. All state lands will remain available for leasing for coal or oil and gas.

**Subunits.** There are ten subunits in the Southwest Seward Peninsula management unit: 5a (habitat and harvest tidelands), 5b (general use uplands) 5c (mineral/habitat and harvest lands), 5d (mineral lands), 5e, 5h, 5i, and 5j (settlement), 5f (general use tidelands), 5g (habitat and harvest uplands). The general management intent for these subunits is described on pages 3-5 to 3-7.

The *Land Use Designation Summary* chart for this unit provides a quick picture of planned uses for each subunit. To get a complete description of management policy, the chart must be used with the statement of management intent and the management guidelines.

The *Resource Information Summary* chart for this unit highlights important resource values found in each subunit. The summary is based on information from the various resource reports prepared for the plan (see Appendices C and D).

**Coastal Plans.** Portions of this unit are within the Bering Straits and Nome coastal management plan boundaries and affected areas. State lands in these areas will be managed consistent with the applicable coastal management program. State lands are also located in the following Important Use Areas identified in the coastal management plans (see maps in Appendix J). These areas have special policies for subsistence which apply through the Bering Straits Coastal Management Plan.

Several Areas Meriting Special Attention (AMSAs) are recommended in the Bering Straits Coastal Management Program. When AMSA plans are adopted for these areas, state land management will also be consistent with AMSA policies. AMSAs proposed

in this unit include Golovnin Bay, Rocky Point, Safety Sound, Cape Nome, Nome River, and Pilgrim River/Salmon Lake.

<u>Important Use Area</u>	<u>Subunit</u>
Pilgrim River	5g - habitat and harvest uplands 5c - minerals/habitat and harvest lands 5h - settlement (Pilgrim)
Safety Sound, Golovnin Bay/Lagoon and the Niukluk and Fish Rivers	5a - habitat and harvest tidelands 5g - habitat and harvest uplands
Kuzitrin River Wetlands Nome River	5g - habitat and harvest uplands 5d - mineral lands

## Management Guidelines

Subunits 5a, 5b, and 5g: The following list of special management guidelines apply for subunits 5a (habitat and harvest tidelands), 5b (general use uplands), and 5g (habitat and harvest uplands).

Bird Rookeries and Subsurface Resources. The stretch of coast along the southern shore of the Seward Peninsula contains some of the largest seabird colonies in the region. Peregrine falcons also nest in this area. At Bluff, bird populations range between 40,000 and 90,000. Murres comprise about 75 percent of the nesting birds. These seabirds feed offshore near the colonies. Offshore waters support large concentrations of sand lance which are a vital food source for fish-eating seabirds. The reproductive success for some seabirds largely depends on availability of sand lance, availability of nesting habitat, and nondisturbance.

Most state lands in this unit remain open to new mineral entry. However, state tidelands with high mineral potential and state uplands, within one-quarter mile of six important seabird colonies, will be closed to new mineral entry to protect this important habitat. For two of the sites--Chiukak and Rocky Point--the state uplands within one-quarter mile will be closed to new mineral entry (subunit 5g). For the two seabird colonies on non-state uplands at Topkok Head and Bluff, a quarter-mile radius of tidelands with high mineral potential will be closed to new mineral entry (subunit 5a). State uplands and tidelands within one-quarter mile of the seabird colonies at Topkok and Eldorado Creek will be closed to new mineral entry (subunit 5a and 5b). These sites are shown on the *Subsurface Designation Summary Map*, page 2-61, and shown in detail in Appendix H: *Mineral Orders for the Northwest Area Plan*. Special guidelines apply to state lands within one mile of these seabird colonies and the other sites identified on the management unit map; see *Fish and Wildlife Habitat* guideline K, page 2-10.

Mouths of Anadromous Streams, or Enclosed Estuaries. *Fish and Wildlife Habitat* guideline J, on page 2-10, describes state management for mouths of anadromous streams and narrow openings of enclosed estuaries such as lagoons, inlets, or basins. These areas are shown on the management unit maps. For many of these areas, the location of the opening is dynamic, and the guideline will apply to their location at the time of a proposed action. Within this subunit, this guideline applies to the following areas:

Bonanza River	Safety Sound
Cheenik River	Saunders River
Cripple River	Silverbow Creek
Eldorado River	Sinuk River
Fish River (three mouths)	Snake River
Kachauik River	Solomon River
Nome River	Topkok River
Penny River	Yuonglik River

**Aleutian Tern Nesting Habitat.** In Safety Sound, all land use activities that would disturb nesting Aleutian terns or detrimentally alter nesting habitat will be avoided to the extent feasible and prudent. Where these activities are authorized, they will be conducted to minimize disturbance to nesting Aleutian terns or detrimental alteration of habitat. Leases or permits may include seasonal restrictions on activities to avoid impacts. Consultation with the ADF&G will be used to identify current or potential nesting habitat and to determine guidelines to follow and activities to avoid.

**Subunits 5a, 5c, 5e, 5f, 5g, 5h, and 5i:** The following guideline applies to subunits 5a (habitat & harvest tidelands), 5c (minerals/habitat & harvest lands), 5f (general use tidelands), 5g (habitat & harvest uplands), and 5e, 5h, 5i (settlement).

Commercial Recreation Leases. Most state lands will be available for permits and leases for commercial recreation facilities. However, commercial recreation facilities will not be allowed in high value habitat areas (A1: seabird colonies, marine mammal haulout areas, mouths of anadromous streams and enclosed estuaries), reindeer fawning areas, or in special use areas identified by the coastal management plan for each area. The management unit map shows the A1 habitat areas, except reindeer fawning areas, which are shown in Appendix I. The coastal plan special use areas are shown in Appendix J.

**Subunits 5b, 5d, and 5g:** The following recommendations for remote cabin permits apply for subunits 5b (general use uplands), 5c (mineral/habitat and harvest lands), 5d (mineral lands), and 5g (habitat and harvest uplands):

Remote Cabin Permits. Three areas are identified for remote cabins in the Southwest Seward Peninsula management unit. Their location, number of cabins, and subunits are listed below. All township and range locations are in the Kateel River Meridian.

<u>Permit Area</u>	<u>Location</u>	<u>Number</u>	<u>Subunit</u>
Sinuk River	T8S, R35W, E 1/2;	1	5b, 5g
	T8S, R34W, W 1/2	1	
Eldorado/Bonanza	T8S, R31W, W 1/2;	1	5b, 5g
	T9S, R31W, N 1/2; T9S, R32W, NE 1/4	1	
Casadepaga	T5S, R27W;	2	5b, 5c, 5d, 5g
	T5S, R28W;	2	
	T6S, R27W;	2	
	T6S, R28W;	2	
	T7S, R27W;	2	
	T7S, R28W;	2	
	T7S, R29W;	2	
	T8S, R29W;	2	
	T8S, R30W;	2	
	T8S, R31W, E 1/2	1	

**Unresolved issue.** Concerns have recently been expressed about potential conflict between reindeer winter range and fawning areas and these proposed remote cabin sites. Although only two cabins are designated for each 36-square miles, there may be other areas and densities for the cabin sites that will avoid the sensitive grazing areas. Prior to the final plan, the planning team will work with the Reindeer Herders Association to identify areas for remote cabins that minimize impacts to reindeer herding.

**Subunits 5e, 5h, 5i, and 5j (Settlement):** The following recommendations for land disposal apply for subunits 5e (Grand Central), 5h (Pilgrim), 5i (Christian Creek), and 5j (Golden Gate).

**Land Disposal.** Four settlement areas are designated in the Southwest Seward Peninsula management unit: Grand Central and Christian Creek will be available for a combined disposal of approximately 400 acres of land; Pilgrim will be available for approximately 350 acres of land, and the Golden Gate area will be available for approximately 150 acres.

Pacing. Due to concerns about impacts on community lifestyles or resources, these land offerings should be phased over a number of years as follows:

<u>Disposal</u>	<u>Year</u>	<u>Acres</u>	<u>Parcels</u>
Grand Central & Christian Creek	1990	400	all available parcels including extended areas
Golden Gate I	1995	80	1/2 available parcels
Pilgrim I	1999	200	1/2 available parcels; roadside area only
Golden Gate II	2002	70	All remaining parcels;
Pilgrim II	2005	150	entire area open (includes prior offering relinquishments)
TOTAL		900	

The Pilgrim River is an important stream for red salmon spawning, rearing, and migration. This is the northernmost known migration of red salmon, and the only red salmon spawning area in the planning area. For subunit 5h, there will be a quarter-mile staking setback from the ordinary high water mark on the Pilgrim River; the buffer will be retained in public ownership and managed for wildlife habitat. When the land disposal process is developed, land one-quarter mile either side of Pilgrim River will be classified for habitat. Public notice for the reclassification will be simultaneous with public notice for the sale.

Unresolved Issue. Details of the land sale offerings on the Seward Peninsula are unresolved at this time. The primary demand for these land sales is for seasonal, recreational use by area residents. The Bering Straits Coastal Management Plan has identified special habitat and subsistence use concerns in the Pilgrim River Important Use Area and has recommended the Pilgrim River Area Meriting Special Attention. DNR will consider appropriate mechanisms to reduce impacts to habitat and subsistence in the land sale areas, such as limiting re-subdivision and restricting commercial uses.

General. The complete set of areawide guidelines is presented in chapter 2. The *Resource Information Summary* charts for this unit identify important trails, known or probable heritage sites, and other resource values in specific subunits that are addressed by the appropriate guidelines in chapter 2. Any of the chapter 2 guidelines could apply to certain uses within this management unit. Those that are most likely to apply are:

- Coordination and public notice
- Fish and wildlife habitat
- Forestry
- Grazing
- Heritage resources
- Lakeshore management

# RESOURCE INFORMATION SUMMARY

## Management Unit 5: Southwest Seward Peninsula - Page 1 of 3

Resource	5a	Subunit 5b	5c	5d
Fire Protection	Full	Full	Full	Mostly full; moderate north of Kuzitrin River.
Fish and Wildlife	A1: six seabird rookeries and nine anadromous stream mouths; A2: ducks & geese brown bear, moose, herring in Golovnin Lagoon; marine mammals, marine fish.	Mostly B2, some C.	A2/B1/B2: moose, anadromous fish, ducks & geese, brown bear.	Mostly B2, some C.
Forestry	Driftwood	Trees in Fish River drainage (east end of unit).	None	None
Heritage Resources	Known coastal sites: Rocky Pt. to Topkok, Golovnin Lagoon, and Safety Sound.	Known sites: near Eldorado and Canyon Creek.	Nome Historic Mining District; known sites near Ruby.	Known sites: east of Nome area and near Canyon Creek.
Important Trails	Iditarod Trail; Golovnin Bay winter trail; Golovnin to White Mountain winter trail; Safety Sound trails.	Iditarod Trail; Nome to Shishmaref winter trail; Sinuk River trail; Penny River trail; Bluff to White Mountain winter trail; Solomon R. to Casadapaga R.	Nome River trail; Casadapaga and Niukluk Rivers; American Creek to Iron Creek; Pilgrim River.	Nome to Eldorado R. trails; Casadapaga R. to Iron Creek; American Creek to Iron Creek.
Minerals	Moderate to very high on coast; Golovnin Bay, low to moderate; some mining claims along coast.	Low to very high; numerous mining claims.	High to very high; mining claims in many active claim blocks.	High to very high; mining claims in many active claim blocks.
Oil & Gas	Unknown	Unknown	Unknown	Unknown
Public Access	Boat along coast and up Fish R.; floatplane in protected areas.	Kougarok, Teller, Council, Ruby roads; Iditarod Trail in east end; local trails.	Kougarok Road; plane landings in upper Niukluk; local trails along rivers.	Nome road system; plane landings in upper block; local trails along river.
Recreation	Along coast, Topkok to Bluff; upper Golovnin Lagoon.	Unknown	Along Niukluk River.	Unknown
Reindeer Grazing	N/A	Fawning areas: Eldorado Creek, Kwiktalik Mt., Ptarmigan Creek; some winter range.	Some winter range.	Mostly winter range.
Settlement Suitability	N/A	Low along rivers, rest unsuitable.	Low along rivers, rest unsuitable.	Low along rivers, rest unsuitable.
Subsistence	Subsistence use in this unit has been documented by studies of the ADF&G, Subsistence Division, for the communities of Shishmaref and Brevig Mission. Use by other communities—such as Nome, Teller, Mary's Igloo, Wales, White Mountain, Council, and Golovin—may exist, but has not been documented in studies for the NWAP.			

See glossary for definition of ratings.

# RESOURCE INFORMATION SUMMARY

## Management Unit 5: Southwest Seward Peninsula - Page 2 of 3

Resource	5a	Subunit 5f	5g
Fire Protection	Full	Full	Mostly full; modified north of Kuzitrin R.
Fish and Wildlife	B2: moose, brown bear.	A1: eight mouths of anadromous streams. A2: marine mammals, marine fish, ducks & geese, anadromous fish, brown bear, moose.	A1: five seabird rookeries and eight mouths of anadromous fish streams. A2/B1: moose, anadromous fish, ducks & geese, brown bear.
Forestry	None	Driftwood	Trees along Morris Creek (east end).
Heritage Resources	Unknown	All coastal areas have known cultural values, especially the Snake, Sinuk and Nome R. corridors and Cape Nome.	Known sites: near Ruby, and the Eldorado, Sinuk and Flambeau R.
Important Trails	Grand Central R. trail.	Coastal trails.	Nome to Shishmaref winter trail; Sinuk River trail; Penny River trail; Bluff to White Mountain winter trail; Bonanza River, Eldorado River, Flambeau River.
Minerals	High; some mining claims.	Low to very high; some mining claims along coast.	Mostly moderate, some low and high; some mining claims.
Oil & Gas	Unknown	Unknown	Unknown
Public Access	Kougarok Road.	Boat along coast.	Kougarok, Council, and Teller Roads; landings at Tajata Creek, Salmon Lake and upper Niukluk; local trails; boat on lower rivers.
Recreation	Along Grand Central R.	N/A	Along road and major rivers, especially Niukluk R.
Reindeer Grazing	Winter range.	N/A	Fawning areas: Eldorado Creek, Kwik-talik Mts., Ptarmigan Creek; some winter range.
Settlement Suitability	Low		Mixed low and unsuitable.
Subsistence	Subsistence use in this unit has been documented by studies of the ADF&G, Subsistence Division, for the communities of Shishmaref and Brevig Mission. Use by other communities—such as Nome, Teller, Mary's Igloo, Wales, White Mountain, Council, and Golovin—may exist, but has not been documented in studies for the NWAP.		

See glossary for definition of ratings.

# RESOURCE INFORMATION SUMMARY

## Management Unit 5: Southwest Seward Peninsula - Page 3 of 3

Resource	Subunit		
	5h	5i	5j
Fire Protection	Full	Full	Full
Fish and Wildlife	B1 along Salmon Lake and Pilgrim River; rest B2/C: moose anadromous and resident fish.	B1: moose, anadromous fish, brown bear	B1: anadromous fish or resident fish, moos. winter range; upgraded due to human use (Brevig area)
Forestry	None	None	None
Heritage Resources	Known sites: Pilgrim Hot Springs, Salmon Lake	Nome Historic Mining District.	Unknown
Important Trails	Pilgrim River trail	Nome River trail	Trail along road
Minerals	Very High; some mining claims.	High	Moderate potential; mining claims along road
Oil & Gas	Unknown	Unknown	Unknown
Public Access	Kougarok Road; trail/boat along Pilgrim River.	Teller Highway; boat along Nome River.	Kougarok Road
Recreation	Unknown	Along river.	Unknown
Reindeer Grazing	Some winter range in SW corner; rest nothing.	Winter ranges.	None
Settlement Suitability	Low	Low	Low

Subsistence use in this unit has been documented by studies of the ADF&G, Subsistence Division, for the communities of Shishmare and Brevig Mission. Use by other communities—such as Nome, Teller, Mary's Igloo, Wales, White Mountain, Council, and Golovin—may exist, but has not been documented in studies for the NWAP.

See glossary for definition of ratings.

# LAND-USE DESIGNATION SUMMARY

## MANAGEMENT UNIT 5 - SOUTHWEST SEWARD PENINSULA - Page 1 of 2

SUBUNIT	LAND USE DESIGNATIONS			COMMENTS
	PRIMARY SURFACE USE <sup>1</sup>	PROHIBITED SURFACE USE <sup>2</sup>	SUBSURFACE <sup>3</sup>	
5a	Habitat & harvest tidelands	Remote cabins Commercial rec. leases in some areas	Open except 1/4 mile radius at 4 seabird colonies.	
5b	General use uplands	Land disposals Remote cabins except in 3 areas	Open except 1/4 mile radius at 2 seabird colonies	
5c	Minerals/ Habitat and harvest lands	Land disposals Remote cabins except in one area Commercial rec. leases in some areas	Open	
5d	Mineral lands	Land disposals	Open	
5e	Settlement	Remote cabins Commercial rec. leases in some areas	Closed prior to sale	
5f	General use tidelands	Remote cabins Commercial rec. leases in some areas	Open	
5g	Habitat & harvest uplands	Land disposals Remote cabins except in 3 areas Commercial rec. leases in some areas	Open except 1/4 mile at 2 seabird colonies	

<sup>1</sup>Secondary uses include: forestry in subunits 5b and 5g; reindeer grazing in all subunits except 5a and 5f; recreation in subunits 5a, 5c, 5e, 5g, and 5i.

<sup>2</sup>Other uses such as material sales, land leases, or permits, that are not specifically prohibited may be allowed. Such uses will be allowed if consistent with the management intent statement, the management guidelines of this unit, and the relevant management guidelines listed in Chapter 2.

<sup>3</sup>All areas are available for leasing for leasable minerals. Statements of whether or not the unit is open to mineral entry refer only to locatable minerals. See glossary in Appendix A for definitions of leasable and locatable minerals. See Appendix H for detailed descriptions of areas closed to mineral entry.

LAND-USE DESIGNATION SUMMARY  
 MANAGEMENT UNIT 5 - SOUTHWEST SEWARD PENINSULA - Page 2 of 2

SUBUNIT	LAND USE DESIGNATIONS			COMMENTS
	PRIMARY SURFACE USE <sup>1</sup>	PROHIBITED SURFACE USE <sup>2</sup>	SUBSURFACE <sup>3</sup>	
5h	Settlement	Remote cabins Commercial rec. leases in some areas	Closed prior to sale	
5i	Settlement	Remote cabins Commercial rec. leases in some areas	Closed prior to sale	
5j	Settlement	Remote cabins	Closed prior to sale	

<sup>1</sup>Secondary uses include: forestry in subunits 5b and 5g; reindeer grazing in all subunits except 5a and 5f; recreation in subunits 5a, 5c, 5e, 5g, and 5i.

<sup>2</sup>Other uses such as material sales, land leases, or permits, that are not specifically prohibited may be allowed. Such uses will be allowed if consistent with the management intent statement, the management guidelines of this unit, and the relevant management guidelines listed in Chapter 2.

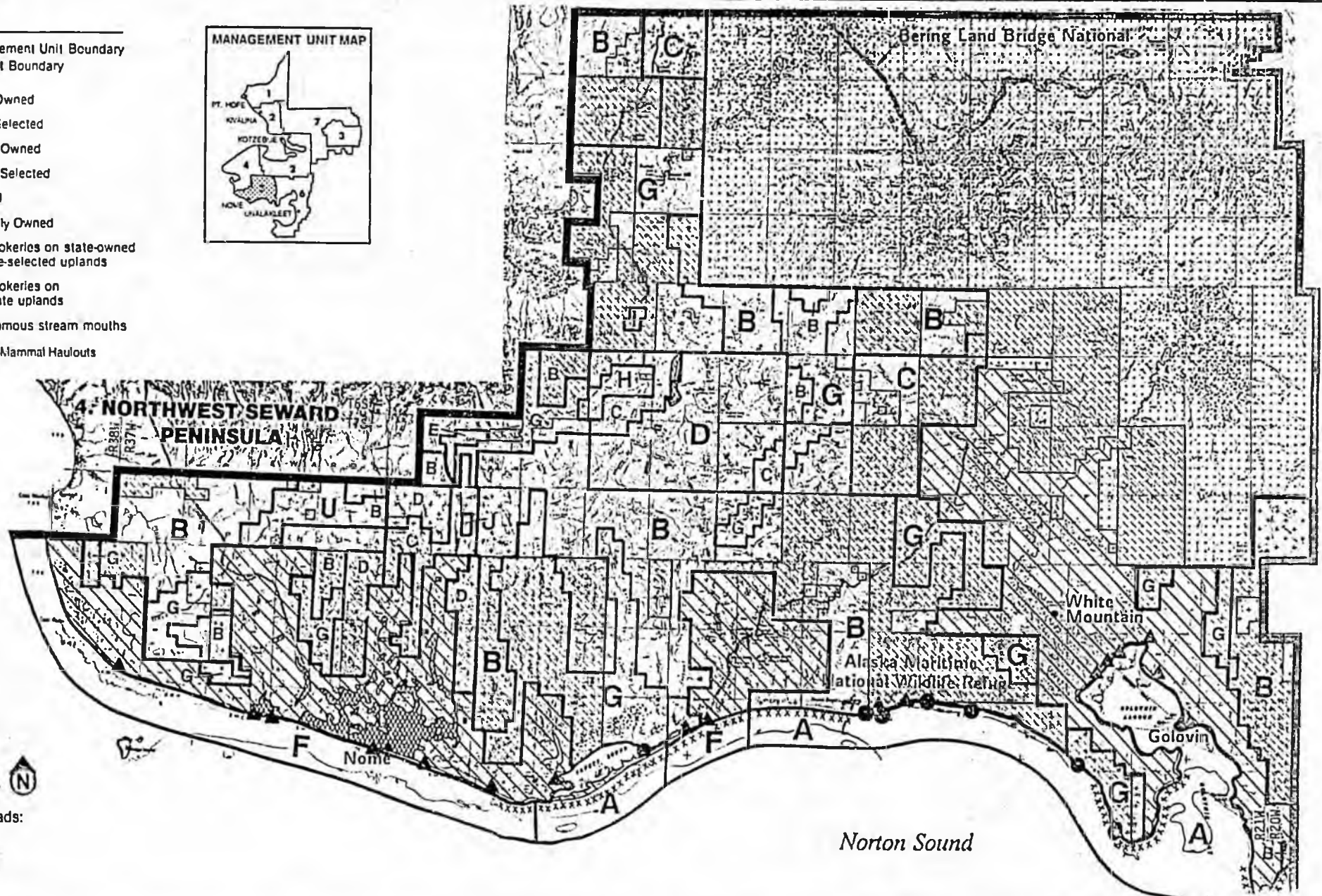
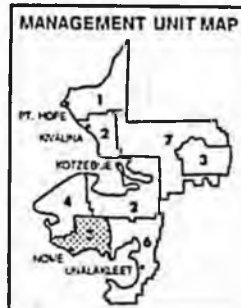
<sup>3</sup>All areas are available for leasing for leasable minerals. Statements of whether or not the unit is open to mineral entry refer only to locatable minerals. See glossary in Appendix A for definitions of leasable and locatable minerals. See Appendix H for detailed descriptions of areas closed to mineral entry.

# Northwest Area Plan

# SOUTHWEST SEWARD PENINSULA Map 3-11 UNIT 5

## LEGEND

- Management Unit Boundary
- Subunit Boundary
- State Owned
- State Selected
- Native Owned
- Native Selected
- Federal
- Privately Owned
- Bird rookeries on state-owned or state-selected uplands
- Bird rookeries on non-state uplands
- Anadromous stream mouths
- Marine Mammal Haulouts



Map Scale:  
1:500,000



U.S.G.S. Quads:  
Bendeleben  
Nome  
Solomon  
Teller

Norton Sound

**H J R**

**29**

SENATE COMMITTEE REPORT

DATE: 3/23/90

FURTHER:

DATE TURNED INTO OFFICE: 4-18-90

Resources

Committee considered

CSHJR 29 (Resources)

Relating to state jurisdiction over the territorial sea out to 12 nautical miles and the air, water, submerged land, and resources found there and to the transfer of title to submerged land of the territorial sea out to 12 nautical miles to the State of Alaska and the other coastal states.

and recommended:

[ ] replace with \_\_\_\_\_ CS \_\_\_\_\_  
[ ] or adopt \_\_\_\_\_ CS \_\_\_\_\_

[ ] 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):

APPROVES PREVIOUS:

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

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

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

[x] zero fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_

[ ] appropriation-no fiscal note

[ ] Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

*Rick Halford*  
*Paul J. ...*  
*John ...*  
*William Sturgis ...*  
*Don*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Robert ...*  
Chair: Signature and Recommendation

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Fish and Game  
 Title: Relating to state jurisdiction over territorial sea... BRU: \_\_\_\_\_  
 Sponsor: Davidson Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

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

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary) No FY 90 Impact. The Department of Fish and Game supports the extension of the territorial sea from three to twelve miles proposed by HJR 29. Fisheries data do not reflect the resources specifically harvested between three and twelve miles at this time. The data do indicate, however, that there may be significant potential economic benefits to the state from fisheries activities occurring in an extended territorial sea.

Prepared by: Deborah Greenberg Phone: 465-4100  
 Division: Commissioner's Office Date: 2/28/90

Approved by Commissioner: [Signature] Date: \_\_\_\_\_  
 Agency: Fish and Game

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



# STATE OF ALASKA

HOUSE OF REPRESENTATIVES


Box V, Juneau, Alaska 99811

(907) 465-2487 • 465-2498

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REPRESENTATIVE CLIFF DAVIDSON • DISTRICT 27 • Box 746, Kodiak, Alaska 99615 • (907) 486-8250

TO: Senator Bettye Fahrenkamp, Chair  
Senate Resources Committee

FROM: Representative Cliff Davidson 

DATE: April 2, 1990

SUBJECT: HJR 29, "Relating to state jurisdiction over the territorial sea out to 12 nautical miles and the air, water, submerged land, and resources found there and to the transfer of title to submerged land of the territorial sea out to 12 nautical miles to the state of Alaska and the other coastal states"

House Joint Resolution 29 was recently referred to the Senate Resources Committee. I would appreciate an expeditious hearing on this legislation.

In December of 1988, President Reagan signed Presidential Proclamation 5928 unilaterally extending the U.S. territorial sea out to 12 nautical miles. This proclamation has intensified the legal question as to whether the individual states or the federal government actually have jurisdiction between three and 12 miles from shore. HJR 29 asks Congress to resolve the question in favor of the states.

HJR 29 was co-sponsored by 42 House members and passed the House unanimously. Its passage will support and assist the Coastal States Organization staff in their lobbying efforts in Washington, D.C.

Attached is some background information on HJR 29. If you have additional questions please do not hesitate to contact me. My staff assigned to this bill is Jay Nelson (465-3715).

Thank you for your assistance.

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Fish and Game  
 Title: Relating to state jurisdiction over territorial sea... BRU: \_\_\_\_\_  
 Sponsor: Davidson Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

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

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary) No FY 90 Impact. The Department of Fish and Game supports the extension of the territorial sea from three to twelve miles proposed by HJR 29. Fisheries data do not reflect the resources specifically harvested between three and twelve miles at this time. The data do indicate, however, that there may be significant potential economic benefits to the state from fisheries activities occurring in an extended territorial sea.

Prepared by: Deborah Greenberg Phone: 465-4100  
 Division: Commissioner's Office Date: 2/28/90  
 Approved by Commissioner: *[Signature]* Date: \_\_\_\_\_  
 Agency: Fish and Game

**Distribution (by preparer):**

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

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: State Jurisdiction Over  
Territorial Sea  
 Sponsor: Davidson, et al.  
 Requestor: House Resources

Agency Affected: Commerce & Econ. Dev.  
 BRU: Business Development  
 Components: \_\_\_\_\_

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

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

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE</b>	0	0	0	0	0	0
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**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

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

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

Prepared by: Jamie Parsons, Director  
 Division: Business Development

Phone: 465-2017  
 Date: 2-7-90

Approved by Commissioner: Larry Mercurieff  
 Agency: Department of Commerce & Economic Development

Date: 2/27/90

Distribution (by preparer):

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

3775D-1/22790b

Prepared by:

Steven E. Kettel  
Income and Excise Audit Division  
February 28, 1990

Analysis

The Department has consulted with both in house counsel and the Attorney General's office concerning state taxation beyond the traditional 3 - mile limit. It is their advice that President Reagan's actions to extend the federal territorial waters out to 12 nautical miles did not likewise extend the state's taxing jurisdiction.

Assuming that Congress were to extend state's taxing powers to the 12 - mile limitation alluded to in CS HJR 29, the state would be entitled to collect several taxes from activities conducted there. These would include fisheries business tax (AS 43.75), corporate income tax (AS 43.20) oil severance taxes (AS 43.55) and motor fuel tax (AS 43.40). We do not presently have data which would allow us to estimate the revenues collectible in the additional 9 mile area. Our experience is that the cost to enforce tax compliance for offshore activities is very high.

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION : HJR 29  
PUBLISH DATE : \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: 27-Feb-90 Agency Affected: Natural Resources  
 Title: Asserting sovereign jurisdiction BRU: Management & Administration  
over the territorial sea out to 12 nautical miles  
 Sponsor: Davidson Components: Commissioner's Office  
 Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

\_\_\_\_\_

Prepared by: Larry Ostrovsky Phone: 465-2400  
 Division: Commissioner's Office Date: 27-Feb-90

Approved by Commissioner: Lennie Gorsuch Date: 27-Feb-90  
 Agency: Department of Natural Resources

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

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: CS HJR 29

PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

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

Revision Date: \_\_\_\_\_  
Title: Territorial Sea to 12 Nautical  
Miles  
Sponsor: Davidson, et al.  
Requestor: Resources and Finance

Agency Affected: Revenue  
BRU: Income & Excise Audit  
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
<b>OPERATING</b>						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	-	-	-	-	-
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel  
Division: Income and Excise Audit

Phone: (907) 465-2320  
Date: February 28, 1990

Approved by Commissioner: Hugh Malone  
Agency: Department of Revenue

Date: February 28, 1990

Distribution (by preparer):

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

# News

from the Coastal States Organization

FOR IMMEDIATE RELEASE  
January 5, 1988

FOR FURTHER INFORMATION  
CONTACT:  
Gary Magnuson  
(202) 628-9636

PRESS STATEMENT OF THE  
COASTAL STATES ORGANIZATION  
ON THE  
PRESIDENTIAL PROCLAMATION EXTENDING THE U.S. TERRITORIAL SEA

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For over 200 years the United States territorial boundary extended three miles out to sea. On December 28, 1988, President Reagan extended that boundary from three miles to twelve, to "advance the national security . . . interests of the United States." This move brings the United States in line with 100 other coastal nations that claim a 12 mile territorial sea.

"The Coastal States Organization (CSO) supports the President's action as a logical step to serve the Nation's security needs better," stated CSO Chair, Chris Shafer, in response to the proclamation. "However, the Proclamation raises significant legal and policy questions regarding its domestic effect, its effect on the citizens of the coastal states," he said.

"Of equal importance to what the Proclamation says is what it does not say. Many areas of significant interest to coastal states -- fisheries, offshore oil and gas production, air and water pollution, coastal management, even state boundaries -- are simply omitted from the proclamation," stated Shafer.

...ry as the President may to have this Proclamation affect only the international theater, it is clear to the coastal states that it will be the genesis of a new era in Federal-State relations on the management of the nation's offshore resources. The President should expect, as Truman did when he issued his 1947 Outer Continental Shelf Proclamation, that Congress and the coastal states will act to legally chart these seas.

The Proclamation recognizes the U.S. territorial sea as "a maritime zone extending beyond the land territory and internal waters of the United States over which the United States exercises sovereignty and jurisdiction." This maritime zone is then extended to "12 nautical miles" from the previous three. At the same time, the Proclamation adds that this extension of U.S. territory another 9 miles out to sea does not "extend or otherwise alter existing Federal or State law or any jurisdiction, rights, legal interest, or obligations derived therefrom." In other words, the Proclamation's intent is to preserve the domestic legal status quo, while changing only the internationally recognized U.S. border.

There is now a 9 mile-wide belt of U.S. territory, from 3 to 12 miles offshore (over 100,000 square miles of U.S. territory), that is a legally uncharted sea with respect to the application of domestic law. All of the existing ocean resource laws are designed to fit a 3-mile territorial sea. This design no longer fits.

For example, foreign fishing has been banned within the U.S. territorial sea for many years. However, federal law allows foreign fishing (with a permit) within the U.S. Exclusive Economic Zone which extends, by definition, from 3 to 200 miles. Is foreign fishing now allowed within the U.S. territorial sea from 3 to 12 miles out? If not, under what authority are the foreign fishermen banned? If so, isn't this an amazing reversal of federal law and policy? The coastal states will pursue answers to this and other questions the proclamation leaves begging.

HJR 29

CS FOR HOUSE JOINT RESOLUTION NO. 29 (Resources) by the Resources Committee,

Relating to state jurisdiction over the territorial sea out to 12 nautical miles and the air, water, submerged land, and resources found there and to the transfer of title to submerged land of the territorial sea out to 12 nautical miles to the State of Alaska and the other coastal states.

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

April 19, 1990

SENATE JOURNAL

p. 3455

HJR 29

The Resources Committee considered CS FOR HOUSE JOINT RESOLUTION NO. 29 (Resources) (Relating to state jurisdiction over the territorial sea out to 12 nautical miles and the air, water, submerged land, and resources found there and to the transfer of title to submerged land of the territorial sea out to 12 nautical miles to the State of Alaska and the other coastal states) and a majority of the committee recommended do pass. The report was signed by Senator Fahrenkamp, Chair, and concurred in by Senators Halford, Zharoff, Eliason, Sturgulewski and Frank.

Previous House zero fiscal notes.

CS FOR HOUSE JOINT RESOLUTION NO. 29 (Resources) was referred to the Rules Committee.

# FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Fish and Game  
 Title: Relating to state jurisdiction over territorial sea... BRU: \_\_\_\_\_  
 Sponsor: Davidson Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

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

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

CAPITAL						
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REVENUE						
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**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary) No FY 90 Impact. The Department of Fish and Game supports the extension of the territorial sea from three to twelve miles proposed by HJR 29. Fisheries data do not reflect the resources specifically harvested between three and twelve miles at this time. The data do indicate, however, that there may be significant potential economic benefits to the state from fisheries activities occurring in an extended territorial sea.

Prepared by: Deborah Greenberg Phone: 465-4100  
 Division: Commissioner's Office Date: 2/28/90

Approved by Commissioner: *Davidson* Date: \_\_\_\_\_  
 Agency: Fish and Game

**Distribution (by preparer):**

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

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: State Jurisdiction Over  
Territorial Sea  
 Sponsor: Davidson, et al.  
 Requestor: House Resources

Agency Affected: Commerce & Econ. Dev.  
 BRU: Business Development

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

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

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

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE</b>	0	0	0	0	0	0
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**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

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

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

Prepared by: Jamie Parsons, Director  
 Division: Business Development

Phone: 455-2017  
 Date: 2-7-90

Approved by Commissioner: Larry Mercurieff  
 Agency: Department of Commerce & Economic Development

Date: 2/27/90

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- 3775D-1/22790b

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: CSHJR 29(RES) No. 3

PUBLISH DATE: HOUSE 3/5/90

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Territorial Sea to 12 Nautical Miles  
Sponsor: Davidson, et al.  
Requestor: Resources and Finance

Agency Affected: Revenue  
BRU: Income & Excise Audit  
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
<b>OPERATING</b>						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	-	-	-	-	-
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel *Steven E. Kettel* Phone: (907) 465-2320  
Division: Income and Excise Audit Date: February 28, 1990

Approved by Commissioner: Hugh Malone *Hugh Malone* Date: February 28, 1990  
Agency: Department of Revenue

Distribution (by preparer):

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

Prepared by:

Steven E. Kettel  
Income and Excise Audit Division  
February 28, 1990

Analysis

The Department has consulted with both in house counsel and the Attorney General's office concerning state taxation beyond the traditional 3 - mile limit. It is their advice that President Reagan's actions to extend the federal territorial waters out to 12 nautical miles did not likewise extend the state's taxing jurisdiction.

Assuming that Congress were to extend state's taxing powers to the 12 - mile limitation alluded to in CS HJR 29, the state would be entitled to collect several taxes from activities conducted there. These would include fisheries business tax (AS 43.75), corporate income tax (AS 43.20) oil severance taxes (AS 43.55) and motor fuel tax (AS 43.40). We do not presently have data which would allow us to estimate the revenues collectible in the additional 9 mile area. Our experience is that the cost to enforce tax compliance for offshore activities is very high.

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: CSHJR 29 (RES) No. 4  
PUBLISH DATE: HOUSE 3/5/90

FISCAL NOTE

REQUEST:

Revision Date: 27-Feb-90  
Title: Asserting sovereign jurisdiction  
over the territorial sea out to 12 nautical miles  
Sponsor: Davidson  
Requestor: House Resources

Agency Affected: Natural Resources  
BRU: Management & Administration  
Components: Commissioner's Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky Phone: 465-2400  
Division: Commissioner's Office Date: 27-Feb-90  
Approved by Commissioner: [Signature] Lennie Gorsuch Date: 27-Feb-90  
Agency: Department of Natural Resources

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

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

RECEIVED APR 5 1989

April 4, 1989

The Honorable Cliff Davidson  
Alaska State Representative  
P.O. Box V  
Juneau, AK 99811

Dear Cliff,

Thank you for your letter about House Joint Resolutions (HJR) 29 and 30, which assert State jurisdiction over the extended 12-mile territorial sea. I have asked members of my staff, my resource agency commissioners, and the Department of Law to carefully review HJR 29 and 30, as well as to prepare testimony for a Congressional hearing on the topic. By now you should have received suggestions for restructuring the resolutions from the Attorney General's Office.

I believe a strong argument can be made to extend State jurisdiction and ownership out to 12 miles, based upon Alaska's excellent record of ocean management from the coast out to three miles. HJR 29 and 30 can be strengthened if they are based upon similar arguments. Enclosed is a copy of the State's Congressional testimony on this topic, which explains my position in more detail. Please contact Bob Grogan of the Division of Governmental Coordination at 465-3562 if you have questions.

Thanks again for your letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Cowper".

Steve Cowper  
Governor

Enclosure

cc: Rob Grogan  
John Katz  
Denby Lloyd

Testimony of Suzanne Iudicello  
Before the  
House Subcommittee on Oceanography and Great Lakes  
March 21, 1989

Mr. Chairman and Members of the Subcommittee:

My name is Suzanne Iudicello. I am the Associate Director for Fisheries and the Environment in Alaska Governor Steve Cowper's Washington, D.C. office. Thank you for the opportunity to present the views of the State of Alaska on the Presidential Proclamation extending the United States territorial sea.

As a State with 6,640 miles of coastline--more than half of the entire United States coast--Alaska has a strong interest in the expansion of the territorial sea. Moreover, as a state whose ocean resources are critical to its economy, Alaska is concerned with the stewardship of those marine resources. The wholesale value of Alaska's commercial fishing industry exceeded \$2 billion last year, and exports of fishery products were our largest source of income. But fishery resources are only the most obvious concern. The role the states will play in the nine miles of the expanded territorial sea will govern issues from environmental protection to community planning to resource development. Alaskans believe that role should be an active one, and we look forward to working with you to develop it.

Today, we would like to focus on four general areas, similar to the concerns expressed on behalf of the other coastal states by Mr. Shafer of the Coastal States Organization (CSO). Alaska is a member of CSO and we support their views. We do, however, appreciate the opportunity to elaborate on the Alaskan perspective on these issues.

Summary

First, the State of Alaska strongly supports Congressional action to resolve the many confusing legal and policy questions the Proclamation has raised. Second, it is our view that the vastness of this new area, the value of its abundant resources, and the scope and number of federal statutes delineating authority and jurisdiction over those resources merit more attention than one hearing by this committee. Third, H.R. 1405, which would freeze federal-state relationships in coastal waters despite expansion of the territorial sea, does not resolve federal-state relationships in a manner that is either realistic or satisfactory to coastal states. For that reason, the State of Alaska cannot support it. Finally, and most important, the State of Alaska believes that state jurisdiction and ownership over coastal waters should be extended to encompass the new 12 mile territorial sea. Such an extension will promote wise ocean stewardship.

Congress Should Clarify the Meaning of the Territorial Sea Expansion

Presidential Proclamation 5928, which extended the U.S. territorial sea from three to 12 miles, was signed to "advance national security and other significant interests of the United States." Although the Proclamation states that "nothing in this Proclamation extends or otherwise alters existing federal or state law or any jurisdiction, rights, legal interests or obligations derived therefrom," the matter is not so simply resolved.

While no one questions the President's authority to extend U.S. jurisdiction for foreign relations purposes, the Proclamation has raised the constitutional question of whether he may unilaterally acquire territory by an extension of sovereignty. Was the President's December 27 action an annexation of territory, and must Congress act in order for the United States to acquire the new area encompassed by the nine-mile expansion of the territorial sea? Legal scholars on both sides can, and likely will, debate these questions. Even the U.S. Department of Justice conceded, in its October 1988 Memorandum accompanying the Proclamation, that the domestic effect of the Proclamation on the relationship between the states and the federal government is not free from doubt.

As a matter of sound public policy, Alaska believes Congress should act to resolve questions of jurisdiction, sovereignty, and ownership over this new area. We encourage the members of this Committee to exert their leadership now, rather than wait for the expensive and time-consuming process of the litigation that undoubtedly will result without clear direction.

Jurisdictional Issues Raised by the Proclamation Merit Thorough Congressional Review

Not only is it important for Congress to act to answer basic questions about the national territorial effect of the proclamation, but action also is required to resolve the issues of jurisdiction over the conservation, management, and development of the myriad ocean resources in the three to 12 mile zone.

The term 'territorial sea' is used more than seventy times in the United States Code, in laws governing activity ranging from waterfowl hunting to smuggling. In the area of environmental protection alone, there are at least a half dozen statutes that define the territorial sea as three

miles. Further, the Proclamation creates anomalies between those laws whose seaward jurisdictional limit is defined simply as the "territorial sea" and those in which it is expressly defined as three miles. For example, the Magnuson Fishery Conservation and Management Act (MFCMA) gives the federal government management authority over fishery resources out to 200 miles, and gives the states authority in their coastal waters. The so-called "inner boundary" of that federal management zone is defined in the Act as a line "coterminous with the seaward boundary of each of the coastal states." Thus, if a case can be made that the Proclamation affects a state's seaward boundaries, state fishery jurisdiction could be expanded.

The courts will be asked to clarify some of these interpretational problems if Congress does not act. Because the Proclamation leaves unanswered questions about effects on domestic law, and because the potential issues are so diverse, we recommend that Congress hold more than one hearing to fully consider these conflicts.

The Alaska Attorney General and the state's resource management agencies presently are analyzing in more detail the legal, economic, and policy issues that arise in the territorial sea area off Alaska. We hope such information will be useful in your deliberations and look forward to providing it to you in future hearings.

#### The State of Alaska Supports Legislation To Extend State Jurisdiction and Ownership Over Coastal Waters

One piece of legislation that proposes to resolve questions raised by the Proclamation is H.R. 1405. This bill would maintain the 'status-quo' (prior to the signing of the Proclamation) with respect to state-federal jurisdiction and law. It is the State of Alaska's view that not only would H.R. 1405 contravene the congressional intent underlying certain laws delineating authority in the territorial sea, but this bill also would foreclose an important opportunity for Congress to consider, as a matter of national policy, how resources in the three to 12 mile zone can best be managed.

For example, the Coastal Zone Management Act (CZMA) simply defines the coastal zone as "seaward to the outer limit of the United States Territorial Sea." Looking more closely at the legislative intent when the CZMA was adopted, Congress considered using both the definition 'territorial sea' and a more specific definition based upon the Submerged Lands Act. Legislative history suggests that a future expansion of the

territorial sea was considered and that the flexible term 'territorial sea' was specifically chosen for that very reason. It thus appears that freezing all domestic law boundaries, as H.R. 1405 advocates, would be counter to the intent of the CZMA.

As this subcommittee and others in Congress consider implementation of the Proclamation, the State of Alaska strongly believes it is appropriate to extend state jurisdiction, which currently extends from the coastline to three miles, to include the entire 12 mile territorial sea.

Further, the same arguments that can be made for extending this jurisdiction apply to granting state ownership as well. While we understand that a case can be made, based upon historical and constitutional precedent, that new U.S. territory must be held in trust and ultimately granted to the states, we would rather focus on congressional precedent, and the public policy reasons why Congress should grant Alaska and the other states jurisdiction and ownership over this zone.

Alaska has consistently demonstrated great competence in managing ocean resources, not only from the coastline out to three miles, but in the 200 mile exclusive economic zone (EEZ) as well. We are not unique in our ability to successfully manage large territorial seas and ocean areas. As you know, the Great Lake States routinely manage large coastal seas (11-80 miles), and some Gulf states currently have jurisdiction over nine or 12-mile state coastal waters. Alaska has a proven record showing experience and skill at balancing protection, conservation and utilization of the living and non-living resources in the zero to three mile ocean zone and beyond. We have devoted a larger percent of available revenues to resource management than the federal government. We are better able, in terms of fiscal resources and administrative abilities, to manage these relatively nearshore fisheries, minerals, oil and gas, and other resources that are so close to our state borders.

For example, Alaska now manages a multi-billion dollar a year seafood industry which includes the world's largest salmon fisheries and several world class salmon runs. We already exclusively manage some fisheries in federal waters such as the shelf commercial rockfish fishery, king and tanner crab, and the troll salmon fishery. The State of Alaska spends \$20 million dollars annually to manage its regional fisheries--ten times the federal government's expenditure to manage fisheries in the vast area of federal waters off Alaska's coasts. Further, the State has taken

the lead in joint efforts with the U.S. State Department on reducing foreign interception of salmon and other living marine resources, and has years of experience in negotiating the harvest of anadromous species with other states and with foreign nations.

Alaska has had a successful offshore mining program since statehood. The State's program has provided minerals such as gold and platinum to industry while providing for environmental protection. State regulations and the coastal zone management program ensure that offshore mining leases go through strict review by all state resource agencies. In contrast to the federal government, which has never issued a single offshore mining lease off the coast of Alaska, there are currently nine active offshore leases which have been issued by the State and more than 200 offshore prospecting permits, giving Alaska the benefit of experience in this area.

Looking at oil and gas resources, the State also has a successful track record of evaluating oil and gas potential, completing timely permitting, and balancing complex interests such as subsistence whaling and oil development. The federal government currently takes an average of five years to plan an oil and gas lease sale in the three to 12 mile zone, while Alaska typically completes a similar rigorous evaluation and analysis in two to three years. The state also maintains a consistent and predictable leasing schedule, providing oil companies a better opportunity to plan and execute exploration budgets. In addition, the State's stipulations and mitigating measures for oil and gas exploration and development offer better environmental protection for marine life, the multi-million dollar fishing industry, and the subsistence lifestyle of many coastal residents. Again, we believe Alaska can more efficiently and competently manage this resource in the three to 12 mile zone than can the federal government.

In another initiative regarding ocean resources, the State of Alaska already is working with other Pacific states to assess the resource potential of the EEZ in the Northeast Pacific Ocean. This includes an effort to identify priorities for research and management, and to analyze capabilities for ocean governance.

In addition to demonstrated competence in protecting and managing ocean resources off our coasts, we believe there is a sound policy basis for extending not only coastal state jurisdiction, but also our ownership over the expanded territorial sea. Congress concluded properly in 1953 that

the states were the proper owners of the submerged lands within their boundaries and over which they had jurisdiction. There are good reasons for this, and they are as valid as they were 35 years ago. First, the coastal states are most significantly impacted by activities in the territorial sea. Second, and most important, it makes good sense to unify jurisdiction and ownership in one sovereign so that the states and the federal government are not working at cross purposes.

In conclusion, we request that Congress act to resolve the many questions this Proclamation has raised: to reaffirm the policy made by this body in 1953, to extend the states' jurisdiction over the expanded territorial sea, and to grant them ownership of the lands beneath it. Thank you for your consideration. We look forward to working with this Committee to implement the Territorial Sea Proclamation.



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

P.O. Box Y, State Capitol  
Juneau, Alaska 99811-3100  
Mail Stop 3100  
(907) 465-3991

April 8, 1939

MEMORANDUM

TO: Representative Cliff Davidson

ATTN: Lourene Miovski

FROM: Karen Oakley *VP*  
Legislative Analyst

RE: Extension of State Jurisdiction in the New 12-Mile Territorial Sea:  
Impact on Alaska  
Research Request 89.172

You requested this agency to report on the likely impact on the State of Alaska if the U.S. Congress extends state jurisdiction in territorial waters to 12 miles offshore; currently states have jurisdiction within three miles of shore. You were particularly interested in the impact on fisheries management and on development of offshore mineral and oil and gas resources. You asked whether the benefits of extended state jurisdiction would be likely to outweigh the costs.

As you are aware, the State of Alaska supports the extension of state jurisdiction and has so testified before Congress.<sup>1</sup> The executive branch is in the process of preparing a detailed analysis of the impacts of extending the state's jurisdiction. You may contact Barb Sheinberg, with the Division of Governmental Coordination, for updates on the progress of this effort.

This memorandum provides background information on the recent extension of the U.S. territorial sea to 12 miles and provides an overview of impacts on the development and management of offshore natural resources--specifically fisheries, minerals and oil and gas--of extending state jurisdiction to 12 miles.

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<sup>1</sup>A copy of the testimony of Suzanne Iudicello, with the Governor's Washington D.C. office, before the House Subcommittee on Oceanography and Great Lakes on March 21, 1989, is provided as Attachment A.

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In summary:

- President Reagan extended the territorial sea of the United States from three miles to 12 miles by proclamation in late 1988; the purpose of the extension was to hinder the activities of Soviet spy ships.
- Congress granted coastal states jurisdiction within three miles of shore in 1953 under the Submerged Lands Act. Coastal states are expected to now lobby Congress to extend state jurisdiction to the new 12-mile boundary of the United States' territorial sea.
- Coastal states are eager to assume jurisdiction within 12 miles to increase their control over activities in coastal waters and to increase their revenues from such activities.
- Extension of state jurisdiction to 12 miles will probably increase the management responsibilities of the state with regard to certain offshore fisheries, primarily the groundfish fishery. The state will also receive additional revenues from the Fisheries Business Tax.
- Offshore mining now occurs only in state waters offshore of Nome. Unless the state changes the way it taxes production of offshore minerals, the extension of state jurisdiction offshore will not generate significant additional revenue for the state.
- Currently, there are some federal oil and gas leases within 12 miles of shore in the Beaufort and Chukchi seas, but none have been developed. Under current federal revenue sharing provisions, the state receives 27 percent of the bonuses, rentals and royalties from these leases.
- Extension of state jurisdiction to 12 miles will increase, possibly by a significant amount, state revenues from oil and gas. The state would receive 100 percent of bonuses, rentals and royalties. In addition, the state would receive severance and property taxes.
- Based on this preliminary analysis, the benefits of extending state jurisdiction appear likely to outweigh the costs. More detailed study is required, however.

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## BACKGROUND

On December 27, 1988, then-President Ronald Reagan extended by proclamation the territorial waters of the United States from its present breadth of three miles to twelve miles.<sup>2</sup> Although the reasons given for the extension in the proclamation were somewhat vague ("extension of the territorial sea to the limits permitted by international law will advance the national security and other significant interests of the United States"), the primary reason was apparently to hinder the activities of Soviet spy ships. In extending the territorial sea, the United States joined the 104 nations that have extended their territorial seas to 12 miles; only 12 nations now maintain a three-mile limit.

The territorial sea is the belt of water immediately adjacent to the coast of a nation. A nation is sovereign within its territorial sea and exercises the same sovereignty there as over its land. In contrast, nations are not sovereign over the high seas, which are the remainder of the ocean beyond the territorial sea. Nations may<sup>3</sup> assert, however, limited forms of jurisdiction in portions of the high seas.

In 1953, the Submerged Lands Act (SLA) granted coastal states the rights to offshore submerged lands within their "boundaries."<sup>4</sup> The SLA was passed to override the effects of a 1947 case, California v. United States, in which the Supreme Court ruled that the United States had jurisdiction over submerged lands off the California coast.<sup>5</sup> Prior to this decision, the coastal states were assumed to have jurisdiction out to the three-mile territorial limit. The

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<sup>2</sup>Proclamation 5928 of December 27, 1988, published in the Federal Register, January 9, 1989, Vol. 54, No. 5., page 777. A copy of the proclamation is provided as Attachment B.

<sup>3</sup>For example, a nation may exercise authority necessary to apply its customs, fiscal, immigration and sanitary regulations in the territorial sea within immediately contiguous waters (the "contiguous zone"). On the continental shelf, a nation is restricted to the exploration and exploitation of natural resources. Within the Exclusive Economic Zone (EEZ), which extends 200 miles offshore, a nation is restricted to activities for economic exploration and exploitation, scientific research and environmental protection.

<sup>4</sup>For the states bordering the Atlantic and Pacific, their boundaries could not extend past three miles; states bordering the Gulf of Mexico were given the opportunity to prove that their historic boundaries extended up to nine miles from shore. Two states, Texas and Florida, were able to justify their ownership of submerged Gulf of Mexico lands out to nine miles.

<sup>5</sup>A copy of the Supreme Court decision in the California case is provided as Attachment C. As you requested, we have ordered copies of the briefs filed in this case through Interlibrary loan and will notify you when these materials are available.

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California decision established the principle that coastal states had no rights to submerged lands beyond the low-tide line or to coastal waters unless such rights were given to them by Congress.

The potential for extension of the territorial sea boundary to 12 miles--either by Congressional action or Presidential Proclamation--has been recognized for several years, and the effects of extending the territorial sea--and of extending state jurisdiction in an expanded territorial sea--have been considered by various federal agencies, coastal states, and other interested parties. Several of the reports published on this topic in recent years are described below.

- In 1985, the Texas A & M University Sea Grant Program sponsored a Conference on an Expanded Territorial Sea. A copy of the proceedings of this conference has been requested and will be forwarded upon arrival.
- Two California officials discussed whether the State of California should support extension of state jurisdiction in an expanded territorial sea in a 1984 paper published in the Coastal Zone Management Journal. They noted that "no fixed boundary can possibly separate federal from state interests in ocean management," and they argued against the extension of state jurisdiction. Based on their experiences in dealing with the federal government on ocean issues in California, they felt it would be more prudent for the state to argue for increased state clout in the federal decision making process and for increased revenue sharing than to argue for extended state jurisdiction. This article provides a good "checklist" of questions to be examined when considering extending state jurisdiction to 12 miles; a copy of the article is provided as Attachment D.
- In a 1986 article in the Journal of Maritime Law and Commerce, Attorney R.K. Littleton proposed that coastal states seek the support of inland states in their efforts to expand their boundaries from three miles to 12 miles. He argued that the federal government would be opposed to extending state jurisdiction; therefore, the only way to achieve extended jurisdiction would be to enlist the support of inland states by promising to share revenues (primarily from oil and gas) from the territory acquired by the coastal states with the inland states. A copy of this article is provided as Attachment E.
- The California Attorney General issued an opinion on March 15, 1989, concerning the effect of the President's Proclamation on the obligations of the California Coastal Commission. He concluded that the proclamation did not extend the boundary of the State of California nor did it extend the permit jurisdiction of the coastal commission. However, the Attorney General found that the

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proclamation did extend the boundary of the coastal zone for the purposes of the Coastal Zone Management Act (CZMA); this extension of the coastal zone would mean that more activities will affect the coastal zone and thereby require consistency with the provisions of the CZMA. A copy of this opinion is provided as Attachment F.

Two resolutions relating to extension of state jurisdiction in the territorial sea, HJR 29 and HJR 30, are currently before the Alaska Legislature. HJR 29 asserts the sovereign jurisdiction of the State of Alaska over the territorial sea out to 12 miles; HJR 30 (respectfully) demands that the U.S. Congress 1) immediately authorize the transfer of title to all submerged lands below the territorial sea from three miles out to 12 miles, and 2) recognize the sovereign jurisdiction of the State of Alaska in the new territorial sea.<sup>6</sup> Both resolutions were co-sponsored by all members of the house. The measures are expected to be considered by the House Resources committee during the latter part of the 1989 session.

## IMPACT ON ALASKA

### Fisheries

Currently, the State of Alaska manages fisheries which occur entirely within three miles of shore. Fisheries which occur between three miles and 200 miles offshore are managed by the North Pacific Fisheries Management Council (NPFMC) under the Magnuson Act. The State of Alaska, as a member of the NPFMC, participates in the management of these offshore fisheries. No fisheries that are currently managed by the NPFMC would occur totally in state waters if state jurisdiction were extended to 12 miles. Thus, the existing management program for fisheries offshore of Alaska would probably not be greatly changed. However, the responsibility for various aspects of the management program (e.g., enforcement and data collection) could shift. The Department of Fish and Game is currently considering the specific effects of an extension of state jurisdiction, and you may wish to contact Deborah Greenberg, with the commissioner's office, at 465-4100, for further information.

The primary fisheries that would be affected by an extension of state jurisdiction to 12 miles are the groundfish fisheries of the Bering Sea-Aleutians and the Gulf of Alaska. Tables 1 and 2 and Figures 1 and 2, found in Attachment G, present information on the volume and value of the 1987 Alaska

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<sup>6</sup>It is commonly understood, based on the 1947 California case, that coastal states will receive jurisdiction in the expanded territorial sea only if Congress grants them jurisdiction by amending the Submerged Lands Act or by passing new legislation specifically addressing the issue. In this regard, assertion of State of Alaska sovereignty in the new portions of the territorial sea via HJR 29 appears to be an unnecessary and possibly counterproductive step.

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groundfish harvest by the distance offshore of the harvest. Approximately 30 percent of the groundfish (representing 33 percent of the value) taken offshore of Alaska in 1987 were harvested between three and 12 miles.

The Magnuson Act prohibits processing and other support activities by foreign processors within state waters except for certain operations approved by the governor of the affected state. Applications by foreign processors to process fish in State of Alaska waters are reviewed under 5 AAC 39.198 by the Department of Commerce and Economic Development and approved by the Governor. A copy of the regulations governing issuance of these "internal waters permits" is provided in Attachment H.

The requirement for approval of processing by foreign ships within the three to nine mile zone will have its biggest effect on joint venture operations.<sup>7</sup> Although joint ventures in Alaska offshore fisheries increased greatly in recent years, their numbers are now declining. The extension of state jurisdiction may, therefore, not greatly increase the number of applications for internal waters permits. Paul Peyton, Commercial Fisheries Development analyst with the Department of Commerce and Economic Development, is considering the effect on internal waters permits, and you may wish to contact him at 465-2162 for further information.

The extension of state jurisdiction will allow the state to collect additional revenues via its Fisheries Business Tax.<sup>8</sup> Pursuant to AS 43.75, persons engaged in fisheries businesses within the State of Alaska are liable for a fisheries business tax applied to the value of fish processed. The tax rate varies from 1.5 to 5.0 percent depending on the species, the status of the fishery (developing versus established) and whether the fish are processed on shore or by a floating processor. Current revenues from the fish tax are on the order of \$20 million, of which from \$7 million to \$8 million is shared with local government jurisdictions in which the fish are processed.

Extension of the state waters to 12 miles means that fish harvested within 12 miles would be subject to the tax. The Department of Revenue is currently analyzing the potential revenue from the extension of state waters. Based on the value of groundfish harvested from waters between three and 12 miles offshore in 1987, approximately \$3 million in additional Fisheries Business Tax revenues would have been collected.

The federal government is likely to oppose extension of state jurisdiction for fisheries management. The National Marine Fisheries Service (NMFS) has twice evaluated the effects on fisheries of extending the territorial sea to 12 miles with and without concomitant extension of state jurisdiction, first in 1984 and most recently in November of 1988. A copy of the most recent

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<sup>7</sup>Joint ventures involve domestic fishermen and foreign processors.

<sup>8</sup>See House Research Memorandum 89.303, State of Alaska Revenues from Natural Resources, for a more complete description of taxes on fishing.

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analysis is provided as Attachment I. In this analysis, the NMFS concluded that simply extending the territorial waters of the United States to 12 miles would have no significant effect on federal fishery management responsibilities. However, the NMFS opposed the extension of state jurisdiction. The report stated:

In general, if state jurisdiction were extended to 12 nm [nautical miles], several purposes of the Magnuson Act would be negated, or at a minimum, made much more difficult to achieve. Reexamination of the role and purpose of Federal fishery management would become necessary, in turn requiring redefinition of Council functions and the spectrum of State/Federal relationships (such as shared enforcement and data collection responsibilities) developed since passage of the Magnuson Act. New legislation would be required to address and balance the questions arising from reduced Federal authority, increased State responsibility, and a return to divided fishery management authority, which by defining a federal role, the Magnuson Act was in part designed to overcome. It would be ill-advised to extend state fishery jurisdiction without assurance that the resources would be adequately protected and managed.

### Offshore Mining

Near shore marine mineral exploration was given a boost in 1983 when the 200-mile Exclusive Economic Zone (EEZ) was declared. The unconsolidated placers of the continental shelf can now be developed under the protection of U.S. law and can therefore be considered viable resources. Alaska, with 74 percent of the U.S. continental shelf, is expected to contain much of the mineral wealth of the U.S. EEZ. Although largely unexplored, there are numerous prospects, mining sites and known occurrences of marine placer minerals, including gold and platinum, along Alaska's coast. Three geologists with the Alaska Division of Geological and Geophysical Surveys recently completed a paper entitled "Marine Placer Development and Opportunities in Alaska." This paper, which describes the known occurrences of marine minerals off Alaska and discusses the past, present and future development of marine placers off Alaska, is provided as Attachment J.

Currently, the only offshore mining operation in Alaska is just offshore of Nome. The State of Alaska has leased approximately 21,000 acres to Westgold Minerals, which is using the world's largest bucket line offshore dredge. Gold placers are believed to occur over a wide area off Nome, and at the request of industry, the federal government recently commenced a mineral leasing program in that area under the auspices of the Outer Continental Shelf Lands Act (OCSLA). Although the state is participating in the review of the proposed lease sale, the state is also arguing that the OCSLA is inadequate for offshore mineral leasing and that legislation establishing a leasing

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system specifically for marine minerals should be passed. With other coastal states, Alaska is seeking provisions for sharing federal offshore mineral revenues and significant state consultation in the leasing process.

If state jurisdiction were extended to 12 miles offshore, more of the placers of the continental shelf, including the valuable gold placers off Nome, would be leasable by the state. Under the current federal mineral leasing system, the state would receive no revenue from leasing of submerged lands by the federal government, thus extension of state jurisdiction would increase the revenue potential of the state. However, under current state law, the state receives only minimal payments from mining, including offshore mining.<sup>9</sup> Offshore prospecting permits yield \$3 per acre in annual fees, and leases produce \$1 per acre in annual rentals; expenses can be credited against annual rentals. In addition, there is no provision for royalty payments. Under these conditions, the state receives only a minuscule percent of the value of offshore mining. For example, in FY 88, offshore prospecting permits and leases generated a net total of \$11,509 for the state; at the same time, the Westgold Minerals dredging operation at Nome is estimated to have extracted 36,000 ounces of gold worth over \$16 million. Unless the state changes the way it taxes the production of offshore minerals, the extension of state jurisdiction offshore will not generate significant additional revenue for the state.

The extension of state jurisdiction will allow the state to control more of the mining that can be expected to occur offshore. In contrast to the federal government--which is just getting into the business of offshore mineral leasing--the state has an established program. The acquisition of additional submerged lands would allow the state to expand its role in offshore mineral development.

The mining industry may view expanded state jurisdiction favorably if the expansion reduces the number of prospects that are interjurisdictional. Mining companies proposing to develop prospects that include both federal and state submerged lands, e.g., Westgold Minerals at Nome, must go through two separate leasing processes. Because developable prospects are usually close to shore, the expansion of state territory may allow more prospects to be developed solely under the auspices of the state program. Industry may react to a less complicated regulatory regime with increased exploration and development.

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<sup>9</sup>See House Research Memorandum 89.303, State of Alaska Revenues from Natural Resources, for further information on state revenues from mining.

## Oil and Gas

Under the OCSLA, the federal government has pursued an aggressive oil and gas leasing program in Alaska.<sup>10</sup> Currently, there are some federal oil and gas leases within 12 miles of shore in the Chukchi and Beaufort seas, however, none of these leases has been developed. Attachment K shows the location of these leases. If state jurisdiction were extended, the state would presumably take over management of these existing leases. The state would also be able to expand its own oil and gas leasing of submerged lands.

Extension of the state's offshore jurisdiction could significantly increase the revenue potential of the state, but the potential revenue gains cannot be quantified. Under the current revenue sharing provisions of the OCSLA, Alaska receives 27 percent of federal offshore oil and gas lease bonuses, rentals and royalties. If state jurisdiction were extended, the state would receive 100 percent of bonuses, rentals and royalties from leases in the new territory; in addition, the state would receive severance taxes and property taxes.<sup>11</sup>

Although the revenue potential of expanding the state's offshore jurisdiction is significant, the opportunity for increased state control over offshore leasing is also compelling. As have other states, Alaska has had several major disputes with the federal government over the federal oil and gas leasing program. These disputes include the leasing of Bristol Bay and the measures to be imposed on Beaufort Sea lessees for the protection of bowhead whales. Expanded state jurisdiction would give the state control over the leasing of a much larger area. The state could dictate the areas to be offered, the pace of leasing, and the conditions under which exploration and development can occur.

## Costs Versus Benefits

Based on this preliminary analysis, the revenues to be gained from extending Alaska's jurisdiction to 12 miles offshore appear to have the potential to be greater than the costs of managing resources in the additional territory. The state has management programs in place for fisheries and for offshore oil and gas and mining, and these programs could presumably manage the additional territory without major changes in structure, function or cost. The potential revenues from oil and gas and fishing in the new territory could be significant. Offshore mining, which is just beginning to develop, could

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<sup>10</sup>The Department of Interior has proposed eight oil and gas lease sales off Alaska during the period 1989 - 1992. This level of leasing activity is not new.

<sup>11</sup>See House Research Memorandum 89.303 for more complete description of State of Alaska taxes on oil and gas.

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generate revenues for the state with changes to the tax structure. Apart from the financial aspects of extending state jurisdiction, the state would benefit from increased control.

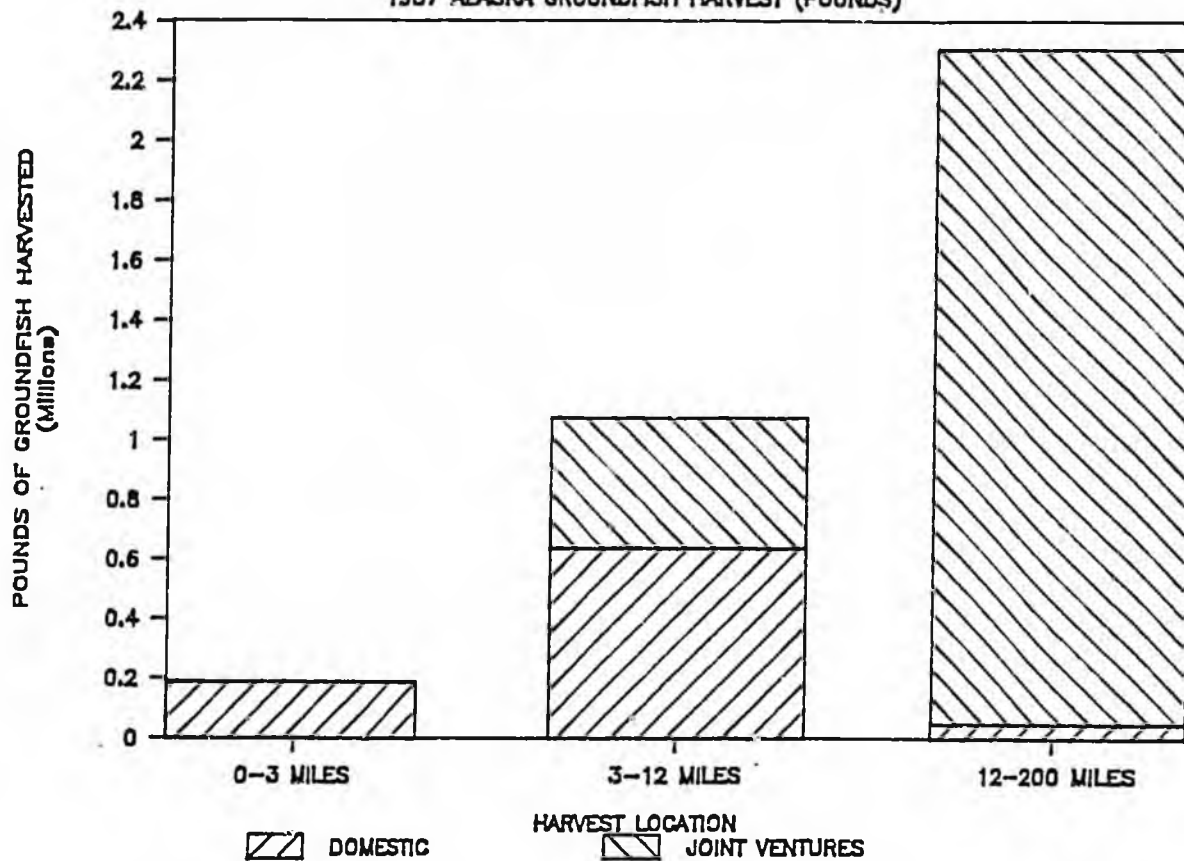
The executive branch agencies that would be involved in managing resources in the new territory are currently preparing a more detailed analysis of the costs and benefits of extending the state's jurisdiction. Please be aware that our conclusion that benefits are likely to outweigh costs is based on preliminary information.

I hope you find this information useful. If you need additional information, please let us know.

Attachments

### FIGURE 1

1987 ALASKA GROUNDFISH HARVEST (POUNDS)



### FIGURE 2

1987 ALASKA GROUNDFISH HARVEST VALUE

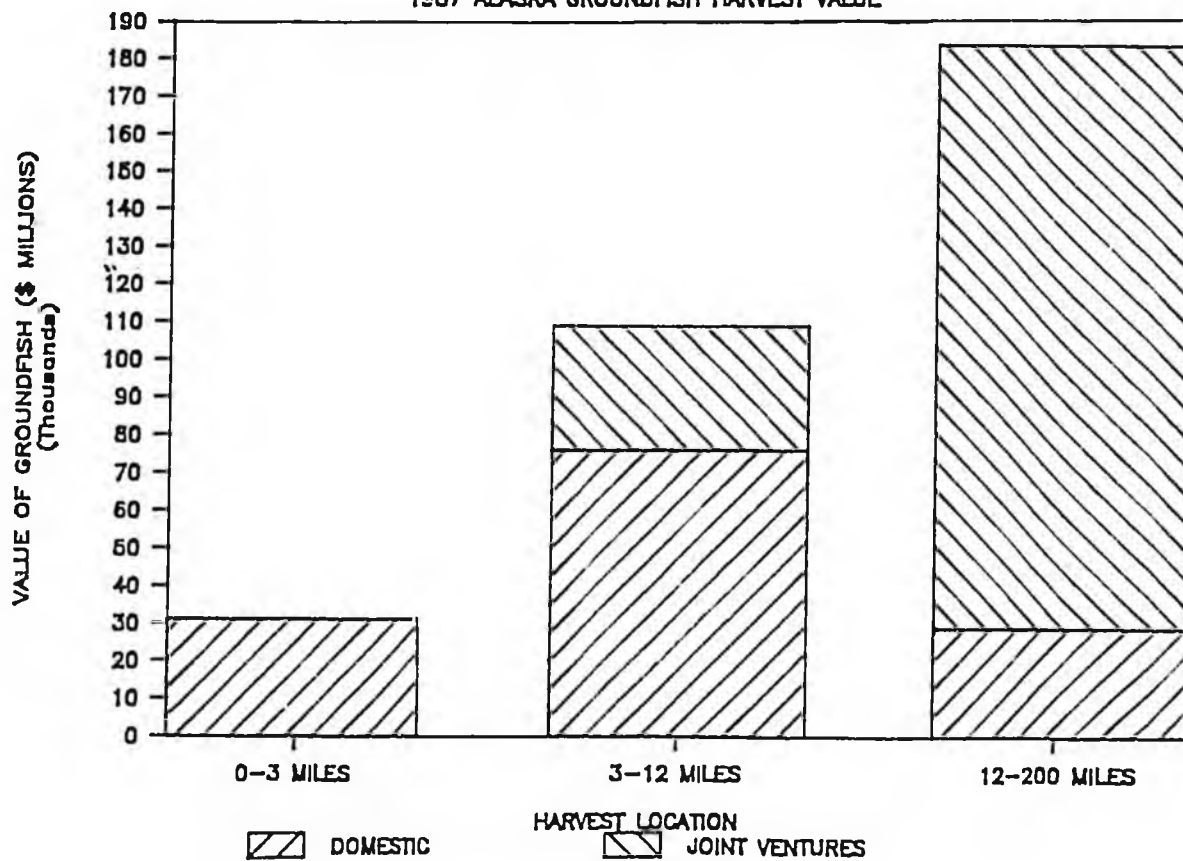


TABLE 1  
 POUNDS OF GROUND FISH HARVESTED OFF ALASKA IN 1987 BY DISTANCE FROM SHORE  
 (IN THOUSANDS OF POUNDS)

FISHERY	HARVEST LOCATION (DISTANCE FROM SHORE)			TOTAL
	0-3 MILES	3-12 MILES	12-200 MILES	
Bering Sea/Aleutians				
Domestic	140,618	500,799	0	641,417
Joint Venture	0	370,505	2,258,757	2,629,262
Subtotal	140,618	871,304	2,258,757	3,270,679
Gulf of Alaska				
Domestic	49,612	138,073	50,417	238,102
Joint Venture	0	69,704	0	69,704
Subtotal	49,612	207,777	50,417	307,806
TOTAL				
Domestic	190,230	638,872	50,417	879,519
Joint Venture	0	440,209	2,258,757	2,698,966
TOTAL	190,230	1,079,081	2,309,174	3,578,485
PERCENT OF TOTAL POUNDS				
Domestic	5.3	17.9	1.4	24.6
Joint Venture	0.0	12.3	63.1	75.4
TOTAL	5.3	30.2	64.5	100.0

Source: National Marine Fisheries Service

Prepared by the House Research Agency, April 1989 (89.172A1)

TABLE 2  
 VALUE OF GROUND FISH HARVESTED OFF ALASKA IN 1987 BY DISTANCE FROM SHORE  
 (IN THOUSANDS OF DOLLARS)

FISHERY	HARVEST LOCATION (DISTANCE FROM SHORE)			TOTAL
	0-3 MILES	3-12 MILES	12-200 MILES	
Bering Sea/Aleutians				
Domestic	\$20,073	\$58,110	\$0	\$78,183
Joint Venture	0	28,462	155,041	183,503
Subtotal	20,073	86,572	155,041	261,686
Gulf of Alaska				
Domestic	11,155	18,056	28,956	58,167
Joint Venture	0	4,490	0	4,490
Subtotal	11,155	22,546	28,956	62,657
TOTAL VALUE				
Domestic	31,228	76,166	28,956	136,350
Joint Venture	0	32,952	155,041	187,993
TOTAL	\$31,228	\$109,118	\$183,997	\$324,343
PERCENT OF TOTAL VALUE				
Domestic	9.6	23.5	8.9	42.0
Joint Venture	0.0	10.2	47.8	58.0
TOTAL	9.6	33.6	56.7	100.0

Source: National Marine Fisheries Service

Prepared by the House Research Agency, April 1989 (89.172B1).

CONFLICTS OF JURISDICTION IN THE AMERICAN 12-  
MILE TERRITORIAL SEA: A CASE FOR THE STATES  
(or how to make it work instead of worse)

by

G. Thomas Koester \*

I. Introduction.

President Reagan's Proclamation expanding the United States' territorial sea from three to twelve nautical miles 1/ explicitly addressed only the United States' foreign relations and disclaimed any effect domestically. Strong arguments can be made, however, that it had a substantial domestic effect because of specific jurisdictional formulations in various federal statutes. Some of the most significant questions presented involve the allocation of off shore resource jurisdiction between the states and the federal government. The Proclamation accordingly has generated substantial domestic interest in the twenty-three coastal states which, along with their twenty-seven inland sisters, collectively make up the United States. 2/

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\* Assistant Attorney General, State of Alaska. The views expressed herein are those of the author and not necessarily those of the State of Alaska, although the state should find none of this loyal employee's opinions objectionable.

1/ Presidential Proclamation 5928 of December 27, 1988, Territorial Sea of the United States of America, 54 Fed. Reg. 777 (1989).

2/ In contrast to the domestic interest provoked, there has been very little international reaction to the Proclamation. This is not surprising for at least two reasons. First, most of the international community has already adopted a twelve-mile limit. In effect, the United States at long last has simply joined the rest of the family of nations. More significant, however, is the  
(continued...)

These questions undoubtedly could be resolved through litigation in the courts. A much better solution, however, would be for the United States Congress to address the matter comprehensively from a public policy perspective after thorough consideration of the views of the states, the federal government, the directly affected private sector, and the public generally.

When looked at from the standpoint of public policy, the jurisdictional questions raised by the extension of the territorial sea from three to twelve miles should be resolved in favor of the states. This is true whether the policy being considered is as fundamental as the principles of federalism on which this nation was founded or as pragmatic and practical as determining the most efficient and effective way to manage off shore activities.

The three theses of this paper, then, are: (1) the extension of the territorial sea from three to twelve miles raises serious and substantial questions regarding the allocation of

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2/ (...continued)

fact that the rest of the world undoubtedly is now accustomed to the United States expanding its jurisdictional claims to the ocean and its resources. The United States in 1945 was the first country to claim for itself the entire continental shelf off its shores. Proclamation 2667, 59 Stat. 884. Later, the United States extended its fisheries jurisdiction to 200 miles in the 1976 Fishery Conservation and Management Act, 16 U.S.C. §§ 1891 et seq. Even those claims paled when the United States in 1983 claimed total resource jurisdiction against the rest of the world in Proclamation 5030, 48 Fed. Reg. 10605 (1983), even though the only international legal authority for such a claim is Part V of the 1982 United Nations Convention on the Law of the Sea which the United States has refused to sign. Taken in context, the only surprising feature of the United States' territorial sea extension may be its uncharacteristic modesty. It is no wonder that it provoked a negligible reaction from the international community.

jurisdiction between the states and the federal government; (2) those questions should be resolved by Congress and not in the courts; and (3) those questions should be resolved in favor of the states.

II. Questions regarding the allocation of jurisdiction between the states and the federal government stem from a questionable decision by the United States Supreme Court in 1947 and subsequent Congressional action to reverse it.

A. Overview.

For much of our nation's history, there was no dispute between the states and the federal government over the allocation of off shore resource jurisdiction. The early cases involved the states and private parties, and generally concerned either the ownership of submerged lands or the enforcement of state fisheries regulations. The federal government did not claim either ownership or jurisdiction, and the cases were consistently resolved in favor of the states.

Language in those early cases strongly suggested that the states both owned the lands underlying the territorial sea and had virtually plenary resource jurisdiction over activities in the territorial sea except for one area -- navigation -- explicitly allocated to the federal government under the United States Constitution. The decisions themselves, however, applied only to tidelands (the lands between low tide and high tide), lands underlying inland navigable waters (bays, rivers, lakes, etc.), and the associated waters. No case explicitly addressed state ownership or jurisdiction between the coast line and the seaward

limit of the territorial sea.

The first major conflicts between the states and the federal government over off shore jurisdiction coincided with the development of the technology necessary to exploit the subsurface resources of the seabed. These disputes were proprietary in nature: were the states or the federal government entitled to the revenues from the submerged lands underlying the territorial sea?

Although it had been assumed by virtually everyone that the rules applicable to tidelands and lands underlying inland waters also would apply to off shore submerged lands, a combination of unusual factors resulted in a determination by the United States Supreme Court in 1947 that the United States, and not the states, had plenary jurisdiction seaward of the nation's coast line.

That decision was viewed by both the states and the United States Congress as an unwarranted judicial reversal of virtually settled law and policy. It subsequently was reversed by Congress and, as a general rule, the states now have federal statutory ownership of and jurisdiction over the submerged lands out to three miles off shore and the living and nonliving resources in the superjacent water column.

Had that been the end of it, questions regarding the allocation of jurisdiction between the states and the federal government would have been relatively easy to resolve: the states would have jurisdiction out to three miles; jurisdiction further off shore would belong to the federal government.

But things did not stop there. The environmental

movement of the 1970s brought with it a host of federal procedural and substantive laws designed to protect the environment. With respect to activities off shore, most of these laws call for some degree of state involvement in implementation, decision-making, and enforcement. These federal laws present the most obvious questions regarding the allocation of jurisdiction between the states and the federal government.

B. The early cases established a rule of state jurisdiction over the territorial sea.

The ownership of the lands underlying navigable water bodies has long been a matter of dispute in the United States. Use of the nation's many lakes and rivers as highways of trade and commerce was central to its early economic development; the living and nonliving resources of the beds and banks provided both sustenance and economic opportunity for early settlers; and, even in the country's youth, the beaches and shores were valued for recreation.

Early on, the United States Supreme Court adopted the English common law rule that the beds and banks of tidal and navigable waters are not privately owned but held by the sovereign in trust<sup>3/</sup> for the benefit of the public. The governmental sovereign in that early case was one of the thirteen original states, and the Court logically concluded that it owned the lands as the sovereign successor to the English crown following the revolution. In the Court's view, the ownership of such lands was simply one of

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<sup>3/</sup> Martin v. Waddell, 41 U.S. (16 Pet.) 367 (1842).

the incidents of sovereignty which each of the individual thirteen original states assumed upon achieving independence from England.

Three years later, the Court extended the rule of state ownership to those states subsequently admitted to the Union. 4/ The Court reasoned that new states must join the Union on an "equal footing" with the original states in terms of sovereignty. One incident of sovereignty under this equal footing doctrine is the ownership of submerged lands underlying navigable waters. Significantly, the Court noted that the state's territorial limits "extended all her sovereign power into the sea," 5/ clearly implying that the rule of state ownership extended off shore to the lands underlying the territorial sea.

The Court subsequently upheld state regulation of off shore fishing activity, 6/ relying in large part on the equal footing doctrine ownership cases. Indeed, the Court first acknowledged that, under international law, the limits of a nation's right to control off shore fishing "have never been placed at less than a marine league from the coast on the open sea." 7/ It went on to state that "[t]he extent of the territorial jurisdiction of Massachusetts [and, by extension, all other states]

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4/ Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212 (1845).

5/ Id. at 230.

6/ Smith v. Maryland, 59 U.S. (18 How.) 71 (1855); McCready v. Virginia, 94 U.S. 391 (1877).

7/ Manchester v. Massachusetts, 139 U.S. 240, \_\_\_\_\_, 35 L.Ed. 159, 164 (1891).

over the sea adjacent to its coast is that of an independent nation" 8/ -- i.e., out to at least three miles off shore.

These and other cases applied the equal footing doctrine rule of state jurisdiction to bays, 9/ tidal rivers, 10/ harbors, 11/ nontidal rivers, 12/ lakes, 13/ and tidelands. 14/ None of these cases specifically addressed jurisdiction over the territorial sea, but it was generally assumed by both state and federal officials in all three branches of government -- executive, legislative and judicial -- that state jurisdiction was the rule. That, however, proved not to be the case.

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8/ Id. at \_\_\_\_\_, 35 L.Ed. at 166.

9/ E.g., *Martin v. Waddell*, 41 U.S. (16 Pet.) 367 (1842); *Smith v. Maryland*, 59 U.S. (18 How.) 71 (1855); *Manchester v. Massachusetts*, 139 U.S. 240 (1891).

10/ E.g., *Pollard's Lessee v. Hagan*, 44 U.S. (3 How.) 212 (1844); *McCready v. Virginia*, 94 U.S. 391 (1877).

11/ E.g., *Weber v. Harbor Commissioners*, 85 U.S. (18 Wall.) 57 (1873).

12/ E.g., *Barney v. Keokuk*, 94 U.S. 324 (1876).

13/ E.g., *United States v. Holt State Bank*, 270 U.S. 49 (1926).

14/ E.g., *Borax, Ltd. v. Los Angeles*, 296 U.S. 101 (1935).

C. The equal footing doctrine was not extended off shore. 15/

The first case addressing the ownership of offshore submerged lands was filed in 1945. The United States sued the State of California, seeking title to the submerged lands seaward of that state. 16/

From the states' perspective, the timing of the litigation could not have been worse. The United States was just emerging from World War II, a conflict which had instilled an intense spirit of nationalism throughout the country.

This war-driven nationalistic spirit even affected as august an institution as the United States Supreme Court. The effect of the war on the Supreme Court perhaps was best reflected in Korematsu v. United States, 17/ in which the Court upheld the forcible internment of United States citizens of Japanese ancestry. Korematsu may have marked a singular low point in the history of the Court. One commentator has stated that "the decision represents the nefarious impact that war and racism can have on

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15/ Much of this section and the remainder of part II is drawn from Briscoe, Federal-State Offshore Boundary Disputes: The State Perspective, Law of the Sea Institute Eighteenth Annual Conference (1984), reprinted in The Developing Order of the Oceans 380 (R. Krueger and S. Riesenfeld, eds.) 380 (1985).

16/ United States v. California, No. 12 Original, United States Supreme Court, October Term, 1945. For a history of the events leading up to the filing of the complaint, see E. Bartley, The Tidelands Oil Controversy (1953).

17/ 323 U.S. 215 (1944).

institutional integrity and cultural health." 18/ It certainly revealed a willingness by the Court to accept what today is viewed as an outrageous position taken by the national government in direct conflict with fundamental principles embodied in the United States Constitution.

In that light, consider the chronology of events leading up to the filing of the complaint against California. On August 14, 1945, the Allies defeated Japan. Japan's formal surrender was accepted on September 2, 1945. On September 28, 1945, President Truman signed Executive Proclamation 2667, 19/ which announced to the world that "the government of the United States regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control."

This unilateral assertion by the United States of jurisdiction over the entire continental shelf as against the rest of the world was followed by the filing of the United States' complaint against California on October 19, 1945. In the complaint, the United States claimed that it "was and now is the owner in fee simple of, or possessed of paramount rights in and

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18/ L. Tribe, American Constitutional Law 1452 (2d ed.) (1988). The United States Congress recently passed legislation making reparations for the detention of both Americans of Japanese descent and Aleut Indians. [need cite]

19/ 59 Stat. 884.

powers over, the lands, minerals, and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low water mark on the coast of California and outside the inland waters of the State . . . ." 20/

In light of the times, it perhaps was not surprising that the Supreme Court embraced the United States' alternative submission and held that the national government, and not California, was possessed of "paramount rights" in the off shore submerged lands at issue. 21/ The influence of World War II is revealed in the Court's reasoning:

The ocean, even its three-mile belt, is thus of vital consequence to the nation in its desire to engage in commerce and to live in peace with the world; it also becomes of crucial importance should it ever again become impossible to preserve that peace. And as peace and world commerce are the paramount responsibilities of the nation, rather than an individual state, so, if wars come, they must be fought by the nation. 22/

The Court acknowledged that, prior to the dispute, it had been generally understood that the states owned the off shore submerged lands, at least within the three-mile limit of the

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20/ Complaint, United States v. California, No. 12 Original, United States Supreme Court, October Term, 1945, paragraph 2.

21/ United States v. California, 332 U.S. 19 (1947).

22/ Id. at 35.

territorial sea constituting the seaward boundary of the United States. 23/ Following California, however, the states could no longer argue that the constitutional equal footing doctrine encompassed all submerged lands within their boundaries; instead, it reached only to the seaward limit of inland waters. The Court subsequently rejected claims by Louisiana, 24/ Texas 25/ and, ultimately, the Atlantic seaboard states that, in large part, comprised the thirteen original states which initially formed the Union. 26/

D. Congress reversed the 1947 California decision when it passed the Submerged Lands Act in 1953.

The 1947 California decision prompted a firestorm of protest from the states, and the United States Congress acted quickly to reverse it by passing legislation quitclaiming the federal government's interest to the states. Such legislation was passed by three successive Congresses, only to suffer vetoes by

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23/ Id at 36-37, citing Manchester v. Massachusetts, 139 U.S. 240 (1891), Louisiana v. Mississippi, 202 U.S. 1, 52 (1906), and The Abby Dodge, 223 U.S. 166 (1912).

24/ United States v. Louisiana, 339 U.S. 699, 704-05 (1950).

25/ United States v. Texas, 339 U.S. 707, 718-20 (1950). Ironically, the Court employed the equal footing doctrine to defeat Texas' claim that, as an independent nation prior to its admission to the Union, it possessed full sovereignty over the territorial sea as well as ownership of it. The Court held that only by relinquishing its sovereignty and ownership to the national government upon admission could Texas have joined the Union on an equal footing with the other states. 339 U.S. at 718.

26/ United States v. Maine, 420 U.S. 515 (1975).

President Truman. 27/

With the change in administration following the 1952 national election, however, legislation quitclaiming the federal government's interest in certain off shore submerged lands became law. The Submerged Lands Act of 1953 28/ restored to the coastal states the rights to their off shore submerged lands which Congress believed the 1947 California decision had divested. 29/ Congress declared that it was in the public interest that title to and ownership of the lands beneath navigable waters within state boundaries, along with the natural resources within such lands and waters, be vested in the states, to include the right and power to manage and administer them. 30/ The Act then quitclaimed the submerged lands to the coastal states. 31/

The term "boundaries" was defined to include a state's seaward boundaries "as they existed at the time such State became a member of the Union, or as heretofore approved by Congress." 32/ For states bordering the Atlantic and Pacific Oceans, boundaries were limited to three geographic miles off

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27/ The first of these quitclaim measures actually was enacted and vetoed in 1946, prior to the Court's 1947 California decision.

28/ 43 U.S.C. §§ 1301 et seq.

29/ See the Court's discussion of Congress' belief in United States v. Louisiana, 363 U.S. 1, 19-20 (1960).

30/ 43 U.S.C. § 1311(a).

31/ 43 U.S.C. § 1311(b)(1).

32/ 43 U.S.C. § 1301(b).

shore; states bordering the Gulf of Mexico, however, were afforded an opportunity to prove that their historic boundaries extended up to three marine leagues (nine geographic miles) off shore. 33/

The same Congress shortly thereafter passed the Outer Continental Shelf Lands Act, 34/ legislatively ratifying President Truman's 1945 claim to that area on behalf of the national government. The outer continental shelf is defined as "all submerged lands lying seaward and outside of the area of land [quitclaimed to the states in the Submerged Lands Act], and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control." 35/

The basic framework for the allocation of state and federal ownership and jurisdiction offshore was thus established: the states have ownership and control within their boundaries, generally three miles off shore, while the United States has authority over areas "seaward and outside of" those allocated to the states.

The first critical point for current purposes is that, by virtue of the 1947 California decision, this allocation of ownership and jurisdiction is pursuant to federal statute and not any fundamental right of the states. In effect, Congress has

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33/ Id. Only Texas and Florida (with respect to its Gulf coast) were successful in claiming a seaward boundary nine miles off shore. *United States v. Louisiana*, 363 U.S. 1, 36-65 (1960) (Texas); *United States v. Florida*, 363 U.S. 121 (1960).

34/ 43 U.S.C. §§ 1331 et seq.

35/ 43 U.S.C. § 1331(a).

virtually plenary power to allocate jurisdiction between the states and the federal government through the enactment of federal laws.

The second critical point is that in the Submerged Lands Act, the first such Congressional allocation, state jurisdiction was explicitly defined as extending three miles off shore; it was not defined in terms of the territorial sea. In subsequent jurisdictional allocations, however, Congress made explicit reference to the territorial sea, giving rise to the current questions.

E. Since 1953, Congress has employed a variety of statutory formulations to allocate jurisdiction between the states and the federal government.

While the initial controversy over state and federal off shore jurisdiction was proprietary, more recent questions have involved police power regulation of development activities. The environmental movement which began in the late 1960s spawned a host of federal laws affecting development of off shore resources. Whether substantive or purely procedural, virtually all of those laws acknowledge the strong state interest in playing a significant role in the decision-making process.

For example, the 1978 amendments to the Outer Continental Shelf Lands Act included the following statements of Congressional policy: 36/

It is hereby declared to be the policy of the United States that --

. . .

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36/ 43 U.S.C.A. § 1332 (1986 and 1989 Supp.).

(4) since exploration, development, and production of the minerals of the outer Continental Shelf will have significant impacts on coastal and non-coastal areas of the coastal States, and on other affected States, and, in recognition of the national interest in the effective management of the marine, coastal, and human environments --

(A) such States and their affected local governments may require assistance in protecting their coastal zones and other affected areas from any temporary or permanent adverse effects of such impacts;

. . .

(C) such States, and through such States, affected local governments, are entitled to an opportunity to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, minerals of the outer Continental Shelf;

(5) the rights and responsibilities of all States and, where appropriate, local governments, to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized; and

. . .

Similarly, Congress found in the Coastal Zone Management Act that "[t]he key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and