

ALASKA LEGISLATURE COMMITTEE FILES
7080 HOUSE LABOR & COMMERCE

1991-1992

8672

Currently, house inspections are generally paid for by the buyer pursuant to a contingency contained in the Earnest Money Agreement made at his request. This proposal shifts the cost of the inspection to the seller, and mandates that the inspection will be performed in essentially all cases, rather than only in those instances where the buyer is sufficiently sophisticated to request an inspection.

IV. EVALUATION

Initially, this proposal may somewhat delay sales, in part because of the need for additional inspectors. We believe that sufficient qualified inspectors are or can be available to meet the demand. Rather than an additional licensing bureaucracy for inspectors, we propose that State licensed architects and engineers, whose certification already demonstrates general familiarity with construction, would be authorized to perform the inspections without further certification¹². We anticipate that those engineers or architects who are not reasonably well qualified to do inspections (for example, petroleum engineers) would be disinclined to do them, and would be dissuaded by liability risks and their professional malpractice insurers from doing so.

In 1989, Texas adopted legislation licensing home inspectors who complete a 90-class hour training program and successfully complete a written examination in the field¹³. See Tex. Civ. Code § 535.202 (Licensed Real Estate Inspectors), attached hereto as Exhibit " ". There appears to be no requirement that a licensed inspector inspect a property prior to a sale; however, no one can hold himself out as a house inspector without a license. Licensees each pay \$250.00 into a real estate inspection recovery fund which may pay some or all of the liability of a negligent inspector.

Until the seller decides to perform the repairs set forth in the report, the attempt to sell the property would be suspended. The real estate agent would not wish to waste time attempting to sell the property, if financing would not be available and the seller will not commit to performing the repairs. If the repairs are completed or the seller commits to having them done as part of the sale, then the matter could move forward. I am proposing that there be an upper limit on the repairs necessary to finance the sale of the home, below which the statute deems the repairs to be immaterial. If the upper limit is \$2,000.00, then to the extent that there are in aggregate less than \$2,000.00 worth of minor repairs, the seller and buyer can negotiate for the value, but the

¹²See Exhibit "11", "A Home Buyer's Guide to Environmental Hazards".

¹³See Exhibit "12", Texas Civil Code §535.202 (Licensed Real Estate Inspectors).

appraiser and lender should not care. If the repair is a single \$1,500.00 item that happens to be the furnace, then this would have to be repaired. Some repairs are cosmetic, while others go to the habitability of the property¹⁴.

The real estate brokers and appraisers we have contacted regarding this proposal have indicated tentative support for it¹⁵. We believe that the proposal can be developed into a form that will win the broad-based support of most of the significant players in the real estate industry, including brokers, appraisers, mortgage insurers and lenders. We acknowledge that those lenders currently holding a large inventory of unsold houses may disapprove of the proposal. These institutions, however, like others in the industry, will stand to benefit in the long run from a housing market free of defective houses.

Respectfully Submitted,

LAW OFFICES OF WILLIAM L. McNALL

By: _____
William L. McNall

WLM/kdm

¹⁴Subject to secondary market requirements.

¹⁵See Exhibit "13", Appraisal Report and Comment. See also, Revnolds v. U.S., 643 F.2d 707; Kipf v. U.S., 501 F.Supp. 110 (U.S.D.C. Mont. 1980); Alva v. Cloninger, 277 S.E.2d 535 (N.C.App. 1981).

THE SPOKANE DISTRICT FARM CREDIT COUNCIL

FARM CREDIT BANKS BUILDING • POST OFFICE BOX TAF-C5 • SPOKANE, WASHINGTON 99220 • (509) 838-9208

Testimony
of
Al Haslebacher, President
Spokane District Farm Credit Council
Relative to
Alaska HB 398
before the House Labor & Commerce Committee
2-26-92

The Spokane District Farm Credit Council (SDFCC) is a trade association formed to safeguard the legislative interests of its members: the Farm Credit Bank of Spokane; its distribution arm, Northwest Farm Credit Services, an Agricultural Credit Association; and member cooperatives in the Pacific Northwest.

The Twelfth Farm Credit District has over \$2 billion in loans to farmers, ranchers, and cooperatives in the states of Alaska, Idaho, Montana, Oregon, and Washington. We wish to be on record as opposing HB 398. While we understand that there has been no action on this bill to date, we wish the committee to be aware of our concerns.

The Farm Credit System and the Twelfth District have had many costly "borrowers rights" obligations imposed as a result of the Agricultural Credit Act of 1987. At the same time, we are under strong pressures to reduce costs of operations. We believe that additional state-imposed obligations will increase costs at a time in our "recovery cycle" when all options for reduced costs must be explored. Increases in costs of operations tend to reduce availability of credit in areas where business volume is low. Therefore, we ask that the Farm Credit Bank and its association be exempted as federal instrumentalities.

If you have need of further information, please feel free to call me at (509) 838-9207.

In the usual employment, the employer would have a particular interest in the workers' compensation system for liberal purposes. The act, to benefit the presumption of the provisions

(mitted).

The Board's decision applied an incorporation of the parties' agreement to have a bearing on the employment relationship coverage,² the decision on the liability of all the controls. To ignore and rely on the agreement common law liabilities' compensation is established by

EMPLOYER

of whether Donald the *Searfus* threshold determines an "employer" workers' Compensation whether Kroll was in as a precondition of the Act⁴ and as

board of this case to hold Kroll common law tort theories. Nor is the party attempted all's liability insurer injury was initially on as to the viability claims.

'Employee' means an employer as

an element of the relative nature of the work test. Thus, only if it is determined that Kroll acted as an employer in the course of his construction activities may Donald reasonably be said to have been engaged in work which was "a regular part of the employer's regular work." *Ostrem v. Alaska Workmen's Compensation Board*, 511 P.2d at 1063.⁵

[5] For purposes of the Act, an employer is defined as "a person employing one or more persons in connection with a business or industry coming within the scope of this chapter." AS 23.30.265(12). The Board stated in this regard:

The definition of subsection (12) 'in connection with a business or industry coming within the scope of this chapter' is interpreted to mean *all business or industry is to be considered as covered by the Act* and that interpretation would follow Larson's which includes every person in the service of another under contract. [Emphasis added.]

The Board's broad construction of AS 23.30.265(12) fails to give proper weight to the statutory limitation to employment relationships "in connection with a business or industry." In Larson's terms,⁶ the policy question is whether Kroll's construction activity, either by itself or as an element of his rental activities,⁷ was a profit-making enterprise which ought to bear the costs of injuries incurred in the business, or was the construction activity simply a cost-cutting shortcut in what was basically a *consumptive* and not a *productive* roll played by Kroll.⁸

We conclude that the Board's statement with respect to the parameters of the statu-

5. The concept of "regular work" as used in *Ostrem* as part of the text for differentiating between employees and independent contractors is a subclass of "business" as used in AS 23.30.265(12). Whether a person engages in a "business" within the meaning of AS 23.30.265(12), is relevant for purposes of determining the "extent to which claimant's work is a regular part of the employer's regular work." *Ostrem*, 511 P.2d at 1063. The Board's first obligation is to ascertain the nature of the particular business enterprise in which the injury allegedly occurred, and then to determine whether

the statutory definition of an employer reflects an erroneous standard of law. As a result, the threshold issue of whether Kroll's construction activity was sufficient to establish his status as an employer must also be remanded to the Board for further consideration.⁹

REVERSED and REMANDED.



Max BEVINS and Johnson-Bevins Inc.,
d/b/a Star Realty, Appellants,

v.

David L. BALLARD and Linda K.
Ballard, Appellees.

No. 4571.

Supreme Court of Alaska.

Nov. 19, 1982.

Purchasers brought action against vendors and real estate broker alleging, in part, intentional and negligent misrepresentation in describing condition of well on property. The Superior Court, Third Judicial District, Anchorage, Eben H. Lewis, J., rendered judgment in favor of purchasers, and broker appealed. The Supreme Court, Burke, J., held that: (1) trial court's dismissal of purchasers' negligence claim against real estate broker precluded broker's liability from resting on a negligent representation

er the work being done by the claimant is a regular part of that business.

6. See IC A. Larson, *supra* note 2, § 50.21.

7. *Id.* at § 50.24.

8. *Id.* at § 50.21, at 9-70 to 9-71 & nn. 4 and 5. But see *Donald v. Whatley*, 346 So.2d 896 (Miss.1977).

9. *Burgess Constr. Co. v. Smallwood*, 623 P.2d 312, 317 (Alaska 1981).

theory, even though postjudgment amendments are allowed to conform issues tried to evidence, where, subsequent to dismissal, neither party argued negligent misrepresentation in trial briefs, court and parties treated case as one involving innocent misrepresentations, and broker neither expressly nor impliedly consented to trying negligence claim, but (2) real estate broker who made material misrepresentation to purchasers as to condition of well on unimproved property was liable to purchasers, even though representation was innocently made.

Affirmed.

Connor, J., dissented in part and filed an opinion in which Rabinowitz, J., joined.

1. Negligence ⇐2

In determining whether duty exists to provide accurate information once speaker undertakes to speak, factors to consider are whether speaker had knowledge, or its equivalent, that information was desired for serious purpose and that listener intended to rely upon it, foreseeability of harm, degree of certainty that listener would suffer harm, directness of causation, and policy of preventing future harm.

2. Brokers ⇐102

In land sales context, duty to provide accurate information when real estate broker undertakes to speak can arise when broker becomes aware of suspicious facts regarding his or her representations, or when purchaser makes affirmative inquiry and broker fails to check accuracy of subsequent responding representation, or when court determines that public policy requires brokers to undertake certain functions.

3. Pretrial Procedure ⇐693

Trial court's dismissal of purchasers' negligence claim against real estate broker precluded broker's liability for misrepresentations from resting on a negligent representation theory, even though postjudgment amendments are allowed to conform issues tried to evidence, where, subsequent

to dismissal, neither party argued negligent misrepresentation in trial briefs, court and parties treated case as one involving innocent misrepresentations, and broker neither expressly nor impliedly consented to trying negligence claim.

4. Vendor and Purchaser ⇐37(1)

Vendors guilty of even innocent misrepresentation cannot hide behind doctrine of caveat emptor because vendors are presumed to know character and attributes of land conveyed and purchasers are consequently entitled to rely on vendors' reasonable representations.

5. Fraud ⇐13(2)

Owner of land must be both truthful and informed in making any representations, for fraud includes pretense of knowledge where there is none.

6. Brokers ⇐102

Policy favoring liability of real estate brokers for innocent misrepresentation is founded on recognition that purchasers should be entitled to rely on a broker's representations.

7. Brokers ⇐106

Purchaser who relies on a material misrepresentation of real estate broker, even though innocently made, has a cause of action against broker.

8. Brokers ⇐102

Real estate broker who made material misrepresentation to purchasers as to condition of well on unimproved property was liable to purchasers, even though representation was innocently made.

Fredrick P. Pettyjohn, Anchorage, for appellants.

Saul R. Friedman, Hedland, Fleischer & Friedman, Anchorage, for appellees.

Before RABINOWITZ, C.J., CONNOR, BURKE, and MATTHEWS, JJ., and DIMOND, Senior Justice.*

* Dimond, Senior Justice, sitting by assignment made pursuant to article IV, section 11 of the

Constitution of Alaska, and Alaska R.Admin.P. 23(a).

OPINION

BURKE, Justice.

This is an appeal from a judgment holding a real estate broker liable for certain misrepresentations made in the course of a real estate transaction.

A. Facts

On February 3, 1975, David and Linda Ballard purchased a lot with an unfinished dwelling from Josephine, Patricia, and William Ferris. Prior to their purchase, certain representations were allegedly made to the Ballards regarding the adequacy of a well on the property. The purchaser, David Ballard, who had previous experience as a general contractor, attempted to complete the existing well on the property. He installed a pump and piping from the well to the house. The well, however, failed to provide sufficient water. As a result, the Ballards were forced to haul water to their property. They subsequently incurred expenses of \$6,935.00 in deepening the well to an adequate level.

Believing themselves the victims of fraudulent misrepresentations, the Ballards sued the sellers, the broker (Bevins), and an employee of the broker (Lucas). Their complaint alleged, in part, intentional and negligent misrepresentation.¹ In addition, it alleged that Bevins and Lucas had a duty to check the well's condition, that Lucas knew there was no functional well, that Bevins

was vicariously liable for Lucas's acts, and that the Ferrises were vicariously liable for the actions of their agents, Bevins and Lucas. The complaint did not explicitly allege innocent misrepresentation.

After the close of plaintiffs' evidence, the trial court dismissed certain counts of the complaint. First, the court ruled that the broker did not have a general duty to inspect the premises. Second, it held that the broker was not vicariously liable for the acts of his employee, Lucas. In a subsequent written decision, the court further ruled that Lucas was not liable. It then held that Bevins and the sellers were jointly and severally liable, each with a right of contribution from the other for any payment in excess of a pro rata share. While both the sellers and the broker filed timely notice of appeal, only Bevins, the broker, pursues his appeal.

The basis of the broker's liability is not clear. The court found that the sellers were the source of the representation that the well was "good," i.e., capable of supplying the reasonable water needs of the residents. It ruled that the broker had a right to rely on the representations, and thus the sellers were liable (as principals) for the act of Bevins (their broker and thus their agent) who passed on the misrepresentation. The court also found that Lucas passed on the representation intending that

1. The complaint made the following factual allegations:

- (a) Bevins personally inspected the property;
- (b) sellers told Bevins that there was a well drilled on the property;
- (c) sellers failed to disclose to Bevins the incomplete nature of the well, with the knowledge and intent that Bevins would tell potential buyers there was a well;
- (d) sellers represented to the broker's employee that the well was finished, held 36 feet of standing water, and was capable of supporting the reasonable water needs of residents of the house;
- (e) sellers made those representations with the intent that Lucas would tell the buyers;
- (f) Lucas did so represent to the Ballards;
- (g) the representations were false;
- (h) Lucas made the representations with the knowledge they were false;

(i) sellers made the representations knowing they were false, for the purpose of deceiving plaintiffs and inducing them to buy;

(j) plaintiffs did rely and were induced; and,
(k) plaintiffs were unable to discover the defect until after purchase.

In addition, the following legal allegations were made:

(1) Bevins owed plaintiffs a duty to investigate the accuracy of the sellers' representations, and breached that duty (this count was dismissed at the close of plaintiffs' evidence);

(2) Lucas (broker's employee) owed plaintiffs a duty to investigate, and breached that duty;

(3) Bevins was vicariously liable for acts of his employee Lucas (this count was dismissed at the close of plaintiffs' evidence); and,

(4) sellers were vicariously liable for the acts of their agents, Bevins, the broker, and his employee, Lucas.

argued negligent
griefs, court and
involving inno-
cent broker neither
presented to trying

37(1)

an innocent mis-
behind doctrine
vendors are pre-
and attributes of
sellers are conse-
quently vendors' reasona-

are both truthful
any representa-
in absence of knowl-

of real estate
representation is
that purchasers
on a broker's

a material mis-
tate broker, even
has a cause of

made material
sellers as to condi-
tion of property was
enough represen-

storage, for ap-

and, Fleischer &
appellees.

CONNOR,
and DI-

Alaska R.Admin.P.

it be relied upon; Bevins admitted to the same intent. The court further found that the Ballards did so rely, and that their reliance was justified.

Although the court earlier concluded that Bevins had no general duty to inspect, it subsequently held that a duty of inquiry arose when Lucas asked Bevins, on behalf of the Ballards, about the adequacy of the well. The court concluded that Bevins acted unreasonably by simply assuring Lucas that it was a "good well" rather than by investigating. Thus Bevins' liability appears to rest on a negligence theory.

Certain facts are not contested:

1. The listing mentioned a 100 foot well.
2. The well proved to be incomplete, i.e., inadequate to support reasonable water needs.
3. Bevins, the broker, testified that the listing of a well would reasonably lead buyers to assume the well was "good," i.e., adequate.
4. The Ballards relied on the listing and representations that the well was "good."
5. Both Lucas and Bevins intended that the Ballards so rely.

As to the source of the misrepresentation, Bevins testified that he would not have written it on the listing unless it came from the sellers. The sellers, however, denied telling him about it; they testified that Bevins must have misunderstood. The court believed Bevins, concluding that the sellers were the original source of the representation.

B. The Broker's Liability

There are three types of misrepresentations: intentional, negligent and innocent. While the Ballards did assert an intentional misrepresentation claim against the sellers, they did not do so against Bevins or Lucas.

2. Bevins' liability could be based on a vicarious liability for the acts of his employee Lucas. As we noted in *Black v. Dahl*, 625 P.2d 876, 879 n. 3 (Alaska 1981), a real estate broker can be liable under the doctrine of respondeat superior for the acts of his or her sales-people. However, two of the rulings below preclude resting liability on such a basis. First, at the close of

Thus, we need address ^{Realtor} only the negligent and innocent misrepresentation claims in this appeal. Bevins' liability to be sustained, must rest on one of these two theories.

1. Negligent Misrepresentation

The Ballards' third claim for relief stated a cause of action for negligence against Bevins. That claim alleged that Bevins had a duty to "take reasonable steps to determine whether or not the well . . . was a completed well" and had sufficient capacity to support a purchaser's reasonable water needs, that Bevins breached that duty, and that as a direct and proximate result of Bevins' breach the Ballards purchased the property believing the well was completed. As noted, the trial court subsequently dismissed that claim, and the Ballards did not appeal. In its final opinion, however, the trial court imposed liability on grounds that Bevins had a "duty to inquire of the sellers whether the well was, in fact, 'a good well.'" Bevins argues that the court thus held him negligent even though negligence was dismissed from the case and, further, that he was prejudiced thereby because dismissal of the third claim led him to forego a negligence defense.

[1,2] We recognized the tort of negligent misrepresentation in *Transamerica Title Insurance Co. v. Ramsey*, 507 P.2d 492 (Alaska 1973), and *Howarth v. Pfeifer*, 443 P.2d 39 (Alaska 1968). Under this theory, Bevins could have been liable for breaching his duty to provide accurate information once he undertook to speak. In determining whether such a duty exists, one must consider: (a) whether the defendant had knowledge, or its equivalent, that the information was desired for a serious purpose and that the plaintiff intended to rely upon it; (b) the foreseeability of harm; (c) the degree of certainty that plaintiff would suf-

the Ballards' evidence, the trial court dismissed the eighth claim for relief, which had asserted that Bevins was vicariously liable. Second, in its written opinion, the trial court found in favor of Lucas, the salesman. Thus there is no underlying liability for which Bevins could be held vicariously responsible. The Ballards have not appealed these rulings.

y the negligent
ation claims in
lity to be sus-
these two theo-

resentation

for relief stated
ligence against
that Bevins had
steps to deter-
well ... was a
fficient capacity
asonable water
d that duty, and
imate result of
s purchased the
was completed.
ubsequently dis-
Ballards did not
on, however, the
grounds that
ne of the sellers
n fact, 'a good
t the court thus
ough negligence
se and, further,
reby because dis-
d him to forego a

ne tort of negli-
Transamerica Ti-
ey, 507 P.2d 492
ch v. Pfeifer, 443
nder this theory,
ble for breaching
rate information
k. In determin-
exists, one must
e defendant had
nt, that the infor-
i serious purpose
nded to rely upon
of harm; (c) the
aintiff would suf-

nal court dismissed
which had asserted
able. Second, in
ourt found in
... thus there is no
ch Bevins could be
ble. The Ballards
ings.

fer harm; (d) the directness of causation; and (e) the policy of preventing future harm. *Howarth v. Pfeifer*, 443 P.2d at 42; see *Transamerica Title Insurance Co. v. Ramsey*, 507 P.2d at 494-95.³ In the land sales context, such a duty can arise when a broker becomes aware of suspicious facts regarding his or her representations, or when a buyer makes an affirmative inquiry and the broker fails to check the accuracy of his subsequent responding representation, or when a court determines that public policy requires brokers to undertake certain functions. See, e.g., *First Church of the Open Bible v. Cline J. Dunton Realty, Inc.*, 19 Wash.App. 275, 574 P.2d 1211 (1978).

[3] We believe, however, that the trial court's dismissal of Ballards' third claim for relief, which was their only negligence claim against Bevins, precludes the broker's liability from resting on a negligent misrepresentation theory.⁴ While Alaska Rule of Civil Procedure 15(b) allows post-judgment amendments to conform the issues tried to

3. In *Transamerica Title*, we upheld submitting the negligence issue to the jury where a title insurance company failed to inform a client that a power of attorney, upon which she was relying in asserting her authority to sell the property, had been revoked. Although the title company was unaware of the revocation, that information was readily available to it. We concluded that the title insurer knew that the seller, its client, desired information about her legal capacity to sell the land, that she intended to rely on that information, and that there was foreseeable harm to her should she be poorly advised. We concluded that the jury could find that the title company had a "duty to speak carefully." We rejected any distinction between the nonfeasance of the title company and the misfeasance in the *Howarth* case. 507 P.2d at 494-95.

In *Howarth*, a vendor sought damages for the alleged negligent misrepresentation by the defendant insurer that a purchaser of vendor's property had obtained fire insurance on the property. We held that assuming the presence of the essential factors establishing a duty of care, those engaged in the insurance business are required to speak with reasonable care.

4. That the court intended to dismiss negligence claims from the case is further evidenced by the following colloquy:

THE COURT: ... I feel that it's the third claim for relief that you seek thereby to impose upon realtors a burden that does not exist except in extraordinary circumstances.

the evidence, and further provides that the failure to so amend "does not affect the result of the trial" on those issues. The rule sets as a threshold the requirement that such issues be "tried by express or implied consent of the parties." We do not believe that this condition was met in the case at bar. Subsequent to the dismissal neither party argued negligent misrepresentation in their trial briefs. The court and parties treated the case as one involving innocent misrepresentations. Bevins neither expressly nor impliedly consented to trying a negligence claim. Accordingly, Bevins' liability cannot rest on a negligent misrepresentation theory.

2. Innocent Misrepresentation

The case went forward against Bevins on an apparent theory of innocent misrepresentation, evidenced by the colloquy quoted in note 4 and the arguments advanced in the trial briefs.⁵ The tort of innocent mis-

That is when there's been—when there has been evidence adduced as to the duty of a realtor to inquire arising from some circumstances directing the attention of a reasonable prudent realtor to some—some—something unusual. In this case it seems to me that this was just an ordinary transaction. That it's rural property, most of which does require that it be serviced by a well. It is incomplete, and if I accept the evidence as it now stands, that it was represented that there was a good well, that that's the end of the matter, that there's no duty on the realtors to go further and inquire whether that is the actual fact. You know, there's nothing unusual about that well that would alert the ordinary prudent realtor of the need to do something about it. To check it out.

MR. FRIEDMAN: Well, if the court finds that there was no duty, then they can't obviously be negligent. But I still ask the court

THE COURT: They—well, they still can be—the defendants still could be—they made the representation, which is—facts show was not true.

MR. FRIEDMAN: Correct.

THE COURT: So that they can be—they can be held liable for having made the same. But not on—no—on—(indiscernible) negligence—or negligence theory.

5. The elements of innocent misrepresentation were alleged to a sufficient degree. Paragraph 8 of the Ballards' first claim for relief makes

representation is defined by section 552C(1) of the Restatement (Second) of Torts (1977) as follows:

One who, in a sale, rental or exchange transaction with another, makes a misrepresentation of a material fact for the purpose of inducing the other to act or to refrain from acting in reliance upon it, is subject to liability to the other for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation, even though it is not made fraudulently or negligently.

Id. The Restatement leaves open the question of whether such a cause of action lies against real estate brokers. *Id.* § 552C, Comment g.

[4, 5] We have recognized a cause of action against the owner of realty who innocently misrepresents its condition to the purchaser. *Cousineau v. Walker*, 613 P.2d 608 (Alaska 1980). In *Cousineau*, we granted rescission and restitution to a purchaser where the seller made false statements concerning the highway frontage and gravel content of the purchased land. In so doing, we held that an owner guilty of even innocent misrepresentation could not hide behind the doctrine of caveat emptor. *Id.* at 614-16. This is so because owners are presumed to know the character and attributes of the land conveyed and buyers are consequently entitled to rely on the seller's reasonable representations. See *Sorenson v. Adams*, 98 Idaho 708, 571 P.2d 769, 776 (1977), quoted in *Cousineau v. Walker*, 613 P.2d 608, 615 n. 14 (Alaska 1980). The owner of land must therefore be both truthful and informed in making any representations, for fraud includes the pretense of knowledge where there is none. *Spargnapani v. Wright*, 110 A.2d 82, 84 (D.C.App. 1954).

the necessary allegation concerning Bevins' scienter. Paragraph 2 of the fifth claim for relief alleged that Bevins' agent passed on the representation with the intent to cause action in reliance thereon. Finally, paragraph 15 of the first claim for relief alleged actual reliance. In light of this, plus the court's and the parties' arguments concerning Section 552 of the Restatement, we conclude that Bevins was "adequately notified" that the Ballards were asserting a cause of action based on innocent misrepresentations. See *Clary Ins. Agency v. Doyle*, 620 P.2d 194, 201 (Alaska 1980).

pani v. Wright, 110 A.2d 82, 84 (D.C.App. 1954).

The question presented in this case is whether or not liability for innocent misrepresentation should extend to the owner's agent, the real estate broker, where that party serves as a conduit for the owner's misinformation. Most courts addressing this issue recognize a cause of action by the purchasers of property against the broker for the latter's innocent misrepresentation.

An illustrative case is *Spargnapani v. Wright*, 110 A.2d 82 (D.C.App.1954). There, both the seller and broker were held liable for representing that a house could be heated for a little more than \$100.00 per year, when a defect in the boiler made it impossible to heat the house at all. *Id.* at 85. The broker had merely passed on the seller's information, and neither defendant had knowledge of a defect. Nevertheless, the court sustained liability:

If the broker innocently represented that the heating plant was in workable condition and was mistaken in that representation, or made the representation without knowing whether it was true or false, the injured party may recover in an action for fraud.

... We may assume that the broker was guilty of no deliberate deception and had no actual knowledge of the concealed defect. But on defendants' own evidence their selling agent did not disclaim such knowledge.... The representation... was flagrantly inaccurate, since the defect... made it impossible to heat the house at all.... "Fraud includes the

6. *Sodal v. French*, 35 Colo.App. 16, 531 P.2d 972, 973 (1974); *Spargnapani v. Wright*, 110 A.2d 82, 85 (D.C.App.1954); *Pumphrey v. Quillen*, 165 Ohio St. 343, 135 N.E.2d 328, 331 (1956); *Berryman v. Riegert*, 286 Minn. 270, 175 N.W.2d 438, 442 (1970); *Lawlor v. Schepher*, 232 S.C. 94, 101 S.E.2d 269, 271 (1957); *Polk Terrace, Inc. v. Harper*, 386 S.W.2d 588, 593 (Tex.App.1965). *Contra Lyons v. Christ Episcopal Church*, 71 Ill.App.3d 257, 27 Ill.Dec. 559, 389 N.E.2d 623, 625 (1979).

Let the
Buyer
Beware

82, 84 (D.C.App.

in this case is innocent misrepresentation to the owner's broker, where that for the owner's courts addressing of action by the against the broker misrepresentation.⁶

Spargnapani v. [redacted] (1954). There, [redacted] were held liable [redacted] could be heated [redacted] 100.00 per year, [redacted] made it impossi-

Id. at 85. The [redacted] on the seller's [redacted] defendant had [redacted] nevertheless, the

represented that [redacted] workable condi- [redacted] that representa- [redacted] mentation without [redacted] true or false, the [redacted] ver in an action

t the broker was [redacted] ception and had [redacted] he concealed de- [redacted] s' own evidence [redacted] ot disclaim such [redacted] presentation . . . [redacted] e, since the de- [redacted] ible to heat the [redacted] ud includes the

App. 16, 531 P.2d [redacted] v. Wright, 110 [redacted] v. Quil- [redacted] N.E.2d 328, 331 [redacted] 286 Minn. 270, [redacted] v. Schep- [redacted] 269, 271 (1957); [redacted] S.W.2d 588, [redacted] v. Christ [redacted] 257, 27 Ill.Dec. [redacted] 79).

pretense of knowledge when knowledge there is none."

Id. at 83-84 (citation omitted).

[6] The policy favoring liability for innocent misrepresentation is found on a recognition that purchasers should be entitled to rely on a broker's representations. As one opinion notes:

Real estate brokers and their agents hold themselves out to the public as having specialized knowledge with regard to housing, housing conditions and related matters. The public is entitled to and does rely on the expertise of real estate brokers in the purchase and sale of its homes. Therefore there is a duty on the part of real estate brokers to be accurate and knowledgeable concerning the product they are in the business of selling—that is, homes and other types of real estate. Courts have held in many cases that purchasers are entitled to rely on real estate brokers' statements.

Lyons v. Christ Episcopal Church, 71 Ill. App.3d 257, 27 Ill.Dec. 559, 389 N.E.2d 623, 628 (1979) (dissenting opinion).

[7] We find this reasoning persuasive. Parties to real estate transactions frequently do not deal on equal terms. Real estate brokers are licensed professionals, possessing superior knowledge of the realty they sell and the real estate market generally. Prospective purchasers recognize this expertise and tend to rely on a broker's representations. Just as purchasers are entitled to rely on an owner's representations, *Cousineau v. Walker*, 613 P.2d 608 (Alaska 1980), purchasers should be entitled to rely on the broker's representations. Any other rule would permit brokers to use misleading statements in selling the property, yet remain immune from liability by simply remaining ignorant of the property's true characteristics. Accordingly, we hold that a purchaser who relies on a material misrepresentation, even though innocently

7. Some listing agreements contain indemnification provisions, entitling the broker to indemnify from the owner should the broker's communication of the owner's representations engen-

made, has a cause of action against the broker originating or communicating the misrepresentation. See Restatement (Second) of Torts § 552C(1) (1977).

In our view, the consequences of recognizing a cause of action in this situation are entirely beneficial. The presence of a cause of action against the broker would tend to lessen the likelihood of transactions tainted by misinformation and confusion. Additionally, recognizing a cause of action against the broker would provide another source of recovery to the purchaser of defective property. Frequently, the owners may move away, leaving the broker as the only reachable defendant. As between the broker who communicated the misrepresentation, and the purchaser whose only fault was to rely on the broker, we think it preferable that the broker bear any loss caused by misrepresentation. Brokers, in turn, can protect themselves from liability by investigating the owner's statements, or by disclaiming knowledge, by requiring the seller to sign at the time of listing a statement setting forth representations which will be made, certifying that they are true and providing for indemnification if they are not.⁷ See *Goldman v. Hart*, 134 Ga. App. 422, 214 S.E.2d 670 (1975).

[8] Having determined that a cause of action in innocent misrepresentation exists, it is apparent that the judgment below must be affirmed. Bevins does not contest that the listing he prepared mentioned a 100 foot well, that this listing would reasonably lead buyers to assume the well was good, that the Ballards so relied, and that the well was, in actuality, inadequate. These facts establish liability under an innocent misrepresentation theory. See Restatement (Second) of Torts § 552C(1) (1977). The decision below is therefore AFFIRMED.⁸

COMPTON, J., not participating.

der liability. See, e.g., *Barnes v. Lopez*, 25 Ariz.App. 477, 544 P.2d 694, 698-99 (1976).

8. This case is distinguishable from *Stepanov v. Gavrilovich*, 594 P.2d 30 (Alaska 1979), where-

CONNOR, Justice, with whom RABINOWITZ, Justice, joins, (dissenting in part)

I dissent from the holding that an action for innocent misrepresentation should be permitted against the real estate broker.

When a realtor acts as a mere conduit for passing on information supplied by the seller, he should be under no duty independently to verify that information unless he has reason to believe the information to be false. See *Lyons v. Christ Episcopal Church*, 71 Ill.App.3d 257, 27 Ill.Dec. 559, 389 N.E.2d 623, 625 (1979). Allowing an innocent misrepresentation action against the broker in such circumstances is quite close to imposing strict liability. There is no reason to make the broker the "insurer" of the seller's representation.

Although we recognized a claim based on innocent misrepresentation in *Cousineau v. Walker*, 613 P.2d 608 (Alaska 1980), that case is distinguishable from a case between a buyer and a broker. Sellers who make representations about their property should be held to the accuracy of the representations, as they are normally in the best position to know the facts. But a broker often has little personal knowledge of the property which he offers for sale. I see no reason to make the broker the guarantor of representations emanating from the seller. I would hold that innocent misrepresentation is not available as a cause of action by the buyer against the broker. Thus, I would reverse the judgment of the superior court. I agree with the balance of the majority opinion.



In we affirmed a judgment in favor of a small "subdivider," in a damage action founded upon the subdivider's innocent failure to disclose undetected permafrost conditions in lots sold to the plaintiffs.

Subdividers are subject to, and protected by, the Alaska Land Sales Practices Act, AS 34.55. Under the act, a subdivider is liable for material misrepresentations or omissions affecting the land, "unless in the case of an untruth or omis-

Lauren BAILEY, Appellant and
Cross-Appellee,

v.

Dennis J. HAAS, Appellee and
Cross-Appellant.

Nos. 6177/6688.

Supreme Court of Alaska.

Dec. 3, 1982.

Cross appeals were taken from a decision of the Superior Court, Third Judicial District, Kenai, James A. Hanson, J., which was entered in an action brought pursuant to the Uniform Reciprocal Enforcement of Support Act. The Supreme Court, Connor, J., held that: (1) failure of petition to include a prayer for arrearages did not justify dismissal of the claim where respondent had notice of the claim for arrearages at the very latest by time motion for an order of support was filed, and (2) request for arrearages in child support need not be reduced to judgment by petitioning state prior to recovering such arrearages in an Uniform Reciprocal Enforcement of Support Act action.

Reversed and remanded.

1. Parent and Child ⇐ 3.4(2)

Failure of petition to initiate support proceedings under Uniform Reciprocal Enforcement of Support Act to include a prayer for arrearages did not justify dismissal of the claim where respondent had notice of the claim for arrearages at the very latest by time motion for an order of support was filed. AS/25.25.010-25.25.270.

sion it is proved that . . . the person offering or disposing of subdivided land did not know and in the exercise of reasonable care could not have known of the untruth or omission." AS 34.55.030(a). Thus, a "subdivider" is not liable for innocent misrepresentations. Such liability is barred by the statute. This protection, however, is not available to the defendants in the case at bar, since they are not "subdividers."

Discard Earlier Pocket Supplement

1992 POCKET SUPPLEMENT

ISSUED IN JANUARY, 1992

COVERING LEGISLATION THROUGH THE 1991
SESSION OF THE 1991-92 LEGISLATURE

**DEERING'S
CIVIL
CODE**


ANNOTATED

OF THE STATE OF CALIFORNIA

§§ 818-1236

Annotated and Indexed by the Publisher's Editorial Staff

Note—An updated analysis of the Civil Code appears at the
beginning of the supplement to the first volume.


BANCROFT-WHITNEY JAN 31 1992
Law Publishers
3250 Van Ness Avenue
P.O. Box 7005
San Francisco, CA 94120-7005
800-848-4000
LEGISLATIVE AFFAIRS
Reference Library

ITEM-13

§ 987. Protection of fine art against alteration or destruction; Actions; Removal of work from property

NOTES OF DECISIONS

In an action by artists who painted a large mural on the wall of a service station owned by defendants, for damages under the California Art Preservation Act (Civ. Code, § 987), following the destruction of the wall to which the mural was attached without notice to the artists, the trial court erred in granting summary judgment for defendants based on its finding that a mural was not included within the term "painting" as used in the act. The declared policies of the act, protecting artistic expression and preserving the integrity of cultural and artistic creations would not be served by excluding

muralists from the act's protection, which is a curative statute that should be liberally construed to achieve its stated purposes. The fact the Legislature used the terms "painting" and "mural" in a previous statute authorizing state funding of art in public buildings, while the act used only the term "painting," had little relevance. Accordingly, the Legislature intended the term "fine art" to include paintings in the form of murals that otherwise qualify for protection under the act. *Botello v Shell Oil Co.* (1991, 2nd Dist) 229 Cal App 3d 1130, 280 Cal Rptr 535.

§ 990. Deceased personality

Editor's Notes—In the 1988 Amendment Note on page 193, delete "and (3) added subds (m) and (n)". These subdivisions were added in 1984 by Chapter 1704.

§ 1007. Title by prescription

NOTES OF DECISIONS

9. Proprietary Property of State or Municipality

Owners of lots abutting a road that had been impliedly dedicated to the public upon subdivision of the land it traversed were precluded by Civ. Code, § 1007, from establishing title to portions of the road by adverse possession based on their construction of various encroachments over the years,

even though dedication of the road was never formally accepted by the county. The provisions of § 1007 are not limited to property that is owned by a particular governmental entity, but apply to any property dedicated to the public in general. *Hays v Yanek* (1989, 4th Dist) 217 Cal App 3d 271, 266 Cal Rptr 856.

§ 1015. Sudden removal of bank

Collateral References:

Liability for diversion of surface water by raising surface level of land. 88 ALR4th 891.

§ 1057.3. Return of escrow funds

(a) It shall be the obligation of a buyer and seller who enter into a contract to purchase and sell real property to ensure that all funds deposited into an escrow account are returned to the person who deposited the funds or who is otherwise entitled to the funds under the contract, if the purchase of the property is not completed by the date set forth in the contract for the close of escrow or any duly executed extension thereof.

(b) Any buyer or seller who fails to execute any document required by the escrow holder to release funds on deposit in an escrow account as provided in subdivision (a) within 30 days following a written demand for the return of funds deposited in escrow by the other party shall be liable to the person making the deposit for all of the following:

(1) The amount of the funds deposited in escrow not held in good faith to resolve a good faith dispute.

(2) Damages of treble the amount of the funds deposited in escrow not held to resolve a good faith dispute, but liability under this paragraph shall not be less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000).

(3) Reasonable attorney's fees incurred in any action to enforce this section.

(c) Notwithstanding subdivision (b), there shall be no cause of action under this section, and no party to a contract to purchase and sell real property shall

be liable, for failure to return funds deposited in an escrow account by a buyer or seller, if the funds are withheld in order to resolve a good faith dispute between a buyer and seller. A party who is denied the return of the funds deposited in escrow is entitled to damages under this section only upon proving that there was no good faith dispute as to the right to the funds on deposit.

(d) Upon the filing of a cause of action pursuant to this section, the escrow holder shall deposit the sum in dispute, less any cancellation fee and charges incurred, with the court in which the action is filed and be discharged of further responsibility for the funds.

(e) Neither any document required by the escrow holder to release funds deposited in an escrow account nor the acceptance of funds released from escrow, by any principal to the escrow transaction, shall be deemed a cancellation or termination of the underlying contract to purchase and sell real property, unless the cancellation is specifically stated therein. If the escrow instructions constitute the only contract between the buyer and seller, no document required by the escrow holder to release funds deposited in an escrow account shall abrogate a cause of action for breach of a contractual obligation to purchase or sell real property unless the cancellation is specifically stated therein.

(f) For purposes of this section:

(1) "Close of escrow" means the date, specified event, or performance of prescribed condition upon which the escrow agent is to deliver the subject of the escrow to the person specified in the buyer's instructions to the escrow agent.

(2) "Good faith dispute" means a dispute in which the trier of fact finds that the party refusing to return the deposited funds had a reasonable belief of his or her legal entitlement to withhold the deposited funds. The existence of a "good faith dispute" shall be determined by the trier of fact.

(3) "Property" means real property containing one to four residential units at least one of which at the time the escrow is created is to be occupied by the buyer. The buyer's statement as to his or her intention to occupy one of the units is conclusive for the purposes of this section.

(g) Nothing in this section restricts the ability of an escrow holder to file an interpleader action in the event of a dispute as to the proper distribution of funds deposited in an escrow account.

Added Stats 1990 ch 13 § 1 (AD 546).

§ 1086. Agency listings

Collateral References:

What constitutes financial ability to perform within rule entitling broker to commission for producing ready, willing, and able purchaser of real property. 87 ALR4th 11.

§ 1102. Transactions to which article applies

Cross References:

Disclosure to prospective purchaser that property is located within special studies zone: Pub Res C § 2621.9
Disclosure that real property is located within seismic hazard zone: Pub Res C § 2694.

§ 1102.6. Form of disclosure statement

The disclosures required by this article pertaining to the property proposed to be transferred are set forth in, and shall be made on a copy of, the following disclosure form:

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF _____, 19____. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I

COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same: _____

(list all substituted disclosure forms to be used in connection with this transaction)

II

SELLERS INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller _____ is _____ is not occupying the property.

A. The subject property has the items checked below (read across):

- Range, Dishwasher, Washer/Dryer Hookups, Burglar Alarms, T.V. Antenna, Central Heating, Wall/Window Air Cndng., Septic Tank, Patio/Decking, Oven, Trash Compactor, Window Screens, Smoke Detector(s), Satellite Dish, Central Air Cndng., Sprinklers, Sump Pump, Built-in Barbeque, Microwave, Garbage Disposal, Rain Gutters, Fire Alarm, Intercom, Evaporator Cooler(s), Public Sewer System, Water Softener, Gazebo

- Sauna, Security Gate(s), Garage: Attached, Pool/Spa Heater: Gas, Water Heater: Gas, Water Supply: City, Gas Supply: Utility, Exhaust Fan(s) in, Gas Starter, Other, Pool, Automatic Garage Door Opener(s), Not Attached, Solar, Well, Bottled, 220 Volt Wiring in, Roof(s): Type, Fireplace(s) in, Spa Hot Tub, Number Remote Controls, Carport, Electric, Private Utility or Other, Age (approx.)

*This garage door opener may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of the Health and Safety Code.

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? Yes No. If yes, then describe. (Attach additional sheets if necessary): _____

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? Yes No. If yes, check appropriate space(s) below.

- Interior Walls, Ceilings, Floors, Exterior Walls, Insulation, Roof(s), Windows, Doors, Foundation, Slab(s), Driveways, Sidewalks, Walls/Fences, Electrical Systems, Plumbing/Sewers/Septics, Other

Structural Components (Describe: _____)

If any of the above is checked, explain. (Attach additional sheets if necessary): _____

C. Are you (Seller) aware of any of the following:

- 1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the subject property Yes No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property Yes No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property Yes No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits Yes No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes Yes No
6. Landfill (compacted or otherwise) on the property or any portion thereof Yes No

IV

AGENTS INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

Agent (Broker obtaining the Offer) _____ By _____ Date _____
(Please Print) (Associate Licensee or Broker-Signature)

V

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____ Buyer _____ Date _____
Seller _____ Date _____ Buyer _____ Date _____

Agent (Broker Representing Seller) _____ By _____ Date _____
(Associate Licensee or Broker-Signature)

Agent (Broker obtaining the Offer) _____ By _____ Date _____
Associate Licensee or Broker-Signature

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

Amended Stats 1990 ch 1336 § 2 (AB 3600), operative July 1, 1991.

Amendments:

1990 Amendment: Amended the SELLERS INFORMATION disclosure form by (1) substituting "Automatic Garage Door Opener(s)" for "Garage Door Opener(s)" in subd A; and (2) added the footnote referring to a garage door opener.

Note—Stats 1990 ch 1336 provides:

SECTION 1. The Legislature finds and declares all of the following:

(a) The garage door is the largest and heaviest piece of moving equipment in most homes, and in order to avoid injury, it should be designed, manufactured, equipped, and maintained with due care. For this reason, garage door springs are currently regulated under California law.

(b) There are over 20 million automatic garage door openers in the nation today, a large portion of them in California.

(c) New residential automatic garage door openers should possess an automatic reversing safety device in compliance with current voluntary standards.

(d) There is no current California state regulation of these devices. Voluntary standards were established in 1973; however, prior to that date, there were no applicable industry safety standards requiring automatic reversing safety devices. Although automatic garage door openers have a life expectancy of approximately eight years, it is possible for individual openers to last as long as 40 years.

(e) Therefore, many automatic garage door openers currently installed do not have automatic safety reversing devices, and for many of the doors that do have these devices, the door and operator systems may not be properly adjusted and maintained. This condition is worsened by the fact that many persons are not aware of this problem and may have a false sense of security because they possess a door which

- 7. Any settling from any cause, or slippage, sliding, or other soil problems
8. Flooding, drainage or grading problems
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides
10. Any zoning violations, nonconforming uses, violations of "setback" requirements
11. Neighborhood noise problems or other nuisances
12. CC&R's or other deed restrictions or obligations
13. Homeowners' Association which has any authority over the subject property
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)
15. Any notices of abatement or citations against the property
16. Any lawsuits against the seller threatening to or affecting this real property

Yes No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.):

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller _____ Date _____
Seller _____ Date _____

III

AGENTS INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

Agent (Broker Representing Seller) _____ By _____ Date _____
(Please Print) (Associate Licensee or Broker-Signature)

purports to have an automatic safety device, yet the door and operator system may not have been tested or properly maintained and, therefore, may not be able to protect small children living in, or visiting, the home from serious injury or death.

(f) Since 1982, nationally, at least 44 children under 14 years of age have died in accidents involving automatic garage door openers. In November of 1989, a five-year-old girl died in Sacramento in an accident involving a garage door.

(g) It is, therefore, necessary that mandatory safety standards be established with respect to residential garage door opener systems.

Section 2 of this act shall be operative on July 1, 1991.

Cross References:

Disclosure to prospective purchaser that property is located within special studies zone: Pub Res C § 2621.9

Disclosure that real property is located within seismic hazard zone: Pub Res C § 2694.

Collateral References:

Taking a closer look: Significant new California legislation enacted in 1989. 13 CEB Real Prop L Rep No. 2 p 37.

§ 1102.13. Failure to comply with article; Liability for damages

Cross References:

Disclosure to prospective purchaser that property is located within special studies zone: Pub Res C § 2621.9

Disclosure that real property is located within seismic hazard zone: Pub Res C § 2694.

§ 1105. When fee simple title is presumed to pass

Collateral References:

Ehrman & Flavin, *Taxing California Property* (3d ed) § 2:26.

§ 1113. Implied covenants

Collateral References:

Builder's liability to new and subsequent purchasers. 20 *Southwestern U LR* 219.

NOTES OF DECISIONS

4. Covenant Against Prior Conveyances

In an action against a seller of real property brought by a title insurer to recover what it paid to the purchaser for diminution of property value after the discovery of a recorded restrictive covenant granting a view easement over the property, the mere fact that the purchaser and the insurer may have known during escrow of the possibility of a restrictive covenant did not necessarily bar the insurer from recovering for the purchaser's breach

of the statutorily implied covenant against encumbrances (Civ. Code, § 1113). For purposes of § 1113, a covenant running with the land restricting the use of property constitutes an encumbrance. If an encumbrance is one affecting title, the covenant against encumbrances is broken at the time of the transfer, and the vendor's prior notice of the encumbrance is immaterial. *Fidelity National Title Ins. Co. v Miller* (1989, 4th Dist) 215 Cal App 3d 116, 264 Cal Rptr 17.

§ 1148. Gift not revocable

A gift, other than a gift in view of impending death, cannot be revoked by the giver.

Amended Stats 1991 ch 1055 § 2 (SB 271).

Law Revision Commission Comments:

1991—Section 1148 is amended to refer to a gift in view of "impending" death, consistent with Probate Code Sections 5701-5705.

§§ 1149-1153. [Sections repealed 1991.]

Repealed Stats 1991 ch 1055 §§ 3-7 (SB 271).

Law Revision Commission Comments:

1991—Former Section 1149 is superseded by Section 5702 of the Probate Code.

Former Section 1150 is continued in substance in Section 5703 of the Probate Code.

Former Section 1151 is superseded by Section 5704 of the Probate Code.

Former Section 1152 is continued in substance in Section 5704 of the Probate Code.

Former Section 1153 is continued in substance in Section 5705 of the Probate Code.

§ 1188. Officer must indorse certificate

An officer taking the acknowledgment of an instrument shall endorse thereon or attach thereto a certificate substantially in the form prescribed in Section 1189.

Amended Stats 1990 ch 1070 § 1 (SB 2251).

Amendments:

1990 Amendment: Substituted (1) "shall endorse" for "must indorse"; and (2) "form prescribed in Section 1189" for "forms hereinafter prescribed".

§ 1189. General form of certificate of acknowledgment

(a) Any certificate of acknowledgment taken within this state shall be in substantially the following form:

State of California }
County of _____ }

On _____ before me, (here insert name and title of the officer), personally appeared _____

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

(Seal)

(b) Any certificate of acknowledgment taken in another place shall be sufficient in this state if it is taken in accordance with the laws of the place where the acknowledgment is made.

(c) An acknowledgment provided prior to January 1, 1993, and conforming to applicable provisions of former Sections 1189, 1190, 1190a, 1190.1, 1191, and 1192, as repealed by Chapter 335 of the Statutes of 1990, shall have the same force and effect as if those sections had not been repealed.

Added Stats 1990 ch 335 § 2 (AB 2581). Amended Stats 1990 ch 1070 § 2 (SB 2251); Stats 1991 ch 157 § 1 (AB 1750).

Former Sections:

Former § 1189, similar to the present section, was enacted 1872. Amended Stats 1891 ch 125 § 3; Stats 1897 ch 46 § 1; Stats 1980 ch 188 § 1; Stats 1982 ch 197 § 2, effective May 12, 1982 and repealed Stats 1990 ch 335 § 1 (AB 2581).

Amendments:

1991 Amendment: Substituted "January 1, 1993" for "January 1, 1992" in subd (c).

§ 1190. Certificate of acknowledgment by corporation

The certificate of acknowledgment of an instrument executed on behalf of an incorporated or unincorporated entity by a duly authorized person in the form specified in Section 1189 shall be prima facie evidence that the instrument is the duly authorized act of the entity named in the instrument and shall be conclusive evidence thereof in favor of any good faith purchaser, lessee, or encumbrancer. "Duly authorized person," with respect to a domestic or

Lawsuits

Continued from page C1

ditional \$6,935 for a driller to reach water.

The couple sued. The case eventually went to the Alaska Supreme Court, which ruled that, even though the real estate agent thought the well was good, he is a conduit of information and should know his property, Bedsworth said.

"This is landmark in that innocent misrepresentation landed on the broker," he said.

Bedsworth said he tells all of his students to get the seller to reveal everything about a piece of property and say, "I don't know," to questions they cannot answer.

Disgruntled buyers often have a legitimate beef, said William L. McNall, an attorney representing buyers.

"There are more complaints out there," he said. "The rate of litigation is increasing nationally."

McNall said real estate agents are trying so hard to lure clients they invariably promise too much. When a buyer with a foot of water in his basement finds out the former owner was flooded out four times in five years, he is bound to get angry, he said.

About 80 percent of Alaska's real estate companies cannot afford the high cost of errors and omissions insurance, which protects against lawsuits, according to a 2-year-old study by the Alaska Real Estate Commission. The price is prohibitively steep because lawsuit risk is high.

The National Association of Realtors has made full disclosure by sellers one of its top priorities for 1992, said Robert D. Butters, deputy general counsel for the industry organization. He also advocated that states require a professional property inspection before every sale.

"There are inequities on both sides," Wickersham said. "We need to take this out of the realm

□ Currency rates C6

Metals C6

BUSINESS

The Anchorage Times

TUESDAY
January 21, 1992

Lawsuits plague real estate offices

By IMRE HEMETH
TIMES BUSINESS WRITER

Alaska real estate companies have become immersed in a pool of lawsuits industry leaders say is getting deeper by the month.

An increasing number of buyers are filing claims against former owners and the person or company responsible for the sale, said Gene Bates, an agent who recently sold his company in part to avoid the high cost of liability.

"Even if (the agent) is right, you can pay thousands and thousands of dollars in court costs," he said. "Most of us settle

rather than going to court."

Although agents are more careful and have started taking protective measures, such as making the seller reveal every detail of his property to the buyer, legal disputes continue unabated, said Kirk Wickersham, a former chairman of the Alaska Real Estate Commission and an Anchorage attorney specializing in real estate law.

Wickersham said he expects the trend to continue. He said a bill before the Legislature that has commission support would require full disclosure by every real estate seller on every transaction.

He said any law passed should include a clause absolving real estate agents and their companies if they believe the seller's information is correct and have no knowledge of potential wrongdoing.

Industry leaders said claims are often legitimate but catch the real estate agent in the middle of disputes between buyers and sellers.

"It's a very serious problem," said Brooke Marston, owner of Marston Real Estate. His company still encounters lawsuits despite requiring every seller to fill out a checklist detailing every complication and potential situation, he said.

William E. Bedsworth, director of Commonwealth School of Real Estate, said Alaska law currently favors the buyer because the Alaska Supreme Court ruled real estate agents could be liable for problems associated with a property sale even if they did not know of potential problems.

In the precedent-setting case *Bevens vs. Ballard*, a couple purchased an unfinished house and were told a well on the property was good. After the sale, they found the well was dry and the buyers discovered they would have to pay an ad-

See Lawsuits, page C7

HB

4000

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 400

Revision Date: _____

Department Affected: Commerce & Econ. Dev.

Title: An Act relating to Fisheries Development
Endowment Loans

BRU: Investments

Sponsor: Representative Davidson

Component: _____

Requestor: Labor and Commerce

COMPONENT SERIAL NO.

0	3	8	4
---	---	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND RESOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS (Attach a separate page if necessary.)
 HB 400 creates a new loan program for nonprofit corporations that promote the development of commercial fisheries in the state. Companion bill, HB 401, would appropriate \$5,000,000 for the purpose of making a loan to Alaska Fisheries Development Foundation. It is anticipated that this is the only loan that would be made in the near future and, thus, no new funds would be needed to implement this bill.

Prepared By: Martin J. Richard, Director *[Signature]* Phone: 465-2510

Division: Investments Date: 1/27/92

Approved by Commissioner: Glenn A. Olds *[Signature]* Asst. Comm.

Agency: Department of Commerce & Economic Development Date: 1.29.92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., and Impacted Agency(ies).

STATE OF ALASKA
House of Representatives
District 27

Representative Cliff Davidson
Chairman
House Resources Committee



Box V, Juneau, AK 99811
(907) 465-2487
Box 746, Kodiak, AK 99615
(907) 486-8250

SPONSOR STATEMENT

Representative Cliff Davidson

HOUSE BILL 400 - "An Act relating to loans for the establishment of commercial fisheries development endowments; and providing for an effective date."

HOUSE BILL 401 - "An Act making an appropriation for a loan to the Alaska Fisheries Development Foundation for a commercial fisheries development endowment; and providing for an effective date."

.....
House Bill 400 and House Bill 401 are companion pieces of legislation that would provide a state endowment for the Alaska Fisheries Development Foundation (AFDF).

The endowment -- which will be in the form of a loan, to be repaid in 10 years - will provide AFDF with sufficient income for the next decade to continue with its mission of developing new fisheries and new seafood products in Alaska.

Since its founding in 1978, AFDF has compiled an impressive record of accomplishments, including the development of innovative new onshore processing techniques for surimi, flatfish, and arrowtooth flounder. Through a board of directors made up of experts in harvesting, processing, and product development, AFDF directs its research efforts toward practical projects with applied and direct economic returns. Due to AFDF's pioneering work, surimi production is now a major industry in Alaska.

Along with private memberships, AFDF has operated primarily on federal funds provided by the Saltonstall-Kennedy Act. (Saltonstall-Kennedy funds come from tariffs on imported fish products.) Due to changing federal budget priorities, however, those funds have

diminished and are increasingly unavailable. The very survival of AFDF is at stake today. Without a new source of funding, the Alaskan economy will not continue to enjoy the successes and benefits of an organization with a proven record of accomplishments; one that guides fisheries development projects that benefit all Alaskans.

House Bill 401 is the appropriation bill. Section 1, the Legislative Findings, explains the situation and the purpose of the funding. The \$5 million appropriation is a loan that will be repaid in full, though without interest, in ten years. This will enable the legislature to reevaluate its goals for fisheries research and development.

House Bill 400 establishes the program -- the commercial fisheries development endowment loan -- under which the funds will be appropriated. The endowment loan will be administered by the Department of Commerce and Economic Development. The bill contains a sunset provision (Sec. 2) so the program will be automatically removed from the statute books when it is no longer needed.

STAFF SUMMARY FOR CHAIRMAN

HB 400 & 401

"An Act relating to loans for the establishment of commercial fisheries development endowments...." (HB 400)

"An Act making an appropriation for a loan to the Alaska Fisheries Development Foundation for a commercial fisheries endowment...." (HB401)

(COMMERCIAL FISHERIES ENDOWMENT LOANS)

SUMMARY OF BILLS

Rep. Davidson's bills are aimed at development of new seafood products, not marketing of existing products. Of course, all the bills before the committee today are interrelated; better products make for easier marketing. The Alaska Fisheries Development Foundation has an impressive track record with developing new products for groundfish (pollock, cod, flounder, etc.), but has not developed salmon products. The Foundation could do salmon work or continue its groundfish work, but its federal funding is running out.

HB 400 authorizes the Department of Commerce and Economic Development to loan money for ten-year terms at zero interest to non-profit corporations specializing in the development of seafood products. The Alaska Fisheries Development Foundation is the intended beneficiary of this authorization.

HB 401 appropriates \$5 million to Commerce for a loan to the Alaska Fisheries Development Foundation.

SUPPORTERS

Rep. Cliff Davidson, who will speak in favor of his bill.

Mr. Mel Munson, Executive Director of Alaska Fisheries Development Foundation, who will testify in favor of the bill and will provide the committee with expert testimony about problems facing the salmon industry.

OPPONENTS

None known.

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE FINKELSTEIN

TO: CSHB 401(L&C)

Page 1, line 8, following "foundation.":

Insert "At least \$1,000,000 of this appropriation shall be expended for salmon product development."

CS FOR HOUSE BILL NO. 401 (L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Funding Information:	General Fund	\$2,000,000
	Other Funds	<u>-0-</u>
		\$2,000,000

Sponsor(s): REPRESENTATIVE DAVIDSON

A BILL

FOR AN ACT ENTITLED

1 "An Act making an appropriation for a grant to the Alaska Fisheries Development
2 Foundation for commercial fisheries development research projects; and providing for an
3 effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. The sum of \$2,000,000 is appropriated from the general fund to the Department of
6 Commerce and Economic Development for payment as a grant under AS 37.05.316 to the Alaska
7 Fisheries Development Foundation for commercial fisheries development research projects to be selected
8 by the foundation.

9 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

HB 400 (401): "An Act relating to Fisheries Development
Endowment Loans."

HB 400 establishes a new program that allows the department to make loans to establish endowments for support of commercial fisheries development research projects in the state. The loans would be made to nonprofit corporations incorporated for the purpose of promoting the development of commercial fisheries in the state. The loans would be ten-year, zero interest, unsecured loans due in full at maturity. Recipients would be required to provide financial information relating to the endowment and would be subject to audit by the legislative auditor.

HB 401 would appropriate \$5,000,000 to the department for the purpose of making a loan under this program to the Alaska Fisheries Development Foundation.

The department is neutral on this legislation.

Glenn A. Olds
Glenn A. Olds, Commissioner

Date: 1-29-92

A Proposal
To Establish an Endowment to Perpetuate
Industry-Directed Fisheries Development
In Alaska

Submitted for Consideration to the
Alaska State Legislature
January 1992

by

Alaska Fisheries Development Foundation, Inc.
508 West Second Avenue, Suite 212
Anchorage, Alaska 99501
Phone: (907) 276-7315
Fax (907) 271-3450

Abstract

The commercial seafood industry of Alaska proposes that the Alaska Legislature establish an endowment for commercial fisheries development in Alaska.

The Alaska Fisheries Development Foundation since 1978 has initiated and led seafood industry development projects that have helped create new fisheries in Alaska, have greatly expanded the state's seafood processing and exporting capacity, and have contributed significantly to Alaska's economic growth and diversification.

Alaska Fisheries development Foundation is the force behind the successful demonstration of large-scale shore-based groundfish processing, the nation's first surimi processing plant, and a full-scale flatfish filleting plant. Over the last 14 years, AFDF has brought nearly one million dollars per year of federal research funds into Alaska.

Now, budget restrictions and priority changes in the federal fisheries industry grants program have caused severe reductions in federal funding for fisheries development projects. These changes have closed at least four of the original seven industry-directed fisheries development foundations in the U.S.

But many of the commercial fisheries of Alaska remain dramatically underdeveloped. It is vitally important that the State of Alaska continue to pursue industry-directed fisheries development research focusing on new species and on new processing technologies. It is also crucial that these development efforts be directed by the seafood industry--and designed with resource concerns in mind--and remain independent of the caprices of the federal budgetary process. An endowment of five million dollars from the State of Alaska, to be matched with industry contributions, is proposed as a means to perpetuate the administration and funding of crucial industry-directed seafood research and development in Alaska.

I. AFDF: A proven leader in fisheries development for Alaska

Alaska Fisheries Development Foundation (AFDF) opened in March 1978, after Alaskan fishermen and processors joined together to bring federal fisheries development grants to Alaska and apply them toward needed development projects. The Foundation was formed, along with other regional foundations across the U.S., to bring home research funds from the federal Saltonstall-Kennedy (S-K) program, which was set up by Congress to fund domestic seafood industry research and development activities.

The S-K grants program was created to strengthen the U.S. fishing industry in the face of increasing foreign competition and fluctuating resources. S-K funds come from a portion of tariffs on imported seafood and seafood products. These funds have been made available annually via a nationwide competitive process.

When the S-K program began, members of the Alaska seafood industry collectively decided that, to direct these funds toward projects with the broadest benefit and a realistic chance of success, it would be best to maximize the industry's control of the projects and minimize the government's. The Foundation was organized to represent the industry; its members include harvesters, processors, and support industry representatives. Every year AFDF members and the Board of Directors, with input from all levels of the industry, set the Foundation's priorities and the staff designs project proposals for the S-K funding competition based on these priorities. This combination of strong industry participation and the compelling seafood development opportunities in the North Pacific have produced an outstanding record of accomplishment for AFDF.

II. AFDF's fisheries development approach and accomplishments

Alaska Fisheries Development Foundation's projects, from salt cod to surimi to flatfish filleting to new byproducts processing techniques, laid the groundwork for a good part of Alaska's current groundfish industry. The success of these projects also demonstrates the foresight and efficiency that industry direction provides. The Foundation has pioneered new methods of groundfish processing and harvesting, byproduct utilization, and salmon product development. Nearly all of AFDF's projects have brought significant new opportunities to Alaskan businesses.

AFDF's projects are straightforward and involve private industry to a great degree. Most Foundation projects are technology demonstrations. The most dramatic example of this approach was the Foundation's five-year Surimi Industry Development Project, which began in the early 1980s. Troubled former crab harvesters and struggling shore-based processors began to focus on the bounty of pollock off Alaska's coast, which was not then harvested or processed domestically. Foreign fleets dominated the groundfish fisheries at the time, but much of their finished products--surimi

and pollock fillets--were being marketed successfully in the U.S. and abroad. It was apparent that the Alaska seafood industry was missing out on a huge opportunity, but no information--certainly no assistance--was available to aid the domestic industry in exploring the pollock opportunity. The Foundation stepped in to provide the information, guidance and opportunity for Alaska to prove to world markets that pollock-based surimi could be successfully produced on shore by Alaskan producers. AFDF designed a demonstration project to set up and operate the first U.S. surimi plant, which, after a competitive process, was sited at Alaska Pacific Seafoods in Kodiak. Through our international industry network, we built a surimi processing line and continued to improve it over the course of the project. We even introduced innovations to the Japanese, who invented surimi processing. So much improvement was made that for the first time the Japanese buyers, who previously contended that high-quality surimi could only be produced at sea, admitted that shoreside surimi production in Alaska could indeed be successful.

One of the most crucial elements of the Foundation's work is our production and distributing of usable information that results from our projects. During the surimi project the Alaska Pacific Seafoods plant was open to other processors, buyers and researchers to tour and observe. This gave the whole industry a chance to get first-hand information from the project. The Foundation also produced numerous reports containing hard data on production, yields, quality control, equipment, process improvements, economics and every other aspect related to the processing of surimi. This information was widely applied by the entire industry, and is a prime example of the benefit of the collective ability of the seafood industry when compared to the limited benefits of privately conceived and executed research and development efforts.

AFDF has also conducted other demonstration projects that have resulted in industry innovations now widely accepted. Many of them also have brought widespread benefits to the state of Alaska by improving the industry's year-round stability, employment base, industry profitability and responsible use of fisheries resources. Examples of such projects are:

1. Refrigerated sea water for storing pollock and cod before processing. During the surimi project, studies documented that sea water storage allowed round fish to be held for several days, on board or in the plant, without loss of quality. This knowledge was key to the establishment of the shore-based surimi processing in Alaska, and provided a crucial method to improve product quality and decrease waste.

2. The Baader 182 pollock filleting machine. This then-new technology was demonstrated in a production situation for the first time during the surimi project. Its ability to automatically and quickly handle pollock of varying sizes dramatically enhanced the feasibility of both pollock fillet and surimi production in Alaska. These machines are now used by virtually every pollock producer.

3. Objective surimi quality measurements. The Japanese system of determining surimi quality was based on broad categories such as vessel versus shore-based production and producer experience. AFDF pioneered objective quality and functional measurements that have allowed domestic producers to compete in the worldwide, especially in the large Japanese market.

4. USDA approval for fish in meat products. The microbiology of surimi, data generated in an AFDF study, was documented and incorporated into the first U.S. Department of Agriculture-approved Hazard Analysis and Critical Control Point (HACCP) plan for seafood. This breakthrough resulted in the first USDA-approved processed food product containing a blend of seafood and red meat. The potential of surimi to expand into the processed meat industry represents a tremendous domestic market for Alaska's fish products, especially with the recent focus on reduced fat and cholesterol in the diet. The potential of fish materials to be used in blended meat products represents an unmeasurable opportunity in the future.

5. The first documented demonstration of sole and flounder fillet production in Alaska introduced Alaskan product to a market starving for high-quality product. The Alaska flatfish resource is nearly untouched, and AFDF's project applying North Atlantic processing equipment to Alaskan flatfish has focused worldwide attention on Alaska as a source for quality flatfish. Since the start of AFDF's flatfish demonstration project, Alaska has increased flatfish production fourfold.

6. Innovative uses of fish byproducts. AFDF has demonstrated the use of Alaska's first automated, continuous-flow seafood waste hydrolyzer. The hydrolyzed product is already being tested for food for Alaska's salmon hatcheries, food for livestock, and fertilizer/insecticide on tree fruit crops. If fully successful, this process has the potential to greatly reduce processing wastes and increase industry profitability.

7. Conversion of a small salmon vessel to a cod longliner, and production of salt cod at remote sites. Information from this project has been used by many coastal communities to help expand economic development, and has led to the use of many small salmon vessels as longliners.

8. Spearheaded two efforts to find ways to process arrowtooth flounder, a species known for its flesh softening problems. Both efforts are producing positive results, which may lead to successful processing methods. This is especially important when one considers the size of the resource, which is expected to support annual harvests of nearly 500,000 metric tons.

9. Spearheaded demonstration of poultry deboning technology on pink salmon frames. This demonstration produced usable salmon mince from previously discarded frames, a product that is valuable and in high demand. This mincing technology may someday be applied to recover edible protein from the increasing number of spawned-out

carcasses at our private-non-profit hatcheries.

10. Development and testing of a prototype salmon head splitter to recover salmon flesh from the collars usually discarded with the heads. This high quality salmon "chunk" has an immediate application in salmon canning, and perhaps could be developed into a specialty product with a high value similar to halibut cheeks.

These brief project descriptions give just a small idea of the benefits the State of Alaska has received from Foundation activities. The complete chart of projects is considerably longer and can only be fully appreciated after reviewing the more than seventy-five project-related reports the Foundation distributes.

III. Why An Endowment?

The Foundation has been able to accomplish these development projects because of the Saltonstall-Kennedy program and its mandate for industry-directed research and development. Although this program is still in effect, its funding and intent have been severely compromised over the past two to three years.

Because of the considerable stress on the federal budget and the funding of vital programs, the industry-directed portion of the Saltonstall-Kennedy program has been steadily reduced. The funding level in 1992 is only \$500,000.00 for the entire country, nearly \$7.0 million below the annual average for the last decade. The rest of the S-K funds have been redirected to fund general government operations. From the Alaska seafood industry's perspective, this reduction in Saltonstall-Kennedy funding reflects the fact that in most other areas of the United States the commercial fishing industry is much more developed--in most cases to the point of diminished resources. Our situation in Alaska is considerably different.

With the relatively recent development of most of our fisheries, opportunities, (especially groundfish) and with the rapid changes in established fisheries, (increasing pink salmon supplies and farmed salmon competition) we have before us dramatic opportunities to turn small investments in research and development into large benefits for the commercial fishing industry and the people of Alaska.

As with many other areas of endeavor, Alaska finds itself in a dramatically different stage than the rest of the country when it comes to fisheries development needs. We cannot afford to lose the opportunities that are now available because of a reduction in the Saltonstall-Kennedy Program. The Alaska Fisheries Development Foundation's Board of Directors has responded to this challenge by initiating an endowment to fund the operations of the organization. This endowment would allow the Foundation to operate independently of the reductions in federal industry grants, and continue to provide the fisheries development breakthroughs that foster

industry success.

The Foundation is pursuing private and public sources of funding for the endowment. The endowment revenues will be applied toward long-term funding of the Foundation so it may continue its integrated, cooperative approach toward fisheries development research. The total amount of funding needed to keep AFDF's efforts going is ten million dollars. Our request for State of Alaska funds is five million dollars. We are seeking matching funds from the food and seafood industry.

This level of endowment funding will allow the Foundation to maintain the optimum organizational structure, and to continue its tradition of gleaning maximum benefits from minimal administrative costs. The return on this investment for the people of Alaska can only be projected based on the past 14 years of accomplishments at the Foundation. These include bringing in more than \$13 million in federal grant funds and initiating demonstration projects that have increased Alaska's fisheries wholesale value by at least \$240 million annually.

The endowment is a small investment when one considers the benefit it will bring to Alaska.

ALASKA FISHERIES DEVELOPMENT FOUNDATION ENDOWMENT

What Is The Foundation And What Is Its Goal?

* The Alaska Fisheries Development Foundation (AFDF) is a private non-profit corporation formed in 1978 by the Alaska seafood industry to satisfy the research and development needs of Alaska's commercial fishing industry.

* The Foundation acts as a catalyst for all segments of the seafood industry, including the scientific and research communities, to demonstrate new technologies and ideas for the benefit of Alaskan seafood producers, users, consumers and fishery managers.

What Does The Foundation Do?

* AFDF conceptualizes and acquires funding for demonstration projects which allow the Alaskan seafood industry to test and apply new technologies in plants or aboard vessels that expand opportunities, increase yields and make better use of Alaska's fish resources. These are projects that few companies could afford or have the ability to conduct on their own.

* AFDF demonstration projects have helped Alaskan fishermen and processors develop new harvesting and processing techniques, create new markets for seafood products, experiment with new product forms, create economic opportunities for coastal communities, reduce fisheries waste, increase yields and pioneer technologies that return the maximum benefit to Alaskans and the people of the United States.

* In its first 14 years, AFDF brought over \$13 million in federal Saltonstall-Kennedy research and development funds to Alaska, and conducted hundreds of successful projects--many of which brought multi-million-dollar benefits to the Alaska seafood industry and to seafood-dependent communities.

What Has AFDF Accomplished?

* In the past, AFDF projects have:

- Pioneered surimi and pollock production technology on shore in Alaska, resulting in a \$500 million/year industry in Alaska;

- Developed a whole new fishery based on Alaskan flatfish species, a bountiful resource that was not commercially used before AFDF'S project. In the first three years since AFDF's flatfish development project, commercial flatfish fillet production has already brought \$12 million/year into Alaska's economy and has not yet realized its full potential;

- Led ground-breaking research into surimi production from arrowtooth flounder, a development that could lead to a second raw material source for surimi in Alaska;

- Spearheaded the development of new, profitable uses for

seafood processing byproducts to help seafood producers turn waste into marketable products;

- AFDF demonstration projects have resulted in over 2,000 full-time year-round jobs, which are a permanent addition to the Alaska economy; and

- Identified and realized hundreds of opportunities for fishermen, processors and secondary processors to make fuller use of the protein from Alaska's fish, to reap more long-term, year-round benefits from Alaska's fisheries, and to return more benefits to the state of Alaska and the public.

Why is AFDF Pursuing A State-Funded Endowment?

- * AFDF has obtained a vast majority of its project funding from the federal Saltonstall-Kennedy program, which was set-up to fund industry conceived and directed development projects.

- * The Saltonstall-Kennedy program, like many federal programs, has suffered considerable funding cuts. These reductions accurately reflect the fully developed status of commercial fisheries opportunities in most of the United States. But, Alaska has only recently begun to develop its commercial fishing resources beyond traditional species such as salmon and crab, and these federal budget reductions are limiting one of the greatest economic development opportunities in the country.

- * AFDF is now seeking a fisheries development endowment to ensure that Alaska can continue to reap economic benefit from successful research and development, and to ensure that such development projects remain within the control of Alaskan fishermen and processors, and the citizens of Alaska, and are not controlled by the whims of federal funding and/or national politics.

- * Fisheries make up Alaska's second most important private industry, and its largest private employer. AFDF has contributed, directly and indirectly, to the growth, stability and competitiveness of this industry. Alaska cannot afford to allow such an effective force to be lost due to a lack of federal fisheries funding priorities.

Why Doesn't Industry Pay For The Endowment?

- * Industry already provides more than \$350,000 dollars each year to the operations and projects of the Foundation.

- * The Foundation is also soliciting endowment funds from private industry and already has made a deposit to the endowment.

- * The benefits of high risk industry research and development accrue to all sectors of Alaska and is therefore an investment within the purview of State expenditures.

FISHERIES DEVELOPMENT PROJECTS
OF THE
ALASKA FISHERIES DEVELOPMENT FOUNDATION

1. Analysis of Factors That Affect Groundfish Quality

This project produced the first solid baseline of data on the quality characteristics of Alaska groundfish through the entire year. This information allows processors to structure their production to achieve the highest quality product, and to respond with factual information to speculation about how intrinsic characteristics of Alaskan species compare to North Atlantic species. AFDF worked with International Seafoods of Alaska, National Marine Fisheries Service (NMFS), All Alaskan Seafoods and Oregon State University to analyze groundfish product samples for an entire annual cycle. Samples were analyzed for moisture content, yield, taste acceptability, storage stability, and enzyme activity. The resulting data on quality and flesh characteristics is available in both a poster and a full report.

2. Development of Improved Techniques for Bone and Parasite Removal

In a project involving many shore-based cod processors, the Foundation has been working with the University of Alaska Fishery Industrial Technology Center (FITC) to improve current methods of bone and parasite removal, and to develop new, better methods. First, we studied the use of light filters and how variations in light intensity affect candling efficiency. Other studies involved mechanical vision systems, and may include testing bioelectrical methods as well. The goal is to develop a less labor-intensive, more accurate way to remove fish parasites. This may eventually lead to completely automated parasite detection and removal.

3. Development of Surimi Process Quality Assurance

This project has given surimi producers better quality information and expanded market opportunities. It also helped pave the way for U.S. Department of Agriculture approval for HACCP-produced surimi to be used in processed meats--a first for any seafood product. AFDF, Alaska Pacific Seafoods and the FITC together introduced a cutting-edge Hazard Analysis and Critical Control Point (HACCP) program, a quality assurance technique at the food industry forefront. A complete multi-seasonal microbiological analysis of production samples was done, and critical control points in the surimi process were identified. This effort has resulted in much better quality control. USDA approval for HACCP-produced surimi in processed meats, a direct result of this program, has created a

multi-million-dollar opportunity for surimi producers. We are applying the HACCP concept into other Alaska seafood processing lines so that broader microbiological data will be available to industry. This information will help prepare the Alaska seafood industry for the expected mandatory federal seafood inspection program.

4. Flatfish Processing Line Yield Improvements

During the AFDF flatfish project in 1988, we recognized the need to reduce waste and increase profits by improving yields during processing. This project demonstrated a process that would recover the flesh left on filleted flatfish frames. The process used available technology transferred from the poultry deboning industry to the Alaska seafood industry. Results indicate that we can increase recoveries and returns to processors and fishermen. We are also testing a similar process to increase yields from other groundfish, especially gray cod and pollock.

5. Development and Demonstration of Seafood By-Product Hydrolysis

The Foundation, working with North Pacific Processors and Advanced Hydrolyzing Systems, addressed the crucial question of seafood processing by-product utilization. Conventional meal and oil processing, though effective enough in large plants, offered little opportunity for most of Alaska's smaller or seasonal processors because of high capital costs. We tested a prototype 1,000/lb. per hour automated hydrolyzer machine and produced more than 12,000/lbs. of meal from material that would normally be discarded as waste. The hydrolyzed product was analyzed for use in piglet starter feeds at the University of Alaska Fairbanks, salmon fry feeds at the Fort Richardson State Hatchery, and as foliar feeder/insecticide for commercial fruit trees in Oregon. If successful, this hydrolyzing technology will allow processors to use more of the raw material they buy from harvesters, and to minimize problems with effluent regulations. This project has been continued for one more year to further explore the hydrolyzing options available to Alaska processors and the applications for hydrolyzed products.

6. Coordinate an International Seafood By-Product Conference

The Foundation, together with The University of Alaska Sea Grant Program, Icicle Seafoods, and several other members of the seafood industry hosted this international conference in 1990. The conference featured speakers from major fish by-product producers, researchers and buyers, and attendance topped 200 people from 13 countries. The purpose of the conference was to expose the Alaska industry to the worldwide demand and opportunities for seafood by-products, and to expose the international seafood by-products industry to growing opportunities in Alaska. In the past, dominance of Alaska's industry by salmon and crab producers had led to a widely held belief that Alaska had little to offer in the way of high quality whitefish by-products. The fact that our waste

streams had changed and our by-product handling facilities had been upgraded was not widely known. The conference was very successful in achieving these goals.

7. Testing an Automated Vision-Based Flatfish Sorting System

During our recently completed flatfish production demonstration project, we discovered that one obstacle to profitable flatfish filleting was the sorting problem caused by the large size range of flatfish species. Hand sorting is extremely time consuming and expensive, but is necessary to effectively machine fillet the fish. A prototype vision-based sorting machine from Eastern Canada is being tested at All Alaskan Seafoods for its ability to correctly sort Alaska flatfish species. If the machine is successful, as it is with Atlantic flatfish species, we will have solved a major problem for automated flatfish filleting in Alaska.

8. Developing a Flatfish Gutting Machine

A second obstacle to flatfish industry development the presence of rocks and grit in the gut cavity of Alaska flatfish, which damages the blades of automated filleting equipment. To solve this problem, we have begun to develop a prototype machine that would clean the belly cavity before the fish is filleted. If successful, this machine would increase efficiency, profitability, and feasibility of flatfish processing in Alaska.

9. Researching Feasibility of Producing Arrowtooth Flounder Surimi

Working with the National Marine Fisheries Service (NMFS), Eagle Fisheries, Alaska Dragners Association, Alaska Pacific Seafoods, and All Alaskan Seafoods, the Foundation is attempting to document the feasibility of commercial production of surimi from arrowtooth flounder. Arrowtooth flounder have an intrinsic flesh softening problem that renders them useless for seafood processors. The Gulf of Alaska population is at very high levels, and both harvesters and processors go to considerable trouble to avoid--or, when encountered, discard--this species. Dr. Diana Wasson, a scientist with NMFS, identified an additive which, when applied in the laboratory to arrowtooth flounder flesh, effectively eliminated the flesh softening problem. This incredible breakthrough led to a production test of the additive, which demonstrated successful application. The additive seems to retain its effectiveness through frozen storage. Final results from this project have been released. The next step will be a full-scale demonstration project in 1992 so that the industry will be able to collect the information required to make educated decisions about the feasibility of arrowtooth flounder surimi processing on an industrial scale.

10. Modification of Crab Pots to Harvest Pacific Cod

In response to the recent development of modified crab pots for the harvest of gray cod, the Foundation--together with the Alaska Department of Fish and Game, Neptune Trap and Trigger, Gotyas and the M/V Enterprise--completed research into the effectiveness of pot gear in harvesting cod and avoiding halibut. Both processors and harvesters have been hard hit by the closure of groundfish fisheries when halibut limits have been reached. The use of inclusion devices, together with vertical dividers in pot entrances, offers a logical method to continue the harvest of gray cod while eliminating most halibut. This harvesting method could also allow many small crab vessels to enter the groundfish fishery without large capital investments. The field research for this project has been completed and a final report is available. The results give harvesters an objective look at the production possibilities of this new gear type. We are also planning to study various modifications of bottom trawl gear in an effort to identify changes that will reduce trawlers' catches of halibut in 1992.

11. Ongoing Program Development

Each year the Foundation's program development committee, board of directors and staff complete an effort to identify and select projects for funding proposals. This year's effort is just beginning and will be completed in late March. At the present time the following ideas are under consideration: expanded arrowtooth flounder surimi studies, continued trawl bycatch reduction studies, pink salmon surimi, mince and secondary processing studies, squid surimi production demonstration, recovery of proteins from surimi wastewater, continued byproduct processing efforts, a bycatch workshop, and automated removal of cod pin bones.

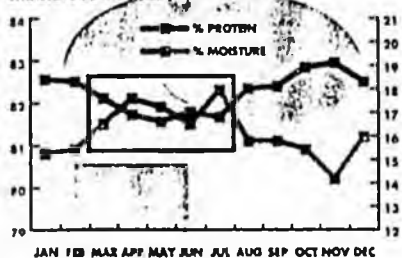
GROUNDFISH QUALITY CHART

What makes a high-quality fish? A year-long study of pollock, cod and rock sole shows how quality factors and conditions change through the seasons. Fish quality is a blend of variables – some are intrinsic and some can be controlled with careful handling and monitoring. Three major quality problems are: driploss, related to moisture; gaping, caused by seasonality and poor handling; and overall desirability. It's helpful for fish buyers, producers and managers to know how and when quality factors change, and what can be done to maximize the quality of Alaska's groundfish. In the graphs below, the highlighted areas show periods of greatest extremes.

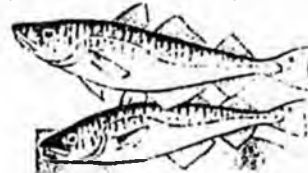
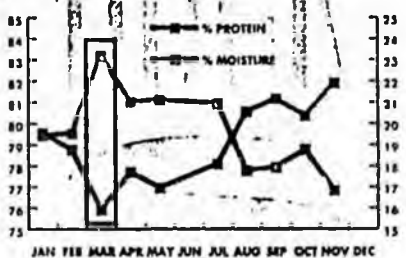


PROTEIN AND MOISTURE

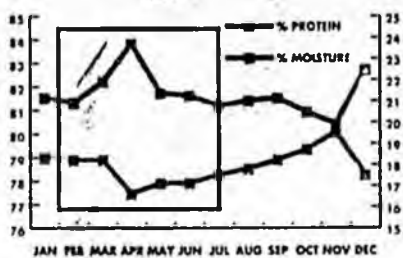
Protein and moisture levels indicate overall quality of the fish. In groundfish, protein and moisture seem to be inversely related; if you measure moisture content, you can accurately predict protein content. Note that pollock doesn't vary in protein and moisture as much as rock sole or cod.



Protein and moisture content vary with the season, particularly with rock sole and cod. Spawning appears to take its greatest toll on rock sole, but its flesh retains more protein during the recovery period than does pollock or cod. Females of all species recover from spawn more slowly than males.

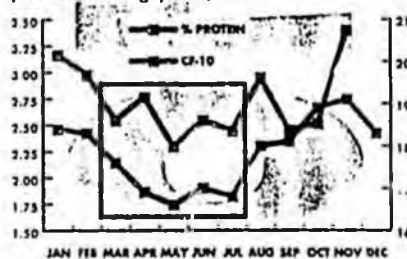


Pacific cod do not retain higher moisture levels than Atlantic cod, as previously thought. Studies reveal Pacific cod recover from spawning and regain their protein levels in mid-May instead of July. For pollock and cod quality, April appears to be the lowest month.

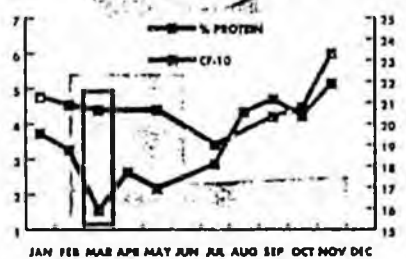


PROTEIN AND CONDITION FACTOR

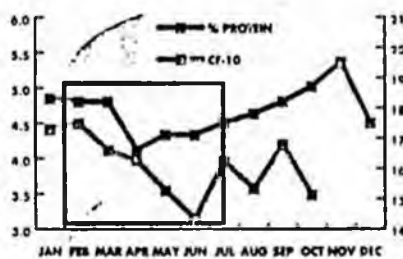
Condition factor is a measure of both health and sexual maturity of the fish. Higher condition factor scores indicate plumpness of fish, reflecting an adequate food supply. Lower scores can mean fish are not feeding, or are using body reserves for gonad production during spawn periods.



Gonad development takes the greatest toll on rock sole, the leanest of these three species. The condition factor correlates with changes in protein/moisture content and roe development.

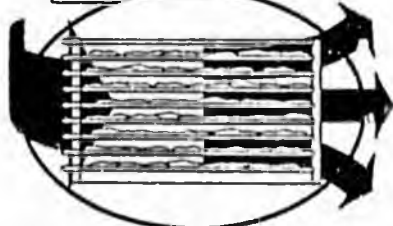
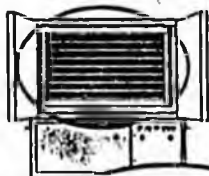


Condition factor of Pacific cod appears at its lowest in June, and recovers slightly more slowly than that of pollock or flatfish. Condition factor improvement seems related to decreases in core temperature through the fall.



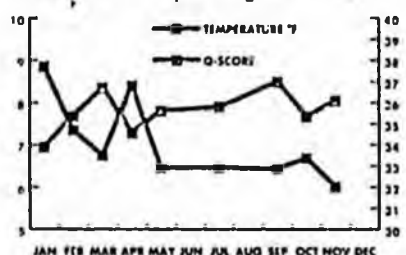
Cold storage is a critical factor in maintaining fish quality. Equipment to measure the efficiency of your freezer system is available and inexpensive. Here are some tips:

- Don't overload the freezer; it causes poor blast and spiral freezer performance.
- Be sure to maintain uniform velocity in your blast freezer, especially if you process a variety of products.
- Move your product into cold storage as quickly after processing as possible. Carefully time your product transfer to minimize warm-up of the fish.

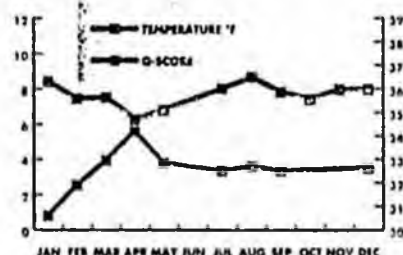


TEMPERATURE VS. Q-SCORE FOR FLATFISH AND ROUND FISH

Q-score is a subjective measurement of fish color, taste, appearance and overall freshness. These graphs, one for flatfish and one for round fish, show how Q-score corresponds with core temperature of the fish at the time of processing.



Temperature strongly affects growth of bacteria and the rate of enzymatic reactions. It takes cold-tolerant bacteria 60 min. to double in population at 60°F; 120 min. at 59°F, 180 min. at 50°F, 360 min. at 40°F and 1200 min. at 32°F.



Graphs reflect samples taken in 1989 and 1990. Year-to-year variations in the timing of natural events, such as spawning, may cause quality changes to occur somewhat earlier or later than shown above.

The information in this poster was adapted from the Groundfish Quality Project Final Report which is available from AFDF. For more information contact:

AFDF

508 West 2nd Ave., Suite 212, Anchorage, Alaska 99501 (907) 276-7315 FAX: (907) 271-3450

This project was funded by the Department of Commerce, National Marine Fisheries Service, through the Salmonell-Kennedy Act

ALASKA FISHERIES DEVELOPMENT FOUNDATION, INC.
BOARD OF DIRECTORS

January 3, 1992

Bruce Buls
American Factory Trawler Ass'n
4039 21st Avenue W.
Seattle, Washington 98199
Work: (206) 285-5139
Home:
FAX: (206) 285-1841
Alternate #:
Processor
Supporting
Board

Alvin R. Burch
Alaska Draggers Association
P.O. Box 991
Kodiak, Alaska 99615
Work: (907) 486-3910
Home: (907) 486-5238
FAX: (907) 486-6292
Alternate #:
Fisherman, Reg. III
Voting
Board

Mark Chandler
F/V Topaz
P.O. Box 116
Kodiak, Alaska 99615
Work: (907) 487-9755
Home:
FAX: (907) 487-2417
Alternate #:
Fisherman, Reg. IV
Voting
Board

Oscar Dyson
All Alaskan Seafoods, Inc.
P.O. Box 1728
Kodiak, Alaska 99615
Work: (907) 486-3694
Home:
FAX: (907) 486-3840
Alternate #:
Processor
Voting
Board

Gil Gunderson
Northern Fury Seafoods
P.O. Box 32543
Juneau, Alaska 99803
Work:
Home: (907) 789-2457
FAX:
Alternate #:
Fisherman, Reg. I
Voting
Board President

Phil Hanson
UniSea, Inc.
15400 NE 90th Street
Redmond, Washington 98073-9719
Work: (206) 881-8181
Home:
FAX: (206) 821-8416
Alternate #:
Processor
Voting
Board Secretary/Treasurer

Dan James
Kodiak Reduction, Inc.
911 Gibson Cove Road
Kodiak, Alaska 99615
Work: (907) 486-3171
Home:
FAX: (907) 486-2670
Alternate #:
Support
Voting
Board

Rae McFarland
Diamond Stainless
84 High Country Road
Herriman, Utah 84065
Work: (801) 254-7377
Home: (206) 869-6611 CA WK
FAX: (801) 254-0432
Alternate #: (209) 869-4069 CA FAX
Support
Voting
Board

Henry V.E. Mitchell
Bering Sea Fishermen's Ass'n
725 Christensen Drive
Anchorage, Alaska 99501
Work: (907) 279-6519
Home:
FAX: (907) 258-6688
Alternate #:
Fisherman At Large
Voting
Board

George M. Pigott
Sea Resources Eng., Inc.
2759 92nd N.E.
Bellevue, Washington 98004
Work: (206) 453-1546
Home:
FAX: (206) 453-9634
Alternate #: (206) 543-4281
Support
Voting
Board

Steven A. Russell
F/V Hustler
P.O. Box 4974
Kenai, Alaska 99611
Work: (907) 776-5119
Home: (907) 776-8602
FAX: (907) 776-7517
Alternate #:
Fishermen, Reg. II
Voting
Board

Paul L. Schilling
Alaskan Gourmet, Inc.
P.O. Box 190733
Anchorage, Alaska 99519
Work: (907) 563-3752
Home:
FAX: (907) 563-2592
Alternate #:
Processor
Voting
Board Second Vice President

John Sevier
Alaska Pacific Seafoods
627 Shelikof Avenue
Kodiak, Alaska 99615
Work: (907) 486-3234
Home:
FAX: (907) 486-5164
Alternate #:
Processor
Voting
Board First Vice President

PROGRAM DEVELOPMENT COMMITTEE
(Appointed)

Bruce Buls
American Factory Trawler
Ass'n
4039 21st Avenue, West
Seattle, Washington 98199
(206) 285-5139
(206) 285-1841 FAX

Al Burch
Alaska Dragger Association
Box 991
Kodiak, Alaska 99615
(907) 486-3910
(907) 486-6292 FAX

Mark Chandler
F/V Topaz
P.O. Box 116
Kodiak, Alaska 99615
(907) 487-9755
(907) 487-2417 FAX

Oscar Dyson
All Alaskan Seafoods
Box 1728
Kodiak, Alaska 99615
(907) 486-3266
(907) 486-3840 FAX

Dan James
Kodiak Reduction Inc.
911 Gibson Cove Road
Kodiak, Alaska 99615
(907) 486-3171
(907) 486-2670 FAX

Rae McFarland, Chairman
Diamond Stainless
84 High Country Road
Herriman, Utah 84065
(801) 254-7377
(801) 254-0432 FAX

Henry Mitchell
Bering Sea Fishermen's Ass'n
725 Christensen Drive
Anchorage, Alaska 99501
(907) 279-6519
(907) 258-6688 FAX

Paul Schilling
Alaskan Gourmet, Inc.
P.O. Box 190733
Anchorage, Alaska 99519
(907) 563-3752
(907) 563-2592 FAX

Terence Reeve
Towa America, Inc.
424 East Manor Avenue
Anchorage, Alaska 99501
(907) 276-6869



Publications List 1991

Alaska Fisheries Development Foundation, Inc. 508 West Second Avenue Suite 212, Anchorage, Alaska 99501
(907) 276-7315 Fax: (907) 271-3450

Number of copies	Publications	Cost (US\$)
[]	The Lodestar - AFDF's Quarterly Newsletter (Calendar year publication)	(Foreign) \$40.00 (US) \$30.00
	General	
[]	AFDF Industry Survey, 1989	\$ 5.00
[]	Alaska Fisheries Economic Assessment Model, 1989	5.00
[]	Alaska Pollock: Is it a Red Herring? Conference Proceedings, 1981	5.00
[]	Alternate Pink Salmon Product Forms, 1988	5.00
[]	Atka Mackerel: The Invisible Fishery, 1987	5.00
[]	Bering Sea Fishermen's Association Marketing Education Project, 1983	5.00
[]	Conference on Fisheries Development in Rural Western Alaska: Proceedings, 1983	2.00
[]	Demonstration of Parasite Detection Technologies on Alaska Groundfish, 1990	5.00
[]	Development of an Alaska Pink/Chum Salmon Product, 1989	3.00
[]	Development of Improved Techniques for Bone/Parasite Removal in White Fish Fillet Production, 1991	5.00
[]	Five-Year Commercial Fisheries Development Plan for Alaska White Fish & Underutilized Species, 1981	2.00
[]	Groundfish Quality Project Final Report, 1991 (Includes Quality Poster and 1990 Progress Report)	15.00
[]	[] Poster only 5.00 [] Report only 10.00	
[]	Longlining Information Package, 1983: Includes Automated Longlining in Norway; Conversion of a Crabber to an Auto-Longlining Catcher/Processor (Executive Summary, Trip Reports, Financial Analysis and Final Report); Building Instructions for a Low-Cost Longline Baiting Machine; and Fishing Objectives and Longlining Techniques	17.00
[]	Marketing Service Project for Smaller Fisheries in Remote Areas, 1981	2.00
[]	Modifying Crab Pots to Harvest Cod, 1991	7.00
[]	Monitoring and Controlling Performance of Commercial Freezers and Cold Stores, 1990	5.00
[]	Mosquito Fleet Goes to Fish Camp: Small Vessel Salt Fish Operation at Remote Alaska Site, 1983	2.00
[]	Pacific Pollock: Resources, Fisheries, Products and Markets, 1983	5.00
[]	Proceedings from Salt Fish Workshop, 1981	5.00
[]	Promise of Profits: The Trident Seafoods Experience, 1986	5.00
[]	Salt Cod Production Field Manual, 1983	5.00
	Surimi	
[]	Surimi: It's American Now! A compendium of the AFDF Surimi Industry Development Project to bring surimi technology to America, 1982-87	\$50.00
[]	Application of Surimi Quality Measurements to Least-Cost Linear Programming of Surimi Production Formulations, 1989	3.00
[]	Assessment of Industrial Markets for Pollock Surimi (Phase I: Functional Properties) 1985	2.00
[]	Availability of Pollock in Relation to Possible Surimi Production Centers, 1984	2.00
[]	Customized Surimi: Market Evaluation, Production & Sample Distribution, 1990	5.00
[]	Development and Market Evaluation of a Surimi Product (Seattle Sausage), 1990	2.00
[]	Development of Methods for Quality and Functionality Assessment of Surimi and Minced Fish in Gel Type Food Products, 1985	2.00
[]	Evaluation of Factors Affecting the Consistency, Functionality, Quality & Utilization of Surimi, 1990	10.00
[]	The Domestic Market Outlook for Surimi-Based or Fish Mince Products, 1983	2.00
[]	Fish Protein in Processed Meats: The Surimi Potential (National Provisioner reprint, 1985)	2.00
[]	Functional Properties of Alaska Pollock Surimi for Applications in the Food Industry, 1985	2.00
[]	Hazard Analysis & Critical Control Point System: An Outline for the Surimi Industry, 1988	3.00
[]	Hazard Analysis & Critical Control Point System: Guidelines for the Surimi Industry, 1990	10.00
[]	List of U.S. Seafood Analog Companies	2.00
[]	List of U.S. Surimi Processing Companies	2.00
[]	McRae-Manning Test to Determine Gel Strength and Functionality of Surimi, 1989	2.00
[]	McRae-Manning Test Training Manual, 1989	2.00
[]	Comparison of the Punch, Torsion, Constant Rate Deformation and Dynamic Force Deformation Tests to Determine Rheological Properties of Surimi Gels, 1990	2.00
[]	Microbiological Profiling of Surimi Production: Phase I, 1988	2.00
[]	Microbiological Study of Surimi Production: Phase II, 1989	2.00
[]	Opening the Door to Surimi Quality: The Quality and Preservation of Shore-Produced Surimi, 1988	5.00

[]	Partial Quality Control: Surimi/Meat Products, 1988	3.00
[]	Pastrics to Peanut: The Japanese Kamaboko Industry, 1983	2.00
[]	Pilot Surimi and Analog Line: Information Manual, 1988	2.00
[]	Product Development: Surimi and Meat, 1988	3.00
[]	Prototype Product Development Using Alaska Surimi, Salmon and Pollock Mince, 1989	2.00
[]	Refrigerated Seawater and Surimi Production from Alaska Pollock, 1986	2.00
[]	Situation and Outlook for Surimi and Surimi-Based Foods, 1989	2.00
[]	Surimi: Alternate Protein Source for Processed Meat Products (Food Processing reprint, 1990)	2.00
[]	Surimi and Meat (Food Engineering reprint, 1988)	2.00
[]	Surimi as an Ingredient in a New Salmon Jerky Product, 1985	2.00
[]	Surimi Production Contract Briefing, 1984	2.00
[]	Surimi Specifications Summary, 1985	2.00
[]	Surimi-Based Foods and Seafood Analogs, Conference Proceedings, 1984	2.00
[]	The Use of a Beehive Deboner in Surimi Processing, 1988	2.00
[]	The Use of Decanter Centrifuges in Surimi Processing, 1988	2.00
[]	The Use of Surimi in Restructured Meat Products: Interim and Final Project Reports, 1989	2.00

By-Products

[]	Alaskan Salmon and White Fish Oil Marketing, 1989 (Includes FDA Meeting Summary and Quality Analyses and Fatty Acid Profiles of Four Samples of Alaska Salmon Oil)	\$10.00
[]	Characterization of Alaska Seafood Waste, 1988	5.00
[]	Fish Feed Trials Using an Experimental Hydrolysate Diet, 1991	5.00
[]	Hydrolyzer Demonstration Project Final Report, 1988-1990	10.00
[]	Making Profits Out of Seafood Waste, Conference Proceedings, 1990	10.00
[]	Multi-Species By-Product Utilization Final Report (KRI), 1989	5.00
[]	No Guts, No Glory: News about Alaska fish meal and oil, April 1989	2.00
[]	No Guts, No Glory: News about hydrolyzed fish protein from Alaska, September 1991	2.00
[]	Nutritional and Feeding Value of a Salmon Head Protein Hydrolysate in Pig Diets, 1991	5.00
[]	U.S. Market Prospects for Alaska Pollock Liver Oil, 1988	5.00
[]	Recovery and Evaluation of Marketable Products from Cod Trimmings, 1983	5.00
[]	Rendering Profits: Fish Oil Seminar Proceedings, 1987	5.00

Flatfish

[]	AIDF&G Groundfish Observers for AFDF Flatfish Project: Final Report, 1989	\$ 5.00
[]	Arrowtooth Flounder Microwave Project: Final Report, 1990	5.00
[]	Arrowtooth Flounder Protease Inhibitor Injection Project, 1990	5.00
[]	Commercial Utilization of Arrowtooth Flounder, 1991	7.00
[]	Flatfish Handling, Processing and Marketing Project, 1990	3.00
[]	Flatfish Processing Line Yield Improvements: Final Report 1991, Plus home video documenting process	10.00
[]	Flatfish Quality Evaluation Project, 1978-89	5.00
[]	Flounder Stocks in Central Gulf of Alaska: Notes on Distribution, Biomass, Species, Spawning Periods and Marketability, 1988	10.00
[]	Improving Methods for Handling Flatfish on Vessel and in Plant to Maximize Quality, 1990	10.00
[]	The Joint Venture Fishery for Yellow Sole in the Bering Sea, 1980	5.00
[]	Sole Source: Flatfish Project Newsletter, April 1988-March 1990	10.00

Video Tapes

[]	"The Sole Source" - The Alaska Flatfish Fishery	\$20.00
[]	"Surimi: An American Opportunity" - Markets and Uses for Surimi Seafoods	40.00
[]	"Surimi: Building Block for Formulated Foods" - How to Use Surimi in Processed Foods	45.00
[]	"White Gold: The Surimi Block Blues" - How Surimi is Made in the U.S.	40.00
[]	"Blended Seafood: A Video Cookbook" - Creativity in the Kitchen Featuring Chef Eric Benson	15.00

How to Order: Prices cover cost of printing and shipping within the U.S. only. Shipping charges will be added for international orders. Please send payment in U.S. dollars only with order. No orders shipped without advance payment. Questions? Call Shirley Marinelli at AFDF, (907) 276-7315.

Ship to: _____

Company: _____

Address: _____

City/State/Zip: _____

Amount Enclosed: _____



2550 Denali Street, Suite 1201
P. O. Box 92070
Anchorage, Alaska 99509-2070
(907) 276-2007


January 23, 1992

Representative David Finkelstein
Alaska State Legislature
Post Office Box V
Juneau, Alaska 99811

Dear Representative Finkelstein,

This is to express strong personal and institutional support for the substance and purpose of House Bill 400 (and related HB 401). The Alaska Fisheries Development Foundation seems to be one of the most highly regarded and widely respected organizations in and around the Alaska seafood industry. Although there has never been occasion for a direct relationship between CFAB and AFDF, we have had many opportunities to observe the relevance of its efforts, the professionalism of its staff and structure, and the broad and positive impacts of its results. We believe it is an effective and efficient organization. Please advise us if there is an opportunity to assist your efforts in connection with this legislation.

Very truly yours,



Edward E. Crane
President

EEC:dmv

Salmon Strategy Task Force Recommendations



**Walter J. Hickel, Governor
Commissioner Glenn A. Olds, Chair**

**State of Alaska
Department of Commerce and
Economic Development
Division of Economic Development**

JANUARY 24, 1992

INTRODUCTION

Governor Hickel appointed the Salmon Strategy Task Force on August 15, to investigate the reasons for the 1991 salmon crisis and to review options for industry stabilization and recovery.

Alaskans should be proud of the courage of the people and companies that started this industry years ago. The people and lifestyle of the salmon industry are a fundamental part of Alaska's history, culture and way of life.

Alaska has been the world's leading supplier of salmon. The state's salmon industry now faces strong competition from many other sources and its dominant role is threatened. Traditional markets are no longer dependent on Alaska for their needs.

The entire world is producing salmon at a record rate. For many years, Alaska's salmon industry enjoyed a market strategy based on allocating scarce resources among competing customers. In less than a decade the entire system has changed. Now the competition in both traditional and developing markets is intense, and it's likely to stay that way.

In order to compete, and indeed survive in this new environment, it is essential that all participants in the industry recognize and accept the reality of these competitive changes. The industry is facing a crisis of considerable magnitude, requiring decisive short term action and long term action to prevent the crisis from recurring.

The 1991 salmon season has forced us to recognize that the Alaska salmon industry is at a crossroads. As with many other industries in America, we must recognize that traditional business practices are no longer adequate in the face of global competition. Reevaluation and action are required.

The Salmon Strategy Task Force has made several immediate and long-term recommendations which should alleviate the immediate crisis, help stabilize the industry, and plot a course to regain our leadership role in the marketplace.

The effects of the decrease in salmon prices are profound, putting at risk state loan programs, community stability, and tax revenues to all levels of government. The seafood industry is the state's largest private sector employer, with the largest resident private sector payroll. The failure of the state and the industry to take decisive action will result in continued weakness in this economic sector and put increased demands and safety net programs.

These will not necessarily be easy changes to make. It will take a substantial commitment of time, hard work, and money. We ask that the Administration, the entire salmon industry and the Legislature work together to support the implementation of these recommendations.

Charge to the Task Force

Governor Hickel's charge was to develop a strategy to generate maximum economic return to Alaska fishermen, processors, and the state as a whole, consistent with wise use and conservation of the resource. The Task Force is to make specific recommendations to the seafood industry, the Administration and the Legislature.

The group was to focus on methods to maintain existing markets, develop alternative markets and product forms, promote secondary processing, develop necessary infrastructure, coordinate production and marketing strategies, improve salmon quality control, optimize fish tax policies and improve fish harvesting and processing efficiency. The Task Force also delineated existing salmon markets and collected and distributed information to assist fishermen and processing companies in reaching agreement.

Conditions requiring study

The major factors distressing the industry are greatly increased competition, high inventory levels, low prices, and projections of continuing high production levels. The runup in prices 1986-1988 followed by declining prices since have left many fishermen with debt loads they cannot support. The declining markets have hurt processors, exporters, and end users holding product in a declining market as well. These factors led to serious price disputes and charges of price fixing in some quarters as the 1991 season developed.

The market outlook for the 1992 season may improve somewhat for sockeye, but extremely high inventory levels remain for pinks. These species represent the vast majority of Alaska production value and volume. The early, very tentative prognosis from Fish and Game is for another big production year.

Inventory of issues

An initial questionnaire went out to 350 recipients of the Alaska Fish and Game weekly catch reports in mid July. This was followed by a second mailing of 125 in late July that added all Alaskan salmon fishing organizations, processors and legislators. The mailing solicited opinion on the issues the Task Force should address. Some 70 responses (a 15% response rate) were received. Staff collated the responses and summarized them. These responses were then categorized under nine headings for presentation to the Task Force.

Selection of Task Force

The Governor announced the membership of the Task Force on August 15. It includes broad representation from the salmon industry, appropriate state agencies, and the general public. The group provides a good cross section of the industry and policy makers in state government, while main-

taining reasonable geographic balance and a practical size. The members are:

Honorable Richard Eliason of Sitka,
President of the Alaska Senate,
and a Southeast Alaska fisher;
Honorable Fred Zharoff of Kodiak,
Chairman of the Alaska Senate Rules
Committee and a Bristol Bay fisher;
Honorable Eugene Kubina* of Valdez,
Chairman of the House State Affairs
Committee;
Commissioner Glenn Olds,
Alaska Department of Commerce and
Economic Development;
Commissioner Carl Rosier*,
Alaska Department of Fish and Game;
Mr. Ed Crane*,
President of the Alaska Commercial
Fishing and Agriculture Bank;
Dr. Jerome Komisar,
President, University of Alaska;
Mr. Richard Lauber,
Vice President, Pacific Seafood
Processors Association;
Ms. Hazel Nelson*,
President, Becharof Corporation,
and Bristol Bay fisher;
Mr. Greg Seider*,
Executive Director, United Fishermen of
Alaska;
Ms. Sandra Tavanis*,
Co-owner, Sea Hawk Seafoods, Valdez;
Mr. Bob Van Brocklin,
Prince William Sound Aquaculture
Corporation; and
Mr. Robert Waldrop,
President of the Board, Alaska Seafood
Marketing Institute, and Vice President,
Silver Lining Seafoods, Ketchikan.

* Editorial Committee

Calendar of work

The Task Force met four times, August 29, October 7, November 1, and November 22. Agendas and summaries of the meeting minutes are contained in appendices to the full report.

At the first meeting, the Task Force selected which of the issues raised in the extensive mail-out solicitation to pursue. Five of the original nine survived; product and market development, reducing costs of production, getting reliable information, improving quality, and marketing salmon and ASMI's role. It also became clear there were several myths at work clouding the issues. Staff reworked the five issues passed by the Task Force in the first meeting into problem statements before the second meeting.

The second meeting started with presentations on various myths, including "everyone's making money but me," "it's all just a Japanese conspiracy," and "we should stick to business as usual, the customer just thinks they want something different." The Japanese market, salmon prices, margins and costs at various points in the industry, and ASMI's mission were discussed. The Task Force made changes to the problem statements and staff followed up the second meeting with extensive interviews of Task Force members and other experts to lay out the facts and options available to address the problems. A sixth problem was isolated and addressed in this process, the need for strategic planning. The persons interviewed, the questions asked and the options identified are in the full report appendix.

The third meeting started with presentations of the interview results and options gathered. The interview results form the main body of the full report. The Task Force then ranked the options available at that time. Some options were dropped. Staff reworked the options into general, specific, and detailed lists, and prepared a draft outline for the report.

The fourth meeting consisted of preparing some new recommendations for immediate action, and reworking the options that passed muster at the third meeting into the recommendations that follow. Some items were dropped. An editorial committee was appointed to oversee production of the report (see footnote above), and a schedule established for completion of the report.

Recommendations

The Task Force recommendations take into account budget cycles and priorities. In many cases requiring state agency action, existing budgets are not adequate to perform the recommendations. Additional funding will be required, not reprogramming of existing budgets. The Task Force expects the relevant agencies to prepare the necessary budget information, and respectfully requests full and favorable consideration by the Administration and Legislature.

RECOMMENDATIONS FOR DEALING WITH THE IMMEDIATE CRISIS

1. The Alaska Seafood Marketing Institute (ASMI) should develop a budget for immediate funding to deal with the existing inventory surplus before the 1992 season and projected 1992 production. This must be implemented as soon as possible¹.
2. Processors and fishermen should initiate market discussions early. The Task Force recognizes that the market situation will be uncertain at that time, and that the risk involved will lead to low price suggestions from processors, but recommends early discussions to provide maximum information sharing and opportunity to reach agreement. The Department of Labor (DOL) should be prepared to bring in knowledgeable mediators if necessary.
3. ~~The University of Alaska (U of A), Commerce and Economic Development (DCED), and Fish and Game (ADF&G), should initiate and/or support efforts to expose the broadest possible range of Alaska fishermen to credible and detailed information about recent and ongoing changes, including problems and opportunities, in the world markets for salmon.~~³
4. The DCED Division of Economic Development should review the processing capacity situation in Prince William Sound, taking into account the outcome of the 1991 season, and make preliminary findings available to the Governor (and the industry) as early as is practicable. The Task Force recognizes that the capacity problems that developed in Prince William Sound were the result of the fishery being late and very concentrated, and the fish being relatively dark and small.⁴
5. The DCED Division of Investments and Alaska Commercial Fishing and Agriculture Bank (CFAB) recognize the crisis caused by low prices and the effect this has on loan payments. The Task Force encourages them to actively seek out fishermen having problems and work with them on loan extensions and other measures to minimize foreclosures.⁵

-
1. The immediate ASMI program should be geared to long-term domestic market growth. The Governor could include this amount in his budget request, including a request for exemption from procurement codes for this emergency funding. The Legislature could pass this supplemental funding out as soon as possible in the session. ASMI could reprogram funds to initiate the campaign as soon as possible, prior to release of the funds, consistent with prudent financial management.
 3. Provide reasonably detailed but clearly written information on prices and markets for salmon for wide-spread distribution in the spring of 1992 and thereafter. The information could be updated in season. A goal should be to establish a clearer understanding of the effects of market conditions and dynamics on prices.
 4. DCED could prepare a supplemental budget to cover the costs of doing the necessary surveys for the PWS capacity determination.
 5. Reinstatement of state funding for the ABDC (Alaska Business Development Centers) program of outreach and business assistance in rural areas has been identified as an important component in dealing with financial hardship. This organization provides one-on-one assistance with loan workouts and dealing with the IRS that is not available elsewhere.

MID-RANGE RECOMMENDATIONS

General

1. The DCED, ADF&G, and Department of Labor (DOL) should consider promoting a closer and more trusting relationship among the interests involved in the issues concerning Alaska's salmon industry. This effort should be closely coordinated with other ongoing educational and consensus building efforts.¹

Product and Market Development

2. The Alaska Science and Technology Foundation (in fisheries area), and the U of A's Fisheries Industrial Technology Center, and ~~Marine Advisory Program should be encouraged to expand their efforts in salmon product and market development~~ and to coordinate their efforts in providing technical assistance and research and development in salmon products through the Alaska Fisheries Development Foundation (AFDF).²
3. The DCED's ability to provide international marketing information and sales assistance should be expanded. The Department's Division of Economic Development and Office of International Trade should work closely with ASMI and the Alaska Center for International Business (ACIB) to reduce risk and costs to the private sector.³
4. The DCED, ASMI and the ~~Marine Advisory Program's ability to assist domestic marketing should be expanded~~. The Department's Division of Economic Development work closely with ASMI to reduce risk and costs to the private sector.⁴

-
1. In the consensus building efforts, the agencies could organize forums and/or participate in existing trade shows and conferences. The issues examined by the Salmon Strategy Task Force could be presented and discussed with the objective of developing a consensus about the direction the state should take in the future regarding the harvesting, management, promotion and marketing of Alaska's salmon.
 2. AFDF has in place a proven industry board and ability to perform, but will require administrative funding to continue operations. Salmon industry representation on their board should be expanded.
 3. Specific projects could include:
 - Work to reduce tariff barriers for Alaska seafood products overseas.
 - Encouragement to foreign reprocessors to purchase or joint venture value-added production in Alaska.
 - Continuing investigation of new markets for salmon overseas where disposable income is high enough, and seafood is commonly eaten.
 4. These entities could reduce risk and costs to the private sector of expanding domestic markets through:
 - Working with food service entities in Alaska and other states to promote sales and distribution of Alaska salmon products.
 - Providing start-up technical assistance to new ventures.

Quality

5. The Department of Fish and Game should reexamine management practices with the goal of obtaining the highest quality pack possible without hanning the stocks.⁵
6. The Department of Fish and Game should conduct a comprehensive study in Southeast Alaska and Prince William Sound, with the cooperation of fishermen and processors, to determine the degree of risk managers should take in managing for economic efficiency and fish quality. The goal would be to identify the optimum locations for harvest.⁶
7. Industry and the Department of Fish and Game should cooperate on a program to educate fisheries managers, fishermen and industry operators on the physiological changes that occur in salmon (and hence its marketability) to encourage management that provides for the optimum use of the resource.⁷
8. Hatcheries should conduct research to determine the cause for variations in sexual maturity and other quality factors for stocks returning to hatcheries. Based on the research, hatcheries should modify their stocks and practices to optimize quality.

Marketing and ASMI's Role

9. ASMI, the FITC and the ~~Marine Advisory Program (U of A)~~ should expand educational programs on fish handling, cleaning, chilling, and processing for virtually all parts of the industry. Such efforts should focus on providing hands-on training from the fishing boat to the market, and on meeting the needs of the consumer for quality seafood. The effects of quality handling on the ability to market the end product should be emphasized.

-
5. The reexamination of management practices could include changes in the length of openings and the timing of fisheries to optimize salmon quality. The Task Force recognizes that Fish and Game may need statutory and regulatory changes to incorporate such considerations in management decisions.
 6. A controlled set of experiments to determine the optimum points of harvest for top quality could include:
 - a. testing the condition of fish to determine rates of deterioration in terminal harvest and outer areas, throughout the duration of the run; and
 - b. identifying the optimum location which will provide the highest quality of salmon with an acceptable risk to the wild stocks.
 7. A study to examine the effects of sexual maturity on finished product quality could include the following:
 - a. samples in each of the categories in ASMI's Color Guide and hatchery broodstock would be collected;
 - b. portions of each category would be processed at least as headed and gutted, filleted and canned products; and
 - c. the end products would then be used in a workshop setting to educate managers on the various aspects of salmon quality.

The Task Force recognizes that a similar program budgeted at \$25,000 was considered and set aside by the ASMI board, and that it may be possible to achieve the same ends using commercially-processed products. ADF&G should prepare a budget item if necessary.

10. The Department of Commerce and Economic Development should initiate and/or encourage efforts to expose all salmon fishermen to organized, accurate and credible data concerning the salmon industry and markets in sufficient form and detail to permit fishermen's consideration of a national salmon marketing council chartered by the U. S. Secretary of Commerce under the Federal Fish and Seafood Promotion Act of 1986.¹⁰

LONG-TERM RECOMMENDATIONS

GENERAL GOAL

The state needs to develop a strategic plan for long term development of the salmon (seafood) resource, using recommendations of this task force as a starting point. This should focus on strengthening the support structure and sustainability of the industry. The goal would be a more rational and efficient system which is less vulnerable to market, production, and financial fluctuations. This would ensure an integrated and uniform state approach to the fishing industry.

OBJECTIVES:

- review and evaluate the institutions and relationships developed in the industry with an eye toward improving competitiveness and economic return to Alaska residents.
- bring together agencies and functions to affect a rational, consistent and sustainable program linking production, harvesting, processing, marketing and financing.
- determine the proper roles for the public and private components of the industry, integrating regulatory and developmental activities.

ACTION ITEMS

General

1. The Department of Commerce and Economic Development, in cooperation with other state agencies and the salmon industry, should organize a group with broad experience and understanding, in aggregate, of food and commodities industries, to:

10. The Federal Fish and Seafood Promotion Act of 1986 provides that species-specific councils (roughly parallel to the National Beef Council, etc.) may be formed only after a rigorous referendum process which must include all salmon harvesters and all primary processors or harvest purchasers and may include other industry participants. If properly organized and chartered, a "National Salmon Council" would have the power to assess the industry participants for funds to be used for salmon promotion and marketing, product research, consumer education, etc. It would also have the power to develop and offer, for Department of Commerce and Economic Development approval, salmon quality standards.

- a. review the functional and procedural workings of the Alaska seafood industry;
- b. identify areas of inefficiency, counter-productivity and resource waste.
- c. review and evaluate research and development capabilities.
- d. recommend what state resources, including statutes, regulations, prestige, etc., can and should be applied to address those areas.

Fish Production

2. DCED, ADF&G, and ASMI should develop an integrated production and marketing strategy, which would:
 - a. recognize marketability of the fish as an important management goal.
 - b. recognize that price will be set by overall supply and demand, including the production of farmed salmon.
 - c. coordinate production with wider economic goals, including processing, product development, and markets, based on dependable information and planning.
 - d. better coordinate wild and hatchery production, regionally and by species and market.

Harvesting/Processing

3. The Commercial Fisheries Entry Commission, DCED, and DF&G, should develop fishery management and regulatory measures aimed at reducing operating costs, more efficiently utilizing present investments, and promoting a rational sustainable industry. Investigate ways to retain permits in Alaska and rural areas in particular, provide greater stability and enhanced revenues to resident fishermen, and increased shoreside investment consistent with sound financial standards, through:
 - a. reexamination of loan policies and permit use limitations.
 - b. reexamination of Alaska's limited entry system.
4. To widen options for Alaskan fishermen, DCED, in cooperation with other state agencies and the industry should consider promoting Alaskan controlled joint venture processing developments linking present investors and industry participants with new technologies and capital, and Pacific Rim and lower 48 markets. Give special attention to rural communities dependent on the salmon resource, smaller plants, local consumption and market needs, infrastructure needs, and current economic development plans.

Marketing

5. DCED should contract a major marketing research firm with proven credentials in food marketing to develop and analyze the "facts" related to salmon market trends, opportunities and weaknesses in major and potential markets. The group should also evaluate the state and industry's marketing efforts, including consideration of changes in the ASMI statute or operations, to permit, if possible, a more effective approach to marketing Alaska seafood.⁵
6. The Governor and Legislature should consider funding ASMI's \$10 million per year proposal for an intensive 5 year domestic marketing campaign. The goal is to raise domestic consumption of salmon from 1 to 1.5 pounds per person annually.
7. DCED, in cooperation with ASMI and DEC, should conduct a study to find the most cost effective ways to improve consumer confidence in Alaska seafood products. The Task Force recognizes that the entire seafood industry must improve the inherent quality of the salmon it processes, the freshness and workmanship of the product, and the consistency of grading to remain competitive, particularly when competing with farmed salmon.⁷

Finance/Other

8. DCED, in cooperation with other agencies and the industry, should readdress the issue of infrastructure including but not limited to improving quality, providing cold storage capacity, and promoting value added production.
9. OMB, in cooperation with state agencies and the industry, should reexamine the policy and implementation of fisheries taxes, including the corporate income and marine fuels taxes. The State must first decide what it wishes to accomplish by taxation. While this is nominally raising revenues, any tax distorts the market in some way, and a review of the current tax structure and various proposed alternatives is in order. Of particular interest is whether targeted tax credits for research and development expenditures is feasible.

Reducing Costs and Regulatory Burdens

1. The Departments of Fish and Game and Revenue should consider combining the appropriate processor annual report forms to simplify reporting requirements for the industry. This should be done at an agency level with the agencies sharing information from each form or integrating them, and may require statutory changes.

5. The efforts should take into account what's already been done (Salmon 2000) and focus on those areas outside ASMI's assigned and traditional role, including new product and market development. The results must be produced in a form which will permit evaluation and initiation of strategies to further enhance and stabilize markets.

7. A great deal of the input the Task Force received identified the lack of consistency in Alaska salmon products as a major marketing problem. Some Alaska product has been described as "low quality" compared to the competition. As Alaska's products become better identified in the marketplace, the Task Force recognizes that "Alaska brand" seafood must be of "good" quality, and meet the customers' expectations if customer satisfaction is to be achieved and advertising dollars well spent. Exactly how to determine those inherent quality standards, and how to ensure that the customer consistently gets the product they have purchased and expect could not be reconciled. The industry is divided on how large a role the state should play in determining quality, ranging from mandatory grading standards to no standards beyond wholesomeness.

2. The Department of Commerce and Economic Development, in cooperation with other affected agencies and the industry, should investigate ways to assist small operators in meeting the myriad regulatory requirements of various agencies. This might range from exempting processors under a specified size from filing certain forms to providing a central clearinghouse for permitting and filing information, technical advisory services and special loans for equipment such as computers and computer software.
3. The relevant state agencies should, in consultation with the Limited Entry Commission, collect child support payments from permit holders at the time of yearly permit renewal. Permit holders will be motivated to pay this fee and it will not unfairly burden processors.
4. The Departments of Revenue and Labor respectively, should relieve the burden of prepayment of the Fishery Business Tax and provision of Labor bond for companies with proven payment records and sufficient assets.

the **LODESTAR**

Charting the course of fisheries development today.

Alaska Fisheries

Development Foundation, Inc.

Volume VI Number 4, Autumn 1988

Special Issue: AFDF at ten

This special 10th Anniversary Celebration issue of The Lodestar tells the story of Alaska Fisheries Development Foundation.

It recalls the beginnings of AFDF, its first board of directors, its struggle for life, and its first projects. It tells the tale of efforts successful and frustrated, of people coming and people going. Even if The Lodestar were more than eight pages, there would not be enough room to tell all the stories, to introduce all the characters, and to remember all the moments that were turning points in the Foundation's history.

But this is a start. It will help acquaint newcomers to the Foundation and its beginnings. It will stir long time associates to remember things they might have forgotten. It will possibly encourage more people to join the Foundation and be involved in its projects in the coming ten years.

This issue of The Lodestar not only celebrates the achievements of the Foundation; it also celebrates all the people who have been associated with AFDF through the past decade. There won't be room to mention them all, though their names and efforts are inscribed on the inner halls of the Foundation's collective memory.

And what a collective memory it is. Just for starters, we thank our 1988 board of directors:

President

Al Burch, Alaska Druggers Assoc.

1st Vice President

Steve Smith, Kemp Pacific Fisheries

2nd Vice President

Phil Hanson, UniSea

Secretary/Treasurer

Rod McLachlan, Trident Seafoods

John Sevier, Alaska Pacific Seafoods

Oscar Dyson, All Alaskan Seafoods

Henry Mitchell, Bering Sea

Fishermen's Association

Hank Eaton, F/V Skagit Bay

Phillip McCrudden, McCrudden

Fishing Ventures

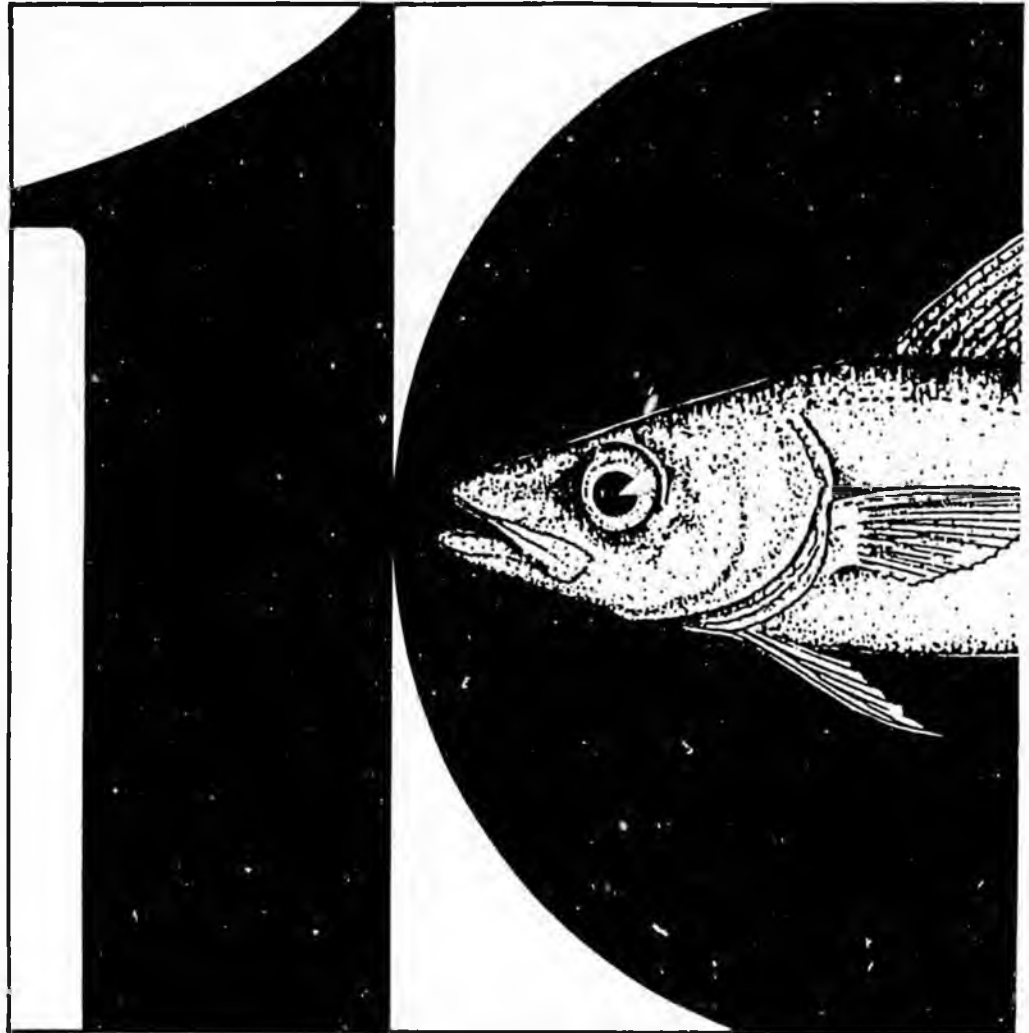
Rae McFarland, McFarland Foods

Gil Gunderson, Northern Fury

Seafoods

William Reinke, Van Camp Seafood

In addition to the board of directors, AFDF relies on and gains much from the direction of Carl Roser, Chief of Industry Services at National Marine Fisheries Service Alaska Region in Juneau.



A Decade of Development

By Krys Holmes

Looking back, the path Alaska Fisheries Development Foundation has taken in the last ten years seems direct, planned, almost inevitable. But from 1978 looking forward, it was a dubious, chaotic, and sometimes staggering path facing the new organization. Like most things in the fishing business, it all started with a rumor. The way Sara Hemphill tells it, someone heard that National Marine Fisheries Service (NMFS) had got hold of \$3 million of federal Saltonstall-Kennedy funds and was going to give part of it to New England Fish Co. (Nelco) for a white fish development project.

"In typical Alaskan style, the fishermen started screaming," Hemphill said. It seemed NMFS wanted to award the contract without bids, and Nelco would get a windfall of public money. NMFS called a meeting in December 1977, but expected only a few people. The room was full.

"What came out of that meeting was a consensus that NMFS couldn't let a \$3 million sole source contract, and that

we should set up some organization that could funnel the Saltonstall-Kennedy money to the industry," Hemphill said.

Almost twenty months later, the Alaska Fisheries Development Corporation, with \$100,000 startup money from the state of Alaska and Sara Hemphill as executive director, embarked on its first white fish development project, a \$1.475 million demonstration of the economical and technical feasibility of Alaskan fishing vessels and processing plants going after the foreign-controlled Alaskan white fish industry.

The Saltonstall-Kennedy fund was created by a 1954 act of Congress to devote one-third of all revenues from import tariffs on marine products, including coral, pearls and seafood products, to the U.S. seafood industry. The money was to be used for fisheries development projects, and its application was to be industry-directed.

"That first project had something for everybody," Hemphill said. The project was segmented to include activities from all parts of the state and to include fishing, processing

the company where AFDF would later find surimi technician Billy Thrash, who aided AFDF in its first tentative months of surimi production.

By 1982 the Foundation staff had increased to include Anita Murphy, Sharon Tyone, Linda Allen and Florence Scott. Late in the year, Ellen Wilson was hired as secretary. And on March 1, a day that will live in infamy for both AFDF and the pyrotechnics industry nationwide, (he once set fire to a stack of old Wall Street Journals on his desk while negotiating fantasy stock deals with Doug Humes) Chris Riley joined the staff as project manager.

1983

Throughout the history of AFDF run several common themes: creating opportunities for fishermen, filling the gaps in U.S. seafood processing technology, and exploring new uses for Alaska's seafood products. But in 1983, under the direction of Chris Mitchell and the nervously supportive eye of Carl Rosier of NMFS, AFDF took a dramatic turn: the Foundation moved away from its "scattershot" projects, planted most of its resources behind one concentrated, multi-year project, and dedicated itself to discovering and developing new methods of producing surimi from Alaska pollock.

"We're looking for a few greedy people," read a brochure AFDF produced that year. To succeed in a risky project like the surimi program—going against the political tides and certainly against the Japanese interests now very powerful in the Alaskan seafood industry—it would be necessary to make sure everyone had something to gain from the project. In 1983, AFDF submitted its surimi project proposal to NMFS, and began to lay groundwork for the project that would put AFDF on the map.

The staff contacted 500 U.S. companies—suppliers of ingredients, equipment, materials and knowledge—and sent out samples of Japanese surimi for product development purposes. Within months, companies across the country were twisting, poking, flavoring, coloring and tasting surimi.

The staff, hoping that at least some of these companies would find surimi profitable, pumped out as many samples and as much information as they could get hold of. And in the interests of better communications, The Lodestar was born.

In December 1983, AFDF selected from among five bidders one plant to conduct its surimi production project. After hours of proposal review, analyses and deliberation, a specially-selected board of advisors awarded the project to Royal Alaskan Seafoods in Dutch Harbor. The plant would be shut down within a year; and the deliberations would have to be repeated the following year. But, Chris Mitchell was quoted as saying, the level of knowledge demonstrated by the companies proposing for the project indicated "a growing strength of knowledge and commitment" to building an Alaskan surimi industry.

In early 1983, Barbara Culver joined the AFDF staff as accountant.

Also in 1983, the Trident Seafoods

plant in Akutan—after only one year of operation—burned to the ground.

1984

If 1983 was AFDF's Year of the Pollock, 1984 was the Year for Surimi. AFDF published "Hooked on Surimi," a directory of companies offering services and equipment to the surimi industry. The staff continued to investigate uses for surimi. The Foundation and National Food Processors Assoc. held a surimi conference in Washington, D.C. that drew 200 people and seemed to set fire under each of them.

But primarily, the energy of AFDF and its associated companies was toward building the first commercial surimi plant in Alaska. With Bob Ryan as chief engineer and Billy Thrash as surimi consultant, Royal Alaskan began small-scale surimi production on May 4. The quality was low, but excitement was high. Despite much talk to the contrary, Alaska had proved that it could make good surimi.

That summer, Royal Alaskan was shut down, the surimi project halted, and AFDF issued a second RFP for shore-based surimi production. This time, rather than a pilot-scale plant, AFDF went for full-scale commercial production of surimi. Alaska Pacific Seafoods of Kodiak was the winner this time, and late in the year all the surimi equipment was moved to Kodiak.

1985

"Surimi: It's American Now," announced The Lodestar in January 1985, under an illustration of the Norman Rockwell Thanksgiving table spread with surimi-based products. The illustration has become one of AFDF's trademarks. The message was twofold: Not only was it proven that Americans could make high-quality surimi on shore in Alaska, but the surimi was made with a combination of traditional Japanese and modern American and European technology.

Two hundred people came to "White Gold," a grand opening of the surimi plant, to get their shoes wet and see American surimi made. Once on shore, surimi began to capture the imagination of food executives and technologists. One company experimented with a surimi-based cheese log; another with surimi in cake mix; another with baby food. The potential value of an Alaska pollock industry profiting from waste, mince, meal, oil and surimi was estimated above \$8 billion per year.

Knowledge about the pollock market coincided with the opening of the rebuilt Trident Seafoods plant. Owner Chuck Bundrant had turned disaster into an opportunity, and had included

in his rebuilt plant design for pollock and cod processing equipment. With the new plant, Bundrant was set up to process 52,000 lbs. of pollock per day, worth over \$1 million per month, which at capacity would pay fishermen about \$260,000 per month.

In 1985 the pollock biomass seemed unending. Yet it became clear, from a standpoint of economics, efficiency, and resource management, that a successful pollock plant would have to fully use every ounce of protein an Alaska pollock has to offer.



Alaska pollock has to offer.

With nearly a million pounds of surimi on their hands, the AFDF staff turned their attention to market development. How to create entirely new markets and uses for a material few knew very much about? A few analog plants were springing up in the Lower 48. AFDF concentrated on working with food develop-

ers, those who would create products beyond the imitation seafood market. It was the beginning of an endeavor still continuing, though today the effort centers not only on surimi but on all seafood forms.

1986

A good year for the product development effort for surimi at AFDF. The year dawned with a new line of health food products including a granola bar and a powdered protein drink, all using surimi. Next, Lynda Nestelle created a moisturizing cream using surimi as the binder. The trend continued with AFDF's first visit to the Western States Meat Association convention, where the little fisheries booth was nearly bowled over by eager meat packers who were either checking out the opportunity or the competition—even they may not have been sure which.

AFDF had achieved three important goals in its surimi project: it had successfully produced surimi in the U.S.; it had proven that existing technology could be improved upon using existing American equipment and techniques; and it had marketed the surimi in the U.S. and Japan.

And so, AFDF began the process of stepping back from the forefront of surimi industry development. By this time there were two other surimi plants on shore in Alaska and several floating processors being built. Work was being done independently of the AFDF project that indicated the surimi industry was on strong footing. It was time to start looking to the future.

In the spring of 1986, Chris Riley left AFDF and the surimi project he had devoted himself to. In the fall, Chris Mitchell resigned to start his own company in Seattle. In September Sharon Gwinn, who had left in 1985 to start a business with Richard Rhoda, returned to fill in as acting executive director.

1987

Ten years after that first December meeting that sowed the seeds that would become AFDF, foreign fishermen harvested Alaskan white fish in U.S. waters for the last time.

The new year brought high prices for U.S. pollock fillets and blocks, and doubled production of surimi for Alaska Pacific Seafoods. The economy of Alaska was deep in a recession but Kodiak boomed from bottomfish activity. AFDF started a project to enhance fish waste processing technology, and focused on gaining USDA approval for surimi as an ingredient in meats.

In March, AFDF published *Surimi: It's American Now*, the first compendium of surimi knowledge in the U.S.

On April 1, Mel Monsen joined the staff as executive director. Soon after, he hired Loretta Lure and Peter Moore, who had been temporary contractors to AFDF during the transitional period.

The effort to move AFDF from its surimi project toward the future began with a flatfish demonstration project, a new seafood product development contest, and a study of pollock liver oil and its potential uses. The Foundation had moved from the uncertainty of its start, through the process of proving itself by aiding different segments of the industry, into a very focused project that was planned to benefit the entire Alaskan seafood industry directly or indirectly—and now began broadening its vision again to encompass the areas that still needed the unique kind of activity only the Foundation can conduct.

1988

In its tenth year, the Alaska Fisheries Development Foundation enjoys the stability that comes with having a history. Not everyone has supported AFDF or its projects, or agrees with the directions it has taken. Many agree the Foundation has been a force of change and growth in the industry; some think it hasn't done enough to benefit small Alaskan operators.

There were a few successes in 1988: Surimi gained approval from the USDA as a processed meats ingredient; The tenth U.S. surimi factory ship has been launched; a salmon chili that resulted from the Foundation's new product contest is entering commercial production; Koriak Reduction, Inc. added a dryer to its meal plant and the flatfish project at Eagle Fisheries is moving piecemeal toward profitability.

AFDF celebrates its tenth anniversary with a taste of uncertainty flavoring the punch. The S-K Program funneled less money to fisheries development projects this year than ever before. Some member companies are beginning to question if the priorities outlined by NMFS speak to the needs of the industry. But a few things are clear: AFDF was set up as a catalyst for public funds directed toward private industry, to benefit the greatest number of people with the smallest amount of bureaucracy. Members agree that, whatever direction the Foundation takes in the future, its role as high-risk catalyst will continue.

CORRECTION

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

the **LODESTAR** **STAR**

Charting the course of fisheries development today.

Alaska Fisheries

Development Foundation, Inc.

Volume VI Number 4, Autumn 1988

Special Issue: AFDF at ten

This special 10th Anniversary Celebration issue of The Lodestar tells the story of Alaska Fisheries Development Foundation.

It recalls the beginnings of AFDF, its first board of directors, its struggle for life, and its first projects. It tells the tale of efforts successful and frustrated, of people coming and people going. Even if The Lodestar were more than eight pages, there would not be enough room to tell all the stories, to introduce all the characters, and to remember all the moments that were turning points in the Foundation's history.

But this is a start. It will help acquaint newcomers to the Foundation and its beginnings. It will stir long-time associates to remember things they might have forgotten. It will possibly encourage more people to join the Foundation and be involved in its projects in the coming ten years.

This issue of The Lodestar not only celebrates the achievements of the Foundation; it also celebrates all the people who have been associated with AFDF through the past decade. There won't be room to mention them all, though their names and efforts are inscribed on the inner halls of the Foundation's collective memory.

And what a collective memory it is. Just for starters, we thank our 1988 board of directors:

President

Al Burch, Alaska Druggers Assoc.

1st Vice President

Steve Smith, Kemp Pacific Fisheries

2nd Vice President

Phil Hanson, UniSea

Secretary/Treasurer

Rod McLachlan, Trident Seafoods

John Sevier, Alaska Pacific Seafoods

Oscar Dyson, All Alaskan Seafoods

Henry Mitchell, Bering Sea

Fishermen's Association

Hank Eaton, F/V Skagit Bay

Phillip McCrudden, McCrudden

Fishing Ventures

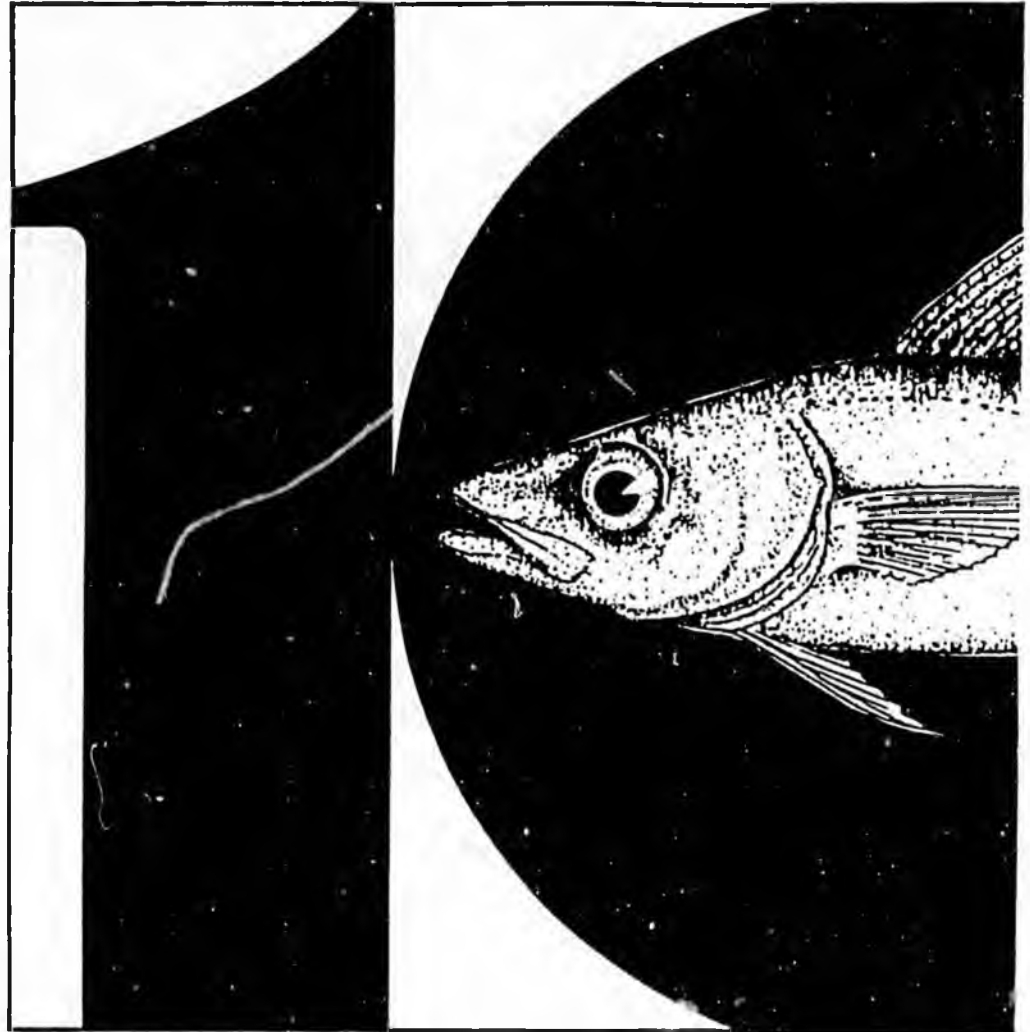
Rao McFarland, McFarland Foods

Gil Gunderson, Northern Fury

Seafoods

William Reinke, Van Camp Seafood

In addition to the board of directors, AFDF relies on and gains much from the direction of Carl Rosier, Chief of Industry Services at National Marine Fisheries Service Alaska Region in Juneau.



A Decade of Development

By Krys Holmes

Looking back, the path Alaska Fisheries Development Foundation has taken in the last ten years seems direct, planned, almost inevitable. But from 1978 looking forward, it was a dubious, chaotic, and sometimes staggering path facing the new organization.

Like most things in the fishing business, it all started with a rumor. The way Sara Hemphill tells it, someone heard that National Marine Fisheries Service (NMFS) had got hold of \$3 million of federal Saltonstall-Kennedy funds and was going to give part of it to New England Fish Co. (Nefco) for a white fish development project.

"In typical Alaskan style, the fishermen started screaming," Hemphill said. It seemed NMFS wanted to award the contract without bids, and Nefco would get a windfall of public money. NMFS called a meeting in December 1977, but expected only a few people. The room was full.

"What came out of that meeting was a consensus that NMFS couldn't let a \$3 million sole source contract, and that

we should set up some organization that could funnel the Saltonstall-Kennedy money to the industry," Hemphill said.

Almost twenty months later, the Alaska Fisheries Development Corporation, with \$100,000 startup money from the state of Alaska and Sara Hemphill as executive director, embarked on its first white fish development project, a \$1.175 million demonstration of the economical and technical feasibility of Alaskan fishing vessels and processing plants going after the foreign-controlled Alaskan white fish industry.

The Saltonstall-Kennedy fund was created by a 1954 act of Congress to devote one-third of all revenues from import tariffs on marine products, including coral, pearls and seafood products, to the U.S. seafood industry. The money was to be used for fisheries development projects, and its application was to be industry-directed.

"That first project had something for everybody," Hemphill said. The project was segmented to include activities from all parts of the state and to include fishing, processing

and marketing. It included shrimp boats, longliners, crew training programs and processing demonstrations. It touched on pollock, cod, sablefish, and black cod.

1978

Alaska Fisheries Development Corporation was formed, the first organization in Alaska to include both fishermen and processors, and to span all industry interests. Ron Jensen was the president of the board of directors. Other board members were: Patrick Pletnikoff, Pete Harris, Connie Taylor, Al Burch, Larry Painter, Jim Ferguson, John Enge Sr., Robert Morgan, and Jim Marr. Hemphill was Acting Executive Director, and was soliciting applications for the permanent post until the board convinced her to stop fooling around and apply for the job herself. She did, she was Executive Director until 1982.

"After many months of careful planning and preparation, the public trust in fisheries development is now an active, tangible reality."

—AFDF Bulletin August 1980

Through the first year of AFDC, members were most concerned with increased foreign allocations of bottomfish under the one-year-old 200-mile limit law. A November

10 AFDC newsletter quoted attorney Ed Furia speaking to a U.S. bottomfish workshop: "We found out this morning ... that the State Department is considering increasing the allocation of Alaska bottomfish to Korea and to Poland so that they can sell those bottomfish in the United States... We think this is incredible."

The goal seemed clear to membership: to capture the profitable fishing and processing activity that was then given to foreign companies. The methods seemed less clear. The Alaskan fishing industry was segmented, with many separate groups representing gear types, regions and activities.

The same AFDC newsletter of Nov. 10, 1978 tells a story of two boys trying to balance on railroad tracks. Neither could make it far, until they discover that by holding hands across the expanse they could keep each other balanced. "AFDC symbolizes the hands held across the track," wrote editor Connie Taylor.

1979

After riding a "rollercoaster o... the funding issue" through the winter of 1978-79, Sara Hemphill announced in the spring of 1979 that Congress had finally approved \$1.445 million, promised the year before. But it would take until September to see the first dollar of S-K money. In the meantime, the

"Government must recognize that its agencies are not experts; the expertise resides in the private sector. Government must assist without interfering, challenge without destroying and encourage without building a false foundation."

—The Lodestar Autumn 1983

board updated its white fish development project proposal, and prepared for some smaller projects.

In October, bids were solicited for a bottomfish trawler, a shrimp trawler and a longline vessel, and for shore-based or floating processors who would handle the product harvested

by the project's boats. It was a small step toward Americanization of Alaska's bottomfish resource.

Also in 1979, the board of directors decided one change had to be made to ensure the organization of its non-profit status, and to underline the philanthropic purpose that characterizes the organization: they changed its name to Alaska Fisheries Development Foundation.

1980

"Working to meet the diverse self-identified needs of the Alaskan industry is a monumental task," wrote Sara Hemphill in February 1980. As a first step, the AFDF board drafted a mission statement, affirming that the Foundation's purpose was "to encourage the full and viable domestic utilization of all Alaskan fisheries consistent with wise resource management and healthy development of Alaska's fishing communities."

By this time AFDF had developed a reputation as the only arena in which fishermen and processors, on shore and offshore, Southeast to the Bering Sea, could communicate needs and cooperate in solutions.

AFDF's 1980 projects included helping create a shore-based white fish processing plant, originally sited at Alaska Food Company at Gibson Cove, in Kodiak; and equipping a 124-foot combination crabber/longliner called the *Aleutian*

Mistress with a Mustad auto longlining system. Both projects would see plenty of changes before they were finished. The *Aleutian Mistress* was the first of many projects in which Baader North America contributed technology, time and expertise to an AFDF project.

AFDF also arranged to place U.S. observers aboard the German factory trawler *Friedrich Busse* to collect harvesting, processing and economic data. Participants confirmed that the North Pacific bottomfish learning curve was indeed very long, and that the market had no patience for those who were still on it.

Ron Jensen resigned from the board in 1980 and was replaced by Bob Anderson. AFDF hired Sharon Gwinn as assistant executive director; she was with the Foundation until 1985 and returned in 1986 as acting executive director. Bettymae Jones was hired as office manager.

1981

"U.S. development of an Alaska pollock fishery will probably not be viable until we develop successful methods of using minced pollock either as an export commodity or in products acceptable for domestic consumption," said Dick Nelson of NMFS in 1981. His comment solidified ideas AFDF had been tossing around that fisheries development would not depend solely on fishing and processing Alaska's bottomfish, but on developing new, marketable products from Alaska's most abundant raw material.

A huge slate of 17 projects received \$1.9 million in S-K funds for fiscal year 1981-82. They included shore-based and at-sea cod, salt cod and pollock processing, demonstrations of longline gear, baiting systems and fishing, a fish waste recovery project, several small fishery studies, a fishing vessel safety project, a study of cold storage and transportation needs in Alaska, and several marketing and informational projects.

In November 1981, AFDF sponsored a conference entitled, "Alaska Pollock: Is it a Red Herring?" The meeting would finally set fire to Alaska's bottomfish development;

The AFDF board of directors in 1981 included Bob Anderson (as president), Al Burch, Jesse Foster, Richard Favretto, John Enge, Hank Eaton, Dan Flynn, Richard Pace, Ken Allread, and Jake Phillips. Charlene Wilson and Michael Broili joined the staff in this year.

1982

Greg Cushing and Bill Woods joined the AFDF board of directors; Sara Hemphill resigned, citing a need for "new blood"—she may have felt she'd already spilled enough of her own—and Christopher K. Mitchell was hired as AFDF's second executive director. In an *Anchorage Times* interview, Hemphill said she favored hiring Mitchell because "he asked harder questions of us than we asked of him."

In 1982 the Model White Fish Processing Demonstration Project was moved from Kodiak to Akutan, on the Aleutian Chain 700 miles west of Anchorage. There Trident Seafoods had built a 100,000 square foot plant dedicated solely to white fish processing. The Trident plant, the first of its kind ever built in Alaska, could handle more fish than Oregon's entire annual harvest. The project would begin with a target production of split, salted Pacific cod in March, and frozen fillets later.

AFDF circulated 400 questionnaires to Alaskan fishermen and processors to help identify future projects that might have a significant impact on the future of Alaska's fisheries economy. The Foundation received 42 project proposals that year.

"Our most important mission," reads a newsletter from early 1982, "is to accelerate the growth and diversification of Alaska's seafood industry." With that goal in mind, the AFDF staff applied another year of S-K funds toward enhancing shore-based white fish processing at Akutan, completing the *Aleutian Mistress* project, demonstrating the quality and preservation of Alaskan groundfish, and exploring the feasibility of several new fisheries targeting on pollock, Atka mackerel, razor clams, sablefish and octopus.

By 1982 it was clear that developing the pollock fishery would depend on developing products to make from pollock—primarily surimi. A May/June AFDF Bulletin brings surimi to the Foundation forefront for the first time. "Seafood Alchemy: Turning coxaker into crab legs" reads the headline; the story told of Nichibel Fisheries in Alabama.



the company where AFDF would later find surimi technician Billy Thrash, who aided AFDF in its first tentative months of surimi production.

By 1982 the Foundation staff had increased to include Anita Murphy, Sharon Tyone, Linda Allen and Florence Scott. Late in the year, Ellen Wilson was hired as secretary. And on March 1, a day that will live in infamy for both AFDF and the pyrotechnics industry nationwide, (he once set fire to a stack of old Wall Street Journals on his desk while negotiating fantasy stock deals with Doug Humes) Chris Riley joined the staff as project manager.

1983

Throughout the history of AFDF run several common themes: creating opportunities for fishermen, filling the gaps in U.S. seafood processing technology, and exploring new uses for Alaska's seafood products. But in 1983, under the direction of Chris Mitchell and the nervously supportive eye of Carl Rosier of NMFS, AFDF took a dramatic turn: the Foundation moved away from its "scattershot" projects, planted most of its resources behind one concentrated, multi-year project, and dedicated itself to discovering and developing new methods of producing surimi from Alaska pollock.

"We're looking for a few greedy people," read a brochure AFDF produced that year. To succeed in a risky project like the surimi program—going against the political tides and certainly against the Japanese interests now very powerful in the Alaskan seafood industry—it would be necessary to make sure everyone had something to gain from the project. In 1983, AFDF submitted its surimi project proposal to NMFS, and began to lay groundwork for the project that would put AFDF on the map.

The staff contacted 500 U.S. companies—suppliers of ingredients, equipment, materials and knowledge—and sent out samples of Japanese surimi for product development purposes. Within months, companies across the country were twisting, poking, flavoring, coloring and tasting surimi.

The staff, hoping that at least some of these companies would find surimi profitable, pumped out as many samples and as much information as they could get hold of. And in the interests of better communications, The Lodestar was born.

In December 1983, AFDF selected from among five bidders one plant to conduct its surimi production project. After hours of proposal review, analyses and deliberation, a specially-selected board of advisors awarded the project to Royal Alaskan Seafoods in Dutch Harbor. The plant would be shut down within a year, and the deliberations would have to be repeated the following year. But, Chris Mitchell was quoted as saying, the level of knowledge demonstrated by the companies proposing for the project indicated "a growing strength of knowledge and commitment" to building an Alaskan surimi industry.

In early 1983, Barbara Culver joined the AFDF staff as accountant.

Also in 1983, the Trident Seafoods

plant in Akutan—after only one year of operation—burned to the ground.

1984

If 1983 was AFDF's Year of the Pollock, 1984 was the Year for Surimi. AFDF published "Hooked on Surimi," a directory of companies offering services and equipment to the surimi industry. The staff continued to investigate uses for surimi. The Foundation and National Food Processors Assoc. held a surimi conference in Washington, D.C. that drew 200 people and seemed to set fire under each of them.

But primarily, the energy of AFDF and its associated companies was toward building the first commercial surimi plant in Alaska. With Bob Ryan as chief engineer and Billy Thrash as surimi consultant, Royal Alaskan began small-scale surimi production on May 4. The quality was low, but excitement was high. Despite much talk to the contrary, Alaska had proved that it could make good surimi.

That summer, Royal Alaskan was shut down, the surimi project halted, and AFDF issued a second RFP for shore-based surimi production. This time, rather than a pilot-scale plant, AFDF went for full-scale commercial production of surimi. Alaska Pacific Seafoods of Kodiak was the winner this time, and late in the year all the surimi equipment was moved to Kodiak.

1985

"Surimi: It's American Now," announced The Lodestar in January 1985, under an illustration of the Norman Rockwell Thanksgiving table spread with surimi-based products. The illustration has become one of AFDF's trademarks. The message was twofold: Not only was it proven that Americans could make high-quality surimi on shore in Alaska, but the surimi was made with a combination of traditional Japanese and modern American and European technology.

Two hundred people came to "White Gold," a grand opening of the surimi plant, to get their shoes wet and see American surimi made. Once onshore, surimi began to capture the imagination of food executives and technologists. One company experimented with a surimi-based cheese log; another with surimi in cake mix; another with baby food. The potential value of an Alaska pollock industry profiting from waste, mince, meal, oil and surimi was estimated above \$6 billion per year.

Knowledge about the pollock market coincided with the opening of the rebuilt Trident Seafoods plant. Owner Chuck Bundrant had turned disaster into an opportunity, and had included

in his rebuilt plant design for pollock and cod processing equipment. With the new plant, Bundrant was set up to process 52,000 lbs. of pollock per day, worth over \$1 million per month, which at capacity would pay fishermen about \$260,000 per month.

In 1985 the pollock biomass seemed unending. Yet it became clear, from a standpoint of economics, efficiency, and resource management, that a successful pollock plant would have to fully use every ounce of protein an

Alaska pollock has to offer.

With nearly a million pounds of surimi on their hands, the AFDF staff turned their attention to market development. How to create entirely new markets and uses for a material few knew very much about? A few analog plants were springing up in the Lower 48. AFDF concentrated on working with food develop-

ers, those who would create products beyond the imitation seafood market. It was the beginning of an endeavor still continuing, though today the effort centers not only on surimi but on all seafood forms.

1986

A good year for the product development effort for surimi at AFDF. The year dawned with a new line of health food products including a granola bar and a powdered protein drink, all using surimi. Next, Lynda Nestelle created a moisturizing cream using surimi as the binder. The trend continued with AFDF's first visit to the Western States Meat Association convention, where the little fisheries booth was nearly bowled over by eager meat packers who were either checking out the opportunity or the competition—even they may not have been sure which.

AFDF had achieved three important goals in its surimi project: it had successfully produced surimi in the U.S.; it had proven that existing technology could be improved upon using existing American equipment and techniques; and it had marketed the surimi in the U.S. and Japan.

And so, AFDF began the process of stepping back from the forefront of surimi industry development. By this time there were two other surimi plants on shore in Alaska and several floating processors being built. Work was being done independently of the AFDF project that indicated the surimi industry was on strong footing. It was time to start looking to the future.

In the spring of 1986, Chris Riley left AFDF and the surimi project he had devoted himself to. In the fall, Chris Mitchell resigned to start his own company in Seattle. In September Sharon Gwinn, who had left in 1985 to start a business with Richard Hoda, returned to fill in as acting executive director.



1987

Ten years after that first December meeting that sowed the seeds that would become AFDF, foreign fishermen harvested Alaskan white fish in U.S. waters for the last time.

The new year brought high prices for U.S. pollock filets and blocks, and doubled production of surimi for Alaska Pacific Seafoods. The economy of Alaska was deep in a recession but Kodiak boomed from bottomfish activity. AFDF started a project to enhance fish waste processing technology, and focused on gaining USDA approval for surimi as an ingredient in meats.

In March, AFDF published *Surimi: It's American Now*, the first compendium of surimi knowledge in the U.S.

On April 1, Mel Monsen joined the staff as executive director. Soon after, he hired Loretta Lure and Peter Moore, who had been temporary contractors to AFDF during the transitional period.

The effort to move AFDF from its surimi project toward the future began with a flatfish demonstration project, a new seafood product development contest, and a study of pollock liver oil and its potential uses. The Foundation had moved from the uncertainty of its start, through the process of proving itself by aiding different segments of the industry, into a very focused project that was planned to benefit the entire Alaskan seafood industry directly or indirectly—and now began broadening its vision again to encompass the areas that still needed the unique kind of activity only the Foundation can conduct.

1988

In its tenth year, the Alaska Fisheries Development Foundation enjoys the stability that comes with having a history. Not everyone has supported AFDF or its projects, or agrees with the directions it has taken. Many agree the Foundation has been a force of change and growth in the industry; some think it hasn't done enough to benefit small Alaskan operators.

There were a few successes in 1988: Surimi gained approval from the USDA as a processed meats ingredient; The tenth U.S. surimi factory ship has been launched; a salmon chili that resulted from the Foundation's new product contest is entering commercial production; Kodiak Reduction, Inc. added a dryer to its meal plant and the flatfish project at Eagle Fisheries is moving piecemeal toward profitability.

AFDF celebrates its tenth anniversary with a taste of uncertainty flavoring the punch. The S-K Program funneled less money to fisheries development projects this year than ever before. Some member companies are beginning to question if the priorities outlined by NMFS speak to the needs of the industry. But a few things are clear: AFDF was set up as a catalyst for public funds directed toward private industry, to benefit the greatest number of people with the smallest amount of bureaucracy. Members agree that, whatever direction the Foundation takes in the future, its role as high-risk catalyst will continue.



HB

403

246-4259

HOUSE BILL NO. 403

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Introduced: 1/15/92

Referred: Labor & Commerce, Health, Education & Social Services

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to electrical worker safety."

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

3 * Section 1. AS 18.60 is amended by adding a new section to read:

4 Sec. 18.60.042. ELECTRICAL WORKER SAFETY. (a) When an employee is working
5 on an energized line or conducting object that carries 5,000 or more volts phase to phase or phase
6 to ground, an employer shall

7 (1) require the employee to

8 (A) use only approved live line tools; and

9 (B) maintain a distance of at least two and one-half feet from the
10 energized line or conducting object; the employee shall maintain this distance by using
11 approved live line tools;

12 (2) provide the employee with correctly functioning, approved, live line tools for
13 use on the job;

14 (3) ensure that live line tools are

1 (A) stored, maintained, and used so as to prevent damage to the tools;
2 (B) visually inspected and wiped clean each day before their use and, if
3 defects are discovered, ensure that the tools are removed from service.

4 (b) An employer may not permit live line tools to be used for purposes other than line
5 work. The employer shall ensure that wood live line tools are maintained with a surface coating
6 of varnish or other generally accepted treatment to prevent the absorption of moisture into the
7 wood. The maintenance, inspection, storage, and use of live line tools shall be in conformance
8 with the methods and standards recommended by the manufacturer of the tool.

Status Sheet

Bill 403

23rd

Date:

Action:

1/16/92

Fiscal note request Dept of Labor

teleconference to Anch LIO

* Call AK Health project to go to LIO

9201128 - teleconference

Dillingham, Jensen, Anch

Alaska State
Legislature



House
Labor &
Commerce
Committee

(907) 465-2029

Dear Legal Services:

Please prepare a work draft based on the electrical worker safety bill included in this fax. I would like these new workplace safety requirements to fit into the existing system of occupational health and safety laws, inspections, fines and appeals. The Occupational Safety and Health Standards Construction Code, published by the Alaska Department of Labor Division of Labor Standards and Safety, pages 193-213 (power transmission and distribution) may be of assistance to you in preparing the draft.

I wrote the bill in consultation with Tom Begich of the IBEW. Please call Tom in Anchorage at 274-2135 (Alaska Research Associates) if you have questions about the bill. Tom has the authority to make decisions about the content of this bill. Rep. Finkelstein intends to introduce the legislation at the very beginning of the session. I would appreciate a draft being prepared as soon as possible and then faxed to Tom Begich at (907) 274-6251, as well as sent to Rep. Finkelstein's Anchorage office.

Thank you, as always, for your help.

Sincerely,

Catherine Reardon
aide to the House Labor and Commerce Committee

Electrical Worker Safety

Sec. _____ An employer shall require an employee to comply with the following safety requirements while on the job:

- (1) The employee shall use approved live line tools when the employee is working on an energized line or conducting object carrying 5,000 or more volts phase to phase.
- (2) The employee shall maintain a distance of at least 2.5 feet from an energized line or conducting object carrying 5,000 or more volts phase to phase. The employee shall maintain this distance through the use of approved live line tools.
- (3) The employer shall provide the employee with correctly-functioning, approved live line tools for use on the job.
- (4) The employer shall ensure that live line tools are visually inspected and wiped clean each day before their use, and if any hazardous defects are indicated such tools shall be removed from service.

(5) The employer shall ensure that live line tools are stored, maintained and used in such a manner as to prevent damage to the tools. Live line tools shall not be used for purposes other than line work. Wood live line tools shall be maintained with a surface coating of varnish or other approved treatment to prevent the absorption of moisture into the wood. The maintenance, inspection, storage, and use of live line tools shall be in conformance with the methods and standards recommended by the tools' manufacturers.

Sec. -----

(1) For the purposes of this chapter, "live line tool" means hot stick or other barrier to the conduction of electricity.

(2) For the purposes of this chapter, "approved" means the manufacturer certifies the tool does not conduct electricity when it is exposed to the following conditions:

(a) 100,000 volts phase to phase per foot of length for 5 minutes, if the tool is constructed of fiberglass; or

(b) 75,000 volts phase to phase per foot of length for 3 minutes, if the tool is constructed of wood.

Sec. -----

(1) The Department of Labor shall adopt regulations implementing the provisions of this chapter.

(2) An employer who violates the requirements of this chapter may be assessed by the Commissioner of Labor a civil penalty of not more than \$7,000 for each violation.

(3) An employer who wilfully or repeatedly violates a provision of this chapter may be assessed by the Commissioner of Labor a civil penalty of not more than \$70,000 for each violation.

(4) An employer who fails to correct a violation within the period permitted for its correction for which a citation has been issued may be assessed by the commissioner of Labor a civil penalty of not more than \$7,000 for each day during which the failure to correct the violation occurs.

(907) 274-6251

Dear Tom:

I am sorry I screwed around and did not get the electrical worker safety bill into your hands when I promised. I have told legal services to take your direction in decisions on the content of the bill. After reading the Construction Code Occupational Safety and Health Standards, published by the Alaska Department of Labor Division of Labor Standards and Safety, which you gave me when you visited the office, I do not understand what protections the bill would guarantee which are not already in the Construction Code regulations. I understand that statute is more secure than regulation, but I think the bill is also supposed to be increasing the use of hot sticks by small utilities. I am not sure we are achieving that. You may want to read the construction code section on power transmission and distribution (pages 193-213) to see what I mean.

Once again, I apologize for not being more responsive to you and the IBEW. David will introduce this bill as soon as it meets with your approval.

I'll see you in a few weeks,

Catherine

Electrical Worker Safety Bill Sent to Legal Services for Drafting

Sec. _____ An employer shall require an employee to comply with the following safety requirements while on the job:

(1) The employee shall use approved live line tools when the employee is working on an energized line or conducting object carrying 5,000 or more volts phase to phase.

(2) The employee shall maintain a distance of at least 2.5 feet from an energized line or conducting object carrying 5,000 or more volts phase to phase. The employee shall maintain this distance through the use of approved live line tools.

(3) The employer shall provide the employee with correctly-functioning, approved live line tools for use on the job.

(4) The employer shall ensure that live line tools are visually inspected and wiped clean each day before their use, and if any hazardous defects are indicated such tools shall be removed from service.

(5) The employer shall ensure that live line tools are stored, maintained and used in such a manner as to prevent damage to the tools. Live line tools shall not be used for purposes other than line work. Wood live line tools shall be maintained with a surface coating of varnish or other approved treatment to prevent

the absorption of moisture into the wood. The maintenance, inspection, storage, and use of live line tools shall be in conformance with the methods and standards recommended by the tools' manufacturers.

Sec. -----

(1) For the purposes of this chapter, "live line tool" means hot stick or other barrier to the conduction of electricity.

(2) For the purposes of this chapter, "approved" means the manufacturer certifies the tool does not conduct electricity when it is exposed to the following conditions:

(a) 100,000 volts phase to phase per foot of length for 5 minutes, if the tool is constructed of fiberglass; or

(b) 75,000 volts phase to phase per foot of length for 3 minutes, if the tool is constructed of wood.

Sec. -----

(1) The Department of Labor shall adopt regulations implementing the provisions of this chapter.

(2) An employer who violates the requirements of this chapter may be assessed by the Commissioner of Labor a civil penalty of not more than \$7,000 for each violation.

(3) An employer who wilfully or repeatedly violates a provision of this chapter may be assessed by the Commissioner of Labor a civil penalty of not more than \$70,000 for each violation.

(4) An employer who fails to correct a violation within the period permitted for its correction for which a citation has been issued may be assessed by the commissioner of Labor a civil penalty of not more than \$7,000 for each day during which the failure to correct the violation occurs.

Electrical-Worker Safety Standards

Source

Sec. _____ A person shall require the person's employee to comply with the following safety requirements while on the job:

P.1 (7)(a) (1) The employee and any conducting object shall not be closer to an energized line or conducting object than the distances established in (a), unless the energized line or conducting object in carrying less than 5,000 kilovolts of electricity and the employee is using approved protective equipment in an approved manner.

(a) Voltage Range Phase to Phase Distance

(chart you gave me)

P.1 (9) (2) The employee shall use approved rubber gloves or approved hot sticks when removing a tree limb or conducting object from contact with high voltages, and when a tree limb or conducting object is within the distance established in (1)(a).

P.1 (9) 2nd sentence (3) The employee shall wear approved rubber gloves or use approved hot sticks when the employee is closer to (or can touch) an energized line or conducting object than the distance established in (1)(a).

P.1 (11) (4) The employee may use approved rubber gloves, line hoses, rubber blankets, and other approved protective equipment, as well as approved hot sticks, on an energized line or conducting object carrying less than 5,000 ~~kilov~~ volts of electricity.

P.1 (13) (5) The employee may use conductor support tools such as link sticks, strain carriers, and insulator cradles, if the clear insulation is at least as long as the insulator string or the minimum distance established in (1)(a) for the operating voltage.

P.1, #1 (6) The employee shall not use the live-line, bare-handed technique on an energized line or conducting object carrying 750 or more volts of electricity.

P.1 (8) (7) The employee shall use approved rubber gloves or approved hot sticks when placing protective equipment on or around energized conductors of voltages of 750 to 5,000 volts of electricity.

top of p. 1 handwritten (8) The employee shall use approved hot sticks when the employee is working on an energized line or conducting object carrying 5,000 or more kilovolts of electricity.

Source

P.1 (14) (9) The employee shall maintain a distance of at least ___ feet from an energized line or conducting object carrying 5,000 kilovolts or more of electricity. The employee shall maintain this distance through the use of approved hot line tools.

P.3 (4)(c) (10) The employee shall not use a defective hot line tool. The employee shall mark as defective, and turn in for repair or replacement, any hot line tool which appears defective.

Sec. A person who employs a person to repair, maintain, or install electrical systems shall:

P.3 (4)(b) (1) The employer shall visually inspect, and wipe clean, each hot line tool the employee uses each day, before the tool is used.

P.3 (4)(d) (2) The employer shall inspect all hot line tools and ropes each day before use. Hot line tools and ropes shall be stored and maintained and used in such a manner as to prevent damage. Hot line tools and ropes shall not be used for purposes other than line work. Wood hot sticks shall be maintained with a surface coating of varnish or other approved treatment to prevent the absorption of moisture into the stick. The maintenance, inspection, storage, and use of such equipment shall be in conformance with the methods and standards recognized by manufacturers and the industry.

Definitions

() For the purposes of these sections, "protective equipment" means hot sticks, rubber gloves, line hoses, rubber blankets, guards, or other barriers to the conduction of electricity.

() For the purposes of these sections, "hot line tool" means... ?

P.3 (15) () For the purposes of these sections, "approved" means the manufacturer certifies that the equipment/tool does not conduct electricity when it is exposed to the following conditions:

(a) 100,000 volts of electricity per foot of length for 5 minutes, if the equipment is constructed of fiberglass;

(b) 75,000 volts of electricity per foot of length for 3 minutes, if the equipment is constructed of wood; or

(c) Other tests which equal or exceed (a) and (b).

Source

P.1(12) () For the purposes of these sections, a high voltage switch or disconnect is not considered de-energized if the remainder of the switch or disconnect remains energized, unless approved barriers are erected which will prevent the employee from coming into contact with the remaining energized part.

Sec.3 A person who violates the provisions of Sec.1 or Sec.2 is subject to the following penalties...

* I now realize I left out P.1(10) which says an employee shall not wear rubber gloves while ascending or descending a pole until the employee becomes positioned so that the employee is capable of touching voltages of 750 ~~kV~~ or more.

(4)