

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**  
**7173 HOUSE RESOURCES**

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 is 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 is 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 Draggers 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.

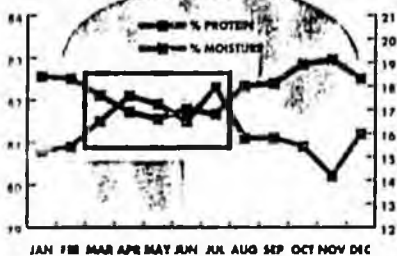
# GROUND FISH QUALITY CHART

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.

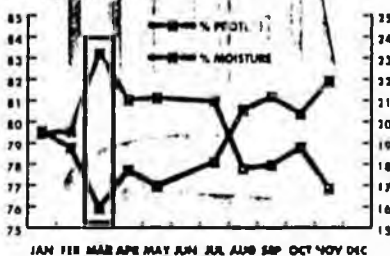


## PROTEIN AND MOISTURE

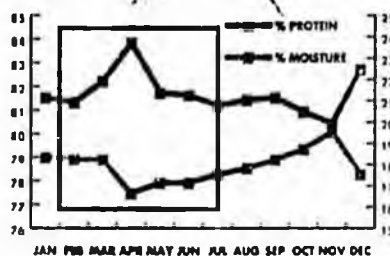
Protein and moisture levels indicate overall quality of the fish. In groundfish, protein and moisture seem to be inversely related. If you measure moisture content, you can accurately predict protein content. Note that pollock doesn't vary in protein and moisture as much as rock sole or cod.



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.

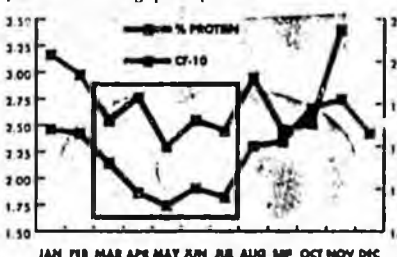


Pacific cod do not retain higher moisture levels than Atlantic cod, as previously thought. Studies reveal Pacific cod recover from spawning and regain their protein levels in mid-May instead of July. For pollock and cod quality, April appears to be the lowest month.

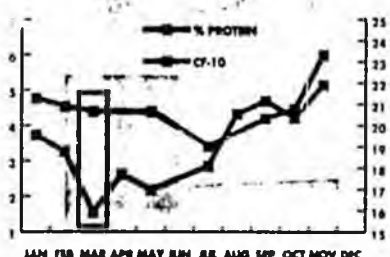


## PROTEIN AND CONDITION FACTOR

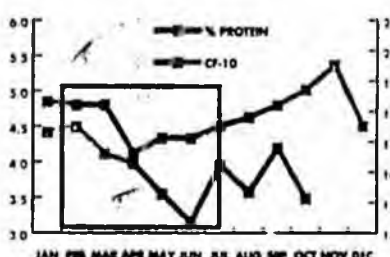
Condition factor is a measure of both health and sexual maturity of the fish. Higher condition factor scores indicate plumpness of fish, reflecting an adequate food supply. Lower scores can mean fish are not feeding, or are using body reserves for gonad production during spawn periods.



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 the development.

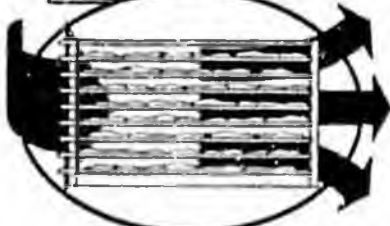
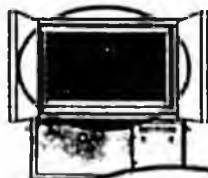


Condition factor of Pacific cod appears at its lowest in June, and recovers slightly more slowly than that of pollock or flatfish. Condition factor improvement seems related to decreases in core temperature through the fall.



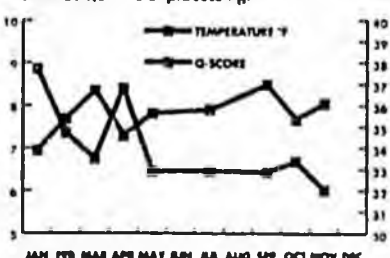
Cold storage is a critical factor in maintaining fish quality. Equipment to measure the efficiency of your freezer system is available and important. Here are some tips:

- 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.

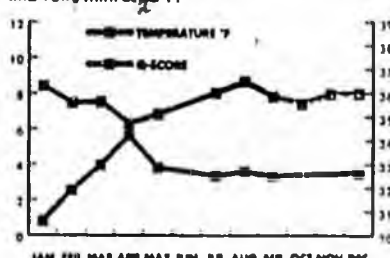


## TEMPERATURE VS. Q-SCORE FOR FLATFISH AND ROUND FISH

Q-score is a subjective measurement of fish odor, 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 68°F; 120 min. at 59°F, 360 min. at 50°F, 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 M.D.F. For more information contact:

# AEDE

# 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.

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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

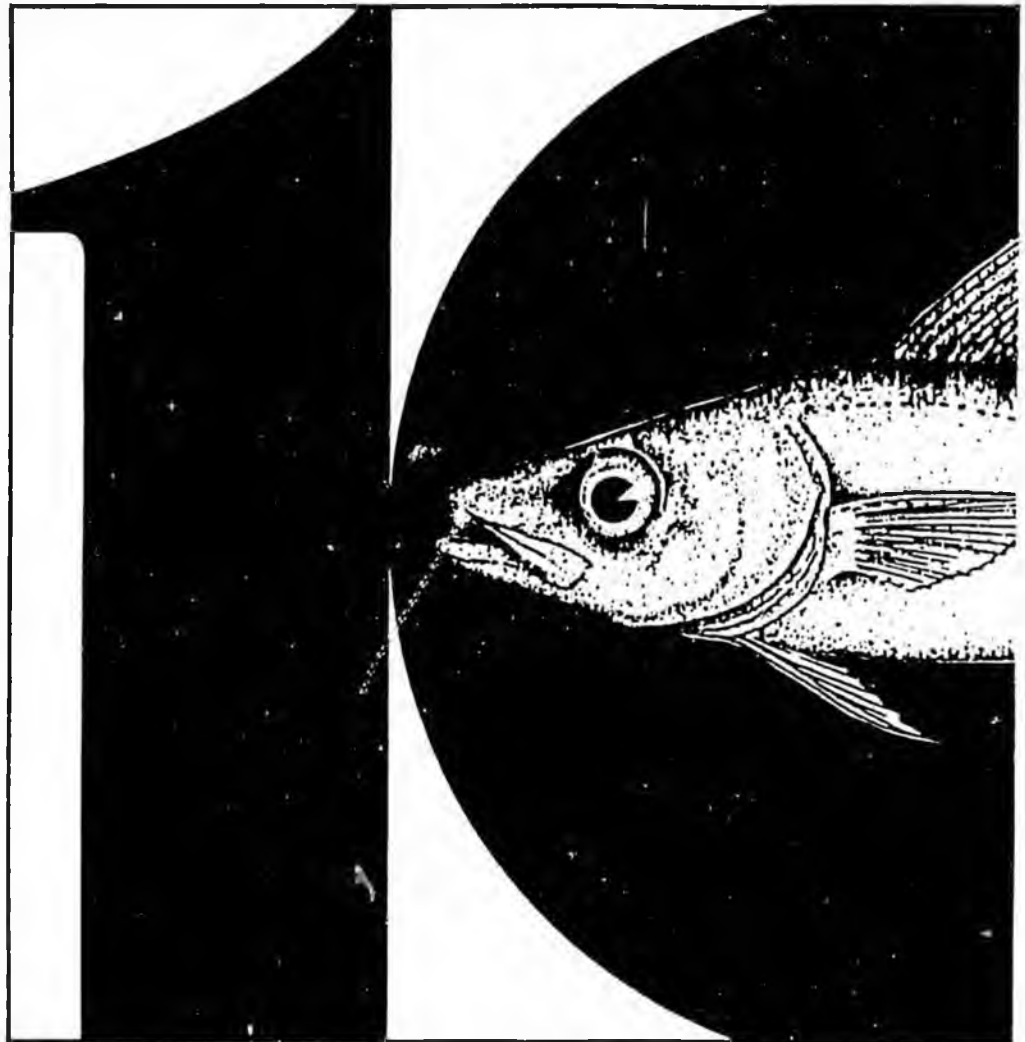
Hank Eaton, F/V Skegih Bay

Phillip McCrudden, McCrudden Fishing Ventures

Rae McFarland, McFarland Foods

Gil Gunderson, Northern Fury Seafoods

William Reinke, Van Camp Seafood



## 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.

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

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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

# 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 Loreita 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.

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, analysis 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 Rhoda, returned to fill in as acting executive director.

# **CORRECTION**

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

# the **LODESTAR** **STAR**

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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

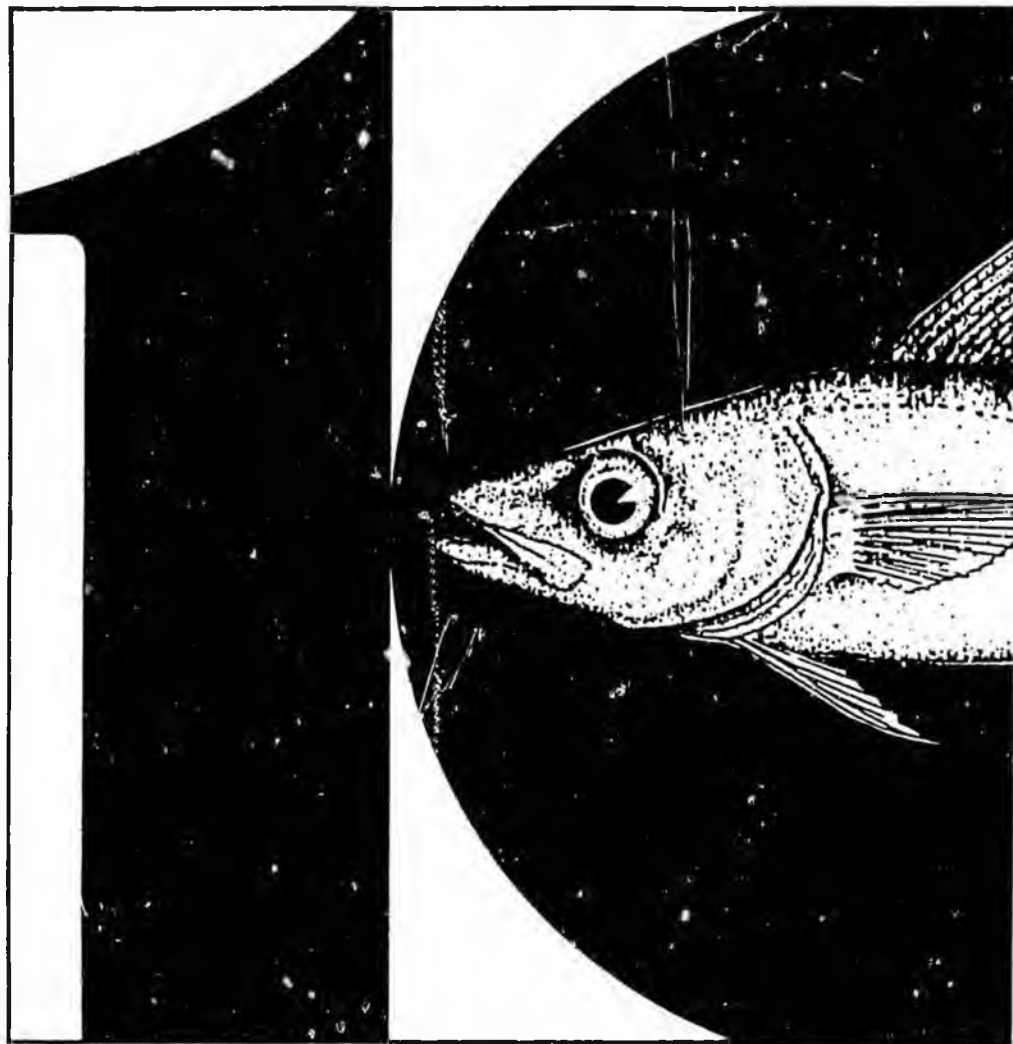
directors, AFDF relies on and gains

much from the direction of Carl

Rosier, Chief of Industry Services

at National Marine Fisheries

Service Alaska Region in Juneau.



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"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 on 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 off-shore, 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 Buse* 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, Greg Favretto, John Enge, Hank Eaton, Dan Flynn, Richard Pace, Ken Alread, 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 *Anchor-age 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 croaker into crab legs" reads the headline; the story told of Nichibei 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 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; 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 SK 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.



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January 23, 1992

Representative David Finkelstein  
Alaska State Legislature  
Post Office Box V  
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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

HB

407



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 16, 1992

*The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182*

*Dear Speaker Grussendorf:*

*Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill providing immunity for the Alaska State Emergency Response Commission (Alaska SERC), local emergency planning committees (LEPCs) established by Alaska SERC, and the Hazardous Substance Spill Technology Review Council (HSSTRC) and their members from civil damages and costs resulting from any acts or omissions occurring within the course and scope of their official duties under AS 46.13, unless the act or omission constitutes gross negligence or intentional misconduct or may be the subject of relief under an applicable federal law.*

*This bill adds a new section to AS 46.13 which at present does not address the question of the liability of the Alaska SERC, LEPCs, or HSSTRC nor the personal liability of the members of these entities.*

*State officials and members of the public serve on Alaska SERC, LEPCs, and HSSTRC. In performing tasks related to hazardous substance emergency planning and preparedness, community right-to-know reporting, toxic chemical release reporting, and the management of hazardous substances, the individuals appointed to these entities serve to protect the health and welfare of the citizens of this state.*

*The potential exposure to liability arising from these statutorily authorized activities may dissuade qualified and otherwise interested members of the public from accepting appointments to the Alaska SERC, LEPCs, and HSSTRC. In order for the*

*The Honorable Ben Grussendorf*

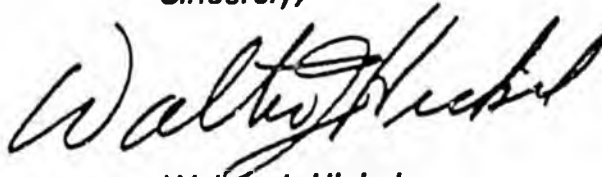
*January 16, 1992*

*Page 2*

*Alaska SERC, LEPCs, and HSSTRC to function effectively and to encourage the participation of qualified individuals, AS 46.13 should provide immunity for these entities and their members for any act or omission occurring within the course and scope of their statutorily authorized activities, except for those acts or omissions which constitute gross negligence or intentional misconduct or which may be the subject of relief under applicable federal law.*

*I urge your prompt consideration and passage of this bill.*

*Sincerely,*

A handwritten signature in cursive script, appearing to read "Walter J. Hickel". The signature is written in dark ink and is positioned above the printed name.

*Walter J. Hickel*  
Governor

Revision Date: \_\_\_\_\_ Department Affected: Environmental Conservation  
 Title: Immunity for SERC, LEPCs, and HSSTRC BRU: Spill Prevention and Response  
 Component: Spill Prevention, Planning and Management  
 Sponsor: Governor  
 Requestor: Governor COMPONENT SERIAL NO. 

1	4	3	0
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EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Janice Adair Phone: 465-5050  
 Division: Commissioner's Office Date: December 10, 1991  
 Approved by Commissioner: Janice Adair for John Sandoe  
 Agency: Department of Environmental Conservation Date: December 10, 1991

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

Revision Date: \_\_\_\_\_  
 Title: An Act providing for immunity for the Alaska Emergency  
 Response Comm. \_\_\_\_\_  
 Sponsor: Rules Committee  
 Requestor: Governor

Department Affected: Administration  
 BRU: Risk Management  
 Component: Risk Management

COMPONENT SERIAL NO. 

0	0	7	1
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Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: No impact on the Division of Risk Management's budget.

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Donald J. Hitchcock  
 Division: Risk Management

Phone: 465-2180  
 Date: 12-10-91

Approved by Commissioner: Nancy Bear Usera  
 Agency: Administration

*Nancy Bear Usera by me*  
 Date: Dec. 16, 1991

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

CONTINUATION OF FISCAL NOTE ANALYSIS  
HB 407

An act providing statutory immunity for the Alaska State Emergency Response Commission and the Hazardous Substance Spill Technology Review Council and their members while acting within the course and scope of their official duties unless gross negligence or intentional misconduct is involved. Gross negligence, intentional misconduct or acts which fall under federal law are excluded from this immunity statute.

This bill will make it easier to get qualified members to serve on these very sensitive and important Commissions. The Division of Risk Management is in favor of this legislation.

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER  
410 WILLOUGHBY AVENUE, SUITE 105  
JUNEAU, AK 99801-1795

Phone: (907) 465-5000  
Fax: (907) 465-5070

January 27, 1992

The Honorable Bill Hudson  
Chairman  
House Special Committee on  
Oil and Gas  
P.O. Box V  
Juneau, AK 99811

Dear Representative Hudson:

HB 407 was recently referred to your committee after introduction by the Governor. This bill would provide immunity to the members of the Alaska State Emergency Response Commission (SERC), the Local Emergency Planning Committees (LEPCs) created under the SERC, and the Hazardous Substance Spill Technology Review Council (HSSTRC or TRC) for their acts or omissions which are in accordance with their official duties, unless the act or omission constitutes gross negligence or intentional misconduct or which may be the subject of relief under an applicable federal law.

As explained in the Governor's transmittal letter, state officials and members of the public serve on the SERC, the LEPCs and the RTC. Each of these entities is charged with tasks relating to hazardous substance emergency planning and preparedness, community right-to-know reporting, toxic substance release reporting, and the management of hazardous substances. The potential exposure to liability arising from these statutorily mandated activities may discourage qualified individuals from accepting appointments to the SERC, LEPCs and RTC.

The success of the SERC, LEPCs and RTC are critical to the success of the State of Alaska in emergency preparedness when dealing with oil spills or other hazardous substance releases. Enclosed herewith is a legal opinion relating to this issue that may be of interest to the members of your committee when reviewing HB 407. We are also enclosing statutes from other states which have adopted this kind of immunity for members of their SERC, and the federal law allowing for citizen suits against members of a SERC. HB 407 would not affect this federal law.

The Honorable Bill Hudson

-2-

January 27, 1992

We respectfully ask that you schedule this bill for a hearing at the earliest possible convenience. We look forward to your favorable action.

If you need any further information, please do not hesitate to contact Janice Adair, the Department's legislative liaison, at 465-5050.

Sincerely,

  
John A. Sandor  
Commissioner

JA/vr (CO-comm\hudson.407)

Enclosures: Legal Opinion  
Statutes

cc: Paul Fuhs, Governor's Office

# MEMORANDUM

State of Alaska

Department of Law

October 29, 1990

Page 1

TO: Hon. Dennis D. Kelso  
Department of Environmental  
Conservation

DATE:

FILE NO.:

TEL. NO.:

Honorable Dennis D. Kelso  
Commissioner  
Department of Environmental  
Conservation

SUBJECT: October 29, 1990

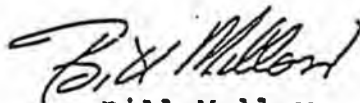
FROM:

RECEIVED

OCT 31 1990

465-3603

Liability of SERC, LEPC  
and HSSTRC members



Bill Mellow  
Assistant Attorney General  
Special Litigation-Juneau

STATE OF ALASKA  
DEPT. OF ENVIRONMENTAL CONSERVATION  
DIVISION OF ENVIRONMENTAL QUALITY

Your opinion request seeks answers concerning potential liability of members of the above identified committees. I could go into a lengthy legal analysis of tort liability exposure, governmental immunities and qualified immunities but time constraints <sup>1/</sup> require that for now the solution to your concerns be met with a general statement of the law plus a state assurance of protection from non-insured liability exposure.

The short answer to liability exposure is that, generally, there is liability exposure for negligence which has been a legal cause of injury unless immunity is granted by law or court decision. Governmental agencies and employees are immune from liability for discretionary function negligence. AS 09.65.070 (municipalities); AS 09.50.250 (state). This form of immunity extends to high level planning activities which probably would be found by our courts to encompass most official actions of SERC, LEPC and HSSTRC members. Additionally, "member[s] of the governing body, a commission, or a citizen's advisory committee of a municipality of the state" are immune from liability for ordinary negligence occurring within the course and scope of official duties. AS 09.17.050.

As you acknowledge in your opinion request letter, liability is mostly hypothetical but the fear is real enough to

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<sup>1/</sup> The file was assigned to me while I was away most of the summer farming in Oregon. I am retiring from state employment at the end of October and thus, I am unable to devote the necessary research time needed for a careful analysis. Additionally, I have been advised by Camille Stephens that, most important, is an assurance of protection which can be given at the November 3, SERC meeting.

RECEIVED

SEP 19 1991

ADEC  
COMMISSIONER'S OFFICE

justify a request for some degree of protection. As above noted, there exists only a slight potential for liability for negligence in planning for and implementation of responses to discharges of oil and hazardous substances. The best way to resolve the fear of liability and the cost of defense against the threat of liability is by contractual or legislative indemnification.

Attached is a proposed memorandum of agreement. The agreement extends a guarantee of defense of claims arising within the authority granted the respective committees and their members by state and federal law. The agreement also extends a guarantee of indemnification for damages for negligence. This memorandum of agreement should quell fears of committee members and will provide interim protection pending legislatively extended protection.

Concerning legislative action, I or my successor will draft a proposed bill which would immunize members from liability but, as you are well aware, such a bill would not easily pass into law and may well be watered down substantially as it winds its way through the hearing committees. I would anticipate that as a part of preparation of an explanation for justification of such a law that an extensive legal opinion memorandum will be prepared. The department's analysis will be provided to you.

Following is a restatement of questions raised by your letter along with an answer.

Question 1. What liability, if any, may exist for the SERC or the Council as state agencies or entities.

Answer. State agencies are liable for non-discretionary negligence. Discretionary (immune) activities are high level planning activities which are determined on a case by case basis. To quote the Alaska Supreme Court, the distinction between planning level (immune) and operational level (not immune) activities depends upon "the type of decision that is being made, examined within an analytical framework which is sensitive to the policies underlying the discretionary function or duty exception." Carlson v. State, 598 P.2d 969, 972 (Alaska 1979).

Question 2. What liability, if any, do the members of the SERC accrue due to their activities, or inactivity, as SERC members? If there is liability, will the state represent and indemnify the members should an award be made?

Answer. Planning decisions by SERC members are usually going to fall within the category of "discretionary" immune

activities. 2/ Where activities or inaction cross the line into operational negligence, members will be protected pursuant to the terms of the Memorandum of Agreement (MOA).

Question 3. If the state will represent and indemnify the SERC members, are there any limits?

Answer. The state will represent, without monetary limit, for ordinary negligence claims occurring within the course and scope of authority granted by law. By way of example, the state would represent the member on a claim that while intoxicated, the member slandered a SERC consultant if the state's initial investigation led to a conclusion that the conduct occurred within the course and scope of official duty but, at most, only ordinary negligence occurred. If the state investigative determination was proven to be wrong concerning the degree of negligence, the state would not pay a judgment where the fact finder determined that the defendant's conduct rose to the level of gross negligence or intentional misconduct.

Question 4. [Are the answers to questions 2 and 3 the same as to the HSSTRC and its members?]

Answer. Yes.

Question 5. Where a LEPC is formed under the auspices of a local government, does the local government run the risk of liability?

Answer. Yes, the local government runs the same risk as the state but the MOA will protect against non-insured liability.

Question 6. What are the liability risks to an LEPC or its individual members?

Answer. If a LEPC is "a commission, or a citizen's advisory committee of a municipality of the state" its members are immune for ordinary negligence for action or inaction within the course and scope of official duties but are subject to liability for gross negligence. AS 09.17.050(a)(4). If a LEPC is a state agency commission the answer to question 2 would be applicable along with the caveat of footnote 2 concerning "employees." The

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2/ AS 09.50.250 protects "employees" of the state. It is probable that the court would broadly construe "employee" to include the seven public members listed as potential appointees in AS 46.13.010.

Hon. Dennis D. Kelso  
Department of Environmental  
Conversation

October 29, 1990  
Page 4

MOA provides indemnification for those circumstances where otherwise there would be liability exposure because the commission is a state rather than municipal agency or where the individual defendant happens to be a non-governmental person.

Question 7. If there are liability risks associated with activities of an LEPC, will the State represent and indemnify the LEPC, the local government under which it is formed, and its members? Are there limits to the coverage for gross negligence or intentional acts? If so what are examples of acts that might trigger a limitation on coverage?

Answer. The MOA provides for representation of the LEPC and its members to the extent that no insurer has coverage obligations. If a local government is the alter ego of the LEPC, the municipality would also be defended where the plaintiff named the municipality as a defendant. The state will represent where there has been a determination that, at most, the defendant's conduct was only ordinary negligence but will not indemnify for conduct found to constitute gross negligence or intentional misconduct.

It is not possible to predict the degree of negligence for any specific type of conduct. Negligence may be ordinary, gross, or willful. Ordinary negligence is the failure to use ordinary care. Gross negligence is a failure to exercise even that care which a careless person would use, while willful negligence describes intentional conduct in disregard of an obvious risk occurring under circumstances that make it probable that harm to the plaintiff will result. W. Prosser, The Law of Torts § 180-85 (4th ed. 1971).

WGM:jal  
Attachment

cc w/enc.: Camille Stephens

## PROPOSED MEMORANDUM OF AGREEMENT

1. The State agrees to defend members of the State Emergency Response Commission (SERC), SERC approved Local Emergency Planning Committees (LEPCs) and their members and members of the Hazardous Substance Spill Technology Review Council (HSSTRC), against all non-insured claims arising from acts or omissions occurring within the course and scope of statutorily authorized activities on behalf of SERC, SERC approved LEPCs, and the HSSTRC. The State further agrees to indemnify SERC members, SERC approved LEPCs and their members, and HSSTRC members for non-insured judgments against SERC members, approved LEPCs and their members, and HSSTRC members with the exception that the State will not indemnify for judgments for damages resulting from gross negligence or intentional misconduct.

2. As used in paragraph 1 of this agreement, "non-insured claims" and "non-insured judgments" refer to all or a portion of a claim or judgment for which the defendant or the defendant's employer are not protected by a policy of insurance. Where a portion of a claim is insured, the State will endeavor to arrive at a cooperative agreement with the insurer for proration of costs and assignment of counsel. In the event of inability to reach such agreement, the State will reimburse the defendant for non-insured costs and attorney fees incurred in defense of claims.

3. A defendant against whom a claim is made must submit a written request for defense with the State of Alaska, Division

of Risk Management within 30 days of knowledge or receipt of a claim. The State will appear and defend the defendant unless after investigation it is determined that the claim does not arise out of acts or omissions occurring within the course and scope of statutorily authorized activities or that the acts or omissions complained of amounted to gross negligence or willful misconduct, in which case the State may reject defense of the claim. The State's obligation to defend and indemnify is further conditioned upon cooperation of the defendant in defense against the claim. Failure to provide timely notice of a claim, conduct prejudicial to the State's position or failure to cooperate in defense voids the State's obligations under this agreement.

4. It is understood that there currently exists genuine liability concerns by persons who contribute their time and service to the SERC, LEPCs and the HSSTRC. By providing protection against liability costs, this memorandum of agreement is intended as an interim method of insuring that such persons will be willing to provide assistance to the SERC, LEPCs and the HSSTRC. It is further understood that the State will present a bill and seek legislation which will provide defense and indemnification similar to that provided by this agreement. This memorandum of agreement may be revoked by the State upon 30 days notice.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Douglas B. Baily  
Attorney General

DATED: \_\_\_\_\_

\_\_\_\_\_  
Division of Risk Management

# MEMORANDUM

State of Alaska

RECEIVED  
JULY 30 1980  
JUL 31 1980

TO: Douglas B. Baily  
Attorney General  
Department of Law

DATE:

FILE NO:

TELEPHONE NO:

STATE OF ALASKA  
DEPT. OF ENVIRONMENTAL CONSERVATION  
DIVISION OF ENVIRONMENTAL QUALITY

FROM: Dennis D. Kelso  
Commissioner  
Department of Environmental  
Conservation

SUBJECT: Liability of State,  
Members of the State  
Emergency Response  
Commission (SERC),  
Local Emergency  
Planning Committees  
(LEPCs) and the  
Hazardous Substance  
Spill Technology  
Review Council

On behalf of the State Emergency Response Commission (SERC), I am requesting an opinion concerning the potential liability arising from the activities of the SERC, the Hazardous Substance Spill Technology Review Council, or the Local Emergency Planning Committees (LEPCs). Members of the SERC are appointed by the Governor under the Superfund Amendments and Reauthorization Act, Title III (SARA Title III), Administrative Order 103, and House Bill 566 which passed last session. The SERC is required by law to review and approve membership on the LEPCs. The Hazardous Substance Spill Technology Review Council was established within the SERC by HB 566. Seven of its nine members are appointed by the Governor.

The SERC and LEPCs have many planning and coordinating functions imposed by federal and recently passed state statutes (AS 46.13). However, neither has any direct administrative function. Response to hazardous substance and oil spill incidents remains the responsibility of Department of Environmental Conservation (DEC), the Department of Military and Veterans Affairs (DMVA), and other local, state, and federal agencies.

For SERC, the LEPCs, and the Council to be effective in their mission, there must be a large pool of potential members representing the various roles and expertise necessary to prepare an emergency response plan for hazardous substance and oil spill incidents. This is especially true at the local level. SERC policy has encouraged LEPCs to establish strong ties with, and even organize under the auspices of, a local government and the strive for the broadest possible representation on the committee. In many cases, LEPC membership exceeds the minimum number of participants mandated by state and federal law.

This policy encourages the level of public participation necessary to effectively carry out the goals of SARA Title III and HB 566. However, it is jeopardized by growing fears on the part of the local governments and the LEPC members about what, if any, liability may be attached to membership on an LEPC. This uncertainty now extends to the SERC members as well and impedes our ability to accomplish our statutory duties. Although members of the Council have not yet been appointed, it is reasonable to assume the same questions will arise in relation to its activities and members. This concern may result in some candidates being unwilling to accept appointment without reassurance about the degree of potential liability they may be assuming.

Before narrowing this request to the specific questions, I want you to know that I appreciate the likelihood that most fear of liability is hypothetical. However, the fear is real and no one wants to take any significant chance, or perhaps even a slight chance, of being sued for damages associated with a hazardous substance or oil spill incident. The cost of defense alone, as we well know could bankrupt anyone.

Specifically our questions are:

1. What liability, if any, may exist for the SERC or the Council as state agencies or entities?
2. What liability, if any, do the members of the SERC accrue due to their activities, or inactivity, as SERC members? If there is liability, will the state represent and indemnify the members should an award be made? (It is important to remember that some members are appointed to represent business, local governments, and other specific interests.)
3. If the state will represent and indemnify the SERC members, are there any limits, (for example gross negligence or intentional acts)? If there are such limits, please give examples of what may constitute such acts.
4. Questions 2 and 3 also pertain to the Hazardous Substance Spill Technology Review Council and its members.
5. Where an LEPC is formed under the auspices of a local government, does the local government run the risk of liability?
6. What are the liability risks to an LEPC or its individual members?

July 30, 1990

7. If there are liability risks associated with activities of an LEPC, will the State represent and indemnify the LEPC, the local government under which it is formed, and its members? Are there limits to the coverage for gross negligence or intentional acts? If so what are examples of acts that might trigger a limitation on coverage.

I have not tried to list the duties of the SERC, LEPCs or Council, although it is apparent that the answers to the questions are driven by the duties. The best source is the laws themselves, especially since SARA Title III is still relatively new and HB 566 was just passed by the Governor.

Should your review suggest there is any significant risk of liability for the members of any of these three entities, especially if the state will not fully represent and indemnify them, I would appreciate suggestions for a legislative "fix".<sup>signed</sup> The goals of SARA Title III and HB 566 cannot be met if the participants in the activities, local governments, or the State are subject to liability for their participation.

There are voluminous materials concerning SERC and SARA Title III that may be relevant to liability issues. An attached December 28, 1987, memo from a Kentucky Assistant Attorney General may be particularly helpful. Also attached are memos from two LEPC chairs expressing their liability concerns.

Please feel free to contact me or Camille Stephens of DEC's Spill Prevention, Planning and Management staff at 465-2630.

Thank for your assistance with this important matter.

Attachments

bcc: Camille Stephens

MEMORANDUM

TO: COLONEL MIKE MOLLOY  
CHAIRMAN, KENTUCKY EMERGENCY RESPONSE COMMISSION

FROM: GREG HOLMES, ASSISTANT ATTORNEY GENERAL *GH*

RE: ASSESSMENT OF LIABILITY OF STATE COMMISSION AND  
LOCAL COMMITTEES APPOINTED PURSUANT TO SARA

DATE: DECEMBER 28, 1987

-----

At your request I have prepared the following assessment of the potential liability of the state commission and the local committees appointed pursuant to Title III of the Super Fund Amendments and Reauthorization Act of 1986 (hereinafter "SARA"). This assessment constitutes my legal opinion based on an analysis of existing statutes and case law.

The potential liability of the commission or committee must be thought of in two distinct ways: the liability of the commission or committee itself and the liability of the individual commissioners or committee members. It appears that the commission or committee itself will not be liable unless it fails to comply with a mandatory requirement spelled out in Title III of SARA. For example, should the commission or a committee fail to comply with the time table mandated in the federal statute, and should any future damages to any person or company accrue from such failure, there could be potential liability under the provisions of Title III. Title III does authorize persons to seek injunctive relief (that is orders from the federal courts requiring the commission or committee to undertake a mandated activity or to refrain from a forbidden activity) in matters concerning the enforcement of the provisions of the statute.

With regard to the potential liability of individual commission or committee members, all attorneys with whom I have spoken as well as my own research indicate that while we cannot be certain, it appears at this point that individual commission and committee members would not be liable unless: a) they fail to comply with the mandated requirement as discussed in the paragraph above; and b) such failure was due to gross negligence or willful misconduct.

Finally, it is important to note that commission and committee members, being appointed pursuant to state law to carry out state-mandated functions, are agents of the state with all the attendant immunities from liability conferred by law upon appointees to other state boards, commissions, and agencies.

TO: Commissioner Dennis Kelso, Chair  
State Emergency Response Commission

FROM: Steven O'Connor, Interim Chair  
Kenai Peninsula Local Emergency Planning Committee

SUBJ: LEPC Budget and concerns

DATE: January 10, 1990

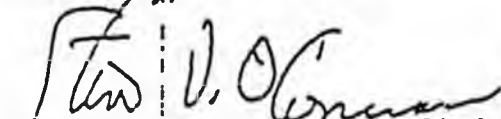
The Kenai Peninsula Local Emergency Planning Committee would like to submit a draft budget for consideration by the State Emergency Response Commission. This budget is just a preliminary draft as we have not had time to develop a workplan. As soon as the workplan is complete we will have a better idea of our fiscal needs.

Our LEPC has met and established a steering committee to draft bylaws and look at short term work objectives. The next full meeting of the Kenai Peninsula LEPC is scheduled for January 22, 1990. At that meeting the draft bylaws will be presented for consideration along with this budget. Dave McDowell is also scheduled to review the SERC workplan with the group with an emphasis on how the SERC workplan will provide guidance for the development of our local workplan. I have attached an agenda for your consideration.

Also attached are some concerns that have come up that the LEPC would appreciate your office or the State Emergency Response Commission addressing for us. These questions may have already been addressed in other areas. If you have any questions to clarify the attached questions please feel free to call Ross Kinney, Finance Director or Phil Reeves, Assistant Borough Attorney for the Kenai Peninsula Borough at 262-4441.

At this time I intend to be present at the SERC meeting scheduled for January 12, 1990 to answer any questions. Thank you for your time and consideration.

Sincerely,

  
Steven O'Connor, Interim Chair  
Kenai Peninsula Local Emergency  
Planning Committee

cc: Linda VanHouten  
cc: Dave McDowell

enclosures (5)

# **CORRECTION**

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

MEMORANDUM

TO: COLONEL MIKE MOLLOY  
CHAIRMAN, KENTUCKY EMERGENCY RESPONSE COMMISSION

FROM: GREG HOLMES, ASSISTANT ATTORNEY GENERAL *gh*

RE: ASSESSMENT OF LIABILITY OF STATE COMMISSION AND  
LOCAL COMMITTEES APPOINTED PURSUANT TO SARA

DATE: DECEMBER 28, 1987

-----

At your request I have prepared the following assessment of the potential liability of the state commission and the local committees appointed pursuant to Title III of the Super Fund Amendments and Reauthorization Act of 1986 (hereinafter "SARA"). This assessment constitutes my legal opinion based on an analysis of existing statutes and case law.

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With regard to the potential liability of individual commission or committee members, all attorneys with whom I have spoken as well as my own research indicate that while we cannot be certain, it appears at this point that individual commission and committee members would not be liable unless: a) they fail to comply with the mandated requirement as discussed in the paragraph above; and b) such failure was due to gross negligence or willful misconduct.

Finally, it is important to note that commission and committee members, being appointed pursuant to state law to carry out state-mandated functions, are agents of the state with all the attendant immunities from liability conferred by law upon appointees to other state boards, commissions, and agencies.

# NORTH SLOPE BOROUGH

BARROW GAS FIELD DEVELOPMENT PROJECT  
P.O. Box 1120 Barrow, Alaska 99723 .

Phone: 907-852-7779  
Fax 907-852-8571



April 3, 1990

Ms. Linda Van Houten  
SARA Title III Coordinator  
Department of Environmental Conservation  
P.O. Box 0  
Juneau, Alaska 99811-1800

Dear Ms. Van Houten;

The Prudhoe Bay Area LEPC membership is concerned about the area of liability in regards to their participation and activity within the framework of the LEPC.

As coordinator, I have been requested to query SERC and relay a response regarding potential liability in the following areas:

1. What is the nature of liability coverage for LEPC members?
2. What is the extent of liability coverage?
3. Who is responsible for liability coverage for members?
4. When is the membership covered and how?
5. Is the membership covered professionally and personally?
6. Is the membership covered against civil or criminal liability?

I understand that the question of liability for LEPC membership is an area yet to be completely clarified. However, the subject remains a timely concern for the Prudhoe Bay Area membership. I appreciate your address to this topic. Our next meeting is scheduled for April 23, 1990. If your schedule permits, please respond before this date. If I can be of further assistance to you, please contact me at your convenience, 852-2611, ext. 247.

Sincerely,

T.R. Rail  
Coordinator, Prudhoe Bay Area LEPC

cc: David McDowell ✓  
Division of Emergency Services

TO: Commissioner Dennis Kelso, Chair  
State Emergency Response Commission

FROM: Steven O'Connor, Interim Chair  
Kenai Peninsula Local Emergency Planning Committee

SUBJ: LEPC Budget and concerns

DATE: January 10, 1990

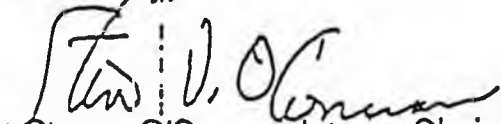
The Kenai Peninsula Local Emergency Planning Committee would like to submit a draft budget for consideration by the State Emergency Response Commission. This budget is just a preliminary draft as we have not had time to develop a workplan. As soon as the workplan is complete we will have a better idea of our fiscal needs.

Our LEPC has met and established a steering committee to draft bylaws and look at short term work objectives. The next full meeting of the Kenai Peninsula LEPC is scheduled for January 22, 1990. At that meeting the draft bylaws will be presented for consideration along with this budget. Dave McDowell is also scheduled to review the SERC workplan with the group with an emphasis on how the SERC workplan will provide guidance for the development of our local workplan. I have attached an agenda for your consideration.

Also attached are some concerns that have come up that the LEPC would appreciate your office or the State Emergency Response Commission addressing for us. These questions may have already been addressed in other areas. If you have any questions to clarify the attached questions please feel free to call Ross Kinney, Finance Director or Phil Reeves, Assistant Borough Attorney for the Kenai Peninsula Borough at 262-4441.

At this time I intend to be present at the SERC meeting scheduled for January 12, 1990 to answer any questions. Thank you for your time and consideration.

Sincerely,



Steven O'Connor, Interim Chair  
Kenai Peninsula Local Emergency  
Planning Committee

cc: Linda VanHouten  
cc: Dave McDowell

enclosures (5)

QUESTIONS FOR SERC REGARDING LEPC FINANCING  
AND LIABILITIES OF MEMBERS OF A LEPC

1. Will the SERC account for and allocate funding/expenditures of the LEPC's or will the LEPC's control their own finances? If the latter, we propose that the Borough administer LEPC finances as an agency fund; i.e., account for receipts and disbursements of funds based on the LEPC's budget which remains under the LEPC's discretion and control. This will allow the LEPC to meet the State and Federal single-audit requirements without additional expense.

2. LEPC members are apparently covered by the State of Alaska workmen's compensation coverage under AS 23.30.242. Will volunteer subcommittee members of the LEPC who are not LEPC members; approved by the State be covered by State worker's comp policies, and what will be the procedure for notification and acceptance of such subcommittee members by the CERC for such compensation coverage?

3. Are LEPC members (and subcommittee members) covered under the State's general liability coverage particularly for automobile liability? Are there any particular insurance requirements which the State will impose upon LEPC and subcommittee members for utilization of their personal automobiles in connection with their LEPC service?

4. Are LEPC members covered by any state public officials liability coverage? Will the State commit to providing legal defense for LEPC members in the event they are named defendant in a legal action based upon their LEPC service?

Comment. AS 09.50.250 provides immunity for the State and its agencies from tort actions arising from discretionary activities. This is obviously a limited immunity, and our Borough Risk Management policy is to insure our elected officials who are covered by a similar (but broader) municipal immunity under AS 09.65.070. AS 26.20.140 provides a much broader immunity for the State, its agents and representatives in activities under that chapter on civil defense. There is no similar immunity provided under AS 26.23 which is the Alaska Disaster Act. While we are aware that some people have cited AS 26.20.140 in discussing immunity provisions for disaster actions, we question this interpretation particularly considering AS 26.23.210 which sets out the relationship of the Alaska Disaster Act to the civil defense statute by stating: "The Alaska civil defense statute (AS 26.20), applies to preparedness, response, and recovery from disasters caused by enemy attack and other hostile military or paramilitary action. The provisions of this chapter [AS 26.23], other than AS 26.23.130, apply to preparedness, response, and recovery in cases of natural and nonmilitary man-made disasters." It would seem that AS 26.23.210 expressly denies application of AS 26.20.140 immunities to actions undertaken under AS Chapter 26.23.

corporation, is an employee of the corporation under this chapter. However, an executive officer of a corporation may waive coverage under this chapter, subject to the approval of the commissioner of labor, notwithstanding AS 23.30.245(b). Notwithstanding any other provision of this chapter, an executive officer of a municipal corporation or of a charitable, religious, educational, or other nonprofit corporation may be brought within the coverage of its insurance contract by the corporation by specifically including the officer in the contract of insurance. The election to bring an executive officer within the coverage continues in force for the period the contract of insurance is in effect. During that period an executive officer brought within the coverage of the insurance contract is an employee of the corporation under this chapter. (§ 2(8) ch 193 SLA 1959; am ch 146 SLA 1962)

## NOTES TO DECISIONS

Stated in *Gordon v. Burgess Constr. Co.*, Sup. Ct. Op. No. 401 (File No. 716), 425 P.2d 602 (1967).

Cited in *Gordon v. Burgess Constr. Co.*, Sup. Ct. Op. No. 401 (File No. 716), 425 P.2d 602 (1967).

Collateral references — 81 Am. Jur. 2d, *Workmen's Compensation*, § 177.

**Sec. 23.30.241. Special officers as employees.** (2) A special officer appointed under AS 18.65.010(a) is considered an employee under this chapter only when the person is actually traveling or working as a special officer. The weekly wage earned in the special officer's regular employment shall be used in computing the amount of compensation to be awarded. If a special officer has no regular employment, the minimum wage paid a full-time state trooper shall be used in computing the amount of compensation to be awarded.

(b) Annual appropriations to fund the coverage provided for in (a) of this section shall be provided for in the budget of the Department of Public Safety. (§ 1 ch 6 SLA 1978)

**Sec. 23.30.242. Members of state boards and commissions as employees.** (2) A member of a state board or commission is considered an employee under this chapter only while the member is actually traveling or working as a member of the board or commission. The maximum weekly wage shall be used in computing the amount of compensation to be awarded.

(b) Annual appropriations to fund the coverage provided for in (a) of this section shall be provided for in the budget of the Office of the Governor. (§ 1 ch 105 SLA 1969; am § 54 ch 69 SLA 1970)

## MEMORANDUM OF AGREEMENT

### 1. Recitals

There currently exist liability concerns by persons who contribute their time and service to the State Emergency Response Commission ("SERC"), Local Emergency Planning Committees ("LEPCs"), and the Hazardous Substance Spill Technology Review Council ("HSSTRC"). By providing protection against liability costs, this memorandum of agreement is intended as an interim method of insuring that such persons will be willing to provide assistance to the SERC, LEPCs, and the HSSTRC. This agreement is entered into between the Department of Law, the Division of Risk Management in the Department of Administration, and the Commissioner of Environmental Conservation on behalf of the SERC, LEPCs, and the HSSTRC.

### 2. State Defense of Claims

The State of Alaska (State) agrees to defend the SERC and its members, SERC-approved LEPCs and their members, and the HSSTRC and its members against all non-insured claims arising from their acts or omissions occurring within the course and scope of statutorily authorized activities on behalf of the SERC, SERC-approved LEPCs, and the HSSTRC. When defense is provided under this agreement, the State will select and retain counsel to represent the members and entities covered by this agreement. The State will not be obligated to pay expenses of defense counsel

independently retained by members and entities without the approval of the Division of Risk Management.

3. Indemnification

The State agrees to indemnify the SERC, SERC-approved LEPCs, the HSSTRC, and their members for non-insured judgments arising from their acts or omissions occurring within the course and scope of statutorily authorized activities on behalf of the SERC, SERC-approved LEPCs, the HSSTRC, except that the State will not indemnify for judgments for damages resulting from gross negligence or intentional misconduct, or for punitive damages.

4. Definition of Non-Insured Claims and Judgments

As used in this agreement, "non-insured claims" and "non-insured judgments" refer to all or a portion of a claim or judgment (including a settlement) for which a member or entity covered by this agreement or a member's employer is not protected by a policy of insurance. Where a portion of a claim is insured, the State will endeavor to arrive at a cooperative agreement with the insurer for proration of defense costs and assignment of defense counsel. In the event of inability to reach such agreement, the State will, with prior written approval, reimburse the member covered by this agreement for reasonable non-insured defense costs and attorney fees incurred in defense of claims.

5. Notice of Claim

A member or entity covered by this agreement against whom a claim is made must submit a written request for defense to the State of Alaska, Division of Risk Management within 30 days of knowledge or receipt of a claim.

6. Conditions

The State will appear and defend a member or entity covered by this agreement unless and until it is determined by the State that the claim does not arise out of acts or omissions occurring within the course and scope of statutorily authorized activities on behalf of the SERC, SERC-approved LEPCs, or the HSSTRC, or that the acts or omissions complained of amounted to gross negligence or willful misconduct, in which case the State may reject defense of the claim. The State's obligation to defend and indemnify is further conditioned upon cooperation of the member or entity in defense against the claim. The member or entity shall not, except at their own cost, admit liability, voluntarily make any payment, assume any obligation, or incur any expense, without prior approval of the Division of Risk Management. Failure to provide timely notice of a claim, conduct prejudicial to the State's position, or failure to cooperate in defense voids the State's obligations under this agreement.

7. Recision of this Agreement

This memorandum of agreement may be revoked by the State upon 30 days notice to the entities covered by this agreement.

DATED: 6-12-91

Charles E. Cole

Charles E. Cole  
Attorney General  
Department of Law

DATED: 6/13/91

Brad Thompson

Brad Thompson, Deputy Director  
Division of Risk Management  
Department of Administration

DATED: 6/13/91

John Sandor

John Sandor  
Commissioner  
Department of Environmental  
Conservation

paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Oct. 17, 1986, P. L. 99-499, Title III, § 325, 100 Stat. 1753.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Act Oct. 17, 1986, P. L. 99-499, § 4, 100 Stat. 1614, which appears as 42 USCS § 9601 note, provides that this section is effective on enactment on Oct. 17, 1986.

#### 11046. Civil actions

*SERC Liability under Federal law*

a) Authority to bring civil actions. (1) Citizen suits. Except as provided in subsection (e), any person may commence a civil action on his own behalf against the following: \*

(A) An owner or operator of a facility for failure to do any of the following:

(i) Submit a followup emergency notice under section 304(c) [42 USCS § 11004(c)].

(ii) Submit a material safety data sheet or a list under section 311(a) [42 USCS § 11021(a)].

(iii) Complete and submit an inventory form under section 312(a) [42 USCS § 11022(a)] containing tier I information as described in section 312(d)(1) [42 USCS § 11022(d)(1)] unless such requirement does not apply by reason of the second sentence of section 312(a)(2) [42 USCS § 11022(a)(2)].

(iv) Complete and submit a toxic chemical release form under section 313(a) [42 USCS § 11023(a)].

(B) The Administrator for failure to do any of the following:

(i) Publish inventory forms under section 312(g) [42 USCS § 11022(g)].

(ii) Respond to a petition to add or delete a chemical under section 313(e)(1) [42 USCS § 11023(e)(1)] within 180 days after receipt of the petition.

(iii) Publish a toxic chemical release form under 313(g) [42 USCS § 11023(g)].

(iv) Establish a computer database in accordance with section 313(j) [42 USCS § 11023(j)].

(v) Promulgate trade secret regulations under section 322(c) [42 USCS § 11042(c)].

(vi) Render a decision in response to a petition under section 322(d) [42 USCS § 11042(d)] within 9 months after receipt of the petition.

(C) The Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 324(a) [42 USCS § 11044(a)].

(D) A State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 312(e)(3) [42 USCS § 11022(e)(3)] within 120 days after the date of receipt of the request.

(2) State or local suits. (A) Any State or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

(i) Provide notification to the emergency response commission in the State under section 302(c) [42 USCS § 11002(c)].

(ii) Submit a material safety data sheet or a list under section 311(a) [42 USCS § 11021(a)].

(iii) Make available information requested under section 311(c) [42 USCS § 11021(c)].

(iv) Complete and submit an inventory form under section 312(a) [42 USCS § 11022(a)] containing tier I information unless such requirement does not apply by reason of the second sentence of section 312(a)(2) [42 USCS § 11022(a)(2)].

(B) Any State emergency response commission or local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 303(d) [42 USCS § 11003(d)] or for failure to submit tier II information under section 312(e)(1) [42 USCS § 11022].

(C) Any State may commence a civil action against the Administrator for failure to provide information to the State under section 322(g) [42 USCS § 11042(g)].

(b) Venue. (1) Any action under subsection (a) against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2) Any action under subsection (a) against the Administrator may be brought in the United States District Court for the District of Columbia.

(c) Relief. The district court shall have jurisdiction in actions brought under subsection (a) against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) against the Administrator to order the Administrator to perform the act or duty concerned.

(d) Notice. (1) No action may be commenced under subsection (a)(1)(A) prior to 60 days after the plaintiff has given notice of the alleged

violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) No action may be commenced under subsection (a)(1)(B) or (a)(1)(C) prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(e) **Limitation.** No action may be commenced under subsection (a) against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act [42 USCS §§ 11001 et seq.] with respect to the violation of the requirement.

(f) **Costs.** The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) **Other rights.** Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).

(h) **Intervention.** (1) By the United States. In any action under this section the United States or the State, or both, if not a party, may intervene as a matter of right.

(2) By persons. In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

(Oct. 17, 1986, P. L. 99-499, Title III, § 326, 100 Stat. 1755.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

**Explanatory notes:**

Brackets are inserted around the first period in subsec. (a)(2)(A)(iv) to indicate the probable intent of Congress to omit such punctuation.

**Effective date of section:**

Act Oct. 17, 1986, P. L. 99-499, § 4, 100 Stat. 1614, which appears as 42 USCS § 9601 note, provides that this section is effective on enactment on Oct. 17, 1986.

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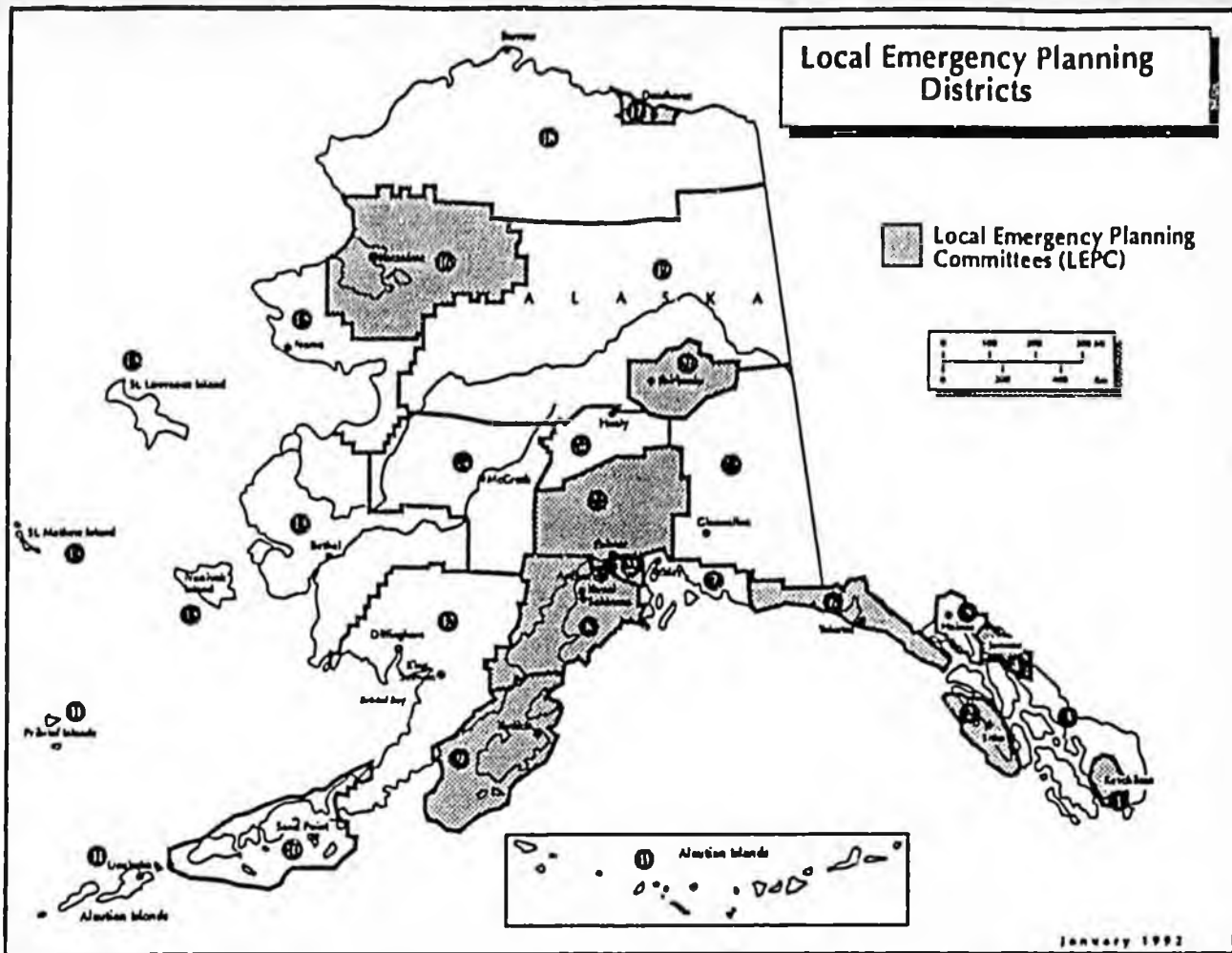
(Commissioner representative)  
Nelda Warkentin, Program Manager  
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#### Staff

Amy Skilbred, SERC Coordinator  
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P.O. Box O  
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PH: 465-5220  
FAX: 465-5244



Map Key	Local Emergency Planning District (LEPD)	Principal City	LEPC appointed by SERC
1	KETCHIKAN GATEWAY BOROUGH	Ketchikan	April 4, 1991
2	CITY & BOROUGH OF SITKA	Sitka	May 14, 1990
3	Southeast	Juneau	
4	CITY AND BOROUGH OF JUNEAU	Juneau	January 29, 1992
5	Lynn Canal	Haines	
6	CITY OF YAKUTAT	Yakutat	September 18, 1989
7	Prince William Sound	Valdez	
8	KENAI PENINSULA BOROUGH	Soldotna	June 9, 1989
9	KODIAK ISLAND BOROUGH	Kodiak	June 9, 1989
10	Aleutians East Borough	Sand Point	
11	Aleutian Islands	Unalaska	
12	Bristol Bay	Dillingham	
13	Yukon Delta	Bethel	
14	Southwestern Interior	McGrath	
15	Northwestern Interior	Noorvik	
16	NORTHWEST ARCTIC BOROUGH	Katlovik	June 14, 1991
17	PRUDHOE BAY	NA	June 14, 1991
18	North Slope Borough	Barrow	
19	Interior Alaska	Fairbanks	
20	FAIRBANKS NORTHSTAR BOROUGH	Fairbanks	June 9, 1989
21	MATANUSKA-SUSITNA BOROUGH	Palmer	June 14, 1991
22	MUNICIPALITY OF ANCHORAGE	Anchorage	June 14, 1991
23	Southeastern Interior	Chenaassen	
24	Denali Borough	Healy	

## Approved LEPCs In Alaska

LEPC	Members	Chair
Greater Ketchikan	13	Mike Holman
City and Borough of Sitka	21	Nancy Hope
City and Borough of Juneau	20	Lissa Nelson Barnaby Dow
City of Yakutat	14	Larry Powell
Kenai Peninsula Borough	30	Keith Laurie
Kodiak Island Borough	22	Jerome Selby
Northwest Arctic Borough	24	Ron Monson
Prudhoe Bay	13	Gary Stewart
Fairbanks North Star Borough	22	Mike Oden
Matanuska-Susitna Borough	21	James MacIntosh
Municipality of Anchorage	18	Bruce Harding

## CURRENT MEMBERSHIP

Revision Date: 5/24/91

BOARDS AND COMMISSIONS CONTACT ROSTER  
HAZARDOUS SUBSTANCE SPILL TECHNOLOGY REVIEW COUNCIL

<u>MEMBER</u>	<u>APPT</u>	<u>RAPPT</u>	<u>RAPPT</u>	<u>TERM</u>
Randy Bayliss 119 Seward Street, No. 10 Juneau 99801 (H) 364-3259 (W) 586-6813 (Fax) 536-6819 Public/Restricted/ 1st JD	90/10/30	0/00/00	0/00/00	91/09/24
Edward J. Brown Water Research Center-UAF Fairbanks 99775-1760 (H) (W) 474-7350 (Fax) 474-6087 University of Alaska Rep.	90/10/30	0/00/00	0/00/00	91/09/24
Dr. Luis Proenza University of Alaska, Fairbanks Chancellor for Research 306 Signers Hall UAF Fairbanks, Alaska 99775-1720 (H) (W) 474-7314 (Fax) 474-7720 Governor's Senior Science Advisor	90/10/30	0/00/00	0/00/00	0/00/00
Jim Butchart Department of Emergency Service E. 3401 Bogard Road Wasilla, Alaska 99687 (H) (W) 376-2337 (Fax) Designee for Adjutant General/DMVA	90/12/27	0/00/00	0/00/00	0/00/00
Gordon W. Ito P. O. Box 307 Kotzebue 99752 (H) 442-3680 (W) (Fax) Public/Restricted/2nd JD	90/10/30	0/00/00	0/00/00	92/09/24

John (Randy) R. McGovern 1611 Carr Fairbanks 99701 (H) 451-0124 (W) 456-4248 (Fax) Public/Restricted/4th JD	90/11/15	0/00/00	0/00/00	93/09/24
Peter G. Mickelson PWS Science Center/Box 705 Cordova 99574 (H) 424-5111 (W) 424-5800 (Fax) Prince William Sound Science Center/Cordova/Rep.	90/10/30	0/00/00	0/00/00	92/09/24
Walter B. Parker 3724 Campbell Airstrip Road Anchorage 99504 (H) (W) 333-5189 (Fax) Public/Restricted/3rd JD	90/10/30	0/00/00	0/00/00	93/09/24
Mead Treadwell Deputy Commissioner - DEC Commissioner's Office/DEC P. O. Box 0 Juneau 99811 (H) (W) 465-2600 (Fax) 465-2617	90/12/03	0/00/00	0/00/00	0/00/00
Commander Edward E. Page Seventeenth Coast Guard Dist. P. O. Box 3-5000 Juneau, Alaska 99802 (H) 789-4970 (W) 463-2210 (Fax) 463-2218 Coast Guard Rep./Nonvoting	00/00/00	0/00/00	0/00/00	0/00/00
Carl Lautenberger EPA, Federal Bldg. Rm. 537 222 West 7th Ave. #19 Anchorage, AK 99501-5126 (H) (W) 271-5083 (Fax) EPA Rep./Nonvoting	00/00/00	0/00/00	0/00/00	0/00/00

HB

408

**DEPT. OF ENVIRONMENTAL CONSERVATION**

OFFICE OF THE COMMISSIONER  
410 WILLOUGHBY AVENUE, SUITE 105  
JUNEAU, AK 99801-1795

Phone: (907) 465-5000  
Fax: (907) 465-5070

January 28, 1992

The Honorable Jerry Mackie  
Chairman  
House Community and Regional  
Affairs Committee  
P.O. Box V  
Juneau, AK 99811

Dear Representative Mackie:

HB 408 was recently referred to your committee after introduction by the Governor. This bill clarifies the statutory powers of the Department of Environmental Conservation by adding language that DEC may award grants for the purposes of forming or operating a Local Emergency Planning Committee (LEPC) under AS 46.13.070.

In 1990, the Alaska Legislature created within the Department of Environmental Conservation the State Emergency Response Commission (SERC) pursuant to federal laws adopted in 1986. Under that federal law, as well as state law, a SERC is to appoint an LEPC for the various regions of the state. LEPCs are responsible for preparing emergency plans for communities to respond to the release of hazardous substances. A listing of the LEPCs which have been approved by the SERC is enclosed for your information.

DEC receives money in its budget each year for the purposes of assisting in the formation and operation of LEPCs. We learned this summer that DEC in fact has no granting authority and thus may not issue a grant to an organization wishing to form an LEPC. After an LEPC is formed, it is an entity of the state and DEC may then transfer money to them. HB 408 is designed to assist in the formation of LEPCs by making it clear that DEC can in fact issue such grants.

LEPCs are an essential part of the State of Alaska's readiness to prevent catastrophic hazardous substance releases, and respond to such releases when they do occur. The Department of Environmental Conservation respectfully requests that you

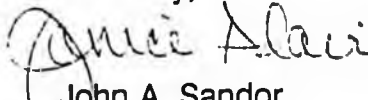
The Honorable Jerry Mackie

-2-

January 28, 1992

schedule this bill at your earliest convenience. Please contact Janice Adair at 465-5050 if you need further information. We look forward to your favorable action.

Sincerely,

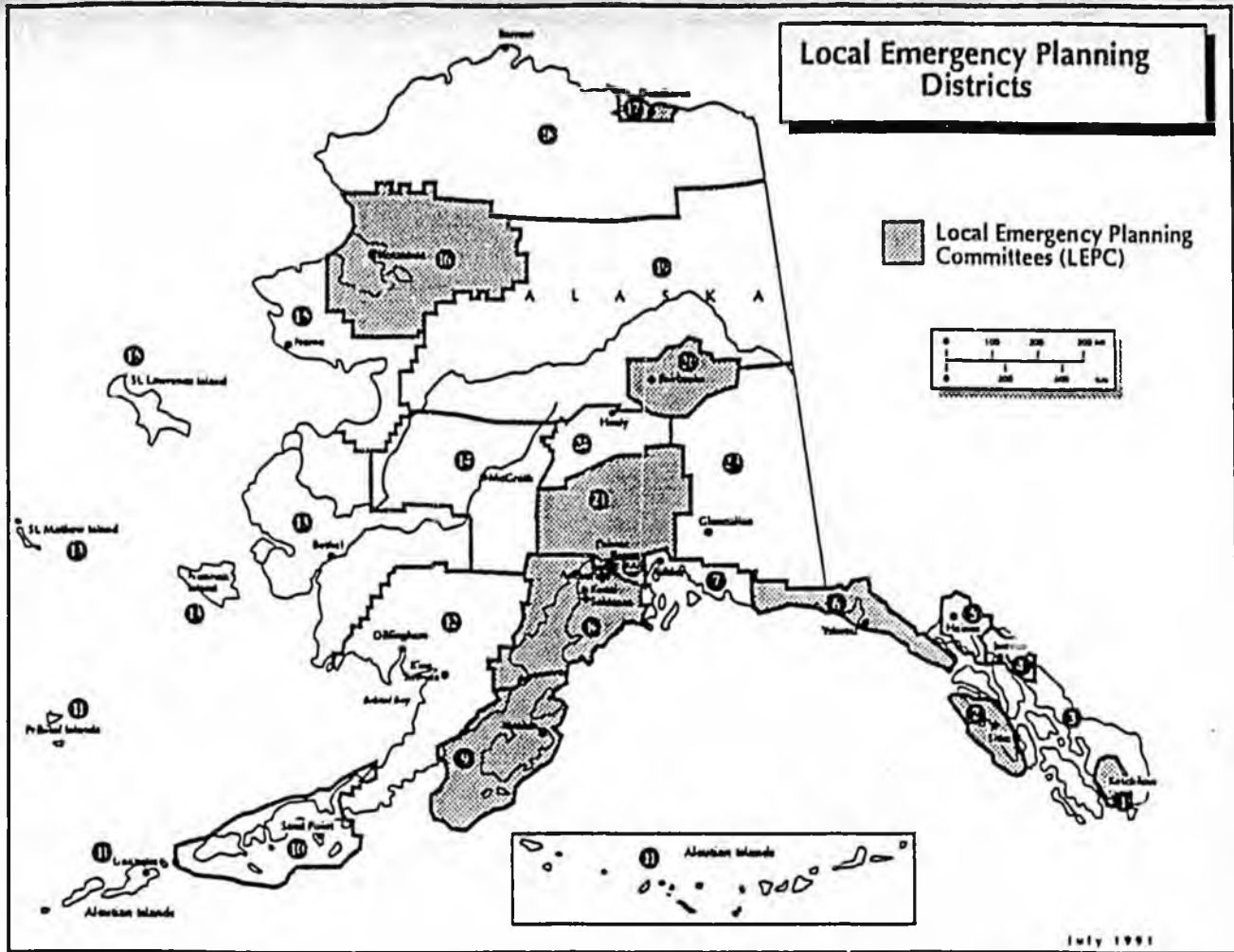
  
John A. Sandor  
Commissioner

JA/vr (CO-comm\mackie.408)

Enclosures: List of LEPCs approved by SERC

cc: Paul Fuhs, Office of the Governor  
Beth Kerttula, Assistant Attorney General

## Local Emergency Planning Districts



Map Key	Local Emergency Planning District (LEPD)	Principal City	LEPC appointed by SERC
1	KETCHIKAN GATEWAY BOROUGH*	Ketchikan	April 4, 1991
2	CITY & BOROUGH OF SITKA*	Sitka	May 14, 1990
3	Southeast	Juneau	
4	City and Borough of Juneau	Juneau	
5	Lynn Canal	Heinemann	
6	CITY OF YAKUTAT*	Yakutat	September 18, 1989
7	Prince William Sound	Valdez	
8	KENAI PENINSULA BOROUGH*	Soldotna	June 9, 1989
9	KODIAK ISLAND BOROUGH*	Kodiak	June 9, 1989
10	Aleutians East Borough	Sand Point	
11	Aleutian Islands	Unalaska	
12	Bristol Bay	Dillingham	
13	Yukon Delta	Bethel	
14	Southwestern Interior	McGrath	
15	Northwestern	Noorvik	
16	NORTHWEST ARCTIC BOROUGH*	Kotzebue	June 14, 1991
17	PRUDHOE BAY*	NA	June 14, 1991
18	North Slope Borough	Barrow	
19	Interior Alaska	Fairbanks	
20	FAIRBANKS NORTHSTAR BOROUGH*	Fairbanks	June 9, 1989
21	MATANUSKA-SUSITNA BOROUGH*	Palmer	June 14, 1991
22	MUNICIPALITY OF ANCHORAGE*	Anchorage	June 14, 1991
23	Southeastern Interior	Chitina	
24	Denali Borough	Healy	

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
Title: Authorizing DEC to award grants for LEPC; efd

Department Affected: Environmental Conservation  
BRU: Spill Prevention & Response  
Component: Spill Prevention, Planning

Sponsor: Governor  
Requestor: Governor

and Management  
COMPONENT SERIAL NO. 

1	4	3	0
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EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)  
DEC has received funds for the past two fiscal years, and is requesting funding for FY 93, to use for LEPC formation and operation. This legislation would allow the Department to enter into grant agreements for this purpose.

Prepared By: Janice Adair Phone: 465-5050  
Division: Commissioner's Office Date: December 12, 1991

Approved by Commissioner: Janice Adair for John Sander  
Agency: Department of Environmental Conservation Date: December 12, 1991

FISCAL NOTE

No. 1

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Bill Version: HB 408

(H) Publish Date: 1/16/92

Revision Date: \_\_\_\_\_ Department Affected: Administration

Title: "An Act Authorizing the AK. DEC to award grants for local emergency planning..." BRU: Finance

Component: Finance

Sponsor: Rules Committee

Requestor: \_\_\_\_\_

COMPONENT SERIAL NO.

59

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Don Wanie

*DW 12/16*

Phone: 465-2240

Division: Finance

Date: 12/16/91

Approved by Commissioner: Nancy Bear Usura

Agency: Administration

Date: 12/19/91

WALTER J. HICKEL  
GOVERNOR

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 16, 1992

*The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182*

*Dear Speaker Grussendorf:*

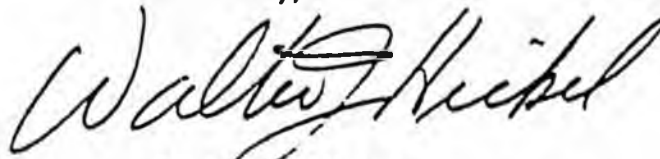
*Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill authorizing the Department of Environmental Conservation (DEC) to award grants for the purposes of forming or operating local emergency planning committees (LEPCs) under AS 46.13.070.*

*Under AS 46.13.040(5), the Alaska State Emergency Response Commission in DEC is required to establish, supervise, and coordinate LEPCs for emergency planning districts across the state. LEPCs play a vital role in developing community awareness, training of community resources, and planning for hazardous substances emergencies in their areas.*

*This bill amends AS 46.03.020 to give DEC the authority to award grants so that LEPCs may be formed or operated.*

*I urge your prompt consideration and passage of this bill.*

*Sincerely,*



Walter J. Hickel  
Governor

**KETCHIKAN  
GATEWAY  
BOROUGH**

**OFFICE OF THE MAYOR**

Ralph M. Bartholomew  
344 Front Street  
Ketchikan, AK 99901-6494  
Phone 228-6605 Fax 225-7282

**March 31, 1992**

**The Honorable Jerry Mackie  
House of Representatives  
P.O. Box V  
Juneau, AK 99801**

**HB 408, GRANTS FOR LOCAL EMERGENCY PLANNING COMMITTEES**

**The Ketchikan Gateway Borough Assembly voted to support HB 408 on March 16, 1992. The community has an active Local Emergency Planning Committee which has been working on tasks related to hazardous substance emergency planning and preparedness, community right-to-know reporting, toxic chemical release reporting, management of hazardous substances and related planning efforts.**

**This bill authorizes the Department of Conservation to award grants for the purpose of forming or operating local emergency response committees under AS 46.13.070.**



**Ralph M. Bartholomew  
Mayor**

Collateral references. — 61A Am. Jur. 2d, Pollution Control, §§ 46-49. 39A C.J.S., Health and Environment, §§ 115-124.

Power of state to prohibit or restrict exportation of natural resources. 32 ALR 331.

Preservation or protection of animals or birds as subject of charitable trust. 66 ALR 465.

Constitutionality of reforestation or forest conservation legislation. 13 ALR2d 1095.

Article 2. Department of Environmental Conservation.

Section

20. Powers of the department  
30. Water quality enhancement, water supply, sewage, and solid waste facilities grants

Section

32. Alaska clean water fund  
40. Alaska environmental plan  
45. Public recognition of pollution prevention efforts

Collateral references. — 61A Am. Jur. 2d, Pollution Control, § 6.

39A C.J.S., Health and Environment, §§ 5, 9-15, 125-145.

Power of state to prohibit or restrict exportation of natural resources. 32 ALR 331.

Preservation or protection of animals or

birds as subject of charitable trust. 66 ALR 465.

Constitutionality of reforestation or forest conservation legislation. 13 ALR2d 1095.

Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency. 60 ALR3d 665.

Sec. 46.03.020. Powers of the department. The department may (1) enter into contracts necessary or convenient to carry out the functions, powers, and duties of the department;

(2) review and appraise programs and activities of state departments and agencies in light of the policy set out in AS 46.03.010 for the purpose of determining the extent to which the programs and activities are contributing to the achievement of that policy and to make recommendations to the departments and agencies, including but not limited to, environmental guidelines;

(3) consult with and cooperate with

(A) officials and representatives of any nonprofit corporation or organization in the state;

(B) persons, organizations, and groups, public and private, using, served by, interested in, or concerned with the environment of the state;

(4) appear and participate in proceedings before any state or federal regulatory agency involving or affecting the purposes of the department;

(5) undertake studies, inquiries, surveys, or analyses it may consider essential to the accomplishment of the purposes of the department; these activities may be carried out by the personnel of the department or in cooperation with public or private agencies, includ-

ing educational, civic, and research organizations, colleges, universities, institutes, and foundations;

(6) at reasonable times enter and inspect with the consent of the owner or occupier any property or premises to investigate either actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with a regulation that may be adopted under AS 46.03.020 — 46.03.040; information relating to secret processes or methods of manufacture discovered during investigation is confidential;

(7) conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books, and documents by the issuance of a subpoena;

(8) advise and cooperate with municipal, regional, and other local agencies and officials in the state, to carry out the purposes of this chapter;

(9) act as the official agency of the state in all matters affecting the purposes of the department under federal laws now or hereafter enacted;

(10) adopt regulations necessary to effectuate the purposes of this chapter, including, by way of example and not limitation, regulations providing for

(A) control, prevention, and abatement of air, water, or land or subsurface land pollution;

(B) safeguard standards for petroleum and natural gas pipeline construction, operation, modification, or alteration;

(C) protection of public water supplies by establishing minimum drinking water standards, and standards for the construction, improvement, and maintenance of public water supply systems;

(D) collection and disposal of sewage and industrial waste;

(E) collection and disposal of garbage, refuse, and other discarded solid materials from industrial, commercial, agricultural, and community activities or operations;

(F) *[Repealed, § 12 ch 172 SLA 1978.]*

(G) control of pesticides;

(H) other purposes as may be required for the implementation of the policy declared in AS 46.03.010;

(I) handling, transportation, treatment, storage, and disposal of hazardous wastes;

(11) after consultation with other state agencies and local government officials, identify and propose for addition or deletion, by regulation, other licenses, permits or authorizations for which the provisions of AS 46.35 are applicable, and report annually to the legislature the permits that have been included or deleted;

(12) *[Repealed, § 92 ch 36 SLA 1990.]*

(13) inspect the premises of sellers and suppliers of paint, vessels, and marine and boating supplies, and take other actions necessary to

## § 46.03.025

## WATER, AIR, ENERGY, ETC.

## § 46.03.030

enforce AS 46.03.715. (§ 3 ch 120 SLA 1971; am § 1 ch 220 SLA 1976; am § 2 ch 60 SLA 1977; am § 12 ch 172 SLA 1978; am § 8 ch 93 SLA 1981; am § 86 ch 138 SLA 1986; am § 1 ch 67 SLA 1987; am § 92 ch 36 SLA 1990)

Cross references. — For status of certain enforcement and inspection employees of the department as peace officers, see AS 46.03.890(b); for provisions relating to coordination of environmental permits and procedures, see AS 46.35; for

fees for department services, see AS 44.46.025.

Effect of amendments. — The 1957 amendment added paragraph (13).

The 1990 amendment, effective May 12, 1990, repealed paragraph (12).

## NOTES TO DECISIONS

Approval of subdivision plans. — Department of environmental conservation can validly require its approval of potential subdivision plans as a prerequisite

to the recording and sale of any lots in the subdivision. *State v. Anderson*, 749 P.2d 1342 (Alaska 1988).

**Sec. 26.23.040. Duties of the Alaska division of emergency services.** (a) The Alaska division of emergency services shall prepare and maintain a state emergency plan and keep it current. The plan may include provisions for

- (1) prevention and minimization of injury and damage caused by disasters;
- (2) prompt and effective response to disasters;
- (3) emergency relief;
- (4) identification of geographical areas, municipalities, cities or villages especially vulnerable to a disaster;
- (5) recommendations for
  - (A) zoning, building, and other land use controls;
  - (B) safety measures for securing mobile homes or other nonpermanent or semi-permanent structures; and
  - (C) other preventive and preparedness measures designed to eliminate or reduce disasters or their impact;
- (6) assistance to local officials in designing local emergency action plans;
- (7) authorization and procedures for the construction of temporary works designed to protect against or mitigate danger, damage, or loss from a disaster;
- (8) organization of manpower and chains of command;
- (9) coordination of federal, state, and local disaster activities;
- (10) coordination of the state emergency plan with the disaster plans of the federal government; and
- (11) other matters necessary to carry out the purposes of this chapter.

(b) The Alaska division of emergency services shall play an integral part in the development and revision of local and interjurisdictional disaster plans prepared under AS 26.23.060. To this end, it may employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions, their disaster agencies, and interjurisdictional planning and disaster agencies. These personnel shall consult with political subdivisions and agencies on a regular basis and shall make field examinations of the areas, circumstances, and conditions to which particular local and interjurisdictional disaster plans are intended to apply and may suggest or require revisions.

(c) In preparing and maintaining the state emergency plan, the Alaska division of emergency services shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations and community leaders. In advising local and interjurisdictional agencies, the office shall encourage them also to seek advice from these sources.

(d) The state emergency plan or any part of it may be incorporated in regulations or orders of the Alaska division of emergency services.

Regulations and orders of the Alaska division of emergency services have the force and effect of law.

(e) The Alaska division of emergency services shall

- (1) determine requirements of the state and its political subdivisions for food, clothing, and other necessities in the event of a disaster emergency;
- (2) procure and pre-position supplies, medicines, materials, and equipment;
- (3) adopt standards and requirements for local and interjurisdictional disaster plans;
- (4) periodically review local and interjurisdictional disaster plans;
- (5) establish and operate, or assist political subdivisions, their disaster agencies, and interjurisdictional disaster agencies to establish and operate, training programs;
- (6) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon by the parties;
- (7) establish a register of persons with type of training and skills important in disaster prevention, preparedness, response, and recovery;
- (8) prepare, for issuance by the governor, orders, proclamations, and regulations as necessary or appropriate in coping with disasters;
- (9) cooperate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster prevention, preparedness, response and recovery;
- (10) develop and carry out procedures and policies to effectively employ disaster relief funds made available by the governor's authority or by special legislative action; these procedures shall include application and documentation by disaster victims or applicants, review, verification and funding approval, and processing of appeals;
- (11) do other things necessary or proper for the implementation of this chapter. (§ 3 ch 104 SLA 1977; am §§ 3, 4 ch 178 SLA 1990)

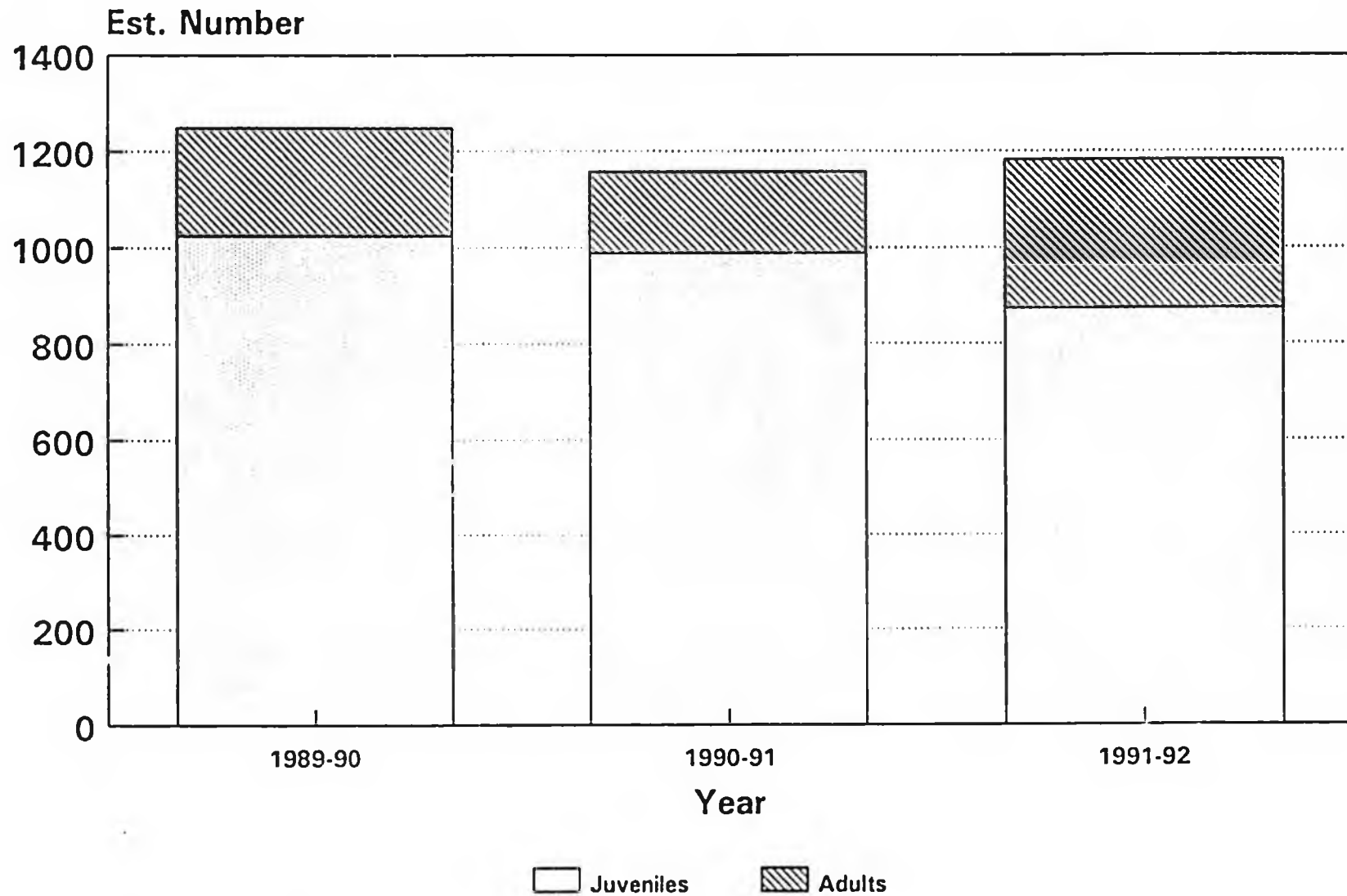
**Effect of amendments.** — The 1990 amendment, in subsection (a), made stylistic changes in paragraph (5), deleted former paragraph (8) relating to preparation and distribution of catalogs or extracts listing assistance programs, and redesignated former paragraphs (9) through (12) as present paragraphs (8) through (11); and in subsection (e), deleted former paragraph (5) relating to provision for mo-

bile support units, deleted former paragraph (7) relating to surveys, deleted former paragraph (10) relating to registration of certain equipment and housing, redesignated former paragraphs (6), (8), (9), and (11) through (14) as present paragraphs (5) through (11), and deleted "and public information" following "training" in present paragraph (5).

HB

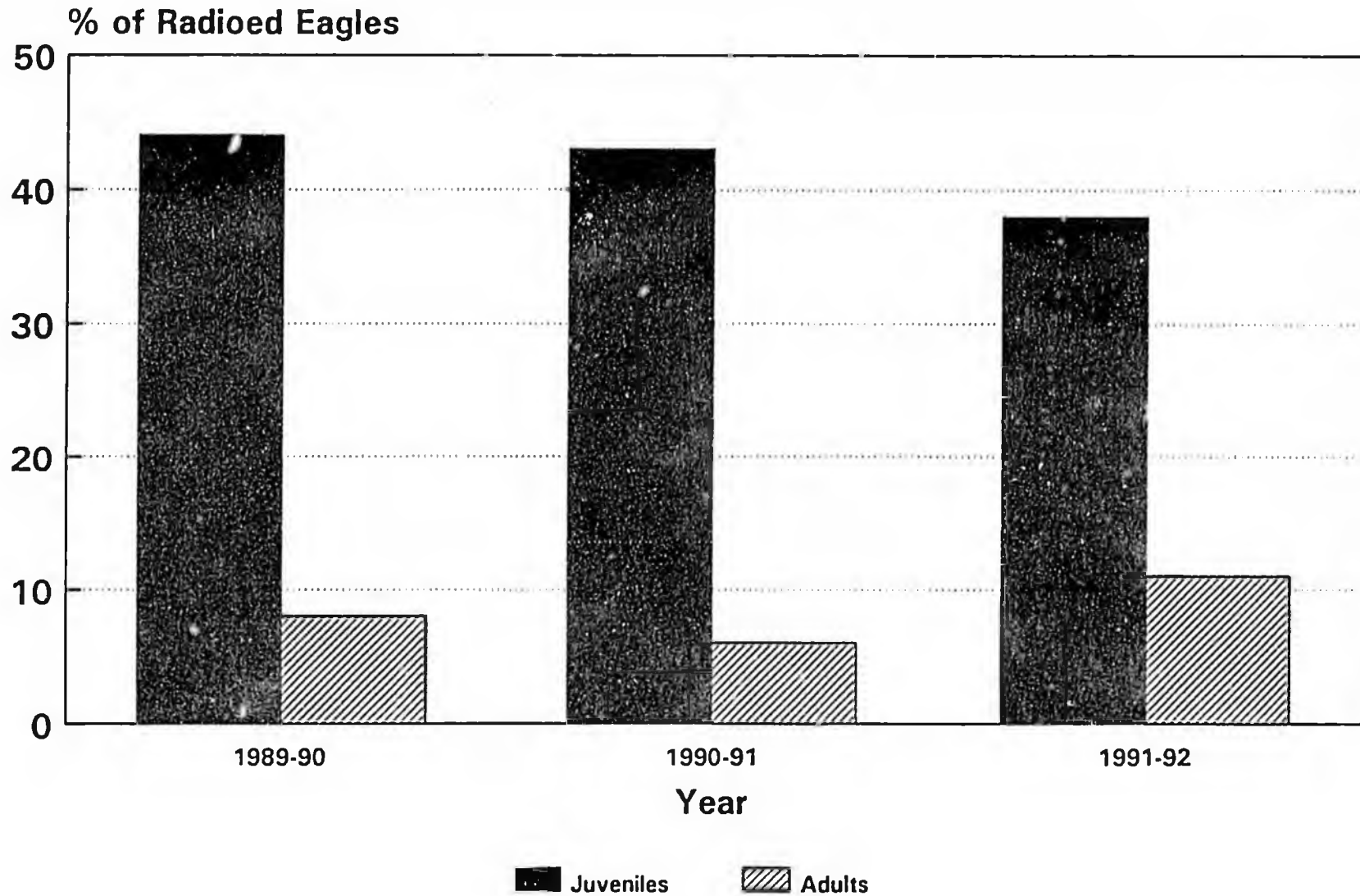
411

# Fall/Winter Use of Cape Suckling Area by Bald Eagles From Prince William Sound



Fall/Winter defined as Oct. thru Jan.

# Fall/Winter Use of Cape Suckling Area by Bald Eagles From Prince William Sound



Fall/Winter defined as Oct. thru Jan.

*study by US FWS*

# HOUSE BILL 411

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## *LEGAL OPINIONS*

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# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

### MEMORANDUM

February 21, 1992

**SUBJECT:** Use of Exxon Valdez oil spill restitutionary payments (Work Order No. 7-LS1810)

**TO:** Representative Cliff Davidson  
Attn: Jay Nelson

**FROM:** George Utermohle *GU*  
Legislative Counsel

This memorandum addresses the issue of whether the restitutionary payment received by the State of Alaska as part of the Plea Agreement between the United States and Exxon Corporation and Exxon Shipping Company (Exxon) must be used exclusively for natural resources restoration projects.

### SHORT ANSWER

Two things are clear. First, under the terms of a Memorandum of Agreement, the State of Alaska and the United States have agreed to use the restitutionary payments only for restoration of natural resources. Second, the State of Alaska, the United States, and the Court intend that the restitutionary payments be used to restore natural resources and the environment in the areas affected by the Exxon Valdez oil spill. What is unclear is the extent to the State of Alaska and the United States may have agreed, subsequent to entering into the Memorandum of Agreement, to use the restitutionary funds for purposes in addition to restoration of natural resources and the environment.

### DISCUSSION

There is nothing inherent in the concept of restitution that requires the State of Alaska to use the restitutionary payment received under the Plea Agreement between the United States and Exxon for restoration of natural resources damaged by the Exxon Valdez oil spill. The victim of a crime is entitled to restitution for the loss of or damage to the property caused by the perpetrator of a crime. Money received as restitution is to make the victim whole and to restore the victim to the position the victim occupied before the crime. Generally, the victim is not required to use the

money received to replace the specific property that is lost or damaged; the victim may use the money for other purposes.<sup>1/</sup>

However, at the specific request of Attorney General Cole, the Court included the purposes for which the restitutionary payments may be used as part of the Judgment.<sup>2/</sup> Attorney General Cole made the request so that there is no misunderstanding as to how the restitutionary payments are to be used.<sup>3/</sup> The order of restitution contained in the Judgment states, in relevant part:

The monies paid in restitution are to be used by the State of Alaska and the United States of America exclusively for restoration projects, within the State of Alaska, relating to the "Exxon Valdez" oil spill. Restoration includes restoration, replacement, and enhancement of affected resources; acquisition of equivalent resources and services; and long-term environmental monitoring and research programs directed to the prevention, containment, cleanup, and amelioration of oil spills.<sup>4/</sup>

The order of restitution does not refer expressly to restoration of natural resources. Instead, in describing what are permissible restoration projects, the order uses only

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<sup>1/</sup> For the purposes of the Exxon Valdez oil spill Plea Agreement, the victims are the State of Alaska and the United States of America. Transcript of Proposed Change of Plea, United States of America v. Exxon Corporation and Exxon Shipping Company, United States District Court, District of Alaska, Case No. A90-015 CR, p. 68, October 8, 1991. Cited as Transcript.

<sup>2/</sup> Judgment, United States of America v. Exxon Corporation, United States District Court, District of Alaska, Case No. A90-015 CR.

Judgment, United States of America v. Exxon Shipping Company, United States District Court, District of Alaska, Case No. A90-015 CR.

Cited collectively as Judgment.

<sup>3/</sup> MR. COLE: I would like to have the scope of that restitution set out in full in the Agreement, as I recall it's set out in the Plea Agreement, so there's no misunderstanding on the part of anyone as to the scope of what those restitutionary funds may be used for. That was a carefully negotiated provision.

THE COURT: All right. The Plea Agreement, and I'm looking at Page 9, says such monies are to be used by the State of Alaska and the United States exclusively for restoration projects within the State of Alaska relating to Exxon Valdez oil spill, and then there's some more.

MR. COLE: Yes. I would like that . . . .

THE COURT: I would be happy to include that expressed language in the judgment.

Transcript at 76.

<sup>4/</sup> Judgment at 4.

the broad term "resources". The failure to specifically refer to natural resources does not preclude the possibility that the order meant "natural resources" and only natural resources.

In order to determine whether the order of restitution meant "natural resources" when it said only "resources", it is necessary to look behind the order to the documents<sup>5/</sup> which the Court had before it at the time and to the representations by the parties to the Court supporting acceptance of the Plea Agreement and the restitution requirement included therein.

The order of restitution is derived virtually verbatim from the Plea Agreement between the United States and Exxon. The Plea Agreement initiated the use of the term "resources" but does not indicate whether the term should be construed narrowly to mean only natural resources.

The best support for the conclusion that the restitutionary payment received by the State of Alaska may be used for restoration of natural resources and only natural resources is found in the MOA. Under the MOA the United States and the State of Alaska agreed to dedicate all natural resource damage recoveries received as the result of the Exxon Valdez oil spill to restoration of natural resources. For purposes

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<sup>5/</sup> Plea Agreement, United States of America v. Exxon Corporation and Exxon Shipping Company, United States District Court, Alaska District, Case No. A90-015 CR., September 26, 1991. Cited as Plea Agreement.

Memorandum of Agreement and Consent Decree, United States of America v. State of Alaska, United States District Court, District of Alaska, Civil Action No. A91-081 CV, August 27, 1991. Cited as MOA.

Agreement and Consent Decree, United States of America v. Exxon Corporation et al., United States District Court, District of Alaska, Civil Action No. A91-087 CV and United States of America v. Exxon Corporation and Exxon Shipping Company, United States District Court, District of Alaska, Civil Action No. A91-083 CV, filed October 9, 1991. Cited as Consent Decree.

Governments' Memorandum in Support of Agreement and Consent Decree, United States of America v. Exxon Corporation et al., United States District Court, District of Alaska, Civil Action No. A91-082 CV and United States of America v. Exxon Corporation and Exxon Shipping Company, United States District Court, District of Alaska, Civil Action No. A91-083 CV, filed October 8, 1991.

Government's Memorandum in Aid of Sentencing, United States of America v. Exxon Corporation and Exxon Shipping Company, United States District Court, District of Alaska, Case No. A90-015 CR, filed April 16, 1991.

Joint Sentencing Memorandum of Exxon Corporation and Exxon Shipping Company, United States of America v. Exxon Corporation and Exxon Shipping Company, United States District Court, District of Alaska, Case No. A90-015 CR, dated April 16, 1991.

of the MOA "natural resource damage recoveries" is defined to include "criminal restitution, unless the parties otherwise agree that criminal restitution recoveries can be separately managed by either government consistent with this MOA."<sup>6/</sup>

The presentations made to the Court by Charles De Monaco of the U.S. Department of Justice and Attorney General Charles Cole state that the both the United States and the State of Alaska do intend to use the restitutionary payments for natural resources restoration projects, but are not wholly clear as to whether the payments will be used exclusively for natural resource restoration projects. In recommending that the Court accept the Plea Agreement, Mr. De Monaco said:

The Plea Agreement strives to settle the criminal litigation with pleas of guilty and a criminal sentence consisting of a fine in [sic] restitution. The amount of the sentence actually required to be paid within 30 days of conviction is 125 million dollars, with the bulk of the money earmarked for use in Alaska for restoration of the areas affected by the oil spill.

This oil spill was a catastrophe, and it was also an environmental crime. The criminal remedy should, likewise, in substantial part, be environmental in nature; that is 100 million dollars to be paid in restitution to be used exclusively in the State of Alaska for restoration of Prince William Sound and the Gulf of Alaska. The restitutionary components of a sentence for an environmental crime cannot be understated. The environment, as a victim, must be aided quickly through efforts funded by restitutionary payments.

...

Consequently, of the 125 million dollar sentence that is actually to be paid, 112 million dollars will go directly toward in aiding the environment for this environmental offense.<sup>7/</sup>

Mr. De Monaco also said:

The Governments urge that there be restitution now for the areas affected by the oil spill, and it should not await years of legal battles over damages and liabilities. The Plea Agreement provides and [sic] immediate infusion of money needed to continue the work of restoring

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<sup>6/</sup> MOA at 6 - 7.

<sup>7/</sup> Transcript at 26 - 27.

the Prince William Sound and the Gulf of Alaska, while the Consent Decree provides money over the long term to insure that the restoration work can continue over time to heal the damages caused by the Exxon Valdez oil spill.<sup>8/</sup>

Attorney General Cole presented the position of the State of Alaska regarding how the restitutionary payments were going to be used, as follows:

Very important from the State's standpoint is that 100 million dollars of this Plea Agreement will be used for the restoration of the damage to the natural resources, and for, perhaps, other purposes in the State of Alaska.<sup>9/</sup> (Emphasis added.)

In addition to indicating support for the Plea Agreement and the order of restitution, this statement by Attorney General Cole highlights an ambiguity as to whether the restitutionary payments are to be used exclusively for restoration of natural resources. For what "other purposes in the State of Alaska" may the restitutionary payments be used? Is Attorney General Cole referring only to the proposed science center to study oil spills or is he allowing an opportunity for the restitutionary payments to be used for additional restoration projects for non-natural resources under the right circumstances?

It is worth noting that the Court did not balk at the suggestion that the State of Alaska may use part of the restitutionary payment for purposes other than restoration of natural resources.

At the same time that the Plea Agreement was being negotiated and completed in the criminal case against Exxon, the same parties were engaged in negotiating and completing the MOA and Consent Decrees in three related civil cases: United States of America v. State of Alaska,<sup>10/</sup> United States of America v. Exxon Corporation et al.,<sup>11/</sup> and United States of America v. Exxon Corporation and Exxon Shipping Company.<sup>12/</sup> In each of these cases the parties provided in detail for the

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<sup>8/</sup> Transcript at 32 - 33.

<sup>9/</sup> Transcript at 39.

<sup>10/</sup> United States of America v. State of Alaska, United States District Court, District of Alaska, Civil Action No. A91-081 CV.

<sup>11/</sup> United States of America v. Exxon Corporation et al., United States District Court, District of Alaska, Civil Action No. A91-082 CV.

<sup>12/</sup> United States of America v. Exxon Corporation and Exxon Shipping Company, United States District Court, District of Alaska, Civil Action No. A91-083 CV.

establishment and use of a trust fund for restoration of natural resources damaged by the Exxon Valdez oil spill. Each of the agreements and consent decrees used and defined the term "natural resources".<sup>13/</sup> The MOA also included a definition of "restoration" that discussed restoration only in the context of natural resources.<sup>14/</sup> If the State of Alaska and the United States intended to limit restoration projects funded through the restitutionary payments to only those projects involving natural resources, they could have expressly provided for such, as they did in the civil agreements and consent decrees.

The restitutionary provisions of the Plea Agreement were "carefully negotiated"<sup>15/</sup> by several skilled and experienced attorneys so it is difficult to believe that any ambiguity in such a basic provision of the agreement was not the result of a conscious decision of the parties.

The extent to which the restitutionary payments may be used for other purposes is a matter known only to the parties who negotiated the Plea Agreement and the Court, because only they know why they used the term "resources" instead of "natural resources", what they intended the term "resources" to mean, and what subjective or implied constraints they intended to place on the use of the payments.

The Court was concerned that the money received in the settlement of the civil and criminal cases, including the restitutionary payments, is spent as the Court intended. The Court stated its continuing interest in seeing that the money is spent on the right things and imposed an obligation on the parties to the settlement, including Attorney General Cole, to monitor how the money is spent. If the money is being misdirected then the parties would have to bring it to the attention of the Court.<sup>16/</sup> If the legislature is potentially subject to being brought before the federal District Court for

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<sup>13/</sup> MOA at 6.

Consent Decree at D-10.

<sup>14/</sup> "Restore" or "Restoration" means any action, in addition to response and cleanup activities required or authorized by state or federal law, which endeavors to restore to their pre-spill condition any natural resource injured, lost, or destroyed as a result of the Oil Spill and the services provided by that resource or which replaces or substitutes for the injured, lost or destroyed resources and affected services. Restoration includes all phases of injury assessment, restoration, replacement, and enhancement of natural resources, and acquisition of equivalent resources and services.

MOA at 6 - 7.

<sup>15/</sup> Transcript at 76 and 77.

<sup>16/</sup> Transcript at 73.

Representative Cliff Davidson

February 21, 1992

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misusing the restitutionary payment, it is important, and only fair, that one of the participants in the drafting of the Plea Agreement inform the legislature of the constraints on the use of the payment.

Attorney General Cole is a key person in determining how the money is to be spent. As representative of the State of Alaska in the Exxon Valdez oil spill settlement negotiations, an active participant in those negotiations, one of the state trustees for the Exxon Valdez settlement trust, and "court appointed monitor" of the expenditures of the money received in the civil and criminal settlements, Attorney General Cole is an important resource available to the legislature to resolve the ambiguity as to what the State of Alaska, the United States of America, and the Court meant when they used the term "resources" in the order of restitution and Plea Agreement. Attorney General Cole can also resolve whether the restitutionary payments may be used for anything other than restoration projects relating to natural resources.

If I may be of further assistance, please advise.

GU:pl

92-118.plm



Sunrise, Mt. McKinley Ansel Adams

# SIERRA CLUB LEGAL DEFENSE FUND, INC.

*The Law Firm for the Environmental Movement*

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## MEMORANDUM

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**TO:**  
**FROM:** Eric Jorgensen  
**RE:** Limitations on oil spill restitution funds  
**DATE:** February 12, 1992

My review of the plea agreement entered to resolve the criminal charges against Exxon Corporation arising out of the Exxon Valdez spill leads me to conclude there are stringent limits on the purposes for which the State of Alaska may spend the restitution payments it received pursuant to that agreement. This memo briefly summarizes my views on this issue. I would be happy to discuss this with you at greater length if you wish.

Fundamentally, I believe the plea agreement must be interpreted with an eye toward the violations underlying the agreement. Exxon pled guilty to violations of three environmental statutes--the Clean Water Act, Refuse Act, and Migratory Bird Treaty Act. All three statutes are designed to foster protection of the environment, wildlife and water quality in particular. The plea agreement describes the restitution payments as "remedial and compensatory." I would interpret the document to provide generally only for use of these funds in a manner which remedies the injuries addressed in the criminal complaint--that is, injuries to the environment and natural resources. Any other use--subsidizing development projects, for example--would not remedy or compensate for this injury and therefore should be barred.

This interpretation is confirmed if one reviews the statements made at the hearing on the approval of the plea agreement conducted by Judge Holland. There are numerous references to the restitutionary payments during the discussion of the plea agreement by the lawyers for the United States and Alaska, as well as Judge Holland, which indicate clearly that the parties and the court

intended the plea agreement to limit carefully the expenditure of funds to projects related to restoration of the natural environment. See, e.g., Plea Agreement Hearing Transcript at pages 26, 27, 32, 33, 40, 47-48, 68. The only possible exception provided for in these discussions is for an oil spill research center in Alaska. Attorney General Cole made a careful effort to explain to the court that this was the one area which might not fit the traditional definition of restoration, but which the State had explicitly negotiated to facilitate with the restitutionary payments. See Transcript at 77, 39, 47.

Given that this is the only project which may not fit the strict definition of restoration that was specifically mentioned by the State, I would argue that any other project not directed toward restoration of the natural environment be prohibited. Clearly, the State was aware of the narrow limits imposed by the agreement and required by the court and yet chose to insist on only this one exception. This is a clear indication that the parties and the court expected and agreed that this would be the only exception.

This interpretation of the agreement is also supported by a careful examination of the definition of "restoration" in the agreement. The first half of the definition, describing restoration, replacement and enhancement of affected resources and acquisition of replacement resources, is based on the similar provisions of the Clean Water Act, 33 U.S.C. section 1321(f)(5) and should be similarly interpreted. The main addition to the Clean Water Act definition is the specific reference to "long-term environmental monitoring and research programs." This is the oil spill research center so carefully preserved by the remarks of Attorney General Cole. Thus, both the language of the agreement and the Attorney General Cole's interpretation of the agreement at the hearing support a two part definition of the proper uses of the funds: first, restoration of the natural environment in the traditional sense as described in federal law; and second, long-term monitoring and research relating to oil spills. See Plea Agreement Hearing Transcript at 39 and 47.

Though arguments might be made to broaden the scope of the plea agreement, none of them is persuasive. It is true that the plea agreement uses the word "resources" to define the object of restoration efforts, in contrast to the consent decree entered to settle the civil litigation, which uses the term "natural resources". Thus, it might be argued that the plea agreement payments can be used to restore a broader group of resources than the "natural resources" benefitted by the civil

settlement. This argument should fail, however, because it conflicts with the clear understanding expressed by the parties at the plea hearing and, more fundamentally, with the idea that the payments must be used to remedy the injury for which the criminal charges were brought--environmental injury. In other words, properly interpreted in context, "resources" should be understood to mean natural resources, with the sole identified exception for a spill study center.

An argument could also be made that because the definition of restoration in the plea agreement is not exclusive (it says restoration "includes" rather than "means", or some other exclusive term) that other uses of the money are possible. In light of all the other evidence to the contrary, I do not believe this argument standing alone can prevail. Moreover, the force of the argument is severely limited by the general rule of contract and statutory interpretation which provides that if a definition is not exclusive, other possible meanings must be of the same nature or general type as the listed meanings. In this case, the definition of restoration in the agreement lists specific activities which are permissible. Even if the use of the word "includes" is interpreted to mean that other uses of the funds are appropriate, those uses must be of the same general nature as the specifically listed uses.

I have not discussed in this memo any arguments that might be made based on the briefs filed by the parties in support of the plea agreement. I simply did not have time to review them. If it would be helpful to you, I will try to find the time later in the week.

HOUSE BILL 411

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*CORRESPONDENCE*  
&  
*PROPOSALS*

\*\*\*\*\*

*EDUCATION AND*  
*MISCELLANEOUS PROPOSALS*



# NORTH GULF OCEANIC SOCIETY

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Hon. Cliff Davison  
Alaska Legislature  
Juneau, Alaska

Atten: Jay Nelson

Date: MARCH 9, 1992

Re: Proposal to Continue Long Term Killer Whale Research  
in Prince William Sound, Alaska via HB 411

## Background:

Since 1983 systematic photoidentification studies have been conducted in the Sound by our group. We have been able to determine changes that have occurred in the highly stable resident killer whale pods, first as a result of interactions with the longline fishery and then as a result of the Exxon Valdez Oil Spill. Support from the State of Alaska via the Alaska Legislature and then Senator Mike Symanski's office was instrumental in providing data to assess changes in killer whale pods after the spill. Over the past 3 years the Federal Government has supported this critical work, but funding has now ended (as result of Trustees decision) despite the demonstration of damages. These are whales that are viewed by the tour boats and attract visitors from all areas. The Federal Government does not have the long term view of this work that the State has demonstrated in the past. We are asking that the State provide research monies once again to insure the continuity of the project through 1992. Bringing the project back under the State will improve communication and dissemination information as we have been extremely limited in this regard under the Federal program.

## Research

The project involves the yearly photographic identification of each animal in the killer whale pods that use Prince William Sound. It is possible to keep track of births, deaths, and other changes within the killer whale population if the process is completed each year. Graduate projects at the University of Alaska and University of British Columbia have been fostered by this study and examine other aspects of killer whale biology. Recently NGOS has produced catalogues of individual whales (for both humpback and killer whales) that soon will be available to the individuals and the tour boat industry for use in identifying whales.

**Budget**

Because of in kind donations, and other support developed by our non-profit research group, the cost to the State for maintaining this project is substantially less than actual cost. Each season NGOS operates a fieldcamp and at least two research vessels and have 6 individuals working part time on the project. The total requested to continue operations in 1992 is \$60,000.

This includes the preparation and completion of the field program, data analysis, and annual report. As was our policy before the oil spill and federal funding, all data files remain open for use by other workers. At this time other users are primarily graduate students.

**Breakdown:**

Salaries	24,000
Vessel Operations (includes food, fuel, logistic support, etc.)	27,000
Photographic Processing	5,200
Communications, Computer	3,100
Travel	700
	<u>60,000</u>