

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672  
7629 SENATE RESOURCES

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KODIAK OIL SALES, INC.  
NORTH PACIFIC FUEL  
P.O. BOX 1487  
KODIAK, ALASKA 99615

APR 26 1991

Alaska State Legislature  
Senate Resources Committee

April 26, 1991

This a letter in support of SB 263.

Kodiak Oil Sales Inc. is a fuel distributor serving the Kodiak Area. We are a family owned business and have operated as a family business since 1950.

I would like to encourage the passage of SB 263.

... regulations that came out of HB 567 have created fuel distributors like us.

Alaska State Legislature



Senate Resources Committee

and unanswered questions. That don't actually exist is : and Industry.

Alaska, Exxon USA and Kodiak Oil (Western Alaska) doesn't make is separating the issues of regulations that fit the very he very different risks to the

for a more orderly process, one it and industry. A more orderly better Regulations, regulations ernment and industry.

SB 263  
waived from Cmte  
on May 9, 1991

lc

# **CORRECTION**

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

# Alaska State Legislature



## Senate Resources Committee

SB263

waived from Cmte

on May 9, 1991



**KODIAK OIL SALES, INC.**  
NORTH PACIFIC FUEL  
P.O. BOX 1487  
KODIAK, ALASKA 99615

APR 26 1991

**Alaska State Legislature  
Senate Resources Committee**

**April 26, 1991**

This a letter in support of SB 263.

Kodiak Oil Sales Inc. is a fuel distributor serving the Kodiak Area. We are a family owned business and have operated as a family business since 1950.

I would like to encourage the passage of SB 263.

The proposed regulations that came out of HB 567 have created many problems for fuel distributors like us.

There are so many unknown factors and unanswered questions. Trying to comply with regulations that don't actually exist is very confusing for both the State DEC and Industry.

Applying the same standards to Alyeska, Exxon USA and Kodiak Oil Sales Inc. (or electric utilities in Western Alaska) doesn't make sense to me. What does make sense is separating the issues of Crude and Noncrude, then designing regulations that fit the very different industries involved and the very different risks to the environment.

The passage of SB 263 will allow for a more orderly process, one that makes sense both to government and industry. A more orderly process makes for better Laws and better Regulations, regulations that are much better for both government and industry.

Jio Ramaglia  
Vice Pres  
Kodiak Oil Sales Inc  
486-3245

S B

267

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL

DATE: 2/19/91

FURTHER: Finance

Date of 5-Day Notice: March 7, 1991  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: April 13, 1992

Resources Committee considered SB 126

Review and reporting requirements of agencies of the state relating to the state mineral policy; efd.

and recommended:

- replace with \_\_\_\_\_ CS SB 126 (Res.)  same title  
 attached amendment(s)  new title
- \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

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

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

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

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

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

[Signature]  
[Signature]  
[Signature]  
[Signature]

OTHER RECOMMENDATIONS:

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

[Signature]  
Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SSSB 267

Revision Date: 3/25/92

Department Affected: Fish and Game

Title: Notice of Fish and Game Regulations

BRU: Boards/Boards Services

Component: Boards/Boards Services

Sponsor: Senator Zharoff

Requestor: Senate Resources  
Expenditures/Revenues: (Thousands of Dollars)

COMPONENT SERIAL NO. 

4	8	2
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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	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	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: Geron Bruce G.B.

Phone: 465-4100

Division: Commissioner's Office

Date: 4/4/92

Approved by Commissioner: [Signature]

Agency: Department of Fish and Game

Date: 4/6/92

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



## SENATOR FRED F. ZHAROFF

### ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99815 (907) 488-5259

DURING SESSION:


P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 105-3473 • 485-3474

DISTRICT N

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

### MEMORANDIUM

TO: Senator Jones, Chairman  
Senate Resources Committee

FROM: Senator Fred Zharoff 

RE: Scheduling of SSSB 267, relating to notice of the Board of Fisheries' intention to consider approval of a petition to CFEC to establish a moratorium on entrants into a commercial fishery

DATE: April 2, 1992

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I am writing to request that you schedule SSSB 267 for a committee hearing at your earliest convenience.

SSSB 267 amends AS 16.05.251(g) to provide that notice of, and a copy of, a petition from the Commissioner of Fish and Game to the Commercial Fisheries Entry Commission to establish a moratorium on entry in a commercial fishery shall be available to the public at Fish and Game Department offices, and distributed to the Fish and Game advisory committees in the areas affected by the proposed moratorium, 30 days before the Board takes action on the petition.

This legislation will increase the public comment period from 15 to 30 days, and help to assure that the public has access to material critical to their considerations regarding the management of fish and game resources in their area in a timely manner.

Backup information is included.

# 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

April 3, 1992

**SUBJECT:** Sectional Summary: Sponsor Substitute for SB 267

**TO:** Senator Fred Zharoff

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

This memorandum is a sectional summary of SSSB 267: an Act relating to notice of the Board of Fisheries' intention to consider approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery; and providing for an effective date.

A sectional summary is not an authoritative interpretation of a bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends AS 16.05.251(g) which relates to the procedures of the Board of Fisheries for considering the request of the commissioner of fish and game for approval of the commissioner's petition to Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery under AS 16.43.225.

The new language requires the board to provide 30 days' public notice of its intention to consider the petition of the commissioner. Current law requires only 15 days' public notice before the board can act on the commissioner's request for approval of the petition for a moratorium.

The new language also requires the board to distribute the public notice and a copy of the petition to all advisory committees and fish and game offices in the area where the proposed moratorium would be established. The board must distribute the public notice and copy of the petition in a timely manner, so as to give the public a meaningful opportunity to respond to and comment on the proposed petition.

Section 2 of the bill provides that the bill takes effect July 1, 1992.

GU:pl  
92-240.plm



## SENATOR FRED F. ZHAROFF

### ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99815 (907) 486-5259

DURING SESSION:

STATE CAPITOL BLDG., JUNEAU, ALASKA 99801-1182 • (907) 485-3473 • FAX: (907) 483-3043

DISTRICT N

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

### SSSB 267 SPONSOR STATEMENT

March 31, 1992

SSSB 267 amends AS 16.05.251(g) to require 30 days public notice of the intent of the Board of Fisheries to consider the approval of a petition by the Commissioner of Fish and Game to the Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery. SSSB 267 also provides that a copy of the public notice and the petition be distributed to each Fish and Game advisory committee and ADFG office in the administrative area where the moratorium would be established.

Current law requires only 15 days public notice of the board's intent to consider the approval of a petition to establish a moratorium on entry into a fishery, and there are no specific provisions to assure the prompt availability of the petition to the public for consideration.

Consideration and comment regarding fish and game issues by an informed public is the basis for the development of rational and effective fishery regulations under Alaska's Fish and Game Board system. Current statutory language does not provide adequate time for the public to be notified of, obtain material related to, and comment on the petition to be considered by the board. It is vital to this process that the public be given sufficient time and information to comment on issues and proposals that will affect their area.

This legislation will help to assure that the public and the Board of Fisheries are provided sufficient time and information in their considerations regarding the approval of a petition to establish a moratorium on entry into a commercial fishery.

**KODIAK LONGLINE  
VESSEL OWNERS' ASSOCIATION**



326 CENTER AVENUE, P.O. BOX 135  
KODIAK, ALASKA 99615  
(907) 486-3781 FAX (907) 486-2470

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HALIBUT • SABLEFISH • PACIFIC COD • CRAB

April 2, 1992

The Honorable Fred Zharoff  
Alaska State Legislature  
Juneau, Alaska 99811

SENT BY FAX: 463-3043

**RE: Substitute for Senate Bill No. 267**

Dear Fred,

We would like to express our support for Substitute SB 267. In the past, we have experienced frustration over not receiving adequate notice on Board of Fisheries agenda items. While legal requirements may have been met, it is sometimes difficult for groups in the state to track legal notices and information doesn't always get to groups which might be impacted.

In our opinion this bill is extremely important and we would like to urge you to pass this legislation.

Sincerely,

Linda Kozak  
Executive Director

**Area K Seiners Association**  
P.O. Box 2399 Kodiak, Alaska 99615  
Phone 907/486-4686 FAX 907/486-7655

---



March 31st, 1992

Senator Fred Zharoff  
Room 121, State Capitol  
P.O. Box V  
Juneau, AK 99801-1182

Dear Senator Zharoff:

We strongly support Senate Bill 267. The recent attempt to place a moratorium on the 23 year old Alaska Scallop fishery showed some oversight in current law that SB 267 would correct.

A large part of the scallop fishery occurs near Kodiak. The Kodiak Advisory Committee was never informed of the process that could have closed this fishery to new entrants and granted a four year monopoly to ten or fewer vessels. The Committee chairman, Andre Nault, did enough research so that the committee was able to comment on the proposed moratorium. When the scallop moratorium proposal came before the Board, the public wasn't properly noticed. Additionally, the proposal was buried on the agenda under a category called "other" instead of listed as an individual item to be discussed.

It is clear that some fishermen will try to take advantage of the moratorium law to increase their own economic advantage. Senate Bill 267 would insure that the public could more adequately participate in the process.

Sincerely,

Oliver Holm,  
Area K Seiners Board of Directors

TO: The Honorable Fred Zharoff  
Chairman  
Senate Rules Committee

DATE: March 31, 1992

FAX NO: 789-6170

ATTN: David Shrader

TELEPHONE NO: 789-6160

FROM: COMMERCIAL FISHERIES  
ENTRY COMMISSION  
Bruce Twomley, Chairman  
Frank Homan, Commissioner  
Rich Listowski, Commissioner

SUBJECT: SSSB 267

You asked for our comments on SSSB 267 extending the time for public notice for moratorium requests under Board of Fisheries consideration from 15 days to 30 days. In the event of a petition for a moratorium from the Commissioner of Fish and Game, with the approval of the Board of Fisheries, comes to the CFEC, we would undertake our own separate public notice procedures as required by the Alaska Administrative Procedures Act. SSSB 267 together with CFEC public notice procedures extends the time period to the public for comments. While we cannot comment for the Board of Fisheries or the Department of Fish and Game, our statutes are not affected and we have no problem with this legislation.

If we can provide any additional information, please do not hesitate to contact us.

cc: Geron Bruce, Special Assistant to the Commissioner, ADF&G  
Laird Jones, Director, Board of Fisheries, ADF&G

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 267

Revision Date: 3/25/92

Department Affected: Fish and Game

Title: Notice of Fish and Game Regulations

BRU: Boards/Boards Services

Component: Boards/Boards Services

Sponsor: Senator Zharoff

Requestor: Senate Judiciary

COMPONENT SERIAL NO. 

4	8	2
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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	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	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: Geron Bruce GB.

Phone: 465-4100

Division: Commissioner's Office

Date: 4/2/92

Approved by Commissioner: [Signature]

Agency: Department of Fish and Game

Date: 4/2/92

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

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 267 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATOR ZHAROFF

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Board of Fisheries' consideration of a petition to the Alaska  
2 Commercial Fisheries Entry Commission to establish a moratorium on new entrants into  
3 a commercial fishery; and providing for an effective date."

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

5 \* Section 1. AS 16.05.251(g) is amended to read:

6 (g) The Board of Fisheries shall consider a written request of the commissioner for  
7 approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a  
8 moratorium on new entrants into a commercial fishery under AS 16.43.225 at the board's next  
9 regular or special meeting that follows the receipt by the board of the petition and the written  
10 request for approval of the petition and that allows time for the notice required under this  
11 subsection. The written request of the commissioner for approval of the petition must  
12 document that the fishery, that is the subject of the petition, meets requirements for a  
13 moratorium on new entrants under AS 16.05.050. The board may consider the petition and  
14 the written request of the commissioner for approval of the petition only after receiving the

- 1 petition and the written request and only after <sup>30</sup>60 [15] days' public notice of the board's  
2 intention to consider approval of the petition. The board shall distribute in a timely manner  
3 a copy of the petition and the written request of the commissioner for approval of the  
4 petition to each fish and game advisory committee and office of the department in the  
5 administrative area where the proposed moratorium would be established. The board shall  
6 consider whether the commissioner, in [SUPPORT OF] the request for approval of the petition,  
7 has adequately shown that the fishery meets requirements for a moratorium on new entrants  
8 under AS 16.05.050. The board by a majority vote of its members at the meeting when the  
9 petition must be considered shall approve or disapprove the petition.
- 10 \* Sec. 2. This Act takes effect July 1, 1992.

**DEPARTMENT OF FISH AND GAME**

**POSITION PAPER**

**Bill Number:** SSSB 267

**Sponsor:** Senator Zharoff

**Bill Title:** Notice of Fish and Game Regulations

**Department Position:** Support

**Legislative Intent:** It is the intent of this legislation to increase the existing 15 day public notice requirement on a petition from the Alaska Board of Fisheries to the Commercial Fisheries Entry Commission requesting a moratorium on new entrants into a commercial fishery. This legislation would also require the board to distribute, in a timely manner, a copy of the public notice and a copy of the petition to each fish and game advisory committee and the office of the department in the administrative area where the proposed moratorium would be established.

**Effects of Legislation on Department Programs:** Requiring a minimum 30 day public notice will provide greater public notice. This will not be burdensome, or cost any more than the existing 15 day public notice requirement. The department supports the intent to provide the public with greater notice.

It is not clear what "in a timely manner" means or is trying to accomplish. Currently, when the Division of Boards publishes the public notice to fulfill the Administrative Procedures Act (APA) for the board, the notice is also distributed pursuant to APA requirements. The public notice is an informative summary of the issue the board has accepted.

For fish issues, there is a standing distribution of 1,670. This includes all the advisory committee members on file, the 60 legislators, and any organization and individual that has requested to receive fish issue mailings. The notices are currently distributed to each of the Department of Fish and Game's divisions.

We do have concern on distributing the "petition" itself to the full mailing. Some petitions can be very lengthy. Just the other day we received a petition that was over two inches thick (though this was not a moratorium petition). The commissioner's petition to the board regarding the scallop petition was approximately 20 pages in length.

It is also not clear the parameters of what department offices are "in the administrative area where the proposed moratorium would be established." If not clearly defined, people can argue that this requirement was not fulfilled.

Department of Fish and Game  
Position Paper SSSB 267  
Page 2

I would note that as the statutory requirements get more complex the chances of missing a procedural step increase. The courts historically turn over regulations and laws for procedural errors.

Commissioner's Signature

*Paul Linnick for*

Date

4/6/92

Area K Seiners Association  
P.O. Box 2399 Kodiak, Alaska 99615  
Phone 907/486-4686 FAX 907/486-7655



March 31st, 1992

RECEIVED APR 3 1992

Senator Fred Zharoff  
Room 121, State Capitol  
P.O. Box V  
Juneau, AK 99801-1182

Dear Senator Zharoff:

We strongly support Senate Bill 267. The recent attempt to place a moratorium on the 23 year old Alaska Scallop fishery showed some oversight in current law that SB 267 would correct.

A large part of the scallop fishery occurs near Kodiak. The Kodiak Advisory Committee was never informed of the process that could have closed this fishery to new entrants and granted a four year monopoly to ten or fewer vessels. The Committee chairman, Andre Nault, did enough research so that the committee was able to comment on the proposed moratorium. When the scallop moratorium proposal came before the Board, the public wasn't properly noticed. Additionally, the proposal was buried on the agenda under a category called "other" instead of listed as an individual item to be discussed.

It is clear that some fishermen will try to take advantage of the moratorium law to increase their own economic advantage. Senate Bill 267 would insure that the public could more adequately participate in the process.

Sincerely,

  
Oliver Holm,  
Area K Seiners Board of Directors

**United Fishermen's Marketing Association, Inc.**

P.O. Box 1035 Kodiak, Alaska 99615

Telephone 486-3453



April 4, 1992

Senator Fred Zharoff  
Room 121  
State Capitol  
Juneau, AK 99801-1182

**SENT VIA FAX # 463-3043**

Dear Senator Zharoff,

We would like to provide you with some comments regarding SSSB 267 ("An Act relating to notice of the Board of Fisheries' intention to consider approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery; and providing for an effective date." SSSB 267 addresses AS 16.05.251.

We support the changes to AS 16.05.251(g) that are proposed in SSSB 267. The 15 days public notice that is presently required by AS 16.05.251(g) is not adequate nor reasonable. Therefore, we believe that the 30 days public notice that is proposed in SSSB 267 is a much needed improvement to AS 16.05.251(g). However, we believe that 60 days or 45 days public notice is preferable and more reasonable than 30 days, and we respectfully suggest that SSSB 267 be amended to provide for 60 days public notice.

We also support those provisions of SSSB 267 that address the issue of the distribution of the public notice and of the petition to each ADF&G Fish and Game Advisory Committee and to each ADF&G office in each of the management areas where the proposed moratorium is proposed to apply. Recent occurrences regarding the manner in which a recent request and petition for a moratorium were handled by ADF&G dictate that it is absolutely necessary to require a provision such as this which is provided in SSSB 267. However, we believe that not only the public notice and the petition, but also the "request of the Commissioner for approval of the petition" that accompanies the petition should be included in this provision of SSSB 267.

We also believe that the petition and the "request of the Commissioner for approval of the petition" that accompanies the petition should be in writing, and submitted to the Board office in writing prior to the public notice being published by the Board that the Board intends to address a moratorium.

Thank you very much for your attempt to improve and amend AS 16.05.251(g) in a manner that will allow the public a fair opportunity to have knowledge of, and to comment on, those ADF&G initiatives that apply to the establishment of a moratorium and which ADF&G proposes to submit to the Alaska Board of Fisheries.

Sincerely,

Jeffrey R. Stephan

# United Fishermen's Marketing Association, Inc.



P.O. Box 1035 Kodiak, Alaska 99615

Telephone 486-3453



April 5, 1992

Senator Fred Zharoff  
Room 121  
State Capitol  
Juneau, AK 99801-1182

**SENT VIA FAX # 463-3043**

Dear Senator Zharoff,

As you know, we have previously provided you with some comments regarding SSSB 267 ("An Act relating to notice of the Board of Fisheries' intention to consider approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery; and providing for an effective date." SSSB 267 addresses AS 16.05.251.

These comments should be considered additive to those comments regarding SSSB 267 that we have previously provided to you in our letter of April 4, 1992.

We believe that AS 16.05.251(g) should be amended in the following manner:

(g) The Board of Fisheries shall consider a petition and a written request of the commissioner for approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery under AS 16.43.225 at the board's next regular or special meeting that follows the receipt by the board of the petition and the written request for approval of the petition and that allows time for the notice required under this subsection. The board may consider the petition and the written request of the commissioner for approval of the petition only after 60 [15] days' public notice of the board's intention to consider approval of the petition and the written request of the commissioner for approval of the petition. The board shall have in its possession the petition and the written request of the commissioner before the board may issue a public notice of the board's intention to consider approval of the petition and the written request of the commissioner. The written request of the commissioner must address the rationale that is required of the commissioner under AS 16.05.050(20). The board shall distribute in a timely manner a copy of the public notice, the petition and the written request of the commissioner for approval of the petition to each fish and game advisory committee and office of the Department in the administrative area where the proposed moratorium would be established. The board shall consider whether the commissioner, in support of the written request for approval of the petition, has adequately shown that the fishery meets requirements for a moratorium on new entrants under AS 16.05.050. The board by a majority vote of its members at the meeting when the petition and the written request of the commissioner for approval of the petition must be considered shall approve or disapprove the petition and the written request of the commissioner for approval of the petition.

During recent activities that addressed a request by the Commissioner of ADF&G for a moratorium in the scallop fishery, the official request of the Commissioner (with his limited rationale for requesting such a moratorium) as well as the petition that the Commissioner intended to submit to CFEC, were not transmitted to the Board until the day that the Board

Senator Zharoff, SSSB 267, 4/5/92, Page 2/2

addressed the issue. Neither of these documents were considered ready or complete for submission to the Board until the day before the Board was expected to take action on the proposed scallop moratorium. On what basis, then, did the Board publish the legal notice that advertised that the Board intended to address the petition and the request of the Commissioner for approval of the petition to establish a moratorium on new entrants into the commercial scallop fishery under AS 16.43.225? Verbal requests that require the Board to address issues as significant as a moratorium, without any associated rationale or draft petition language, do not serve the public process.

Under AS 16.05.050(20), the Commissioner has the power to petition to establish a moratorium on new entrants into commercial fisheries:

"(A) that have experienced recent increases in fishing effort that are beyond a low, sporadic level of effort;

(2) that have achieved a level of harvest that may be approaching or exceeding the maximum sustainable level for the fishery; and

(3) for which there is insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the fishery."

It is obvious that the requirements that govern the procedures under AS 16.05.251(g) must be made clear, and must be modified to provide that the public will have a fair opportunity to have knowledge of, and to comment on, those ADF&G initiatives that apply to the establishment of a moratorium, and which ADF&G proposes to submit to the Alaska Board of Fisheries and to the Commercial Fisheries Entry Commission.

It is reasonable to require in statutory language that the official request from the Commissioner (including the statutorily required rationale), and the language of the petition that has been drafted by the Commissioner, should be available in writing to the public during the public notification period.

It is also reasonable to require in statutory language that the Board must not give public notice that the Board intends to consider a petition and a written request of the Commissioner for approval of a petition to establish a moratorium on new entrants into a commercial fishery under AS 16.43.225 unless the Board has first received, in writing, the petition and the request of the Commissioner for approval of the petition to establish a moratorium on new entrants into a commercial fishery.

Thank you for your consideration of our comments regarding SSSB 267.

Sincerely,



Jeffrey R. Stephan

KODIAK FISH AND GAME ADVISORY COMMITTEE  
211 MISSION RD.  
KODIAK, ALASKA 99615

APRIL 2, 1992

Senator Fred Zharoff  
Room 121  
State Capital Bldg.  
Juneau, AK. 99801-1182

Dear Senator Zharoff,

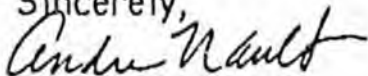
This letter is in regards to S.B. 267. The Kodiak Advisory Committee (K.A.C.) supports changes to the present law as we believe the 15 day notice period is very inadequate. We feel the public would be better served if the notices and copies of the petitions were distributed in a more timely manner and adequate review time was available.

We might suggest that even 45 days may be a more realistic notice period due to the normal length of time between advisory committees meetings. We also agree that it is important to provide copies of the petitions to the local advisory boards and local ADF&G offices.

In order to have time to notify the public of details of proposals, changes, and other actions, and be prepared to comment and make recommendations ourselves, we feel the Board and ADF&G has a responsibility to make information available as early as possible. As you know, the K.A.C. has written to you in the past about problems in receiving important fisheries related information, and any steps that can be taken to help correct this situation are appreciated.

Thank you for introducing this bill and for your consideration of our comments.

Sincerely,



Andre Nault, Chairman

Kodiak Fish and Game Advisory Committee

7-LS1250D ✓  
Utermohle  
3/19/92

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 267  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY SENATOR ZHAROFF

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to notice of the Board of Fisheries' intention to consider approval of  
2 a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium  
3 on new entrants into a commercial fishery; and providing for an effective date."

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

5 \* Section 1. AS 16.05.251(g) is amended to read:

6 (g) The Board of Fisheries shall consider a request of the commissioner for approval of  
7 a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on  
8 new entrants into a commercial fishery under AS 16.43.225 at the board's next regular or special  
9 meeting that follows the receipt by the board of the request for approval of the petition and that  
10 allows time for the notice required under this subsection. The board may consider the request  
11 of the commissioner for approval of the petition only after 30 [15] days' public notice of the  
12 board's intention to consider approval of the petition. The board shall distribute in a timely  
13 manner a copy of the public notice and the petition to each fish and game advisory  
14 committee and office of the department in the administrative area where the proposed

1 moratorium would be established. The board shall consider whether the commissioner, in  
2 support of the request for approval of the petition, has adequately shown that the fishery meets  
3 requirements for a moratorium on new entrants under AS 16.05.050. The board by a majority  
4 vote of its members at the meeting when the petition must be considered shall approve or  
5 disapprove the petition.

6 \* Sec. 2. This Act takes effect July 1, 1992.

**DRAFT****DRAFT****SCALLOP MORATORIUM PETITION**

Under authority of AS 44.62.220, the Department of Fish and Game hereby petitions the Commercial Fisheries Entry Commission to establish, under AS 16.43.225, a moratorium on new entrants into the Alaskan scallop fishery. The Board of Fisheries has approved this petition under AS 16.05.251(g).

There are three statutory criteria that must be met before the department can request a moratorium:

- (1) the fishery must have experienced recent increases in fishing effort that are beyond a low, sporadic level of effort;
- (2) the fishery must be at a level of harvest that may approach or exceed the maximum sustainable level for the fishery; and
- (3) there must be insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the fishery.

Interest in an Alaskan scallop fishery has existed since the early 1950's when the Bureau of Commercial Fisheries began systematic surveys to determine if commercial quantities were available. It was not until 1967 that the first commercial deliveries were made. Since then the commercial harvest of scallops has fluctuated greatly, ranging from a high in 1969 of 1,850,187 pounds of shucked meats by 19 vessels in 157 landings to no fishing effort being reported in 1978. Table 1. shows the variation in vessels, landings and pounds harvested by year.

A dramatic increase in the number of landings during the two most recent seasons is of concern to the department. Effort may continue to intensify and may threaten the conservation of the state's scallop resources if new management measures are not implemented. Additionally, as a result of a pending moratorium and other management efforts in the east coast scallop fishery, it is possible that some scallop vessels from that area could migrate to Alaska.

Large variations in effort and landings may indicate maximum sustainable levels for the fishery are being exceeded. However, at the present state of knowledge it is not known what level of harvest the state's scallop populations can withstand.

There is certainly not sufficient biological and resource management information available to promote the conservation and sustained yield of the fishery. The department issued a report in 1968, Informational Leaflet 125, that summarized the state of scallop knowledge. Since that

# DRAFT

time there has been little additional information acquired on Alaskan scallop stocks, although the fishery has been prosecuted in every year except 1978. The department has a fair idea of the distribution of scallops in Alaskan waters, but no solid information on, abundance, recruitment rates, exploitation rates, and other knowledge necessary to properly manage the fishery. The limited information available indicates scallop populations may be easily overfished.

The Department of Fish and Game finds that the Alaskan scallop fishery meets the statutory criteria necessary for a moratorium under AS 16.05.050(20). Such a moratorium on new entrants would give department time to develop a management plan that would conserve the resource and stabilize the fishery. Expected increases in fishing effort may adversely impact the health of the resources which could result in a complete closure of the fishery. A moratorium would promote the orderly development of the state's scallop fishery and is necessary to protect Alaska's scallop stocks from over-exploitation, and to preserve the economic health and stability of the commercial fishery.

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

\_\_\_\_\_  
Carl L. Rosier  
Commissioner  
Alaska Department of Fish and Game

**DRAFT**

**TABLE 1. STATEWIDE SCALLOP HARVEST, 1969 - 1991**  
(from ADF&G fish tickets)

YEAR	# VESSELS	# LANDINGS	LANDINGS PER VESSEL	POUNDS OF SHUCKED MEATS
1969	19	157	8.3	1,850,187
1970	7	137	19.6	1,440,338
1971	5	60	12	931,151
1972	5	65	13	1,167,034
1973	5	45	9	1,109,495
1974	3	29	9.7	504,438
1975	4	56	14	435,672
1976	2	21	10.5	264,788
1977	2	3	1.5	22,121
1978	0	0	0	0
1979	2	5	2.5	24,856
1980	8	56	7	632,535
1981	18	101	5.6	924,441
1982	13	120	9.2	913,996
1983	6	31	5.2	194,116
1984	10	61	6.1	389,817
1985	8	54	6.8	647,292
1986	9	86	9.6	682,622
1987	4	55	13.8	583,043
1988	4	47	11.8	341,070
1989	7	54	7.7	525,598
1990	9	144	16	1,488,642
1991	10	125	12.5	1,006,332

No landings were recorded in 1978  
1991 fish ticket data is preliminary

March 9, 1992

**DRAFT**

Board of Fisheries  
1255 West 8th Street  
Juneau, AK 99801

Attention: Michael Martin, Chairman

Dear Board Members:

Recently some participants in the scallop fishery submitted information to me they are anticipating large increases in effort that could have serious negative effects on the state's scallop stocks. They also requested me, under authority granted in AS 16.05.050(20), to petition the Commercial Fishery Entry Commission to impose a moratorium on new entrants to the statewide scallop fishery to protect the resource and to stabilize the economic health of the commercial fishery.

Statute requires the board to approve or disapprove the petition before it is submitted to the Commercial Fisheries Entry Commission.

AS 16.05.050. POWERS AND DUTIES OF THE COMMISSIONER. The commissioner has, but not by way of limitation, the following powers and duties:

(20) to petition the Alaska Commercial Fisheries Entry Commission, unless the Board of Fisheries disapproves the petition under AS 16.05.251(g), to establish a moratorium on new entrants into commercial fisheries

**DRAFT**

Board Members

- 2 -

March 4, 1992

(A) that have experienced recent increases in fishing effort that are beyond a low, sporadic level of effort;

(B) that have achieved a level of harvest that may be approaching or exceeding the maximum sustainable level for the fishery; and

(C) for which there is insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the fishery.

**AS 16.05.251. Regulations of the Board of Fisheries**

(g) The Board of Fisheries shall consider a request of the commissioner for approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery under AS 16.43.225 at the board's next regular or special meeting that follows the receipt by the board of the request for approval of the petition and that allows time for the notice required under this subsection. The board may consider the request of the commissioner for approval of the petition only after 15 days public notice of the board's intention to consider whether the commissioner,

# DRAFT

Board Members

- 3 -

March 4, 1992

in support of the request for approval of the petition, has adequately shown that the fishery meets requirements for a moratorium on new entrants under AS 16.05.050. The board by a majority vote of its members at the meeting when the petition must be considered shall approve or disapprove the petition.

There is little information available on the scallop fishery. Fish ticket data has been collected since 1969. Limited work has been done on life history. The department has limited information on distribution, no solid data on abundance, recruitment rates, exploitation rates, and other knowledge necessary to properly manage a fishery. The limited information available indicates scallop populations may be easily overfished.

A moratorium on new entrants to the fishery could enable the department, to develop a statewide scallop fishery management plan that would conserve the resource and stabilize the fishery.

Present circumstances in the scallop fishery meet all three of the requirements of AS 16.05.050(20).

I therefore request the board approve the petition to the Commercial Fisheries Entry Commission.

Sincerely,

Board Members

- 4 -

March 4, 1992

**DRAFT**

Carl L. Rosier  
Commissioner

Enclosed: petition to Commercial Fisheries Entry Commission

CLR\BC\pjd  
v:\bill\scallop.brd

RECEIVED MAR 2 1992

NOTICE OF REVIEW OF PROPOSED PETITION  
BY THE ALASKA BOARD OF FISHERIES

Notice is given that the Alaska Board of Fisheries, under authority vested by AS 16.05.251(g), proposes to approve or disapprove a petition from the Alaska Department of Fish and Game, under AS 16.05.050(20), to the Commercial Fisheries Entry Commission that seeks to place a four year moratorium on new entrants into the statewide scallop fishery. A petition can be submitted if the department finds

- (1) that a fishery has experienced recent increases in fishing effort that are beyond a low, sporadic level of effort;
- (2) that a fishery has achieved a level of harvest that may be approaching or exceeding the maximum sustainable level for the fishery; and
- (3) there is insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the fishery.

If the board approves the petition it will be submitted to the Commercial Fisheries Entry Commission for review. CFEC has the authority to establish a four year moratorium on new entrants to a fishery while the commission is investigating the need of limiting entry to that fishery.

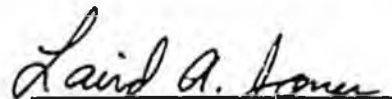
This action may require an increased appropriation.

Copies of the proposed petition may be obtained by writing to the Alaska Department of Fish and Game, Division of Commercial Fisheries, P.O. Box 25526, Juneau, Alaska, 99802-5526. Notice is also given that anyone interested may present written comments or arguments relevant to the proposed actions in this notice. Written comments may be submitted to the Board of Fisheries any time before the beginning of the public hearing tentatively scheduled as follows:

March 13, 1992 in Juneau, Alaska at the Baranof Hotel.

Anyone interested in or affected by the proposed moratorium is hereby informed that, by publishing this legal notice, the Board of Fisheries may consider all of the subjects covered by the proposed changes contained in this notice. The board is not limited by the specific language of the actual petition that has been submitted. The board's actions are limited to the subject matter given in this legal notice, but pursuant to AS 44.62.200(3), the board may review the full range of activities appropriate to any of the subjects listed.

DATE: 2.26.92

  
Laird Jones, Director  
Division of Boards

## STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPARTMENT OF FISH AND GAME

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802-2000  
PHONE: (907) 465-4100

## OFFICE OF THE COMMISSIONER

March 10, 1992

Board of Fisheries  
1255 West 8th Street  
Juneau, AK 99801

Attention: Michael Martin, Chairman

Dear Board Members:

Recently some participants in the scallop fishery submitted information to me they are anticipating large increases in effort that could have serious negative effects on the state's scallop stocks. They also requested me, under authority granted in AS 16.05.050(20), to petition the Commercial Fishery Entry Commission to impose a moratorium on new entrants to the statewide scallop fishery to protect the resource and to stabilize the economic health of the commercial fishery.

Statute requires the board to approve or disapprove the petition before it is submitted to the Commercial Fisheries Entry Commission.

AS 16.05.050. POWERS AND DUTIES OF THE COMMISSIONER. The commissioner has, but not by way of limitation, the following powers and duties:

(20) to petition the Alaska Commercial Fisheries Entry Commission, unless the Board of Fisheries disapproves the petition under AS 16.05.251(g), to establish a moratorium on new entrants into commercial fisheries

(A) that have experienced recent increases in fishing effort that are beyond a low, sporadic level of effort;

(B) that have achieved a level of harvest that may be approaching or exceeding the maximum sustainable level for the fishery; and

(C) for which there is insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the fishery.

Board Members

-2-

March 10, 1992

## AS 16.05.251. Regulations of the Board of Fisheries

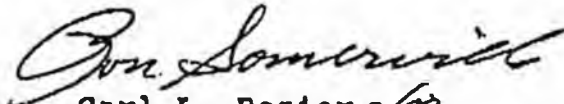
(g) The Board of Fisheries shall consider a request of the commissioner for approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery under AS 16.43.225 at the board's next regular or special meeting that follows the receipt by the board of the request for approval of the petition and that allows time for the notice required under this subsection. The board may consider the request of the commissioner for approval of the petition only after 15 days public notice of the board's intention to consider whether the commissioner, in support of the request for approval of the petition, has adequately shown that the fishery meets requirements for a moratorium on new entrants under AS 16.05.050. The board by a majority vote of its members at the meeting when the petition must be considered shall approve or disapprove the petition.

There is little information available on the scallop fishery. Fish ticket data has been collected since 1969. Limited work has been done on life history. The department has limited information on distribution, no solid data on abundance, recruitment rates, exploitation rates, and other knowledge necessary to properly manage a fishery. The limited information available indicates scallop populations may be easily overfished.

A moratorium on new entrants to the fishery could enable the department to develop a statewide scallop fishery management plan that would conserve the resource and stabilize the fishery.

In sum, I believe that present circumstances in the scallop fishery meet all three of the requirements of AS 16.05.050(20). I therefore request the board to approve the enclosed petition to the Commercial Fisheries Entry Commission.

Sincerely,

  
Carl L. Rosier  
Commissioner

Enclosed: Petition to Commercial Fisheries Entry Commission

## STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPARTMENT OF FISH AND GAME

## OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802-2000  
PHONE: (907) 465-4100

## SCALLOP MORATORIUM PETITION

Under authority of AS 44.62.220, the Department of Fish and Game hereby petitions the Commercial Fisheries Entry Commission to establish, under AS 16.43.225, a moratorium on new entrants into the Alaskan scallop fishery. The Board of Fisheries has approved this petition under AS 16.05.251(g).

There are three statutory criteria that must be met before the department can request a moratorium:

- (1) the fishery must have experienced recent increases in fishing effort that are beyond a low, sporadic level of effort;
- (2) the fishery must be at a level of harvest that may approach or exceed the maximum sustainable level for the fishery; and
- (3) there must be insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the fishery.

Interest in an Alaskan scallop fishery has existed since the early 1950's when the Bureau of Commercial Fisheries began systematic surveys to determine if commercial quantities were available. It was not until 1967 that the first commercial deliveries were made. Since then the commercial harvest of scallops has fluctuated greatly, ranging from a high in 1969 of 1,850,187 pounds of shucked meats by 19 vessels in 157 landings to no fishing effort being reported in 1978. Table 1. shows the variation in vessels, landings and pounds harvested by year.

A dramatic increase in the number of landings during the two most recent seasons is of concern to the department. Effort may continue to intensify and may threaten the conservation of the state's scallop resources if new management measures are not implemented. Additionally, as a result of a pending moratorium and other management efforts in the east coast scallop fishery, it is possible that some scallop vessels from that area could migrate to Alaska.

Large variations in effort and landings may indicate maximum sustainable levels for the fishery are being exceeded. However, at the present state of knowledge it is not known what level of harvest the state's scallop populations can withstand.

There is certainly not sufficient biological and resource management information available to promote the conservation and sustained yield of the fishery. The department issued a report in 1968, Informational Leaflet 125, that summarized the

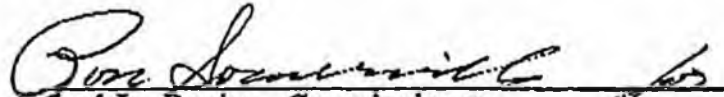
### Scallop Moratorium Petition

state of scallop knowledge. Since that time there has been little additional information acquired on Alaskan scallop stocks, although the fishery has been prosecuted in every year except 1978. The department has a fair idea of the distribution of scallops in Alaskan waters, but no solid information on, abundance, recruitment rates, exploitation rates, and other knowledge necessary to properly manage the fishery. The limited information available indicates scallop populations may be easily overfished.

The Department of Fish and Game finds that the Alaskan scallop fishery meets the statutory criteria necessary for a moratorium under AS 16.05.050(20). Such a moratorium on new entrants would give department time to develop a management plan that would conserve the resource and stabilize the fishery. Expected increases in fishing effort may adversely impact the health of the resources which could result in a complete closure of the fishery. A moratorium would promote the orderly development of the state's scallop fishery and is necessary to protect Alaska's scallop stocks from over-exploitation, and to preserve the economic health and stability of the commercial fishery.

DATE:

3/13/92

  
Carl L. Rosier, Commissioner  
Alaska Department of Fish and Game



# SENATOR FRED F. ZHAROFF

## ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

STATE CAPITOL BLDG., JUNEAU, ALASKA 99801-1182 • (907) 485-3473 • FAX: (907) 483-3043

DISTRICT N

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

March 13, 1992

Mr. Michael Martin  
Chairman  
Alaska Board of Fisheries  
P.O. Box 25526  
Juneau, AK 99802-5526

Dear Mr. Martin:

It has come to my attention that, during the Board of Fisheries meeting now being conducted, the board will review a petition from the Alaska Department of Fish and Game, which proposes to place a four year moratorium on entry into the Alaska statewide scallop fishery.

Notice of review of this proposal, dated February 26, 1992, indicating that a comment period on this proposal would end on March 13, 1992, was received by my office on March 2, 1992. According to the notice, the public is required to have received the notification of this proposal, written to ADF&G in Juneau to obtain data relative to the proposal, and returned their comments to the Board of Fisheries between the dates of February 26, and March 13, 1992. The petition itself was not provided to the Kodiak Fish and Game Advisory Committee, the area where much of this fishery is conducted, for consideration. Review of this petition is not apparent on the tentative agenda for the March 7-14 Board of Fisheries meeting, except under item number 13, "Petitions / Resolutions / Findings / Letters / Other".

In my view, public notice of consideration of this moratorium proposal by the board has been seriously inadequate, and the ADF&G petition itself has not been adequately available for consideration and comment. Consideration of the approval of the petition from ADF&G to the Commercial Fisheries Entry Commission regarding a moratorium on entry into the statewide scallop fishery is not appropriate at this time.

In the interest of providing the public sufficient notification and opportunity to provide meaningful comment on this proposed action as intended, I most respectfully and strongly urge you to delay consideration of this petition by the Board of Fisheries at least until the next regular board meeting.

Sincerely,

Fred F. Zharoff  
Alaska State Senator

FFZ/ds

# United Fishermen's Marketing Association, Inc.



P.O. Box 1035 Kodiak, Alaska 99615

Telephone 486-3453

March 12, 1992



Mr. Michael Martin  
Chairman  
Alaska Board of Fisheries  
P. O. Box 25526  
Juneau, AK 99802-5526

## COMMENT ON ADF&G PETITION REGARDING A MORATORIUM IN THE ALASKAN SCALLOP FISHERY

Dear Mr. Martin,

We request the Alaska Board of Fisheries ("Board"), under the authority granted to the Board in AS 16.05.251(g), to disapprove the Scallop Moratorium Petition that is submitted to the Board by the Commissioner of The Alaska Department of Fish and Game ("Commissioner"). The Board has authority to disapprove the Scallop Moratorium Petition.

In the Scallop Moratorium Petition, the Commissioner petitions the Commercial Fisheries Entry Commission ("CFEC") to establish, under AS 16.43.225, a moratorium on new entrants into the Alaskan scallop fishery.

Under AS 16.05.050(20), before the Commissioner can petition the CFEC to establish a moratorium in the Alaskan scallop fishery, he must demonstrate to the Board that the following three criteria exist:

- (1) the Alaskan scallop fishery must have experienced recent increases in fishing effort that are beyond a low, sporadic level of effort;
- (2) the Alaskan scallop fishery must have achieved a level of harvest that may be approaching or exceeding the maximum sustainable level for the fishery; and
- (3) that there is insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the Alaskan scallop fishery

The Commissioner is grossly incorrect in his claim that the three statutory criteria exist. The Commissioner has not demonstrated, nor has he even remotely substantiated, that the three statutory criteria have been met, other than to little more than simply state that they have been met.

Prior to a request for the proposed moratorium by a predominant beneficiary of any moratorium in the Alaskan scallop fishery, there was no such request from any member of the staff of the Alaska Department of Fish and Game ("ADF&G") who have the responsibility to manage the Alaskan scallop fishery. Indeed, we challenge the Commissioner to produce documents, reports, memorandum, etc. that would demonstrate that ADF&G staff had any difficulty or concern that related to the three statutory criteria that have been claimed to exist by the Commissioner.

This Petition was requested by a member of the Alaskan scallop industry who will be one of a very few predominant beneficiaries of a moratorium in the Alaskan scallop fishery (such member claims to be one of 5 "traditional" scallopers at present). The very few beneficiaries

Mr. Michael Martin, 3/12/92, Page 2

of the proposed moratorium will share in a scallop fishery that was worth, ex-vessel value, approximately \$4 Million in 1991, and approximately \$5.2 Million in 1990.

In the Scallop Moratorium Petition, the Commissioner states that, "Such a moratorium on new entrants would give the department time to develop a management plan that would conserve the resource and stabilize the fishery". We ask the Board to ask the Commissioner to explain several aspects of the management of the scallop fishery, including the details of developing a management plan for the Alaskan scallop fishery:

1. On what basis has ADF&G been managing the Alaskan scallop fishery to the present time?
2. Why has ADF&G failed to develop a management plan for the Alaskan scallop fishery before now?
3. What human and financial resources has the Commissioner currently budgeted for the development of this proposed management plan?
4. How much time does the Commissioner feel he needs to develop the proposed management plan?
5. Has the Commissioner proposed any human and financial resources in the ADF&G F/Y 1993 budget to develop the proposed management plan?
6. Is the Commissioner able to develop a management plan for the Alaskan scallop fishery without having a moratorium in place?
7. Is a moratorium a necessary prerequisite for developing a management plan for the Alaskan scallop fishery?
8. Is it not the responsibility of the Board to develop a management plan?
9. Has the Commissioner ever indicated to the Board in the past that such a management plan is necessary, or that he is unable to conserve or manage the Alaskan scallop fishery?
10. Has the Commissioner substantiated that his staff is unable to manage and conserve the Alaskan scallop fishery?
11. Can the Commissioner produce any past reports, documents, memorandum or verbal testimony from his staff who have responsibility for managing the Alaskan scallop fishery that ADF&G is unable to manage and conserve the Alaskan scallop fishery?
12. Has the Commissioner ever discussed, or proposed to the Board, any other solutions that would address the problems that he perceives to exist in the scallop fishery [ie, 100 % observer coverage on scallop vessels (wrap them into the Alaska shellfish observer program); the development of an enforcement plan in cooperation with the Fish and Wildlife Protection Division of the Department of Public Safety that would result in a focused enforcement effort on scallop vessels; the requirement of satellite or some other type of position indicators on scallop vessels; outright closures of areas that are determined to be in jeopardy; limiting the width of a scallop dredge; establishing a minimum ring size greater than the currently permitted 4 inches; limiting the length of a scallop vessel; establishing a trip limit for scallop vessels; establishing registration areas for scallop vessels (including exclusive and super-exclusive registration areas); etc.]?
13. Can the Commissioner provide information regarding the length of time that the beneficiary vessels, owners, operators and crews of a scallop moratorium have participated in the Alaskan scallop fishery?
14. How does the Commissioner reconcile the fact that he is now proposing a step as drastic as a moratorium, but yet has not submitted any other regulatory proposals to the Board that would assist ADF&G in conserving, stabilizing and managing the Alaskan scallop fishery?
15. Does the Commissioner intend to develop any regulatory proposals regarding the Alaskan scallop fishery prior to the April 10, 1992, proposal deadline?

Mr Michael Martin, 3/12/92, Page 3

16. Are there any areas of the state where the scallop fishery is regulated in such a manner that ADF&G is able to conserve and manage the scallop fishery?,

17. Are regulations and other Permit Requirements that govern the Alaskan scallop fishery applied uniformly throughout the state, or have different management areas developed specific management regimes, Permit Requirements and Regulations that allow ADF&G to conserve and manage the scallop fishery?

It appears that the legal notice that pertains to the Board action on the Scallop Moratorium Petition may allow the Board to take a variety of regulatory action, apart from action on the Scallop Moratorium Petition, during your current meeting. Also, there are several options that are available to the Board, and several options that are at the immediate disposal of the Commissioner, that would address any ADF&G or Industry concerns regarding the scallop fishery. Independent of Board direction or action, the Commissioner may stipulate, at his discretion, any variety of Permit Requirements regarding any aspect of the Alaskan scallop fishery

AS 16.05.251(g) states, "The Board of Fisheries shall consider a request of the commissioner for approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery under AS 16.43.225 at the board's next regular or special meeting that follows the receipt by the board of the request for approval of the petition and that allows time for the notice required under this subsection. The board may consider the request of the commissioner for approval of the petition only after 15 days' public notice of the board's intention to consider approval of the petition. The board shall consider whether the commissioner, in support of the request for approval of the petition, has adequately shown that the fishery meets requirements for a moratorium on new entrants under AS 16.05.050. The board by a majority vote of its members at the meeting when the petition must be considered shall approve or disapprove the petition." (emphasis added)

We understand that the required official request of the Commissioner for approval of the petition was not transmitted to the Board prior to the date that the legal notice was published (2/26/92); that is, that the legal notice relative to this issue was published prior to the Board having received the required official request from the Commissioner. We further understand that as of today, the Commissioner has not yet transmitted the required official request to the Board. Therefore, we believe that the legal notice was improperly and prematurely released, which would not permit the Board to take action on this issue at this meeting. Additionally, as we have submitted previously, the Commissioner has not adequately shown that the fishery meets the requirements for a moratorium on new entrants under AS 16.05.050.

We respectfully request that the Board judge that the issue of a moratorium in the Alaskan scallop fishery is not properly or legally before you at this meeting. If the Board decides to take action on this issue at this meeting, we respectfully request that the Board disapprove any Petition from the Commissioner regarding a moratorium in the Alaskan scallop fishery. Thankyou for your consideration of our comments regarding this issue.

Sincerely,



Jeffrey R. Stephan

**KODIAK FISH AND GAME ADVISORY COMMITTEE**  
211 Mission Road  
Kodiak, Alaska 99615

March 13, 1992

Alaska State Board of Fisheries  
Post Office Box 25526  
Juneau, Alaska 99802-5526

Dear Board Members:

The Kodiak Advisory Committee (KAC) voted unanimously to oppose a moratorium on entrants into the statewide scallop fishery. The Department of Fish and Game (ADF&G) should not have submitted this petition to the Board because the three criteria necessary are not met:

- 1) This fishery has not experienced recent increases in fishing effort that are beyond a low sporadic level of effort. Landings, vessels and catch are all within the historic range for this 23 year old fishery.
- 2) This fishery has not achieved a level of harvest that may be approaching or exceeding the maximum sustainable level. Weathervane scallop landings have fluctuated greatly with effort, but catches over one million pounds have occurred over relatively long periods. Average landings per vessel last year were almost exactly the same as the average for the first 23 years. (Bay scallops are not utilized at all.) Since the State is so large and abundance fluctuates locally, it is unlikely that all scallop beds are being exploited.
- 3) There is not much biological information on scallops, but the catch information indicates that current levels of harvest are sustainable although probably do vary. Intensive exploitation on the East Coast has not managed to eliminate scallops there. The Department has the ability, under their permitting powers, to require more information if they wanted to. The fact that the Department has not required observers or other changes in the fishery indicates that they do not feel more information is needed.

The KAC feels that the petition is being pushed strictly to limit competition. Scallop vessels around Kodiak have usually come from the East Coast. The petitioner came from the East Coast. The Committee would look with favor on conservation measures, but a moratorium is not a conservation measure. It is an allocation measure.

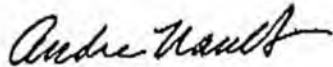
To protect crab stocks and to gather more detailed scallop information, we recommend including all scallop vessels in the shellfish observer program.

Alaska State Board of Fisheries  
March 13, 1992  
Page 2

The KAC feels that the use of a moratorium may have some merit when used in a new and emerging fishery, providing that the Department and Board have exhausted all other reasonable management options and a serious increase in effort is demonstrated to be threatening the health of stocks. However, we do not feel this has been proven to be the case in the Alaska scallop fishery. We do not think the Board should use a moratorium to take the place of good biological management, and we object to creating a defacto limited entry program for a select few boats in a multi million dollar fishery.

After reviewing the history of the scallop fishery in Alaska, we are extremely surprised that the Commissioner forwarded this petition to the Board of Fisheries. We urge the Board to reject this petition. We would also point out that the agenda does not adequately notice when this will come before the Board.

Respectfully,



Andre Nault, Chairman  
Kodiak Fish and Game Advisory Committee



Oliver Holm, Vice Chairman  
Kodiak Fish and Game Advisory Committee

AN/OH/gp

copies: Senator Cliff Davidson  
Senator Fred Zharoff

# ALASKA BOARD OF FISHERIES

## TENTATIVE AGENDA

Spring Meeting  
Part II

Westmark Baranof Hotel  
Juneau, Alaska

March 7 - 14, 1992  
1:00 p.m.

1. Call to Order
2. Introductions of Board Members & Staff
3. Board Member Ethics Disclosures
4. Staff Reports on Southeast Alaska Chinook Salmon Management
5. <sup>3.7.92</sup> Public Testimony on Southeast Alaska Chinook Salmon Management
6. Advisory Committee & Regional Council Reports on Southeast Alaska Chinook Salmon Management
7. Board Deliberations on Southeast Alaska Chinook Salmon Management

Break  
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104.8  
3.8.92

IMPORTANT AGENDA NOTE: This portion of the meeting will not begin prior to March 11. The actual beginning of the meeting will depend on the conclusion of the deliberations of the above portion of the meeting.

8. Board member Ethics Disclosures
9. Staff Reports on 1987 Area M Tagging Study
10. Public Testimony on Tagging Study and Chum Cap
11. Advisory Committee and Regional Council Reports on Study and Chum Cap
12. Board Deliberations on Tagging Study and Chum Cap
13. Petitions/Resolutions/Findings/Letters/Other
14. Adjourn

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**NOTE:** This schedule is tentative and subject to change during the meeting. Schedule updates can be obtained by calling the board's recorded message phone during the meeting. The number is 586-9819.

# ALASKA BOARD OF FISHERIES

## Summary

### June Area M Chum Cap Issue and Other issues the Board Considered

The board had met from early afternoon of Friday, March 13 through the late evening of Sunday, March 15 on the June Area "M" Chum Cap Issues. Following the Area "M" issues, the board took actions on the other petitions and requests.

The department first briefed the board on the 1987 tagging study as the only staff report for this portion of the meeting. The board then heard from two public panels on interpretations of the significance of the 1987 tagging study. One panel represented the general western Alaska area from Bristol Bay through the Norton Sound areas. The other panel represented the Alaska Peninsula and Aleutian Islands Area ("Area M"). Each panel was provided 30 minutes to state their case on the 1987 tagging study. [Note: There was one coin toss to select which person representing each panel was going to call heads or tails (the Area M person won). The second coin toss was won by the Area M person. They selected to go second in the panel presentations]

After the panel presentations, the board asked the department additional questions about the study and items brought up during the panel presentations. The board voted unanimously to proceed with considering the June Area M Chum Cap (03/14/92 @ 3:11pm).

The evening of March 13 the chairman of the board (Mike Martin) met with five fishermen from Area M and five fishermen of the A-Y-K areas to see if there was common ground the groups could agree on. The next morning the chair reported that the groups could not agree on a solution to the issues but did agree on some other ideas. He also hoped the affected fishermen would continue the dialogue to see if there could be at least an understanding between the fishermen.

The board heard from approximately 83 people and 5 advisory committees that afternoon, next morning and into the afternoon.

At 4:30 the first motion was:

To amend the adoption order to amend: SAAC 09.365. SOUTH UNIMAK AND SHUMAGIN ISLANDS JUNE SALMON MANAGEMENT PLAN. (f) to provide the following: The total chum salmon harvest shall not exceed "a range of 500,000 - 700,000 fish (cap). When the chum harvest reaches 500,000, a working group comprised of 4 area M and 4 A-Y-K persons and the ADF&G shall implement a plan to reduce chum harvest to allow for Area M to reach their project 8.3% allocation while not exceeding the chum cap. This will sunset in one year with the board reviewing the progress of the working group and the fishery. The department shall monitor both fisheries in concurrence with any

existing subsistence needs in any of the effected areas." This motion was withdrawn at 5:26 p.m.

The second motion provided:

To amend the adoption order to amend: 5AAC 09.365. SOUTH UNIMAK AND SHUMAGIN ISLANDS JUNE SALMON MANAGEMENT PLAN. (f) to provide the following: [40 PERCENT OF THE FORECASTED SOCKEYE SALMON GUIDELINE HARVEST LEVEL. THE TOTAL ANNUAL CHUM SALMON HARVEST SHALL NOT EXCEED 900,000] [bracketed language to be deleted] "700,000". "When the harvest reaches 400,000 chum salmon, the department shall take appropriate management action, in season, to reduce the remaining chum harvest rate while attempting to allow full harvest of the sockeye guideline harvest level." Note: underlined language to be added. This motion carried at 6:45pm [6 in favor; 1 against].

The third motion provided [intent language]:

To amend the adoption order to amend: 5AAC 09.365. SOUTH UNIMAK AND SHUMAGIN ISLANDS JUNE SALMON MANAGEMENT PLAN. (f) to provide the following: "for the set gillnet fishermen approximately 16 hours of fishing opportunity during the periods after the 400,000 threshold is reached and to end when the 700,000 cap is reached." This carried at 7:47pm [6 in favor; 1 absent]. This is not to expand the set gillnet allocations. It is to maintain status quo on the allocations. Only to be implemented between the 400,000 and 700,000 chum harvest times.

NOTE: The draft regulatory language for 5AAC 09.365. is enclosed.

The board denied the request from the Commissioner of Fish and Game to petition Commercial Fisheries Entry Commission on providing a moratorium for the Scallop Fisheries [1 in favor; 5 against; 1 absent].

The board delegated authority to the commissioner to adopt certification:decertification for the shellfish onboard observer program [6 in favor; 2 absent].

The board approved adding to the October 1992 Soldotna meeting considering two proposals from Fish and Wildlife Protection to correct two statewide fish regulations (house keeping issues) [carried without objection].

The board denied a petition from the Chair of the Prince William Sound Aquaculture Corporation Production and Planning Committee [0 for; 6 against; 1 absent]. The petition requested the board to amend: 5AAC 24.367 (b)(1) to allow for "drift gillnet fleet to set amongst the setnets on openers only, to benefit from buildups."

After a long hard, but productive meeting cycle, the board adjourned at 10 pm.

DRAFT REGULATORY LANGUAGE - MARCH 1992 BOARD MEETING  
FALSE PASS JUNE CHUM CAP  
DRAFT AS OF MARCH 18, 1992

5 AAC 09.365. SOUTH UNIMAK AND SHUMAGIN ISLANDS JUNE SALMON  
MANAGEMENT PLAN.

(f) The department shall close the June fishery before the sockeye guideline harvest levels are taken if incidental harvest of chum salmon reaches [40 PERCENT OF THE FORECASTED SOCKEYE SALMON GUIDELINE HARVEST LEVEL. THE TOTAL ANNUAL CHUM SALMON HARVEST SHALL NOT EXCEED 900,000 FISH] 700,000 fish. When the harvest reaches 400,000 chum salmon, the department shall take appropriate management action, in season, to reduce the remaining chum salmon harvest rate while attempting to allow full harvest of the sockeye salmon guideline harvest level. The documented contribution of Russell Creek Hatchery chum salmon to the June fishery shall be added on over the existing chum salmon numerical quota beginning in 1993.

(g) If it becomes necessary for the department to take management actions, as specified in (f) of this section, to reduce the chum salmon harvest rate, the fishing periods for set gill gear shall not be less than 16 hours in duration, unless such a period will result exceeding the chum salmon guideline harvest level.

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5 AAC 39.205 ALASKA AD

sonal use fisheries. The primary purpose is to protect the sustained yield of the fishery at the same time providing an equitable distribution of fish between various users. The regulations are intended to aid in the achievement of these goals and apply to all fishery management plans contained in 5 AAC 03-5 AAC 39.

(b) In some fishery management plans, the distribution of harvestable fish between various users is determined by the harvest that occurs during a specific time period, at a specific location or by a specific group or groups of users. At times fishermen, due to circumstances that are beyond the control of the department, such as weather or price disputes, will not harvest fish. When this happens in a fishery governed by a management plan, the goals of that plan may not be achieved. Therefore, when a fishery is open to the taking of fish and the group or groups of users whose catch determines the distribution of the harvest as set out in the applicable management plan is not taking the harvestable fish available to them, the department shall manage the fishery as if the available harvest is being taken. When determining the available harvest, the department shall consider the number of fish needed to meet spawning requirements, the number of fish present in the fishery and in spawning areas that are in excess of spawning requirements and the estimated harvesting capacity of the group or groups of users that would normally participate in the fishery. (Eff. 4/16/83, Register 86)

Authority: AS 16.05.251

**5 AAC 39.205. CRITERIA FOR THE ALLOCATION OF FISHERY RESOURCES AMONG PERSONAL USE, SPORT, AND COMMERCIAL FISHERIES.** Before adopting regulations that allocate fish among personal use, sport, and commercial fisheries, the board will, as appropriate to particular allocation decisions, consider factors such as those set out in AS 16.05.251(e). (Eff. 6/10/87, Register 102)

Authority: AS 16.05.251

**5 AAC 39.210. MANAGEMENT PLAN FOR HIGH IMPACT EMERGING FISHERIES.** (a) To guide management of high impact emerging commercial fisheries, a plan is needed that ensures resource conservation, minimizes impacts on existing users, and provides for the orderly development of new fishery resources.

(b) The department may regulate a commercial fishery as a high impact emerging commercial fishery if the commissioner determines

5 AAC 39.210

that any of the following conditions exist in an area or region:

- (1) harvestable fish are below the level;
  - (2) interest in the fishery is more than a specified level;
  - (3) the level of harvest is not being sustained;
  - (4) the board determines that there are issues of fishery.
- (c) The commissioner may make such regulations as are necessary to manage the fishery.
- (d) The department may close a fishery once it has been closed and may not reopen the fishery until the associated regulations are approved by the interim management plan commissioner.

(e) The department may regulate each high impact emerging commercial fishery as follows:

- (1) a review of the fishery in Alaska;
- (2) a review of the fishery;
- (3) identification of the fishery;
- (4) an evaluation of the fishery;
- (5) designation of management measures;
- (6) an evaluation of the management measures;
- (7) a plan for the management of the fishery;
- (8) a list of the fishery;
- (9) a cost estimate of the fishery;
- (10) an analysis of the fishery.

(f) The commissioner may regulate a fishery consistent with the regulations under (g).

(g) Upon completion of the management plan approved by the board at a public meeting.



That any of the following conditions apply to a species or species group in an area or region:

- (1) harvesting effort has recently increased beyond a low sporadic level;
- (2) interest has been expressed in harvesting the resource by more than a single user group;
- (3) the level of harvest might be approaching a level that might not be sustainable on a local or regional level;
- (4) the board has not developed comprehensive regulations to address issues of conservation, allocation, and conduct of an orderly fishery.

(e) The commissioner shall notify the board if a determination is made to manage a fishery as a high impact emerging fishery.

(d) The department shall close a high impact emerging commercial fishery once it has been designated as such by the commissioner, and may not reopen the fishery until an interim management plan and associated regulations have been adopted by the commissioner. If an interim management plan and regulations have been adopted, the commissioner may allow the fishery to continue.

(e) The department shall develop an interim management plan for each high impact emerging commercial fishery. An interim management plan shall contain at least the following information:

- (1) a review of the history of commercial exploitation of the species in Alaska and other relevant jurisdictions;
- (2) a review of the life history of the organism;
- (3) identification of specific management goals and objectives;
- (4) an evaluation of potential impacts on existing users;
- (5) designation and justification of the preferred management measures;
- (6) an evaluation of the conservation impacts of the preferred management approach on non-target species and on non-target individuals of the same species;
- (7) a plan for determining the productivity of the species and impact of the fishery;
- (8) a list of proposed interim regulations;
- (9) a cost estimate for plan implementation;
- (10) an analysis of customary and traditional subsistence use patterns.

(f) The commissioner may adopt regulations and open the fishery consistent with measures identified in the interim management plan. The regulations will remain in effect until the board adopts regulations under (g) of this section.

(g) Upon completion of an interim plan, the department shall petition the board under 5 AAC 96.625 to consider adoption of the management plan and associated regulations at its next regularly scheduled meeting.

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5 AAC 39.230 ALASKA ADMINISTRATIVE CODE 5 AAC 39.250

(h) The department may require onboard observers as specified in 5 AAC 39.141 and 5 AAC 39.645 on fishing vessels, catcher/processors and floating processors that participate in high impact emerging commercial fisheries. (Eff. 4/30/91, Register 118)

Authority: AS 16.05.251

Article 2. Salmon Fishery

Section	Section
230. Gear	280. Identification of stationary fishing gear
240. General gear specifications and operations	281. (Repealed)
250. Gill net specifications and operations	290. Closed waters
260. Seine specifications and operations	292. (Repealed)
270. Troll specifications and operations	

5 AAC 39.230. GEAR. Only those gill nets, seines, troll lines, fishwheels, spears or other appliances as provided for in 5 AAC 03 — 5 AAC 39 may be used to take salmon. (In effect before 1988)

Authority: AS 16.05.251

5 AAC 39.240. GENERAL GEAR SPECIFICATIONS AND OPERATIONS. (a) A salmon fishing vessel shall operate, assist in operating, or have aboard it or any boat towed by it, only one legal limit of salmon fishing gear in the aggregate except as otherwise provided in this title.

(b) Unhung gear sufficient for mending purposes may be carried aboard fishing vessels.

(c) A purse seine, hand purse seine or beach seine may not be fished simultaneously with gill net gear by any individual or vessel.

(d) Salmon fishing nets must be measured, either wet or dry, by determining the maximum or minimum distance between the first and last hanging of the net when the net is fully extended with traction applied at one end only.

(e) The interim-use or entry permit card holder is responsible for the operation of the net. (In effect before 1985; am 5/31/85, Register 94)

Authority: AS 16.05.251

5 AAC 39.250. GILL NET SPECIFICATIONS AND OPERATIONS. (a) The trailing of gill net web is prohibited at any time or place where fishing is not permitted.

(b) Set gill nets shall be removed from the water during any closed period.

5 AAC 39.260 FISH AND GAME

(1) in the Southeast Alaska, Yakutat, Prince Cook Inlet Areas, gill net web must meet or requirements:

(A) the web must contain at least 30 elements must be of equal diameter, or

(B) the web must contain at least six fil must be at least 0.20 millimeter in diam

(2) effective 1/1/89, the requirements in subsection apply in the Kodiak, Chignik, Alaska Peninsula, Bristol Bay, Kuskokwim, Yukon Clarence, and Kotzebue-Northern Areas.

(d) The float line and floats of gill nets must surface of the water while the net is fishing, un cause the net to temporarily sink. The restriction does not apply to the Kotzebue-Northern (5 Sound-Port Clarence (5 AAC 04.100), Yukon Kuskokwim (5 AAC 07.100), and Kodiak (5 AAC effect before 1983; am 4/16/83, Register 86; am 4/2/88, Register 105)

Authority: AS 16.05.251

5 AAC 39.260. SEINE SPECIFICATIONS. (a) In the use of purse seines and hand than one anchor may be used to hold the seine during a set.

(b) Repealed 3/26/76.

(c) Unless otherwise provided in 5 AAC 05 seine is considered to have ceased fishing when the water.

(d) A hand purse seine is considered to have both ends of the seine are fast to the vessel.

(e) A beach seine is considered to have ceased the lead line is above the water on the beach.

(f) Where the use of leads is permitted, a purse have or use more than one lead of legal length purse rings attached, and with a minimum number

(g) If a purse seine and a lead are operated

(1) the lead must be attached to the purse

(2) the lead may be attached to only one

(3) the lead may not be attached at any

seine;

(4) the web of the purse seine must overlie at least one fathom, or the web of the purse the end of the lead for the entire depth

(5) — (8) repealed 6/2/88.

SB

292

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SECOND SUB. FOR SB 292

Revision Date: \_\_\_\_\_ Department Affected: Fish and Game  
Title: Goodnews Bay Submerged Lands Area BRU: Habitat  
Component: Habitat

Sponsor: Hoffmann  
Requestor: Senate Resources COMPONENT SERIAL NO. 

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EXPENDITURES/REVENUES: (Thousands of Dollars, (inflation not included))

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: No impact on current year

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Frank Rue, Director Phone: 465-4105

Division: Division of Habitat Date: 5-1-92

Approved by Commissioner: [Signature]

Agency: Department of Fish and Game Date: 5/5/92

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SSSB 292

Revision Date: 5-Feb-92 Department Affected: Natural Resources  
 Title: Establishing the Goodnews Bay BRU: Mining Management  
Submerged Land Area Components: Mining Management  
 Sponsor: Senator Hoffman  
 Requestor: Senate Resources COMPONENT SERIAL NO. 442

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	* 1000.0					
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	* 1000.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	* 10,000.0					
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REVENUE						
Funding Source:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	* 11,000.0					
FEDERAL FUNDS						
OTHER						
Funding Source:						
TOTAL	* 11,000.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

\* See Attached

Prepared by: Sam Dunaway, Acting Director Phone: 762-2171  
 Division: Mining Date: 5-Feb-92  
 Approved by Commissioner: Harold C. Heinze Date: 2/5/92  
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Fiscal Note SSSB 292  
Goodnews Bay Submerged Land Area

Section 2 of this bill establishes the Goodnews Bay Submerged Land Area (GBSLA) as a limited use area that is closed to mining, mineral entry and leasing, and also closed to mineral exploration, development and extraction. There are 74 mining claims located within the GBSLA. Since the owners of these claims will not be able to make use of the property rights they have acquired, the state will need to buy back or acquire the claims.

To determine the validity of these claims, a mineral endowment analysis that assesses the availability of minerals and what they are worth may be needed. The analysis may require some exploration and drilling and could cost an estimated \$250,000.

In addition to validity costs, the buy-back costs for valid claims could be as much as ten million dollars. Actual costs would depend on the results of the mineral endowment analyses.

There are also other costs related to this bill. There are 4.5 Offshore Prospecting Permits (OPPs) located within the GBSLA, where mining activity will not be allowed, and 9.5 OPPs located in areas adjoining the GBSLA where all mineral permits and leases will be canceled. The OPP costs of the owners as of last year at this time are approximately \$750,000, for which they would expect reimbursement.

COST SUMMARY

1.	Mining Claim Validity Determinations	--	\$	250,000
2.	OPP Applicant Costs (as of last year)	--	\$	750,000
3.	Mineral Value Buy-Back Estimate	--	\$	10,000,000
				<hr/>
	Total		\$	11,000,000

**SENATE COMMITTEE REPORT**  
FIRST COMMITTEE OF REFERRAL

DATE: 5/14/91  
1/14/92 -- SS intro  
3/19/92 -- 2d SS intro

FURTHER:

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED  
INTO OFFICE: \_\_\_\_\_

Resources                      Committee considered                      2D SSSB 292

GOODNEWS BAY SUBMERGED LAND AREA

and recommends:

replace with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

same title  
 new title  
 technical  
title change  
(HB only)

attaches amendment(s)

adopts \_\_\_\_\_ Letter of Intent

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

do pass

do not pass

no recommendation

individual recommendations

**NEW FISCAL NOTES:**                      Dept/Date

zero fiscal notes \_\_\_\_\_

\_\_\_\_\_

fiscal notes \_\_\_\_\_

\_\_\_\_\_

appropriation--no fiscal note

**PREVIOUS FISCAL NOTES:**                      Dept/Date

Governor's bill with fiscal notes:

zero fiscal notes \_\_\_\_\_

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fiscal notes \_\_\_\_\_

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**DO PASS:**

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**OTHER RECOMMENDATIONS:**

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\_\_\_\_\_  
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\_\_\_\_\_  
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\_\_\_\_\_  
Chair: Signature and Recommendation

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 2
To <i>Jerry Lachapart</i>	From <i>Jerry Cross</i>	
Co. <i>LAP Legal</i>	Co. <i>Sen Res</i>	
Dept.	Phone # <i>4907</i>	
Fax # <i>2024</i>	Fax #	

Amendments to 2nd Sponsor Substitute to SB 292

On page 1, Line 9

On page 1, Line 9

After "economies" insert:

"The legislature also finds that the submerged lands near Goodnews Bay are considered the best prospect in the United States for locating commercially recoverable platinum. Platinum group metals were first mined from onshore deposits in the area in 1926. It has long been suspected that placing platinum metals are concentrated in sediments of Goodnews Bay."

On page 1, Line 9.

After "economies" delete:

"That heritage, and current use, could be endangered by mining, mineral entry or location, mineral leasing, ,or mineral prospecting in the submerged land of the bay."

On page 2, line 1

after "interest.", insert:

"The Legislature also finds that environmentally sound exploration of state land and water adjoining the Goodnews Bay Submerged Land area should proceed."

On page 3, line 24

Delete subsection (b)

*Please incorporate this!*

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 1
To <i>Jerry Lachapart</i>	From <i>Sen Res</i>	
Co.	Co. <i>1. Cross</i>	
Dept.	Phone # <i>4907</i>	
Fax # <i>2028</i>	Fax # <i>Jerry Cross</i>	

*11:38 AM*

Finding Of The Commissioner  
Mineral Closing Order No. 607  
A8 38.05.18(a)

:  
:  
:

In preparation for issuing offshore prospecting permits (OPPs) in selected areas near Goodnews Bay, the Director of the Division of Mining (DOM), Department of Natural Resources, prepared a best interest finding and coastal consistency determination, dated August 10, 1990, after coordinating and reviewing resource data and considering comments by various state agencies, the Cenaliulriit Coastal Management District, and the general public. The Commissioner concurred with the best interest finding.

The best interest finding states that the Director of the DOM decided to reject all OPP applications within Goodnews Bay because of the high value and sensitivity of the shallow bay to disturbance and because of strong public comment opposing exploration and mining within Goodnews Bay. He found that the issuance of OPPs within the bay not to be in the best interest of the state. The Director of the DOM also decided to reject all or portions of the OPP applications covering the entrance of Goodnews Bay and offshore portions on both sides of the north and south spits located at the entrance of the bay because of high concentrated seasonal feeding and migration by fish, birds, and marine mammals at the bay entrance and important biological resources present offshore along the spits.

In conjunction with the rejection of all or portions of certain OPPs, the best interest finding also stated that the Director of the DOM intended to initiate procedures necessary for closing to new locatable mineral entry the intertidal area encompassing the first one-quarter mile (1320 feet) seaward from the mean high tide line within Goodnews Bay, and both sides of the north and south spits.

As a result of the August 2, 1990 commissioner level elevation meeting regarding the coastal buffer issues of the coastal consistency determination, an agreement was reached between the Department of Fish and Game (ADF&G) and the Department of Natural Resources (DNR) that DNR would issue a mineral closing order (MCO) along the coast within the OPP disposal area a distance of 1320 feet seaward from mean high tide. In anticipation of additional OPPs being issued south of the present OPP area, DNR agreed to extend the MCO or issue a similar one along the coast south of the disposal area to the southern end of Chagvan Bay. The extended MCO includes the tide and submerged lands 1320 feet seaward from mean high tide along the eastern shoreline of Kuskokwim Bay and within Chagvan Bay. The extended MCO terminates at the southern line of Section 33 of Township 16 South, Range 75 West, S.M.

Finding of the Commissioner  
MCO 607  
Goodnews Bay/Kuskokwim Bay/Chagvan Bay  
Page 2

The extension of the OPP disposal area MCO is to protect the migratory corridor for salmon and herring moving north along the coast of Kuskokwim Bay to Goodnews Bay and for protecting and preserving the natural habitat and wildlife populations of Chagvan Bay. Chagvan Bay is almost totally situated within the Cape Newenham State Game Refuge which was established by the Alaska State Legislature in 1960. Chagvan Bay is a large shallow estuarine embayment known for its large productive eelgrass beds and importance as a resting and feeding area for vast numbers of birds on their way to and from nesting grounds to the north. The bay is especially critical to Pacific herring which spawn in large numbers on the eelgrass and to black brant which stop in the spring to feed on eelgrass.

This mineral closure does not apply to and will not affect the adjacent uplands (areas above the mean high tide line) in any way. It covers state-owned tide and submerged lands only within those lands described in MCO 607. It also will not affect the valid existing rights of the approximately sixteen (16) mining claims presently located within the tide and submerged lands along the Kuskokwim Bay shoreline but would preclude the staking of new mining claims in the area if any of the existing claims become invalid.

It is my finding that the fish and wildlife uses of the lands described in Attachment A of this order constitutes an important and significant surface use and that mining would be incompatible with this use. It is therefore, my finding, in accordance with AS 38.05.185(a), that the best interests of the State of Alaska are served by the closure to new locatable mineral entry those lands identified in MCO 607, to entry under the locatable and mining laws of the State of Alaska. Mineral Closing Order No. 607.

---

Harold C. Heinze, Commissioner  
Department of Natural Resources

---

Date

STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF LAND

MINERAL ORDER 607

X Closing Lands to Mineral Entry \_\_\_\_\_ Opening Lands to Mineral Entry \_\_\_\_\_

I. Name GOODNEWS BAY/KUSKOKWIM BAY/CHAGVAN BAY

II. This mineral order is based upon the attached Commissioner's Finding and the written documentation contained in:

Area Plan: \_\_\_\_\_ Dated \_\_\_\_\_

Management Plan: \_\_\_\_\_ Dated \_\_\_\_\_

Site Specific Plan: \_\_\_\_\_ Dated \_\_\_\_\_

Other: FINAL BEST INTEREST FINDING Dated August 10, 1991

III. File Number \_\_\_\_\_ Legal Description \_\_\_\_\_ Acreage \_\_\_\_\_

(See Attachment A)

IV. This order is subject to valid existing rights and issued under the authority granted by AS 38.05.185 - 38.05.275 to the Department of Natural Resources. The above described lands are hereby X close \_\_\_\_\_ opened to entry under the locatable mineral and mining laws of the State of Alaska.

Concur: [Signature]  
Director  
Division of Land

July 29 1991  
Date

Concur: [Signature]  
Director  
Division of Mining

July 30 1991  
Date

Approved: \_\_\_\_\_  
Commissioner

\_\_\_\_\_ Effective Date

ATTACHMENT A

Goodnews Bay/Kuskokwim Bay/Chagvan Bay  
Mineral Closing Order No. 607

Legal Description:

This mineral closing order encompasses a strip of land 1320 feet wide, measuring seaward from the mean high tide line in the following areas:

SEWARD MERIDIAN

Goodnews Bay & Vicinity

T12S, R73W:  
Portions of Sections  
17-21, 28, 32-33.

T12S, R74W:  
Portions of Sections  
19-20, 23-30.

T12S, R75W:  
Portions of Sections  
25-26, 34-36.

T13S, R74W:  
Portions of Sections  
3, 8-10, 16-19.

T13S, R75W:  
Portions of Sections  
6-8, 13, 16-21, 23-24,  
26-30, 32.

T13S, R76W:  
Portions of Sections  
1-2, 12.

Kuskokwim Bay

T14S, R75W:  
Portions of Sections  
4-5, 9, 16, 21, 28, 33.

T15S, R75W:  
Portions of Sections  
4, 9, 15-16, 21-22,  
27, 34.

Goodnews Bay/Kuskokwim Bay/Chagvan Bay  
MCO 607  
Legal Description  
Attachment A  
Page 2

Kuskokwim Bay (con't)

T16S, R75W:  
Portions of Sections  
2-3, 10, 15, 22, 27-28,  
33.

Chagvan Bay

T16S, R74W:  
Portions of Sections  
5-8, 17-19, 30.

T16S, R75W:  
Portions of Sections  
1-2, 11-12, 14-15,  
22-23, 25-27, 34-36.

Totaling approximately 11,630 acres

7-LS1242V  
Luckhaupt  
5/6/92

CS FOR 2d SPONSOR SUBSTITUTE FOR SENATE BILL NO. 292 (RESOURCES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:

Referred:

Sponsor(s): SENATOR HOFFMAN

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the Goodnews Bay Submerged Land Area; closing the area to mining,  
2 mineral entry, mineral location, mineral prospecting, and mineral leasing; and providing  
3 for an effective date."

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

5 \* Section 1. FINDINGS. The legislature finds that Goodnews Bay is of extreme importance to the  
6 culture, communities, and residents of the area. Since the area was first inhabited, Goodnews Bay has  
7 been and remains a source of fish, including salmon and herring, wildlife, and marine life important for  
8 local cash and subsistence economies. The legislature also finds that the submerged lands near  
9 Goodnews Bay are considered the best prospect in the United States for locating commercially  
10 recoverable platinum. Platinum group metals were first mined from onshore deposits in the area in 1926.  
11 It has long been suspected that placer platinum metals are concentrated in sediments of Goodnews Bay.  
12 A reduction in the fishery resource because of mining, mineral entry or location, mineral prospecting,  
13 or mineral leasing activity would be extremely harmful to the cultural heritage of the communities and  
14 residents of the area. The legislature finds that closing the Goodnews Bay Submerged Land Area to

1 mining, mineral entry or location, mineral prospecting, and mineral leasing represents the maximum use  
2 of the area consistent with the public interest. The legislature also finds that environmentally sound  
3 exploration of state land and water adjoining the Goodnews Bay Submerged Land Area should proceed.

4 \* Sec. 2. AS 41 is amended by adding a new chapter to read:

5 CHAPTER 24. LIMITED USE AREAS.

6 Sec. 41.24.010. PURPOSE OF CHAPTER. The purpose of this chapter is

7 (1) to establish the Goodnews Bay Submerged Land Area as a limited use area  
8 to be managed by the department as provided in AS 41.24.020;

9 (2) to protect and perpetuate the fisheries resources and habitat in the area; and

10 (3) to close the area to mining, mineral entry, mineral location, mineral  
11 prospecting, and to leasing as mineral land.

12 Sec. 41.24.020. GOODNEWS BAY SUBMERGED LAND AREA ESTABLISHED. (a)

13 The state tideland, submerged land, and water lying within the area described in this subsection  
14 is designated as the Goodnews Bay Submerged Land Area: Starting at the northern starting  
15 point, which consists of the northern section line of Section 2, Township 13 South, Range 76  
16 West, Seward Meridian, where it intersects with the mean higher high tide line, continuing  
17 southerly along the higher high tide line of Kuskokwim Bay to Goodnews Bay, thence continuing  
18 along the higher high tide line of Goodnews Bay, then southerly again along the higher high tide  
19 line of Kuskokwim Bay to Chagvan Bay, thence continuing along the higher high tide line of  
20 Chagvan Bay, thence southerly again along the higher high tide line of Kuskokwim Bay to the  
21 point where the higher high tide line intersects with the southern boundary line of Section 33,  
22 Township 16 South, Range 75 West, Seward Meridian, thence westerly along the section line to  
23 a point 1,320 feet seaward from the higher high tide line, thence northerly along a line 1,320 feet  
24 seaward of the higher high tide line to a point where this line intersects the westward extension  
25 of the northern boundary of Section 2, Township 13 South, Range 76 West, Seward Meridian,  
26 thence easterly along the section line to the northern starting point.

27 (b) The land and water described in (a) of this section is closed to

28 (1) mining, mineral location, mineral entry, mineral prospecting, and mineral  
29 leasing under AS 38.05.185 - 38.05.275;

30 (2) exploration, development, and extraction of minerals under AS 38.05.135 -  
31 38.05.184.

1 (c) The department may not manage the Goodnews Bay Submerged Land Area as a unit  
2 of the state park system.

3 (d) The department shall manage the Goodnews Bay Submerged Land Area as it does  
4 other state land and water except as provided in (b) of this section and shall permit other uses  
5 as provided by law.

6 Sec. 41.24.030. MANAGEMENT OF OFFSHORE STATE LAND AND WATER  
7 ADJACENT TO THE GOODNEWS BAY SUBMERGED LAND AREA. (a) The department  
8 shall manage offshore state land and water adjoining the Goodnews Bay Submerged Land Area  
9 as it does other state land and water and shall permit other uses as provided by law, except as  
10 provided in this section.

11 (b) The department may permit mineral and mining activity in the offshore state land and  
12 water adjoining the Goodnews Bay Submerged Land Area <sup>after consultation with</sup> ~~unless the~~ commissioner of fish and  
13 game <sup>and</sup> ~~determines~~, before the beginning of the activity or during the course of the activity, that

14 (1) the activity

15 (A) is: consistent with the protection of fish and wildlife, their habitat,  
16 and their use in the Goodnews Bay Submerged Land Area; <sup>and areas</sup>

17 (B) unduly restrict or interfere with the public use and enjoyment of the  
18 resource values of the Goodnews Bay Submerged Land Area; and

19 (2) effects of the activity upon fish and wildlife, their habitat, and their use in the  
20 Goodnews Bay Submerged Land Area can be mitigated;

21  
22 \* Sec. 3. APPLICABILITY. The prohibitions in AS 41.24.010 - 41.24.020, added by sec. 2 of this  
23 Act, do not apply to valid mineral leases for the offshore state land and water within the Goodnews Bay  
24 Submerged Land Area described in AS 41.24.020(a), added by sec. 2 of this Act, that are in existence  
25 on the effective date of this Act.

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

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SSSB 292

Revision Date: 5-Feb-92 Department Affected: Natural Resources  
 Title: Establishing the Goodnews Bay BRU: Mining Management  
Submerged Land Area Components: Mining Management  
 Sponsor: Senator Hoffman  
 Requestor: Senate Resources COMPONENT SERIAL NO. 442

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	* 1000.0					
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	* 1000.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	* 10,000.0					
REVENUE						
Funding Source:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	* 11,000.0					
FEDERAL FUNDS						
OTHER						
Funding Source:						
TOTAL	* 11,000.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

\* See Attached

Prepared by: Sam Dunaway, Acting Director Phone: 762-2171  
 Division: Mining Date: 5-Feb-92  
 Approved by Commissioner: Harold C. Heinze Date: 5-Feb-92  
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,  
& Impacted Agency(ies).

Fiscal Note SSSB 292  
Goodnews Bay Submerged Land Area

Section 2 of this bill establishes the Goodnews Bay Submerged Land Area (GBSLA) as a limited use area that is closed to mining, mineral entry and leasing, and also closed to mineral exploration, development and extraction. There are 74 mining claims located within the GBSLA. Since the owners of these claims will not be able to make use of the property rights they have acquired, the state will need to buy back or acquire the claims.

To determine the validity of these claims, a mineral endowment analysis that assesses the availability of minerals and what they are worth may be needed. The analysis may require some exploration and drilling and could cost an estimated \$250,000.

In addition to validity costs, the buy-back costs for valid claims could be as much as ten million dollars. Actual costs would depend on the results of the mineral endowment analyses.

There are also other costs related to this bill. There are 4.5 Offshore Prospecting Permits (OPPs) located within the GBSLA, where mining activity will not be allowed, and 9.5 OPPs located in areas adjoining the GBSLA where all mineral permits and leases will be canceled. The OPP costs of the owners as of last year at this time are approximately \$750,000, for which they would expect reimbursement.

COST SUMMARY

1. Mining Claim Validity Determinations	--	\$	250,000
2. OPP Applicant Costs (as of last year)	--	\$	750,000
3. Mineral Value Buy-Back Estimate	--	\$	10,000,000
			<hr/>
		Total	\$11,000,000

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SECOND SUB. FOR SB 292

Revision Date: \_\_\_\_\_ Department Affected: Fish and Game

Title: Goodnews Bay Submerged Lands Area BRU: Habitat

Component: Habitat

Sponsor: Hoffmann

Requestor: Senate Resources

COMPONENT SERIAL NO. 

	4	8	6
--	---	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

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

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

REVENUE	0	0	0	0	0	0
FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
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 current year

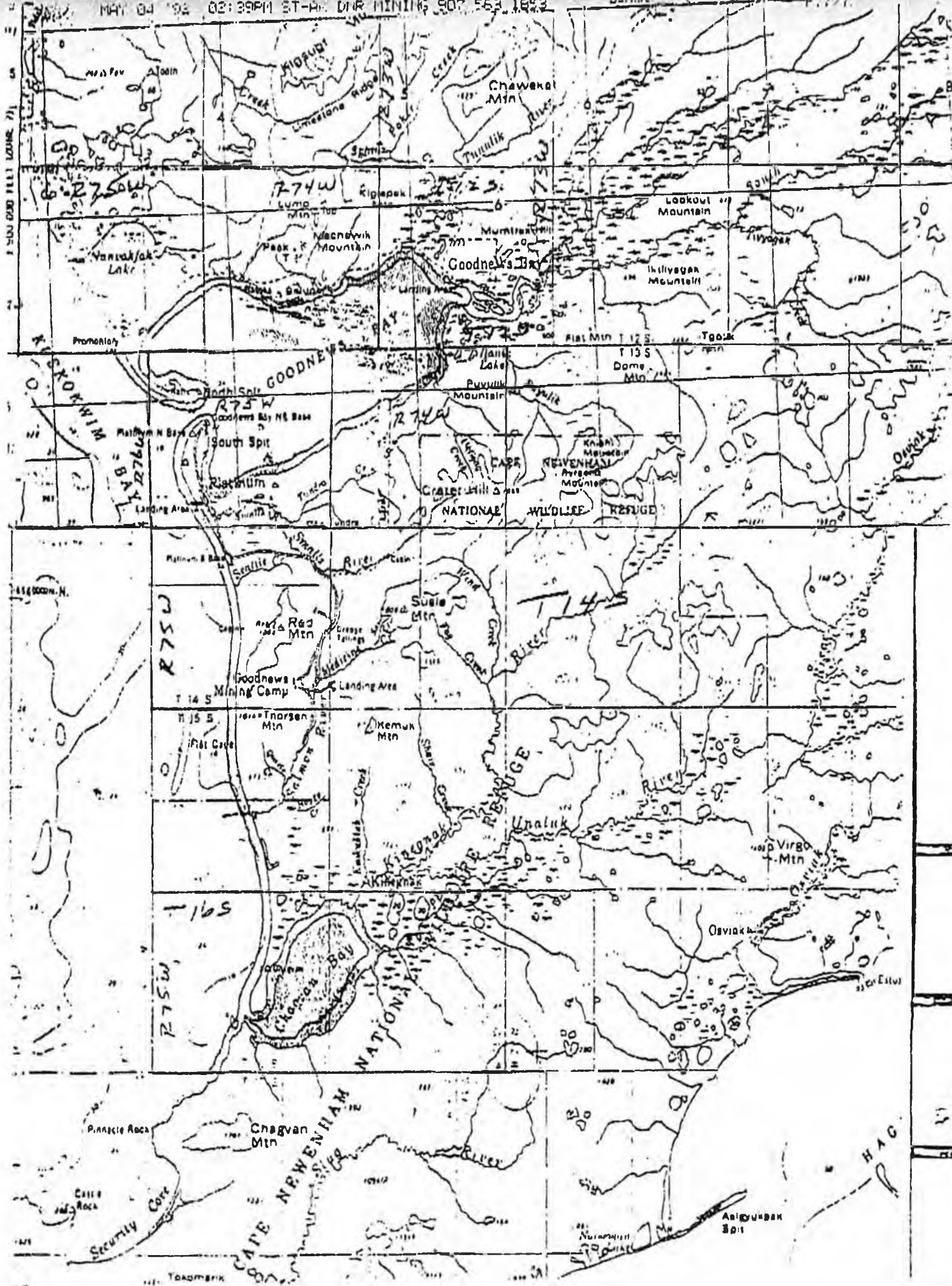
ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Frank Rue, Director Phone: 465-4105

Division: Division of Habitat Date: 5-1-92

Approved by Commissioner: [Signature]

Agency: Department of Fish and Game Date: 5/5/92



# 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

May 4, 1992

**SUBJECT:** CSHB 575 (Finance) (Work Order No. 7-LS1949\P)

**TO:** Representative Eileen McLean  
Representative Mike Navarre, Co-Chairs  
House Finance Committee

**FROM:** Jack Chenoweth  
Legislative Counsel 

A portion of this bill is conditioned upon the voters' not defeating the "dedicated transportation fund" proposal in the November, 1992, general election if the proposal is put to them. The only "dedicated fund" proposal that looks to have a possibility of adoption this year is SJR 23. Under it, the revenue from motor fuel taxes would become subject to dedicated treatment on and after July 1, 1993.

The penny per gallon surcharge, added by sec. 10, the revenue from which would become available for the storage tank assistance fund, would take effect July 1, 1992, and there is no provision for its automatic expiration. However, since I think the courts would view that surcharge as an increment to the motor fuel tax, then assuming legislative passage and eventual voter approval of SJR 23, that additional penny would also be subject to the dedication requirement for the revenue it generates beginning July 1, 1993.

In other words, under the assumptions mentioned, you should not count on use of the proposed motor fuel surcharge to support the storage tank cleanup program after mid-1993.

JBC:mi  
92-066.mai

Enclosure

CS FOR HOUSE BILL NO. 575 (FINANCE)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act increasing the motor fuel tax, imposing a motor fuel surcharge, and authorizing  
2 certain municipalities to levy and the state to collect and remit a motor fuel tax not to  
3 exceed two cents per gallon; and providing for an effective date."

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

5 \* Section 1. AS 29.10.200 is amended by adding a new paragraph to read:

6 (51) AS 29.45.750 (municipal motor fuel tax)

7 \* Sec. 2. AS 29.45 is amended by adding a new section to read:

8 ARTICLE 6. MOTOR FUEL TAX.

9 Sec. 29.45.750. MUNICIPAL MOTOR FUEL TAX. (a) Each of the following may, by  
10 ordinance, levy, on the same transactions and subject to the same restrictions as set out in  
11 AS 43.40 and to the exemptions set out in AS 43.40.015 - 43.40.100, a tax on motor fuel:

12 (1) a unified municipality;

13 (2) a home rule or general law borough; and

14 (3) a city in the unorganized borough.

1 (b) The tax levied by a municipality under this section may not exceed two cents per  
2 gallon.

3 (c) The tax levied under this section does not apply to

4 (1) aviation gasoline;

5 (2) motor fuel used in and on watercraft of all descriptions; and

6 (3) aviation fuel other than gasoline.

7 (d) The levy authorized by this section is in addition to any other levy of a municipal  
8 tax on the sale, transfer, or consumption of motor fuel. The governing body of a municipality  
9 shall promptly inform the commissioner of revenue of its adoption of an ordinance to levy, or  
10 to amend an ordinance that levies, the tax authorized by this section.

11 (e) If a municipality enacts an ordinance to levy the tax authorized by this section, the  
12 Department of Revenue shall

13 (1) collect the tax in the manner provided for collection of the tax proposed by  
14 AS 43.40; and

15 (2) after retaining one percent of the amount collected under (1) of this subsection  
16 to offset the expenses of administration, remit to the municipality the balance of the proceeds of  
17 the tax.

18 \* Sec. 3. AS 43.40.010(a) is amended to read:

19 (a) On sales or transfers of motor fuel in the state outside a municipality that levies  
20 a tax under AS 29.45.750. there [THERE] is levied a tax of 18 [EIGHT] cents a gallon. On  
21 sales or transfers of motor fuel within a municipality in the state that levies a tax under  
22 AS 29.45.750. there is levied a per gallon tax of 18 cents less the rate per gallon. not to  
23 exceed two cents per gallon. that is imposed by a levy of a motor fuel tax by the  
24 municipality under AS 29.45.750. The tax under this subsection is levied on all motor fuel  
25 sold or otherwise transferred within the state, except that

26 (1) the tax on aviation gasoline is four cents a gallon,

27 (2) the tax on motor fuel used in and on watercraft of all descriptions is five cents  
28 a gallon, and

29 (3) the tax on all aviation fuel other than gasoline is two and one-half cents a  
30 gallon.

31 \* Sec. 4. AS 43.40.010(b) is amended to read:

1           (b) On consumption of motor fuel in the state outside a municipality that levies a  
2 tax under AS 29.45.750, there [THERE] is levied a tax of 18 [EIGHT] cents a gallon. On  
3 consumption of motor fuel within a municipality in the state that levies a tax under  
4 AS 29.45.750, there is levied a per gallon tax of 18 cents less the rate per gallon, not to  
5 exceed two cents per gallon, that is imposed by a levv of a motor fuel tax by the  
6 municipality under AS 29.45.750. The tax under this subsection is levied on all motor fuel  
7 consumed by a user, except that

8           (1) the tax on aviation gasoline consumed is four cents a gallon,

9           (2) the tax on motor fuel used in and on watercraft of all descriptions is five cents  
10 a gallon, and

11           (3) the tax on all aviation fuel other than gasoline is two and one-half cents a  
12 gallon.

13 \* Sec. 5. AS 43.40.010(e) is amended to read:

14           (e) Sixty percent of the proceeds of the revenue from the taxes levied under this section  
15 on aviation fuel, excluding the amount determined to have been spent by the state in its  
16 collection, shall be refunded to a municipality owning and operating or leasing and operating an  
17 airport in the proportion that the revenue was collected at the municipal airport. All other  
18 proceeds of the taxes levied under this section on aviation fuel shall be paid into a special  
19 aviation fuel tax account in the state general fund. The legislature may appropriate funds from  
20 this account for aviation facilities.

21 \* Sec. 6. AS 43.40.010(f) is amended to read:

22           (f) The proceeds from the revenue from the tax levied under this section on motor fuel  
23 used in boats and watercraft of all descriptions shall be deposited in a special watercraft fuel tax  
24 account in the general fund. The legislature may appropriate from this account for water and  
25 harbor facilities.

26 \* Sec. 7. AS 43.40.010(g) is amended to read:

27           (g) The proceeds of the revenue from the tax levied under this section on all motor  
28 fuels, except as provided in (e), (f) and (j) of this section, shall be deposited in a special highway  
29 fuel tax account in the state general fund. The legislature may appropriate funds from it for  
30 expenditure by the Department of Transportation and Public Facilities directly or as matched with  
31 available federal-aid highway money for maintenance of highways, construction of highway

1 projects and ferries included in the program provided for in AS 19.10.150, including approaches,  
2 appurtenances and related facilities and acquisition of rights-of-way or easements, and other  
3 highway costs including surveys, administration, and related matters. All departments of the state  
4 government authorized to spend funds collected from taxes imposed by this section [CHAPTER]  
5 shall perform, when feasible, all construction or reconstruction projects by contract after the  
6 projects have been advertised for competitive bids, except that, when feasible, arrangements shall  
7 be made with political subdivisions to carry out the construction or reconstruction projects. If  
8 it is not feasible for the work to be performed by state engineering forces, the commissioner of  
9 transportation and public facilities may contract on a professional basis with private engineering  
10 firms for road design, bridge design, and services in connection with surveys. If more than one  
11 private engineering firm is available for the work the contracts shall be entered into on a  
12 negotiated basis.

13 \* Sec. 8. AS 43.40.010(i) is amended to read:

14 (i) Within 30 days after the legislature convenes the Department of Transportation and  
15 Public Facilities shall submit an annual budget covering anticipated revenues and their  
16 expenditure, for the consideration and approval by the legislature. The budget shall cover all  
17 money collected or anticipated to be collected under this section [CHAPTER] for the year  
18 following the adjournment of each regular session of the legislature.

19 \* Sec. 9. AS 43.40.010(j) is amended to read:

20 (j) The proceeds from the tax levied under this section on motor fuel used in snow  
21 vehicles and, unless a tax refund is applied for under AS 43.40.050(a), other internal combustion  
22 engines not used in or in conjunction with a motor vehicle licensed to be operated on public  
23 ways shall be deposited in a special nonpublic highway use account in the general fund. The  
24 legislature may appropriate from this account to the Department of Transportation and Public  
25 Facilities for trail staking and shelter construction and maintenance.

26 \* Sec. 10. AS 43.40 is amended by adding a new section to read:

27 Sec. 43.40.012. SURCHARGE ON MOTOR FUEL. (a) In addition to the tax levied  
28 by AS 43.40.010, there is levied a surcharge of one cent a gallon on all motor fuel subject to tax  
29 under AS 43.40.010.

30 (b) The surcharge imposed by (a) of this section shall be collected and remitted in the  
31 same manner as the tax levied and collected under AS 43.40.010.

1 (c) Notwithstanding any other provision of this chapter, the commissioner of revenue  
2 shall deposit amounts received from the levy of the surcharge under this section into the general  
3 fund.

4 (d) The commissioner of administration shall separately account for the proceeds of the  
5 surcharge collected under this section and deposited into the general fund. The legislature may  
6 use the annual estimated balance in the account to make appropriations to the Department of  
7 Environmental Conservation for the storage tank assistance fund established under AS 46.03.410.

8 \* Sec. 11. Sections 1 - 4 of this Act do not take effect if amendments to the state constitution are  
9 proposed at the November 1992 general election to create as a dedicated fund a transportation fund to  
10 receive, among other sources, the revenue from the state's levy and collection of motor fuel taxes, and  
11 a majority of the voters at that election does not approve the adoption of those amendments.

12 \* Sec. 12. If secs. 1 - 4 of this Act take effect, they take effect January 1, 1993.

13 \* Sec. 13. Sections 5 - 10 of this Act take effect July 1, 1992.

14 \* Sec. 14. Section 11 of this Act takes effect immediately under AS 01.10.070(a).

S B

3 30

STATE COMMITTEE REPORT

DATE: 1/22/92

FURTHER: Finance

DATE TURNED INTO OFFICE: Jan 22, 1992

Resources Committee considered

SENATE BILL NO. 330

"An Act relating to an exemption from municipal property taxation for natural resources in place; and providing for an effective date."

and recommends:

replace with \_\_\_\_\_ CS \_\_\_\_\_ ( )

or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( )

attaches amendment(s)

same title  
 new title  
 technical title change  
(HB only)

adopts \_\_\_\_\_ Letter of Intent

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

do pass

do not pass

no recommendation

individual recommendations

**NEW FISCAL NOTES:** Dept/Date

zero fiscal notes \_\_\_\_\_

fiscal notes \_\_\_\_\_

appropriation--no fiscal note

**PREVIOUS FISCAL NOTES:** Dept/Date

zero fiscal notes DCRA 1/13/92

fiscal notes \_\_\_\_\_

DO PASS

*Rich Helford*  
*[Signature]*  
*[Signature]*  
*[Signature]*  
*[Signature]*  
*[Signature]*

OTHER RECOMMENDATIONS:

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

*[Signature]*  
Chair: Signature and Recommendation

A M E N D M E N T

OFFERED IN THE SENATE

BY THE SENATE RESOURCES COMMITTEE

TO: SB 330

Page 2, line 22:

Delete "stumpage"

**FISCAL NOTE**

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 330

Revision Date: \_\_\_\_\_  
Title: "...exemption from property taxation for natural resources in place."  
Sponsor: Senator Adams  
Requestor: \_\_\_\_\_

Department Affected: Community and Regional Affairs  
BRU: Local Government Assistance  
Component: State Assessor  
COMPONENT SERIAL NO. 

0	6	7	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	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	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
\_\_\_\_\_  
\_\_\_\_\_

Prepared By: Remond Henderson  
Division: Administrative Services Division

Phone: 465-4750  
Date: 1/13/92

Approved by Commissioner: Ken Kelly  
Agency: Department of Community and Regional Affairs

Date: 1-14-92

# Alaska State Legislature

Senate District L  
Al Adams

WHILE IN SESSION  
P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3707

OUT OF SESSION  
P.O. Box 333  
Kotzebue, Alaska 99752  
(907) 442-3245

Official Business

TO: Senator Lloyd Jones, Chair  
Senate Resources Committee

FROM: Senator Al Adams *APA*

RE: Senate Bill 330

DATE: January 17, 1992

Thank you for scheduling Senate Bill 330 pending referral from the Senate Community and Regional Affairs Committee.

This bill creates an exemption on the taxation of natural resources in place. As you may know, unless this legislation is passed this session, the state assessor and municipalities will have to begin the process of including these resources in their tax base. The exemption has broad support from both government and private sector interests.

Enclosed as background materials are:

- Bill copy
- 1992 Report to the Legislature on the Taxation on Natural Resources in Place
- Copy of 1990 statute that created a two year exemption for the purposes of studying this issue
- 1991 resolution of the Alaska Municipal League in support of this exemption
- 1991 Alaska Minerals Commission report placing this as their top legislative priority

A fiscal note has been requested, is expected shortly and will be forwarded to your office upon receipt.

Please feel free to contact Martha Stewart of my staff if you have questions.

Thank you.

# KETCHIKAN SPORTS and WILDLIFE CLUB

P.O. Box 5122 • Ketchikan, Alaska 99901

City of Ketchikan  
Parks and Recreation Division  
344 Front st.  
Ketchikan, Alaska 99901  
(attn. Susie Daly)

Ms. Daly,

Jan. 3, 1992

The Ketchikan Sports and Wildlife Club, representing over 650 members, requests that an Indoor Shooting Range be included in the planning for the Recreation Center. This kind of facility would be a great benefit to Ketchikan residents, allowing programs such as Hunter Safety and Firearm Safety to be offered to the area. We have contacted several organizations and their response has been overwhelmingly in favor of such a facility in Ketchikan.

There are funds available through the Pittman Roberts act and the National Rifle Association to assist in the construction of Indoor Shooting Ranges. If you agree that this facility will be added to the planning of the Recreation Center, our organization will work toward getting these funds allocated. Please consider this request carefully and contact us if you approve of having an Indoor Shooting Range for Ketchikan residents.

Sincerely;

*Lee Putman*  
Lee Putman NP  
Ketchikan Sports  
and Wildlife Club

cc; Rep. Robin Taylor  
Rep. Cheri Davis  
Sen. Lloyd Jones  
Sen. Pat Rodey

*Ray - Terry  
E. Larson is working on legis.  
to reduce charter boat limit for  
charter boat operators - Sag /  
Commercial troll & sport fishermen  
should support. - Need to talk to  
Lee & Bob Pellett. L*

Testimony  
SB 330  
January 22, 1992

MY NAME IS KENT DAWSON. I AM HERE TODAY REPRESENTING THE ALASKAN PRODUCERS COUNCIL, WHICH IS A GROUP OF LARGE MINERAL PRODUCERS WITH AN INTEREST IN ALASKA DEVELOPMENT, INCLUDING SUCH FIRMS AS COMINCO, GREENS CREEK, ECHO BAY, AMERICAN COPPER AND NICKEL, AMAX, NORTH PACIFIC MINING, AND ALASKA GOLD.

THE ALASKAN PRODUCERS COUNCIL JOINS WITH THE MUNICIPAL LEAGUE IN SUPPORTING THIS LEGISLATION AND APPRECIATES THAT ALASKA MUNICIPALITIES HAVE ACKNOWLEDGED THE DETRIMENTAL EFFECT TO MINING DEVELOPMENT A TAX ON MINERALS IN PLACE WOULD CAUSE.

THE ALASKAN PRODUCERS COUNCIL WISHES TO ACKNOWLEDGE THE EXCELLENT JOB THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS HAS DONE WITH THEIR RATHER DIFFICULT STUDY.



# Resource Development Council

for Alaska, Inc.

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503-26  
Phone 937/276-0700 Fax 276-38

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Becky L. Gay

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## RDC Position Paper - January, 1992

### SB 330 - Resources in-place

The Resource Development Council for Alaska Inc., supports SB 330 and applauds the quick legislative action being taken to move this legislation. As the record shows, much consideration and study was given to this issue during the interim and support for the taxation change is nearly unanimous.

This issue is vital to minerals and timber companies and landowners with undeveloped resources that could be subject to municipal property taxes. SB 330 addresses the problem facing landowners, as well as local governments. Research has shown that the inventory process and tax assessment system would likely prove costly to municipalities and the state.

RDC believes SB 330, and its companion legislation in the House, represent a clean, concise exemption to the issue of taxing in-place resources. RDC's policy-making executive committee, which represents the 10,000 members of the non-profit organization, is on record supporting SB 330. RDC appreciates the opportunity to comment on this bill.

*For further information, contact Debbie Reinwand,  
Executive Director, 276-0700*

# MEMORANDUM

State of Alaska

To: The Honorable Walter J. Hickel  
Governor

December 16, 1991

From: Rural Development Sub-cabinet

Phone: 465-4700

Re: Support for legislation exempting natural resources in place  
from local property taxation

The rural development sub-cabinet has been following with concern the issue of whether or not natural resources in place should be subject to local property taxation. A study of the issue was conducted by the Department of Community and Regional Affairs, and a report will be submitted to the Legislature before January 13.

There is now consensus around the state that natural resources in place should be totally exempt from local property taxation. Legislation to effect a total exemption (with the exception of oil and gas which are treated separately under existing statutes) will be proposed in the forthcoming legislative session. Natural resource industries and associations, Native corporations, local governments, and the Alaska Municipal League have all endorsed a total exemption.

The rural development sub-cabinet supports a total exemption of natural resources in place from local property taxation, and urges the Governor to actively support legislation that will so amend Title 29 of The Alaska Statutes.

*Edgar Blatchford*

Commissioner Edgar Blatchford, Chair  
Community & Regional Affairs

*Glenn A. Olds*

Commissioner Glenn A. Olds  
Commerce & Economic Development

*Carl L. Rosier*

Commissioner Carl L. Rosier  
Fish and Game

*Harold C. Heinze*

Commissioner Harold Heinze  
Natural Resources

*John A. Sandor*

Commissioner John A. Sandor  
Environmental Conservation

*Letter to Governor from  
Rural Dev. Sub-Cabinet*

Exemption from municipal property taxation for natural resources in place.

My name is Steven C. Borell and I am the Executive Director of the Alaska Miners Association.

Thank you Mr. Chairman and committee members for the opportunity to comment on this important issue. Thank you also for scheduling this bill early in the session.

The AMA supports this legislation and the need for passing an exemption for the taxation of natural resources in place during this session of the Legislature. We are concerned that if taxation of natural resources in place is begun, the affect will be to discourage if not totally close down exploration in those areas where this form of taxation occurs.

We also wish to commend the Alaska Municipal League for taking the lead in support of an exemption from taxation for resources in place. We were very pleased to learn that the AML passed a resolution favoring exemption of taxation of natural resources in place and that the resolution passed on a unanimous vote. The AML recognized that in place taxation would have a very serious negative affect on local economies in several different ways.

Rather than addressing in detail all of the arguments why in place taxation is not a good policy, I shall list and summarize the major problems with this form of taxation.

The first and possibly most compelling reason for not taxing minerals in place is that it is extremely difficult to place a value on minerals before they are actually extracted from the ground. Major mining companies employing scores of exploration, financial, environmental, engineering, and management people have a very difficult time defining the value of a deposit.

The second major problem with the taxation of minerals in place is that it discourages exploration. Mining companies will not even look for minerals if they will be taxed for the many years that are required to determine if they have an economic deposit. For Greens Creek, the largest silver mine in North America, it took 17 years from the initial discovery until first production. For Red Dog, possibly the largest zinc deposit in the world, it took 21 years from initial discovery until first production. If an in place tax had been charged on these minerals before they were mined, there is a high likelihood that no mining would ever have taken place.

A third fact to consider is that taxation of minerals in place is an additional burden on local communities that are already struggling to encourage creation of new jobs and expand their real property tax base. For much of Alaska the only opportunity

*Alaska Miners Assoc.  
letter of support*