

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672  
7631 SENATE RESOURCES

*Price Waterhouse*



November 16, 1990

To the Board of Directors of  
Alaska Fisheries Development  
Foundation, Inc.

We have audited the cash basis financial statements of Alaska Fisheries Development Foundation, Inc. for the year ended September 30, 1990 and have issued our report thereon dated November 16, 1990. In planning and performing our audit we considered the internal control structure to determine our auditing procedures; not to provide assurance on the internal control structure.

Because of inherent limitations in any system of internal accounting control, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the system to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the degree of compliance with the procedures may deteriorate.

Our consideration of the entity's internal control structure was more limited than would be necessary to express an opinion on the system of internal accounting control taken as a whole.

This report contains a status report on recommendations related to certain matters noted during our previous audits.

This report is intended solely for the information and use of the board of directors and management of Alaska Development Foundation, Inc. and should not be used for any other purpose.

*Price Waterhouse*

ALASKA FISHERIES DEVELOPMENT FOUNDATION, INC.

STATUS OF PRIOR YEAR RECOMMENDATIONS

SEPTEMBER 30, 1990

Recommendations Fully Implemented

The Foundation should continue efforts to obtain an agreement with its bank which would provide collateral security if deposits are in excess of \$100,000.

The Foundation should prepare and document formal investment policies to ensure that investment decisions are made in accordance with the intent of management.

ALASKA FISHERIES DEVELOPMENT FOUNDATION, INC.

STATUS OF PRIOR YEAR RECOMMENDATIONS

SEPTEMBER 30, 1990

Recommendations Partially Implemented

The Foundation should periodically evaluate existing control procedures to determine if additional control procedures should be implemented.

ALASKA FISHERIES DEVELOPMENT  
FOUNDATION, INC.  
STATEMENT OF ASSETS AND FUND BALANCES  
ARISING FROM CASH TRANSACTIONS AND  
STATEMENTS OF REVENUE COLLECTED AND  
EXPENSES PAID AND  
CHANGES IN FUND BALANCE  
FOR THE YEAR ENDED SEPTEMBER 30, 1991  
WITH INDEPENDENT AUDITORS' REPORTS



Peat Marwick

Certified Public Accountants

601 West Fifth Avenue  
Suite 700  
Anchorage, AK 99501-2258

Independent Auditors' Report

The Board of Directors  
Alaska Fisheries Development  
Foundation, Inc.:

We have audited the accompanying statement of assets and fund balances arising from cash transactions of Alaska Fisheries Development Foundation, Inc. (the Foundation) as of September 30, 1991 and the related statements of revenues collected and expenses paid and changes in fund balance for the year then ended. These financial statements are the responsibility of the Foundation's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in Note 1, these financial statements were prepared on the basis of revenues collected and expenses paid (cash basis) and are not intended to be a presentation in conformity with generally accepted accounting principles.

In our opinion, the financial statements referred to above present fairly, in all material respects, the assets and fund balances arising from cash transactions of Alaska Fisheries Development Foundation as of September 30, 1991 and its revenues collected and expenses paid and the changes in fund balances during the year then ended, on the basis of accounting described in Note 1.

*KPMG Peat Marwick*

November 15, 1991



Member Firm of  
KPMG Peat Marwick Coopers

ALASKA FISHERIES DEVELOPMENT FOUNDATION, INC.  
STATEMENT OF ASSETS AND FUND BALANCES  
ARISING FROM CASH TRANSACTIONS  
SEPTEMBER 30, 1991

	<u>Restricted Fund</u>	<u>Unrestricted Fund</u>
Assets:		
Cash	\$12,411	\$ 5,238
Investments	<u>          -</u>	<u>54,993</u>
Total Assets	<u>\$12,411</u>	<u>\$60,231</u>
 Fund balance	 <u>\$12,411</u>	 <u>\$60,231</u>

The accompanying notes are an integral  
part of these financial statements.

ALASKA FISHERIES DEVELOPMENT FOUNDATION, INC.  
STATEMENT OF REVENUES COLLECTED AND EXPENSES PAID  
AND CHANGES IN FUND BALANCE  
RESTRICTED FUND

	Year Ended <u>September 30, 1991</u>
Revenues Collected:	
Federal grants	\$ 1,067,112
State of Alaska grants	103,652
Program income	13
Publication income	<u>6,275</u>
Total revenues collected	<u>1,177,052</u>
Expenses Paid - Program:	
Full utilization	40,150
Refining surimi	49,670
Multi-species waste utilization	200
Flatfish II	17,577
Waste utilization II	124,873
Flatfish III	32,180
Groundfish quality enhancement	51,555
Byproduct utilization of nonfillet flesh	51,000
Waste utilization III	170,620
Flatfish IV - sorting machine	284,200
Arrowtooth surimi demonstration	6,568
Modifying crab pots to harvest cod	<u>95,865</u>
Total program expenses paid	<u>924,458</u>
Expenses Paid - Administration:	
Salaries	181,465
Employee benefits	34,425
Business insurance and taxes	6,427
Office expense and maintenance	8,256
Supplies	4,516
Rent	21,008
Telephone	3,513
Postage and courier	4,193
Consulting fees	3,880
Staff travel and expenses	6,995
Board travel	15,356
Public information	39,511
Accounting	11,157
Furniture and equipment	560
Other	<u>64</u>
Total administration expenses paid	<u>341,328</u>
Total expenses paid	<u>1,265,786</u>
Excess of expenses paid over revenues collected	(88,734)
Fund balance, beginning of year	28,145
Transfer from unrestricted fund	<u>73,000</u>
Fund balance, end of year	<u>\$ 12,411</u>

The accompanying notes are an integral part  
of these financial statements.

ALASKA FISHERIES DEVELOPMENT FOUNDATION, INC.  
STATEMENT OF REVENUES COLLECTED AND EXPENSES PAID  
AND CHANGES IN FUND BALANCE  
UNRESTRICTED FUND

	Year Ended <u>September 30, 1991</u>
Revenues Collected:	
Membership dues, contributions and other	\$ 31,017
Interest	<u>10,985</u>
Total revenues collected	<u>42,002</u>
Expenses Paid:	
Office expenses	3,086
Bank charges	160
Travel and entertainment	1,105
Professional services	3,750
Salaries	4,687
Equipment purchases	13,554
Contributions	<u>500</u>
Total expenses paid	<u>26,842</u>
Excess of revenues collected over expenses paid	15,160
Fund balance, beginning of year	118,071
Transfer to restricted fund	<u>(73,000)</u>
Fund balance, end of year	<u>\$ 60,231</u>

The accompanying notes are an integral part  
of these financial statements.

ALASKA FISHERIES DEVELOPMENT FOUNDATION, INC.NOTES TO FINANCIAL STATEMENTSSEPTEMBER 30, 1991NOTE 1 - SUMMARY OF OPERATIONS AND ACCOUNTING POLICIES:Operations -

The Alaska Fisheries Development Foundation, Inc. (AFDF) is an Alaska non-profit corporation exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. AFDF (incorporated March 6, 1978 as Alaska Fisheries Development Corporation) was organized to serve as coordinator with the commercial fishing industry in Alaska for research and development projects aimed at developing under-utilized marine resources. The majority of funding received for these activities comes from the National Marine Fisheries Service (NMFS). Other funding comes from the Alaska Science and Technology Foundation and membership dues and contributions.

Basis of Accounting -

AFDF maintains its accounting records and has prepared its financial statements on the basis of revenues collected and expenses paid (cash basis); consequently, revenues are recognized when received rather than when earned, and expenses are recognized when paid rather than when the related obligation is incurred.

For financial statement purposes, AFDF reports proceeds from the sale of products produced by grant-funded programs as program income. Administrative expenses such as telephone, fax use, travel and postage are offset by incidental reimbursements to AFDF by those outside AFDF.

Fund Types -

Two basic fund types are maintained by AFDF. They are the Restricted Fund and the Unrestricted Fund. A brief description of each follows:

Restricted Fund -

This fund accounts for certain grants provided by the State of Alaska and amounts received under a letter of credit granted by the National Oceanic and Atmospheric Administration, National Marine Fisheries Service to provide funding for the various research and development activities undertaken by AFDF and to cover administrative costs.

Unrestricted Fund -

This fund accounts for all other revenues and expenses not related to grants or contracts. Revenues consist of membership dues, contributions, interest earnings and other miscellaneous receipts. Disbursements are made at the discretion of the Board of Directors.

NOTE 2 - INVESTMENTS:

AFDF maintains an investment account with Merrill Lynch, which provides interest earnings on funds included in the unrestricted account. Total interest received for the year ended September 30, 1991 was \$10,985. At September 30, 1991 the account consisted of \$20,000 of bank certificates of deposit; \$34,993, stated at cost which approximates market, invested in government bonds through the Metropolitan Life State Street Fund; and \$5,238 in money market funds.

NOTE 3 - REVENUES:

The following amounts were received under contracts from the National Oceanic and Atmospheric Administration:

NA86-ABH-00044	\$47,306
NA88-ABH-00007	67,448
NA89-ABH-00008	203,054
NA90AA-H-SK165	103,078
NA90AA-D-SK241	390,783
NA90AA-D-SK242	<u>255,443</u>
	<u>\$1,067,112</u>

AFDF must also meet certain cost sharing provisions which require that non-federal funds comprise 31% to 39% of total funds received on each contract. However, non-federal funds may be received in the form of in-kind contributions as well as cash.

NOTE 4 - RELATED PARTY TRANSACTIONS:

As part of its normal operations, AFDF enters into various contractual arrangements with companies in the fisheries industry. Certain of these companies are represented by persons related to members of AFDF's Board of Directors. Contracts with these companies during the current year resulted in payments totaling \$77,800.

Certified Public Accountants

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601 West Fifth Avenue  
Suite 700  
Anchorage, AK 99501-2258

Report on Supplementary Information  
Schedule of Financial Assistance  
Independent Auditors' Report

The Board of Directors  
Alaska Fisheries Development  
Foundation, Inc.:

We have audited the accompanying statement of assets and fund balances arising from cash transactions as of September 30, 1991 and the related statements of revenues collected and expenses paid and changes in fund balances for the year then ended and have expressed our opinion on these financial statements dated November 15, 1991. These financial statements are the responsibility of Alaska Fisheries Development Foundation's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards and with Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

Our audit was made for the purpose of forming an opinion on the financial statements of Alaska Fisheries Development Foundation, taken as a whole. The accompanying schedule of federal financial assistance for the year ended September 30, 1991 is presented for purposes of additional analysis in accordance with the requirements of Office of Management and Budget Circular A-133, and is not a required part of the financial statements. The information in this schedule has been subjected to the auditing procedures applied in the audit of the financial statements and, in our opinion, is fairly presented in all material respects in relation to the financial statements taken as a whole.

*KPMG Peat Marwick*

November 15, 1991

Member Firm of  
KPMG Peat Marwick Gordon

ALASKA FISHERIES DEVELOPMENT FOUNDATION, INC.  
SCHEDULE OF FEDERAL FINANCIAL ASSISTANCE  
FOR THE YEAR ENDED SEPTEMBER 30, 1991

<u>Federal Grantor</u>	<u>CAFD Number</u>	<u>Grantor's Number</u>	<u>Disbursements</u>
U.S. Department of Commerce National Oceanic & Atmospheric Administration Saltonstall-Kennedy Program			
Full Utilization	11.427	NA86-ABH-00044	\$ 40,150
Optimizing Opportunities	11.427	NA88-ABH-00007	67,448
Alaska Fisheries Development Program	11.427	NA89-ABH-00008	208,608
Byproduct Utilization of Non- Fillet Flesh, Development of Improved Techniques for Bone/ Parasite Removal (III)	11.427	NA90AA-H-SK165	94,630
Multi-species byproduct Utilization	11.427	NA90AA-D-SK241	240,451
Flatfish Utilization IV	11.427	NA90AA-D-SK242	395,637
Development of Quality Control Data in Support of Model Seafood Surveillance Program	11.427	NA17FD0274-01	-
Total federal assistance			<u>\$1,046,924</u>

RECONCILIATION OF FEDERAL FINANCIAL ASSISTANCE  
TO FINANCIAL STATEMENTS

Federal grant expenditures	\$1,046,924
State of Alaska grant expenditures	119,982
Local disbursements for restricted administrative costs	92,605
Program income used to offset expenditures	<u>6,275</u>
Total expenses paid - restricted fund	<u>\$1,265,786</u>



Peat Marwick

Certified Public Accountants

601 West Fifth Avenue  
Suite 700  
Anchorage, AK 99501-2258

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Report on Internal Control Structure in  
Accordance with Government Auditing Standards

The Board of Directors  
Alaska Fisheries Development  
Foundation, Inc.:

We have audited the cash basis financial statements of Alaska Fisheries Development Foundation as of and for the year ended September 30, 1991 and have issued our report thereon dated November 15, 1991.

We conducted our audit in accordance with generally accepted auditing standards and with Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

In planning and performing our audit of the cash basis financial statements of Alaska Fisheries Development Foundation for the year ended September 30, 1991, we considered its internal control structure in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide assurance on the internal control structure.

The management of Alaska Fisheries Development Foundation is responsible for establishing and maintaining an internal control structure. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of internal control structure policies and procedures. The objectives of an internal control structure are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, and that transactions are recorded properly to permit the preparation of financial statements. Because of inherent limitations in any internal control structure, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the structure to future periods is subject to the risk that procedures may become inadequate because of changes in conditions, or that the effectiveness of the design and operation of policies and procedures may deteriorate.



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The Board of Directors  
Alaska Fisheries Development Foundation  
Page 2

For the purpose of this report, we have classified the significant internal control structure policies and procedures in the following categories:

- o Cash receipts
- o Cash disbursements
- o Compliance with laws and regulations

For all the control categories listed above, we obtained an understanding of the design of relevant policies and procedures and whether they have been placed in operation, and we assessed control risk.

Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be material weaknesses under standards established by the American Institute of Certified Public Accountants. A material weakness is a reportable condition in which the design or operation of one or more of the internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their functions. We noted no matters involving the internal control structure and its operation that we consider to be material weaknesses as defined above.

This report is intended for the information of the board of directors, management, and the National Oceanic and Atmospheric Administration. This is not intended to limit the distribution of this report, which is a matter of public record.

*KPMG Peat Marwick*

November 15, 1991

601 West Fifth Avenue  
Suite 700  
Anchorage, AK 99501-2258

Compliance Report Based on an Audit of the  
Cash Basis Financial Statements Performed in  
Accordance With Government Auditing Standards

The Board of Directors  
Alaska Fisheries Development  
Foundation, Inc.:

We have audited the cash basis financial statements of Alaska Fisheries Development Foundation as of and for the year ended September 30, 1991 and have issued our report thereon dated November 15, 1991.

We conducted our audit in accordance with generally accepted auditing standards and with Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

Compliance with laws, regulations, contracts, and grants applicable to Alaska Fisheries Development Foundation is the responsibility of Alaska Fisheries Development Foundation's management. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we performed tests of Alaska Fisheries Development Foundation's compliance with certain provisions of laws, regulations, contracts, and grants. However, the objective of our audit of the financial statements was not to provide an opinion on overall compliance with such provisions. Accordingly, we do not express such an opinion.

The results of our tests indicate that, with respect to the items tested, Alaska Fisheries Development Foundation complied, in all material respects, with the provisions referred to in the preceding paragraph. With respect to items not tested, nothing came to our attention that caused us to believe that Alaska Fisheries Development Foundation had not complied, in all material respects, with those provisions.

This report is intended for the information of the board of directors, management and the National Oceanic and Atmospheric Administration. This is not intended to limit the distribution of this report, which is a matter of public record.

November 15, 1991

*KPMG Peat Marwick*



601 West Fifth Avenue  
Suite 700  
Anchorage, AK 99501-2258

Report on Internal Control Structure  
Used in Administering Federal Awards

The Board of Directors  
Alaska Fisheries Development  
Foundation, Inc.:

We have audited the cash basis financial statements of Alaska Fisheries Development Foundation as of and for the year ended September 30, 1991 and have issued our report thereon dated November 15, 1991. We have also audited Alaska Fisheries Development Foundation's compliance with requirements applicable to major federal award programs and have issued our report thereon dated November 15, 1991.

We conducted our audit in accordance with generally accepted auditing standards; Government Auditing Standards, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Circular A-133, Audits of Institutions of Higher Education and Other Nonprofit Institutions. Those standards and OMB Circular A-133 require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement and about whether Alaska Fisheries Development Foundation complied with laws and regulations, noncompliance with which would be material to a major federal award program.

In planning and performing our audits for the year ended September 30, 1991, we considered Alaska Fisheries Development Foundation's internal control structure in order to determine our auditing procedures for the purpose of expressing our opinions on the financial statements and on its compliance with requirements applicable to major programs and not to provide assurance on the internal control structure. This report addresses our consideration of internal control structure policies and procedures relevant to compliance with requirements applicable to federal financial award programs. We have addressed policies and procedures relevant to our audit of the financial statements in a separate report dated November 15, 1991.

The management of Alaska Fisheries Development Foundation is responsible for establishing and maintaining an internal control structure. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of internal control structure policies and procedures.



The Board of Directors  
Alaska Fisheries Development Foundation  
Page 2

The objectives of an internal control structure are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of financial statements, and that federal award programs are managed in compliance with applicable laws and regulations. Because of inherent limitations in any internal control structure, errors, irregularities, or instances of noncompliance may nevertheless occur and not be detected. Also, projection of any evaluation of the structure to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the effectiveness of the design and operation of policies and procedures may deteriorate.

For purposes of this report, we have classified the significant internal control structure policies and procedures used in administering federal awards in the following categories:

General Requirements

- o Political activity
- o Davis-Bacon Act
- o Civil rights
- o Cash management
- o Federal financial reports
- o Allowable costs/cost principles
- o Drug-free workplace
- o Administration requirements

Specific Requirements

- o Types of services
- o Eligibility
- o Matching, level of effort, or earmarking
- o Reporting
- o Cost allocation
- o Special conditions
- o Claims for advances and reimbursements
- o Amounts claimed or used for matching

For all the internal control structure categories listed above, we obtained an understanding of the design of relevant policies and procedures and determined whether they have been placed in operation, and we assessed control risk.

During the year ended September 30, 1991, Alaska Fisheries Development Foundation expended 100% of its total federal awards under major programs.

The Board of Directors  
Alaska Fisheries Development Foundation  
Page 3

We performed tests of controls, as required by OMB Circular A-133, to evaluate the effectiveness of the design and operation of internal control structure policies and procedures that we considered relevant to preventing or detecting material noncompliance with specific requirements, general requirements, and requirements governing claims for advances and reimbursements and amounts claimed or used for matching that are applicable to each of the organization's major programs, which are identified in the accompanying schedule of federal financial assistance. Our procedures were less in scope than would be necessary to render an opinion on these internal control structure policies and procedures. Accordingly, we do not express such an opinion.

Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be material weaknesses under standards established by the American Institute of Certified Public Accountants. A material weakness is a reportable condition in which the design or operation of one or more of the internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their functions. We noted no matters involving the internal control structure and its operation that we consider to be material weaknesses as defined above.

This report is intended for the information of the board of directors, management, and the National Oceanic and Atmospheric Administration. This is not intended to limit the distribution of this report, which is a matter of public record.

November 15, 1991

*KPMG Peat Marwick*



Certified Public Accountants

601 West Fifth Avenue  
Suite 700  
Anchorage, AK 99501-2258

Report on Compliance with Specific Requirements  
Applicable to Major Programs

The Board of Directors  
Alaska Fisheries Development  
Foundation, Inc.:

We have audited the cash basis financial statements of Alaska Fisheries Development Foundation as of and for the year ended September 30, 1991 and have issued our report thereon dated November 15, 1991.

We have also audited Alaska Fisheries Development Foundation's compliance with the requirements governing types of services; eligibility; matching, level of effort, or earmarking; reporting; cost allocation; and special conditions that are applicable to its major program which is identified in the accompanying schedule of federal financial assistance, for the year ended September 30, 1991. The management of Alaska Fisheries Development Foundation is responsible for its compliance with those requirements. Our responsibility is to express an opinion on compliance with those requirements based on our audit.

We conducted our audit of compliance with those requirements in accordance with generally accepted auditing standards; Government Auditing Standards, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions". Those standards and OMB Circular A-133 require that we plan and perform the audit to obtain reasonable assurance about whether material noncompliance with the requirements referred to above occurred. An audit includes examining, on a test basis, evidence about Alaska Fisheries Development Foundation's compliance with those requirements. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, Alaska Fisheries Development Foundation, complied, in all material respects, with the requirements governing types of services; eligibility; matching, level of effort, or earmarking; reporting; cost allocation; and special conditions that are applicable to its major program, which is identified in the accompanying schedule of federal financial assistance, for the year ended September 30, 1991.

This report is intended for the information of the board of directors, management, and the National Oceanic and Atmospheric Administration. This is not intended to limit the distribution of this report, which is a matter of public record.

November 15, 1991

*KPMG Peat Marwick*



Certified Public Accountants

601 West Fifth Avenue  
Suite 700  
Anchorage, AK 99501-2258Report on Compliance With General RequirementsThe Board of Directors  
Alaska Fisheries Development  
Foundation, Inc.:

We have applied procedures to test Alaska Fisheries Development Foundation's compliance with the following requirements applicable to its federal program, which is identified in the accompanying schedule of federal financial assistance, for the year ended September 30, 1991.

- o Political activity
- o Davis-Bacon Act
- o Civil rights
- o Cash management
- o Federal financial reports
- o Allowable costs/cost principles
- o Drug-free workplace
- o Administration requirements

Our procedures were limited to the applicable procedures described in the Office of Management and Budget's Compliance Supplement for Single Audits of State and Local Governments. Our procedures were substantially less in scope than an audit, the objective of which is the expression of an opinion on Alaska Fisheries Development Foundation's compliance with the requirements listed in the preceding paragraph. Accordingly, we do not express such an opinion.

With respect to the items tested, the results of those procedures disclosed no material instances of noncompliance with the requirements listed in the first paragraph of this report. With respect to items not tested, nothing came to our attention that caused us to believe that Alaska Fisheries Development Foundation has not complied, in all material respects, with those requirements.

This report is intended for the information of the board of directors, management, and the National Oceanic and Atmospheric Administration. This is not intended to limit the distribution of this report, which is a matter of public record.

November 15, 1991

KPMG Peat Marwick



ALASKA FISHERIES DEVELOPMENT FOUNDATION  
SCHEDULE OF FINDINGS AND QUESTIONED COSTS  
FOR THE YEAR ENDED SEPTEMBER 30, 1991

Description

Costs  
Questioned

The financial statements of Alaska Fisheries Development Foundation are not presented in accordance with Generally Accepted Accounting Principles.

OMB Circular A-133 requires that the auditor determine whether the financial statements of the entity being audited are presented in accordance with generally accepted accounting principles. Alaska Fisheries Development Foundation's financial statements are presented on the cash basis of accounting.

Management's Response.

The Board of Directors of the Alaska Fisheries Development Foundation has determined that the financial statements will be prepared on a cash basis. Management prepares them accordingly.

Supporting documentation maintained by Alaska Fisheries Development Foundation for cost share donated from third parties does not meet requirements of OMB Circular A-110, Attachment E.

OMB Circular A-110 requires supporting records for donated goods and services to be similar in detail to those maintained by the Foundation for its own expenditures. Presently Alaska Fisheries Development Foundation maintains third party certifications of goods and services donated. Original invoices, payroll records, etc. are maintained by the third parties subject to inspection by the Foundation or other government agencies.

Management's Response.

Systems for documenting third party donated goods and services have been upgraded over the past four years. We now contractually require the donors to substantiate and report their in-kind contributions along with their regular invoices to Alaska Fisheries Development Foundation for goods and services provided under their contracts. However, the required level of documentation for these donations is maintained by the provider. Rather than duplicate all of these records, the Foundation, through its contracts with these providers, maintains the authority and ability to access this information should further documentation be needed.

ALASKA FISHERIES DEVELOPMENT FOUNDATION  
SCHEDULE OF FINDINGS AND QUESTIONED COSTS  
FOR THE YEAR ENDED SEPTEMBER 30, 1991

DescriptionCosts  
Questioned

Cost sharing expenditures on cooperative agreement NA90AA-H-SK241 were not paid at the same general rate as federal expenditures.

The standard terms and conditions of the Foundation's cooperative agreements require that the cost sharing contributions be paid at the same general rate as the federal share of the costs. As of September 30, 1991, Alaska Fisheries Development Foundation was approximately \$40,000 deficient in its cost share for this agreement. No costs are questioned, however, as the Foundation has the remainder of the grant period to cure the deficiency in the local share on the agreement.

Management's Response.

In-kind contributions are provided by third party contractors in the course of Alaska Fisheries Development Foundation's programs. In-kind contributions are generally provided ratably. However, the third party providers report their contributions periodically as required by their contracts. Under this system, in-kind contribution documentation often lags behind the actual donation of the goods and services. Even though in-kind contributions are provided ratably, the actual reporting is usually delayed one quarter.

Total questioned costs

\$           -



ALASKA FISHERIES DEVELOPMENT

FOUNDATION, INC.

STATEMENT OF ASSETS AND FUND BALANCES

ARISING FROM CASH TRANSACTIONS AND

STATEMENTS OF REVENUE COLLECTED AND

EXPENSES PAID AND

CHANGES IN FUND BALANCES

FOR THE YEAR ENDED SEPTEMBER 30, 1989

WITH REPORTS OF INDEPENDENT ACCOUNTANTS

ALASKA FISHERIES DEVELOPMENT FOUNDATION, INC.

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SEPTEMBER 30, 1989

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*Price Waterhouse*



REPORT OF INDEPENDENT ACCOUNTANTS

November 22, 1989

To the Board of Directors of  
Alaska Fisheries Development Foundation, Inc.

We have audited the accompanying statement of assets and fund balances arising from cash transactions of Alaska Fisheries Development Foundation, Inc. (the Foundation) as of September 30, 1989 and the related statements of cash receipts and disbursements and cash balances, restricted and unrestricted funds, for the year then ended. These financial statements are the responsibility of the Foundation's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards, the financial audit requirements of Governmental Auditing Standards, issued by the Comptroller General of the United States, and the provisions of the Office of Management and Budget Circular A-110. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As discussed in Note 1, the Foundation adopted a policy of preparing its financial statements on the basis of cash receipts and cash disbursements; consequently, certain revenue and the related assets are recognized when received rather than when earned and certain expenses are recognized when paid rather than when the obligation is incurred. Accordingly, the accompanying financial statements are not intended to present financial position and results of operations in conformity with generally accepted accounting principles.

November 22, 1989  
Alaska Fisheries Development Foundation, Inc.  
Page 2



In our opinion, the financial statements audited by us present fairly, in all material respects, the assets and fund balances arising from cash transactions of Alaska Fisheries Development Foundation, Inc. as of September 30, 1989 and the revenue collected and expenses paid during the year then ended, on the basis of accounting described in Note 1.

As discussed in Note 6, the Department of Commerce, Office of the Inspector General has proposed certain actions which, if implemented, could require that the Foundation return certain cooperative agreement monies. The amount, if any, that may be required to be returned is not presently determinable and, accordingly, the Foundation has made no provision for this contingency in the accompanying financial statements.

*Price Waterhouse*

ALASKA FISHERIES DEVELOPMENT FOUNDATION, INC.STATEMENT OF ASSETS AND FUND BALANCESARISING FROM CASH TRANSACTIONSSEPTEMBER 30, 1989

	<u>Restricted Fund</u>	<u>Unrestricted Fund</u>
Assets:		
Cash	\$66,042	\$ 36,749
Investments	<u>                    </u>	<u>154,993</u>
Liabilities:		
Contingent liabilities	<u>                    </u>	<u>                    </u>
 Fund balance	 <u>\$66,042</u>	 <u>\$191,742</u>

See accompanying notes to financial statements

ALASKA FISHERIES DEVELOPMENT FOUNDATION, INC.  
STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS AND CASH BALANCES  
RESTRICTED FUND

	<u>Year Ended</u> <u>September 30, 1989</u>
Receipts:	
Federal grants	\$933,599
Publication income	7,923
Program income	<u>6,481</u>
Total Receipts	<u>948,003</u>
Disbursements:	
Program -	
Pollock industry development	21,121
Surimi and beyond	8,449
Pacific pollock protein project	70,803
Full utilization	35,619
Flatfish I	116,639
Multi species waste utilization	101,908
Flatfish II	2,388
Waste utilization II	78,000
Groundfish quality enhancement	<u>91,125</u>
Total program disbursements	<u>526,052</u>
Administration -	
Salaries	192,599
Employee benefits	41,132
Miscellaneous and contract labor	96
Business insurance and taxes	5,840
Office expense and maintenance	12,760
Supplies	5,164
Rent	19,392
Phone	5,739
Postage and courier	4,644
Consulting fees	6,767
Staff travel and expenses	15,601
Board travel	20,125
Public information	40,969
Furniture and fixtures	2,928
Accounting	6,090
Interest and other	<u>6</u>
Total administration disbursements	<u>379,852</u>
Total disbursements	<u>905,904</u>
Excess of receipts over disbursements	42,099
Cash, beginning of year	<u>23,943</u>
Cash, end of year	<u>\$ 66,042</u>

See accompanying notes to financial statements

ALASKA FISHERIES DEVELOPMENT FOUNDATION, INC.  
STATEMENT OF CASH RECEIPTS AND  
DISBURSEMENTS AND CASH AND INVESTMENT BALANCES  
UNRESTRICTED FUND

	Year Ended <u>September 30, 1989</u>
Receipts:	
Membership dues, contributions and other	\$ 24,142
Interest	<u>16,526</u>
Total receipts	<u>40,668</u>
Disbursements:	
Office expenses	5,371
Bank charges	125
Travel and entertainment	1,199
Professional services	14,210
Miscellaneous	<u>575</u>
Total disbursements	<u>21,480</u>
Excess of receipts over disbursements	19,188
Cash and investments, beginning of year	<u>172,554</u>
Cash and investments, end of year	<u>\$191,742</u>

See accompanying notes to financial statements

ALASKA FISHERIES DEVELOPMENT FOUNDATION, INC.NOTES TO FINANCIAL STATEMENTSSEPTEMBER 30, 1989NOTE 1 - DESCRIPTION OF OPERATIONS AND SUMMARY OF ACCOUNTING POLICIES:Operations -

The Alaska Fisheries Development Foundation, Inc. (AFDF) is an Alaska non-profit corporation exempt from income tax under Section 501(c)(3) of the Internal Revenue Code. AFDF (incorporated March 6, 1978 as Alaska Fisheries Development Corporation) was organized to serve as coordinator with the commercial fishing industry in Alaska for research and development projects aimed at developing under-utilized marine resources. The majority of funding received from these activities comes from the National Marine Fisheries Service (NMFS). Funding is also provided by membership dues and contributions.

Basis of Accounting -

AFDF maintains its accounting records and has prepared its financial statements on the basis of cash receipts and disbursements; consequently, certain revenues are recognized when received rather than when earned, and certain expenses are recognized when paid rather than when the related obligation is incurred.

For financial statements purposes, AFDF reports proceeds from the sale of products produced by grant funded programs, as program income. Other revenues are reported net of related administrative expenses. These revenues are reimbursements to the Foundation for incidental telephone and FAX use, travel and postage by those outside the Foundation. This method of presentation more clearly reflects the Foundation's income and expenses.

Fund Types -

Two basic fund types are maintained by AFDF. They are the Restricted Fund and the Unrestricted Fund. A brief description of each follows:

Restricted Fund -

This fund accounts for amounts received under a letter of credit granted by the National Oceanic and Atmospheric Administration, National Marine Fisheries Service to provide funding for the various research and development activities undertaken by AFDF and to cover administrative costs.

Unrestricted Fund -

This fund accounts for all other receipts and disbursements not related to grants or contracts. Receipts are made up of membership dues, contributions, interest earnings and other miscellaneous receipts. Disbursements may be made at the discretion of the Board of Directors.

NOTE 2 - INVESTMENTS:

AFDF maintains an investment account with Merrill Lynch, which provides interest earnings on idle funds included in the unrestricted account. Interest earnings of \$16,526 have been reinvested. At September 30, 1989 the account consisted of \$120,000 of bank certificates of deposit and \$34,993 invested in government bonds through the Metropolitan Life State Street Fund which are stated at cost which approximates market, and \$36,749 in money market funds.

NOTE 3 - REVENUES:

Revenues received from the National Oceanic and Atmospheric Administration were received by letter of credit on various grant contracts as follows:

83-ABH-00057	\$ 23,300
84-ABH-00062	11,833
85-ABH-00044	81,919
86-ABH-00044	23,177
87-ABH-00020	128,833
88-ABH-00007	330,213
89-ABH-00008	<u>334,324</u>
	<u>\$933,599</u>

AFDF must also meet certain cost sharing provisions which require that non-federal funds comprise at least 30% of total funds received. However, non-federal funds may be received in the form of in-kind contributions as well as cash.

NOTE 4 - PENSIONS:

In addition to required participation in the Social Security System, all AFDF employees have the option of contributing to individual tax sheltered annuities. Total employee contributions during the year amounted to \$13,977.

NOTE 5 - RELATED PARTY TRANSACTIONS:

As part of its normal operations, AFDF enters into various contractual arrangements with companies in the fisheries industry. Certain of these companies are represented by persons related to members of AFDF's Board of Directors. Contracts with these companies during the current year resulted in payments totaling \$24,944.

NOTE 6 - CONTINGENT LIABILITIES:

In accordance with the provisions of Cooperative Agreement 85-ABH-00044, Alaska Fisheries Development Foundation is subject to audit by the Department of Commerce, Office of the Inspector General. An audit was conducted by Inspector General auditors from the Seattle office on this agreement for the period September 30, 1985 through December 31, 1987. Based on their findings, they have proposed certain actions be taken which, if implemented, could result in the Foundation being liable for \$929,332. Management is of the opinion that the recommendations are in error and is vigorously pursuing a favorable resolution to this matter. Management anticipates that the final resolution will not have a material impact on the financial position of the Foundation.

NOTE 7 - UNRESTRICTED REVENUES:

Certain revenues in the Unrestricted Fund were received from the sale of equipment originally purchased with federal administrative funds. The Foundation has contacted the federal technical monitor for a determination by the National Oceanic and Atmospheric Administration (NOAA) as to whether these revenues should be classified as restricted or unrestricted. Currently \$3,984 plus the accrued interest is being held in the unrestricted fund pending a decision by NOAA.

*Price Waterhouse*



REPORT OF INDEPENDENT ACCOUNTANTS

November 22, 1989

To the Board of Directors of  
Alaska Fisheries Development Foundation, Inc.

We have audited the cash basis financial statements of Alaska Fisheries Development Foundation as of and for the year ended September 30, 1989 and have issued our report thereon dated November 22, 1989.

We conducted our audit in accordance with generally accepted auditing standards, the financial audit requirements of Governmental Auditing Standards, issued by the Comptroller General of the United States, and the provisions of the Office of Management and Budget Circular A-110. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the cash basis financial statements are free of material misstatement.

Compliance with laws, regulations, contracts, and grants applicable to Alaska Fisheries Development Foundation is the responsibility of the Foundation's management. As a part of obtaining reasonable assurance about whether the cash basis financial statements are free of material misstatement, we performed tests of the Foundation's compliance with certain provisions of laws, regulations, contracts, and grants. However, our objective was not to provide an opinion on overall compliance with such provisions.

The results of our tests indicate that, with respect to the items tested, Alaska Fisheries Development Foundation complied, in all material respects with the provisions referred to in the preceding paragraph. With respect to items not tested, nothing came to our attention that caused us to believe that the Foundation had not complied, in all material respects, with those provisions.

This report is intended for the information of the board of directors, management, the United States Department of Commerce, National Oceanic and Atmospheric Administration. This restriction is not intended to limit the distribution of the is report, which is a matter of public record.

*Price Waterhouse*

*Price Waterhouse*



REPORT OF INDEPENDENT ACCOUNTANTS

November 22, 1989

To the Board of Directors of  
Alaska Fisheries Development Foundation, Inc.

We have audited the cash basis financial statements of Alaska Fisheries Development Foundation as of and for the year ended September 30, 1989, and have issued our report thereon dated November 22, 1989.

We conducted our audit in accordance with generally accepted auditing standards, the financial audit requirements of Governmental Auditing Standards, issued by the Comptroller General of the United States, and the provisions of the Office of Management and Budget Circular A-110. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the cash basis financial statements are free of material misstatement.

In planning and performing our audit of the cash basis financial statements of Alaska Fisheries Development Foundation as of and for the year ended September 30, 1989, we considered its internal control structure in order to determine our auditing procedures for the purpose of expressing our opinion on the cash basis financial statements and not to provide assurance on the internal control structure.

The management of Alaska Fisheries Development Foundation is responsible for establishing and maintaining an internal control structure. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of internal control structure policies and procedures. The objective of an internal control structure are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of financial statements in accordance with the cash basis of accounting. Because of inherent limitations in any internal control structure, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the structure to future



periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the effectiveness of the design and operation of policies and procedures may deteriorate.

For the purpose of this report, we have classified the significant internal structure policies and procedures in the following categories:

- o Cash receipts
- o Cash disbursements

For all of the internal control structure categories listed above, we obtained an understanding of the design of relevant policies and procedures and whether they have been placed in operation, and we assessed control risk.

Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be material weaknesses under standards established by the American Institute of Certified Public Accountants. A material weakness is a reportable condition in which the design or operation of one or more of the specific internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relations to the cash basis financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control structure and its operation that we consider to be material weaknesses as defined above.

However, we noted certain matters involving the internal control structure and its operation that we have reported to the management of Alaska Fisheries Development Foundation in a separate communication dated November 22, 1989.

This report is intended for the information of the board of directors, management, and the United States Department of Commerce, National Oceanic and Atmospheric Administration. This restriction is not intended to limit the distribution of the is report, which is a matter of public record.

*Price Waterhouse*



ALASKA FISHERIES DEVELOPMENT  
FOUNDATION, INC.  
RECOMMENDATION TO IMPROVE  
ADMINISTRATIVE EFFICIENCY AND  
INTERNAL ACCOUNTING CONTROL  
NOVEMBER 1989

*Price Waterhouse*



November 22, 1989

To the Board of Directors  
Alaska Fisheries Development  
Foundation, Inc.

We have audited the cash basis financial statements of Alaska Fisheries Development Foundation for the year ended September 30, 1989, and have issued our report thereon dated November 22, 1989. In planning and performing our audit of the financial statements, we considered the internal control structure in order to determine our auditing procedures for the purpose of expressing an opinion on the financial statements and not to provide assurance on the internal control structure.

Because of inherent limitations in any system of internal accounting control, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the system to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the degree of compliance with the procedures may deteriorate.

Our consideration of the Foundation's internal control structure was more limited than would be necessary to express an opinion on the system of internal accounting control taken as a whole. However, such study and evaluation disclosed no condition that we believed to be a material weakness. As discussed in the following recommendations, we did, however, note certain areas where we believe that additional control is desirable to further safeguard assets, ensure the reliability of the financial reports and maximize operational efficiency.

This report is intended solely for the use of management of Alaska Fisheries Development Foundation and should not be used for any other purpose.

*Price Waterhouse*

ALASKA FISHERIES DEVELOPMENT FOUNDATION, INC.  
RECOMMENDATIONS TO IMPROVE ADMINISTRATIVE EFFICIENCY  
AND INTERNAL ACCOUNTING CONTROL

SEPTEMBER 30, 1988

RECOMMENDATION 1:

The Foundation should continue efforts to obtain an agreement with its bank which would provide collateral security if deposits are in excess of \$100,000.

The Foundation has been negotiating with its bank to obtain an agreement to collateralize deposits over \$100,000. Should the Foundation need to draw down an amount on its U.S. Treasury line of credit which would cause the Foundation's bank balance to exceed the \$100,000 federal deposit insurance level the Foundation would be in violation of federal regulation and at financial risk. Efforts should continue in negotiating a collateralization agreement with the bank, so the Foundation can have the maximum flexibility possible in drawing down funds and still meet federal requirements that deposits in excess of federal deposit insurance levels be collaterally secured.

RECOMMENDATION 2:

The Foundation should periodically evaluate control procedures to determine if additional control procedures should be implemented.

Due to the small size of the Foundation and the limited number of employees, it is not possible to adequately segregate the duties of employees to achieve ideal internal control over assets and transactions. This lack of segregation of duties requires that management be involved in daily operations lessen the chance that errors or irregularities may occur and not be detected. Management should periodically evaluate the control procedures being performed, such as reviewing the monthly bank reconciliations, and determining if any additional control procedures are necessary to ensure that the internal control system is as strong as possible under the circumstances.

RECOMMENDATION 3:

The Foundation should prepare and document formal investment policies to ensure that investment decisions are made in accordance with the intent of management.

During our examination we noted that other investment alternatives are being explored by the Foundation to get better returns on its invested funds. Although no unsound investment practices were noted, the management of the Foundation should determine investment policies such as types of allowable investments, officials with authority to make investment decisions, and desired levels of risk and return and document those policies to ensure that investment decisions are made in accordance with the intent of the board of directors.



# Publications List 1991

5

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

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

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

#### By-Products

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

#### Flatfish

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

#### Video Tapes

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

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

Ship to: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Amount Enclosed: \_\_\_\_\_

KODIAK REDUCTION, INC.

911 GIBSON COVE ROAD  
KODIAK, ALASKA 99615  
TELEPHONE (907) 486-3171

January 31, 1990

Senator Lloyd Jones  
State Capitol  
Juneau, AK. 99801-1182

Dear Senator:

I am writing to urge you to support Senate Bills 343 & 345 appropriating a loan to the Alaska Fisheries Development Foundation for a commercial fisheries development endowment. The "Foundation" has done alot for the betterment of fisheries throughout Alaska using the Seibonstall-Kennedy federal grant monies they have appropriated. However, with the "drying up" of federal funding in general, the Foundation is in dire straits in regard to funding its research projects. Without help from the State of Alaska in the form of the above loan, this fine Foundation will succumb and future projects parallelling the surimi project in Kodiak (which has resulted in a \$500 million/year industry in Alaska) will never come to fruition. Your support will be greatly appreciated by all of coastal Alaska.

Sincerely,

  
Dan James  
General Manager

SB

34.6

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL

DATE: 1/13/92

FURTHER: Finance

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

DATE TURNED  
INTO OFFICE: Feb 11, 1992

Resources                      Committee considered                      SENATE BILL NO. 346

Appropriation for a loan to the Alaska Fisheries Development Foundation for a commercial fisheries development endowment; efd.

and recommends:

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

attaches amendment(s)

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

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

same title  
 new title  
 technical  
title change  
(HB only)

do pass

do not pass

no recommendation

individual recommendations

**NEW FISCAL NOTES:**                      Dept/Date

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

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

**PREVIOUS FISCAL NOTES:**                      Dept/Date

**Governor's bill** with fiscal notes:  
zero fiscal notes \_\_\_\_\_

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

appropriation--no fiscal note

DO PASS:

[Signatures]

OTHER RECOMMENDATIONS:

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

[Signature]  
Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 345 and SB 3

Revision Date: 1/27/92  
Title: Commercial Fisheries Development  
Endowments

Department Affected: Fish and Game  
BRU: Commercial Fisheries  
Component: Commercial Fisheries

Sponsor: Senator Zharoff  
Requestor: Senate Resources Committee

COMPONENT SERIAL NO. 

	4	5	9
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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					
TRAVEL	0					
CONTRACTUAL	0					
SUPPLIES	0					
EQUIPMENT	0					
LAND & STRUCTURES	0					
GRANTS, CLAIMS	0					
MISCELLANEOUS	0					
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0
FUND SOURCE:						

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: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Bob Clasby Phone: 465-4210  
Division: Commercial Fisheries Date: 1/27/92

Approved by Commissioner: Clint K. Reiner  
Agency: Dept. of Fish and Game Date: 1/27/92

Fiscal Note  
Dept of Fish + Game

SB 345 (346): "An Act relating to Fisheries Development Endowment Loans."

SB 345 establishes a new program that allows the department to make loans to establish endowments for support of commercial fisheries development research projects in the state. The loans would be made to nonprofit corporations incorporated for the purpose of promoting the development of commercial fisheries in the state. The loans would be ten-year, zero interest, unsecured loans due in full at maturity. Recipients would be required to provide financial information relating to the endowment and would be subject to audit by the legislative auditor.

SB 346 would appropriate \$5,000,000 to the department for the purpose of making a loan under this program to the Alaska Fisheries Development Foundation.

The department is neutral on this legislation.

*Glenn A. Olds*

Glenn A. Olds, Commissioner *for*

Date: 2-3-92

GAO/BC/dgl1363D-3  
013192a

Position Paper



SENATOR FRED F. ZHAROFF  
ALASKA STATE LEGISLATURE

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

DURING SESSION:

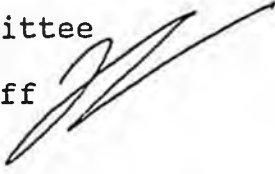
P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 485-3473 • 485-3474

DISTRICT N

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

MEMORANDUM

TO: Senator Lloyd Jones  
Chairman  
Senate Resources Committee

FROM: Senator Fred F. Zharoff 

DATE: February 3, 1992

RE: Senate Bill 346 - "An Act making an appropriation for a loan to the Alaska Fisheries Development Foundation for a commercial fisheries development endowment; and providing for an effective date."

BILL SUMMARY: SB 346 appropriates \$5 million to the Department of Commerce and Economic Development to use for a commercial fisheries development endowment loan for the Alaska Fisheries Development Foundation. The commercial fisheries development endowment loan is established in a companion bill, SB 345.

The appropriation is contingent on the Alaska Legislature's passage and the governor's approval of a bill creating the commercial fisheries development endowment loan program.

FISCAL IMPACT: Fiscal notes requested from the Department of Commerce and Economic Development and the Department of Fish and Game.

PREVIOUS ACTION: Introduced on Jan. 13, 1992.

BACKGROUND INFORMATION: The Alaska Fisheries Development Foundation would fund its operations from the income generated by the \$5 million. The principal would be protected so that it could be returned to the state upon the expiration of the loan. AFDF would supplement this money with an active fundraising campaign aimed at building an endowment with private donations.

Due to decreasing federal funding (Saltonstall-Kennedy grant monies), AFDF needs a new source of funds if it is to continue with its mission of developing new fisheries, new seafood processing techniques, and new seafood products in Alaska.

Based on its impressive track record -- innovative new processing techniques for surimi, flatfish, and flounder -- AFDF is worthy of consideration for state support.

With this funding, AFDF will also be able to pursue research and development projects for salmon, which does not now meet the criteria for federal grant monies because it is considered a developed species.

ATTACHED BACKUP INFORMATION:

1. Sectional analysis.

All the backup submitted for SB 345 also applies to SB 346.



## SENATOR FRED F. ZHAROFF

### ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99815 (907) 486-5250

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 485-3473 • 465-3474

DISTRICT N

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

#### SECTIONAL ANALYSIS

#### Senate Bill No. 345

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

#### SECTION 1

LEGISLATIVE FINDINGS.

Explains the purpose of the bill.

#### SECTION 2

Appropriates \$5 million from the general fund to the Department of Commerce and Economic Development for a commercial fisheries development endowment loan to the Alaska Fisheries Development Foundation. This is contingent on the passage of SB 345 or similar legislation.

#### SECTION 3

Immediate effective date.

Sectional Analysis

S B

3 5 9

STATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL

DATE: 1/16/92

FURTHER: Judiciary

Date of 5-Day Notice: Feb 27, 1992  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: April 16, 1992

Resources Committee considered SB 359

"An Act providing immunity for the Alaska State Emergency Response Commission, the local emergency planning committees, and the Hazardous Substance Spill Technology Review Council and their members for actions taken under AS 46.13; and providing for an effective date."

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

[x] individual recommendations

NEW FISCAL NOTES: Dept/Date

[ ] zero fiscal notes \_\_\_\_\_

[ ] fiscal notes \_\_\_\_\_

[ ] appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

[x] Governor's bill with fiscal notes:

zero fiscal notes Admin 1/16/92

NEC 1/16/92

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

DO PASS:

See Govt  
[Signature]  
[Signature]

OTHER RECOMMENDATIONS:

And no rec  
Rick Halford

[Signature]

Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Vol. 1  
Bill Version: SB 359  
(S) Publish Date: 1/16/92

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

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

COMPONENT SERIAL NO. 

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

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

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

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

POSITIONS:

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

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

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Donald J. Hitchcock  
Division: Risk Management

Phone: 465-2180  
Date: 12.10.91

Approved by Commissioner: Nancy Bear Usura  
Agency: Administration

*Nancy Bear Usura*  
Date: Dec. 16, 1991

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

CONTINUATION OF FISCAL NOTE ANALYSIS  
LAW LOG 92-0057 DRAFT BILL

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

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

FISCAL NOTE

No. 2

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Bill Version: SB 359

(S) Publish Date: 1/16/92

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

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

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

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

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

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

WALTER J. HICKEL  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

JB359

January 16, 1992

*The Honorable Richard I. Eliason  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182*

*Dear President Eliason:*

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

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

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

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

*The Honorable Richard I. Eliason*

*January 16, 1992*

*Page 2*

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

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

*Sincerely,*

A handwritten signature in cursive script, reading "Walter J. Hickel". The signature is written in dark ink and is centered on the page.

*Walter J. Hickel*  
*Governor*

# Citizens' Groups in Alaska with Duties Related to Oil and Hazardous Substances

## FEDERAL

### ■ Regional Citizens' Advisory Councils (RCAC)

The federal Oil Pollution Act (OPA) of 1990 established RCACs in Prince William Sound and Cook Inlet to oversee crude oil tanker and terminal operations in those areas. RCACs serve as advisory groups to the President, U.S. Congress, and industry.

RCACs are funded by industry as required in OPA 90.

## STATE

### LEGISLATIVE BRANCH

#### ■ Citizens' Oversight Council (COC)

The COC is an advisory group to the Legislature established by HB 578 in 1990. The Council is responsible for evaluating whether state and federal agencies are carrying out legislatively mandated programs related to oil and hazardous substance discharge prevention, and response. The COC may also make recommendations to the State regarding ways to prevent releases. [AS 24.20.600]

The COC is funded by the Oil and Hazardous Substance Release Response Fund. [AS 46.08]

### EXECUTIVE BRANCH

#### ■ State and Local Oil and Hazardous Substance Emergency Planning

The federal Emergency Planning and Community Right-to-Know Act (EPCRA) required states to establish a **State Emergency Response Commission (SERC)** to oversee local hazardous substance emergency planning programs. [42 USC 11001-11050]

Under Alaska law, the SERC oversees the development of response plans for oil and hazardous substance releases which are prepared by LEPCs and the State, and reviews and approves them as specified in state law. [AS 46.13]

The SERC appoints **Local Emergency Planning Committees (LEPC)**. LEPCs are responsible for developing a local response plan for oil and hazardous substance releases.

#### ■ Hazardous Substance Spill Technology Review Council (HSSTRC)

The HSSTRC evaluates existing cleanup technologies for potential application in arctic/sub-arctic conditions and proposes research to development new ones.

- The SERC, LEPCs, and the HSSTRC are funded by the Oil and Hazardous Substance Release Response Fund [AS 46.08].

## **Citizens' Groups in Alaska with Duties Related to Oil and Hazardous Substances**

Federal and state laws passed since 1986 provide citizens with greater opportunities to play an active role in making sure that Alaskans and their environment are safer from the negative impacts of hazardous substance releases. These groups and a brief description of their responsibilities are summarized below.

### **OVERSIGHT GROUPS**

#### **□ Citizen Oversight of Industry Operations**

Regional Citizens' Advisory Councils (RCAC) in Prince William Sound and Cook Inlet were created under the federal Oil Pollution Act of 1990. Their primary responsibility is to monitor crude oil tanker and terminal operations. These Councils serve in an advisory capacity to industry and the federal government on issues related to crude oil tanker and terminal operations. RCACs are funded by industry.

#### **□ Legislative Oversight of State Programs**

Citizens' Oversight Council (COC) was established in the Legislature in 1990. Their chief function is to monitor and evaluate state and federal agencies efforts to carry out their responsibilities for programs related to preventing and responding to oil and hazardous substance releases. The Council may recommend to the Legislature, the Governor, the federal government, and private entities, policies and actions for preventing releases. [AS 24.20.600] The COC is funded by the Oil and Hazardous Substance Release Response Fund.

### **STATE AND LOCAL HAZARDOUS SUBSTANCE PLANNING GROUPS**

#### **□ State Planning**

As required by federal law, the State Emergency Response Commission (SERC) was established in 1990. The Commission has sixteen members, including seven representing the public. The SERC is primarily responsible for ensuring that response plans for oil and hazardous substance releases prepared by Local Emergency Planning Committees (below) and the State are effective and coordinated. [AS 46.13]

#### **□ Local Planning**

Local Emergency Planning Committees (LEPC) are appointed by the State Emergency Response Commission (SERC). LEPCs are responsible for developing local response plans for oil and hazardous substances. [AS 46.13]

### **TECHNOLOGY REVIEW AND DEVELOPMENT**

#### **□ Hazardous Substance Spill Technology Review Council**

The Hazardous Substance Spill Technology Review Council is responsible for reviewing existing spill containment and cleanup technology or procedures for their potential use in arctic/sub-arctic conditions. The Council may recommend research projects to develop new technology. The Council is also responsible for proposing ways to improve the ability of government agencies and industry to prevent and respond to releases. [AS 46.13]

## MEMORANDUM OF AGREEMENT

### 1. Recitals

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

### 2. State Defense of Claims

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

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

3. Indemnification

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

4. Definition of Non-Insured Claims and Judgments

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

5. Notice of Claim

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

6. Conditions

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

7. Recision of this Agreement

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

DATED:

6-12-91

Charles E. Cole  
Charles E. Cole  
Attorney General  
Department of Law

DATED:

6/13/91

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

DATED:

6/13/91

John Sandor  
John Sandor  
Commissioner  
Department of Environmental  
Conservation

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

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

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

January 27, 1992

The Honorable Lloyd Jones  
Chairman  
Senate Resources Committee  
P.O. Box V  
Juneau, AK 99811

Dear Senator Jones:

SB 359 was recently referred to your committee after introduction by the Governor. This bill would provide immunity to the members of the Alaska State Emergency Response Commission (SERC), the Local Emergency Planning Committees (LEPCs) created under the SERC, and the Hazardous Substance Spill Technology Review Council (HSSTRC or TRC) for their acts or omissions which are in accordance with their official duties, unless the act or omission constitutes gross negligence or intentional misconduct or which may be the subject of relief under an applicable federal law.

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

The success of the SERC, LEPCs and RTC are critical to the success of the State of Alaska in emergency preparedness when dealing with oil spills or other hazardous substance releases. Enclosed herewith is a legal opinion relating to this issue that may be of interest to the members of your committee when reviewing SB 359. We are also enclosing statutes from other states which have adopted this kind of immunity for members of their SERC, and the federal law allowing for citizen suits against members of a SERC. SB 359 would not affect this federal law.

The Honorable Lloyd Jones

-2-

January 27, 1992

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

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

Sincerely,



John A. Sandor  
Commissioner

JA/vr (CO-comm\Jones.359)

Enclosures: Legal Opinion  
Statutes

cc: Paul Fuhs, Governor's Office

# MEMORANDUM

State of Alaska

Department of Law

October 29, 1990

Page 1

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

DATE:

FILE NO.:

TEL. NO.:

Honorable Dennis D. Kelso  
Commissioner  
Department of Environmental  
Conversation

SUBJECT: October 29, 1990

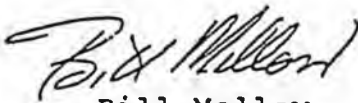
FROM:

RECEIVED

OCT 31 1990

465-3603

Liability of SERC, LEPC  
and HSSTRC members



Bill Mellow  
Assistant Attorney General  
Special Litigation-Juneau

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

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

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

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

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

RECEIVED

SEP 19 1991

ADEC  
COMMISSIONER'S OFFICE

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

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

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

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

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

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

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

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

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

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

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

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

Answer. Yes.

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

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

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

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

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

Hon. Dennis D. Kelso  
Department of Environmental  
Conversation

October 29, 1990  
Page 4

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

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

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

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

WGM:jal  
Attachment

cc w/enc.: Camille Stephens

## PROPOSED MEMORANDUM OF AGREEMENT

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

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

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

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

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

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

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

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

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

# MEMORANDUM

State of Alaska

RECEIVED  
JUL 30 1980  
JUL 31 1980

TO: Douglas B. Baily  
Attorney General  
Department of Law

DATE:

FILE NO:

TELEPHONE NO:

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

FROM: Dennis D. Kelso  
Commissioner  
Department of Environmental  
Conservation

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

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

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

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

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

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

Specifically our questions are:

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

July 30, 1990

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

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

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

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

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

Thank for your assistance with this important matter.

Attachments

bcc: Camille Stephens

MEMORANDUM

TO: COLONEL MIKE MOLLOY  
CHAIRMAN, KENTUCKY EMERGENCY RESPONSE COMMISSION

FROM: GREG HOLMES, ASSISTANT ATTORNEY GENERAL *GH*

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

DATE: DECEMBER 28, 1987

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

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

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

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

# NORTH SLOPE BOROUGH

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

Phone: 907-852-7779  
Fax 907-852-8971



April 3, 1990

Ms. Linda Van Houten  
SARA Title 111 Coordinator  
Department of Environmental Conservation  
P.O. Box 0  
Juneau, Alaska 99811-1800

Dear Ms. Van Houten;

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

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

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

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

Sincerely,

T.R. Rail  
Coordinator, Prudhoe Bay Area LEPC

cc: David McDowell ✓  
Division of Emergency Services

TO: Commissioner Dennis Kelso, Chair  
State Emergency Response Commission

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

SUBJ: LEPC Budget and concerns

DATE: January 10, 1990

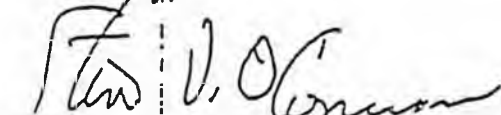
The Kenai Peninsula Local Emergency Planning Committee would like to submit a draft budget for consideration by the State Emergency Response Commission. This budget is just a preliminary draft as we have not had time to develop a workplan. As soon as the workplan is complete we will have a better idea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

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

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

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

Sincerely,

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

cc: Linda VanHouten  
cc: Dave McDowell

enclosures (5)

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

Collateral references. — 51 Am. Jur. 2d, Workmen's Compensation, § 177.

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

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

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

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

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## MEMORANDUM OF AGREEMENT

### 1. Recitals

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

### 2. State Defense of Claims

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

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

3. Indemnification

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

4. Definition of Non-Insured Claims and Judgments

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

5. Notice of Claim

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

6. Conditions

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