

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**  
**7676 SENATE RESOURCES**

22. What are the effects of withdrawals from the various accounts?

Remember that no income tax is paid on amounts deposited in the capital gain or ordinary income accounts. Instead, the deferred income tax is recaptured by decreasing the depreciable basis of your Schedule B project when you withdraw funds from your CCF account. The effect of withdrawals from the three accounts is as follows:

(a) The Ordinary Income Account. QUALIFIED withdrawals from the ordinary income account reduce the depreciable basis of your Schedule B project by an amount equal to the withdrawal.

You must include nonqualified withdrawals from the ordinary income account in your income tax return as ordinary income in the year you make the withdrawal.

(b) The Capital Gain Account. QUALIFIED withdrawals from the capital gain account reduce the depreciable basis of your Schedule B project in an amount equal to the applicable tax rate for an individual or corporation.

You must include nonqualified withdrawals from the capital gain account in your income tax return in the year you make the withdrawal.

(c) The Capital Account. You did not receive any income tax deduction at the time of the capital account deposit. So any withdrawal from the capital account is equivalent to a return of capital and, accordingly, has no effect on your taxable income or the depreciable basis of Schedule B vessels.

23. Can you choose the account from which a withdrawal will be made?

No. Qualified withdrawals come, first, from the capital account; second, from the capital gain account; and, last, from the ordinary income account.

Nonqualified withdrawals are made in the reverse order; first, ordinary income; second, capital gain; and last, capital.

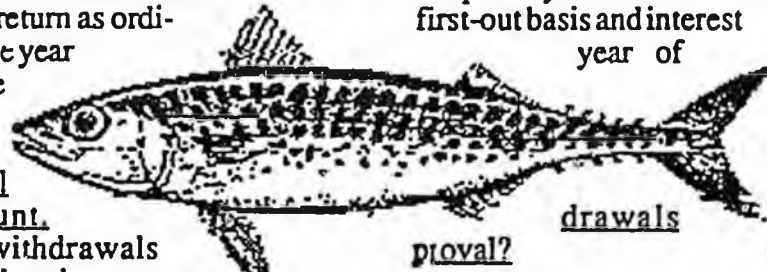
Generally, withdrawals from a particular account are made on a first-in/first-out basis.

24. Will nonqualified withdrawals be approved regardless of reason?

No. Nonqualified withdrawals will only be approved for good cause. For instance, should you incur a net operating loss and need funds to continue operation, NMFS would approve a nonqualified withdrawal upon proof of the need.

25. Are there any Penalties for Nonqualified Withdrawals?

All nonqualified withdrawals for taxable years beginning after December 31, 1986, will be taxed at the maximum rate applicable in the year you make the withdrawal. Nonqualified withdrawals stand alone as income and cannot be used to offset net operating losses. The tax on nonqualified withdrawals is subject to a self-assessed interest penalty. Withdrawals are made on a first-in/first-out basis and interest is charged from the year of deposit to the year of withdrawal.



26. What happens if you make withdrawals without prior approval?

Without NMFS approval, the withdrawal may be considered nonqualified. In addition to the tax consequences of a nonqualified withdrawal, this is a breach of your CCF Agreement and could result in its termination.

27. What happens if your CCF Agreement is Terminated?

If it is terminated, voluntarily or involuntarily, any balance remaining in the CCF will be treated as a nonqualified withdrawal. The balance in your CCF account will be considered income for the year of termination, possibly causing you a substantial tax liability for that tax year.

28. What effect does basis reduction have on future sale of a vessel?

Upon the sale of a Schedule B vessel, any reduction in depreciable basis is treated the same as depreciation claimed. Thus, any gain on the sale would be reported as ordinary income. However, if the net proceeds from that sale are deposited in a CCF account, taxation of the gain can again be deferred.

29. Are there penalties if you fail to complete the required second Schedule B objective?

Yes. In order to acquire a used vessel as a Schedule B objective, you must agree to a second Schedule B objective of either reconstructing that vessel or constructing another one at some time in the future. If you fail to do so, all previous withdrawals for acquisition of the used vessel may be considered nonqualified. At present, it is uncertain what will happen if the tax statute of limitations has expired in respect to any of the withdrawals.

If plans or circumstances change, however, the second Schedule B objective may be amended or revised with NMFS consent.

30. What if you make CCF deposits in excess of your taxable income?

You have several options available. The excess may: (a) be withdrawn, as if never deposited; or (b) be treated as a deposit under any ceiling, if available, and/or as a deposit under any ceiling for the next taxable year, if ceilings for prior years are filled.

31. What if your taxable income is changed by an IRS audit?

If an IRS audit results in an increase of your taxable income, you may make a deposit to your CCF equal to the increase if a ceiling from vessel operations is available. This deposit will be attributed to the year of the tax return which was audited. The deposit must be made within specified time limits.

If the audit results in a decrease in income, which reduces any ceilings below the amounts previously deposited in your CCF, you would have an overdeposit which could be treated as explained in No. 32.

32. Once you enter a CCF Agreement can Deposits or Withdrawals be considered as Constructive?

No, once you have entered into a CCF Agreement, all deposits and withdrawals must be physically made through your designated CCF account in order to qualify. If, however, you make an otherwise qualified payment outside of your CCF account, you may use your CCF account to reim-

burse yourself within 6 months from the date of the expenditure.

33. How many annual reports must be submitted to NMFS?

Only one. This is a "DEPOSIT/WITHDRAWAL REPORT" which you must submit not later than 30 days from the due date along with a copy of your "FEDERAL INCOME TAX RETURN" as filed with IRS.

34. How is the CCF program restricted in a Conditional Fishery?

You may enter a CCF Agreement to construct a new vessel for a conditional fishery if you are able to remove from that fishery within one year a vessel of equivalent capacity. The removed vessel must have operated in that conditional fishery for at least 18 months prior to construction of the new vessel, and must be removed from all fishing or placed permanently in a non-conditional fishery. Reconstruction of a vessel in a conditional fishery will not be deemed to increase the harvesting capacity significantly if it operated substantially in the conditional fishery for at least 36 months before reconstruction.

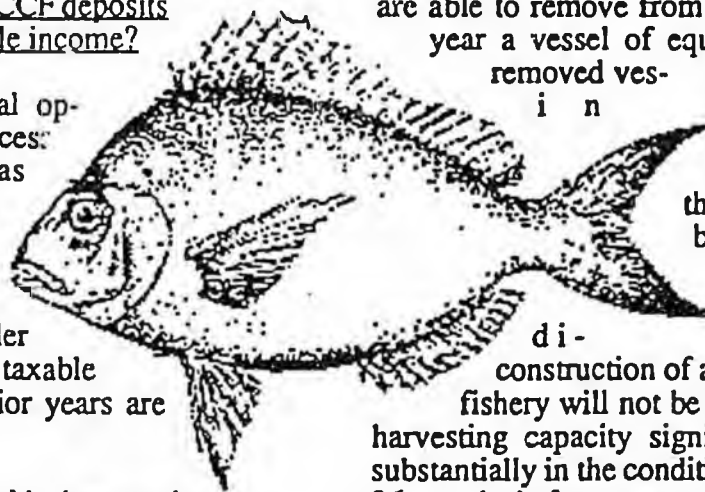
35. Can the CCF program and the Fisheries Obligation Guarantee (FOG) program be used together on the same vessel?

Yes. The FOG program provides private lenders a 100% U.S. Government guarantee of obligations financing up to 80% of the cost of constructing, reconstructing, or reconditioning fishing vessels of at least 5 net tons.

Long-term maturities (up to 20 years) can be obtained at very reasonable interest rates under the FOG program. If you cannot find a suitable lender, NMFS can help you find one.

An obligation guaranteed under the FOG program would finance the portion of your vessel project's cost which was not paid for from your CCF account at the time your vessel was delivered to you. You could, thereafter, continue to use the CCF program to pay off the obligation guaranteed under the FOG program.

If you are interested in applying under the FOG program, call or write a Regional Financial Services Branch of NMFS.



36. Are CCF Deposits a Tax-preference item to "C" Corporation Taxpayers?

Yes. This is the most significant change made by the Tax Reform Act of 1986. When tax-preference items reduce a "C" corporation's tax. Then it must calculate an alternative minimum tax. If the regular tax is greater than the alternative minimum tax, then the regular tax must be paid. Any alternative minimum tax in excess of the regular tax can be used as a tax credit in a later year when no alternative minimum tax is due.

Thus, a "C" corporation with a CCF must calculate an alternative minimum tax for any taxable year in which a CCF deposit is made after December 31, 1986.

The regular tax is calculated on taxable income, after subtracting tax-preference items. The alternative minimum tax of 20% is calculated on taxable income by: (a) adding back the tax-preference items, (b) subtracting depreciation allowances lost as a result of withdrawals of CCF deposits made after 12/31/86, and (c) subtracting a \$40,000 exemption (phased out on income over \$150,000).

REVISED DRAFT  
12/13/90  
9:00 a.m.

SELF-EMPLOYMENT TAX TREATMENT OF CONTRIBUTIONS TO A CAPITAL  
CONSTRUCTION FUND

Present Law

In general, a taxpayer's taxable income is reduced by qualified contributions to a capital construction fund (CCF) established under section 607 of the Merchant Marine Act. Qualified contributions generally include taxable income attributable to the operation of certain fishing vessels in the foreign or domestic commerce of the United States or the fisheries of the United States (sec. 7518(a)(1)(A) of the Internal Revenue Code). Contributions to a CCF are allowed as a deduction under subtitle F of the Internal Revenue Code, and operate as a deferral of tax.

Self-employment taxes are imposed on a taxpayer's net earnings from self-employment, which is defined as the gross income derived by the taxpayer from any trade or business carried on by that taxpayer, less the deductions allowed under subtitle A of the Internal Revenue Code attributable to the trade or business (sec. 1402(a) and (b) of the Code).

The term "gross income" is the broadest statutory measure of income, and is defined as "all income, from whatever source derived." Conversely, the term "taxable income" is a narrow measure of income, and is defined as adjusted gross income, less the personal exemption and either the standard deduction or itemized deductions.

The Internal Revenue Service has taken the position that contributions to a CCF do not reduce a taxpayer's net earnings from self-employment for purposes of self-employment taxes, on the grounds that self-employment taxes are imposed on gross income, while contributions to a CCF reduce taxable income (see, e.g., Rev. Rul. 79-413, 1979-2 CB 309). The Courts have adopted similar reasoning (see, e.g., Eades v. Commissioner, 79 TC 985), and have noted that reducing net earnings from self employment by contributions to a CCF may result in avoidance, rather than deferral, of the self-employment tax (Eades, at 993).

In 1986, Congress codified the CCF rules in subtitle F of the Code, providing further support for the IRS and Tax Court's position (i.e., the deduction is allowed under subtitle F of the Code; section 1402 only allows deductions authorized under subtitle A of the Code).

Explanation of Proposal

The proposal would provide that contributions to a CCF reduce net earnings from self-employment for purposes of calculating self-employment taxes. The proposal would amend the Internal Revenue Code (sec. 1402) and Social Security Act (sec. 211).



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Silver Spring, Maryland 20910

NATIONAL MARINE FISHERIES SERVICE (NMFS)

FISHING VESSEL CAPITAL CONSTRUCTION FUND (CCF)

Swift's

Re: H. R. 1363 - Social Security Self-Employment Tax on CCF

The Internal Revenue Service (IRS), in their Publication 595 (which is based on a Revenue Ruling), instructs self-employed fishermen to add back their CCF deduction of taxable fishing income to refigure their Self-Employment Tax (S.E. Tax). In other words, they are being discriminated against because they entered into a CCF Agreement as an individual proprietor (husband and/or wife). If they had entered into a CCF Agreement as a different entity--Corporation or Partnership--their CCF deduction would not be subject to S.E. Tax.

MARAD has a CCF program also, but none of their Agreementholders are subject to S.E. Tax. MARAD's participants are all Corporations!

The CCF add-back for individuals (for S.E. Tax purpose) is DOUBLE TAXATION! When CCF monies are used to purchase a vessel and/or equipment, the Depreciable Basis of same must be reduced accordingly. For example, in 1988 a vessel was purchased for \$500,000 using CCF monies of \$100,000 as a down payment--in lieu of a \$50,000 deduction for Depreciation on Schedule C (based on 10-year straight line depreciation) only \$40,000 was allowed--thus creating more taxable income and more S.E. Tax, resulting in DOUBLE TAXATION. In 1989, the owner of this vessel worked on the Alaska oil spill and deducted \$200,000 for CCF, all of the monies were paid on his vessel mortgage. His vessel basis is now reduced to \$200,000, therefore, he can only claim \$20,000, etc., etc.!

CCF Program Participation - 1970 thru 1990

		<u>Individuals</u>	<u>Other</u>
Total No. of CCF's	= 6,336	4,524	1,812
No. CCF's Terminated	= <u>2,236</u>	<u>1,524</u>	<u>712</u>
Active No. of CCF's	= 4,100 <sup>1/</sup>	3,000	1,100

The majority of CCF Agreementholders are individuals (73%), as shown in the table above. This number is only a fraction of the fishermen eligible to use the CCF program. Over the years, I have been told many times that the S.E. Tax add-back provision by IRS is the major reason for many fishermen not using the CCF.

<sup>1/</sup> As of March 22, 1991.

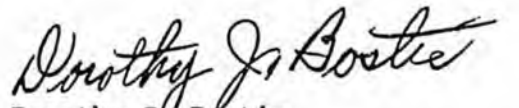


I did a sampling of the 1990 Federal tax returns for individuals with a CCF Agreement; i.e., 10% or 300 of the 3,000 total participants. The results are as follows:

1. 25% or 750 paid S.E. Tax on fishing income - no CCF deposit.
2. 20% or 600 paid maximum S.E. Tax - no CCF income deposit, deposited interest, sale proceeds of vessel, etc.
3. 20% or 600 paid maximum S.E. Tax - fishing income deposited.
4. 35% or 1,050 - half added back CCF deduction for S.E. Tax, the other half did not.

If that 35 percent (1,050) deducted \$35,000 (high estimate) per year for CCF and did not have to add the amount back, the total would equal \$36,750,000. The 1990 S.E. Tax schedule has you multiply that figure by .9235% to arrive at the amount subject to S.E. Tax, that amount would be \$33,938,625, you then multiply that amount by .153% to arrive at the S.E. Tax amount owed. This amount would be approximately \$5.2M per year in revenues, but they are allowed to add back one-half of that amount on Line 25 of their 1040. That amount would be \$2.6M which reduces A.G.I. (Adjusted Gross Income).

I have run out of ideas today. Please call if there are any questions.

  
Dorothy J. Bostic  
Financial Assistance Specialist  
Financial Services Division  
Phone: (301) 427-2393  
Fax: (301) 589-2686



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NY 01067  
130x 112  
Haines, AK  
1991

20 USA

SENATOR DICK ELIASON  
ALASKA STATE LEGISLATURE  
BOX V (MS3100)  
JUNEAU, ALASKA 99801

ART UNLIMITED AMSTERDAM  
POSTBUS 1760 1000 BT AMSTERDAM TEL: 020-851011  
DISTRIBUTION U.S.A. JOSEPHINE NEW YORK TEL NR 212-529-1197

2/11/92

DEAR SENATOR ELIASON,

THIS WHAT I FEEL LIKE AFTER HAVING  
DONE MY TAXES.

I SUPPORT YOU IN <sup>YOUR</sup> ~~MY~~ EFFORTS IN  
SPONSORING A RESOLUTION IN THE  
SENATE TO URGE CONGRESS TO  
PASS SENATE BILL #5-19-34  
MAYBE THIS WILL SOLVE THE PROBLEM  
OF THE SELF EMPLOYMENT TAX & THE  
CCF

B 46

W. J. Black

February 12, 1992  
HC1 Box 8330  
Soldotna, AK. 99669

Senator Dick Eliason  
State Capital  
Juneau, Alaska 99801

Dear Senator Eliason:

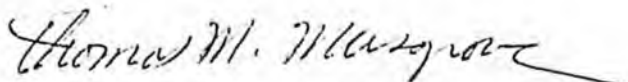
I have been a commercial fisherman in Alaska for the last 14 years and currently have a Capital Construction Fund Account open.

The IRS incorrectly brought the CCF into the tax code in 1985 through Section 1 resulting in double taxation on the funds the sole proprietorship fisherman deposits into a CCF account.

I have just become aware of a resolution in the Alaska State Senate to be sent to Washington D.C. urging the U.S. Congress to support Senate Bill # S-19-34 pertaining to the correction of the Self Employment Tax issue when utilizing the Capital Construction Fund. I am in full support of this resolution.

Thank you for your help in the preparation and support of this resolution.

Sincerely,



Thomas M. Musgrove  
Owner/Operator F/V SEAHAWK II

Retail Sales & Marketing

PaineWebber Incorporated  
Suite 2400  
1201 Third Avenue  
Seattle, WA 98101-3070  
206-447-2400

February 4, 1992

**PaineWebber**

Senator Dick Eliason  
State Capitol  
Juneau, Alaska 99801

Dear Senator Eliason:

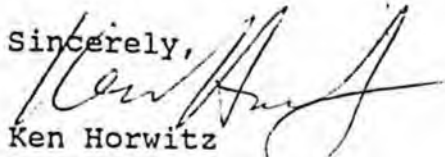
I work for nearly 500 Alaskan Commercial Fishing Families. These families need your support of the pending resolution in the Alaska Legislature urging our Federal Congress to support Senate Bill # S-19-34 pertaining to the correction of the Self Employment issue when utilizing the Capital Construction Fund.

The fishermen are historically loosely organized and often unable to represent themselves properly when they spend most of their time out to sea pursuing their livelihood. They depend upon you for support!

The IRS incorrectly brought the CCF into the tax code in 1985 through Section 1 of the Code which has no provision for anything not susceptible to Self Employment taxation. Since use of the CCF structure eliminates depreciation of the fishermen's boat, self employment tax actually rises later on for the fishermen using the CCF structure. For him to have to pay additional Self Employment tax at the time of his CCF deposit is actually resulting in double taxation. Furthermore, simply by creating a Sub-chapter S corporation, CCF deductions are exempt from Self Employment tax which is further discrimination against the Alaskan individual fisherman operating as a sole proprietor.

Thank you for your help in supporting the resolution you are preparing for the Alaskan legislature. I would also ask that you send a personal wire to the two Alaskan Senators as well.

Sincerely,



Ken Horwitz

Senior Vice-President

Author: Financial Planning For Commercial Fishermen

F/V Lady Kimberly Inc.  
P. O. Box 240102  
Douglas, Alaska 99824

2/12/92

Dear Senator Eliason,

My husband & I own  
and operate 2 Fishing sites in  
Kodiak, & also own a 58' limit  
seiner. We have a Capital Construction  
Fund, which we used to build  
the Lady Kimberly. Please continue to  
support the resolution in the  
Alaska state Legislature #S-19-34.  
Thank-you for your interest in  
helping us fisherman. Also we  
live in Alaska year round & spend  
our money here.

Thank-you

Kimberly C. Petersen

Feb 11, 1992

Senator Dick Eliason  
State Capitol  
Juneau Alaska 99801

Honorable Senator Eliason,

We would like to Thank you  
for showing your support for  
Senate Bill # S-19-34. We  
support you & this bill 100%.

~~Being~~ a commercial  
fisherman for the last 20  
years and recently last 5 years  
taking advantage of the  
Capital Construction Fund, we  
feel we are being taxed twice  
since we cannot depreciate  
the vessel <sup>we</sup> purchased with

Monies used.

Respectfully yours,

Steve J. Adams  
Brendan Penning

UNOPENED  
BY QAS  
PAPERWORK  
FEB 12 1992

David Y. Nanney / FV Brown Sugar  
Box 387, Haines, Alaska 99827

Senator Dick Eliason  
State Capitol  
Juneau, Alaska 99801

Re: Capital Construction Fund  
& Self Employment Tax

Dear Senator Eliason:

This letter is in support of your efforts to eliminate the self employment tax requirement on Capital Construction Fund (CCF) deposits.

As Alaska fishermen become more businesslike in their operations, the use of a CCF has increased within the Alaskan fleet. It is a very good program which greatly assists in planning for, and accomplishing, the purchase or improving of a fishing vessel.

Please continue to work for elimination of the self employment tax requirement in the Alaska Legislature and with our congressional delegation.

Sincerely,

*David Y. Nanney Jr.*  
David Y. Nanney, Jr.

Dear Senator Eliason:

Our family has fished in Alaska for 16 years as commercial setnetters. We need your support of the pending Resolution in the Alaska Legislature urging our Federal Congress to support Senate Bill # S-19-34 pertaining to the correction of the Self Employment issue when utilizing the Capital Construction Fund.

As a sole proprietor, we feel discrimination is created, since use of the CCF structure eliminates depreciation of the fisherman's boat, and self employment tax actually paid later on for the fisherman using the CCF structure. For us to have to pay additional Self-Employment tax at the time of our CCF deposit is actually resulting in double taxation. Furthermore, simply by creating a Sub-Chapter S corporation, CCF deductions are exempt from self-employment tax which is further discrimination against the Alaskan individual fisherman operating as a sole proprietor.

Please support our concern. Thank  
you!

Sincerely  
Leo + Beth Kouramatis  
& Family

LEO AND BETH KOURAMATIS  
Box 424  
KODIAK, ALASKA  
99615

1/15

**JOSEPH BORDYNOSKI**

CERTIFIED PUBLIC ACCOUNTANT  
1684 CAMELLIA CIRCLE  
WILLITS, CA 95490 • (707) 459-3053

February 18, 1992

Senator Dick Eliason  
State Capitol  
Juneau, Alaska 99801

Dear Senator Eliason:

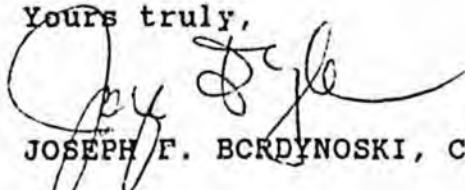
I work for a number of Alaska commercial fishermen and their families. All involved urge the support of the State of Alaska in convincing the Federal Congress to pass Senate Bill #S-19-34 pertaining to the self employment issue of the Capital Construction Fund (CCF).

This bill will stop the double taxation on deposits into one's CCF made by commercial fishermen who are striving to become better equipped. The IRS has, in my opinion, incorrectly assessed the self employment tax on the CCF deposit while requiring that those deposits, when utilized, reduce the basis of the purchase for claiming depreciation. This double taxation was not the intent of Congress - they intended a deferral which aids all commercial fishermen in his quest to help the United States of America reduce its import/export deficit by catching fish and exporting that catch to foreign markets.

Your support is support for the benefits of the entire country.

Thank you for your assistance.

Yours truly,



JOSEPH F. BORDYNOSKI, CPA

JFB:pm

February 13, 1992

Senator Dick Eliason  
State Senate  
PO Box V  
Juneau, Alaska 99811.

*C. already sent  
initial acknowledgment*

Dear Senator Eliason:

My family and I have commercially trolled and longline in the northern SE waters now for almost 17 years. We are asking for your support of the pending resolution in the Alaska Legislature urging our Federal Congress to support Senate Bill # S-19-34, pertaining to the correction of the Self Employment issue when utilizing the Capital Construction Fund.

For us to have to pay an additional Self Employment tax at the time of our CCF deposit is actually resulting in a double taxation. Also by creating a Sub-chapter S corporation, CCF deductions are exempt from Self Employment tax which is further discrimination against the Alaskan individual fisherman operating as a sole proprietor.

Thank you for your help in supporting the resolution your are preparing for the Alaskan legislature, knowing that you yourself are in this business of commercial fishing, that you are able to understand what it is that we are up against. I would also ask that you send a personal wire to the two Alaskan Senators as well.

Sincerely,



Bruce & Laura Smith  
Owners and Operators of the F/V No-Seeum

F/V NO-SEEUM  
BRUCE & LAURA SMITH  
P.O. BOX 45  
GUSTAVUS, ALASKA 99826

March 27, 1993

Senator Dick Eliason  
State Senate  
P.O. BOX V  
Juneau, AK 99811.

Dear Senator Eliason:

I urge you to support #HR-13-63 pertaining to elimination of Self Employment Tax on the Commercial Fisherman's use of Capital Construction Fund.

The Capital Construction fund deduction is not a reduction of revenue to the U.S. Treasury because it is not an elimination of taxes. It is only a reworking of how Commercial Fisherman pay their taxes because they give up all claims to depreciation anyway when they use the CCF to help build a better economy and employ other individuals.

An error was made in 1985 when the CCF was merged with the IRS tax code, it was mistakenly brought in through section 1 which has no provision for any items not subject to Self Employment since forcing us to pay SE tax on the CCF deduction creates a situation whereby you'll pay higher SE at the back end when you don't take a deduction on depreciation.

Not only is this double taxation, but it also causes the "smaller operation" individual to pay higher taxes since Corporate CCFs don't pay Self Employment taxes anyway.

Another very clear example of those folks with the least money feeling this problem the most.

Thank you for your support in voting for #HR-13-63.

Sincerely,



Bruce A. Smith  
Commercial Fisherman with a CCF Account.

(From Gustavus)

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: MEGAN PASTERNAK

TITLE:

ADDRESS: BOX 830

CITY: SITKA, AK

ZIP: 99835

PHONE: 747-5943

BILL NO:

SUBJECT: CONGRESSIONAL SENATE BILL #1934

MESSAGE: WE ARE IN FAVOR OF YOUR SUPPORT OF SENATE BILL S 1934. PLEASE URGE OUR CONGRESSIONAL DELEGATION TO PURSUE SUPPORT. ALSO REGARDING YOUR PROPOSAL TO IMPLEMENT AN ADDITIONAL 1% TAX ON OUR FISHING PROCEEDS, COULD IT BE DESIGNATED TO PROMOTE ONLY THE FRESH AND FROZEN PRODUCTS, NOT THE CANNED SALMON INDUSTRY?

POMID: 12115052

DATE: 92/02/11

TIME: 11:50:52

LIONAME: SITKA LIO

# POWELL, SEILER & COMPANY, P.S.

A Professional Service Corporation  
Certified Public Accountants

South Bend  
912 West Robert Bush Dr.  
P.O. Box 435  
South Bend, WA 98586  
(206) 875-6565

John W. Powell, CPA  
Martin F. Seller, CPA  
James A. Seller, PhD  
Nicheia A. Goodin

Long Beach  
9th So. & Hwy 103  
P.O. Box 676  
Long Beach, WA 98631  
(206) 642-4425

FAX: (206) 875-6568

FAX: (206) 642-4535

February 6, 1992

Senator Dick Eliason  
State Capitol  
Juneau, Alaska 99801

Dear Senator Eliason:

We work for many Alaskan Commercial Fishing families. These families need your support of the pending resolution in the Alaska Legislature urging our Federal Congress to support Senate Bill No. S-19-34 pertaining to the correction of the self employment issue when utilizing the Capital Construction Fund.

The fishermen are historically loosely organized and often unable to represent themselves properly when they spend most of their time out to sea pursuing their livelihood. They depend upon you for support!

The I.R.S. incorrectly brought the CCF into the tax code in 1985 through Section 1 of the Code, which has no provision for anything not susceptible to self employment taxation. Since use of the CCF structure eliminates depreciation of the fisherman's boat, self employment tax actually rises later on for the fisherman using the CCF structure. For him to have to pay additional self employment tax at the time of his CCF deposit is actually resulting in double taxation. Furthermore, simply by creating a Subchapter S corporation, CCF deductions are exempt from self employment tax, which is further discrimination against the Alaskan individual fisherman operating as a sole proprietor.

Thank you for your help in supporting the resolution you are preparing for the Alaskan Legislature. We would also ask that you send a personal wire to the two Alaskan Senators as well.

Sincerely,

*Powell, Seiler & Co.*

POWELL, SEILER & CO., P.S.

2/14/92

Senator Dick Eliason  
State Capitol  
Juneau, Alaska 99901

Dear Senator Eliason,

I am a commercial fisherman in  
Alaska (and an Alaskan resident).  
I feel passage of Senate Bill  
#5-19-34 pertaining to the correction  
of the Self Employment issue when  
utilizing the Capital Construction Fund  
is vital for the Alaskan Fisherman.  
I appreciate your support in  
this matter.

Sincerely,  
Dunda Bickford  
Box 1657  
Valdez, Alaska  
99686

Dear Senator Eklund

Feb 13, 1992

My name is James P. Odgaard and I own and operate a fishing vessel in Southeast Alaska. I am writing to ~~to~~ you because of your support on the Senate Bill #S-19-34, the bill pertaining to self-employment tax when utilizing the Capital Construction fund.

As a fisherman I feel we are paying enough in taxes along with insurance, updating our vessels for safety and just general repair. The fishing industry isn't looking good so having to pay more taxes on our CCF just isn't right. We may as well pay everything up front if we can't get a tax break somewhere.

I am in favor of this bill and in full support of everything you are doing for the fishing industry and fishermen.

James P. Odgaard

Box 162

Pitmeburg, Alaska

99833

Sincerely

J. Odgaard  
che

ALVIN & CORA COLPITTS  
P.O. BOX 1126  
DILLINGHAM, AK 99576

Feb 11-92

Senator Dick Eliason  
State Capital  
Juneau AK 99801

Dear Senator Eliason

I ask your support of our Federal Congress  
on Bill # S-19-34 regarding the Correction of  
the Self Employment Issue when utilizing  
the Capital Construction Fund.

\* → Thank you for supporting the in the Alaskan  
Legislature. Would you send a personal note  
to the 2 Alaskan Senators.

Al Colpitts

Lava

GOODING & EMKEN  
CERTIFIED PUBLIC ACCOUNTANTS

242 TAYLOR STREET, PORT TOWNSEND, WASHINGTON 98368  
(206) 385-1040

February 6, 1991

Senator Dick Ellason  
State Capital  
Juneau, AK 99801

Dear Senator:

Today I had the opportunity to read your working draft endorsement of S 1934. I have not seen the actual pending legislation.

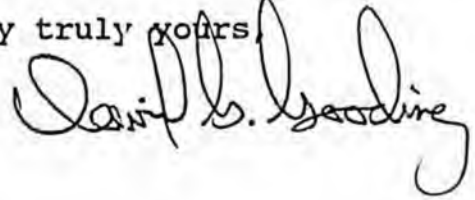
Based on this draft, I support your efforts in excluding from self-employment tax, the amounts run through Capital Construction Fund Accounts.

I work with many fishermen operating in Alaska, Washington and California. I have seen many instances where the Capital Construction Fund deduction created a short term deferment of income tax and actually created additional self-employment tax (CCF usage vs. a non-CCF acquisition or repair).

The additional self-employment tax works as a penalty for those individuals using the Capital Construction Program. I do not believe this was the intent of the Merchant Marine Act as amended in 1936.

If there is anything I can do to further support your efforts in reducing self-employment tax on CCF program contributions, please let me know.

I appreciate your efforts in helping fishermen, and creating a more equitable tax structure.

Very truly yours,  




**JACK ANGOVE**  
CERTIFIED PUBLIC ACCOUNTANT

409 N. Tower Avenue  
Centralia, Washington 98531  
Phone (206) 736-2828  
FAX # (206) 736-3170

February 5, 1992

Senator Dick Eliason  
State Capitol  
Juneau, AK 99801

Dear Senator Eliason:

I am pleased to take this opportunity to express my support for action being taken on behalf of many unincorporated fishermen. Having received copy of correspondence to you by Ken Horwitz of PaineWebber, I am very encouraged that progress is being made to eliminate the double tax problem of Self-Employment tax on the use of the Capital Construction Fund.

I am a CPA representing many Commercial Fishermen in the State of Alaska. Many of them have been or will be effected by the double tax. Having their best interest as a concern, I find it expedient to voice my support for legislative action being taken, such as Senate Bill #5-19-34 that would free commercial fishermen from the imposed double tax on the use of the Capital Construction Fund.

I further see action on this necessary in that I believe the intent by Congress in establishing the CCF program was to benefit the fishing industry, not to create an extra tax burden.

I sincerely appreciate your concern and efforts in this matter. Please advise me of supportive action I might take to be of assistance.

Sincerely,

*Stephen Angove*

Stephen Angove  
Certified Public Accountant

February 6, 1992

Senator Dick Eliason  
State Capital  
Juneau, AK 99801

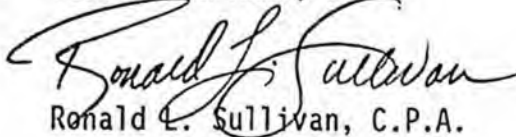
Dear Senator Eliason:

I am a certified public accountant practicing in Seattle, Washington. A number of my clients are commercial fishermen who fish in Alaskan waters. I am writing regarding the pending legislation concerning the capital construction fund and net earnings from self employment.

Fishermen who pay self employment tax on contributions to the capital construction fund will eventually be subject to double taxation since the vessels purchased with CCF funds do not have depreciable bases to deduct against future earnings. I support your effort to enact legislation which will eliminate the self employment tax which results in double taxation for commercial fishermen who currently contribute to the CCF.

Sincerely,

CLOTHIER & HEAD, P.S.



Ronald L. Sullivan, C.P.A.

RLS/em

102D CONGRESS  
1ST SESSION

# S. 1934

To exclude deposits into a capital construction fund account under section 607(d) of the Merchant Marine Act from net earnings from self-employment

---

## IN THE SENATE OF THE UNITED STATES

NOVEMBER 7 (legislative day, OCTOBER 29), 1991

Mr. STEVENS introduced the following bill; which was read twice and referred to the Committee on Finance

---

## A BILL

To exclude deposits into a capital construction fund account under section 607(d) of the Merchant Marine Act from net earnings from self-employment

1       *Be it enacted by the Senate and House of Rep-*  
2 *resentatives of the United States of America in Congress*  
3 *assembled,*

4       **SECTION 1. DEPOSITS IN CAPITAL CONSTRUCTION FUND**  
5                               **ACCOUNT EXCLUDED FROM NET EARNINGS**  
6                               **FROM SELF-EMPLOYMENT.**

7       (a) IN GENERAL.—Subparagraph (A) of section  
8 607(d)(1) of the Merchant Marine Act, 1936 (46 U.S.C.  
9 1177(d)(1)) is amended by striking “taxable income (de-  
10 termined without regard to this section and section 7518

1 of such Code) for the taxable year shall be reduced” and  
2 by inserting “taxable income and net earnings from self-  
3 employment attributable to the operation of the agreement  
4 vessels (determined without regard to this section and sec-  
5 tion 7518 of such Code) for the taxable year shall each  
6 be reduced”.

7 (b) NONQUALIFIED WITHDRAWALS.—Section 607(h)  
8 of the Merchant Marine Act, 1936 (46 U.S.C. 1177(h))  
9 is amended by adding at the end thereof the following new  
10 paragraph:

11 “(7) NONQUALIFIED WITHDRAWALS SUBJECT  
12 TO SELF-EMPLOYMENT TAX.—

13 “(A) IN GENERAL.—In the case of any  
14 taxable year for which there is a nonqualified  
15 withdrawal (including any amount so treated  
16 under paragraph (5)), the tax imposed by sec-  
17 tion 1401 of the Internal Revenue Code of 1986  
18 (at a rate for such taxable year unless otherwise  
19 established by the taxpayer to the satisfaction  
20 of the Secretary) shall be determined without  
21 regard to section 230 of the Social Security Act  
22 (42 U.S.C. 430).

23 “(B) TAX BENEFIT RULE.—If any portion  
24 of a nonqualified withdrawal is properly attrib-  
25 utable to deposits (other than earnings on de-

1           posits) made by the taxpayer in any taxable  
2           year which did not reduce the taxpayer's liabil-  
3           ity for tax under section 1401 of such Code for  
4           any taxable year preceding the taxable year in  
5           which such withdrawal occurs, such portion  
6           shall not be taken into account under subpara-  
7           graph (A).”.

8           (c) CONFORMING AMENDMENTS.—

9           (1) Subparagraph (A) of section 7518(c)(1) of  
10          the Internal Revenue Code of 1986 is amended by  
11          striking “taxable income (determined without regard  
12          to this section and section 607 of the Merchant Ma-  
13          rine Act, 1936) for the taxable year shall be re-  
14          duced” and by inserting “taxable income and net  
15          earnings from self-employment attributable to the  
16          operation of the agreement vessels (determined with-  
17          out regard to this section and section 607 of the  
18          Merchant Marine Act, 1936) for the taxable year  
19          shall each be reduced”.

20          (2) Section 7518(g) of the Internal Revenue  
21          Code of 1986 is amended by adding at the end  
22          thereof the following new paragraph:

23                 “(7) NONQUALIFIED WITHDRAWALS SUBJECT  
24                 TO SELF-EMPLOYMENT TAX.—

1           “(A) IN GENERAL.—In the case of any  
2 taxable year for which there is a nonqualified  
3 withdrawal (including any amount so treated  
4 under paragraph (5)), the tax imposed by sec-  
5 tion 1401 (at a rate for such taxable year un-  
6 less otherwise established by the taxpayer to the  
7 satisfaction of the Secretary) shall be deter-  
8 mined without regard to section 230 of the So-  
9 cial Security Act (42 U.S.C. 430).

10           “(B) TAX BENEFIT RULE.—If any portion  
11 of a nonqualified withdrawal is properly attrib-  
12 utable to deposits (other than earnings on de-  
13 posits) made by the taxpayer in any taxable  
14 year which did not reduce the taxpayer’s liabil-  
15 ity for tax under section 1401 for any taxable  
16 year preceding the taxable year in which such  
17 withdrawal occurs, such portion shall not be  
18 taken into account under subparagraph (A).”.

19           (3) Section 1403(b) of the Internal Revenue  
20 Code of 1986 is amended by adding the following  
21 new paragraph:

22           “(3) For treatment of earnings of ship con-  
23 tractors deposited in special reserve funds, see sub-  
24 sections (d) and (h) of section 607 of the Merchant

1 Marine Act, 1936 (46 U.S.C. 1177) and subsections  
2 (c) and (g) of section 7518.”

3 (d) EFFECTIVE DATE.—

4 (1) IN GENERAL.—The amendments made by  
5 this section shall apply to taxable years beginning  
6 after December 31, 1985.

7 (2) WAIVER OF STATUTE OF LIMITATIONS.—If  
8 on the date of the enactment of this Act (or at any  
9 time within 1 year after such date of enactment) re-  
10 fund or credit of any overpayment of tax resulting  
11 from the application of the amendment made by  
12 subsection (a) is barred by any law or rule of law,  
13 refund or credit of such overpayment shall, neverthe-  
14 less, be made or allowed if claim therefore is filed  
15 before the date 1 year after the date of the enact-  
16 ment of this Act.

O

SJR

52

STATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL

*gmk*

DATE: 2/28/92

FURTHER:

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

DATE TURNED  
INTO OFFICE: Feb 28,

Resources Committee considered SJR 52

Supporting the inshore-offshore fisheries allocation plans proposed by the North Pacific Fishery Management Council.

and recommends:

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

same title  
 new title  
 technical title change  
(HB only)

attaches amendment(s)

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

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

do pass

do not pass

no recommendation

individual recommendations

**NEW FISCAL NOTES:** Dept/Date  
 **zero** fiscal notes Sen Resurias Cmte 2/28/92

**PREVIOUS FISCAL NOTES:** Dept/Date  
 **Governor's bill** with fiscal notes:  
**zero** fiscal notes \_\_\_\_\_

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

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

appropriation--no fiscal note

**DO PASS:**  
Jan Galt  
[Signature]  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_

**OTHER RECOMMENDATIONS:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
Chair: Signature and Recommendation

**FISCAL NOTE**

**STATE OF ALASKA**  
**1992 LEGISLATIVE SESSION**

BILL NO. SJR 52

Revision Date: 2/28/92 Department Affected: \_\_\_\_\_  
 Title: Inshore-offshore fisheries allocation plan BRU: \_\_\_\_\_  
 Component: \_\_\_\_\_  
 Sponsor: Sen. Fred Zharoff  
 Requestor: Senate Resources Committee COMPONENT SERIAL NO. 

--	--	--	--

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

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

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE FUND SOURCE:</b>						
-----------------------------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: -0-

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

This resolution is directed to the federal government and does not require a state appropriation.

Prepared By: Terry Otness *TO* Phone: 465-4907  
 Division: Senate Resources Committee Date: 2/28/92  
 Approved by Commissioner: Senator Lloyd Jones *LJ* Chairman, Senate Resources Committee  
 Agency: \_\_\_\_\_ Date: 2/28/92

Parker Recreational Services  
4440 Columbia Blvd.  
Juneau, Alaska 99801

February 28, 1992

Senator Lloyd Jones  
Chairman, Senate Resource Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Jones:

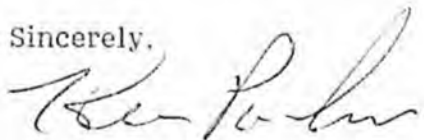
I am a 26 year resident of Alaska, a father of two hungry school age boys and a soon to be an adult young woman, a Lodge owner, a charter vessel operator, and a life long sport fisherman. I would like to offer my personal observations and position on SENATE BILL NO. 397, "An Act authorizing the Board of Fisheries to allocate fishery resources to the guided sport fishery".

First let me say that I oppose SB #397 as it is unwarranted, discriminatory, and detrimental to the economic interest of the State of Alaska. I can not see where it is justified to allow blatant discrimination between recreational fishers; those that have opportunity and access to a privately owned boat and those that do not. The residents and non-residents that choose to sport fish on a chartered vessel don't deserve to be considered as a second class citizen. That is precisely what SB #397 would facilitate!

The State of Alaska needs, more now than ever, to stimulate economic growth in business sectors other than in the oil industry and the guided sport component of the tourism industry offers great opportunity to accomplish just that. Alaska will not continue to be the preferred destination that it has become if the Legislature enacts laws like SB #397 that says we are going to treat our visitors differently.

Thank you for the opportunity to comment on this important issue.

Sincerely,



Kenneth P. Parker



## 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) 465-3473 • 465-3474

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 28, 1992

RE: Senate Joint Resolution No. 52 - "Supporting the inshore-offshore fisheries allocation plans proposed by the North Pacific Fishery Management Council."

RESOLUTION SUMMARY: SJR 52 requests the Secretary of the U.S. Department of Commerce to approve the inshore-offshore fisheries allocation plan that was passed by the North Pacific Fishery Management Council in June, 1991.

The resolution describes the detrimental impacts the factory trawler fleet has had on Alaska. It summarizes the benefits to the state from the development of the inshore harvesting and processing industry.

FISCAL IMPACT: Zero fiscal note prepared by the Senate Resources Committee. SJR 52 is directed toward the federal government and requires no state appropriations.

PREVIOUS ACTION: Introduced on Feb. 28, 1992.

BACKGROUND INFORMATION: After years of study and debate, the North Pacific Fishery Management Council -- in June, 1991 -- recommended to the Secretary of Commerce that a plan be adopted that would allocate specific percentages of the fishery resources of the Gulf of Alaska and the Bering Sea to the inshore processing sector and to the offshore processing sector. A decision on this plan is expected soon.

The purpose of plan is to settle the fisheries allocation question between the inshore and offshore (factory trawlers) components of the industry. Through their wasteful fishing practices and overbuilt processing capacity, the factory trawlers have created tremendous problems for the managers of the North Pacific fishery resource, including overfishing and potential resource depletion. In some cases, shore based plants -- which pay Alaska taxes and support local economies -- were forced to shut down when the factory trawler fleet took all the available quota.

The factory trawler fleet strongly opposes the council's proposed plan and has launched a "no holds barred" lobbying campaign in Washington, D.C. to convince the Secretary of Commerce to reject it.

ATTACHED BACKUP INFORMATION:

1. Fiscal note.
2. Anchorage Times editorial in support of the inshore allocation, Feb. 20, 1992.
3. Anchorage Daily News article about efforts to have the plan rejected, Feb. 27, 1992.
4. Anchorage Times article about the fight in Washington, D.C. over the allocation plan, Feb. 22, 1992.
5. Anchorage Daily News article about conflicting opinions in Washington, D.C. over the allocation plan, Feb. 14, 1992.
6. Kodiak Daily Mirror article about the conflict in Washington, D.C., Feb. 7, 1992.
7. Kodiak Daily Mirror article about destructive factory trawler fishing practices in Russian territorial waters, Jan. 23, 1992.

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SJR 52

Revision Date: 2/28/92 Department Affected: \_\_\_\_\_  
 Title: Inshore-offshore fisheries allocation plan BRU: \_\_\_\_\_  
 Sponsor: Sen. Fred Zharoff Component: \_\_\_\_\_  
 Requestor: Senate Resources Committee

COMPONENT SERIAL NO. 

--	--	--	--

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

This resolution is directed to the federal government and does not require a state appropriation.

Prepared By: Terry Otness Phone: 465-4907  
 Division: Senate Resources Committee Date: 2/28/92  
 Approved by Commissioner: Senator Lloyd Jones Chairman, Senate Resources Committee  
 Agency: \_\_\_\_\_ Date: 2/28/92

# The Anchorage Times

"Putting Alaska first"

BILL J. ALLEN *Publisher*      GENE AREHART *President*  
WILLIAM J. TOBIN *Asst. Publisher*      JAMES H. SLACK *General Manager*

J. RANDOLPH MURRAY *Editor*  
PAUL JENKINS *Managing Editor*  
DENNIS FRAULEY *Editor, Editorial Pages*

Robert B. Atwood, *Publisher Emeritus*

## FISH WAR INTENSIFIES

### Trawlers show clout

**A**LTHOUGH MANY Alaskans may not realize it, our state is at war — a fish war in which Alaska fishermen who supply pollock to onshore processors are on one side, and the giant fleet of Seattle-based factory trawlers are lined up on the other. Unfortunately for our state, the other guys appear to be winning.

When lawyers at the Department of Justice weighed in the other day with an independent opinion on how Alaska's pollock should be allocated, it illustrated just how powerful the U.S. factory trawler lobby has become.

In their opinion, the federal attorneys argued against dividing Alaska's pollock resources between fishermen who supply the onshore processors and the offshore trawlers. They recommended instead an auction of the resource — all of Alaska's fish going to the highest bidder, which undoubtedly would mean the trawlers get all of it.

**BECAUSE THE** opinion was volunteered — no one had asked for it — and because the arguments it presented, wording and all, were very similar to the position advocated by the trawlers association, it could have been written by the trawlers themselves. In any event, it contained flaws in its reasoning.

Principal among those flaws is the contention that the allocation of U.S. resources should go to the most "efficient" operations, and whoever is willing to pay the most for those resources, therefore, must be the most efficient.

Obviously overlooked by the Justice Department lawyers is the fact that the reason trawlers make so much profit is because they are notoriously inefficient when it comes to full utilization of fish resources. The trawl fleet operations account for an enormous amount of fish waste — almost 30 percent of everything caught is discarded. The food is wasted in order to increase profit margins.

**ALASKA'S INSHORE** fishery, on the other hand, maximizes productivity from the fishery and therefore is the most efficient. Alaska's shore-based fishery also provides employment and economic benefits to numerous local communities, one of the objectives in federal guidelines for allocating fish resources.

Those were among the reasons why the North Pacific Fishery Management Council recommended last fall the allocation of up to half of the available pollock for annual harvest to the inshore fishery. But NPFMC's recommendation is still awaiting approval by the secretary of Commerce.

Former Commerce Secretary Robert Mosbacher was well briefed on the issue, and Alaskans were optimistic he would side in favor of the NPFMC recommendation. However, he has since moved on and a new secretary, Barbara Franklin, is awaiting confirmation by the Senate. Where she will come down on the issue, no one knows.

But it's apparent that the trawlers lobby will be doing everything possible to sway her opinion its way.



## Schwarze

**GOFFSTOWN, N.H.** — Regard "spin" the White House puts on Hampshire primary returns, the unmistakable signs that President serious political problems this year Schwarzenegger phenomenon and the Shop 'n' Save factor. Put them and they spell trouble for the incumbent.

In hopes of injecting some energy was a notably lethargic campaign a servative challenger Patrick Bush Bush operatives went to Hollywood Schwarzenegger — and got more bargained for. Accompanying Bush nal campaign swing here Saturday minator" star stirred much more than the liberator of Kuwait could expect.

It took me back 30 years to the Richard Nixon would invite a Hollywood named Ronald Reagan to lend some his rallies in California. Schwarzenegger told by associates of his in the film cal world, is on the same path that onered, aiming to become governor nia. He may be a great candidate but as a shill for Bush he has the flaw Reagan did when he was warred crowds in Nixon's losing 1960 and 1968.

In both cases, the supposed show was so overshadowed in presence by the "second banana" diminished, not aided, by having Bush normally looks and sounds like a leader, but next to Schwarzenegger like most mere mortals — seemed And his message at the moment limp.

For the thousands of New Hampshire angry and frustrated at the

# Official wants to reject plans for fish catch

## Inspector general criticizes council's work on pollock

By BRIGID SCHULTE  
and HAL BERNTON  
Daily News reporters

WASHINGTON — The Commerce Department's inspector general says two proposals to guarantee pollock to Alaska's shore-based plants are based on incomplete and faulty studies, and should be rejected.

Inspector General Frank DeGeorge released the report Wednesday, one week before the department is scheduled to make a final decision on the allocation proposals. The proposals were approved last summer by the federal North Pacific Fishery Management Council. They have triggered one of the nastiest fish fights of the past decade, pitting Alaska politicians and shore operators against largely Seattle-based factory trawler companies that process fish

at sea. They are fighting for shares of a North Pacific pollock catch worth more than \$1 billion a year.

Factory trawler operators are hoping the inspector general's report will doom the allocation proposals.

"No self-respecting administration official would dare put their reputation on the line for this thing," said Stuart Looney, president of the factory trawler company Royal Seafoods Inc.

Meanwhile, Alaska politicians are trying to downplay the findings as they lobby the Bush Administration to support the shore plants.

"The audit revealed no violations of laws or regulations in the way the council process was conducted," Murkowski and Young said

Please see Back Page,  
**POLLOCK**

# POLLOCK: Official wants proposals rejected

Continued from Page A-1  
a statement Wednesday. The council followed both a letter and intent of the law."

The proposals were approved by the fishery council last summer in a 9-2 vote. The council is a group of fishing industry, federal and state officials who help craft federal fishery policy, and the Commerce Department normally approves council actions.

One proposal would guarantee most of the Gulf of Alaska pollock to boats serving Kodiak and other shore-based plants. The other proposal would guarantee at least 45 percent of the much larger Bering Sea pollock catch to boats serving shore plants.

The fish are now caught

on a first come, first-served basis, and factory trawlers have charged the proposals are an unfair attempt to rig the harvest in favor of their competitors.

The inspector general's report did not attempt to judge the merits of the proposal. Instead, it looked at the economic, social and environmental studies on which the council is required to base decisions. The report's findings include:

- The council failed to prepare a cost-benefit analysis of how the proposal would affect the fishing industry.

- The council failed to document how the allocation proposal would help solve the problem of an oversized fleet with too many boats chasing after the pollock.

- The council failed to

study how the proposal would affect Steller sea lions, which are listed as a threatened species. Key sea lion rookeries lie within many of the major pollock harvest areas.

- The council failed to address the full social impact of jobs being shifted from the factory trawler fleet to the shore-based processors.

Rick Lauber, the council chairman, said the council closely followed the legal advice of attorneys from the National Marine Fisheries Service. Those attorneys said the studies meet all legal requirements, and specifically said the council did not have to do a cost-benefit analysis.

"Now, they're saying we should have done something we thought wasn't necessary," Lauber said. "The

whole thing is so unfair." Both shore plant and factory trawler supporters are now pressing forward with a final week of lobbying to try and sway the final decision. And both sides are vowing to sue if the decision goes against them.

"The record is unimpeachable for this action, so, given the violations of the law that have occurred, we would in all likelihood litigate on it," said Jim Gilmore, a lobbyist for the American Factory Trawler Association.

Dennis Phelan, lobbyist for the Pacific Seafood Processors Association, said the plan meets all legal standards. If the Commerce Department decides to "minimize some new standard," Phelan said, that's illegal and "we'll have no choice but to sue."

ANCHORAGE TIMES  
\*\*\*\*\*  
FINISHED BY THE ANCHORAGE MEMBERS OF THE LEGISLATIVE COMMITTEE ON TO JUNEAU COURTESY OF ALASKA AIRLINES

# The Anchorage Times

Locally owned since 1915; Alaska's best newspaper

SATURDAY, February 22, 1992

## GOOD MORNING



HIGH 55, LOW 32

Cloudy with flurries.  
N wind 10 mph.  
Detailed map, A2

Daylight: 9 hours, 42 minutes  
Sunrise: 8:23  
Sunset: 6:05  
Light gain: 5 minutes, 42 seconds

### INSIDE

#### METRO

Gov. Walter J. Hickel introduces his bill to solve Alaska's subsistence dilemma, but the AFN and some lawmakers say it falls short. B1

#### SPORTS

John Schandelmeyer wins the Yukon Quest. C1

#### BUSINESS

Winter layoffs in construction and real estate combine with an influx of job hunters to push Alaska's unemployment rate to 11.6 percent in January. E1

ADVICE	D7
BUSINESS	E1
CLASSIFIED	F1
COMICS	D7, B, 9
CROSSWORDS	D8
DEAR ABBY	D7
EDITORIALS	B6
METRO	B1
MOVIES	D5
OBITUARIES	B2
ON RECORD	B2
RELIGION	D1
SPORTS	C1
STOCKS	E3
TV	D6
WEDDINGS	D4

## Bottom-fish feud spills over onto Capitol Hill

By IMRE NEMETH

TIMES BUSINESS WRITER

Two warring factions of Alaska's commercial fishing industry have launched last-ditch efforts to woo federal regulators as a ruling nears on splitting Alaska's \$1-billion bottom-fish industry between the two groups.

The pending reallocation of bottom fish stocks in the Bering Sea and Gulf of Alaska has sparked a survival-of-the-fittest lobbying battle in which onshore processors and a well-positioned Seattle factory trawl fleet are slugging it out to influence officials from the White House to Capitol Hill.

"I've never seen anything like it," said Margaret Hayes, chief fisheries attorney for the Commerce Department. "This is more (lobbying) than I've seen before on any other fisheries proposal."

The proposal calls for a 55 percent share of

the harvest for factory trawlers, which process surimi and fillets at sea, and 45 percent for catcher vessels that deliver to shore-based plants in Dutch Harbor, Kodiak, Akutan and St. Paul.

A decision is expected March 5 by either yet-to-be-confirmed Commerce Secretary Barbara Franklin or the current acting secretary.

"It's a tough, tough battle," said Bill Woolf, spokesman for Sen. Frank Murkowski, R-Alaska, in Washington, D.C. "We frankly consider the allocation vital for Alaska. (Otherwise), people are going to be put out of work."

Both sides in the debate believe their economic survival hinges on the decision.

Bruce Bult, a spokesman for the Seattle-based American Factory Trawlers Association, says the industry is "in a bind." See Fish, back page



A worker keeps the flow of processing machine at an onshore

mistake was the injured dog. I've gotten hurt during a run I took Tuesday, Larson said. "But I'm not injured 'til we get to the trail." The injuries included two minor lacerations and a slight tangle in the wrap-around at a route to the finish. "It was the cleanest run,"

Today's 25-mile heat is scheduled to begin at 1 p.m. on Fourth Avenue in downtown Anchorage. The mushers are competing for a \$70,000 purse, with the winner guaranteed \$11,800. "Day winnings" are also awarded to the mushers who turn in the four best times for each heat.

Here are the results after one 25-mile heat:

- 1) Roxy Wright-Champaine, Salcha 87:30
- 2) Ross Saunderson, B.C., Canada 87:39

Marvin Kokrine, North Pole	88:39
Dan Daigle, Salcha	90:01
George Atla, North Pole	90:41
Eddy Streeper, Minnesota	90:44
8) Curtis Erhart, Fairbanks	91:38
9) Dale Raitt, Salcha	91:53
10) Jose Redington Jr., Manley	93:54
11) Jim Amdt, North Pole	94:14
12) Jeff Conn, Ester	94:39
13) Eddie Dayton, Big Lake	94:59
14) Glen Calvert, Manitoba	96:58
15) Tim Redington, Konny Lake	98:30
16) Jim Harvey, Alberta	99:40
17) Don Cousins, Alberta	101:35
18) Stan Huntington, Galena	102:17
19) Robert Ivan, Akiaak	108:47
20) Walt Brockman, Wisconsin	113:46

Day winnings: Wright-Champaine \$800; Saunderson \$700; Clarke \$600; Kokrine \$500.

...but was unable to because so much traffic was stalled.

"It looked like a parking lot," he recalled.

In desperation, Provost contacted his captain who advised him to open the intersection.

Now, a year later, he still thinks about the nightmare and wonders if he could put in for early retirement because of the stress it caused him, he joked.

Lt. Pat Donahue said about 150 officers and police reservists help out during the 10-day festival.

advances toward... aid the DFYS... September 1988 that... were staying with... at another social... d to the case knew... history. she knew Orth, to follow through... Krumm said in

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# Fish

Continued from page

Association, said the proposal would cost his industry millions of dollars and give unfair control of the surimi market to large Japanese-owned processors in Dutch Harbor.

"Is the U.S. government, by policy, proposing to grant resource and market control to the Japanese?" he said. "We're talking about tampering with people's lives, and for what? So that Nippon Suisan, Taiyo and Trident could have guaranteed economic success."

Nippon Suisan and Taiyo, both Japanese companies, own Dutch Harbor plants, while U.S.-owned Trident Seafoods Inc. has a plant in Akutan.

Onshore interests were wary of guessing the outcome, but John Iani, president of the Pacific Seafood Processors Association, said his forces have a 50-50 chance of winning.

"I think we've gotten to the point where we've proven our case," he said. "Now it's a policy decision. This is the biggest fish issue to hit the state since the Magnuson Act. If it doesn't pass, the shore plants will be out of luck."

The state's congressional delegation is trying to arrange a meeting with White House officials next week to push the proposed allocation, said Rod Moore, an aide to Rep. Don Young, R-Alaska.

The factory trawl industry, which now harvests 80 percent of Bering Sea pollock, has been locked in political competition

with shore-based interests since the allocation proposal passed the North Pacific Fishery Management Council in June by a 9-2 vote.

Jim Cornelius, a council economist, described the current state of events as a "Super Bowl attrition" with no clear front-runner.

"I've seen controversy in the past, but not one that reached such a polarization," he said.

The proposal initially spawned more than 500 pages of economic and biological review by the Alaska office of the National Marine Fisheries Service and another 500 pages of public testimony. Both sides since have added further comment for the record and two full-scale governmental investigations also are under way.

The Commerce Department has probed allegations of conflict of interest among 11 members of the North Pacific council. A draft report based on the investigation has been issued to the National Oceanic & Atmospheric Administration following extensive study throughout Alaska. NOAA oversees the fisheries service and the council.

Wayne Weaver, a spokesman in Commerce's Inspector General's office, declined to say what was in the report, nor would he say when it would be made public.

The Washington, D.C., office of the fisheries service also has started analyzing the inshore-offshore proposal to supplement nearly 1,100 public comments and its Alaska offices's economic analysis, said Dick Schaefer, director of the service's Office of Fish Conservation and Management. A 90-day public comment

period ended earlier this month.

The fisheries service analysis of the entire issue remains "several weeks" from completion, but must be submitted prior to the March 5 deadline, Schaefer said.

The agency last month rejected a similar onshore-offshore allocation proposal dividing Pacific whiting off Oregon's coast. Btl said the move is indicative of the agency's feelings toward allocations between different user groups, but officials say the agency has voiced no opinion on the Alaska proposal.

The Department of Justice's Antitrust Division also has entered the fray, submitting a review that advocates rejection of the proposal.

"Neither the current allocation system nor the proposed amendment are consistent with the efficiency goals of National Standard," the opinion said.

The National Standard, as defined by the Magnuson Act, says fishery management should promote efficiency in the utilization of the resource.

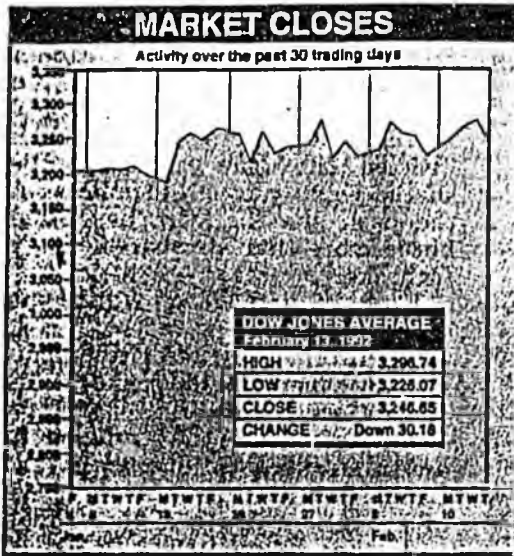
The Antitrust Division favored a controversial individual quota system passed by the North Pacific council in December. The council is to review the quota in April.

Moore, of Young's office, downplayed the Justice review, deriding it as "just an opinion of a bunch of lawyers."

Hayes at the Commerce Department said the Justice opinion was the first one she could recall on a fisheries issue. She said the Antitrust Division's review is without real clout, since the Natural Resource Division at Justice would defend her agency in the event of legal challenges to any allocation.

2/14/92

## THE MARKETPLACE



The Associated Press

Complete stock and commodity reports begin on Page C-3. The price of the Treasury's 30-year bond in the secondary market fell 1 point, or \$11.25 per \$1,000 in face amount. The bond's yield shot up to 7.91 percent from 7.80 percent late Wednesday.

### Judge overturns VDT law

SAN FRANCISCO.— A Superior Court judge on Thursday overturned San Francisco's landmark video display terminal safety ordinance, the only law in the United States that required private companies to protect workers from the muscle-straining dangers of VDT work. Judge Lucy Kelly McCabe, ruling in favor of two small data-processing companies, held that California's 1973 Occupational Safety and Health Act pre-empted the San Francisco ordinance, which required periodic rest breaks and properly designed office furniture for anyone who spent four hours a day or more at a VDT. The ruling left business representatives greatly relieved and worker safety advocates bitterly disappointed.

Daily News wire services

## BUSINESS NOTEBOOK

### Small-business guide

□ The office of the Alaska State Ombudsman has created the Ombudsman Resource Guide for Small Business. The brochure is designed as a reference guide for small-business owners trying to negotiate their way

# Fish plan alive

## Trawlers' actions irk Commerce

By DONNA PARKER  
Special to the Daily News

A recent U.S. Justice Department opinion against a proposal to divide Alaska's rich bottom fishery between offshore processing ships and boats serving onshore plants was unsolicited, inaccurate and misused by those who hope the plan will be nixed, a top federal Department of Commerce official said.

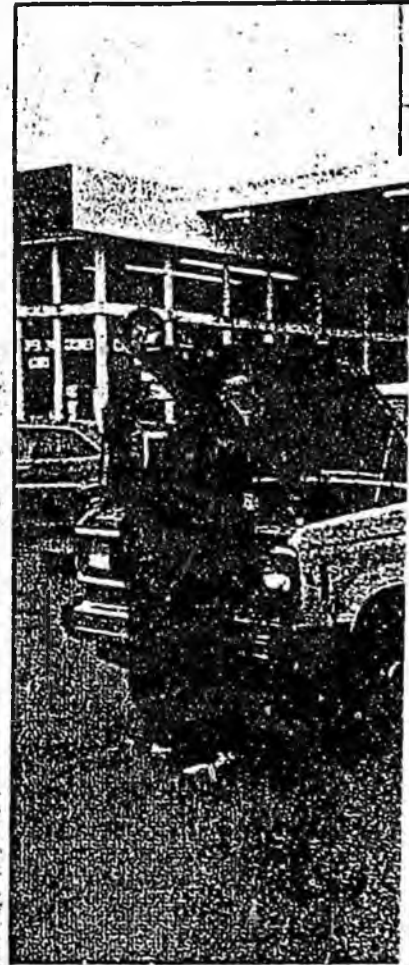
Margaret Hayes, assistant general counsel on fisheries for the Commerce Department, said the legal comments circulated by the American Factory Trawler Association is being misrepresented as a Justice Department decision.

The comments were written by four attorneys from the Antitrust Division who urged the proposed allocation plan be rejected because it does not meet the requirements of federal law.

The allocation plan has torn apart the bottom-fishing industry. Most of the offshore ships that fish off Alaska are based in Seattle or elsewhere outside the state. The onshore plants are located mainly in Kodiak and Dutch Harbor.

The onshore plants want a guarantee the huge ships that catch and process fish can't take all the fish near their plants; they say the guarantee is vital to the economic survival of Alaska

Please see Page C-6, FLEET



Earl Davis has sold his Chevron

## Retiree Owner hands

By ALICIA AGOS  
Daily News business reporter

Retirement is calling Earl. Earl is Earl Davis, colorado owner of the midtown Earl Chevron. And Davis, known motorists all over town by a promotional bumper sticker urging them to "Call Earl," selling the service station has owned and operated for the past nine years.

Davis' decision to sell the station to local businessman William Faas was motivated purely by the lure of retirement, he said.

"I'm 65. I'm drawing Social Security. Why should I work?" said Davis, who acts as

## FLEET: Attorneys' letter irks Commerce counsel

Continued from Page C-1

coastal communities. The offshore group argues the plan is inefficient and penalizes them for their investment in at-sea processing.

The Commerce Department, which is to decide by March 5 on the allocation plan, did not request the comments, she said. And the Antitrust Division would not defend whatever decision is made, she said.

She was perturbed that the legal comments were being touted by the trawler association — which represents the offshore fleet — as representing a Justice Department decision.

"This document from Justice is not a decision. It is merely a comment on a set of proposed regulations that we asked the whole world to comment on," Hayes said.

The comments would not carry much weight within the Commerce Department, she said.

"We certainly would respect the opinion of the Antitrust Division in areas where they have expertise. But I don't think they have any particular expertise on the national standards of the Magnuson Act," she said of the federal law that governs fishing off the U.S. coast.

The Justice Department lawyers did not return calls asking for comment.

Bruce Buis, spokesman for the trawlers association, said the group's lobbyists had solicited the Justice Department lawyers in hopes of securing a legal opinion that could overturn the proposed allocation plan.

"Yes, we contacted them. We talked to them and asked them to look into this. And we provided them with information explaining our point of view of the issue," Buis said. "We've approached anybody that we think might help have this overturned."

The trawlers association circulated the Justice Department comments to the press last week with a cover letter interpreting the 10-page document.

The letter claimed the Justice Department had concluded the allocation plan wasn't consistent with the Magnuson Act's efficiency requirements and "puts the government in a bind if Commerce approves" the plan.

*"This document from Justice is not a decision. It is merely a comment on a set of proposed regulations . . ."*

— Margaret Hayes

"The reason is," wrote Buis in the cover letter, "that if the allocation is challenged in court — as it would be — the Department of Justice would have to defend the Department of Commerce. And Justice has already said that the proposed allocation doesn't satisfy the law."

That caused proclamations that the onshore/offshore proposal was all but dead. However, Hayes said that is far from true. The legal comments were inaccurate readings of the Magnuson Act, she said, and if the decision is challenged in court, the Lands and Natural Resource Division of the Justice Department would defend the government.

John Iant, director of the Pacific Seafood Processors Association, which represents on-shore plants, blasted the trawlers association. "This is another case where the factory trawlers have ginned-up erroneous information," he said. The allocation proposal would guarantee shore-based fleets 45 percent of the huge pollock catch in the Bering Sea and all of the pollock catch in the Gulf of Alaska.

Last spring, the trawlers association was behind an ad campaign that asked fishermen to oppose the proposal because it would allocate most of the pollock to a monopoly of foreign-controlled processing plants and cause fishermen to get less for their fish. The ad campaign used a box number in Alaska but never identified the group as members of the at-sea processing sector.

The on-shore/offshore separate allocation proposal was passed in a 9-2 vote by the North Pacific Fishery Management Council last June.

## DAVIS: Retirement calls

Continued from Page C-1

manager for Chevron. "He

## Ford loses record \$2.3 billion

By FREDERICK STANDISH  
The Associated Press

DETROIT — Ford Motor Co., once the most profitable of the Big Three automakers, on Thursday reported a record \$2.3 billion loss in 1991, further solidifying the year as U.S. auto industry's worst.

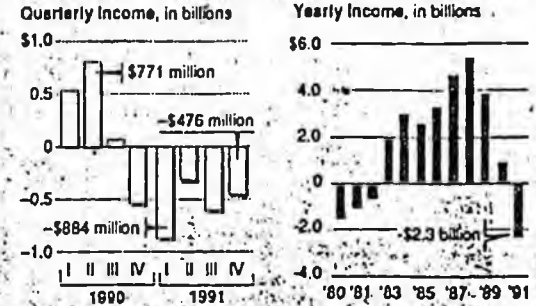
Enormous losses expected Feb. 24 from General Motors Corp. will push combined Big Three automakers' losses toward \$7 billion, far beyond any level seen before.

Despite the miserable financial news, Ford Treasurer David McCammon said Thursday there are some faint signs of recovery in a fragile economy. If things hold together, he said, a turnaround in the strapped auto industry could begin by the end of the year.

Indeed, the Ford loss announcement coincided with industry sales figures that showed a surge of car buying in early February. The 22.7 percent jump was the strongest in many weeks,

### Ford's falling fortunes

The auto company suffered its worst loss in history in 1991: -\$2.3 billion.



SOURCE: Company reports

although it was compared to an anemic sales pace of a year earlier, when the nation was preoccupied with the Persian Gulf War.

For the fourth quarter, Ford lost \$475.7 million, or \$1.03 a share, on \$22 billion in revenues. That's slightly better than the \$518.5 mil-

lion, or \$1.11 a share, the automaker lost in the final three months of a year earlier. Fourth-quarter 1990 revenues were \$24.2 billion.

"The recent dealer orders, dealer optimism, the sales acceptance of our redesigned 1992 models have all been favorable," McCammon told

## Abu Dhabi rulers dispute auditors' BCCI

By MARCY GORDON  
The Associated Press

WASHINGTON — The ruling family of Abu Dhabi on Thursday disputed allegations by Price Waterhouse auditors that its members participated in fraudulent activities of the failed Bank of Credit and Commerce International. The Persian Gulf emirate's Al Nahyan family owns 77 percent of BCCI, whose operations were shut down last July by banking regulators in the United States, Britain and six other countries.

Earlier this year, BCCI pleaded guilty to federal racketeering charges. Under a plea agreement approved by a federal court in Washington, the bank's liquidators agreed to forfeit a record \$550 million in U.S. assets.

The Al Nahyan family has denied any wrongdoing related to BCCI and has said it was duped by the bank's Pakistani executives.

But Price Waterhouse, which had been BCCI's auditor, alleged in a Feb. 5 report to Britain's House of Commons that the Abu Dhabi government took part in the fraud and hid important information from the auditors. The Abu Dhabi rulers used their huge oil wealth to create "a banking institution of status, power and influence," the Price Waterhouse report charged.

In a statement issued late Thursday in Washington, the Abu Dhabi leaders said Price Waterhouse's allegations were "grossly misleading." The statement said the auditors' charges "ignore

the efforts holders in of the affair light the management rulers acqui shares.

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# Justice department doesn't like pollock allocation plan

## Recommends ITQs

ANCHORAGE (AP) — The Justice Department is urging rejection of a proposal by the North Pacific Fishery Management Council that would divide the annual pollock catch between factory trawlers and shore-based processors.

The agency's comments to the Commerce Department, which must decide by next month whether to approve the allocation, is the second indication the controversial proposal is in trouble with the Bush administration.

Last month, the National Marine Fisheries Service rejected a similar allocation plan for Pacific whiting off the Oregon coast.

The Fisheries Service, which is an arm of the Commerce Department, said the Oregon plan raised policy questions about whether the federal government should be in the business of dividing catches among competing user groups.

The pollock fishery is worth about \$1 billion a year. It is the largest single commercial fishery in the United States.

Since the mid-1980s, the industry has become so overbuilt that there are not enough fish available to keep all segments of the industry operating profitably.

Last year, Seattle-based factory ships harvested about 80 percent of the pollock catch.

The North Pacific Council is proposing to dedicate about 45 percent of the annual catch to shore-based processors in Alaska to help keep them in business.

While the Justice Department said something must be done to control the pollock industry, it said the council's plan would perpetuate waste and inefficiency in violation of national fishery management standards.

The Justice Department agreed there are problems with the current "Olympic system" under

which the council sets a total harvest volume benefiting those who can catch the most fish the fastest.

Companies competing in that system, whether they operate factory ships or shore-based plants, are encouraged to spend more money developing faster and bigger ships and larger processing facilities so they can take a bigger share, the department said.

All the council's allocation plan would do is create a two-class Olympic system where the same inefficiencies persist, the Justice Department said.

"Although a new equilibrium between inshore and offshore operations would be established, both offshore and inshore firms will continue to have the incentive to harvest and process fish as quickly as possible, and will continue to overinvest in fishing and processing equipment," the Justice Department said.

It urged the Commerce Department to scrap the plan and suggest that the North Pacific Council enact a market-driven system such as assigning pollock quotas to individual fishing companies.

Such quotas, called "individual transferable quotas" or ITQs, could be assigned on the basis of historic catches, company by company.

Those quotas then could be sold so that, over time, the companies most able to efficiently catch and process the fish would buy quota rights from those less efficient companies, the Justice Department said.

"Coming on top of the whitening decision, I don't see how the Commerce Department now can approve the pollock allocation even if it wanted to," said Jim Gilmore, lobbyist for the American Factory Trawler Association, which is fighting the allocation plan.



**All American hopeful**  
 Kodlak's Carlton Sapp, right, is one of the 1,700 best high school basketball players across the country hoping to be selected to the McDonald's All-American Team. Standing next to Sapp, holding his certificate of achievement, is store manager Jane Peterson. See story, Page 10.

# ISA bids on Eagle property

By SUZANNE HANCOCK  
 Staff Writer

International Seafoods of Alaska Inc. is trying to buy another piece of the Monopoly board known as the Kodiak waterfront.

ISA is the high bidder in the proposed sale of the Eagle Fisheries Plant.

A hearing continued at 1:30 p.m. today in federal bankruptcy court in Anchorage before chief bankruptcy Judge Herb Ross.

According to Thomas J. Yerbich, attorney for a partnership known as F/V Pacific Star, one of the secured creditors, the trustee in bankruptcy entered into an agreement to sell and petitioned the court for an approval of the sale.

Other creditors have also objected to the sale because they will not be paid in full for what they are owed.

Yerbich said the creditors have stated for the record they would take the property back themselves.

"There are a number of creditors with secured interest in various parts (of the plant) with various priorities," he said.

He also stated that the property was worth more as a package, but the creditors questioned whether \$875,000 was the highest and best price available on the market.

A spokesman at ISA said the company would not discuss plans for the Eagle Plant if the purchase goes through.

A \$25,000 deposit is due today and an additional \$50,000 due next Wednesday with a potential closing in March. The next highest bidder was Henry Kim.

Yerbich said the objection filed will determine whether the sale is approved or not. The trustee has proposed the sale.

"There are a number of complex issues," he said.

If the sale is completed, property will be added to holdings of ISA and U.S. Fine Corporation.

"Other than the city and though, ISA is the largest owner as far as the highest asset."

See ISA, Page 2

# Scientist says spill damage continues

ANCHORAGE, Alaska (AP) — Wildlife and habitat continue to suffer from the effects of the Exxon Valdez oil spill, says a scientist who publicly summarized two and a half years of confidential studies.

Dr. Robert Spies of Livermore, Calif., coordinator of damage studies for the Oil Spill Trustees Council, said Thursday that seaotters are continuing to die in unusually high rates. Populations of murrets and harlequin ducks are continuing to fall, harbor seals are suffering brain lesions and salmon are producing more dead eggs, he said.

Spies' presentation came nearly three years after the tanker Exxon Valdez piled up on Bligh Reef, spilling nearly 11 million gallons of North Slope crude oil. The March 24, 1989, spill was the worst in the nation's history.

The council is considering spending proposals for more studies, as well as restoring affected areas in Prince William Sound and the Gulf of Alaska.

Spies said studies thus far indicate effects of the spill are lingering.

Murrets, diving sea birds, are unable to resume reproduction after losing 250,000 of the estimated 1.4 million birds that inhabit the northern Gulf of Alaska, he said.

See Spill, Page 2

# Kodiak Daily Mirror

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Senator Fred Zharoff  
Box V  
Juneau, AK 99811

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KODIAK, ALASKA

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50 CENTS

## American fishermen are landing millions of pounds of halibut caught in Russian waters

By MARK BUCKLEY  
Staff Writer

An American-flagged fleet of factory trawlers and longliners has been operating in Russian territorial waters since August or September of last year. They're returning to North American ports, primarily Dutch Harbor, with millions of pounds of halibut and other groundfish.

Had some of those fish been caught in the U.S., they would have been illegal to keep.

Some of those fish landed may be of American stock.

Because of a loophole in federal regulation, no one in the U.S. knows how many boats are in this fishery. Additionally, no one knows exact tonnage or species composition of the fish being landed here.

"The situation is legal," said Bob Trumble, Senior Biologist with the International Pacific Halibut Commission (IPHC), the organization that manages Pacific halibut in U.S. and Canadian waters.

Because the boats landing Russian-origin fish in U.S. ports are American flagged processors, they are not technically "importing" the fish. The processors can legally sell the fish as "product of the U.S.A."

Because the fish were caught legally in Russian waters, no U.S. laws were broken. This is true even though the fish may have been caught, kept or landed in ways that are illegal in America.

"The vessel owners have an arrangement with the Russians for American boats to fish inside the Russian 200-mile limit," Trumble said. "The U.S. vessels pay a fee per pound and get to keep and process the fish at sea."

The boats are both trawlers and longliners. Some of the boats are from the U.S., some are from other places. Just recently, for example, a significant quantity of fish was landed in British Columbia," Trumble added.

"There are no reporting requirements," said Trumble. "Therefore, there is no official record of the quantity of fish coming in."

"The Russians allow trawlers who are targeting pollock and cod to keep a percentage of their halibut bycatch," said Shari Gross of the Halibut Association of North America (HANA). "In American waters, it's illegal to catch halibut with a net or keep halibut when you're longlining for other species, like blackcod. Bycatch halibut here have to be returned to the sea."

"In American and Canadian waters, the minimum legal size for halibut is 32 inches," Gross said, "but the Russians have no minimum legal size limit."

"It will be an enforcement nightmare when those sublegal fish start showing up in the U.S. markets. Who can prove those fish actually came from Russia? There's the potential they could've been caught illegally in U.S. waters and then passed off as Russian fish," Gross said.

Another question regarding the Russian fishery is the mixing of Russian and American stocks of halibut.

"There is the potential that North American halibut stocks will be affected by the Russian fishery," said the IPHC's Trumble. "There was some tagging in Russian waters a few years ago and we got some tags back in the U.S. sector. We ex-

pect some interchange, but don't have any idea what the proportion of the interchange might be."

Trumble forecasts U.S. participation in the Russian fishery is likely to increase. "I would guess there were probably less than 20 boats there in 1991. We do project an increase in landings for 1992, but, again, we have no official records," he said.

HANA's Gross felt she could be a little more specific about landings. "We're estimating landings of 4 to 10 million pounds of halibut in 1991," Gross said. "We're expecting an enormous increase in volume for

1992 as the Russians sell more of their fish for hard currency.

"How will that increase in volume affect prices paid to the shorebased U.S. and Canadian halibut fishermen?" Gross asked.

According to industry monitors, the situation in the former Soviet Union today is chaotic. "For all we know, the Russians don't know what's going on out there," Gross said. "These deals that have been cut may or may not be with the knowledge of the central government."

A factory trawler representative defended his company's actions.

"We did have Russian observers on our boats," said Steve Finley, director of government affairs for Emerald Seafoods in Seattle.

"We were operating three factory trawlers in Russian waters and had 2 to 3 observers on our boats at all times. They were Russian officials of some sort, but things are really confusing over there right now and I can't say who exactly employed them."

"We were really happy with how it all worked out," said Finley. "We plan to go back."

See Halibut, Page 2

## Coast Guard crew honored for heroic Dora H. rescue

By JEFF GRAVES  
Staff Writer

A Coast Guard helicopter crew from Kodiak is being honored by the Naval Helicopter Association for their heroic rescue of four fishermen who were forced to abandon their sinking vessel in heavy seas last May.

Pilot Lt. Cmdr. Keith Comer and co-pilot Lt.jg. Bob Yerex, crewmen Petty Officers 2nd Class Jeff Waite and Dave Schron and Petty Officer 3rd Class Gary Srebe will be in San Diego this week to receive the prestigious award.

The coveted NHA award is given to helicopter crews in five U.S. regions each year to recognize "outstanding feats and contributions," according to organization literature.

Association judges later review the cases of the region winners to determine a national helicopter crew of the year.

This is the second year a crew from Kodiak has been chosen to



### Crewman lost

may have saved lives of the Dora H. crew.

Ycrex, who was wearing night vision goggles at the time, said he saw "a strobe from the life raft, what appeared to be about 10 miles away from us." What

nearby fishing vessels that had been searching the area for the raft.

Strebe lost his mask and snorkel immediately after hitting the water, but managed to get his bearings and reach the raft.

## Halibut— Fish come from Russia

Continued from Page 1 again. Right now our boats are fishing in the American zone, but our company president is working on the next contract with the Russians."

Finley said the American boats were required to keep bycatch.

"The contract required us to keep all bycatch. However, we had a bycatch limit as well as an overall quota. I'm not at liberty to say, though, what that bycatch limit was. When either the bycatch limit or the quota was reached, we would be out of the fishery for the rest of the year."

Finley said a total of 8 factory trawlers and several longliners operated in the Russian zone. "We had three factory trawlers and there were (a total of) five others from both American Seafoods and Ocean Trawl.

"Arctic Alaska Seafoods converted some factory trawlers into longliners and I'd guess there were 8 or 9 longliners there, though some of them were catcher ships delivering to motherships."

Asked if Emerald Seafoods ships were delivering halibut that would be of sublegal size if caught in the U.S., Finley said, "Yeah, we're delivering 'sublegal' halibut, but our contract requires us to keep them. You know, there is no U.S. law that says we're prohibited from selling those fish in this country. They were legally caught in the Russian zone."

Finley said his company voluntarily reports deliveries of large and small halibut to the National Marine Fisheries Service.

"We're calling NMFS, telling them when we enter and plan to exit U.S. waters and what our po-

sition and course heading are," he said. "That way Coast Guard planes can overfly our boats to prove they're not fishing illegally inside the U.S. zone."

"When we deliver in the U.S., we report to NMFS the amount of fish we're delivering. We voluntarily tell them the amount of 'large market' and 'small market' halibut we're bringing in."

When asked if all the other companies engaged in the fishery were reporting their catches and activities in U.S. waters as well, Finley answered, "I don't know; I don't think so."

Shari Gross of HANA wants mandatory reporting, and more.

"We're going to work with NMFS and IPHC to identify the loophole and close it," said Gross. "We brought this situation to the attention of the North Pacific Fishery Management Council at the recent Portland meeting. The council asked for a report from the NMFS staff."

"Our first goals are to close the reporting loophole and to get U.S. observer coverage on these boats."

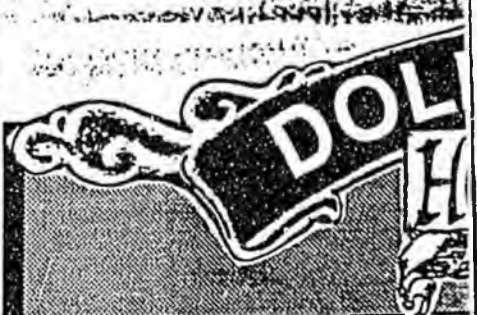
HANA may have a difficult time putting controls on American boats in the Russian fishery, though.

IPHC's Trumble said, "I don't know if they're involved in taking any marine mammals such as dolphins or endangered species like sea lions or sea turtles. Unless that can be shown, it's hard to put import restrictions on the fishery."

Dealing government-to-government with the Russians will not be easy, either.

"The Russians aren't signatories to any treaties that cover this situation," Trumble said.

extremely tired. It's pretty amazing that we could do it for as long as we did," Yerec said. "Gary recognized his own fatigue and I think he was able to understand what we were going through in the air." 100 g and 20 compl demor. petenc "It's of the



**TESTORS**  
Bottle Enamels  
2/\$1.00

**Aleene's**  
Tacky  
Glue  
2 oz.  
\$1.00

Pony Be  
Felt Squa  
Wilson  
Alphabet  
Fun Foam  
Ribbon S

**DMC**  
WHERE THE FINEST  
NEEDLECRAFT BEGINS

4/\$1.00

Fri. Jan. 24 - Sun. Jan. 26

# United States Senate

WASHINGTON, DC 20510

February 27, 1992

The Honorable Rockwell Schnabel  
Acting Secretary of Commerce  
U.S. Department of Commerce  
Washington, D.C. 20230

Dear Mr. Secretary,

We are writing in regard to a pair of fishery management plans which propose the allocation of pollock and Pacific whiting between sectors of the commercial fishing industry. These allocations were proposed by the North Pacific Fishery Management Council and the Pacific Fishery Management Council, respectively. These are two of the eight regional councils created by the Magnuson Fishery Conservation and Management Act (Magnuson Act) to craft management programs for their regional fisheries. The pollock allocation is currently awaiting Secretarial approval, while the whiting plan has been preliminarily rejected by the National Marine Fisheries Service (NMFS).

The purpose of this letter is to express our support for both allocations, and to raise questions about the manner in which NMFS is interpreting the Magnuson Act.

The Magnuson Act calls for fishery management plans which result in the greatest economic and social benefit to the nation. In both these cases, the Councils have chosen strategies which will result in a more efficient utilization of a publically owned resource. Both the quantity and total dollar value of fishery products available to consumers will increase. This increased food production will, in turn, provide greater employment, increased social stability, and a net increase in trade revenues.

Since these are the major goals of the Magnuson Act, we do not understand the apparent opposition of the agency to the proposals. We can only conclude that there is a policy dispute between the Councils and the hierarchy of NMFS. However, we must point out that Congress created the Councils as policy making bodies based upon the idea that it is better to have local citizens propose management strategies for their regions than to have this role performed in Washington, D.C. The secretary, in reviewing Council proposals, must make sure they acted reasonably and in accordance with federal law. However, as the Secretary has noted in the past, it is not the intent of the Act for the agency to substitute its policy judgment for that of the Councils.

Honorable Rockwell Schnabel  
February 27, 1992  
Page 2

We ask you, as the person ultimately responsible for plan approval, to ask NMFS to reconsider its rejection of the Pacific whiting plan and to keep Congressional intent in mind as both plans are reviewed.

Thank you for your consideration of this matter.

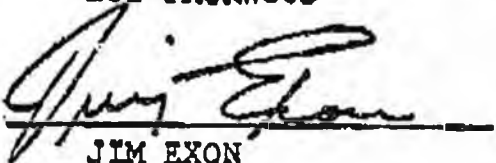
Sincerely,



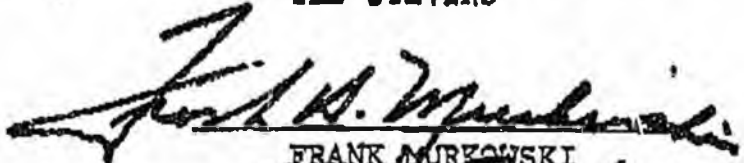
BOB PACKWOOD



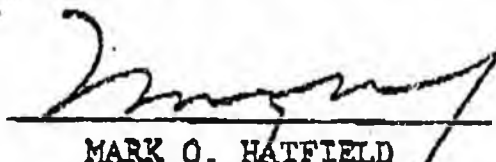
TED STEVENS



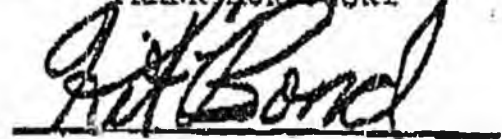
JIM EXON



FRANK MURKOWSKI



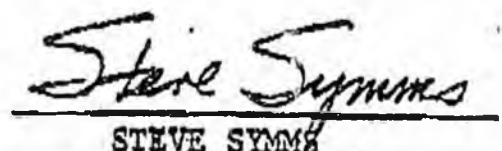
MARK O. HATFIELD



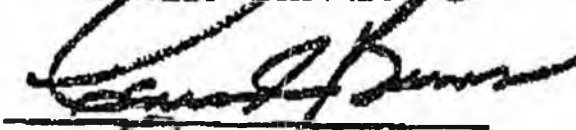
CHRISTOPHER S. BOND



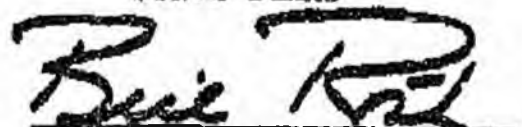
CHARLES GRASSLEY



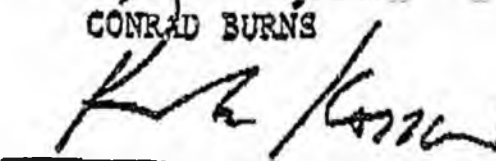
STEVE SYMMS



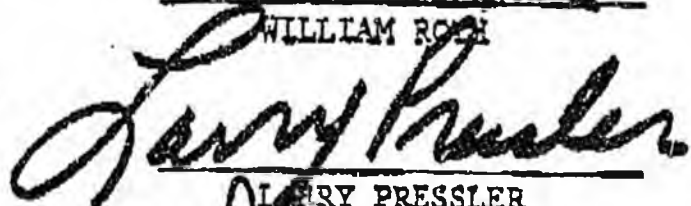
CONRAD BURNS



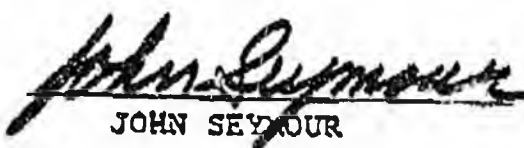
WILLIAM ROTH



BOB KASTEN



LARRY PRESSLER



JOHN SEYMOUR



LARRY CRAIG

# United States Senate

WASHINGTON, DC 20510

February 27, 1992

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Acting Secretary of Commerce  
U.S. Department of Commerce  
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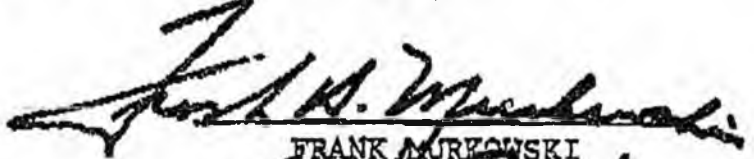
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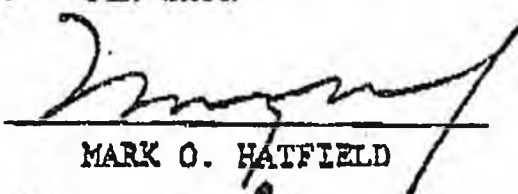
TED STEVENS



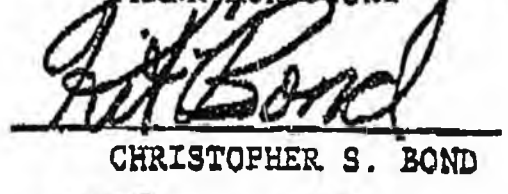
JIM EXON



FRANK MURKOWSKI



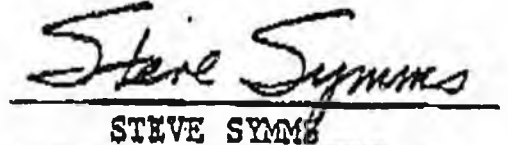
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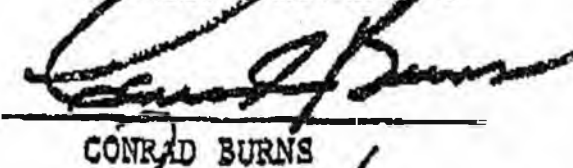
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CHARLES GRASSLEY



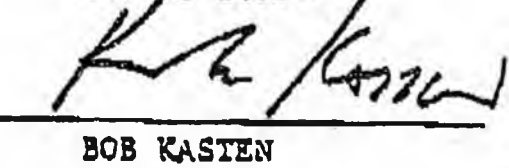
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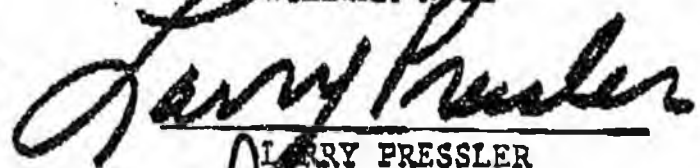
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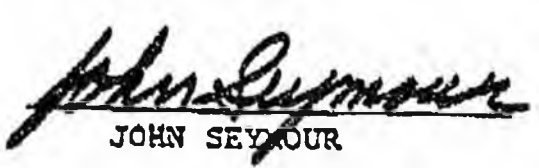
WILLIAM ROTH



BOB KASTEN



LARRY PRESSLER



JOHN SEYMOUR



LARRY CRAIG

HB

49

DATE: 4/26/91

FURTHER:

DATE TURNED INTO OFFICE: 5-8-91

Resources Committee considered HOUSE BILL NO. 49

"An Act amending the definition of slow-leaching TBT-based marine antifouling paint."

and recommended:

replace with \_\_\_\_\_  
 or adopt S CS HB 49 (Loc)  
 attached amendment(s)  
 \_\_\_\_\_ letter of intent adopted

same title  
 new title  
 technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

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

ATTACHES NEW FISCAL NOTE(S):  
Dept/Date:

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

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

appropriation-no fiscal note


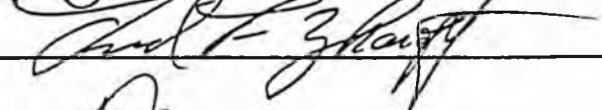
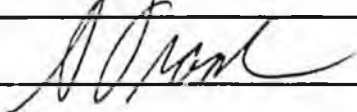
APPROVES PREVIOUS:  
Dept/Date:

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

zero fiscal note(s)  
Previous FN 1/28/91 DEC

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

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

Hoyd Jones (Do Pass)

Chair: Signature and Recommendation

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES



### REPRESENTATIVE FRAN ULMER

TO: Rep. David Finkelstein, Chairman  
Labor and Commerce Committee

FROM: Rep. Fran Ulmer

DATE: February 26, 1991

RE: HB 49

#### TBT BILL

TBT is an ingredient widely used in marine paints to prevent the growth of barnacles and algae on boat hulls. It is also a highly toxic pesticide that has caused death and deformities in marine life. In 1987 the legislature passed a bill and joined other west coast states in sharply reducing the amount of TBT in paint that can be sold in Alaska.

Unfortunately, the testing standard for TBT which "trips" the ban on it's sale is just one microgram per centimeter per day lower than the threshold that has since been established by the EPA and all other western states. As a result, many marine paints which meet the federal requirement are not allowed to be sold in Alaska. Fisherman and other boat owners are simply buying their paint out of state and using them "illegally" here. Stores that sell marine paint in Alaska are being penalized because of the prohibition on sale of paints that don't meet the lower (Alaska) threshold. The new bill would solve the problem by changing the level to be the same as federal standards.

Several organizations that lobbied strenuously for the lower standards in 1987, including the Pacific Fisheries Legislative Task Force, support matching the state's standards with the new federal level. California Oregon and Washington have all crafted their laws to meet the new EPA standards. The Task Force says the new standard still effectively curbs the threat to marine life, while allowing commerce to continue without undo restraint.

Thank you for your prompt consideration.

District 4B — Juneau

P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB49

Revision Date: \_\_\_\_\_ Department Affected: Environmental Conservation  
 Title: Amending the definition of slow-leaching TBT-based marine antifouling paint BRU: Environmental Health  
 Component: Palmer Laboratory  
 Sponsor: Ulmer, Koponen

Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

6	5	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Douglas C. Donegan, Director *DD* Phone: 465-2696  
 Division: Division of Environmental Health Date: Jan. 28, 1991  
 Approved by Commissioner: *Mendenhall, A. John Sander*  
 Agency: Department of Environmental Conservation Date: \_\_\_\_\_

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

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p. No. 1076 (File  
1974).

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P.2d 3 (1974).

Whatever may be the outer boundaries of conduct prohibited by this section as defined by AS 46.03.900(19), it is beyond dispute that the emptying of a lagoon of raw sewage into a stream running through residential areas comes within the definition of the term "pollution." Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

Definitional language of AS 46.03.900(19) incorporated in this section. — See Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

Foreseeability requirement imposed. — By use of the word "potentially" in AS 46.03.900(19) in prohibiting potentially harmful alterations of water, this chapter prohibits acts which a reasonable person would foresee as creating a substantial risk of making water actually injurious to the statutorily protected interests. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

In "potentiality" cases, the state must hereafter prove that the threatened injury was foreseeable to a reasonable man in the position of the defendant at the time of the act or omission. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

The foreseeability requirement is no more than a narrowing construction. The supreme court imposes it only to give this chapter definite enough standards to survive on its face and in future cases. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

Effect of foreseeability requirement. — A foreseeability requirement assures

that fair notice is given to the defendant that his conduct is within the ambit of the statute. Such an element added to the definition of the offense also criminalizes only that conduct which is serious enough to warrant enforcement and conviction, thus discouraging discriminatory enforcement. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

Application of foreseeability requirement is prospective. — The supreme court could not find plain error in the district court's failure to anticipate and apply to defendant the narrowing construction of AS 46.03.900(19) and this section which it ordered for future cases. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

This section makes pollution a crime without mention of any administrative order. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

This section and AS 46.03.760 contemplate direct prosecution of pollution violations. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

The authorization for direct criminal prosecution is particularly clear since it constitutes an amendment of former law. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

The department was not required to exhaust the compliance-order procedure before instituting prosecution for pollution. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

Former statutes created no crime of pollution. — See Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

Sec. 46.03.715. Sale and use of TBT-based antifouling paint.

(a) Except as otherwise provided in this section, a person may not sell or use TBT-based marine antifouling paint or coating in the state, nor may a person sell, rent, or lease in the state, or import into the state, or use in state water, a vessel, fishing gear, or other item intended to be partially or completely submerged in water, if the vessel, gear, or item has been painted or treated with TBT-based marine antifouling paint or coating.

(b) TBT-based marine antifouling paint or coating need not be removed from fishing gear, or from a vessel or other item that was painted or treated before December 1, 1987, but the vessel, gear, or item may not be repainted or retreated with TBT-based marine antifouling paint or coating. Fish culture or capture nets treated with TBT-based marine antifouling coating before December 1, 1987, may not be used in state water on or after December 1, 1992.

(c) Notwithstanding other provisions of this section, slow-leaching TBT-based marine antifouling paint may be imported into and sold in the state. A slow-leaching TBT-based marine antifouling paint may be applied in the state only to aluminum vessel hulls and lower outboard drive units. Aluminum vessel hulls and lower outboard drive units to which a slow-leaching TBT-based marine antifouling paint has been applied may be imported into and sold, rented, leased, or used in the state.

(d) This section does not apply to

(1) a vessel of the United States government;

(2) a foreign vessel in state water fewer than 90 consecutive days;

or

(3) a vessel of 4,000 gross tons or more.

(e) In this section

(1) "slow-leaching TBT-based marine antifouling paint" means a TBT-based marine antifouling paint, but not a coating or other treatment, that has a measured release rate equal to or less than 3.0 micrograms per square centimeter per day at steady state conditions determined under the U.S. Environmental Protection Agency testing procedure, as outlined in the agency's call-in notice of July 29, 1986, on tributyltin in antifouling paints under 7 U.S.C. 136 — 136y (the Federal Insecticide, Fungicide, and Rodenticide Act);

(2) "TBT-based marine antifouling paint or coating" means a paint, coating, or treatment that contains tributyltin, or a triorganotin compound used as a substitute for tributyltin, and that is intended to control fouling organisms in a fresh water or marine environment;

(3) "vessel" means watercraft used or capable of being used as a means of transportation on water, including

(A) aircraft equipped to land on water; and

(B) barges. (§ 2 ch 67 SLA 1987)

**Cross references.** — For provisions December 1, 1987, see § 3, ch. 67, SLA applicable to the importation of TBT-based paint after June 13, 1987, and until 1987 in the Temporary and Special Acts.

**Sec. 46.03.720. Construction and operation of certain facilities prohibited.** (a) A person may not construct, extend, install or operate a sewerage system or treatment works, or any part of a sewerage system or treatment works, until plans for it are submitted to the department for review and the department approves them in writing and issues a written permit.

(b) A person may not construct, extend, install or operate a public water supply system, or any part of a public water supply system, until plans for it are submitted to the department for review and the department approves them in writing.

(c) The department may waive the requirements of this section. (§ 3 ch 120 SLA 1971; am § 7 ch 220 SLA 1976)

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4.0

# MEMORANDUM

STATE OF ALASKA


DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Health

TO: Kate Tesar  
Legislative Assistant

DATE: March 19, 1990

PHONE: 465-2609

FROM: Douglas Donegan   
Director

SUBJECT: TBT Law

I have reviewed the proposed change to the definition of "slow-leaching TBT-based marine antifouling paint." Changing the definition to allow a release rate of 4.0 micrograms per square centimeter per day, will make the state definition consistent with that of the federal Environmental Protection Agency (EPA). Consistency with federal law will simplify enforcement of state law and reduce the number of potential violators.

Changing the definition to the national standard will also have the effect of making more TBT-based paints available to Alaskan vendors.

For your information, I am also attaching a current EPA list of TBT-based antifouling paints with their release rates.

Attachment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, DC 20460

OFFICE OF  
PESTICIDES AND  
TOXIC SUBSTANCES

TBT ANTIFOULANTS PAINTS

Certified Under QAPCA 1988

As of 2/1/90

<u>COMPANY</u>	<u>EPA REGISTRATION NUMBER</u>	<u>PRODUCT NAME</u>	<u>AVERAGE RELEASE RATE ug/cm<sup>2</sup>/day</u>
1. Hempel	10250-14*	Antifouling Nautic 7680-1212-Gray	3.58
2. DeVoe	39492-39**	Navicote 2000 Red Antifouling Paint MD 4540	0.0
3. Sigma Coatings	11350-9**	7293 Pilot LL Antifouling	1.09
4. International Paint	2693-127**	Intersmooth HiSol SPC AF Plum BFA 254	3.78
5. Chugoku Marine Paints	48302-1**	AF Seaflo Z-100	4.0
6. Chugoku Marine Paints	48302-6**	AF Seaflo Z-100LE	3.1
7. Sigma Coating	11350-25**	Sigmaplane 7284 HiBuild Antifouling Red Brown	2.68
8. Ameron Coatings	8120-48**	Amercoat 698 HS Antifouling Red	3.17
9. Ameron Coatings	8120-49**	Amercoat 635 Antifouling White	3.93
10. M & T Chemicals	5204-68**	Poly-Flo 2018	3.58
11. Nautical Coatings	44891-6**	Sea Hawk Biocop 1230 Blue	3.28

## TBT ANTIFOULANTS PAINTS

Certified Under OAPCA 1988

As of 2/1/90

<u>COMPANY</u>	<u>EPA REGISTRATION NUMBER</u>	<u>PRODUCT NAME</u>	<u>AVERAGE RELEASE RATE ug/cm<sup>2</sup>/day</u>
12. M & T Chemicals, Inc.	5204-IG*	Poly-Flo 4024	3.96
13. M & T Chemicals, Inc.	5204-64*	Poly-Flo 201-A White	3.07
14. Int. Nat. Paint	2693-115**	Interlux Micron 33	2.11
15. Int. Nat. Paint	2693-123**	Interswift Copolymer A/P Red BKA 007	2.78
16. Hempel Coatings	10250-40**	Hempel's Antifouling Combic 7699-5111 Red	0.80
17. ITW-Philadelphia Resins	55363-5*	Classic Yacht Clear	2.22
18. ITW-Philadelphia Resins	55363-6*	Classic Yacht AF Coating Aersol	3.04
19. Pro-Line Paint	40238-9**	Antifouling Paint 1077	3.65
20. Rule Industries, Inc.	7995-32**	KL990 Komposition Blue	0.27
21. Rule Industries, Inc.	7995-35**	U.S.M.C.	0.41
22. Rule Industries, Inc.	7995-36**	KL990 Graph-Cop	0.39
23. Rule Industries, Inc.	7995-38**	KL990 Graph-Cop	1.77
24. Rule Industries, Inc.	7995-39**	KL990 Graph-Cote	0.88
25. Rule Industries, Inc.	7995-41**	KL990 Komposition Brown	0.26
26. Rule Industries, Inc.	7995-43**	KL990 Super Epoxycop Red	1.11
27. Rule Industries, Inc.	7995-46**	574 Super Sea Jacket	0.37
28. Rule Industries, Inc.	7995-47**	KL990 Super Epoxycop Blue	0.44

\* TBT Only

\*\* TBT and Cuprous Oxide

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE ULMER

NAME: CYNTHIA FLOR  
 TITLE: PETERSBURG SHIPWRIGHTS'S  
 ADDRESS: BOX 4  
 CITY: PETERSBURG ZIP: 99033  
 PHONE: 772-4500

BILL NO: HB 49  
 SUBJECT: TBT-BASED MARINE ANTIPOULING PAINT  
 MESSAGE: AS BUSINESS MANAGER FOR PETERSBURG SHIPWRIGHT'S INC., WE STRONGLY  
 OPPOSE PASSAGE OF HB49. CURRENTLY NO MAINTENANCE PRODUCTS ARE AVAILABLE IN THE  
 STATE FOR ALUMINIUM BOATS. STATE AND FEDERAL REGULATIONS DIFFER, SO BOAT OWNERS  
 ARE BUYING THE PRODUCTS IN WASHINGTON STATE ILLEGALLY.

FOHID: 15123423  
 DATE: 91/02/14  
 TIME: 12:34:23  
 LIOHNAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATOR

TAYLOR	JONES
C.DAVIS	
FINKELSTEIN	
PARNELL	
IVAN	
DONLEY	
BRUCKMAN	
ZAWACKI	

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE ULMER

NAME: LUCILLE CLARK  
 TITLE:  
 ADDRESS: 525 B STREET  
 CITY: ANCHORAGE ZIP: 99501  
 PHONE: 277-3733

BILL NO:  
 SUBJECT: 75 DAY LEGISLATIVE SESSION  
 MESSAGE: I SUPPORT GOVERNOR HICKEL'S PROPOSED 75 DAY LEGISLATIVE SESSION.  
 WOULD BE TO THE TAXPAYER'S BENEFIT.

POMID: 03130611  
 DATE: 91/02/14  
 TIME: 13:06:11  
 LIOHNAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BAKER	BARNES	ADAMS
BOYER	BROWN	COLLINS
BRUCKMAN	CARNEY	COTTEN
CHOUQUETTE	DAVIDSON	DUNCAN
B.DAVIS	C.DAVIS	ELIASON
DONLEY	ELLIS	FAHRENKAMP
FINKELSTEIN	FOSTER	FISCHER
GONZALES	GRUENEERG	FRANK
OPUSSENDORF	HANLEY	HALFORD
HUDSON	IVAN	HOFFMAN
JACKO	KOPONEN	JONES
KUBINA	LARSON	KERTTULA
LEMAN	LINCOLN	MENARD
MACKIE	MACLEAN	PEARCE
MARTIN	M.A.MILLER	POURCHOT
M.W.MILLER	MOYER	RODEY
NAVARRE	PARNELL	SHULTZ
G.PHILLIPS	R.PHILLIPS	STURGULEWSKI
SHARP	TAYLOR	UEHLING
ZAWACKI		ZHAROFF

submissions are currently deficient. Many submissions did not include raw data (instrument readings), adequate information on instrument calibration, or sufficient data on blanks and controls. The descriptions of leaching and analytical methodologies were incomplete. Information needed to demonstrate that proper environmental controls (pH, temperature, and salinity) were maintained were not included in most submissions. In some cases, samples were stored beyond the period specified by the ASTM/EPA method; however, storage stability data were not submitted.

At this time no release rate studies have been validated. Registrants were informed in an Agency letter dated August 12, 1988, that additional data/information were required to be submitted before any decisions regarding specific release rates can be made.

In addition to the above deficiencies, many of the submitted studies did not adhere to the ASTM/EPA method specification that the TBT concentration in the measuring tank not exceed 50 ppb. This restriction was imposed to eliminate the possibility of autoinhibition of TBT release from the paint film. EPA and the ASTM committee suspect that the 50 ppb restriction may be too conservative. Testing is being initiated at EPA's Environmental Chemistry Laboratory (ECL) in Bay St. Louis, Mississippi, to determine the true autoinhibitory threshold.

After the ECL test results are available and the registrants respond to the above Notice, the Agency will reevaluate each study. If it is determined that the measuring tank concentration did not exceed the true autoinhibitory threshold and if the Agency finds that the registrant has supplied the additional data/information necessary to validate his submission, the Agency will use the study for regulatory purposes.

#### **B. Release Rate Restriction**

The proposed restrictions in the Preliminary Determination specified that no TBT antifouling paint could be sold or distributed which exceeds the short-term cumulative release (cumulative release over the first 14 days of the ASTM/EPA test) of  $168 \mu\text{g TBT}$  (includes tributyltin and triphenyltin)/ $\text{cm}^2$  or an average daily release rate (average over weeks 3 through 5) of  $4.0 \mu\text{g TBT}/\text{cm}^2/\text{day}$ . The proposed short-term cumulative release restriction was indexed to the average release rate restriction ( $3 \times$  the average release rate over 14 days).

The short-term cumulative release was intended to reflect the initial surge of TBT release when a freshly painted vessel is first placed in the water. It was calculated by summing the time weighted release for each sampling over the first 14 days of the test. The time weighted release was calculated by multiplying the rate of TBT release for a given sampling time by the preceding length of time between sampling times. The average release rate reflects the long-term TBT release pattern that is established after the initial surge. It is defined as a simple average of the release rates measured over a certain number of weeks.

In the Preliminary Determination, release rate values were normalized to adjust for variation between testing facilities and the average daily release rate was defined as the mean of individual release rates over weeks 3 through 5. The Agency received numerous comments from TBT registrants and the FIFRA Scientific Advisory Panel regarding this analysis of the release rate data. Most commenters felt that the proposed release rate restrictions should be adjusted to account for the variability of the test method but that normalization was not an appropriate means of accounting for variability.

The standard test paint data were the only data common to all registrants and as such were used to evaluate the variability of the ASTM/EPA release rate method. Additional standard test paint data and information on testing procedures from individual testing facilities submitted after the Preliminary Determination was issued, were included in the Agency's analysis of the method's variability. It was not possible to establish that variation among testing facilities was attributable to systematic error, as was previously assumed.

Variation associated with testing facilities is now assumed to represent a component of method variance. Normalization is not appropriate under these circumstances, and the Agency agrees that release rate data should not be normalized. The available data could not be analyzed by standard statistical procedures because sampling was unbalanced (a wide variation in the number of samples per laboratory). The Agency could only perform a qualitative analysis of the method's variability. It was determined that most of the variability was associated with testing among different laboratories and sampling over time within a given test. Variation between replicate cylinders and between replicate runs was low by comparison.

The Agency has determined that, due to the incomplete nature of the release rate data submissions and the uncertainty over autoinhibition, it would be inappropriate at this time to try to quantify the variability associated with the EPA/ASTM method. The Agency is unable to determine whether the high variance of the results is attributable solely to the inherent variability of the method or to possible improper conduct of the release rate studies. It would also be inappropriate to determine a release rate restriction which attempts to account for this variability based solely on the current data base.

For the present the Agency is keeping the Special Review open on the issue of release rates and is deferring to the interim release rate restriction ( $4 \mu\text{g}/\text{cm}^2/\text{day}$ ) and certification program established by OAPCA. Products will be certified on the basis of the average daily release rate calculated from validated release rate studies conducted according to the current draft ASTM/EPA method. Any new release rate data submission or resubmission (such as those required by the Agency's August 12, 1988 letter) will be reviewed and a determination regarding certification reached within 90 days of the Agency's receipt of such data.

The average daily release rate will now be calculated as the non-normalized mean of all release rate measurements during weeks 3 through 10. In the Preliminary Determination the average daily release rate was defined as the average of release rates measured over weeks 3 through 5. However, examination of the standard paint release rate data indicated that individual release rate measurements made during week 6 and beyond were equivalent to those made during weeks 3 through 5. Release rate measurements beyond 10 weeks may be required for paints with atypical patterns of TBT release over time. The additional measurements included in the calculation of the average release rate are expected to increase accuracy.

The Agency will consider release rate levels again when additional environmental monitoring data are available and the release rate method is improved. The Agency has already identified certain procedures within the method as potential sources of variability and has initiated experimentation to determine how the release rate method can be improved. This testing is further discussed in Unit VII. When the research is completed, the Agency may decide to replace the current OAPCA release rate restriction

7/EPA  
Testing  
method

# MEMORANDUM

STATE OF ALASKA


DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Health

TO: Kate Tesar  
Legislative Assistant

DATE: March 19, 1990

PHONE: 465-2609

FROM: Douglas Donegan   
Director

SUBJECT: TBT Law

I have reviewed the proposed change to the definition of "slow-leaching TBT-based marine antifouling paint." Changing the definition to allow a release rate of 4.0 micrograms per square centimeter per day, will make the state definition consistent with that of the federal Environmental Protection Agency (EPA). Consistency with federal law will simplify enforcement of state law and reduce the number of potential violators.

Changing the definition to the national standard will also have the effect of making more TBT-based paints available to Alaskan vendors.

For your information, I am also attaching a current EPA list of TBT-based antifouling paints with their release rates.

Attachment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, DC 20460

OFFICE OF  
PESTICIDES AND  
TOXIC SUBSTANCES

TBT ANTIFOULANTS PAINTS

Certified Under QAPCA 1988

As of 2/1/90

<u>COMPANY</u>	<u>EPA REGISTRATION NUMBER</u>	<u>PRODUCT NAME</u>	<u>AVERAGE RELEASE RATE ug/cm<sup>2</sup>/day</u>
1. Hempel	10250-14*	Antifouling Nautic 7680-1212-Gray	3.58
2. DeVoe	39492-39**	Navicote 2000 Red Antifouling Paint MD 4540	0.0
3. Sigma Coatings	11350-9**	7293 Pilot LL Antifouling	1.09
4. International Paint	2693-127**	Intersmooth HiSol SPC AF Plum BFA 254	3.78
5. Chugoku Marine Paints	48302-1**	AF Seaflo Z-100	4.0
6. Chugoku Marine Paints	48302-6**	AF Seaflo Z-100LE	3.1
7. Sigma Coating	11350-25**	Sigmaplane 7284 HiBuild Antifouling Red Brown	2.68
8. Ameron Coatings	8120-48**	Amercoat 698 HS Antifouling Red	3.17
9. Ameron Coatings	8120-49**	Amercoat 635 Antifouling White	3.93
10. M & T Chemicals	5204-68**	Poly-Flo 2018	3.58
11. Nautical Coatings	44891-6**	Sea Hawk Biocop 1230 Blue	3.28

TBT ANTIFOULANTS PAINTS

Certified Under OAPCA 1988

As of 2/1/90

<u>COMPANY</u>	<u>EPA REGISTRATION NUMBER</u>	<u>PRODUCT NAME</u>	<u>AVERAGE RELEASE RATE ug/cm<sup>2</sup>/day</u>
12. M & T Chemicals, Inc.	5204-IG*	Poly-Flo 4024	3.96
13. M & T Chemicals, Inc.	5204-64*	Poly-Flo 201-A White	3.07
14. Int. Nat. Paint	2693-115**	Interlux Micron 33	2.11
15. Int. Nat. Paint	2693-123**	Interswift Copolymer A/P Red BKA 007	2.78
16. Hempel Coatings	10250-40**	Hempel's Antifouling Combic 7699-5111 Red	0.80
17. ITW-Philadelphia Resins	55363-5*	Classic Yacht Clear	2.22
18. ITW-Philadelphia Resins	55363-6*	Classic Yacht AF Coating Aersol	3.04
19. Pro-Line Paint	40238-9**	Antifouling Paint 1077	3.65
20. Rule Industries, Inc.	7995-32**	KL990 Komposition Blue	0.27
21. Rule Industries, Inc.	7995-35**	U.S.M.C.	0.41
22. Rule Industries, Inc.	7995-36**	KL990 Graph-Cop	0.39
23. Rule Industries, Inc.	7995-38**	KL990 Graph-Cop	1.77
24. Rule Industries, Inc.	7995-39**	KL990 Graph-Cote	0.88
25. Rule Industries, Inc.	7995-41**	KL990 Komposition Brown	0.26
26. Rule Industries, Inc.	7995-43**	KL990 Super Epoxycop Red	1.11
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28. Rule Industries, Inc.	7995-47**	KL990 Super Epoxycop Blue	0.44

\* TBT Only

\*\* TBT and Cuprous Oxide

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE ULMER

NAME: CYNTHIA FLOR  
 TITLE: PETERSBURG SHIPWRIGHTS'S  
 ADDRESS: BOX 4  
 CITY: PETERSBURG ZIP: 99833  
 PHONE: 772-4500  
 BILL NO: HB 49

SUBJECT: TBT-BASED MARINE ANTIFOULING PAINT  
 MESSAGE: AS BUSINESS MANAGER FOR PETERSBURG SHIPWRIGHT'S INC., WE STRONGLY  
 OPPOSE PASSAGE OF HB49. CURRENTLY NO MAINTENANCE PRODUCTS ARE AVAILABLE IN THE  
 STATE FOR ALUMINIUM BOATS. STATE AND FEDERAL REGULATIONS DIFFER, SO BOAT OWNERS  
 ARE BUYING THE PRODUCTS IN WASHINGTON STATE ILLEGALLY.

POMID: 15123423  
 DATE: 91/02/14  
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 LIO: NAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATOR

TAYLOR	JONES
C.DAVIS	
FINKELSTEIN	
PARNELL	
IVAN	
DONLEY	
BRUCKMAN	
ZAWACKI	

## PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE ULMER

NAME: LUCILLE CLARK  
 TITLE:  
 ADDRESS: 525 B STREET  
 CITY: ANCHORAGE ZIP: 99501  
 PHONE: 277-3733  
 BILL NO:

SUBJECT: 75 DAY LEGISLATIVE SESSION  
 MESSAGE: I SUPPORT GOVERNOR HICKEL'S PROPOSED 75 DAY LEGISLATIVE SESSION.  
 WOULD BE TO THE TAXPAYER'S BENEFIT.

POMID: 03130611  
 DATE: 91/02/14  
 TIME: 13:06:11  
 LIO: NAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BAKER	BARNES	ADAMS
BOYER	BROWN	COLLINS
BRUCKMAN	CARNEY	COTTEN
CHOUQUETTE	DAVIDSON	DUNCAN
B.DAVIS	C.DAVIS	ELIASON
DONLEY	ELLIS	FAHRENKAMP
FINKELSTEIN	FOSTER	FISCHER
GONZALES	GRUENBERG	FRANK
GRUSSENDORF	HANLEY	HALFORD
HUDSON	IVAN	HOFFMAN
JACKO	KOPONEN	JONES
KUBINA	LARSON	KERTTULA
LEMAN	LINCOLN	MENARD
MACKIE	MACLEAN	PEARCE
MARTIN	M.A.MILLER	POURCHOT
H.W.MILLER	MOYER	RODEY
NAVARRE	PARNELL	SHULTZ
G.PHILLIPS	R.PHILLIPS	STURGULEWSKI
SHARP	TAYLOR	UEHLING
ZAWACKI		ZHAROFF

# Petersburg Shipwrights, Inc.

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Drydocking • Construction • Repair

1000 Nordic Drive • Box 378  
Petersburg, Alaska 99833  
(907) 772-3596

February 28, 1991

To all Legislators:

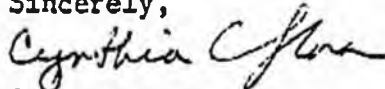
As a service industry concerned with the maintenance of marine vessels, we are strongly in favor of passage of HB49. Our customers with aluminum vessels have had no form of antifouling protection for their boats since Alaska passed their bill restricting the use of TBT. The growth that results from lack of annual maintenance can cause serious damage in the form of "pitting".

Following a steady stream of customer complaints about the lack of alternatives, I contacted several of the major marine coating manufacturers about a year ago and inquired as to whether or not they were going to ever come up with a product that would meet the State of Alaska's TBT leachate rate. They all answered NO, that the lowest they would go would be the leachate rate required by Federal law.

The difference between State and Federal laws is very small yet the negative impact on owners of aluminum vessels is quite large. Many owners out of desperation bought paint in Washington where it was sold legally until just recently when it fell under restricted pesticide control.

Let's have conformity of law! Please pass HB49.

Sincerely,



Cynthia C. Flora  
Business Manager  
Petersburg Shipwrights, Inc.



U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
ALASKA OPERATIONS OFFICE  
3200 HOSPITAL DRIVE, SUITE 101  
JUNEAU, ALASKA 99801

March 1, 1991.

REPLY TO  
ATTN OF:

AOO

The Honorable Fran Ulmer  
House of Representatives  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Ulmer:

We have reviewed HB 49, the legislation you have introduced for amending the definition of slow-leaching TBT-based marine antifouling paint. We are pleased that you have introduced this legislation and find it compatible with Environmental Protection Agency's (EPA) tributyltin (TBT) leach out standard/release rate of 4.0 micrograms per square centimeter per day at steady state conditions, cited in the federal call-in notice of July 29, 1986.

We understand the need and endorse this legislation. When enacted, it will correct the current discrepancy of two differing yet allowable TBT release rates in Alaska, and achieve a uniform standard that fully meets federal stringency requirements. Such legislation fosters flexibility and greater consistency with regard to cooperative state and federal regulatory control of commercially available and viable marine pesticide products.

Thank you for the opportunity to provide comment on this important piece of legislation.

Sincerely,

Steven A. Torok, Chief  
State Operations Section

ULMLTR.GCB

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97), 526 P.2d 3

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up. Ct. Op. No.  
P.2d 3 (1974).

Whatever may be the outer boundaries of conduct prohibited by this section as defined by AS 46.03.900(19), it is beyond dispute that the emptying of a lagoon of raw sewage into a stream running through residential areas comes within the definition of the term "pollution." *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

Definitional language of AS 46.03.900(19) incorporated in this section. — See *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

Foreseeability requirement imposed. — By use of the word "potentially" in AS 46.03.900(19) in prohibiting potentially harmful alterations of water, this chapter prohibits acts which a reasonable person would foresee as creating a substantial risk of making water actually injurious to the statutorily protected interests. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

In "potentially" cases, the state must hereafter prove that the threatened injury was foreseeable to a reasonable man in the position of the defendant at the time of the act or omission. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

The foreseeability requirement is no more than a narrowing construction. The supreme court imposes it only to give this chapter definite enough standards to survive on its face and in future cases. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

Effect of foreseeability requirement. — A foreseeability requirement assures

that fair notice is given to the defendant that his conduct is within the ambit of the statute. Such an element added to the definition of the offense, also criminalizes only that conduct which is serious enough to warrant enforcement and conviction, thus discouraging discriminatory enforcement. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

Application of foreseeability requirement is prospective. — The supreme court could not find plain error in the district court's failure to anticipate and apply to defendant the narrowing construction of AS 46.03.900(19) and this section which it ordered for future cases. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

This section makes pollution a crime without mention of any administrative order. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

This section and AS 46.03.760 contemplate direct prosecution of pollution violations. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

The authorization for direct criminal prosecution is particularly clear since it constitutes an amendment of former law. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

The department was not required to exhaust the compliance-order procedure before instituting prosecution for pollution. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

Former statutes created no crime of pollution. — See *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

**Sec. 46.03.715. Sale and use of TBT-based antifouling paint.**

(a) Except as otherwise provided in this section, a person may not sell or use TBT-based marine antifouling paint or coating in the state, nor may a person sell, rent, or lease in the state, or import into the state, or use in state water, a vessel, fishing gear, or other item intended to be partially or completely submerged in water, if the vessel, gear, or item has been painted or treated with TBT-based marine antifouling paint or coating.

(b) TBT-based marine antifouling paint or coating need not be removed from fishing gear, or from a vessel or other item that was painted or treated before December 1, 1987, but the vessel, gear, or item may not be repainted or retreated with TBT-based marine antifouling paint or coating. Fish culture or capture nets treated with TBT-based marine antifouling coating before December 1, 1987, may not be used in state water on or after December 1, 1992.

(c) Notwithstanding other provisions of this section, slow-leaching TBT-based marine antifouling paint may be imported into and sold in the state. A slow-leaching TBT-based marine antifouling paint may be applied in the state only to aluminum vessel hulls and lower outboard drive units. Aluminum vessel hulls and lower outboard drive units to which a slow-leaching TBT-based marine antifouling paint has been applied may be imported into and sold, rented, leased, or used in the state.

(d) This section does not apply to

- (1) a vessel of the United States government;
- (2) a foreign vessel in state water fewer than 90 consecutive days;

or

- (3) a vessel of 4,000 gross tons or more.

(e) In this section

(1) "slow-leaching TBT-based marine antifouling paint" means a TBT-based marine antifouling paint, but not a coating or other treatment, that has a measured release rate equal to or less than 3.0 micrograms per square centimeter per day at steady state conditions determined under the U.S. Environmental Protection Agency testing procedure, as outlined in the agency's call-in notice of July 29, 1986, on tributyltin in antifouling paints under 7 U.S.C. 136 — 136y (the Federal Insecticide, Fungicide, and Rodenticide Act);

(2) "TBT-based marine antifouling paint or coating" means a paint, coating, or treatment that contains tributyltin, or a triorganotin compound used as a substitute for tributyltin, and that is intended to control fouling organisms in a fresh water or marine environment;

(3) "vessel" means watercraft used or capable of being used as a means of transportation on water, including

- (A) aircraft equipped to land on water; and
- (B) barges. (§ 2 ch 67 SLA 1987)

**Cross references.** — For provisions applicable to the importation of TBT-based paint after June 13, 1987, and until December 1, 1987, see § 3, ch. 67, SLA 1987 in the Temporary and Special Acts.

**Sec. 46.03.720. Construction and operation of certain facilities prohibited.** (a) A person may not construct, extend, install or operate a sewerage system or treatment works, or any part of a sewerage system or treatment works, until plans for it are submitted to the department for review and the department approves them in writing and issues a written permit.

(b) A person may not construct, extend, install or operate a public water supply system, or any part of a public water supply system, until plans for it are submitted to the department for review and the department approves them in writing.

(c) The department may waive the requirements of this section. (§ 3 ch 120 SLA 1971; am § 7 ch 220 SLA 1976)

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**FISCAL NOTE**

**STATE OF ALASKA  
1991 LEGISLATIVE SESSION**

**BILL NO. HB49**

Revision Date: \_\_\_\_\_ Department Affected: Environmental Conservation  
 Title: Amending the definition of slow-leaching TBT-based marine antifouling paint BRU: Environmental Health  
 Component: Palmer Laboratory  
 Sponsor: Ulmer, Koponen  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Douglas C. Donegan, Director *DD* Phone: 465-2696  
 Division: Division of Environmental Health Date: Jan. 28, 1991  
 Approved by Commissioner: *Menderson-Swift, A. John Smith*  
 Agency: Department of Environmental Conservation Date: \_\_\_\_\_

# Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

April 25, 1991

TO: Senator Lloyd Jones, Chair  
Senate Resources Committee

FROM: Rep. Fran Ulmer

RE: HB 49 "An act amending the definition of slow-leaching TBT-based marine anti fouling paint."

I am requesting a hearing for this bill at your earliest convenience. HB 49 simply changes a testing standard for TBT based paint in order to conform with new federal regulations. In hearings before the House, no one has written or testified against the bill.

TBT is an ingredient widely used in marine paints to prevent the growth of barnacles and algae on boat hulls. It is also a highly toxic pesticide. In 1987 the legislature passed a bill and joined other west coast states in sharply reducing the amount of TBT in paint that can be sold in Alaska.

Unfortunately, the testing standard for TBT which "trips" the ban on its sale is just one microgram per centimeter per day lower than the tough standard that has since been established by the EPA and other western states. As a result, many marine paints which meet the federal requirement are not allowed to be sold in Alaska. The new bill would solve the problem by changing the level to be the same as federal standards.

Several organizations that lobbied strenuously for the lower standards in 1987, including the Pacific Fisheries Legislative Task Force, support matching the state's standards with the new federal level. Marine paint distributors and sellers say the bill will remove a significant hindrance to commerce. California, Oregon and Washington have all crafted their laws to meet the new EPA standards. The Task Force says the new standard still effectively curbs the threat to marine life, while allowing commerce to continue without undo restraint.

Thank you for your consideration.

District 4B — Juneau

P.O. Box V • Juneau, Alaska 99801-3100 • (907) 465-4947



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# Alaska State Legislature

1991



## REPRESENTATIVE FRAN ULMER

FOR IMMEDIATE RELEASE

March 25, 1991  
Contact: Barnaby Dow  
465-4947

### MARINE PAINT BILL PASSES HOUSE

(JUNEAU) - Boat owners would find more types of marine paint on store shelves under a bill passed by the House of Representatives on Monday. The vote was 40 to 0. HB 49, sponsored by Juneau Representative Fran Ulmer, changes state testing standards restricting the uses of TBT-based paints in order to conform with tough new federal standards.

TBT is an ingredient widely used in marine paints to prevent the growth of barnacles and algae on boat hulls. It is used widely on aluminum hulled craft. TBT is also a highly toxic pesticide. In 1987 the legislature passed a bill and joined other west coast states in sharply reducing the amount of TBT in paint that can be sold in Alaska.

However, the testing standard for TBT which "trips" the ban on its sale is just one microgram per centimeter lower than the tough standard that has since been established by the EPA and other western states. As a result, many marine paints which meet the federal requirement cannot be sold in Alaska. The new bill would solve the problem by changing the level to match the federal standard.

(OVER)

submissions are currently deficient. Many submissions did not include raw data (instrument readings), adequate information on instrument calibration, or sufficient data on blanks and controls. The descriptions of leaching and analytical methodologies were incomplete. Information needed to demonstrate that proper environmental controls (pH, temperature, and salinity) were maintained were not included in most submissions. In some cases, samples were stored beyond the period specified by the ASTM/EPA method; however, storage stability data were not submitted.

At this time no release rate studies have been validated. Registrants were informed in an Agency letter dated August 12, 1988, that additional data/information were required to be submitted before any decisions regarding specific release rates can be made.

In addition to the above deficiencies, many of the submitted studies did not adhere to the ASTM/EPA method specification that the TBT concentration in the measuring tank not exceed 50 ppb. This restriction was imposed to eliminate the possibility of autoinhibition of TBT release from the paint film. EPA and the ASTM committee suspect that the 50 ppb restriction may be too conservative. Testing is being initiated at EPA's Environmental Chemistry Laboratory (ECL) in Bay St. Louis, Mississippi, to determine the true autoinhibitory threshold.

After the ECL test results are available and the registrants respond to the above Notice, the Agency will reevaluate each study. If it is determined that the measuring tank concentration did not exceed the true autoinhibitory threshold and if the Agency finds that the registrant has supplied the additional data/information necessary to validate his submission, the Agency will use the study for regulatory purposes.

#### B. Release Rate Restriction

The proposed restrictions in the Preliminary Determination specified that no TBT antifouling paint could be sold or distributed which exceeds the short-term cumulative release (cumulative release over the first 14 days of the ASTM/EPA test) of  $168 \mu\text{g TBT}$  (includes tributyltin and triphenyltin)/ $\text{cm}^2$  or an average daily release rate (average over weeks 3 through 5) of  $4.0 \mu\text{g TBT}/\text{cm}^2/\text{day}$ . The proposed short-term cumulative release restriction was indexed to the average release rate restriction ( $3 \times$  the average release rate over 14 days).

The short-term cumulative release was intended to reflect the initial surge of TBT release when a freshly painted vessel is first placed in the water. It was calculated by summing the time weighted release for each sampling over the first 14 days of the test. The time weighted release was calculated by multiplying the rate of TBT release for a given sampling time by the preceding length of time between sampling times. The average release rate reflects the long-term TBT release pattern that is established after the initial surge. It is defined as a simple average of the release rates measured over a certain number of weeks.

In the Preliminary Determination, release rate values were normalized to adjust for variation between testing facilities and the average daily release rate was defined as the mean of individual release rates over weeks 3 through 5. The Agency received numerous comments from TBT registrants and the FIFRA Scientific Advisory Panel regarding this analysis of the release rate data. Most commenters felt that the proposed release rate restrictions should be adjusted to account for the variability of the test method but that normalization was not an appropriate means of accounting for variability.

The standard test paint data were the only data common to all registrants and as such were used to evaluate the variability of the ASTM/EPA release rate method. Additional standard test paint data and information on testing procedures from individual testing facilities submitted after the Preliminary Determination was issued, were included in the Agency's analysis of the method's variability. It was not possible to establish that variation among testing facilities was attributable to systematic error, as was previously assumed.

Variation associated with testing facilities is now assumed to represent a component of method variance. Normalization is not appropriate under these circumstances, and the Agency agrees that release rate data should not be normalized. The available data could not be analyzed by standard statistical procedures because sampling was unbalanced (a wide variation in the number of samples per laboratory). The Agency could only perform a qualitative analysis of the method's variability. It was determined that most of the variability was associated with testing among different laboratories and sampling over time within a given test. Variation between replicate cylinders and between replicate runs was low by comparison.

The Agency has determined that, due to the incomplete nature of the release rate data submissions and the uncertainty over autoinhibition, it would be inappropriate at this time to try to quantify the variability associated with the EPA/ASTM method. The Agency is unable to determine whether the high variance of the results is attributable solely to the inherent variability of the method or to possible improper conduct of the release rate studies. It would also be inappropriate to determine a release rate restriction which attempts to account for this variability based solely on the current data base.

For the present the Agency is keeping the Special Review open on the issue of release rates and is deferring to the interim release rate restriction ( $4 \mu\text{g}/\text{cm}^2/\text{day}$ ) and certification program established by OAPCA. Products will be certified on the basis of the average daily release rate calculated from validated release rate studies conducted according to the current draft ASTM/EPA method. Any new release rate data submission or resubmission (such as those required by the Agency's August 12, 1988 letter) will be reviewed and a determination regarding certification reached within 90 days of the Agency's receipt of such data.

The average daily release rate will now be calculated as the non-normalized mean of all release rate measurements during weeks 3 through 10. In the Preliminary Determination the average daily release rate was defined as the average of release rates measured over weeks 3 through 5. However, examination of the standard paint release rate data indicated that individual release rate measurements made during week 6 and beyond were equivalent to those made during weeks 3 through 5. Release rate measurements beyond 10 weeks may be required for paints with atypical patterns of TBT release over time. The additional measurements included in the calculation of the average release rate are expected to increase accuracy.

The Agency will consider release rate levels again when additional environmental monitoring data are available and the release rate method is improved. The Agency has already identified certain procedures within the method as potential sources of variability and has initiated experimentation to determine how the release rate method can be improved. This testing is further discussed in Unit VII. When the research is completed, the Agency may decide to replace the current OAPCA release rate restriction

27/EPA  
Testing  
method

HB

57

**ALASKA STATE LEGISLATURE**  
**REPRESENTATIVE MIKE NAVARRE**

Co-Chair  
House Finance Committee  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3779

**SPONSOR STATEMENT**

**DATE:** May 1, 1991

**TO:** Senator Lloyd Jones, Chairman, Senate Transportation Committee

**FROM:** Representative Mike Navarre *Mike*

**SUBJECT:** House Bill 57, An Act relating to leases of state land for fisheries development.

.....

Historically, land plans have been considered important to the proper growth and development of the resources of the State of Alaska. Shore fisheries have developed in some cases without the benefit of a land use/management plan. The Department of Natural Resources (DNR) for a variety of reasons has not completed or in some instances started the planning process. In recent times, applicants have gone through the process and when the end appears to be near the applicant is told that DNR cannot issue the lease because there is no land management plan.

HB 57 provides that DNR may issue setnet leases in lieu of an operable land plan. This bill will expedite the leasing process and at the same time offer protection to the shore fishery user.

HB 57 requires that land management plans in shore fishery areas be completed in a timely manner, specifically January 1, 1997. The bill sunsets the authority of the Director to issue the setnet lease without a land management plan.

HB 57 has a few changes that were made in the House Finance Committee. First, the date for completion of the land use plans was changed from 1995 to 1997. Second, the fiscal note was moved to zero by the House Finance Committee. The Finance Committee concluded that the same personnel that are presently on board and completing the Cook Inlet plan could transfer their energies to the Kodiak land use plan.

HB 57 is widely supported by fishermen and the fishing associations. I know of no opposition to this bill and its intent to protect the fishing industry from potential chaos.

DISTRICT 5

34824 K-Beach Road • Soldotna, Alaska 99689 • (907) 262-7842



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# SENATE COMMITTEE REPORT

DATE: 4/29/91

FURTHER:

DATE TURNED INTO OFFICE: 5-13-91

Resources Committee considered CS FOR HOUSE BILL NO. 57 (FINANCE)

"An Act relating to leases of state land for fisheries development; and providing for an effective date."

and recommended:

- replace with \_\_\_\_\_ CS \_\_\_\_\_
- or adopt \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- \_\_\_\_\_ letter of intent adopted

- same title
- new title
- technical title change (HB on \_\_\_\_\_)

do pass

do not pass

no recommendation

individual recommendations

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

**ATTACHES NEW FISCAL NOTE(S):**

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

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

appropriation-no fiscal note

**APPROVES PREVIOUS:**

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

zero fiscal note(s) DNR CS4351 FD. 4/12/91

Governor's bill w/fiscal note

**SIGNING DO PASS:**

*[Handwritten signatures]*

**OTHER RECOMMENDATIONS:**

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

*[Handwritten signature]*

Chair: Signature and Recommendation

APRIL 30, 1991  
FAIRBANKS, ALASKA

FAX # 465-4565

MEMBERS OF THE RESOURCE COMMITTEE  
STATE OF ALASKA LEGISLATURE  
(Attn. All Committee Members)  
P.O. BOX V  
JUNEAU, ALASKA 99811

Dear Sirs and Ladies of the Resource Committee,

I'm writing to enlist your support for the passage of H.B. #57: "AN ACT RELATING TO LEASES OF STATE LAND FOR FISHERIES DEVELOPMENT; AND PROVIDING FOR AN EFFECTIVE DATE."

My family and I have fished in the Kodiak Area for the past 22 years. We are set-netters at High Rock Fish Camp on the Southern tip of Kodiak Island in Alitak Bay.

In 1980 we applied for and received ALASKA STATE SHORE LEASES which have successfully protected our fishing sites since that time. As long-time Alaskan fishermen at these sites we have appreciated this measure of stability. Our original shore leases were written for a period of 10 years --with renewal provisions. However, because there is no current issue of a land use plan for Kodiak Island all shore lease renewals have been "put on hold" in this area. As a result of this limbo our family's shore leases expired in the year 1990-91; and--even though we re-applied and paid for renewals several months before the date that it became apparent Kodiak did not have a "land use plan," and--according to law--we have lost our protection. We are now exposed to "claim jumping" by other fishermen who have no time, money, effort nor emotion invested in our sites.

Furthermore, because we were issued shore leases, we moved ahead on the good faith that the State of Alaska would secure and protect our fishing sites--only to find ourselves now in a condition where the state has failed to carry out its responsibility.

As this issue now stands our sites and all the Alitak/Moser Bay sites are open to violation by set-netters from all areas of Kodiak Island. This is a frightening possibility.

My wife and I have contacted the Kodiak Protection Department and they informed us that they "had no intentions of honoring our long-time fishing tradition and history of leases. We are fishing sites that have been fished continuously from the first year of Alaskan Statehood. Without passage of H.B. #57 with its assurance, and as the Regs now read, my wife and I, my son and his wife will have to cover each of our combined eight sites with a boat and crew at precisely the exact moment the fishing season opens in order to be the first fisherman to place a net in the water at each site or we'll run the very definite risk of losing one or more of our long time sites to "claim jumpers." If we are challenged the first hour of the first opening fishing period of the year --the solution by protection officers will be to arrest both parties--which is no solution--and will necessitate a court action before a judge.

To show our intent to be continuous fishermen for these sites let me describe to you some of the efforts and procedures my family and I have put into practice over the past 20 years at High Rock Fish Camp. We have purchased the land on which our cabins are located; we have dug a permanent well on this property; we have built two, family sized dwellings, a bunk house for crew members, a large workshop and storage shed, and a generator house; we have electrified our cabins and the shop providing for electric washers and dryers, lights, power tools, sophisticated welding equipment and other specific tools for aluminum-boat building and maintenance; we have purchased numerous nets and tailored each to its specific location for the most efficient means of harvesting salmon; we have permanent and portable power net washers so that our nets will remain clean and strong. We plan to remain in the fishing business and to pass our holdings on to our children and grandchildren. We are not marauding transients who come by ready to grasp any site available without putting anything of value into the profession or the area.

The passing of H.B. #57 would give ours and all other expired leases the protection, stability and security for the orderly harvest and efficient handling of this state's great fishing resource.

My family and I would like to offer our services in assuring the passage of this bill. Any advice on how we can help would be greatly appreciated.

We appreciate your efforts in dealing with this problem.

Sincerely yours,

Mr. & Mrs. Donald R. Blanc

Mr. and Mrs. Donald R. Blanc  
291 Gold ~~Call~~ Avenue  
Fairbanks, Alaska  
99712  
(907)457-7001

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF LAND AND WATER SOUTHCENTRAL REGION

WALTER J. HICKEL, GOVERNOR

3801 C STREET  
BOX 107005  
ANCHORAGE, ALASKA 99510-7005

March 6, 1991

Heather Bradner  
House Resource Committee

Re: Shore Fishery Leases

Dear Ms. Bradner:

The statistics for Shore Fishery Leases and applications are as follows:

Total issued = 1,083  
Total pending = 387

#### Alaska Peninsula

Issued= 70  
Pending= 22

#### Kodiak

Issued= 106  
Pending= 31  
Renewal pending (approx)= 21

#### Cook Inlet

Issued= 393  
Pending= 161  
Renewal pending (approx)= 20

Kathleen Sheehan Dugan *KSD*  
Natural Resource Officer

FIGURE 1.

# PLANNING PROCESS

**1. Identify Issues**

Hold public meetings to identify issues and concerns in the area.

**2. Gather Information**

Throughout the planning process collect information about natural resources, present and past land use, land ownership, and the local economy.

**3. Prepare and Evaluate Land Use Alternatives**

Describe possible choices for managing state land based on public interests, local resources, and state policies. Describe the effects of each choice on goals for the management of an area.

**4. Public Reviews Alternatives**

Hold public meetings to review the land use choices and identify those that people prefer.

**5. Prepare Draft Plan**

The planning team and advisory board create a draft plan using public and agency comments. The agencies review the first draft and settle any land use conflicts that remain.

**6. Public Reviews Draft Plan**

Hold public meetings to provide the public the opportunity to comment on the draft plan and identify parts that need to be changed.

**7. Prepare Final Plan**

Review agency and public comments and revise the plan. The plan is prepared for publication.

**8. Approve Plan**

The Commissioner of the Department of Natural Resources approves and signs the plan.

**9. Adopt and Implement Plan**

The plan guides land management decisions in the planning area.

FIGURE 2.

# Alaska Department of Natural Resources AREA PLANS






January 1991



Alaska Department of  
**NATURAL  
RESOURCES**

### AREA PLANNING STATUS

-  Completed area plans
-  Area plans in progress
-  Not scheduled for area plans at this time

ALASKA STATE LEGISLATURE  
REPRESENTATIVE MIKE NAVARRE

Co-Chair  
House Finance Committee  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3779

May 1, 1991

MEMORANDUM

TO: Senator Lloyd Jones, Chairman, Senate Resources Committee

FROM: Representative Mike Navarre 

SUBJECT: House Bill 57, An Act relating to leases of state land for fisheries development.

.....

I would like to request that the Senate Resources Committee schedule House Bill 57 for a hearing at their earliest convenience. HB 57 grants relief to persons seeking to finalize their shore fisheries setnet lease. The passage of this bill into law would reduce potential chaos that will exist if there are no leases in the areas without land management plans, specifically Cook Inlet and Kodiak.

Thank you for your assistance in this matter.



## Shore Fishery Leasing

Division of Land & Water Management • May 1990

As manager of most of the state's tidelands out to the three-mile limit, the Department of Natural Resources issues shore fishery (set net) leases. A shore fishery lease gives the leaseholder first priority to use a shore fishery site for commercial salmon set net fishing on state-owned tidelands. This "first priority" applies only when the leaseholder is personally fishing the site.

### **Is a shore fishery lease required for set net fishing?**

No, a shore fishery lease is not required for set net fishing. However, a person holding a valid shore fishery lease may exclude others from set net fishing within his or her lease area.

### **Who may apply for a shore fishery lease?**

An applicant must have a valid limited entry permit or an interim-use salmon set net permit. In addition, the applicant must be a citizen of the United States, and must be at least 18 years of age. A lease for a minor who is at least 10 years old may be issued to a legal trustee until the child reaches age 18. Then the lease is automatically transferred to the child's name.

### **When may I apply for a shore fishery lease?**

New applications may be filed each year between May 1 and September 1.

### **How do I apply for a shore fishery lease?**

First, decide where you want to locate your lease. Then check land status. Generally, if the tidelands are not already leased to another setnetter, you may stake your lease area. After that, you have thirty days to file your application to the Department of Natural Resources at the address shown on the back of this fact sheet. You must also turn in a sketch map with your application and meet the other requirements of 11 AAC 64.260 (part of the Department of Natural Resources shore fishery regulations). Later, you will have to prepare and file a shore fishery diagram.

### **What fees are charged for a shore fishery lease?**

A non-refundable filing fee of \$50 is required with each application. There is a \$75 diagram review fee and rent is \$150 per year. The first year's rent must be paid before the lease is issued. Applicants must also pay the cost of public notice (newspaper ad).

### **Do I have to stake my site?**

Yes. Each site must be staked on the shore above the high tide line before submitting an application. The stake must carry a sign with your name, mailing address, limited entry permit number and date of staking. An application must be filed within 30 days of staking the site.

### **Does staking give me exclusive use of a site?**

No. Staking is part of the application process for a shore fishery lease. It notifies others that you have applied to lease the site. Only after a lease has been issued do you have first priority to fish your site when you are physically set net fishing there.

### **What areas are open to set net leasing?**

Only certain areas in Southcentral Alaska are open. They are located in the Alaska Peninsula area, Bristol Bay, Kodiak Island waters, Cook Inlet, and the Eshamy Bay district in Prince William Sound. These areas are defined in the Board of Fisheries' commercial finfish regulations.

### **May I locate my site anywhere I wish within the open areas?**

No. You must contact the Department of Fish and Game to find out which tide and submerged lands are open to set net fishing on a permanent basis. Set net leases will not be issued in areas that are opened only on a temporary or irregular basis.

### **Does the state have a list of set net sites available for leasing?**

No. You must locate your own site within the open areas.

### **How long is a shore fishery lease valid?**

A lease is issued for up to 10 years. The leaseholder may apply for a renewal at the end of the lease term.

### **How many set net sites may I lease?**

The number varies depending on the commercial finfish regulations for the area, except for Cook Inlet where the maximum is three sites.

### **Do I have to apply separately for each set net site?**

No. Sites that are within a reasonable distance (approximately two miles) of each other may be included in one application.

*continued*