ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672
8072 HOUSE RESOURCES

337

AS 16.10.400 - 16.10.470;

(8) if surplus **viable** salmon eggs are sold by a permit holder to another permit holder, a copy of the sales transaction be provided to the department;

(9) [REPEALED

(10)] a hatchery be located in an area where a reasonable segregation from natural stocks occurs, but, when feasible, in an area where returning hatchery fish will pass through traditional salmon fisheries.

* **Sec. 3.** AS 16.10.440(b) is amended to read:

(b) The Board of Fisheries may, after the issuance of a permit by the commissioner, amend by regulation adopted in accordance with AS 44.62 (Administrative Procedure Act), the terms of the permit relating to the source and number of salmon eggs **from wild stock to be incubated**, the harvest of fish by hatchery operators, and the specific locations designated by the department for harvest. The Board of Fisheries may not adopt any regulations or take any action regarding the issuance or denial of any permits required in AS 16.10.400 - 16.10.470.

* **Sec. 4.** AS 16.10.450(a) is amended to read:

(a) Except as otherwise provided in a contract for the operation of a hatchery under AS 16.10.480, a hatchery operator who sells salmon returning from the natural waters of the state, [OR] sells **viable** salmon eggs to another hatchery operating under AS 16.10.400 - 16.10.470, **or sells salmon eggs as authorized by a permit issued under AS 16.05.831(b),** after utilizing the funds for reasonable operating costs, including debt retirement, expanding its facilities, salmon rehabilitation projects, fisheries research, or costs of operating the qualified regional association for the area in which the hatchery is located, shall expend the remaining funds on other fisheries activities of the qualified regional association.

* **Sec. 5.** AS 16.10.470(a) is amended to read:

(a) A person who holds a permit for the operation of a salmon hatchery under AS 16.10.400 - 16.10.470 shall submit an annual report no later than December 15 to the department and to the qualified regional association for the area in which the hatchery is located, to include [BUT NOT BE LIMITED TO] information pertaining to species; brood stock source; number, age, weight, and length of spawners; number

of eggs taken **for incubation** and fry fingerling produced; and the number, age, weight, and length of adult returns attributable to hatchery releases, on a form to be provided by the department.

*** Sec. 6.** AS 16.40.210(b) is amended to read:

(b) This section does not restrict

(1) the fishery rehabilitation, enhancement, or development activities of the department;

(2) the ability of a nonprofit corporation that holds a salmon hatchery permit under AS 16.10.400 to sell

(A) salmon returning from the natural water of the state, as authorized under AS 16.10.450**;**

(B) [, OR] surplus **viable** salmon eggs, as authorized under AS 16.10.420 and 16.10.450; **or**

(C) salmon eggs, as authorized by a permit issued under AS 16.05.831(b);

(3) rearing and sale of ornamental finfish for aquariums or ornamental ponds provided that the fish are not reared in or released into water of the state.

*** Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX 25526
JUNEAU, ALASKA 99802-5526
PHONE: (907) 465-4100

March 1, 1994

The Honorable Bill Williams
Alaska State Legislature
Capitol Building, Room 128
Juneau, AK 99801-1182

Dear Representative Williams:

House Bill 448 recently moved out of the House Special Fisheries Committee. Its next committee of referral is the House Resources Committee. I am requesting a hearing of this bill by your committee at your earliest opportunity.

A number of minor technical amendments suggested by the aquaculture associations were adopted by the Fisheries Committee. These amendments were supported by the department. In one instance, the full wording proposed was not included. This is on page 3, line 12. The words <u>from wild stocks</u> were intended to precede <u>to be incubated.</u> I request that the Resources Committee add <u>from wild stocks</u> to the language adopted by the Fisheries Committee. The desired language on page 3, line 12 will then read <u>from wild stocks to be incubated.</u>

I hope this legislation receives a favorable hearing from the Resources Committee. The department will have staff at the hearing to testify in support of the bill and to answer questions.

Sincerely,

Carl L. Rosier
Commissioner

cc: Raga Elim, John McMullen

11-K2LH

GOVERNOR HICKEL'S
INCREASE VALUE OF HATCHERY HARVESTS
LEGISLATION
(SB 281 & HB 448)

Governor Hickel has proposed legislation that will derive as much value as possible from returning hatchery salmon by allowing the harvest and sale of roe (eggs) from salmon that are otherwise unsuitable for human consumption.

Salmon naturally deteriorate in quality after they return to the vicinity of their natal stream. In the case of hatchery salmon, this is the site from which they were released. This deterioration is characterized by discoloration of the skin, softening of the flesh and loss of meat color.

Hatcheries and hatchery remote release sites are located where the majority of the salmon produced contributes to common property fisheries. Harvest in the common property fisheries usually accounts for 50 to 90 percent of the harvest of hatchery production. The remainder of the harvest is taken in a terminal hatchery location or a terminal hatchery remote release site. This is done to prevent overharvest of wild stocks while providing for a higher harvest rate on hatchery stocks.

A portion of those fish available in the terminal sites have deteriorated to the point that the flesh is unsuitable for human consumption. However, the salmon roe still have considerable value. This legislation would legalize the harvest and sale of roe, and the discard of carcasses, from hatchery salmon which had returned to a terminal location and were determined by the commissioner of the Department of Fish and Game to be unsuitable for human consumption.

All harvest of salmon roe provided for under this legislation would be conducted under a permit system established by regulation. This would ensure that only hatchery salmon from terminal sites were harvested for their roe.

Hatchery operators, commercial fishers, and salmon processors would benefit from this legislation. It will provide a more efficient and complete utilization of Alaska's hatchery returns by allowing the harvest of roe from salmon which otherwise yield no value.

It is particularly important at present to extract every dollar of value possible from Alaska's salmon returns given the extremely difficult financial times facing Alaska's salmon industry.

HB 448

WALTER J. HICKEL
GOVERNOR

P. O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 4, 1994

The Honorable Ramona Barnes
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Barnes:

Under authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the waste and use of salmon and parts of salmon, and to permits for and operation of salmon hatcheries.

The bill would repeal and reenact AS 16.05.831 (waste of salmon) to authorize the commissioner of fish and game to issue permits to allow the removal and sale of eggs from hatchery-produced salmon and the discard of the salmon carcasses The permits would allow this practice only for salmon that return to hatchery terminal and special harvest areas or remote sites from which hatchery smolt are released, and that are determined by the commissioner of fish and game to be unfit for human consumption. This is a practice that is prohibited by existing AS 16.05.831. It is anticipated that persons who would be authorized under such a permit are commercial fishermen who are participating in a designated terminal fishery and, perhaps, hatchery operators or fish processors.

The language that appears in the bill as AS 16.05.831(b)(2), regarding permits authorizing "other uses of salmon," is currently contained in AS 16.05.831(b).

The bill also cures several problems in existing AS 16.05.831. Presently, that statute applies only to salmon that are "intended" for certain uses. Because that statute does not indicate whose intent is to be measured, this ambiguity can cause enforcement problems. Also, the specified uses are not meaningful because they cover every conceivable use of salmon. The bill's repeal and reenactment of AS 16.05.831 deletes this problematic language from the law.

Because of present market conditions, it is important for the fishing industry and hatchery operators to be able to recover as much value as possible from salmon resources. The bill will contribute to this goal and, at the same time, will allow the state to more effectively enforce the statute on waste of salmon. For these reasons, I urge your prompt consideration and passage of the bill.

Sincerely,

Walter J. Hickel

Walter J. Hickel
Governor

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM February 9, 1994

SUBJECT: Sectional Summary of HB 448; An Act relating to waste of salm .. and parts of salmon; relating to permits for and operation of a salmon hatchery; and providing for an effective date. (Work Order No. 8-GH2028\A)

TO: Representative Carl Moses, Chair
House Special Committee on Fisheries

FROM: George Utermohle
Legislative Counsel

You have requested a sectional summary of HB 448; An act relating to waste of salmon and parts of salmon; relating to permits for and operation of a salmon hatchery; and providing for an effective date. HB 448 was drafted by the Department of Law and introduced by the Governor.

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

Section 1 of the bill repeals and reenacts AS 16.05.831. Subsection (a) prohibits the waste of salmon and defines "waste." Subsection (b) authorizes the commissioner of fish and game to issue permits that (1) allow the discard of carcasses of hatchery fish if the fish are taken in specified locations, the eggs are removed, and the carcasses are unfit for human consumption or (2) allow other uses of salmon that are consistent with maximum and wise use of the resource. Subsection (c) authorizes the commissioner to adopt regulations to implement subsection (b). Subsection (d) prescribes the penalty for violating this section or regulations adopted under this section.

Sections 2 - 5 of the bill amend provisions of AS 16.10.420, 16.10.440(b), 16.10.450(a), and 16.10.470(a) to allow nonprofit salmon enhancement facilities to sell salmon eggs from surplus brood stock and from hatchery salmon that were taken in specified locations and were not fit for human consumption.

Section 6 of the bill amends AS 16.40.210(b) to clarify that the sale of eggs from surplus salmon brood stock or from hatchery salmon that were taken in specified locations and were not fit for human consumption does not violate the prohibition against finfish farming.

Section 7 of the bill provides that the bill takes effect immediately.

GU:pl
94-119.plm

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 448(RES)

Revision Date: 3/8/94
Title: Relating to the waste and use of salmon

Sponsor: House Rules
Requestor: House Resources Committee

Dept. Affected: Fish and Game
BRU: Commercial Fisheries Management & Develop.
Component: Fisheries Management

COMPONENT SERIAL NO. 1941

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: $ 0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Bob Clasby
Division: Commercial Fisheries Management and Dev
Approved by Commissioner:
Agency: Alaska Department of Fish and Game

Phone: 465-6120
Date: March 8, 1994
Date: March 8, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 448(FSH)

Revision Date: 2/18/94
Title: Relating to the waste and use of salmon

Sponsor: House Rules
Requestor: House Special Fisheries Committee

Dept. Affected: Fish and Game
BRU: Commercial Fisheries Management & Develop.
Component: Fisheries Management

COMPONENT SERIAL NO. 1941

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: $ 0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Bob Clasby
Division: Commercial Fisheries Management and Dev.
Approved by Commissioner:
Agency: Alaska Department of Fish and Game

Phone: 465-6120
Date: February 18, 1994
Date: February 18, 1994

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No. 1
Bill Version: HB 448
(H) Publish Date: 2/4/94

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. _

Revision Date:
Title: Relating to the waste and use of salmon
Sponsor:
Requestor: Governor

Dept. Affected: Fish and Game
BRU: Commercial Fisheries Management & Develop.
Component: Fisheries Management

COMPONENT SERIAL NO. 1941

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: $ 0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Bob Clasby
Division: Commercial Fisheries Management and Dev.
Approved by Commissioner:
Agency: Alaska Department of Fish and Game

Phone: 465-6120
Date: January 10, 1994
Date: January 10, 1994

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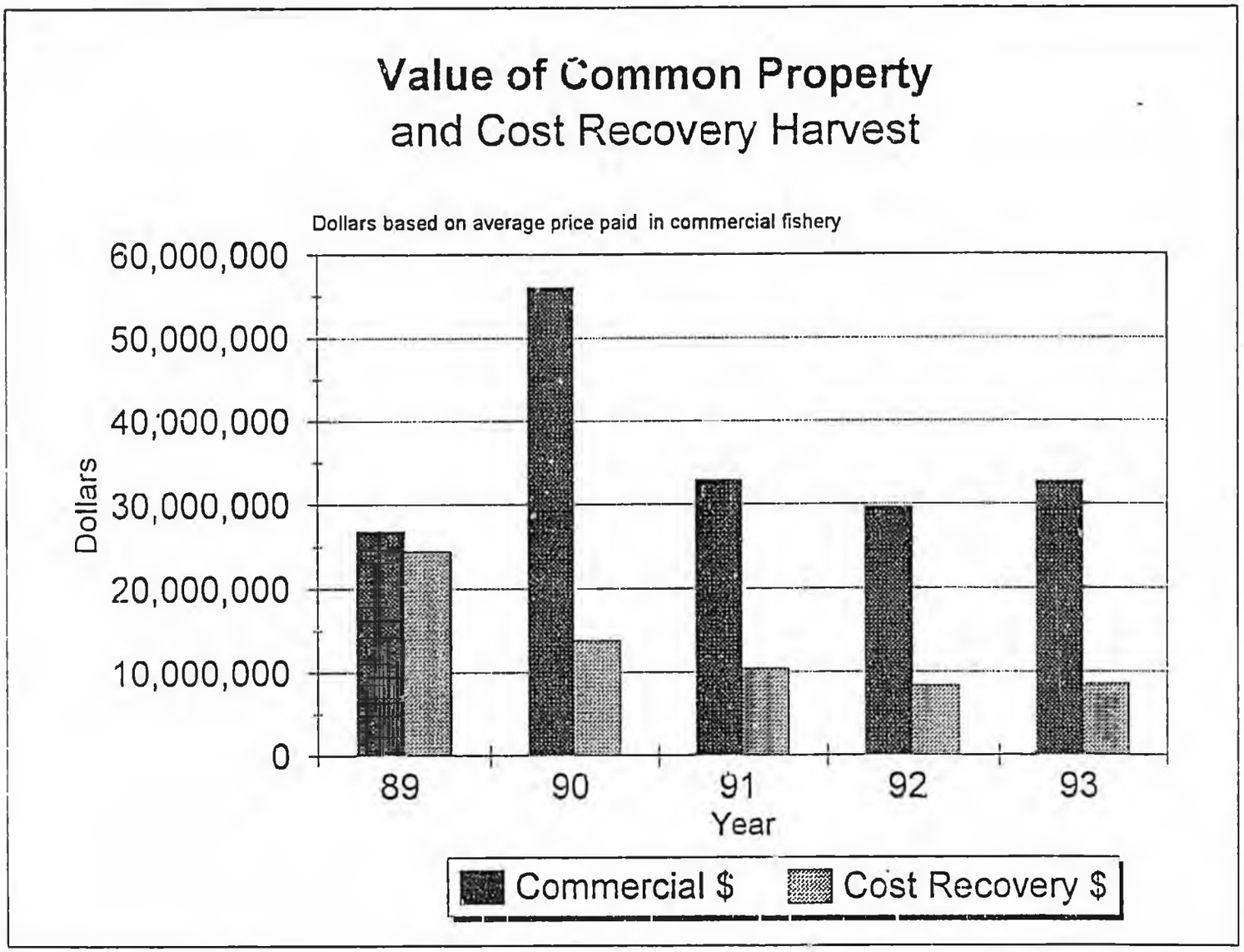
COMMITTEE COPY


Value of Common Property
and Cost Recovery Harvest
Dollars based on average price paid in commercial fishery
60,000,000
50,000,000
40,000,000
30,000,000
20,000,000
10,000,000
0
Dollars
89
90
91
92
93
Year
Commercial $
Cost Recovery $

COOK INLET
AQUACULTURE ASSOCIATION

HC 2, BOX 849
SOLDOTNA, AK 99669-9707
(907) 283-5761

February 14, 1994

Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Dear Legislators:

Cook Inlet Aquaculture Association supports the concept expressed in SB 281 and its companion HB 448. It is a good idea to allow operators of special harvest areas or fishermen working therein to remove and sell eggs from salmon that are determined, by the Commissioner of Fish and Game, to be unfit for human consumption.

The bills would allow hatchery operators and fishermen the opportunity to recover the rather substantial egg value and dispose of otherwise useless carcasses without causing what would previously have been a "wanton waste". The alternative, under current law, is to forgo harvest of the fish and "waste" both the highly valued eggs and the useless carcass.

Sincerely,

Thomas E. Mears

Thomas E. Mears,
Executive Director

cc: Ray Gillespie

March 7, 1994

Representative Bill Williams, Chairman
House Resources Committee
Alaska House of Representatives
State Capitol Building
Juneau, Alaska 99811

Dear Mr. Chairman:

This morning I teleconferenced into the House Resources Committee meeting at which CS for House Bill 448 (Resources) was discussed. Your Committee apparently did not have time to take all testimony, but that was okay because I supported the Committee substitute which you approved.

Mr. Chairman, I am John McMullen, President of Prince William Sound Aquaculture Corporation (PWSAC), based at Cordova. We own and operate two salmon hatcheries and also fund and operate the three state-owned hatcheries located in the Prince William Sound/Copper River Region.

It is PWSAC's policy to provide 70% of our returning hatchery salmon to the common property fisheries. The hatcheries utilize the remaining 30% for brood stock and cost recovery. In 1991, the Alaska Board of Fisheries adopted a salmon allocation and management plan for Prince William Sound. That plan was developed by our Regional Planning Team, which is comprised of representatives of the ADF&G and PWSAC. That plan provides for the sustained yield of wild salmon and also for the allocation of all harvestable salmon to the seine and gillnet fisheries and the hatcheries.

I am testifying in support of CS for House Bill 448 (Resources). I am not in favor of wasting salmon carcasses if it is at all possible to sell them or otherwise utilize them. I favor a hatchery sales program in which value is received for both fish flesh and eggs. In fact, PWSAC is developing and marketing value-added salmon products this year as a means of increasing its income from pink salmon which would otherwise have been sold for about 15-16 cents per pound.

I also realize that a hatchery operator might find him/herself in a position where the hatchery's returning fish could not be sold. That happened to us in 1991, and has happened recently at a hatchery in Southeast Alaska. At such a time, it seems reasonable to me that the ADF&G commissioner be given the authority to authorize the sale of eggs-only on a case by case basis, as would be enabled by HB 488.

I support the Committee amendment of Sec 3. AS 16.10.440 (b), which references the Board of Fisheries' authority to allocate eggs from wild stocks for the purpose of developing hatchery brood stocks. It is essential the the Board of Fisheries exercise this control over the use of wild stocks.

Thank you for this opportunity to testify.

John McMullen

Corporate Office • Post Office Box 1110 • Cordova, Alaska 99574-1110
phone: 907/424-7511 * fax: 907/424-7514

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 25526
JUNEAU, ALASKA 99802-5526
PHONE: (907) 465-4100

February 17, 1994

The Honorable Carl Moses
Alaska State Legislature
State Capitol Building, Room 204
Juneau, AK 99801-1182

Dear Representative Moses:

I will be out of town on February 18th, when the House Special Fisheries Committee holds its first hearing on House Bill 448. I hope this legislation receives a favorable hearing from the Fisheries Committee.

Since its introduction, I have heard some concerns expressed about this legislation and I would like to briefly address those. The first issue has been how the harvest of roe from hatchery salmon fits with other state policies, regulations, and law on roe stripping.

This bill provides an exception to the general practice of requiring utilization of the carcass associated with the harvest of roe. I believe there are a number of factors that create a reasonable basis for this exception.

The first distinction is that there is no biological reason why the roe could not be harvested from terminal hatchery sites. Hatchery salmon are not part of the spawning population required to maintain the sustained yield of wild stocks.

The second distinction is that salmon, unlike pollack or herring, die shortly after spawning. The deterioration that makes their flesh unsuitable for human consumption after a certain point is the consequence of the inevitable approach of their death. These fish can die with their valuable roe inside them, or their roe can be harvested before they die.

A third factor I believe to be relevant is that fishermen and hatcheries have made significant investments to produce these hatchery fish. The public, through the hatchery loan fund and other measures, also has an investment in the state's private

nonprofit hatchery program. It is only wise management of those investments to recover all the value possible from these returns within the limits of sound biological management.

Additional concerns I have heard include that this legislation might encourage hatchery operators, fishermen and processors to hold off on the harvest of salmon until the fish had deteriorated to the point that only the roe was of value. Concern has also been expressed that this legislation would encourage hatchery operators to develop programs which were primarily intended to produce salmon for the sole purpose of roe harvest.

I would be strongly opposed to any such interpretation of this legislation. The department, through its management of the common property fisheries, and through its planning and permitting oversight of the private nonprofit hatchery program, is well equipped to prevent any such abuse.

Thank you for your consideration of the bill and the above comments. If we can be of any further assistance, please feel free to contact me.

Sincerely,

Carl L. Rosier
Commissioner

LTN1100-R01 LEGISLATIVE TELECONFERENCE NETWORK PAGE 01
05/09/94 15:23:16
TCN: 40446 DATE & TIME: 03/07/94 08:15 TO 10:00 STATUS:7 STATS. IN

**** ORDER SUMMARY ****
SPONSOR: HRES HOUSE RESOURCES CHAIRS: WILLIAMS
PURPOSE: PUB PUBLIC HEARING LEGISLATIVE
CONTACT: MARY MCDOWELL TEL#: (907)465-3715
CHAIRING SITE: JUNEAU CAPITOL CAP124

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 99 MINUTE LIMIT
TESTIMONY WILL BE TAKEN

TCN REQUESTED ON 03/07/94 AND HAS 12 UPDATES

**** AGENDA ****

1 HR 404 NATIVE ALLOTMENTS IN STATE PARKS
2 HB 448 WASTE & USE OF SALMON: HATCHERIES
3 HJR 17 MAGNUSON FISHERY CONSRV & MGT ACT
4 SB 77 INTENSIVE MANAGEMENT OF GAME RESOURCES
5 **** ORDER OF BILLS ****
6 HJR 17
7 HB 404
8 HB 448
9 SB 77

**** PARTICIPATING LIOS ****

	ANC	ANCHORAGE	716 W 4TH. #200		LOCATION STAFF
	BAR	BARROW	COURTHOUSE #305		LOCATION STAFF
	COR	CORDOVA	705 2ND STREET		LOCATION STAFF
	DJT	DELTA JCT.	JARVIS CTR. #210		LOCATION STAFF
	DLG	DILLINGHAM	KANGIQUTAQ BLDG		LOCATION STAFF
	FBX	FAIRBANKS	119 N CUSHMAN ST		LOCATION STAFF
	GLN	GLENNALLEN	COMMUNITY LIB.		LOCATION STAFF
	HOM	HOMER LTC	126 W PIONEER #4		LOCATION STAFF
*	JNU	JUNEAU	CAPITOL	CAP124	LOCATION STAFF
	KOD	KODIAK	112 MILL BAY RD.		LOCATION STAFF
	KOT	KOTZEBUE	333 FRONT STREET		LOCATION STAFF
	KTN	KETCHIKAN	352 FRONT STREET		LOCATION STAFF
	MAT	MATSU	165 E PARKS HWY.		LOCATION STAFF
	SEW	SEWARD	2001 SEWARD HWY		LOCATION STAFF
	SIT	SITKA	210 LAKE STREET		LOCATION STAFF
	SOL	KEN/SOL	34824 KALIFONSKY		LOCATION STAFF
	TOK	TOK	MP 1314 AK. HWY		LOCATION STAFF
	VAL	VALDEZ	STATE BLDG. #13		LOCATION STAFF

**** VOLUNTEER & OFFNET SITES ****

ZZ 01 OFFNET 1 MCGRATH WINCHELL TICKNOR (907)524-3005

PARTICIPANTS IN:ANCHORAGE ANC

1 PETE PANARESE AK STATE PARKS TSFY. HR 404
PO BOX 107001 ANCHORAGE AK 99510 (907)762-2602

2 SANDRA ARNOLD TSFY. SB 77
PO BOX 200606 ANCHORAGE AK 99520 (907) 76-3670

3 DAN HOUGHAN AK STATE PARKS TSFY. HB 404
PO BOX 107001 ANCHORAGE AK 99510 (907)762-261

4 CHRIS MAACH ANCH AUDUBON TSFY. SB 77
PO BOX 101161 ANCHORAGE AK 99510 (907)278-4265

5 TRACY ABELL SIERRA CLUB TSFY. SB 77

LIN1100-R01 LEGISLATIVE TELECONFERENCE NETWORK PAGE 02
05/09/94 15:23:16
TCN: 40446 DATE & TIME: 03/07/94 08:15 TO 10:00 STATUS:7 STATS. IN

PARTICIPANTS IN:ANCHORAGE ANC

13030 BATES CIRCLE ANCHORAGE AK 99515 (907)345-0132

6 GEORGE MATZ TSFY. SB 77
14345 CODY ANCHORAGE AK 99516 (907)345-3135

PARTICIPANTS IN:CORDOVA COR

1 MR. JOHN MCMULLEN PWSAC TSFY. HB 448
PO BOX 1110 CORDOVA AK 99574 (907)424-7511

PARTICIPANTS IN:DELTA JCT. DJT

1 MR. DONALD QUARBERG OBSV. SB 77
PO BOX 349 DELTA JCT. AK 99737 (907)895-4215

2	MS.	CHEYENNE	WALKER		OBSV. SB 77	
		HC 62, BOX 5360		DELTA JCT.	AK 99737	(907)895-1024
3	MR.	TIM	WEBB		OBSV. SB 77	
		HC 62, BOX 5360		DELTA JCT.	AK 99737	(907)895-1024

PARTICIPANTS IN:DILLINGHAM DLG

1	MR.	DUGAN G.	NIELSEN		TSFY. HB 404	
		BOX 103		DILLINGHAM	AK 99576	(907)842-2743

PARTICIPANTS IN:FAIRBANKS FBX

1	MR.	PERRY	AHSOGEAK	TCC	TSFY. HB 404	
		122 1ST AVE.		FAIRBANKS	AK 99701	(907)452-8251
2	MR.	DICK	BISHOP		TSFY. SB 77	
		1555 GUS'S GRIND		FAIRBANKS	AK 99709	(907)455-6151
3	MR.	GEORGE	YASKA	TCC	TSFY. SB 77	
		122 1ST AVE.		FAIRBANKS	AK 99701	(907)479-2362
4	MS.	KATHRINE	RICHARDSON		OBSV. SB 77	
		P.O. BOX 80766		FAIRBANKS	AK 99709	(907)479-2362

PARTICIPANTS IN:GLENNALLEN GLN

1	MR.	LES	SUTHERLAND	CRNA	OBSV. HB 404	
		DRAWER M		COPPER CENTER	AK 99573	(907)822-3940
2	MR.	JAMES D.	WOOLINGTON	ADF&G	OBSV. SB 77	
		PO BOX 47		GLENNALLEN	AK 99588	(907)822-3461

PARTICIPANTS IN:HOMER LTC HOM

1	MR.	RANDY	FRANKLIN		TSFY. SB 77	
		PO BOx 1924		HOMER	AK 99603	(907)235-7194
2	MR.	L. R.	MCCUBBINS	SCURVEY CR.	FISH TSFY. ALL ITEMS	
		PO BOX 1656		HOMER	AK 99603	(907)000-0000

PARTICIPANTS IN:JUNEAU JNU

1	REP	B	WILLIAMS		TSFY. ALL ITEMS
				AK	(907)000-0000
2	REP	P	CARNEY		TSFY. ALL ITEMS
				AK	(907)000-0000
3	REP	B	HUDSON		TSFY. ALL ITEMS
				AK	(907)000-0000
4	REP	D	FINKLESTEIN		TSFY. ALL ITEMS
				AK	(907)000-0000
5	REP	G	DAVIES		TSFY. ALL ITEMS
				AK	(907)000-0000

TCN: 40446 DATE & TIME: 03/07/94 08:15 TO 10:00 STATUS:7 STATS. IN

PARTICIPANTS IN:JUNEAU JNU

6	REP	E	MULDER		TSFY. ALL ITEMS
				AK	(907)000-0000
7	REP	C	BUNDE		TSFY. ALL ITEMS
				AK	(907)000-0000
8	REP	J	JAMES		TSFY. ALL ITEMS
				AK	(907)000-0000
9	REP	M	NAVARRE		TSFY. ALL ITEMS
				AK	(907)000-0000
10	MR	RAY	GILLESPIE		TSFY. ALL ITEMS
		ASSOC. OF AQUACULTURE ASSOCIATIONS		AK	(907)000-0000
11	SEN	B	SHARP		TSFY. ALL ITEMS
		PRIME SPONSOR		AK	(907)000-0000
12	MR	DAVID	KELLYHOUSE		TSFY. ALL ITEMS
		DIR., DIV. OF WILDLIFE, DEPT. OF F&G		AK	(907)000-0000
13		TO	OBSERVE		OBSV. ALL ITEMS

13	TO	OBSERVE		OBSV. ALL ITEMS
14	TO	OBSERVE		OBSV. ALL ITEMS
15	TO	OBSERVE		OBSV. ALL ITEMS
16	TO	OBSERVE		OBSV. ALL ITEMS
17	TO	OBSERVE		OBSV. ALL ITEMS
18	TO	OBSERVE		OBSV. ALL ITEMS
19	TO	OBSERVE		OBSV. ALL ITEMS
20	TO	OBSERVE		OBSV. ALL ITEMS
21	TO	OBSERVE		OBSV. ALL ITEMS
22	TO	OBSERVE		OBSV. ALL ITEMS
23	TO	OBSERVE		OBSV. ALL ITEMS
24	TO	OBSERVE		OBSV. ALL ITEMS
25	TO	OBSERVE		OBSV. ALL ITEMS
26	TO	TESTIFY		TSFY. ALL ITEMS
27	TO	TESTIFY		TSFY. ALL ITEMS

PARTICIPANTS IN:KODIAK KOD

1 MR.	LARRY	MALLOY	KOD REG AQUACULT OBSV. HB 448	
	BOX 3407		KODIAK	AK 99615 (907)486-6555

PARTICIPANTS IN:KOTZEBUE KOT

1 MR.	BILLY	SHELDON	KOTZEBUE IRA	OBSV. HB 404
	BOX 696		KOTZEBUE	AK 99752 (907)442-3467
2 MR.	WHITTIER	WILLIAMS	SELF	OBSV. ALL ITEMS
	BOX 742		KOTZEBUE	AK 99752 (907)442-2991
3 MR.	STEPHEN	MAXWELL	SELF	OBSV. ALL ITEMS
	BOX 290		KOTZEBUE	AK 99752 (907)442-2716

PARTICIPANTS IN:KETCHIKAN KTN

1 MR.	DON	AMEND	SSRAA	TSFY. HB 448
	2721 TONGASS AVE.			AK 99901 (907)225-9665
2 MR.	LEE	PUTMAN		OBSV. SB 77
	6905 ROOSEVELT DRIVE			AK 99901 (907)225-7694

PARTICIPANTS IN:MATSU MAT

1 MR.	MOD	ARNO		TSFY. SB 77
	PO BOX 2790		PALMER	AK 99645 (907)376-2913

PARTICIPANTS IN:SITKA SIT

LIN1100-R01 LEGISLATIVE TELECONFERENCE NETWORK PAGE 04
05/09/94 15:23:16
TCN: 40446 DATE & TIME: 03/07/94 08:15 TO 10:00 STATUS:7 STATS. TN

PARTICIPANTS IN:SITKA SIT

1	PETE	ESQUIRO	NSRAA	TSFY. HB 448
	1308 SAWMILL CREEK RD.		SITKA	AK 99835 (907)747-3850

PARTICIPANTS IN:KEN/SOL SOL

1 MR.	TOM	MEARS	CIAA	TSFY. HB 448
	MC 2 BOX 849		SOLDOTNA	AK 99669 (907)283-5761

PARTICIPANTS IN:TOK TOK

1 MS.	KAREN	OGDEN		OBSV. SB 77
	P.O. BOX 96		TOK	AK 99780 (907)883-5604

PARTICIPANTS IN:VALDEZ VAL

1 MR.	DONALD K.	TAYLOR		TSFY. HB 494
	P.O. BOX 3118		VALDEZ	AK 99686 (907)835-4358
2 MR.	GREG	WILLIAMS	KCHU	OBSV. ALL ITEMS
	P.O. BOX 467		VALDEZ	AK 99686 (907)835-4665
3 MR.	DONALD K.	TAYLOR		TSFY. HB 448
	P.O. BOX 3118		VALDEZ	AK 99686 (907)835-4358

* PLEASE PRINT PLEASE * COMPLETE MAILING ADDRESS

HOUSE RESOURCES COMMITTEE

DATE: 3/7/94

PLACE: Capitol, Room 124

SUBJECT OF MEETING:
HJR 17 - Magnuson Fishery Conservation + Mgt. Act
HB 404 - Land Allotments
HB 448 - Waste + Use Of Salmon + Parts of Salmon
SB 77 - Intensive management of Game

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Bill Garry	State DNR Parks	400 Willoughby	99801		465-4563	(Y)	N	HB 404
Geron Bruce	Fish/Game	P.O. Bx 25526	99802		465-6143	(Y)	N	HB 448
Dave Kelleyhouse	Fish & Game	"	"		465-4191	(Y)	N	HS CSSB 77
Ray Gillespie	Aquaculture	9478 Riverbend Ct	9980	789-3941	463-337	(Y)	N	HB 448
Kevin McDougall	Fisherman Processors	Box 714 Douglas	99824		364-2273	(Y)	N	HB 448
Roger McKowan	Rep Hoffman					(Y)	N	HB 404
John George	AOC	9515 Moraine Way Juneau	9880	789-0172		(Y)	N	HB 77
						Y	N	
						Y	N	
						Y	N	
						Y	N	

HB 462

HOUSE COMMITTEE REPORT

(9)

Date Referred: February 11, 1994 FURTHER REFERRALS:
Date of Committee Action: 3/18/94

The RESOURCES Committee considered: HB 462
HOUSE BILL NO. 462 MINING REQUIREMENTS:RECORDING/LABOR/SIZE

"An Act repealing certain provisions of the laws, other than those in the Alaska Land Act, relating to recording requirements, labor and improvement requirements, and size requirements for mining claims and providing for the suspension or waiver of state annual mining labor requirements when the federal government has suspended or waived federal annual mining labor requirements administratively or by statute; and providing for an effective date."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[✓] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[✓] zero fiscal note DNR [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Hudson	✓	Finkelstein		✓	
Green	✓				
James	✓				
Mulder	✓				
Burde	✓				
Williams	✓				

W.K. Williams
CHAIRMAN'S SIGNATURE

REPRESENTATIVE
GENE THERRIAULT
P.O. Box 55326
North Pole, Alaska 99705
(907) 488-0862

Home District 23

Alaska State Legislature

House Of Representatives

Mail to:
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3797

Sponsor Statement for HB 462
Mining Requirements: Recording/Labor/Size
by Rep. Gene Therriault
February 25, 1994

Title 27 deals with mining claims on federal land where the overriding authority rests with the federal laws and regulations. Much of the language contained in Title 27 dates back to territorial days when it was crafted to match the federal requirements in place at that time. However, over time these federal requirements have changed and unfortunately our state statutes have not kept pace and in many instances no longer conform. This lack of conformity is currently causing confusion and must be updated.

I have attached a letter of support from the Department of Natural Resources which identifies the specific problem that each section of HB 462 is designed to correct.

(9th Cir.), aff'd, 223 U.S. 85, 32 S. Ct. 187, 56 L. Ed. 359 (1909); Adams v. Yukon Gold Co., 251 F. 226 (9th Cir. 1918).

And until he has notice and opportunity to cast off excess the claim is not subject to relocation. Jones v. Wild Goose Mining & Trading Co., 177 F. 95 (9th Cir. 1910); Adams v. Yukon Gold Co., 251 F. 226 (9th Cir. 1918).

Accidental inclusion of excess does not invalidate location unless excess very great. — Embracing by accident more than the lawful quantity of ground within a location has never been held, unless the excess was very great, to invalidate the location. Pratt v. United Alaska Mining Co., 1 Alaska 95.

Scheme for acquisition of more than 20 acres is fraud. — Any scheme or device entered into whereby one individual is to acquire more than 20 acres or proportion in area constitutes a fraud upon the law, and consequently a fraud upon the government, from which the title is to be acquired. Nome & Sinook Co. v. Snyder, 187 F. 385 (9th Cir. 1911).

And any location made in pursuance of such a scheme or device is without legal support and void. Nome & Sinook Co. v. Snyder, 187 F. 385 (9th Cir. 1911).

Use of dummy locators to secure interest in excess of 20 acres is violation of law. — The scheme of using the names of dummy locators in making the location of a mining claim for the purpose of securing a concealed interest in such claim appears to be contrary to the purpose of the statute; but when this scheme is used to secure an interest in a claim for a single individual, not only concealed but in excess of the limit of 20 acres, it is plainly in violation of the letter of the law. Cook v. Klonos, 164 F. 529 (9th Cir. 1908).

And when all the locators have knowledge of the concealed interest and are parties to the transaction, it renders the location void. Cook v. Klonos, 164 F. 529 (9th Cir. 1908).

Location and staking of excess by third person. — One claiming the right to make entry of a placer mining claim the boundaries of which contain an area in excess of the amount allowed by law, under permission of the owners thereof to stake the excess, should first determine the amount of such excess and stake the same in such manner that the original location thus reduced in area will not contain an additional course. Adams v. Yukon Gold Co., 5 Alaska 391, aff'd, 251 F. 226 (9th Cir. 1918).

Sec. 27.10.110. Limits on size of association claims. No association placer mining claim may be located in excess of 40 acres, and have a greater length than 2,640 feet. (§ 47-3-88 ACLA 1949)

NOTES TO DECISIONS

Fraudulent conduct of one locator should not invalidate entire association location. — Where a location is made by an association of locators, there is no reason why the fraudulent and concealed conduct of one of the locators in an association claim should invalidate the entire location. Rooney v. Barnette, 200 F. 700 (9th Cir. 1912).

Sec. 27.10.120. Location of claims by agent or attorney. A person may not locate a placer mining claim as agent or attorney for another unless authorized to do so by a power of attorney in writing, acknowledged and executed within four years before the date of location, and recorded in the office of the recorder of the recording district in which the claim is located. A person may not act as attorney in fact for more than two principals in any one recording district. (§ 47-3-90 ACLA 1949; am § 2 ch 73 SLA 1961)

Sec. 27.10.160. Affidavit of labor or improvements. Within 90 days after September 1 of each year the owner of a mining claim, or some other person having knowledge of the facts, shall make and record with the recorder for the district in which the claim is located, an affidavit showing the performance of labor or the making of improvements. The affidavit must contain:

(1) the name or number of the mining claim and where situated;

(2) the number of days' work done and the character and value of the improvements made;

(3) the date of the performance of the labor and of the making of improvements;

(4) at whose instance the work was done or the improvements made;

(5) the actual amount paid for the work and improvements, and by whom paid, when the work was not done by the owner or the lessee of the owner. (§ 47-3-53 ACLA 1949; am § 2 ch 26 SLA 1960)

Revisor's notes. — Minor word changes related to the recording of documents were made in this section in 1988 under sec. 42, ch. 161, SLA 1988.

Sec. 27.10.170. Effect of recording and of failure to record affidavit of labor or improvements. An affidavit recorded under AS 27.10.160 is prima facie evidence of the performance of the work or of making the improvements stated in it. If the assessment work affidavit is not recorded within six months after the close of the assessment work year the claim is abandoned and is subject to relocation by another person. However, compliance with AS 27.10.010 — 27.10.070 and 27.10.150 — 27.10.190 before a relocation saves the rights of the last locator, claimant or owner of a forfeited claim. If a claim is not relocated by another person within one year after a forfeiture, the last locator, claimant or owner of the forfeited claim may return to the forfeited claim and relocate it as though it had never been located. (§ 47-3-55 ACLA 1949; am § 1 ch 105 SLA 1957)

Revisor's notes. — Minor word changes related to the recording of documents were made in this section in 1988 under sec. 42, ch. 161, SLA 1988.

Sec. 27.10.190. Recording the notice to contribute and affidavits. (a) Within 120 days after personal service, or within 120 days after the completion of publication of the notice provided for in AS 27.10.180, the co-owner who claims the forfeiture shall record in the office of the recorder of the recording district in which the claim is located a copy of the notice with the following affidavits attached:

(1) an affidavit of the person serving the notice giving the time, place and manner of service and by whom and upon whom the service was made or, if service was made by publication in a newspaper, an affidavit of the editor, publisher, printer or foreman of the newspaper

ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

March 8, 1994

Honorable William Williams
Chairman
House Resources Committee
State Capitol
Juneau, AK 99811

RE: HB-462, Aligning State Mining Law to Federal Law Changes

Dear Representative Williams,

The Alaska Miners Association wishes to go on record in support of House Bill 462 which will bring the state mining law into agreement with changes that have been made to the federal mining law over the past many years.

Some aspects of the state mining law deal with recording, maintaining of paperwork, rules for filing and re-staking of federal mining claims, etc. that no longer agree with the federal law. The changes proposed by HB-462 are needed to eliminate confusion and uncertainty that may otherwise develop between the federal mining law and the state law. The differences between state mining law and federal law may otherwise result in the inadvertent loss or invalidation of rights. It may also result in unnecessary litigation between mining claimants.

Some examples would include provisions that are allowed by state law but no longer have relevance. One example is the state limitation on the size of association placer claims. This type of claim is no longer allowed by the federal law and yet state law addresses the issue and could be a source of confusion to a miner that did not know the federal law had been changed. Another example is that state law requires recording an affidavit of annual labor within 6 months of the end of the labor year, whereas the federal law requires such affidavit be recorded within 90 days of the end of the labor year. The more restrictive federal law will prevail and the state requirement now only adds confusion. These provisions can be a serious pitfall when they have been superseded by a more restrictive federal law.

The changes proposed in HB-462 will help remove one more item of uncertainty for those wishing to invest in mineral exploration and development in Alaska. We urge its passage.

If you have any questions regarding this bill please contact me.

Sincerely,

Steven C. Borell, P.E.
Executive Director

cc: Representative Therriault

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-3400
FACSIMILE: (907) 586-2954

Feb. 25, 1994

The Honorable Gene Therriault
Alaska House of Representatives
Capitol Building, Room 421
Juneau, Alaska 99801

Re: HB 462

Dear Representative Therriault:

The Department of Natural Resources supports HB 462, an Act which will bring Alaska Statute 27.10 specifying certain state requirements for federal mining claims in Alaska into conformity with the federal requirements. The federal requirements take precedent over any state requirements and update of this chapter will eliminate confusion and potential litigation among mining claimants.

Specifically, section 1 deletes an out of date provision that is in direct conflict with federal mining law. Although the existing language allows recording of location notices after 90 days but before the ground is staked by another locator, federal law no longer allows such late recording under any circumstances. This deletion conforms AS 27.10 to current federal requirements.

Section 2 adds language to clarify that should [illegible]eral requirements be changed by administrative acti[illegible] requirements of AS 27.10 are likewise affected. [illegible]g the past year, the BLM by administrative action allowed federal miners to waive annual labor if an annual rent payment was made. However, this section of the statute created confusion in Alaska because miners were not sure if this was an act of law covered by AS 27.10.150(c). This change will end such confusion.

Section 3 deletes an out of date requirement for the recording of an annual labor affidavit within 6 months after the close of the annual labor year. Federal law requires such affidavits be recorded within 90 days of the close of the labor year. This deletion will again conform Alaska law to federal law.

Section 4 repeals the limitation on the size of association placer claims. This limitation is simply inconsistent with federal law.

10-J9 LH

Section 5 is necessary to be sure the changes made in Section 2 may be applied to those miners inadvertently caught in the conflicting state and federal laws in effect on August 31, 1993.

Please contact me if you have any questions.

Sincerely,

Gerald Gallagher
Director

FISCAL NOTE

STATE OF ALASKA — BILL NO. HB462

1994 LEGISLATIVE SESSION

Revision Date: Original — Dept Affected: Natural Resources

Title: "An Act repealing certain provisions of the laws, other than those in the Alaska Land Act, relating to recording..." — BRU: Resource Development

Component: Mining Development

Sponsor: Representative Therriault

Requestor: Representative Therriault — Component Serial No. 442

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: $ None

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

This bill provides modifications to state law as related to mining claim recording requirements, labor and improvement requirements, and size requirements, so that state law corresponds to recent changes in federal law.

Prepared by: Jerry Gallagher, Director — Phone : 465-2400

Division: Mining — Date : 25-Feb-94

Approved by Commissioner:

Harry A. Noah — Date: 25-Feb-94

Agency: Natural Resources

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(HB462.XLS Rev 2/25/94) For further distribution information call the Governor's Legislative Office

HOUSE RESOURCES COMMITTEE

DATE: 3-18-94

PLACE: Capitol, Room 124

SUBJECT OF MEETING:
HB 446 - Environmental Conservation Agreements
HB 462 - Mining Requirements: Recording; Labor/Size
HB 352 - Subdivision Plat Approval: Unorganized Bor.

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Mead Treadwell	ADEC	410 Willoughby Ave, Ste 105/Juneau	99801	364 3430	465 5065	(Y)	N	446.
JERRY GALLAGHER	DNR				465-2400	(Y)	N	462
Ron Swenson	DNR				762-2692	(Y)	N	352
RICK HARRIS	SEALASKA	ONE SEALASKA PLAZA SUITE 400	99501	~~586-1512~~ 789-3909	586-1512	(Y)	N	352
MARY A. NORCROSS	AMA	P.O. Box 21211 JUNEAU 99802			586-3340	(Y)	N	462
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

HB 474

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

P.O. BOX 107034
ANCHORAGE, ALASKA 99510-7034
PHONE: (907) 762-2553

(907)762-2547

March 3, 1994

Clement Lewsey, Acting Chief
Coastal Programs Division
United States Department of Commerce
National Oceanic and Atmospheric Administration
National Ocean Service
Office of Ocean and Coastal Resource Management
Washington, D.C. 20235

Dear Mr. Lewsey:

I am writing to you in my capacity as Director of the State of Alaska's Division of Oil and Gas, an agency both interested in and affected by the proposed statutory amendments contained in Alaska Senate Bill 308. I have reviewed a copy of your March 2, 1994 letter responding to a March 1, 1994 letter from Ms. Riki Ott. Your letter raises several questions.

As a preliminary matter, I agree with your statement that it is premature for OCRM to decide whether it would approve the changes resulting from SB 308. The bill is proposed legislation and is still undergoing the committee review process. It may be modified several times as its intent is clarified and public concerns are addressed. I also understand that any changes to an approved state coastal management program must be formally submitted for review by your agency. Since this bill is not yet approved or enacted, such a submittal, obviously, has not yet been made.

Is it a standard procedure for your federal agency to comment on proposed state legislation? Committing to a written statement on legislation which is currently before Alaska's Legislature under the signature and letterhead of agency authority appears unusual, at best, and gives the impression that the federal agency is actively taking a position on the proposed state legislation. If that is indeed your intent, please describe your agency's authority for and policy on commenting on proposed state legislation.

Further, the comments in your letter lead me to believe that your agency does not understand the bill's composition. In the third paragraph of page 1 of your letter, you state that SB 308 would narrow the scope of review for state agency decisions including the disposition of state land, property, and resources. That described effect is not part of the proposed amendment to the Alaska Coastal Management Program ("ACMP"). Only Section 3 of the bill, proposed statute AS 46.40.094, would affect the ACMP. The first two sections

of the bill address amendments to the Alaska Land Act (Alaska Statutes Title 38, chapter 5), a set of statutes dating from statehood which is independent of and not part of the ACMP statutory scheme.

Even if a federal agency properly may comment on proposed state legislation, a federal agency cannot possibly have any basis to comment on proposed amendments to state statutes which are not in any way under the control of a federal program. Although some decisions eventually issued under the Alaska Land Act may require a prior independent consistency determination under the ACMP (Alaska Statutes Title 46, Chapter 40), the vast majority do not.

I would ask that you reconsider the accuracy of and appropriateness of your comments presented on page 1, paragraph 3 of your letter. If, after such reconsideration, you still feel that your comments are accurate and appropriate, please clarify and specify how they apply to the particular sections of SB 308 and what conflicts result.

Your second comment (page 2, paragraph 1) also appears to address the portions of the bill proposing amendments to the Alaska Land Act. The last sentence of paragraph 1, page 2 refers to the location of an activity. Nothing in Section 3 of the bill, the only section affecting decisions under the ACMP, refers to location of an activity; the only such reference is in Section 2 of SB 308. Again, such comments appear to arise from a faulty understanding of the bill and, as a result, are inaccurate and inappropriate.

If indeed your second comment does address Section 3 of SB 308, the comment remains unclear as to how the ACMP, if amended pursuant to Section 3 of SB 308, might contradict federal statutes or regulations and cause problems. You refer to CZMA section 307(c)(1) (codified at 16 U.S.C. § 1456(c)(1)) which requires consistency of federal agency activities "to the maximum extent practicable with the enforceable policies of approved State management programs," (emphasis added) and you then provide H.R. Conference Report No. 964 describing the intent of Congress in enacting the 1990 amendment to that section.

You do not, however, provide any cites to federal statutes or regulations which, in the event that Section 3 of SB 308 is enacted in its current form, could create a conflict between the ACMP and existing federal requirements for state coastal management programs (16 U.S.C. § 1455(d)). What specific statutes or regulations exist (since intent language must be used to construe existing language) that would cause a conflict between the ACMP and the federal requirements for state programs if Section 3 of SB 308 is enacted? What would be the result of any alleged conflict? I request clarification and specifics of how OCRM anticipates that Section 3 of SB 308 would violate state program requirements.

Your third comment (page 2, paragraph 2) does appear to address Section 3 (phasing of consistency determinations). However, it seems to agree that the use of phasing is consistent with the CZMA. Indeed, Section 3 of SB 308 appears to conform with the intent of 15 C.F.R. § 930.37(c) by providing for review "at major decision points for a long-term project and ensur[ing] that the project, taken as a whole, is consistent . . . with the state coastal management program." If there is a conflict, please specify how you believe Section 3 of SB 308 conflicts with the federal CZMA requirements for state programs.

I am impressed by the quick response you provided to Ms. Ott and request that I be accorded the same consideration. As Ms. Ott pointed out, proposed legislation may move quickly and if concerns or potential problems exist, they should be addressed now. I look forward to a written response in the next day or two. Our facsimile number is (907)562-3852. If a prompt written response is not possible, perhaps you will be available to provide comments by telephone to a state legislative committee considering this bill. In that case, please call me at (907)762-2547 so I can arrange for a telephonic conference.

Sincerely,

James E. Eason
Director

4W pm 7/2/94

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Washington, D.C. 20235

Riki Ott, Ph.D.
United Fishermen of Alaska
211 Fourth Street, Suite 211
Juneau, Alaska 99801

MAR 2 1994

Dear Dr. Ott:

Thank you for your letter of March 1, 1994, regarding Alaska Senate Bill 308 (SB 308). SB 308 would affect the way the Alaska Coastal Management Program (ACMP) reviews decisions by state agencies regarding the disposition of state land, property and resources. Your letter raises several issues regarding SB 308 and asks for clarification on the federal role in this particular legislation. Because we have not had time to conduct an in-depth review or legal analysis of SB 308, the comments that follow must be viewed as a preliminary programmatic response.

The Office of Ocean and Coastal Resource Management (OCRM) is the federal office responsible for overseeing the implementation of state coastal management programs developed pursuant to the Coastal Zone Management Act of 1972, as amended (CZMA). In addition to initially approving state programs, OCRM is charged with reviewing and approving or denying changes to the state's coastal management program. Thus, if SB 308 were enacted, the resultant changes to the ACMP would have to be submitted to OCRM for approval as a program change pursuant to 15 C.F.R. 923 Subpart I.

As mentioned above, we have completed a preliminary review of SB 308, and it would be premature to decide whether OCRM would approve the changes resulting from SB 308. We can, however, point out several aspects of SB 308 for which OCRM has significant concerns. First, as presented, SB 308 would narrow the scope of review for state agency decisions including disposition of state land, property and resources. In essence, this would create a double standard for review under the ACMP: one standard for federal agency actions, and a narrower, less strict standard for state agency actions. In order to apply state coastal management enforceable policies to federal agencies through the CZMA's federal consistency provisions, the standard of review applicable to the federal agency must be the same standard that applies to all public and private entities under the state's jurisdiction.

Second, in narrowing the scope of review, SB 308 would be contrary to the direction set by Congress in the 1990 reauthorization of the CZMA regarding state review of direct federal activities under section 307(c)(1) of the CZMA. Specifically, the changes require that each federal agency activity affecting any land or water use or natural resource of the coastal zone be conducted in a manner which is consistent to the maximum extent practicable with the enforceable policies of an approved state coastal management program. Further, Congress intended that in determining the effects of the activity, the federal agency must consider both direct and indirect effects, including reasonably foreseeable cumulative effects of the proposed activity.[1] It is also important to emphasize that the trigger for review of an activity is whether it affects the land or water uses or natural resources of the coastal zone, not the location of the activity.

Finally, you have raised the question of whether the federal program allows for phasing the review of certain activities. Federal regulations at 15 C.F.R. 930.37(c) allow, under certain circumstances, for the phased review of federal activities. This section is not intended to curtail the scope of the review at any particular phase. In fact, this section provides an opportunity for state review at major decision points for a long-term project and ensures that the project, taken as a whole, is consistent to the maximum extent practicable with the state coastal management program.

I hope that this letter answers your questions. Enclosed are some background materials regarding the reauthorization of the CZMA and federal consistency. If you would like to discuss the matter further, please contact John King of my staff at 301/713-3121.

Sincerely,

Clement Lewsey, Acting Chief
Coastal Programs Division

enclosures

cc: Paul Rusanowski, OGC
Beth Kerttula, DOL

---

[1] H.R. Conference Report No. 964, 101st Congress, 2d Session at 970, 971 (1990)

UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax:907/463-2545

John King
Office of Oceans & Coastal Resource Management
National Oceanic & Atmospheric Administration
Rockville, MD

VIA FAX: (301) 713-4367

March 1, 1994

Dear Mr. King;

Several days ago, we provided you with a copy (via fax) of Senate Bill SB308 and background information. From our perspective, SB308 is a radical shift in public policy regarding the public input process under Alaska's coastal management plan of the Coastal Zone Management Act. We have several key concerns.

#1) This bill gives resource agency directors the power to limit the scope of issues addressed during the initial administrative review. Would similar powers be granted to federal resource agency directors on federal land disposals under the consistency determinations? Or would two standards go into effect: one on federal lands and one on state lands?

#2) This bill institutionalizes multi-phasing on state lands by allowing review of "relevant" public concerns during the appropriate project phase. We are concerned that multi-phasing increases the likelihood of erroneous land disposals because the process lacks a thorough cost/benefit analysis and best interest finding during the initial review phase. This seems counter to the entire concept of the CZMA. Does the federal government allow multi-phasing of projects on federal lands as maintained by state officials?

#3) Limiting the range of effects during the review process to "foreseeable, significant and direct" seems to eliminate most effects. Didn't Congress clarify "direct" to include secondary, cumulative and indirect? If so, how can the federal government approve language that they themselves do not use?

#4) Limiting the range of effects on fish and wildlife to "within the scope of the lease sale area" seems extremely arbitrary and unrealistic. This would exclude effects on migratory wildlife, including fish, marine mammals and birds, and also effects on wildlife immediately adjoining the lease sale area.

In summary, could you clarify the role of the federal government in this legislation? Would the federal government have to approve the changes proposed in SB308 should this bill become law? What is the likelihood of federal approval given the legal history of the CZMA?

This bill is on an extremely fast track. Your haste in answering these questions--even a preliminary review--would be greatly appreciated.

Sincerely,

Riki Ott

Riki Ott, Ph.D.
Chairman of the Habitat Committee

MAR 22 1994

Union Texas Petroleum

1330 Post Oak Boulevard
P. O. Box 2120
Houston, Texas 77252-2120
(713) 968-2758

A. Clark Johnson
Chairman and Chief Executive Officer

March 18, 1994

The Honorable Gail Phillips
Alaska State Legislature
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Ms. Phillips:

Thank you very much for your letter of February 22, 1994, concerning Union Texas Petroleum Alaska's exploration agreement with Cook Inlet Region, Inc. (CIRI). I am enclosing for your information copies of press releases about our transaction with CIRI and a contribution from Union Texas to provide educational support for Alaska Natives of Cook Inlet Region and their families. Also attached is a copy of our company's most recent annual report, which highlights our activities on the Kenai Peninsula.

Union Texas has been involved in a number of exploration ventures in Alaska since the mid-1970s. We believe that Alaska holds excellent potential for significant hydrocarbon reserves and are excited to have the opportunity to work with CIRI. We were discouraged, however, by the enjoining of the Alaska State Lease Sale 78. This injunction has adversely affected our view regarding exploration and development plans in Alaska. We have expressed our concern to Senator Mike Miller and have encouraged his support for SB308/HB474, to be applied retroactively. Enclosed for your information is a copy of our letter to Senator Miller. We also seek your support of this important legislation.

We appreciate your interest in Union Texas and look forward to participating in successful exploration ventures in Alaska.

Sincerely,

Enclosures

News Release

Union Texas Petroleum

1330 Post Oak Blvd.
P.O. Box 2120
Houston, Texas 77252-2120
(713) 623-6544

Contact: Carol L. Cox
(713) 968-2714

UNION TEXAS PETROLEUM SIGNS AGREEMENT TO EXPLORE FOR OIL AND GAS ON ALASKA'S KENAI PENINSULA

Houston, February 2, 1994 -- Union Texas Petroleum Holdings, Inc. today announced that its subsidiary, Union Texas Petroleum Alaska Corporation, has signed an agreement with Cook Inlet Region, Inc. (CIRI), an Alaska Native Regional Corporation, to explore for oil and gas on Alaska's Kenai peninsula.

The agreement calls for a phased three-year exploration program on more than 340,000 acres situated in south central Alaska on the Kenai peninsula about 50 miles southwest of Anchorage on the eastern shore of the Cook Inlet. Union Texas Petroleum Alaska, as operator, will initially have a 100% working interest and conduct the exploration program. Union Texas has the option to acquire oil and gas leases on prospects and CIRI will have the option to participate in exploratory drilling and development programs.

"We are very excited to have this opportunity to work with CIRI in the search for oil and gas on the Kenai peninsula," said Union Texas Vice President-Exploration Joel S. Empie. "During 1994, we will under take an extensive study to process and interpret approximately 1,100 miles of existing seismic data. After a review of this seismic and other technical data, we may conduct a new seismic program later in 1994 or 1995. Given encouragement, we would expect to drill as early as 1995-96."

- more -

In addition to its interests in the Kenai peninsula acreage, Union Texas Petroleum Alaska has actively participated in exploring for hydrocarbons in the Colville River Delta area, which is located six miles west of the Kuparuk River field on the North Slope, and in the Beaufort Sea offshore northern Alaska. During 1994, Union Texas plans to participate in two exploration wells in the Colville area, where the company's working interest averages approximately 14%.

One of the largest independent producers located in the U.S., Houston-based Union Texas Petroleum Holdings, Inc. (NYSE: UTH) explores for and produces oil and gas overseas primarily in the U.K. North Sea, Indonesia and other strategic areas. The company also has petrochemicals interests in the U.S.

# # #

News Release

Union Texas Petroleum

1330 Post Oak Blvd
P.O. Box 2120
Houston, Texas 77252-2120
(713) 623-6544

Contact: Carol L. Cox
(713) 968-2714

CIRI FOUNDATION RECEIVES CONTRIBUTION FROM UNION TEXAS PETROLEUM ALASKA

Houston, February 9, 1994 -- Cook Inlet Region Inc., (CIRI), an Alaska Native Regional Corporation, today announced that Houston-based Union Texas Petroleum Alaska, a subsidiary of Union Texas Petroleum Holdings, Inc., has made a contribution of $100,000 to the CIRI Foundation.

"On behalf of the employees of Union Texas, we are very pleased to make this contribution to the CIRI Foundation to assist in its outstanding efforts to meet the educational needs of Alaska Natives of Cook Inlet Region and their families," said Union Texas Senior Vice President-Exploration and Production William M. Krips.

Union Texas Petroleum Alaska has oil and gas interests in southern and northern Alaska.

One of the largest independent producers located in the U.S., Houston-based Union Texas Petroleum Holdings, inc. (NYSE: UTH) explores for and produces oil and gas overseas primarily in the U.K. North Sea, Indonesia and other strategic areas. The company also has petrochemicals interests in the U.S.

# # #

Union Texas Petroleum

1330 Post Oak Boulevard
P. O. Box 2120
Houston, Texas 77252-2120
Telephone (713) 968-3340

Joel S. Emple

February 22, 1994

The Honorable Mike Miller
Chairman
Senate Resources Committee
Capitol Building, Room 423
Juneau, AK 99811

VIA FAX AND FEDERAL EXPRESS

RE: STAY OF STATE OF ALASKA LEASE SALE 78
PROPOSED LEGISLATION SB308 / HB474
LAWSUITS REGARDING STATE OF ALASKA LEASE SALES 50, 55, & 78

Dear Senator Miller:

Union Texas Petroleum Alaska is an indirect wholly owned subsidiary of Union Texas Petroleum Holdings, Inc., one of the largest independent producers located in the United States. Union Texas explores for and produces oil and gas overseas primarily in the U.K. North Sea, Indonesia and other strategic areas.

Union Texas Petroleum Alaska pursues exploration activities in Alaska. At year-end 1993, it held approximately 88,000 net acres in Alaska, primarily in the Colville Delta, Cook Inlet and offshore Beaufort Sea. During the past several years, Union Texas Petroleum Alaska has increased its exploration activity in Alaska. This activity included participation in three additional wells in the Kuukpik State Exploration Unit, four wells in the adjacent Colville River Delta area, one well in the Jones Island State Exploration Unit, three wells in the Kuvlum Federal Unit in the Beaufort Sea, and the Diamond #1 Well in the Chukchi Sea.

The stay of the State of Alaska Lease Sale 78 has significantly affected the view of Union Texas Petroleum Alaska regarding our ability to implement a sound exploration and development plan in Alaska. Current statutes and regulations governing leasing activities as interpreted by the Alaska courts in lawsuits concerning State Lease Sales 50, 55, and 78, discourage bidding as well as exploration and production activities on state lands. In addition, we believe these interpretations are inconsistent with the legislative intent of these statutes and regulations. The delay in arriving at a settlement and the impact of the settlement of the Mental Health Lands further discourages activities on state lands. Because of the long lead time and high exploration costs involved in arctic projects, independent operators such as Union Texas Petroleum can ill afford to continue to expend significant sums of money on exploration activities into areas where the return on the investment is becoming more uncertain due to the of lack of leasing opportunities on state lands.

Alaska is in direct competition with alternative international opportunities for funding. We believe that Alaska compares favorably with other international projects on a technical basis but we are concerned that increasing regulation and the inability to plan and budget programs with reasonable assurance that leases will be available places Alaska at a distinct disadvantage. Union Texas Petroleum would prefer to keep the dollars and jobs at home as much as possible. The passage of SB308/HB474, to be applied retroactively, would be a significant step in accomplishing our common objectives.

Sincerely,

UNION TEXAS PETROLEUM ALASKA CORPORATION

J. S. Empie
Senior Vice President

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM March 1, 1994

SUBJECT: Questions concerning House Bill 474 (Work Order No. 8-LS1692\J)

TO: Representative Joe Sitton
ATTN: Paula Terrel

FROM: Jack Chenoweth
Legislative Counsel

With reference to HB 474, you have asked several questions.

Your principal question concerns the implications of the provisions of sections 1 and 2 of HB 474 (granting authority to the director of the division of land to modify the procedures for and the dimensions of administrative decisions relating to dispositions of state resources under the Alaska Land Act, AS 38.05).

A key appellate court decision is Trustees for Alaska v. Gorsuch, 835 P.2d 1239 (Alaska 1992). The decision grew out of a challenge to issuance of coal mining permits under the state's Surface Coal Mining Control Act, AS 27.21. The court disposition of one issue in favor of the plaintiffs and against the defendant state agency indicates arguments that are likely yet to come in response to the changes being made by sections 1 and 2 of HB 474. In the Gorsuch decision, the court endorsed plaintiff's arguments, noting that

> . . . statutory language does support Trustees' . . . argument that [the department] may not ignore cumulative effects of mining and related support facilities by **unreasonably** restricting its jurisdiction and disregarding the effects of activities outside that jurisdiction.

835 P.2d at 1246 (emphasis added). [1] The administration is supporting the

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[1] And, the court went on to reach this determination:

> These purposes cannot be accomplished by ignoring cumulative impacts.

(continued...)

legislation so that it may have authority--to use the words of the court decision--to "restrict . . . jurisdiction" in order to "[disregard] the effects of activities outside that jurisdiction."

The question, as I see it developing in any effort that the director may initiate under the authority being granted by these two bill sections, is whether, for proposed disposals requiring the preparation and publication of written findings when required by AS 38.05.035, the director has acted "reasonably" in establishing the scope of the division's administrative review for the proposed disposal. My guess is that, with adoption of HB 474 in some version approximating the measure as it was introduced, at least for a little while the director's efforts should continue to provide a lively field to litigants interested in the way the state proposes to dispose of its resources. The litigants will, however, have a new target.

In the abstract, one cannot say whether the director may achieve a significantly better measure of success under the proposed statute change. Recall that, in Gorsuch, the Supreme Court defined the following as the applicable standard of judicial review for "best interest determinations" and similar "complex" agency administrative decisions:

> We defer to an agency decision which involves complex subject matter or fundamental policy considerations unless the decision is arbitrary, capricious, or without a reasonable basis. Trustees for Alaska v. State, Department of Natural Resources, 795 P.2d 805, 809 (Alaska 1990). "The reasonable basis standard is appropriate for determining whether the agency decision has been undertaken 'in the manner required by law.' One indication whether an agency has proceeded in the manner required by law is compliance with its own regulations." Jager v. State, 537 P.2d 1100, 1107-08 (Alaska 1975).

Trustees for Alaska v. Gorsuch, 835 P.2d 1239, at 1243.

[1/](...continued)

> Based on the policies inherent in these purposes, we conclude that DNR may not ignore cumulative effects of mining and related support facilities by unreasonably restricting its jurisdiction or by permitting facilities separately. These purposes require that at the time DNR reviews any [Surface Coal Mining Control Act] permit application it consider the probable cumulative impact of all anticipated activities which will be part of a "surface coal mining operation," whether or not the activities are part of the permit under review. If DNR determines that the cumulative effect is problematic, the problems must be resolved before the initial permit is approved.

835 P.2d at 1246.

Proposed AS 38.05.035(e)(1)(B) directs that an administrative review for a proposed disposal that requires a best interest finding may be limited--and, by extension, under AS 38.05.035(e)(1)(C), may be limited to one phase of a proposed disposal for a multiphased development project--to these two elements: first, the

> . . . applicable law and the facts . . . that the director finds are material to the determination[,] and that are known [to him] or knowledge of which is made available [to him] during the administrative review,

and second, the

> . . . issues that, based on [that law and those facts] and on the nature of the uses sought to be authorized, the director finds are relevant to the determination of whether the proposed disposal will best serve the interests of the state.

As to the first of the two elements, arguably the director's efforts become easier and, hence, the opportunity to successfully challenge that element of his conclusion under the "deferential review" standard of Gorsuch may be tougher. I say that because there is in current law the requirement that the director set out, in the written finding, "the facts and applicable law upon which [his] determination . . . was based." I sense that the Department of Natural Resources ought to find it no tougher than under the current law to identify applicable law and should be able to readily demonstrate that, in the course of the administrative process that attaches to its examination of a proposed disposal of state resources, it has considered all material--by which I take it to mean acts, events, transactions, or circumstances that are **necessary** or **significant** to its determination of the outcome of that disposal--facts. [2/]

[2/] Indeed, the process of identification and discussion of the facts alone may be enough for the department to show that it has satisfied the legal requirement of amended AS 38.05.035(e)(1)(B)(i) for, as the Supreme Court said in Trustees for Alaska v. State, Department of Natural Resources, 795 P.2d 805 (Alaska 1990) [Trustees I]:

> . . . [O]ur role in this case is to ensure that DNR "has given reasoned discretion to all the material facts and issues." If an agency does not consider an important factor, its decision is regarded as arbitrary, and those important factors which it did consider[ ] must be discussed in the decisional document. . . . Because the [department's] Finding omits any discussion of transportation facilities should ANWR's present status be unchanged, it clearly does not meet this standard of review.

795 P.2d at 811. The implication of the court's treatment of "material" as a modifier of "facts and issues" may be no more than that the agency must show that it took into account, in a rational and objective way, an "important factor"--that is, a significant element bearing on the

(continued...)

The second element involves deciding whether an "issue" [3] is "'relevant' [4] to the determination of whether the proposed disposal will best serve the interests of the state." This provision has no expressly comparable antecedent in current statute law. However, early state case law defined the test of "relevancy" as "evidence [that has] some tendency in reason to establish a proposition material to the case," Hutchings v. State, 518 P.2d 767, 769 (Alaska 1979), quoted in Poulin v. Zartman, 542 P.2d 251 (Alaska 1975), at 260, and the applicable language of the pertinent provision of the state's Administrative Procedure Act, AS 44.62.460(d), is not inconsistent with that requirement.

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[2](...continued)

administrative question or decision--as evidenced by the agency's treatment and disposition of it in its written best interest findings decision. The court is apparently not prepared to say that, in its treatment and disposition of the element, the agency reached a "proper" outcome, but confines itself to ascertaining whether or not that element was not altogether ignored.

[3] In the context of AS 38.05.035(e), "issue" has no antecedent. I take it to relate to an "issue" that, under AS 38.05.035(g)--both in current law and as amended in this measure--looks to point of debate or dispute that "[was] raised during the period allowed for receipt of public comment," presumably by an interested citizen.

[4] Evidence is "relevant" under the Evidence Rules of the Alaska Court System when it

> . . . has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Alaska Rules of Evidence, Rule 401. However, the Evidence Rules are not necessarily applicable to administrative adjudications made under the Alaska Administrative Procedure Act. The Act provides, at AS 44.62.460(d), its own rule as to admissibility of evidence in an agency adjudicatory hearing:

> (d) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be used to supplement or explain direct evidence but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action. The rules of privilege are effective to the same extent that they are recognized in a civil action. Irrelevant and unduly repetitious evidence shall be excluded.

As with the treatment of evidence, then, I take it that the matter of deciding whether, for purposes of conducting an administrative review in conjunction with preparation of a best interest finding, an "issue" meets the test of "relevant" if the "issue" relates in some manner that is probative--that it has a relationship in reason--to the proposed resource disposal, and that the relationship in reason between the issue and the point to be determined has not been diminished by the issue's uncertainty, the remoteness of the issue from the proposed resource disposal, or the speculative or conjectural quality of the issue's effect on the proposed disposal.

In administrative adjudications, state law favors the admissibility of relevant evidence. AS 44.62.460(d). Questions of admissibility of evidence in administrative matters are typically reserved to the party responsible for the administrative adjudication, AS 44.62.330(a). I assume that, in any challenge on this point, the department would argue that its framing of the scope of the administrative review and its decision as to the relevance of the issues to the proposed disposal are matters uniquely involving the agency's expertise. To the extent the department prevails in that argument, any judicial review of the decision to admit or exclude relevant issues would be examinable under a "reasonable basis" standard, the same standard that had been applied in the several appellate decisions recently litigated by Trustees for Alaska, the Alaska court determinations earlier cited. In instances in which the reviewing court found that the department had neglected to consider relevant evidence, a remand of the matter for further proceedings would be in order.

*

To answer other points you raise, not necessarily in the order presented:

(1) I am not the person to ask about the additional burden the proposed changes place on the respective decision makers. I couldn't hazard a guess. However, given that both sets of changes--AS 38.05 and AS 46.40--involve establishing limitations on a process that the court has come to view as somewhat open-ended, the ability of the appropriate agency to circumscribe the administrative review would appear to me to be a significant enlargement of administrative requirements.

(2) Does language in this measure that revises an administrative review process applicable to a written best interest finding in conjunction with a proposed disposition of state resources so that the parameters of the administrative review may vary from one proposed disposal to another invite an equal protection challenge? Probably. Would that equal protection challenge be successful? Depending upon the manner of its handling by the division of land, it very well could.

I take your question to be one that is concerned with distinctions that, under the proposed amendments to AS 38.05.035(e) and (g), may be drawn in the administration of the agency's handling of its "written best interest" obligation wherein different

distinctions may impose limitations on parties having an interest in the proposed disposition of the state's resources. [5/]

This question can best be answered by reference to a handful of basic principles that guide administrative law and the constitutional requirements of equal protection. In an early Alaska decision, the Supreme Court observed that

> . . . [T]he guarantee of equality of treatment prohibits legislation which denies to one group of persons the enjoyment of certain rights which are afforded to another group when, considering the purpose of the legislation, there is no reasonable basis for not treating both groups the same.

Leege v. Martin, 379 P.2d 447 (Alaska 1963), at 452. See also, Application of Brewer, 430 P.2d 150 (Alaska 1967), Alex v. State, 484 P.2d 677 (Alaska 1971). This principle, applicable, to be sure, to measures considered by a legislature, also guides administrative actions. Agency determinations necessarily must include like treatment unless there is some reasonable basis for allowing a different outcome. Even where, as proposed here, discretionary authority is broadly granted, state agencies are not free to apply the law differentially or make unjust distinctions between persons or groups in the application of the law they administer. [6/] Thus, if the director can assert no reason to justify the shaping of the direction and dimensions of the administrative review underlying the written best interest finding effort than to restrict

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[5/] In doing so, I distinguish the situation of classifications in application from (1) those in which the statute itself establishes its own classifications, and the statutory classifications compel evaluation--the amendment to AS 38.05.035 does not do this--and (2) those in which the statute makes no classification, or makes a "neutral" classification that can be applied evenhandedly but that the statute is so designed as to impose different burdens on different classes of people--a proposition that your memo does not assert.

[6/] In Alex, the court supplies this expanded explanation of the requirement of the basic equal protection principle:

> The requirements of equal protection amount to a prohibition of laws which, in their application, make unjust distinctions between persons. If a rational basis for a classification is reasonably apparent, there is no denial of equal protection. . . . We cannot say that a legislative judgment was unreasonable if it bears a rational connection to a legitimate public purpose. So long as a legislative classification is not based upon an arbitrary or unjustifiable distinction and does not invidiously discriminate between two groups, there is no denial of equal protection.

Alex, 484 P.2d at 684.

opportunity for meaningful public comment, then the effort may be invalidated under an application of this basic equal protection requirement. [7]

(3) Is there a national or state model? I don't have one to which to refer you. However, as to coastal management matters, regulations applicable to the federal coastal management program authorize phased decisionmaking, and this was specifically mentioned to me in conjunction with an early discussion of a first draft of the Senate companion to the House bill. See, in this regard, 15 CFR §§ 930.37(c) and 930.38(b).

I trust this is sufficient for your purposes.

JBC:pl
94-169.plm

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[7] Considerations of due process, then, or at least a due regard for fair treatment of the interested public on a question of significance, would almost certainly require that the director outline the principles that would serve to guide or influence exercise of discretion bearing upon definition of the scope of administrative review in conjunction with preparation of written best interest findings. Since the manner of the exercise of discretion may well constitute, under AS 44.62.640(a)(3), a "standard of general applicability" that "makes specific a law" administered by the agency and that is "used by the agency in dealing with the public," adoption of regulations would seem to be called for.

FISCAL NOTE

STATE OF ALASKA **BILL NO. HB474**

1994 LEGISLATIVE SESSION

Revision Date: Original
Dept Affected: Natural Resources
Title: "An Act modifying administrative procedures and decisions by state agencies that relate to uses and dispositions..."
BRU: Resource Development
Component: All
Sponsor: House Resources Committee
Requestor: House Oil & Gas Committee
Component Serial No. All

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: $ None

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact associated with this bill in the Department of Natural Resources.

Prepared by: Jerry Gallagher, Legislative Liaison
Phone : 465-2400
Division: Commissioner's Office
Date : 15-Feb-94
Approved by Commissioner:
Harry A. Noah
Date: 15-Feb-94
Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

(HB474.XLS Rev 2/15/94) For further distribution information call the Governor's Legislative Office

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

P.O. BOX 107034
ANCHORAGE, ALASKA 99510-7034
PHONE: (907) 762-2553

(907)762-2547

March 1, 1994

The Honorable Bill Williams
Chairman, House Resources Committee
Alaska State Legislature
State Capitol, Room 128
Juneau, Alaska 99801-1182

Dear Representative Williams:

HB 474 (O&G) was passed out of the House Special Committee on Oil and Gas on February 28, 1994. On behalf of the administration, I request that the House Resources Committee schedule a hearing on the legislation at the earliest possible date. In addition to the extensive record which will be conveyed to the committee, I want to take this opportunity to address a major concern expressed in prior hearings in both the House and the Senate. That concern has to do with the granting of limited discretion to the executive agencies to determine the scope of the analysis which will be conducted before a resource disposal.

In order for the state to conduct an oil and gas leasing program, discretion to make legislatively required findings must be vested in some decision maker. Someone must reach a final decision as to whether a proposed disposal is in the best interest of the state and is also consistent with the terms of the Alaska Coastal Management program. I believe that the Legislature intends that the executive agencies have the responsibility for those decisions, not the courts. The legislation introduced last month clarifies that intent.

HB 474 (O&G) does not grant any authority not already vested with the administrative agencies. And, in fact, any complaints about the agencies being granted unfettered discretion under the provisions of this legislation are groundless because, ultimately, all agency actions are subject to review by the courts. If an agency decision is challenged, courts will review the exercise of the administrative agency's discretion to ensure that the decision is not arbitrary or capacious, and that it is supported by the administrative record.

Sincerely,

James E. Eason
Director

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

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March 1, 1994

The Honorable Bill Williams
Chairman, House Resources Committee
Alaska State Legislature
State Capitol, Room 128
Juneau, Alaska 99801-1182

Dear Representative Williams:

HB 474 was passed out of the House Special Committee on Oil and Gas last evening, and hopefully will receive a hearing in the House Resources Committee soon. A recurrent theme in public testimony on HB 474 is that the department is exposing the state to large fiscal risks should it be necessary to repurchase oil and gas leases if they are subsequently determined to be too environmentally sensitive for development. In her testimony earlier this week before both the Senate Finance Committee and the House Oil and Gas Committee, Ms. Ricki Ott even went so far as to suggest that conflicts will undoubtedly occur, resulting in the need for lease buybacks. Her comments, as well as those of others testifying on HB 474, suggest that there will be extraordinary financial exposure for the state should HB 474 be passed.

Those concerns seem to arise from a belief that "history will repeat itself," and that the state will be faced with the need to repurchase tracts, as resulted after the legislature decided, as a matter of policy, not to allow leasing in Kachemak Bay. For two reasons, I do not believe that passage of HB 474 will produce such dire consequences.

First, as a result of the Kachemak Bay decision, as well as general concerns about oil and gas leasing, the statutes governing oil and gas leasing underwent comprehensive revision in 1978. A major provision of those revisions was the adoption of a five-year schedule with its predictable timelines. The requirement that sales which the department proposes to conduct must be on the five-year schedule for a minimum of two calendar years was adopted at that time. The implicit purpose of this requirement was that the legislature have sufficient notice of potentially controversial sales so that it could act to set broad policy in those instances where it was the will of the legislature not to lease. HB 474 in no way diminishes the legislature's ability to review areas under consideration for leasing and to remove those which it chooses.

Secondly, the fiscal exposure about which Ms. Ott and others speculate already exists. However, the presumption that massive lease buybacks conflicts will occur as a result of that

exposure conflicts with the record. Rather than speculating on the effects of having a situation where leasing might occur with the need to later disallow development, one should look to that record.

Since 1979, the Department of Natural Resources has included as a term in its leases a provision which makes clear that the lessee purchases the lease with the risk that it may ultimately not be allowed to develop the lease. That provision, Paragraph 20, entitled *Default and Termination; Cancellation*, provides in pertinent part:

> ...(b) The state may cancel this lease at any time if the state determines, after the lessee has been given notice and a reasonable opportunity to be heard, that:
>
> (1) continued operations pursuant to this lease probably will cause serious harm or damage to biological resources, to property, to mineral resources, or to the environment (including the human environment);
>
> (2) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and
>
> (3) the advantages of cancellation outweigh the advantages of continuing this lease in effect. Any cancellation under this subparagraph will not occur unless and until operations under this lease have been under suspension or temporary prohibition by the state, with due extension of the terms of this lease, continuously for a period of five years or for a lesser period upon request of the lessee.
>
> (c) Any cancellation under subparagraph (b) will entitle the lessee to receive compensation as the lessee demonstrates to the state is equal to the lesser of:
>
> (1) the value of the cancelled rights as of the date of cancellation, with due consideration being given to both revenues from this lease and anticipated costs, including costs of compliance with all applicable regulations and stipulations, liability for clean-up costs or damages, or both, in the case of an oil spill, and all other costs reasonably anticipated under this lease; or
>
> (2) the excess, if any, over the lessee's revenues from this lease (plus interest on the excess from the date of receipt to date of reimbursement) of all consideration paid for this lease and all direct expenditures made by the lessee after the effective date of this lease and in connection with exploration or development, or both, under this lease, plus interest on that consideration and those expenditures from the date of payment to the date of reimbursement.

Since that provision was incorporated in the state's leases, 40 competitive oil and gas lease sales have been held, with more than 1758 leases having been issued. In total, leases comprising more than four million acres currently are conditioned by this provision.

To date, there have been no conflicts which required the state to exercise this option. To the contrary, there have been instances in which major accommodations were required of lessees to assure that their proposed development plans were made compatible with competing surface resources. I have cited for the record during prior testimony on HB 474 the state's experience in permitting the Niakuk and Lisburne developments on the North Slope. In both cases the lessees' proposed developments were considerably reconfigured and conditioned to assure minimal environmental impact and compatible development. Thus, perception that the state is somehow forced into incompatible development after issuing oil and gas leases has never materialized.

Similarly, I have addressed on the record that the "conflicts" which were alleged by the plaintiffs to be inevitable should Sale 78 proceed without deletion of the fishing corridor acreage. Those supposed "conflicts" simply do not comport with the record. As noted in my February 28, 1994 letter to the committee, the corridor area has been the site of leasing in the past, as well as the drilling of four exploratory wells. There are active leases in the area today. These facts, again, are being disregarded.

The record compiled from more than 40 lease sales since 1978 reflects that adequate mitigation measures and terms have been adopted at the lease sale stage to assure that the department can condition subsequent projects with demonstrated success to assure that they are in the state's best interest and consistent with the ACMP. However, the courts' decisions demonstrate that they are unwilling to allow the department to proceed beyond leasing to the second stage, that of reviewing specific project proposals, identifying conflicts that must be resolved, and working with the responsible state agencies, the public and lessees to provide creative solutions to address those conflicts.

It is for that reason that passage of HB 474 is crucial. Without the legislature's clear guidance, the courts will continue to set oil and gas leasing policy.

Sincerely,

James E. Eason
Director

Gustavus, Alaska
March 2, 1994

Rep. Bill Hudson
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Hudson:

As one of the chairmen of the Resources Committee, I ask you to oppose HB 474, which would alter the administrative procedures and decisions for leasing or other disposal of state lands and resources.

This is a really terrible bill, for it would both abridge the public process and put blinders on the responsible parties. Would damage to the fisheries and coastlines of the Alaska Peninsula have been considered a "reasonably forseeable, nonspeculative, direct effect" of building the TransAlaska Pipeline or the Valdez terminal? Under HB 474 one would expect such a possibility to be ruled outside the scope of the administrative process.

What can be the purpose of allowing projects to be considered in phases, and restricting public comment, administrative review and findings to the single phase under consideration? It can only be to frustrate the public process and exhaust those who would otherwise wish to be involved in it. Wise planning can only be hindered by such a policy, and the public left frustrated and angry. One can imagine the most hazardous projects being divided into the most phases!

After the oil pipeline and terminal were built, several parties including the State of Alaska busied themselves with taking apart and reducing the safeguards surrounding that system. After the Exxon Valdez spill legislators lined up to enact new safeguards. Five years later the legislature and governor are busy taking the safeguards apart again.

This kind of legislation engenders distrust of legislators and of the administrative bureaucracy.

Yours truly,

Judy Brakel

Judy Brakel
Box 94, Gustavus, Alaska 99826

Voting address - Juneau

UCIDA
UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(907) 283-3600 • FAX (907) 283-3306

March 10, 1994

Sent by telefax

Representative Bill Williams,
Chairman House Resources Committee
State Capitol, Room #126
Juneau, AK. 99801-1182

Dear Representative Williams,

On February 28, 1994, I was fortunate enough to have an opportunity to testify orally on HB 474 before the House Special Committee on Oil & Gas. That testimony was transcribed and submitted to your committee on March 4. I have since taken the opportunity to clarify my remarks and add some additional comments.

I would appreciate it if copies of my revised testimony could be distributed to each of the Committee members. Thank you for your consideration.

Sincerely,

Theo Matthews
Administrative Assistant

UCIDA
UNITED COOK INLET DRIFT ASSOCIATION
P.O. Box 389 • Kenai, Alaska 99611 - 0389
(907) 283-3600 - FAX (907) 283-3306

Theo Matthews February 28, 1994 Testimony On HB474
To The House Oil & Gas Committee

Thank you Mr. Chairman. My name is Theo Matthews. I am speaking tonight as the Administrative Assistant of United Cook Inlet Drift Association (UCIDA). I am also a member of UFA and serve on the UFA Habitat and Executive Committees.

Both UCIDA and UFA oppose HB474. I was encouraged by the comments from AOGA tonight where it was stated that they simply did not feel that DNR should have to engage in endless speculation. I don't think anyone has argued against the fact that there should be some certainty in the scope of things that need to be considered - this is only fair to the courts and to DNR. One should not have to speculate out to the ends of the earth. However, that is not the driving force behind this legislation which, as written, would allow "directors" the discretion to deem most if not all public comments and concerns "speculative" in best interest and consistency findings at the initial disposal phase of any project.

The driving force behind this legislation is found on page 2, lines 24-27. The issue here is phasing and best interest findings, and what that does to the relevancy of public comment and to the public and state coffers. The attempt to limit what is relevant to a DNR decision to grant a property right to a leasee at the leasing stage is not acceptable. This legislation will not even permit DNR to consider the most nonspeculative of issues that can be seen down the road. The same thing is found in the section dealing with consistency findings, section 46 on page 5. Again, at its discretion, DNR may limit consistency review to a particular stage. The problem with this bill is DNR's ability to limit the scope of best interest findings and consistency reviews - this is bad public policy.

There was nothing speculative about the issues we raised in Cook Inlet with respect to Lease Sale 78. We made it very clear that a stationary production platform in certain waters in Cook Inlet would be totally incompatible with existing uses when considering physical and safety conflicts. We made this claim with respect to two areas of Cook Inlet

included in Lease Sale 78:

1) Tracts 20 and 21 which are located in front of the oil tanker docks in North Kenai. It is pretty obvious you don't want a stationary platform there.
2) We also made this claim with respect to the near shore waters south of Kasilof.

There is nothing speculative about the conflict that would be created by locating platforms in either of these areas.

UCIDA requested that DNR include a mitigation measure in the Lease that was fair to the lessee and the public. The suggested mitigation measure would have advised the lessee interested in purchasing leases in these particular marine waters that permanent production platforms would not be allowed. UCIDA also suggested that other kinds of access would have been acceptable. These included directional drilling, tapping a well and piping it to shore. We did not oppose the lease sale itself. There were many other tracts in northern waters, along the west side of Cook Inlet and onshore where no additional mitigation measures were proposed.

DNR's response was that we were asking them to engage in speculation by considering the conflicts that would arise if a permanent production platform were to be put in these areas. We found this comment less than genuine after 35 years of offshore platforms being the only production method used in the marine waters of Cook Inlet!

The public, in every possible forum, let DNR know that there were conflicts. Different elements of the public had different concerns. For example:

- there were many land owners who stated they had not been notified and did not want drilling on their property. DNR stated that, by law, a bond would have to be posted if an agreement could not be reached with a land owner but that drilling could, nevertheless, occur. DNR also stated that the bond would not cover a neighbor's damages.
- Cook Inlet Regional Citizen's Advisory Council opposed the entire sale, all tracts in marine waters and onshore because no environmental monitoring program has been established in Cook Inlet.
- The Kenai Peninsula Borough Assembly opposed all tracts, land and marine, south of Kasilof.
- Commercial fishermen opposed only the marine portions of tracts that were located in front of the tanker docks and south of Kasilof. As you

can see, there were many different elements of the public that had varied concerns. But commercial fishermen did not oppose this sale.

I would like to conclude, Mr. Chairman, by noting that **the court in the Lease Sale 78 case was not arbitrary and did not engage in far flung speculation.** The court noted DNR's own Finding where the fisheries were identified and it was stated that exploration and development of the sale area could adversely affect human uses of the area and its resources if access to hunting, fishing, or trapping were restricted by industry's operations occurring at the same time and place as harvest activities. Those were DNR's own findings. Judge Cranston concluded that DNR's failure to address and resolve specific conflicts as to proposed use imperilled the consistency findings. That is exactly what we told DNR throughout the public hearings. We expressed our conviction that conflicts would definitely arise if platforms were placed in certain tracts. We need to resolve these issues at the lease stage and in the state's best interest.

Thank you Mr. Chairman.

Sincerely,

Theo Matthews

Theo Matthews
Administrative Assistant

March 10, 1994

James K. Eason, Director
Alaska Department of Natural Resources
Division of Oil and Gas
P.O. Box 107034
Anchorage, Alaska 99510

Dear Mr. Eason:

This is in regard to our efforts to resolve differences with you over Senate Bill 308 and House Bill 474, the legislation sponsored by the Administration that would change the requirements by which the State must make best interest determinations under Title 38 of Alaska Statutes and coastal zone consistency determinations under Title 46. Representatives of our organizations have devoted several hours to meeting with you and drafting suggested alternatives to the existing bills in order to protect the interests of coastal communities and residents. Regrettably, we appear to have reached an impasse. It is our hope that by clearly articulating our concerns in this letter, you will reconsider your position on critical points of disagreement and be amenable to evaluating some of the changes we have suggested.

DELETION OF REFERENCE TO SEC. 46.40.094 CONSISTENCY DETERMINATIONS

We have asked that you agree to deletion of sections of the existing bills that change the manner in which coastal zone consistency determinations are conducted. We have indicated that the current language would grant an inordinate amount of discretionary authority to the state government at the cost of local governments and adversely affect the ability of local governments and developers to undertake long-range planning for the completion of projects and mitigation of impacts.

The current statutory language regarding coastal zone consistency determinations is the result of many hours of cooperative effort between state administrations and local governments and many years of experience in implementing the Alaska Coastal Management Program. The changes proposed in the pending legislation are significant and far-reaching. We again ask you to consider agreeing to set aside any amendments to Title 46 during this legislative session and work with us in the interim to craft amendments that serve our mutual needs.

LIMITING CHANGES IN TITLE 38 TO OIL AND GAS LEASE SALES

As we indicated in our meetings with you, we are uncomfortable with the changes proposed in the current legislation that would allow the phasing of best interest determinations at the State's discretion under Title 38. We feel that such changes would have far-reaching consequences beyond Alaska's coastal areas, increase the state's financial liability in many instances and alter the manner in which divisions within the Departments of Fish and Game and Environmental Conservation as well as the Department of Natural Resources review initiatives which involve the disposal of interests in state resources.

However, we indicated we would be willing to consider some changes in the best interest determination provisions of Title 38 if they were limited to state oil and gas leasing and could be demonstrated to improve the current leasing program. You pointed out that you feel determining what will happen as a result of a state oil and gas lease sale involves a greater degree of uncertainty than determinations for state timber sales or mineral leases. As a result, you asserted, predicting the final outcome of potential development at the lease sale stage is more difficult. We are therefore disappointed that you are not willing to support limiting Title 38 changes to oil and gas lease sales. Given that the pending legislation was designed to address problems you identified in the state's oil and gas leasing program, we ask that you reconsider your position on this issue.

EXPANSION OF THE WORKING GROUP

We also ask that you reconsider your opposition to expanding the current informal working group to include representatives of the Department of Law and the Department of Governmental Coordination. As was pointed out during the last meeting of the working group, the institutional experience representatives of these agencies could bring to the table would be invaluable in reviewing the complex issues affected by the pending legislation. In addition, as we have indicated, local agencies and public interest groups outside of Alaska's coastal districts that would be affected by changes in Title 38 should be brought to the table.

At this time we must reaffirm our opposition to the current legislation. Please understand we simply cannot support these bills in their present form. The manner in which the State makes decisions regarding the disposal of state resources in coastal areas can have profound effects on the lives and livelihoods of the citizens who live in these regions. We believe it is essential that the people most affected by the State's decisions maintain meaningful opportunities to participate in those decisions.

We look forward to hearing from you.

Sincerely,

Gerry McCune, President
United Fishermen of Alaska

Theo Matthews

Theo Matthews, Administrative Assistant
United Cook Inlet Drift Fishermen's Association

Loren Flagg, Executive Director
Kenai Peninsula Fishermen's Association

Dorne Hawxhurst, Executive Director
Cordova District Fishermen United

Paul Seaton, Chairman
Alaska Marine Conservation Council

cc: All Coastal Districts
Harry Noah, Commissioner, Ak Department of Natural Resources

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

P.O. BOX 107034
ANCHORAGE, ALASKA 99510-7034
PHONE: (907) 762-2553

(907)762-2547

March 1, 1994

The Honorable Bill Williams
Chair n, House R sources Committee
Ala ate Legislature
State Capitol, Room 128
Juneau, Alaska 99801-1182

Dear Representative Williams:

HB 474 was passed out of the House Special Committee on Oil and Gas last evening, and hopefully will receive a hearing in the House Resources Committee soon. A recurrent theme in public testimony on HB 474 is that the department is exposing the state to large fiscal risks should it be necessary to repurchase oil and gas leases if they are subsequently determined to be too environmentally sensitive for development. In her testimony earlier this week before both the Senate Finance Committee and the House Oil and Gas Committee, Ms. Ricki Ott even went so far as to suggest that conflicts will undoubtedly occur, resulting in the need for lease buybacks. Her comments, as well as those of others testifying on HB 474, suggest that there will be extraordinary financial exposure for the state should HB 474 be passed.

Those concerns seem to arise from a belief that "history will repeat itself," and that the state will be faced with the need to repurchase tracts, as resulted after the legislature decided, as a matter of policy, not to allow leasing in Kachemak Bay. For two reasons, I do not believe that passage of HB 474 will produce such dire consequences.

First, as a result of the Kachemak Bay decision, as well as general concerns about oil and gas leasing, the statutes governing oil and gas leasing underwent comprehensive revision in 1978. A major provision of those revisions was the adoption of a five-year schedule with its predictable timelines. The requirement that sales which the department proposes to conduct must be on the five-year schedule for a minimum of two calendar years was adopted at that time. The implicit purpose of this requirement was that the legislature have sufficient notice of potentially controversial sales so that it could act to set broad policy in those instances where it was the will of the legislature not to lease. HB 474 in no way diminishes the legislature's ability to review areas under consideration for leasing and to remove those which it chooses.

Secondly, the fiscal exposure about which Ms. Ott and others speculate already exists. However, the presumption that massive lease buybacks conflicts will occur as a result of that

exposure conflicts with the record. Rather than speculating on the effects of having a situation where leasing might occur with the need to later disallow development, one should look to that record.

Since 1979, the Department of Natural Resources has included as a term in its leases a provision which makes clear that the lessee purchases the lease with the risk that it may ultimately not be allowed to develop the lease. That provision, Paragraph 20, entitled ***Default and Termination; Cancellation***, provides in pertinent part:

> ...(b) The state may cancel this lease at any time if the state determines, after the lessee has been given notice and a reasonable opportunity to be heard, that:
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> (1) continued operations pursuant to this lease probably will cause serious harm or damage to biological resources, to property, to mineral resources, or to the environment (including the human environment);
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> (2) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and
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> (3) the advantages of cancellation outweigh the advantages of continuing this lease in effect. Any cancellation under this subparagraph will not occur unless and until operations under this lease have been under suspension or temporary prohibition by the state, with due extension of the terms of this lease, continuously for a period of five years or for a lesser period upon request of the lessee.
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> (c) Any cancellation under subparagraph (b) will entitle the lessee to receive compensation as the lessee demonstrates to the state is equal to the lesser of:
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> (1) the value of the cancelled rights as of the date of cancellation, with due consideration being given to both revenues from this lease and anticipated costs, including costs of compliance with all applicable regulations and stipulations, liability for clean-up costs or damages, or both, in the case of an oil spill, and all other costs reasonably anticipated under this lease; or
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> (2) the excess, if any, over the lessee's revenues from this lease (plus interest on the excess from the date of receipt to date of reimbursement) of all consideration paid for this lease and all direct expenditures made by the lessee after the effective date of this lease and in connection with exploration or development, or both, under this lease, plus interest on that consideration and those expenditures from the date of payment to the date of reimbursement.

Since that provision was incorporated in the state's leases, 40 competitive oil and gas lease sales have been held, with more than 1758 leases having been issued. In total, leases comprising more than four million acres currently are conditioned by this provision.

To date, there have been no conflicts which required the state to exercise this option. To the contrary, there have been instances in which major accommodations were required of lessees to assure that their proposed development plans were made compatible with competing surface resources. I have cited for the record during prior testimony on HB 474 the state's experience in permitting the Niakuk and Lisburne developments on the North Slope. In both cases the lessees' proposed developments were considerably reconfigured and conditioned to assure minimal environmental impact and compatible development. Thus, perception that the state is somehow forced into incompatible development after issuing oil and gas leases has never materialized.

Similarly, I have addressed on the record that the "conflicts" which were alleged by the plaintiffs to be inevitable should Sale 78 proceed without deletion of the fishing corridor acreage. Those supposed "conflicts" simply do not comport with the record. As noted in my February 28, 1994 letter to the committee, the corridor area has been the site of leasing in the past, as well as the drilling of four exploratory wells. There <u>are</u> active leases in the area today. These facts, again, are being disregarded.

The record compiled from more than 40 lease sales since 1978 reflects that adequate mitigation measures and terms have been adopted at the lease sale stage to assure that the department can condition subsequent projects with demonstrated success to assure that they are in the state's best interest and consistent with the ACMP. However, the courts' decisions demonstrate that they are unwilling to allow the department to proceed beyond leasing to the second stage, that of reviewing specific project proposals, identifying conflicts that must be resolved, and working with the responsible state agencies, the public and lessees to provide creative solutions to address those conflicts.

It is for that reason that passage of HB 474 is crucial. Without the legislature's clear guidance, the courts will continue to set oil and gas leasing policy.

Sincerely,

James E. Eason
Director

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

P.O. BOX 107034
ANCHORAGE, ALASKA 99510-7034
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(907)762-2547

March 1, 1994

The Honorable Bill Williams
Chairman, House Resources Committee
Alaska State Legislature
State Capitol, Room 128
Juneau, Alaska 99801-1182

Dear Representative Williams:

HB 474 (O&G) was passed out of the House Special Committee on Oil and Gas on February 28, 1994. On behalf of the administration, I request that the House Resources Committee schedule a hearing on the legislation at the earliest possible date. In addition to the extensive record which will be conveyed to the committee, I want to take this opportunity to address a major concern expressed in prior hearings in both the House and the Senate. That concern has to do with the granting of limited discretion to the executive agencies to determine the scope of the analysis which will be conducted before a resource disposal.

In order for the state to conduct an oil and gas leasing program, discretion to make legislatively required findings must be vested in some decision maker. Someone must reach a final decision as to whether a proposed disposal is in the best interest of the state and is also consistent with the terms of the Alaska Coastal Management program. I believe that the Legislature intends that the executive agencies have the responsibility for those decisions, not the courts. The legislation introduced last month clarifies that intent.

HB 474 (O&G) does not grant any authority not already vested with the administrative agencies. And, in fact, any complaints about the agencies being granted unfettered discretion under the provisions of this legislation are groundless because, ultimately, all agency actions are subject to review by the courts. If an agency decision is challenged, courts will review the exercise of the administrative agency's discretion to ensure that the decision is not arbitrary or capacious, and that it is supported by the administrative record.

Sincerely,

James E. Eason
Director

Alaska State Legislature

Interim:
P.O. Box 1287
Soldotna, AK 99669
(907) 262-8414

Session:
State Capitol
Juneau, AK 99801
(907) 465-2693

Representative Gary L. Davis

March 07, 1994

Commissioner Harry Noah
Department of Natural Resources
Mail Stop 1000
Junueau, AK 99801

Dear Commissioner Noah:

As you know, House Bill No. 474, "...modifying administrative procedures & decisions by state agencies that relate to uses & dispositions of state land, property & resources...." has passed out of the House Special Committee on Oil & Gas after two hearings. As a member of that committee with many concerned constituents I feel there are a few changes that should be considered to alleviate many of the concerns expressed.

There are a few changes which could be made that I feel would reduce an implied "trust me, I am from the government and I am here to help" sentiment. These changes are: (copy 8-LS 1692\K)

1- Page 2 Line 9- change first word in line, "may" to "shall." This maintains continuity with the paragraph. In actuality there will be a review and finding so the more directive word should be acceptable.

2- Page 2 line 27- change the word "solely." I am not sure what would fit, but even if it was deleted I think a lot of concerns would be reduced. Any recommendations by your office would be appreciated.

3- Page 4 line 15- the last word "or" should be changed to "and." I discussed this with Jim Eason at the last meeting and he wasn't in favor of the change, but it is my feeling that the stronger word should be used when describing an activity that will be done.

These are my immediate concerns. I want to assure you I do support the intent of this legislation. As a long time Kenai Peninsula resident I have an understanding of the compatibility of oil/fish in Cook Inlet, but I also understand the concerns expressed when legislation such as HB 474 is introduced under its particular circumstance. There is a problem which needs to be addressed, but all involved parties should and can be a part of the solution!

Thank you for considering my proposals. I am looking forward to your response.

Regards,

Gary L. Davis, Representative

GD:jb

cc: Senator Loren Leman
Representative Bill Williams
Theo Matthews

UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax: 907/463-2545

2/16/94

POSITION PAPER ON HB 474 & SB 308

UFA opposes this legislation. We are not anti-development. However, this legislation attempts to ignore consideration of problems at the initial stage of projects.

The Alaska Coastal Management Program isn't broken: DNR is.

In April 1993, the Alaska Supreme Court ruled that DNR failed to adequately consider salient issues in making its best-interest finding to allow Lease Sale 50 (Camden Bay) to proceed. Sale 50 was remanded because DNR did not do its homework.

In December 1993, the Alaska Supreme Court ruled that DNR again failed to adequately consider identical issues in making its best-interest finding to allow Lease Sale 55 (Demarcation Point, ANWR) to proceed. Sale 55 was remanded because DNR did not do its homework. In fact, the Supreme Court was so astonished by DNR's sloppiness in preparing its Findings, that the court specifically pointed out in its ruling that DNR appears to have copied--without alteration--the previously rejected Sale 50 Finding in Camden Bay and tried to apply this same flawed Finding to Sale 55.

In January 1994, the State Superior Court ruled preliminarily that DNR failed to adequately consider salient issues in making its best-interest finding to allow Lease Sale 78 (Cook Inlet) to proceed. Although DNR has appealed, it is obvious, this time even at the state court level, that DNR has, once again, not done its homework.

Legislative "fixes" won't substitute for professionalism at DNR.

DNR has already asked the Legislature to change the law when the Alaska Supreme Court found that DNR made the initial consistency determination in Sale 50, rather than the Office of Management and Budget as required by law. The Legislature amended the law (AS 44.19.145(11)) to permit DNR to make consistency determinations--retroactive to Sale 50. Once again, DNR is requesting legislative "fixes" for departmental incompetency. The law is not the problem.

This legislation increases federal authority on federal lands and decreases local authority on state lands.

This legislation tries to give DNR resource agency directors authority to limit the scope and number of issues that are raised during administrative review. However, because federal and state findings need to be consistent under the Coastal Zone Management

Act, when this legislation delegates broad authority to state directors, it also delegates this same broad authority to federal directors. For example, if this legislation were enacted, the state would have far less opportunity to comment on federal findings on federal lands, such as outer continental shelf oil lease sales or Tongass timber harvests.

Similarly, by empowering DNR resource agency directors to narrow the focus of administrative reviews, this legislation also takes power away from local governments and the concerned public. This is undemocratic. The idea of concentrating control in the hands of state bureaucrats is as repulsive to local governments and people as the idea of concentrating control in the hands of federal bureaucrats is to state governments. Yet this legislation does both.

This legislation affects future timber, mining and oil projects.

This legislation gives all resource agency directors--timber, mining, oil-- power to limit the range of issues presented during administrative reviews. This concentrates power in the hands of state bureaucrats who have demonstrated their inability to make "reasoned determinations" in areas other than oil and gas lease sales. For example, the area forester determined that the visual impact from the 215,000 acre harvest in the Susitna Valley would be a "pleasing" mosaic of colors for viewers.

This legislation will increase the risk of environmentally unsound projects.

This legislation allows DNR to conduct multi-phase administrative reviews and permitting without requiring all the relevant information at the initial phase of the proposed project. This is counter to the best interests of the state, because DNR will find it difficult to slow or stop momentum once projects are initiated and developers have property interest. The lease sale buy-back situation in Bristol Bay is a perfect example. To be fair to the state, developers and the public, it is imperative that all social and environmental risks are brought to the table at the initial stage of the project.

The Alaska Supreme Court noted that "a finding... that development is economically feasible is not the same as a finding that the sale is in the State's best interests. DNR must consider the "social, cultural and environmental impacts on the state from oil production." However, the Supreme Court warned that "the more segmented an assessment of environmental hazards, the greater the risk that prior permits will compel DNR to approve later, environmentally unsound permits." Surely this is not in the state's best interests.

This bill legislates DNR's incompetence and irresponsibility.

The Alaska Supreme Court found that "DNR is required [by law] to take a 'hard look' at the salient problems involved with a lease sale, and [it] must engage in reasoned decision making." Further, the Supreme Court ruled that DNR must "consider the probable cumulative impact of all anticipated activities which will be a part of [the project]. Instead DNR is appealing to the legislature to remove these requirements.

The problem lies with DNR's ability to meet the requirements of the Coastal Management Program, not with the program itself. The public, industry and the state deserve to discuss and resolve issues up front to ensure projects proceed responsibly and with minimal impact on other resource users and the environment.

Alaska Sportfishing Association

3605 Arctic Blvd. Suite 800 • Anchorage, Alaska 99503

Rep. David Finkelstein
Alaska House of Representatives
State Capitol
Juneau, AK

Re: HB474/SB308

Dear Representative Finkelstein,

Thank you for asking for the position of the Alaska Sportfishing Association on HB474 and its companion bill, SB308.

The Association is opposed for the following reasons:

The bills amend AS 38.05.035 (e). The present law requires the Director of the Division of Lands to make findings as to the state's "best interest" whenever the state considers land disposal, timber sales or oil and gas leases. These findings must meet criteria that protect fish and wildlife habitat, such as sport fishing.

Section 1 of the bills would amend the statute to make the best interest determinations subject---not to specific criteria--- but to simply whatever facts and issues the Director of the Division of Lands believes are "material". This defeats public planning, and the requirements that agencies respond to public concerns. It changes agencies into some "divine hand" that knows best, rather than requiring that they respond to the public.

Section 1 of the bills would also defeat considerations of cumulative impacts in multi-phased disposal of lands, leases or timber sales. For twenty years, resource agencies (beginning with the President's Council on Environmental Quality in the early 1970's) have consistently recognized the importance of addressing the cumulative impacts in resource matters. This shoddy draftsmanship of the bills should not be allowed to persist.

Finally, this issue of cumulative impacts also arises in section 3 of the bills by limiting coastal zone consistency determinations to incremental phases of a project rather than the overall project. That's bad news for fish.

This legislation arises because of in three recent court cases, the Department of Natural Resources has lost in challenges to its best interest determinations. While the latest involved oil lease sale No 78 on the east side of Cook Inlet, which is right in the heart of the relatively new and expanding Deep Creek recreational fishery and in the heart of the long established set net and drift gill net fisheries, DNR could have easily made a sustainable decision if, as the public requested, it had simply required directional drilling from ashore in order to protect the fisheries and the aesthetic value of the area.

While the Alaska Sportfishing Association has long objected to management of the mixed stock commercial fisheries that intercept many fish other than Kenai Sockeye, and while ASA did not join in the litigation to stop that sale, we believe that maintaining the existing law regarding best interest determinations transcends such matters. That issue transcends any particular sale, transcends oil and gas matters because other dispositions such as timber sales and land sales are involved, and transcends the allocation and intercept issues. The best interests statutes are at the heart of all state land management, not just oil and gas leases.

The Legislature would be unwise to amend the statutes to legalize what the courts have determined to be illegal. In our opinion, DNR has been correctly told three times that it performs poorly on these matters. Three strikes and you're out ought to be the law on DNR. To have DNR now come to ask that the statutes it violated be amended to excuse its conduct amounts to nothing more that any law violator coming to the Legislature to ask that the law violated be expunged. If this were a criminal statute, with a petty thief making such a request, we would all recognize the absurdity of the request. Because this is a civil statute with DNR as the violator and the oil industry as a protagonist, we too easily think the issues are different. They are not. What DNR needs is a lesson in respecting the law, the public and the enactments of the Legislature.

Please convey our sentiments to others in the House and the Senate, and please keep us informed if the legislation progresses. It should not.

Sincerely,

Phil Cutler 3/1/94

Phil Cutler, President

Executive Director
Ben Ellis
P.O. Box 1228
Soldotna, AK 99669
(907) 262-8586
1 800 478 0721

Pat Carter
President

Bob Penney
Chairman

FACSIMILE TRANSMITTAL

TO: Rep. Joe Sitton

Attention: Joe Date: 4/18/94

RE: SB 308

From: BEN ELLIS

We are sending a total of 2 page(s) including this transmittal. Please contact us at (907) 262-8588 if you encounter any problems receiving this transmission. Our fax number is (907) 262-8582.

JOE - HERE IS A COPY OF THE SHORT LETTER I HAVE FAXED TO RAMONA AND GAIL. WHEN THIS BILL GOES TO COMMITTEE WE WILL SEND A MORE DETAILED OPPOSTION LETTER AND OFFER PUBLIC TESTIMONY IF DESIRED. THNAKS FOR YOUR INTEREST IN PROTECTING THE HABITAT.

SENT 10:41

Executive Director
Ben Ellis
P.O. Box 1228
Soldotna, AK 99669
(907) 262-8588
1-800-478-0724

April 18, 1994

Honorable Joe Sitton
House of Representatives
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative ~~Sitton~~ Joe,

The board of directors of Kenai River Sportfishing, Inc. is concerned about SB308. We would request the bill be sent to the oil and gas, resources and the finance committees for close evaluation.

Sincerely,

Ben Ellis
Executive Director
Kenai River Sportfishing, Inc.

The Sportfishing Voice of the Kenai River

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

P.O. BOX 107034
ANCHORAGE, ALASKA 99510-7034
PHONE: (907) 762-2553

(907)762-2547

February 23, 1994

The Honorable Bill Williams
Alaska State Legislature
Room 128
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Williams:

There is legislation in the Senate, SB 308, and in the House, HB 474, which responds to a number of Superior Court and Alaska Supreme Court decisions affecting the state's ability to continue its competitive oil and gas leasing program. Passage of this legislation this session is vital to assuring the viability of that program and the continuation of the many benefits which it provides to all Alaskans.

I have enclosed a number of documents related to this legislation in anticipation that you may have questions concerning either the need for this legislation or what the legislation is intended to accomplish. Among the enclosures is the Alaska Supreme Court's February 22, 1994 denial of the state's petition for its review of the Superior Court's injunction of Sale 78. This final action by the Alaska Supreme Court underscores the need for addressing and passing this legislation this session.

Meanwhile, I would appreciate the opportunity, at your convenience, to discuss the legislation with you. If you have any questions concerning the enclosures, please feel free to call.

Sincerely,

James E. Eason
Director

Enclosures:
Letter from Shelby Stastny
4 speaking documents.
Copy of amended legislation.
Order from the Supreme Court.

cc: Kyle Parker

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 1

To KYLE PARKER	From MARY LUNDQUIST
Co. Governor's office	Co. DOL
Dept.	Phone # 269-5266
Fax #	Fax #

FROM

APPELLATE COURTS CLERK
303 K STREET
ANCHORAGE, AK 99501

RECEIVED
Department of Law
FEB 22 1994
Attorney General
Criminal Division
Anchorage, Alaska

Case Title: STATE V NINILCHIK TRAI[illegible]NAL
Supreme Court # [illegible]

***** O R D E R ***** 02/22/94

IT IS ORDERED: THE PETITION FOR REVIEW FILED ON JANUARY 28, 1994, IS DENIED. ENTERED AT THE DIRECTION OF THE SUPREME COURT ON FEBRUARY 22, 1994. (CHIEF JUSTICE MOORE NOT PARTICIPATING; JUSTICE BRYNER, PRO TEM).
CC: JUSTICES, JUDGE CRANSTON, CLERK OF THE TRIAL COURT
3KN-93-1174 CIVIL

TRW

Clerk of the Appellate Courts

MARY ANN LUNDQUIST ESQ
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF LAW
1031 W 4TH #200
ANCHORAGE AK 99501

8-LS1689\K

CS FOR SENATE BILL NO. 308(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act modifying administrative procedures and decisions by state agencies that relate to uses and dispositions of state land, property, and resources, and to the interests within them, and that relate to uses and activities involving land, property, and resources, and to the interests within them, that are subject to the coastal management program when the use or activity is to be authorized or developed in phases; and providing for an effective date."

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

* Section 1. AS 38.05.035(e) is amended to read:

(e) Upon a written finding that the interests of the state will be best served, the director may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available land, resources, property, or interests in them, and, in addition to the conditions and limitations imposed by law, may impose additional conditions or limitations in the contracts as the director determines, with the consent

of the commissioner, will best serve the interests of the state. A written finding of the director is subject to the following:

(1) with the consent of the commissioner and subject to the director's discretion, for a specific proposed disposal of available land, resources, or property, or of an interest in them, the director, in the written finding,

(A) shall establish the scope of the administrative review on which the director's determination is based, and the scope of the written finding supporting that determination; the scope of the review and finding may address only reasonably foreseeable, significant, direct effects of the uses proposed to be authorized by the disposal;

(B) may limit the scope of an administrative review and finding for a proposed disposal

(i) to the applicable statutes and regulations and the facts pertaining to the land, resources, or property, or interest in them, that the director finds are material to the determination and that are known to the director or knowledge of which is made available to the director during the administrative review; and

(ii) to issues that, based on the statutes and regulations and facts as described in (i) of this subparagraph and on the nature of the uses sought to be authorized, the director finds are material to the determination of whether the proposed disposal will best serve the interests of the state; and

(C) may, if the project for which the proposed disposal is sought is a multiphased development, limit the scope of an administrative review and finding for the proposed disposal to the applicable statutes and regulations, facts, and issues identified in (B)(i) and (ii) of this paragraph that pertain solely to a discrete phase of the project when the only uses to be authorized by the proposed disposal are part of that discrete phase, the department's approval is required before the next phase of the project may proceed, and the department conditions its approval to ensure that any additional uses or activities proposed for that or any later phase of the

project will serve the best interests of the state:

(2) a [A] written finding for an oil and gas lease sale under AS 38.05.180 is subject to (g) of this section;

(3) a [. A] contract for the sale, lease, or other disposal of available land or an interest in land is not legally binding on the state until the commissioner approves the contract but if the appraised value is not greater than $50,000 in the case of the sale of land or an interest in land, or $5,000 in the case of the annual rental of land or interest in land, the director may execute the contract without the approval of the commissioner;

(4) before [. BEFORE] a public hearing, if held, or in any case no less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them, the director shall make available to the public a written finding that, **in accordance with (1) of this subsection,** sets out the material facts and applicable law upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based; **however, a** [. A] written finding is not required before the approval of

(A) [(1)] a contract for a negotiated sale authorized under AS 38.05.115;

(B) [(2)] a lease of land for a shore fishery site under AS 38.05.082;

(C) [(3)] a permit or other authorization revocable by the commissioner;

(D) [(4)] a mineral claim located under AS 38.05.195;

(E) [(5)] a mineral lease issued under AS 38.05.205;

(F) [(6)] a production license issued under AS 38.05.207;

(G) [(7)] an exempt oil and gas sale under AS 38.05.180(d) of acreage offered in a sale that was held within the previous five years if the sale was subject to a written best interest finding, unless the commissioner determines that new information has become available that justifies a revision of the best interest finding; or

(H) [(8)] a lease sale under AS 38.05.180(w) of acreage offered