

**ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672**

**8441 SENATE RESOURCES**

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR FRANK

TO: CSSB 310( ), Draft dated 3/18/94

Page 7, line 8:

Delete "AS 41.17.950"

Insert "AS 38.04.910"

8-LS1558X ✓

Luckhaupt

~~3/28/94~~

CS FOR SENATE BILL NO. 310(RES)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATORS FRANK, Taylor, Pearce, Sharp, Miller, Kelly, Halford

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the management and sale of state timber and relating to the  
2 administration of forest land."

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

4 \* Section 1. AS 38.05.112(c) is amended to read:

5 (c) A forest land use plan shall consider [IN ADDITION TO] the  
6 requirements of AS 38.04.065(b) only for areas where a land use plan under  
7 AS 38.04.065(a) or a forest management plan under AS 41.17.230 has not been  
8 adopted. Regardless of whether there is a land use plan or a forest management  
9 plan. each [, A] forest land use plan shall consider

10 (1) commercial timber harvesting, including related activities;

11 (2) harvesting of forest products for personal use;

12 (3) fish and wildlife habitat, including

13 (A) identification and protection of important wildlife habitat;

14 (B) retention of riparian, wetland, and ocean-shoreline

1 vegetation critical for fish and wildlife habitat; and

2 (C) classification of water bodies according to physical  
3 characteristics;

4 (4) uses of forest land for nontimber purposes, including

5 (A) recreation, tourism, and related activities;

6 (B) mining, mining claims, mineral leaseholds, and material  
7 extraction;

8 (C) uses of fish and wildlife;

9 (D) agriculture, including grazing; and

10 (E) other resources and uses appropriate to the area, including  
11 compatible traditional uses;

12 (5) soil characteristics and productivity;

13 (6) water quality; and

14 (7) watershed management.

15 \* Sec. 2. AS 38.05.113(c) is amended to read:

16 (c) Sales under 500,000 board feet [THE DEPARTMENT MAY ADOPT  
17 REGULATIONS EXEMPTING SMALL] and emergency sales are exempt from the  
18 requirements of this section if public notice of the proposed sale is provided in the  
19 manner specified in AS 38.05.945(b). Exempt sales, other than emergency sales,  
20 under this subsection may not exceed 1,000,000 board feet in a calendar year in  
21 each region.

22 \* Sec. 3. AS 38.05 is amended by adding a new section to article 4 to read:

23 Sec. 38.05.122. FOREST MANAGEMENT AGREEMENTS. (a)

24 Notwithstanding the requirements of AS 38.05.110 - 38.05.120 or another provision  
25 of this chapter, the commissioner, under the procedures set out in this section and if  
26 not inconsistent with a land use plan then in effect, may enter into a forest  
27 management agreement with a person to authorize the person to enter on the state  
28 forest land covered by the agreement for the purposes of selecting, harvesting, and  
29 regenerating timber in a manner consistent with sustained yield.

30 (b) At least once each calendar year, the commissioner shall solicit proposals  
31 for forest management agreements on state forest land. The commissioner shall provide

1 notice of the solicitation to all persons who have requested notification and may  
2 provide for any additional notice that the commissioner determines is ~~is~~ appropriate.  
3 Regardless of whether the commissioner has solicited proposals under this subsection,  
4 a person may submit a proposal for a forest management agreement to the  
5 commissioner at any time for consideration. The commissioner may not consider  
6 unsolicited proposals for a parcel of land covered by a solicited proposal until the  
7 commissioner has completed the review and determination required under this section  
8 concerning the solicited proposals.

9 (c) The commissioner shall solicit public comment for a proposed agreement  
10 unless the evaluation under (d) indicates it is unlikely that the proposed agreement will  
11 be selected as a tentatively successful proposed agreement. The public comment  
12 period under this subsection may not be less than 30 days nor more than 60 days.

13 (d) The commissioner shall evaluate proposed agreements submitted under (b)  
14 of this section. In evaluating a proposed agreement, the commissioner shall consider  
15 the

16 (1) effect of the agreement on the following:

17 (A) commercial timber harvesting, including related activities;

18 (B) harvesting of forest products for personal use;

19 (C) fish and wildlife habitat, including

20 (i) identification and protection of important wildlife  
21 habitat;

22 (ii) retention of riparian, wetland, and ocean shoreline  
23 vegetation critical for fish and wildlife habitat; and

24 (iii) classification of water bodies according to physical  
25 characteristics;

26 (D) uses of forest land for nontimber purposes, including

27 (i) recreation, tourism, and related activities;

28 (ii) mining, mining claims, mineral leaseholds, and  
29 material extraction;

30 (iii) uses of fish and wildlife;

31 (iv) agriculture, including grazing; and

- 1 (v) other resources and uses appropriate to the area,  
2 including compatible traditional uses;
- 3 (E) soil characteristics and productivity;  
4 (F) water quality; and  
5 (G) watershed management;
- 6 (2) necessary public access for uses described in (1) of this subsection;  
7 (3) financial feasibility of the proposed agreement;  
8 (4) technical and financial qualifications of the proposer;  
9 (5) stumpage payments offered to be paid;  
10 (6) economic benefits from the proposed agreement to the region in  
11 which the land that is to be covered by the agreement is located;  
12 (7) economic benefits to state forest land under the proposed  
13 agreement; and  
14 (8) other factors that the commissioner determines are relevant and  
15 appropriate.
- 16 (e) After evaluating proposed agreements under (d) of this section, the  
17 commissioner may designate a tentatively successful proposed agreement. A proposed  
18 agreement may not be designated under this subsection until public comment has been  
19 solicited under (c) of this section. A tentatively successful proposed agreement may  
20 not be designated unless the commissioner includes, and makes a written finding that  
21 sets out facts and applicable law to support the commissioner's conclusion, that
- 22 (1) land or timber covered by the tentatively successful proposed  
23 agreement is not reasonably necessary to provide sustained harvest for a sawmill or  
24 wood processing facility using that land or timber at the time the proposed agreement  
25 was evaluated, or that a final agreement can adequately address those needs; and  
26 (2) the tentatively successful proposed agreement will best serve the  
27 interests of the state and is consistent with applicable land use or management plans  
28 then in effect.
- 29 (f) The commissioner shall provide notice under AS 38.05.945(b) and (c) of  
30 a finding under (e) of this section and designation of a tentatively successful proposed  
31 agreement at least 90 days prior to entering into a final agreement. The commissioner

1 shall solicit comments from the public and from state and local government agencies  
2 on a tentatively successful proposed agreement. ~~-----~~

3 (g) If a tentatively successful proposed agreement is designated under (e) of  
4 this section, the commissioner, after considering comments and recommendations  
5 received under (f) of this section, may proceed to develop a proposed final agreement  
6 between the proposer and the state. A proposed final agreement

7 (1) shall provide for terms, conditions, and limitations determined by  
8 the commissioner to be in the public interest;

9 (2) must contain

10 (A) the initial term of the agreement, which may not exceed 20  
11 years;

12 (B) the stumpage prices for the timber;

13 (C) provisions regarding compensation from the proposer for  
14 scaling services required in order to account for timber sold;

15 (D) provisions regarding compensation, if required by the  
16 department, for state services provided to administer the agreement;

17 (E) provisions regarding responsibilities for construction and  
18 maintenance of access roads necessary to manage the land that is to be covered  
19 by the agreement;

20 (F) provisions regarding consideration for the sale of material  
21 obtained from state land for the construction of access roads on the land that  
22 is to be covered by the agreement;

23 (G) provisions regarding responsibilities for reforestation and  
24 silvicultural practices on land that is to be covered by the agreement;

25 (H) a statement that activities under the agreement are governed  
26 by the provisions of AS 41.17 and regulations adopted under AS 41.17  
27 applicable to operations on state land;

28 (I) provisions for the submission and approval of biennial  
29 operational plans for activities authorized or required by the agreement;

30 (J) requirements for reports and submission of information to  
31 the department regarding performance under the agreement;

1 (K) procedures for enforcement and termination of the  
2 agreement;

3 (L) provisions for existing public access;

4 (M) an operational level forest inventory every five years; and

5 (N) provisions for deactivation or termination, that may include  
6 bonding, to ensure reforestation, stabilization, monitoring, and other residual  
7 obligations.

8 (h) The form of the proposed final agreement developed under (g) of this  
9 section must be approved by the attorney general before the agreement is signed by  
10 the commissioner. After approval by the attorney general under this subsection, the  
11 commissioner and the proposer may sign the proposed final agreement.

12 (i) When the commissioner solicits public comment under (c) of this section,  
13 and at all times thereafter, the proposed agreements are public records and are open  
14 to public inspection and disclosure under AS 09.25.120. Prior to solicitation of public  
15 comment under (c) of this section, proposed agreements submitted under this section  
16 are confidential and are not open to public inspection or disclosure under  
17 AS 09.25.120. When the commissioner selects a tentatively successful proposed  
18 agreement under (e) of this section, all documents regarding that proposed agreement  
19 and all other competing proposed agreements, as well as a subsequent final agreement  
20 and all documents leading up to that agreement, are public records and are open for  
21 inspection under AS 09.25.120.

22 (j) All right, title, and interest in or to timber or material in or on land covered  
23 by a final forest management agreement remains with the state until the timber or  
24 material has been cut or severed, determined as to volume, removed from the site, and  
25 paid for in compliance with the agreement. Timber or material that is not removed  
26 from land covered by a final forest management agreement within the period specified  
27 by the agreement or by an extension of the agreement remains the property of the  
28 state.

29 (k) An interest in a final forest management agreement may not be assigned  
30 without the prior written consent of the commissioner. An assignment without the  
31 prior written consent of the commissioner is void. The commissioner may not consent

1 under this subsection unless the assignment is of the entire interest in the final forest  
2 management agreement. The commissioner shall consider all of the factors of this  
3 section when making a determination concerning an assignment.

4 (l) Upon the completion of three-quarters of the total term of the agreement,  
5 the commissioner shall review the operation and performance of the agreement and  
6 determine whether it is in the best interest of the state to renew the agreement. If the  
7 commissioner determines that it is in the best interest of the state, the commissioner  
8 shall solicit and evaluate proposals, as provided in this section, for renewal of the  
9 agreement, including a proposal from the current operator.

10 (m) The activities conducted under a final forest management agreement are  
11 governed by AS 41.17 and regulations adopted under AS 41.17 applicable to  
12 operations on state land.

13 (n) In this section,

14 (1) "agreement" means a forest management agreement;

15 (2) "proposer" means the person who submitted a proposed forest  
16 management agreement under (b) of this section;

17 (3) "sustained yield" has the meaning given in AS 38.04.910.

18 \* Sec. 4. AS 41.17.060(c) is amended to read:

19 (c) With respect to state and municipal forest land only, the following  
20 standards also apply:

21 (1) forest land shall be administered for the multiple use of the  
22 renewable and nonrenewable resources and for the sustained yield of the renewable  
23 resources of the land in the manner that best provides for the present needs and  
24 preserves the future options of the people of the state;

25 (2) a system of allocating predominant uses or values to particular units  
26 within a contiguous area of land shall reflect in reasonable proportion the various  
27 resources and values present in that area;

28 (3) to the extent its capacity permits, forest land shall be administered  
29 so as to provide for the continuation and expansion of businesses, activities, and  
30 lifestyles that are dependent upon or derived from forest resources;

31 (4) timber harvesting is limited to areas where data and information

1 demonstrate that natural or artificial reforestation techniques will result in the  
2 production of a sustained yield of merchantable timber from that area; ~~and~~

3 (5) there may not be significant impairment of the productivity of the  
4 land and water with respect to renewable resources;

5 (6) allowance shall be made for scenic quality in or adjacent to areas  
6 of substantial importance to the tourism and recreation industry; and

7 (7) allowance shall be made for important fish and wildlife habitat.

8 \* Sec. 5. AS 41.17.200 is amended to read:

9 Sec. 41.17.200. STATE FOREST PURPOSES. The purpose of AS 41.17.200  
10 - 41.17.230 is to permit the establishment of designated state-owned or acquired land  
11 and water areas as state forests. The primary purpose in the establishment of state  
12 forests is the development of commercial forest land under the principles of  
13 sustained yield and multiple use while perpetuating [PERPETUATION OF]  
14 personal, commercial, and other beneficial uses of resources through multiple-use  
15 management.

16 \* Sec. 6. AS 41.17.200 is amended by adding a new subsection to read:

17 (b) In managing a state forest the commissioner shall

18 (1) allow for the fullest possible access to, and use of, the natural  
19 resources, including timber, fish, game, and minerals; the allowance under this  
20 paragraph shall take into account the interests of private landowners;

21 (2) maintain forest growth at a high level of productivity; and

22 (3) restrict the public use of the land and its resources only when  
23 necessary to carry out the purposes of this chapter.

GOVERNMENT OF THE PROVINCE OF ALBERTA

FORESTS ACT

FOREST MANAGEMENT AGREEMENT

(O.C. 614/90)

Approved and Ordered

Helen Hunley  
Lieutenant Governor

Edmonton, November 7, 1990

Upon the recommendation of the Honourable the Minister of Forestry, Lands and Wildlife, the Lieutenant Governor in Council, pursuant to section 16(1) of the Forests Act, approves the entry by the Minister of Forestry, Lands and Wildlife into a forest management agreement with Slave Lake Pulp Corporation in accordance with the attached Appendix.

Don R. Getty (Chairman)

MEMORANDUM OF AGREEMENT

BETWEEN:

HER MAJESTY THE QUEEN in the right of the Province of Alberta, as represented by the Minister of Forestry, Lands and Wildlife, (hereinafter referred to as "the Minister"),

OF THE FIRST PART

and

SLAVE LAKE PULP CORPORATION, a body corporate, registered under the laws of Alberta, with a business office in Slave Lake, Alberta and its head office in Edmonton, Alberta, (hereinafter referred to as "the Company"),

OF THE SECOND PART

WHEREAS the Company proposes to construct and operate a chemithermomechanical pulpmill (the "CTMP" mill) near the town of Slave Lake, Alberta for the manufacture of pulp products with an initial rated capacity of 110 000 air dry metric tonnes annually; and

WHEREAS it is anticipated that the initial production of pulp products will be increased to 220 000 air dry metric tonnes or more of pulp annually; and

WHEREAS the Minister, recognizing the Company's needs for a forest management agreement to warrant establishment of a CTMP mill, desires to provide for a perpetual sustained yield of deciduous timber in order to provide adequate fibre for such operations; and

WHEREAS the Minister desires to provide for sustainable development of all resources and to provide for the fullest possible economic utilization of timber from the forest management area and stable employment in local communities by maximizing the value of the timber resource base while maintaining a forest environment of high quality; and

FOREST MGMT. AGREEMENT:  
PROVINCE OF ALBERTA and  
SLAVE LAKE PULP CORPORATION

WHEREAS Alberta Energy Company Ltd. has agreed to surrender its rights to the timber in the Cold Lake Air Weapons Range as outlined in the document duly registered with the Department of Forestry, Lands and Wildlife dated December 1, 1988.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises, terms, conditions, covenants, stipulations, agreements and provisions herein contained, the Minister and the Company hereby agree as follows:

#### DEFINITIONS

1. (1) In this Agreement
  - (a) "annual allowable cut" is the amount of deciduous timber that may be harvested in any one year as stipulated in the pertinent forest management plan approved by the Minister;
  - (b) "commencement of construction" means the date on which construction physically begins on a site under the terms of a firm construction contract or the first of a series of firm construction contracts with a reputable contractor or contractors, providing for continuing construction leading to the completion of a facility by the applicable date prescribed herein;
  - (c) "completion of construction" means the date on which a facility is physically capable of production at its initial rated capacity;
  - (d) "cut control period" means a period of five consecutive forest management operating years;
  - (e) "cubic metre" shall have the same meaning as that prescribed by the Timber Management Regulation;
  - (f) "Department" means the Department of Forestry, Lands and Wildlife;
  - (g) "dollar" means Canadian currency of the value of one Canadian dollar, or the equivalent value in any other currency;
  - (h) "forest management area" refers to the tract of forest land over which the Company has been given management rights for establishing, growing and harvesting trees on a perpetual sustained yield basis for a defined period of time; and as specifically defined in paragraph 3;
  - (i) a "merchantable coniferous stand" is a stand having at least 47.5 cubic metres net volume per hectare of merchantable coniferous trees;
  - (j) a "merchantable coniferous tree" is one having a minimum 15 centimetre diameter, measured outside bark at 30 centimetres above ground level, and having a minimum 3.66 metre usable length to a 10 centimetre top diameter, measured inside bark, unless otherwise mutually agreed;
  - (k) a "merchantable deciduous stand" is a stand having at least 50 cubic metres net volume per hectare of merchantable deciduous trees;
  - (l) a "merchantable deciduous tree" is one having a minimum 15 centimetre diameter, measured outside bark at 30 centimetres above ground level, and having a minimum 3.66

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metre usable length to a 10 centimetre top diameter,  
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(m) "periodic allowable cut" is the total of the annual allow-  
able cuts approved for a five-year cut control period;

(n) "Scaling Regulation" means Alberta Regulation 336/79  
authorized by Ministerial Order 40/79 and any amendments  
thereto or substitutions therefor;

(o) "Surface Materials Regulation" means Alberta Regulation  
11/78 and any amendments thereto or substitutions  
therefor;

(p) "Timber Management Regulation" means Alberta Regulation  
60/73 authorized under Order-in-Council 309/73 and any  
amendments thereto or substitutions therefor; and

(q) "Timber Regulation" means Alberta Regulation 268/78 and any  
amendments thereto or substitutions therefor.

(2) The Forests Act, the Public Lands Act, and the regulations made  
thereunder shall mean for the purpose of this Agreement, those  
Acts and the regulations as each may from time to time be  
amended or substituted, and terms defined by the Forests Act,  
the Public Lands Act, and the regulations made thereunder shall,  
in and for the purpose of this Agreement, have the meaning given  
to them by those Acts and regulations as each may be amended or  
substituted from time to time.

2. (1) This Agreement shall commence on the 15th day of November, 1990  
hereinafter referred to as the commencement date and shall  
expire on the 14th day of November, 2010 unless renewed under  
the provisions of subparagraph (3) or extended under the  
provisions of subparagraph (4).

(2) It is the intention of the parties hereto to continue the rights  
of the Company under paragraph 7 to grow and harvest timber on  
the forest management area for additional terms of twenty years  
each not limited to the initial twenty year term of this  
Agreement if pursuant to subparagraph (3) mutual agreement  
thereon can be reached by the Minister and the Company and such  
agreement is approved by the Lieutenant Governor in Council.

(3) Subject to the approval of the Lieutenant Governor in Council  
and provided that the Company is not in default on the expiry  
date as to any of the terms, conditions, stipulations,  
covenants, agreements and provisions of this Agreement, the  
Company shall be entitled to a renewal of this Agreement whereby  
its rights under paragraph 7 to grow and harvest timber are  
continued for a further term of 20 years on condition that  
mutually acceptable terms, conditions, stipulations, covenants,  
agreements and provisions including further renewal provisions  
or other requirements can be renegotiated at the time of  
renewal. The Company shall give notice to the Minister of its  
desire to renew twelve months prior to the expiry date of this  
Agreement and within sixty days of receiving such notice the  
Minister shall commence discussions with the Company to  
negotiate the terms, conditions, stipulations, covenants,  
agreements, and provisions of the renewal agreement.

(4) Notwithstanding subparagraphs (1), (2) and (3), if a renewal  
agreement cannot be agreed upon by the Company and the Minister  
and approved by the Lieutenant Governor in Council by the expiry  
date of this Agreement then this Agreement shall be extended for  
a further term of five years from that date and the Company and  
the Minister shall act reasonably and continue to carry out good

faith negotiations in an attempt to agree on a renewal agreement and have it approved by the Lieutenant Governor in Council before the end of the five year period.

#### FOREST MANAGEMENT AREA

3. (1) The Minister and the Company hereby enter into a forest management agreement in respect of the forest management area comprising, subject to paragraphs 4, 5, and 6, public lands within the boundaries shown outlined on a map registered in the Department, a copy of which is annexed hereto as Appendix "A".
  - (2) In order to satisfy the wood requirements of the Company's expanded or additional CTMP mill facilities under paragraph 37(3), the Minister agrees to set aside a "deciduous timber reserve area for second line" for a period of five years following the commencement date of this Agreement or a period of 7 years if an extension is given under subparagraph (6).
  - (3) The areas depicted in Appendix "A" as "deciduous timber reserve area for second line" do not form a part of the forest management area until they are added to it in accordance with subparagraph (4) and the Minister shall have the right to issue competitive deciduous timber permits up to the allowable cut for deciduous timber on this reserve area until such time that it is added to the forest management area. The terms of these permits shall not exceed three years each.
  - (4) Should the Company proceed to commence construction within five years following the commencement date of this Agreement as required under paragraph 37(3) or within 7 years if an extension has been given under subparagraph (6), the lands depicted on Appendix "A" as "deciduous timber reserve area for second line" shall be added to the forest management area; provided, however, that the Company's rights under this Agreement on these additional lands shall be limited to the deciduous timber.
  - (5) The Company may request in writing that the period for the "deciduous timber reserve area for second line" be extended for a period of two years from five years to seven years.
  - (6) Where the Company has requested an extension under subparagraph (5), the Company shall pay to the Minister the sum of 500 thousand dollars (\$500,000.00) as compensation for holding the deciduous timber in the "deciduous timber reserve area for second line" for the Company's use in the CTMP mill facilities described in paragraph 37(3) and the period for the "deciduous timber reserve area for second line" shall be extended from 5 years to 7 years.
  - (7) If the Company fails to complete construction in accordance with paragraph 37(4), or extended under the provisions of paragraph 37(6), the Minister shall withdraw the "deciduous timber reserve area for second line" from the forest management area and the Company shall have no further rights with respect to those lands.
4. Out of the forest management area the following are excepted:
    - (a) areas which are the subject of any timber dispositions issued pursuant to the Forests Act, prior to the date of this Agreement;
    - (b) lands which are the subject of a disposition issued pursuant to the Public Lands Act, prior to the date of this Agreement;

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- (c) lands applied for in respect of which a timber disposition under the Forests Act or a disposition under the Public Lands Act is pending prior to the date of this Agreement;
  - (d) lands which were reforested by the Minister under the "Maintaining Our Forests" program prior to the date of this Agreement as depicted on Appendix "B".
  - (e) the beds and shores of all permanent and naturally occurring bodies of water and all naturally occurring rivers, streams, watercourses and lakes; and
  - (f) lands contained within any Provincial Park or Forest Recreation area prior to the date of this Agreement.
5. Whenever any of the productive or potentially productive land excepted under paragraph 4 (a), (b) and (c) or subsequently withdrawn from the forest management area becomes available for disposition and where such land is intended to be returned to timber production by the Minister, the Minister shall return these lands back to the forest management area in a productive or potentially productive state.

WITHDRAWALS

6. (1) The Minister may, at any time in his discretion, after consultation with the Company, either permanently or for a specified term, withdraw from the forest management area:
- (a) any land which cannot be logged without causing substantial harm to the water table or to lakes, rivers, streams or other bodies of water, to the margins of water courses or to roads;
  - (b) any lands required for rights-of-way, water resource development or for any other purposes deemed by the Minister to be required for the human or physical resource development of the Province;
  - (c) any lands required for commercial and industrial facilities; and
  - (d) any lands which are not capable of producing merchantable coniferous or deciduous timber.
- (2) A withdrawal shall take effect
- (a) on the date the notice of withdrawal is given by the Minister to the Company, or
  - (b) where the notice given states that the withdrawal shall take effect at a future date, on the date stated in the notice.
- (3) In the event from time to time of any withdrawal or withdrawals of land from the forest management area by the Minister:
- (a) for disposition to users other than the Crown except where that use has been designated for exemption by the Minister, the Company shall be entitled to reasonable compensation from the users for any loss of profit or other damage or loss suffered by the Company, including by way of example, but without limitation, damage to deciduous timber, regeneration, forest growth, improvements, or to its operations on the forest management area resulting from such withdrawal and the Company shall determine such compensation for damage to deciduous timber, deciduous regeneration and deciduous forest growth in accordance with

the Department's stand damage appraisal table and associated guidelines as amended or replaced from time to time;

- (b) for use by the Crown, and for uses designated for exemption by the Minister, wherein the net aggregate area withdrawn on a cumulative basis does not exceed 3% of the net forest management area, the Minister shall determine the compensation and arrange for reimbursement to the Company for the actual loss or damage resulting from such withdrawal to any improvements created by the Company's efforts, but not for any loss of profit, inconvenience nor increased costs reasonably incurred by the Company in harvesting an equivalent volume of timber elsewhere;
  - (c) for use by the Crown, and for uses designated for exemption by the Minister, wherein the net aggregate area withdrawn on a cumulative basis does exceed 3% of the net forest management area, the Minister shall determine the compensation in respect of such excess and arrange for reimbursement to the Company for any increased costs reasonably incurred by the Company in replacing the lost volume of deciduous timber and for any loss or damage suffered by the Company, including damage to deciduous timber, regeneration, forest growth, improvements, or to its operations on the forest management area. The Minister shall determine such compensation for damage to deciduous timber, deciduous regeneration and deciduous forest growth in accordance with the Department's stand damage appraisal table and associated guidelines as amended or replaced from time to time.
- (4) The Minister may, from time to time add available public land to the forest management area as full or partial compensation to the Company under subparagraphs (3)(b) or (c).
  - (5) If the administration and control of any of the lands comprising the forest management area is transferred to the Crown in right of Canada, the Company shall be entitled to compensation under subparagraph (3) as if the lands were withdrawn for use by the Crown.
  - (6) Monetary compensation received by the Company under this paragraph and paragraph 8(1)(b) shall only be used to offset damage to improvements such as plantations, roads, bridges or other facilities and to replace lost timber resource through:
    - (a) intensive forest management programs;
    - (b) purchasing logs from farmers and permittees who are logging on lands outside the forest management area; and
    - (c) purchasing woodchips that are not the subject of chip direction by the Minister; or
    - (d) any other such activities as the Minister may approve.
  - (7) The Minister may from time to time at his discretion request verifiable documentation of the use of compensation funds received under this paragraph and paragraph 8(1)(b) and the Company shall comply with any such request.
  - (8) For the purposes of applying subparagraphs (3)(b) and (c), the net area for the initial forest management area shall be established and agreed upon by both parties to be effective on the commencement date of this Agreement, and shall be

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- (9) For purposes other than applying subparagraphs (3)(b) and (c), the net area shall be adjusted annually on the anniversary date of this Agreement in accordance with all exceptions, additions to and withdrawals from the forest management area.

#### RIGHTS OVER THE LAND

7. (1) Subject to all the terms and conditions of this Agreement the Minister grants to the Company the rights, during the term of this Agreement, to establish, grow and harvest timber on the forest management area on a perpetual sustained yield basis, such rights being,
- (a) the right during the term of this Agreement to enter and occupy the forest management area for the purposes referred to in subparagraphs (b), (c), (d), (e) and (f);
  - (b) the right during the term of this Agreement to grow, cut and remove deciduous timber on and from the forest management area;
  - (c) subject to paragraph 21 and Appendix "D" of this Agreement, the right during the term of this Agreement to harvest coniferous timber where it occurs in D and D(C) stands where that coniferous timber has been approved for harvest under the approved annual operating plan;
  - (d) the right to grow coniferous timber on the forest management area in accordance with paragraphs 24(2) and 26 and the right to cut and remove that coniferous timber;
  - (e) the right during the term of this Agreement to carry out reforestation and other programs that are approved by the Minister in accordance with this Agreement; and
  - (f) the right during the term of this Agreement to construct, operate and maintain camps, roads, wood concentration yards and other installations necessary and incidental to the Company's logging and silvicultural operations on the forest management area.
- (2) For the purpose of interpreting the Surface Rights Act, as amended from time to time, the Company is an occupant of the public lands comprising the forest management area.
- (3) The Minister shall cause land dispositions required within the forest management area for work such as roads, bridges, camps, timber processing operations, and other necessary works incidental to the Company's logging and silvicultural operations to be issued to the Company without any dues, fees or rental charges being paid but such dispositions shall otherwise be subject to any pertinent regulations.
- (4) Notwithstanding subparagraph (3), the Company may obtain sand and gravel needed for its operations under this Agreement from any vacant public land on the forest management area pursuant to the Surface Materials Regulation, subject to the payment by the Company of all required fees and royalties. In no case, however, shall the Company have to pay fees or royalties for in situ right-of-way material located and used where it is found within the right-of-way.

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B. (1) It is recognized by the Minister that the Company's use of the forest management area for growing and harvesting timber is to be the primary use thereof and that it is to be protected therein, but in keeping with the policy of providing for multiple uses of the same public land and recognizing that certain portions of the forest management area have been designated for uses by integrated resource plans, the Minister reserves all land rights on the forest management area not specifically given hereby, including by way of example, but without limiting the generality of the foregoing:

- (a) the right of others to travel, hunt, fish, trap and otherwise use the said lands for recreational purposes, subject only to any necessary restrictions approved by the Minister for the purpose of prevention of accidents, fire control and seasonal protection of roads;
- (b) the right to authorize any person to conduct any work in connection with or incidental to geological or geophysical exploration pursuant to the Mines and Minerals Act, or the Exploration Regulation; provided that the Company shall be entitled to reasonable compensation, from the person conducting the exploration, for any loss or damage suffered by the Company and resulting from such exploration including by way of example but without limitation, for any damage to deciduous timber, forest growth, regeneration, improvements, or to any of its operations on the forest management area; and provided further that the Company shall not be entitled to compensation for damage to coniferous timber or coniferous forest growth caused by any such geological or geophysical exploration;
- (c) the right to maintain and enhance fish and wildlife resources; and
- (d) the right to authorize domestic stock grazing provided, however, that the growth performance of the managed species is not impaired and the regeneration will not be damaged by domestic stock grazing to the point where the overall stocking is reduced below the reforestation standard as set out in the Timber Management Regulation and provided the Company's rights to manage the area for timber production is not significantly impaired.

(2) The Minister also reserves the following rights to the timber on the forest management area:

- (a) the right to issue deciduous timber permits, not exceeding one year in duration, to provide timber for local use in construction and maintenance of public works by any local authority, municipality, county, the Crown in the right of Alberta or Canada and for local residents for their own use and sale provided, however, that the total volume of timber cut under authority of such permits on the forest management area in any timber operating year does not exceed two percent (2%) of the approved deciduous annual allowable cut;
- (b) for the purposes of determining the volume to be included in the two percent limitation for permits referred to in subparagraph (2)(a), the volume of birch and balsam poplar issued under permits shall not be included, except that in the event that the Company commits to the full utilization of the balsam poplar through their annual operating plan, then the balsam poplar shall be included in the two percent limitation for permits referred to in subparagraph (2)(a);

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- (c) the right to issue coniferous quotas and to issue licences and permits to coniferous quota holders listed in Appendix "C" to maintain their operations after the commencement date of this Agreement;
- (d) the right to issue coniferous timber permits on C, CD and DC stands;
- (e) the right to issue coniferous timber permits on D and D(C) stands where that coniferous timber has not been approved for harvest under the Company's approved annual operating plan; and
- (f) the right to manage and reforest coniferous tree species on non-productive lands and on C, CD, and DC timber stands which may be required to maintain the coniferous annual allowable cut.

- (3) The Minister shall provide such available information as the Company may reasonably request concerning the operations authorized under permit and licence and consult with the Company on an ongoing basis as may be required to minimize any conflict between the operations authorized under the permits and licences issued pursuant to subparagraph (2) and the operations of the Company.

#### FOREST MANAGEMENT

##### A. GENERAL PROVISIONS

##### 9. On the forest management area the Company shall:

- (a) follow sound forestry practices with the purpose of achieving and maintaining a perpetual sustained yield of timber from the productive forest land, while not diminishing the productivity of the land or adversely affecting the coniferous timber stands identified by the Minister;
- (b) follow sound forestry practices in accordance with Appendix "D"; and
- (c) harvest the annual allowable cut of merchantable deciduous trees from merchantable stands in accordance with paragraph 12.

- 10. (1) Not more than twelve months following the commencement date of this Agreement and in any case before the commencement of woods operations, the Company shall submit for the Minister's approval a preliminary forest management plan describing the methods that the Company will follow in managing the timber located within the forest management area on a sustained yield basis and establishing a preliminary estimate of the sustainable annual allowable cut for deciduous timber.

- (2) Not more than three years after the commencement date of this Agreement, the Company shall submit to the Minister a detailed forest management plan describing the methods that the Company will follow in managing the timber located within the forest management area on a sustained yield basis for a period equivalent to one approved full rotation and this plan upon approval by the Minister shall replace the preliminary plan. The plan shall reflect sound reforestation and multiple use management practices and shall include yield projections for a period equivalent to at least one full rotation plus a harvest schedule and road development plan for the duration of this Agreement. The Company shall specify in their detailed

management plan the amount of annual allowable cut which will be allocated to supply the Company's manufacturing facilities.

- (3) Not later than the tenth anniversary date of this Agreement the Company shall submit for the Minister's approval a revised detailed management plan, and this revised plan when approved will replace that supplied under subparagraph (2).
  - (4) The Minister may require the Company, after discussing any proposed changes with the Company, to alter any of the methods described in its forest management plans before approving such plans; provided, however, that in so doing, the Minister may not unilaterally alter the ground rules.
11. (1) Within six months following the commencement date of this Agreement, the Minister and the Company shall jointly develop a set of ground rules to provide guidelines for the preparation of annual operating plans and management plans which will facilitate supervision of timber harvesting and reforestation operations.
- (2) At the initiative of either party and in any event at intervals not exceeding five years, the established ground rules shall be reviewed jointly by the Minister and the Company. These ground rules may be altered by mutual agreement of the Minister and the Company.
  - (3) In the event that the initial ground rules or a revision to a set of ground rules cannot be established by mutual agreement after good-faith negotiations, the Minister may establish or revise a set of ground rules but only with the approval of the Lieutenant Governor in Council.
12. (1) The term of this Agreement shall be divided into four cut control periods each with a duration of five years. The annual allowable cut shall be recalculated when requested by the Minister and not later than by the end of the second control period.
- (2) The required production in each period shall be controlled as follows:

CUT CONTROL PERIOD	REQUIRED MINIMUM VOLUME OF TIMBER TO BE CUT IN THE PERIOD
First	60% of the Periodic Allowable Cut
Second	60% of the Periodic Allowable Cut
Third	90% of the Periodic Allowable Cut
Fourth	90% of the Periodic Allowable Cut

- (3) Roundwood timber or pulp quality woodchips purchased by the Company from Alberta sawmills or from other companies or individuals located in the Province of Alberta may, at the discretion of the Company, be considered as production under this Agreement within the applicable five year cut control period.
- (4) If the Company does not harvest (as supplemented by purchases under subparagraph (3)) the required minimum volumes of timber specified in subparagraph (2) during the relevant period, it may during the subsequent 12 month period submit a program satisfactory to the Minister making up the shortfall within the subsequent five-year period.
- (5) If the Company does not submit a program satisfactory to the Minister under subparagraph (4), the Minister may, during the subsequent period make the entire unused volume available to

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operators other than the Company provided that the areas to be harvested shall be determined by the Minister after consultation with the Company.

(6) If the Company over cuts the periodic allowable cut the Minister may reduce the allowable cut during the subsequent period by an amount equivalent to the entire overcut volume.

(7) (a) If the Company does not harvest (as supplemented by purchases under subparagraph (3)) the required minimum volumes of deciduous timber specified in subparagraph (2) in either the second, third or fourth cut control period, and if, in the opinion of the Minister, such underutilization is significant, both parties shall review the situation with a view to achieving the full utilization of the deciduous timber growing on the forest management area by either expanding the Company's facilities in Alberta, or by reducing the forest management area.

(b) If the Company does not expand the Company's facilities in Alberta such that the Company will be capable of using the underutilized volume by a reasonable date specified by the Minister, the Minister may, at any time during the six month period following that date and after consultation with the Company, unilaterally reduce the forest management area to accommodate the Company's annual allowable cut requirements as approved by the Minister by deleting from the designated area listed below in the order indicated, exhausting S1 before removing land(s) from S2 so that the remaining forest management area will accommodate the Company's annual allowable cut requirements:

- i) forest management unit S1
- ii) forest management unit S2.

13. (1) The Company shall forthwith upon the commencement of this Agreement establish a forest management operating year that shall commence and end on dates approved by the Minister.

(2) Not less than four months before the commencement of each forest management operating year or within such shorter period as may be permitted by the Minister, the Company shall submit to the Minister an operating plan, which plan shall include reforestation and forest protection plans and road construction and maintenance plans covering the next ensuing forest management operating year.

(3) Each operating plan shall be in accordance with the forest management plan and include a two-year operating projection showing the entire harvesting operation intended by the Company to be implemented during the next ensuing two forest management operating years.

(4) Each operating plan shall provide for the harvesting and management of timber in the forest management area in accordance with the guidelines set forth in Appendix "D" and shall provide for the full utilization of the timber resource and shall minimize the adverse impact on public resources such as fish and wildlife throughout the forest management area.

(5) The Minister may approve such plans as are submitted, or may require the Company, after discussing any proposed changes with the Company, to alter any harvesting operations described in the plans, provided that the Minister shall not thereby alter the ground rules and acts promptly so as to avoid delay in the Company's operations.

- (6) When the operating plan does not provide for the salvage of dead, damaged, diseased or decadent timber, the Minister may give notice to the Company that he requires provision for its salvage in such plan. The Company shall have thirty days from the date on which such notice is given to it by the Minister within which to amend the plan or to justify the exclusion of such timber from its plan, but if it fails or elects not to do either within such period, the Company shall not be deemed to be in default and the Minister may dispose of such timber to any person by license or permit not exceeding one year in duration without compensating the Company and the volume of timber so disposed may be charged by the Minister as production against the forest management area.
14. When, in the opinion of the Minister, any plan approved by him becomes obsolete or inadequate, he may, by reasonable notice in writing, require the Company to submit a revised plan for his approval within a specified time, or within any extended time he may subsequently allow.
15. The Company may not commence or carry on any construction project or any operation on the forest management area until the relevant plans which are required to be submitted pursuant to this Agreement have been submitted by the Company and approved in writing by the Minister; and the Company may not digress from the approved plans without the Minister's consent in writing, with the understanding that the Minister shall provide a full explanation whenever consent is withheld.
16. The Company shall at its own expense make such surveys of the forest management area as are necessary to prepare the plans required by paragraphs 10, 13 and 14.
17. The Company shall utilize all the merchantable trees growing within merchantable stands cut in road construction and other incidental operations of the Company unless otherwise permitted in writing by the Minister.
18. The Company shall conduct its woods operations and manufacturing operations in such a manner as to achieve the highest degree of economic utilization of the timber on the forest management area and shall not commit acts of waste in respect of such timber; provided, however, that nothing in this Agreement shall preclude the Company from using any wood harvested for the purpose of manufacturing pulp.
19. The Company shall use every reasonable effort to purchase roundwood offered to the Company at prevailing market prices, provided that the roundwood possesses a standard of quality suitable in the opinion of the Company for use in facilities of the Company.
20. The Company shall use every reasonable effort to purchase pulp quality woodchips which are not directed by the Minister and are offered to the Company from any quota holder or permittee within the Province at prevailing market prices or at some price mutually agreed upon by the disposition holder and the Company.
21. (1) The Company shall offer the coniferous timber referred to in paragraph 7(1)(c) which has been harvested under the approved annual operating plan to independent "arm's length" sawmills in Alberta in trade for deciduous timber, coniferous timber or pulp quality woodchips, for sale, or a combination of trade and sale.
- (2) Notwithstanding subparagraph (1), the Minister may specify that the Company shall offer coniferous timber harvested from designated stands under the approved annual operating plan to specified sawmills chosen by the Minister and in specified

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(3) With respect to any coniferous timber referred to in subparagraphs (1) and (2) which the Company has not been able to trade or sell with sawmill operators under this paragraph, the Minister may

(a) allow the Company to use that coniferous timber, or

(b) appoint a single arbitrator under the Arbitration Act to establish reasonable terms of trade or sale of that coniferous timber under which terms the timber must be offered for trade or sale by the Company.

(4) If the coniferous timber referred to in subparagraph (3) is offered for trade or sale under the arbitrated terms, and the sawmill operator does not accept the offer, it may be used by the Company.

(5) The Company shall pay to the Minister reforestation charges on all coniferous timber referred to in this paragraph, at the rates set out in the Timber Management Regulation.

(6) The Company shall pay to the Minister timber dues on all coniferous timber referred to in this paragraph, at the rates provided under paragraph 35 based on the products produced from that timber.

22. (1) The Company shall not hinder or obstruct the lawful timber operations of licensees and permittees.

(2) It is recognized that during their operations, the coniferous licensees and permittees may cause some incidental damage to deciduous timber. No claim shall be made by the Company against any licensee, permittee or the Minister for such incidental damage to deciduous timber.

(3) The Minister shall ensure that all timber licences and permits issued on the forest management area after the commencement date of this Agreement shall include a provision preventing a claim by the licensee or permittee against the Company for incidental damage to coniferous timber.

23. (1) The Minister shall consult with the Company concerning proposed areas and methods of harvesting by timber licensees and permittees in the forest management area before designating the areas in which their operation may be carried on and the Company shall schedule in its management plans and annual operating plans for the Minister's approval areas available for harvesting by timber licensees and permittees.

(2) The Minister shall require timber licensees and permittees operating within the forest management area to conduct all harvesting operations in accordance with sound forestry practices and to refrain from hindering or obstructing the lawful operations of the Company.

#### B. REFORESTATION

24. (1) The Company shall be obliged to progressively reforest at its own expense all land cut over by the Company under authority of this Agreement and shall describe its reforestation program in its management and annual operating plans.

- (2) In accordance with its approved management and annual operating plans, the Company may, with the Minister's approval, reforest to coniferous species those deciduous stands that were harvested by the Company and which have been designated in those plans as to be reforested to coniferous species.
  - (3) For the purpose of the reforestation requirements, "year" shall mean the period from May 1st to April 30th until such time as the phrase "timber year" is defined in the Timber Management Regulation and from that time on shall have the same meaning as may be thereby ascribed to that phrase.
  - (4) Considering the year of cut or, in the case of supplemental reforestation areas the year of treatment, as being year zero, the Company shall complete a reforestation survey which meets the specifications of the Minister for all areas that it is obliged to reforest and submit same to the Minister in accordance with the Timber Management Regulation.
  - (5) In this Agreement, the required reforestation standard means the reforestation standard set out in the Timber Management Regulation as amended from time to time or in any regulations passed in substitution thereof.
  - (6) Where the Company fails to reforest any area it is obliged to reforest to the required reforestation standard in accordance with the Timber Management Regulation the Company shall comply with any direction received from the Minister in relation to the reforestation of the area.
  - (7) In the event that the Company does not comply with the Minister's direction under subparagraph (6), the Minister may suspend timber harvesting operations until such time as the Company has complied with the Minister's direction in relation to the reforestation of the area.
25. (1) Deciduous seed, deciduous seedling trees and propagules for reforestation programs under this Agreement shall be native to and produced and grown within the Province of Alberta unless the Company requests otherwise and the Minister approves the request in writing.
- (2) As part of its operations under this Agreement the Company shall, at its sole expense, furnish all of the deciduous seedling trees and propagules required for its reforestation needs.
- (3) Where the Company has supplied clean extracted seed to the Minister in order to meet the Company's reforestation needs, the Minister shall, without charge to the Company, store such seed for delivery to the Company on demand.
26. (1) The Company and the Minister shall devise and implement a reforestation program (hereinafter referred to as "supplemental reforestation") on potentially productive lands in the forest management area, on which the timber was cut over by individuals other than quota holders or the Company prior to this Agreement or destroyed at any time by natural agencies or is currently in a non-merchantable and non-productive state due to decadence or over-maturity and which have not been restocked to the required reforestation standard.
- (2) The Company and the Minister shall each undertake to effect one-half of the supplemental reforestation program on an area basis.
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- (3) The maximum supplemental reforestation that the Company and the Minister jointly may be required to carry out during any operating year shall not exceed 15% of the total area harvested by the Company in the immediately preceding operating year. Over any five-year period the average annual supplemental reforestation shall not exceed one-twentieth of the total area found to be not satisfactorily regenerated.
  - (4) The Minister may direct in any operating year that the maximum supplemental reforestation program area be reduced to the extent necessary to fit either party's estimated budget for that purpose.
  - (5) The supplemental reforestation program shall be included in the Company's annual operating plan submission.
  - (6) Deciduous seedlings and propagules required by the Company for supplemental reforestation shall be supplied by the Company at its sole expense.
27. The Company shall be solely responsible for reforesting all productive and potentially productive lands burned by fire within the forest management area, when the fire has been caused by the Company, its employees, its agents or its contractors.
28. (1) The Company may devise and implement more intensive silvicultural practices than required by the Minister under this Agreement, such as but not limited to spacing, fertilization, and genetics. The Company and the Minister may enter into an agreement which will define the programs and conditions that, in the Minister's opinion, will establish a sustainable increase in the allowable cut approved by the Minister in the Company's management plans submitted under paragraph 10.
- (2) Where the Company implements the intensive silvicultural program under the terms of such an agreement, and where the Minister and the Company agree on the amount of additional allowable cut which will result from the Company's silvicultural efforts over and above those required under this Agreement and the Forests Act, then such additional allowable cut shall be offered by the Minister to the Company free of timber dues provided the Minister has been duly authorized to do so by a regulation passed under section 4 of the Forests Act.
- (3) The additional allowable cut resulting from the Company's intensive silvicultural efforts will only be offered to the Company free of timber dues after the Company has fully utilized the annual allowable cut approved in the Company's management plans.
- (4) The additional allowable cuts agreed upon by both parties shall not be used for the purpose of calculating the periodic allowable cuts for cut control purposes specified in paragraph 12.
29. (1) The Company shall establish a deciduous growth and yield program acceptable to the Minister on lands within the forest management area and the Minister's acceptance shall not be unreasonably withheld.
- (2) The growth and yield program will include the establishment of a system of permanent sample plots which will be used to monitor the results of different harvesting systems during the term of this Agreement so as to provide accurate information for the preparation of reliable deciduous yield tables.

- (3) The permanent sample plots established under subparagraph (2) shall also be used to provide additional information related to other resource uses on the forest management area such as the effects of harvesting on wildlife and watershed.
- (4) The Company shall undertake a cooperative cost sharing (50/50 basis) deciduous tree improvement program with the Minister, whereby the Company will establish trial plantations of both imported deciduous stock and genetically selected Alberta stock and shall monitor their performance on a continuing basis during the term of this Agreement.
- (5) All of the information collected by the Company under this paragraph shall be provided to the Minister free of charge upon his request for such information for the specific purpose of developing the forest management plan and annual operating plans or such other uses as agreed to by the Company.

#### C. FOREST PROTECTION

30. (1) The Minister agrees to provide and maintain an organization of men and equipment necessary for the protection of the forest from and suppression of forest fires on the forest management area and, except as herein otherwise provided, to pay the cost of fighting any forest fire that originates on the forest management area on the understanding that the Minister will not be liable for damages to the Company resulting from a failure to prevent, control or suppress any fire.
- (2) Notwithstanding subparagraph (1), the Company shall pay the cost of suppressing any forest fire that originates on the forest management area if the fire is caused by or arises out of any of the operations or activities conducted on the forest management area by the Company, its employees, agents or contractors; provided, however, that in no event shall the liability of the Company exceed the liability provided for in a separate Fire Control Agreement which may be negotiated and entered into by the Minister with the Company. Until such time as a Fire Control Agreement has been entered into, the Company agrees to have on hand in good working order such fire fighting equipment and shall train such employees in fire suppression as specified by the Minister. If the cause of any fire is disputed by the Company, the dispute shall be resolved by means of civil suit in the Courts of Alberta.
- (3) Notwithstanding anything contained in this Agreement, the Company shall not be liable for loss of or damage to Crown timber by fire that is caused by or arises out of any of the operations conducted on the forest management area by the Company, its employees, agents or contractors.
- (4) In the event of an occurrence of insect damage of epidemic nature to forest growth or a disease epidemic affecting forest growth on the forest management area the parties hereto will cooperate in suppressing the epidemic.

#### RECORDS AND SCALING

31. (1) All scaling, measuring and weighing of timber shall be performed by the Company.
- (2) All scaling and measuring of timber weights and volumes shall be conducted in accordance with the Timber Regulation, the Scaling Regulation and the published instructions of the Department.

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- (3) The Company shall maintain in the form and in the manner approved by the Minister complete and accurate records of the operations it conducts on the forest management area.
- (4) The Minister, or any person authorized by him, may inspect the records maintained by the Company pursuant to subparagraph (3).
- (5) The measurement of the volume of all wood cut by or for the Company and sold to others or purchased by the Company may be determined, at the option of the Company, by physical measurement of said wood or by derivation of volume/weight factors by sampling in the manner prescribed by the Minister.
- (6) The Company may establish and use a constant conversion factor to convert the weight of wood delivered to cubic metres. The constant conversion factor will be re-established at appropriate intervals according to procedures prescribed by the Minister.

- 32. (1) Within 21 days of the termination of every three month period, the Company shall submit in confidence to the Minister in writing, on a form prescribed by the Minister, a return reporting for each such period:
  - (a) the volume of timber cut by and for the Company;
  - (b) the volume of timber cut or destroyed by others for which the Company is entitled to compensation under this Agreement;
  - (c) at the request of the Minister, the volumes of primary timber products manufactured and sold by and for the Company from each of its manufacturing facilities in Alberta; and
  - (d) at the request of the Minister, the volume of timber and primary timber products purchased for use in its mills and timber and primary timber products sold by the Company, from its operations in Alberta, the names of all persons from whom timber and primary timber products were purchased, to whom timber and primary timber products were sold, and the land from which the timber was cut.
- (2) Unless otherwise authorized in writing by the Minister, the Company shall remit to the Minister with its quarterly returns of production the amount of all dues payable for the volume of timber shown in such returns.

CHARGES AND DUES

- 33. (1) Once a year during the term of this Agreement, the Company shall pay to the Minister on or before a date specified by the Minister:
  - (a) a holding charge, and
  - (b) a forest protection charge

for every square kilometer, to the nearest square kilometer, within the forest management area on the commencement date of this Agreement with respect to the initial payment and on each anniversary date of this Agreement with respect to each subsequent payment.
- (2) Initially, on the commencement date of this Agreement the charges in subparagraph (1) will be:

- (a) a holding charge of \$1.25 per square kilometer; and
  - (b) a forest protection charge of \$28.05 per square kilometer.
- (3) Subsequent holding charges and forest protection charges shall be adjusted annually on the anniversary of the commencement date of this Agreement using the Annual Implicit Price Index for government current expenditure in goods and service, as published by Statistics Canada, in the following formula:

$$\text{Charge for Year of Payment} = \text{Charge for Previous Year} \times \frac{\text{Index for Year Prior to Year of Payment}}{\text{Index For Second Year Prior to Year of Payment}}$$

Example:

(a) 1991 Holding Charge = \$1.25 X  $\frac{1990 \text{ Index}}{1989 \text{ Index}}$

(b) 1991 Forest Protection Charge = \$28.05 X  $\frac{1990 \text{ Index}}{1989 \text{ Index}}$

In the event that the Annual Implicit Price Index is no longer published or in the event of a change in the method used to calculate the Index, the Minister and the Company shall mutually and reasonably agree on a comparable published index to be used in the above formula.

- (4) Until such time as the "deciduous timber reserve area for second line" has been added to the forest management area, the Company shall pay to the Minister annually on the anniversary date of this Agreement, the sum of \$27,000.00 as compensation to the Minister for unrealized holding and protection revenues associated with the deciduous timber in forest management unit S1.
  - (5) Where the lands shown on appendix "A" as "deciduous timber reserve area for second line" have been added to the forest management area under the provisions of paragraph 3(4), the holding charge and forest protection charge on this "deciduous timber reserve area for second line" on the next anniversary date of the commencement date of this Agreement following the occurrence of such an event shall be an amount equal to the holding charge and forest protection charge calculated under subparagraph (3) for the forest management area and shall be subject to subsequent indexing in accordance with subparagraph (3).
  - (6) The annual holding and forest protection charges otherwise payable by the Company under this Agreement shall be reduced by \$0.15 for every cubic metre of annual allowable cut under active coniferous timber quota certificates within the forest management area in the immediately preceding 12 month period.
34. The Company shall pay dues in accordance with this Agreement in respect of all timber for which the Company is entitled to compensation and in respect of all timber cut by and for the Company on the forest management area.
35. (1) On the commencement date of this Agreement the Company shall pay to the Minister dues on all timber cut for manufacture as pulp at the following rates:
- (a) all coniferous species \$2.09 per cubic metre; and
  - (b) all deciduous species \$0.40 per cubic metre.

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(2) The rates of dues to be paid by the Company on all timber cut by or for the Company for manufacture as pulp shall be adjusted effective on July 1, 1991 and annually thereafter effective on July 1 of every year of this Agreement by multiplying:

- (a) the rates of dues applicable in the previous year
- BY
- (b) the price for July 1 of the then current year divided by the price for July 1 of the previous year.

The above being illustrated as follows:

$$\text{Timber Dues for current year} = \text{Timber Dues for previous year} \times \frac{\text{Price for July 1 of current year}}{\text{Price for July 1 of the previous year}}$$

(3) In subparagraph (2),

- (a) "price for July 1 of the then current year" means the price quoted in U.S. dollars for the third quarter of the then current year for one air dried metric ton of bleached kraft pulp delivered in U.S. market of the applicable type referred to in subparagraph (4)(b). Such price is to be obtained from the first issue of Pulp & Paper Week in the then current year which correctly states the third quarter price.
- (b) "price for July 1 of the previous year" means the price quoted in U.S. dollars for the third quarter of the previous year for one air dried metric ton of bleached kraft pulp delivered in U.S. market of the applicable type referred to in subparagraph (4)(b). Such price is to be obtained from the first issue of the Pulp & Paper Week in that previous year which correctly states the third quarter price.

(4) For the purposes of subparagraphs (2) and (3):

- (a) A separate calculation shall be made for coniferous species and for deciduous species.
- (b) The adjustment for coniferous species shall use the prices quoted in Pulp & Paper Week for Canadian/U.S. bleached softwood kraft pulp and the adjustment for deciduous species shall use the prices quoted in the Pulp & Paper Week for Canadian bleached hardwood kraft pulp.
- (c) In the event that the selling prices are no longer published in the Pulp & Paper Week or in the event of a change in the method used to calculate the price listings, the Minister and the Company shall mutually and reasonably agree on comparable published price lists to be used in the above formula and provisions.

(5) The adjusted rates of dues to be paid by the Company under subparagraph (2) on all timber cut by or for the Company for manufacture as pulp shall not be reduced below the rates of dues established under subparagraph (1).

(6) Notwithstanding subparagraph (2), where the Company has failed to construct an additional CTMP mill or an expansion of the CTMP mill under paragraph 37, the Minister shall have the right, after prior consultation with the Company, to unilaterally

establish new rates of timber dues to be paid by the Company on all timber cut for manufacture as pulp and these new rates shall be subject to subsequent indexing in accordance with subparagraph (2).

- (7) For all wood cut by or for the Company and sold or used for purposes other than the production of wood pulp, the Company shall pay to the Minister timber dues at the General Rates of Crown Dues as established pursuant to the Timber Management Regulation.
36. The Minister has, in addition to any rights and powers conferred on him by this Agreement, all the rights and powers for enforcing the payment of Crown charges that are provided for pursuant to the Forests Act. In addition, nothing in this Agreement shall, or shall be construed so as to, limit or restrict the Minister's rights and remedies at common law or in equity.

#### MILL CONSTRUCTION AND OPERATION

37. (1) On or before December 1, 1989, the Company shall commence construction of a chemithermomechanical pulp mill (the "CTMP mill") near the town of Slave Lake, Alberta for the manufacture of wood pulp having a rated capacity of 110 000 air dry metric tonnes of pulp annually at a cost of not less than one hundred and sixty-eight (168) million dollars.
  - (2) The Company shall complete the construction of the CTMP mill under subparagraph (1) on a schedule that will permit commencement of production on or before December 1, 1991.
  - (3) Within five years following the commencement date of this Agreement or within 7 years if an extension has been given under paragraph 3(6), the Company shall commence construction of an additional CTMP mill (the "additional CTMP mill") in Alberta or an expansion of the CTMP mill under subparagraph (1) such that when completed the CTMP mill and the additional CTMP mill combined or the expanded CTMP mill will have a minimum rated capacity of 220 000 air dry metric tonnes of wood pulp annually.
  - (4) The Company shall complete the construction of the additional CTMP mill or the expanded CTMP mill under subparagraph (3) within 24 months following commencement of such construction.
  - (5) Upon commencement of construction of the additional CTMP mill or the expanded CTMP mill under subparagraph (3), the Company shall have the right during the term of this Agreement to grow, cut and remove deciduous timber from those lands shown on Appendix "A" as "deciduous timber reserve area for second line" that have been added to the forest management area under paragraph 3(4).
  - (6) The Lieutenant Governor in Council may from time to time extend the commencement and completion dates for construction set out in this paragraph.
  - (7) The failure of the Company to commence or complete in accordance with subparagraphs (3) and (4) the construction of or expansion to such facility shall not amount to a default or breach by the Company of any of the provisions of this Agreement.
38. (1) If the Company has failed to commence construction of the CTMP mill within the time specified in paragraph 37(1) or fails to commence production from the CTMP mill on or before December 1, 1991, the Minister may give notice to the Company stating the default complained of and requiring the Company to remedy such default within six months of the date of such notice, and if the

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Company fails to remedy the default within the said period of six months, the Minister may cancel this Agreement and declare the rights of the Company under this Agreement to be at an end and thereupon the deposit referred to in paragraph 43(1) shall be forfeited and become the property of the Crown, unless the Lieutenant Governor in Council extends the period as provided in subparagraph (2) below.

- (2) The Lieutenant Governor in Council may from time to time extend the period during which the Company is to remedy the default complained of in a notice given under subparagraph (1).
- 39. (1) If, at any time after completion of construction, the CTMP mill ceases to be in production and operation for a period of twelve consecutive months, the Company shall have no right to and shall not harvest timber on the forest management area until such time as the Company advises the Minister in writing of its intentions to resume production and operation of the CTMP mill.
- (2) Notwithstanding subparagraph (1), where the Company fails to recommence production and operation of the CTMP mill under paragraph 37(1) after such period of twelve consecutive months, the Company shall, subject to paragraph 46, be in default under this Agreement.
- (3) If, at any time after completion of construction of the additional CTMP mill or the expanded CTMP mill, such additional CTMP mill or expanded CTMP mill ceases to be in production and operation for a period of twelve consecutive months, the Company shall have no right to and shall not harvest timber on those lands that were added to the forest management area under paragraph 3(4) until such time as the Company advises the Minister in writing of its intentions to recommence production and operation of either the additional CTMP mill or the expanded CTMP mill as the case may be.
- (4) If, at any time after completion of the CTMP mill and the additional or expanded CTMP mill, such facilities in their aggregate cease to be in production and operation after such period of twelve consecutive months, the Company shall, subject to paragraph 46, be in default under this Agreement.
- 40. The Company shall satisfy the Minister of Economic Development throughout the term of this Agreement with respect to the use, wherever practicable of Alberta engineering and other professional services, and Alberta tradesmen and other construction personnel, equipment, materials and supplies from Alberta.
- 41. The Company shall submit to the Minister when required any information or documents the Minister may reasonably request relating to the progress of the facilities required to be constructed or expanded by the Company and other matters relating to this Agreement for the purpose of verifying the Company's continued compliance with the terms of this Agreement.
- 42. The Company will notify the Minister, in writing, of any intended major reduction in production levels of its mill facilities described in paragraph 37, and such notification will be submitted to the Minister at least six weeks prior to the intended reduction taking effect.

DEPOSIT

- 43. (1) The Company shall deposit with the Minister the sum of \$1,000,000.00 on the date this Agreement is executed.

- (2) The deposit referred to in subparagraph (1) may consist in whole or in part of cash, a certified cheque or letter of credit submitted in accordance with all of the requirements of the Minister, or bearer bonds of the Government of Canada or of the Province of Alberta having a market value at time of placement equivalent to the sum of such deposit.
  - (3) The interest coupons attached to any bonds deposited pursuant to subparagraph (2) shall, as they fall due for payment, be detached and returned by the Minister to the Company.
  - (4) Upon the completion of construction and commencement of production of the CTMP mill referred to in paragraph 37(1), the Company may make application for a partial refund of deposit whereupon the Minister shall retain \$750,000.00 as a deposit to guarantee against default by the Company of any of the covenants, terms, stipulations, conditions, agreements and provisions of this Agreement and will return the balance to the Company.
  - (5) Upon the completion of construction and commencement of production of the additional CTMP mill or the expanded CTMP mill, the Company may make application for a partial refund of deposit whereupon the Minister shall retain \$250,000.00 as a deposit to guarantee against default by the Company of any of the covenants, terms, stipulations, conditions, agreements and provisions of this Agreement and will return the balance to the Company.
  - (6) The Company may with the consent of the Minister, at any time during the existence of this Agreement, substitute one or more forms of deposit as described in subparagraph (2) herein, for any one or more forms of deposit held by the Minister pursuant to this Agreement.
  - (7) When this Agreement expires and if it is not renewed, and there is not then an unremedied default under this Agreement of which the Company has been notified, the Minister will return to the Company all deposits then held by the Minister under this Agreement.
44. (1) If the Company at any time makes default under any of the covenants, terms, conditions, provisions, agreements and stipulations in this Agreement, the Minister may give notice to the Company setting out the default complained of and requiring the Company to remedy the default within six months of the giving of notice, and if the Company fails to remedy the default complained of within the said period of six months, the Minister may declare that the whole or part of the deposit referred to in paragraph 43 is forfeited and thereupon the amount becomes the property of the Crown, unless the Lieutenant Governor in Council extends the period as provided in subparagraph (2) below.
- (2) The Lieutenant Governor in Council may from time to time extend the period during which the Company is required to remedy any default complained of in a notice given pursuant to subparagraph (1).
  - (3) Where the whole or part of the deposit has been forfeited pursuant to subparagraph (1), the Minister may suspend timber harvesting operations and shall not approve the next operating plan unless the default complained of has been remedied to the satisfaction of the Minister and the deposit re-established. The re-established deposit shall be subject to paragraphs 44 and 45 herein.

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(4) The references in paragraphs 38 and 39 to the Company being in default under certain circumstances does not mean or imply that the absence of such a reference in any other paragraph of this Agreement precludes the Company from being in default with respect to those other paragraphs.

45. Notwithstanding the rights of the Minister as provided for under either or both of paragraphs 38 and 44(1) to declare a forfeiture of the deposit provided pursuant to paragraph 43 or as re-deposited pursuant to the terms of paragraphs 43 and 44, the Minister shall have the right to have the Company perform all the covenants, terms, conditions, stipulations, provisions and agreements contained in this entire Agreement or to sue the Company for damages for any breach or breaches thereof and the Minister shall also have the right to cancel this Agreement as set forth in paragraph 47 and the rights of the Minister to have the Company perform the Agreement and to sue for damages as aforesaid as well as the right of cancellation shall be construed as additional remedies to forfeiture and not an alternative to it.

46. When any default or delay by the Company in the performance or observance of any of the terms, conditions, provisions, agreements, covenants and stipulations of this Agreement is occasioned in whole or in part through

(a) industrial disputes,

(b) governmental review or judicial proceedings respecting the possible environmental impact of the mill facilities to be constructed by the Company under this Agreement, or

(c) interruption which is not the result of any willful or negligent act or omission by the Company, such as power failure, fire, sabotage, tempest, war or acts of God

and not avoidable by reasonable effort or foresight, the Company shall not be deemed in default under this Agreement and the time for performance or observance of such term, condition, provision, agreement, covenant or stipulation shall be extended by such reasonable period of time as the Minister may specify in writing to the Company.

#### GENERAL PROVISIONS

47. (1) The Minister may, by giving the Company ninety (90) days notice in writing, cancel this Agreement when:

(a) any goods or chattels of the Company, having a value in excess of \$2,000,000.00, which are liable to distress, are lawfully seized or taken in execution by a creditor of the Company, and the Company has failed to take any legal action to contest the same within ninety (90) days after such seizure or taking, or

(b) the Company makes any general assignment for the benefit of its creditors or an assignment in bankruptcy or takes the benefit of any Act in force for bankrupt or insolvent debtors, or

(c) the Company fails from time to time to observe or perform any of the covenants, stipulations, terms, conditions, provisions and agreements required to be observed or performed by the Company under this Agreement, and having been given notice of such failure under paragraph 44 of this Agreement, fails to remedy such failure within the time allowed by the said paragraph for so doing, or any

extension thereof given by the Lieutenant Governor in Council).

(2) Subparagraphs (1) (a) and (b) do not apply if a trustee for the holders or receiver managers or the holders themselves of bonds, debentures, or other securities of the Company exercises any rights or remedies contained in any deed of trust or mortgage or other agreement under which such bonds, debentures or other securities are issued or secured, including but without restricting the generality of the foregoing, the taking of possession by the trustee, receiver managers or the holders themselves of the Company's properties and assets and the operation or disposition thereof for the benefit of the holders of the Company's bonds, debentures or other securities.

- no. 32400-1-2
48. The Minister does not guarantee any quality or quantity of timber on the forest management area.
49. No implied contract of any kind by or on behalf of either party shall arise or be construed from anything contained in this Agreement and the only rights, powers and privileges granted to the Company are those contained in this Agreement.
50. The Minister and the Company agree that the lines on the map shown in Appendix "A" hereunto annexed are intended, where those lines outline areas that are yet unsurveyed, to be the survey lines of the townships, sections, or half sections, as the case may be, that would exist if such areas were surveyed under the system of township surveys prescribed by the Surveys Act of Alberta and any amendments or substitutions thereto.
51. The Company shall comply with and observe all the provisions and requirements of:
- (a) the Forests Act as amended from time to time, and
  - (b) any Acts of the Legislature of the Province of Alberta in force, or enacted hereafter from time to time, and as amended from time to time, and
  - (c) any Regulation inclusive of any amendments or substitutions in force from time to time under any of the Acts referred to in subparagraphs (a) and (b)

that apply to the Company or to this Agreement either specially or generally by express wording or by implication.

52. The Company shall during the term of this Agreement maintain an office in the Province of Alberta or obtain and maintain a registration under the Business Corporations Act of Alberta, its regulations or as each may be amended from time to time.
53. (1) Where any dispute arises between the parties to this Agreement concerning the application or interpretation of this Agreement the dispute may be referred to arbitration pursuant to the Arbitration Act of Alberta but only upon the mutual agreement of both parties.
- (2) Where both parties do not agree to refer a dispute concerning this Agreement to arbitration as provided in subparagraph (1), the dispute shall be resolved by means of civil action before the Courts of the Province of Alberta.
54. (1) The Company shall not assign this Agreement or any of the rights granted to it by this Agreement without the consent of the Minister in writing and such consent may in his sole discretion be withheld. Where the Minister refuses consent to an

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assignment, he shall advise the Company in writing of his reasons for so refusing.

(2) Subparagraph (1) does not apply to:

- (a) the employment of one or more contractors to cut and remove timber;
- (b) an assignment or transfer of this Agreement by way of mortgage or charge or the grant of a security interest in this Agreement to lenders to or trustees for lenders in connection with the construction and operation of the CTMP mill or the additional CTMP mill as the case may be.
- (c) an assignment or transfer to a person, firm or corporation upon the sale or other disposition by or on behalf of lenders to or trustees for lenders referred to in subparagraph (2)(b) in the course of realization or enforcement of security against the mill facilities, provided that any such assignment, transfer or other disposition shall not be made without the consent of the Minister in writing, such consent not to be unreasonably withheld.

55. Any waiver by the Minister of the strict performance by the Company of its covenants or of any term, condition, stipulation, agreement or provision under this Agreement is not binding upon the Minister unless it is expressed in writing under the authority of the Minister, and any such waiver or any extension of time granted by the Lieutenant Governor in Council hereunder shall not abrogate such or any covenant, term, condition, stipulation, agreement or provision herein or constitute a waiver or extension of time as to any subsequent breach of the same or any other covenant, term, condition, stipulation, agreement or provision herein.

56. The Company covenants and agrees to observe, perform and keep all covenants, terms, conditions, stipulations, agreements and provisions herein on its part to be observed, performed and kept and time shall be and remain of the essence thereof and notwithstanding any binding waiver given by the Minister as referred to in paragraph 55 or any extensions of time given by the Lieutenant Governor in Council under this Agreement that thereby may affect the time for performing any particular act, covenant, term, condition, stipulation, agreement, or provision of this Agreement herein, time shall remain of the essence pertaining to all subsequent performance by the Company of any and all acts, covenants, terms, conditions, stipulations, agreements and provisions herein contained and to this entire Agreement.

57. The Company assumes liability for and shall pay all claims of the Minister for all damages to any real or personal property other than timber of the Crown in right of Alberta caused by the Company, its servants, agents, workmen and contractors in the course of the exercise or purported exercise of its rights, powers and privileges under this Agreement, whether or not the damage so caused is due to the negligence of the Company, its servants, agents, workmen and contractors, as the case may be.

58. The Company shall keep the Minister indemnified against all claims and demands that may be made against the Minister by reason of anything done by the Company, its servants, workmen, agents, and contractors on the forest management area in the exercise or purported exercise of its rights, powers and privileges under this Agreement.

59. The Company shall comply with the requirements of the Public Health Act, the Clean Air Act and the Clean Water Act of Alberta and as amended from time to time and all other applicable provincial and

federal legislation now or hereafter enacted and the regulations inclusive of any amendments or substitutions thereunder relating to the control of air and water pollution.

60. Any notice required to be given under this Agreement shall be deemed to be well and sufficiently given if delivered to the address set out below or if mailed at any government post office in the Province of Alberta by prepaid registered mail addressed as follows:

(a) to the Company:

Slave Lake Pulp Corporation  
1200, 10707 - 100 Avenue  
Edmonton, Alberta  
T5J 3M1  
Attention: President

(b) to the Minister:

Minister of Forestry, Lands and Wildlife  
Legislature Building  
Edmonton, Alberta  
T5K 2B7

or to such other address either party may from time to time inform the other party in writing, and any such notice shall be deemed to have been received on the fourth business day after the mailing thereof, or if delivered, when delivered; provided that if mailed should there be between the time of mailing and the actual receipt of the notice a mail strike, slow down or other labour dispute which might affect the delivery of such notice then such notice shall only be effective if and when actually delivered.

61. This Agreement is made subject to its approval by the Lieutenant Governor in Council.
62. This Agreement inures to the benefit of and is binding upon Her Majesty the Queen in Right of the Province of Alberta and Her assigns, and the Company and its successors and assigns if approved by the Minister in accordance with the provisions of this Agreement.
63. This Agreement shall be construed as having been made in the Province of Alberta and the laws of the Province of Alberta shall be applied in the event of any action or arbitration mutually agreed to, respecting any dispute arising from this Agreement, its formulation, interpretation, and each and every other aspect pertaining to or resulting from its entire contents.

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IN WITNESS WHEREOF the party of the first part executes this Agreement under the hand of the Minister subscribed hereunder and the party of the second part executes this Agreement by subscribing hereunder the signatures of its duly authorized corporate officers and by attesting hereto its lawful corporate seal this 15<sup>th</sup> day of November 1990.

Her Majesty the Queen in Right of Alberta

Witness

Minister of Forestry, Lands and Wildlife

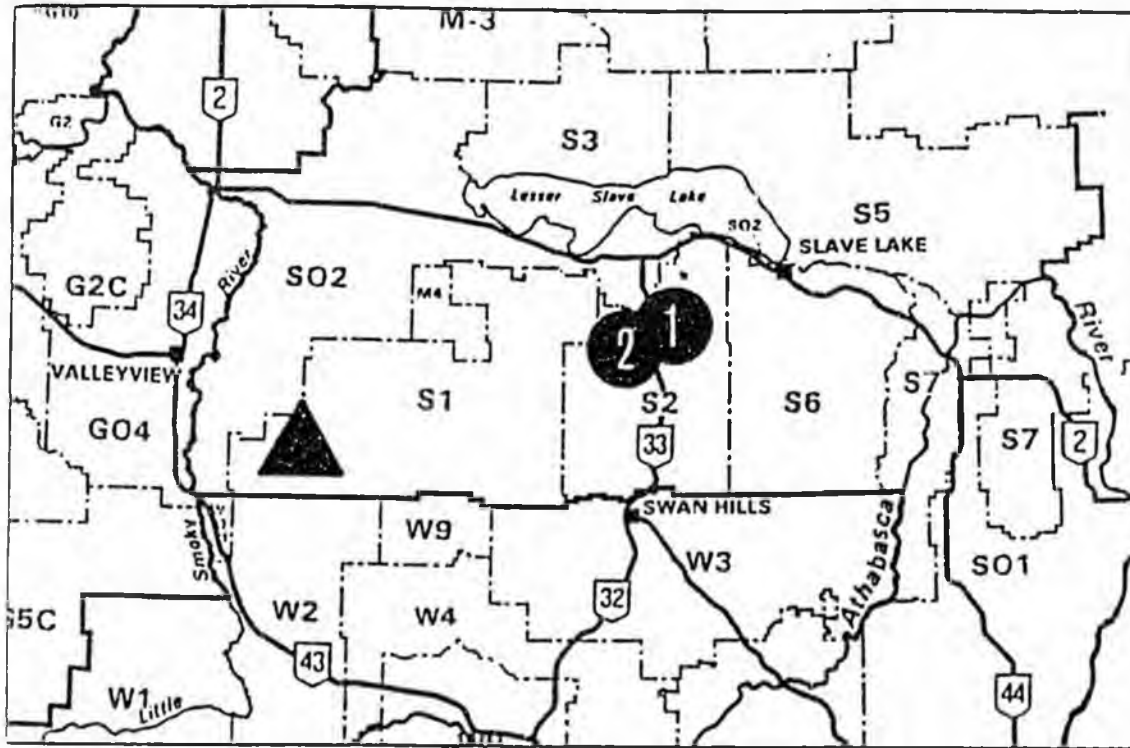
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SLAVE LAKE PULP CORPORATION  
 FOREST MANAGEMENT AGREEMENT  
 APPENDIX "B"



"MAINTAIN OUR FORESTS" PROGRAMS

LOCATION	PROJECT NAME
1	Frost Hills
2	Shannon Creek

CANADA/ALBERTA



SLAVE LAKE PULP CORPORATION

APPENDIX "C"

A. CONIFEROUS QUOTA HOLDERS WITHIN THE FOREST MANAGEMENT AREA

1. Alberta Energy Company Ltd.
2. Tomen Alberta Timber Industries Ltd.
3. Bissell Bros. Lumber Ltd.
4. Gordon Buchanan Enterprises Ltd.
5. WB Forest Products Ltd.
6. Millar Western Industries Ltd.
7. Vanderwell Contractors (1971) Ltd.
8. Vanderwell Holdings Ltd.
9. Zeidler Forest Industries Ltd.

B. CONIFEROUS QUOTA CERTIFICATES ISSUED WITHIN THE FOREST MANAGEMENT AREA

Initial Forest Management Area

CTQSO10032 (North)	CTQSO60001
CTQSO20005	CTQSO60002
CTQSO20008	CTQSO60003
CTQSO20031	CTQSO60005
CTQSO20032	CTQSO60006
CTQSO20033	CTQSO60008

Deciduous Timber Reserve Area For Second Line

CTQSO10008	CTQSO10030
CTQSO10026	CTQSO10032
CTQSO10028	CTQSO10035
	CTQSO10036

Where a quota listed in this Appendix is merged with one or more quotas, the new quota shall be deemed to be listed in Appendix "C" for the purpose of paragraph 8(2) (c) of this Agreement.

SLAVE LAKE PULP CORPORATION

APPENDIX "D"

The coniferous and deciduous timber on the forest management area shall be managed, harvested and reforested in accordance with the provisions of this Agreement including the following guidelines:

1. Timber stands in the forest management area shall be classified in accordance with the forest timber type classification used in undertaking the provincial Alberta Phase 3 Forest Inventory (ENR Report No. 1/86 and Associated Reports) and as designated on timber type maps produced by the Department of Forestry, Lands and Wildlife, or such maps as are retyped and enhanced by the Company using Phase 3 criteria or such criteria as may be mutually agreed on.

Stand Crown cover shall be classified as follows:

CODE	DESCRIPTION	% CROWN COVER	
		CONIFEROUS	DECIDUOUS
C	Coniferous	80 - 100	0 - 20
CD	Coniferous - Deciduous	50 - 79	21 - 50
DC	Deciduous - Coniferous	21 - 49	51 - 79
D(C)	Deciduous- (Coniferous)	11 - 20	80 - 89
D	Deciduous	0 - 10	90 - 100

2. All stands in the forest management area will be managed and harvested in accordance with the following provisions:
  - (a) All C, CD and DC stands shall be included in the coniferous land base and managed for coniferous production. All D, and D(C) stands containing a coniferous understory which need to be included in the coniferous land base in order to maintain the coniferous annual allowable cut shall also be managed for coniferous production. Coniferous operations will have priority in such stands. All stands managed for coniferous production shall be reforested to coniferous stocking standards.
  - (b) All D and D(C) stands, with the exception of those identified in subparagraph (a), shall be managed for deciduous production and reforested to deciduous stocking standards.
  - (c) The Company shall be allowed to harvest merchantable deciduous trees from all stands which are to be managed for deciduous production even if they contain a coniferous understory, provided, that damage to the coniferous understory is minimized through harvesting techniques, recognizing however, that the Minister shall not require the use of logging methods that unreasonably increase the logging costs of the Company.
  - (d) For the purposes of this Agreement, a coniferous understory is the second storey of a two-storied stand where the C, CD, DC, D(C) and D understory cover group is two or more height classes lower than the overstorey of the dominant and co-dominant trees in a forest stand. For the purposes of Phase 3, each storey of a two-storied stand is given an independent cover type description.

3. (a) Where a coniferous quota holder desires to harvest deciduous timber located within an active coniferous timber licence in the forest management area, the coniferous quota holder shall be required to make prior arrangements with the Company for the harvest and removal of such deciduous timber.  
  
(b) Harvesting and removal of deciduous timber by the coniferous quota holder shall be subject to the approval of their annual operating plan submitted pursuant to their active coniferous timber licence.
4. Harvesting and removal of coniferous timber by the Company shall be subject to the approval of their annual operating plan submitted pursuant to this Agreement. The coniferous timber cut by the Company will be made available in accordance with paragraph 21 of this Agreement.
5. All deciduous timber cut by and for the Company on the forest management area shall be considered as production against the forest management area unless the timber has been designated as quota chargeable.

**SB**

**311**



February 4, 1994

Senator Mike Miller  
Alaska State Senate  
Room 423, State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

Dear Senator Miller:

The fishing communities of Western Alaska continue to experience declines in economic revenues, reductions in various salmon runs and problems associated with other fisheries stocks. The impact of these problems surfaces as loss of jobs and loss of self-esteem, but manifests itself through alcohol and drug abuse, domestic violence, teen pregnancies, and the ultimate disaster -- suicide. We cannot overlook the social welfare significance of the desperate situation that is facing Western Alaska fishing communities.

The Bering Sea Commercial Fisheries Development Foundation (Foundation) has recognized this relationship because it is made up of Alaskan people who are experiencing these social and economic realities in their communities and industry representatives who are committed to the betterment of the affected communities.

We are aware of the provisions of the Fishery Resource Landing Tax Bill passed in 1993 and are dismayed by the lack of opportunity for taxpayers to elect a tax credit option for contributions directly to non-profit fisheries development organizations such as the Foundation. Surely, taxes on the fishing industry should be accrued for the benefit of all coastal communities who are experiencing social and economic hardships. In fact, the Bill excludes financial assistance to many of the smaller communities who are the most adversely impacted by this situation. These are the communities and people who stand to benefit from the fisheries development education, training, and employment activities of groups such as the Foundation.


We realize that under the current fiscal situation in Alaska, dollars are scarce and must be used effectively where the need may be. This presents you, as a legislator, with the responsibility to appropriate these tax revenues to where it can provide the maximum benefit. I submit that providing tax credits to companies who will contribute through Alaska non-profit corporations such as the Foundation provides the best way for these dollars to be matched by private sector industry, public charitable philanthropic organizations, and community-based funding institutions. For every state dollar that becomes available through this tax credit, we should be able to match three dollars to the community from other sources.

Without an adequate tax credit, the incentives to the private sector, community, and philanthropic organizations does not exist. Philosophically, at the very least, the government responsibilities to its constituents should lead legislators to form working partnerships with private sector to maximize funding and to meet the social well being needs of the communities and members who need it the most.

Please consider supporting the enclosed Amendment to the Fishery Resource Landing Tax Bill to allow organizations such as the Foundation to continue to exist and support rural Alaskan communities. To assist you in your deliberations, I have included the enclosed information which more specifically explains the projects that the Foundation has undertaken during the past two years and the benefits received by people in Western Alaska. I have also included a copy of the draft amendment that Senator George Jacko is planning to introduce in the Senate to accomplish these stated objectives. We have asked Representative Carl Moses to consider introducing a similar bill in the House.

Thank you for your consideration of this most important initiative.

Sincerely,

  
Dewey Schwalenberg  
Executive Director

enc. 3



March 17, 1994

MAR 17 1994

Jerry Ivanoff  
NSEDC EET Coordinator  
Box 193  
Unalakleet, Alaska 99684

Senator George Jacko  
Room 125, State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

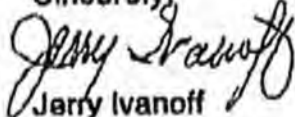
Re: Support of Senate Bill 311

Dear Honorable Jacko,

With this letter, please feel a lot of support from the Norton Sound Economic Development Corporation Education, Employment, and Training office for Senate Bill No. 311 in the Legislature of the State of Alaska Eighteenth Legislature-Second Session. A bill for an act entitled "An Act authorizing a credit against the fishery resource landing tax for certain contributions made by taxpayers not harvesting fisheries resources not harvested under a quota and for contributions based on fishery resources under a community development quota, amending the manner of calculating the amount available for revenue sharing by operation of this credit, and expediting agency review of the credit applications under that tax; and providing for an effective date."

It is my understanding that an amendment to the Fishery Resource Landing Tax of 1993 provides for 13.65 % of the taxes collected from off-shore seafood processors to be available to non-profit entities for support of fisheries related education/training, employment, and economic development projects. If this monies would be available for these particular reasons, the Norton Sound region would be happy for some assistance to train our local (newly-forming) crabbing and halibut fleet in marine crew safety, electronic navigation, and new fishing technology for the harvesting of the crab and halibut in Area 4d North and the whole Norton Sound. As the opportunities continue to expand our fishing and harvesting capabilities for the residents of our region, we have encountered more stringent safety requirements for our vessels and fishermen, which are quite expensive for compliance. To crab and halibut fish, we will be required to have EPIRB's, fire extinguishers, survival suits for each person on board, flares, vhf radio, and GPS or loran capabilities for finding our gear. At our low and depressed salmon prices today, our fishermen are having some difficulty gearing up to harvest a resource right in our back door, so to speak. Thank you for your time and effort to push for this bill this session!!

Sincerely,

  
Jerry Ivanoff

**Bristol Bay Economic Development Corporation**

P.O. Box 1464 • Dillingham, Alaska 99576 • (907) 842 4370 • Fax (907) 842-4336 • 1-800-478-4370



March 17, 1994

Senator George Jacko  
Alaska State Senate  
State Capitol, Room 125  
Juneau, Alaska 99801-1182

Dear Senator Jacko:

Thank you for introducing SB 311. The amendment to the Fishery Resource Landing Tax Bill of 1993 makes good sense in these times of declining oil prices and reduced budgets that affect our communities in Western Alaska. The bill is timely and appropriate.

Allowing off-shore processors to gain a tax credit to provide communities with education/training, employment and economic development projects is important to our long-term economic development. I understand that your bill is in Senate Resources at this time. I intend to send a copy of this letter of support to Senator Miller.

As you know, our program is working very well at this time but there is a long way to go. Although the funds from the CDQ program are meeting some of our needs, the dollars needed to bring our area up to parity with the rest of the state are not there. SB 311 will provide the incentive for off-shore processors to increase their financial assistance to help us get more of our people into the work force and off of the welfare rolls. The bill will also assist in providing more funds for vocational and technical training which again will get more Western Alaskans into the work force.

Again, thank you for introducing this bill that will allow our people to become a part of the equitable distribution of fisheries generated revenue to support locally determined fisheries initiatives. This is a creative piece of legislation that is needed.

Sincerely yours,

*Nels A. Anderson, Jr.*  
Nels A. Anderson, Jr.

cc: Senator Miller



**EMMONAK TRIBAL COUNCIL**

P.O. Box 126  
Emmonak, Alaska 99581  
(907) 949-1720  
FAX (907) 949-1926

MAR 21 1994

March 18, 1994

Honorable Senator George Jacko  
Room 125, State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

RE: IN SUPPORT OF SENATE BILL 311.

Dear Senator Jacko,

The Emmonak Tribal Council would like to express its full support of the Senate Bill 311.

Emmonak has been directly impacted as a result of the Western Alaska fisheries situation.

We support programs that will help our people with jobs and alternative means to meet our daily needs.

Please feel free call our office for any questions or comments, reference to our support for Senate Bill #311.

WITH REGARDS,

*Billy A. Charles (Pres)*  
Billy A. Charles, President  
EMMONAK TRIBAL COUNCIL

ETC/lda  
cc Bering Sea Commercial Fisheries  
Development Foundation

file

Post-It™ brand fax transmittal memo 7671 # of pages 1	
To	Office of Sen. George Jacko
Co.	Emmonak Tribal Council
D. pt.	
Phone #	(907) 949-1720
Fax #	(907) 465-2997



MAR 21 1994

**AKUTAN FISHERIES  
ASSOCIATION, Inc.  
P.O. BOX 89  
AKUTAN, AK. 99553  
PH.(907)698-2300  
FAX(907)698-2301**

**JACOB STEPETIN, PRES.  
JOE HERESKIN, V.PRES.  
TERRY COOK, SEC/TREAS  
THOMAS STEPETIN, BOARDMEMBERS  
DEMETRI TCHERIPANOFF  
JENNIE ROBINSON**

Senator George Jacko  
State Capitol (MS 3100)  
Juneau, AK. 99801-1182

BY Fax # 465-2997

March 21, 1994

Dear Senator,

The Akutan Fisheries Association is incorporated under the Non-Profit Laws of the State of Alaska, and as such and representing Akutan's Fishermen, we support and urge the passage of SB 311 amending AS 43.77.040(b).

We are pursuing an economic development project that would involve the processing of our fishermen's catch by adding value such as direct selling and smoking of our products.

We would benefit if this SB 311 is passed by enabling the contributions to help cover some overhead expenses incurred in the development and operations of economic projects that in the end enhance the quality of life for all Akutan residents.

Thank you for your support and please relay this message to Senator Mike Miller.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Terry A. Cook".

Terry A. Cook, Sec/Treas.  
Akutan Fisheries Association, Inc.

# FOUNDATION

## S U P P L E M E N T

### *Dear Legislator...*

*During the last legislative session, the Alaska Legislature passed the Fisheries Landing Tax bill of 1993. The intent was to recover revenues from the off-shore fishing industry for landing fish products near Western Alaska coastal communities. Fifty percent of the tax revenue will accrue to the state General Fund, and approximately 50 percent to the communities where landings will be made, with .3 percent being provided to the Alaska Seafood Marketing Institute for Alaska seafood promotion. A very limited amount will support Community Development Quota (CDQ) programs.*

We believe that an important aspect of the relationship between the resources of the Bering Sea, the fisheries industry and the Western Alaska coastal communities has been overlooked.

The American Factory Trawler Association (AFTA) has for the past two years, voluntarily contributed more than \$850,000 through the Foundation to projects in the most economically depressed Western Alaska communities. Projects that provided job training and employment have placed more than 240 persons in seafood processing contracts. These

contracts have led to more than \$3 million in wages to community members and their families. The results of these jobs and the wages have had an immeasurable effect on the social well-being of these community members.

The Foundation also has provided grants and zero-percent interest loans to remote communities in Western Alaska to support economic development. Through our loan program, Nunivak Island Seafoods now has the equipment to transport its processed halibut to market and provide fishing opportunities to the community fishermen. In Kotzebue, the fishermen have formed the Chukchi Sea Fishermen's Cooperative. With a grant from the Foundation, they have operated their own salmon buying station. This project raised the price to the fishermen by \$.20 a pound in one year. More than 200,000 pounds were purchased by the cooperative, which also provided employment to five workers during the season.

In addition, the Foundation was the first institution to provide support funding to communities that were eligible for the Community Development Quota (CDQ) program. Our initial \$30,000 allowed the 53 community representatives to meet to form the

# FOUNDATION

S U P P L E M E N T

CDQ community organizations that went on to establish economic development joint ventures with the fishing industry.



The Foundation has supported other projects that allowed fishermen to increase their opportunities to participate in fisheries. The Atka Fishermen's Association members now participate in a pink salmon fishery as a result of an equipment loan made by the Foundation. Savoonga and Gambell fishermen now participate in a halibut fishery as a result of a training grant that the Foundation made.



Finally, the Foundation has worked with numerous communities to strengthen the cooperative relationship between the fishermen who ultimately must work together for their common good. Inuit Fish Marketing, Ltd., was established to bring fishermen from Kotzebue, Unalakleet, Emmonak and Bethel to a common marketing effort of 1 million pounds of chum salmon. Although the group formed and worked cooperatively toward this common sales goal, the disastrous chum salmon runs of this past season allowed a limited success for this project. This effort underscores the continued need for the Foundation, its projects and the financial support of the off-shore fishing industry such as the AFTA members.



We must find ways to support more partnerships between industry, Alaska and the Western Alaskan communities. To do this, we believe that the Fish Landing Tax Bill of 1993 must be amended to include a provision that will provide a tax credit to companies

that contribute to the Bering Sea Commercial Fisheries Development Foundation. These contributions will allow the Foundation to form matching challenge grant partnerships with federal, state, industry, communities and private philanthropic organizations. The projects that the Foundation then is able to sponsor in Western Alaska will be used to benefit the most economically depressed communities.



The disastrous fishing season this year for the Bering Sea communities should serve to focus our attention. The Foundation believes that industry is willing to assist and has shown this willingness for the past two years. The Governor's proclamation of an economic disaster in the Yukon-Kuskokwim region indicates only the beginning of the problems for these communities. If the Landing Tax Bill is allowed to divert all the fisheries revenues from the economically disadvantaged communities to the state General Fund and the economically sound communities, the off-shore fishing industry with its current economic difficulties, will have no ability to assist the communities that need it the most. We suggest setting aside a portion of the revenues (perhaps 15 percent) for reinvestment into economically depressed Western Alaskan communities through the Foundation.



Please consider supporting an amendment to the Fisheries Landing Tax Bill of 1993 in the 1994 legislative session. I have included additional information about the Foundation and the community projects that we have supported. If you have any questions, please feel free to contact us.

SENATOR GEORGE JACKO (R)  
ALASKA STATE SENATE  
STATE CAPITOL, ROOM 125  
JUNEAU AK 99801

FEB 28 1994

■ **Opinion:** Just where are the pavement police when you need them?  
Page 6.

Soup Off fund-raiser.  
Page 6.

old its annual

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■ Sports.....page 8  
■ Classified ads ..page 11

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# THE DUTCH HARBOR FISHERMAN

Serving the Aleutians and Pribilofs

Unalaska, Alaska

Volume 2 Number 10

Friday, February 25, 1994

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## Offshore processors to pay taxes

By Ann Touza

For the Fisherman

How much — and in what ways — does the Seattle-based factory trawler fleet contribute to Alaska's economy?

In recent years, the question has been often raised and sometimes argued vehemently in the state Legislature and at North Pacific Fisheries Management Council meetings. Industry representatives and coastal residents have also joined the debate.

Every year offshore processors profit from hundreds of thousands of metric tons of fish harvested in the Bering Sea.

Part of the profits end up in Alaskan coastal

communities through fuel sales, wages, grocery and supply sales, dock fees and ship repair, but opponents of the factory trawlers say most of the profits end up in Seattle.

"They use our facilities and don't pay any tax," said Rep. Carl Moses, author of the bill. The shore-based processors were already paying a similar tax, and this gave the offshore fleet an unfair economic advantage over the shore-based processors, Moses said.

Last year the Alaska Legislature passed a bill, which Hickel signed into law, that assesses a 3.3 percent tax on the offshore fleet based on the value of product landed at Alaskan ports.

Assessments began this year, and the offshore fleet is expected to begin paying the esti-

mated \$7 million to \$9 million next year.

How the money will be spent has not been finalized, but legislators have proposed that about half of it be placed in the state's general fund. Most of the remainder would go to the communities where the product is landed, while 0.3 percent would go the Alaska Seafood Marketing Institute.

The American Factory Trawler Association recently filed a lawsuit against this tax, which AFTA says is unfair based on the amount of time factory trawlers spend in Alaskan ports. The shore-based processors make use of community water, roads and landfills all year, while

See Foundation, page 2

## Food costs eat away pocketbook

By Debby Ross

Fisherman Staff

Food costs in Unalaska Harbor are nearly double Anchorage but are less than other rural communities, according to a recent survey by the Alaska Cooperative Extension at the University of Alaska, Fairbanks.

Unalaska resident Pam Brantley researched the food and utility cost figures for the quarterly survey completed in December. Past surveys have not included costs from Unalaska/Dutch Harbor.

According to the survey a family of four with elementary school children pays \$166.92 a week for food and utility costs in Dutch Harbor.

## Pollock haul a mixed bag



THE DUTCH HARBOR FISHERMAN 2/25/94

## Foundation

From page 1

factory trawlers come in to offload maybe five or six times a year. Blum said.

AFTA members currently include 14 factory trawler companies with 38 vessels.

AFTA Executive Director Joe Blum emphasizes the amount of money factory trawlers spend yearly in Alaskan ports, such as the \$62 million spent in Dutch Harbor/Unalaska last year.

AFTA also provides economic benefits to Western Alaska communities through the Bering Sea Commercial Fisheries Development Foundation. Blum said.

This Anchorage-based foundation formed in 1991 as debate over the inshore-offshore pollock allocation raged at the NPFMC meetings.

The board of directors includes John Binkley, Harold Samuelsen, Edward Crane, T. Edward Luttrell, Stanley Simonson, Agralon Krukoff, Timothy Towarak and John White. AFTA members agreed to voluntarily assess themselves 75 cents per metric ton of groundfish caught in the Bering Sea and to use this money for development projects in Western Alaska.

Dewey Schwalenberg, executive director for the foundation, says the 3.3 percent tax could jeopardize the foundation's work.

Factory trawlers companies, already facing financial hard times, may find it hard to contribute to the foundation and pay the 3.3 percent tax, Schwalenberg said.

"When we see 3.3 percent taxes thrown onto the industry it makes it very hard for me to do my job," he said. He said he went to the Legislature last year and told them that this tax may be good for state but will be hard on communities in Western Alaska.

"What it amounts to is the poor get poorer and the rich get richer," he said.

Schwalenberg believes the problem with the tax is that fish-

eries money is used to offset declining revenues and to build up the infrastructure in communities rather than going back into fisheries development.

At the same time, fisheries are "on the verge of collapse," he said.

The way to improve the social welfare of coastal communities is to improve their fisheries, Schwalenberg said.

The focus of the foundation is on education, training and employment, Schwalenberg said. Loans and grants are also made available to fishing groups in small Western Alaska coastal communities.

"We honestly believe the lifeblood of those small communities is their fisheries..." Schwalenberg said. By helping these communities develop their fisheries and by providing employment on factory trawlers, the foundation is "getting very involved in the social welfare of the communities without getting involved in social programs."

Roughly \$1 million has been collected by the foundation so far. About \$246,000 has gone to train people for entry-level positions, usually as processors, on factory trawlers. The training program is held at the Alaska Vocational Technical Center in Seward. Twenty percent of the funding comes from the state Department of Community and Regional Affairs, 80 percent comes from the foundation.

Schwalenberg said 176 people have gone through the program and that 240 people, mostly Natives from 60 Western Alaska communities, have been employed through the foundation.

Contracts are usually for 60 to 90 days at sea, allowing people to also participate in subsistence fishing in their villages, Schwalenberg said.

"The return from salaries alone came in over \$3 million to the communities," he said.

None of the foundation money has been spent in Unalaska/Dutch Harbor, however. Schwalenberg said that is because the foundation "works predominantly in areas

with very limited economic opportunity."

The foundation did provide \$29,000 in start-up grants for the six Community Development Quota groups, including the Central Bering Sea Fisherman's Association based in St. Paul and the Aleutian Pribilof Island Community Development Association based in St. George.

Most of the CDQ groups have factory trawler companies as partners.

A two-year zero-interest loan for \$24,000 was also given to the Atka Fishermen's Association to buy netting equipment to help them participate in the pink salmon fishery.

Most of the loans, around \$40,000, have gone to communities from Bethel to Kotzebue.

About one-third of the money collected is spent on administrative costs.

If the offshore landing tax can't be overturned, Schwalenberg would like to see the factory trawlers be able to get tax credits for contributions to non-profits like the foundation.

The Senate Finance Committee has introduced legislation what would amend the offshore landing tax bill to include a 13.65 percent tax credit option. Sen. George Jacko was the primary sponsor of this amendment.

Moses said this amendment was introduced last year in an effort "to keep the offshore fleet from fighting the offshore landing tax." But with the tight money situation in the state this year, Moses said he is not sure if the amendment will pass.

Schwalenberg said the amendment would allow some of the tax money to continue to go to underdeveloped communities. Otherwise, "the vast majority of the money would go to Dutch Harbor," where most of the fisheries product is landed, Schwalenberg said.

But how much — and in what ways — the offshore fleet will be required to contribute to Alaska's economy remains to be resolved.

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**SB**

**316**

# STATE OF ALASKA

## COMMERCIAL FISHERIES ENTRY COMMISSION

WALTER J. HICKEL, GOVERNOR

8800 GLACIER HWY, #109  
JUNEAU, AK 99801  
(907) 789-6150 Licensing Calls  
(907) 789-6160 Other Business  
(907) 789-6170 FAX

February 11, 1994

RECEIVED

The Honorable Rick Halford  
President of the Alaska State Senate  
Capitol Building, Room 111  
Juneau, AK 99801-1182

Re: Your request for comments concerning proposed amendment to  
AS 16.05.710

Dear Senator Halford:

We circulated your request to various staff members for their comments. One of our senior hearing officers is David A. Ingram, who was personally responsible for the last amendment to AS 16.05.710, which both toughened the statute and clarified some of its terms.

Mr. Ingram produced a thoughtful memo in response dated February 10, 1994, which is enclosed with this letter. In response to your specific request, some suggested language is provided on page 3 of Mr. Ingram's memo.

There is much additional and relevant discussion in Mr. Ingram's memo. We have not yet thought through all of the implications of the various suggestions. However, in the face of your pending legislative deadline, we wanted you to have the benefit of the best information we have at present, so we are sharing the entire memo with you.

Please call if you have any questions or comments. You are welcome to call Mr. Ingram directly at this office.

Sincerely,

COMMERCIAL FISHERIES ENTRY COMMISSION

Bruce Twomley, Chairman  
Frank Homan, Commissioner  
Dale G. Anderson, Commissioner

by: \_\_\_\_\_

Enclosure

cc: David Thompson, Special Staff Assistant  
Colonel Bill Valentine, Fish & Wildlife Protection  
Commissioner Carl Rosier, Alaska Department of Fish & Game  
Clem Tillion, Special Assistant to the Governor for Fisheries  
Dean J. Guaneli, Assistant Attorney General

COMMENTS FROM COMMERCIAL FSH. ENTRY  
COMMISSION

**MEMORANDUM****STATE OF ALASKA**

TO: Commissioners  
Management Council  
Jesse Walters  
Susan Haymes  
Elerene McClure

DATE: February 10, 1994

FILE NO:

TELEPHONE NO:

FROM: Dave Ingram *AK*  
Hearing Officer

SUBJECT: Proposed Amendment  
to AS 16.05.710

Here are my thoughts on the proposal to toughen up AS 16.05.710.

First, as Col. Valentine's synopsis of the 1993 Bristol Bay enforcement effort suggests, the real problem with enforcement in the Bay is not the inadequacy of AS 16.05.710, it's the performance of the prosecutors. They generally reduce misdemeanors down to violations in order to obtain quick guilty pleas and avoid trial. In doing so, however, they allow the offenders to avoid the effects of AS 16.05.710, which requires misdemeanor or felony convictions before the suspension provisions come into play. Col. Valentine correctly stated the problem as follows: "As long as misdemeanor cases are reduced to infractions [violations] there will never [be] any chance of fishing permits being suspended or ultimately revoked after three convictions as provided by statute."

You might ask why the statute can't be amended to provide for suspension upon conviction of mere violations. The answer is that to do so would require a major restructuring of the criminal code as well in order to avoid constitutional problems. AS 11.81.900(b)(57) defines a violation as being a noncriminal offense punishable only by a fine and further provides that a person charged with a violation is not entitled to a trial by jury and is not entitled to have a public defender appointed to the case. The Alaska Supreme Court has made it clear that a defendant is entitled to a trial by jury if conviction may result in the loss of a license to pursue an occupation. See Baker v. City of Fairbanks, 471 P.2d 386 (Alaska 1970). Consequently, no entry permit can be suspended unless the defendant has the right to a trial by jury. The criminal code would have to be changed to allow for trial by jury on violations before permits could be suspended at that level, and I doubt that such a change would find little, if any, support in the Department of Law.

The best cure for rampant violation of fishing laws in the Bay, I think, would be vigorous prosecution of the cases prepared by Fish and Wildlife Protection (F&WP). I can imagine how frustrating it must be for the officers to work up a case and then have a prosecutor reduce it

Sec 16.05.710. Suspension and forfeiture of commercial license and entry permit. (a) Upon the conviction of a person for a misdemeanor or felony violation of a commercial fishing law of this state, the court, in addition to other penalties imposed by law

(1) may suspend one or more of the person's commercial fishing privileges and licenses for a period of not more than one year, if the conviction is the person's first [OR SECOND] misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law of this state or another jurisdiction; or

(2) shall suspend one or more of the person's commercial fishing privileges and licenses for a period of at least one year but not more than three years if the conviction is the person's second [THIRD OR SUBSEQUENT] misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law of this state or another jurisdiction; or

(3) shall suspend one or more of the person's commercial fishing privileges and licenses for a period of at least two years but not more than five years if the conviction is the person's third misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law of this state or another jurisdiction; or

(4) shall suspend one or more of the person's commercial fishing privileges and licenses for a period of at least three years but not more than seven years if the conviction is the person's fourth misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law of this state or another jurisdiction; or

(5) shall order the forfeiture of one or more of the person's commercial fishing privileges and licenses if the conviction is the person's fifth or subsequent misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law of this state or another jurisdiction.

The remaining sections of the statute would have to be renumbered and tweaked a bit to include forfeiture language where appropriate.

There is, of course, another way to get tough on violators that the legislature may wish to consider: provide for suspension and revocation of permits through administrative proceedings as well as court proceedings. The Alaska Supreme Court has held that a respondent has no right to a jury trial and that his professional license may be suspended or revoked in administrative proceedings in which the respondent's fitness to practice a profession is the primary concern. See Loesche v. Alaska Board of Fish and Game, 537 P.2d 1122 (Alaska 1975). Here, it seems, the legislature could assign the task of conducting such proceedings to CFEC and provide guidelines for determining when a person has become unfit for participation in a fishery due to violations of fishing laws and the threat such violations pose to the fishery. The guidelines could be very similar to the proposed statutory amendment set forth above, e.g., suspension would be mandatory after a certain number of convictions and revocation would follow if more violations were committed. The advantage in using administrative proceedings, it seems, are several: (1) no jury trial is required, (2) mere violations could be considered as well as

misdemeanors and felonies in determining whether the person is unfit to continue in the fishery, and (3) the proceedings would be relatively simple if lack of fitness were tied to convictions only (all CFEC would have to do is provide proof of the convictions, apply the formula provided by the legislature, and suspend or revoke the permit).

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 316

Revision Date: February 25, 1994  
Title: "An Act relating to commercial fishing penalties."  
Sponsor: Senator Halford  
Requestor: Senate Resources Committee

Department Affected: Department of Law  
BRU: Prosecution  
Component: Criminal Justice Litigation  
COMPONENT SERIAL NO. 0087

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	43.9	43.9	43.9	43.9	43.9	43.9
TRAVEL	3.5	3.5	3.5	3.5	3.5	3.5
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	1.2	1.2	1.2	1.2	1.2	1.2
EQUIPMENT	6.5					
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	60.1	53.6	53.6	53.6	53.6	53.6

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

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF	60.1	53.6	53.6	53.6	53.6	53.6
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	60.1	53.6	53.6	53.6	53.6	53.6

POSITIONS:

FULL-TIME						
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY						

Estimate of current year (FY94) impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
Please see the attached analysis.

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services Division  
Approved by Commissioner: Bruce M. Botelho, Attorney General  
Agency: Department of Law

Phone: 465-3672  
Date: February 25, 1994  
Date: February 25, 1994

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
For further information, contact the Legislative Office

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. SB 316

ANALYSIS CONTINUATION:

This bill amends the state commercial fishing penalties laws under AS 16.05.710 to provide, in addition to other penalties imposed by law, that when a person is convicted of a misdemeanor or felony violation of a commercial fishing law, a court may suspend one or more of the person's commercial fishing privileges and licenses for a period of not more than one year, if the conviction is the person's first misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law. Under the existing statute, this additional penalty applies to both a first and second conviction.

This section is further amended to provide that a court shall suspend a person's commercial fishing privileges and licenses for three years, if the conviction is the person's second or subsequent misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law. The existing statute gives the court the discretion to suspend a commercial fishing privilege or license for up to three years for a third or subsequent conviction.

The bill also amends AS 16.05.722(a) to increase the penalty for a person who, without any culpable mental state, violates the state's commercial fishing laws by providing for a fine of not more than \$6,000 for a first conviction and providing for a fine of not more than \$12,000 for a second or subsequent conviction. The existing penalties for these commercial fishing violations are \$3,000 and \$6,000, respectively.

Finally, the bill amends AS 16.05.722(b) and AS 16.05.723(a) to provide that in a defense against a state forfeiture action for fish found on board a fishing vessel that was used in or in aid of a violation of the state's commercial laws, it is the defendant's burden to show by clear and convincing evidence that the fish on board were lawfully taken and retained. Under existing laws, defendants are permitted to use the lesser standard of a preponderance of the evidence to prove that the fish on board were lawfully taken and retained.

We believe that this will have two effects on the enforcement of the state's commercial fishing laws that will be primarily felt in Southwestern Alaska. First, the bill's increased penalties will serve as an incentive for persons engaged in commercial fishing to obey the state's commercial fishing laws and regulations. Second, the bill could also serve as a disincentive for violators to plead guilty and settle out as most do now. For example, in the Bristol Bay salmon fishery which experiences the state's highest number of violations, about 500 violations occur each year. Of this number, between 15 and 20 violations are contested and now go to trial. Most of the remainder of the violations settle before trial. Although we believe that the total number of violations will probably decline, we also believe that the number of contested violations (and subsequent trials) will increase significantly. We therefore request fiscal impact funds to pay for a permanent part-time Attorney III, who would work on the increased caseload from June through November, each year.

02/25/94

15:03:35.4

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 2

DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020300 NAME: THIRD JUDICIAL DISTRICT

BRU NAME: PROSECUTION

PCN	UNAUTII PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B S C U	R&S MOS BUDG	SALARY	PREM PAY	DENES	PER.SERV. COSTS	G. F. AMOUNT
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03#044		ATTORNEY IV	T	ANCHORAGE	A XE AA	24A 12	61000	0	20660	81668.60	
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\*\*\*\* JUSTIFICATION:

TRAVEL COSTS	7500.00	
CONTRACTUAL COSTS	13600.00	
SUPPLIES COSTS	3300.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
=====		
TOTAL COSTS	112568.60	81668.60
=====		
*** FUNDING DETAIL:		
100% GENERAL FUND RECEIPTS	81668.60	
=====		
TOTAL FUNDING	81668.60	

03#048		ATTORNEY III	P	DILLINGHAM	A XE III	22A 6	33900	0	10011	43911.96	
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\*\*\*\* JUSTIFICATION:

Substantial increases in the penalties for commercial fishing violations will result in a more vigorous defense by defendants and will increase the number of trials significantly.

TRAVEL COSTS	3500.00	
CONTRACTUAL COSTS	5000.00	
SUPPLIES COSTS	1200.00	
EQUIPMENT COSTS	6500.00	
OTHER COSTS	0.00	
=====		
TOTAL COSTS	60111.96	43911.96
=====		
*** FUNDING DETAIL:		
100% GENERAL FUND RECEIPTS	43911.96	
=====		
TOTAL FUNDING	43911.96	

ALL GF

\*\*\*\* COMPONENT TOTALS:

FULL TIME NEW POSITIONS	1	TOTAL PERSONAL SERVICES	125580.56
PART TIME/SEASONAL NEW POSITIONS	1		
NON PERMANENT NEW POSITIONS	0	TOTAL COSTS INC. ASSOC COSTS	172680.56
OTHER.....	0		
	====		

NUMBER OF NEW POSITIONS IN COMPONENT: 2

FUNDING DATA: G.F. & G.F. MATCH:	125580.56
OTHER FUNDS:	0.00
=====	
TOTAL FUNDING:	125580.56

# 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 25, 1994

**SUBJECT:** Sectional Summary of CSSB 316 (RES): An Act relating to commercial fishing penalties. (Work Order No. 8-LS1676)

**TO:** Senator Mike Miller

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

You have requested a sectional summary of CSSB 316 (RES): An Act relating to commercial fishing penalties.

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 amends AS 16.05.710(a) to provide an escalating schedule for suspension, and eventually forfeiture, of commercial fishing privileges and licenses based on the number of times a person had been convicted of misdemeanor or felony violations of commercial fishing laws in this state or another jurisdiction during the preceding 10 years.

Section 2 of the bill amends AS 16.05.722(a) to double the maximum allowable fines that may be imposed for strict liability violations of commercial fishing laws.

Section 3 of the bill amends AS 16.05.722(b) to increase the evidentiary burden that a commercial fisherman must satisfy in order to rebut the presumption that fish found onboard a fishing vessel that is used in a strict liability violation of a commercial fishing law or fish present at a fishing site where a strict liability commercial fishing violation occurred, were taken unlawfully and thus subject to forfeiture. The burden of proof is increased from a preponderance of the evidence to clear and convincing evidence.

Section 4 of the bill amends AS 16.05.723(b) to increase the evidentiary burden that a commercial fisherman must satisfy in order to rebut the presumption that fish found onboard a fishing vessel that is used in the commission of a misdemeanor commercial fishing offense or fish present at a fishing site where a misdemeanor

SECTIONAL ANALYSIS

Senator Mike Miller  
February 25, 1994  
Page 2

commercial fishing offense occurred, were taken unlawfully and thus subject to forfeiture. The burden of proof is increased from a preponderance of the evidence to clear and convincing evidence.

GU:pl  
94-162.plm

8-LS16760 ✓  
Utermohle  
2/25/94

CS FOR SENATE BILL NO. 316(RES)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATORS HALFORD, Jacko, Kerttula, Miller, Frank, Pearce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to commercial fishing penalties."

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

3 \* Section 1. AS 16.05.710(a) is amended to read:

4 (a) Upon the conviction of a person for a misdemeanor or felony violation of  
5 a commercial fishing law of this state, the court, in addition to other penalties imposed  
6 by law,

7 (1) may suspend one or more of the person's commercial fishing  
8 privileges and licenses for a period of not more than one year [,] if the conviction is  
9 the person's first [OR SECOND] misdemeanor or felony conviction within a 10-year  
10 period for violating a commercial fishing law of this state or another jurisdiction; [OR]

11 (2) shall suspend one or more of the person's commercial fishing  
12 privileges and licenses for a period of at least one year but not more than three years  
13 [,] if the conviction is the person's second [THIRD OR SUBSEQUENT] misdemeanor  
14 or felony conviction within a 10-year period for violating a commercial fishing law of

1 this state or another jurisdiction;

2 (3) shall suspend one or more of the person's commercial fishing  
3 privileges and licenses for a period of at least two years but not more than five  
4 years if the conviction is the person's third misdemeanor or felony conviction  
5 within a 10-year period for violating a commercial fishing law of this state or  
6 another jurisdiction;

7 (4) shall suspend one or more of the person's commercial fishing  
8 privileges and licenses for a period of at least three years but not more than seven  
9 years if the conviction is the person's fourth misdemeanor or felony conviction  
10 within a 10-year period for violating a commercial fishing law of this state or  
11 another jurisdiction; or

12 (5) shall order the forfeiture of one or more of the person's  
13 commercial fishing privileges and licenses if the conviction is the person's fifth or  
14 subsequent misdemeanor or felony conviction within a 10-year period for violating  
15 a commercial fishing law of this state or another jurisdiction.

16 \* Sec. 2. AS 16.05.722(a) is amended to read:

17 (a) A person who without any culpable mental state violates AS 16.05.440 -  
18 16.05.690, or a regulation of the Board of Fisheries or the department governing  
19 commercial fishing, is guilty of a violation and upon conviction is punishable by a fine  
20 of not more than

21 (1) \$6,000 [~~\$3,000~~] for a first conviction; and

22 (2) \$12,000 [~~\$6,000~~] for a second or subsequent conviction.

23 \* Sec. 3. AS 16.05.722(b) is amended to read:

24 (b) In addition, the court shall order forfeiture of any fish, or its fair market  
25 value, taken or retained as a result of the commission of the violation. For purposes  
26 of this subsection, it is a rebuttable presumption that all fish found on board a fishing  
27 vessel used in or in aid of a violation, or found at the fishing site, were taken or  
28 retained in violation of AS 16.05.440 - 16.05.690 or a commercial fisheries regulation  
29 of the Board of Fisheries or the department. It is the defendant's burden to show by  
30 clear and convincing [A PREPONDERANCE OF THE] evidence that fish on board  
31 or at the site were lawfully taken and retained.

1 \* Sec. 4. AS 16.05.723(a) is amended to read:

2 (a) A person who negligently violates AS 16.05.440 - 16.05.690, or a  
3 regulation of the Board of Fisheries or the department governing commercial fishing,  
4 is guilty of a misdemeanor and in addition to punishment under other provisions in this  
5 title, including AS 16.05.195 and 16.05.710, is punishable upon conviction by a fine  
6 of not more than \$15,000 or by imprisonment for not more than one year, or by both.  
7 In addition, the court shall order forfeiture of any fish, or its fair market value, taken  
8 or retained as a result of the commission of the violation, and the court may forfeit any  
9 vessel and any fishing gear, including any net, pot, tackle, or other device designed or  
10 employed to take fish commercially, that was used in or in aid of the violation. Any  
11 fish, or its fair market value, forfeited under this subsection may not also be forfeited  
12 under AS 16.05.195. For purposes of this subsection, it is a rebuttable presumption  
13 that all fish found on board a fishing vessel used in or in aid of a violation, or found  
14 at the fishing site, were taken or retained in violation of AS 16.05.440 - 16.05.690 or  
15 a commercial fisheries regulation of the Board of Fisheries or the department, and it  
16 is the defendant's burden to show by clear and convincing [A PREPONDERANCE  
17 OF THE] evidence that fish on board or at the site were lawfully taken and retained.

COST 234

# FROM DPS, Div. of Fish & Wildlife Protection

The following is a brief synopsis of the 1993 Bristol Bay Salmon Enforcement Program.

The program began on June 20, 1993, with an opener in the Egegik District, which was covered by the P/V PUBLIC SAFETY #1 (PS1). The P/V TROOPER and the P/V WOLDSTAD arrived in the bay on June 23. The P/V PS1 patrolled the Egegik and Ugashik districts, the P/V TROOPER patrolled the Egegik district, and the P/V WOLDSTAD patrolled the Naknek-Kvichak district. The P/V WOLDSTAD departed the bay on July 16, the P/V TROOPER departed on July 20, and the P/V PS1 patrolled the Ugashik district until July 19, 1993.

Unlike the 1991 season, we didn't have to deal with any strike related activity. This allowed us to concentrate our efforts on enforcement right from the beginning.

The Bristol Bay run this year came back considerably larger than forecast. The preseason forecast was for a return of 41.8 million fish. A commercial harvest of 41.7 million fish was achieved in 1993, with a total return of 53.6 million fish, broken down as follows:

RIVER SYSTEM	CATCHES	ESCAPEMENTS	TOTAL RUN
Naknek-Kvichak	8,914,823	5,931,722	14,846,545
Egegik	21,911,499	1,522,188	23,433,687
Ugashik	4,357,820	1,429,538	5,787,358
Nushigak	5,818,947	2,664,673	8,573,520
Togiak	721,007	356,980	1,077,987
<b>TOTALS</b>	<b>41,724,086</b>	<b>11,895,001</b>	<b>53,619,097</b>

The inshore run of sockeye salmon totaled 52.2 million fish, the third largest inshore return on record (trailing only returns of 62.5 million in 1980, and 53.1 million in 1965). It was approximately 25% greater than the preseason forecast of 41.8 million.

All districts except the Naknek-Kvichak experienced greater than expected runs and a commercial harvest of 40.8 million sockeye was achieved, the largest sockeye harvest on record for Bristol Bay (exceeding the previous high of 37.4 million in 1983). A total of 11.4 million sockeye entered the escapement.

The estimated ex-vessel value of the 1993 Bristol Bay salmon fisheries totaled \$153.7 million. This is the fifth largest ex-vessel value on record, but well below the \$202.3 million record value attained in 1990 when salmon prices were high and below last years ex-vessel value of \$191.3 million. It was, however, well above the 1973 to 1992 mean value of \$102.9 million.

BRISTOL BAY ENFORCEMENT PROGRAM  
12/15/93

## Bristol Bay Enforcement Recap 1993

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December 15, 1993

There were twenty commissioned personnel assigned to the program, as well as nine civilians. Six of the civilians were part of the crews on the two large patrol vessels and the other three were clerical support staff. The total number of personnel (including civilian vessel personnel, clerks, etc.) was twenty-nine. A personnel roster is attached. The highest number of personnel at the peak of the 1992 season was only nineteen. At the peak of the 1991 season, the highest number of personnel was thirty-eight.

We had four commissioned Alaska State Troopers assigned to the program full time. Three of these troopers were assigned to the vessels and one was assigned to the beach. Each of these individuals did an outstanding job.

TDY personnel arrived in King Salmon aboard the King Air on June 23, 1993. At which time, a briefing was held prior to their deployment to the vessels and to Dillingham.

We were able to maintain an excellent working relationship with the Alaska Department of Fish and Game staff in King Salmon and Dillingham. We were kept well informed of openings, closures, extensions, etc. Problem areas and enforcement concerns were discussed on a regular basis. The cooperation and coordination between the two agencies continues to be excellent and is expected to remain that way.

As always, our primary fisheries enforcement problems occurred on the district lines. As mentioned earlier, with no strike activity this year, we were able to concentrate on enforcement problems right from the start. This allowed us to stay on top of things as best we could.

It should be noted that on the first day of the fishery at Egegik, June 20, 1993, the crew of the P/V PS1, assisted by Trooper Gary Folger in a Piper Supercub, made approximately 60 closed waters cases.

Again this year, we saw excellent cooperation between the vessels and aircraft. With the exception of the first opening at Egegik, patrol vessel skiffs were able to approach nearly all violators spotted from the air.

While the P/V PS1 did an excellent job at Egegik, it was just not enough and couldn't control the line. Sergeant Rollin Young and FWEO Scott Quist, as stated earlier, made approximately 60 cases the first day and could have probably made that many more if they had the skiffs and troops to do it.

## Bristol Bay Enforcement Recap 1993

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December 15, 1993

With the big return to the Egegik district, we had close to 950 boats in that district throughout much of the season. Fishermen appeared to be much more aggressive this season and constantly pushed over the line. They knew at what point we were citing and pushed to that point and beyond continuously.

Our shore based personnel were faced with continuous set net complaints. This was primarily due to two reasons. First, there is always the ongoing dispute between the drifters and the setnetters. Numerous complaints came from the drifters that the setnetters were fishing too far out. Complaints also came from the setnetters that the drifters were on top of their set nets.

This was compounded this year by a regulation change that took effect March 1, 1993, which required setnetters to be no more than 1000 feet from the 18 foot high tide mark. In past years in this area, they could be out to 1200 feet from the 18 foot high tide mark.

Measuring these nets proved almost impossible until we located a La Prosurvey 1000 Laser Ranger 58, which we rented from The Surveyor's Exchange in Anchorage. This device proved invaluable in dealing with the problems of measuring nets, distances, etc.

At Ugashik, we experienced the same problems as in past years. As long as a patrol boat was on the line, we could keep fishermen from pushing over the line for the most part. However, the minute the boat got tied up with a case or left the line, fishermen decided it was open season everywhere.

With that in mind, we did a staksout operation on the north line of Ugashik. We set up range markers on the bluff, utilizing the loran on the P/V PS1. This worked well and we made quite a few cases. Some boats we had over the line as many as three times in one day. The operation went well until the officer was spotted on the bluff by a spotter pilot, who then landed in a dry lake bed and walked up to see what he was doing. It was amazing how well the fishermen knew where the line was once they found out an officer was on the bluff.

We did a similar operation on the Egegik north line on the first opening. In that situation, we put an officer on another vessel with a fisherman who agreed to work with us. The P/V PS1 then left the line and the officer stayed on the private vessel and made approximately 20 cases. He reported seeing many skippers on their flying bridges with binoculars looking for the patrol vessel. His comments were that it was obvious most fishermen were not concerned about where the line was, they were only concerned with where the patrol vessel was.

## Bristol Bay Enforcement Recap 1993

Page 4

December 15, 1993

Four vessels were seized in the bay this season. Three of the vessels were seized for fishing closed waters and the fourth was seized as a result of the operators fishing without a permit. Vessels seized are as follows:

Fishing Vessel	Reason Seized	Settlement
GONE FISHING	.5 miles into closed waters after the closure of the Kvichak Section.	Civil: \$10,000
KATIE DEVINE	Closed waters 30 minutes after closure.	Released.
DEACON	Operator did not have a permit.	Has not settled.
MINSTRAL	1.5 miles into closed waters outside the Nushigak District.	Civil: \$25,000

The F/V KATIE DEVINE was released with no settlement. This was done because the defendant stated he had lost a net and that he had approval from Fish and Game to retrieve it from closed waters. A check revealed that Fish and Game did not talk to this individual. However, it was very clear from talking to other fishermen who heard the conversation on the VHF radio that someone came on the VHF and stated that they were ADF&G and that they had given the F/V KATIE DEVINE approval to go in to closed waters to retrieve a net. The F/V KATIE DEVINE did forfeit its illegal fish.

We opened 482 cases during the Bristol Bay fishery this year, up from a previous all time high of 328 in 1991. We filed 509 criminal charges in 1993. There were 52 cases with multiple defendants and we had 31 cases where there were multiple charges per defendant.

We seized 581,474 pounds of fish during the season, of which; 161,172 has been forfeited to date. Based on an average of \$.60 per pound, forfeiture value of this fish is \$96,730.20.

We seized 108 shackles of gillnet during the program. 19 shackles were forfeited as of this date.

As of December 9, 1993, gross fines for the program have been \$1,065,633.86, with only \$230,500 of that being suspended. This leaves a total of \$835,133.86 in net fines due the State.

## Bristol Bay Enforcement Recap 1993

Page 5

December 15, 1993

There was nearly a 100% increase in closed waters cases in 1993, with a total of 311 cases in 1993 compared to 168 cases in 1992. This can be attributed in part to the extreme aggressiveness of the fishermen this season and to continued effective enforcement. A break down of the cases are as follows:

<u>VIOLATION</u>	<u># OF OCCURRENCES</u>
ASSAULT III	1
COMMERCIAL FISH AID AND ABET	2
COMMERCIAL FISH ANCHOR DRIFT NET	4
COMMERCIAL FISH CLOSED PERIOD	28
COMMERCIAL FISH CLOSED WATERS	311
COMMERCIAL FISH DRIFT TOO CLOSE	18
COMMERCIAL FISH EMPLOY UNLICENSED CREW	15
COMMERCIAL FISH FAIL TO MARK BUOY	5
COMMERCIAL FISH FAIL TO RECORD	4
COMMERCIAL FISH FAIL TO REGISTER	6
COMMERCIAL FISH FALSE FISH TICKET	2
COMMERCIAL FISH FALSE STATEMENT	3
COMMERCIAL FISH ILLEGAL GEAR	1
COMMERCIAL FISH ILLEGAL POSSESSION	5
COMMERCIAL FISH IMPROPERLY MARKED BUOY	1
COMMERCIAL FISH IMPROPERLY MARKED GEAR	6
COMMERCIAL FISH MISCELLANEOUS CHECK/STOP	1
COMMERCIAL FISH NET OUT TOO FAR	21
COMMERCIAL FISH NO BUOY	4
COMMERCIAL FISH NO CREW LICENSE	26
COMMERCIAL FISH NO PERMIT	3
COMMERCIAL FISH NO PHOTO ID	16
COMMERCIAL FISH NO VESSEL NAME	3
COMMERCIAL FISH NO VESSEL NUMBERS	6
COMMERCIAL FISH PERMIT HOLDER NOT PRESENT	5
LOG: BOATING ACCIDENT	1
LOG: CARCASS FOUND	1
LOG: COMMERCIAL FISH CLOSED PERIOD	1
LOG: COMMERCIAL FISH DRIFT TOO CLOSE	8
LOG: COMMERCIAL FISH FAIL TO REGISTER	2
LOG: COMMERCIAL FISH INTERFERE WITH GEAR	2
LOG: COMMERCIAL FISH MISCELLANEOUS	1
LOG: COMMERCIAL FISH NO VESSEL NUMBERS	1
LOG: COMMERCIAL FISH OVERLIMIT OF GEAR	4
LOG: COMMERCIAL FISH SET NET TOO CLOSE	1

## Bristol Bay Enforcement Recap 1993

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December 15, 1993

<u>VIOLATION</u>	<u># OF OCCURANCES</u>
LOG: FOUND NET	2
LOG: GAME NUISANCE BEAR	1
LOG: MEDICAL ASSIST	1
LOG: PERSONAL USE CLOSED SEASON	2
LOG: PROCESS SERVED	1
LOG: PUBLIC ASSIST	3
LOG: UNMARKED GILLNET	1
SPORT FISH NO KING STAMP	2
SPORT FISH NO LICENSE	13
SPORT FISH USE BAIT	1
WARNING: COMMERCIAL FISH ANCHOR DRIFT NET	4
WARNING: COMMERCIAL FISH CLOSED PERIOD	2
WARNING: COMMERCIAL FISH CLOSED WATERS	6
WARNING: COMMERCIAL FISH DRIFT TOO CLOSE	1
WARNING: COMMERCIAL FISH EMPLOY U/L CREW	7
WARNING: COMMERCIAL FISH FAIL TO MARK NET	1
WARNING: COMMERCIAL FISH INTERFERE WITH GEAR	1
WARNING: COMMERCIAL FISH NO CREW LICENSE	5
WARNING: COMMERCIAL FISH NO VESSEL ID	1
WARNING: SPORT FISH NO LICENSE	6

Radio Dispatcher II Jolene Dodge from Kodiak, Clerk IV Cynthia Nestegard from SIS, and Clerk Typist III Kim Spaans from Detachment provided the clerical support for the program. While from outward appearances this seems like a large clerical staff for one program, we must realize that Kim and Cynthia only overlapped each other for a couple of days and that this staff handled 484 cases in approximately three weeks. This included running criminal record checks on all defendants, closing case reports for those that plead out at arraignment, and returning those cases to the boats for full reports were the defendants plead not guilty at arraignment. They also utilized a data base program to keep track of all the statistics for this program.

For the most part the enforcement program went very well with personnel working as hard and carrying as large a case load as humanly possible. Without question the most frustrating part of the program was the process of prosecuting the cases and not receiving adequate penalties to serve as a deterrent to the fishermen. As in the past the Division, in conjunction with the District Attorney's Office in Dillingham, established recommended sentencing guidelines for the various violations occurring in the Bay. These guidelines were based on ten years of experience with the fishery. In 1993 we did begin citing fishermen for a narrower margin of closed water fishing

## Bristol Bay Enforcement Recap 1993

Page 7

December 15, 1993

than in previous years with this being the only major change.

It is common practice to be approached by the various defendants prior to court arraignments in an effort for them to reach a plea agreement satisfactory to the state and thus avoid a trial. This routinely involves the fishermen and Fish & Wildlife personnel assigned court duty. The district attorney is advised of the agreement and normally makes this recommendation to the court.

During 1993 we had two state attorneys assigned to the program. One attorney was not only new to Bristol Bay but was also a new attorney. The second attorney had several years of experience with the program. For some reason the experienced attorney felt the plea agreements were too harsh, so consequently it became common practice for him to lower the recommended penalty to the court, in many cases by \$1,000 to \$1,500 (sometimes more), and agree to return additional fish and nets. Keep in mind the original plea agreement was agreed to by the defendant. It was then not uncommon for the court to reduce the fine even more.

Another common problem with the District Attorney's office is the practice of reducing cases from a misdemeanor to an infraction (violation). This is done for a number of reasons but for the most part as a cost saving measure. The burden of proof is less for an infraction in that the "intent" of the fishermen to violate the law is not required to be proven (strict liability rule). However, intent has been proven in all cases originally filed as misdemeanors by FWP, the information is in the report. There is a greater chance of the defendant agreeing to plea to an infraction, as opposed to a misdemeanor because the monetary fine is less, there is no chance of serving jail time, and his fishing permit can not be suspended. As a result, this saves the Department of Law and the Court System time and money by not having to schedule expensive trials, convene juries and pay judge and attorney travel expenses to the Bay later in the year. No one debates the expense and time that would be necessary to conduct misdemeanor trials for the several hundred fishing cases.

The number of cases in Bristol Bay are increasing while the fines per case are decreasing. The fishermen already know they may be able to make several illegal sets valued at \$10,000 to \$20,000 before being caught. This combined with the possibility of a mere \$3,000 or even a \$6,000 fine serves as no deterrent to their illegal acts.

As long as misdemeanor cases are reduced to infractions there will never be any chance of fishing permits being suspended or ultimately revoked after three convictions as provided by statute. This, of course is the ultimate deterrent.

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Prior to the 1994 season it is imperative for the Division to meet with the appropriate state attorneys and judges if necessary to resolve these issues. Division personnel and the commercial fishing community are demanding a much higher compliance rate but this will never happen until the penalty exceeds or at least meets the value of the crime.

This is a list of the personnel and equipment which were utilized in the program:

**P/V WOLDSTAD (Egegik, Naknek, and Kvichak)**

Cpl. Dean Layton  
Trp. Lonnie Swanson  
VTII Bill Wertanen  
BOI Don Wood (cook)  
BOI John Gianguilli  
BOI Mike Reuter  
Trp. Ken Woldstad  
AST Trp. Willard Ellis

**P/V TROOPER (Egegik)**

Trp. Robert Rodrigues  
Trp. Scott Jones  
BOI Rick Gottwald  
VTI Mark Salvog  
FWEO Bob Beasley  
AST Trp. Jeff Edmondson  
AST Trp. Frank D'Angelo

**P/V PUBLIC SAFETY #1 (Egegik and Ugashik)**

Trp. Rollin Young  
FWEO Scott Quist

**KING SALMON**

Lt. Thomas Schwantes  
Sgt. Don Starbard  
Trp. Gary Folger (pilot)  
Trp. Curt Bedingfield (pilot) (set net)  
FWEO Rohn Nelson (set net)  
AST Trp. Joanna Roop (set net)  
RDII Jolene Dodge  
CIV Cynthia Nestegard  
CTIII Kim Spaans

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**DILLINGHAM**

Trp. Ed Painter (pilot) (O.I.C.)

Trp. Jim Lowe (22' Whaler)

FWEO Eric Olsen (22' Whaler)

**AIRCRAFT**

PA18 Cub on floats (King Salmon)

PA18 Cub on wheels (King Salmon)

PA18 Cub on floats (Dillingham)

King Air (transportation of TDY personnel)

**VESSELS**

P/V WOLDSTAD (2 skiffs)

P/V TROOPER (2 skiffs)

P/V PUBLIC SAFETY #1 (1 skiff)

22' Whaler (King Salmon)

22' Whaler (Dillingham)

Vessel Sea Days	FY93	FY94	Total
P/V WOLDSTAD	12	20	32
P/V TROOPER	10	23	33
P/V PUBLIC SAFETY #1	10	22	32
22' WHALER (DILLINGHAM)	3	10	13
22' WHALER (KING SALMON)	8	19	27
<b>Grand Total</b>	<b>43</b>	<b>94</b>	<b>137</b>

**AIRCRAFT HOURS**

Cessna 714NK 1.2 Hours

PA18 24005 42.5 Hours

PA18 7066 54.9 Hours

PA18 88AK 64.4 Hours

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**TOTAL AIRCRAFT HOURS 163.4 Hours**

FY93 AIRCRAFT HOURS = 82.5

FY94 AIRCRAFT HOURS = 80.9

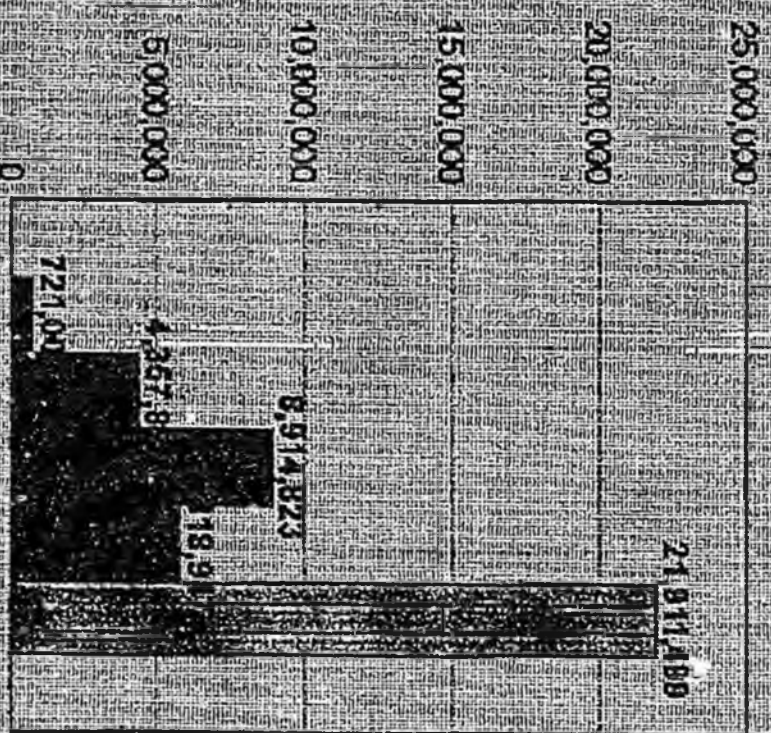
**ALASKA**  
**DEPARTMENT OF PUBLIC SAFETY**  
**FISH AND WILDLIFE PROTECTION**  
**BRISTOL BAY SALMON ENFORCEMENT**  
**1993 SEASON**

**Commissioner,**  
**Richard L. Burton**



# ADF&G Statistics

- ▶ Ex-vessel value of the harvest **\$153.7 million** dollars
- ▶ (fifth largest ever)
- ▶ Total run was **53,619,017** fish.
- ▶ (third largest run ever)
- ▶ Total catch was **41,724,096** (largest sockeye catch on record, exceeding the prior 1983 record of 37.4 million)
- ▶ Total Escapement = **11,895,001**



TORJIAK
  UGASHIK
  NAK-KVIGCHAK
  NUSHAGAK
  EGEGIK

# **CORRECTION**

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

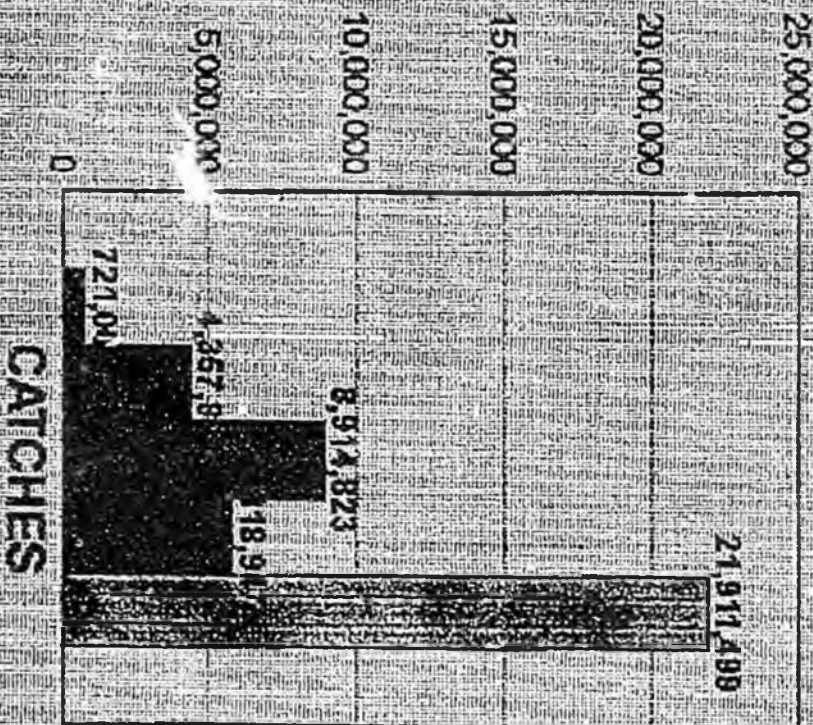
**ALASKA**  
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TOGIAK
  UGASHIK
  NAK-KVICHAK
  MUSHAQAK
  ECEGAIK

1993 BRISTOL BAY SALMON PROGRAM  
 COSTS -VS- INCOME COMPARISON

▶ INCOME	▶ EXPENSES
▶ FINES \$ 835,133.86	▶ PERSONAL SERVICES \$173,050.00
▶ SEIZED FISH	▶ TRAVEL
▶ \$ 96,730.20	▶ \$ 27,572.00
▶ FORFEITED GEAR	▶ CONTRACTUAL
▶ \$ 5,700.00	▶ \$ 9,494.00
▶ CIVIL FINES	▶ SUPPLIES \$ 17,812.00
▶ \$35,000.00	▶ TOTAL EXPENSES
▶ TOTAL INCOME	▶ \$227,928.00
▶ \$972,564.06	
▶ Cases remaining to be settled = 65.	