

ALASKA LEGISLATURE COMMITTEE FILES

1995-1996 8672

8739 HOUSE RESOURCES

230

Amendment 2: grammatical clarification (limit scope of term 'money and revenue')

Page 4, lines 8-9:

Following "pledge of"

Insert "such"

Amendment 3: grammatical clarification (singular to plural).

Page 5, line 12

Following "default to"

Delete "the"

Insert "any"

Amendment 4: correct typographical omission.

Page 6, line 28

Following "refunding"

Insert "bonds"

Amendment 5: CSHB 401 allows municipalities and state agencies to access the Alaska Clean Water Fund for bond insurance and other collateral security for local obligations. "Other qualified entities" should also have access to the Fund for this purpose.

Page 9, line 26:

Following "municipal"

Delete "or"

Insert ","

Following "state agency"

Insert ", or other qualified entity"

AMENDMENT

OFFERED IN HOUSE RESOURCES

BY REPRESENTATIVE JOHN DAVIES

TO: CSHB 388 (RES):

Page 6, Line 27:

Following 'may'

Insert: ', for state land north of the Umiat baseline'

A DON WG -
N YNY NN

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1993
PHONE: (907) 269-5100
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

March 19, 1996

The Honorable Joseph Green
Co-Chairman, House Resources
Committee
Alaska State Legislature
State Capitol, Room 24
Juneau, AK 99801-1182

Re: CSHB 401
Alaska Clean Water Fund

Dear Representative Green:

This letter will describe the reasons for the Administration's proposed amendments to CSHB 401, the bill to allow leveraging of the Alaska Clean Water Fund.

Amendment 1

The first amendment clarifies and corrects the bond cap language. Section 37.15.560(b) in CSHB 401, on page 2, lines 14-17, provides that

The state bond committee may not issue more than \$15,000,000 in revenue bonds during a fiscal year, excluding refunding bonds. The total amount of revenue bonds outstanding at any one time may not exceed \$150,000,000, including principal and interest owed on the bonds.

Under the proposed amendment, the bond cap language would read:

The state bond committee may not issue more than \$15,000,000 in revenue bonds under AS 37.15.560 - 37.15.605 during a fiscal year, excluding refunding bonds. The total unpaid principal amount of revenue bonds may not exceed \$150,000,000, including refunding bonds, but excluding refunded bonds, issued under the provisions of AS 37.15.560 - 37.15.605.

The proposed amendment clarifies that the total cap excludes refunded bonds, as refunded bonds are generally considered no longer to be a liability of the issuer. The annual cap excludes refunding bonds, but the total cap includes refunding bonds.

We also propose deleting interest from the total cap. The inclusion of interest creates unnecessary ambiguities; for example, is the interest that is to be taken into account the interest owing or due this fiscal year, or is it the total interest that will be paid on the bonds to their maturity, but which is not yet "owed." How is interest on a variable rate bond calculated for purposes of the cap?

Finally, we have added references to the bond legislation to eliminate the possible interpretation that the cap computation includes other types of bonds that the State Bond Committee is authorized to issue.

Amendment 2

Amendment 2, on page 4, lines 8-9, is a grammatical clarification that limits the scope of the term "money and revenue" in section 37.15.570(c). This section identifies the money and revenue that the State Bond Committee may pledge to secure the bonds. The original text of HB 401 had included the term "such money and revenue" to refer back to the categories of money and revenue that could be pledged. The CS deleted the word "such" for purposes of conforming to legislative drafting style recommendations. However, in this case, strict adherence to the drafting style recommendations does not accurately reflect the intent that only the identified sources of money and revenue may be pledged.

Amendment 3

Likewise, amendment 3 restores the original language from HB 401 to the state aid intercept provision, section 37.15.575 on page 5, lines 10 - 19. The intent of this section is that the State Bond Committee can provide written notice to any state agency that might be holding funds payable to a municipality. By deleting the word substituting the word "the" for "any," the CSHB 401 suggests that only one state agency is the custodian of municipal funds, which is not accurate.

Amendment 4

Amendment 4 inserts the word "bonds" at the end of the sentence on page 6, line 28, referring to the issuance, exchange or sale, and delivery of refunding bonds. This amendment corrects a typographical error, an omitted word.

The Honorable Joseph Green
Co-Chairman, House Resources Committee
CSHB 401 - Alaska Clean Water Fund

March 19, 1996
Page 3

Amendment 5

The fifth amendment, on page 9, line 26, will allow qualified entities access to the Fund for purposes of obtaining bond insurance or otherwise guaranteeing local obligations. Under the federal Clean Water Act, the Fund may be used "to guarantee, or purchase insurance for, local obligations where such action would improve credit market access or reduce interest rates." 33 U.S.C. § 1383(d)(3).

Thank you for your consideration of these proposed amendments. Please do not hesitate to contact me if you require further assistance.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:

Marie Sansone
Marie Sansone
Assistant Attorney General

BMB/MS/lmt

cc: Keith Kelton, DEC
Ross Kinney, DOR
Lee Sharp, bond counsel

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P O Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

HB 401

HB 401

January 8, 1996

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

Dear Speaker Phillips:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to authorize the state bond committee to issue and sell state revenue bonds to fund public wastewater treatment systems, solid waste management systems, nonpoint source water pollution control projects, and estuary conservation and management projects. This bill also authorizes the Department of Environmental Conservation to use the Alaska clean water fund, a revolving loan fund, as security for the payment of the principal and interest on the bonds, provided the bond proceeds are deposited in the fund. By using the fund as security for the bonds, the state will be able to leverage or increase the amount of money in the fund that is available to municipalities and state agencies for water pollution control projects.

Section 2 of the bill provides the legal framework for the bond issuance and sale. This section is patterned after the international airports revenue bonds statutes, and establishes a cooperative relationship between DEC, which administers the Alaska clean water fund, and the state bond committee, which will administer the bond program. The bill requires the state bond committee to conduct its activities in the best interests of the state and its inhabitants, in a manner that will accomplish the most advantageous sale of the bonds, with due regard for the continued funding of projects under the Alaska clean water fund program.

The Honorable Gail Phillips
January 8, 1996
Page 2

Sections 3-12 of the bill amend the clean water fund loan program to clarify the statute. It authorizes DEC to use the fund to secure state-issued bonds and to make other amendments necessary to acknowledge the bond-issuance and repayment process.

I urge your prompt consideration and passage of this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tony Knowles".

Tony Knowles
Governor

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
410 Willoughby Avenue
Juneau, Alaska 99801-1795

Phone: 465-5066
Fax: 465-5070

March 11, 1996

The Honorable Joe Green, Co-Chairman
The Honorable Bill Williams, Co-Chairman
House Committee on Resources
Alaska State Legislature
Juneau, Alaska 99801

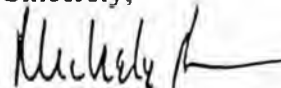
SUBJECT: Request for hearing on CS for House Bill No. 401 (STA)

Dear Representatives Green and Williams:

The Governor's Office and the Department of Environmental Conservation request that public hearings be scheduled for CS for House Bill 401 (STA). This bill is important for Alaskans for many reasons. It affords a way for our communities to obtain low-cost loans for their water pollution projects far into the future. This proposal will accomplish this goal while reducing general funds and in fact, at some point in the future, could eliminate the need for legislative appropriations for wastewater projects. Alaskan communities are simultaneously faced with many federal regulatory burdens and diminishing financial resources. It is important that we provide them with financial tools to deal with the many problems that they encounter. This bill would provide one of these financial tools.

We have attached a short analysis of the bill for your convenience in understanding the intent of the Legislation. At this time, the Alaska Clean Water Fund has the required collateral to support the proposed revenue bond leveraging plan. If legislation is enacted this session, adequate collateral would remain to ensure a bond issue large enough to meet anticipated demand. Delay in enacting this legislation will reduce the program's effectiveness in meeting our water pollution capital project needs. For this reason, we ask that the hearings be scheduled as soon as possible. If you wish to discuss this legislation, please call Keith Kelton at 465-5135. Thank you for your consideration.

Sincerely,



Michele Brown
Commissioner

MBVKK:lp (h:\co\clerical\white\leverage\hearing.ltr)
Enclosure: Bill Analysis

March 13, 1996

HOUSE BILL 401
SECTIONAL ANALYSIS

(Reflects changes made by House STA Committee)

Introduction

House Bill 401 will authorize the state bond committee (committee), which consists of the commissioners of the Departments of Administration, Commerce and Economic Development, and Revenue, to issue and sell state revenue bonds to fund public wastewater treatment systems, solid waste management systems, nonpoint source water pollution projects, and estuary conservation management projects. The bill authorizes the Department of Environmental Conservation (DEC) to use the Alaska clean water fund (fund), a revolving loan fund, as security for the payment of the principal and interest on the bonds, provided the bond proceeds are deposited in the fund.

The Alaska clean water fund and the proposed bond program are designed to comply with requirements for participation in a federal matching grant program under the Clean Water Act and, therefore, do not present any problem under the dedicated funds prohibition of the State Constitution.

By using the Alaska clean water fund as security for the bonds, the state will be able to leverage or increase the amount of money in the fund that is available to municipalities and other qualified entities for water pollution control projects.

Section 1. Section 1 of the bill recognizes that the proposed bond program is an appropriate use of the public credit, and that it will serve a public purpose by allowing public water pollution control projects to be financed and constructed much sooner than would otherwise be possible. This statement of the policies and purposes underlying the bill will also reflect the legislature's intent that the bonds to be issued are revenue bonds.

Section 2.

This section of the bill will create a new article, article 3A, in Title 37, the public finance title of the Alaska Statutes.

Sec. 37.15.560. BOND AUTHORIZATION - Authorizes the state bond committee to issue and sell revenue bonds to raise money to be deposited in the Alaska clean water fund. This section characterizes the Alaska clean water fund as a public enterprise of the state and the proposed bonds as revenue bonds. Under the Alaska Constitution, state-issued revenue bonds do not require voter approval. This section authorizes the committee to enter into agreements and perform those functions that are normally required to accomplish the task of issuing and selling bonds. The committee may not issue more than \$15,000,000 in revenue bonds during a fiscal year, excluding refunding bonds. The total amount of revenue bonds outstanding at any one time may not exceed \$150,000,000, including principal and interest owed on the bonds.

Sec. 37.15.565. BOND REDEMPTION FUND - A bond redemption fund is established. This is a standard financing technique for making it easier and more accountable to perform the many functions necessary in the bond issuance and sales process. And also, to provide accountability for any future principal and interest payments and any premium redemptions on the bonds. The state bond committee will be responsible for administering the bond redemption fund, and may invest the proceeds of the bond redemption fund according to the 'prudent investor' standards established in AS 37.10.070, providing the earnings on these investments are retained in the bond redemption fund.

Sec. 37.15.570. BOND TERMS - The state bond committee may issue, sell, or redeem the bonds so as to achieve the greatest advantage for the State. The committee can make decisions based upon the market conditions, and does not require approval of another agency to execute these decisions. The committee will decide the level of security required from the Alaska clean water fund and the portion of the fund that will

provide this collateral security. The committee may appoint a trustee to perform all necessary functions. The committee must give due regard to the continued funding of projects under the Alaska clean water fund, including applicable state and federal requirements. Any such decisions made by the committee and expressed in a bond resolution are conclusively deemed to comply with the requirements of the legislation pertaining to the bond program.

Sec. 37.15.573. BOND RESOLUTION - The committee must adopt a bond resolution to issue bonds. The resolution will contain those terms and conditions necessary to identify and define the bonds and the bond sales process.

Sec. 37.15.575. STATE AID INTERCEPT - This section defines the procedure for allowing the State to intercept or garnish other legitimate sources of State aid should a community default on a loan from this fund. This paragraph is included in the legislation to enhance investor confidence in the program, improve the bond rating, and ultimately, lower program costs.

Sec. 37.15.580. PLEDGE OF THE STATE - This provision recognizes that the state may not alter the terms and conditions of a bond resolution by subsequent executive or legislative action.

Sec. 37.15.583. ENFORCEMENT BY BONDOWNER - To resolve any disagreements between the bondowners and the committee, 10 percent or more of the bondowners of any series or issue can bring suit in state superior court in Juneau. The ten percent threshold was selected to discourage frivolous litigation.

Sec. 37.15.585. AMOUNTS REQUIRED FOR PAYMENTS - Each year the committee will inform the commissioners of the departments of Environmental Conservation and Revenue of the amounts needed to pay for the bonds. The notice will be given at this time so that the departments will be able to incorporate these numbers into their financial planning for the current and next fiscal years.

Sec. 37.15.587. PURPOSES AND SUFFICIENCY OF REVENUE - Bond proceeds will be used to build projects that are eligible

under the clean water fund program. The committee will not issue bonds unless there is enough security available in the fund to make it prudent to issue the bonds.

Sec. 37.15.590. REFUNDING - If it is in the best interests of the State, the committee may refund all or some of the bonds. The committee will follow the defined procedures to conduct the refunding process. The committee may appoint a trustee to conduct this process. The trustee may invest funds in short-term federal instruments until the refunding proceeds are needed.

Sec. 37.15.595. BONDS AS LEGAL INVESTMENTS - The bonds are legal investments and can be traded and sold between institutions and persons. The State may accept them as security for the State and Municipal debts.

Sec. 37.15.603. REGULATIONS - The committee can adopt regulations to implement this program.

Sec. 37.15.605. Definitions - This section contains the definitions applicable to the bond program.

Section 3 - 12. Sections 3 - 12 of the bill amend AS 46.03.032, the statute that establishes the Alaska clean water fund.

Section 3. AS 46.03.032(a) - The Alaska clean water fund statute is amended to allow the fund to receive money from the sale of bonds and this money may be placed in a special account of the fund.

Section 4. AS 46.03.032(b) - The DEC will administer the fund consistent with the state and federal requirements applicable to the fund and with the requirements of the bond legislation.

Section 5. AS 46.03.032(c) - This section makes a technical correction in the citation of the Clean Water Act, to follow the proper citation form and to refer to the Clean Water Act as

amended.

Section 6. AS 46.03.032(d) - This section reorganizes the existing statute into a more understandable form. It also authorizes use of the fund to secure state-issued bonds, and authorized use of the fund to pay the principal and interest on the bonds and the costs of issuing and administering the bonds. The proceeds of the bond sale must be deposited into the fund.

Section 7. AS 46.03.032(f) - This section also reorganizes the existing statute into a more logical format and allows DEC to spend the money from the fund to carry out the bond program.

Section 8. AS 46.03.032(g) - The existing statute is amended to allow other qualified entities to receive loans from the fund. Currently, only municipalities may do this. Allowing DEC to make loans to other qualified entities will provide a tool to enable these organizations to cooperatively address environmental problems. Also, the section is amended to make it clear that the potential borrowers will demonstrate their credit-worthiness prior to loan commitment.

Section 9. AS 46.03.032(j) - This section amends the existing statute to accommodate the references to the bond issuance program. Some technical changes are also made to reference AS 46.06.021, the solid waste statute that establishes project priorities, rather than repeat them in full in the Alaska clean water fund statute.

Section 10. AS 46.03.032(k) - In addition to the reports the department already prepares for the program, DEC will prepare reports necessary for the committee.

Section 11. AS 46.03.032(o) - The definitions section includes one technical change in the terminology used to refer to solid waste management projects and adds a new definition for the term

"other qualified entity."

Section 12. AS 46.03.032(p) - This new subsection provides that any inconsistencies between any regulations adopted by the state bond committee under Title 37 and those adopted by DEC under Title 46 involving the Alaska clean water fund program will be resolved in favor of the Title 37 regulations.

Section 13. Clarifies that the portion of this legislation that is entitled ENFORCEMENT BY BONDOWNER would affect a change in Civil Procedure 3 and require all actions to be filed in Superior Court in Juneau.

Section 14. Recognizes that in order for all actions to be filed in Superior Court in Juneau, the second part of the paragraph that is entitled ENFORCEMENT BY BONDOWNER must receive a two-thirds majority vote of each house; otherwise that portion will not take effect.

**SENATE BILL 207
HOUSE BILL 401**

DEPARTMENT OF ENVIRONMENTAL CONSERVATION BILL SUMMARY

This bill will authorize the State Bond Committee to issue and sell State revenue bonds to provide funds for the Department of Environmental Conservation (DEC) to offer low-interest loans to municipalities. The municipalities would use these funds to finance the construction of public wastewater treatment systems, solid waste management systems, nonpoint source water pollution control projects and estuary conservation and management projects. DEC already operates the Alaska clean water fund, a revolving loan program that is funded by federal grants and State appropriations. The demand for these subsidized loans has been growing with the increase in federal requirements placed upon the local communities and the concurrent reduction in State revenues in the last few years. It is estimated that the demand for loans will exhaust the available supply of funds by the summer of 1998.

One solution to this problem is to leverage the Alaska clean water fund, that is, to increase the amount of money available to finance water pollution control projects by using the fund as collateral to secure State-issued revenue bonds. Programs similar to this proposal are currently in place in 21 states. Communities collect user fees for their sewerage and solid waste projects to provide the money to make their annual loan payments to the Department. Under this leveraging concept, the annual loan repayments would be used to pay back the bond investors. Nationwide, in the six years of operation of the clean water loan funds, there has never been a loan default. With such an excellent repayment history, the program risk is very small. A sizable corpus of money in the fund would provide extra security for the bonds and would also result in lower program costs which could be passed onto the municipalities. If this bill could be enacted this session, an adequate amount would be available in the corpus to accomplish this. Delays in passage will reduce the amount available to leverage and minimize the effectiveness of the legislation.

This type of bond sales program has been previously authorized to the State bond committee. In fact, this legislation is patterned after the statute created for the International Airport bond sales done by the committee for the Department of Transportation. The State bond committee has the expertise to properly conduct a bond sales issue. DEC has the expertise to properly run the clean water fund program. This legislation provides a simple, efficient method to assist the incorporated communities of the State by ensuring that low-cost loans for essential projects will be available well into the future, while reducing the demand for general-funded capital projects.

STATE REVOLVING FUNDS

Issuer	RATINGS			State Intercept
	Moody's	S & P	Fitch	
Alabama Water Pollution Control Authority	NR	NR	NR	No
Wastewater Management Authority of Arizona	Aa	AA+	NR	No
Arkansas Development Finance Authority	NR	AA	NR	No
Colorado Water Resources and Power Development Authority	Aa	AA/AA+	NR	No
State of Connecticut	Aa	AA+	AA	Yes
Indiana Bond Bank	NR	A	NR	Yes
Iowa Finance Authority	NR	A	NR	No
Kansas Development Finance Authority	Aa1	AA+	NR	Yes
Kentucky Infrastructure Authority	A	A	NR	No
Maine Municipal Bond Bank	NR	A+	NR	No
Maryland Water Quality Financing Administration	Aa	AA	AA-	Yes
Massachusetts Water Pollution Abatement Trust	Aa1/Aa	AAA/AA+/A+	AA+/AA	Yes
Michigan Municipal Bond Authority	Aa	AA	NR	Yes
Minnesota Public Facilities Authority	Aa	AAA	NR	No
Missouri State Environmental Improvement And Resources Authority	Aa1/Aa	NR	NR	No
New Jersey Wastewater Treatment Trust	Aa	AA	NR	Yes
State of Nevada	Aa	AA	NR	No
New York State Environmental Facilities Corporation	Aaa/Aa	AAA/A/A-	AAA/AA	Yes
North Dakota Municipal Bond Bank	A1	NR	NR	No
Ohio Water Development Authority	A	A	NR	No
Pennsylvania Infrastructure Investment Authority	NR	AA	NR	No
Rhode Island Clean Water Finance Agency	NR	NR	NR	No
South Dakota Conservancy District	A	NR	NR	No
Texas Water Development Board	Aa	AAA	NR	No
State of Wisconsin	Aa	AA	AA+	Yes

STATES THAT HAVE NO STATE INTERCEPT

Alabama	No uninsured ratings.
Arizona	Uninsured ratings are only for Phoenix, whose double-A general obligation ratings flow to the ratings on Arizona's SRF bonds.
Arkansas	Double-A Standard and Poor's rating; without state intercept, State is required to use supplemental reserve fund, which is utilized if earnings fall below required coverage.
Colorado	Double-A from both Mood's Investors Service and Standard & Poor's; without state intercept, State is required to use supplemental reserve fund, which is utilized if earnings fall below required coverage.
Iowa	Rated only single-A by Standard & Poor's.
Kentucky	Rated only single-A by both Moody's Investors Service and Standard & Poor's.
Maine	Rated only "A+" by Standard & Poor's; enjoys state moral obligation.
Minnesota	Similar to both Arkansas and Colorado, Minnesota has a supplemental reserve, but the debt is also secured by moral obligation pledge.
Missouri	Reserve fund equals 70% of outstanding loans, as opposed to lower conventional reserve fund levels for most other programs.
Nevada	Backed by State's general obligation pledge.
North Dakota	Rated "A1" by Moody's Investors Service.
Ohio	Rated only single-A by both Moody's Investors Service and Standard & Poor's.
Pennsylvania	Double-A Standard & Poor's rating; overcollateralization with over one-half of the program funds coming from the State of Pennsylvania.
Rhode Island	No uninsured ratings.
South Dakota	Rated only single-A by Moody's Investors Service.
Texas	Substantial overcollateralization; expectation that debt service coverage on pool will rise to over 8.0 times during the life of the bonds.



PRESTON GATES & ELLIS
ATTORNEYS

January 18, 1996

Ms. Michele Brown
Acting Commissioner
Department of Environmental Conservation
State of Alaska

The State Bond Committee
c/o Mr. Forrest Browne, Debt Manager
Treasury Division, Department of Revenue
State of Alaska

Re: Leveraging the Clean Water Act Revolving Fund Loan Program

Dear Ms. Brown and Members of the Committee:

We have been requested to evaluate the Alaska Clean Water Fund ("ACWF") revolving fund loan program for the purpose of making recommendations as to how the program can be structured to accommodate and provide for the sale of bonds ("Bonds"), the proceeds of which would be reinvested in the program. In so doing, we have been asked to consider the legal issues such a program may raise and to analyze the different options available for achieving such a program. We have also been requested to confirm that any format we propose complies with federal law requirements for the issuance of bonds the interest on which may be excluded from federal income tax. Concern has also been expressed that it comply with federal law relating to the federal Clean Water Act.

Finally, we were asked to assist in drafting necessary implementing legislation. Such legislation has been prepared through the efforts of the Department of Law, the Department of Environmental Conservation, the staff of the State Bond Committee, the financial advisor to the State Bond Committee and this firm. This legislation has been introduced in the Legislature as Senate Bill No. 207 and House Bill No. 401 (herein together, the "Bill").

In undertaking this task, we have reviewed the constitution and statutes of the State of Alaska relating to the ACWF (a state revolving fund or "SRF" under federal law) and have reviewed federal law relating to tax exemption of state and local governmental obligations and the Clean Water Act. We have reviewed relevant court decisions and opinions of the attorney general of the state, information relating to the operation of the revolving loan program and have met and

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

had discussions with staff members of the State Bond Committee, the Department of Environmental Conservation ("DEC") and the Department of Law.

We respond as follows:

SUMMARY OF CONCLUSIONS

We believe that the Bonds may be issued by the State Bond Committee as provided in the Bill, without violation of Article IX, Section 8, of the State Constitution requiring an election approving the issuance of bonds. We also believe that under the Bill the program can be structured to allow leveraging of the ACWF by the issuance of Bonds, with the commitment of funds necessary to such a structure without violation of Article IX, Section 7, of the State Constitution restricting the dedication of revenues of the state. Finally, under the Bill, such a financing program can be structured to allow the Bonds to be issued on a tax-exempt basis. These conclusions are, of course, dependent on the final language of the legislation adopted, and the ultimate terms and provisions of the financing plan as adopted by the State Bond Committee.

LEGAL ANALYSIS

Regardless of the administrative structure chosen to implement a program of leveraging the ACWF by the issuance of bonds, there are two fundamental legal issues which must be addressed. They are the questions of (1) whether or not a vote of the people is required for the issuance of such bonds and (2) whether or not the issuance of such bonds can be structured in such a way as to comply with the constitutional prohibition against dedication or earmarking of revenues of the State.

One important point should be made before discussing the legal issues. In order for a bond counsel to be able to give an opinion approving an issue of bonds, he or she must be able to say that no reasonable argument can be made against the validity of such bonds. This is a strict standard and is sometimes difficult to meet even if one thinks that a court would be likely to uphold validity on a particular issue. The following discussion is the result of our effort to evaluate each issue in the light of the "no reasonable argument" standard.

Issuing State Bonds Without an Election

Article IX, Section 8, of the State Constitution provides as follows:

"No state debt shall be contracted unless authorized by law for capital improvements . . . and ratified by a majority of the qualified voters of the State who vote on the question."

Section 11 of Article IX provides:

"The restrictions on contracting debt do not apply to debt incurred through the issuance of revenue bonds by a public enterprise or public corporation . . . when the only security is the revenues of the enterprise or corporation."

Thus, Article IX, Section 8, requires that State bonds be issued only for capital purposes and only with an approving vote of the electorate. These restrictions are removed with respect to the issuance of revenue bonds issued by "a public enterprise or public corporation of the State . . . when the only security is the revenues of the enterprise or corporation." Although the Bill proceeds would not be used for capital facilities belonging to the state and no election is contemplated, these restrictions do not apply if one of the above exceptions can be invoked.

One approach would be to create or use a separate public corporation for the purpose of leveraging the revolving fund program. The Bonds can also be issued directly by the State, as contemplated by the Bill, through the State Bond Committee which now administers the issuance of other State debt, if to do so constitutes "the issuance of revenue bonds by a public enterprise . . . of the State . . . , when the only security is the revenues of the enterprise. . . ." There is little law on the subject of whether or not such a loan program can constitute a "public enterprise" for purposes of meeting the revenue bond exception to public vote requirements. Many cases recognize the validity of issuing such bonds for a public improvement, such as a utility system or an airport which generates revenue sufficient to secure the bonds. There is authority that the issuance of bonds primarily for reinvestment to make a profit (arbitrage bonds) is not a valid public purpose. See State v. City of Orlando, 576 So. 2d 1315, 1317 (Fla. 1991). Such arbitrage schemes are, however, quite different from the program contemplated here--the loaning of money to municipalities for clean water related public improvements. Under present federal law and DEC practice, such loans cannot bear interest at a rate greater than the Bonds so it is unlikely a profit could be made. We believe that the leveraging of the revolving fund program through the issuance of Bonds should be considered by the courts to be a public enterprise. While there seems to have been little litigation on this point, the existence of other similar State revolving fund programs financed in part by the issuance of revenue bonds, as well as the existence of a number of general purpose bond banks and industrial development authorities in Alaska and nationally, gives credence to the "public enterprise" characterization of such a program as being within the custom and practice nationally in municipal finance.

The proceedings of the Alaska Constitutional Convention further support the characterization of the Bonds as the revenue bonds of a public enterprise of the State. The minutes of the convention record the following exchange:

"HELLENTHAL: In Section 11 where the Committee deals with the non-applicability of the restrictions on debt, in the case of revenue bonds issued by public corporations of the state, first; public enterprises of the state, second; and

thirdly, any political subdivision. Does the committee mean by that language that any political subdivision can issue revenue bonds either through a public corporation or through a public enterprise, or directly, like the City of Anchorage did with its Eklutna project; and in the event that they choose to issue them directly without employing the device of the public corporation, with those bonds being exempt from the restrictions applicable to debt?

NERLAND: That was the intention of the Committee, Mr. Hellenthal."

This language makes clear the intent of the drafters that bonds to fund a public enterprise may be issued directly by the State without employing the device of a public corporation.

Case law defines "enterprise" broadly. "Enterprise" is not restricted to a scheme for making money but includes any object that is consistent with the interests of society and may engage the attention of men and invite their cooperation." under the holding in Maxwell vs. Akin, 89 F. 178, 180 C.C.C.D. Ore. 1898. Case law interpreting "enterprise," as it appears in federal statutes, does so very broadly. See Marshall v. McAlester Corp., 438 F. Supp. 1005, 1012 (E.D. Okla. 1977) ("enterprise" under the Fair Labor Standards Act).

Based on the foregoing, it appears that characterizing the revolving loan program as a public enterprise of the State should successfully bring into play the exceptions of Article IX, Section 11. Care should still be taken however in actually implementing the legislation to avoid the implication that the Bonds are, in any way, secured by the general funds or revenue of the State. To this end, it may be necessary to segregate in separate accounts the money paid into the fund out of general State funds and other ACWF moneys such as grants or loan repayments, to make clear that only federal grants, loan repayments and earnings thereon secure the Bonds, to create reserves that secure the Bonds only out of "revenues of the enterprise" and to make whatever other provisions are necessary to clarify the applicability of the revenue bond concept.

Dedicated Funds

In order to structure, in conjunction with the ACWF, a revenue bond financing vehicle, it is necessary to provide for, or authorize the issuing agency to provide for, the pledging or dedication of the revenue stream and other moneys which are to secure and pay the Bonds. The Bill does this. This is usually not a problem for a state or municipality. However, Alaska is subject to the requirements of Article IX, Section 7, of the State Constitution which provides:

"The proceeds of any state tax or license shall not be dedicated to any special purpose, except . . . when required by the federal government for state participation in federal programs."

The following questions are raised: May the State dedicate loan repayments (principal and interest) under the ACWF revolving fund program to be deposited in the ACWF? May the State pledge to the payment and security of the Bonds the loan repayments (principal and interest), federal grants received, State matching money and interest earned on ACWF money? May reserve funds or accounts be created out of funds other than revenue of the revolving fund loan program and pledged to secure and pay Bonds?

Dedications Required By Federal Law

In order to continue to qualify for participation in the federal funding program established by the Clean Water Act, implementing state legislation must be consistent with the Clean Water Act and relevant federal regulations. The proceeds of state bonds secured by the state revolving fund (the ACWF) are required to be paid into such fund. (33 U.S.C.A. Section 1383 (d)(4)) Repayment of loans out of a SRF must also be paid into the fund. (33 U.S.C.A. Section 1383(d)(1)(D)) Federal capitalization grants and state matching moneys are also required to be paid into the SRF. (33 U.S.C.A. Section 1382 (b) (1), (2)) Although there does not appear to be federal legislation specifically mandating the retention of interest earnings in the SRF, the regulations state that "SRF balances must be available in perpetuity and must be used solely to provide loans and other authorized forms of financial assistance" to assist communities in maintaining water quality. 40 CFR Section 35.3115 (1994) The Initial Guidance for State Revolving Funds contains similar language referring to "All funds within the SRF," as does 33 U.S.C.A. Section 1383 (c).

Thus it appears that federal legislation mandates that all of the major sources of money in the ACWF be deposited in that Fund and that moneys in the Fund may not be withdrawn except to be applied to provide financial assistance to local governments or state agencies for the purposes specified in the Act. One of the methods of giving financial assistance is to use such moneys to pay and secure bonds issued to provide funds for the same purposes. While federal law does not mandate that moneys in the SRF be used only for so securing bonds, as opposed to other authorized means of assisting communities, the discretion that Article IX, Section 7, intended to permanently vest in the legislature with respect to state revenues is almost totally eclipsed by these requirements of federal law which are "required . . . for state participation in" this federal program. Also, the case of State v. Alex, 646 P.2d 203, 209 (Alaska 1982) indicates that once moneys are in a given fund, Art. IX, Section 7, does not preclude their dedication to secure revenue bonds to which they relate. Thus, we believe that, as authorized by the Bill, the dedication of revenue sources in the Alaska Clean Water Act to the ACWF and the proposed dedication of money in the ACWF (other than state matching money or, possibly, the portion of loan repayments representing the loan of state matching money) to pay and secure bonds meet the requirements of Article IX, Section 7.

Tax Analysis

Under the Bill, a program may be structured in which tax-exempt bonds are issued by the State to acquire tax-exempt obligations of local governmental units. The debt obligations issued by the local governmental units must be tax-exempt governmental obligations and may not be tax-exempt private activity bonds. Care must be taken to ensure that the underlying projects do not have private business users in excess of that permitted by the Internal Revenue Code (the "Code") and that any private business management contracts for the facility meet the IRS guidelines in effect at the time the State bonds are issued.

The Code generally treats bonds as taxable "arbitrage bonds" if the bond proceeds are used to acquire "investment property" that has a yield that is materially higher than the bond yield. The term "investment property" includes securities (such as the obligations issued by local governmental units) but excludes from this treatment tax-exempt obligations that are not private activity bonds. Also, it is unlikely that any of the local obligations acquired would bear interest at a higher rate than the Bonds.

It is important that there be more projects to be financed than the non-bond resources available from the State and the federal government. Internal Revenue Service regulations generally prohibit the State from issuing more bonds, issuing bonds earlier, or allowing them to remain outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes for which the bonds are issued. A review of the DEC projection in this regard indicates that this issue should not pose a problem. The State's goal in the program is to leverage additional borrowed money into more project financing. It is important to demonstrate that additional projects may be financed (and financed sooner) than could be financed if the State were just to use the state and federal resources available to demonstrate that the State is not issuing more bonds than are necessary or issuing them earlier than necessary.

Programs such as this usually require that debt service reserves be established to secure the bonds. If money derived from the State funds or from the federal government are pledged to secure the State bonds, that money will be subject to the Code rules relating to bonds and may be subject to the arbitrage rebate requirements if invested in excess of the bond yield.

The bond proceeds generally may be invested at yields in excess of the bond yield for a period of three years by the local governmental units. While the bond proceeds are held by the State and before they are used to acquire the local governmental unit obligations, the IRS regulations allow for a six-month investment period for State bond proceeds. This six-month temporary period is subtracted from the three-year period available to the local governmental units. In addition, there is a three-month temporary investment period for repayments that are expected to be recycled into purchase of new local obligations.

Ms. Michele Brown
The State Bond Committ
January 18, 1996
Page 7

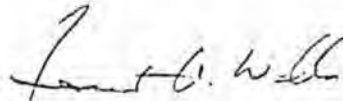
The Code also contains specific requirements for "pooled financing bonds." In general, the State must reasonably expect that as of the close of the three-year temporary investment period, at least 95% of the net bond proceeds will have been used to acquire the local governmental unit obligations. In addition, the payment of legal and underwriting costs associated with the issuance of the bonds may not be contingent and at least 95% of such costs must be paid not later than 180 days after the State bond issuance.

We hope that the forgoing is of assistance. Please call with any questions or comments.

Very truly yours,

PRESTON GATES & ELLIS

By



Forrest W. Walls

FWW:wp

cc: Ms Marie Sansone
Mr. Butch White
Mr. Chester Johnson
Mr. Mike Burns
Mr. Lee Sharp
Mr. Bill Mantle
Ms. Cynthia Weed

FWW09F.DOC

Government Finance Associates, Inc

71 Broadway, Suite 1301
New York, New York, 10006
(212) 809-5700
FAX (212) 809-6317

January 19, 1996

TO: MIKE BURNS
BUTCH WHITE
MARIE SANSONE
FORREST BROWNE

FROM: GOVERNMENT FINANCE ASSOCIATES, INC.

SUBJECT: ELIMINATION OF STATE INTERCEPT; EFFECT ON
ALASKA'S PROPOSED SRF FINANCING PROGRAM

We have been asked to evaluate the impact of removing the state intercept from the proposed SRF leveraging and bonding structure. In this connection, it is necessary to review the effects on both the underlying credit features and the projected financing costs for the program. In order to appropriately respond to this subject, background material should be presented, as follows.

DESIRED RATING: Generally speaking, as a result primarily of (i) the large cash infusions from the Federal and state governments, (ii) provisions of the local loan repayment arrangements, and (iii) the state creation and oversight, SRF's have been highly rated. For example, as indicated in the attachment, of the 25 active leveraged state SRFs, sixteen are rated double-A or better, without taking into account bond insurance. The other nine are rated single-A, or they are assigned insured ratings. Because of the high credit standing of these structures, only a few have chosen to be insured, since any rating in the double-A or higher categories makes bond insurance unnecessary. In most cases, insured bonds trade no better than a weak double-A. Additionally, double-A ratings, on an uninsured basis, give a borrower substantially greater flexibility, as a result of the lower cost of capital that the rating affords and the reduced number of restrictions that apply to uninsured debt. Taking these factors into consideration, combined with the inherent strengths of the Alaska SRF, we recommend that the State establish a goal of achieving no less than an uninsured rating of double-A.

USE OF STATE INTERCEPT: As shown in the attachment, of the sixteen active leveraged SRFs rated double-A or better, half of them use the state intercept of local aid to provide underlying security. The state intercept mechanism has been employed for numerous purposes over the years. In the 1970's, for example, states that created bond banks to reduce the cost of capital for localities often applied the state intercept to help secure the bonds that were sold by the respective state bond banks. As a policy matter, the rating agencies have concerns about the pooling of local credits, with disparate credit

Government Finance Associates, Inc.

standing, in the absence of some generic, extra credit support. State intercepts have often been used to address these rating agency misgivings about local credit pools and to "homogenize" the various credits within the pools. On occasion, state "moral obligation" pledges have been invoked for this purpose, but Moody's, in particular, gives little weight to the concept after "moral obligation" agencies in New York State had very serious credit problems in the 1970's, including a default on certain notes by one "moral obligation" agency. The state intercept is a well-established and favorably accepted credit device.

DIFFERENCE IN COST OF CAPITAL BETWEEN "A" AND DOUBLE "A" SRFs:

In our opinion, if the State does not make special arrangements, as discussed further below, to compensate for the loss of the state intercept, it is highly likely that a rating of single-A will be given to the State's SRF, as opposed to the more desirable double-A. If this development occurs, then the Alaska SRF will experience a more costly interest expense on the bonds it sells in the credit markets. We estimate that the current difference in interest costs between a single-A and double-A credit, over twenty years, on \$10 million is equal to \$271,000 in gross dollars. Compounding this difference over several years of SRF issuances, for \$100 million, it would amount to \$2.3 million over twenty years.

It should be noted that we are currently experiencing low interest rates. In a higher interest rate environment, this difference between single-A and double-A credits could be (and has been) as great as 50 basis points. In that situation, the difference in capital costs between a single A and double A could aggregate as much as \$7.0 million over twenty years. One could argue that the difference could be reduced through bond insurance, which is correct, but it is relevant to emphasize the following in this respect. First, bond insurance is rather expensive, often as much as one-half of one percent of total debt service. Second, bond insurers frequently require programmatic restrictions that even the rating agencies do not mandate.

ALTERNATIVES TO STATE INTERCEPT: As discussed above and as more fully exhibited in the enclosures, there are options for Alaska in achieving a double-A rating for the leveraged SRF over and above the use of the state intercept. The alternatives tend to fall into three categories. First, as demonstrated by the Arkansas, Colorado, and Minnesota programs, a supplemental reserve could be created that further secures the cash flow through excess revenues and unreleased fund balances. Second, overcollateralization of financed loans could also be accomplished through lower ratios of SRF debt to the program's fund balance and other unreserved monies; Missouri, Pennsylvania and Texas have followed this course. Third, other programs, such as Arizona and Nevada, have applied high general obligation bond ratings to secure the SRF debt; Arizona apparently issues uninsured debt only for high rated localities, such as Phoenix, and Nevada SRF debt is further secured by the State's general obligation pledge. Based on our understanding of the desire for flexibility in the Alaska program, we do not think that the third option is realistic for the Alaska context.

Government Finance Associates, Inc.

CONCLUSION: The state intercept mechanism is a common feature for many, highly rated SRF structures. If the State wishes to eliminate the state intercept but still achieve a double-A rating, on an uninsured basis, for its leveraged SRF program, it will be necessary for operational adjustments to be made by the State. These adjustments could include, but would not necessarily be limited to, the establishment of supplemental reserve funds and significant overcollateralization of assets (lower debt to equity ratios). In effect, the Alaska program would be required to limit its flexibility in certain respects. The State will need to balance these additional restrictions and effect on the SRF's future programmatic flexibility against any perceived disadvantages of the use of a state intercept.

As a final comment, we would like to emphasize that in the absence of substantial reasons to the contrary, the use of the state intercept, as a result of its frequent use for other states that have received a double-A rating, will facilitate discussions with rating agencies and will be met with an historically favorable acceptance by the credit markets. These factors should result in a lower cost of capital for the Alaska SRF. We suggest that if Alaska desires to eliminate the state intercept, we should first discuss its elimination with the rating agencies to determine the replacement security feature that the agencies would possibly require in order for Alaska to achieve a double-A rating. Of course, if Alaska is satisfied with the single-A rating, then it becomes a matter of the additional cost of capital that would be incurred through the elimination of the state intercept.

Testimony before House Community and Regional Affairs

My name is Diana Bennett. I am the Finance Manager of the Anchorage Water and Wastewater Utility, a department of the Municipality of Anchorage. I am here today to speak in favor of House Bill 401 and its companion bill in the Senate, number 207, bills authorizing the State of Alaska to issue revenue bonds for the purpose of funding wastewater and other water quality improvement projects thru the Alaska Clean Water loan fund.

Although AWWU shares a common workforce and management, it is actually two separate utilities for regulatory purposes, establishing separate rates for service and incurring separate debt for capital projects. The wastewater utility relies substantially, almost entirely, on the Alaska Clean Water loan fund to finance its comprehensive capital improvement plan. We anticipate borrowing \$4-6 million

annually from the loan program. I hope the funds will be available to do so.

The low interest loan program has been extremely popular and well received throughout the country. The Anchorage Wastewater Utility has borrowed \$8.8 million from the low interest loan program, at rates substantially lower than would be possible in the regular bond market. We estimate this has saved the ratepayers at least \$400,000 over the past four years, in addition to the flexibility the program affords us. In the years this Alaskan program has been in existence, ADEC has made loans totaling \$53 million. There is still a tremendous need for low cost funding throughout the state. ADEC received requests for \$13 million in loans for the current fiscal year.

The bill under discussion will allow what many other states have done and leverage this initial capitalization money from the federal government. Increasing the amount of funds available allows

projects to be completed sooner than if we have to wait for our projects to move above the "cut line". This is a good way to increase the pool of money available for necessary water quality projects, without putting any other programs at risk. The burden for repayment remains with the communities requiring the funds. There is a strong incentive for them (us) to make our payments.

Without increasing the availability of funds, at the current request level of \$13 million, the state will run out of money to loan in only 2 years. The loans are being repaid, but the repayment stream has not reached equilibrium yet, and when it does it will only be, I believe, \$4 - 5 million - well below the projected need. The communities around the State need this source of low interest money to help finance sorely needed water quality improvements.

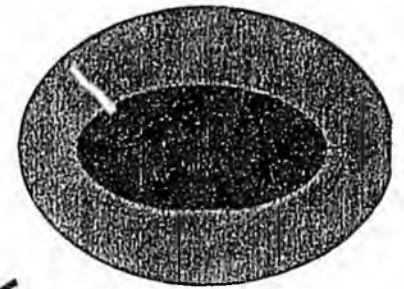
The revenue bonds will be backed, not by the full faith and credit of the state, but by the revenue coming from repayment of the loans. In

the history of the low interest loan program, there has never been a default - not in the entire United States. In fact, in Alaska, there has never been a late payment! These bonds will be extremely safe. The State will not be required to "bail out" any agency over this.

You may have seen a Municipality of Anchorage memo listing some recommended changes to this bill. The Utility is substantially in favor of the bill as was originally written, however, we were asked to comment on the bill, with an eye to any proposed changes. This Utility works closely with ADEC and we have agreed among our two groups that this bill, with or without any or all of the suggested revisions, is extremely workable, and will benefit the whole state of Alaska. I urge you to pass this bill. Thank you for your time.

February 20, 1996

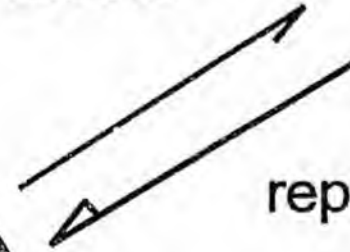
LEVERAGING THE CLEAN WATER FUND



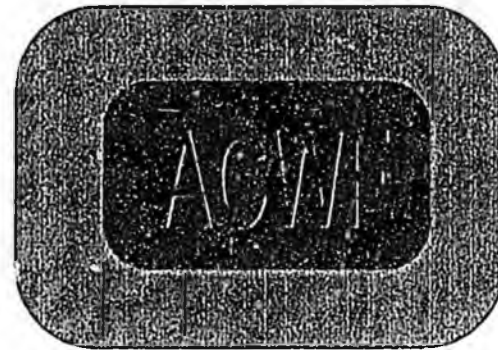
FEDERAL CAPITALIZATION GRANTS
STATE APPROPRIATIONS



loans



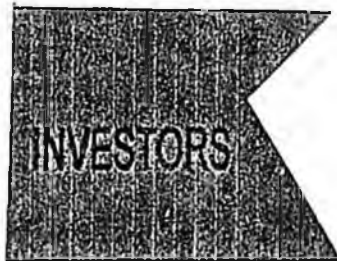
repayments



bond proceeds



1 bond issuance costs
2 annual bond payments



1 issue bonds

2 annual bond payments



LEVERAGING THE CLEAN WATER FUND

The upper part of the accompanying chart demonstrates how the Alaska Clean Water Fund (ACWF) currently operates:

- Federal capitalization grants & State appropriations (20% of federal grant amount) are deposited into the ACWF.
- ADEC administers the ACWF, providing loans to fund sanitation projects.
- Repayment of loan principal and interest is deposited into the ACWF to provide the basis for funding more community projects.
- Department of Revenue maintains the ACWF account and invests the unobligated balance, with the earnings also deposited into the ACWF.

The bottom portion of the chart illustrates the effects of leveraging on management of the ACWF:

- The ACWF balance will be pledged as collateral for revenue bonds. Costs of bond issuance are moved from the ACWF to the Bond Redemption Fund (BRF).
- The BRF will pass these funds to the State Bond Committee (SBC) who will then issue the bonds and sell them to investors.
- Bond proceeds from investors will be deposited into the ACWF. The proceeds will fund additional loans for projects. The loan repayments will produce the bond principle and interest payments.
- The SBC and the Trustee will make bond principle and interest payments from the ACWF and the BRF.

LOAN SPECIFIC INFORMATION

Community Served	Project Name	Project Number	Loan Amount	Agreement Date	Interest Rate	Amortization Period
Loans made during FY 90						
Anchorage	Eagle River	127011	\$7,759,380	10/31/89	4.65%	20 years
Homer	STP	409011	\$4,750,000	9/5/89	4.80%	20 years
Kachemak City	STP	451011	\$450,000	7/25/89	4.54%	20 years
Loans made during FY 91						
Anchorage	Campbell Creek	12702	\$2,238,607	12/17/90	4.84%	20 years
Nome	STP	627011	\$788,421	4/19/91	4.56%	20 years
Loans made during FY 92						
Anchorage	Eagle River Inc.	127011	\$3,000,000	9/6/91	4.65%	20 years
Cordova	Sewer Rehab	261011	\$735,310	9/24/91	4.42%	20 years
Anchorage	Campbell Creek II	127031	\$453,141	6/30/92	4.31%	20 years
Nome	Icy View	627021	\$2,000,000	6/30/92	4.31%	20 years
Seward	Lowell Point	769011	\$924,000	6/30/92	4.31%	20 years
Loans made during FY 93						
Seward	Dairy Hill	769021	\$40,000	11/23/92	4.75%	20 years
Juneau	Belt Press	445011	\$255,501	10/9/92	4.64%	15 years
Juneau	Back Loop Sewer	445021	\$1,620,500	2/2/93	4.56%	10 years
Anchorage	Pt. Woronzof	127041	\$2,443,128	4/26/93	4.24%	20 years
Juneau	Channel Drive	445031	\$536,000	6/7/93	4.23%	10 years
Loans made during FY 94						
Silka	I&I	783011	\$2,000,000	8/17/93	4.04%	20 years
Juneau	Goat Hill	445041	\$166,000	12/23/93	4.05%	10 years
Bristol Bay	Leader Creek	183011	\$2,235,321	3/1/94	4.11%	20 years
Loans made during FY 95						
Craig	Wastewater	265011	\$1,000,000	9/14/94	4.45%	20 years
Anchorage	Regional Landfill	127051	\$10,062,000	12/2/94	4.74%	20 years
Anchorage	Girdwood Wastewater	127061	\$2,500,000	4/24/95	4.17%	20 years
Loans made during FY 96						
Nome	Solid Waste	627031	\$2,000,000	7/19/95	3.99%	20 years
Anchorage	Eagle River TID	127071	\$2,500,000	10/30/95	3.86%	20 years
Anchorage	Miscellaneous Projects	127081	\$3,015,000	1/12/96	3.74%	20 years

**Alaska Clean Water Fund
Project List**

July 6, 1995

Municipality	Project Title	Score	Amount	Cumulative
Projects to be Funded from Existing EPA Capitalization Grant				
Statewide	Planning and Design		\$614,287	\$614,287
Anchorage	Merrill Field Leachate Collection System		\$4,875,000	\$5,489,287
Yakutat	Wastewater Treatment Plant	85	\$200,000	\$5,689,287
Bristol Bay	King Salmon, Phase II	67	\$4,769,413	\$10,458,700
Klawock	STP Upgrade and Int.	46	\$1,500,000	\$11,958,700

**Alaska Clean Water Fund
Project List**

July 6, 1995

Municipality	Project Title	Score	Amount	Cumulative
Projects Seeking Funding from FFY 96/97 Capitalization Grant				
DEC	Administrative Costs		\$578,240	\$578,240
Juneau	Goat Hill Sewer Phase II	73	\$770,000	\$1,348,240
Kodiak	Wastewater Treatment Plant Project	70	\$4,880,500	\$6,228,740
Bristol Bay Borough	Borough Landfill Expansion	69	\$285,000	\$6,513,740
Homer	East Trunk-STP to Lake Street	67	\$626,000	\$7,139,740
Bristol Bay Borough	King Salmon Sewer Phase III	67	\$1,576,265	\$8,716,005
Anchorage	Middle Fish Creek Trunk	65	\$3,000,000	\$11,716,005

**Alaska Clean Water Fund
Project Planning List**
July 6, 1995

Municipality	Project Title	Score	Amount	Cumulative
Craig	Wastewater Plant Reconstruction	66	\$4,000,000	\$4,000,000
Unalaska	Solid Waste Facility, Phase I	66	\$3,500,000	\$7,500,000
Anchorage	C-5-7 Trunk R&R	65	\$3,000,000	\$10,500,000
Nome Joint Utility	Wooden Utilidor Upgrade	63	\$2,000,000	\$12,500,000
Valdez	Robe River Subdivision Sewer Interceptor	54	\$5,024,900	\$17,524,900
Petersburg	Scow Bay Sewer Extension, Final Phase	54	\$2,064,000	\$19,588,900
Petersburg	Sludge De-watering Facility	53	\$1,115,000	\$20,703,900
Fairbanks	Wastewater Sludge Disposal	47	\$9,500,000	\$30,203,900
North Slope	Anaktuvuk Pass Sewer	47	\$3,000,000	\$33,203,900
North Slope	Point Hope Sewer Project	47	\$3,000,000	\$36,203,900
North Slope	Point Lay Sewer Project	47	\$3,000,000	\$39,203,900
North Slope	Wainwright Sewer Project	47	\$3,000,000	\$42,203,900
Fairbanks	Ft. Wainwright Interceptor Rehabilitation	47	\$800,000	\$43,003,900
Unalaska	Wastewater Secondary Treatment	46	\$9,000,000	\$52,003,900
Unalaska	Primary Wastewater Treatment Facility	46	\$7,500,000	\$59,503,900
Anchorage	Pt. Woronzof Incinerator	42	\$6,000,000	\$65,503,900
Dillingham	Northeastern Townsite Sewer	37	\$898,976	\$66,402,876
Dillingham	Area 5 Phase I & II	37	\$1,390,505	\$67,793,381
Dillingham	Area 4 Phase I & II	34	\$2,011,280	\$69,804,661
Sand Point	Harbor Sewer Extension	34	\$300,000	\$70,104,661
Fairbanks	Van Horn & South Cushman Sewer	33	\$900,000	\$71,004,661
North Pole	Highway Park/Badger-Hurst Sewer	29	\$2,850,000	\$73,854,661
Fairbanks	International Industrial Ave. Sewer, Ext.	29	\$850,000	\$74,704,661
Fairbanks	E.M. Jones Sewer Extension, Phase I	29	\$2,600,000	\$77,304,661
Fairbanks	Industrial Park Sewer Ext.	29	\$850,000	\$78,154,661

03/28/96

15:32:18

TCN: 60576

DATE & TIME: 03/20/96 08:00 TO 10:00 STATUS:7 STATS. IN

**** ORDER SUMMARY ****

SPONSOR: HRES HOUSE RESOURCES

CHAIRS: GREEN

PURPOSE: PUB PUBLIC HEARING

LEGISLATIVE

WILLIAMS

CONTACT: JEFF OR GARY

TEL#: (907)465-4846

CHAIRING SITE: JUNEAU

CAPITOL

CAP124

TOLL FREE: (700)222-1000

DIAL-UP:

LIO:(800)478-9908

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED

3 MINUTE LIMIT

TESTIMONY WILL BE TAKEN WITH A 3 MINUTE LIMIT.

SEE COMMITTEE SCHEDULE IN BASIS

SPONSOR REMARKS(LIO): BACKUP MATERIAL:Y MEETING IN PROGRESS:N MAX. SITES:10

OTHER SITES MAY ADD THRU THE JNU LIO

BACK-UP = NOM BACK-UP FAXED 3/19

TCN REQUESTED ON 03/20/96 AND HAS 3 UPDATES

**** AGENDA ****

- 1 HB 388 AREAWIDE OIL & GAS LEASING
- 2 HB 401 REVENUE BONDS: WATER & WASTE PROJECTS

**** PARTICIPATING LIOS ****

ANC ANCHORAGE	716 W 4TH, #200	LOCATION STAFF
* JNU JUNEAU	CAPITOL CAP124	LOCATION STAFF
NOM NOME	FRONT STREET	LOCATION STAFF

PARTICIPANTS IN:ANCHORAGE

ANC

1	PAT FOLEY	AOGA	TSFY. HB 388
	BOX 100360/ARCO AK	ANCHORAGE	AK 99510 (907)265-6243
2	BRAD PENN	MARATHON OIL CO	TSFY. HB 388
	PO BOX 196168	ANCHORAGE	AK 99519 (907)564-6428
3	KEN BOYD	DIV O&G	TSFY. HB 388
	3601 C ST	ANCHORAGE	AK 99503 (907)269-8800
4	LEE SHARP	ADEC	TSFY. HB 401
	429 L ST, STE 400	ANCHORAGE	AK 99501 (907)276-1969
5	DIANA BENNETT	AWWU	TSFY. HB 401
	3000 ARCTIC BLVD	ANCHORAGE	AK 99503 (907)786-5623
6	STEVEN PORTER	ARCO	OBSV. HB 388
	PO BOX 100360	ANCHORAGE	AK 99501 (907)265-6329
7	TO OBSERVE		OBSV. ALL ITEMS
8	TO OBSERVE		OBSV. ALL ITEMS

PARTICIPANTS IN:JUNEAU

JNU

1	TO OBSERVE	OBSV. ALL ITEMS
2	TO OBSERVE	OBSV. ALL ITEMS
3	TO OBSERVE	OBSV. ALL ITEMS
4	TO OBSERVE	OBSV. ALL ITEMS
5	TO OBSERVE	OBSV. ALL ITEMS
6	TO OBSERVE	OBSV. ALL ITEMS
7	TO OBSERVE	OBSV. ALL ITEMS
8	TO OBSERVE	OBSV. ALL ITEMS
9	TO OBSERVE	OBSV. ALL ITEMS
10	TO OBSERVE	OBSV. ALL ITEMS
11	TO OBSERVE	OBSV. ALL ITEMS
12	TO OBSERVE	OBSV. ALL ITEMS

03/28/96

15:32:18

TCN: 60576

DATE & TIME: 03/20/96 08:00 TO 10:00 STATUS:7 STATS. IN

PARTICIPANTS IN:JUNEAU

JNU

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

PARTICIPANTS IN:NOME

NOM

1 MRS. BERDA	WILLSON	NJU	TSFY. HB 401
BOX 70		NOME	AK 99762 (907)443-5288

**** SCHEDULING NOTES ****

JEFF CALLED 031996 TO CHANGE AGENDA-SJR39 DROPPED-HB388 ADDED-OFFNET DROPPED

**** UPDATES ****

01	03/18/96	12:52:21	ANNOUNCING TELECONFERENCE
02	03/19/96	15:06:08	NOME ADDED ON
03	03/19/96	17:49:43	OFFNET 1 DROPPED
03	03/19/96	17:49:44	ADDED HB 388
03	03/19/96	17:49:45	DROPPED SJR 39

HB

406

9-LS1485\C
Utermohle
4/18/96

CS FOR HOUSE BILL NO. 406()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE WILLIAMS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to waste and use of salmon; and providing for an effective
2 date."

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

4 * Section 1. AS 16.05.060 is amended by adding a new subsection to read:

5 (d) The commissioner may by emergency order suspend or otherwise limit
6 operations authorized to discard pink salmon or chum salmon carcasses under a permit
7 issued under AS 16.30.060.

8 * Sec. 2. AS 16.30 is amended by adding new sections to read:

9 ARTICLE 2. USE AND WASTE OF SALMON.

10 Sec. 16.30.050. WASTE OF SALMON. (a) A person may not intentionally,
11 knowingly, or with reckless disregard for the consequences waste salmon.

12 (b) This section does not apply to

13 (1) salmon from which milt or eggs are extracted under a permit issued
14 under AS 16.10.400 for lawful use as brood stock;

1 (2) activities lawfully conducted under a permit issued under
2 AS 16.30.060.

3 (c) A person who violates this section is guilty of a class A misdemeanor.

4 (d) In this section,

5 (1) "flesh" means all muscular body tissue surrounding the skeleton;

6 (2) "person" has the meaning given in AS 01.10.060 and includes a
7 joint venture; "person" does not include the state or federal government;

8 (3) "waste" means the failure to use or sell the flesh of a salmon for
9 human consumption, production of food for domestic animals, scientific purposes,
10 display purposes, educational purposes, or other uses authorized by the commissioner
11 under AS 16.30.060; "waste" does not include

12 (A) normal inadvertent loss of flesh that cannot be prevented
13 by practical means; or

14 (B) failure to use or sell spoiled, diseased, or contaminated
15 salmon flesh, unless the spoilage or contamination occurs as the consequence
16 of an intentional, knowing, or reckless act.

17 Sec. 16.30.060. USE OF HATCHERY PINK AND CHUM SALMON. (a)
18 Notwithstanding AS 16.30.050, a person who holds a hatchery permit issued under
19 AS 16.10.400 or a salmon limited entry or interim-use permit issued under AS 16.43
20 may remove and sell eggs from, and discard the carcasses of, certain pink salmon or
21 chum salmon, if the person has received a permit under this section. The
22 commissioner may adopt regulations to implement this section.

23 (b) The commissioner shall issue a permit to a person who holds a hatchery
24 permit issued under AS 16.10.400 or a salmon limited entry or interim-use permit
25 under AS 16.43 and who applies for the permit in writing. The permit authorizes the
26 permittee to discard the carcasses of pink salmon or chum salmon that

27 (1) originated from a hatchery;

28 (2) are harvested by the permittee in a hatchery terminal area, hatchery
29 special harvest area, or hatchery remote release site;

30 (3) have matured to the extent that the flesh cannot be sold or marketed
31 profitably; and

1 (4) cannot be reasonably put to another lawful use at the hatchery or
2 point of landing; and

3 (5) cannot be given away despite reasonable efforts to do so.

4 (c) Before disposing of pink salmon or chum salmon under the permit, the
5 permittee shall offer the salmon, free of charge, to food banks or to the public. A
6 permittee shall provide timely notice of the availability of the salmon to food banks
7 and the public and allow a reasonable time for the salmon to be collected by a food
8 bank or the public before disposing of the salmon. A permittee is not required under
9 this subsection to

10 (1) transport the salmon to a location other than

11 (A) the permittee's normal place of business; or

12 (B) a point of landing in the vicinity of the place where the
13 salmon are harvested; or

14 (2) preserve or process the salmon.

15 (d) A permittee shall

16 (1) maintain detailed records of

17 (A) salmon offered to food banks and to the public;

18 (B) salmon that are discarded under the permit;

19 (C) all attempts to sell or market salmon that are discarded
20 under this section; and

21 (2) before December 15 of each year, submit a written report containing
22 information maintained under this subsection and other information that may be
23 required by the commissioner by regulation.

24 (e) Information submitted to the department under this section is a public
25 document. Records maintained under (d) of this section are subject to inspection by
26 the department, the Department of Public Safety, or the Department of Environmental
27 Conservation.

28 (f) A permittee may not discard pink salmon or chum salmon under this
29 section except as provided by the commissioner, if the commissioner suspends or
30 otherwise limits operations under the permit by emergency order under AS 16.05.060.

31 (g) If the commissioner determines that the operation of a permittee is not in

1 compliance with this section, the commissioner may suspend or limit the operation of
2 the permittee under this section. The operation of a permittee is not in compliance
3 with this section if the permittee has

4 (1) not made reasonable efforts to give salmon to food banks or the
5 public before discarding the salmon;

6 (2) failed to maintain records required under this section or submit a
7 report required under this section;

8 (3) falsified information in records or reports required by this section;

9 or

10 (4) discarded salmon in a manner inconsistent with state, federal, or
11 municipal law.

12 (h) Pink salmon and chum salmon subject to disposal under this section may
13 be sold and used for bait in a commercial, personal use, or subsistence fishery to the
14 extent otherwise allowed by law.

15 (i) A person who intentionally, knowingly, or with reckless disregard for the
16 consequences violates this section or a regulation or emergency order adopted under
17 this section is guilty of a class A misdemeanor.

18 * Sec. 3. TRANSITION; REGULATIONS. The commissioner of fish and game may
19 proceed to adopt regulations to implement the provisions of AS 16.30.050 and 16.30.060,
20 added by sec. 2 of this Act. The regulations take effect under AS 44.62 (Administrative
21 Procedure Act) but not before the effective date of sec. 2 of this Act.

22 * Sec. 4. AS 16.05.831 is repealed.

23 * Sec. 5. Sections 1, 2, and 4 of this Act take effect January 1, 1997.

24 * Sec. 6. Section 3 of this Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature



Representative William K. Williams

Committees:
House Resources
Co-Chairman
World Trade &
State Federal Relations
Transportation
Rules
Oil & Gas

During Session:
State Capitol
Juneau, AK 99801-1182
(907) 465-3424
Fax (907) 465-3793

In Ketchikan:
352 Front Street
Ketchikan, AK 99901
(907) 247-4672
Fax (907) 225-8546

SPONSOR STATEMENT

House Bill 406

Committee Substitute

THE HEAVY ROE BILL

Commercial salmon fishermen and hatchery operators are undergoing tremendous economic strain. The facilities producing pink and chum salmon are struggling to meet financial obligations. House Bill 406 will allow some measure of relief and provide for utilization of roe from pink and chum salmon that might otherwise reap no economic return for those who have paid the costs of rearing the fish.

Hatchery pinks and chums are paid for by commercial fishermen through either a 2% or 3% tax on the gross value of a fisherman's harvest. These fish are made available to the common property fishery for harvest opportunity. Hatcheries harvest a portion of these fish at terminal areas for cost recovery purposes. In addition, fishermen harvest these fish in terminal areas. Sometimes the fish have deteriorated to a point where the flesh cannot be marketed profitably. These returning fish do not enter streams for purposes of propagation. If they are not harvested, they die and rot in terminal areas. House Bill 406 provides for a better utilization of these hatchery fish.

Committee Substitute for House Bill 406 clarifies in statute the authorized uses for hatchery pink and chum salmon. The bill will allow both hatcheries and salmon limited entry permit holders to remove and sell eggs and to discard carcasses under certain conditions.

The pink and chum salmon must have originated from a hatchery; be harvested in a designated area; have matured to the point that their flesh cannot be marketed profitably and cannot be put to any other lawful use at the hatchery site or be given away.

House Bill 406 will assist fishermen and hatchery operators as they move through this difficult transition to the future. House Bill 406 should not be viewed any differently than other incentives and assistance rendered by the legislature to struggling industries.

Good morning. My name is Kay Andrew and I am here representing the United Southeast Alaska Gillnetters Association.

As many of you know, falling fish prices is causing a tremendous strain on the families of our fishermen. Over the last few years, some gillnetters have been taking eggs from fish in terminal harvest areas to sell on the very lucrative roe market.

For the past few years our fishermen, who have their processing permits, have taken roe in terminal harvest areas. Now our fishermen are being told they can no longer do this. Why? Because processors don't like the competition and THEY have the attention of our administration.

Since January we have tried to work with this administration to find a solution. They have continually refused to cooperate by not allowing the gillnet fleet any representation. They put together a committee and had a ROE MEETING in Anchorage. Even though Southeast Gillnetters have been involved in the taking of roe, none were asked to serve on this committee. Even after several calls to the administration to get a Southeast gillnetter on the committee, none were appointed. Instead a Southeast troller, with no "roe" experience and a Kodiak seiner, also with no roe experience, were asked to sit on the committee. Our organization then flew two gillnetters up to the meeting so that we could have a voice before the committee. As we expected, no agreements were reached at the

meeting and another was scheduled for mid-February. Because a member of the committee was unable to make the February meeting, we asked the Department to replace that member with one of the Southeast gillnetters who attended the first meeting. After several calls to the Governor's office and the Department, they relented and allowed us to have a participant.

Prior to the first meeting of the committee, and after we asked the Governor's office for representation on the committee, we asked Rep. Williams to sponsor legislation that would allow our fishermen to be able to take roe in terminal harvest areas. We advised the Governor's office that we were doing this and we were asked by them if we would not ask for a hearing until after the committee had met. This administration has dragged this process out until now, at which time they are attempting to slip in regulations which entirely exclude the fishermen. This is contrary to what was said at the committee meetings. The administration said that if no consensus could be reached, then status quo would prevail...our fishermen would be allowed to take roe in terminal harvest areas.

Now they are going back on their word.

Since the second and final committee meeting in February, we have been waiting patiently for this administration to come up with its final report on the meeting. Since there was no consensus on how to tackle this issue, we

were surprised to find out the administration was going to pass regulations which did not allow our fishermen to take roe from terminal harvest areas.

We contacted the administration and offered to work with them to find a solution we all could live with, but to no avail. We told them that there was no market for a majority of the fish in the terminal harvest areas. In fact most processors don't buy those fish because of their dark color. However, since the fishermen paid 3% of their gross for these fish, they should be allowed to harvest them.

We also asked the administration if they could review the provision in two or three years to give us a chance to find a market for the dark fish. This way our fishermen can continue to utilize the fish they pay for to the best of their ability.

Thank you for giving me the opportunity to testify. I would be happy to answer any questions you might have.

Southern Southeast Regional Aquaculture Association, Inc.

2721 Tongass Avenue
Ketchikan, Alaska 99901
Phone: (907) 225-9605
Fax: (907) 225-1348

FEB 29 1996



February 23, 1996

Representative Bill Williams
Alaska State Legislature
Room 128
State Capital
Juneau, Alaska 99801-1181

Dear Representative Williams:

You recently introduced H.B. 406 relating to the removal of roe from hatchery produced salmon. I believe you are aware of the task group appointed by the Governor to determine if a consensus could be reached on this issue because of concerns of wanton waste of salmon. I was a member of this task group and we met for four days in Anchorage, two days in January and two days in February.

Nothing of substance came from the task group because a consensus could not be reached over the waste issue. Most people were not aware of how hatcheries operate and the controls already in place. Many people approached this as an allocative issue and not as a waste issue. Consequently, no agreement could be reached, even roe from salmon carcasses after they are spawned at the hatchery. They took the extreme position that every fish should be used, no matter the condition of the fish, the cost of processing them, or whether a market existed or not. A lot of hatchery bashing occurred.

There is a strong anti-hatchery sentiment in some areas of the state. I believe that proceeding with H.B. 406 at this time will only strengthen the anti-hatchery feelings and much controversy will occur. We do not need H.B. 406 to operate and I believe that it would be better to set this aside for now.

I do, however, have some serious concerns and we need to be careful of any legislation that the administration may propose as a result of the task group. The main point of contention of the task group was inclusion of any statutory language which would give the commissioner authority to grant exemptions to the wanton waste statutes. I strongly believe that statutory authority to grant exemptions is essential. The extreme position of no exemptions cannot be allowed. Forcing hatchery operators, fishermen, or processors to market fish no matter their condition, cost to process, or market value is not acceptable.

February 23, 1996

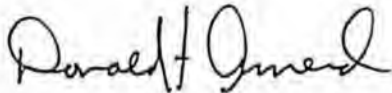
Page 2

I also do not believe that extracting the valuable portions of the fish (eggs) and discarding carcass is justifiable as a general practice. The situations for roe extraction should be very limited, such as special harvest areas where no wild fish are present and there is limited or no natural spawning areas. This can be addressed through regulation, but statutory authority is needed to assure these situations can be exempted.

The State of Alaska has invested in the hatchery program and commercial fishermen have invested via their 3% enhancement tax. Market conditions are so poor, at present, that processors either do not buy fish from fishermen or they pay an extremely low price. Processors treat hatchery bids the same. This forces hatcheries to harvest excessive numbers of fish to meet financial goals and fishermen do not receive a fair return from their investment in the hatchery program. However, there is a high value to the eggs. The fish are near death and the quality is poor. They will be "wasted" if they die and rot with the eggs in them. The roe value should be recovered without forcing anyone to market the carcass. This will increase the financial return to both fishermen and the hatcheries. Processors would also benefit from not processing and selling fish at below cost and they could pay fishermen and hatcheries more for the fish (eggs) they purchase. This also helps remove the glut of fish on the market especially low value salmon which only further depresses the market. Is this not the best solution for everyone??

I urge you to be aware of any legislative action which would not allow exemptions from the waste statutes. Exemptions must be allowed for the benefit of everyone. Of primary importance is to not confuse the waste issue of the factory trawlers, who dump high quality fish flesh, to a salmon near death which is of very low quality.

Sincerely,

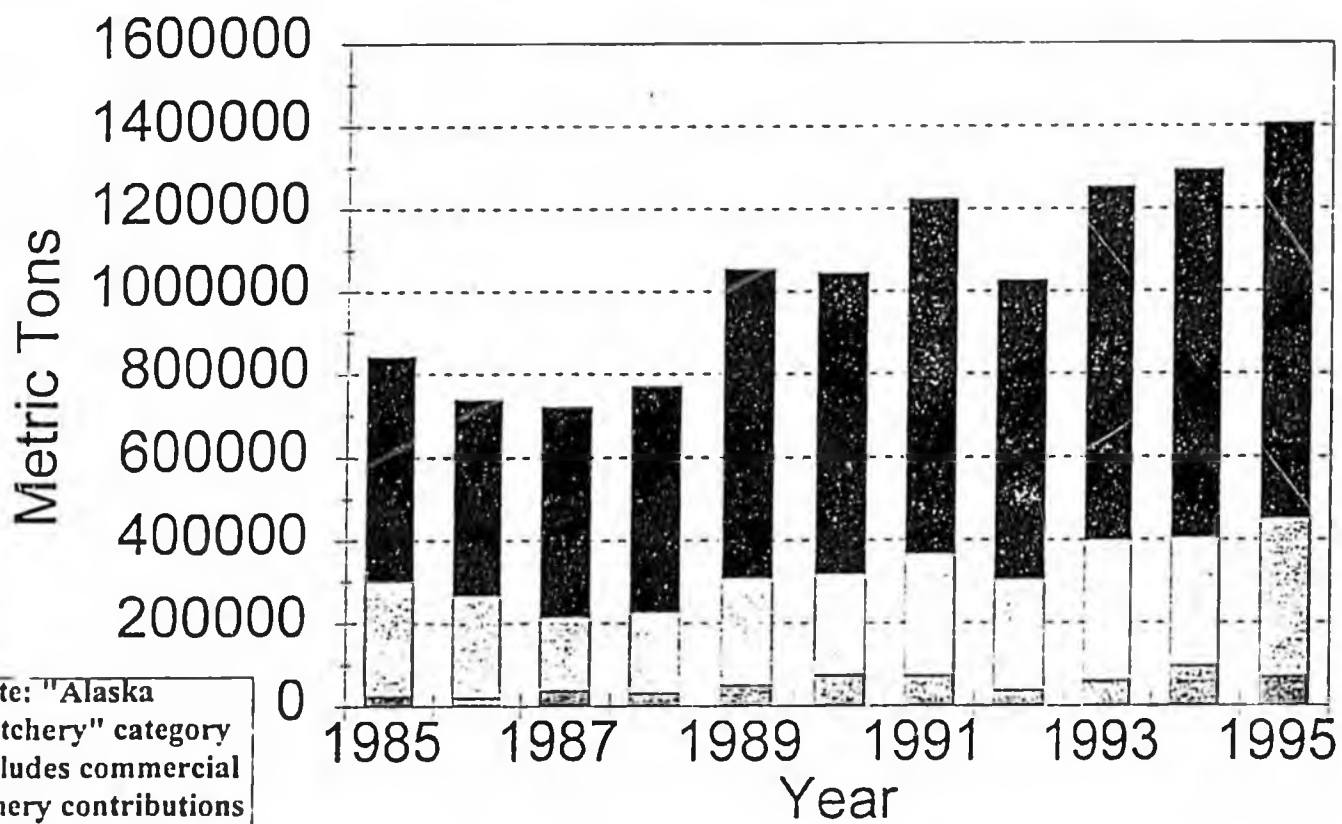


Donald F. Amend
General Manager

cc: Senator Taylor
Ray Gillespie

26/14i

World Salmon Production (1985-1995)

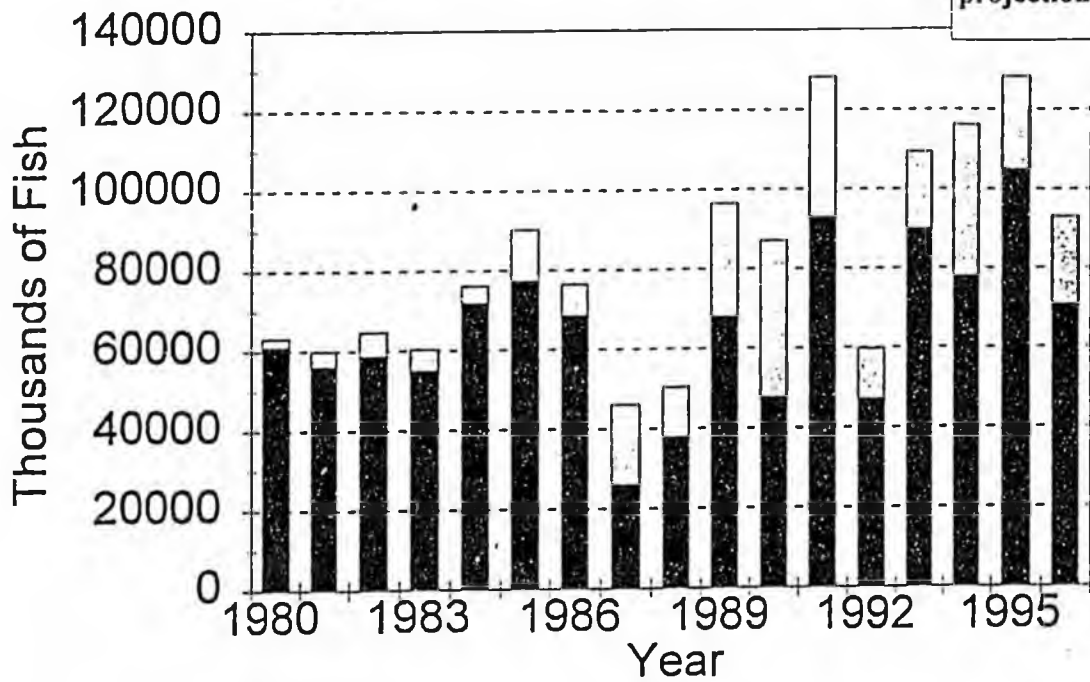


Note: "Alaska Hatchery" category includes commercial fishery contributions from hatcheries

Alaska Hatchery
 Alaska Wild
 Other

Statewide Harvest of Pink Salmon
(1980-1995)

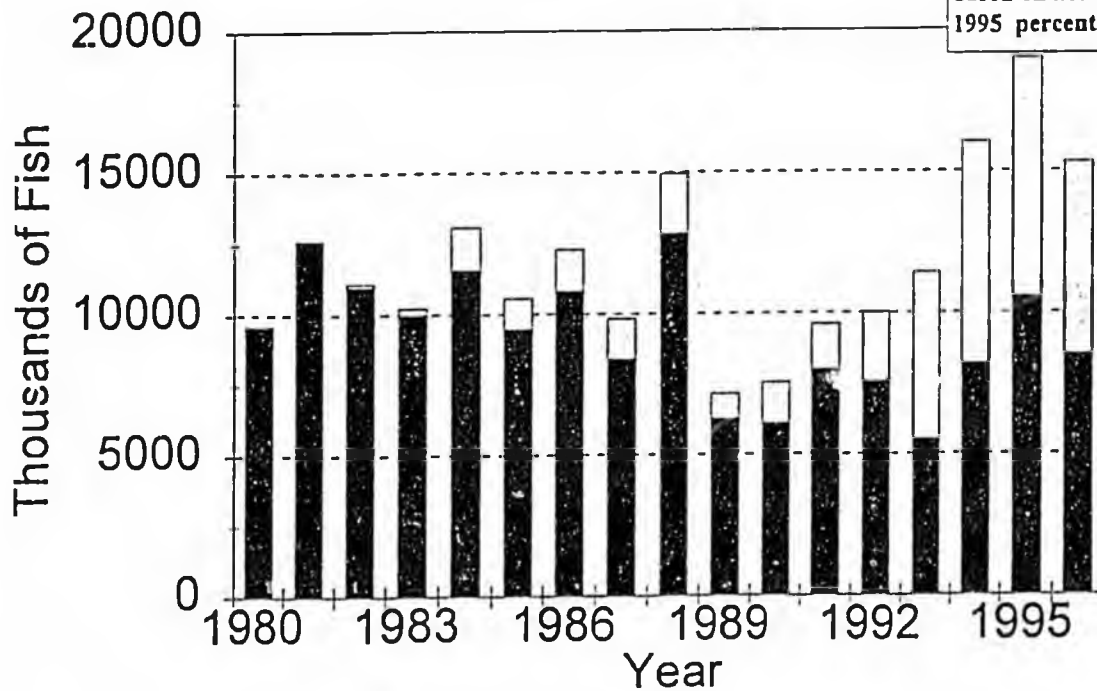
Note: 1996 data are projections



■ Wild □ Enhanced

Statewide Harvest of Chum Salmon
(1980-1995)

Note: 1996 projection for enhanced catch based on actual 1995 percentages



■ Wild □ Enhanced

1995 Salmon Roe Sales from PNP Hatcheries

Lbs of Roe Value	Species					Total
	Pink	Chum	Coho	Chinook	Sockeye	
	65,004	569,707	66,114	5,585	6,000	712,410
	\$226,014	\$2,823,702	\$323,270	\$20,670	\$33,639	\$3,427,294

Pounds of Roe and Value

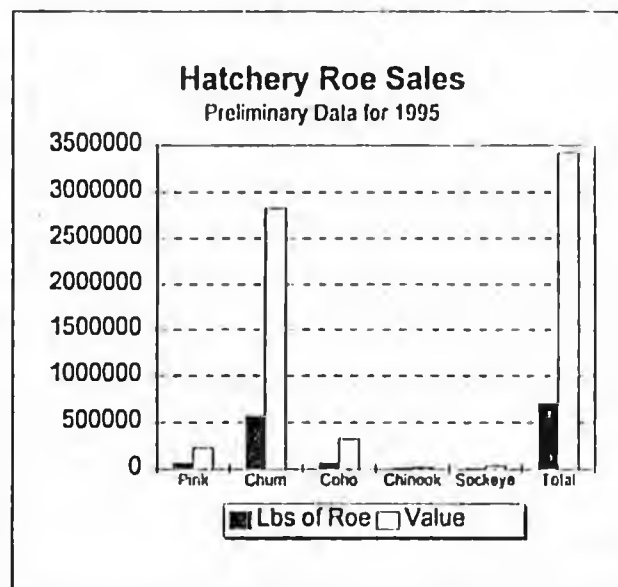
PNP Operator	Pink	Value	Chum	Value	Coho	Value	Chinook	Value	Sockeye	Value
DIPAC	14,377	\$51,458	17,995	\$88,314	5,469	\$25,106	1,817	\$5,907		
VFDA	42,134	\$150,875	6,204	\$30,426	23,243	\$102,669				
AAI	590	\$1,947	1,597	\$7,213						
SSRAA			473,696	\$2,350,000	28,608	\$160,386			6,000	\$33,639
NSRAA			36,399	\$178,668	8,151	\$32,573	3,145	\$14,763		
PWSAC	7,903	\$21,734	33,816	\$169,080	643	\$2,536	623			
	65,004	\$226,014	569,707	\$2,823,702	66,114	\$323,270	5,585	\$20,670	6,000	\$33,639

Carcass Disposal (associated with roe sales)

	Pink	Chum	Coho	Chinook	Sockeye
DIPAC	26,810	17,714	4,864	545	
VFDA	76,964	6,184	13,499		
AAI	3,629	1,427			
SSRAA		8,909			
NSRAA		32,368	5,625	1,244	
PWSAC	16,243	31,833		181	
	123,646	98,435	23,988	1,970	0

Fish Harvested in 1995

	Pink	Chum	Coho	Chinook	Sockeye
DIPAC		267,880	9,675		
VFDA	2,529,931	1,256	8,093		
AAI		44,500			
SSRAA		941,571	23,080	1,109	7,258
NSRAA		309,400	180,855	21,525	
PWSAC	2,551,032	230,299	5,152	710	62,782
	5,080,963	1,794,906	226,855	23,344	70,040



**Overview of the
Alaska Chum Roe and Dark Chum Markets
by
Donald F. Amend, General Manager
Southern Southeast Regional Aquaculture Association, Inc.**

Gunnar Knapp, professor of Economics, gave a paper on "Perspectives on the Value of Alaska Salmon Roe" at the January 16, 1996 meeting in Anchorage which reviewed the salmon waste law and policies on the sale of salmon roe. His data showed that chum roe production was a distant third behind sockeye and pink salmon roe. However, the chum roe value was second to sockeye roe value because the roe yield on chum and the average chum roe prices were the highest of all species. Because of the high chum roe yield and price, chum roe value was the highest percentage of processors total roe sales, ex-vessel value, and average value per round pound harvested. Furthermore, the average wholesale chum price was declining faster than the average chum roe price; therefore the whole sale value of chum roe was more than 70% of the ex-vessel value and this percentage is increasing.

The Chum Roe Market

The primary market for salmon roe is Japan. Most salmon roe is made into Sujiko (caviar in the skein), but most of the chum roe is made into Ikura (single egg caviar). As chum salmon mature, the percent yield and egg recovery increases. The roe yield averages 3.5% in most commercial fisheries, but in terminal areas at the end of the run, the yield can average over 10 percent. The skeins are "rubbed" through screens to make Ikura. The recovery is low in immature roe, but can average near 80% in mature roe. Consequently, chum roe value increases in terminal areas at the end of the run. The flesh value of these chum is very low because they have dark skin and pale meat, therefore, over 400% of the ex-vessel value is in the roe.

Processors Roe Market

Ikura is sold mainly in Japan and the market is growing in North America and Europe. Most processors have preseason contracts with Japanese trading companies for all their roe production. The Japanese send technicians to work directly in the processing plant in space provided by the processor. The processor typically receives a contract price for the finished product, but the egg agreement can vary among the processor and/or the parent Japanese Company. In 1995 finished Ikura to U.S. Companies averaged about \$10.50 per pound.

Independent Roe Buyers

There are also buyers of just roe; Cassack Caviar, Franco Fish Products, and Northern Keta Caviar are examples. These companies buy roe from small processors who do not have the volumes of justify having Japanese technicians. They also buy from native fishermen, commercial fishermen, and from hatchery operations. Cassack Caviar does little marketing in Japan and their markets are Europe and North America. About 15% is made into bait and 85% for human consumption. Franco has a Japanese market, but also sells into Europe and North America. He also has a bait market.

The roe buyers purchase the eggs based on a "green" egg price. The eggs are taken from the fish, rinsed in a mild salt solution, and air shipped directly to the buyer. The typical buyer will purchase green eggs and pay all shipping costs. They will also provide the buckets for shipment. The eggs are then made into bait, Sujiko, Ikura and sold as finished products.

Roe Value

The value of the green roe depends on the quality. If not properly refrigerated or if held too long, the value is decreased or they may be rejected. Also, roe can be too mature. As eggs develop and begin to drop from the skein (eggs sac) just prior to spawning, they develop a "hard shell." Hard shell eggs leave a residue in the mouth when eaten and, therefore, are less desirable and less valuable. The most valuable roe is from chum just prior to spawning before the eggs loosen in the skeins, if they are extracted from the fish, kept cool, and processed within a few hours after death. Also, the finished roe must be properly processed, refrigerated, and reach the market in good condition.

Roe Prices

The green egg price varies according to market conditions, and where the eggs are purchased. Because most are sold in Japan, the Japanese market sets the price. In 1992 a low chum run returned to Japan and this drove the 1993 prices to a record high level. The Japanese wholesale price was over \$28 per pound for number one chum Ikura and the North America green egg price was close to \$9.00/lb. However, the Japanese chum run was high in 1993 and the price dropped to about \$16.00/lb. and the green egg price dropped to under \$6.00/lb. In 1994 another large Japanese chum run occurred and there was a large roe inventory going into the 1995 season. The Japanese "dumped" the 1994 inventory onto the market just as the 1995 season started and this kept prices down. Typically roe prices are high at the beginning of the season because fresh Alaska roe get to the market before the Japanese roe. However, this did not occur in 1995.

Despite the weakened Ikura market in 1995, egg buyers still purchased green roe at \$5.50 to \$6.00 per pound in S.E. Alaska. They were able to maintain prices because their markets did not depend entirely on Japanese sales. The Japanese buyers reduced prices slightly but the price was still good in relation to the price of the flesh. The current Tokyo wholesale price for No. 1 Alaska Ikura averages 3000 yen/kg and the exchange rate is about 106 yen to the dollar for a wholesale price of about \$13.00 per pound. Future roe prices will vary according to the yen-dollar exchange rate and the abundance of roe produced in Japan.

Future Roe Markets

The Japanese roe companies are saying that salmon roe consumption is still expanding in Japan, especially Ikura. Salmon roe consumption worldwide is also expanding and the most desired product is Ikura. Because chum salmon roe makes the best Ikura and other species roe is mainly made into Sujiko, the Ikura market is expected to remain relatively strong compared to fish prices. *This is an area in which the farmed salmon are not able to compete.*

The Chum Market

Chum prices and roe prices are driven by world market conditions. Farmed salmon now control the salmon market and the price of Alaska salmon follow the farmed salmon prices. In 1995 Alaska broke an all time statewide harvest of over 200 million salmon. The 1995 farmed salmon production exceeded the entire State of Alaska production. *If every hatchery was closed, it would not have any impact on world salmon or roe prices.* In fact, the entire state harvest of salmon could be eliminated, and in 4 to 5 years it would be replaced by farmed salmon. We can expect a continued high abundance of salmon into the near future.

Exemptions to the Waste Laws

No one should be allowed to waste salmon, but exemptions are needed. Dark skin, pale meat chum have a low or no market value. Part of the over abundance problem could be solved by discarding the dark chum with soft meat. However, these fish would still have a high egg value. Therefore, exemptions to the waste laws to allow discarding of the poor quality chum and harvesting the eggs should be allowed and this should include processors, catcher processors, and hatchery operators. The exemptions can be very specific and limited, but the commissioner should have the flexibility to make the exemptions apply to cover a variety of situations that exist statewide.

Fishers - Processors

Fishermen (catcher processors) are independent businessmen. They should be allowed to sell their catch to any processor they choose. Maximizing their economic return should be as important to them as any other business. Extracting roe from fish should be allowed, but exemptions from the waste laws would have to be restricted to limited areas and conditions. This is especially true in regions where fishermen pay an enhancement tax and they have an ownership in the fish. Special Harvest Areas exist where fish return specifically for commercial fishermen to catch, there is no natural spawning opportunity, and the fish must be harvested to prevent wastage and straying.

Unfounded Hatchery Criticism

The criticism that Alaska fish hatcheries are over producing chum and, therefore eroding the fish and roe market is unfounded. The volume produced is insignificant compared to world production. Except for a few niche markets, there is no impact. Unfortunately, any attempt to cut back local production will encourage expansion elsewhere. It is not helpful to single out Alaska hatcheries because they are an easy target. What the real problem is that there are too many salmon for today's market and this is being driven by the worldwide farmed salmon production. Whether we like it or not, the farmed salmon are here to stay and we are better served by addressing the real issue of expanding the market and increasing demand. It does no one any service by placing blame on someone else.

Fish Farmer

EDITORIAL

DÉJÀ-VU

HOEVER wrote "déjà-vu rules OK? déjà-vu rules OK?" in an ending sequence all over a wall was probably thinking of the Norwegian salmon marketing dilemma.

After pious pledges to act responsibly, optimistic announcements of sales to the Far East, endless propositions to control marketing, here we are, back to the situation of two years ago, with over-production rampant, prices down, recrimination fromotland, and the Irish Government requesting the imposition of minimum import prices.

On the latter, one is tempted to ask what would have happened if the Irish had not acted, since our own Government adopted its familiar posture of seemingly standing back from European involvement when the protestations were loudest.

The only difference between this occasion and the last appears to be in the scale of tonnage involved. The Norwegian industry seems doggedly set on a production-led course taking it to ever higher realms of absurd statistics where the possible destruction of 40 million smolts can be regarded with equanimity and the goal for the millennium seems to be production of a million tonnes of salmon as some sort of celebration, regardless of whether there is any market for them.

Ironically, the present crisis comes just when the tide of opportunity for fish farming is flowing more strongly than ever before.

At last it is becoming universally recognised that wild fish stocks are a finite resource which cannot be forever plundered, and that the only way to expand fish production is by propagation.

We hear news of a 1,000 tonne order in Scotland for unpigmented salmon, presumably destined to take its place alongside white fish on retail slabs.

This must be the way forward, maximising every market opportunity, competing at every level for a larger share of the market. And there could scarcely be a better time for that than now, when a prime commodity like beef is forced to mention salmon in its adverts.

There will always be a place for a premium product, but there is no room to scorn sales of "ordinary" fish. The big battle, to convince the public that farmed fish is not inferior - indeed, may be superior - to wild fish, was won long ago.

Those few bigoted "purist" chefs who make subjective statements about the superiority of wild fish, show their ignorance and would be hard put to demonstrate their claims in a blind test.

The industry's approach to marketing is infinitely more professional than it once was, and the awareness of quality control is commendable, but it must always beware of aloof attitudes to what it thinks the consumer wants.

Per head consumption of salmon in the UK still runs at pitifully low levels compared with some countries, not necessarily because they have a stronger fish eating tradition. It is an area for study.

Meanwhile, the ridiculous spectacle of the Norwegian industry periodically absorbing vast quantities of livestock, like a dog eating its own tail, must be halted by better planning, free of self-delusion.

Calls for a long-term solution must be turned into realistic, international action, or salmon producers are going to find themselves without a viable, profitable, industry, just when the world needs it.

CONTENTS

EDITOR'S DIARY 4

SHOW DEBATE 7-8

FEED COSTS
FEATURE 10-20,41-42



INTERNATIONAL FILE 21-40

WORLD AQUACULTURE '96,
BANGKOK PREVIEW 24

JAPAN - KOBE EXHIBITION PREVIEW 25

BRUSSELS EUROFISH CONFERENCE
REVIEW 26-29

FISH AFRICA EXHIBITION REVIEW 30-31

EVENTS 38

INDEPENDENT VIEW - HUGH HORREX 45

PHOTOPERIOD EGGS 48



EARTH CENTRE
PROGRESS 50-51

THE BEHRENDT COLUMN 52-53

PRODUCTS 56-57

ADVERTISERS' INDEX 58

Managing Editor/Publisher
Stuart Banks

Assistant Editor
Linda Gray

Advertisement Manager
Rosemary Banks

Head Office:

34 Amberley Drive, Woodham, Addlestone, Surrey KT15 3SL. Tel: Waybridge (01932) 851668. Fax: (01932) 859747. Published six times a year by Amber Publications. UK subscriptions £35 a year, Europe £45, other zones £50 including postage. All Air Mail.

Subscriptions: "Fish Farmer", Subscriptions Dept., Gerrard House, 2-6 Homesdale Road, Bromley BR2 9WL. Tel: 0181 402 8181 Fax: 0181 402 8383.

Typesetting and Origination by Domino Design Solutions, Sutton Business Centre, Restmor Way, Wallington, Surrey SM6 7AH. Printed in Great Britain for the proprietor by Pensord Press Ltd., Blackwood, Gwent.

© Amber Publications

ISSN 0262-9615

Declining wild catches - the spur to farmed production

With the gap created by over-exploitation in 70 per cent of world fisheries, the challenge for farmers is not over-production but adjusting their market viewpoint, suggests Dr MARTIN JAFFA

IN his message to the 1994 Scottish Fish Farming Conference, Raymond Robertson MP, Minister for Fisheries in Scotland, encouraged diversification within the industry. He said that new species of farmed fin-fish, such as halibut, must be brought on.

Mr Robertson should be congratulated for his faith in the industry and his recognition of the need for diversification. This is seen as essential to remove the dependence on salmon farming, which some claim is over-producing. Farming of other species is therefore seen as a way of regaining margin lost through the unrestrained expansion of the salmon industry.

However, there is a much more important reason why the aquaculture industry should diversify. A recent UN report has indicated that 70 per cent of commercial fisheries are now over-exploited or very close to being so. This means that there will be an increasing shortfall in fish for human consumption.

Declining catches from commercial fisheries give fish farmers the opportunity to provide an alternative source of fish. Emphasis must therefore be placed on the development of farmed demersal species, especially those which can be produced in volume to supply the mass markets.

Investigations into the potential for farming marine fish are not new. Research in Europe dates back over 100 years, while elsewhere in the world, extensive marine fish farming has been practised for centuries.

More recent attempts at intensive marine farming have spanned the last 35 years. The driving force behind the work being the White Fish Authority, and its current incarnation, Seafish. The first endeavours were directed at plaice, which was seen as being significant in the traditional markets for fish. However, these early trials identified that the cost of farming the fish could not be recouped from the relatively low price achieved in the marketplace.

To maximise potential profitability, research turned to the Dover sole, at the other extreme of the market. Unfortunately, this fish was so difficult to grow in captivity that trials were abandoned.

Research then turned to another species with a perceived high value: turbot. This fish was identified as one which could be farmed, but before any commercial venture could be established, there were problems with water temperature. The cool waters around the British Isles were too cold for commercial farming, although it was a native fish.

Commercial turbot farms were therefore established in Galicia in Northern Spain, where they have become extremely successful. However, the question of British water

temperatures has been raised again with renewed interest in farming this species here.

Research moved on to halibut, another species considered to have a high market value. Halibut are on the point of commercialisation, with the first farmed halibut being produced in Norway and a number of trial units being established in Scotland. Hence, the encouragement given by Raymond Robertson to halibut farming.

Interestingly, such encouragement has not prompted a rush to establish stand-alone halibut farms, operated by new entrants to the industry. Surely, this would be the case if halibut had shown significant commercial potential, yet no halibut farms have appeared.

Trial units

Instead, a number of salmon farms have established trial units. As part of their five-year strategy, Highlands and Islands Enterprise have encouraged salmon farmers to diversify into halibut farming. Salmon farmers appear to need an alternative activity due to a continued, mistaken, perception that their industry is over-producing.

Against a background of over-exploitation in 70 per cent of world fisheries, can any fish farming industry be over-producing?

The answer depends on the perception of the fish produced. Aquaculture takes one of two forms; the majority of fish are grown in extensive culture, primarily as a source of food; the alternative is intensive culture of high value species, mainly for monetary gain, and is a more recent development. Salmon fall into this category and are seen as the archetypal successful species.

The difficulty for salmon farmers is that any expansion of production seemingly devalues its luxury image. Scottish salmon farmers can either capitalise on the low margins and expand production, but at the same time devalue the image of the fish, or they can cut back production and force up prices, retaining the luxury image.

Unfortunately, there is no choice. Salmon farmers are part of an international community and any attempt to cut back local production will encourage expansion elsewhere. **Salmon farming must continue to expand.**

This new image of a low margin industry has resulted in the idea that margins can be made by growing other types of fish. Hence, the encouragement to farm halibut. The question is whether farming halibut can provide the solution to low margins.

Polyculture is commonplace in extensive pond farming. Salmon and halibut would seem logical potential species for polyculture, with salmon swimming at the surface

and mid-water and halibut on the bottom. However, such a scenario is unlikely, with totally separate growing facilities under development.

The case for separate growing systems is strong. In salmon farming, isolation of individual year classes is necessary to prevent disease, so farmers are unlikely to want to mix species, especially as previous attempts at commercial ventures have been disrupted by serious disease problems.

Salmon farmers are therefore likely to have to develop separate halibut farms. What, then, is the difference between such diversification by salmon farmers and the apparent lack of interest in setting up a stand-alone unit? If independent businesses do not consider halibut farming lucrative, why should salmon farmers?

Part of the explanation can be found in a recent report produced by a fish industry task force. Their investigation into the fisheries industry and its markets advocated caution about involvement in fish farming. They see that the difficulties of the salmon industry should serve as a warning against investment in other forms of aquaculture. The surprising aspect of this report is that representatives of Seafish, the pioneers of marine fish farming, formed a key part of the task force.

Why should those who have been involved in leading the way in marine fish farming, urge caution against its commercialisation? The simple fact is that any attempts to increase the availability of a high value luxury product, will inevitably debase its image, and, more importantly, its price.

The problem for the industry is that it is more focused on production of fish which are believed to have a high monetary reward, than investing in a fish for which there is mass market demand. That is, the intensive aquaculture industry is production-led when it should be market-led.

The industry must therefore be clear about why it should want to farm fish like halibut. Is it for financial gain, or because it believes there is a clear market need?

The idea of significant financial rewards is spurred on by reports of wholesale prices typically at about £5.00/lb, compared with salmon at around £1.35/lb. The potential profit margin therefore looks extremely attractive. But, such figures can be misleading.

One major retail store group currently sells top-of-the-range, prepacked halibut at about £11/lb - almost double wholesale prices, yet local fishmongers regularly supply halibut at £4.25/lb, with some selling Scottish halibut as low as £2.75/lb. Whether

Can farmers fill the wild-catch shortfall?

A small but influential conference in Brussels reached few conclusions but did show the huge gap between fisheries and fish farming, with many interesting statistics

THE enormous chasm which exists between the fisheries and farming sectors was brought home at the Eurofish conference "Increasing Demand V. Diminishing Supply", held during November in Brussels. Organised by Agra Europe in collaboration with FAO European Inland Fisheries Advisory Commission, the conference was chaired by Courtney Hough, General Secretary of the Federation of European Aquaculture Producers.

The aim of this conference was to assess the true wild fish stock situation and then evaluate if Europe's growing aquaculture industry could fill the gaps in supply. What soon became clear was that the development of aquaculture to meet any shortfall in fish catch, is not yet an issue.

The indisputable fact is that stocks of wild fish are under threat. Poul Degnbol of the Danish Institute for Fisheries Research described how most important stocks are exploited above their maximum capacity and how sound management of existing resources is urgently required if total collapse is to be prevented.

He made it clear that fishing pressure must be reduced to protect major high value stocks. Yet, this pressure continues because governments see the fishing industry as an integral part of the economy which must also be protected.

Dr Stephen Cunningham of CEMARE in Portsmouth illustrated the conflict between the protection of fish stocks and the fishing communities with an example from Canada where subsidies, used to maintain the viability of the industry, rose to over \$1 billion in 1991, a figure which actually exceeded the value of the landed catch of \$919 million.

The removal of fishing vessels is therefore seen as a priority. In Norway, for example, a reduction in capacity is viewed as the only way that the fishing industry can remain profitable, yet remove pressure from the fish stocks.

Torstein Hansen of the Norwegian Ministry of Fisheries described a programme involving quotas, licences, and the sale or scrapping of surplus boats. Such programmes, together with increasing co-operation through the EU and other international bodies including the FAO and OECD, could still avert the total collapse of fish stocks.

Against a background of declining fish catches, however, the European demand for fish continues to increase. Speakers described the markets and the consumer demand on both a regional and national basis.

Charles Pecher, managing director of Belgian company Thalassa Seafoods summarized the markets of Northern Europe including the UK. British *per capita* con-

sumption is 20 kg/year, with cod and had-dock accounting for 50 per cent of the market. Sales of salmon have pushed this fish to third place. Changes within the retail markets mean that 81 per cent of fish is now sold through the major supermarkets, with frozen prepared dishes gaining increasing acceptance.

This compares with Germany which has a consumption of only 15kg/head/year. The Germans rely on 85 per cent imports to satisfy their needs which is for a wide range of fish. However, in Germany, demand for frozen fish is increasing rapidly.

As a fish processor, Mr Pecher said that he saw aquaculture as the saviour of the seafood market, but he warned that any questions of price, which seemed to affect the fish farming industry, should be avoided by the development of a well defined approach to the market through the sale of value-added products, a point re-enforced later in the conference.

Consumers would clearly eat more fish if

it were available in the form the market wanted. Could aquaculture meet this requirement?

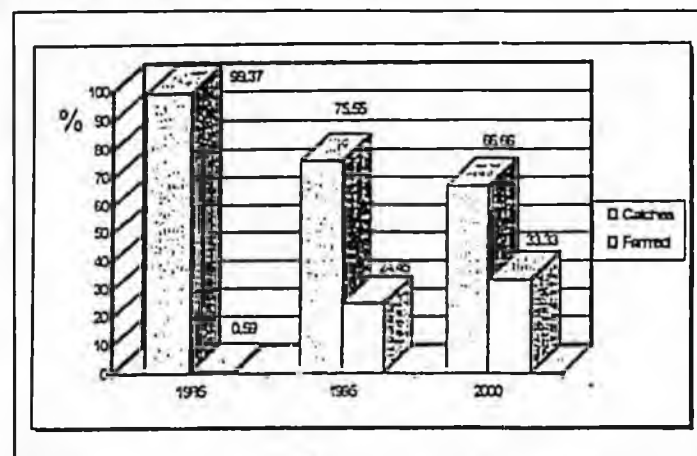
Seven different species were reviewed in all, but three presentations summed up the overall position of the European aquaculture industry. Lars Liabo, of the respected Kontali Analyse consultancy, outlined the potential for salmon.

Mr Liabo's forecast was that salmon production would continue to expand, rising to over 1.2 million tonnes world-wide within the next ten years. He expected the price of production to continue to fall, making salmon even more attractive to the markets.

Referring only to whole salmon, Mr Liabo saw low prices and better quality bringing about an increase in demand from Japan, the US and the EU. Other smaller markets would also be developed.

The pressure on prices, as production continues to expand, was also highlighted by John Stephanis of Selonda Aquaculture, who discussed the future for sea bass and sea bream, and by Sergio Devesa of Prodemar

FARMED TURBOT AS PERCENTAGE OF TOTAL CONSUMPTION (CATCHES & FARMED)



This graph shows the growing proportion of cultured turbot in Europe noted by Sergio Devesa of Prodemar SA, Spain. Production tonnages went from 50 tonnes in 1986 (10t from France and 40t from Spain) to 2,912t in 1995 (700t from France and 2,010t from Spain) with the balance - in descending order of importance - coming from Portugal, Norway, Denmark, Holland and Germany.

POSSIBLE DEVELOPMENT IN MAIN SALMON MARKETS

	1990	1995	1,000 tons round weight 5-10 years ahead
Japan	480	530	600
EU	245	360	600
US	140	250	450
Russia	100	130	120
Canada	60	70	70
Other markets	25	60	160
Total	1,050	1,400	2,000

World supply of farmed Atlantic and Pacific salmon could reach 1.2 million tonnes in 5-10 years (555,000 in 1995) predicts Lars Liabo of Kontali Analyse AS Norway. With a wild catch of 800,000 (875,000t in 1995) total supply would be 2 million tonnes. This graph shows the market to be supplied.

1995 production estimate of about 260,000 tons. While initial marketing targeted the fresh salmon market, the rapid increase in production volume forced the producers to begin freezing salmon to allow more time for marketing.

Over the years, the Norwegian farmers have made considerable advances in fry development, cutting costs, improvement in feed and disease prevention. Originally, it took 12 months to rear fry to a size of 70 to 80 grams. The current technology has shortened the length of time required to achieve this size by about one-half. They have also been able to reduce the amount of feed needed to raise a one kilo fish from 2 kilos of feed to around 1.1 to 1.2 kilos of feed. With improvements in processing and distribution, and resulting lower costs, the Norwegians have been able to greatly expand their market in Europe.

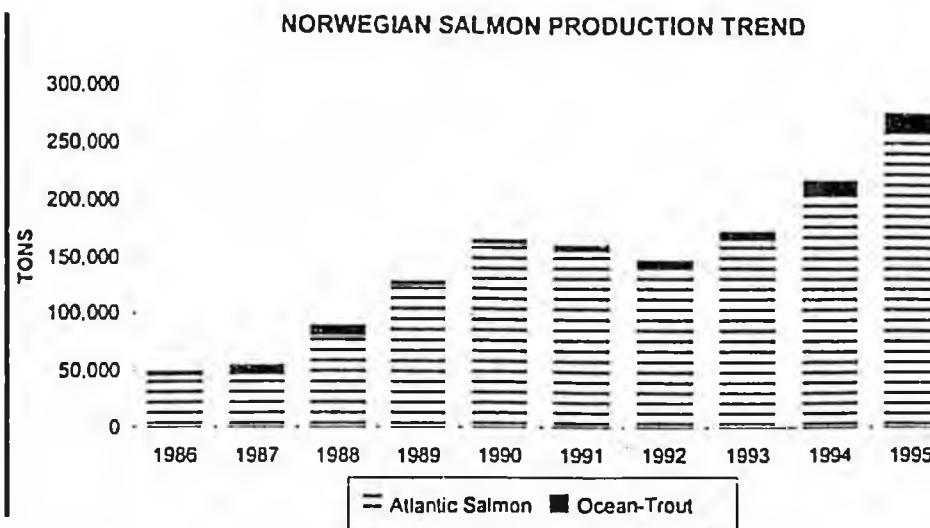
There is a definite oversupply of salmon on the world market. With weaker prices and charges of "dumping" from members of the European Union (EU), the Norwegian producers are under considerable pressure to reduce their production of farmed salmon. The Norwegian government will be monitoring the salmon market conditions, and the effect of the "stop feeding program" on prices. If the situation hasn't improved sufficiently, the government is reportedly prepared to continue the program. At this point, the 1996 production figures are placed somewhere between 300,000 and 360,000 tons, although continued strong opposition to increases in Norwegian production from other producer nations are expected.

The Norwegian coastline is 2,650 kilometers (1,656 miles) long. There are no limitations on the number of farmers, as long as the companies or groups follow government regulations related to the rearing of farmed salmon. Norway apparently has the capability of increasing their overall farmed salmon production to a level around one million tons (round weight) by the year 2005. (January 14, 1996)

NORWEGIAN SALMON PRODUCTION TREND

YEAR	ATLANTIC SALMON	TROUT
1986	45,000	4,250
1987	46,000	9,000
1988	80,000	9,500
1989	125,000	3,900
1990	162,000	3,300
1991	155,000	6,000
1992	140,000	7,500
1993	165,000	8,000
1994	203,000	14,000
1995	260,000	16,000

Unit: Metric tons



Chilean Coho

The Chilean farmed salmon producers have projected a total coho production of 40,000 tons for the 1995/96 season. According to reports from Japanese who visited Chile in December, the weather and water conditions are apparently excellent this year, and the fish are growing well. Initial harvest plans were based on the following schedule: December 8,000 tons; January and February 15,000 tons each; and March 2,000 tons. Actual harvest volume and shipments have been delayed somewhat, however, due to problems in reaching a purchase price agreement. Such delays in harvesting the coho will only result in a further increase in the total tonnage produced, however, due to a longer growth period for a portion of the fish.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH 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

April 22, 1996

SUBJECT: Proposed regulations relating to use and waste of salmon
(Work Order No. 9-LS1865)

TO: Representative Bill Williams
Attn: Cheryl Sutton

FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether the Department of Fish and Game has authority to adopt regulations to implement and interpret AS 16.05.831 which prohibits the waste of salmon. The proposal for the adoption of regulations addresses interpretation of AS 16.05.831, authorization for hatcheries to discard salmon carcasses, and use of salmon as bait. This memorandum addresses the regulation making authority of the department in the context of the proposed interpretation of AS 16.05.831 and authorization for hatcheries to discard salmon carcasses.

Though AS 16.05.831, particularly subsection (b), is in need of interpretation, it is not clear that the Department of Fish and Game has the authority to adopt regulations regarding waste of salmon.

The courts will narrowly interpret a statute as to whether it grants an agency the discretion to adopt regulations. Warner v. State, 819 P.2d 28 (Alaska 1991); McDaniel v. Cory, 631 P.2d 82 (Alaska 1981). Neither of the sections cited as authority for the adoption of the proposed regulations (AS 16.05.020 and 16.05.831) expressly authorizes the department or the commissioner to adopt regulations. AS 16.05.020 is frequently cited by the department as authority for adopting regulations, however that statute does not mention regulations. AS 16.05.020 states:

FUNCTIONS OF COMMISSIONER. The commissioner shall

- (1) supervise and control the department, and may appoint and employ division heads, enforcement agents, and the technical, clerical, and other assistants necessary for the general administration of the department;
- (2) manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well-being of the state;

Representative Bill Williams

April 22, 1996

Page 2

(3) have necessary power to accomplish the foregoing including, but not limited to, the power to delegate authority to subordinate officers and employees of the department.

Likewise, AS 16.05.831 does not expressly authorize the commissioner or department to adopt regulations regarding waste of salmon. The text of AS 16.05.831 does suggest that some regulations are anticipated to be adopted under that statute, but the references are oblique. Under AS 16.05.831(c), "[a] person who violates this section or a regulation adopted under it is punishable by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both. . . ." Clearly the legislature envisioned that regulations may be adopted under AS 16.05.831, but the legislature failed to expressly grant such authority. Under AS 16.05.831(b), "The commissioner, upon request, may authorize other uses of salmon that would be consistent with maximum and wise use of the resource." To the extent that the commissioner exercises the authority conferred by AS 16.05.831(b), that authority would have to be exercised by regulation, because the Administrative Procedure Act (APA) requires that every rule, regulation, or order, and policies, interpretations, and the like that have the effect of a rule, regulation, or order must be adopted as a regulation in accordance with the APA. The APA, itself, does not provide authority for the adoption of regulations.

Despite the lack of express authority to adopt regulations under AS 16.05.831, it is possible to conclude that the department has implied authority to adopt at least some regulations regarding waste of salmon. The Department of Law has, in the past, concluded that the department has authority to adopt regulations such as the proposed regulations.

In the absence of a broad grant of authority to adopt regulations, the agency must have at least authority to adopt the regulation in question. The need to interpret a statute in order to implement it is not sufficient authority for the adoption of regulations. Warner, 819 P.2d at 32.

Assuming for purposes of argument that the department may adopt at least certain regulations under AS 16.05.831, it is not clear that the proposed regulation regarding discarding of salmon carcasses from hatchery fish is within the scope of permissible regulations under AS 16.05.831. AS 16.05.831(a), in unambiguous terms, states that "[a] person may not waste salmon intentionally, knowingly, or with reckless disregard for the consequences" and then proceeds to define waste as "the failure to utilize the majority of the carcass, excluding viscera and sex parts, of a salmon . . ." However, the proposed regulation authorizing the discarding of salmon carcasses expressly authorizes that the majority of the salmon carcass may be thrown away and not utilized. The proposed regulation seems to directly contradict AS 16.05.831(a). The department may not adopt a regulation that conflicts with any state statute.

Representative Bill Williams

April 22, 1996

Page 3

The only basis for adoption of the proposed regulations, in light of AS 16.05.831(a), is that it is somehow authorized under AS 16.05.831(b), e.g. "The commissioner, upon request, may authorize other uses of salmon that would be consistent with maximum and wise use of the resource." In the context of the whole section, AS 16.05.831(b) is ambiguous in that it is not clear how it is to relate to subsection (a). AS 16.05.831(a) does not state that its application is subject to provisions of subsection (b). And AS 16.05.831(b) does not state that it is meant to supersede subsection (a). The commissioner may authorize "other uses of salmon" under AS 16.05.831(b), but the remainder of the section does not refer to uses of salmon.

In order for the proposed regulations to be valid under AS 16.05.831(b), it is necessary to reach the conclusion that the subsection authorizes the commissioner to grant exemptions from the application of AS 16.05.831(a). Such a conclusion is not wholly unreasonable or without a basis, but it does require an expansive construction of the language of AS 16.05.831(b). The burden will fall upon the department to justify its interpretation of AS 16.05.831, if the proposed regulations should take effect and be challenged.

In conclusion, though the language of AS 16.05.020 and 16.05.831 does not expressly provide authority to adopt regulations and does not seem to contemplate the adoption of regulations permitting the discarding of salmon carcasses, it is possible that a court would give an expansive construction to those statutes and find that the commissioner/department has authority to adopt the proposed regulations. However, such a result is not certain.

The foregoing discussion highlights the need for AS 16.05.831 to be rewritten in order to clearly set out what uses of salmon are permitted.

If I may be of further assistance, please advise.

GU:glc:klb

96-242.glc

FW 205
1996

16.05.831
16.05.020
16.05.831(a)
16.05.831(b)
16.05.831(c)
16.05.831(d)
16.05.831(e)
16.05.831(f)
16.05.831(g)
16.05.831(h)
16.05.831(i)
16.05.831(j)
16.05.831(k)
16.05.831(l)
16.05.831(m)
16.05.831(n)
16.05.831(o)
16.05.831(p)
16.05.831(q)
16.05.831(r)
16.05.831(s)
16.05.831(t)
16.05.831(u)
16.05.831(v)
16.05.831(w)
16.05.831(x)
16.05.831(y)
16.05.831(z)

House 2/4/94
Journal

HB 448

HOUSE BILL NO. 448 by the House Rules Committee by request of the Governor, entitled:

"An Act relating to waste and use of salmon and parts of salmon;

relating to permits for and operation of a salmon hatchery; and providing for an effective date."

HB 448

was read the first time and referred to the House Special Committee on Fisheries, Resources and Judiciary Committees.

The following fiscal note applies:

Zero fiscal note, Dept. of Fish & Game, 2/4/94

The Governor's transmittal letter, dated February 4, 1994, appears below:

"Dear Speaker Barnes:

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

The bill would repeal and reenact AS16.05.831 (waste of salmon) to authorize the commissioner of fish and game to issue permits to allow the removal and sale of eggs from hatchery-produced salmon and discard of the salmon carcasses. The permits would allow this practice only for salmon that return to hatchery terminal and special harvest areas or remote sites from which hatchery smolt are released, and that are determined by the commissioner of fish and game to be unfit for human consumption. This is a practice that is prohibited by existing AS16.05.831. It is anticipated that persons who would be authorized under such a permit are commercial fishermen who are participating in a designated terminal fishery and, perhaps, hatchery operators or fish processors.

The language that appears in the bill as AS16.05.831(b)(2), regarding permits authorizing "other uses of salmon," is currently contained in AS16.05.831(b).

The bill also cures several problems in existing AS16.05.831.

Presently, that statute applies only to salmon that are "intended" for certain uses. Because that statute does not indicate whose intent is to

HB 448

be measured, this ambiguity can cause enforcement problems. Also, the specified uses are not meaningful because they cover every conceivable use of salmon. The bill's repeal and reenactment of AS16.05.831 deletes this problematic language from the law.

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

4/6/94

CONSIDERATION OF THE DAILY CALENDAR
SECOND READING OF HOUSE BILLS
HB 448

The following was read the second time:

HOUSE BILL NO. 448

"An Act relating to waste and use of salmon and parts of salmon;

relating to permits for and operation of a salmon hatchery; and
providing for an effective date."

with the: Journal Page

FSH RPT CS(FSH) 2DP 1NR	2475
-PREVIOUS ZERO FISCAL NOTE (F&G) 2/4/94	2476
RES RPT CS(RES) 6DP	2677
-PREVIOUS ZERO FISCAL NOTE (F&G) 2/4/94	2677
JUD REFERRAL WAIVED	2884

Representative Phillips moved and asked unanimous consent that the
following committee substitute be adopted in lieu of the original bill:

CS FOR HOUSE BILL NO. 448(RES)

(same title)

HB 448

There being no objection, it was so ordered.

Representative Phillips moved and asked unanimous consent that
CSHB 448(RES) be considered engrossed, advanced to third reading
and placed on final passage. There being no objection, it was so
ordered.

CSHB 448(RES) was read the third time.

**The presence of Representative Menard was noted.

The question being: "Shall CSHB 448(RES) pass the House?" The
roll was taken with the following result:

CSHB 448(RES)

Third Reading

Final Passage

YEAS: 37 NAYS: 1 EXCUSED: 1 ABSENT: 1

Yeas: Barnes, Brice, Brown, Bunde, Carney, Davies, B.Davis,
G.Davis, Finkelstein, Foster, Green, Grussendorf, Hanley, Hoffman,
Hudson, James, Kott, Larson, Mackie, MacLean, Martin, Menard,
Moscs, Mulder, Nordlund, Olberg, Parnell, Phillips, Porter, Sanders,
Sitton, Therriault, Toohey, Ulmer, Vezey, Williams, Willis

Nays: Davidson

Excused: Navarre

Absent: Nicholia

And so, CSHB 448(RES) passed the House.

Representative Phillips moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

HB 448 - Waste & Use Of Salmon; Hatcheries

CHAIRMAN WILLIAMS advised there is a draft committee substitute in committee members folders which adds two words that were unintentionally omitted from the Fisheries Committee CS when it was amended in that committee.

GERON BRUCE, LEGISLATIVE LIAISON, ALASKA DEPARTMENT OF FISH AND GAME (ADF&G), said on page 3, line 12, the words "from wild stock" were left out of the Fisheries Committee version. This language is to carry forward the original intent of this section of the statute, which was to ensure that when hatcheries are being established and eggs are being taken from wild stock, there is some balance between the sustained yield needs of the wild stock, the hatchery egg takes, and the opportunities of the common property users to continue to harvest those resources. Once the eggs are in the hatcheries, the hatchery has established its own brood stock and is operating off of its own brood stock, it is a different situation. This language was to clarify the original intent.

MR. BRUCE stated HB 448 provides for an exemption to the statutory requirement that the carcass of a salmon be utilized when it is harvested. He explained the hatchery program begins with the most important decision made in hatchery development, which is the siting of the hatchery.

When a hatchery is given a permit by ADF&G, two things are looked at when siting the facility. First, the hatchery is sited in a location where it will contribute significantly to the common property fisheries. These are fisheries which are mixed in nature and are composed of a number of wild stocks. Once the hatchery is on-line, the hatchery stocks will also be present in that fishery. The second consideration is that the hatchery has a terminal harvest area relatively free of wild stock so the hatchery operator or fishermen operating in the area can go in and harvest the hatchery's run completely without jeopardizing the sustained yield of any wild stock.

Number 240

MR. BRUCE said in managing the harvests of hatchery stocks as they pass through the mixed wild stock/common property fisheries, the hatchery harvests have to be restricted to

the level at which the wild stocks will support. A certain percentage of the hatchery run has to get back to the hatchery to provide brood stock for subsequent returns and also to provide cost recovery to the hatchery operator. He stressed in the private nonprofit hatchery programs, the major premise of the program is that a significant portion of the costs of the program will be covered by the harvest of returning fish produced by the hatchery.

MR. BRUCE pointed out that in most situations, approximately 60 percent of the hatchery returns statewide are harvested in common property fisheries by commercial, sport, and personal use fishermen. In many cases, a high percentage of the fish returning to the terminal harvest area are suitable for utilization in some manner. However, at a certain point in the run, the salmon deteriorate to the point they are not suitable for value-added products. He said it is important to consider the biology of salmon.

MR. BRUCE stated as salmon return to fresh water and get ready to spawn, they stop feeding and begin consuming their stored body fats and proteins for their own survival and for conversion into roe. The animal is headed for death, it is consuming its own energy sources for other purposes and consequently reduces the value of the flesh. He stressed at some point the fish becomes unsuitable. It is not unwholesome. A person could eat it, but very few people do because it is very mushy, has no color, etc.

MR. BRUCE explained in order to more fully utilize the returns coming back to the hatcheries, both for the seafood industry and the hatchery operators, and in trying to recover all of the revenue which can be received from the returns, HB 448 will provide an exemption for the tail end of the run when the fish are not suitable for any other purpose, but still contain a valuable product. He noted that salmon roe is an extremely valuable product. In 1993, the value of frozen red salmon exported from Alaska was \$627.5 million and the value of salmon roe was \$177 million.

He added that roe has steadily been increasing in value over the last five years.

REPRESENTATIVE MULDER asked if that was value of the salmon roe exported or just the value of salmon roe to the hatcheries.

MR. BRUCE replied the figure is for the salmon roe exported as a finished product.

Number 311

MR. BRUCE continued that the exemption in HB 448 is permissive and has to be applied for, it is not automatically granted. In order to receive the permit, three criteria will need to be met: 1) the fish will have to be demonstrated to be from a hatchery program; 2) the fish will have to have returned to a terminal area; and 3) they will have to be determined by the commissioner of ADF&G to be unsuitable for human consumption. Once the three criteria are satisfied, the commissioner can issue a permit allowing the taking of salmon in a specific area for the harvest of roe and the carcasses will be discarded in accordance with the Department of Environmental Conservation's (DEC) requirements.

MR. BRUCE said many people ask the question, how does this fit with other state policies regarding the harvest of roe and the discard of carcasses. He stated most people are aware of the controversy on pollack roe stripping which occurred in the North Pacific by factory trawlers. He said there are several differences which are a basis for distinguishing between the two issues. Salmon returning to hatcheries are not part of the biological basis for sustained yield. They are not needed for spawning, they are supplemental production, and they are intended by the producers and the state to be totally utilized for either common property harvest, brood stock, or cost recovery.

MR. BRUCE explained salmon are within a week or two of dying. If HB 448 is not in place to allow salmon to be harvested for their roe, they will die with the roe still in them, they will not spawn successfully, they will not contribute at all to a sustained yield and a very valuable byproduct will go unutilized. He said another difference is that pollack are not going to die upon spawning, pollack are not nearing death, and pollack flesh does not deteriorate to the point that the quality is such that people would not want to eat it. In the case of pollack, it is an economic decision. The market value of the flesh is low enough that factory trawlers chose not to process it because the cost of producing the product exceeded the price they could get in

the market for it. That is not the case with salmon. He stressed the salmon being discussed have zero value in the marketplace and are not desirable.

MR. BRUCE stated the public and private players in the private nonprofit salmon program have significant investments in salmon. In many cases, the hatcheries are operating under loans from the state, the fishermen are paying a salmon enhancement tax in many areas of the state to support the hatcheries, there are significant private and public investments which have been made to produce these fish and its wise management to try to recover all possible revenue from returning fish, especially if there is no reason not to.

MR. BRUCE gave an example of a situation which could have been bettered if HB 448 had been in place. Runs come in, a significant percentage is harvested in the common property fishery and the remainder in the terminal area are cleaned up without getting below the threshold. He noted there are circumstances in which either the runs behave unusually or in the case of a very large run, the process or capacity gets plugged and the process is not able to get to the fish, so the fish sit in the water in the terminal area and deteriorate. He stressed in that case, a matter of a few days makes a significant difference.

Number 385

MR. BRUCE described the situation which occurred in Prince William Sound in 1991. The Prince William Sound Aquaculture Association had to get a permit from ADF&G to dump three million pounds of pink salmon out in the open Sound because those fish came into the terminal harvest area, deteriorated in quality, there was no market for them, the processors were unable to get to them, and therefore the fish were dumped. He stressed no value was recovered from the fish whatsoever, and pointed out that if HB 448 had been in place, the Aquaculture Association would have been able to recover the value of the roe which would have paid the costs for dumping them with money probably left over. As it was, the state paid the costs of dumping the fish. The circumstances which led to the dumping of the fish were that in 1991, for some reason the pink salmon held off very late in entering the Sound and when they did enter, it was a very large run, there were low wild stocks, there was limited

opportunity to fish in the mixed common property areas, and a very large number of fish returned to the terminal area and swamped everything.

Number 415

REPRESENTATIVE CARNEY asked why was it more of a crime to take the roe before the fish were dumped than it was just to dump the fish.

MR. BRUCE replied it would have been the most desirable circumstance to have harvested the fish and utilized the carcass and the roe. In this instance, that was not possible because of the circumstances surrounding that year's return. It would have been less of a crime in the sense, that at least some value could have been extracted from the fish.

REPRESENTATIVE CARNEY said Mr. Bruce was still not answering his question. He asked if it was legal to dump fish.

MR. BRUCE replied a permit is required. He said the fish were taken out to the Sound to dump because in a shallow bay, if all of those fish would have been allowed to die, they would have caused significant environmental problems.

REPRESENTATIVE CARNEY asked why were the roe not taken before the fish were dumped.

MR. BRUCE replied it would have been illegal. There is no provision in statute to allow for the removal of the roe if the carcass was not utilized. In current law, the carcass has to be utilized in some way.

REPRESENTATIVE CARNEY said a permit was issued from the commissioner to dump the fish and asked if the commissioner could have also given permission to take the roe.

MR. BRUCE said not without the law being proposed.

Number 471

REPRESENTATIVE MULDER stated it would seem like the commissioner would have the authority under emergency regulation to be able to issue that kind of permit.

MR. BRUCE replied the commissioner might have been able to stretch his discretionary authority in the law, but it would have been an unusual call and one which would have not been subject to policy approval through the legislative body.

REPRESENTATIVE MULDER asked if ADF&G has explored options to try and limit bycatch or incidental catch.

MR. BRUCE responded yes in specific fisheries, the department has made efforts to do that. He noted the fisheries having the most excessive discard are not managed by the department. Therefore, the role of the department is to try and influence the federal managers to take action.

REPRESENTATIVE HUDSON asked what is the value to be derived from extracting roe from salmon.

MR. BRUCE stated he did not know because there is nothing to base the figure on, except what egg sales have taken place in hatcheries as a result of and ancillary to the utilization of a portion of the brood stock they do not need. In 1993, the sales were less than \$500,000 statewide.

He said the roe market is very large and healthy and he guessed the figure would probably be in the tens of millions of dollars. He added that a hatchery might have a one million dollar budget and if it can recover an extra \$200,000, it is a very significant percentage of its total costs.

Number 547

REPRESENTATIVE FINKELSTEIN felt HB 448 is a good bill. He said there has been use of carcasses and mentioned a nonprofit agency which has received funding to distribute excess carcasses to get them into the hands of poor people.

He asked if there is any way to require hatcheries, without cost to them, to make the carcasses available.

MR. BRUCE stated there is a market incentive to do that already, because there is a cost associated with disposing of the carcasses. Hatcheries have to conform with DEC requirements which require carcasses to be either ground and disposed of or transported out to deep water. He pointed out that if someone is willing to come to the hatchery door

and take the carcasses, the hatchery avoids a cost.

REPRESENTATIVE FINKELSTEIN commented there is also some disincentive because the hatcheries might not want to put inferior salmon out into the market for fear of hurting their reputation.

REPRESENTATIVE DAVIES asked what the original purpose in the law was in preventing the taking of eggs. He wondered if it was to eliminate the situation where people destroy fish just for the roe.

MR. BRUCE said he cannot answer the question. He stated the roe market is a recent development and he did not know what date the statute originates. He said he would research the answer and get back to the committee.

REPRESENTATIVE BUNDE said hatcheries in Unalakeet just break even on processing the flesh and make their money on the eggs. He noted there are unsubstantiated rumors that people along the Yukon catch fish, throw the fish away, keep the eggs and make \$125 a pound. He asked if there is any danger that the rumored egg take could be legitimized through HB 448.

MR. BRUCE replied there is an existing roe fishery on the Yukon River which is in a specific drainage. Under current law, people are required to utilize the carcass in some way and it is usually dried. He said ADF&G's best information is that compliance with the law is good there and no significant abuse is occurring. He explained there is an authorized roe fishery and it is operated under a guideline harvest by the department. There are so many pounds of roe which are allowed to be harvested under that fishery and it is managed on a sustained yield basis. He stressed that is a different situation than what HB 448 will authorize because HB 448 involves hatchery fish and the utilization of the carcass is not required.

MR. BRUCE said there have also been reports of salmon being harvested by subsistence users and the roe being sold. He stated there have been arrests and convictions.

TAPE 94-27, SIDE A
Number 000

RAY GILLESPIE, REPRESENTATIVE, ASSOCIATION OF AQUACULTURE ASSOCIATIONS, expressed all four organizations he represents support HB 448 and the proposed amendment.

DON AMEND, REPRESENTATIVE, SOUTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION (SSRAA), testified via teleconference and stated SSRAA supports HB 448. He noted there have been instances where fish have had to be dumped without being able to recover some of the value in the form of eggs.

Number 039

TOM MEARS, EXECUTIVE DIRECTOR, COOK INLET AQUACULTURE ASSOCIATION (CIAA), testified via teleconference and stated CIAA supports HB 448. Extracting some value from otherwise low grade fish is a good idea. In answer to a question asked earlier regarding CIAA's current position of refusing to provide fish for the free salmon giveaways, CIAA chooses not to participate based on the advice of legal counsel. He stated CIAA has letters in their files from state and federal regulatory agencies telling them that brood stock taken in remote hatcheries are unfit for human consumption.

He explained CIAA's lawyers worry about the legal liability of giving away something which is unfit for human consumption even though there is a law in place which might protect or exempt them when giving fish to a food bank.

REPRESENTATIVE FINKELSTEIN asked if there is a law in place which addresses a hatchery's liability in giving away fish.

MR. MEARS responded there is a current law which allows for a general exemption from liability for people who give food to a food bank. However, he is not sure how the Association would defend themselves when they knowingly gave away fish which were deemed to be unfit for human consumption.

REPRESENTATIVE FINKELSTEIN said he would do some research to determine if there is any way to resolve that issue. If the legislature is going to allow the taking of the valuable part of the fish, he felt the carcasses should also be made available to serve a public interest.

MR. MEARS said CIAA would be happy to make fish available if they could be assured there will be no legal repercussions

to them.

REPRESENTATIVE DAVIES said earlier testimony indicated there is a difference in the quality of fish as the run progresses. He asked Mr. Mears to comment on that statement.

MR. MEARS replied that at most facilities, fish early in the run are in excellent condition and can be marketed on the value of their flesh quality. As time passes, particularly in the last ten percent of fish coming in, the flesh has little or no value, but eggs may provide an opportunity to still get value.

REPRESENTATIVE DAVIES clarified the only concern of CIAA for giving fish away is the legal circumstance that somehow fish are defined as unfit, whereas it may be that some of the fish are fit for human consumption.

MR. MEARS stated fish harvested in the round and taken off to a processor are always deemed fit for human consumption.

He said the specific incidence he is referring to is fish which are in a normal course of events at a hatchery, collected for brood stock, and eggs are collected for the spawning process. Those fish, because they are cut open in conditions not approved by DEC nor can be approved, are by definition adulterated and by definition are unfit for human consumption.

Number 116

PETE ESQUIRO, REPRESENTATIVE, NORTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION (NSRAA), testified via teleconference and expressed support of HB 448. He stated NSRAA still sees its mission as trying to harvest the highest quality fish possible and the committee should note that fish being discussed in HB 448 are fish NSRAA cannot make fit into the high quality category. He felt as HB 448 is approved and implemented, it is important for the commissioner to meet with representatives of the industry who can help in defining unsuitable for human consumption.

He thought that definition is a critical element.

REPRESENTATIVE HUDSON asked Mr. Esquiro what the approximate

value of what is being wasted in his region by not being able to harvest the eggs.

MR. ESQUIRO replied last year, NSRAA marketed \$160,000 worth of surplus eggs. He said the eggs resulted primarily from overestimates made in the available brood stock.

REPRESENTATIVE BUNDE asked if there is an assumption being made that there is an unlimited market for eggs, because eggs taken at the hatchery level compete with eggs available from privately caught fish.

MR. ESQUIRO stated over the next few years, a better estimate of the egg market will be determined. He said many of the eggs NSRAA sold this past year were used to produce trout bait.

REPRESENTATIVE BUNDE noted there are different qualities of eggs taken at different times and stated his concern is the possibility of over supplying the market and destroying the already low price of salmon.

REPRESENTATIVE HUDSON felt the market has not been saturated and the market capacity is there.

DONALD TAYLOR, VALDEZ, testified via teleconference and stated he is working with hatcheries in his area to develop byproducts utilizing carcasses. He stressed timing and correct handling in the taking of eggs is very critical. He expressed support of HB 448.

LAWRENCE MCCUBBINS, HOMER, testified via teleconference and expressed support for HB 448. He referred to lines 16 and 17 on page 4, "rearing and sale of ornamental finfish for aquariums or ornamental ponds provided that the fish are not reared in or released..." and asked if fish are not to be reared in state waters, what kind of waters will the fish be reared in.

REPRESENTATIVE FINKELSTEIN said that is a section of existing law and is not affected by HB 448.

MR. MCCUBBINS asked if fish can be reared or cannot be reared.

REPRESENTATIVE FINKELSTEIN responded it is not a part of HB

448 and the reason it is stated because the part which is amended is in the same section. He said ornamental fish can be reared in ponds or aquariums.

MR. MCCUBBINS stated it reads "not reared in". He commented on the issue of permit and asked if that permit is issued by the area biologist or does it go to the commissioner. If it goes to the commissioner, he wondered what the timetable is.

MR. BRUCE responded the power can be delegated by the commissioner. ADF&G anticipates that if HB 448 passes, a group representing hatchery operators, processors, fishermen, etc., will be formed for the purpose of developing procedures for the implementation of HB 448. He stressed ADF&G does recognize there is a time factor and there will be a need for a balance between controlling the situation and being able to react quickly to circumstances as they develop.

MR. MCCUBBINS noted the word "identify" was mentioned and asked how fish will be identified.

MR. BRUCE replied fish in a terminal harvest area will be identified by their location and the trigger at which point the fish are deemed unsuitable. He said the Alaska Seafood Marketing Institute has developed a color chart showing the stages which salmon go through as they go from ocean to a fully water marked fish and at some location in that chain, a certain point can be selected to be the trigger.

MR. MCCUBBINS said his specific question is will the deviation between wild stock and hatchery stock be identified.

MR. BRUCE stated HB 448 only applies to hatchery stock and those fish are identified by the fact they have returned to a terminal hatchery area. HB 448 will not necessarily require all hatchery fish be marked although it is the department's preference that there is some method of identifying hatchery fish.

Number 320

REPRESENTATIVE MULDER made a MOTION to ADOPT CSHB 448(RES).

CHAIRMAN WILLIAMS asked if there were any objections.

Hearing none, the MOTION PASSED.

REPRESENTATIVE MULDER made a MOTION to MOVE CSHB 448(RES) with zero fiscal notes out of committee with INDIVIDUAL RECOMMENDATIONS.

CHAIRMAN WILLIAMS asked if there were any objections.

Hearing none, the MOTION PASSED.