

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8972 SENATE RESOURCES

The Alaska Royalty Oil and Gas Development Advisory Board

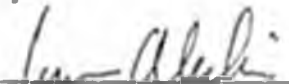
Resolution 95-1

On March 21, 1995, the acting director of the division of oil and gas ("director") provided the Alaska Royalty Oil and Gas Development Advisory Board ("Board") with preliminary findings and proposed contract for a three-year sale of approximately 40,000 barrels per day of Prudhoe Bay Unit royalty oil to Tesoro Alaska Petroleum Company ("Tesoro"). Tesoro will process the oil in its refinery in Nikiski, Alaska.

The propose contract was discussed between representatives of the division of oil and gas and Tesoro over the past four months culminating in a draft contract. On March 21, 1995, the director made public the proposed contract and the Preliminary Finding and Determination of the Commissioner of the Department of Natural Resources. The director notified the public that the proposed sale would be discussed at the Board's meeting on April 6, 1995 and invited them to attend.

On April 6, 1995, the Board met to discuss the sale and to take public comment on it. The meeting was attended by representatives of the division of oil and gas, representatives of Tesoro, and members of the public. The Board received a presentation from the division staff regarding the proposed sale and contract, questioned the staff about them, and made several suggestions. The staff will implement those suggestions. At the conclusion of the discussion, the voting members of the Board, who attended the meeting, unanimously approved the proposed sale and recommended that the proposed contract be approved by the legislature.

Based on the Board's review of the contract for the sale and purchase of royalty oil between the state of Alaska and Tesoro, the Commissioner's finding and determination regarding the proposed sale, and the information presented at a public meeting of the Board, the Board is of the opinion that the proposed disposition of Prudhoe Bay Unit royalty oil to Tesoro meets the requirements of AS 32.06 and 11 AAC 26. The Board adopts the Commissioner's finding and determination, and recommends that the Nineteenth Legislature approve the agreement for the sale and purchase of royalty oil from the Prudhoe Bay Unit to Tesoro Alaska Petroleum Company.



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 04-06-95

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The Alaska Royalty Oil and Gas Development Advisory Board

APR 10 1995

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Final Finding and Determination

to Sell Royalty Oil

to

Tesoro Alaska Petroleum Company



Alaska Department of

**NATURAL
RESOURCES**

Division of Oil and Gas
3601 "C" Street, Suite 1380
Anchorage, Alaska 99503-5948

April 21, 1995

**Final Finding and Determination to Sell Royalty Oil
to
Tesoro Alaska Petroleum Company**

I. Summary

The commissioner of the Department of Natural Resources, on behalf of the State of Alaska, proposes a three-year sale of approximately 40,000 barrels per day of the state's royalty oil to Tesoro Alaska Petroleum Company (Tesoro). Tesoro operates a refinery in Nikiski on the Kenai Peninsula and is one of the state's largest retailers of petroleum products. This document provides the final finding and recommendation required under AS 38.05.183 for the proposed sale.

The department distributed the preliminary finding and draft contract on March 21, 1995. The public comment period ended one month later on April 21, 1995. The department notified the public about the preliminary finding and draft contract and written comments were solicited by sending a notice of the sale or copies of the preliminary finding and draft contract to 388 citizens, special interest groups, industry and government representatives, and the media. The department also advertised through legal notices and display advertisements in newspapers throughout Alaska. At the close of the public comment period only two letters were received by the department both of which supported the sale. (See Appendix B.)

The mailing and advertisements also notified the public of a meeting of the Alaska Royalty Oil and Gas Development Advisory Board (Royalty Board) that was held on April 6, 1995 at which the proposed sale was discussed and public comment solicited. Comments made by the public (there were two people who testified) are addressed in this final finding. The Royalty Board subsequently unanimously approved the sale and signed a resolution recommending approval of the proposed sale by the Alaska Legislature. (See Appendix B.) The Alaska Legislature was also afforded an opportunity to be briefed by the commissioner of the Department of Natural Resources in informal meetings of the House Oil and Gas Committee and the Senate Resources Committee held on April 11-12, 1995.

II. Background

The State of Alaska receives a royalty of approximately 12.5 percent of the oil and gas produced from the Prudhoe Bay Unit. The state may take its share of oil production "in-kind or "in-value." When the state takes its royalty share of the oil in-kind (RIK), it assumes ownership of the oil, and the commissioner disposes oil through either competitive or non-competitive sales. When oil is taken in-value (RIV), the state's lessees, who produce the oil, market the state's share along with the lessees' own share. The lessees are obligated to pay the state the value of its royalty share.

On September 9, 1995 the state agreed to sell to Tesoro a volume of royalty oil equal to 27.2 percent of the daily royalty oil production of the Prudhoe Bay Unit. Deliveries under this contract began on January 1, 1995 and will continue through December 31, 1995. By statute this contract may not be renewed without a specific recommendation of the Royalty Board to the legislature and the legislature's subsequent approval. Last December, Tesoro initiated negotiations with the

department for a new royalty oil supply contract for which would begin deliveries when this current contract expires.

This finding and determination and the attached copy of the sales contract represent the result of those negotiations. Much of what was written by way of background to the 1995 contract still applies today. Where appropriate, this finding will reference the "Final Finding and Determination to Sell Royalty Oil to Tesoro Alaska Petroleum Company" dated September 9, 1994. In the following section of this finding, the description of the contract focuses on how this new contract differs from the current one-year contract.

III. Discussions of Contract Provisions

Quantity Tesoro will purchase 30 percent, denoted as the "maximum quantity," of the state's royalty share (estimated at 40,500 barrels per day in 1996) from the Prudhoe Bay Unit (PBU). This increases the percentage of PBU royalty oil nominated from the 27.2 percent in the current contract, but, because of the decline in production forecasted for the PBU in 1996, the actual volume taken by Tesoro will not significantly increase. Tesoro also has the right at any time to decrease the maximum quantity of RIK as long as it timely notifies the state, however, Tesoro may not ever increase the maximum quantity.

Because of the terms of the Prudhoe Bay Unit Agreement in force among the producers and the state, the state must combine royalty production from both the Prudhoe Bay field and royalty crude processed currently through the Lisburne Production Center. The 135,000 barrels per day of royalty crude oil forecast for 1996 (Table 1) is the sum of the royalty offtake from Prudhoe Bay, Lisburne, Pt. McIntyre, West Beach, North Prudhoe Bay State, and the Niakuk/Alapah oil fields.¹ Table 1 illustrates the future royalty crude oil supply from the Prudhoe Bay Unit. The state is obligated to supply 35,000 barrels per day to Mapco through 2003. If the proposed Tesoro contract is awarded, the state will still keep 44 percent of its royalty share as RIV in 1996 (declining to about 40 percent by 1998) and maintain the flexibility to nominate more RIK as circumstances warrant, e.g., other in-state refinery requirements, RIK sales to Lower-48 purchasers, or a change in the federal regulations that restrict the export of ANS.

Tesoro may elect to purchase less than the maximum quantity, subject to certain notice requirements. If Tesoro decides to take less than the maximum quantity, it will be subject to a per-barrel reservation fee on each barrel less than the maximum quantity. The per-barrel reservation fee is 0.75 percent of the full purchase price.

Price The proposed contract requires Tesoro to pay the same West Coast royalty value received by the state based on the royalty production lifted in the PBU by Exxon. This price meets the statutory requirement that the value of RIK is at least equal to or exceeds RIV. It also differs from the current contract which uses a price based on the volume-weighted average West Coast

¹ The state reserves the right to supply 100 percent of Tesoro's volume from just the Prudhoe Bay Unit Initial Participating Areas (IPA) rather than include the production processed through the Lisburne Production Center. This would imply that Tesoro would receive approximately 35.2 percent of the Prudhoe Bay IPA production. Tesoro will be notified 90 days in advance if the commissioner, in his sole discretion, chooses to exercise this right.

royalty value reported by the largest PBU producers, ARCO, BP, and Exxon. The proposed contract price is compared with the current contract and the value of RIV in Table 2.²

Table 1: North Slope Royalty Crude Oil Production Forecast
(MBCD)

	1995	1996	1997	1998	1999	2000	2001	2002	2003
Prudhoe Bay Unit	143	135	127	116	105	95	85	75	69
Kuparuk River Unit	39	38	38	38	37	37	35	32	29
Mine Point	5	7	7	8	9	9	7	6	6
Endicott	13	12	10	9	8	7	6	5	4
Total Royalty:	200	192	182	171	159	147	133	118	108
minus RIV Read for Field Cost Allowance									
Prudhoe Bay Unit	14	14	13	12	11	10	9	8	7
Kuparuk River Unit	3	3	3	3	3	3	2	3	2
Mine Point	0	0	0	0	0	0	0	0	0
Endicott	1	1	1	1	1	1	0	0	0
	18	18	17	15	14	13	12	10	10
minus Current RIK Contracts									
Marco	35	35	35	35	35	35	35	35	35
Tesoro	39	--	--	--	--	--	--	--	--
Total Current RIK Obligation	74	35	35	35	35	35	35	35	35
ANS Royalty Oil Available to Supply New RIK Contracts:									
	108	120	130	121	110	99	86	73	63
Flow Tesoro @ 30.0%	--	31	38	35	--	--	--	--	--
ANS Royalty Oil Remaining:	108	89	92	86	110	99	86	73	63

The Exxon West Coast royalty value further simplifies the calculation of the price for Tesoro's RIK purchase. In the calculation of royalty value in the current contract, the West Coast price reported by BP must be held confidential by mutual agreement with BP and the state. Since this information is proprietary, a mechanism was devised so that this value is first estimated with a provision to later revise it when the data are no longer restricted. The BP royalty value is subject to a six-monthly true-up of its actual marine transportation deduction which is also subject to review and audit by the state. This means that an RIK price value based on a BP royalty value would be subject to subsequent re-adjustments that could occur over several years.

² If the commissioner elects to sell Tesoro RIK from the Prudhoe Bay IPA, then the price will be calculated on the basis of Exxon's Royalty Value from just the IPA. See Table 2.

Table 2: RIK Price Calculations--January 1995

Exxon's Royalty Value				
Proposed Tesoro Contract Price				
<i>Exxon Production at:</i>	<i>Gross Volume</i>	<i>PS-1 Value</i>	<i>Product of Volume Times PS-1 Value</i>	<i>Average Price</i>
Usburne Production Center	1,762,900.13	\$11.05000	\$19,408,046.44	
Prudhoe Bay IPA	8,807,215.20	\$11.11000	\$97,848,160.87	
Total	8,818,503.20		\$97,972,893.27	
Volume Weighted Average Value:				\$11.09999

Volume Weighted Average Price--ARCO, BP (West Coast), and Exxon				
Tesoro's Current Contract				
<i>Producer</i>	<i>Gross Volume</i>	<i>PS-1 Value</i>	<i>Product of Volume Times PS-1 Value</i>	<i>Average Price</i>
Usburne Production Center				
ARCO	1,459,347.74	\$11.58000	\$16,899,246.83	
BP Exploration	2,022,440.13	\$10.51000	\$21,255,845.77	
Exxon	1,762,900.13	\$11.05000	\$19,480,046.44	
Prudhoe Bay IPA				
ARCO	8,807,752.40	\$11.61000	\$102,258,005.36	
BP Exploration	12,721,772.40	\$10.61000	\$134,978,005.16	
Exxon	8,807,215.20	\$11.11000	\$97,848,160.87	
Totals	35,581,428.00		\$392,719,310.43	
Volume-Weighted Average Value:				\$11.03720

Volume Weighted Average Price--All Producers				
Value of RIV				
<i>Producer</i>	<i>Gross Volume</i>	<i>PS-1 Value</i>	<i>Product of Volume Times PS-1 Value</i>	<i>Average Price</i>
Usburne Production Center				
ARCO	1,459,347.74	\$11.58000	\$16,899,246.83	
BP Exploration	2,022,440.13	\$10.51000	\$20,649,113.73	
Exxon	1,762,900.13	\$11.05000	\$19,480,046.44	
Prudhoe Bay IPA				
Amerada Hess	121,673.40	\$11.27400	\$1,371,745.91	
ARCO	8,807,752.40	\$11.61000	\$102,258,005.36	
BP Exploration	12,721,772.40	\$10.31000	\$131,161,473.44	
Chevron ¹	195,833.10	\$11.01000	\$2,156,122.43	
Exxon	8,807,215.20	\$11.11000	\$97,848,160.87	
Louisiana Land and Exploration	8,993.30	\$11.61000	\$104,412.21	
Marathon ²	11,288.00	\$11.61000	\$131,053.68	
Mobil	453,693.20	\$10.61000	\$4,813,684.85	
Phillips ³	449,246.20	\$10.61000	\$4,766,502.18	
Shell ⁴	31,141.00	\$11.61000	\$361,547.01	
Texaco ⁵	124,049.00	\$10.61000	\$1,316,159.89	
Totals	36,977,345.20		\$403,317,274.84	
Volume Weighted Average Value:				\$10.90715

Note: Only BP's royalty value calculated from the volume-weighted average of the prices reported for each market may be made public. The per barrel price listed here is not BP's actual West Coast Value. Assume that BP's West Coast value is the volume-weighted average plus \$0.30.

¹Amerada Hess currently has no prospective formulaic treatment of its royalty value.

²Chevron uses a simple average of ARCO, BP, and Exxon.

³These producers use ARCO's royalty value formula.

⁴These producers use BP's royalty value formula for West Coast destinations.

Tesoro opted for a RIK price based on the Exxon West Coast royalty value to avoid this uncertainty. The Exxon formula is strictly a West Coast price and no Gulf Coast pricing enters into its rather straightforward calculation of the PBU royalty value. Confidentiality provisions also apply in the intermediate calculations of the Exxon royalty value, but the value is determined by a formula that can be readily calculated independently.

The use of the Exxon royalty value explicitly recognizes that the sale of RIV to Tesoro is a West Coast placement. While Table 2 suggests that this price is about \$.19 per barrel higher than the volume-weighted average royalty value, this difference would have averaged about \$.15 per barrel in 1994 had this contract been in place then.

Previous RIK Findings have described the so-called "displacement effect" and "competitive effect" that may occur with a state sale of RIK. The "displacement effect" theorizes that any RIK sale by the state replaces ANS sales by North Slope producers to refineries on the West Coast (including Alaska). Although the total volume of ANS sold on the West Coast is the same without a RIK sale, the state's RIK volume displaces the volume that North Slope producers may sell on the West Coast. The producers must then show in their royalty reports that a larger percentage of their oil is placed on the U.S. Gulf Coast with higher transportation costs and a lower netback value. The result is a calculation of the lessees' average royalty value for RIV that reflects a new ratio of West Coast-to-Gulf Coast sales. This proportion of deliveries to the West Coast and Gulf Coast is also reflected in the netback value reported for severance tax purposes. In this way, selling RIK may decrease the states revenues from both RIV royalties and severance taxes.

The "competitive effect" relies on an assumption that the price of ANS on the West Coast as reported in the producers' royalty value is higher than the price that would result from a purely competitive market. The ANS spot market is dominated by one North Slope producer who may be able to influence the price by its decision to transport oil to the Gulf Coast. When the state was selling most of its royalty oil in-kind (nearly 210,000 barrels per day in 1986), there was concern that the state, as another seller in the market, could contribute to a lower West Coast price.

The "displacement effect" will diminish insofar as the proportion of total ANS sold on the Gulf Coast will continue to decline over the next few years. As above, the effect appears both in RIV royalty value and severance taxes. Now at less than 15 percent of total ANS production, Gulf Coast deliveries may cease in 1996.¹ The "competitive effect" is minimized insofar as the volumes of royalty crude considered for nomination under this proposed contract are so small (less than 3 percent) when compared to the total ANS production. Since the state may benefit from the continued operation of the Tesoro facility and, since the consumers of Alaska, may be better off with a more competitive refining industry, these benefits will likely outweigh the impact of these effects.

¹ Alaska Department of Revenue, 1994, Fall 1994 Revenue Sources Book, Anchorage, Alaska, p.16. In 1990, ANS movements to destinations in the Eastern U.S. represented 22 percent of total ANS production. Personal Communication with Roger Marks, Alaska Department of Revenue.

In any case, pricing Tesoro's RIK at the Exxon royalty value should sufficiently compensate the state for these impacts. As the volumes of ANS oil delivered to the Gulf Coast decline, the volume-weighted average royalty value for RIV should rise and the difference between the Exxon royalty value (Tesoro's price) and the RIV royalty value will diminish.

One of the people testifying at the Royalty Board meeting of April 6, 1995 suggested that the proposed price term should not be based on a "West Coast" price.⁴ Rather, he recommended a price that would be higher to reflect the difference in marine transportation cost between Valdez and Nikiski versus the cost to deliver ANS oil to the West Coast. This is based on the observation that West Coast Pump Station No. 1 (PS-1) West Coast prices are higher than the Gulf Coast PS-1 price. In a market that was perfectly competitive, one would expect that market at each destination, Gulf Coast, West Coast, and Alaska, would just clear at a destination price at which the producers would be indifferent about where to send the marginal barrel of oil. Said another way, deliveries to the Gulf Coast would be made only as long as buyers there are willing to cover the added transportation cost. If the destination price at the Gulf Coast is too low, the producer's will sell in the West Coast or, similarly, sell in Alaska if the West Coast price is too low to offset the marine transportation cost.

The ANS oil market is not perfectly competitive: it is dominated by a single seller. This creates the situation where the Pump Station No. 1 price of West Coast deliveries is actually higher than the Gulf Coast (and the difference in the destination price between the Gulf Coast and West Coast is less than the incremental transportation cost) and, hence, the observation of the commentator. To expect the state to charge a higher PS-1 price for deliveries in Alaska suggests that the state could manipulate price terms to take advantage of the lack of competition among suppliers in the local market. Even if it were possible to secure a higher price, it would not serve the goal of promoting in-state refining.

In-state Processing In the current contract and in the proposed contract, Tesoro has agreed that 80 percent of the RIK it will purchase will be processed in the Nikiski refinery. This clause is designed to prevent Tesoro from re-selling RIK to a third party and possibly profiting from a favorable price charged to Tesoro by the state. If such a benefit is available because the price charged to Tesoro for its RIK based on Exxon's royalty value is less than Tesoro would have to pay for oil from another source, then this benefit should be passed on to the in-state consumers of Tesoro's products.

Purchase Price Reopener According to the ANS Royalty Settlement Agreement with Exxon, the state and Exxon have reopener rights in which a new pricing formula may be negotiated, if necessary, or arbitrated by an independent Decision Panel. If this process leads to a price that is not to Tesoro's liking, then Tesoro may unilaterally terminate its contract with the State, subject to specified notice requirements. Tesoro may not reopen the contract with the state over price should the state and Exxon agree to a different royalty value methodology. Tesoro also agrees that it will not intervene in any way in the negotiations or arbitration of a reopener between the state and Exxon.

⁴ Richard Fineberg testified by teleconference from Juneau, Alaska.

Tesoro or the state may reopen the proposed RIK contract if the ban on ANS exports is lifted. This would also be cause for the state to reopen the ANS Royalty Settlement Agreement with Exxon. Though Tesoro may not intervene between the state and Exxon, the RIK contract reopener provides a mechanism for the state and Tesoro to develop a new price term through prompt and good faith negotiations between each other. If the state and Tesoro fail to agree on a new price then, by notice to the other, either the state or Tesoro may terminate the contract.

Payments Like the current contract, the proposed contract has specified the timing and due dates associated with the Initial Billing, Initial Adjustments, and Subsequent Adjustments. The timing of these invoice and due dates has been shortened somewhat to reduce the state's exposure to default risk as described below.

Unlike the current contract, the state has agreed that any subsequent adjustment rendered more than six years after the date of delivery will bear interest for only six years from the due date of the initial billing. However, this six-year interest limitation does not apply to adjustments that result from regulatory decisions, reopeners, court proceedings, or audits of Exxon's royalty reports that are commenced during the six year period.

Termination Notice The state requires at least a six-month plus ten-day notice of early termination of the contract or any reduction in the maximum quantity taken by Tesoro. This timing is based on the ANS Royalty Settlement Agreements and the Prudhoe Bay Unit Agreement. Under the original Prudhoe Bay Unit Agreement, the state has a right to "denominate" RIK deliveries with a six month notice. Under each of the royalty settlement agreements, the timing requirement was reduced to 90 days. However, the settlements also provide that the lessees may claim *force majeure* if transportation is unavailable to transport any additional RIV for the first 90 days that the RIK has reverted back to the producers. During this up-to-90-day period that lessees could claim *force majeure*, the state must take full possession of its RIK and find customers to buy it and tankers to transport it. For this reason Tesoro is obliged to provide sufficient notice to terminate the contract or reduce its maximum quantity.

Security Supplies of RIK under the current contract are secured by an irrevocable letter of credit equal to 60 days worth of oil deliveries. The proposed contract will require a letter of credit equivalent to the value of 75 days worth of RIK to secure the state in the event that Tesoro, for any reason, fails to pay its bills or to take delivery. The increase in the value of the letter of credit is required to protect the state from its exposure to "denomination risk."⁵ As described above, in addition to the risk assumed by the state should Tesoro fail to pay, the state also runs a risk of losing full value of its RIK when it "denominates" the RIK volumes as RIV. This 90 day denomination notice period under the ANS Royalty Settlement Agreements is effectively increased to 180 days should a lessee declare *force majeure* in obtaining sufficient marine transportation to haul the additional RIV volume. During this period, the state either has to find a new RIK purchaser or negotiate with the lessees to take back the RIK. In either event, the state is in a distress sale situation and the letter of credit instrument is intended to protect the state from this event.

⁵ Denomination risk and default risk were fully described in the Final Finding and Determination to Sell Royalty Oil to Petro Star Valdez Refinery Joint Venture, March 4, 1992.

The state's risk exposure is measured as follows:

30 days	RIK is tendered but not billed
2 days	Initial Billing
3 days	Initial Billing due
<u>4 days</u>	Default declared
39 days	Default Risk

Volumes subject to 180 day denomination as per ANS Royalty Settlements times 80 percent of value should the state be forced to sell RIK =

<u>36 days</u>	Denomination Risk
75 days	Total risk exposure

The letter of credit is valued at the price of RIK volume per day times the number of days of total risk exposure.

The contract includes language that will allow the 75-day letter of credit to be reduced to 60 days if arrangements can be made to ameliorate the potential of a declaration of *force majeure* by any of the lessees. Since Tesoro will already have marine transportation under charter to move its ANS supply from Valdez to Nikiski, these vessels could be offered to the lessees as an indication that the supply of tankers in the Valdez trade is sufficient. A declaration of *force majeure* by the lessees in the event of a default of the proposed contract by Tesoro may be more difficult to demonstrate with Tesoro's tankers idled and waiting for new customers.

Local Hire Like current contract, the proposed contract requires that "Tesoro agrees to employ Alaska residents and Alaska companies to the extent they are available, willing and qualified for all work performed in Alaska in connection with the Agreement." An Alaska resident is defined as one who has lived in Alaska for at least a year at the time of employment. If this provision is found to be unconstitutional, then Tesoro agrees to hire Alaska residents to the extent that the constitution will allow.

IV. In-State Benefit Analysis

The commissioner must consider, among other things, the effects of the sale of RIK on the economy of the state and the projected benefits of refining or processing the RIK in the state (under AS 38.05.183). In short, the terms of the proposed RIK sale should 1) assure that the state receives at least as much value for the RIK as it would have received for RIV and 2) encourage in-state processing of RIK together with the attendant economic and social benefits. These benefits are measured in terms of jobs, taxes, and economic competition among the state's refineries for their products. The conclusions reached in the best interest finding that accompanied the current one-year contract are still applicable. Some of the information has been updated here.

In the following discussion of in-state benefits, there is one caveat: the degree to which these effects may be attributable to the sale depends on how important the sale is to the continued

operation and expansion of Tesoro's Nikiski refinery. The state can offer a somewhat unique crude oil supply contract whose terms might not be available from any other seller. Presumably, Tesoro would continue their operations without this contract, but there are direct benefits to Tesoro that may be derived in their dealings with the state. To the extent that these benefits are translated into jobs, taxes, and more vigorous refined-products competition, the state will also benefit. By the same token, the degree to which the sale may contribute to the ongoing operation of the refinery also must be taken into account when describing the environmental effects of the refinery's operation.

Economic Impacts Tesoro reports that it currently employs 189 people in the Kenai Peninsula Borough.⁶ This translates as one-in-ten of the manufacturing jobs in the Borough (competing largely with fish processing and timber). Tesoro is, according to the Alaska Department of Labor, number six of the top-ten private sector employers in the Borough. For the most part these are also high-wage jobs with a payroll in the Borough of over \$11 million per year.⁷

Tesoro's statewide marketing and distribution of petroleum products also contributes to the diversity of the Alaskan economy. Tesoro employs 552 people statewide with a payroll of over \$20 million.

Social Impacts Tesoro is one of the largest property taxpayers in the Kenai Peninsula Borough. It contributed \$1.3 million in ad valorem taxes in 1994 and the state received another \$7.6 million in various income, payroll, and excise taxes. No incremental effects on land use, impacts on the local social infrastructure, i.e., schools, public safety, roads, and other government services, are anticipated as a result of this sale.

Consumption Benefits In 1993, the Corps of Engineers reported "coastwise receipts" of 626,000 tons of petroleum products (185 million gallons). These are domestic shipments originating outside of Alaska. Furthermore, another 152,000 tons (45 million gallons) of petroleum products were imported to Alaska from Canada and elsewhere. Together these volumes amount to about 15 percent of the state's consumption. Presumably, some of these volumes can be displaced by a growth in local production of refined petroleum products and their may be a benefit to Alaskan consumers if competition from local supplies contribute to lower prices for the consumer.⁸

Tesoro estimates that its throughput in 1995 will 50,000 barrels per day. It produces a wide-range of products and contributes to a 30 percent share of the local market for diesel fuel, jet fuels, gasoline, and is a major supplier of propane and butane.

⁶ Tesoro Alaska Petroleum Company. March 14, 1995. Letter to Kevin Banks from Bernie Smith.

⁷ Scott Sellemeyer. February 1995. "A Diversified Economy--The Kenai Peninsula" Alaska Economic Trends. Alaska Department of Labor. pp. 1 - 7.

⁸ U.S. Department of the Army, Corps of Engineers. November 1994. Waterborne Commerce of the United States. Calendar Year 1993, Part 4--Waterways and Harbors Pacific Coast, Alaska, and Hawaii. WRXC-WCUS-93-4. New Orleans, Louisiana and Alaska Department of Natural Resources. March 1995. Historical and Projected Oil and Gas Consumption. Anchorage, Alaska.

Environmental Impacts Tankers have operated in the Cook Inlet for over 50 years and, for the most part have operated safely.⁹ The bulk of tanker traffic in the Cook Inlet carries ANS from Valdez to the Nikiski refinery, petroleum products to Cook Inlet ports, or refined oil and gas to Pacific Rim markets. The sale of North Slope RIK will not materially affect the reliance of the Nikiski refinery on tanker transportation. The refinery's main source of crude oil comes from the North Slope via Valdez and the Cook Inlet, but Cook Inlet crude oil supplies will continue to contribute to 10 percent of Tesoro's requirements. The decision to sell RIK to Tesoro does not authorize its transportation. Federal and state permits will be required.

A second commentator at the Royalty Board meeting on April 6, 1995 expressed concerns about tanker traffic in the Cook Inlet.¹⁰ He voiced the concern that the vessels now under charter by Tesoro met only minimum safety and operational standards. These standards should be raised to a level similar to those required in the Prince William Sound. He advocated the use of tanker escort vessels in the Cook Inlet. Tesoro indicated in its reply to this concern at the meeting that their vessels would be hydrostatically loaded to avoid a catastrophic spill in the event of a tanker collision and that the new facilities at the Nikiski refinery meant that fewer total tanker trips will be required.¹¹ Nonetheless, the volume of oil transported through the Cook Inlet will not increase as a result of this contract nor is this agreement the appropriate venue to change the regulatory oversight of Cook Inlet tanker operations.

The Alaska Department of Environmental Conservation (ADEC) requires that the oil industry develop oil spill contingency plans and monitors the implementation of those plans. In 1990, the legislature enacted additional laws to reduce the likelihood of future spills in Alaska and to improve the capability to respond to those that occur. The federal Oil Pollution Act of 1990 created Regional Citizens Advisory Councils to involve local citizens in the process of preparing, adopting, and revising oil spill contingency plans and the regulation of tanker and terminal operations.

The Tesoro refinery now operates under a ADEC Air Quality Control permit to operate (PTO No. 9023-AA008) and under this permit Tesoro must comply with a variety of conditions to control and monitor emissions both from the burning of fuel and the refinery's process equipment. In January 1994, the state issued Tesoro a Prevention of Significant Deterioration air permit (PSD) to allow the refinery to operate some equipment for longer hours. Tesoro then submitted proposed amendments to the PSD permit in February related to the vacuum unit project. Tesoro has also agreed to several conditions that will result in air quality monitoring and improvements at the refinery including an air pollution compliance audit and improvements at the refinery that are recommended in the audit. Most significantly, Tesoro has agreed to reduce emissions of volatile organic compounds from the refinery by 150 tons per year by 1996.

⁹ Alaska Department of Natural Resources, October 1993, Final Finding of the Director Regarding Oil and Gas Lease Sale 78, Cook Inlet, Anchorage, Alaska.

¹⁰ Ken Kastner testified by teleconference from Homer, Alaska.

¹¹ See also page 20, Final Finding and Determination to Sell Royalty Oil to Tesoro Alaska Petroleum Company, Alaska Department of Natural Resources, September 20, 1994.

Under compliance orders with both ADEC and the U.S. Environmental Protection Agency, Tesoro is undertaking a long term clean-up of historical groundwater and soil contamination at the refinery.

V. Findings and Determination

The commissioner must conclude that in any disposition of RIK, first, under AS 38.05.183(a) the best interests of the state will be served by a non-competitive sale, and second, under AS 38.05.183(e), the non-competitive sale of RIK will be awarded to the prospective buyer whose proposal offers maximum benefits to the citizens of the state. The commissioner is specifically directed to consider the cash value offered for the RIK, the economic effects of the sale, the benefits of in-state processing of the RIK, and the ability of the prospective buyer to supply the state with refined products. In addition to these considerations, commissioner is obligated to analyze the sale using the same criteria that are to be considered by the Royalty Board in its review of the sale. These criteria are listed in AS 38.06.070 and include: the revenue needs and fiscal condition of the state; the local and regional requirements for petroleum products; the desirability of localized capital investment, increased payroll, and secondary development effects; the social impacts of the sale; the additional costs to the state and local governments caused by the development related to the transaction; the local and regional labor market; environmental effects; and the impact on existing private commercial enterprises and investment patterns.

Competitive Bidding is Waived As commissioner of the Department of Natural Resources, I have determined in accordance with AS 38.05.183(a) and 11 AAC 03.030 that the best interest of the state may be achieved in this sale without competitive bidding. The State is currently selling 37 percent of its North Slope royalty oil under the Mapco contract and Tesoro's one-year contract. There are other refineries that have requested RIK from the State. At the time of the publication of this finding, Petro Star Inc. and Petro Star Valdez Refinery together have requested 62,000 barrels per day and Tosco Refining Co., an independent West Coast refinery, has indicated an interest in a one-year supply contract. So, while competition for RIK may be said to exist, the state will retain enough royalty oil to meet the needs of these other RIK purchasers even with the proposed contract.

By this Preliminary Finding and Determination, the Alaska Royalty Oil and Gas Development Board has been notified that competitive bidding is waived as required under 11 AAC 03.040.

Contract Prices are Acceptable Under 11 AAC 03.010(b), I find that in establishing the price of this royalty oil contract, the department has obtained a price applicable to the oil that is being sold that is at least equal to, and probably will exceed, the volume-weighted average of the royalty value for all the RIV oil lifted in the Prudhoe Bay Unit.

The Sale is in the Best Interest of the State In accordance with AS 38.05.183(a), (c), and (e), I find that taking RIK and selling by non-competitive bid to Tesoro for use at the Nikiski refinery is in the best interests of the state. Furthermore, the sale as described above will maximize benefits to the citizens of Alaska. I find the following:

1. The state is now highly dependent on oil revenue and will continue to depend on oil

revenues in the future. The price term of the sale protects the state's interest by ensuring that revenues from this sale will likely exceed the in-value alternative.

2. There are local and regional economic benefits to be derived from the continued operation and expansion of the Nikiski refinery. While the proposed contract may increase the financial viability of the refinery, the extent to which these benefits can be ascribed to the proposed contract cannot be predicted.
3. As described above, Tesoro is an important competitor in the market of refined petroleum products. Vigorous competition in fuel sales in the state may provide for lower consumer product prices.
4. Tesoro provides high-wage jobs to 189 people in the Kenai Peninsula Borough and another 363 people statewide. It is one of the largest private sector employers in a region where unemployment rates often exceed state averages. Both the Kenai Peninsula Borough and the state receive revenues from Tesoro as property taxes and corporate income and excise taxes.
5. Any environmental effects will result from the continued operation of the Nikiski refinery, not from the proposed sale. The sale itself will have no incremental effect. Waterborne movements of ANS through the Cook Inlet will occur with or without the sale (though waterborne movements of residual oil will be reduced with the completion of the refinery expansion). Improvements at the refinery will operate only under air quality permits issued by the ADEC which has a process for assessing the effects of the projects.
6. To the extent that the sale helps provide a consistent and economic supply of crude oil to the refinery, the sale will contribute to ongoing economic stability in the Kenai Peninsula region and maintain a healthy competitor in the in-state market for refined petroleum products.

Criteria Weights According to 11 AAC 03.060(b), "In considering the criteria described in AS 38.05.183(c), the Commissioner will state which criteria apply to the proposed disposition and discuss the weight given to the applicable criteria in determining the maximum benefit to the state...."


In making this finding, the department first determined that the state would not lower the total oil revenue, including royalties and severance taxes, due the state by making a disposal to Tesoro. The department next looked at whether the disposal would contribute to robust competition in the in-state refining industry and the extent to which that would lead to lower product prices. Finally, the department examined the criteria to determine that the state would not create any unacceptable environmental or social impacts.

Royalty Board This finding and determination will be submitted to the Royalty Board in compliance with AS 38.05.183(c) which requires that commissioner may not waive competitive bidding is a sale of RIK unless prior written notice has been given to the board.

Legislative Approval According to AS 38.06.055(c) the commissioner may not renew the current one-year contract with Tesoro without the prior approval of the legislature. By statute, The Royalty Board must review the sale and submit a written recommendation to accompany a resolution introduced in the legislature to approve the sale.

Conclusion Under the terms of the proposed contract, the state would receive a fair royalty value for the royalty oil, while fostering in-state processing, potentially lowering product prices, and providing attendant benefits. The satisfactory price terms, coupled with the associated economic benefits for Alaska citizens, supports the decision to waive competitive bidding.

The foregoing facts and analysis support the finding that this disposal is in the best interest of the state and that it maximizes the benefits to Alaska citizens.



John T. Shively, Commissioner

4/21/95

Date

Appendix A: AS 38.05.183(e), AS 38.06.055, and AS 38.06.070(a)

AS 38.05.183(e). When a sale, exchange or other disposal of oil or gas taken in kind by the state as its royalty share, or a sale, exchange or other disposal in whole or in part of a right to receive future royalty oil or gas, under a state lease under this chapter is made other than by competitive bid, the sale, exchange or other disposal shall be awarded by the commissioner to the prospective buyer whose proposal offers the maximum benefits to citizens of the state. The commissioner shall consider:

- (1) the cash value offered;
- (2) the projected effects of the sale, exchange or other disposal on the economy of the state;
- (3) the projected benefits of refining or processing the oil or gas in the state;
- (4) the ability of the prospective buyer to provide refined products or by-products for distribution and sale in the state with price or supply benefits to the citizens of the state; and
- (5) the criteria listed in AS 38.06.070(a).

AS 38.06.055. Legislative approval. (a) In addition to the recommendation by the board required under AS 38.06.050, the commissioner of natural resources may not enter into a sale, exchange, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas under AS 38.05.183 without the prior approval of the legislature. The legislature may approve a sale, exchange, or other disposition of oil or gas or of the rights or of a waiver of the rights to receive future production of royalty oil or gas only by enacting legislation. (b) The provisions of (a) of this section do not apply to

- (1) the sale, exchange, or other disposition of oil or gas for one year or less if the sale, exchange, or other disposition is entered into to relieve storage or market conditions;
- (2) contracts for the sale of state-owned royalty gas or oil that specify the sale and delivery of not more than
 - (A) 400 barrels of crude oil per day;
 - (B) 460 barrels of natural gas liquids per day; and
 - (C) 2,400 Mcf of natural gas per day.

(c) A sale, exchange, or other disposition of oil or gas under (b)(1) of this section may not be continued after the end of one year or renewed with the same party without the prior approval of the legislature under (a) of this section. This subsection does not apply to a sequential competitively bid sale of oil or gas made with the same party under (b)(1) of this section.

AS 38.06.070. Criteria. (a) In the exercise of its powers under AS 38.06.040(a) and 38.06.050 the board shall consider

- (1) the revenue needs and projected fiscal condition of the state;
- (2) the existence and extent of present and projected local and regional needs for oil and gas products and by-products, the effect of state or federal commodity allocation requirements which might be applicable to those products and by-products, and the priorities among competing needs;
- (3) the desirability of localized capital investment, increased payroll, secondary development and other possible effects of the sale, exchange or other disposition of oil and gas or both;
- (4) the projected social impacts of the transaction;
- (5) the projected additional costs and responsibilities which could be imposed on the state and affected political subdivisions by development related to the transaction;
- (6) the existence of specific local or regional labor or consumption markets or both which should be met by the transaction;
- (7) the projected positive and negative environmental effects related to the transaction;
and
- (8) the projected effects of the proposed transaction upon existing private commercial enterprise and patterns of investments.

Appendix B: Comments and Responses on the Preliminary Findings and Draft Contract

The department sent either a copy of the preliminary finding and draft contract, or a notice announcing its availability to a 388-person mailing list. In addition, legal notices and display advertisements were published in the Anchorage Daily News, Juneau Empire, Fairbanks Daily News-Miner, Kenai Peninsula Clarion, Homer News, Homer Tribune, and the Frontiersman.

The department received two letters commenting on the proposed sale. These letters appear below. Also, attached is Resolution 95-1 of the Alaska Royalty Oil and Gas Development Advisory Board signed by the Board members April 6, 1995.



WORLD OIL CORP.

P O BOX 1966

SOUTH GATE, CA 90280-1966

TEL (310) 928-0100

FAX (310) 928-3234

March 30, 1995

Kenneth A. Boyd
Acting Director
State of Alaska
Department of Natural Resources
Division of Oil and Gas
3601 C Street, Suite 1380
Anchorage, Alaska 99503-5948

Dear Mr. Boyd:

World Oil Corp. is in its 55th year as a petroleum marketer and refiner.

We respectfully urge the State of Alaska to sell royalty oil to Tesoro.

Tesoro is a supplier of petroleum products to the independent segment of the industry, and it is to the consumer's benefit that Tesoro remain a vital, vibrant factor in the independent field.

Sincerely,

WORLD OIL CORP.

Bernard B. Roth
Chairman and Chief Executive Officer

Kevin Banks
Division of Oil and Gas
3601 C Street, Suite 1398
Anchorage, Alaska 99503-5948

APR 20 1995
APR 18, 1995

Dear Mr. Banks,

This is in response to a publicly advertised request for comments concerning the sale of royalty oil to Tesoro Alaska Petroleum Company. The exploration for, production of, and shipment of oil in Cook Inlet continue to be emotionally charged issues in which I have been involved over the past 6+ years. This sale though should remain unrelated to those discussions.

As a commercial fisherman since the late 1960's in Cook Inlet waters ("semi-retired" in 1991), I have seen fishing overtaken by oil as the premier "industry" in Alaska. Unfortunately for all Alaskans, the oil industry merely increased resource *extraction* rather than expand resource *development*. Tesoro Alaska operations represent the pinnacle of resource development for the oil industry in Alaska. This sale needs to be supported wholeheartedly to continue at least this small effort of resource development in our state. The reasons I see of supporting this sale are, in general, split in two major areas.

On a local economic level innumerable opportunities have been provided to the Kenai Peninsula by the Tesoro operations. A stable economic base provided by the Tesoro plant and the related industry it helped spawn has made the Kenai region one of steady growth and excellent services. The continued sale of royalty oil to Tesoro will assure this region of its immediate future. In long-range economic terms this is an immeasurable benefit, yet there is no doubt of the positive effect. Providing a three year contract maintains security for Tesoro and the local economy.

A more thought-provoking reason concerns my belief the Tesoro plant and its responsible development plan should be the model for resource development in this state. While limiting or eliminating the royalty oil sale would have an economic effect largely confined to the central peninsula, the ramifications of such a detrimental action would be felt dramatically in the conceptual design of resource development for Alaska. The effect to future responsible development planning in the timber, fishing and oil industries would be to continue as merely a resource extraction site. This would be devastating to Alaska, especially as we attempt to rely less on oil extraction revenue and develop a broader economic base. Indeed, the continued sale of royalty oil to Tesoro Alaska Petroleum Company should be embraced by all Alaskans as the most positive and prominent step in responsible resource development in this state.

I enthusiastically endorse this royalty oil sale under a three year contract. Thank you for this opportunity to comment.

Yours truly,


Karl Pulliam

Sea Breeze Inn & Charters
Karl & Nancy Pulliam, Box 31, Seldovia, Alaska 99663
ph/fax 907-234-7641/7699

The Alaska Royalty Oil and Gas Development Advisory Board


Resolution 95-1

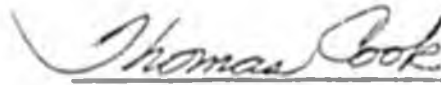
On March 21, 1995, the acting director of the division of oil and gas ("director") provided the Alaska Royalty Oil and Gas Development Advisory Board ("Board") with preliminary findings and proposed contract for a three-year sale of approximately 40,000 barrels per day of Prudhoe Bay Unit royalty oil to Tesoro Alaska Petroleum Company ("Tesoro"). Tesoro will process the oil in its refinery in Nikiski, Alaska.


The propose contract was discussed between representatives of the division of oil and gas and Tesoro over the past four months culminating in a draft contract. On March 21, 1995, the director made public the proposed contract and the Preliminary Finding and Determination of the Commissioner of the Department of Natural Resources. The director notified the public that the proposed sale would be discussed at the Board's meeting on April 6, 1995 and invited them to attend.

On April 6, 1995, the Board met to discuss the sale and to take public comment on it. The meeting was attended by representatives of the division of oil and gas, representatives of Tesoro, and members of the public. The Board received a presentation from the division staff regarding the proposed sale and contract, quesuoned the staff about them, and made several suggestions. The staff will implement those suggestions. At the conclusion of the discussion, the voting members of the Board, who attended the meeting, unanimously approved the proposed sale and recommended that the proposed contract be approved by the legislature.

Based on the Board's review of the contract for the sale and purchase of royalty oil between the state of Alaska and Tesoro, the Commissioner's finding and determination regarding the proposed sale, and the information presented at a public meeting of the Board, the Board is of the opinion that the proposed disposition of Prudhoe Bay Unit royalty oil to Tesoro meets the requirements of AS 32.06 and 11 AAC 26. The Board adopts the Commissioner's finding and determination, and recommends that the Nineteenth Legislature approve the agreement for the sale and purchase of royalty oil from the Prudhoe Bay Unit to Tesoro Alaska Petroleum Company.



Lynn Aleshire

 04-06-95
Tom Cook


Wilson Condon


Becky Gay


Willie Hensley


Shively

APR 10 1995

The Alaska Royalty Oil and Gas Development Advisory Board

Resolution 95-1

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Lynn Aleshire

Tom Cook

Wilson Condon

Becky Gay

Willie Hensley

Willie Hensley

John Stively

John Stively

4/6/95

SB

171

Sections 3+5 have
effective dates of 10-1-95

These must be reported, rather
than included directly in the value
reporting a separate late claim.

Section 8
New or amended provisions
effective 10-1-95



LAWS OF ALASKA

1992

Second Special Session

Source
CCS HB 601

Chapter No.
1

AN ACT

Relating to the taking of fish and game; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: July 14, 1992
Actual Effective Date: Sections 6 - 8 take effect July 15, 1992; sections 1, 2,
4, and 9 are conditional; sections 3 and 5 take effect October 1, 1995

Post-It™ brand fax transmittal memo 7571		# of pages = 6
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Fax # 3810	Fax # -4844	

AN ACT

1 Relating to the taking of fish and game; and providing for an effective date.

2

3 * Section 1. FINDINGS, PURPOSE, AND INTENT. (a) The legislature finds that
4 (1) there are Alaskans, both Native and non-Native, who have a traditional,
5 social, or cultural relationship to and dependence upon the wild renewable resources produced
6 by Alaska's land and water; the harvest and use of fish and game for personal and group
7 consumption is an integral part of those relationships;

8 (2) although customs, traditions, and beliefs vary, these Alaskans share ideals
9 of respect for nature, the importance of using resources wisely, and the value and dignity of
10 a way of life in which they use Alaska's fish and game for a substantial portion of their
11 sustenance; this way of life is recognized as "subsistence";

12 (3) customary and traditional uses of Alaska's fish and game originated with
13 Alaska Natives, and have been adopted and supplemented by many non-Native Alaskans as
14 well; these uses, among others, are culturally, socially, spiritually, and nutritionally important
15 and provide a sense of identity for many subsistence users;

Chapter 1

1 (4) while Alaska's fish and game are generally still plentiful, these resources
2 are not unlimited and cannot provide for every desired use, now or in the future; competition
3 for and the level of effort on these resources have required the legislature and the Board of
4 Fisheries and Board of Game to establish a preference for subsistence among the various
5 beneficial uses of fish and game in the state; and

6 (5) in most areas of the state, a preference for subsistence can be provided
7 without an overly burdensome intrusion upon other consumptive uses of fish and game.

8 (b) It is the purpose of this Act

9 (1) to develop and maintain healthy fish stocks and game populations through
10 management based on the sustained yield principle; and

11 (2) to provide for a preference for subsistence uses over other consumptive
12 uses of fish and game resources.

13 (c) It is the intent of the legislature that

14 (1) subsistence uses of Alaska's fish and game resources are given the highest
15 preference, in order to accommodate and perpetuate those uses; and

16 (2) this Act not result in significant reallocations of fish and game in Alaska.

17 * Sec. 2, AS 16.05.258 is repealed and reenacted to read:

18 Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION OF FISH AND

19 GAME. (a) Except in nonsubsistence areas, the Board of Fisheries and the Board
20 of Game shall identify the fish stocks and game populations, or portions of stocks or
21 populations, that are customarily and traditionally taken or used for subsistence. The
22 commissioner shall provide recommendations to the boards concerning the stock and
23 population identifications. The boards shall make identifications required under this
24 subsection after receipt of the commissioner's recommendations.

25 (b) The appropriate board shall determine whether a portion of a fish stock
26 or game population identified under (a) of this section can be harvested consistent
27 with sustained yield. If a portion of a stock or population can be harvested consistent
28 with sustained yield, the board shall determine the amount of the harvestable portion
29 that is reasonably necessary for subsistence uses and

30 (1) if the harvestable portion of the stock or population is sufficient
31 to provide for all consumptive uses, the appropriate board

Chapter 1

1 (A) shall adopt regulations that provide a reasonable
2 opportunity for subsistence uses of those stocks or populations;

3 (B) shall adopt regulations that provide for other uses of those
4 stocks or populations, subject to preferences among beneficial uses; and

5 (C) may adopt regulations to differentiate among uses;

6 (2) if the harvestable portion of the stock or population is sufficient
7 to provide for subsistence uses and some, but not all, other consumptive uses, the
8 appropriate board

9 (A) shall adopt regulations that provide a reasonable
10 opportunity for subsistence uses of those stocks or populations;

11 (B) may adopt regulations that provide for other consumptive
12 uses of those stocks or populations; and

13 (C) shall adopt regulations to differentiate among consumptive
14 uses that provide for a preference for the subsistence uses, if regulations are
15 adopted under (B) of this paragraph;

16 (3) if the harvestable portion of the stock or population is sufficient
17 to provide for subsistence uses, but no other consumptive uses, the appropriate board
18 shall

19 (A) determine the portion of the stocks or populations that can
20 be harvested consistent with sustained yield; and

21 (B) adopt regulations that eliminate other consumptive uses in
22 order to provide a reasonable opportunity for subsistence uses; and

23 (4) if the harvestable portion of the stock or population is not
24 sufficient to provide a reasonable opportunity for subsistence uses, the appropriate
25 board shall

26 (A) adopt regulations eliminating consumptive uses, other than
27 subsistence uses;

28 (B) distinguish among subsistence users, through limitations
29 based on

30 (i) the customary and direct dependence on the fish
31 stock or game population by the subsistence user for human

Chapter 1

1 consumption as a mainstay of livelihood;

2 (ii) the proximity of the domicile of the subsistence
3 user to the stock or population; and

4 (iii) the ability of the subsistence user to obtain food if
5 subsistence use is restricted or eliminated.

6 (c) The boards may not permit subsistence hunting or fishing in a
7 nonsubsistence area. The boards, acting jointly, shall identify by regulation the
8 boundaries of nonsubsistence areas. A nonsubsistence area is an area or community
9 where dependence upon subsistence is not a principal characteristic of the economy,
10 culture, and way of life of the area or community. In determining whether
11 dependence upon subsistence is a principal characteristic of the economy, culture, and
12 way of life of an area or community under this subsection, the boards shall jointly
13 consider the relative importance of subsistence in the context of the totality of the
14 following socio-economic characteristics of the area or community:

15 (1) the social and economic structure;

16 (2) the stability of the economy;

17 (3) the extent and the kinds of employment for wages, including full-
18 time, part-time, temporary, and seasonal employment;

19 (4) the amount and distribution of cash income among those domiciled
20 in the area or community;

21 (5) the cost and availability of goods and services to those domiciled
22 in the area or community;

23 (6) the variety of fish and game species used by those domiciled in the
24 area or community;

25 (7) the seasonal cycle of economic activity;

26 (8) the percentage of those domiciled in the area or community
27 participating in hunting and fishing activities or using wild fish and game;

28 (9) the harvest levels of fish and game by those domiciled in the area
29 or community;

30 (10) the cultural, social, and economic values associated with the
31 taking and use of fish and game.

1 (11) the geographic locations where those domiciled in the area or
2 community hunt and fish;

3 (12) the extent of sharing and exchange of fish and game by those
4 domiciled in the area or community;

5 (13) additional similar factors the boards establish by regulation to be
6 relevant to their determinations under this subsection.

7 (d) Fish stocks and game populations, or portions of fish stocks and game
8 populations not identified under (a) of this section may be taken only under
9 nonsubsistence regulations.

10 (e) Takings and uses of fish and game authorized under this section are
11 subject to regulations regarding open and closed areas, seasons, methods and means,
12 marking and identification requirements, quotas, bag limits, harvest levels, and sea-
13 age, and size limitations. Takings and uses of resources authorized under this section
14 are subject to AS 16.05.831 and AS 16.30.

15 (f) For purposes of this section, "reasonable opportunity" means an
16 opportunity, as determined by the appropriate board, that allows a subsistence user to
17 participate in a subsistence hunt or fishery that provides a normally diligent participant
18 with a reasonable expectation of success of taking of fish or game.

19 * Sec. 3. AS 16.05.258 is repealed and reenacted to read:

20 Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION OF FISH AND
21 GAME. (a) The Board of Fisheries and the Board of Game shall identify the fish
22 stocks and game populations, or portions of stocks and populations, that are
23 customarily and traditionally used for subsistence in each rural area identified by the
24 boards.

25 (b) The boards shall determine

26 (1) what portion, if any, of the stocks and populations identified under
27 (a) of this section can be harvested consistent with sustained yield, and

28 (2) how much of the harvestable portion is needed to provide a
29 reasonable opportunity to satisfy the subsistence uses of those stocks and populations.

30 (c) The boards shall adopt subsistence fishing and subsistence hunting
31 regulations for each stock and population for which a harvestable portion is

Chapter 1

1 determined to exist under (b)(1) of this section. If the harvestable portion is not
 2 sufficient to accommodate all consumptive uses of the stock or population, but is
 3 sufficient to accommodate subsistence uses of the stock or population, then
 4 nonwasteful subsistence uses shall be accorded a preference over other consumptive
 5 uses, and the regulations shall provide a reasonable opportunity to satisfy the
 6 subsistence uses. If the harvestable portion is sufficient to accommodate the
 7 subsistence uses of the stock or population, then the boards may provide for other
 8 consumptive uses of the remainder of the harvestable portion. If it is necessary to
 9 restrict subsistence fishing or subsistence hunting in order to assure sustained yield
 10 or continue subsistence uses, then the preference shall be limited, and the boards shall
 11 distinguish among subsistence users, by applying the following criteria:

12 (1) customary and direct dependence on the fish stock or game
 13 population as the mainstay of livelihood;

14 (2) local residency; and

15 (3) availability of alternative resources.

16 (d) The boards may adopt regulations consistent with this section that
 17 authorize taking for nonsubsistence uses a stock or population identified under (a) of
 18 this section.

19 (e) Fish stocks and game populations, including bison, or portions of fish
 20 stocks and game populations, not identified under (a) of this section may be taken
 21 only under nonsubsistence regulations.

22 (f) Takings authorized under this section are subject to reasonable regulation
 23 of seasons, catch or bag limits, and methods and means. Takings and uses of
 24 resources authorized under this section are subject to AS 16.05.831 and AS 16.30.

25 * Sec. 4. AS 16.05.940 is amended by adding new paragraphs to read:

26 (36) "customary and traditional" means the noncommercial, long-term,
 27 and consistent taking of, use of, and reliance upon fish or game in a specific area and
 28 the use patterns of that fish or game that have been established over a reasonable
 29 period of time taking into consideration the availability of the fish or game.

30 (37) "customary trade" means the limited noncommercial exchange,
 31 for minimal amounts of cash, as restricted by the appropriate board, of fish or game

1 resources; the terms of this paragraph do not restrict money sales of furs and
 2 furbearers.

3 * Sec. 5. AS 16.05.940(36) and 16.05.940(37) are repealed.

4 * Sec. 6. REGULATIONS. Notwithstanding the provisions of AS 16.05.258, as in effect
 5 on the day before the effective date of sec. 2 of this Act, the Board of Fisheries, Board of
 6 Game, and Department of Fish and Game shall adopt regulations necessary to implement the
 7 provisions of secs. 1, 2, and 4 of this Act.

8 * Sec. 7. TRANSITION. (a) It is the intent of the legislature that the Board of Fisheries
 9 and the Board of Game expeditiously adopt regulations necessary to implement secs. 1, 2, and
 10 4 of this Act.

11 (b) Regulations adopted by the Board of Fisheries, Board of Game, or Department
 12 of Fish and Game after July 1, 1992, may not be inconsistent with the provisions of secs. 1,
 13 2, and 4 of this Act.

14 (c) Regardless of whether regulations in effect on July 1, 1992, and adopted under
 15 the authority of AS 16.05.251, 16.05.255, or 16.05.258, as that statute read on the day before
 16 the effective date of sec. 2 of this Act, are inconsistent with the provisions of secs. 1, 2, or
 17 4 of this Act, they may continue to be implemented and enforced until the effective date of
 18 sec. 2 of this Act.

19 * Sec. 8. TRANSITION. After January 1, 1995, the Board of Fisheries, Board of Game,
 20 and Department of Fish and Game may adopt regulations to implement AS 16.05.258, as
 21 amended by sec. 3 of this Act. Regulations adopted under this section may not take effect
 22 before the effective date of sec. 3 of this Act.

23 * Sec. 9. REVIEW. (a) The legislature acknowledges and recognizes that this Act deals
 24 with a subject of vital concern and that the subject merits review. Therefore, it is the intent
 25 of the legislature that the operation of this Act and the regulations adopted under this Act be
 26 fully reviewed by the governor no later than June 1, 1994.

27 (b) This review period is intended to allow for further research and to gain experience
 28 in implementing this Act and regulations adopted under secs. 6 and 7 of this Act. It is the
 29 intent of the legislature that the governor convene a representative group to provide
 30 recommendations to the governor before the end of the review period. It is the intent of the
 31 legislature that representatives of the legislature and persons with a history in the formulation

Chapter I

1 of subsistence legislation in this state participate in the group.

2 (c) It is the intent of the legislature that the review under this section occur with
3 public input and participation.

4 (d) No later than September 1, 1994, the governor shall provide a report to the
5 legislature on the results of the review and proposed recommendations for statutory
6 amendments.

7 • Sec. 10. Sections 6 - 8 of this Act take effect immediately under AS 01.10.070(c).

8 • Sec. 11. Sections 1, 2, 4, and 9 of this Act take effect on the effective date of
9 regulations first adopted under sec. 6 of this Act by the Board of Fisheries and the Board of
10 Game.

11 • Sec. 12. Sections 3 and 5 of this Act take effect October 1, 1995.

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 4/27/95

FURTHER:

Date of 5-Day Notice: 24-Hour Roll
(In accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4-29-95

Resources Committee considered SB 171

Delaying the repeal of the current law regarding subsistence use of fish and game; efd.

and recommends:

- be replaced with CS SB171 (RES)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR°

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
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		<i>[Signature]</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>				

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
DF+G	4/28	<input checked="" type="checkbox"/>	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*Include fiscal notes accompanying Governor's bill

CS FOR SENATE BILL NO. 171(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the date for a review of and a report on the current law
2 regarding subsistence use of fish and game and delaying the repeal of the current
3 law regarding subsistence use of fish and game; and providing for an effective
4 date."

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

6 • Section 1. Section 9(a), ch. 1, SSSLA 1992, is amended to read:

7 (a) The legislature acknowledges and recognizes that this Act deals with a
8 subject of vital concern and that the subject merits review. Therefore, it is the intent
9 of the legislature that the operation of this Act and the regulations adopted under this
10 Act be fully reviewed by the governor no later than December 31, 1995 [JUNE 1,
11 1994].

12 • Sec. 2. Section 9(d), ch. 1, SSSLA 1992, is amended to read:

13 (d) No later than February 1, 1996 [SEPTEMBER 1, 1994], the governor
14 shall provide a report to the legislature on the results of the review and proposed

1 recommendations for statutory amendments.

2 • Sec. 3. Section 12, ch. 1, SSSLA 1992, is amended to read:

3 Sec. 12. Sections 3 and 5 of this Act take effect October 1, 1996 [1995].

4 • Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

AMENDMENT

Senator Lincoln

OFFERED IN THE SENATE *Resource Committee*
TO: SB 171

1 Page 1, line 1, after "Act":

2 Insert "extending the date for a review of and a report on the current law
3 regarding subsistence use of fish and game and"

4 Page 1, after line 3:

5 Insert new bill sections to read:

6 * Section 1. Section 9(a), ch. 1, SSSLA 1992, is amended to read:

7 (a) The legislature acknowledges and recognizes that this Act deals with a
8 subject of vital concern and that the subject merits review. Therefore, it is the intent
9 of the legislature that the operation of this Act and the regulations adopted under this
10 Act be fully reviewed by the governor no later than February 1, 1996 [JUNE 1,
11 1994].

12 * Sec. 2. Section 9(d), ch. 1, SSSLA 1992, is amended to read:

13 (d) No later than February 1, 1996 [SEPTEMBER 1, 1994], the governor
14 shall provide a report to the legislature on the results of the review and proposed
15 recommendations for statutory amendments."

16 Page 1, line 4:

17 Delete "Section 1."

18 Insert "Sec. 3."

19 Renumber the following bill section accordingly.

SENATE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced:

Referred:

A BILL
FOR AN ACT ENTITLED

1 "An Act delaying the repeal of the current law regarding subsistence use of fish
2 and game; and providing for an effective date."

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

4 • Section 1. Section 12, ch. 1, SSSLA 1992, is amended to read:

5 Sec. 12. Sections 3 and 5 of this Act take effect October 1, 1996 [1995].

6 • Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

SENATE BILL NO. 

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to subsistence use of fish and game."

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

3 * Section 1. Sections 3, 5, and 8, ch. 1, SSSLA 1992, are repealed.

SENATE BILL NO. 161

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to subsistence use of fish and game."

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

3 * Section 1. Sections 3, 5, and 8, ch. 1, SSSLA 1992, are repealed.

SENATE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to subsistence use of fish and game."

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

3 * Section 1. Sections 3, 5, and 8, ch. 1, SSSLA 1992, are repealed.

1992
SECOND SPECIAL SESSION

CHAPTER 1

AN ACT RELATING TO THE TAKING OF FISH AND GAME; AND PROVIDING
FOR AN EFFECTIVE DATE.

(CCS HB 601)

Be it enacted by the Legislature of the State of Alaska:

Section 1. FINDINGS, PURPOSE, AND INTENT. (a) The Legislature finds that

(1) there are Alaskans, both Native and non-Native, who have a traditional, social, or cultural relationship to and dependence upon the wild renewable resources produced by Alaska's land and water; the harvest and use of fish and game for personal and group consumption is an integral part of those relationships;

(2) although customs, traditions, and beliefs vary, these Alaskans share ideals of respect for nature, the importance of using resources wisely, and the value and dignity of a way of life in which they use Alaska's fish and game for a substantial portion of their sustenance; this way of life is recognized as "subsistence";

(3) customary and traditional uses of Alaska's fish and game originated with Alaska Natives, and have been adopted and supplemented by many non-Native Alaskans as well; these uses, among others, are culturally, socially, spiritually, and nutritionally important and provide a sense of identity for many subsistence users;

(4) while Alaska's fish and game are generally still plentiful, these resources are not unlimited and cannot provide for every desired use, now or in the future; competition for and the level of effort on these resources have required the legislature and the Board of Fisheries and Board of Game to establish a preference for subsistence among the various beneficial uses of fish and game in the state; and

(5) in most areas of the state, a preference for subsistence can be provided without an overly burdensome intrusion upon other consumptive uses of fish and game.

(b) It is the purpose of this Act

(1) to develop and maintain healthy fish stocks and game populations through management based on the sustained yield principle; and

(2) to provide for a preference for subsistence uses over other consumptive uses of fish and game resources.

(c) It is the intent of the legislature that

(1) subsistence uses of Alaska's fish and game resources are given the highest preference, in order to accommodate and perpetuate those uses; and

(2) this Act not result in significant reallocations of fish and game in Alaska.

Secs. 2 — 5. Permanent laws. See Table of Disposition of Acts.

Sec. 6. REGULATIONS. Notwithstanding the provisions of AS 16.05.258, as in effect on the day before the effective date of sec. 2 of this Act, the Board of Fisheries, Board of Game, and Department of Fish and Game shall adopt regulations necessary to implement the provisions of secs. 1, 2, and 4 of this Act.

Sec. 7. TRANSITION. (a) It is the intent of the legislature that the Board of Fisheries and the Board of Game expeditiously adopt regulations necessary to implement secs. 1, 2, and 4 of this Act.

(b) Regulations adopted by the Board of Fisheries, Board of Game, or Department of Fish and Game after July 1, 1992, may not be inconsistent with the provisions of secs. 1, 2, and 4 of this Act.

(c) Regardless of whether regulations in effect on July 1, 1992, and adopted under the authority of AS 16.05.251, 16.05.255, or 16.05.258, as that statute read on the day before the effective date of sec. 2 of this Act, are inconsistent with the provisions of secs. 1, 2, or 4 of this Act, they may continue to be implemented and enforced until the effective date of sec. 2 of this Act.

Sec. 8. TRANSITION. After January 1, 1995, the Board of Fisheries, Board of Game, and Department of Fish and Game may adopt regulations to implement AS 16.05.258, as amended by sec. 3 of this Act. Regulations adopted under this section may not take effect before the effective date of sec. 3 of this Act.

Sec. 9. REVIEW. (a) The legislature acknowledges and recognizes that this Act deals with a subject of vital concern and that the subject merits review. Therefore, it is the intent of the legislature that the operation of this Act and the regulations adopted under this Act be fully reviewed by the governor no later than June 1, 1994.

(b) This review period is intended to allow for further research and to gain experience in implementing this Act and regulations adopted under secs. 6 and 7 of this Act. It is the intent of the legislature that the governor convene a representative group to provide recommendations to the governor before the end of the review period. It is the intent of the legislature that representatives of the legislature and persons with a history in the formulation of subsistence legislation in this state participate in the group.

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TEMPORARY AND SPECIAL ACTS

Ch. 1

(c) It is the intent of the legislature that the review under this section occur with public input and participation.

(d) No later than September 1, 1994, the governor shall provide a report to the legislature on the results of the review and proposed recommendations for statutory amendments.

Sec. 10. Sections 6 — 8 of this Act take effect immediately under AS 01.10.070(c).

Sec. 11. Sections 1, 2, 4, and 9 of this Act take effect on the effective date of regulations first adopted under sec. 6 of this Act by the Board of Fisheries and the Board of Game.

Sec. 12. Sections 3 and 5 of this Act take effect October 1, 1995.

Approved: July 14, 1992

Effective: Sections 6 — 8 take effect July 15, 1992; sections 1, 2, 4, and 9 are conditional; sections 3 and 5 take effect October 1, 1995

which the issuance of the transfer of permits and game management hunting as needed ion of game.

proposal to amend, receiving a written explanation for after the board has proposal, or 30 days whichever is later. n must provide that, the taking of moose, family consumption ch 206 SLA 1975; am 84; am §§ 4, 5, 12 ch

r the broad statutory defi- "or "domestic mammals" (16) and (17), respectively, e scope of the board's au- AS 16.05.255. Jan. 18, Gen. (b) does not presently au- rd of Game to enter into eements. Mar. 14, 1988

Game is the proper entity p, possession and propaga- rds as pets. Apr. 2, 1987

of conservation, develop- ation, the Board of Game rity to regulate seasons, A, and quotas for sport and ing. Apr. 12, 1991 Op.

general authority in AS ulate subsistence hunting mervation, development, f game, together with the ion of subsistence hunt- th taking and possession, ard to regulate post-tak- 22, 1991 Op. Att'y Gen.

Game has authority to a that require the harvest nder subsistence permits ly for purposes of the Potlatch so long as the

regulation does not limit participation only to residents of certain areas. Apr. 12, 1991 Op. Att'y Gen.

It is well within the authorities of the Board of Game under subsection (a) and the Department of Fish and Game under AS 16.05.020 to determine by regulation

the point at which certain animals are deemed feral and subject to whatever game regulations the board may wish to adopt. A board or departmental regulation defining "feral animal" would be applicable statewide regardless of land ownership. July 30, 1987 Op. Att'y Gen.

NOTES TO DECISIONS

Establishment of quotas must be in accordance with the Administrative Procedure Act (AS 44.62). *State v. Tanana Valley Sportsmen's Ass'n*, 583 P.2d 854 (Alaska 1978).

Former subsection (b) construed. — Former subsection (b), concerning adoption of regulations by the Board of Game permitting taking of game for subsistence uses, merely established the priority of subsistence uses within the regulatory scheme; the state supreme court found no evidence of an intent to grant any personal right to take or possess game in the absence of such regulations. *State v. Eluska*, 724 P.2d 514 (Alaska 1986).

"Subsistence" defense created where no regulations adopted under former subsection (b) held contrary to AS 16.05.920(a) mandate. — A "subsistence" defense created by the state court of appeals to "remedy" the Board of Game's failure to adopt separate subsis-

tence regulations under former subsection (b) of this section contradicted the legislative mandate of AS 16.05.920(a). *State v. Eluska*, 724 P.2d 514 (Alaska 1986).

Regulations held invalid. — Board of game regulations establishing seasons and bag limits on the taking of moose and caribou were arbitrary and invalid, where the board did not follow or articulate its use of the statutory analytical process for adopting bag limits as to subsistence hunting, and the regulations imposed seasons not consistent with the board's findings as to established village customs and thereby unacceptably restricted the statutory preference for subsistence uses. *Bobby v. Alaska*, 718 F. Supp. 764 (D. Alaska 1989).

Applied in *Gottardi v. State*, 615 P.2d 626 (Alaska 1980).

Quoted in *Jordan v. State*, 681 P.2d 346 (Alaska Ct. App. 1984).

Sec. 16.05.256. Nonresident and nonresident alien permits. Whenever it is necessary to restrict the taking of big game so that the opportunity for state residents to take big game can be reasonably satisfied in accordance with sustained yield principles, the Board of Game may, through a permit system, limit the taking of big game by nonresidents and nonresident aliens to accomplish that purpose. (§ 3 ch 74 SLA 1982)

Sec. 16.05.257. Subsistence hunting regulations. [Repealed. § 12 ch 52 SLA 1986]

Sec. 16.05.258. Subsistence use and allocation of fish and game. (a) Except in nonsubsistence areas, the Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks or populations, that are customarily and traditionally taken or used for subsistence. The commissioner shall provide recommendations to the boards concerning the stock and population identifications. The boards shall make identifications required

(9) establishing the times and dates during which the issuance of game licenses, permits, and registrations and the transfer of permits and registrations between registration areas and game management units or subunits is allowed;

(10) regulating sport hunting and subsistence hunting as needed for the conservation, development, and utilization of game.

(b) *[Repealed, § 12 ch 52 SLA 1986.]*

(c) If the Board of Game denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later.

(d) Regulations adopted under (a) of this section must provide that, consistent with the provisions of AS 16.05.258, the taking of moose, deer, elk, and caribou by residents for personal or family consumption has preference over taking by nonresidents. (§ 3 ch 206 SLA 1975; am § 5 ch 151 SLA 1978; am §§ 10, 11 ch 132 SLA 1984; am §§ 4, 5, 12 ch 52 SLA 1986; am § 1 ch 6 SLA 1989)

Cross references. — For restriction on maximum area of land that may be closed to multiple uses without an act of the state legislature, see AS 38.05.300(a).

Effect of amendments. — The 1989 amendment, effective June 11, 1989, added the provision beginning "including regulations" at the end of paragraph (a)(3).

Opinions of attorney general. — Neither the Board of Game nor the Department of Fish and Game has jurisdiction over domestic animals. August 29, 1979 Op. Att'y Gen.

Permitting authority over live game, that is, nondomestic animals, rests with the Board of Game as implemented by the Department of Fish and Game. August 29, 1979 Op. Att'y Gen.

For discussion of compatibility of state subsistence-use law with federal standards as set forth in Alaska National Interest Lands Conservation Act (16 U.S.C. § 3115 et seq.), see 1981 Op. Att'y Gen. No. 11.

The Board of Game has general authority to regulate the live capture and possession of game under AS 16.05.255(a)(1). Apr. 2, 1987 Op. Att'y Gen.

Under 16.05.255(a)(5), (a)(6), and (d) and AS 16.05.258, the board's authority to regulate uses of elk in the wild is not diminished under ch. 68, SLA 1987. That

act does not alter the broad statutory definitions of "game" or "domestic mammals" in AS 16.05.940(8) and (17), respectively, which define the scope of the board's authorities under AS 16.05.255. Jan. 18, 1988 Op. Att'y Gen.

AS 16.05.255(b) does not presently authorize the Board of Game to enter into cooperative agreements. Mar. 14, 1988 Op. Att'y Gen.

The Board of Game is the proper entity to regulate the possession and propagation of game birds as pets. Apr. 2, 1987 Op. Att'y Gen.

For purposes of conservation, development, and utilization, the Board of Game has general authority to regulate seasons, areas, bag limits, and quotas for sport and subsistence hunting. Apr. 12, 1991 Op. Att'y Gen.

The board's general authority in AS 16.05.255 to regulate subsistence hunting as needed for conservation, development, and utilization of game, together with the statutory definition of subsistence hunting to include both taking and possession, authorizes the board to regulate post-taking uses. Apr. 12, 1991 Op. Att'y Gen.

The Board of Game has authority to adopt regulations that require the harvest of moose taken under subsistence permits to be used only for purposes of the Nuchalawoyya Potlatch so long as the

under this subsection after receipt of the commissioner's recommendations.

(b) The appropriate board shall determine whether a portion of a fish stock or game population identified under (a) of this section can be harvested consistent with sustained yield. If a portion of a stock or population can be harvested consistent with sustained yield, the board shall determine the amount of the harvestable portion that is reasonably necessary for subsistence uses and

(1) if the harvestable portion of the stock or population is sufficient to provide for all consumptive uses, the appropriate board

(A) shall adopt regulations that provide a reasonable opportunity for subsistence uses of those stocks or populations;

(B) shall adopt regulations that provide for other uses of those stocks or populations, subject to preferences among beneficial uses; and

(C) may adopt regulations to differentiate among uses;

(2) if the harvestable portion of the stock or population is sufficient to provide for subsistence uses and some, but not all, other consumptive uses, the appropriate board

(A) shall adopt regulations that provide a reasonable opportunity for subsistence uses of those stocks or populations;

(B) may adopt regulations that provide for other consumptive uses of those stocks or populations; and

(C) shall adopt regulations to differentiate among consumptive uses that provide for a preference for the subsistence uses, if regulations are adopted under (B) of this paragraph;

(3) if the harvestable portion of the stock or population is sufficient to provide for subsistence uses, but no other consumptive uses, the appropriate board shall

(A) determine the portion of the stocks or populations that can be harvested consistent with sustained yield; and

(B) adopt regulations that eliminate other consumptive uses in order to provide a reasonable opportunity for subsistence uses; and

(4) if the harvestable portion of the stock or population is not sufficient to provide a reasonable opportunity for subsistence uses, the appropriate board shall

(A) adopt regulations eliminating consumptive uses, other than subsistence uses;

(B) distinguish among subsistence users, through limitations based on

(i) the customary and direct dependence on the fish stock or game population by the subsistence user for human consumption as a mainstay of livelihood;

(ii) the proximity of the domicile of the subsistence user to the stock or population; and

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(iii) the ability of the subsistence user to obtain food if subsistence use is restricted or eliminated.

(c) The boards may not permit subsistence hunting or fishing in a nonsubsistence area. The boards, acting jointly, shall identify by regulation the boundaries of nonsubsistence areas. A nonsubsistence area is an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community. In determining whether dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of an area or community under this subsection, the boards shall jointly consider the relative importance of subsistence in the context of the totality of the following socio-economic characteristics of the area or community:

- (1) the social and economic structure;
- (2) the stability of the economy;
- (3) the extent and the kinds of employment for wages, including full-time, part-time, temporary, and seasonal employment;
- (4) the amount and distribution of cash income among those domiciled in the area or community;
- (5) the cost and availability of goods and services to those domiciled in the area or community;
- (6) the variety of fish and game species used by those domiciled in the area or community;
- (7) the seasonal cycle of economic activity;
- (8) the percentage of those domiciled in the area or community participating in hunting and fishing activities or using wild fish and game;
- (9) the harvest levels of fish and game by those domiciled in the area or community;
- (10) the cultural, social, and economic values associated with the taking and use of fish and game;
- (11) the geographic locations where those domiciled in the area or community hunt and fish;
- (12) the extent of sharing and exchange of fish and game by those domiciled in the area or community;
- (13) additional similar factors the boards establish by regulation to be relevant to their determinations under this subsection.

(d) Fish stocks and game populations, or portions of fish stocks and game populations not identified under (a) of this section may be taken only under nonsubsistence regulations.

(e) Takings and uses of fish and game authorized under this section are subject to regulations regarding open and closed areas, seasons, methods and means, marking and identification requirements, quotas, bag limits, harvest levels, and sex, age, and size limitations. Takings and uses of resources authorized under this section are subject to AS 16.05.831 and AS 16.30.

(f) For purposes of this section, "reasonable opportunity" means an opportunity, as determined by the appropriate board, that allows a subsistence user to participate in a subsistence hunt or fishery that provides a normally diligent participant with a reasonable expectation of success of taking of fish or game. (§ 6 ch 52 SLA 1986; am § 2 ch 1 SSSLA 1992)

Delayed amendment of section. — Section 3, ch. 1, SSSLA 1992, effective October 1, 1995, amends this section to read: "Sec. 16.05.258. Subsistence use and allocation of fish and game. (a) The Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks and populations, that are customarily and traditionally used for subsistence in each rural area identified by the boards.

"(b) The boards shall determine

"(1) what portion, if any, of the stocks and populations identified under (a) of this section can be harvested consistent with sustained yield; and

"(2) how much of the harvestable portion is needed to provide a reasonable opportunity to satisfy the subsistence uses of those stocks and populations.

"(c) The boards shall adopt subsistence fishing and subsistence hunting regulations for each stock and population for which a harvestable portion is determined to exist under (b)(1) of this section. If the harvestable portion is not sufficient to accommodate all consumptive uses of the stock or population, but is sufficient to accommodate subsistence uses of the stock or population, then nonwasteful subsistence uses shall be accorded a preference over other consumptive uses, and the regulations shall provide a reasonable opportunity to satisfy the subsistence uses. If the harvestable portion is sufficient to accommodate the subsistence uses of the stock or population, then the boards may provide for other consumptive uses of the remainder of the harvestable portion. If it is necessary to restrict subsistence fishing or subsistence hunting in order to assure sustained yield or continue subsistence uses, then the preference shall be limited, and the boards shall distinguish among subsistence users, by applying the following criteria:

"(1) customary and direct dependence on the fish stock or game population as the mainstay of livelihood;

"(2) local residency; and

"(3) availability of alternative resources.

"(d) The boards may adopt regulations consistent with this section that authorize taking for nonsubsistence uses a stock or population identified under (a) of this section.

"(e) Fish stocks and game populations, including bison, or portions of fish stocks and game populations, not identified under (a) of this section may be taken only under nonsubsistence regulations.

"(f) Taking authorized under this section are subject to reasonable regulation of seasons, catch or bag limits, and methods and means. Takings and uses of resources authorized under this section are subject to AS 16.05.831 and AS 16.30."

Cross references. — For legislative findings, purpose, and intent in connection with the 1992 amendment of this section, see § 1, ch. 1, SSSLA 1992 in the Temporary and Special Acts; for requirement that the boards expeditiously adopt regulations to implement this section, see §§ 6 and 7, ch. 1, SSSLA 1992 in the Temporary and Special Acts; for transitional provisions and for review by the governor and report to the legislature, see §§ 7 - 9, ch. 1, SSSLA 1992 in the Temporary and Special Acts.

Effect of amendments. — The 1992 amendment rewrote this section.

Effective date of 1992 amendment. — Under § 11, ch. 1, SSSLA 1992, the amendment to this section made by § 2, ch. 1, SSSLA 1992 takes effect "on the effective date of regulations first adopted under sec. 6 of this Act by the Board of Fisheries and the Board of Game."

Opinions of attorney general. — Under this section, for a given fish stock or game population, if there is a harvestable surplus and if the relevant board has found a customary and traditional use of that stock, then subsistence uses must be authorized. Jan. 1, 1991 Op. Att'y Gen.

Under this section, the Board of Fisheries and Game may not provide less than reasonable opportunity for subsistence uses unless nonsubsistence uses are closed. However, assuming that guideline is met, the board may go to a two tier

portunity" means an board, that allows a hunt or fishery that reasonable expecta- 2 SLA 1986; am § 2

is may adopt regulations his section that authorize subsistence uses a stock or fished under (a) of this sec-

as and game populations, or portions of fish stocks ations, not identified un- action may be taken only tence regulations. uthorized under this sec- to reasonable regulation ch or bag limits, and ans. Takings and uses of rized under this section AS 16.05.831 and AS

nces. — For legislative e, and intent in connec- 92 amendment of this sec- n. 1, SSSLA 1992 in the Special Acts; for require- ards expeditiously adopt mplement this section, see SSSLA 1992 in the Tem- al Acts; for transitional r review by the governor e legislature, see §§ 7 - 9, 92 in the Temporary and

endments. — The 1992 rote this section. e of 1992 amendment. ch. 1, SSSLA 1992, the his section made by § 2, 92 takes effect "on the ef- egulations first adopted his Act by the Board of e Board of Game"

ttorney general. — Un- for a given fish stock or if there is a harvestable the relevant board has ry and traditional use of subsistence uses must be 1, 1991 Op Att'y Gen- tion, the Board of Fisher- ay not provide less than rtunity for subsistence nsubsistence uses are assuming that guideline d may go to a two tier

analysis under the statute (which is necessary if less than reasonable opportunity can be provided) in two cases: (1) to assure sustained yield, or (2) to continue subsistence uses. The latter situation may be

presented when a population is being managed for overall growth, in order that eventually more opportunity can be provided. Jan. 1, 1991 Op Att'y Gen.

NOTES TO DECISIONS

Rural residency requirement unconstitutional. — The requirement contained in the 1986 subsistence statute (ch. 52, SLA 1986), that one must reside in a rural area in order to participate in subsistence hunting and fishing, violates Alaska Const., art. VI § 3, 15, and 17. *McDowell v. State*, 735 P.2d 1 (Alaska 1989).

Regulations adopted under former AS 16.05.257 had to be in accordance with the Administrative Procedure Act (AS 44.62). *State v. Tanana Valley Sportmen's Ass'n*, 583 P.2d 854 (Alaska 1978).

While former AS 16.05.257, which authorized the Board of Game to adopt regulations providing for subsistence hunting, did not specifically refer to the Administrative Procedure Act (AS 44.62), it appeared clear that it merely set forth an additional purpose for which regulations might be promulgated. *State v. Tanana Valley Sportmen's Ass'n*, 583 P.2d 854 (Alaska 1978).

"Sustained yield". — The term "sustained yield" in subsection (b) is potentially broad enough to include authority in the game board to restrict even subsistence hunting in order to rebuild a damaged game population. However, the board does not have absolute discretion in this area. There must be a balance of minimum adverse impact upon rural residents who depend upon subsistence use of resources and recognized scientific principles of game management. *Kwethluk IRA Council v. Alaska*, 740 F. Supp. 765 (D. Alaska 1990).

Issuance of permits based on verbal

instructions to agents held improper. — Nothing in the Administrative Procedure Act (AS 44.62) authorizes the Board of Game to impose requirements not contained in written regulations by means of oral instructions to agents. Such verbal additions to regulations involving requirements of substance are unauthorized and unenforceable. *State v. Tanana Valley Sportmen's Ass'n*, 583 P.2d 854 (Alaska 1978).

Reasonable basis for Board of Game's quota of caribou to be killed under former AS 16.05.257. — See *State v. Tanana Valley Sportmen's Ass'n*, 583 P.2d 854 (Alaska 1978).

Emergency caribou hunt allowed. — Native Alaskan villagers were granted injunctive relief permitting an emergency caribou hunt allowing the taking of 50 to 70 animals where the hunt was justified by economic conditions and would not adversely affect the herd. *Kwethluk IRA Council v. Alaska*, 740 F. Supp. 765 (D. Alaska 1990).

Regulations held invalid. — Board of game regulations establishing seasons and bag limits on the taking of moose and caribou were arbitrary and invalid, where the board did not follow or articulate its use of the statutory analytical process for adopting bag limits as to subsistence hunting, and the regulations imposed seasons not consistent with the board's findings as to established village customs and thereby unacceptably restricted the statutory preference for subsistence uses. *Bobby v. Alaska*, 718 F. Supp. 764 (D. Alaska 1989).

Sec. 16.05.259. No subsistence defense. In a prosecution for the taking of fish or game in violation of a statute or regulation, it is not a defense that the taking was done for subsistence uses. (§ 7 ch 52 SLA 1986)

Revisor's notes. — Formerly AS 16.05.261. Renumbered in 1987.

NOTES TO DECISIONS

Quoted in *State v. Semaken*, 648 P2d 114 (Alaska Ct. App. 1982).

Sec. 16.05.940. Definitions. In AS 16.05 — AS 16.40

(1) "aquatic plant" means any species of plant, excluding the rushes, sedges and true grasses, growing in a marine aquatic or intertidal habitat;

(2) "barter" means the exchange or trade of fish or game, or their parts, taken for subsistence uses

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature;

(3) "a board" means either the Board of Fisheries or the Board of Game;

(4) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish, but does not include processing workers on floating fish processing vessels who do not operate fishing gear or engage in activities related to navigation or operation of the vessel; in this paragraph "operate fishing gear" means to deploy or remove gear from state water, remove fish from gear during an open fishing season or period, or possess a gill net containing fish during an open fishing period;

(5) "commercial fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid subsistence permit in possession, if required by statute or regulation, is considered prima facie evidence of commercial fishing if commercial fishing gear as specified by regulation is involved in the taking, fishing for, or possession of fish, shellfish, or other fish resources;

(6) "commissioner" means the commissioner of fish and game unless specifically provided otherwise;

(7) "customary and traditional" means the noncommercial, long-term, and consistent taking of, use of, and reliance upon fish or game in a specific area and the use patterns of that fish or game that have been established over a reasonable period of time taking into consideration the availability of the fish or game;

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§ 16.05.940

FISH AND GAME

§ 16.05.940

(8) "customary trade" means the limited noncommercial exchange, for minimal amounts of cash, as restricted by the appropriate board, of fish or game resources; the terms of this paragraph do not restrict money sales of furs and furbearers.

(9) "department" means the Department of Fish and Game unless specifically provided otherwise;

(10) "domestic mammals" include musk oxen, bison, elk, and reindeer, if they are lawfully owned;

(11) "domicile" means the true and permanent home of a person from which the person has no present intention of moving and to which the person intends to return whenever the person is away; domicile may be proved by presenting evidence acceptable to the boards of fisheries and game;

(12) "fish" means any species of aquatic finfish, invertebrate, or amphibian, in any stage of its life cycle, found in or introduced into the state, and includes any part of such aquatic finfish, invertebrate, or amphibian;

(13) "fish derby" means a contest in which prizes are awarded for catching fish;

(14) "fishery" means a specific administrative area in which a specific fishery resource is taken with a specific type of gear; however, the Board of Fisheries may designate a fishery to include more than one specific administrative area, type of gear, or fishery resource; in this paragraph

(A) "gear" means the specific apparatus used in the harvest of a fishery resource; and

(B) "type of gear" means an identifiable classification of gear and may include

(i) classifications for which separate regulations are adopted by the Board of Fisheries or for which separate gear licenses were required by former AS 16.05.550 — 16.05.630; and

(ii) distinct subclassifications of gear such as "power" troll gear and "hand" troll gear or sport gear and guided sport gear;

(15) "fish or game farming" means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and "captivity" means having the fish or game under positive control, as in a pen, pond, or an area of land or water that is completely enclosed by a generally escape-proof barrier; in this paragraph, "fish" does not include shellfish, as defined in AS 16.40.199;

(16) "fish stock" means a species, subspecies, geographic grouping or other category of fish manageable as a unit;

(17) "fur dealing" means engaging in the business of buying, selling, or trading in animal skins, but does not include the sale of animal skins by a trapper or hunter who has legally taken the animal, or the

purchase of animal skins by a person, other than a fur dealer, for the person's own use;

(18) "game" means any species of bird, reptile, and mammal, including a feral domestic animal, found or introduced in the state, except domestic birds and mammals; and game may be classified by regulation as big game, small game, fur bearers or other categories considered essential for carrying out the intention and purposes of AS 16.05 — AS 16.40;

(19) "game population" means a group of game animals of a single species or subgroup manageable as a unit;

(20) "hunting" means the taking of game under AS 16.05 — AS 16.40 and the regulations adopted under those chapters;

(21) "nonresident" means a person who is not a resident of the state;

(22) "nonresident alien" means a person who is not a citizen of the United States and whose permanent place of abode is not in the United States;

(23) "operator" means the individual by law made responsible for the operation of the vessel;

(24) "personal use fishing" means the taking, fishing for, or possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal use and not for sale or barter, with gill or dip net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(25) "person with physical disabilities" means a person who presents to the department either written proof that the person receives at least 70 percent disability compensation from a government agency for a physical disability or an affidavit signed by a physician licensed to practice medicine in the state stating that the person is at least 70 percent physically disabled;

(26) "resident" means a person who for the preceding 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained a voting residence in the state; and in the case of a partnership, association, joint stock company, trust, or corporation, "resident" means one that has its main office or headquarters in the state; however, a member of the military service who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of this paragraph, and the dependent of a resident member of the military service, who has been living in the state for the preceding year is a resident for the purposes of this paragraph; and a person who is an alien but who for one year has maintained a permanent place of abode in the state is a resident for the purposes of this paragraph;

(27) "rural area" means a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for

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§ 16.05.940

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personal or family consumption is a principal characteristic of the economy of the community or area;

(28) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure under AS 16.05 — AS 16.40 by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

(29) "sport fishing" means the taking of or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries;

(30) "subsistence fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources by a resident domiciled in a rural area of the state for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(31) "subsistence hunting" means the taking of, hunting for, or possession of game by a resident domiciled in a rural area of the state for subsistence uses by means defined by the Board of Game;

(32) "subsistence uses" means the noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; in this paragraph, "family" means persons related by blood, marriage, or adoption, and a person living in the household on a permanent basis;

(33) "take" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

(34) "taxidermy" means tanning, mounting, processing, or other treatment or preparation of fish or game, or any part of fish or game, as a trophy, for monetary gain, including the receiving of the fish or game or parts of fish or game for such purposes;

(35) "trapping" means the taking of mammals declared by regulation to be fur bearers;

(36) "vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the state, but does not include aircraft. (1) 2 art I ch 95 SLA 1959; am (1) 1 — 4 ch 131 SLA 1960; am (1) 1 ch 21 SLA 1961; am (1) 1, 2 ch 102 SLA 1961; (1) 9 art III ch 94 SLA 1959; am (1) 23 ch 131 SLA 1960; am (1) 1 ch 160 SLA 1962; am (1) 13, 14 ch 31 SLA 1963; am (1) 2 ch 32 SLA 1968; am (1) 3 ch 73 SLA 1970; am (1) 1 ch 91 SLA 1970; am (1) 4 ch 110 SLA 1970; am (1) 1 ch 90 SLA 1972; am

§ 5 ch 82 SLA 1974; am §§ 26, 82 ch 127 SLA 1974; am §§ 18 — 20 ch 208 SLA 1975; am § 12 ch 105 SLA 1977; am §§ 14, 15 ch 151 SLA 1978; am § 1 ch 78 SLA 1979; am § 1 ch 24 SLA 1980; § 4 ch 74 SLA 1982; am § 24 ch 132 SLA 1984; am §§ 9 — 11 ch 52 SLA 1986; am § 5 ch 76 SLA 1986; am § 1 ch 114 SLA 1988; am § 9 ch 145 SLA 1988; am § 3 ch 6 SLA 1989; am § 15 ch 211 SLA 1990; am § 18 ch 30 SLA 1992; am § 2 ch 49 SLA 1992; am § 3 ch 90 SLA 1992; am § 4 ch 1 SSSLA 1992)

Reviser's notes. — Reorganized in 1983, 1986, 1989, and 1992 to alphabetize the defined terms and to maintain alphabetical order. Former paragraph (13) was renumbered as AS 16.05.662(b) in 1992.

Both § 2, ch 49, SLA 1992 and § 3, ch 90, SLA 1992 amended paragraph (14) of this section. Because the latter amendment took effect first and included the former amendment, paragraph (14) is set out as amended by § 3, ch 90, SLA 1992.

Effect of amendments. — The first 1988 amendment substituted all of the language at the end of paragraph (4) beginning with "commercial fisherman" includes" for "and the term "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish."

The second 1988 amendment, effective June 9, 1988, substituted "that is completely enclosed by a generally escape-proof barrier, in this paragraph, fish" does not include shellfish, as defined in AS 16.40.179" for "which is completely enclosed by a generally escape-proof barrier" in paragraph (14) (now (16)).

The 1989 amendment, effective June 11, 1989, added paragraph (24) (now (26)).

The 1990 amendment, effective January 1, 1991, inserted "the preceding" near the beginning of paragraph (25) (now (27)) and made a punctuation change near the end of that paragraph.

The 1992 amendment by § 18, ch 30, SLA 1992, effective May 16, 1992, inserted "etc." in paragraph (10).

The 1992 amendment by § 3, ch 90, SLA 1992, effective June 19, 1992, re-wrote paragraph (16).

The 1992 amendment by § 4, ch 1, SSSLA 1992 added paragraphs (7) and (8).

Delayed repeal of (7) and (8). — Sections 3 and 12, ch 1, SSSLA 1992 provide for the repeal of (7) and (8) effective October 1, 1993.

Conditional effective date of (7) and (8). — Section 17, ch 1 SSSLA 1992 makes the addition of (7) and (8) by § 4,

ch 1, SSSLA 1992 effective on the effective date of regulations first adopted under § 6, ch 1, SSSLA 1992 by the Board of Fisheries and the Board of Game.

Legislative history reports. — For report on ch 32, SLA 1968 (HCSCSSB 80 am), see 1968 House Journal, p. 169. For report on ch 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

For legislative letter of intent in connection with the amendment to (4) of this section by § 1, ch 114, SLA 1968 (CSSB 307 (Rec)), see 1968 Senate Journal 2027.

Opinions of attorney general. — The paragraph defining "resident" did not grant special resident privileges to military personnel: 1964 (Op. Atty Gen. No. 2).

Term "customary trade" as used in the definition of "subsistence use" allows for limited exchanges for cash other than for purely personal or family consumption: 1981 (Op. Atty Gen. No. 11).

Definition of "subsistence use" in terms of "customary and traditional uses of wild, renewable resources" reflects the equating of "subsistence use" with use by rural residents: 1981 (Op. Atty Gen. No. 11).

A domestic or nondomestic animal becomes feral when it returns to a wild state. In the case of a partially domesticated or captive wild animal such as a fox that escapes, this generally means when the animal is no longer under the control of its owner or the owner is not in direct pursuit. In the case of a domestic animal such as a cow or pig that escapes, it is "feral" when it is living as a wild creature, and this may take more or less time depending on the circumstances. In the case of a domestic animal trespassing upon public lands, it could be declared "feral" under statute or regulation July 30, 1987 (Op. Atty Gen.).

If factual information supported the proposition that it is "customary and traditional" to make handcraft articles from one other skins, and if one other are or have been taken customarily and tradi-



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

MEMO

TO: George Utermohle, Attorney
Legal Services
VIA FAX: 2029

FROM: Annette E. Kreitzer, Aide to
Senate Resources Committee

DATE: April 13, 1995

RE: Continuation of state subsistence law

Please draft a bill to extend the sunset date of the 1992 subsistence law.

WORK ORDER REQUEST FORM

W.O. [19] LS-1025

KEYWORDS: FISH/GAME, FISHERIES ASSIGNED: Utermohle

POSTAL SERVICE

REQUEST FOR: Resolution TAKEN BY: Utermohle

SUBJECT: Wild Salmon Postage Stamps

REQUESTED FOR: SEN LEMAN BY: Annette PHONE: 465-2095

DELIVER TO: Sen. Leman, Cap. 113

INSTRUCTIONS: Prepare a resolution relating to a postage stamp for wild Alaska salmon based on Work Order No. 9-LS0962\C.

OBTAIN	SPECIAL DRAFTING INSTRUCTIONS ATTACHED [] AUTHORIZED TO CONFER WITH _____ _____
	RETURN _____ _____ TO REQUESTOR APPROVED: <input checked="" type="checkbox"/> DIRECTOR, LEGAL SERVICES

REVIEWED _____ IN <u>04/03/95</u> DUE _____ TYPED: Draft _____ Date _____ Final _____ Date _____ PROOFED _____ DELIVERED _____	SPECIAL INSTRUCTIONS to TYPING/PROOFING _____ _____ Request for DRAFT
--	--

WORK ORDER REQUEST FORM

W.O. [19] LS-1082

KEYWORDS: FISH/GAME ASSIGNED: Utermohle

SUBSISTENCE

REQUEST FOR: New Bill TAKEN BY: Utermohle

SUBJECT: Extend Current Subsistence Law

REQUESTED FOR: SEN LEMAN BY: Annette Kreitzer PHONE: 465-4907

DELIVER TO: Sen. Leman, Attn: Annette, Cap. 113

INSTRUCTIONS: Prepare a bill that extends the current subsistence law. If possible draft the bill so that a 2/3 majority vote is not required.

OBTAIN	SPECIAL DRAFTING INSTRUCTIONS ATTACHED []
	AUTHORIZED TO CONFER WITH _____
	RETURN _____
	_____ TO REQUESTOR
	APPROVED: <input checked="" type="checkbox"/> DIRECTOR, LEGAL SERVICES

REVIEWED _____	SPECIAL INSTRUCTIONS to TYPING/PROOFING _____ _____
IN <u>04/13/95</u> DUE _____	
TYPED: Draft _____ Date _____	
Final _____ Date _____	
PROOFED _____ DELIVERED _____	Request for DRAFT

4-18-95

9-LS1082VA
Utermohle
4/13/95

George:

Please correct
sponsor

A. Krutz

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

~~BY SENATOR LEMAN~~

Senate Resource Committee

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to subsistence use of fish and game."

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

3 * Section 1. Sections 3, 5, and 8, ch. 1, SSSLA 1992, are repealed.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB 171

Revision Date: _____ Dept. Affected: Fish and Game
 Title: Extend current subsistence law BRU: Subsistence
 Component: Subsistence
 Sponsor: Senate Resources
 Requester: Senate Resources COMPONENT SERIAL NO. 483

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOT:L	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Geron Bruce Phone: 465-5143
 Division: Commissioner's Office Date: 4/28/95
 Approved by Commissioner: Frans Rue Date: 4/28/95
 Agency: Fish and Game

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SPONSOR STATEMENT

SB 171 "An Act relating to subsistence use of fish and game."

Under terms of the Act by which the state's 1992 subsistence law was enacted (Sec.3, CH.1, SSSLA 1992), the 1992 law will be repealed on October 1, 1995. It will then be replaced by its predecessor, the 1986 subsistence law. This "sunset" provision was premised on the expectation that the legislature would consider reinstating the 1992 law following a review by the Governor. Unfortunately, this review has not been completed.

Although there are many similarities between the 1986 and the 1992 versions of Alaska's subsistence law, there are some significant differences which favor the 1992 law.

First, the 1992 law incorporates the concept of "nonsubsistence areas". These are areas or communities where dependence on subsistence is not a principal characteristic of the economy, culture and way of life of the community or area, as determined by the Boards of Fisheries and Game based on several specific criteria. This allows the Boards to identify places such as the Anchorage bowl or parts of the Kenai Peninsula where the subsistence priority does not apply. Although this provision has been challenged in court and its operation temporarily stayed, the Alaska Supreme Court has not yet ruled, so it is entirely possible that this provision may still be viable.

A second major advantage of the 1992 law is its definition of "customary and traditional" and "customary trade". These definitions are lacking in the 1986 law and hence are a continuous focus of controversy and litigation. The definitions in the 1992 law recognize prior interpretations of the Boards and give them latitude to further refine those definitions. The definition of

"customary trade" and its legislative history clarify that trade is noncommercial and also requires the Boards to identify and provide for those trades.

Another advantage of maintaining the 1992 law is that all Board regulations will remain intact. If the law is allowed to sunset, the Board will be required to review all regulations for consistency with the 1986 subsistence law. This will be a time-consuming, expensive process that will disrupt the Boards' regulatory meetings and create public confusion. This disruption should not occur until the legislature decides that it prefers to return to the provisions of the 1986 law.

The 1992 law is also superior to the 1986 version because it provides clarification that the Boards are not required to quantify an exact harvestable surplus of fish or game -- a task usually biologically impossible. The Boards do, however, have to identify the portion of harvestable surplus that is reasonably necessary for subsistence use.

In sum, the clarifying definitions alone make the 1992 law an improvement over the 1986 law. In addition, the 1992 law's "nonsubsistence area" provision may well be upheld by the Alaska Supreme Court. Reverting to the 1986 law will be costly to the state and its citizens, both in terms of money and public confusion, and will serve no purpose.

SB 171
~~HB 312~~ should be passed to simply extend the state's 1992 subsistence law. This would retain the status quo until the Supreme Court rules on the validity of the "nonsubsistence areas" and a complete review of the 1992 law by the Governor's office has been completed.

SB

176

SB 176
Exempt Natural Gas
Facilities from Bond & Plans

Sectional Analysis

Section 1 of the bill amends AS 31.05.030 by adding a new subsection (i) granting authority to the Alaska Oil & Gas Conservation Commission (AOGCC) to determine whether there is a likelihood that an exploration well will encounter oil when requested by a permit applicant to do so. If the commission determines there is reasonable certainty that the activity will not encounter oil, the commission must so certify.

Section 2 of the bill amends AS 46.04.030(b) to conform to the new exemption provided in AS 46.04.050(c), added by Section 6 of the bill.

Section 3 of the bill adds a new subsection (s) to AS 46.04.030 requiring an operator of a facility exempted under AS 31.05.030(i) who encounters oil to notify the AOGCC and all other appropriate state agencies, and to develop an oil spill response plan before proceeding with further exploration activities.

Section 4 of the bill amends AS 46.04.040(b) to exempt exploration activities from the oil spill financial responsibility requirements if the activity has been exempted under AS 46.04.050(c) added by Section 6 of the bill, provided the activity does not encounter oil.

Section 5 of the bill amends AS 46.04.040 by adding a new subsection (n) requiring the operator of an activity exempt under AS 31.05.030(i) to comply with the financial responsibility requirements of AS 46.04.040(b) if the operator encounters oil.

Section 6 of the bill amends AS 46.04.050 by adding a new subsection (c) creating a general exemption for facilities certified under AS 31.05.030(i). The exemption applies to financial responsibility requirements and oil spill contingency plan responsibilities except as provided in Sections 3 and 5 of the bill.

Section 7 of the bill provides for an immediate effective date under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB 176

Revision Date: _____
 Title: An Act relating to regulation of certain
natural gas exploration. . .
 Sponsor: (S) Resources
 Requestor: Senator Lehman

Department Affected: Environmental
Conservation
 BRU: Spill Prevention & Response
 Component: Spill Prevention & Response
Director's Office
 COMPONENT SERIAL NO. 1392

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

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

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: *Larry Jones*
 Division: Director, Division of Administrative Services

Phone: 465-5010
 Date: 5/8/95

Approved by Commissioner: *[Signature]*
 Agency: Department of Environmental Conservation

Date: 5/8/95

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FISCAL NOTE

BILL NO. CSSB 176 (RES)

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to regulation of certain natural gas..."
 Sponsor: Resource Committee
 Requestor: _____

Department Affected: Administration
 BRU: Alaska Oil and Gas Conservation Commission
 Component: Alaska Oil and Gas Conservation Commission
 COMPONENT SERIAL NO. 2010

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE: (Thousands of Dollars)

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

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: David Johnston, Chair
 Division: Alaska Oil and Gas Conservation Commission

Phone: 279-1433
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 6/2/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSSB 176 (RES)

ANALYSIS: (continued)

Assumptions--None.

Program summary

- a) Position--Program will be implemented with existing staff.
- b) Other expenses--None.
- c) Funding--General Funds.

Computation: Not applicable.

Economic Impact: Bill should have a positive effect on Alaska's economy and energy security. More gas wells will be drilled by independent producers meaning additional employment and investment in Alaska. Bill should contribute to coalbed methane development of Alaska, with significant benefit to bush communities if local sources are found.

Impact on Local Government: Principle beneficiary of the bill is the Kenai Peninsula, Mat-Su Borough and local bush communities. Bill will contribute to local employment and tax base. Significant additional benefits could be realized if new production from coalbed methane is developed. Bush energy costs could be reduced significantly if local sources are found.



E. A. OPSTAD & ASSOCIATES

Geoscience • Engineering • Project Management

3500 Taiga Drive (99516)

P.O. Box 190754

Anchorage, Alaska 99519-0754

Telephone/Fax : (907) 345-6346

Annette Kreitzer, Aide
Senate Resource Committee
718 West 4th Avenue, Suite 540
Anchorage, Alaska 99501

October 14, 1995

SUBJECT: Senate Resource Committee Work Session - Follow-up

Dear Annette:

Thank you for inviting us to participate in the work sessions held under the auspices of the Senate Resource Committee this summer. Having considered the discussions which transpired during those sessions, I would like to reiterate what I heard as being some of the important points raised during the two sessions, and make a few short comments relative to each issue.

- ***Bonding reform is needed to lower the financial hurdles faced by smaller operators.*** I think that the participants generally concur with a point we made which noted that the major environmental threats brought by the oil and gas industry arise from oil transportation and refining systems, not from exploratory drilling activities, and certainly not from gas well drilling operations of any kind. Large bonding requirements for drilling operations generally are not only inconsistent with historical experience both in Alaska and worldwide, but act to significantly restrict the activity upon which much of Alaska's future vitality is dependent. During the coming session, the Legislature should move aggressively to enact bonding reform like that offered by SB 176 and implement other programs designed to assist smaller operators in the state. The legislature should not be swayed from this course by collateral issues raised by certain large companies who seem principally motivated by competitive matters.
- ***Access to state land should be significantly improved.*** Access to land is the life-blood of exploration and development! There appeared to be general agreement among the participants that the state's current leasing cycle is too long, which often causes exploration opportunities to be missed when company funds are available, but the mineral estate is not. Alaska's small companies, who typically can not afford to wait 3 to 5 years simply to acquire a lease, favor the establishment of an "over-the-counter" sales program for short term leases on exempt acreage and the implementation of frequent "area wide" leasing programs modeled after those conducted in the Gulf of Mexico.

- **Reform and streamline the permitting process.** Private industry and future state revenues are being suffocated by the current permitting process, even when no permits are required as pointed to by the experience of Lapp Resources. Some ideas for reform included the use of a single "master" document that would essentially integrate the requirements of all state agencies and the establishment of "accepted practice" guidelines that would eliminate repeated review of "cookie cutter" or routine operations.

- **Establish "Royalty Holidays" for certain domestic projects or low grade accumulations.** A royalty holiday would eliminate the state's royalty on all, or a portion, of production generated by projects which fell into one of several "special classes." Examples of these special classes might include oil and gas produced solely for domestic consumption in bush communities, that produced for private domestic use (individual homesteaders and other remote parcel owners), the first 500 BOPD per well produced by heavy oil projects, or any first-of-kind pilot projects primarily intended as technical feasibility investigations.

- **Attempt to address the numerous gripes and difficulties inherent to the current state-industry relationship.** Some of the issues I heard raised either directly or on sidebar were:
 1. The oil and gas industry is often afraid to challenge regulators or an agency for fear of becoming a reprisal target.
 2. State oil and gas regulations are designed around "Big" Oil, "Big" Government and "Big" Dollars. Small operators have been given little or no consideration.
 3. Agencies spend too much time requesting information or clarifications by formal letter, rather than operating by telephone, fax, or e-mail like everyone else.
 4. The "service fees" charged by some agencies have been greatly disproportional to the work done, particularly on carbon copy wells which are virtual duplicates wells submitted previously. *[This system is ripe for abuse and should be eliminated -EAO]*
 5. The industry is concerned about certain interagency squabbles and the apparent effort by some department heads to politicize necessarily independent boards and commissions such as the AOGCC. In particular, the AOGCC should remain a completely independent body, untainted by bureaucratic and political ambitions, and immune from undo operator influence.

There is one final matter that I would like to follow-up on. During the last work session I expressed my concern over the difficulty in accessing the state's oil and gas related data (lease information, well locations, field production, and so forth), in an era when nearly everyone from the Library of Congress, to the local pizza shop are online. As most people recognize geologic, engineering, and land data are the key technical ingredients required to initiate exploration and development projects. While the State of Alaska collects enormous volumes of oil and gas data, this data can not be readily accessed by private parties in any sort of expeditious fashion. This situation forces each operator to maintain a separate data base, while making prospect research for independents who can not afford to maintain their own data base extremely tedious and expensive.

Attached is a recent article from the ODESSA AMERICAN that describes the Texas Railroad Commission's efforts to deal with this issue after recognizing that it was in the best interest of the state to reduce exploration and production costs by improving access to the state's oil and gas data. It seems reasonable to assume that the same would hold true for Alaska!

Naturally, cost was brought up as one reason why Alaska can't get its data online rapidly and if one considers the cost of revamping the state's fairly arcane systems in each individual agency or department, cost certainly would be an issue. However, the cost of simply downloading and maintaining most of the state's existing digital oil & gas data on a single interactive Internet page or similar DBMS server where it could be easily accessed by anyone with a PC, is relatively trivial!

I'm certain that I have not mentioned a number of other issues which were raised over the summer, but these are the items that were highlighted in my notes and they certainly represent enough work to keep us all busy. Once again, I want to thank you and Senator Leman for the opportunity to participate in the Senate Resource Committee's summer work sessions and I trust that we will be able to address many of the issues raised over the summer during the coming legislative session.

Respectfully yours,



Erik A. Opstad

CC Paul Craig, President, Trading Bay Energy
Dave Lappi, President, Lapp Resources Inc

Commission researching accessibility

Odessa American

The Texas Railroad Commission is launching a project with the Gas Research Institute to evaluate the feasibility of making millions of documents more easily accessible to the Texas oil and natural gas industry through advanced technology, according to a release from the commission.

Since 1919, the commission has collected about 122 million records in its role as the primary regulator of the state's energy industry, said Commissioner Charles R. Matthews. The problem is most of the information exists on microfilm, making timely and cost-effective access difficult.

Of the records on file at the commission, about 28.3 million are paper documents, 90.8 million are on microfilm and 2.6 million are on micromedia.

"While microfilm is a good method of storing information, optical disk and compact disk technology have many advantages," Matthews said. "The improvements in hardware technology and imaging software in recent years make computerized imaging of our records a cost-effective option worth pursuing."

The project is designed to establish the feasibility of reducing exploration and production costs by providing producers with rapid and cost-effective access to valuable decision-making information contained in the commission's extensive records. GRI, a Chicago-based, not-for-profit research and development organization for the natural gas industry, is funding the study and has retained the Radian Corp. of Austin to conduct it. A report is expected in January.

The new information management system will eventually be integrated into the commission's existing personal computer networks, including the local area networks and wide area networks at the commission's nine district field offices.

The commission is scheduled to begin its LAN/WAN project this year, with completion expected in mid-1996. When completed, the commission's field offices will be linked to the commission's central office computer systems in Austin.

* The Gas Research Institute may be reached via the Internet!





Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

SPONSOR STATEMENT

SB 176

In 1992, the Alaska Legislature passed amendments exempting gas production facilities and gas terminal facilities from the requirements to post a \$1 million bond and develop an approved oil spill contingency plan. Gas exploration activities, however, are not exempt from these requirements. This acts as a deterrent for small operators who may want to develop potential gas fields in areas where there is small likelihood of striking oil. The bonding requirement is particularly daunting, since a \$1 million bond could cost a small operator more than \$70,000 to post. This is cost prohibitive in many cases.

Senate Bill 176 addresses this problem by making provisions for an exemption under controlled circumstances. The bill provides that the Alaska Oil & Gas Conservation Commission (AOGCC) must determine that there is a reasonable certainty the exploration activity will not penetrate a formation containing oil before the exemption is allowed.

Senate Bill 176 requires an operator drilling under the new exemption to fulfill the financial responsibility requirements if, during the course of his exploration, the operator encounters oil. Senate Bill 176 also requires an operator to develop and adopt an oil spill response plan if the operator encounters oil. Under provisions of the bill, the operator must notify the AOGCC and all other appropriate state agencies if such a circumstance arises. The operator may continue to operate under the response plan pending its approval.

This bill will help remove an economic barrier to development of Alaska's natural gas resources, while continuing to protect the environment. It is good public policy. I urge its speedy passage.

**BRIEFING PAPER ON THE NEED TO AMEND AS 46.04.050 TO
INCLUDE GAS EXPLORATION WELLS
IN THE EXISTING GAS FACILITIES EXEMPTION
FROM OIL SPILL CONTINGENCY PLANNING AND
FINANCIAL RESPONSIBILITY REQUIREMENTS**

Under existing state law, oil and gas-related facilities, including oil and gas exploration facilities, are generally subject to the requirement to prepare an oil spill contingency plan (AS 46.04.030) and prove financial responsibility in the event of an oil spill by posting a bond or other means (AS 46.04.040). This requirement applies to all exploratory wells, without any consideration of whether the well is expected to encounter oil or gas.

An exemption for natural gas production and terminal facilities from oil spill contingency planning and financial responsibility requirements is set forth in AS 46.04.050(b). The exemption was adopted, with no opposition, because an accidental discharge of natural gas does not pose any environmental risk. Natural gas, unlike oil, dissipates harmlessly into the atmosphere at normal temperatures and pressures.

Some exploration wells are true wildcat wells and are drilled with no definitive knowledge of whether the well will encounter oil or gas. Because such a well may encounter oil, the imposition of the contingency planning and financial responsibility requirements is appropriate. Other exploration wells, which are essentially offset or delineation wells and not true wildcat exploration wells, may be targeted specifically at natural gas deposits or formations in areas with no known oil deposits, with the intention of extending the boundaries of existing fields or developing new fields in areas that previously have experienced exploration and/or development drilling providing information on potential deposits.

To date, the Alaska Dept. of Environmental Conservation has interpreted the exemption in AS 46.04.050(b) in a manner that excludes gas extension, offset or delineation wells, even though such wells have no reasonable likelihood of encountering oil and instead ultimately are intended to produce only gas. Exploratory wells that are targeted solely at natural gas, and have no reasonable likelihood of encountering oil, should not be subject to the expensive, burdensome contingency planning and financial responsibility requirements. Stratigraphic wells or other drilling not intended to drill to a producing formation already are exempted from the contingency plan and financial responsibility requirements under the definition of exploration facility in AS 46.04.900(8).

An exemption for gas exploratory facilities in AS 46.04.050 is necessary to allow smaller, independent oil and gas operators to economically explore and develop smaller properties in existing natural gas provinces such as those in the Cook Inlet Basin. Imposing the very expensive and burdensome contingency planning and financial responsibility requirements on wells that have no reasonable expectation of encountering oil stifles exploration for gas by smaller companies without providing any additional environmental protection.

Without an exemption for gas exploratory wells, the application of AS 46.04.030 and 46.04.040 results in absurd situations. Under the contingency plan requirement to plan for the "realistic maximum oil discharge," for example, the estimate of such a discharge would have to be zero, because there would be no reasonable expectation, based on well logs or other geologic analyses, of encountering oil when drilling such a well. In the case of the financial responsibility requirements, the "per incident" language in AS 46.04.040(b) essentially means that the financial responsibility requirement has no effect when applied to its proposed well, because no oil-related incident could occur from the drilling of the well. These absurdities illustrate why the exemption for gas facilities in AS 46.04.050(b) should include gas exploratory facilities.

To the extent that any question exists as to the likelihood of encountering oil, the State of Alaska Oil and Gas Conservation Commission has the technical expertise to answer the question as part of its drilling permit review process. All oil or gas wells (whether classified as exploratory, development, service or stratigraphic) require a drilling permit from the Alaska Oil and Gas Conservation Commission, and include the requirement to post a \$100,000 bond with the Commission for any liabilities resulting from drilling activities.

Z-ENERGY INC.

April 9, 1995

Senator Loren Leman
State Capital
Juneau, AK 99801

Dear Senator Leman:

Thank you for discussing the Independent Oil & Gas Industry with me during our Juneau - Anchorage flight on Friday. As I promised, please find attached a proposed amendment that would solve the bonding problem for gas exploration wells. A briefing paper is attached for your review.

The proposed amendments to 46.04.050 would resolve a major barrier preventing Dave Lappi of Lapp Resources Inc. and myself from drilling natural gas wells. As I mentioned, there are many other hurdles that should either be removed or streamlined. However, Rome was not built in a day and the problems facing the Independents will not be resolved in one session. If we can resolve the issue of oil spill contingency bonding for natural gas wells this session, we will have accomplished a lot.

I do not think there will be any environmental opposition to this amendment. Natural gas represents an environmentally friendly fuel. If this amendment is passed, Independents could approach small villages regarding use of locally produced coalbed methane to generate electricity and fuel. It is conceivable that some vehicles in the villages could be converted to natural gas. The outcome would be less hazard of spillage associated with the transport of fuel oil, diesel, and gasoline to bush communities. Also, the villages would enjoy improved air quality by burning natural gas rather than the heavier hydrocarbons.

Exemption of natural gas production and transportation facilities from the oil spill contingency bonding requirements was easily adopted by the Alaska Legislature when it was discovered that these facilities had been inappropriately subsumed under oil spill legislation. The proposed amendment is a logical extension of the exemption of natural gas facilities.

If this amendment is not passed, Independents will be left in the untenable position of buying a one million dollar oil spill contingency bond and hiring a consultant to write an oil spill contingency plan to meet DEC requirements. Writing such a plan becomes an exercise in absurdity. For example, under the section specifying expected quantities of oil to be encountered, the logical answer would be "none." Writing an oil spill contingency plan costs about \$100,000. Buying the bond is expected to cost about \$70,000 to \$100,000 -- assuming a vendor can be found. This type of bonding is not required for land based operations anywhere else in the United States. There is no protocol for how

Z-ENERGY INC.

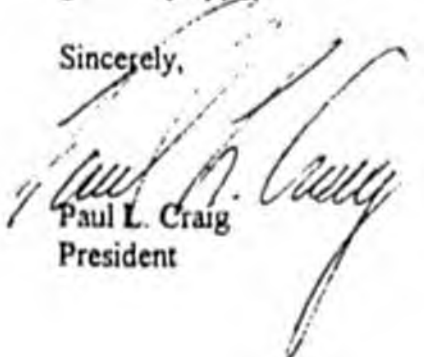
Page 2

to handle this type of bonding within the insurance industry. Hence, simply finding a vendor of this type of insurance product becomes a challenging task.

If this amendment is enacted, the AOGCC could be called upon to identify whether a given well has any chance of encountering liquid hydrocarbons. If not, then the Independent Exploration & Production Company could sensibly develop the prospect without fulfilling absurd oil spill contingency planning and bonding requirements. If the oil spill contingency requirements remain in place relative to natural gas wells, the Independents would make better use of their precious capital by drilling in the Sacramento Valley where an entire well can be drilled for the combined cost of writing an oil spill contingency plan and purchasing an oil spill contingency bond.

Thank you for your interest in the plight of the Independents in Alaska. I hope we are able to resolve this issue during the current session. Between sessions, we could discuss other pressing issues that are inhibiting the growth of the Independent industry in Alaska. Again, it was a pleasure speaking with you during the flight. Your concern for the needs of Alaskans attempting to build the Independent Exploration & Production industry is genuinely appreciated.

Sincerely,



Paul L. Craig
President

Enclosure: Proposed Amendment
Briefing Paper

cc: Dave Lappi
Lapp Resources, Inc.



E. A. OPSTAD & ASSOCIATES

Geoscience • Engineering • Project Management
3500 Taiga Drive (99516)
P.O. Box 190754
Anchorage, Alaska 99519-0754

Telephone/Fax : (907) 345-6346

Senator Loren Leman
State Capitol
Juneau, Alaska 99801

April 9, 1995

Subject: Amendment to AS 46.04.050

APR 13 1995

Dear Senator Leman:

This letter lends my support to efforts being made by Z-Energy and Lapp Resources to amend AS 46.04.050 by eliminating current bonding and oil spill contingency plan requirements for gas wells in the State of Alaska.

As currently enacted AS 46.04.050 requires a One Million dollar bond and *exhaustive* contingency planning to cover *crude oil* spill response procedures...for gas wells? Never mind that gas pipelines, gas processing facilities, gas export terminals, and all other related portions of the State's natural gas system have been appropriately exempted from these same bonding and spill contingency planning requirements! Not only is this regulatory framework illogical, it provides absolutely no incremental protection for the environment. When was the last time a crew was mobilized to environmentally remediate crude oil contamination resulting from a gas leak or incident? What current regulations do very well is erect tremendous financial hurdles for villages and small energy companies who wish to develop local natural gas resources for the benefit of their citizenry and owners.

I suspect that the current regulatory situation is a consequence of legislative oversight, or of being generally uninformed relative to the risks associated with natural gas resource exploration and development operations, rather than purposeful intent, but in any event, the current regulatory implementation has effectively stymied the emergence of an independent gas industry in Alaska.

As a licensed Professional Geologist speaking with 18 years of experience in the State I can tell you that Alaska imposes the most restrictive environment for gas operators among all 50 states. This burden is so great that most independent operators don't even bother to consider Alaska as a potential operations area. When enormous bonding and contingency planning requirements are coupled with the State's restrictive land leasing policy (no over-the-counter sales of exempt acreage) and high operating costs, most oil and gas companies simply elect to invest their time and money elsewhere. By way of an example, my company and its partners drilled 6 wells during 1994 in California with a total budget of approximately \$3.5MM (including pipeline and facility construction). This activity (funded largely with Alaska based money) created nearly 50 temporary California jobs associated with exploration drilling activities, and roughly a half a dozen new long term production jobs. The benefits of this work and associated tax revenues are being realized by California, not Alaska, because as Alaskans we find the regulatory environment in our own state too hostile for a small scale operations.

With its inherently high operating costs and remote location, Alaska may never become a major play for independent operators, but by removing some of the barriers that now exist we may at least unlock the door. Alaska needs a viable independent oil and gas industry to undertake projects which are too small to interest the large multinational companies that currently dominate Alaska's oil and gas scene. For example:

- Would any of the North Slope Operators consider a 2 or 3 well coal gas development program for heating and cooking fuel in one or more of the villages?
- Would any of the Cook Inlet Operators have developed the small West McAurther River Unit discovered by Stewart Petroleum?
- Have the major companies either dropped leases on "uneconomic" fields or farm-out the acreage, so that they could be developed immediately by independent operators?
- Have any of the majors helped private property owners in the Cook Inlet realize the oil and gas potential of their property (excluding the big CIRI - UTP deal)?

The answer to all of these questions, with a very few exceptions, is of course, NO! Only with the emergence of a viable independent oil and gas industry will small Alaskan communities and private individuals be afforded the opportunity to develop their own energy resources. Only with the emergence of a viable independent oil and gas industry will the many small oil and gas pools throughout the State get developed in a timely fashion, and only a viable independent oil and gas industry can support Alaska when the majors move on to greener international pastures.

The road to developing a healthy independent oil and gas industry in Alaska will be long and arduous, because we have constructed so much of the State's regulatory framework around "big oil" situations. However, we can begin to correct this situation simply by eliminating the oil spill bonding and contingency planning requirements for exploration and development gas wells. This minor adjustment to current statute will open the door to energy independence for many villages and individuals throughout the State, and perhaps, lay the first course of block in the foundation of a new Alaskan industry.

Thank you for taking an interest in this issue, and please feel free to call on me for any support or assistance you might need relative to oil and gas matters.

Respectfully yours,



Erik A. Opstad, BS, MS, PG
President

EAO tm

**SENATE COMMITTEE REI RT
First Committee of Referral**

DATE: 5/6/95

FURTHER:

Date of 5-Day Notice: 24-Hour
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 5-7-95

Resources Committee considered

SB 176

Regulation of certain natural gas exploration facilities; Oil and Gas Conservation Commission; efd.

and recommends:

- be replaced with CS SB 176 (RES)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by Committee
- further referral to the Committee

- Senate Bill:
 - same title
 - new title
- House Bill:
 - same title
 - technical title
 - new: SCR#

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

AOBCC - Adm. N		<input checked="" type="checkbox"/>	
DEC		<input checked="" type="checkbox"/>	

for hearing

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*Include fiscal notes accompanying Governor's bill

Z-ENERGY INC.

May 4, 1995

Representative Norm Rokeberg
Chairman, Oil & Gas Committee
Alaska State Legislature
Juneau, AK 99801

VIA FAX: 907-465-2040

Re: CS HB 334

Dear Representative Rokeberg:

As President of a nascent oil and gas exploration and production (E&P) company with 27 square miles of hydrocarbon properties in the Cook Inlet Basin held by the company and its principals, I am writing this letter in support of CS HB 334 entitled "Exempt Natural Gas Facilities from Oil Spill Bond and Plans"

I will provide oral testimony at the May 5, 1995 hearing before the Oil & Gas Committee and the Resources Committee. Briefly, CS HB 334 is critical to the survival of small Independent E&P companies. Also, CS HB 334 is a rational response to the illogical problem of requiring oil spill bonding and contingency planning in the context of a natural gas well. Because deep stratigraphic wells are not expected to encounter oil, they are already exempt from oil spill contingency planning and bonding. The Alaska Oil and Gas Conservation Commission has the necessary technical expertise and geophysical knowledge to draw reasonable conclusions about the probability of encountering oil in a well being drilled on a previously delineated geologic structure. In this context, if the AOGCC concludes that it is improbable for a proposed well to encounter oil, imposing oil spill contingency bonding and planning upon the operators creates a useless economic burden that does nothing to protect the environment.

From an economic perspective, passage of CS HB 334 will allow Independents to develop and produce reserves that may not be evaluated as economically viable by the Majors. Similarly, development of coalbed methane for Bush villages would become more economically feasible with passage of CS HB 334. This resource could provide village residents with an inexpensive and clean fuel for heat and electricity. Furthermore, the environmental risks associated with transporting fuel oil in the bush could be reduced through development of this local environmentally friendly resource.

There are many reasons why there are 8000 Independents doing business in the Lower-48 and only a couple of Independents (Stewart Petroleum & CIRI) producing in Alaska. One of these reasons is the onerous oil spill bonding requirement on natural gas exploration projects. Passage of CS HB 334 could help remove a major hurdle standing

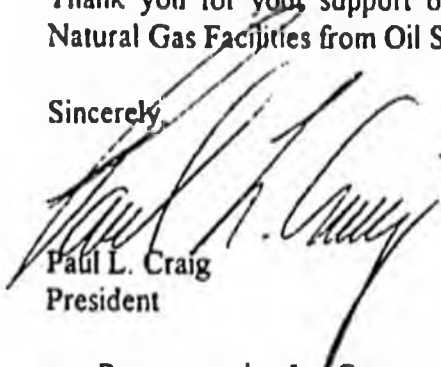
2900 BONIFACE PARKWAY, #610
ANCHORAGE, ALASKA 99504-3132

TELEPHONE: 907-563-5686
FAX: 907-562-7489

in the way of development of Alaskan owned and operated Independent oil and gas exploration and production companies.

Thank you for your support of Committee Substitute for HB 334 entitled, "Exempt Natural Gas Facilities from Oil Spill Bond and Plans."

Sincerely,

A handwritten signature in black ink, appearing to read "Paul L. Craig", is written over the word "Sincerely,".

Paul L. Craig
President

cc: Representative Joe Green
Representative Bill Williams

LAPP Resources Inc.

4900 Sportsman Drive
Anchorage, Alaska U.S.A.
99502-4189

Telephone +1 (907) 248-7188

Facsimile +1 (907) 248-7278

May 4, 1995

Representative N. Rokeberg
State Capitol
Juneau, AK 99811

Attn: House Oil and Gas Committee
Re: Committee Substitute HB 334

Dear Representative Rokeberg:

I look forward to the joint Resources and Oil and Gas hearing tomorrow morning at 8:00am. I believe that it is extremely important to pass this bill for the following reasons.

Alaska's bonding requirements are extremely onerous for all but major companies. This is one reason that independents do not operate in Alaska, and small developments serving local Alaskan markets are not feasible.

Alaska has multiple layers of protection in current statutes and regulations:

\$1,000,000 bond for exploration wells with the DEC,

\$10,000 to \$500,000 lease bond with the DNR, and

\$100,000 single well or \$200,000 statewide bond with the AOGCC.

This is potentially \$1.7 million in bonds for even the smallest exploration well. If the well encounters oil, and production ensues, even larger bonds are required by DEC.

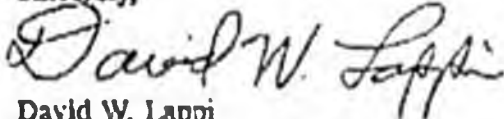
Alaska also has the 470 Fund, a \$50 million emergency kitty for use during oil or other hazardous spill emergencies. This kitty was funded and is maintained by a two cent per barrel tax on oil production.

In light of continuing State budget shortfalls, the State can no longer afford to be an obstacle to private development.

LAPP Resources is currently pursuing small natural gas projects which could supply some areas of rural Alaska with locally-produced gas as a lower cost, more environmentally-friendly fuel than the currently imported diesel fuel. The wells could be drilled for under \$100,000 in some areas. If bonding costs are not reduced, these projects will not be economic, as the bonds will cost more than the drilling. With reduced bonding, independent private gas exploration companies, Native Regional Corporations, or in some cases Village Corporations or rural utilities may be able to participate in the development of their own local energy resources.

Although incentives for the industry are nice, dismantling the disincentives to business will be more effective in the long run and will maintain the State's royalty stream for a longer period.

Sincerely,



David W. Lappi
President

cc Representative Joe Green - Resources Committee Co-Chair
Representative Bill Williams - Resources Committee Co-Chair

**AOGA POSITION
ON CSSB 176/CSHB 334,
RELATING TO REGULATION OF CERTAIN NATURAL GAS
EXPLORATION FACILITIES FOR PURPOSES OF PREPARATION OF
DISCHARGE PREVENTION AND CONTINGENCY PLANS AND
COMPLIANCE WITH FINANCIAL RESPONSIBILITY REQUIREMENTS**

The Alaska Oil and Gas Association (AOGA) is a trade association whose 19 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska.

The Association has reviewed CSSB 176 and its companion CSHB 334 and is concerned about the legislation for the following reasons:

- AOGA believes that state law requiring preparation and implementation of discharge prevention and contingency plans and that the law requiring compliance with financial responsibility requirements for oil and natural gas exploration facilities should be consistent.
- The Association believes it is in the state's best interest to require that consistent, equitable and adequate financial responsibility requirements be met by all persons/companies conducting oil and gas exploration operations in Alaska. The Association is aware of the state's interest to provide opportunities for smaller, independent oil and gas operators, however, the Association believes it is not in the state's best interest to assume financial liability for any operator.

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907)272-1481 Fax: (907)276-8114
L. A. (Ardie) Gray, Public Affairs Manager

May 10, 1995

The Honorable Loren Leman, Chairman
Resources Committee
Alaska State Senate
Capitol Building
Juneau, Alaska

Dear Senator Leman:

The Alaska Oil and Gas Association (AOGA) is a trade association whose member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska.

For your immediate reference, we are sending, via facsimile, the Association's position statement on CSSB 176/CSHB 334, relating to regulation of certain natural gas exploration facilities for purposes of preparation of discharge prevention and contingency plans and compliance with financial responsibility requirements.

If you have any questions or would like additional information regarding AOGA's position on this legislation, please call me at 272-1481.

Sincerely,

A handwritten signature in cursive script, reading "Leigh (Ardie) Gray". The signature is written in black ink and is positioned above the printed name and title.

LEIGH (ARDIE) GRAY
Public Affairs Manager

Attachment

Memorandum State of Alaska
Oil and Gas Conservation Commission

To: Jack Phelps
 c/o Rep. Rokeburg

Date: May 4, 1995

Telephone: 279-1433
Fax number: 276-7542

From: David W. Johnston
 Chairman

Subject: HB 334

The Commission proposes the following changes in HB334.

In Section 1, we propose the following language:

"(i) When requested by a person proposing to explore for gas by means of drilling a well, the commission may determine the likelihood that the drilling activity will penetrate a formation containing oil. If the Commission concludes with reasonable certainty that the drilling activity will not penetrate a formation containing oil, the commission shall so certify as to the natural gas exploration facility used in that drilling. For purposes of this subsection, the term natural gas exploration facility has the same meaning as in AS 46.04.900." [Note--Need a definition for natural gas exploration facility in AS 46.04.900 (i.e., natural gas exploration facility shall mean an exploration facility used only for natural gas exploration.)]

In Section 3, we recommend deleting the phrase after AS 31.05.030(i). The section should read:

"If the operator of a natural gas exploration facility, for which the Alaska Oil and Gas Conservation Commission has certified under AS 31.05.030(i), encounters oil, the operator shall...."

We then recommend changing item (1) to read:

"notify the Alaska Oil and Gas Conservation Commission and all other appropriate state agencies."

In Section 5, we recommend the following language:

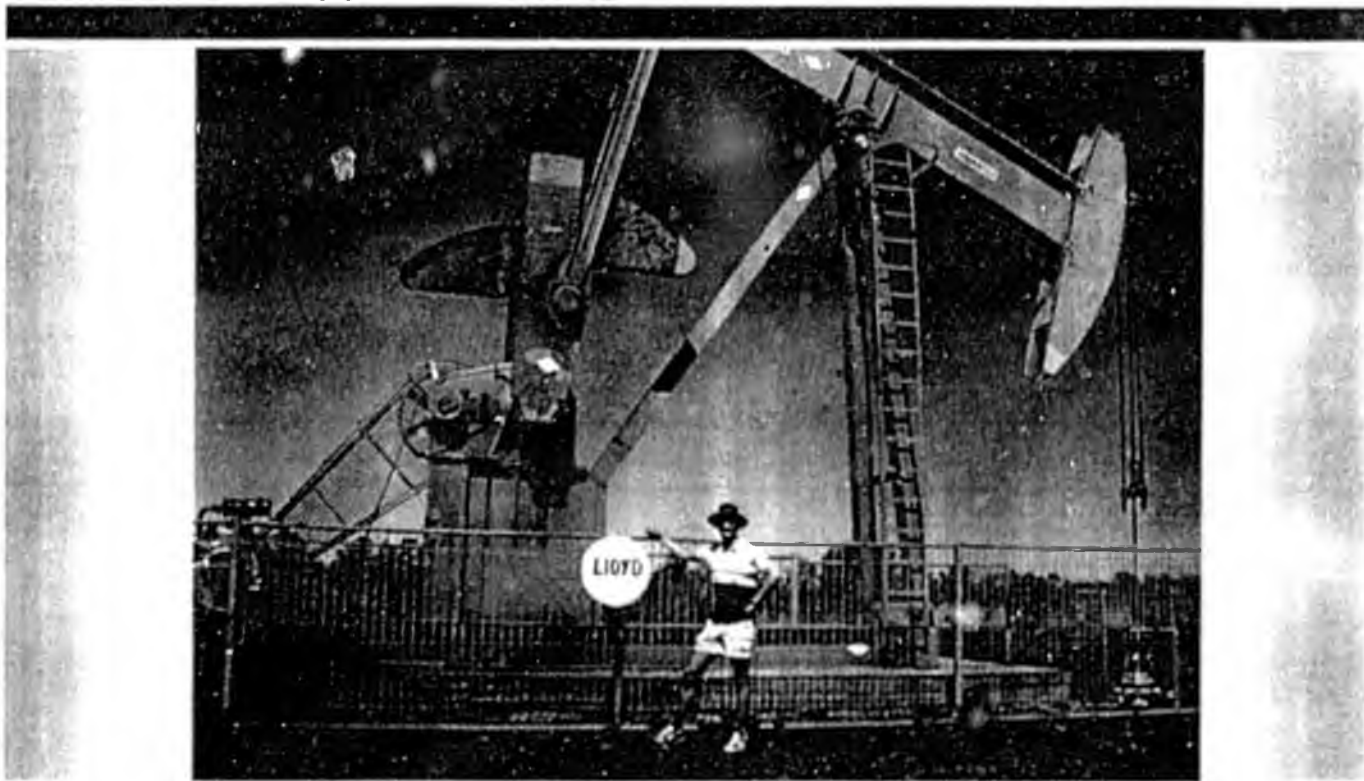
"If the operator of a natural gas exploration facility for which the Alaska Oil and Gas Conservation Commission certifies under AS 31.05.030(i) encounters oil, the operator must cease all activity until the bonding requirements of (b) of this section are met."

The commission lacks expertise for determining the appropriate bonding amounts to assure surface clean up spilled oil. The commission would likely need to add staff to accomplish this task.

Finally, in section 6, we recommend ending the subsection after AS 31.05.030(i).

Cutting Costs with Coalbed Gas

With half of the country's known coal, Alaska owns immense wealth in coalbed methane reserves. The resource could dramatically cut heating costs in rural Alaska. The only catch: Can anyone bring this natural gas to market? Here's one independent Alaska operator who wants to try, hoping he can pave the way for other small producers to work in the state.



Dave Lappi, president of Lapp Resources, stands in front of the Lloyd Oil Production Facility, a company in western Australia where he served as founding director.

By Ray Tyson

After four years of hard work, Dave Lappi is on the brink of becoming Alaska's first commercial producer of coalbed methane, an abundant but unproven natural gas resource that could be a practical solution to the state's rural energy needs.

"Alaska contains about half of the known U.S. coal reserves, so we have a huge potential here for producing gas from coal," notes Lappi, presi-

dent of Lapp Resources, one of Alaska's few independent exploration and production companies.

Lappi was planning to drill three coalbed methane wells this summer to serve residents of Houston, a small community located in the Matanuska-Susitna Valley about 60 miles north of Anchorage.

And if the Houston project is successful, Lappi says he intends to launch similar ventures in more remote Alaska communities, many of which depend on expensive imported diesel

for their energy requirements.

"The Houston project is really designed to work the bugs out of the technology, to see if we can actually produce at commercial rates," Lappi adds.

After the Alaska Oil & Gas Conservation Commission (AOGCC) granted Lapp Resources the go ahead for the project in July, AOGCC chairman Dave Johnston complimented Lappi on his efforts, noting the obvious lack of independents in Alaska's high cost drilling environment.

"Not only could this be a viable source of energy for small communities," Johnston says, "but it also could attract independents here to carve out a niche in the Alaska (gas) market. If it (Houston) proves up, other people like Lappi might gain some confidence. He's a very serious businessman and has lots of experience."

Experience Counts

Lappi also is no newcomer to Alaska or the Mat Su Valley. He was six years old when he and his family moved here in 1959. His father was project superintendent at the Eklutna Power Plant. Lappi attended elementary school in Palmer and junior and senior high schools in Anchorage before moving on to the University of Alaska Fairbanks, where he earned a bachelor's degree in geology.

From 1974 to 1977, Lappi worked on the trans-Alaska oil pipeline as a field engineer and geologist for R&M Consultants. He then headed to Sidney, Australia, where he completed a year of post graduate studies in mineral exploration at MacQuarie University, returning to Alaska to work in that field on behalf of Native corporations and mineral exploration companies.

Lappi headed back to Australia in 1981 to begin a 10-year career in oil and gas exploration and production. He initially worked for Australian independents and later formed his own company, Lapp Resource Consultants Propriety Ltd., generating new play concepts and forming joint ventures with Australian companies.

One of Lappi's Australian ventures involved resource evaluation for a coalbed methane project in Queensland, an experience which would lead him back to Alaska in 1991 to form a new company, Lapp Resources. For the past four years, Lappi's main goal has been to produce commercial gas from coal.

"Since Alaska has half of the nation's coal reserves, it made sense," Lappi explains.

Digging Deep

The existence of coalbed methane has been known for years. In fact, early miners considered it a nuisance and a safety hazard

as the volatile substance began to leak from exposed coal seams into mine shafts.

It wasn't until the 1980s that industry actually began to experiment with producing methane from coal. Most of today's U.S. commercial coalbed production comes from the Black Warrior Basin of Alabama and the San Juan Basin of New Mexico and Colorado.

Geologists believe Alaska's coal reserves could hold a staggering 1,000 trillion cubic feet of methane

gas, 30 times the volume contained in Prudhoe Bay, North America's largest oil and gas reservoir. And for years, the state has wanted to begin testing Alaska's potential for coalbed methane production.

The Alaska Department of Natural Resources (DNR) got its chance to dull last summer, using a U.S. Geological Survey (USGS) rig to sink a test well to the 1,215-foot level just off Church Road, north of Wasilla.

The state's results were impressive,

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COALBED GAS

indicating gas contents at 1,240 feet of 245 cubic feet of gas per ton of coal. The upper end of commercial coal gas contents in the Lower 48 is 250 cubic feet of gas per ton.

DNR's core sample results, along with limited geological data from oil wells drilled in the Houston vicinity during the 1950s and 1980s, led Lappi to choose Houston for his first coalbed methane project, on a 2,700-acre state oil and gas lease he acquired from Unocal and Marathon last spring.

Lappi planned to begin drilling in August, pending resolution of bonding issues and other details. He was to drill all three wells on 40-acre spacing to the 2,100-foot level, using a relatively inexpensive coiled tubing rig.

Cook Inlet produces about 200 billion cubic feet of natural gas a year from conventional sandstone reservoirs. The gas is transported to the region's more populated areas via pipeline, stopping just three miles short of Houston, located just off the well-traveled Parks High-

way. Lappi believes it's an ideal location for a first project.

Hot on Houston

"Houston's got a lot of things going for it," Lappi says. "It's on the road, it's on the railroad, and it's near a pipeline. There are about a thousand people who live there. There's a market for this gas."

Lappi is hoping for at least 200,000 cubic feet of gas a day from each of his coalbed methane wells, the minimum requirement for commercial production. At that rate, each well would meet the winter heating needs for 200 homes. Lappi says he's investing about \$200,000 per well, a cost he eventually wants to reduce to under \$100,000 per well.

He's also hoping that any commercial potential at Houston would entice Enstar Natural Gas Co. to extend its common carrier pipeline to Houston. Lappi also says he has a five-year contract with Unocal to provide a minimum of 1 million cubic feet of gas per day.

"Provided we can prove this

approach to energy production is going to work in Houston, we're going to be able to export that same technology to areas out in rural Alaska that have potential," Lappi says.

There are numerous candidates for coalbed methane production in Alaska's vast Interior region, although most of the basins have not been explored adequately. However, Lappi believes a good target could be the Yukon Flats Basin, where a USGS drilling rig testing for pollen deposits last summer encountered so much gas in a well that the crew had to abandon the project.

"I think the Yukon Flats is going to have higher ranked coals at deeper depths," Lappi says. "Fort Yukon is good because it has 700 to 800 people living there and is sort of a hub for villages in the area. And there are other villages up and down the Yukon River that are near coal."

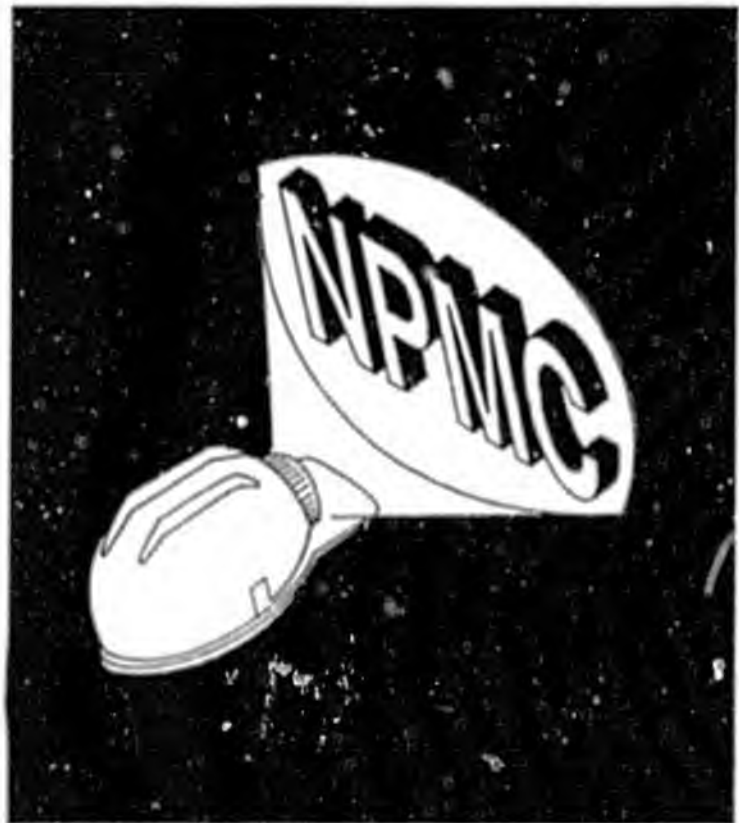
Independent Opportunity

While working on the details for his coalbed methane project, Lappi also has been active on the political

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front, working on removing government regulatory barriers that tend to discourage small independents from operating in Alaska.

In his own case, Lappi adds, "It's unfortunate in this state that it takes so long to get a project to this stage. It's taken us from 1991 to 1995 to get the leases and project to this stage."

He points out that expensive bonding and insurance requirements for drilling, the long and complicated permitting process, and the difficulty in acquiring oil and gas permits are major problems for the small independent producers in Alaska. In the Lower 48, he adds, the same things can be accomplished in a matter of weeks at a fraction of the cost.

"It's a long, slow process," Lappi says. "The rules didn't get the way they are overnight. And it's not going to be an overnight project to get them changed into something Alaskans can live with."

But, as Lappi points out, there should be numerous opportunities for independents down the road, if Alaska's oil and gas laws can be altered. For example, he notes, the small producer could make a living off of fields no longer considered to be profitable by the major companies.

Lappi also says there are a lot of Alaskans who still own the mineral rights on federal homesteads they acquired prior to 1958.

"So far, most Alaskans have not been involved in the industry except as employees or contractors to other companies," he observes. "I think the more Alaskans we actually can get involved as owners and operators of projects, the better off we will be as a state."

As for Lappi, he will have to test flow his Houston wells before determining whether his first-called methane project is a go. However, after years of research, he appears confident.

"The perception, when talking to people in the Lower 48, is that Alaska is the land of multimillion dollar wells," Lappi says. "But I think this will open a few eyes—maybe even in the Lower 48—that Alaska may not necessarily be such a high cost place to operate."

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