

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10389 HOUSE RESOURCES

HB

368

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Feb 28, 2002

House Resources Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Ak 99801

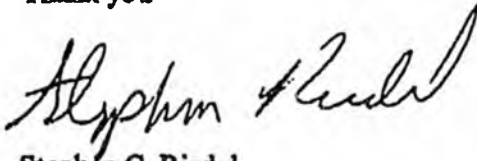
Sent Via Facsimile to 907-465-3472

RE: HB 368

Dear Members,

I would like to write in support of HB 368. Hatchery Debt Restructuring is a very important issue for PWS. Reducing the interest paid on the hatchery loans will directly result in more fish going to all users in PWS. In these difficult times this could be the difference between families making it or going under. I believe it is only fair to provide the same relief for the communities and families that depend on hatcheries that the state has already provided for boat loans and permit loans.

Thank you



Stephen C. Riedel
P.O. box 1005
Cordova, Ak 99574

POSITION OF THE
ALASKA OIL AND GAS ASSOCIATION
ON CSSB 343 (RES)
March, 2002

The Alaska Oil and Gas Association (AOGA) is a private, nonprofit trade association whose 19 member companies account for the majority of oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska. In fact, all companies operating in Cook Inlet and on the North Slope, crude oil pipeline companies and all three in-state refiners are members of AOGA, and all are required to have in place approved Oil Discharge Prevention and Contingency Plans, or C Plans.

Clearly, we are heavily vested in ensuring that the State of Alaska has in place appropriate and reliable laws and regulations governing this program.

As described in CSSB343, on February 1, 2002, the Alaska Supreme Court ruled that two provisions (18 AAC 75.455(k)(1) and (2)) governing Best Available Technology (BAT) determinations were contrary to the Court's interpretation of the intent of the Legislature in enacting AS46.04.030. The Court did not, however, take issue with any other component of the BAT-related regulations or statutes.

The regulations adopted by the Department of Environmental Conservation (DEC) in 1997 followed an extensive, year-long, facilitated stakeholder process involving industry, utilities, local governments, and citizens and public interest groups. This deliberative process identified a three-tier process for determining BAT, which the Department adopted into regulation in April, 1997. Since that time, over 100 C Plans have been approved utilizing this three-tiered approach, ensuring continuous improvement of spill prevention and response technologies in Alaska.

AOGA's members participated in that stakeholder process, supporting the regulations ultimately adopted. We stand by our commitment in support of those regulations, including the requirement for the holding of a conference on best available technology at five-year intervals.

The Supreme Court decision has placed everyone—from AOGA's members and others in the regulated community—to DEC who administers the program, in a tenuous position. Companies seeking new plan approvals, and those going through the renewal process on existing plans—all of which incorporate BAT—are faced with the prospect of unnecessary delays and uncertainties. The Department will be forced instead to refocus its resources away from the immediate process of working with Plan holders to ensure appropriate provisions are in place, to going through another rulemaking process which, at the end of the day, lacking specific Legislative language, could once again be called into question.

While the Supreme Court decision emphasized the limited scope of its ruling and acknowledged that the Legislature had vested ADEC with broad discretion to define BAT, the Court was unable to point to specific Legislative intent which justified the approach DEC had taken in its regulations. This lack of specificity is the heart of this legislation.

In our view, CSSB 343 provides the specificity the Court searched for in considering this matter. With the very limited amendment to AS46.04.030(e), the Legislature makes it clear that the regulatory approach taken by DEC—after extensive stakeholder deliberation—meets the Legislature's expectations when it vested this authority to the DEC.

We would like to emphasize one additional point. On any single legislative proposal there is always the potential that there will be differing views among those affected on what is appropriate and what is desired. We wish to make it absolutely clear that the *only* objective sought by AOGA and its members at this time is Legislative affirmation of the rules prior to the Court decision.

CSSB343 does not, in any way, diminish the Department's authorities in the determination of Best Available Technology, nor does it reduce requirements which Plan holders must meet. CSSB343 provides ADEC with the flexibility and ownership of administration of BAT, and provides the ability to recognize BAT with respect to the diverse set of environmental and operational conditions that exist throughout the State. Further, it affirms the validity of C Plans which have been approved under the regulations and effectively removes the obstacles facing pending Plan approvals.

To summarize, immediate action by the Legislature through CSSB343 is critical to continued C plan administration within the State of Alaska. CSSB343 clearly responds to the uncertainty voiced by the Supreme Court by specifying the Legislature's intent with regard to best available technology requirements in C Plans. We respectfully encourage adoption of CSSB343.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 368(FSH)
(H) Publish Date: 2/27/02

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title: Fishery Enhancement Loans BRU: Investments (122)
Component: Investments

Sponsor: Representative Stevens
Requester: House Fisheries Component No. 383

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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						
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CHANGE IN REVENUES (21615)	(1,714.9)	(1,632.7)	(1,543.0)	(1,443.8)	(1,334.3)	(1,213.2)
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The reduction in revenues to the loan fund was based on an average portfolio interest rate of 9%, compared to a current rate of 6% that would be available under a refinancing program as provided for in HB 368. The impact also assumes that all loan payments would be made as scheduled. If loan payments are reduced because of payoffs or for other reasons the impact to the fund would be reduced.

Prepared by: Greg Winegar, Director
Division: Investments
Approved by: Deborah B. Sedwick, Commissioner
Agency: Department of Community & Economic Development

Phone 465-2510
Date/Time 2/7/02 4:47 PM
Date 2/7/2002



ALASKA STATE LEGISLATURE:
REPRESENTATIVE JOHN HARRIS
STATE CAPITOL 513, JUNEAU, ALASKA 99801-1182 (907) 465-4859

Sponsor Statement
HB 368

“An act authorizing the commissioner of community and economic development to refinance and extend the term of a fishery enhancement loan.”

HB 368 authorizes the Commissioner of the Department of Community and Economic Development to refinance loans made by the Fisheries Enhancement Revolving Loan Fund. It also gives the Commissioner the ability to extend the term of the loan when justified.

The construction and operational funding provided by the Fisheries Enhancement Revolving Loan program have helped to create an extremely successful statewide salmon rehabilitation program. The hatchery system was established in 1974 to address concerns over the depletion of Alaska's wild salmon stocks created by over fishing during the 1960's and 1970's. Now, approximately 40% of the entire salmon harvest in Alaska is enhanced fish. The nearly one billion dollars of salmon created by these state financed private nonprofit hatcheries, have been invaluable to the economy of the many coastal communities so dependent on salmon for their survival, as well as to urban Alaskans working within the industry.

A simple, low cost measure for maintaining a strong enhancement industry, HB 368 allows hatcheries to refinance their debt at a lower interest rate. A majority of the loans made under this program carry the maximum allowable interest rate of 9.5%. It makes good business sense and is good public policy to allow these borrowers to take advantage of current lower interest rates. Financially sound hatcheries are better able to continue producing fish for the industry, and smaller loan payments make it easier for them to pay back their obligations to the State.

The last Legislative Audit of private nonprofit hatcheries, published in 1997, recommended that the Division of Investments in the Department of Community and Economic Development seek the authority to restructure hatchery loans. This legislation does just that. The Department is sufficiently staffed to accommodate the few applications necessary to refinance these loans. There is no forgiveness of principal or interest allowed under this legislation, and all payments are made directly to the loan fund-no general fund monies are impacted.

House Bill 368 recognizes the public trust nature of these non-profit entities. This legislation protects the State's financial interest by guaranteeing sustained production of salmon for the commercial and sports fishing industries, and assuring continued payments of outstanding debts to the state.

Cordova District Fishermen United

Celebrating 65 Years of Service to Commercial Fishermen in Cordova, Alaska
P.O. Box 939 Cordova, Alaska 99574 / phone (907) 424-3447 / fax (907) 424-3430 /
e-mail cdfu@otialaska.net

February 22, 2002

Representative John Harris
Alaska State Legislature
State Capitol (MS 3101)
Juneau, AK 99801-1182

RE: HB 368 - An Act to Refinance Fishery Enhancement Loans

John
Dear ~~Representative~~ Harris,

Cordova District Fishermen United represents the fishing fleets of Area E—Prince William Sound and the Copper River. CDFU fully supports HB 368, legislation to provide for hatchery debt restructuring.

The communities of Prince William Sound have benefited economically and socially from the hatchery production of the Valdez Fisheries Development Association and Prince William Sound Aquaculture Corporation. Both have provided important economic development opportunities for both sport and commercial fisheries in our region, as well as a valuable resource for subsistence and personal use harvesters. We are supportive of legislation which provides them the ability to take advantage of existing low interest rates—an opportunity enjoyed by most businesses and homeowners—especially given that present low ex-vessel values for salmon create the need to take a higher percentage of production as cost recovery in order to make loan payments. This legislation will allow a greater percentage of production to be available to subsistence, personal use, sport and commercial common property harvesters, as well as providing for a modicum of financial stability during this volatile time in the seafood industry.

Given that Alaska's salmon enhancement programs are non-profit and provide a valuable resource for the common good, we encourage your support for legislation that provides parity with the commercial fisheries' revolving loan fund (which was

amended in 1993 to allow refinancing). Enhancement programs have provided direct dollars into the economies of many coastal Alaska communities, and require this statutory change in order to continue to provide the benefits described.

Thank you for your careful consideration of this important legislation.

Sincerely,



Sue Aspekund
Executive Director

**ALASKA DIVISION OF INVESTMENTS
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT**

Fisheries Enhancement Revolving Loan Fund

Historical Summary

(Dollars in Thousands)

AS 16.10.500-.560; enacted in 1976

3 AAC 81.010 - .900

Purpose: Loans are available for planning, construction, and operation of fish hatchery facilities, including pre-construction activities necessary to obtain a permit, construction activities to build the hatchery facility, and the costs to operate the facility.

Eligibility: Loans may be made to qualified regional associations or private, nonprofit corporations who have obtained a private, nonprofit hatchery permit from the Alaska Department of Fish and Game (ADF&G). Loans may also be made for planning and pre-construction purposes prior to receipt of a hatchery permit from ADF&G.

Terms:

Maximum loan amount:	\$10 Million
Maximum loan term:	30 years
Interest rate:	Fixed rate at prime +1%, not to exceed 9.5%

No repayment of the principal is required for an initial period of six to ten years; no interest on the principal accrues during that period.

Statistics as of June 30, 2000

Total appropriations to RLF:	84,660.3	Last appropriation from the General Fund: FY94	2,068.2
Total appropriations from RLF:	-5,215.6		
Net of appropriations	79,444.7	Last transfer from the Commercial Fishing RLF: FY95	9,934.9
Total number of loans made:	266		
Total dollar amount of loans made:	113,684.3	Amount of payments received on all loans (fund only)*:	35,370.6
Number of accounts outstanding:	275		
Principal amount outstanding:	105,889.2	*Total dollar amount of fund and AIDEA payments received on all loans:	36,051.6



UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 110
Juneau, Alaska 99801-1172
(907) 586-2820
(907) 463-2545 Fax
E-Mail: ufa@ufa-fish.org
www.ufa-fish.org

February 7, 2002

Representative John Harris
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Re: HB 368/Refinancing of Fishery Enhancement Loans

Dear Representative Harris,

United Fishermen of Alaska supports passage of this bill to allow hatcheries to refinance their state loans at current interest rates. Thanks for being the sponsor.

Allowing DCED to refinance these hatchery loans (from the old rate of 9.5% to approximately 6%) makes good business sense, as it allows hatcheries to decrease their operating costs, which in turn allows fishermen to catch more fish in the common property harvest. Hatcheries enhanced fish account for 40% of Alaska's commercial salmon harvest, and also benefit sport and personal use fisheries throughout the state. Allowing the hatcheries to reduce interest rates, just as other businesses are doing during these financially volatile times, will not jeopardize the health of the fund, and will still allow for additional loans to be made as needed for future requests.

The twenty-nine member groups of UFA would appreciate your support in passing this bill.

If you have any questions about our position or if you need additional information, please feel free to contact me.

Sincerely,

Thomas M. Gemmell
Executive Director

MEMBER ORGANIZATIONS

Alaska Longline Fishermen's Association • Alaska Trollers Association • At-sea Processors Association • Bristol Bay Reserve
Chignik Regional Aquaculture Association • Concerned Area "M" Fishermen • Cook Inlet Aquaculture Association
Copper River Salmon Producers Association • Cordova District Fishermen United • Douglas Island Pink and Chum
Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association • Kodiak Seiners Association • North Pacific Fisheries Association
Northern Southeast Regional Aquaculture Association • Ok. Harbor Fisherman's Association • Petersburg Vessel Owners Association
Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association • Seafood Producers Cooperative
Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Cook Inlet Drift Association • United Salmon Association • United Southeast Alaska Gillnetters



**CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY**

OFFICE OF THE MAYOR

Telephone: (907) 586-5240; Facsimile: (907) 586-5385

Sally_Smith@ci.juneau.ak.us

February 22, 2002

The Honorable John Harris
Alaska State Representative
Alaska State Capitol
Juneau, AK 99801-1182

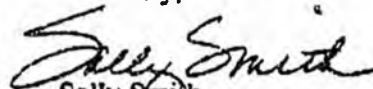
Dear Representative Harris:

The City and Borough of Juneau supports HB 368 and appreciates that you have introduced it. With passage, your bill will strengthen an important economic and educational segment of our community-- that of our fish hatchery and salmon enhancement programs.

Not only do these programs benefit commercial and sport fishing, they also benefit tourism and education. The Ladd Macaulay Visitor's Center, the home of DIPAC, annually hosts 125,000 guests who come to learn about an important part of Alaska's economy. Research partnerships with various agencies and the University of Alaska's School of Fisheries attracts grant monies while providing educational opportunities. DIPAC also provides facilities and staff for educational opportunities in Juneau's public and private school system by hosting field trips to the Macaulay Hatchery and by providing advisors for high school science projects.

Improving the financial stability of the hatcheries across the state by taking advantage of today's low interest environment is good for business and good for the communities who benefit from these facilities.

Sincerely,



Sally Smith
Mayor

cc: Kate Tesar



prince william sound
**ECONOMIC
DEVELOPMENT
COUNCIL**

February 8, 2002

Rep. John Harris
State Capitol
Juneau, AK 99686

Dear Rep. Harris:

John

On behalf of Prince William Sound Economic Development District, I would like to strongly encourage your support of House Bill 368. It is of vital importance for the economic stability of the fishing industry in our region.

Thank you for your support in this matter.

Sincerely,

Sue Cogswell
Executive Director



THE CITY OF WHITTIER

Gateway to the Western Prince William Sound

P. O. Box 608 • Whittier, Alaska 99693 • (907) 472-2327 • Fax (907) 472-2404

February 7, 2002

Representative John Harris
State Capital
Juneau, Alaska 99801-1182

RE: HB 368-Refinancing of hatchery loans

Dear Representative Harris:

The City of Whittier would like to voice its support for HB 368, your legislation that will allow hatcheries to refinance their state loans.

Residents of Whittier have been benefiting from the salmon produced by the state hatchery system for many years. Since 1992, the Prince William Sound Aquaculture Corporation (PWSAC) has released 100,000 coho smolts annually near our community for the sportfishing enjoyment of the locals, as well as for our neighbors from Anchorage and other landlocked communities who travel to Whittier for boating and fishing opportunities.

Thank you for your support of the fishing community in Alaska by introduction of this legislation. Please let me know if the City of Whittier can help in any way with its passage.

Sincerely,

A handwritten signature in cursive script that reads "Ben Butler".

Ben Butler, Mayor
City of Whittier

**VALDEZ FISHERIES
DEVELOPMENT ASSOCIATION INC.**

P.O. Box 125
Valdez, Alaska 99608
PHONE 835-4874 FAX 835-4831



The Honorable John Harris
House of Representatives
State Capital Building
MS 3100
Juneau, Alaska 99801

Dear Representative Harris,

On behalf of Valdez Fisheries Development Association, I would like to thank you for your sponsorship of HB 368 "The Refinancing of Fishery Enhancement Loans". This bill is long overdue and will go along way to helping the non-profit hatcheries in the state. In addition to helping the hatcheries, this bill will benefit the commercial fisherman as well. As I am sure that you are aware, the hatcheries must take fish from the common property fishery in order to meet our financial obligations each year and that means less fish for the commercial fisherman. While VFDA had a very successful year in 2001, Prince William Sound Aquaculture Corporation's return of Pink salmon was considerably less than predicted and consequently the Corporation had to take the majority of the returning adult Pink salmon for their cost recovery and brood stock. The commercial fisherman was left out and did not receive an equitable share of the harvest. The financial obligations that the hatcheries have each year include a substantial loan payment to the State of Alaska, Division of Investments. Presently these loans are at 9.5% interest and are financed for a 25-year period with no opportunity to refinance the loans should a lower interest rates materialize.

Your bill will allow the refinancing at a lower interest rate and for a longer period of time, which will be a direct benefit to the hatcheries but also to the commercial fisherman who will now be able to take a larger share of the harvest because the hatcheries will require less fish to meet their financial obligations.

Once again, thank you for your efforts and please contact VFDA at (907) 835-4874 if you need any help with this bill or additional information.

Respectfully

David C. Cobb

**DEDICATED TO THE UTILIZATION, CONSERVATION,
AND REHABILITATION OF ALASKA'S FISHERY RESOURCE
WITHIN THE 200 MILE LIMIT**

CITY OF CORDOVA



February 4, 2002

Representative John Harris
State Capitol
Juneau, AK 99801-1182

RE: HB 368/Refinancing of hatchery loans

Dear Representative Harris:

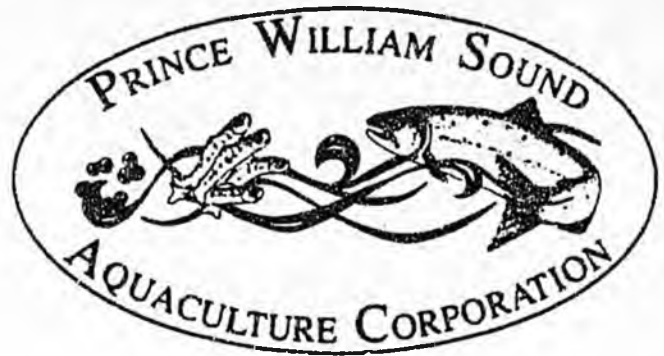
The City of Cordova would like to thank you for your support of the Alaskan fishing industry by the introduction of HB 368. As you know, Cordova is a community built around fishing, and we see HB 368 as a logical financial solution that will help strengthen the hatchery segment of our industry.

This legislation would allow our regional aquaculture association, the Prince William Sound Aquaculture Corporation (PWSAC), to refinance their current loans, lower their debt burden and decrease payment size. PWSAC is a major economic engine in our community of 2500 Alaskans. In 2000, Cordova resident permit holders harvested over \$8 million in hatchery produced salmon, which added an estimated economic output in our city of over \$9.8 million. Seventy people from our area work for the corporation, from office staff to remote site biologists, and they have a local annual payroll of more than \$2.6 million.

HB 368 will have a very positive impact on a large segment of our community, as well as on the other areas of the state that depend, as we do, on hatchery produced salmon for their livelihood. The best of luck with this legislation, and please let me know if the City of Cordova can assist you in any way.

Sincerely,

Mayor Margy Johnson
City of Cordova



February 11, 2002

Rep. John Harris
State Capitol
Juneau, AK 99801-1182

RE: HB 368- Hatchery Debt Restructuring for Alaska's Nonprofit Hatcheries

Dear Rep. Harris:

The Board of Directors of the Prince William Sound Aquaculture Corporation (PWSAC) fully supports the enactment of HB 368, and conveys our genuine appreciation for your part in sponsoring this legislation.

The passage of HB 368 would benefit eleven private nonprofit hatcheries over a broad area of coastal communities. PWSAC was one of the first private nonprofit hatcheries to begin production after the enactment of the hatchery system in 1974, and has been among the leaders in this field.

PWSAC is one of the five "regional" private nonprofit hatcheries. This means that although it produces salmon for all user groups, the regional hatcheries are also supported financially by the commercial fishermen of our region (Area E) who voted in 1985 to voluntarily contribute 2% of their ex-vessel catch value to support PWSAC's operational costs.


Our fisheries enhancement program benefits all the communities of Prince William Sound, and processing interests in Kenai, Cook Inlet and Kodiak as well. Our interior hatchery near Paxson, on the Gulkana River, brings sockeye salmon into an area heavily utilized by subsistence and personal use fisheries. Though the bulk of PWSAC's production benefits the commercial fisheries, a growing number of sport fishing interests come in from all over our state to fish salmon in Prince William Sound.

The Department of Community and Economic Development oversees the Fisheries Enhancement Revolving Loan fund from which PWSAC carries a number of long-term loans, mostly at the 9.5% rates, dating from the early 1980's. If HB 368 is adopted, it will allow PWSAC, and the other ten private nonprofit hatcheries, to refinance their loans at today's lower rates. This would bring our loan obligations into the current financing realm and more on a par with other Alaska businesses that are able to finance at rates in the 6% range.

For PWSAC, this would mean the "benefit" derived from lower interest rates would incur to all our constituents. Of course, the primary benefit would be to the commercial fisheries and processors, but by availing more enhanced salmon to the fleet to catch, benefits would impact the state's general funds and our economy in many positive ways.

Thank you once again for your steadfast support in sponsoring HB 368. Its passage would lower interest "income" to the Fisheries Enhancement Revolving Loan Fund, but it's widespread benefits to the communities and Alaska's people would return more to the state overall.

Sincerely,


Dave Reggioni
General Manager

PRINCE WILLIAM SOUND AQUACULTURE CORPORATION
Corporate Office • P. O. Box 1110, Cordova, AK 99574
Office: 907/424-7511 • Fax: 907/424-7514
Website: www.ctcak.net/~pwsac • Email: pwsac@ctcak.net

**COOK INLET
AQUACULTURE ASSOCIATION**

40610 KALIPORSKY BEACH ROAD
KENAI, AK 99011
(907) 868-5781
FAX: (907) 262-6428
EMAIL: ctaa@ptla.net
February 20, 2002

The Honorable John Harris
State Capitol
Juneau, AK 99801-1182

Re: House Bill 368 - Refinance and Extend the Term of a Fishery Enhancement Loan

Dear Representative Harris:

The Cook Inlet Aquaculture Association (CIAA) supports passage of House Bill 368, which allows the State's Aquaculture Associations to refinance and extend the terms of fishery enhancement loans.

CIAA is a private nonprofit corporation whose purpose is salmon rehabilitation and enhancement in the Cook Inlet region. The Association operates Trail Lakes Hatchery and Tutka Bay Lagoon Hatchery, both State-owned facilities that provide fish to all users of the Cook Inlet salmon resource. Since CIAA began operating Trail Lakes and Tutka Bay Lagoon hatcheries, the Association has provided over 680,000,000 pink, 63,000,000 sockeye and 3,800,000 coho salmon fry and smolts for numerous rehabilitation and enhancement efforts from Big Lake to Homer to Seward.

CIAA currently has five fishery enhancement loans. The interest rate on each of these loans is the maximum permissible rate of 9.5%. Refinancing our operational loans, as other businesses are capable of doing, will allow the Association to take advantage of lower interest rates, reduce our debt service and provide more fish for all users of Cook Inlet's salmon resource.

As the price of salmon continues to decline and natural salmon returns continue to be lower than historical averages, the effect of decreasing revenues challenges the Association's mission of "maximizing the value of self-perpetuating salmon stocks in Cook Inlet" for all user groups at a time when the Association should provide the greatest assistance to those that rely on this resource.

Thank you for your help.

Sincerely,

Gary Fandrei, Executive Director
FAXed 2/20/02, original to follow

SALMON ENHANCEMENT TODAY MEANS BETTER SALMON FISHING TOMORROW



PRINTED ON RECYCLED PAPER

HB 368

Debt Restructuring for Statewide Hatchery System

- Those effected are: Armstrong-Keta (Port Alexander); Burro Creek Farms (Skagway); Cook Inlet Aquaculture Association (Kenai); Douglas Island Pink & Chum (DIPAC-Juneau); Kake Nonprofit Fisheries Corp. (KNFC-Kake); Port Graham Hatchery Corp.; Prince of Wales Hatchery Assoc.; Prince William Sound Aquaculture Corp. (PWSAC-Cordova); Sheldon Jackson College (Sitka); Southern Southeast Regional Aquaculture Association (SSRAA-Ketchikan); and Valdez Fisheries Development Association (VFDA-Valdez). Northern Southeast Regional Aquaculture Association (NSRAA-Sitka) and Kodiak Regional Aquaculture Association (KRAA-Kodiak) have also indicated support even though they have no debt at this time.
- A majority of hatchery loans are currently at the maximum permissible rate of 9.5% interest. Alaska Statutes allow for interest rates of 1% over prime, not to exceed 9.5%. New loans, if received today, would be at 6%. Hatcheries would like to take advantage of the lower interests rates to bring down their debt service, just as other business and homeowners are currently doing throughout Alaska and the Lower 48.
- Currently, the Department of Community and Economic Development (DCED) is unable to refinance loans from the Fisheries Enhancement Revolving Loan Fund for the hatchery system. Similarly, prior to 1993, loans from the other fund, the Commercial Fisheries Revolving Loan Fund, could not be refinanced. Legislation allowing that change for fishermen was enacted, and the hatcheries are now asking for comparable changes for their industry.
- DCED acknowledges the proposed change would not jeopardize the health of the revolving loan fund, which has a current balance of approximately \$8 million.
- The need for reducing the size of hatchery loan payments is magnified by the crisis facing the Alaska salmon industry. Lower payments would help to insure financial stability for the hatcheries and allow them to take less cost recovery fish to make their loan payments. This would result in more fish to commercial and sports fishermen.
- Since the inception of salmon enhancement in Alaska, nearly one billion dollars of hatchery produced fish have been harvested by commercial fishermen (ex-vessel value). No figures are currently available regarding the total monetary impact for the sport fishing industry.
- Currently, approximately 40% of Alaska's entire salmon harvest is enhanced fish. Salmon are also produced that are taken by resident and non-resident sports fishermen and utilized in the personal use fisheries.
- Alaska's salmon enhancement industry is not unlike a public utility. They are operated for the common good and are non-profit corporations. From that perspective, favorable financing rates would be a normal business practice.
- The Department has indicated their workload would be small, as very few applicants would be involved. So, current DCED employees can handle the changes brought about by this legislation.

HB

376

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Sponsor Statement For House Bill 376

Fish & Game in Navigable Waters

An Act relating to management of fish and game in and on the navigable waters and submerged lands of Alaska

This bill affirms that the State of Alaska has not assented to federal control of fish and game in and on the navigable waters and submerged lands of Alaska. The actions of Governor Knowles by not appealing the *John v U.S.* case to the United States Supreme Court prompted introduction of this legislation.

In 1953 the U.S. Congress passed the Submerged Lands Act, which affirmed constitutional doctrine giving state sovereignty over all navigable waters within their borders. This sovereign power was devolved to the State of Alaska on equal footing in the Statehood Act and Compact. In an Anchorage Daily News article dated March 3, 2000, Governor Knowles said, "No governor of any state would – or should – ever voluntarily relinquish authority back to the federal government." He went on to say, "As Alaska's governor, I believe it is my clear responsibility, even in the face of a difficult political battle, to vigorously defend this important aspect of state sovereignty." The U.S. Supreme Court has ruled that Congress may not simply "commandeer the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." *New York v United States*, 505 US 144, 120 L. Ed 2d 120, 112 S Ct 2408 (1992).

Additionally, the governor said, "The Alaska State Supreme Court has ruled exactly the opposite of federal court and unanimously said the State of Alaska controls all navigable waters." Again, the governor also chose to ignore the Alaska Supreme Court. By his actions, Governor Knowles made Alaska a second-class state, ignoring the fact we were admitted to the union on equal footing, when he chose not to appeal the Ninth Circuit Court of Appeals decision to the U.S. Supreme Court.

In the Alaska Digest Email News of September 3-9, 2001, Alaska Sen. Frank Murkowski supported appealing the Ninth Circuit Court of Appeals decision to the U.S. Supreme Court. Murkowski said, "I don't believe such an appeal would endanger justified subsistence protections, but it would protect the rights Alaskans thought they had secured at Statehood. An appeal would actually help to end the discord over subsistence by providing finality to the legal arguments. That would help all Alaskans come together and settle this in Alaska, where it should be settled." Governor Knowles abrogated his "clear responsibility to defend this important aspect of state sovereignty."

HB 376 further strengthens the State's position with language asserting that the State may not expend funds to adopt or enforce the implementation of federal regulatory programs for control of fish and game in or on the navigable waters or submerged lands in the state. It does not, however, prevent authorities from conducting emergency, life saving, or other appropriate activities.

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MEMORANDUM

February 1, 2002

SUBJECT: Sectional Summary of HB 376; relating to management of fish and game in and on the navigable waters and submerged lands of Alaska (Work Order No. 22-LS1339\C)

TO: Representative Scott Ogan
Attn: Bill Church

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of HB 376; relating to management of fish and game in and on the navigable waters and submerged lands of Alaska.

As a preliminary matter, note that a sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill sets out the findings of the legislature in regard to the management of fish and game in and on the navigable waters and submerged lands of Alaska.

Section 2 of the bill amends AS 16.20.010(a) by adding a new subparagraph stating that the State of Alaska has not assented to federal control of fish and game in and on the navigable waters and submerged lands of Alaska.

Section 3 of the bill amends AS 16.20.020 by adding a new subsection (c) setting out the permissible role of state agencies, employees, and agents in implementing a federal regulatory program for control of fish and game in and on the navigable waters and submerged lands of the state.

If I may be of further assistance, please advise.

GU:med
02-090.med

SECTIONAL

Alaska Statehood Act

Selection of public lands, fish and wildlife, public schools, mineral permits, mineral grants, confirmation of grants, internal improvements, submerged lands

Section 6

(a) For the purposes of furthering the development of and expansion of communities, the State of Alaska is hereby granted and shall be entitled to select, within twenty-five years after the date of the admission of the State of Alaska into the Union, from lands within national forests in Alaska which are vacant and unappropriated at the time of their selection not to exceed four hundred thousand acres of land, and from the other public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection not to exceed another four hundred thousand acres of land, all of which shall be adjacent to established communities or suitable for prospective community centers and recreational areas. Such lands shall be selected by the State of Alaska with the approval of the Secretary of Agriculture as to national forest lands and with the approval of the Secretary of the Interior as to other public lands: Provided, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied.

(b) The State of Alaska, in addition to any other grants made in this section, is hereby granted and shall be entitled to select, within twenty-five years after the admission of Alaska into the Union, not to exceed one hundred and two million five hundred and fifty thousand acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection: Provided, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the lands so occupied: And provided further, That no selection hereunder shall be made in the area north and west of the line described in section 10 without approval of the President or his designated representative.

(c) Block 32, and the structures and improvements thereon, in the city of Juneau are granted to the State of Alaska for any or all of the following purposes or a combination thereof: A residence for the Governor, a State museum, or park and recreational use.

(d) Block 19, and the structures and improvements thereon, and the interests of the United States in blocks C and 7, and the structures and improvements thereon, in the city of Juneau, are hereby granted to the State of Alaska.

(e) All real and personal property of the United States situated in the Territory of Alaska which is specifically used for the sole purpose of conservation and protection of the fisheries and wildlife of Alaska, under the provisions of the Alaska game law of July 1, 1943 (57 Stat. 301; 48 U.S.C., sections 192-211), as amended, and under the provisions of the Alaska commercial fisheries laws of June 26, 1906 (34 Stat. 478; 48 U.S.C., sections 230-239 and 241-242), and June 6, 1924 (43 Stat. 465; 48 U.S.C., sections 221-228), as supplemented and amended, shall be transferred and conveyed to the State of Alaska by the appropriate

Federal agency: Provided, That the administration and management of the fish and wildlife resources of Alaska shall be retained by the Federal Government under existing laws until the first day of the first calendar year following the expiration of ninety legislative days after the Secretary of the Interior certifies to the Congress that the Alaska State Legislature has made adequate provision for the administration, management, and conservation of said resources in the broad national interest: Provided, That such transfer shall not include lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife nor facilities utilized in connection therewith, or in connection with general research activities relating to fisheries or wildlife. Sums of money that are available for apportionment or which the Secretary of the Interior shall have apportioned, as of the date the State of Alaska shall be deemed to be admitted into the Union, for wildlife restoration in the Territory of Alaska, pursuant to section 8 (a) of the Act of September 2, 1937, as amended (16 U.S.C., section 669g-1), and for fish restoration and management in the Territory of Alaska, pursuant to section 12 of the Act of August 9, 1950 (16 U.S.C., section 777k), shall continue to be available for the period, and under the terms and conditions in effect at the time, the apportionments are made. Commencing with the year during which Alaska is admitted into the Union, the Secretary of the Treasury, at the close of each fiscal year, shall pay to the State of Alaska 70 per centum of the net proceeds, as determined by the Secretary of the Interior, derived during such fiscal year from all sales of sealskins or sea otter skins made in accordance with the provisions of the Act of February 26, 1944 (58 Stat. 100; 16 U.S.C., sections 631a-631q), as supplemented and amended. In arriving at the net proceeds, there shall be deducted from the receipts from all sales all costs to the United States in carrying out the provisions of the Act of February 26, 1944, as supplemented and amended, including, but not limited to, the costs of handling and dressing the skins, the costs of making the sales, and all expenses incurred in the administration of the Pribilof Islands. Nothing in this Act shall be construed as affecting the rights of the United States under the provisions of the Act of February 26, 1944, as supplemented and amended, and the Act of June 28, 1937 (50 Stat. 325), as amended (16 U.S.C., section 772 et seq.).

(f) Five per centum of the proceeds of sale of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to such sales, shall be paid to said State to be used for the support of the public schools within said State.

(g) Except as provided in subsection (a), all lands granted in quantity to and authorized to be selected by the State of Alaska by this Act shall be selected in such manner as the laws of the State may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe. All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved, and each tract selected shall contain at least five thousand seven hundred and sixty acres unless isolated from other tracts open to selection. The authority to make selections shall never be alienated or bargained away, in whole or in part, by the State. Upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than ninety days before the date on which it otherwise becomes effective, if subsequent to the admission of Alaska into the Union, during which period the State of Alaska shall have a preferred right of selection, subject to the requirements of this Act, except as against prior existing valid rights or as against equitable claims subject to allowance and confirmation. Such preferred right of selection shall have precedence over the preferred right of application created by section 4 of the Act of September 27, 1944 (58 Stat. 748; 43 U. S. C., section 282), as now or hereafter amended, but not over other preference rights now conferred by law. Where any lands desired by the State are unsurveyed at the time of their selection, the Secretary of the Interior shall survey the exterior boundaries of the area requested without any interior subdivision thereof and shall issue a patent for such selected area in terms of the exterior boundary survey; where any lands desired by the State are surveyed at the time of their selection, the boundaries of the area requested shall conform to the public land subdivisions established by the approval of the survey. All lands duly selected by the State of Alaska pursuant to this Act shall be patented to the State by the Secretary of the Interior. Following the selection of lands by the State and the tentative approval of such selection by the Secretary

of the Interior or his designee, but prior to the issuance of final patent, the State is hereby authorized to execute conditional leases and to make conditional sales of such selected lands. As used in this subsection, the words "equitable claims subject to allowance and confirmation" include, without limitation, claims of holders of permits issued by the Department of Agriculture on lands eliminated from national forests, whose permits have been terminated only because of such elimination and who own valuable improvements on such lands.

(h) Any lease, permit, license, or contract issued under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C., section 181 and following), as amended, or under the Alaska Coal Leasing Act of October 20, 1914 (38 Stat. 741; 30 U. S. C., section 432 and following), as amended, shall have the effect of withdrawing the lands subject thereto from selection by the State of Alaska under this Act, unless such lease, permit, license, or contract is in effect on the date of approval of this Act, and unless an application to select such lands is filed with the Secretary of the Interior within a period of five years after the date of the admission of Alaska into the Union. Such selections shall be made only from lands that are otherwise open to selection under this Act, and shall include the entire area that is subject to each lease, permit, license, or contract involved in the selections. Any patent for lands so selected shall vest in the State of Alaska all right, title, and interest of the United States in and to any such lease, permit, license, or contract that remains outstanding on the effective date of the patent, including the right to all rentals, royalties, and other payments accruing after that date under such lease, permit, license, or contract, and including any authority that may have been retained by the United States to modify the terms and conditions of such lease, permit, license, or contract: Provided, That nothing herein contained shall affect the continued validity of any such lease, permit, license, or contract or any rights arising thereunder.

(i) All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: Provided, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

(j) The schools and colleges provided for in this Act shall forever remain under the exclusive control of the State, or its governmental subdivisions, and no part of the proceeds arising from the sale or disposal of any lands granted herein for educational purposes shall be used for the support of any sectarian or denominational school, college, or university.

(k) Grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission. Effective upon the admission of the State of Alaska into the Union, section 1 of the Act of March 4, 1915 (38 Stat. 1214; 48 U.S.C., section 353), as amended, and the last sentence of section 35 of the Act of February 25, 1920 (41 Stat. 450; 30 U. section C, section 191), as amended, are repealed and all lands therein reserved under the provisions of section 1 as of the date of this Act shall, upon the admission of said State into the Union, be granted to said State for the purposes for which they were reserved; but such repeal shall not affect any outstanding lease, permit, license, or contract issued under said section 1, as amended, or any rights or powers with respect to such lease, permit, license, or contract, and shall not affect the disposition of the proceeds or income derived prior to such repeal from any lands reserved under said section 1, as amended, or derived thereafter from any disposition of the reserved lands or an interest therein made prior to such repeal.

(l) The grants provided for in this Act shall be in lieu of the grant of land for purposes of internal

improvements made to new States by section 8 of the Act of September 4, 1841 (5 Stat. 455), and sections 2378 and 2379 of the Revised Statutes (43 U.S.C., section 857), and in lieu of the swampland grant made by the Act of September 28, 1850 (9 Stat. 520), and section 2479 of the Revised Statutes (43 U.S.C., section 982), and in lieu of the grant of thirty thousand acres for each Senator and Representative in Congress made by the Act of July 2, 1862, as amended (12 Stat. 503; 7 U.S.C., sections 301-308), which grants are hereby declared not to extend to the State of Alaska.

(m) The Submerged Lands Act of 1953 (Public Law 31, Eighty-third Congress, first session; 67 Stat. 29) shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder.



Content current as of February 7, 1998
Page last revised February 7, 1998

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SUBMERGED LANDS ACT

43 U.S.C. §§ 1301-1315, May 22, 1953, as amended 1986.

Overview. The Act grants coastal states title to offshore lands within their historic boundaries, generally up to three miles from the coastline, as well as the rights to the natural resources on or within those lands. The federal government relinquishes its claims to the lands and resources, but maintains the right to regulate offshore activities for national defense, international affairs, navigation, and commerce.

Findings/Policy. Congress declared that it is in the public interest that title to and ownership of the lands beneath navigable waters within the boundaries of the respective states, and the natural resources within these lands and waters, be recognized, confirmed, vested in and assigned to the respective states or the persons who were, on June 5, 1950, entitled to the land and resources under state law. The right and power to manage, lease, develop, and use these lands and resources should also be established in the states. § 1311.

Relevant Definitions. **Boundaries:** includes the seaward boundaries of a state or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time the state became a member of the Union, or as approved by Congress or extended and confirmed pursuant to § 1312, but in no event shall the term boundaries or the term lands beneath navigable waters be interpreted as extending from the coastline more than three geographical miles into the Atlantic or Pacific Ocean, or more than three marine leagues into the Gulf of Mexico. However, a boundary that has been fixed by final decree of the U.S. Supreme Court remains immobile. **Lands beneath navigable waters:** (1) all lands within the boundaries of each of the respective states which are covered by nontidal waters that were navigable at the time the state became a member of the Union or acquired sovereignty over the lands and waters, up to the ordinary high water mark, (2) all lands permanently or periodically covered by tidal waters up to the line of mean high tide and seaward to a line three miles from the coast line of such state, and to the boundary line of a state the boundary of which at the time the state became a member of the Union, or as approved by Congress, extended seaward beyond three miles, and (3) all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters. **Natural resources:** includes, without limiting the generality thereof, oil, gas, and other minerals and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life, but does not include water power or the use of water for producing power. § 1301.

Resources Seaward of Continental Shelf. The Act does not affect the rights of the U.S. to the natural resources of the subsoil and seabed of the continental shelf lying seaward and outside of the lands beneath navigable waters. The Act states that these natural resources appertain to the U.S., and it confirms the U.S.'s jurisdiction and control. (See also the summary of the Outer Continental Shelf Act of 1953.) § 1302.

Relinquishment of U.S. Title. According to the Act, the U.S. releases and relinquishes to the states all rights, title and interest it may have, unless otherwise reserved, in lands, improvements, and natural resources beneath or within navigable waters within the boundaries of the respective states. The U.S. also releases and relinquishes any claims it may have for money or damages arising out of the operations of states or persons acting under state authority upon or within those lands and navigable waters. The Act addresses the effectiveness of leases covering lands and natural resources affected by the Act, as well as the allocation of lease payments among the U.S., the state and the lessee.

Nothing in the Act is to affect the use, development, improvement, or control of lands and waters, by or under the constitutional authority of the U.S., navigation or flood control or the production of power. Nothing shall be construed as the release or relinquishment of rights of the U.S. arising under constitutional authority to regulate or improve navigation, or to provide for flood control or the production of power. Also, nothing in the Act is to affect the laws of states which lie westward of the 98th meridian

relating to the ownership and control of ground and surface waters. The control, appropriation, use and distribution of these waters shall continue to be in accordance with state law. § 1311.

Seaward Boundaries of States. The seaward boundary of each original coastal state is confirmed as a line three miles from its coast line or, in the case of the Great Lakes, to the international boundary. Subsequently admitted states may extend their boundaries to either three miles from their coast line or to international boundaries in the Great Lakes or any other body of water traversed by such boundaries. States may claim these boundaries without prejudice to any claim that the boundaries extend beyond that point. § 1312.

Exceptions. Exceptions from the confirmation and establishment of states' title, power and rights include: all tracts or parcels of land, together with all accretions, resources or improvements, to which title has been acquired by the U.S. from a state or a person with vested title; all lands which the U.S. holds under state law; lands expressly retained or ceded to the U.S. when the state entered the union; lands acquired by the U.S. by eminent domain proceedings, purchase, cession, gift or otherwise in a proprietary capacity; all lands filled in, built up or otherwise reclaimed by the U.S. for its own use; any rights the U.S. has in lands presently and actually occupied by the U.S. under claim of right; lands beneath navigable waters which are held by the U.S. for the benefit of a tribe, band, or group of Indians or for individual Indians; all structures and improvements constructed by the U.S. in the exercise of its navigational servitude. § 1313.

Rights and Powers Retained. The U.S. retains its navigational servitude and its rights in and powers of regulation and control of lands and navigable waters for the constitutional purposes of commerce, navigation, national defense and international affairs, all of which shall be paramount to the proprietary rights of ownership, management, administration, leasing, use, and development of lands and natural resources recognized and vested in the states and others under the Act. In time of war or when necessary for national defense, the U.S. shall have the right of first refusal to purchase natural resources at the prevailing market rate or to acquire land with due process of law and paying just compensation. § 1314.

Chapter 4 - Statute Summaries
Federal Wildlife & Related Laws Handbook

EQUAL FOOTING

James Madison had included provisions for equality in admittance of the new States in the first draft of the Constitution:

"If admission be consented to, new states shall be admitted on the same terms with the original states."

In spite of the Oct. 10, 1780, promises of the federal Congress and conditions of several State deeds of cession, a faction lead by Governor Morris of New York and Elbridge Gerry of Massachusetts advocated plans to limit the number of new states so that they would never outnumber the older states or to admit new states on a less than equal basis. Madison insisted that **"the Western States neither would nor ought to submit to a union which degraded them from an equal rank with the other States."** (2 Madison, "Journal of the Debates in the Convention which Framed the Constitution," 274 - Hunt's ed. 1908.)

George Mason stated:

"If the Western States are to be admitted to the Union, they must be treated as equals and subject to no degrading discrimination. They will have the same pride and other passions which we have, and will either not unite with or will speedily revolt from the Union, if they are not in all respects placed on an equal footing with their bretheren." (Clarence B. Carson, A Basic History of the United States, Volume 2, American Textbook Committee, c1995.)

A compromise resulted in the neutral statement in the Constitution:

"New states may be admitted by Congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress."

The principle of "equal footing" was later summarized by Justice Lurton in Coyle v. Smith, 221 U.S. 559 (1911):

"The power of Congress in respect to the admission of new states is found in the 3d section of the 4th article of the Constitution. That provision is that, 'new states may be admitted by the Congress into this Union.' The only expressed restriction upon this power is that no new state shall be formed within the jurisdiction of any other state, nor by the junction of two or more states, or parts of states, without the consent of such states, as well as of the Congress.

"But what is this power? **It is not to admit political organizations which are less or greater, or different in dignity or power, from those political entities which constitute the Union.** It is, as strongly put by counsel, a 'power to admit states.'

"The definition of 'a state' is found in the powers possessed by the original states which

adopted the Constitution,-a definition emphasized by the terms employed in all subsequent acts of Congress admitting new states into the Union. The first two states admitted into the Union were the states of Vermont and Kentucky, one as of March 4, 1791, and the other as of June 1, 1792. No terms or conditions were exacted from either. Each act declares that the state is admitted 'as a new and entire member of the United States of America.' 1 Stat. at L. 191, 189, chaps. 7, 4. Emphatic and significant as is the phrase admitted as 'an entire member,' even stronger was the declaration upon the admission in 1796 of Tennessee [1 Stat. at L. 491, chap. 47] as the third new state, it being declared to be 'one of the United States of America,' 'on an equal footing with the original states in all respects whatsoever,'- phraseology which has ever since been substantially followed in admission acts, concluding with the Oklahoma act, which declares that Oklahoma shall be admitted 'on an equal footing with the original states.'

"The power is to admit 'new states into this Union.'

'This Union' was and is a union of states, equal in power, dignity, and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself. To maintain otherwise would be to say that the Union, through the power of Congress to admit new states, might come to be a union of states unequal in power, as including states whose powers were restricted only by the Constitution, with others whose powers had been further restricted by an act of Congress accepted as a condition of admission. Thus it would result, first, that the powers of Congress would not be defined by the Constitution alone, but in respect to new states, enlarged or restricted by the conditions imposed upon new states by its own legislation admitting them into the Union; and, second, that such new states might not exercise all of the powers which had not been delegated by the Constitution, but only such as had not been further bargained away as conditions of admission.

"The argument that Congress derives from the duty of 'guaranteeing to each state in this Union a republican form of government,' power to impose restrictions upon a new state which deprive it of equality with other members of the Union, has no merit. It may imply the duty of such new state to provide itself with such state government, and impose upon Congress the duty of seeing that such form is not changed to one anti-republican,-Minor v. Happersett, 21 Wall. 162, 174, 22 L. ed. 627, 630,-but it obviously does not confer power to admit a new state which shall be any less a state than those which compose the Union."



Bovd v. State of Nebraska, 143 U.S. 135 (1892):

"Admission on an equal footing with the original states, in all respects whatever, involves equality of constitutional right and power, which cannot thereafterwards be controlled, and it also involves the adoption as citizens of the United States of those whom congress makes members of the political community, and who are recognized as such in the formation of the new state with the consent of congress."



As established by Justice Field in Escanaba & L. M. Transp. Co. v. City of Chicago (1882) 107 U.S. 678, 2 Sup. Ct. 185, regardless of prior territorial provisions, such as the Northwest Ordinance of 1787, the new

States:

'[But the states] have full power to regulate within their limits matters of internal police, including in that general designation whatever will promote the peace, comfort, convenience, and prosperity of their people.'




Stated Justice Field in Illinois Cent. R. Co. v. State of Illinois, 146 U.S. 387 (1892):

"The state of Illinois was admitted into the Union in 1818 on an equal footing with the original states, in all respects. Such was one of the conditions of the cession from Virginia of the territory north of the Ohio river, out of which the state was formed. **But the equality prescribed would have existed if it had not been thus stipulated. There can be no distinction between the several states of the Union in the character of the jurisdiction, sovereignty, and dominion which they may possess and exercise over persons and subjects within their respective limits...**"





Factors that effect "equal footing" can be roughly separated into those pertaining to the "imperium" (political sovereignty, police powers, jurisdiction over citizens and others) of the State and the "dominium" (property, eminent domain or territorial jurisdiction) of the State:


IMPERIUM

 The effects of Enabling Acts, terms and conditions of statehood, Congressional acts applicable to territorial government, etc. upon the subsequent political sovereignty and eminent domain of the State, (including "police" or "municipal" powers such as hunting regulations.)

DOMINIUM

 Devolution of the Crown's title and trust over "Royal Rivers" or the "Sea and its Arms" from the federal government to the sovereign people of the States, including offshore limits, beds and banks of navigable streams and common or public fishery.

 Federal retention of title as proprietor of the "Public Lands" ceded by the original States lying within the new States east of the Mississippi as trustee for the purposes of disposal for payment of the war debt.

 Federal retention of the "public domain" lands west of the Mississippi.



KATIE JOHNS APPEAL IS ABOUT STATE SOVEREIGNTY .

Article Date: Friday, March 03, 2000

Page: B12

Section: Metro By Tony Knowles

In 1953, America was celebrating a new era of peace, prosperity and change. The Korean War had halted; Dwight Eisenhower was president. Early chords of rock and roll were being strummed. The first vacuum tube computer was processing. And in the territory of Alaska, Anchorage's KENI launched the first-ever television broadcast. Another much less noticed event occurred that year, which heralded a dramatic change in the relationship between the federal government and the states. With passage of the Submerged Lands Act, Congress affirmed a constitutional doctrine giving states control of all navigable waters -- those used for commerce and transportation -- within their borders. This act presented the states a historic and extraordinary opportunity for economic development and local control of resources. Six years later, when Alaska became a state, this meaningful state control was imbedded in the Statehood Act and Compact. No governor of any state would -- or should -- ever voluntarily relinquish this authority back to the federal government. As Alaska's governor, I believe it is my clear responsibility, even in the face of a difficult political battle, to vigorously defend this important aspect of state sovereignty. That was certainly my position as a candidate for this office six years ago, and it was my position in 1995 when I fought in court a federal attempt to take this authority from Alaska. And it remains my firm stand today as I appeal the same case to the 9th Circuit Court of Appeals, and to the Supreme Court if necessary. That case is Katie John v. the United States. Filed in 1990 by a respected Athabaskan elder from Mentasta, the case was an appeal to the federal government to protect her subsistence rights under federal law. The State of Alaska, by its own Supreme Court ruling, could not provide this right until the Legislature allows Alaskans the opportunity to vote on a subsistence constitutional amendment. Once this happens, the case would simply disappear. Unfortunately, a small minority of state senators refuses to allow Alaskans to vote on this important issue. That's why on Oct. 1, 1999, the federal government took over fish and game management on federal lands in our state, which constitute about two-thirds of Alaska. If we lose the Katie John case, we also will lose navigable waters to the feds. I believe that as a rural resident of Mentasta, Katie John deserves the right for a subsistence preference in times of shortage. I think most Alaskans agree. We can make that happen by allowing Alaskans to vote on a subsistence amendment to our constitution. The wrong way to make that happen is to hand over to the federal government even more authority by managing our rivers and streams. The Alaska State Supreme Court has ruled exactly the opposite of federal court and unanimously said the State of Alaska controls all navigable waters. In its special convention two weeks ago, the Alaskan Federation of Natives passed a resolution condemning me for again appealing the Katie John case. They further stated they no longer support the rural subsistence preference constitutional amendment that passed the state House at a special legislative session I called last year. In early

K. JOHN

February, I introduced that same amendment in the state Senate. While I understand AFN's frustration and accept the "condemnation" as part of my job as governor (this seems to happen with increasing frequency!), it's vitally important we remain focused on the goal most Alaskans share -- protecting subsistence. I will do all I can to keep together the statewide coalition of business leaders, commercial and sport fishermen, development and civic organizations, a bipartisan majority of the Legislature, the congressional delegation and AFN, who came together behind one goal. That goal is maintaining state -- not federal -- control and management of our fish and game resources and standing behind our commitments under the Alaska Lands Act, which provides for a rural subsistence preference. I have urged AFN privately -- and urge them here publicly -- to continue their long-standing support for a rural subsistence preference constitutional amendment. It is in the best interest of all Alaskans to demand Alaska management of Alaska's fish and game, to recognize the importance of subsistence to the economy and culture of rural Alaska, and to protect state sovereignty of all our navigable waters. Tony Knowles is governor of Alaska.



REPRESENTATIVE SCOTT OGAN

Alaska State Legislature

House District 27 • Palmer • Greater Palmer • Sutton • Chickaloon • Sheep Mountain

Legal History of the Subsistence Issue: A Chronological Overview

To understand the subsistence preference issue, one must examine the legal history behind it. This outline will provide a concise road map to that history and will summarize the development of the legal issues.

- I. Alaska Constitution: Adopted and ratified by the people of Alaska in 1956, the Alaska Constitution specifically addressed ownership and use of Alaska's fish, wildlife and other resources.
 - A. Article VIII, § 3 states that fish and wildlife in their natural state are reserved for the *common use* of the people.
 - B. Article VIII, § 4 requires that all the state's replenishable resources are to be managed on a sustained yield principle, subject to preferences among beneficial uses.
 - C. Taken together, these provisions mean that the state cannot grant any group of *people* preferential use of fish and wildlife resources; the only legally acceptable preferences are among beneficial *uses*. *McDowell v. State*, 785 P.2d 1 (Alaska 1989).

- II. Alaska Statehood Act: The Alaska Statehood Act was a compact between the people of the state of Alaska and the United States of America providing for Alaska's admission to the Union as a state. It was passed by Congress and ratified by the people of Alaska in 1958, and Alaska was formally admitted as a state by a proclamation of President Eisenhower in 1959.
 - A. The Statehood Act is not just a law; it is a *compact* between the people of the state and the United States, just as the U.S. Constitution is a compact between the people and the federal government. This is important because it means that Congress cannot unilaterally pass any law that contradicts or violates the terms of the compact. In other words, the Statehood Act takes precedence over other federal laws if there is a conflict.
 - B. The Statehood Act specifically accepted and ratified the Alaska Constitution as the governing document for the new state, including those provisions reserving fish and wildlife for common use of all Alaskans. (Alaska Statehood Act, § 1)
 - C. The Act also transferred management of Alaska's fish and wildlife resources to the state, except for special refuges or reservations set apart for wildlife protection.

- III. Alaska Native Claims Settlement Act (ANCSA): The Native Claims Settlement Act of 1971 was a full and final settlement of all claims to any rights, title, interest or privilege by people of Native origin in

LEGAL HX

the state of Alaska, and extinguished any claims of Alaska Natives to special hunting or fishing rights. This Act is a legal settlement in the nature of a treaty; it therefore takes precedence over any previous or subsequent laws of Congress.

- A. Declaration of Congressional Policy in § 1 states that "the settlement should be accomplished . . . *without establishing any permanent racially defined institutions, rights, [or] privileges . . .*"
- B. The settlement provided for payment by the federal government to Alaska Natives of four-hundred sixty-two million, five-hundred thousand dollars (\$462,500,000) in cash payments, and another five-hundred million dollars (\$500,000,000) in assignments of mineral royalties and lease payments received by the State of Alaska. It also granted title to millions of acres of land to regional and village Native corporations established under the Act.
- C. In exchange, the Native peoples of the state specifically waived forever any and all aboriginal claims based on previous use or occupancy (in other words, traditional use), or based on any previous statute or treaty. These forfeited claims include claims to any right, title, use or occupancy in or to land and water areas of the State of Alaska:
 - b. All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and *including any aboriginal hunting and fishing rights that may exist, are hereby extinguished.*

Alaska Native Claims Settlement Act, § 4 (b),(c) (emphasis added).

IV. Implementation of Alaska Native Claims Settlement Act (ANCSA) and Alaska Statehood Act: In 1980, Congress passed this Implementing Act which contains a number of clarifications and refinements of procedural and administrative issues relating to implementation of the Native Claims Settlement Act and the Statehood Act.

- A. Also establishes a new "Alaska Land Bank" program which authorizes holders of large tracks of land to place their land in a federal land bank for a ten year period, renewable in five year increments.
- B. A participating landowner agrees (among other things) to manage fish and wildlife on the land according to federal or state management plans, if any. In exchange, the federal government provides the owner with technical assistance in fish and wildlife management, as well as other benefits. The Act does not transfer management duties to the federal government, however.

V. Alaska National Interest Lands Conservation Act (ANILCA): This Act, passed by Congress in 1980, is often referred to as "ANILCA," and imposes a preference for uses of Alaskan fish and wildlife by "rural resident."

- A. Rural or bush residents are granted preference under ANILCA in the taking of fish and wildlife. (16 USC § 3114). While the Act tries to mask its racial preference agenda by granting the preference to rural subsistence users rather than to Natives, the true intent of congress is revealed in § 3111 where Congress invokes its constitutional authority over "Native affairs" to preserve the "economic, traditional and cultural existence" of "Native and non-Native" rural subsistence users and attempts to "fulfill the policies and purposes

- of ANCSA."
- B. Defines the preferential "subsistence uses" as "customary and traditional uses" of fish and wildlife (16 USC § 3113). This is exactly the type of claims of aboriginal hunting or fishing rights based on previous use that were "extinguished" by the Native Claims Settlement Act.
 - C. The Act does not authorize the federal government to manage fish and game according to this subsistence preference; it only authorizes federal judicial intervention if a subsistence user feels that he or she isn't receiving preferential treatment under the state's management plan.

VI. Important Court Cases:

- A. In *McDowell v. State*, 785 P.2d (Alaska 1989), the Alaska Supreme Court ruled that the Alaska Constitution, which was ratified and approved by Congress in the Statehood Compact, prohibits granting a rural subsistence preference.
- B. In 1984, the 9th Circuit Court of Appeals issued an important ruling in two consolidated cases: *Inupiat Community v. U.S.*, 746 F.2d 570 (9th Cir. 1984) and *People of the Village of Gambell v. Clark*, 746 F.2d 572 (9th Cir. 1984). The Court stated that Alaska Natives' claims of subsistence hunting and fishing rights had been forever extinguished with the Alaska Native Claims Settlement Act. The United States Supreme Court refused to hear the one of the two cases when the Native communities appealed, and in the other case bypassed the issue of extinguishment of Native rights by holding that neither the Alaska Native Claims Settlement Act (ANCSA) or Alaska National Interest Lands Conservation Act (ANILCA) applied to the outer continental shelf. *Gambell v. Clark*, 480 U.S. 531 (1991).
- C. These cases clearly hold that any and all claims by Alaska Natives to subsistence hunting and fishing preferences *cannot stand* under the Alaska Constitution, the Alaska Statehood Act, and the ANCSA. Yet the federal government has taken over the management of fish and wildlife on federal lands in Alaska to forcibly implement ANILCA'S unlawful subsistence preference scheme. It was this federal management of Alaska's fish and wildlife resources--which is not authorized in any statute, and which flagrantly violates Alaska statehood compact with the federal government--that was challenged in the Babbitt lawsuit.

and finally,

- D. *United States v. Alexander*, 938 F.2d 942 (CA9 1991). Persons convicted of selling subsistence taken roe-on-kelp challenged their conviction.

The 9th Circuit Court of Appeals found that ANILCA does not limit customary trade to transactions involving personal or family consumption. The sale of herring roe is customary trade [up to fifteen thousand dollars (\$15,000) per person]. ANILCA allows rural Alaskans to engage in limited sales of herring roe so long as the sales are part of customary trade. State regulations cannot prohibit the sale of herring roe taken in subsistence fisheries because customary trade in fish and game is a subsistence use of fish.

The court remanded the case for a new trial. If the defendants were found, at the new trial, to have engaged in a sale of herring roe that was more than a limited cash sale then they could be convicted of unlawful selling of subsistence caught herring roe.

Distributed By
 Representative Scott Ogan
 District 27

Alaska Digest Email News

September 3-9, 2001

Murkowski Laments State Decision Not To Appeal 9th Circuit Case

FAIRBANKS -- Alaska Sen. Frank Murkowski had the following reaction to a decision by Alaska Gov. Tony Knowles not to appeal to the U.S. Supreme Court a decision by the Ninth Circuit Court of Appeals.

"While I stand in agreement with the Governor that over the last several years the divide between Rural and Urban Alaska has widened, I'm disappointed along with the majority of Alaskans that the Governor has conceded jurisdiction over state waters to the federal government by not appealing the Ninth Circuit's decision. The Governor's failure to file an appeal does not solve the subsistence issue."

"Even if we succeed in passing a constitutional amendment to protect subsistence and solve the subsistence problem, which I have supported and will continue to work for, Alaskans will not be afforded the chance to recover control over state waters, which the Governor has chosen to give away."

"The Ninth Circuit decision goes far beyond subsistence to broadly impact state jurisdiction over state waters. The Knowles/Ulmer concession appears to undermine the state's constitution. That is why other western states have voiced support for Alaska's appeal. It's a sad day for states rights."

"I, as do the vast majority of Alaskans, agree that subsistence is an important and integral part of our culture and must be protected. If this court case were solely about subsistence rights in Alaska I could better understand the Governor's rationale. This case is about how far the often-intrusive arm of the federal government can extend into areas of jurisdiction that are better left to the states. If left unchecked, this reach could extend far beyond what it is today."

"In 1953 the federal government passed the Submerged Lands Act granting ownership of all lands under tidal and navigable waters to the states. The Ninth Circuit ruling, however, effectively overturns that law by granting federal authority over navigable waters to further subsistence on "neighboring" federal lands. That could open the door to federal management of navigable waters covering everything from commercial fishing to tourism. Clearly that was not the intent of Congress when it guaranteed subsistence on "federal" lands in 1971's Alaska Native Claims Settlement Act and is the reason why other western states backed Alaska's appeal."

"I don't believe such an appeal would endanger justified subsistence protections, but it would protect the rights Alaskans thought they had secured at Statehood. An appeal would actually help to end the discord over subsistence by providing finality to the legal arguments. That would help all Alaskans come together and settle this in Alaska, where it should be settled."

MAIN PAGE & INDEX

F. MURKOWSKI

HB

382

ALASKA STATE LEGISLATURE



REPRESENTATIVE GRETCHEN GUESS

Sponsor Statement HB 382

" An Act relating to the evaluation and cleanup of sites where certain controlled substances may have been manufactured or stored."

Purpose

Currently Alaska has no standards or requirements for the clean up of illegal drug labs. HB 382 sets standards for cleanup of illegal drug manufacturing sites to ensure the safety of future residents.

Background

Illegal drug manufacturing labs, such as "meth labs," are rising in Alaska with seizures doubling in number from 2000 to 2001. Often these labs are in homes, apartments, and hotels where chemical contamination can pose a serious health hazard to future residents.

Currently Alaska has no standards or requirements for the clean up of illegal drug labs. Once law enforcement discovers an illegal lab it falls to the property owner to properly clean up the hazardous material. If this clean up is not done properly it could pose a serious health risk to future occupants of the property, especially children.

Solution

- HB 382 creates a simple system whereby law enforcement, once they have discovered a lab, will notify the property owner. Either law enforcement or the Department of Environmental Conservation (DEC) will provide the owner with materials developed by DEC. These materials will outline testing procedures and guideline limits for a number of dangerous chemicals that commonly contaminate illegal drug lab sites. In order to demonstrate the property is fit for habitation, the owner must provide test results showing the levels of contamination are below DEC set limits.
- HB 382 offers safeguards for future occupants of the property. Under this bill, the property owner may not allow the reoccupation or rental of the property until it has been tested and shown to be below DEC set limits.
- HB 382 requires full disclosure to any purchaser of the property if it was an illegal drug manufacturing site and has not been properly cleaned.

SPONSOR

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

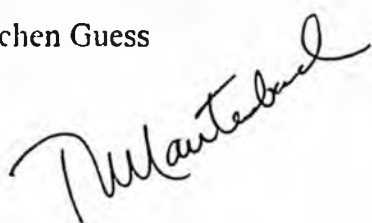
MEMORANDUM

February 25, 2002

SUBJECT: Illegal Drug Sites (HB 382)

TO: Representative Gretchen Guess
Attn: Maridon

FROM: Terri Lauterbach
Legislative Counsel



You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

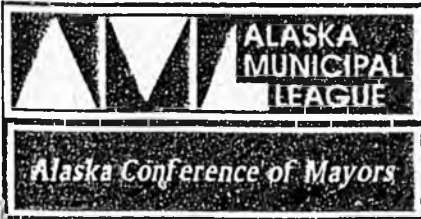
Section 1. Describes the purpose of the bill.

Section 2. Requires testing of property before continued use if a law enforcement officer has determined that the property was an illegal drug manufacturing or storage site. Declares that the property is unfit for use if it doesn't meet the limits set by the Department of Environmental Conservation for lead, mercury, methamphetamines, or volatile organic compounds. Requires decontamination, if done, to be done according to guidelines set by DEC. Specifies miscellaneous other duties for DEC and for the property owner.

TML:med
02-207.med

SECTIONAL

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217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907)586-1325, Fax (907)-463-5480

26 February 2002

The Honorable Gretchen Guess
Alaska House of Representatives
State Capitol, Room 112
Juneau, AK 99801-1182

Dear Representative Guess:

Thank you for the opportunity to support HB 382, relating to the evaluation and cleanup of illegal drug manufacturing sites. The Alaska Municipal League and the Alaska Conference of Mayors encourage all efforts to address the growing problem of illegal drug use, including the manufacture of controlled substances. We are enclosing Alaska Municipal League/Alaska Conference of Mayors Resolution 2002-08, "A resolution to support efforts to combat the use of illegal drugs in Alaskan communities."

As you know, there are currently no regulations in place to address the process of decontamination at these highly volatile sites. We applaud your effort in creating a more accountable cleanup procedure.

Thank you for your continued interest in Alaska's municipalities. If you have any questions about this or any other municipal issue, please let me know.

Sincerely,

Kevin Ritchie
Executive Director

Enclosure

cc: Representative Beverly Masek, Co-Chair
Representative Drew Scalzi, Co-Chair
House Resources Committee



217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907)586-1325, Fax (907)-463-5480

RESOLUTION 2002-8

A RESOLUTION TO SUPPORT EFFORTS TO COMBAT THE USE OF ILLEGAL DRUGS IN ALASKAN COMMUNITIES

WHEREAS, the Alaska Municipal League recognizes the destructive nature of illegal drugs on the citizens of Alaska; and

WHEREAS, the illegal use, manufacturing, and sales of illegal drugs is a growing and serious societal ailment, especially the most recent trend in illegal methamphetamine drug use, as well as other illegal clandestinely produced substances; and

WHEREAS, the Alaska Municipal League recognizes not only the human destruction, but also the economic devastation, property damage, and environmental disasters that can be brought to a community by illegal clandestine laboratory facilities; and

WHEREAS, the law enforcement agencies of Alaska, including local, state, and federal entities, all recognize the seriousness of the situation and hope to gain support in combating the potential devastation that could be visited upon Alaska; and

WHEREAS, the support of the Alaska Municipal League and the individual Mayors is vital to gain widespread support for law enforcement efforts to combat the growing methamphetamine problem and support within communities to educate citizens through organized community programs, school programs, and local media; and

WHEREAS, it is recognized that the success of any meaningful program related to illegal drugs, whether education or enforcement, lies in a multi-disciplined approach towards addressing the problem; and

WHEREAS, the Alaska State Legislature needs to be aggressive in addressing the seriousness of the illegal clandestine laboratory activities through adopting statutes specific to these types of crimes, enhanced sentencing guidelines, and funding.

NOW, THEREFORE BE IT RESOLVED, by the Alaska Municipal League that, members, as a group and as individuals will support the entities involved with investigating and prosecuting individuals involved in the illegal manufacturing, sales, and use of controlled substances produced in clandestine laboratory facilities, and will support the entities involved in providing education and training to the citizens of the State of Alaska to help combat the problem.

BE IT FURTHER RESOLVED, that the Alaska Municipal League supports any efforts to substantially increase penalties for those who operate clandestine illegal substance laboratories particularly in cases where minor children could be impacted.



George P. Wuerch.
Mayor

ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599

Telephone (907) 786-8500

<http://www.ci.anchorage.ak.us>



Walt Monegan
Chief

February 27, 2002

Dear Representative Guess,

The Anchorage Police Department Metropolitan Drug Unit strongly supports House Bill Number 382, an Act relating to the evaluation and cleanup of sites where certain controlled substances may have been manufactured or stored.

This Bill addresses the very serious problem law enforcement has encountered of unwilling or unknowing landlords, home and motel owners who after, a toxic clandestine drug laboratory is seized from their property, do not care or don't know the proper guidelines to ensure that their particular location is safe for occupation.

This Legislation will no doubt protect the health and enrich the life of the citizens of the State of Alaska.

Lieutenant Dave Hoffman
Anchorage Police Department
Commander, Metropolitan Drug Unit

Endorsements:

Sergeant Marc Woodward
Anchorage Police Department
Supervisor Metropolitan Drug Unit

Detective Kurt Kornchuk
Anchorage Police Department
DEA Task Force/Clandestine Laboratory Coordinator

Cc: Resources Committee Co-Chair Beverly Masek

ALASKA STATE LEGISLATURE



REPRESENTATIVE GRETCHEN GUESS

General Information About Illegal Drug Manufacturing Labs and Their Health Effects

No Requirements to Clean Up Illegal Labs

Illegal drug manufacturing labs, such as "meth labs," are rising in Alaska with seizures doubling in number from 2000 to 2001. Often these labs are in homes, apartments, and hotels where chemical contamination can pose a serious health hazard to future residents.

Currently Alaska has no standards or requirements for the clean up of illegal drug labs. Once law enforcement discovers an illegal lab it falls to the property owner to clean up the hazardous material. If this clean up is not done properly it could pose a serious health risk to future occupants of the property, especially children.

Chemicals Used in the Manufacture of Illegal Drugs

Illegal drugs such as methamphetamines can be made using many different chemical processes. Most of these include the use of metals (such as mercury and lead), explosives, acids, chemical salts and volatile organic compounds (VOCs). Exposure to metals and salts can cause respiratory irritation, decreased mental function, anemia, kidney damage and birth defects. Lead and mercury are particularly hazardous. Exposure to VOCs may cause nose and throat irritation, headaches, dizziness, nausea, vomiting, confusion and breathing difficulties.

Many of the chemical agents used in the production of (meth) are caustic, corrosive, or create noxious and harmful fumes. The cooking of these chemicals produces vapors which permeate the interior materials of buildings, including sheet rock, carpets, and other porous surfaces. These chemical residues continue to volatilize from these reservoirs long after the laboratory is dismantled. This creates a potential for long-term exposure resulting in adverse health effects if a building is reoccupied without decontamination. Many of the chemicals in illegal drug manufacture are known to be carcinogenic (cancer causing), mutagenic (an agent that can induce or increase the frequency of mutation in an organism), and teratogenic (causing malformations of an embryo or fetus) in animal and human studies.

General Impacts

Many of the contaminants present during meth's cooking process can be harmful if someone is exposed to them. These contaminants can cause health problems including respiratory (breathing) problems, skin and eye irritation, headaches, nausea and dizziness. Acute (short-term) exposures to high concentrations of some of these chemicals can cause severe health problems including lung damage and burns to different parts of the body. In extreme cases a child's entire respiratory system could shut down with acute exposure to meth fumes.

Impacts on Children

Children are more susceptible to chemical hazards than adults because they grow rapidly, have higher metabolic rates, and have greater intake of food and water. They are also more likely to be exposed to contaminants on surfaces. Crawling or toddling children touch many surfaces and then put their dirty hands in their mouths.

Exposure to methamphetamine, heavy metals, and other ingredients used in methamphetamine manufacture, and their residues, put children at risk for damage to the nervous system. Exposure of a developing nervous system to neurotoxins can be insidiously amplified as a child grows. Cells killed leave a gap in the total number of cells that make up the mature brain. Damaged cells that survive can pass on the deficit as they multiply. Damage to the developing brain can have greater effect than the same exposure once development is complete (as in adults).

Jennifer-

So far these are the folks who would like to be on-line to answer questions on HB 382 during tomorrow's House Resources committee meeting.

Lt. Julia Grimes - Alaska State Troopers (907) 269-4532

Detective Kurt Kornchuck - Anchorage Pooice Department, DEA Task Force/Clandestine Laboratory Coordinator (907) 529-9726

Janice Adair - DEC, Director, Div. Of Environmental Health (907) 269-7644

Nathan Johnson - Legislative Aide to Rep. Guess (907) 269-0120

Lt. Grimes may want to offer testimony, but I haven't heard back from her on this yet.



SARAH H. PALIN
MAYOR

CITY OF WASILLA
290 E. Herning Ave.
Wasilla, Alaska 99654-7091
Phone: (907) 373-9055
Fax: (907) 373-9096

March 1, 2002

The Honorable Gretchen Guess
Alaska House of Representatives
State Capitol, Room 112
Juneau, AK 99801-1182

Dear Representative Guess:

Thank you for the opportunity to comment in support of House Bill 382, relating to the evaluation and cleanup of sites where certain controlled substances may have been manufactured or stored.

There has been an alarming increase in methamphetamine use and production in the Mat-Su Valley, as well as all over the State, and there are currently no guidelines in place to assist property owners and the general public in cleaning up former meth lab sites. Exposure to the chemicals and contaminants left behind when a meth lab is shut down can cause serious health problems to future occupants.

We need to find a way to ensure the safety of future residents and provide guidelines for property owners and landlords to properly clean up the hazardous material resulting from illegal drug manufacturing. As President of the Alaska Conference of Mayors, I also assisted in passing of Resolution 2002-08, "A Resolution to Support Efforts to Combat the Use of Illegal Drugs in Alaskan Communities" (attached). I wholeheartedly support HB 382.

Sincerely,

Sarah Palin
Mayor of Wasilla

cc: Rep. Beverly Masek, Co-Chair
Resources Committee

Enclosure

ALASKA STATE LEGISLATURE



REPRESENTATIVE GRETCHEN GUESS

Questions Relating To HB 382

"An Act relating to the evaluation and cleanup of sites where certain controlled substances may have been manufactured or stored."

Questions:

1. **Why doesn't a property owner have to clean up the site regardless of whether or not they intend to rent or sell?**

We want to limit the role of government intrusion. What if the person doesn't have any money; the person has a debilitating disease and can't afford to clean it up? We're saying if you want to do something with it you must clean it. If not, then its not required at this point. Our concern is the threat to public safety – it's not dangerous if no one is allowed in it. If you don't clean it up, then you won't be allowed to have people in it.

2. **Is disclosure of chemicals already required?**

No. This is an issue that has not been addressed until now.

3. **Why DEC?**

DEC is the agency most capable of integrating it into their current program. They already have systems in place for testing and setting standards. If it were routed through HSS a whole new position would need to be created and most likely have a much higher cost associated.

4. **What do Oregon and Washington have in place?**

OR and WA both fund this program through HSS, but they have fully funded positions. It would cost a lot more to emulate their system. OR is operated on the state level – WA operated on the local level (although WA told us they wished they had it at the state level due to poor execution). In Alaska local governments don't have the expertise for testing.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 376
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title Management of fish and game in and on BRU Multiple
navigable waters and submerged lands Component _____
 Sponsor Representative Ogan
 Requester House Resources Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The fiscal effect of HB 376 is difficult to quantify. Section 3 could very negatively the ability of ADF&G and the board regulatory system to interact in a meaningful way with the federal subsistence program. Under dual federal/state subsistence management, the state works toward the goals of protecting and enhancing our fish and wildlife resources, asserting and protecting the state's management authority and prerogative, and maintaining opportunities for all users of fish and wildlife with subsistence use as a priority. To achieve these objectives, it is critical that the state communicate with federal parties, and that we work with them to protect the state's interests. If ADF&G participation in the development of federal management decisions is limited or curtailed, there will be accelerated erosion of fishing and hunting opportunity for state managed subsistence, sport, personal use, and commercial users, and a far greater likelihood of negative effects on our fish and game resources.

Prepared by: Rob Bosworth Phone 465-6140
 Division Commissioner's Office Date/Time 3/1/02 10:05 AM
 Approved by: Commissioner Frank Rue Date 3/1/2002
 Agency Fish and Game

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 382
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
 Title An Act Relating to Cleanup of Illegal Drug Sites BRU Environmental Health
 Component Laboratory Services
 Sponsor Representative Guess
 Requester House Resources Committee Component No. 2065

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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	10.0	0.0	0.0	0.0	0.0	0.0
Supplies	2.0	2.0	2.0	2.0	2.0	2.0
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	12.0	2.0	2.0	2.0	2.0	2.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	12.0	2.0	2.0	2.0	2.0	2.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	12.0	2.0	2.0	2.0	2.0	2.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)
 The evaluation and cleanup process of illegal drug sites as proposed in this bill will require the Department to develop contaminated substance limits in regulation and guidelines for decontamination. In preparing this fiscal note, the Department has assumed that the expected number of contaminated sites requiring evaluation and clean up would be approximately 18 a year based on actual numbers of 13 sites last year and 25 the year before. Additionally, it is anticipated that Alaska can use standards and cleanup guidance documents from other states as templates.
 Contractual costs of 10.0 would be incurred the first year to pay for regulation development, public notices, and production of the required guidance document.
 Continued on Page 2

Prepared by: Janice Adair, Director Phone (907) 269-7644
 Division Environmental Health Date/Time 2/25/02 2:49 PM
 Approved by: Kurt Fredriksson - Deputy Commissioner Date 2/25/2002
 Agency Department of Environmental Conservation

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. HB 382

ANALYSIS CONTINUATION

Continuation from Page 1

A telephonic survey of the private labs in the state revealed that there are no labs currently capable of conducting some of the analyses required under this legislation. Therefore, this fiscal note assumes that the department's chemical laboratory will conduct the required tests. Laboratory supplies cost of 2.0 are included to cover the commodities required for this testing.

Line Item Description	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY2007
Personal Services	\$0	\$0	\$0	\$0	\$0	\$0
Travel	\$0	\$0	\$0	\$0	\$0	\$0
Contractual						
• Regulations and Public Notice	\$2,000	\$0	\$0	\$0	\$0	\$0
• Guidance Document preparation and copying	\$8,000	\$0	\$0	\$0	\$0	\$0
Subtotal:	\$10,000	\$0	\$0	\$0	\$0	\$0
Supplies						
• Laboratory commodities (72 Samples)	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000
Equipment	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$12,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 382
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title An Act relating to the evaluation and BRU AST Detachments
cleanup of sites where controlled substances . . . Component AST Detachments
 Sponsor Representative Guess
 Requester House Resources Committee Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on the Department of Public Safety.

Prepared by: Lt. Julia Grimes Phone 269-4532
 Division Division of Alaska State Troopers Date/Time 2/27/02 3:49 PM
 Approved by: Commissioner Glenn Godfrey Date 2/27/2002
 Agency Department of Public Safety

HB

392



ALASKA STATE LEGISLATURE

**PLEASE BRING HB286
PACKET TO MEETING
TOMORROW – ALONG
W/THIS CS**

REPRESENTATIVE DREW SCALZI
State Capitol, Juneau
Alaska 99801-1182

(907) 465-2689; (800) 665-2689

Fax: (907) 465-3472

Email: Representative_Drew_Scalzi@legis.state.ak.us

February 21, 2002

To: Members, House Resources Committee

From: Rep. Drew Scalzi

Re: Committee Substitute for HB286

Attached please find a committee substitute for HB286 to be heard tomorrow, Friday, Feb. 22, in House Resources.

The three changes (underlined in your copy) are:

- Page 1, line 8, shall to may
- Page 7, lines 20 & 21; fishery assessment collection changed from quarterly to monthly to be consistent with collection of ASMI and salmon enhancement taxes
- Page 8, line 9, shall to may

Thank you.

cc: Peg Warren, LIO

CS FOR HOUSE BILL NO. 286()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES SCALZI, Fate

A BILL
FOR AN ACT ENTITLED

1 "An Act allowing a person to hold two commercial fishing entry permits for a salmon
2 fishery for the purpose of consolidating the fishing fleet for a salmon fishery; relating to
3 salmon fishery associations and to salmon fishery assessments; and providing for an
4 effective date."

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

6 * Section 1. AS 16.40 is amended by adding a new section to read:

7 Article 5. Salmon Fishery Associations.

8 Sec. 16.40.250. Salmon fishery associations. The commissioner may assist
9 in and encourage the formation of qualified salmon fishery associations for the
10 purpose of promoting the consolidation of the fishing fleet in a salmon fishery for
11 which the Alaska Commercial Fisheries Entry Commission has issued commercial
12 fishing entry permits under AS 16.43. A salmon fishery association is qualified if the
13 commissioner determines that the regional association

14 (1) is incorporated as a nonprofit corporation under AS 10.20;

1 (2) represents interim-use permit and entry permit holders who
2 participate in the salmon fishery for which the association is established; and

3 (3) has a board of directors that is representative of interim-use permit
4 and entry permit holders who fish in the salmon fishery.

5 Sec. 2. AS 16.43.140(c) is amended to read:

6 (c) A person may hold more than one interim-use or entry permit issued or
7 transferred under this chapter only for the following purposes:

8 (1) fishing more than one type of gear;

9 (2) fishing in more than one administrative area;

10 (3) harvesting particular species for which separate interim-use or
11 entry permits are issued;

12 (4) if authorized by regulations of the commission, fishing an entire
13 unit of gear in a fishery in which the commission has issued entry permits for less than
14 a unit of gear under AS 16.43.270(d); under this paragraph, a person may not hold
15 more than two entry permits for a fishery; however, the person may not

16 (A) fish more than one unit of gear in the fishery; or

17 (B) acquire a second entry permit for the fishery after the
18 person has acquired an entry permit that authorizes the use of an entire unit of
19 gear in the fishery;

20 (5) consolidation of the fishing fleet for a salmon fishery; however,
21 a person may hold not more than two entry permits for a salmon fishery under
22 this paragraph, but the person who holds two entry permits for a salmon fishery
23 may not engage in fishing under the second entry permit.

24 * Sec. 3. AS 37.05.146(b)(4)(AA) is amended to read:

25 (AA) dive fishery management assessment receipts
26 (AS 43.76.150) and salmon fishery assessment receipts (AS 43.76.220);

27 * Sec. 4. AS 43.76 is amended by adding new sections to read:

28 **Article 4. Salmon Fishery Assessment.**

29 **Sec. 43.76.220. Salmon fishery assessment.** (a) A salmon fishery
30 assessment shall be levied on the value of the salmon sold in a salmon fishery. The
31 rate of the assessment, not to exceed five percent, shall be determined by an election

1 under AS 43.76.230.

2 (b) A salmon fishery assessment may only be levied or collected on salmon
3 sold in a fishery if

4 (1) there exists in the administrative area in which the fishery occurs
5 an association determined by the commissioner of fish and game to be a qualified
6 salmon fishery association under AS 16.40.250; and

7 (2) the rate of the salmon fishery assessment is determined by an
8 election under AS 43.76.230.

9 **Sec. 43.76.230. Election to approve, amend, or terminate salmon fishery**
10 **assessment.** (a) A qualified salmon fishery association may conduct an election
11 under this section after the commissioner of fish and game approves

12 (1) the notice to be published by the qualified salmon fishery
13 association; the notice must state that all salmon sold in the fishery are subject to the
14 salmon fishery assessment and the rate of the salmon fishery assessment to be
15 approved, amended, or terminated at the election;

16 (2) the ballot to be used in the election; and

17 (3) the registration and voting procedure for the approval, amendment,
18 or termination of the salmon fishery assessment.

19 (b) The salmon fishery assessment is levied under AS 43.76.220 in a fishery
20 on the effective date stated on the ballot if

21 (1) the assessment is approved by a two-thirds majority vote of the
22 eligible interim-use permit and entry permit holders in the fishery; and

23 (2) the election results are certified by the commissioner of fish and
24 game.

25 (c) In conducting an election under this section, a qualified salmon fishery
26 association shall adopt the following procedures:

27 (1) the qualified salmon fishery association for the fishery shall make
28 copies of the articles of incorporation and bylaws of the association available to all
29 interim-use permit and entry permit holders in the fishery;

30 (2) the qualified salmon fishery association for the fishery shall hold at
31 least one public meeting not less than 30 days before the date on which ballots must be

1 postmarked to be counted in the election to explain, as appropriate, the reason for
2 approval or amendment of the proposed salmon fishery assessment, the reason for the
3 proposed rate of the salmon fishery assessment, or the reason for termination of the
4 salmon fishery assessment, and to explain the registration and voting procedure to be
5 used in the election; the qualified salmon fishery association shall provide notice of
6 the meeting by

7 (A) mailing the notice to each eligible interim-use permit and
8 entry permit holder;

9 (B) posting the notice in at least three public places in the
10 administrative area in which the fishery occurs; and

11 (C) publishing the notice in at least one newspaper of general
12 circulation in the administrative area in which the fishery occurs at least once a
13 week for two consecutive weeks before the meeting;

14 (3) the qualified salmon fishery association shall mail two ballots to
15 each eligible interim-use permit and entry permit holder; the first ballot shall be
16 mailed not more than 45 days before the date ballots must be postmarked to be
17 counted in the election; the second ballot shall be mailed not less than 15 days before
18 the date ballots must be postmarked to be counted in the election; the qualified salmon
19 fishery association shall adopt procedures to ensure that only one ballot from each
20 eligible interim-use permit and entry permit holder is counted in the election;

21 (4) the ballot must

22 (A) state that all salmon sold in the fishery are subject to the
23 salmon fishery assessment;

24 (B) state the rate of the assessment to be levied under
25 AS 43.76.220;

26 (C) ask the question whether the salmon fishery assessment
27 addressed on the ballot shall be approved, amended, or terminated, as
28 appropriate;

29 (D) indicate the fishery for which the salmon fishery
30 assessment will be levied or terminated;

31 (E) provide an effective date for the approval, amendment, or

1 termination of the salmon fishery assessment; and

2 (F) indicate the date on which returned ballots must be
3 postmarked in order to be counted;

4 (5) the ballots shall be returned by mail and shall be counted by an
5 auditor selected by the qualified salmon fishery association and approved by the
6 commissioner of fish and game; the qualified salmon fishery association shall pay the
7 costs of counting the ballots.

8 (d) The commissioner of fish and game shall certify the results of an election
9 under this section if the commissioner determines that the requirements of (a) and (c)
10 of this section have been satisfied.

11 (e) A qualified salmon fishery association may employ or contract with
12 another person to administer an election under this section subject to the supervision
13 of the association.

14 (f) Except as otherwise provided under AS 43.76.240 and 43.76.250, an
15 election to amend the rate of a salmon fishery assessment or to terminate a salmon
16 fishery assessment shall be conducted under the same procedures established under
17 (a), (c), and (d) of this section for an election to approve a salmon fishery assessment.

18 (g) In this section, "eligible interim-use permit and entry permit holder" means
19 an individual who, 90 days before the date ballots must be postmarked to be counted
20 in an election under this section, is listed in the records of the Alaska Commercial
21 Fisheries Entry Commission as the legal holder of an interim-use permit for salmon
22 fishing gear or an entry permit for salmon fishing gear that authorizes the individual to
23 fish commercially in the salmon fishery for which the salmon fishery assessment is to
24 be approved, amended, or terminated.

25 **Sec. 43.76.240. Amendment of salmon fishery assessment.** (a) The rate of
26 the salmon fishery assessment levied on salmon under AS 43.76.220 may be amended
27 by the commissioner of revenue upon a two-thirds majority vote at an election held
28 under AS 43.76.230 among the eligible permit holders for the fishery in which the
29 salmon fishery assessment is levied.

30 (b) The commissioner of revenue shall amend the rate of a salmon fishery
31 assessment under (a) of this section following an election among the eligible permit

1 holders for the fishery if

2 (1) a petition that is signed by at least 25 percent of the interim-use
3 permit and entry permit holders in the fishery that is the subject of the petition is
4 presented to the commissioner of fish and game requesting amendment of the rate of
5 the salmon fishery assessment; the petition must state the proposed rate of the salmon
6 fishery assessment to be levied under AS 43.76.220; only a person who holds an
7 interim-use permit or entry permit for the fishery at the time of signing the petition
8 may validly sign the petition;

9 (2) an election is held in accordance with AS 43.76.230; the ballot
10 must ask the question whether the salmon fishery assessment on salmon sold in the
11 fishery shall be amended and must state the salmon fishery assessment to be levied
12 under AS 43.76.220 if the assessment is amended; the ballot must be worded so that a
13 "yes" vote is for amendment of the salmon fishery assessment and a "no" vote is for
14 continuation of the current salmon fishery assessment;

15 (3) a two-thirds majority of the eligible interim-use permit and entry
16 permit holders in the fishery casts a ballot for the amendment of the salmon fishery
17 assessment; in this paragraph, "eligible interim-use permit and entry permit holder"
18 has the meaning given in AS 43.76.230; and

19 (4) the qualified salmon fishery association provides notice of the
20 election in accordance with AS 43.76.230 within six months after receiving notice
21 from the commissioner of fish and game that a valid petition under (1) of this
22 subsection has been received.

23 **Sec. 43.76.250. Termination of salmon fishery assessment.** (a) The salmon
24 fishery assessment levied under AS 43.76.220 shall be terminated by the
25 commissioner of revenue upon a two-thirds majority vote at an election held under
26 AS 43.76.230 among the eligible permit holders for the fishery in which the salmon
27 fishery assessment is levied.

28 (b) The commissioner of revenue shall terminate a salmon fishery assessment
29 under (a) of this section following an election among the eligible permit holders for
30 the fishery if

31 (1) a petition that is signed by at least 25 percent of the interim-use

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permit and entry permit holders in the fishery that is the subject of the petition is presented to the commissioner of fish and game requesting termination of the salmon fishery assessment; only a person who holds an interim-use permit or entry permit for the fishery at the time of signing the petition may validly sign the petition;

(2) an election is held in accordance with AS 43.76.230; the ballot must ask the question whether the salmon fishery assessment shall be terminated; the ballot must be worded so that a "yes" vote is for continuation of the salmon fishery assessment and a "no" vote is for termination of the salmon fishery assessment;

(3) a two-thirds majority of the eligible interim-use permit and entry permit holders in the fishery casts a ballot for the termination of the salmon fishery assessment; in this paragraph, "eligible interim-use permit and entry permit holder" has the meaning given in AS 43.76.230; and

(4) the qualified salmon fishery association provides notice of the election in accordance with AS 43.76.210 within six months after receiving notice from the commissioner of fish and game that a valid petition under (1) of this subsection has been received.

Sec. 43.76.260. Collection of assessment. (a) A buyer who acquires salmon that is subject to a salmon fishery assessment levied under AS 43.76.220 shall collect the salmon fishery assessment at the time of purchase and shall remit the total salmon fishery assessment collected during each month to the department by the last day of the next month.

(b) A buyer who collects the salmon fishery assessment shall maintain records of the value of salmon that is subject to the assessment that is purchased in each salmon fishery of the state.

(c) The owner of salmon removed from the state is liable for payment of the salmon fishery assessment levied under AS 43.76.220 if, at the time the salmon is removed from the state, the assessment payable on the salmon has not been collected by a buyer. If the owner of the salmon is liable for payment of the salmon fishery assessment under this subsection, the owner shall comply with the requirements under (a) and (b) of this section to remit the assessment to the department and to maintain records.

Consistent w/ ASMI Salmon enhancement



1 (d) The salmon fishery assessment collected under this section shall be
2 deposited in the state treasury.

3 **Sec. 43.76.270. Funding for qualified salmon fishery associations.** (a) The
4 legislature may make appropriations of revenue collected under AS 43.76.260 to the
5 Department of Fish and Game for funding of the qualified salmon fishery association
6 for the fishery in which the assessment was collected. Funds received under this
7 section by a qualified salmon fishery association may be expended in accordance with
8 the annual operating plan developed under (b) of this section.

9 (b) The Department of Fish and Game may assist a salmon fishery association
10 in developing an annual operating plan. The annual operating plan must describe the
11 activities for which the association intends to expend the funding received under this
12 section, including consolidation of the fishing fleet in the salmon fishery, financial
13 assistance to permit holders in the fishery to promote consolidation of the fishing fleet
14 for the fishery, and administrative activities of the association.

15 (c) A qualified salmon fishery association receiving funding under this section
16 shall submit an annual report to the Department of Fish and Game and to the members
17 of the association describing the activities of the association and how those activities
18 are consistent with the articles of incorporation and bylaws of the association.

19 (d) This section does not establish a dedication of a state tax or license.

20 (e) This section does not restrict or qualify the authority of the Department of
21 Fish and Game or the Board of Fisheries under AS 16.

22 **Sec. 43.76.280. Definitions.** In AS 43.76.220 - 43.76.280,

23 (1) "administrative area" means an area established by the Alaska
24 Commercial Fisheries Entry Commission under AS 16.43.200 for regulating and
25 controlling entry into salmon fisheries;

26 (2) "buyer" has the meaning given in AS 43.76.040;

27 (3) "fishery" has the meaning given in AS 16.43.990;

28 (4) "qualified salmon fishery association" means an association that is
29 qualified under AS 16.40.250;

30 (5) "salmon" means salmon sold under the authority of a limited entry
31 permit or interim-use permit issued under AS 16.43 for salmon;

1 (6) "sold" means the transfer of ownership of salmon from an interim-
2 use permit or entry permit holder to a buyer at the first point of sale;

3 (7) "value" has the meaning given in AS 43.75.290.

4 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).



UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 110
Juneau, Alaska 99801-1172
(907) 586-2820
(907) 463-2545 Fax
E-Mail: ufa@ufa-fish.org
www.ufa-fish.org

February 20, 2002

Representative Drew Scalzi
Representative Beverly Masek
Co-Chairs
House Resources Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Re: HB 286 Ownership Of More Than One Fishery Permit

Dear Co-Chairs:

United Fishermen of Alaska supports passage of this bill to allow fishery permit stacking for the purpose of fleet reduction. Specifically, we support allowing:

- A natural person to own up to two permits in a salmon fishery
- Formation of regional non-profit associations to facilitate funding.
- A 2/3 majority vote by permit holders to authorize a self assessment of up to 5% of ex-vessel value

As you are aware, the Alaska salmon industry is facing challenges due to imports of farmed fish, the value of the Japanese yen, the lagging Japanese economy, and inefficiencies in the present harvesting structure. It is important that fishermen have a self-directed means of removing excess capacity without the use of state funds and in a manner that is constitutionally viable.

We discussed expanding this permit-stacking program to fisheries other than salmon, but do not feel there has been adequate discussion with other non-salmon fisheries of this option at the present time.

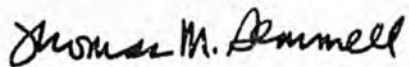
MEMBER ORGANIZATIONS

Alaska Longline Fishermen's Association • Alaska Trollers Association • At-sea Processors Association • Bristol Bay Reservo
Chignik Regional Aquaculture Association • Concerned Area "M" Fishermen • Cook Inlet Aquaculture Association
Copper River Salmon Producers Association • Cordova District Fishermen United • Douglas Island Pink and Chum
Kona Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association • Kodiak Seiners Association • North Pacific Fisheries Association
Northern Southeast Regional Aquaculture Association • Old Harbor Fisherman's Association • Polarisburg Vessel Owners Association
Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association • Seafood Producers Cooperative
Southeast Alaska Regional Diver Fisheries Association • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Cook Inlet Drift Association • United Salmon Association • United Southeast Alaska Gillnetters

The twenty-nine member groups of UFA would appreciate your support in passing this bill.

If you have any questions about our position or if you need additional information, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Thomas M. Gemmell".

Thomas M. Gemmell
Executive Director



ALASKA STATE LEGISLATURE
REPRESENTATIVE JOHN HARRIS
STATE CAPITOL 513, JUNEAU, ALASKA 99801-1182 (907) 465-4859

Sponsor Statement

HB 392 – “An Act relating to the use and appropriation of water.”

Alaska produces vast amounts of fresh water, a fact that the founding fathers of state government took into account when they wrote the constitution. In Article VIII, Sec. 13, they proscribed the use of the surface and subsurface waters, setting up a framework that is the basis for state laws and regulations that have been enacted over the years.

However, the management of the peoples' use and access to their water has become unwieldy, cumbersome and inefficient. HB 392 seeks to give direction to the Department of Natural Resources and correct some of the inefficiencies.

First, the bill removes a \$50 per year fee DNR currently charges for processing water use permits, even when there is no change to the permit holder's usage. It is the sponsor's view that if the permit holder seeks to increase usage or add a new well, for example, a permit fee would then more accurately reflect the work DNR would be required to do.

Second, HB 392 adds agricultural use of water as the second priority, after domestic usage, to assure the agricultural community that farmers will have access to the irrigation their crops will need.

Third, the bill adds a definition for what constitutes “significant use” to mean the use of one million gallons per day or more for 100 consecutive days in a calendar year. It also allows for the renewal of a permit of up to five years for significant use of water.

Finally, HB 392 seeks to provide an efficiency for temporary water users who often do not get their permits until after the water was needed. For example, a contractor who needs water to keep dust under control at a road construction site may not get his permit for the water until weeks after it would have been needed. HB 392 permits the temporary use unless the commissioner takes an action to deny it.

Alaska holds an exceedingly valuable resource in its fresh water, which will be more in demand in the future. HB 392 will help to lay the groundwork for a modern, efficient management regime for our state's water.



ALASKA STATE LEGISLATURE
REPRESENTATIVE JOHN HARRIS
STATE CAPITOL 513, JUNEAU, ALASKA 99801-1182 (907) 465-4859

Sectional Summary

HB 392 – “An Act relating to the use and appropriation of water.”

Sec. 1. amends the bill passed last year to remove the \$50 annual water conservation fee, and prohibits the commissioner of DNR from charging a fee for an application, permit or certificate unless the water user makes changes to his or her water usage.

Sec. 2 amends existing law that proscribes preference in granting permits. This change would put domestic water use first, agricultural and irrigation second, and other uses third, based on the most beneficial use proposed.

Sec. 3 adds language to allow for the renewal of a permit to use a significant amount of water for up to five years, if the factors considered when the permit was first issued are still relevant.

Sec. 4 adds a provision relating to applications for temporary use of water, that would automatically allow the use that has been applied for, unless the commissioner acts to deny the application.

Sec. 5 defines “significant amount of water” as one million gallons per day for 100 consecutive days in a calendar year.

HB

420

Committees:

Resources
Co-Chair

Transportation

World Trade and
State & Federal Relations

Alaska State Legislature



Representative Beverly Masek

During Interim: (June-Dec.)
Mat-Su LIO
600 E. Railroad Avenue
Wasilla, AK 99654
(907) 376-2679
Fax: 373-4745

During Session: (Jan.-May)
State Capitol
Juneau, AK 99801-1182
(907) 465-2679
Fax: 465-4822
1-800-505-2678

Sponsor Statement

An Act Relating to The Use of Water, and Providing for an effective Date

A statutory revision is needed to better facilitate the ability of the Department of Natural Resources to issue temporary water use permits. A repeal of the sunset clause included in last year's HB185 is intended to protect the state's interests in water use distribution cases currently under appeal.