ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672
11304 SENATE RESOURCES

The Campaign
to Label Genetically Engineered Foods

GE foods tutorial

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Threats to the environment

When biotech corporations boast that genetic engineering can do wonders for the environment, we would do well to consider the source. After all, some of these companies are the same ones that have invented such deadly pesticides such as DDT and Agent Orange. These pesticides, it was promised, would help the environment; instead, they turned into environmental disasters.

Environmentalists have many concerns about GE foods. Here are a few:

1. The plight of the Monarch butterfly

Cornell University researchers have found that GE corn may be deadly to the Monarch butterfly. In laboratory tests in the spring of 1999, the scientists found that nearly half of Monarch caterpillars that ate milkweed leaves dusted with GE corn pollen died within four days. The surviving Monarchs that ate the genetically mutated corn pollen were much smaller and had smaller appetites than the control Monarchs, which ate normal corn pollen or no pollen at all.

In 2000, Iowa State University scientists found that plants growing in and near cornfields are being dusted with enough GE pollen to kill monarch caterpillars that feed on them.

Already, GE corn is being grown on 20 million acres of American farmland, right in the heart of Monarch's migratory route between Mexico and Canada.

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And scientists worry that there may be additional surprising scientific discoveries down the road.

2. Increased pesticide pollution

Many of the new GE crops, such as Roundup Ready soybeans, are designed to allow farmers to spray heavier doses of pesticides on their land. These pesticides inevitably will find their way into our water and food supply, endangering humans and wildlife.

New Scientist magazine reports that many farmers that have converted to GE production use as many pesticides as their conventional counterparts, while some GE farmers now use more pesticides.

And one of Britain's leading safety experts, Malcolm Kane (former head of food safety at the supermarket chain Sainsbury's), has revealed that the limits on pesticide residues in soy had been increased 200-fold to help the GE industry. He warned that higher pesticide residues could appear in a wide variety of foods, ranging from breakfast cereals to biscuits.

3. Genetic contamination of the environment

When Scottish Parliament member Robin Harper learned that Scottish scientists were experimenting with genetically modified salmon that grow at four times the normal rate, he was horrified, and called for a ban on all genetic engineering experiments.

"We should be extremely concerned about genetically modified fish because of the danger that they could escape into the wild," he said. "It's a similar, if not even more dangerous threat, to that we are facing with GM plants. If a GM fish escaped or was released accidentally in to the wild it could never be recaptured. This fish could breed with wild populations and devastate the existing natural balance with its modified behavior.

"There can be no doubt as to the huge threat GM fish would be to fish stocks wherever they were released in the World's oceans. This fish, if it

StarLink fiasco increases pressu for regulation

Genetically engineered bugs unc development

"Blue revolution" coming as scientists develop genetically engineered fish

escaped into the North Atlantic, could do untold damage to the ecology both of the north Atlantic and Scottish salmon rivers."

Like Harper, many scientists are concerned about the widespread release of genetically modified organisms (GMOs) into the environment. In the United States, millions of acres of land have been planted with GE crops. Scientists fear that GMOs will be spread, by bird, insect or wind, to non-GE crops--and to the wilderness. And unlike other kinds of waste, genetic contamination cannot be cleaned up, or contained.

4. GE genes can jump species barrier

In May, 2000, Professor Hans-Hinrich Katz, a leading German zoologist, released research that shows that genes used to modify crops can jump to other species and cause bacteria to mutate. Katz found that the gene used to modify oilseed rape had transferred to bacteria living in the guts of honey bees.

"These findings are very worrying and provide the first real evidence of what many have feared," says prominent genetic engineering critic and scientist Dr. Mae-Wan Ho.

"Everybody is keen to exploit GM technology, but nobody is looking at the risk of horizontal gene transfer. We are playing about with genetic structures that existed for millions of years and the experiment is running out of control."

5. Herbicide resistance and fears of the rise of superweeds

Some scientists fear that the extensive planting of genetically engineered crops will lead to a new class of "superweeds" that are resistant to pesticides. The largest class of genetic engineered foods is pesticide-resistant crops, such as Roundup Ready soybeans. The problem is that newly created transgenes may be spread unintentionally--by bird, insect or wind--from target crops to related weed species. The weeds then also pick up resistance to the pesticide.

Nature magazine reported in 1996, for example, that herbicide-resistant GE oilseed rape, released in Europe, has spread to several

wild relatives.

6. Risks to biodiversity

In one especially macabre application of GE technology, scientists seek to develop "terminator" tree farms. The trees would be engineered not to reproduce, and they would be designed to secrete toxic chemicals through their leaves that would kill leaf-eating insects. The trees also would be engineered to include pesticide resistance, meaning that ground flora could be wiped out easily. Critics say the trees might grow faster than before, but they'd be devoid of bees, butterflies, birds and squirrels that depend on pollen, seed and nectar.

The terminator tree farms highlight a growing concern among scientists: the threat genetically engineered crops pose to biodiversity. Scientists estimate that by the year 2000, the world will have lost 95 percent of the genetic diversity present in agriculture 100 years earlier. GE crops are developed from the same monoculture varieties that giant agribusinesses have planted in the latter half of this century, and will only exacerbate the problem.

Moreover, pesticide-resistant crops will allow the application of increasing amounts of powerful pesticides. These pesticides often kill more than the targeted weeds; they frequently kill beneficial plants outside their intended range.

7. Damage to the soil

Scientists are concerned that genetically mutated crops may damage the soil. Researchers for Nature magazine reported in December that some types of GE crops may be leaking powerful toxins into the soil.

Many GE crops, such as corn and potatoes, have been engineered to produce poisons or toxins to fight pests that eat their leaves and stems. Researchers fear that beneficial soil organisms also may be killed, and that some insects may become resistant to the toxins.

Other researchers have revealed that lacewings that ate corn borers reared on GE corn had also died, increasing speculation that

these crops are harming beneficial organisms.

8. Genetically engineered crops put birds at risk

British researchers in 2000 reported that the use of genetically engineered crops modified to tolerate herbicides may severely cut bird populations on farms. Professor Andrew Watkinson and colleagues from the University of East Anglia in Norwich found that bird populations could decline as much as 90 percent in some areas where herbicide-tolerant crops have been sown.

9. The problem of unintended consequences

Biotech firms assure us there's nothing to worry about. Genetically engineered foods, they say, will save the environment.

But it's a story we've heard before. In the mid-1900s, giant agribusinesses took the biological and chemical weapons from two world wars and turned them into pesticides and herbicides. They promised a wondrous new agricultural era of bigger yields and bug-free produce. It was only decades afterwards that scientists began to realize the scope of the environmental devastation wrought by the explosive growth of the pesticide industry.

In the 1960s, scientist Rachel Carson's epic, **Silent Spring**, awakened a generation to the dangers of dioxin and other manmade chemicals in the environment. But it wasn't until 30 years later that scientists began to understand the extent of the problem. Now we know that pesticides and other manmade chemicals are tampering with sexual development and reproduction, in many animal populations and humans as well.

The discovery that genetically engineered corn might be deadly to Monarch butterflies came as a shock to biotech advocates. If biotech companies continue with their massive experiment, what will our scientists tell us 50 years from now?

Previous

Next

GM animals could threaten environment

US NAS report says GM animals pose greater threat to environment than to human health. | By Tabitha M Powledge

A special committee of the US National Academy of Sciences agrees with long-time critics of biotechnology that transgenic animals could threaten the environment. Genetic manipulation of the food supply, however, is unlikely to pose serious direct hazards to human health, it said yesterday (Wednesday August 21).

In a just-released report that was supposed to focus exclusively on scientific concerns about genetic manipulation and cloning of animals, the committee also touched on several policy issues. It concluded that the nation's current regulatory framework might not be equipped to deal with animal biotechnologies, especially regulations administered by the Food and Drug Administration, which requested the report. It urged labeling of genetically modified (GM) foods, a measure long opposed by industry. And it pleased animal activists by describing possible adverse effects on the health and welfare of transgenic animals.

The committee said the greatest potential adverse impact of GM animals was likely to be their environmental effects, especially because it is hard to identify environmental problems in their early stages and difficult to fix them even after they have come to light. Of chief concern are insects and other animals that are hard to contain and can become feral easily, notably shellfish, fish, mice and rats. The report noted that feral cats, pigs and goats can also do serious ecological damage.

The larger risk is from accidental release of transgenic organisms, although the committee said it had "a high level of concern" about intentional release as well. Escapees might spread a transgene in natural populations or they might be so much fitter that they could outcompete them. Another potential danger is an upset to the balance between predator and prey.

The report said release of transgenic fish and shellfish, especially salmon, needed immediate attention. "Cultivated salmon have escaped into the wild from fish farms and these salmon already pose ecologic and genetic risks to native salmon stocks," the report pointed out. In the lab, transgenic salmon grow four to six times faster than non-transgenic salmon. According to committee member Eric M. Hallerman, a fish and wildlife biologist at the Virginia Polytechnic Institute and State University, Blacksburg, definitive studies of their fitness in the wild and their potential evolutionary consequences have yet to be done.

By contrast, the committee saw little reason to think that GM food animals posed much of a health threat, with a couple of possible exceptions. Newly introduced proteins might trigger allergies or hypersensitivity reactions in some consumers. Another potential hazard is animals engineered to produce medical products in milk or eggs; the report urged strict controls to prevent carcasses of these animals from entering the food supply.

The report also explored safety issues stemming from animals engineered for biomedical purposes, but drew few conclusions. It cited much-discussed but unresolved questions about transmission of disease organisms from transplanted animal organs, especially porcine endogenous retroviruses. It also noted "the theoretical possibility" that pathogenic viruses might result from recombination between a viral vector containing a transgene and normally nonpathogenic viruses in the same animal. Analogous events have been observed in the laboratory, the report pointed out.

"The applications of biotechnology can have adverse effects on the welfare of animals," the committee noted, citing a number of examples. Ruminants produced by cell-culture techniques typically are bigger and have longer gestations than those produced in the usual way, which creates suffering and health problems for both mother and baby. Transgenic technologies have an exceptionally low success rate, and the animals that do result often have physical and behavioral abnormalities. Pigs intended for human transplants are raised in isolated environments that can lead to abnormal behavioral development. The committee's attention to GM animal welfare drew praise from Michael Fox, head of the Humane Society, who said he wished it had happened a decade ago.

Links for this article
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http://national-academies.org

Animal Biotechnology: Science-based concerns
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BIOTECHNOLOGY INDUSTRY ORGANIZATION

Testimony of the Biotechnology Industry Organization

Submitted to Alaska Senate Committee on Resources

March 3, 2004

Regarding Senate Bill 281:
The Labeling and Identification of Genetically Modified Fish and Fish Products

On behalf of the Biotechnology Industry Organization and its more than 1,000 member companies, please accept this testimony in opposition of mandatory, generalized labeling requirements for biotech foods like those proposed in Senate Bill 281 "An Act relating to labeling and identification of genetically modified fish and fish products." BIO does, however, strongly support the existing federal requirements for accurate and informative food labels, which communicate information that is relevant to health, safety and nutrition.

Senate Bill 281 would require mandatory labeling of biotech fish and fish products developed using biotechnology. This unnecessary and misleading legislation ignores existing science-based federal guidelines on labeling of biotechnology-derived foods. In addition, it would be costly to implement, and would not provide consumers with any beneficial information. Please consider the following rationale:

- **Before being approved for commercialization, all biotech food products (whether plant- or animal-based) must be rigorously reviewed at the federal level for safety—for both human consumption and the environment.** In fact, the Food and Drug Administration (FDA), the Environmental Protection Agency (EPA) and the U.S. Department of Agriculture (USDA)—at a minimum—are involved in the approval and regulation of such products. The FDA evaluates scientific research to determine whether transgenic fish are safe for their intended use, for the fish themselves, and for the environment. FDA's environmental assessment is conducted with the cooperation of the National Marine Fisheries Service and the U.S. Fish & Wildlife Service under the requirements of the National Environmental Policy Act and the Endangered Species Act.

- **The labeling requirements proposed by Senate Bill 281 would be inconsistent with the science-based guidance of the federal government.** Under the Federal Food, Drug and Cosmetic Act, the label of the food must reveal all *material* facts about the food. For

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instance, the act requires that if a biotech food differs significantly in its nutritional or allergenic properties than its conventionally produced counterpart, that fact must be disclosed on the label. FDA has taken a science-based approach in developing this guidance and decided biotech foods do not inherently "present any different or greater safety concern than foods developed by [conventional methods]." FDA uses the principal of "substantial equivalence"—focusing on the final product, not the process used to develop a food product, in determining how it should be labeled. In a 2002 letter to Oregon's governor, in fact, FDA stated that its "scientific evaluation of bioengineered foods continues to show that these foods, as currently marketed...are as safe as their conventional counterparts." The FDA guidelines are online at http://www.cfsan.fda.gov/~dms/biolabgu.html.

- **Numerous scientific groups, including American Medical Association (AMA), American Council on Science and Health, Council for Agricultural Science and Technology, Institute of Food Technologists, and many more support the FDA's science-based approach to labeling.** In fact, an AMA report found that "[T]here is no scientific justification for special labeling of [biotech foods], as a class, and that voluntary labeling is without value unless it is accompanied by focused consumer education."

- **A patchwork of inconsistent state labeling laws would not benefit consumers.** Mandatory label requirements that vary from state-to-state would not only conflict with the FDA guidelines and be costly to implement and enforce but also would likely confuse consumers.

We hope you will join BIO in opposing Senate Bill 281. If you have any questions or would like additional information on this topic, please feel free to contact Patrick Kelly at 202-962-9200 or by e-mail pkelly@bio.org or Dr. Barbara Glenn, Director of Animal Biotechnology at 202-962-6697 or by e-mail bglenn@bio.org. Thank you for your consideration of this important matter.

Respectfully Submitted,

Patrick M. Kelly
Vice President, State Government Relations
Biotechnology Industry Organization
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Washington, DC 20005
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202-962-9201 [fx]
pkelly@bio.org [e-mail]

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E-Mail: ufa@ufa-fish.org
www.ufa-fish.org

February 17, 2004

Senator Scott Ogan, Chair
Senate Resources Committee
Alaska State Legislature
State Capitol (Mail stop 3100)
Juneau, AK 99801-1182

Dear Senator Ogan,

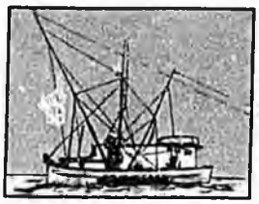
United Fishermen of Alaska supports bill SB 281 relating to the labeling and identification of genetically modified fish and fish products. We believe in proper labeling for all farmed, genetically modified, and wild salmon. UFA applauds the state of California for banning all genetically modified seafood products. The foundation for proper labeling practices will greatly benefit Alaska's Commercial Fishing Industry and help promote the finest seafood in the world to Alaskans and visitors.

United Fishermen of Alaska represents 33 Alaska Commercial fishing organizations, and hundreds of individual fishermen and related businesses, altogether representing over 10,000 Alaska commercial fishermen. We support SB 281 and are strongly against all genetically modified seafood and seafood products. Thank you for your attention to this matter.

Sincerely,

Bob Thorstenson, Jr.
President

CC: Senator Kim Elton



Alaska Trollers Association

130 Seward St., No. 211
Juneau, Alaska 99801
(907) 586-9400
(907) 586-4473 Fax

2004 Legislative Positions

House Bills

HCR 25	Support	Alaska Wild Salmon Week
HJR 32	Support	Labeling of wild and farmed / country of origin
HJR 34	Support	USDA Trade Adjustment Assistance Program
HJR 36	Support	NPS mitigate adverse effects of fishing closures and restrictions
HB 396	Oppose	MSY of "important salmon stocks" and ensuring hatchery brood stock.
HB 409	No Action	Maximum length of seine vessel
HB 410	No Action	CFEC permit buy-back programs
HB 415	No Action	Permit holders (not vessels) fish in multiple areas
HB 419	Oppose as written	Regional seafood development associations and taxes
HB 426	Oppose	Tax certain tourism/recreation-related goods and services
HB 433	Support	Labeling and ID of genetically modified fish & fish products
HB 435	Support	Labeling and misbranding
HB 444	Support	Direct marketing taxes
HB 473	No Action	JV fish processing businesses and tax liability.
HB 478	No Action	Issuance of commercial fishing interim-use permits.

Senate Bills

SCR 19	Support	Support fisheries education
SB 27	No Action	Pesticide Use
SB 281	Support	Labeling and ID of genetically modified fish & fish products
SB 282	Support	Labeling and misbranding
SB 286	Support	Direct marketing taxes
SB 315	No Action	CFEC permit buy-back programs
SB 322	No Action	Salmon enhancement tax rate

ASMI Issues

Support 1% salmon marketing assessment
Neutral on mandatory processor assessment
Support ASMI board size of 11-15 members

Southeast Conference

P.O. Box 21989 Juneau Alaska 99802-1989 Tel. (907) 463-3445 Fax (907) 463-5670

February 27, 2004

Senate Resources
Senator Scott Ogan, Chair
Alaska State Legislature
State Capitol, Mail Stop 3100
Juneau, AK 99801

RE: Support SB 281 – Labeling of genetically modified fish

Dear Senator Ogan,

Southeast Conference supports SB 281 relating to the labeling and identification of genetically modified fish and fish products. Southeast Conference is the State-designated Alaska Regional Development Organization (ARDOR), the Federally-designated Economic Development District (EDD), and the Federally-designated Resource Conservation and Development Council (RC&D) for Southeast Alaska. The mission of Southeast Conference is to undertake and support activities that promote strong economies, healthy communities, and a quality environment in Southeast Alaska. Our over 130 Southeast Alaska members include nearly every community in the region, every chamber of commerce, every major economic development organization, 20 transportation organizations, 10 Alaska Native organizations, and more than 50 other organizations.

SB 281 is legislation that was introduced through the marketing committee of the Salmon Industry Task Force and is based on similar legislation that passed the California State legislature last year. The labeling of genetically modified fish and fish products will help consumers know what they are putting on their dinner plates. It is important to the commercial fishing industry in that it allows our wild Alaska seafood products to be recognized in the marketplace as a superior unmodified food source. The commercial fishing industry is an important component of the fabric of the Southeast region. Differentiating the wild product from a genetically modified product should, in the future, allow for a price differential that will help make the commercial fishing industry more viable in increased ex-vessel value.

The Southeast Conference also recognizes that this legislation is important to the consumer as it required food packaging to be correctly labeled. We encourage you to pass this legislation out of committee. Thank you for your interest.

Sincerely,

Meilani Schijvens

Meilani Schijvens
Executive Director

cc: Southeast Caucus

BIOTECHNOLOGY
INDUSTRY
ORGANIZATION

February 27, 2004

The Honorable Scott Ogan
Chair, Senate Committee on Resources
Alaska State Senate
State Capitol Building
Juneau, AK 99801

Dear Senator Ogan:

The Biotechnology Industry Organization (BIO) opposes mandatory, generalized labeling requirements for biotech foods like those proposed in Senate Bill 281 "An Act relating to labeling and identification of genetically modified fish and fish products." However, we strongly support the existing federal requirements for accurate and informative food labels, which communicate information that is relevant to health, safety and nutrition.

Senate Bill 281 would require mandatory labeling of biotech fish and fish products developed using biotechnology. This unnecessary and misleading legislation ignores existing science-based federal guidelines on labeling of biotechnology-derived foods. In addition, it would be costly to implement, and would not provide consumers with any beneficial information. Please consider the following rationale:

- **Before being approved for commercialization, all biotech food products (whether plant- or animal-based) must be rigorously reviewed at the federal level for safety—for both human consumption and the environment.** In fact, the Food and Drug Administration (FDA), the Environmental Protection Agency (EPA) and the U.S. Department of Agriculture (USDA)—at a minimum—are involved in the approval and regulation of such products. The FDA evaluates scientific research to determine whether transgenic fish are safe for their intended use, for the fish themselves, and for the environment. FDA's environmental assessment is conducted with the cooperation of the National Marine Fisheries Service and the U.S. Fish & Wildlife Service under the requirements of the National Environmental Policy Act and the Endangered Species Act.

- **The labeling requirements proposed by Senate Bill 281 would be inconsistent with the science-based guidance of the federal government.** Under the Federal Food, Drug and Cosmetic Act, the label of the food must reveal all ***material*** facts about the food. For instance, the act requires that if a biotech food differs significantly in its nutritional or allergenic properties than its conventionally produced counterpart, that fact must be

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disclosed on the label. FDA has taken a science-based approach in developing this guidance and decided biotech foods do not inherently "present any different or greater safety concern than foods developed by [conventional methods]." FDA uses the principal of "substantive equivalence"—focusing on the final product, not the process used to develop a food product, in determining how it should be labeled. In a 2002 letter to Oregon's governor, in fact, FDA stated that its "scientific evaluation of bioengineered foods continues to show that these foods, as currently marketed...are as safe as their conventional counterparts." The FDA guidelines are online at http://www.cfsan.fda.gov/~dms/biolabgu.html.

- **Numerous scientific groups, including American Medical Association, American Council on Science and Health, Council for Agricultural Science and Technology, Institute of Food Technologists, and many more support the FDA's science-based approach to labeling.** In fact, an AMA report found that "[T]here is no scientific justification for special labeling of [biotech foods], as a class, and that voluntary labeling is without value unless it is accompanied by focused consumer education."

- **A patchwork of inconsistent state labeling laws would not benefit consumers.** Mandatory label requirements that vary from state-to-state would not only conflict with the FDA guidelines and be costly to implement and enforce but also would likely confuse consumers.

We hope you will join BIO in opposing Senate Bill 281. If you have any questions or would like additional information on this topic, please feel free to contact Patrick Kelly at 202-962-9503 or by e-mail pkelly@bio.org or Dr. Barbara Glenn, Director of Animal Biotechnology at 202-962-6697 or by e-mail bglenn@bio.org. Thank you for your consideration of this important matter.

Sincerely,

Patrick M. Kelly
Vice President,
State Government Relations

SB

282

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/28/04

FURTHER: Finance

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

DATE TURNED IN TO OFFICE: 3-8-04

Resources Committee considered SENATE BILL NO. 282

SB 282 PREPARED FOOD:WILD/FARMED FISH DISCLOSURE

"An Act relating to the identification of finfish in food products and to the misbranding of food products consisting of or containing finfish."

and recommends:

[X] be **replaced** with _____ **CS** SB 282 (Res)

[ ] adopt **previous** _____ **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

Senate Bill:
[X] Same Title
[ ] New Title

House Bill:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
LAW	3/3/04			✓	
DEC	3/1/04	✓			

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
	✓			
	✓			
	✓			
	✓			
CHAIR:			✓	

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB282-EC-EH-3-1-04
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Environmental Conservation
Title: Identification of finfish in food products
RDU: Environmental Health
Component: Food Safety and Sanitation
Sponsor: Senator Elton
Requester: (S) Resources
Component No.: 2343

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	55.9	55.9	55.9	55.9	55.9	55.9
Travel	5.0	5.0	5.0	5.0	5.0	5.0
Contractual	8.4	6.9	6.9	6.9	6.9	6.9
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.9	0.5	0.5	0.5	0.5	0.5
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	**77.2**	**69.3**	**69.3**	**69.3**	**69.3**	**69.3**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

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	77.2	69.3	69.3	69.3	69.3	69.3
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	**77.2**	**69.3**	**69.3**	**69.3**	**69.3**	**69.3**

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: *(Attach a separate page if necessary)*

See attached.

Prepared by: Kristin Ryan, Director — Phone (907) 269-7645
Division: Environmental Health — Date/Time 3/1/04 10:00 AM
Approved by: Kurt Fredriksson, Deputy Commissioner — Date 3/1/2004
Agency: Environmental Conservation

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. SB282-EC-EH-3-1-04

ANALYSIS CONTINUATION

SB 282 requires retail food establishments to state on their menus whether the fish they serve is wild or farmed. Regulations would need to be revised, and inspection and compliance resources added to the retail food program to implement this requirement.

An Environmental Health Technician would be hired to implement the requirements of SB 282. The position would survey retail food establishments and solicit menus for compliance review. This position would research and identify the sources and status of fish and fish products that are sold in Alaska and provide technical assistance on this identification to Alaskan suppliers and retail food establishments. The position would also conduct complaint investigations and initiate enforcement action.

Basic position support costs are included for contractual and supplies. An additional $1.5 in contractual cost is included in the first year to public notice proposed regulations. Equipment cost in FY 2005 includes ordinary office equipment (desk, chair, and office furniture) and a computer workstation with $.5 in subsequent years for equipment replacement and software upgrades.

Personal Services New Position Detail

Department of Environmental Conservation

Scenario: A Scenario for FY2005 Fiscal Notes (3605)
Component: Food Safety & Sanitation (2343)
RDU: Environmental Health (207)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#032	Environmental Health Tech.	FT	A	GP	Anchorage	2A	15 B	12.0		38,280	0	0	17,585	55,865

Justification:

Required for implementation of SB 282. Position will research and identify finfish suppliers, provide technical assistance to Alaskan suppliers and retailers, conduct menu reviews, issue approvals, initiate enforcement actions and conduct complaint investigations.

Funding Detail:

1004	General Fund Receipts	100.00%	55,865
	Total Funding:	100.00%	55,865

Component Summary:

Total New Positions: 1

Fund	Description	Fund Percent	Fund Amount
1004	General Fund Receipts	100.00%	55,865
	Total Funding:	100.00%	55,865

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: SB282-LAW-NR-3-2-04
Bill Version: SB 282
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title "An Act relating to the identification of finfish in food products and to the misbranding of food products consisting..."
RDU CIVIL
Component Natural Resources
Sponsor Senator Elton
Requester Senate Resources Committee
Component No.

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (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 (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill amends the Alaska Food, Drug, and Cosmetic Act, adding a new section requiring that food establishment menus discern between wild fish and farmed fish in prepared food products. A federal version of farmed fish labeling legislation was enacted last fall.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhetee, Director
Phone 465-3673
Division Administrative Services
Date/Time 3/3/04 8:20 AM
Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General
Date 3/3/2004
Agency Department of Law

(Revised 12/2003 OMB)

SENATOR SCOTT OGAN 23RD Alaska State Legislature

Senate District H Lazy Mountain * Butte * Chugiak * Peters Creek * Fairview Loop
Knik-Goose Bay * Big Lake * Houston * Willow * Talkeetna * Trapper Creek

State Capitol, Room 103, Juneau Alaska 99801 * (907) 465-3878 * 1 (800) 862-3878 * Fax (907) 465-3265
Senator_Scott_Ogan@legis.state.ak.us Http://www.akrepublicans.org/ogan

FACSIMILE TRANSMITTAL SHEET

TO: Leg. Legal
FROM: Linda Hay - Sen. Res.
COMPANY:
DATE: 3-6-04
FAX NUMBER:
TOTAL NO. OF PAGES INCLUDING COVER: 1
PHONE NUMBER:
RE: CS for SB 282

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Please prepare a CS for SB 282 from the Senate Resources Committee.

Here is the one minor change:

p94 line 14 should read

— a river, lake, or an ocean

Since this is so minor, please send final only unless there are questions

SENATOR KIM ELTON

SB 282
Sponsor Statement

"An Act relating to the identification of finfish in food products and to the misbranding of food products consisting of or containing finfish."

SB 282 requires retail food establishments to state on its menu whether fish it is selling in a prepared food product is wild fish or farmed fish. State law currently provides that farmed fish be identified on the label when the fish is sold at the retail level.

Recent reports in the scientific and general media focus on increased toxin loads in farmed fish and environmental degradation near fish farm sites. Restaurant consumers in Alaska deserve the same notice as retail consumers when they make purchase decisions based on whether the fish is farmed or wild.

The Joint Legislative Salmon Task Force comprised of legislators, seafood harvesters and seafood processors has unanimously supported SB 282.

ALASKA SENATE
STATE CAPITOL • JUNEAU, ALASKA 99801-1182 • (907) 465-4947 • FAX (907) 465-2108
SENATOR_KIM_ELTON@LEGIS.STATE.AK.US

SENATOR KIM ELTON

MEMORANDUM

DATE: January 28, 2004

TO: Senator Scott Ogan, Chair
Senate Resources Committee

FROM: Senator Kim Elton

SUBJ: Hearing Request for SB 282, An Act relating to the identification of finfish in food products and to the misbranding of food products consisting of or containing finfish.

I respectfully request a hearing for SB 282, which requires retail food establishments to state on its menu whether fish it is selling in a prepared food product is wild fish or farmed fish. State law currently provides that farmed fish be identified on the label when the fish is sold at the retail level.

Recent reports in the scientific and general media focus on increased toxin loads in farmed fish and environmental degradation near fish farm sites. Restaurant consumers in Alaska deserve the same notice as retail consumers when they make purchase decisions based on whether the fish is farmed or wild.

The Joint Legislative Salmon Task Force comprised of legislators, seafood harvesters and seafood processors unanimously supported SB 282.

I ask that you hear SB 282 at your earliest convenience.

ALASKA SENATE
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SENATOR_KIM_ELTON@LEGIS.STATE.AK.US

seattlepi.com Commentary

Sunday, January 25, 2004

P-I Focus: Farming is a net-loss proposition -- ecologically, socially and economically

A Salmon Scare
By JOHN VOLPE

From the perspective of the specialist, it is a mixed blessing when the world turns its attention to your chosen area of endeavor. You feel somehow legitimized when, if only briefly, the public shares your own intense interest in the issues to which you have devoted your professional life. However, initial excitement quickly gives way to exasperation as rhetoric overshadows the substantive deliberation necessary to move from knowledge to understanding.

As a university professor dealing with issues surrounding seafood ecology, I toil in relative obscurity. The bread and butter of my research is how the relationship between the fishing and aquaculture industries is altering ecological, social and economic checks and balances the world over.

The landmark study detailing the greatly increased toxin loads found in farm salmon relative to their wild counterparts has thrust me and my colleagues around the world into the media limelight for a few moments. A seemingly endless parade of cameras and microphones has passed through my lab recently at the University of Alberta in search of expert opinion to put these startling data in perspective.

On average, farm-raised salmon have an order of magnitude higher load of cancer causing POPs (persistent organic pollutants) than wild caught salmon. This is not new. In fact over the last few years three other such studies -- albeit much smaller -- have come to nearly identical conclusions. As the dust settles around the current research, attention is shifting to consumer reaction and what effect this news will have on the aquaculture industry.

What I have not seen in any of the worldwide coverage is anyone asking "Why?" By this I don't mean, "Why are toxin loads higher in farm salmon?" The answer is straightforward and was predicted long ago from well-established bioaccumulation principles. Nor am I referring to the implied paradigm of the existence of such a thing as a safe level of carcinogen. No, my frustration is rooted in the deafening absence of what should be a vigorous debate -- "Why industrial aquaculture?" -- or more specifically -- "Why industrial salmon aquaculture?"

Consider the following:

- Current production methods adopt maximum economies of scale. Thus, feedlot style, open net-pens in the oceans simultaneously maximize

consumption of marine (read: public) resources (i.e. fresh, oxygenated water) while offloading production wastes (feces, uneaten food) and byproducts (toxins, antibiotic residues, escaped fish, bioamplified parasites and pathogens). Each net-pen (numbering in the hundreds on both of Canada's coasts) is tantamount to an untreated sewer outfall introducing solid and dissolved wastes directly into the marine environment. This is in every way "industrial waste," disposed of at no charge.

- The unnaturally high densities of animals in the feedlot environment of net-pens make that environment a breeding ground for disease and parasites. Recently in British Columbia, farm-derived parasites were implicated as the causal agent leading to the largest salmon cohort collapse on record anywhere in the world, ever.
- Three to five kilos of edible fish are used to make one kilo of farm salmon; a net loss of protein badly needed by humanity.
- The contribution of the salmon aquaculture industry to British Columbia's gross domestic product in 2001, as calculated by the Canadian Centre for Policy Alternatives, was $87 million. Marine-based industries directly jeopardized by salmon farming, including commercial and sport fisheries and marine tourism, contributed $582 million, or 51 percent of the provincial total.
- Salmon farming in Canada is dominated (greater than 80 percent of B.C. production) by foreign-owned multinational companies seemingly intent on liquidating Canada's natural marine capital for a very small profit. A similar arrangement characterizes the Washington state industry.
- Farm salmon overproduction (principally from Chile and Norway) has driven the price of all salmon to all-time lows. This forces Canadian and American farms to slash jobs to remain competitive and has brought ruin to coastal fishing communities across the Northern Hemisphere (which depend on a fair price for their wild catch).

So, even a cursory review of the available information leads to the question of why we are engaging in this activity? This industry is clearly a net-loss proposition, whether viewed from the ecological, social or economic perspective. Consumers have either been uninformed or have opted to turn a blind eye to these facts. Admittedly, the cause-and-effect relationship between the viability of the world's oceans and your choice of entree is not as obvious as it could or should be but that does not make it any less real.

The take-home message of the recent research is that we can no longer ignore the natural law that what is bad for the environment is bad for your health. Perhaps if industrial salmon aquaculture really held promise to feed the world's hungry or revitalize our struggling coastal communities or even provide a worry-free epicurean experience, there would be reason to give that industry the benefit of the doubt.

Alas, the farm-raised salmon destined for your dinner plate arrives with overwhelming environmental and social baggage, in addition to -- as we now know -- not being as healthful as you've been told.

As with most enviro-social dilemmas, there is hope, and options are available to consumers. The wild Pacific salmon fishery, contrary to popular belief, is not dead. Its major problem has not been lack of wild salmon, which have been plentiful in recent years. Rather, the problem has been to remain viable in the face of rock-bottom prices from the farms offloading costs of production to our coastal habitats. There are five wild Pacific salmon species, each unique in taste and texture.

Advances in flash freezing at sea have resulted in continent-wide availability of a prime product 12 months of the year. In fact, for anyone who cares about what she/he eats, Internet communication and entrepreneurial spirit have combined to make it possible to buy fish (not just salmon) directly from the fisherman, regardless of location (some even have on-board Web cams). Supporting these fisheries not only does your body a service but also helps to support the dozens of coastal communities hurt by plummeting salmon prices.

The major hurdle to the informed consumer is the current lack of labeling in supermarkets and restaurants. Without consistent labeling (farmed or wild, country of origin), the consumer cannot make an informed decision. Currently grocers and restaurants are not required to provide this information, a situation that is unfair to consumers and must change.

The moral of this story resonates far beyond the farm salmon debate, coloring all of industrial agriculture: There are no shortcuts. So long as market forces alone shape how our food is produced, we will be faced with similar reality checks with increasing frequency and magnitude. Market forces only work when truthful product labeling and public understanding of all the costs accompany them.

Indeed, the current crop of toxic farm salmon stories appearing in this paper compete for page space with mad cow disease coverage, transgenic crops and the like -- all born of the shortsighted demand for more with less.

In light of the remarkable shortcomings of this industry, it is time consumers *and* bureaucrats recognize that industrial salmon farming is a solution in search of a problem. Aquaculture in general has a bright future to be sure, but farm-rearing salmon is no one's idea of sustainability. The story is not just that farm salmon have greatly elevated toxin loads, but that this is actually the thin edge of the wedge.

John Volpe is assistant professor of fisheries and seafood ecology at the University of Alberta-Edmonton.

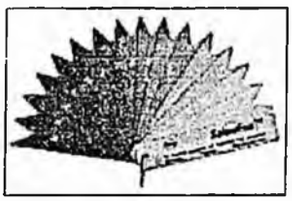
Think Twice About Eating Farmed Salmon

Salmon Farming and Human Health

Nutrition

A single serving of most seafood , including wild or farmed salmon, provides the daily requirement of healthy Omega 3 - an essential fatty acid with many health benefits. However, wild fish have a higher Omega 3 to Omega 6 ratio than farmed salmon which is best for your diet and overall health.

Farmed Atlantic salmon also contain higher levels of unhealthy saturated fats than wild coho, sockeye, steelhead pink and chum salmon. In addition, preliminary research indicates farmed salmon have up to 10 times more PCBs and dioxins than wild salmon. People who eat between 1 and 3 servings of farmed salmon per week are exposed to an amount of contaminants which exceeds the safety level set by the World Health Organization.



SalmoFan - CAAR Files

The food given to farmed salmon does not contain the natural sources of color and as a result, their flesh is an unappetizing gray color. To make their product more marketable, fish farm companies choose what color they want their salmon from the SalmoFan. Chemical additives are then added to the fish feed.

Farmed Atlantic salmon contain 200 per cent more unhealthy, saturated fat than wild pacific pink or chum salmon. This has led some health professionals to question the nutritional value of farmed salmon.

In a letter urging retailers to stop selling farmed salmon to customers, Warren Bell MD, president of the Canadian Association of Physicians for the Environment (CAPE) writes, "Not only is the fat content of farmed salmon higher than that of wild salmon but the composition of farmed salmon fat is also less healthy than that of wild salmon fat." He also writes that, "Another issue of concern to consumers is the fact that the monitoring of residues of antibiotics and other drugs in farmed salmon is inadequate."

Antibiotics & Biocides

Disease and parasites are frequent occurrences on salmon farms. Farmers attempt to control these problems by using powerful drugs including antibiotics and biocides. Farmed salmon are fed more antibiotics per pound, than any other livestock in North America.

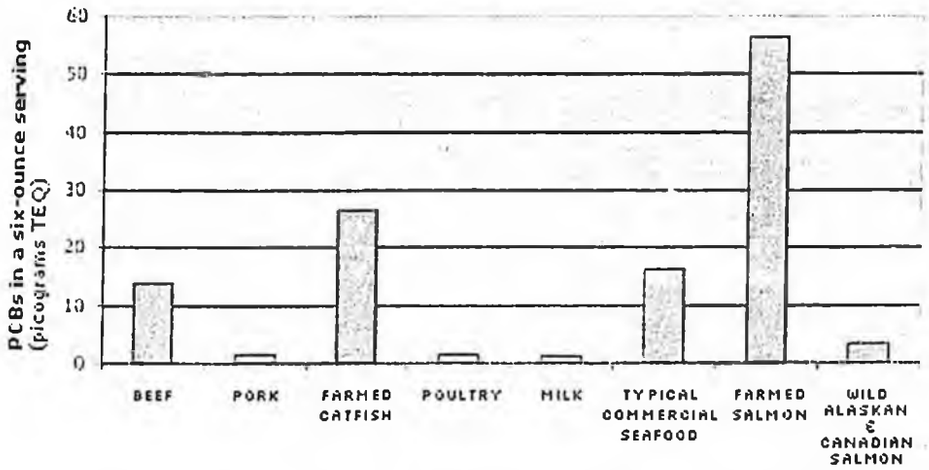
Excess drugs make their way along the food chain. Research suggests that between 74-100 per cent of wild fish caught near farms contain antibiotics in their flesh. Escaped fish caught in a Broughton Archipelago stream were found carrying bacteria known to cause a range of human maladies and these bacteria were resistant to 10 different antibiotics. Excessive use of antibiotics has already led to the development of antibiotic resistant "super-bugs".

Summary — PCBs in farmed salmon

Seven of ten farmed salmon purchased at grocery stores in Washington DC, San Francisco, and Portland, Oregon were contaminated with polychlorinated biphenyls (PCBs) at levels that raise health concerns, according to independent laboratory tests commissioned by Environmental Working Group.

These first-ever tests of farmed salmon from U.S. grocery stores show that farmed salmon are likely the most PCB-contaminated protein source in the U.S. food supply. On average farmed salmon have 16 times the dioxin-like PCBs found in wild salmon, 4 times the levels in beef, and 3.4 times the dioxin-like PCBs found in other seafood. The levels found in these tests track previous studies of farmed salmon contamination by scientists from Canada, Ireland, and the U.K. In total, these studies support the conclusion that American consumers nationwide are exposed to elevated PCB levels by eating farmed salmon.

A serving of farmed salmon has up to 40 times more PCBs than other foods



NOTES: The levels shown on this figure represent the sum of the 12 PCB compounds that resemble dioxin, widely recognized as the most toxic of all industrial pollutants, and linked to cancer as well as to damage of the nervous, reproductive, and immune systems. PCB concentrations are shown as toxic equivalents (TEQs) of 2,3,7,8-Tetrachlorodibenzo-p-dioxin, the benchmark dioxin chemical.

SOURCE: EWG analysis of data from Akyas (2003), Easton et al. (2002), EPA (2000a and 2000b), Fiedler et al. (2000), Jacobs et al. (2002), NMFS (2002), NAS (2003), Schecter et al. (2001), and USDA (2002).

LINK: Methodology and References

PCBs are persistent, cancer-causing chemicals that were banned in the United States in 1976 and are among the "dirty dozen" toxic chemicals slated for global phase-out under the United Nations Convention on Persistent Organic Pollutants, signed by

President Bush on May 23, 2001. Because of their persistence, PCBs continue to contaminate the environment and the food supply.

A number of studies show that farmed salmon accumulate PCBs from the fishmeal they are fed. The feed is often designed to have high amounts of fish oil and is made largely from ground-up small fish. PCBs concentrate in oils and fat, and previous tests of salmon feed have consistently found PCB contamination.

If farmed salmon with the average PCB level found in this study were caught in the wild, EPA advice would restrict consumption to no more than one meal a month. But because farmed salmon are bought, not caught, their consumption is not restricted in any way.

This is because the EPA sets health guidance levels for PCBs in wild-caught salmon, and its standards, which were updated in 1999 to reflect the most recent peer-reviewed science, are 500 times more protective than the PCB limits applied by the Food and Drug Administration (FDA) to commercially-sold fish. The FDA has not updated its PCB health limit for commercial seafood since it was originally issued in 1984. In the intervening two decades new scientific research has shown that the PCBs that build up in fish and people are more potent cancer-causing agents than originally believed, and that they present other health risks as well, in particular neurodevelopmental risks to unborn children from maternal consumption of PCB-contaminated fish.

When the FDA's standard was developed, salmon was something of a rarity in the U.S. diet. Today it is standard fare at home and in restaurants, particularly among consumers who are health-conscious, well educated, and relatively affluent. Last year salmon overtook "fish sticks" as the third most popular seafood in the American diet (trailing only tuna and shrimp). The increased consumption was made possible by the explosive growth in salmon farming, an industrial system that produces the fish in vast quantities at a price far lower than wild salmon.

Seven of the farmed salmon we tested came from factory-scale farms in Canada, the U.S., and Iceland. Six of these seven were polluted with PCBs at levels that would be safe to eat no more than once a month, according to EPA health standards. About 23 million Americans eat salmon more than once a month, the majority of it farmed salmon. One salmon imported from Scotland contained PCBs at levels so high that EPA would restrict consumption to no more than six meals a year, if the salmon were caught, not bought.

The farmed salmon industry claims that both farmed and wild salmon can be eaten safely more than once a week. This claim relies on FDA's outdated contamination limit. In EWG's testing program, nine of 10 farmed salmon tested from five countries of origin failed EPA's health-based limits for weekly consumption (6000 parts per trillion), exceeding the standard by an average of 4.5 times. A pilot study published by Canadian scientists last year showed that farmed Canadian salmon contain ten times the PCBs of wild Alaskan and Canadian salmon.

EWG's analysis of seafood industry fish consumption data shows that one quarter of all adult Americans (52 million people) eat salmon, and about 23 million of them eat salmon more often than once a month. Based on these data we estimate that 800,000 people face an excess lifetime cancer risk of more than one in 10,000 from eating farmed salmon, and 10.4 million people face a cancer risk exceeding one in 100,000. The government's preferred level of increased risk from contaminants like PCBs is no more than one in one million, a threshold set to account for a regulatory system that addresses chemicals or chemical classes individually and is unable to set safe levels for the complex mixtures of hundreds of industrial chemicals to which people are exposed.

Recommendations

Six of every ten salmon sold in stores and restaurants are raised in high-density fish pens in the ocean, managed and marketed by the salmon farming industry. These fish are eaten by a quarter of all adults in the U.S. and experts predict that the exponential growth of the farmed salmon industry will continue.

Farm-raised fish are here to stay. If raised correctly, these fish can help meet global demand for high-quality protein and take some of the pressure off of highly depleted populations of wild fish. But major reforms to the industry are needed.

In addition to the well documented ecological problems with salmon farming, there is now compelling evidence of near industry-wide contamination with unacceptably high levels of PCBs.

To remedy this problem, we recommend that:

- Congress pass a funding increase for FDA to support testing of farmed salmon and other protein sources for PCBs.
- The Food and Drug Administration move quickly to conduct a definitive study of PCB contamination in farmed salmon, and make all results public. This testing is critical, because FDA will be unable to update its regulation on PCBs in farmed salmon until the agency conducts its own laboratory studies.
- The FDA issue a PCB health advisory for seafood consumption in line with current PCB health guidance issued by the EPA.
- Policy-makers do more to preserve salmon habitat in Alaska, where, preliminary indications are, fish are naturally low in PCB contamination.
- The salmon farming industry monitor salmon feed for PCB contamination and shift or refine feed sources to produce fish lower in PCBs and other pollutants.

What you can do

To reduce your exposure to PCBs, trim fat from fish before cooking. Also, choose broiling, baking, or grilling over frying, as these cooking methods allow the PCB-laden fat to cook off the fish. When possible, choose wild and canned Alaskan salmon instead of farmed, and eat farmed salmon no more than once a month.

Two Groups to Sue Farmed Salmon Industry
TERENCE CHEA, Associated Press Writer

AP Online 01-23-2004

Dateline: SAN FRANCISCO

The farmed salmon industry faces legal action in California for failing to warn consumers that the fish contain what environmental groups say are potentially dangerous levels of cancer-causing chemicals.

The Environmental Working Group and the Center for Environmental Health filed notice last week of their intent to sue 50 salmon farms, fish processors and grocery chains under a California anti-toxics law.

"Our goal is to challenge them to change their practices so their fish is safe to eat," said Michael Green, executive director for the Oakland-based Center for Environmental Health.

The potential lawsuit comes after a major study published earlier this month in the journal Science found that farm-raised salmon contains significantly more contaminants than salmon caught in the wild because of PCBs, polychlorinated biphenyls, in feed. It recommended that farmers change fish feed and urged consumers to buy wild salmon.

The farmed salmon industry disputes the conclusions, citing experts who say the benefits outweigh the risks of eating farmed salmon.

"(Consumers) will be doing themselves and their families a great disservice if they stop eating farmed salmon," said Alex Trent, executive director of the trade group Salmon of the Americas. He noted that farmed salmon, a source of heart-healthy omega-3 fatty acids, is much cheaper than wild salmon and can be purchased year-round.

Under Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, companies are required to notify consumers if their products contain hazardous levels of chemicals known to cause cancer or reproductive harm.

State law requires private groups to first file notice of their intent to sue to give the state attorney general and other prosecutors 60 days to decide whether to join or take over the lawsuit.

Defendants named include major U.S. grocery chains such as Safeway Inc., Kroger Co., Albertsons Inc. and Costco Wholesale Corp. and farmed salmon producers in Canada and Europe.

Risky behaviour: Well, it's up to you; Peter McKnight
Vancouver Sun 01-19-2004

Let's say the Environmental Protection Agency and Health Canada give you conflicting information about the safety of eating farmed salmon. Whom should you trust?

The answer: Trust yourself.
That's a bit cryptic, I know, but then there's been a lot of cryptic reporting on this subject. So let me try to clarify.

On Jan. 9, Science magazine published the now (in)famous study that found farmed salmon had much higher levels of polychlorinated biphenyls (PCBs) than wild salmon.

Specifically, farmed salmon had average PCB levels of 36.63 parts per billion, compared to 4.75 parts per billion for the wild variety.

By themselves, those numbers are uncontroversial. After all, even fish farmers admit their fish contain higher PCB levels than wild salmon.

However, the researchers also relied on Environmental Protection Agency guidelines (which set limits for PCBs in fish at 24-48 parts per billion), and concluded that it might not be safe to eat farmed salmon.

That prompted a quick response from the U.S. Food and Drug Administration and Health Canada, both of which set limits for PCBs at 2,000 parts per billion.

Health Canada issued a news release stating that, based on its risk assessment, "consuming farmed salmon does not pose a health risk to consumers."

So who's right? The EPA or the FDA and Health Canada?

Someone must be correct, since this is all based on science, right? Well, no.

While the amount of PCBs in fish is a scientific fact, any recommendation -- whether it be to eat or avoid salmon -- is necessarily a value judgment.

Agencies look at the (scientifically verified) amount of PCBs in contaminated fish and then decide what they consider to be an "acceptable" risk.

What counts as acceptable depends, of course, on the values of the agency.

For example, the EPA guidelines are based on the amount of PCBs that could cause one case of cancer in 100,000 people over a 70- year lifetime.

But why choose one in 100,000 as an appropriate limit? Why not one in a million? Or one in 10,000?

There's no scientific answer to that question because it's not a scientific question.

Science is a purely descriptive, rather than prescriptive, enterprise.

It deals with cold, hard facts, and tells us how things are rather than how they should be.

In other words, science can tell us how many PCBs are in fish, and it can approximate the probability that we will develop cancer if we eat contaminated fish.

But safety is another matter entirely, since nothing is 100 per cent safe. When agencies label a food unsafe, they are making a prescription: They are saying you shouldn't eat the food.

That is a value judgment -- it's a statement of how much risk the agencies think you should assume. But, ultimately, only you can decide what is an acceptable risk.

Interestingly, we engage in risky behaviour every day, without even thinking about it. Everything we do has attendant risks -- from driving a car (relatively speaking, a highly dangerous activity) to taking a shower (perhaps the most dangerous thing you do in your own home) to eating farmed salmon.

Yet when a scientific study appears, we suddenly look to scientists to tell us whether we should continue to engage in certain activities.

Scientists simply can't tell us that -- they can only suggest what might happen to us if we do so. As far as eating farmed salmon is concerned, it's up to each of us to decide whether the risk is worth it.

In the final analysis, the whole shebang comes down to what my mother used to say whenever she was dissatisfied with the many hare- brained decisions I've made.

"It's your life," Mom would say. And she was right.

It is your life, and while you can and should avail yourself of information provided by scientists, no one but you -- not scientists, or government agencies, or environmental activists, or fish farmers -- can tell you how to live it.

UNITED FISHERMEN OF ALASKA

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(907) 586-2820
(907) 463-2545 Fax
E-Mail: ufa@ufa-fish.org
www.ufa-fish.org

February 17, 2004

Senator Scott Ogan, Chair
Senate Resources Committee
Alaska State Legislature
State Capitol (Mail stop 3100)
Juneau, AK 99801-1182

Dear Senator Ogan,

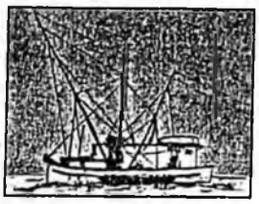
United Fishermen of Alaska supports SB 282 relating to finfish identification and mislabeling. This is a major stepping stone towards informing the consumer that seeks Wild Alaskan Salmon as to what they are purchasing at local retail stores and restaurants. Seafood products containing artificial flavoring, coloring, or chemical preservatives will now be required to accurately indicate contents. The foundation for proper labeling practices will greatly benefit Alaska's Commercial Fishing Industry and help promote the finest seafood in the world to Alaskans and visitors to Alaska.

United Fishermen of Alaska represents 33 Alaska Commercial fishing organizations, and hundreds of individual fishermen and related businesses, altogether representing over 10,000 Alaska commercial fishermen. We support SB 282 for the identification and proper labeling of finfish, and we thank you for your attention to this matter.

Sincerely,

Bob Thorstenson, Jr.
President

CC: Senator Kim Elton



Alaska Trollers Association

130 Seward St., No. 211
Juneau, Alaska 99801
(907) 586-9400
(907) 586-4473 Fax

2004 Legislative Positions

House Bills

HCR 25	Support	Alaska Wild Salmon Week
HJR 32	Support	Labeling of wild and farmed / country of origin
HJR 34	Support	USDA Trade Adjustment Assistance Program
HJR 36	Support	NPS mitigate adverse effects of fishing closures and restrictions
HB 396	Oppose	MSY of "important salmon stocks" and ensuring hatchery brood stock.
HB 409	No Action	Maximum length of seine vessel
HB 410	No Action	CFEC permit buy-back programs
HB 415	No Action	Permit holders (not vessels) fish in multiple areas
HB 419	Oppose as written	Regional seafood development associations and taxes
HB 426	Oppose	Tax certain tourism/recreation-related goods and services
HB 433	Support	Labeling and ID of genetically modified fish & fish products
HB 435	Support	Labeling and misbranding
HB 444	Support	Direct marketing taxes
HB 473	No Action	JV fish processing businesses and tax liability.
HB 478	No Action	Issuance of commercial fishing interim-use permits.

Senate Bills

SCR 19	Support	Support fisheries education
SB 27	No Action	Pesticide Use
SB 281	Support	Labeling and ID of genetically modified fish & fish products
SB 282	Support	Labeling and misbranding
SB 286	Support	Direct marketing taxes
SB 315	No Action	CFEC permit buy-back programs
SB 322	No Action	Salmon enhancement tax rate

ASMI Issues

Support 1% salmon marketing assessment
Neutral on mandatory processor assessment
Support ASMI board size of 11-15 members

SB

295

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/6/04

FURTHER: Finance

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

DATE TURNED IN TO OFFICE: 2-19-04

Resources Committee considered SENATE BILL NO. 295

SB 295 EXTEND NAVIGABLE WATERS COMMISSION

"An Act extending the termination date of the Navigable Waters Commission for Alaska; and providing for an effective date."

and recommends:

[ ] be **replaced** with _____ **CS** _____ (_____)

[ ] adopt **previous** _____ **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

Senate Bill:
[ ] Same Title
[ ] New Title

House Bill:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DNR	2/18/04		✓		

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
Ralph Vee	✓			
Ben Stevens	✓			
[illegible]	✓			
[illegible]			✓	
CHAIR: Scott Ogan	✓			

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB295-DNR-MLW-02-18
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Natural Resources
Title: Extend Navigable Waters Commission
RDU: Resource Development
Component: RS 2477/Navigability
Sponsor: Senator Therriault
Requester: Senate Resources
Component No.: 2226

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**** INDETERMINATE ****					
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	**** INDETERMINATE ****					

Estimate of any current year (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

SB 295 extends the Navigable Waters Commission for Alaska until September 18, 2006. The Commission is charged to establish a joint state/federal process for determining what waters in Alaska are navigable and are therefore, state owned. DNR assumes that a joint federal/state commission would share the costs of the Commission. This Commission has not been established on the state or federal side. In addition, there has been no funding appropriated for establishment of the state Commission.

DNR assumes that the Commission will not be established and staffed until the federal counterpart to the Commission is established. The State costs are therefore unknown and there is currently no federal legislation pending. DNR submits an indeterminate fiscal note.

Prepared by: Dick Mylius
Phone 907-269-8532
Division: Mining, Land & Water
Date/Time 2/18/04
Approved by: Thomas Irwin, Commissioner
Date 2/18/04
Agency: Natural Resources

(Revised 9/2003 OMB)

Alaska State Legislature

SENATOR
GENE THERRIAULT
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Senate

Sponsor Statement
SB295

Senate Bill 295: "An Act extending the termination date of the Navigable Waters Commission for Alaska; and providing for an effective date."

Sponsor: Senator Gene Therriault

Senate Bill 295 would extend the life of the Joint Federal and State Navigable Waters Commission for Alaska until 2006.

The commission's purpose is to expedite the title process to the state's submerged lands, to determine which bodies of water are navigable or non-navigable, and to recommend ways to improve the water navigability determination process and quickly clear title to the state's submerged lands. It would consist of four federal and four state representatives.

At statehood, Alaska was granted title to all the submerged land under the state's navigable waters and marine waters out to three miles off shore, with the exception of federal land withdrawn at statehood. But the state and federal governments have been locked in a decades-old dispute over which waters are navigable, and fewer than 20 rivers have been deemed navigable by federal courts. The ownership of more than 60 million acres is at stake.

In 2002, the Twenty-Second Alaska State Legislature passed Senate Bill 219 to authorize the state's portion of the commission. Unfortunately, the federal authorization did not pass that year, and the state's authorization is now set to expire. Senate Bill 295 will extend the sunset date for an additional two years in the hope that federal lawmakers will grant the federal authorization needed to create this commission.

Email: Senator_Gene_Therriault@legis.state.ak.us

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LAWS OF ALASKA

2002

Source
CSSB 219(FIN)

Chapter No.
71

AN ACT

Establishing and relating to the Navigable Waters Commission for Alaska.

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

Establishing and relating to the Navigable Waters Commission for Alaska.

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

STATE POLICY. The legislature determines that the efficient and orderly development of the state will be better achieved if the state and the federal governments join together in a carefully coordinated approach to land and water use planning and management. The legislature recognizes that, although the state is the primary trustee of public trust resources, it is in the best interest of the citizens if the state and federal governments, as designated stewards of these resources, cooperate to the maximum extent possible in determining their uses. However, the legislature also recognizes that, even without federal participation, the state must proceed to make management decisions. The state is particularly blessed with significant water resources that are invaluable in numerous ways to state residents and all citizens of the United States. With the massive numbers of navigable waterways and bodies of water in the state, the task of resolving submerged land ownership

and navigable water determinations has been painfully slow, counter-productive from an orderly resource management standpoint, and costly as the state, private landowners, and the federal government attempt to initiate long-range planning processes. For this reason, it is determined by the legislature that the State of Alaska and the United States should cooperate in establishing a joint state and federal commission or, if the federal government elects not to participate, a state commission must be established to proceed efficiently and effectively to

(1) expedite the process of quieting legitimate title to the state's submerged lands;

(2) determine, to the extent possible, which bodies of water are navigable or non-navigable; and

(3) provide recommendations to the state and the federal governments concerning ways to improve the process of making navigability determinations and ways to quiet title to the state's submerged lands fairly and expeditiously.

* Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to read:

NAVIGABLE WATERS COMMISSION FOR ALASKA. (a) A Navigable Waters Commission for Alaska is established. If authorized by federal law, the commission shall be a joint federal and state commission.

(b) The governor or the governor's designee shall serve as chair of the commission. If federal participation is authorized by federal law, the member appointed by the President of the United States or the United States Secretary of the Interior shall serve as co-chair of the joint commission. The chair or co-chairs of the commission shall call meetings.

(c) If a joint commission is formed, four state and four federal members of the commission constitute a quorum, and all decisions of the commission require concurrence by at least four state and four federal members of the commission. Otherwise, four state members of the commission constitute a quorum, and all decisions of the commission require concurrence by at least four members.

(d) A vacancy in the membership of the commission does not affect its powers. The vacancy shall be filled in the same manner in which the original appointment was made.

(e) Subject to procedures adopted by the commission, the chair or co-chairs, in accordance with applicable laws, may

(1) appoint and fix the compensation of the commission staff and personnel as they consider necessary; and

(2) procure temporary and intermittent services.

*** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

MEMBERSHIP OF THE COMMISSION. (a) The state membership on the Navigable Waters Commission for Alaska is composed of the governor or the governor's designee, two members appointed by the governor, two members appointed by the president of the senate, and two members appointed by the speaker of the house, all of whom serve at the pleasure of the appointing authority.

(b) The membership also includes individuals appointed under federal law if a joint commission is authorized.

*** Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

COMPENSATION AND PER DIEM. (a) A state member of the Navigable Waters Commission for Alaska who is a state officer or employee serves without compensation in addition to that received for regular employment. Other state members of the commission receive compensation as authorized for the Board of Fisheries under AS 16.05.290.

(b) State members of the commission are entitled to per diem and travel expenses authorized by law for boards and commissions under AS 39.20.180.

*** Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DUTIES OF THE COMMISSION. The Navigable Waters Commission for Alaska shall

(1) establish a process for researching navigability determinations that affect land title;

(2) develop procedures for involving private landowners and the general public in the navigability determination process of the commission;

(3) undertake a process of navigable and non-navigable waters identification under criteria established in law;

(4) make recommendations to improve coordination and consultation between

the state and federal governments in making navigability determinations and decisions concerning title to submerged lands.

* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to read:

HEARINGS. The Navigable Waters Commission for Alaska or, on the authorization of the commission, any subcommittee or member of the commission may, for the purposes of carrying out its duties, hold hearings, take testimony, receive evidence, print or otherwise reproduce and distribute all or part of commission proceedings and reports, and sit and act at those times and places as the commission, subcommittee, or members consider desirable.

* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INFORMATION FOR THE COMMISSION. Each agency, department, board, or commission of the state government is authorized to furnish to the Navigable Waters Commission for Alaska, upon request of a chair or co-chair, information the commission considers necessary to carry out its functions under this Act.

* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REPORTS. (a) On or before January 31 of each year, the Navigable Waters Commission for Alaska shall submit to the President of the United States, the United States Secretary of the Interior, the United States Congress, the governor, and the state legislature a written report describing its activities during the preceding year and its recommendations regarding its duties under sec. 5 of this Act.

(b) The commission shall submit its final comprehensive report at least 10 days before the date the commission is terminated.

* **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TERMINATION OF THE COMMISSION. The Navigable Waters Commission for Alaska is terminated two years after the effective date of this Act.

ALASKA STATE LEGISLATURE

CONFLICTS CONCERNING TITLE TO SUBMERGED LANDS IN ALASKA

By: Ron Somerville, Resource Consultant
and
Ted Popely, Legal Counsel

Updated: 02/11/04

Statehood Entitlement – Submerged Lands

Alaska became a state in 1959 and under the Equal Footing Doctrine and the Submerged Lands Act inherited title to almost 60+ million acres of submerged lands. Unfortunately, since statehood, less than 20 rivers have been determined to be navigable by the federal courts. Although BLM has made numerous navigability determinations and the Department of the Interior is presently working positively with the state to identify and issue a "Recordable Disclaimer of Interest" for navigable waterways, the process is still painfully slow. Considering the fact that Alaska contains 20,000+ potentially navigable rivers and well over 1,000,000 lakes that could qualify as navigable, it could take several life-times and billions of litigation dollars before Alaska realizes its entitlement, if at all. In addition, the passage of time weakens the state's ability to provide the factual determinations necessary to prove in a federal court that a waterbody was navigable at the time of statehood.

Issues of State Ownership of Submerged Lands

Alaska faces two types of legal hurdles in establishing its entitlement to submerged lands. Its most critical problem is to establish, in an efficient and timely manner, which of the state's rivers and lakes are navigable. Alaska's second hurdle is to determine which submerged lands the United States legally withdrew prior to statehood. The state's attempts to resolve these issues are thwarted by the extremely narrow interpretation the United States gives to the federal Quiet Title Act and by the lack of a non-judicial process to determine title.

The Basis of the State's Claim of Title to Submerged Lands

Alaska owns the submerged lands underlying navigable waters and marine waters seaward three miles by virtue of the Equal Footing Doctrine and the Submerged Lands Act of 1953. The Equal Footing Doctrine dictates that new states enter the Union with all of the powers of sovereignty and jurisdiction that pertain to the original states. When a state enters the Union, it takes title to the lands underlying navigable waters and between mean high and mean low tide as a matter of constitutional right, subject only to the paramount federal power to control the waters for navigation in interstate and foreign commerce. The Submerged Lands Act conveys lands under marine waters and also includes lands underlying inland navigable waters to confirm their automatic passage under the equal footing doctrine.

For purposes of title to submerged lands, waters are navigable when they are used or susceptible of being used in their natural and ordinary condition as highways for commerce over which trade and travel may be conducted. Unfortunately, only a handful of waterways have been adjudged navigable since Alaska's statehood, because of the unwillingness of the United States to settle navigability issues outside litigation, and because of the jurisdictional difficulties of litigating navigability against the United States.

Despite the Equal Footing Doctrine and the Submerged Lands Act, the United States claims title to most or all of the state's submerged lands within the 25% of Alaska that the federal government had reserved before statehood. This issue is governed by *Utah Division of Lands v. United States*, 482 U.S. 193 (1987). Commonly referred to as the "Utah Lake" case. In Utah Lake, the court held that in order to establish that it retained title to submerged land within a reservation, the United States must establish (1) that Congress clearly intended to include submerged lands in the withdrawal, and (2) that Congress affirmatively intended to defeat the future state's title to submerged lands. In Utah Lake, the court found that the United States did not establish congress' intent to include the lake-bed in the reservation, despite the fact that the purpose of the reservation was to preserve the lake for a reservoir.

Navigable Waters Jurisdictional Issues

Some federal agencies have issued regulations governing activities on navigable waters flowing through federal lands. The extent of their authority to do so is unclear. In some instances the agency may have Commerce Clause authority (e.g. promulgating regulations to implement environmental laws) but the more difficult question is the scope of an agency's authority whose mandates are not directly related to water, but are tied to land management, such as the National Forest Service, National Park Service, National Fish and Wildlife Service and Bureau of Land Management. The Court of Appeals for the Eighth Circuit has held that some agencies may regulate non-public lands under the Property Clause if the activities could negatively affect the purpose of the federal reservation. In Alaska, the more common scenario is an agency restricting public access on navigable waters within a reservation, such as requiring restrictive permits to conduct commercial activities on a waterway.

Navigability Criteria Conflicts

Where title to submerged lands is at stake, the dispositive issue is usually the navigability of the waters that overlie them. The United States Bureau of Land Management (BLM) makes navigability determinations infrequently, only for lakes less than 50 acres and rivers less than three chains (198 feet) wide, and only when it is conveying the adjacent uplands. When waterways are larger than these measurements BLM conveys the adjacent and non-submerged land without navigability determinations. Even when BLM finds a smaller waterway non-navigable, however, it maintains that the determination is relevant only to the amount of acreage it is conveying and does not reflect a federal position on title.

The greatest hurdle to overcome in the State's efforts to identify and manage navigable waters has been the long-standing differences of opinion between the State of Alaska and the United States regarding the application of the test for determining title navigability. Navigability is a question of fact, not a simple legal formula. Variations in waterbody use that result from different physical

characteristics and transportation methods and needs must be taken into account. There are many legal precedents for determining navigability in other states based upon the particular facts presented in those cases.

The physical characteristics and uses of a waterbody used by the State for asserting navigability "criteria," are based upon legal principles that have been established by the federal courts. These criteria are applied to rivers, lakes, and streams throughout the State and take into account Alaska's geography, economy, customary modes of water-based transportation, and the particular physical characteristics of the waterbody under consideration.

To resolve these navigability criteria disputes, the State has actively pursued a limited number of court cases challenging particular findings of non-navigability by the federal government. Some of the important cases are:

Gulkana River. In this case, both in the U.S. District Court and on appeal to the U.S. Court of Appeals, the federal courts rejected the federal government's restrictive interpretation of the phrase "highway of commerce" in the title navigability test. The federal district court stated that to demonstrate navigability, it is only necessary to show that the waterbody is physically capable of "the most basic form of commercial use: the transportation of people or goods." Because the Gulkana River can be used for the transportation of people or goods, the Gulkana River was found navigable. The court of appeals found that the modern use of the Gulkana River for guided hunting, fishing, and sightseeing trips is a commercial use and, since the physical characteristics of the river have not significantly changed since 1959, provides conclusive evidence that the river was susceptible of commercial use at statehood. The court also found that modern inflatable rafts can be used to establish navigability. In 1990, the U.S. Supreme Court denied the request to review and overturn the decision and, thus, the Gulkana River precedent is now binding on all future navigability determinations in Alaska.

Kandik, Nation and Black Rivers. In this case, the State and Doyon Limited successfully established that the use or susceptibility of use of a river or stream by an 18-24 foot wooden riverboat capable of carrying at least 1,000 pounds of gear or supplies is sufficient to establish navigability. Based upon the use of these types of boats for the transportation of goods and supplies by trappers, as well as extensive historic and contemporary canoe use, the federal courts found the Kandik and Nation rivers navigable and, due to a technical interpretation of the federal Quiet Title Act, failed to rule on the Black River. The Department of the Interior issued a "Recordable Disclaimer of Interest" for the Black River, however, in 2003.

Alagnak River, Nonvianuk River, Kukaklek Lake and Nonvianuk Lake. In this federal district court case, the Alagnak River, Nonvianuk River, Kukaklek Lake and Nonvianuk Lake were all found navigable. Their primary transportation use is for commercially guided hunting, fishing, and sightseeing and for government research and management. They also serve as a means of access for local residents to their homes and to the surrounding areas for subsistence hunting and fishing.

From the standpoint of the public, the state and the federal governments both contribute to the confusion over navigability determinations. The State Policy on Navigability adopted by the Alaska Department of Natural Resources includes the following explanations:

> "When information is lacking, and it must make a navigability determination, the state is forced to rely solely upon the physical characteristics shown on maps and aerial photographs. In these cases, the state identifies as navigable all streams depicted on the U.S.G.S. maps with double lines (generally at least 70 feet wide) and having an average gradient over the length of the stream of no more than 50 feet per mile."
>
> "Streams depicted with single lines, although narrower in width, may also be listed as potentially navigable if they have gradients of substantially less than 50 feet per mile and are at least 10 miles."
>
> "If a lake is totally isolated, it will be included on the state's navigability maps if it is at least 1 ½ miles long. That length insures that the lake can be used as a highway."
>
> "An isolated lake might need to be 2-3 miles long to be included on the state's navigability maps."
>
> "...those lakes which are shown on maps and aerial photographs as having a navigable water connection with other navigable waters, or which are accessible by short overland portages, are considered navigable regardless of the size of the lake."

Clouded Titles Due to Erroneous Navigability Determinations

The standard procedures for surveying and conveying federal land are found in the Manual of Instructions for the Survey of the Public Lands of the United States. Under those procedures, consistently used in every public land state except Alaska, only uplands are surveyed and conveyed in fulfillment of acreage entitlements, not submerged lands. The survey rules require that all lakes 50 acres or larger, and rivers and streams three chains (198 feet) in width or wider, regardless of navigability, be meandered rivers, lakes, and streams is not included in computing the amount of land involved in the conveyance.

In Alaska, however, the federal government had not consistently followed these survey rules. Until 1983, the federal government treated submerged lands the same as uplands. All bodies of water that were considered non-navigable by the federal government, regardless of size, were surveyed as though they were uplands and the acreage of submerged lands were charged against the total acreage entitlement.

Because of these conveyance procedures, the navigability of waterbodies in Alaska has been an issue of contention since the enactment of the Alaska Statehood Act and ANCSA. In addition to the problems caused by a lack of information about many waterbodies, the situation was exacerbated by the narrow definition of navigability used by the federal government. Hundreds of rivers, lakes and streams considered navigable by the state were determined non-navigable by the federal government.

In 1983, the Department of the Interior agreed that the standard rules of survey should be followed for land conveyances in Alaska. The recipients of conveyances from the federal government are charged only for the amount of public land is calculated by the survey, which does not include the areas of meandered rivers, lakes and streams. This decision by the Department of the Interior was legislatively approved in 1988.

Despite the fact that the use of these survey procedures has eliminated many of the land conveyance problems after 1983, a major problem concerning navigability decisions made by the federal government under the old system remains unresolved. At issue are the hundreds of erroneous non-navigability decisions and the resulting submerged land conveyances made to ANCSA corporations in previous years. This issue becomes more critical as efforts are made by the federal government to establish a deadline for completing land conveyances. ANCSA corporations may be unable to replace erroneously conveyed submerged lands if the selection process had been terminated.

Difficulties Quieting Title to Submerged Lands

The State must file a Quiet Title Action in federal court to definitively resolve a dispute with the federal government regarding ownership of a navigable water body. The federal government has made it very difficult to quiet title. The Quiet Title Act provides that the United States may be named as a party defendant in a civil action "to adjudicate a disputed title to real property in which the United States claims an interest." 28 U.S. C. § 2409a(a). The United States has adopted a very narrow view of the term "claims and interest," asserting that the federal court has no jurisdiction to hear quiet title actions against it unless the federal government actively and expressly asserts an interest in the lands. In the context of the submerged lands, this will occur only in rare circumstances.

While the Ninth Circuit Court of Appeals has decided that a federal non-navigability decision is a sufficient federal claim of interest to give the court jurisdiction under the Quiet Title Act, for these few waterways the State still may be unable to get a judgment, for the following reason. The State receives notice of a non-navigability determination when BLM issues a conveyance decision. Both because the State must give 180 days notice under the Quiet Title Act before filing a complaint, and because a preliminary injunction to prevent the conveyance is unavailable under the Quiet Title Act, the United States will likely convey the lands to a third party before the State can do anything to prevent it, and the State could arguably lose its cause of action against the United States.

Therefore, the State rarely has a viable cause of action to quiet title to submerged lands. The United States is in virtually the same position it was before the Quiet Title Act was passed: it controls when and how a court resolves title disputes. The exception to this general rule will be title disputes based on the issue of whether the United States defeated the State's right to submerged lands before statehood, where the United States has expressly taken a position.

The final legal determination of whether a water-body is navigable is a complex process requiring factual determinations that a waterway had been effectively used for commerce prior to statehood. In the States' litigation to quiet title to the Black, Kandik, and Nation Rivers in northeast Alaska, a panel for the Ninth Circuit Court of Appeals noted in January, 2000:

"There is also a serious policy concern in favor of allowing resolution of disputes based on the United States' inchoate claim to everything in Alaska but what it has disclaimed. Eventually, all the witnesses will be dead, reducing the reliability of litigation. Someone who used one of these rivers in 1959 at age 20 is now 60. The population in the area was so sparse at all relevant times – probably no more than a couple of hundred people who might have used the three rivers during the relevant time, most too young to have relevant knowledge or too old to have survived the forty years since statehood – that a few deaths by old age can remove most or all the knowledgeable witnesses. Also, a state entitled as of 1959 to all the incidents of ownership in its rivers, yet still deprived of clear title forty years later, is effectively deprived of what it is entitled to under the equal footing doctrine."

In addition, the process has become incomprehensibly complicated and expensive. A case in point is the quiet title action by the State to resolve submerged lands ownership under the Black, Kandik and Nation rivers in northeast Alaska. These three rivers clearly meet the criteria established by the federal courts for determining navigability in Alaska. Despite the fact that no one contested the State's claim that these three rivers met the federal courts criteria for determining navigability, this case took nine years and upwards of a million of state and federal dollars to litigate, eventually resulting in the State winning two of the three cases and achieving no solution on the third.

Solutions Through Administrative Action – Recordable Disclaimer of Interest

Following meetings with the Legislative leadership in 2002, the Department of the Interior offered to examine the possibility of using a "Recordable Disclaimer of Interest" as a means of resolving submerged lands title disputes between the state and the federal government. In 2003, the Department of the Interior issued a "Recordable Disclaimer of Interest" in the Black River located in Northeast Alaska. This River was one of three rivers in that region that the ownership of the submerged lands was not resolved through litigation.

The legislature, through Legislative Budget and Audit, has funded a special project for the Alaska Departments of Natural Resources and Fish and Game to expedite the petition process to the Department of the Interior for issuing "Recordable Disclaimers of Interest" for navigable waters and RS 2477 Rights-of-way. The major emphasis of the project has been directed at navigable waters. Some petitions are pending and others are due to be submitted early in 2004.

Solutions Through Federal Legislation

A. **Changes to the Quiet Title Act.** The precise issue in dispute between the state and the United States is what should require the United States to "claim an interest" so as to trigger jurisdiction under the Quiet Title Act. A provision in the Quiet Title Act that defines this phrase broadly enough to permit the state to quiet title to its submerged lands would resolve the issue. This would require a definition that makes the existence of a legal cloud on title sufficient to constitute a federal claim of interest, so that the United States' refusal to take a position as to navigability for title purposes of waters on federal lands would give the state a cause of action in federal court.

B. Joint State/Federal Navigable Waters Commission. In 1971, Congress and the State of Alaska respectively created a Joint Federal/State Land Use Planning Commission for Alaska to assist in the massive land-use planning process following passage of the Alaska Native Claims Settlement Act. The State Legislature passed a bill in 2002 to create a similar State/Federal Commission for the purpose of expediting navigability determinations and providing recommendations for ways to improve the process of making water use and navigability decisions in Alaska. Similar legislation was introduced in Congress by the Alaska delegation to create the federal portion of the Commission. Unfortunately, this legislation did not pass as the federal and state administrations looked for other ways to accelerate title dispute resolutions.

Examples of Navigability Complexities & Additional Information

Appendix A is a copy of the State of Alaska's August 27, 1992 notice to Secretary of the Interior, Manuel Lujan, Jr. of its intent to quiet title to submerged lands described under 194 specific water-bodies in Alaska. Similarly, Appendix B contains a copy of the official notice to Secretary of the Interior Bruce Babbitt of the State's intent to quiet title to submerged lands described under an additional 9 water-bodies. Most of the water-bodies listed in Appendix A and Appendix B have been recognized by the Bureau of Land Management as being navigable for land conveyance purposes but have maintained that this assertion is not for title purposes.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

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Appendix A

August 27, 1992

Manuel Lujan, Jr., Secretary
Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Mr. Lujan:

The State of Alaska intends to file real property quiet title actions as to the submerged lands described on the list attached as appendix A, and is providing you this notice pursuant to 28 U.S.C. §2409a(m). Title to these lands passed to Alaska at statehood based on the equal footing doctrine, the Submerged Land Act of May 22, 1953, P.L. 83-31, 67 Stat. 29, 43 U.S.C. §§1301 et seq., and the Alaska Statehood Act of July 7, 1958, P.L. 85-508, 72 Stat. 339, 48 U.S.C. note preceding §21.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: Joanne M. Grace
Joanne M. Grace
Assistant Attorney General

JMG/sh
Attachment

cc: J. T. Tangen, Regional Solicitor, Department of Interior
Edward F. Spang, State Director, Bureau of Land Management
Niles Cesar, Area Director, Bureau of Indian Affairs
Walter Stieglitz, Regional Director, Fish and Wildlife Service
John Morehead, Regional Director, National Park Service

8/27 mailed cert return receipt

03:CSLH

Appendix A to letter of August 27, 1992.

Colville Region

Mouth of Colville River to Nuka River
Mouth of Kuna River to Chefornak

Northwest Region

Mouth of Agiapuk River to American River
Mouth of American River to Budd Creek
Mouth of Buckland River to West Fork
Mouth of Fish River to Omilak Creek
Mouth of Niukluk River to Council
Mouth of Kobuk River to Lower Kobuk Canyon
Mouth of Koyuk River to Dime Landing
Mouth of Kuzitrin River to Noxapaga River
Mouth of Noxapaga River to Turner Creek
Mouth of Noatak River to Aniuk River
Mouth of Selawik River to Kugarak River
Shaktoolik River
Throat River
Ungalik River
Mouth of Unalakleet River to Termile Creek

Koyukuk River Region

Mouth of Hogatza River to Hog Landing
Mouth of Koyukuk River to Bettles
Mouth of Middle Fork to Wiseman

Upper Yukon Region

Mouth of Bearpaw River to Diamond
Mouth of Beaver Creek to Victoria Creek
Birch Creek
Mouth of Black River to Boundary
Mouth of Chandalar River to North and West Forks
Mouth of Charley River to Bear Creek
Mouth of Chatanika River to Steese Highway Bridge
Christian River
Mouth of Coleen River to Lake Creek (59 miles)
Mouth of Crooked Creek to Bridge
Grass River
Mouth of Hess Creek to North and South Forks
Mouth of Hodzana River to Pitka Fork (79 miles)
Jim Lake
Mouth of Kandik River to Boundary
Mouth of Nation River to Boundary

Mouth of Porcupine River to Boundary
Ray River
Mouth of Seventymile River to Barney Creek
Mouth of Sheenjek River to Thluickohnjik Creek
Mouth of Tatonduk River to Boundary

40 Mile Area

Forty Mile River
Mouth of North Fork Forty Mile River to Kink
Mouth of South Fork Forty Mile River to Mosquito Fork

South Central Region

Mouth of Chulitna River to Tokositna River
Mouth of Kasilof River to Tustumena Lake
Mouth of Kenai River to Kenai Lake
Kenai Lake
Knik River
Lake Louise and outlet
Lake Tustumena
Mouth of Skwentna River to Portage Creek
Susitna Lake
Mouth of Susitna River to Indian River
Mouth of Talkeetna River to Chunilna Creek
Mouth of Tokositna River to Home Lake Outlet
Tyone Lake
Mouth of Tyone River to Tyone Lake
Mouth of Yentna River to confluence of its East and West Forks
Johnson River
Red River

Tanana Region

Mouth of Chena River to North Fork
Mouth of Chisana River to Scottie Creek
Mouth of Goodpasture River to Central Creek
Harding Lake
Healy Lake and outlet
Johnson River
Mouth of Kantishna River to Lake Minchumina
Lake George and outlet
Lake Mansfield and outlet
Mouth of Nabesna River to Nabesna Mine
Mouth of Nenana River to Healy River
Mouth of Salcha River to Paldo Creek
Mouth of Tanana River to Nabesna and Chisana Rivers
Mouth of Teklanik River to near Comma Lake
Mouth of Tetlin River to Tetlin Lake
Mouth of Tolovana River to West Fork
Mouth of Wood River to Fish Creek

Middle Yukon River

Mouth of Innoko River to Cripple Creek
Mouth of Iditarod River to Iditarod
Khotol River
Little Melozitna River
Melozitna River
Mouth of Nowitna River and Sulstna Rivers to Tamarack Creek
Tozitna River

Lower Yukon Region

Anvik River
Bonasila River
Kotlik River
Nulato River
Pastolik River

Kuskokwim River Region

Mouth of Aniak River to Salmon River
Mouth of Big River to Otter Creek
Mouth of Chukowan River to Gemuk River
Crooked Creek
Mouth of East Fork Kuskokwim River to Slow Fork and Tonzona River
Mouth of Gemuk River to Beaver Creek
Mouth of George River to Julian Creek
Mouth of Holitna River to Chukowan River
Hoholitna River
Mouth of Johnson River from Mud Creek Portage to Crooked Creek
Mouth of Johnson River to Nunapitchuk and Atmautluak
Kisaralik River
Mouth of Kuguklik River to Kipnuk
Kulik Lake
Mouth of Kuskokwim River to North Fork
Little Tonzona River
Mouth of Middle Fork and Big River to Salmon River
Mouth of Middle Fork Kuskokwim River to Pitka Fork
Mouth of Nixon Fork to its West Fork
Mouth of North Fork Kuskokwim to Lake Minchumina Portage
Mouth of South Fork Kuskokwim River to Tatina River
Mouth of Stoney River to Lime Village
Mouth of Swift Fork to Highpower Creek
Mouth of Tokotna River to Fourth of July Creek
Mouth of Talbiksok River to Yukon-Kuskokwim Portage
Mouth of Tuluksak River to Upper Land
Whitefish Lake and outlet

Bristol Bay Region

Alec River chignik
Aniakchak River chignik

Black Lake Chignik
Mouth of Chignik River to Black Lake chignik
Chikuminuk Lake
Chilikadrotna River
Chulitna River
Clark River
Mouth of Copper River to Falls
Dago Creek - Ugashik
Dog Salmon River Ugashik
Eek River
Egegik River and Becharof Lake Naknek
Gibralter Lake and outlet
Mouth of Goodnews River to Watlamuse Creek
Mouth of Igushik River to Amanka Lake
Illiamna Lake
Mouth of Illiamna River to Forks
Mouth of Kanektok River to Kagati Lake
Kakhonak Lake
Mouth of King Salmon River to Olds Creek Ugashik
Mouth of Kvichak River to Illiamna Lake
Lake Aleknagik
Lake Chavekuktuli
Lake Clark
Lake Beverly
Lake Kulik Mt. Katmai
Lake Nerka
Lower Pike Lake and outlet Ugashik
Kokwok River
Koktuli River
Muklung River
Mouth of Mulchatna River to Summit Creek
Mouth of Naknek River to Naknek Lake Naknek/Mt. Katmai
Negukthlik River
Newhalen River
Nishlik Lake
Mouth of Nushagak River to New Stuyahok
Mouth of Nuyakuk River to Nuyakuk Lake
Ongoke River
Osviak River
Quigmy River
Pile River
Ruth Lake and outlet Ugashik
Mouth of Smelt Creek to Smelt Lake Naknek
Mouth of Snake River to Nunavaugaluk Lake
Stuyahok River
Tazmina River
Mouth of Togiak River to Togiak Lake
Tunulk River
Ualik Lake
Mouth of Ugashik River to Lower and Upper Ugashik Lakes Ugashik
Upnuk Lake
Weary River

Mouth of Wood River to Lake Aleknagik

Copper River Region

Mouth of Bering River to near Bering Lake
Mouth of Chitna River to Tana River
Mouth of Copper River to Batzulnetas (above Slana)
Crosswind Lake
Mouth of Eyak River and Eyak Lake
Mouth of Klutina River to Klutina Lake
Lowe River
Miles Lake and outlet
Nelchina River
- Tasmuna River
- Mouth of Tazlina River to Tazlina Lake

Southeast Region

Chilkat River
Chilkoot River
Stikine River

Kodiak Island and Shelikof Straight Region

Afognak Lake
Mouth of Afognak River to the remains of the Bridge
Akalura and Red Lakes
Mouth of Aniakchak River to Albert Johnson Creek
Karluk Lake
Mouth of Karluk River to Karluk Lake

Statewide Region

Yukon River

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Appendix B

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

☒ 1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

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

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

December 17, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Bruce Babbitt
Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Mr. Babbitt:

The State of Alaska intends to file real property quiet title actions as to the submerged lands described on the list attached as appendix A, and is providing you this notice pursuant to 28 U.S.C. § 2409a(m). Title to these lands passed to Alaska at statehood based on the equal footing doctrine, the Submerged Land Act of May 22, 1953, P.L. 83-31, 67 Stat. 29, 43 U.S.C. §§ 1301 *et seq.*, and the Alaska Statehood Act of July 7, 1958, P.L. 85-508, 72 Stat. 339, 48 U.S.C. note preceding §21.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: Joanne M. Grace
Joanne M. Grace
Assistant Attorney General

Attachment

cc: Laurie Adams, Regional Solicitor, Department of Interior
Tom Allen, State Director, Bureau of Land Management
Niles Cesar, Area Director, Bureau of Indian Affairs
David B. Allen, Regional Director, Fish and Wildlife Service
Robert Barbee, Regional Director, National Park Service

03-CSLH

APPENIDIX A

Copper River Region
Copper River

Northern Region
Kuk River
Meade River
Kukpowruk River

Bristol Bay Region
Arolik River
Kanektok River
Kisaralik River
Goodnews River
Togiak River

SB

297

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/6/04

FURTHER: Finance

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

DATE TURNED IN TO OFFICE: 4-19-04

Resources Committee considered SENATE BILL NO. 297

SB 297 TAKING BLACK, BROWN,& GRIZZLY BEAR/GUIDES

"An Act relating to the taking of black bear, brown bear, and grizzly bear and to registration of big game guides for certain guide use areas."

and recommends:

[X] be **replaced** with _____ **CS** SB297 (RES)

[ ] adopt **previous** _____ **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

Senate Bill:
[ ] Same Title
[X] New Title

House Bill:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
F+G	3/12/04			✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
	✓			
	✓			
	✓			
	✓			
	✓			
CHAIR:	✓			

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB297CS-DPS-ABWE-4-22-04
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Public Safety
Title: Act relating to bear predation management
RDU: Alaska State Troopers
Component: Bureau of Wildlife Enforcement
Sponsor: Sen. Seekins
Requester: (S) Resources
Component No.: 2746

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (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 (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This act will establish policies related to the Department of Fish and Game (ADF&G) being able to issue permits to allow hunters, both resident and non-resident, to harvest black, brown, and grizzly bears within "intensive management" areas. ADF&G will issue bear predation management permits tc those hunters who qualify. Nonresident or nonresident aliens will be accompanied by a registered guide or master guide, or by a hunter who is over 21 years of age and who meets other qualifications outlined in the legislation. The taking of bear under authority of a bear predation management permit is subject to all other provisions applicable to the taking of bear such as the regulations governing the method, manner, means, bag limit, or other matters adopted by the board that do not conflict with this legislation.

This legislation is not expected to have a fiscal impact on the Alaska State Troopers.

Prepared by: Lt. Al Storey
Phone: 907-269-4532
Division: Alaska State Troopers
Date/Time: 4/22/04 10:19 AM
Approved by: Commissioner William Tandeske
Date: 4/22/2004
Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: S.B. 297
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Fish and Game
Title: Taking Black, Brown, and Grizzly Bear
RDU: Wildlife Conservation
Component: Wildlife Conservation
Sponsor: Senator Seekins
Requester: Senate Resources
Component No. 473

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (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 (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Passage of this legislation would have no fiscal impact.

Prepared by: Sarah Gilbertson, Legislative Liaison
Phone 465-6137
Division: Alaska Department of Fish & Game
Date/Time 3/12/04 [illegible].37 AM
Approved by: Commissioner Kevin Duffy
Date 3/12/2004
Agency: Alaska Department of Fish & Game

(Revised 12/2003 OMB)

SENATOR SCOTT OGAN 23RD Alaska State Legislature

Senate District H Lazy Mountain * Butte * Chugiak * Peters Creek * Fairview Loop

Knik-Goose Bay * Big Lake * Houston * Willow * Talkeetna * Trapper Creek

State Capitol, Room 103, Juneau Alaska 99801 * (907) 465-3878 * 1 (800) 862-3878 * Fax (907) 465-3265

Senator_Scott_Ogan@legis.state.ak.us Http://www.akrepublicans.org/ogan

FACSIMILE TRANSMITTAL SHEET

TO: Leg Legal

FROM: Linda Hay – S. Res.

COMPANY: George Utermohle

DATE: 4-17-04

FAX NUMBER:

TOTAL NO. OF PAGES INCLUDING COVER:

PHONE NUMBER:

RE: CS for SB 297

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

George - please prepare a new CS for SB 297 based on 23-LS0607\X with the following conceptual amend. If there are questions please let me know. Also I would like this in draft form first for the comm to review. It passed out of committee on Friday - 4-16-04.

Thanks

Conceptual Amendment #1

The Board shall authorize and the Department shall implement whatever methods and means deemed necessary to effectively carry out the purposes of bear predation management.

George – they wanted you to decide where it should go in the bill

CSSB 297 RES

Conceptual Amendment
#1

The Board shall authorize & the Department shall implement whatever methods and means deemed necessary to effectively carry out purposes of Bear predation management.

— adopted U.C.
— Amend to Amend adopted U.C.

moved by Seekins
discussed
objection removed
Drafter will determine where it goes.

adopted on 4/2/04

3 hearings

23-LS0607\W
Utermohle
3/31/04

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 297

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY SENATOR SEEKINS

Introduced:
Referred:

"bear control permit" changed to bear predation management permit

Safety Training

A BILL

FOR AN ACT ENTITLED

fear predation mgmt

"An Act relating to (the taking of black bear and brown or grizzly bear) and the donation and sale of bear hides and skulls."

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

* Section 1. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.781. Control of black bear and brown or grizzly bear. (a) If, under AS 16.05.255(e) or (f), the Board of Game has identified predation by bear as a cause of the depletion, or the reduction of the productivity, of a big game prey population that is a basis for the establishment of an intensive management program in a game management unit or subunit or for the declaration of the biological emergency in a game management unit or subunit, the species of bear identified by the board may be taken under (c) - (i) of this section in the area identified by the board by a person who holds a bear control permit issued under this section. If the department determines that within the area in which an intensive management program is in effect, the bear population has been reduced to the population level set by the board or

the big game prey population has achieved the population objectives set by the board, the provisions of (c) - (i) of this section are no longer in effect in the area. The department shall provide notice to the public of when and where (c) - (i) of this section are in effect.

(b) The department shall issue a bear control permit to a resident, nonresident, or nonresident alien who holds a valid state hunting license to take bear, who is at least 19 years of age, who satisfies the requirements set out in this section, and who applies for the permit. A bear control permit authorizes the permit holder to take or assist in taking one or more specified species of bear in the area identified in the permit. The taking of bear under authority of a bear control permit is subject to provisions of AS 16, applicable to the taking of bear, and to regulations governing the method, manner, means, bag limit, or other matters adopted by the board that do not conflict with (c) - (k) of this section. The department shall issue bear control permits at each of its offices.

(c) Notwithstanding AS 16.05.407 or 16.05.408, a nonresident or a nonresident alien who holds a bear control permit issued under this section may take a bear under the authority of the permit if the nonresident or nonresident alien is accompanied in the field by either a registered guide or a master guide or by a resident who holds a bear control permit for the area where the hunt occurs, who is over 21 years of age, and who has legally ~~hunted~~ harvested big game in the state during at least two calendar years. A registered guide or a master guide is not subject to any limitation on the number of nonresident or nonresident alien permittees that the guide may accompany for purposes of taking bear under this section. A resident who is not a registered guide or master guide may not receive any remuneration in excess of direct expenses incurred in accompanying the nonresident or nonresident alien to take a bear and may not accompany more than two nonresidents, regardless of whether they are aliens or not, during a calendar year to take a bear under this subsection. A resident who accompanies a nonresident or nonresident alien permittee, but who is not a registered guide or master guide, shall remain with the nonresident or nonresident alien permittee at all times when the nonresident or nonresident alien permittee is in the field.

(d) Notwithstanding any other provision of law, a nonresident who is a member of the military service or the United States Coast Guard who is stationed in the state, who satisfies the requirements set out in this section, and who is at least 19 years of age shall receive, upon application, a resident bear control permit issued under this section and shall be eligible to take bear under this section in the area identified on the permit without obtaining a nonresident or nonresident alien bear tag. A person who is eligible for a resident bear control permit under this section is a resident for purposes of accompanying nonresident and nonresident alien permittees under (c) of this section and may accompany nonresident and nonresident alien permittees to take bear if the person holds a bear control permit issued under this section for the area where the hunt occurs, is at least 21 years of age, and has legally hunted big game in the state during two calendar years.

(e) Notwithstanding any other provision of law, a resident, a nonresident, or a nonresident alien who holds a bear control permit issued under this section may take bear under the authority of the permit without obtaining a big game tag for bear.

(f) A person who holds a bear control permit may, within the area identified on the permit, use scents and relocate and use viscera and inedible parts of game, or the whole or parts of dead domestic livestock, as an attractant for bear without having to register.

(g) A person who holds a bear control permit may, within the area identified on the permit, fly into the field to hunt bear, use aircraft to locate or assist in locating bear, and use information as to the location of a bear from another person who, as an incident of flying, has located a bear. A person who holds a bear control permit may not use an aircraft to pursue, herd, or harass a bear.

(h) A person who holds a bear control permit may, within the area identified on the permit, use a motorized land vehicle or motorized boat to pursue and intercept a bear that has become aware of the person's presence.

(i) A person who holds a bear control permit may, within the area identified on the permit, use any communications equipment or optical illumination equipment to aid in the taking of bear.

(j) A person who takes a bear under authority of a bear control permit shall

Could be eliminated if considered by Game

have the bear sealed by the department within 15 days after returning from the field. A nonresident or nonresident alien shall pay a fee of $50 at the time the bear is sealed by the department. The person shall accurately complete and return to the department in a timely manner reports that may be required by regulations of the Board of Game.

(k) In this section, "bear" means black bear or brown or grizzly bear that is one year old or older.

* Sec. 2. AS 16.40 is amended by adding a new section to read:

Article 6. Bear Hides and Skulls.

Sec. 16.40.275. Donation and sale of bear hides and skulls. (a) A person may donate a legally taken bear hide or skull to the department or a qualified organization.

(b) The department may accept a donation of the hide or skull of a legally taken bear and may sell the hide or skull by direct sale or auction. The disposal of a bear hide or skull under this subsection is exempt from AS 36.30 (State Procurement Code). The department shall return 50 percent of the net proceeds from the sale of the hide or skull to the donor and shall deposit the balance of the proceeds in the general fund. The legislature may appropriate proceeds retained by the department from the sale of bear hides and skulls to the fish and game fund.

(c) A qualified organization that is recognized as tax-exempt under 26 U.S.C. 501 (c)(3) (Internal Revenue Code) may, subject to regulations adopted by the Board of Game, accept a donation of the hide or skull of a legally taken bear and sell the hide or skull by auction or raffle. The organization may retain an amount from the gross proceeds of the auction or raffle equal to the administrative cost of the auction or raffle plus an amount not to exceed 50 percent of the net proceeds. The proceeds from the auction or raffle of a big game harvest permit may not be used to make a contribution to any candidate for political office or to any organization supporting or opposing ballot propositions or to pay expenses associated with lobbying the legislature or administration. Proceeds from the auction or raffle of a hide or skull, less the amount that is retained by the qualified organization under this subsection, shall be transmitted to the department for deposit in the general fund. The legislature may appropriate proceeds received by the department under this subsection to the fish and game fund.

(d) In this section, "qualified organization" has the meaning given in AS 16.05.343(c).

SENATOR SCOTT OGAN 23RD Alaska State Legislature

Senate District H Lazy Mountain * Butte * Chugiak * Peters Creek * Fairview Loop

Knik-Goose Bay * Big Lake * Houston * Willow * Talkeetna * Trapper Creek

State Capitol, Room 103, Juneau Alaska 99801 * (907) 465-3878 * 1 (800) 862-3878 * Fax (907) 465-3265

Senator_Scott_Ogan@legis.state.ak.us Http://www.akrepublicans.org/ogan

FACSIMILE TRANSMITTAL SHEET

TO: Alyson	FROM: Linda Hay
COMPANY:	DATE: 4-6-04
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER: 7
PHONE NUMBER:	RE: Senate Resources

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

SB 318

SB 297

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 April 19, 2004

SUBJECT: CSSB 297(RES), An Act relating to bear predation management and to sale of bear hides and skulls
(Work Order No. 23-LS0607\B)

TO: Senator Scott Ogan
Attn: Linda Hay

FROM: George Utermohle
Legislative Counsel

Enclosed is a draft Resources CS for SB 297, relating to bear predation management and to sale of bear hides and skulls.

The draft CS incorporates my understanding of the conceptual amendment adopted by the Senate Resources Committee at its April 16 meeting. The amendment is added to the bill as a new subsection (a) starting on page 1, line 4, of the bill. It is my understanding that it is the intent of the committee that the Board of Game adopt methods, manners, and means for taking bear in order to manage bear predation. The amendment reflects that understanding. The regulations would establish the methods that may be used to take bear as part of a bear predation management program. The responsibility for enforcement of those regulations would fall upon the Department of Public Safety and, to a lesser extent, the Department of Fish and Game.

The amendment does not contain a reference to implementation of those regulations by the Department of Fish and Game because there is virtually nothing for the department to implement. Unless the board delegates discretion to the department to determine what methods are to be used for bear predation management, methods, manners, and means regulations would not require department implementation.

If I have misconstrued the intent of the committee, please contact me so that I can properly reflect the committee's intent in the final CS.

If I may be of further assistance, please advise.

GU:med
04-421.med

Enclosure

23-LS0607\B
Utermohle
4/19/04

CS FOR SENATE BILL NO. 297(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

"An Act relating to bear predation management and the donation and sale of bear hides and skulls."

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

* **Section 1.** AS 16.05 is amended by adding a new section to read:

Sec. 16.05.781. Bear predation management. (a) The Board of Game shall adopt regulations establishing the methods, manners, and means for taking bear as the board considers necessary to manage bear predation.

(b) If, under AS 16.05.255(e) or (f), the Board of Game has identified predation by bear as a cause of the depletion, or the reduction of the productivity, of a big game prey population that is a basis for the establishment of an intensive management program in a game management unit or subunit or for the declaration of the biological emergency in a game management unit or subunit, the species of bear identified by the board may be taken under (d) - (f) of this section in the area identified by the board by a person who holds a bear predation management permit issued under

this section. If the department determines that within the area in which an intensive management program is in effect, the bear population has been reduced to the population level set by the board or the big game prey population has achieved the population objectives set by the board, the provisions of (d) - (f) of this section are no longer in effect in the area. The department shall provide notice to the public of when and where (d) - (f) of this section are in effect.

(c) The department shall issue a bear predation management permit to a resident, nonresident, or nonresident alien who holds a valid state hunting license to take bear, who is at least 19 years of age, who satisfies the requirements set out in this section, and who applies for the permit. A bear predation management permit authorizes the permit holder to take or assist in taking one or more specified species of bear in the area identified in the permit. The taking of bear under authority of a bear predation management permit is subject to provisions of this title, applicable to the taking of bear, and to regulations governing the method, manner, means, bag limit, or other matters adopted by the board that do not conflict with this section. The department shall issue bear predation management permits at each of its offices.

(d) Notwithstanding AS 16.05.407 or 16.05.408, a nonresident or a nonresident alien who holds a bear predation management permit issued under this section may take a bear under the authority of the permit if the nonresident or nonresident alien is accompanied in the field by either a registered guide or a master guide or by a resident who holds a bear predation management permit for the area where the hunt occurs, who is over 21 years of age, who has legally hunted big game in the state during at least two calendar years and has taken big game in the state during at least one calendar year, and who has obtained a hunter safety certificate issued under (g) of this section. A registered guide or a master guide is not subject to any limitation on the number of nonresident or nonresident alien permittees that the guide may accompany for purposes of taking bear under this section. A resident who is not a registered guide or master guide may not receive any remuneration in excess of direct expenses incurred in accompanying the nonresident or nonresident alien to take a bear and may not accompany more than two nonresidents, regardless of whether they are aliens or not, during a calendar year to take a bear under this subsection. A

resident who accompanies a nonresident or nonresident alien permittee, but who is not a registered guide or master guide, shall remain with the nonresident or nonresident alien permittee at all times when the nonresident or nonresident alien permittee is in the field.

(e) Notwithstanding any other provision of law, a nonresident who is a member of the military service or the United States Coast Guard who is stationed in the state, who satisfies the requirements set out in this section, and who is at least 19 years of age shall receive, upon application, a resident bear predation management permit issued under this section and shall be eligible to take bear under this section in the area identified on the permit without obtaining a nonresident or nonresident alien bear tag. A person who is eligible for a resident bear predation management permit under this subsection is a resident for purposes of accompanying nonresident and nonresident alien permittees under (d) of this section and may accompany nonresident and nonresident alien permittees to take bear if the person holds a bear predation management permit issued under this section for the area where the hunt occurs, is at least 21 years of age, has legally hunted big game in the state during two calendar years and has taken big game in the state during at least one calendar year, and has obtained a hunter safety certificate issued under (g) of this section.

(f) Notwithstanding any other provision of law, a resident, a nonresident, or a nonresident alien who holds a bear predation management permit issued under this section may take bear under the authority of the permit without obtaining a big game tag for bear.

(g) The department shall provide a hunter safety course for persons who intend to accompany nonresident or nonresident alien bear predation management permittees to take bear under (d) or (e) of this section. The department shall provide the course materials for the course at each of its offices and through the department's Internet website. The department shall offer the test for completion of the hunter safety course at each of its offices. The department shall issue a hunter safety certificate to each person who successfully completes the course.

(h) A person who takes a bear under authority of a bear predation management permit shall have the bear sealed by the department within 15 days after returning

from the field. A nonresident or nonresident alien shall pay a fee of $250 at the time the bear is sealed by the department. The person shall accurately complete and return to the department in a timely manner reports that may be required by regulations of the Board of Game.

(i) In this section, "bear" means black bear or brown or grizzly bear.

* **Sec. 2.** AS 16.40 is amended by adding a new section to read:

Article 6. Bear Hides and Skulls.

Sec. 16.40.275. Donation and sale of bear hides and skulls. (a) A person may donate a legally taken bear hide or skull to the department or a qualified organization.

(b) The department may accept a donation of the hide or skull of a legally taken bear and may sell the hide or skull by direct sale or auction. The disposal of a bear hide or skull under this subsection is exempt from AS 36.30 (State Procurement Code). The department shall return 50 percent of the net proceeds from the sale of the hide or skull to the donor and shall deposit the balance of the proceeds in the general fund. The legislature may appropriate proceeds retained by the department from the sale of bear hides and skulls to the fish and game fund.

(c) A qualified organization that is recognized as tax-exempt under 26 U.S.C. 501(c)(3) (Internal Revenue Code) may, subject to regulations adopted by the Board of Game, accept a donation of the hide or skull of a legally taken bear and sell the hide or skull by auction or raffle. The organization may retain an amount from the gross proceeds of the auction or raffle equal to the administrative cost of the auction or raffle plus an amount not to exceed 50 percent of the net proceeds. The proceeds from the auction or raffle of a big game harvest permit may not be used to make a contribution to any candidate for political office or to any organization supporting or opposing ballot propositions or to pay expenses associated with lobbying the legislature or administration. Proceeds from the auction or raffle of a hide or skull, less the amount that is retained by the qualified organization under this subsection, shall be transmitted to the department for deposit in the general fund. The legislature may appropriate proceeds received by the department under this subsection to the fish and game fund.

(d) In this section, "qualified organization" has the meaning given in

AS 16.05.343(c).

ALASKA STATE SENATE

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Senator Ralph Seekins
District D

MEMORANDUM

Date: February 7, 2004

To: Office of Senator Ogan

From: Senator Ralph Seekins

Re: Request for Hearing of SB 297

Attached please find Senate Bill 297. A Sponsor Statement ~~will follow shortly~~ is attached.

Essentially, Senate Bill 297 makes additional tools available to the Board of Game where predation (in this case by bears) has been determined to be a cause for depletion of big game populations in certain game management areas.

I respectfully request a hearing before your committee on this Bill at your earliest convenience. Thank you.

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Senator Ralph Seekins
District D

Senate Bill 297 Sponsor Statement

"An Act relating to the taking of black bear, brown bear, and grizzly bear and to registration of big game guides for certain guide use areas."

There is no shortage of black or grizzly/brown bears in Alaska. Here, they are neither threatened nor endangered. In some Game Management Units the bear populations are many multiples of the established population objectives. The Alaska Department of Fish and Game estimates statewide black bear populations as high as 200,000 and the grizzly/brown bear population as high as 35,000.

In certain game management units, estimates range from 70–90% of all the moose calves are dead before they reach two months of age due, in large part, to bear overpopulation. As a result, fall recruitment is virtually zero and the reproductive base populations are crashing. The well publicized 2003 McGrath bear relocation experiment clearly demonstrated that a reduction in bear populations has a direct positive effect on increasing calf survivability and thus the long-term health of the resource. But relocation efforts do not solve the underlying problem.

Senate Bill 297 addresses Alaska's bear over-population problem in those places — called Intensive Management Areas — where the Board of Game has: (1) first determined that consumptive use of the big game population is a preferred use; (2) depletion of the big game population has occurred and may result in a significant reduction in the allowable human harvest of the population; and (3) enhancement of abundance or productivity of the big game prey population is feasibly achievable utilizing recognized and prudent active management techniques.

It is important to understand that the provisions in SB 297 only come into play if the Board of Game, advised by the Department of Fish and Game biologists, finds that bears are a cause of the depletion or reduction of big game productivity.

Once the above findings have been made, SB 297 allows for remediation efforts on two fronts. First, registered guides would be allowed to select and add a fourth guide use area within the Intensive Management Area for black and/or grizzly/brown bears. Then, methods and means would be relaxed and seasons extended for the taking of bears through the private sector by Alaska residents and their family and friends.

A strong point of emphasis is that this program in all reality is, and should be viewed as, a predator control program. The provisions of this Act *do not apply* to Game Management Units in which intensive management is not necessary. Furthermore, proactive measures end as soon as the bear populations are once again within the population objectives that have been set by the Board of Game.