

12040 SENATE RESOURCES

**HJR**

**9**

# ALASKA STATE LEGISLATURE



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Representative Gabrielle LeDoux

## MEMO

**DATE:** 4/20/2005  
**TO:** SENATE RESOURCES *of*  
SENATOR THOMAS WAGONER  
**FROM:** REPRESENTATIVE GABRIELLE LEDOUX  
**RE:** HEARING REQUEST FOR HJR 9 URGING CONGRESS TO HONOR THE  
EXXON VALDEZ JUDGMENT

---

I respectfully request that House Joint Resolution 9 be scheduled for a hearing in the Senate Resources Committee.

Attached you will find:

- The current version of HJR 9
- Sponsor Statement
- Additional documentation relating to the resolution
- The Kodiak Legislative Information Office (907) 486-8116 would like to be online for the teleconference
- My staff member assigned to this legislation is Suzanne Hancock, direct line 465-4230

**HJR 9 Materials List**

- Sponsor Statement: 1 page
- Bill: 2 pages
- #1 FN: LAA: 3-29-05: 1 page
- Support Letter – UFA: 1 page
- A.D.N. news article: 6 pages
- Support Letter – Jamin, Ebell, Schmitt, & Mason: 1 page
- Time line: 1 pages
- Update: 3 pages
- Primer: 3 pages
- FAQ's on OPA: 2 pages

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## Representative Gabrielle LeDoux

### SPONSOR STATEMENT FOR HOUSE JOINT RESOLUTION 9

**This resolution from the Alaska State Legislature urges that the United States Congress respect the judicial process and refrain from enacting any legislation that would alter the punitive damages awarded to more than 32,000 plaintiffs as a result of the 1989 Exxon Valdez oil spill as finally determined by the federal courts.**

**Nearly 15 years after the disaster, and more than ten years after the original jury verdict, the plaintiffs are still waiting resolution of the lawsuit.**

**While the United States Congress considered the Oil Pollution Act of 1990, Exxon Mobil Corporation sought an amendment that would have substantially reduced the punitive damages that it would have paid for the Exxon Valdez oil spill. This resolution urges Congress only to let the courts determine this matter.**

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HJR 9  
 (H) Publish Date: 4/1/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Legislature  
 Title: "Urging the United States Congress to BRU: Legislative Council  
honor the process and judgment of the federal courts..." Component: Council and Subcommittees  
 Sponsor: "Representatives LeDoux, Gara, ..." Session Expenses  
 Requestor: House Resources Committee Component No. 783

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

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

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)

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director Phone: 465-6626  
 Division: Administrative Services Date/Time: 3/29/05 10:02 AM  
 Approved by: Pamela Varni, Executive Director Date: 3/29/2005  
 Agency: Legislative Affairs Agency



# UNITED FISHERMEN OF ALASKA

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Juneau, Alaska 99801-1172  
(907) 586-2620  
(907) 463-2545 Fax  
E-Mail: [ufa@ufa-fish.org](mailto:ufa@ufa-fish.org)  
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March 3, 2005

Representative Ralph Samuels, Co-Chair  
House Resources Committee  
Alaska State Legislature  
State Capitol (Mail Stop 3100)  
Juneau AK 99801-1182

Dear Representative Samuels,

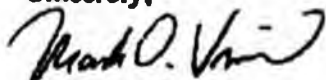
UFA represents thirty-one Alaska commercial fishing groups and hundreds of individual fishermen, crew members and related businesses.

United Fishermen of Alaska (UFA) supports HJR 9 as a meaningful statement from the State of Alaska to urge that the United States Congress respect the judicial process and refrain from enacting any legislation that would alter the punitive damages awarded to more than 32,000 plaintiffs as a result of the 1989 Exxon Valdez oil spill as finally determined by the federal courts.

The sixteen year delay in just compensation has prolonged the economic damage from the spill beyond justification. All reasonable positions in this sad episode have received due process in courts. Fishermen and communities should be compensated without any undue further delay.

We appreciate your consideration and encourage your support of HJR 9.

Sincerely,

  
Mark D. Vinsel  
Executive Director

CC: Representative Gabrielle LeDoux

#### MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Druggers Association • Alaska Longline Fishermen's Association • Armstrong Kets • Al-sea Processors Association  
Bristol Bay Reserve • Concerned Area "M" Fishermen • Cordova District Fishermen United • Douglas Island Pink and Chin  
Fishing Vessel Owners Association • Groundfish Forum • Kasilof Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association  
North Pacific Fisheries Association • North Pacific Scallop Cooperative • Northern Southeast Regional Aquaculture Association  
Old Harbor Fishermen's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation  
Pures Seine Vessel Owner Association • Seafood Producers Cooperative • Southeast Alaska Herring Sciners Marketing Association  
Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association  
United Catcher Boats • United Salmon Association United Southeast Alaska Gillnetters • Valdez Fisheries Development Association  
Western Gulf of Alaska Fishermen

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Anchorage Daily News

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## 16 years later, pressure mounts to settle spill suit

**EXXON VALDEZ: State, federal lawyers must decide by next summer whether to seek additional damages.**

By TOM KIZZIA  
Anchorage Daily News

(Published: February 27, 2005)

State and federal officials in charge of spending Exxon Valdez oil spill settlement funds are pushing new efforts to reach "closure" on controversies about environmental damage posed by crude oil, some of which still lies buried in the sands of Prince William Sound.

Since the election of Gov. Frank Murkowski in 2002, the oil spill trustees have put some broader, long-range scientific projects on hold. Instead, the trustee council has directed Exxon settlement funds to studies of herring and other injured species in hopes of writing the final chapter on spill damage and the effects of so-called lingering oil.

A key piece of that work has been contracted to a private Seattle consulting firm that normally does much of its work for companies accused of pollution. Integral Consulting has \$850,000 in contracts to weigh conflicting studies by government and Exxon scientists and reach independent conclusions on the lingering spill impacts. A state lawyer said the firm is expected to have some answers by late summer or fall.

The change in priorities has drawn strong protests from public advisers and scientists, who say they don't know what's going on because the council has conducted little open discussion. Some critics say they fear the Murkowski and Bush administrations are eager to close the book on a resource-development public-relations mess.

### TRUSTEE COUNCIL MISSION

The trustee council was formed to oversee restoration of the ecosystem damaged by the 1989 Exxon Valdez oil spill. The company tanker hit a charted reef and dumped a reported 11 million gallons of crude oil into Prince William Sound.

The oil spill trustees say they haven't been secretive. But under fire from their public advisory group, which approved a sharply critical resolution last month, they say they are trying harder to make their intentions plain. In recent interviews, several trustees said the new priorities are necessary in part to address the lingering oil, which only showed up in studies beginning in 2001.

"The lingering oil was something no one contemplated back in '89 when the spill happened," said Drue Pearce, the Alaska special assistant for the U.S. Department of the Interior, who holds a federal seat on the Exxon Valdez Oil Spill Trustee Council. Pearce said she visited a beach last summer with still-smelly oil buried in the sand and found it "astounding."

Pearce said findings of the Integral Consulting study will be important to state and federal lawyers, who must decide by the summer of 2006 whether to seek additional damages of up to \$100 million from the spiller, now known as Exxon Mobil. The 1991 settlement between Exxon and the state and federal governments included a short "reopener" period allowing new claims based on

environmental harm that was not foreseen at the time.

## UNRESOLVED QUESTIONS

That litigation deadline aside, the trustees appear uncomfortable with having unresolved questions of environmental damage hover indefinitely over the Sound.

"Maybe (herring) will never recover. But we need to bring closure to that question," said Kurt Fredriksson, acting commissioner of the Department of Environmental Conservation and one of three state trustees. "We need to get restoration of those resources taken care of, or conclude that we cannot."

Scientists involved in past research have questioned the apparent change of direction, saying the new council members were ignoring years of scientific planning and recommendations from peer-review groups. Many were concerned that broader ecosystem research, considered by previous administrations the best way to examine long-term spill impacts, would eventually be canceled. The trustees have \$106 million left for scientific work from the \$900 million civil settlement paid by Exxon.

Trustees have recently assured them that the long-range work will continue after this pause, said Brenda Norcross, a University of Alaska marine science professor and co-chairman of the trustees' scientific advisory committee.

Critics also expressed concern over the Christmas-week firing of the trustee council's science director, Phil Mundy, who had helped build the old research program.

"It's very difficult to get all the work done without a science director," Norcross said.

Mundy said he was given no reason except that his firing was ordered by Murkowski's office. Trustee council executive director Gail Phillips said she could not discuss the decision because it was a confidential personnel matter.

## SKEPTICISM ABOUNDS

The council's actions were viewed warily by the advisory committee set up under the settlement to ensure public involvement in how the funds are spent. In January, the committee passed a resolution branding council actions last August secret and illegal, and calling on the council to reconsider its work plan, this time in public.

"I think the controversy is more the secrecy of how they are doing it," said committee member Pat Lavin of the National Wildlife Federation. "We think it's pretty clear the council violated its own procedures."

Lavin and others say the push for new priorities has come largely from trustees representing the state.

Some question giving the important job of summarizing past research to an independent firm like Integral Consulting.

"They're a complete outsider to this. I don't think they've got the history to make the judgment," said Stan Senner, a longtime science coordinator for the trustee council who is now executive director of Audubon Alaska.

But Craig Tillery, an assistant attorney general for the state who has been involved in the oil spill since the tanker hit Bligh Reef, said it's the right time for an independent summary.

"You've got these disparate studies. You don't have an analysis," Tillery said.

Stacy Studebaker, a Kodiak environmentalist who has served nine years on the public advisory committee, is suspicious.

"I think there's a mandate on the state trustees to get this thing over with, to tidy things up," Studebaker said. "They're trying to clean up a PR mess with Exxon."

But her fellow committee member Lavin said the focus on answering the big remaining questions seems to make sense.

"It's exactly what they should be doing," he said. "My great fear is that, voila, the studies show that everything's great. But I have no reason to think that will happen."

## LONG-TERM PROJECTS

The trustee council, made up of six top bureaucrats from the federal and state governments, has spent \$375 million on buying and protecting habitat, \$176 million to reimburse governments for spill response costs, and \$173 million on scientific studies.

By the spill's 10-year anniversary in 1999, with echoes of the Exxon Valdez catastrophe growing fainter, officials and science advisers were turning attention to planning long-term projects under the umbrella of the so-called Gulf Ecosystem Monitoring Program, or GEM. In 2002, most of the remaining money, around \$87 million, was set aside for GEM studies looking at long-range spill impacts in the context of broader changes in the North Pacific. The council now spends between \$3 million and \$5 million a year on various studies.

The Bush-Murkowski council began to change course in 2004. An August decision to turn down funding for some GEM projects drew a stern complaint from University of Alaska president Mark Hamilton. He said the council had ignored recommendations of staff and science advisers in rejecting high-ranked projects by university scientists while funding some that had been recommended against.

"Violation of the practices and tenets of science sponsorship which have for generations guided successful research in this country -- including peer review, openness, and transparency -- puts at risk the scientific credibility of not only yourselves as trustees, but the organizations you represent," Hamilton wrote the trustees last September.

The state trustees responded with a stout defense of their prerogative, saying their "highest priority" was projects with "the most direct and immediate restoration effects" on damaged resources and lost services. "While some disappointment is expected among investigators whose projects did not receive funding, no reasonable person should conclude a conspiracy exists in the process or a mystery surrounds our decisions," the state trustees wrote to Hamilton.

Studebaker came back with a newspaper column saying the council didn't need to rubber-stamp projects but did need to explain its reasons. Its failure to do so in August had been "a stick in the eye" to those trying to keep public the often-politicized science surrounding the Exxon Valdez spill, she said.

Trustee council members are now going further to explain their thinking, saying the attention to

assessing and restoring damage is essential under the council's 1994 work plan.

"From where I sit, it was a nicety that we jumped to too quickly," DEC's Fredriksson said of the GEM program. "We hadn't completed the restoration work that had to be done."

He said an assessment of resource recovery hadn't been made since 2002. At that point, five species and several other resources were listed as still recovering, while eight species were listed as "not recovering."

The apparent shift in priorities makes some sense to one prominent oil industry critic, Rick Steiner, a marine biologist at the University of Alaska Anchorage. Steiner, who has pushed government officials to stay focused on restoring the Sound, said it is important for the council to not allow its endowment to become a "cash cow" for general scientific research.

Steiner said he's worried, however, that the Bush and Murkowski administrations appear hostile to reopening spill litigation around continuing effects of the spill, which he contends go far beyond sheens leaching into the water from buried oil. He said debating the larger questions in court could reflect badly on their efforts to open other areas to oil drilling.

"The last thing they want is discussion of 15-year long-term damage we didn't expect," Steiner said.

## **CONFLICTING INTERESTS?**

An example of these conflicting interests, cited by Steiner and others, is that Phillips, who made \$105,000 last year as the trustee council's executive director, has played a prominent role in Arctic Power, the group promoting oil development in the Arctic National Wildlife Refuge. Last year, Phillips was Arctic Power's co-chairman. She recently resigned the leadership position because of the complaints, she said, though she remains on the group's board.

"In my mind, it was never a conflict because I had been doing it for so long," said Phillips, a former state House speaker and candidate for lieutenant governor. "But I could understand where people could have thought it was."

Phillips said the question of whether to reopen the spill case is up to state and federal lawyers, not the trustee council.

Tillery, the assistant attorney general, said government lawyers are seriously exploring the potential for a reopening. He would not comment further.

It was Steiner who obtained secret trustee council documents in 2003 outlining the possibilities for reopening the case at that point. The documents, featured in a subsequent story in the Wall Street Journal, detailed growing scientific concern over lingering oil and cited unanticipated damage to pink salmon, sea otters, mussels and harlequin ducks.

"Much, if not all, of the information upon which a claim would be made is generated by the Trustee Council's restoration program," wrote Molly McCammon, Phillips' predecessor, in one of the secret memos.

That was then. Now, said Pearce, vital information for making any such claim is likely to be drawn from the analytical study of lingering oil and damaged resources by Seattle-based Integral Consulting.

## INTEGRAL CONSULTING STUDY

The national consulting firm was first recommended to the state for spill restoration work by Murkowski's first DEC commissioner, Ernesta Ballard, who served as a spill trustee until resigning last year. Ballard said this month she had worked with Integral on a project for the Ketchikan Pulp Co. before joining state government.

According to the company's Web site, Integral is a specialist in polluted sediments and does much of its work for private companies accused of spills -- "potential responsible parties," in the legal term. Integral has also been involved in cleanup for government agencies such as the Port of Seattle, its Web site said.

The company reported at a January symposium that initial findings show the buried oil continues to leach into the environment, but most of the resources "currently" classified as injured are not exposed to it, Integral's Web site said.

Several calls to Integral officials handling the Alaska project were not returned.

Trustee council meetings are known for the jaw-dropping tedium of discussions about scientific appropriations of tens of thousands of dollars. So it was all the more surprising that there was little discussion on March 1, 2004, when the council returned from a lunchtime executive session and voted to give \$1.5 million to the state Department of Law for research "to fill in gaps related to lingering oil."

The motion was made by Jim Balsiger, Alaska administrator for the National Marine Fisheries Service, with little discussion, other than to specify that the department should work with federal agencies and with Integral Consulting. Ballard seconded.

Assistant attorney general Tillery spoke briefly in support, saying the lingering oil was "a cloud hanging over us of unfinished business," according to a transcript of the trustee council meeting.

Integral later received a \$200,000 contract to study sediments and a \$650,000 contract to analyze the lingering oil data and provide a fresh assessment of how species have recovered. The latter contract also calls for recommendations on monitoring and treatment of old oil, as well as "effective communication" to the public of the technical results.

## CONFUSION LINGERS

Public confusion about the state's intentions has not been helped by turnover among the Murkowski administration trustees. In addition to Ballard, who left last October to become a senior vice president for the forest products giant Weyerhaeuser, Fish and Game Commissioner Kevin Duffy resigned at the end of the year to head the factory trawlers association. Now the third trustee, Attorney General Gregg Renkes, has resigned amid conflict of interest allegations involving a coal technology company.

Fredriksson said the spill trustees sought to explain themselves with a passage in their annual report released this month, which Phillips read aloud when asked about the changes:

"Over the next eighteen months, the Council has determined the need to realign priorities and restorative activities, placing focus on critical work required to reach closure in areas of restoration related to lingering oil and injured species."

The trustees also acceded to a request from public advisory committee members for more

dialogue, Phillips said. The next council meeting, scheduled for June in Cordova, will include time for an unprecedented back-and-forth conversation with committee members, she said.

"I think most of the trustees would agree we haven't done as great a job of communicating with our PAC as we might," Pearce said.

Reporter Tom Kizzia can be reached at [tkizzia@adn.com](mailto:tkizzia@adn.com) or in Homer at 1-907-235-4244.

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Statement in Support of House Resolution re: Exxon

To whom it may concern:

Before the 3/24/89 Exxon Valdez oil spill, 43 U.S.C. Sec. 1653 established a Trans-Alaska Pipeline Liability Fund (TAPLF), by which vessel owners and operators, if they spilled oil that had passed through the Alaska pipeline were strictly liable for damages from the discharge, up to \$100,000,000.

When the spill occurred on 3/24/89, plaintiffs looked to the Fund as one source of money to pay damages, but brought our primary litigation claims in state and federal court, arguing that state statutes, state common law theories (such as negligence, trespass and nuisance), and federal admiralty law all gave claimants (fishermen, municipalities, businesses, landowners, etc) rights of action. We were aware then that 43 U.S.C. Sec. 1653 (c)(9) said specifically that the law that established the Fund "shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements," and thus assumed that the existence of the Fund legislation, and the Fund itself, should not bar, or hold back our claims.

With increased federal interest in legislation after the spill (which ultimately resulted in OPA 90), we were very concerned that the industry would try to interfere with what we viewed as our non-Fund existing remedies. We were able to secure a special section in OPA that said, "Nothing in this title shall apply to any cause of action or right of recovery arising from any incident which occurred prior to August 18, 1990. Such claims shall be adjudicated pursuant to the law applicable at the date of the incident. 33 U.S.C. Sec. 2717(e)." OPA also added some good language that we fought for, (and which applied both to future spills and retroactively to our case), relating to the right of a municipality or state to recover for additional public services (like police and fire services) after a spill, which language countered a legal doctrine based on a case called Flagstaff which said that such costs were not recoverable, but had to be passed through to taxpayers, and also permitting states and municipalities to recover for lost revenues, such as taxes.

As we were pursuing our federal and state claims after the passage of OPA 90, Exxon argued in federal court to Judge Holland that all of those claims had to be pursued first before the Liability Fund, even though section 1653 (c)(9) said specifically that it "shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements."

In 1992, when it appeared that Judge Holland might require us to present all the claims first to the TAPLF before we could proceed on our other claims in federal court, we asked for an amendment to the TAPLF legislation which would clarify that the Fund was not the exclusive arbiter of damages from oil spills. Exxon and other oil companies opposed the legislation as it was inconsistent with their position in court that at the very least we had to exhaust remedies with the Fund before we could pursue court claims.

Matt Jamin  
Jamin, Ebell, Schmitt & Mason

## Timeline of *Exxon Valdez* Punitive Damages Litigation

Date	Litigation Milestones
<b>1989</b>	<ul style="list-style-type: none"> <li>▪ <i>Exxon Valdez</i> oil tanker runs aground on Bligh Reef in Prince William Sound, Alaska, discharging 11 million gallons of toxic crude oil. Within a month, numerous civil suits are filed in U.S. District Court and Alaska State court for compensatory and punitive damages.</li> </ul>
<b>1990</b>	<ul style="list-style-type: none"> <li>▪ U.S. District Court initially denies motion for certification of class action, resulting in thousands of additional individual lawsuits being filed, mostly in State court.</li> </ul>
<b>1991</b>	<ul style="list-style-type: none"> <li>▪ State court grants motion for certification of class action.</li> <li>▪ Exxon removes most of the certified class action cases pending in State court to U.S. District Court. These cases are consolidated by the District Court into <u>In re: Exxon Valdez Oil Spill Litigation</u>.</li> </ul>
<b>1992</b>	<ul style="list-style-type: none"> <li>▪ Cases consolidated in <u>In re: Exxon Valdez Oil Spill Litigation</u> consist of nearly 200 direct actions on behalf of approximately 5,000 named plaintiffs and five certified class actions, with class membership estimated to be in the tens of thousands.</li> </ul>
<b>1993</b>	<ul style="list-style-type: none"> <li>▪ U.S. District Court dismisses the first of Exxon's many attempts to avoid punitive damages by arguing it is not subject to them as a matter of law.</li> </ul>
<b>1994</b>	<ul style="list-style-type: none"> <li>▪ U.S. District Court grants final approval of mandatory punitive damages class.</li> <li>▪ Trial takes place from May 2 – September 16.</li> <li>▪ U.S. District Court jury returns a verdict for plaintiffs, finding Exxon liable for punitive damages in the amount of \$5 billion.</li> <li>▪ Exxon, and the ship's captain, file 22 post-trial motions seeking, among other things, a new trial on the issue of punitive damages.</li> </ul>
<b>1995</b>	<ul style="list-style-type: none"> <li>▪ U.S. District Court denies Exxon's post-trial motions.</li> </ul>
<b>1996</b>	<ul style="list-style-type: none"> <li>▪ U.S. District Court enters final judgment as to the mandatory punitive damages class in the amount of \$5 billion (paving the way for the appeals process to begin), and stays execution of the judgment based on Exxon's posting of an irrevocable letter of credit.</li> <li>▪ Exxon seeks entitlement to a portion of the punitive damages award based on secret settlement agreements made with a group of seafood processors who agreed to obtain the punitive damages on Exxon's behalf.</li> </ul>
<b>1997</b>	<ul style="list-style-type: none"> <li>▪ Exxon appeals the amended judgment, both as to liability and amount of the punitive damages award.</li> </ul>
<b>2002</b>	<ul style="list-style-type: none"> <li>▪ Ninth Circuit affirms original judgment regarding liability for punitive damages but vacates the award and remands to the U.S. District Court to reduce the amount of the award.</li> <li>▪ On remand, U.S. District Court concludes that the full \$5 billion punitive damages is constitutionally permissible but reduces award to \$4 billion based on Ninth Circuit's direction that the award be reduced.</li> </ul>
<b>2003</b>	<ul style="list-style-type: none"> <li>▪ Exxon and plaintiffs both appeal the reduced award to the Ninth Circuit.</li> <li>▪ U.S. Supreme Court decides a separate case (<u>State Farm Mutual Auto Insurance Co. v. Campbell</u>), revisiting due process issues as they relate to punitive damages.</li> <li>▪ Prior to hearing the appeal, the Ninth Circuit vacates the \$4 billion punitive judgment without ruling on the merits and remands to the U.S. District Court to reconsider the award in light of the <u>State Farm</u> decision.</li> <li>▪ Exxon files second renewed motion to reduce the amount of the punitive damages</li> </ul>

Date	Litigation Milestones
2004	<p data-bbox="460 223 544 254">award.</p> <ul style="list-style-type: none"> <li data-bbox="413 261 1496 411">▪ U.S. District Court issues its order on remand, in which it considers the recent Supreme Court case, concludes that the punitive damages award still comports with due process and that the full \$5 billion is not excessive, and enters a final judgment for \$4.5 billion in punitive damages.</li> <li data-bbox="413 418 1199 449">▪ Exxon appeals to the Ninth Circuit, and plaintiffs cross appeal.</li> <li data-bbox="413 455 942 486">▪ Ninth Circuit receives briefing on appeal.</li> </ul>
2005	<ul style="list-style-type: none"> <li data-bbox="413 493 1468 566">▪ Ninth Circuit expected to hear oral argument and issue a decision on appeal later this year.</li> </ul>

## Exxon Valdez Update<sup>1</sup>

### The Spill

When the Exxon Valdez ran aground on Bligh Reef in 1989, it released eleven million gallons of toxic crude oil that spread throughout and beyond Prince William Sound. The oil spread past numerous islands and along the coast of the Kenai Peninsula, Cook Inlet, and Kodiak Island. The spill disrupted the lives and livelihoods of those in its path, including fishermen in commercial fisheries that were closed for the 1989 season; additional commercial fisheries that were not closed but suffered significant price declines; the subsistence fisheries in Prince William Sound and Lower Cook Inlet villages; shore-based businesses dependent on the fishing industry; and the people of cities such as Cordova.

### Initial Litigation

Litigation included both civil and criminal actions. Civil suits came first but developed slowly due to their number and complexity. Both the United States and the State of Alaska sued Exxon for environmental damage, and that litigation was settled by means of a consent decree whereby Exxon agreed to pay to the governments, for environmental damage, \$900 million over a period of ten years, with a "re-opener" provision allowing for additional claims of up to \$100 million for damage discovered after settlement.

Exxon was prosecuted by the federal government for various environmental crimes. Exxon Corporation and Exxon Shipping pleaded guilty to a total of four counts of violating three different environmental laws, were jointly fined \$25 million and ordered to pay restitution in the amount of \$100 million.

### The Class Action Suit

The civil cases were ultimately (with a few exceptions) consolidated into one class action suit with more than 32,000 plaintiff class members from all fifty states, which has been winding its way through the courts for nearly 16 years. In the consolidated cases, there was never any dispute as to Exxon's liability for compensatory damages, only the amount of economic losses and the appropriateness of punitive damages were controverted. By the time of the punitive damages phase of the trial in 1994, the parties had stipulated that the actual damages were estimated to be between \$432 million and \$768 million, and compensable harm was eventually determined to be \$513 million.

This figure does not include additional harms that have never been compensated. The Ninth Circuit observed that the spill "obviously caused harm beyond the 'purely economic.'" The District Court Judge found: "The social fabric of Prince William Sound and Lower Cook Inlet

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<sup>1</sup> Unless otherwise noted, all information contained in this update is from the January 24, 2004, Order No. 364 of the U.S. District Court for the District of Alaska, *In re: the EXXON VALDEZ*, Case Number A89-0095CV.

was torn apart," citing research that clearly delineated a chronic pattern of spill-related economic loss, social conflict, cultural disruption and psychological stress; an increased incidence of alcohol and drug abuse, domestic violence, mental health problems, and occupation related problems; and a high percentage of affected fishermen suffering from severe depression, post-traumatic stress disorder, generalized anxiety disorder, or a combination of all three.

### Punitive Damages

For the punitive damages phase of the trial, unusually detailed jury instructions were developed. The jury was specifically instructed that even if it found Exxon's conduct reckless, it was not required to award punitive damages; that it must use reason in setting the amount of punitive damages; that any award should bear a reasonable relationship to the harm caused; that punitive damages are not intended to provide compensation; and that jurors should assume the plaintiffs had already been fully compensated.

Factors the jury was told it could consider in setting an amount of punitive damages included the reprehensibility of the defendants' conduct, the amount of harm suffered by members of the plaintiff class as a result of the defendants' conduct, and the financial condition of the defendants. As to the defendants' wealth, the jury was instructed to consider the defendants' financial condition only in terms of what level of award would be necessary to achieve punishment and deterrence. The jury was also instructed that it should not count any damage to natural resources or the environment in general when assessing harm suffered by plaintiff class members, and that it could consider mitigating factors (such as criminal fines or civil awards already levied for the same conduct) and the extent to which the defendants had taken steps to remedy the consequences of the spill and prevent future ones.

The Alaska jury deliberated for 22 days on the issue of punitive damages and ultimately returned a unanimous verdict in the amount of \$5 billion. The District Court denied Exxon's motion to reduce the award, concluding that it was not so grossly excessive as to violate the defendants' due process rights.

### Appeals and Remands

Exxon appealed both its liability for, and the amount of, the punitive damages awarded by the jury and upheld by the District Court in 1994. The Ninth Circuit Court of Appeals rejected Exxon's contention that punitive damages should have been barred and concluded that there was substantial evidence to support a jury verdict of liability for punitive damages as to both Exxon and the ship's captain. In the end, the Court of Appeals also found that the amount of the award was too high and remanded the matter to the District Court for further review and reduction of the award. After considering the briefing and hearing oral arguments, the District Court found again in 2002 that the award of punitive damages complied with due process. It reduced the punitive damages award to \$4 billion and entered the judgment on December 10, 2002. Exxon appealed again, and the plaintiffs also appealed.

The Ninth Circuit Court of Appeals, prior to receiving briefing on either appeal, vacated the \$4 billion punitive damages judgment and again remanded the case to the District Court, this time to

consider the award in light of a recent U.S. Supreme Court case providing new guidance on evaluating punitive damages awards. Both parties submitted supplemental briefing and engaged in oral arguments applying the new guidance. The District Court then considered, for the third time, the question of whether the \$5 billion punitive damages award against Exxon comports with due process. The court applied the Supreme Court guidance and concluded that the \$5 billion award was not grossly excessive and that it had no principled means by which it could reduce the award. Ultimately, however, to comply with the directive of the Ninth Circuit's remand, the District Court entered judgment in the amount of \$4.5 billion and encouraged plaintiffs to cross appeal if Exxon chose to take further appeal of the punitive damages award. In doing so, the District Judge stated that he would have denied the defendants any reduction in the award had it not been for the specific direction imposed by the Court of Appeals to effect some reduction in the punitive damages award.

The \$4.5 billion judgment entered by the District Court represents a 9:1 ratio between punitive damages and the \$513 million of compensated harm. Courts applying the Supreme Court's punitive damage decisions have understood those decisions to provide a general guideline that "[s]ingle-digit multipliers are more likely to comport with due process." In the three cases in which the Supreme Court held that punitive damage awards were excessive, the awards ultimately approved on remand were 9:1 (*State Farm v. Campbell*), 10:1 (*Cooper v. Leatherman*) and 12.5:1 (*BMW v. Gore*).

#### Current Status of Case

Presently, Exxon is appealing the punitive damages award for the third time. The Ninth Circuit Court of Appeals is expected to issue its decision on the appeal sometime later this year.

#### Ongoing Damage

Damage from Exxon Valdez oil continues to this day. According to the 2003 Status Report of the Exxon Valdez Oil Spill Trustee Council, more than fifteen different species and resources, as well as commercial fishing, recreation and tourism, and subsistence harvesting, have still not fully recovered; and the recovery of five resources is considered unknown.<sup>2</sup> Trustee Council-funded researchers with the National Marine Fisheries Service's Auke Bay Laboratory found beaches in Prince William Sound still contaminated in 2001. More oil was found than expected, especially in the subsurface; subsurface oil was less weathered and more toxic; and oil was found in the intertidal zone, closest to the zone of biological production. Other Trustee Council-funded research indicates that these remaining pockets of oil may be impeding the recovery of several species.

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<sup>2</sup> Not recovering: common loon, cormorants, harbor seal, harlequin duck, Pacific herring, and pigeon guillemot. Recovering: clams, designated wilderness, intertidal communities, killer whale (AB pod), marbled murrelet, mussels, sea otter, and sediments. Recovery unknown: cutthroat trout, dolly varden, Kittlitz's murrelet, rockfish, subtidal communities.

# Natural Resource Damages: A Primer

## Introduction

The purpose of this primer is to define Natural Resource Damage (NRD) concepts and terms, and discuss the following topics as they relate to NRD: the authority under which NRD are assessed; the definition of natural resources; the role of EPA; the designation of Natural Resource Trustees; and the conduct of natural resource damage assessments (NRDAs) and restorations. **Although impacts to natural resources may be addressed under other statutory authorities, this site focuses on provisions under CERCLA or OPA.**

Natural resource injuries may occur at sites as a result of releases of hazardous substances or oil. Trustees use NRDAs to assess injury to natural resources held in the public trust. This is an initial step toward restoring injured resources and services and toward compensating the public for their loss.

## CERCLA and OPA Statutory Authority

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) provides a comprehensive group of authorities focused on one main goal: to address any release, or threatened release, of hazardous substances, pollutants, or contaminants that could endanger human health and/or the environment. CERCLA's response provisions focus on the protection of human health and the environment. The statute also provides authority for assessment and restoration of natural resources that have been injured by a hazardous substance release or response.

**The Oil Pollution Act (OPA) was enacted in reaction to the Exxon Valdez oil spill and provides authority for oil pollution liability and compensation as well as for the Federal government to direct and manage oil spill cleanups. Similar to CERCLA, OPA contains authorities to allow the assessment and restoration of natural resources that have been contaminated by the discharge, or threatened discharge, of oil.**

## Natural Resources Defined

**Both CERCLA and OPA define "natural resources" broadly to include "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources..." Both statutes limit "natural resources" to those resources held in trust for the public, termed Trust Resources. While there are slight variations in their definitions, both CERCLA and OPA state that a "natural resource" is a resource "belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by" the United States, any State, an Indian Tribe, a local government, or a foreign government [CERCLA §101(16); OPA §1001(20)].**

**NRD are for injury to, destruction of, or loss of natural resources, including the reasonable costs of a damage assessment [CERCLA §§101(6); 107(a)(4)(C); OPA §§1001(5); 1002(b)(2)]. The measure of damages is the cost of restoring injured resources to their baseline condition, compensation for the interim loss of injured resources pending recovery, and the reasonable cost of a damage assessment [ 43 CFR Part 11 ; 15 CFR Part 990].**

### **EPA's Role: Notification and Coordination**

**EPA is not a Natural Resource Trustee, nor is it authorized to act on behalf of Natural Resource Trustees. Rather, under CERCLA and OPA, EPA shares with the U.S. Coast Guard the general responsibility for investigating and responding to contamination by hazardous substances or oil. The Coast Guard is primarily responsible for contamination involving the coastal zone including all U.S. waters subject to the tide, the Great Lakes, and deepwater ports. EPA is primarily responsible for contamination on land and inland waters.**

### **Natural Resource Trustees**

**Under both CERCLA and OPA, responsibility for protection of natural resources falls with Federal, State, and Tribal Trustees. This is because no one individual "owns" a natural resource; rather, they are held in trust for the public.**

**Both CERCLA and OPA provide authority for designated Trustees to act as Natural Resource Trustees on behalf of the public. In both CERCLA and OPA, certain Federal, State, and Indian Tribe officials can be designated as Trustees. However, under OPA foreign governments can also choose officials to act as Trustees.**

**Trustees have been given responsibility for restoring injured natural resources. The two major areas of Trustee responsibility under CERCLA and OPA are:**

- \* Assessment of injury to natural resources; and**
- \* Restoration of natural resources injured or services lost due to a release or discharge.**

**To meet these responsibilities, both statutes provide several mechanisms. The Trustees can either:**

- \* Sue in court to obtain compensation from the potentially responsible parties (PRPs) for NRD and the costs of assessment and restoration planning; or**
- \* Conduct assessments or restorations in accordance with certain standards specified by the Federal government and file a claim for reimbursement from the Trust Fund established under OPA; or**
- \* Participate in negotiations with PRPs to obtain PRP-financed or PRP-conducted assessments and restorations of NRD.**

**Details about these statutory tools can be found in NRD Related Statutory Information.**

## NRD Assessments

One of the primary responsibilities of Trustees under both CERCLA and OPA is to assess the extent of injury to a natural resource and determine appropriate ways of restoring and compensating for that injury. A natural resource damage assessment (NRDA) is the process of collecting, compiling, and analyzing information to make these determinations. Trustees have the option of using the methodologies prescribed by the Department of the Interior (DOI), 43 CFR Part 11, or the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA), 15 CFR Part 990. The DOI regulations are to assess NRD under CERCLA, while the NOAA methodologies are applicable for NRDA's under OPA. NRDA's are underway in a variety of locations; many of which involve one or more Superfund sites.

The overall intent of the assessment regulations is to determine appropriate restoration and compensation for injuries to natural resources. If a Federal or State Trustee goes into Federal court and sues a potentially responsible party (PRP) for NRD under CERCLA, an assessment done in accordance with the DOI regulations is given the force and effect of a "rebuttable presumption" [CERCLA §107(f)(2)(C)]. If a Federal, State, or Tribal Trustee sues a PRP for NRD under OPA, an assessment done in accordance with the NOAA regulations is given a rebuttable presumption [OPA §1006(e)(2)]. This means that the burden of persuasion in court shifts to the PRP. It will be the task of the PRP to disprove the Trustee's assessment.

## NRD Restorations

Under CERCLA, monies recovered from an NRD claim are to be used only for restoration or replacement of the injured natural resource, or for acquisition of an equivalent resource (hereinafter called "restoration" unless otherwise noted) [CERCLA §107(f)(1)]. Under OPA, recovered sums are to be used only to reimburse or pay costs incurred by the Trustee with respect to the natural resources [OPA §1006(f)]; these include costs incurred while conducting NRDA's and developing and implementing plans for "the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources" [OPA §1006(c)]. **Any amount in excess of these costs must be deposited in the Oil Spill Liability Fund [OPA §1006(f)].**

Restoration actions are principally designed to return injured resources to baseline conditions, but may also compensate the public for the interim loss of injured resources from the onset of injury until baseline conditions are re-established. Restoration activities have been successfully completed at several sites.

Natural Resource Trustees are required to develop and implement plans for the restoration of natural resources. The Trustee's plans form the basis of calculating NRD for court actions or claims against the OPA Trust Fund [OPA §§1006(c), (d)(1)-(2), 1012(a)(2)].

*Suzanne: Here are some FAQ's from another EPA site on OPA.*

1. Which federal agencies are responsible for implementing the Oil Pollution Act (OPA)?

Executive Order 12777, issued on October 18, 1991, delegated the authority to implement the Oil Pollution Act (OPA) to several federal agencies. EPA carries the responsibility for non-transportation-related onshore facilities and incidents in the Inland Zone. **United States Coast Guard (USCG) has responsibility for marine transportation-related facilities and incidents in the Coastal Zone. The Department of Transportation's Office of Pipeline Safety within the Research and Special Programs Administration oversees onshore transportation-related facilities. The Department of Interior has responsibility for off-shore fixed facilities beyond the coastline. The National Oceanic and Atmospheric Administration is responsible for natural resource damage assessments relating to oil discharges.**

2. How can I report an oil spill?

Spills should be reported immediately to the National Response Center at 800-424-8802. Threats of discharges or releases to the waters of the U.S. should also be reported.

3. What is the definition of oil?

**Oil is defined as oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil [40 CFR 112.2 and CWA Section 311(a)(1)]. Section 1001(23) of the Oil Pollution Act (OPA) further narrows this definition by excluding any substance which is specifically listed or designated as a hazardous substance under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund").**

4. Does the Oil Pollution Act (OPA) preempt state laws?

**No. The Oil Pollution Act (OPA) Section 1018(a) specifically provides that the OPA does not preempt state laws.**

5. Who is responsible for cleanup costs incurred under the Oil Pollution Act (OPA)?

Section 1001(32)(B) of the Oil Pollution Act (OPA) states that in the case of an onshore facility, any person owning or operating the facility is the responsible party.

6. Who can be ordered to cleanup an oil spill?

EPA can enter into an agreement or order any person who owns or operates a facility to perform a cleanup under Section 311(c) and/or (e) of the Clean Water Act (CWA), as amended by the Oil Pollution Act (OPA).

7. Where can I find the text of the laws dealing with Oil Spills?

The Oil Pollution Act (OPA) can be found at <http://www4.law.cornell.edu/uscode/33/ch40.html>.

**HJR**

**14**



Official Business

# Alaska State Legislature

## Senate

### Office of the Secretary

State Capitol, Room 213  
Juneau, Alaska 99801-1182  
Phone: (907) 465-3701  
Fax: (907) 465-2832  
Email:senate\_secretary@legis.state.ak.us

#### **FOR YOUR IMMEDIATE ATTENTION**

DATE: 5/4/06  
TO: Resources Committee  
(Mary, Room 427)  
FROM: Office of the Senate Secretary  
SUBJ: Referral Change

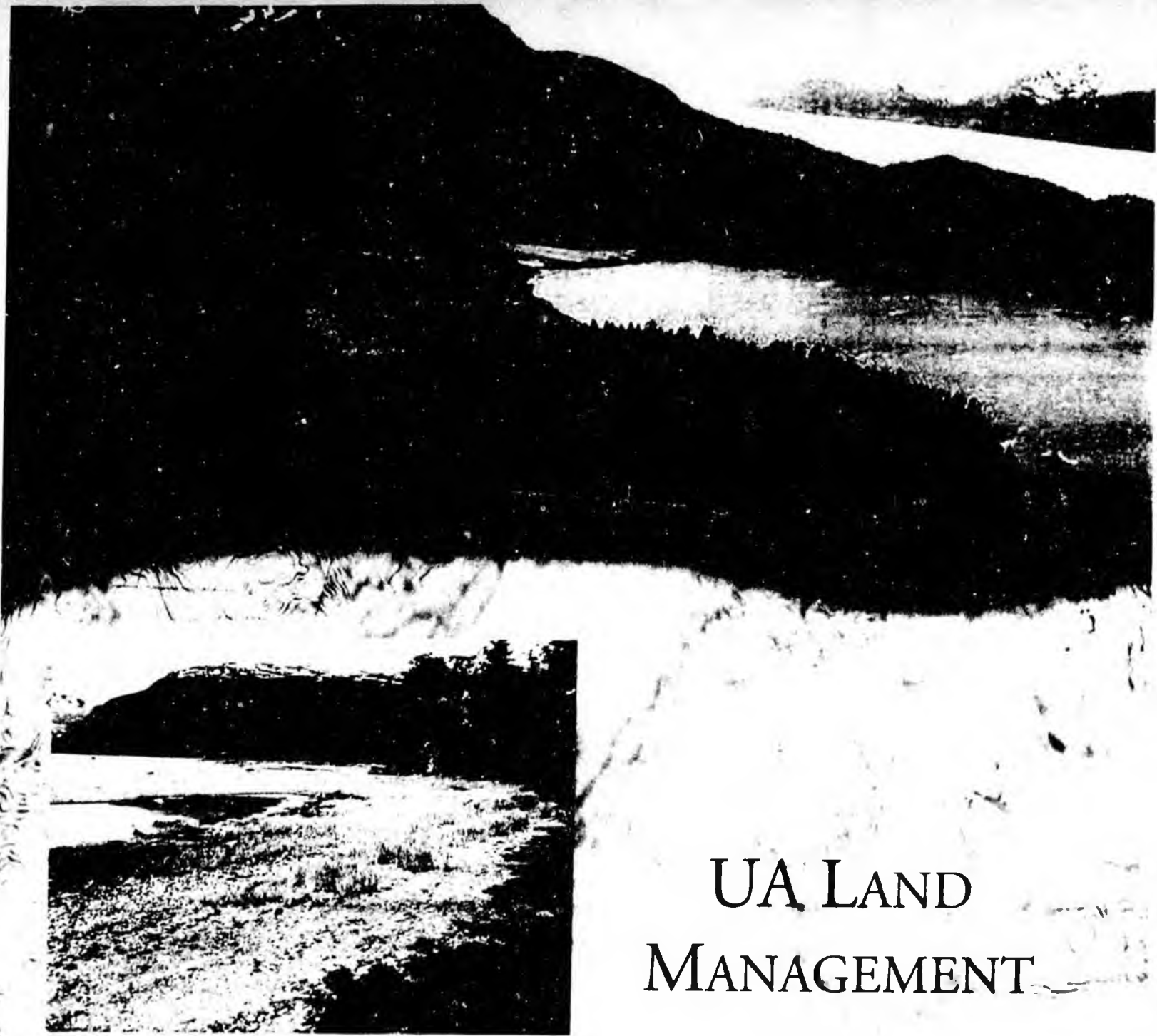
The Chair of the Committee noted above has waived the referral(s) on the following bills(s):

#### **RETRIEVE**

CS FOR HOUSE JOINT RESOLUTION NO. 14(RES)  
Urging the United States Congress to pass legislation to convey land to the  
University of Alaska.

Please give the bill file(s) to the page delivering this message for forwarding to the  
next Committee of referral.

Thank you.



# UA LAND MANAGEMENT

TIMBER

SUBDIVISIONS

COMMERCIAL LEASES

LAND SALES

OIL & GAS, MINERALS



UNIVERSITY  
*of* ALASKA

*Many Traditions One Alaska*



MARK HAMILTON

# STEWARDSHIP: The University of Alaska Develops Its Resources

University stewardship balances the resources of education with the resources for education. As a land

grant institution, the University of Alaska was given land as a financial base for the university. The UA Land Management office is the "private sector" agency that develops the university's resources and creates income to fund university programs.

The university is an Alaska corporate citizen like no other. We are stewards of the natural resources that lay in the ground, and stewards of the next generation of Alaskan leaders. The university has an enormous responsibility and high expectations for ourselves, and for those we educate.

The university's resource development operations, land sales and commercial leases also are held to a higher standard than what might be expected from a private business. The university has a fiduciary responsibility to maximize the revenues from land holdings. We also have been good neighbors and have sold some of our resources into conservation when the university determined it was the best use of the land.

As Alaska grows into its rightful place in the world economy, the higher education of its people will determine how the state grows. The Information Age has created a new economy that ultimately will benefit Alaska, but we need the intellectual atmosphere to capitalize upon it. Thankfully, the resources of the land are helping us develop the resources of the mind.

—Mark Hamilton, President  
University of Alaska



UNIVERSITY  
of ALASKA  
*Ulele' E'nditene' Ulu' A'itaa*



MARI MONTGOMERY

As director of UA Land Management, it is my job to balance the many competing interests for university land. The primary role of the UA Land Management office is to generate revenue to support the university's educational mission through the responsible development of its trust lands and to manage land dedicated for educational purposes

consistent with campus goals and objectives.

Development activities include residential, recreational and commercial subdivisions; timber sales; land and building acquisitions and sales; residential and commercial leases; mineral leases; oil and gas leases; material sales; easements; and permits.

The university is a public institution. Our land holdings are located throughout Alaska—making us a neighbor to all Alaskans.

Balancing the different interests can be challenging. While maintaining the university's fiduciary responsibility of managing trust assets to secure an appropriate financial return, the university is committed to managing its trust assets in an environmentally responsible manner. For example, on university timber operations we surpass current Forest Practices by adding additional non-development buffers near streams in sensitive areas. It is one of the ways we try to be the kind of good neighbor Alaskans expect from their university.

If you have questions about UA Land Management policies or programs, please contact me.

—Mari Montgomery, Director  
UA Land Management

## A Land-Grant University Without the Land

In 1915 and 1929, federal legislation granted approximately 360,000 acres of surveyed land to the University of Alaska to be used to generate revenue to support the university's educational mission. However, at the time of statehood in 1959, only a little over 100,000 acres had been surveyed by the federal government and conveyed to the university. The Statehood Act extinguished the university's right to receive the balance of its federal land grants, and repeated efforts to rectify this inequity have failed. (Only Hawaii and Delaware received smaller university land grants than Alaska.)

## Managing University Lands

The University of Alaska owns and manages approximately 183,000 acres of land. This includes nearly 170,000 acres of land designated as investment property and 13,000 acres of land designated as educational property. Educational property includes the three main campuses, all community campuses and numerous research sites and facilities. All land not specifically designated as educational property is considered investment property. In support of the University of Alaska's education and research mission, through its Land Management office, the university maintains an active management program that focuses on the responsible development of all of the university's land and resources.

## Land-Grant Endowment Trust Fund

Earnings from UA Land Management developments are deposited into the Land-Grant Endowment Trust Fund (LGTF). This fund supports research, educational programming and, until state funding is available, the Alaska Scholars Program. The LGTF earnings are also used to help fund an array of natural resources-related education and research projects, including fisheries and ocean sciences, biology, agriculture and minerals studies.





## Land Management Team Works Across Alaska

The UA Land Management office is involved in real estate operations throughout the State of Alaska.

Ongoing projects can be found from Ketchikan to Nome. These projects include research sites, subdivisions, timber operations, trails, community roads, land leases, real estate sales and oil and gas leases.



University of Alaska  
Land Management  
1000 UNIVERSITY AVENUE  
FAIRBANKS, ALASKA 99775-1100

Land sales and real estate sales are the primary focus of UA's professional offerings.

Alaskans can buy small parcels of land from the university. The university continually offers cabin sites for sale. These land sales are located all across the state, and are advertised in the newspaper and on the internet.





Construction of the Copper River Princess Wilderness Lodge began in the summer of 2001. Located on land purchased from the University of Alaska, it is expected to become a major draw for visitors to the Wrangell-St. Elias area.

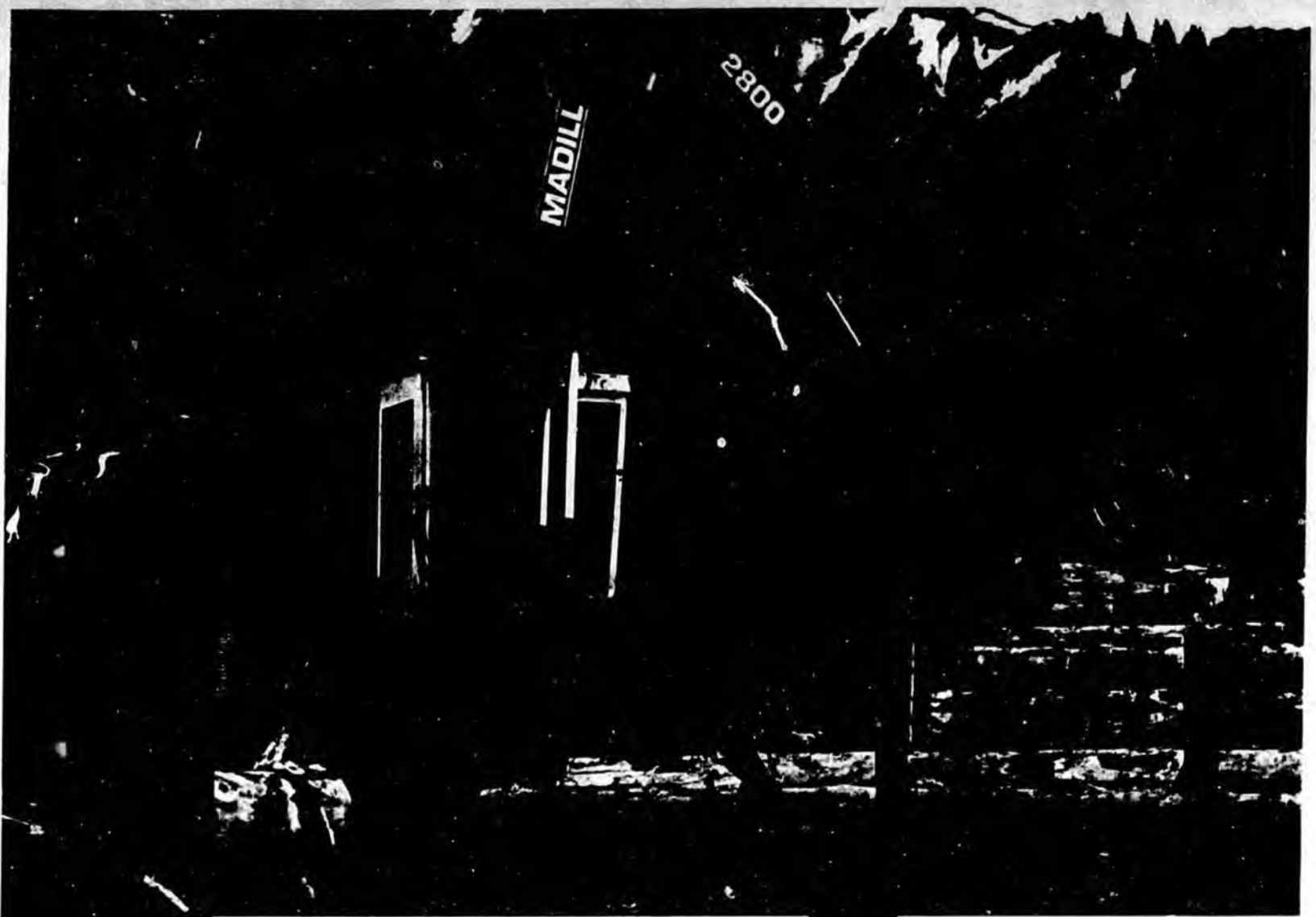
The university participates with resource agencies and the private sector to develop visitor sites in Alaska.

### Subdivision Development

Providing Alaskans with residential subdivision lots is another area of operation within the Land Management office. Development of these home sites on university land has created local jobs, increased the market inventory for real estate sales, and provided affordable home sites for families.



PERCIVINE HEIGHTS SUBDIVISION,  
CHENA RIDGE IN FAIRBANKS



## Timber Development

The university's timber harvest activities undergo a high degree of environmental protection and control from various state agencies charged with oversight of these projects. The Alaska Forest Practices Act provides some of the most progressive subsistence, habitat, wildlife, and fisheries resources protections in the country. The Act ensures that the university is engaging in responsible forestry management practices on its lands.

Harvesting activities at UA's Icy Bay timber project have generated approximately \$20 million over the past seven years. This money is deposited into the university's Land-Grant Endowment Trust Fund (IGTF).



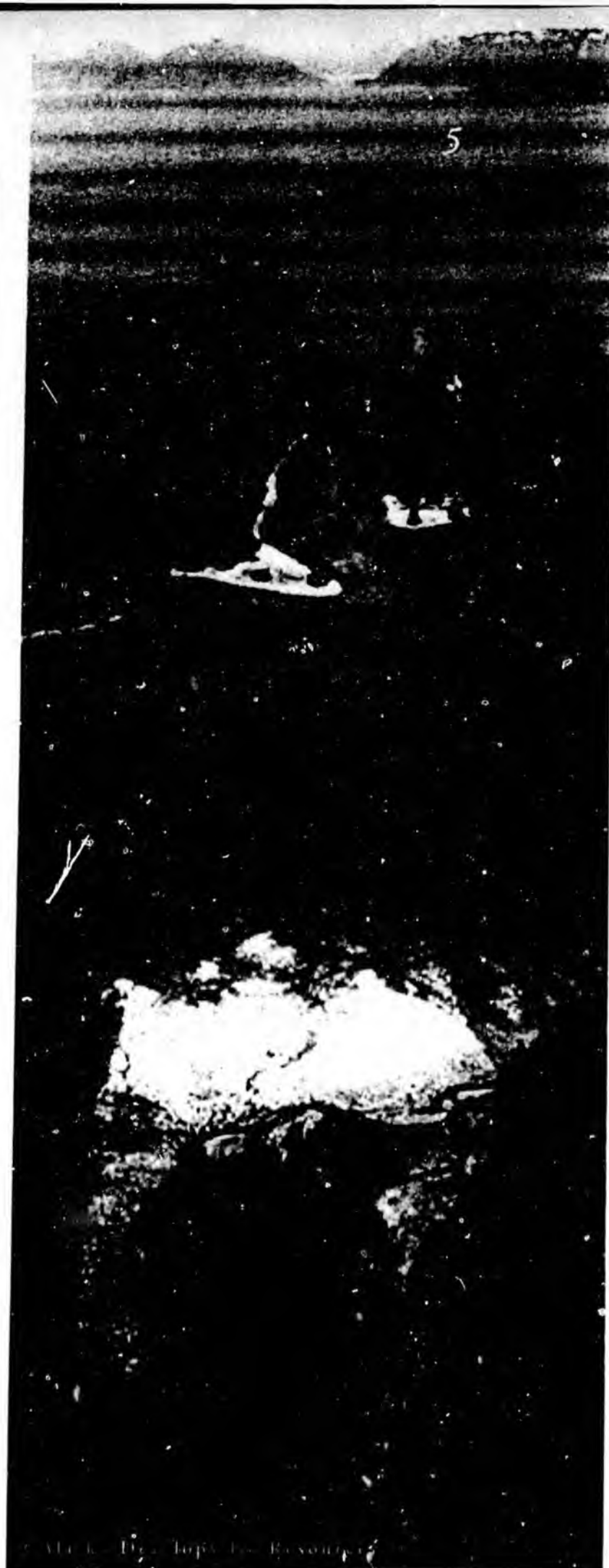


## Land Conservation Settlement Created Icy Bay Logging Opportunity

The university's limited one-time timber harvesting rights at Icy Bay were received in settlement of two complex litigations. Those suits involved the university, state, Yakutat Fisherman's Association, Cordova District Fisheries United, Alaska Center for the Environment, Inc., Southeast Alaska Conservation Council, Inc., and the City and Borough of Yakutat. The university's timber harvesting rights are the result of exhaustive negotiations in which the interests of the environmental and fisheries communities, local government, state, and the university were all represented.

In agreement with the litigants, the university's timber harvesting activities are concentrated in the Cape Yakataga/Icy Bay area, in the smallest footprint possible. Previous timber harvesting and development has already occurred in this area. The university's timber harvest is subject to a high degree of environmental protection and control. Subsistence, habitat, wildlife and fisheries resources are protected at a higher level in this area than generally required under state statutes or of other timber operations on state land.

As part of the settlement, the university agreed to: (1) sell an 835-acre parcel, with approximately 12 miles of coastline, located on the northwest end of Yakobi Island on Cross Sound, (2) spend \$500,000 to develop a "hut-to-hut" trail and cabin system in a remote area near Yakataga, and (3) fund \$250,000 in research and data collection in the Yakataga Area.





## Hut-to-Hut Trail System To Benefit Hikers And Campers

The Duktoth River area in the Gulf of Alaska, and the Caribou Hills area near Kenai both include trail systems for hikers, campers and tourists through cooperative agreements between the university and State of Alaska agencies.

The university also has invested \$500,000 for a "hut-to-hut" cabin and trail system for recreational use near Cape Yakataga.

The university continues to develop cooperative arrangements to enhance recreational opportunities with other public land-holding agencies in Alaska.



## COMMERCIAL USES

Often, the university chooses to lease land rather than sell it. Everything from espresso bars to office buildings can be found on university land. Below is a picture of the Fairbanks Golf Course, partially located on land purchased from the university.

## MOCHA DAN'S ESPRESSO

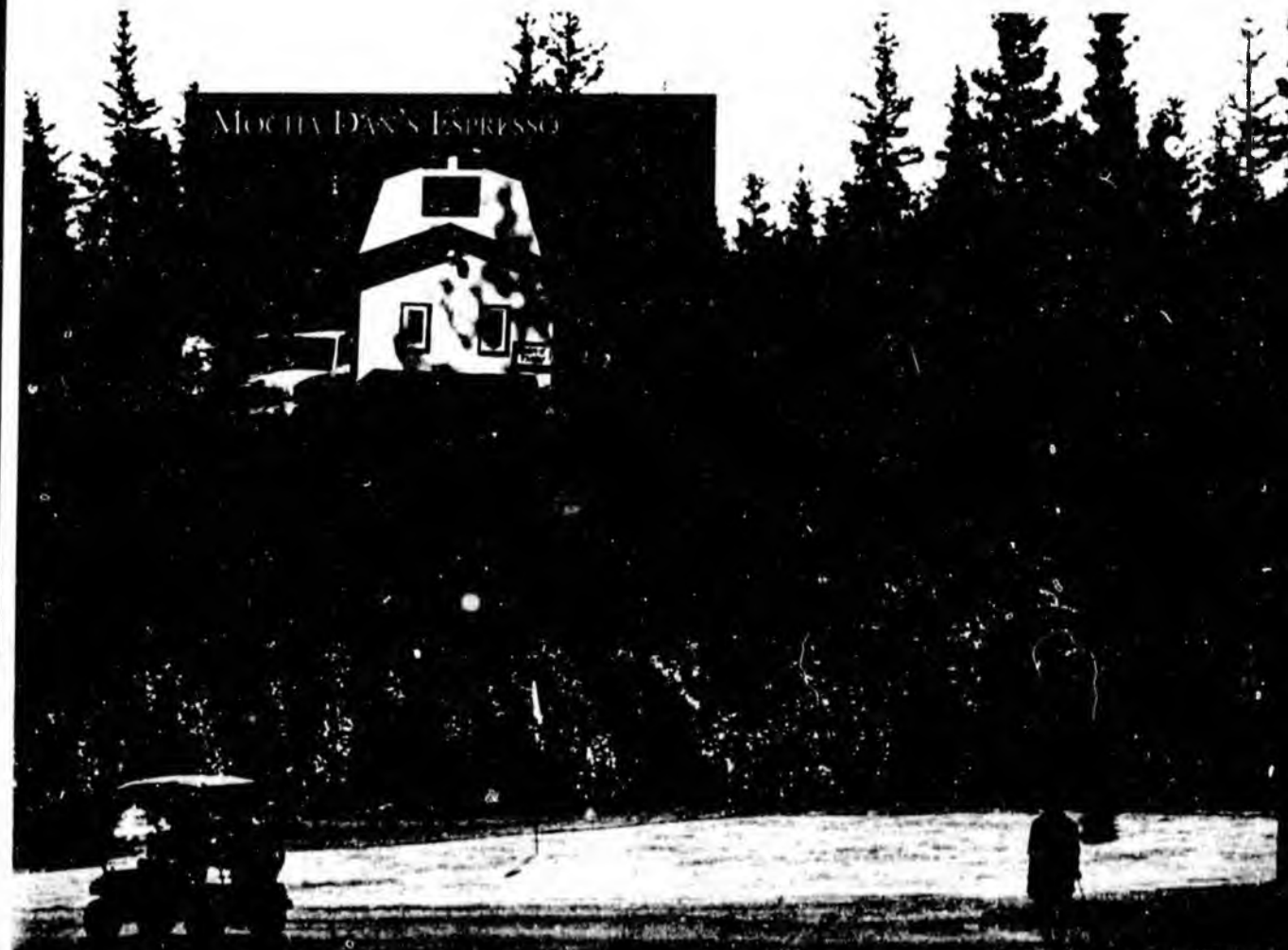
Sipping a double-tall, skinny latte is the way many in the Golden Heart city begin their day. Mocha Dan's on Geist Road probably has your favorite drink memorized, if you're one of the many "regulars."

Dan's espresso stand, built as a portable building, serves roadside espresso to motorists and commuters on the east side of Fairbanks. From the



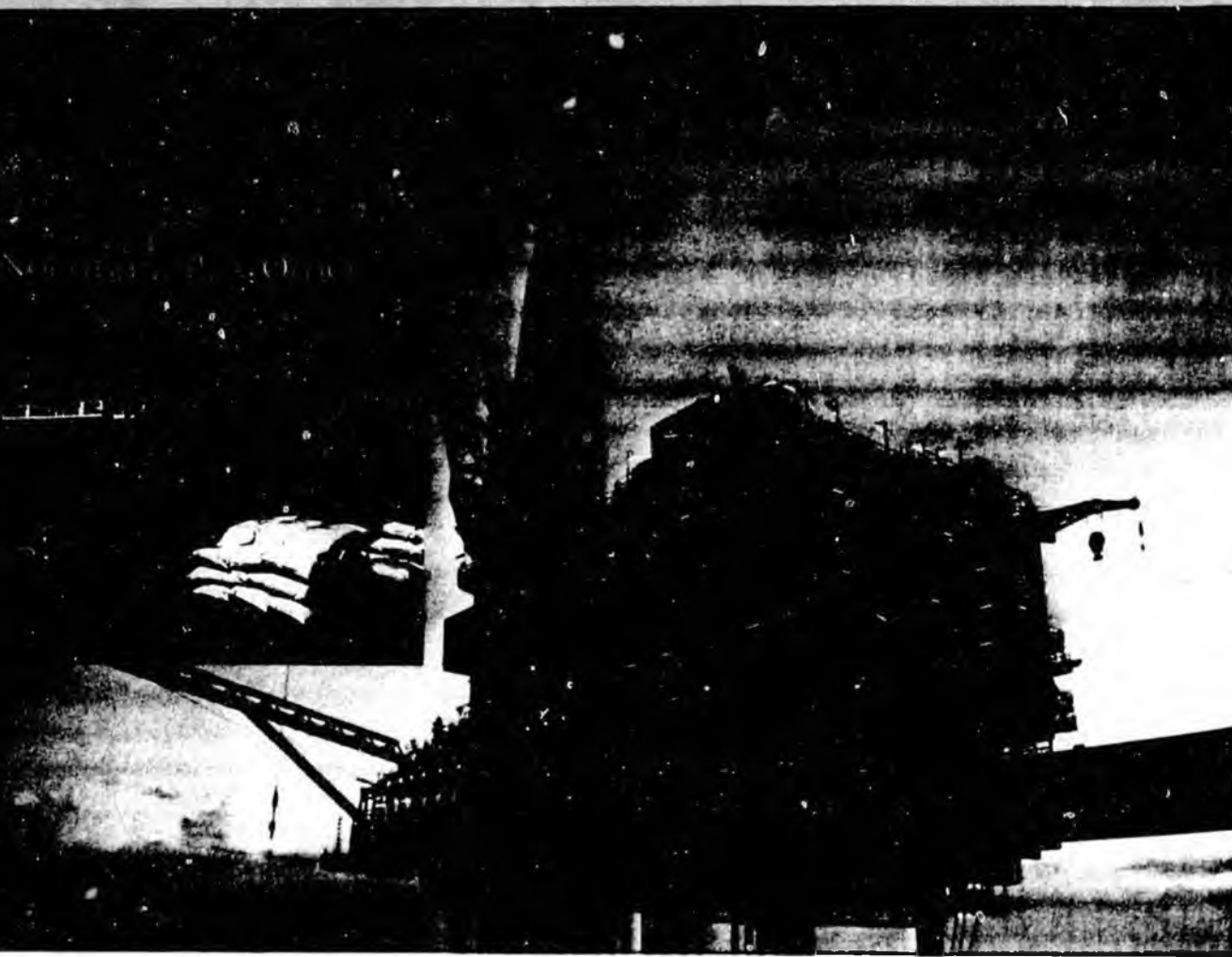
day it opened, it has had a steady stream of customers. The coffee Dan serves is good, but it's the location that has made this espresso business so successful.

Mocha Dan leases the land his business sits on from the University of Alaska. The UA Land Management office negotiated the lease, and is pleased to be a part of Dan's success.



FAIRBANKS GOLF & COUNTRY CLUB

STEWARDSHIP: The University of Alaska Develops Its Resources



## Oil & Gas, Minerals

Alaska's extraction industries have been the economic engines that have created much of Alaska's wealth. The university not only relies on these industries to provide jobs for its graduates, but it also partners with resource development companies on university development projects.

The University system produces engineers to work in Alaska's oil fields and mining operations. Someday, it is hoped that these same engineers will work on university oil & gas and mining projects. The university currently leases land on the Kenai Peninsula for natural gas development and is actively seeking additional opportunities for oil & gas and mineral exploration and development.

### THE PROSPECT OF A

UNIVERSITY SYSTEM FOR

MINERAL DEVELOPMENT

IN ALASKA

BY JAMES H. HARRIS, JR.

A MORE ADEQUATELY

FUNDED UNIVERSITY

SYSTEM IN ALASKA



## Stewardship: The University of Alaska's Role in the Economy

*"Consider Chapel Hill, Palo Alto, the Puget Sound, Boston... communities with strong educational institutions have strong economies."*

— Elsa Froehlich-Demeksa, UA Regent,  
Chair of Facilities & Land  
Management Committee



*"The Alaska workforce needs to be well trained to compete in a growing global economy. We live in a resource state, and education is key."*


— Mano Frey, President,  
Alaska AFL-CIO



*"The University can do more to improve the lives of working women and single moms than a host of government programs. We must provide the financial resources it needs today, for all of our tomorrows."*


— Eleanor Andrews, President,  
The Andrews Group





## Land Management Development Guidelines

The University of Alaska Board of Regents sets policy for management of university investment properties through a hierarchy of plans, beginning with a biennial Strategic Plan, annual Development Plans, and specific project plans. The university seeks public comment through the notice of its development plans published in local newspapers 60 days prior to the scheduled consideration by the Board and provides public notice of all major real property transactions not specifically approved in the annual Development Plan. The university is also subject to all local, state, and federal government regulations, including the Alaska Forest Practices Act, ADEC water & wastewater regulations, wetlands regulations, Coastal Management Plans, and local zoning and platting ordinances to the same level as other private land owners. In addition, Land Management commonly holds additional public workshops and community forums to address such development issues as local impacts, density, lot sizes, road maintenance, desired covenants, trail systems and architectural standards.



TO CONTACT UA LAND MANAGEMENT,  
OR TO SHARE YOUR OPINION ABOUT  
UNIVERSITY MANAGEMENT OF RESOURCES  
PLEASE CALL OR WRITE:

Mari Montgomery, Director  
UA Land Management  
3890 University Lake Drive, Suite 103  
Anchorage, AK 99508  
Phone: (907) 786-7766  
Fax: (907) 786-7733

## The UA Scholars Program

Each year, the UA Scholars Program offers an \$11,000 scholarship to the top 10% of graduates from qualified Alaska high schools. Students are designated by their high school based on academic standing at the end of their junior year.

The UA Scholars Program then verifies each designee's eligibility. Once designees have been deemed eligible, the Program Administrator sends an award letter and a reservation form to each Scholar. The Scholar must return the reservation form to the Program Administrator in order to complete the award process.

To use the award, the Scholar must enroll at a UA campus within 16 months of high school graduation. This grace period allows the Scholar to take time off after graduation to work, travel or even try a school outside of Alaska, before enrolling at the University of Alaska. Once enrolled, the Scholar receives \$1,375 per semester, for eight semesters, provided he or she remains in good standing.



# ALASKA STATE LEGISLATURE

## INTERIM

50 Front Street  
Suite 203  
Ketchikan, Alaska 99901  
Phone (907) 247-4672  
Fax: (907) 225-8546



## SESSION

Suite 416  
State Capitol Building  
Juneau, Alaska 99801  
Phone: (907) 465-3424  
Fax: (907) 465-3793

## REPRESENTATIVE JIM ELKINS

### Sponsor Statement

House Joint Resolution 14 has been introduced to urge the United States Congress to pass legislation to convey federal land to the University of Alaska.

HJR14 voices support for U.S. Senate Bill 293, the Federal University Land Bill, sponsored by Senator Lisa Murkowski (R-AK). That legislation provides a grant from the federal government of 250,000 acres and up to an additional 250,000 acres match from the state.

As the largest landholder in Alaska, it is only proper that the Federal government provide support to the University of Alaska. The University needs a more dependable revenue stream, and this legislation will make the University of Alaska System more stable and similar to other land grant institutions across the nation. Eventually they will be able to become financially independent from yearly funding allocations from the Legislature.

In conjunction with House Bill 130, which was passed during the last session, U.S. Senate Bill 293 will give the University of Alaska well over 600,00 acres and will make them the envy of universities around the nation. HJR14 will inform the members of Congress how important S.293 is to Alaskans because producing a long-term revenue stream for the University is in the best interest of all Alaskans.

**CS FOR HOUSE JOINT RESOLUTION NO. 14(RES)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE RESOURCES COMMITTEE**

**Offered: 2/17/06**  
**Referred: Rules**

**Sponsor(s): REPRESENTATIVES ELKINS, Seaton**

**A RESOLUTION**

1 **Urging the United States Congress to pass legislation to convey land to the University of**  
2 **Alaska.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **WHEREAS** the University of Alaska is a land grant institution offering higher  
5 education to Alaskans; and

6 **WHEREAS** an academically strong and financially secure state university system is a  
7 cornerstone to the long-term development of a stable population and to a healthy, diverse  
8 economy; and

9 **WHEREAS** the University of Alaska is the successor to and the beneficiary of all  
10 federal grants and conveyances to or for the Alaska Agricultural College and School of  
11 Mines; and

12 **WHEREAS**, under the Acts of March 4, 1915 (38 Stat. 1214), and January 21, 1929  
13 (45 Stat. 1091), the United States granted to the Territory of Alaska certain federal land for  
14 the University of Alaska; and

15 **WHEREAS** the Territory of Alaska did not receive most of the land intended to be  
16 conveyed by the Act of March 4, 1915, before repeal of that Act by sec. 6(k) of the Alaska

1 Statehood Act (P. L. 85-508, 72 Stat. 339); and

2 **WHEREAS** only one other state land grant college in the United States has obtained a  
3 smaller land grant from the federal government than has the University of Alaska, and all land  
4 grant colleges in the western states of the United States have obtained substantially larger land  
5 grants than has the University of Alaska; and

6 **WHEREAS** Alaska is the largest state in the United States; and

7 **WHEREAS** the federal government is the largest landowner in the state;

8 **BE IT RESOLVED** by the Alaska State Legislature that the United States Congress  
9 is urged to pass S. 293 to facilitate the continuation of higher education in Alaska through the  
10 conveyance of certain public land in the state to the University of Alaska; and be it

11 **FURTHER RESOLVED** that the Alaska State Legislature supports the conveyance  
12 of federal land in Alaska that was identified for conveyance under the Acts of March 4, 1915  
13 (38 Stat. 1214), and January 21, 1929 (45 Stat. 1091), but was not conveyed before Alaska  
14 achieved statehood.

15 **COPIES** of this resolution shall be sent to the Honorable George W. Bush, President  
16 of the United States; the Honorable Richard B. Cheney, Vice-President of the United States  
17 and President of the U.S. Senate; the Honorable Bill Frist, Majority Leader of the U.S. Senate;  
18 the Honorable Harry Reid, Minority Leader of the U.S. Senate; the Honorable J. Dennis  
19 Hastert, Speaker of the U.S. House of Representatives; the Honorable John Boehner, Majority  
20 Leader of the U.S. House of Representatives; the Honorable Nancy Pelosi, Minority Leader of  
21 the U.S. House of Representatives; ~~the Honorable G. M. ...~~, United States Secretary of the  
22 Interior; the Honorable Pete V. Domenici, Chair of the Energy and Natural Resources  
23 Committee of the U.S. Senate; the Honorable Ted Stevens and the Honorable Lisa  
24 Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of  
25 the Alaska delegation in Congress; and, by electronic transmission, to all other members of  
26 the U.S. Senate and U.S. House of Representatives serving in the 109th United States  
27 Congress.

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHJR 14(EDU)  
 (H) Publish Date: 2/1/2006

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title URGE CONGRESS TO GRANT LAND TO UNIV. RDU \_\_\_\_\_  
 Sponsor Representative Elkins Component \_\_\_\_\_  
 Requester House Special Committee on Education Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2006) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: Beth Schneider Phone 465-3820  
 Division: Committee Aide, House Special Committee on Education Date/Time \_\_\_\_\_  
 Approved by: Representative Mark Neuman Date 1/31/2006  
 Agency: Chair, House Special Committee on Education

**HJR**

**15**

**HJR 15 Packet**

- Sponsor Statement: 1 page
- 3-08-05 Support Letter: UFA: 1 page
- #1 Fiscal Note: ADF&G: 3-21-05: 1 page
- CSHJR 15: 3 pages
- #1 Fiscal Note: 3-08-05: ADF&G: 1 page
- #2 Fiscal Note: 3-07-05: LEG: 1 page

# ALASKA STATE LEGISLATURE



Rep. John Harris  
Rep. Peggy Wilson  
Rep. Jim Elkins  
Rep. Mary Kapsner  
Rep. Woodie Salmon

State Capitol, Room 124  
Juneau, AK 99801-1182  
Co-Chairs  
Rep. Gabrielle LeDoux  
(907) 465-2487 FAX 465-4956  
Rep. Bill Thomas  
(907) 465-3732 FAX 465-2652

## HOUSE SPECIAL COMMITTEE ON FISHERIES

### SPONSOR STATEMENT CSHJR 15 (RES)

**"Relating to open ocean aquaculture in the federal exclusive economic zone"**

Open Ocean Aquaculture (OOA) is a concept that concerns many Americans who are involved in the seafood business and whose communities depend on the economic strength of the commercial fishing industry. This new method of seafood production has been under development for a number of years, and there is pending federal legislation drafted by the Department of Commerce that would establish a program allowing OOA in federal waters.

In response to many environmental, economic and social concerns, Alaska enacted legislation in 1990 that prohibits finfish farming in state waters. This prohibition has enabled the Alaska fishing industry to differentiate itself in the global seafood market. Our name is associated with natural, healthy and safe seafood that has inherent quality because it is not artificially raised with antibiotics, artificial coloring and industrial fish food. Alaska's relative market share of seafood has diminished with the massive increases in farmed fish production, but our products have excellent name recognition and often occupy high value niches in the market. Our commitment to wild fisheries is beginning to pay dividends to our industry and the state, as some prices that dipped to severely low levels are showing strong signs of recovery.

CSHJR 15 (RES) recognizes that the Alaska Legislature is committed to ensuring the biological and economic health of our fisheries and the social and economic well-being of our communities. It states that the Legislature is opposed to Open Ocean Aquaculture in federal waters. Furthermore, it requests that the U.S. Congress require any federal proposal to authorize OOA to undergo a legislative environmental impact statement and asks Congress to ban the introduction of genetically modified fish into the waters of the EEZ. It also asks that the Regional Fisheries Management Councils established under the Magnuson-Stevens Act be granted authority over any proposals regarding OOA.



# UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 110  
Juneau, Alaska 99801-1172  
(907) 588-2820  
(907) 463-2545 Fax  
E-Mail: [ufa@ufa-fish.org](mailto:ufa@ufa-fish.org)  
[www.ufa-fish.org](http://www.ufa-fish.org)

March 8, 2005

Representative Bill Thomas, Co-Chair  
House Special Committee on Fisheries  
Alaska State Legislature  
State Capitol (Mail Stop 3100)  
Juneau AK 99801-1182

Dear Representative Thomas,

United Fishermen of Alaska (UFA) represents thirty-one Alaska commercial fishing groups and hundreds of individual fishermen, crew members and related businesses. UFA supports House Joint Resolution 15 as a clear statement to congress from the State of Alaska regarding the potential environmental and economic threat of fish farms in federal waters.

UFA shares the position in HJR 15, that any management of any offshore aquaculture be under the authority of the regional fishery management councils. UFA also supports the requirement of a legislative environmental impact statement on any federal legislation that would allow fish farms in the Exclusive Economic Zone off U.S. Waters.

Respectfully,

Mark D. Vinson  
Executive Director

#### MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Druggers Association • Alaska Longline Fishermen's Association • Armstrong Kala • Al-see Processors Association  
Bristol Bay Reserve • Concerned Area "M" Fishermen • Cordova District Fishermen United • Douglas Island Pink and Chum  
Fishing Vessel Owners Association • Groundfish Forum • Kani Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association  
North Pacific Fisheries Association • North Pacific Scallop Cooperative • Northern Southeast Regional Aquaculture Association  
Old Harbor Fishermen's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation  
Purse Seine Vessel Owner Association • Seafood Producers Cooperative • Southeast Alaska Herring Seiners Marketing Association  
Southeast Alaska Fisherman's Alliance • Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association  
Southern Southeast Regional Aquaculture Association • United Catcher Boats • United Salmon Association • United Southeast Alaska Gillnetters  
Valdez Fisheries Development Association • Western Gulf of Alaska Fishermen

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHJR 15(FSH)  
 (H) Publish Date: 3/10/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Fish and Game  
 Title Relating to Open Ocean Aquaculture RDU \_\_\_\_\_  
in the Federal Exclusive Economic Component \_\_\_\_\_  
 Sponsor House Special Committee on Fisheries  
 Requester House Special Committee on Fisheries Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 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  
 Division: Legislative Liaison  
 Approved by: Acting Commissioner Wayne Regelin  
 Agency: Alaska Department of Fish & Game

Phone 465-6137  
 Date/Time 3/8/05 4:54 PM  
 Date 3/8/2005

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: CSHJR 15(FSH)  
 (H) Publish Date: 3/10/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Legislature  
 Title Relating to open ocean aquaculture in the BRU Legislative Council  
federal exclusive economic zone. Component: Session Expenses  
 Sponsor House Special Committee on Fisheries  
 Requestor House Special Committee on Fisheries Component No. 783

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

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

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)

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626  
 Division Administrative Services Date/Time 3/7/05 1:34 PM  
 Approved by: Pamela Varni, Executive Director Date 3/7/2005  
 Agency Legislative Affairs Agency

**HJR**

**16**

## **Senate Resources**

**April 22, 2005**

### HJR 16 Materials List

- Sponsor Statement: 1 page
- Dangers of Designations: 2 pages
- CSHJR 16(RES): 3 pages
- #1 Fiscal Note: 3-29-05: LAA: 1 page
- Frequently Asked Questions on biosphere reserves: 3 pages
- Denali - Biosphere Reserve Information: 3 pages
- Glacier Bay - Biosphere Reserve Information: 3 pages
- Aleutian Island - Biosphere Reserve Information: 3 pages
- World Heritage Information: 2 pages
- RDC support letter: 3-30-05: 1 page

# ALASKA STATE LEGISLATURE

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**SESSION**  
Suite 416  
State Capitol Building  
Juneau, Alaska 99801  
Phone: (907) 465-3424  
Fax: (907) 465-3793

## REPRESENTATIVE JIM ELKINS

### Sponsor Statement

House Joint Resolution 16 opposes the designation of any area in Alaska as a World Heritage Site, Biosphere Reserve, or any other type of international designation without the specific consent of the Alaska State Legislature. It also urges the United States Congress to pass and the President to sign legislation that will require approval by an Act of Congress before any area in the United States or its territories can be nominated as a World Heritage Site, Biosphere Reserve, or any other type of international designation.

This resolution urges the Congress of the United States to reaffirm the power of Congress, under article IV, section 3 of the United States Constitution over international agreements, which concern disposal, management, and use of lands belonging to the United States. To protect State powers not reserved to the Federal Government under the Constitution from Federal actions designating lands pursuant to international agreements. Ensure that no United States citizen suffers any diminishment or loss of individual rights as a result of Federal actions designating lands pursuant to international agreements for purposes of imposing restrictions on use of those lands. Protect private interests in real property from diminishment as a result of Federal actions designating lands pursuant to international agreements.

✓  
cc: Officers, Directors  
Mining District

# DANGERS OF DESIGNATIONS

## REGIONAL, FEDERAL, STATE AND INTERNATIONAL LAND-USE INTRUSIONS *National/American Heritage Areas, UN Biosphere Reserves and UN World Heritage Sites*

### *Myths*

### **Reality**

*The Designation of National American Heritage Areas is merely honorary and has no regulatory power.*

Congressional bills and federal laws for **National or American Heritage Areas** require a contract between the state government regional entity and the U.S. Secretary of Interior to manage the land-use of the region for preservation. This means federal control of zoning, either directly, by the terms of the "management compact," or indirectly, by the use of funds dispensed by preservation agencies to influence zoning under a seductive porkbarrel system, the iron-clad zoning is enforced locally, with home-rule seemingly preserved, but private property owners' rights diminished and locally generated land-use patterns foreclosed.

*The designation of UN Biosphere Reserves is for research and education only.*

The preponderance of research (published in specialized journals) about **Biosphere Reserves** is about "restoring" rural areas so that human influence on nature is eliminated. The "international significance" of the designated region is trumpeted by the national environmental groups to lobby for government land acquisition and more "environmental" restrictions on land-use.

*The designation of UN World Heritage Sites does not bring foreign influence over land in the United States.*

Exactly what people feared happened near Yellowstone National Park, which is a **World Heritage Site**. When environmentalists acting in conjunction with the Clinton Administration persuaded UNESCO to declare the park a "World Heritage Site in Danger," United Nations officials flew to the U.S. from Paris to complain about a gold & copper mine that was planned outside the park, but inside an area the environmentalists call "Greater Yellowstone." President Clinton himself then stopped the environmental impact review required under the National Environmental Protection Act (NEPA) from being completed and disapproved the mine based on the UN World Heritage Committee's recommendation.

*The designations are to promote tourism.*

If the stated purpose of tourism succeeds for the **National Heritage Areas**, of which over 200 are proposed (encompassing much of the West, the entire 2,500-mile Mississippi River and adjacent counties, and most of the land east of the Mississippi), the United States will theoretically become one vast "heritage" tourism complex, to the detriment of productive, less "beautiful" industries, agriculture and forestry. In addition, for **Biosphere Reserves** and **World Heritage Sites** to be successful, areas must be off-limits to hunting, and many roads used by hunters and tourists closed. Tourism is one of the first sectors to suffer from recessions and depressions. Much tourism is both weather-dependent and seasonal, and tourism jobs are predominately low-paid. The only things that are "sustainable" are the views that new restrictions protect. Flexibility to respond economically is lost. Most communities cannot afford to focus a large part of their resources on their past heritage. Communities with sagging economies become run-down and uninviting. Preservation zoning and lack of jobs force ordinary people to move away, whereby wealthier people may move in and gentrify the area without generating a productive local economy.

*According to United Nations testimony before Congress, local officials are always consulted before Biosphere Reserves are proposed.*

When state and local elected officials in New York learned from property rights activists about the secret proposal to designate the Catskill Mountains Biosphere Reserve, they were angry, and the application ultimately had to be withdrawn from the U.S. Department of State. **Biosphere Reserve** applications are usually done secretly, and local people and their elected representatives excluded from information.

Over...

# Dangers of Designations continued

## Myths

*UN Biosphere Reserves and World Heritage Sites are approved only after public hearings and Congressional vote.*

*The Biosphere Reserve and World Heritage Site programs have potentially little impact on government or private property.*

*UN Biosphere Reserves and World Heritage Site designations present no threat to American sovereignty.*

## Reality

The U.S. Congress failed to pass the legislation (H.R.2379) to establish the Biosphere Reserve system when it was proposed in 1983. The World Heritage Convention was ratified by the U.S. Senate in 1973. Working in conjunction with the National Park Service, the Department of State does not consult Congress before designating individual Biosphere Reserves or World Heritage Sites. Neither of these agencies, nor Congress, holds public hearings and no Congressional vote takes place before the UN sites are designated.

There are 47 Biosphere Reserves and 20 World Heritage Sites in the United States. The designations involve not only government, but private property. The largest Biosphere Reserve in the U.S. is the 10-million acre, secretly designated Champlain-Adirondack Biosphere Reserve. Private landowners were not notified and their permission was not granted for the designation, but environmental groups quickly publicized it among their members, who thereupon lobbied for stricter environmental regulations of the private land in the region. Official goals for "core" and "buffer" regions of Biosphere Reserves and for World Heritage Sites are not consistent with the continued population of the regions.

"I think it perfectly understandable that people are concerned that when you set up a program, when you give it a designation, where you as international authorities recognize it, the implication is that down the road when there are conflicts, somebody's going to be leaned on, and the authority for this, at least the moral authority for this, will be an invocation of some very dubious international authority." - Dr. Jeremy Rabkin, Associate Professor, Cornell University, from testimony before the U.S. House of Representatives, Committee on Resources Sept. 12, 1996, on the American Land Sovereignty Protection Act.



### AVAILABLE FROM

THE PROPERTY RIGHTS FOUNDATION OF AMERICA:

*National Heritage Areas*  
(Positions on Property, Jan-Apr 1996)..... \$3.00 p. pd.

*The National Park Service, No. 2 - UNESCO Biosphere Reserves*  
(Positions on Property, Jan-Mar 1995, 12pp) .. \$3.00 p. pd.

*The American Heritage Areas*  
Background Brief, July 1995, 2 pp ..... free

*Building & Zoning Codes*  
(Positions on Property May-Dec. 1996, 32pp) .. \$6.00 p. pd.

Single copies priced as listed. Please enquire for multiple copies.

For up to 10 additional copies of *Dangers of Designations* at no charge, and additional information contact:  
The Property Rights Foundation of America, Inc.  
P.O. Box 75, Stony Creek, NY 12878 (518) 696-5748

The Property Rights Foundation of America, Inc. is a national, New York-based not-profit organization dedicated to the right to own and use private property guaranteed in the United States Constitution.

The Foundation publishes *Positions on Property* (\$25.<sup>00</sup> yearly), a quarterly journal of information, analysis and ideas on private property rights, and the *New York Property Rights Clearinghouse* (\$25.<sup>00</sup> yearly), a quarterly newsletter of current information on property rights across New York and the Northeast.



# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHJR 16(RES)  
 (H) Publish Date: 4/4/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Legislature  
 Title "Opposing the designation of any area in BRU Legislative Council  
the state as a world heritage site, biosphere reserve, ..." Component: Council and Subcommittees  
 Sponsor Representative Elkins Session Expenses  
 Requestor House Resources Committee Component No. 783

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE (Thousands of Dollars)**

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

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)

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626  
 Division Administrative Services Date/Time 3/29/05 9:55 AM  
 Approved by: Pamela Varni, Executive Director Date 3/29/2005  
 Agency Legislative Affairs Agency



- Home
- Topics
- Biosphere Reserves
- National Committees
- Activities
- Regional Networks
- Awards
- Co-operation
- Publications
- UN Years

Français

### Frequently asked questions on biosphere reserves

- What is a Biosphere Reserve?
- The origin of Biosphere Reserves
- Why do we need them?
- How are they organized?
- Who benefits?
- How are they selected?
- Who is participating?
- Why a World Network?

### What is a Biosphere Reserve?

**B**iosphere Reserves are areas of terrestrial and coastal ecosystems promoting solutions to reconcile the conservation of biodiversity with its sustainable use. They are internationally recognized, nominated by national governments and remain under sovereign jurisdiction of the states where they are located. Biosphere reserves serve in some ways as 'living laboratories' for testing out and demonstrating integrated management of land, water and biodiversity. Each biosphere reserve is intended to fulfil three basic functions, which are complementary and mutually reinforcing:

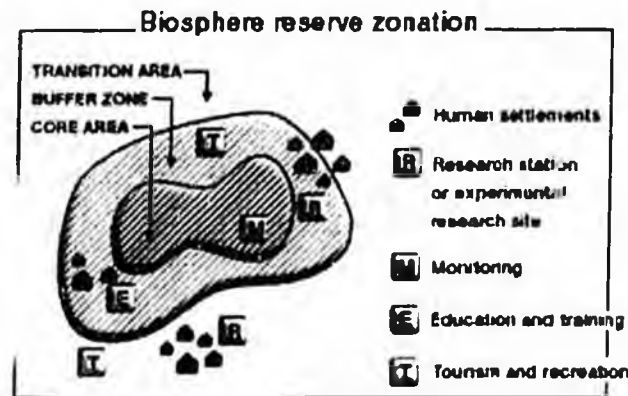
- ▶ A conservation function - to contribute to the conservation of landscapes, ecosystems, species and genetic variation;
- ▶ A development function - to foster economic and human development which is socio-culturally and ecologically sustainable;
- ▶ A logistic function - to provide support for research, monitoring, education and information exchange related to local, national and global issues of conservation and development.

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structure of our institutions. Biosphere reserves provide places where conflicts in interest can be debated by all the stakeholders concerned: local officials, landowners, nature conservation associations, government leaders, scientists, local farmers, fishermen, private enterprises, etc. - all must work together to find appropriate co-ordination mechanisms to plan and manage the biosphere reserve. Biosphere reserves therefore provide opportunities for conflict resolution which could be applied in other land and water development issues.

### How are Biosphere Reserves organized?

To carry out the complementary activities of nature conservation and use of natural resources, biosphere reserves are organized into three interrelated zones, known as the core area, the buffer zone and the transition area.



► **The core area** needs to be legally established and give long-term protection to the landscapes, ecosystems and species it contains. It should be sufficiently large to meet these conservation objectives. As nature is rarely uniform and as historical land-use constraints exist in many parts of the world, there may be several core areas in a single biosphere reserve to ensure a representative coverage of the mosaic of ecological systems. Normally, the core area is not subject to human activity, except research and monitoring and, as the case may be, to traditional extractive uses by local communities.

► **A buffer zone (or zones)** which is clearly delineated and which surrounds or is contiguous to the core area. Activities are organized here so that they do not hinder the conservation objectives of the core area but rather help to protect it, hence the idea of "buffering". It can be an area for experimental research, for example to discover ways to manage natural vegetation, croplands, forests, fisheries, to enhance high quality production while conserving natural processes and biodiversity, including soil resources, to the maximum extent possible. In a similar manner, experiments

can be carried out in the buffer zone to explore how to rehabilitate degraded areas. It may accommodate education, training, tourism and recreation facilities.



In buffer zones, emphasis is on sustainable use of the natural resources for the benefit of local communities.

More

► **An outer transition area**, or area of co-operation extending outwards, which may contain a variety of agricultural activities, human settlements and other uses. It is here that the local communities, conservation agencies, scientists, civil associations, cultural groups, private enterprises and other stakeholders must agree to work together to manage and sustainably develop the area's resources for the benefit of the people who live there. Given the role that biosphere reserves should play in promoting the sustainable management of the natural resources of the region in which they lie, the transition area is of great economic and social significance for regional development.



The human dimension of biosphere reserves is strongest in the transition areas. Here, the needs and aspirations of local communities and the various interests in agriculture, forestry,



## Biosphere Reserve Information

United States of America

### DENALI

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#### General Description

Denali Biosphere Reserve and National Park is situated in south-central Alaska centered on the Alaska Range which separates the coastal lowland from the interior. Denali comprises Mount McKinley, the highest peak in North America towering 4,800 meters above the surrounding landscape as well as Denali fault system, the largest crustal break in North America.

Warm dry south-facing slopes adjacent to rivers have white spruce (*Picea glauca*) with paper birch (*Betula papyrifera*), balsam poplar (*Populus balsamifera*) and quaking aspen (*P. tremuloides*) and a ground cover of ericaceous shrubs and mosses. North-facing permafrost-underlain slopes and lowlands have black spruce (*P. mariana*) with paper birch, white spruce, tamarack (*Larix laricina*) and ericaceous shrubs, mosses, sedges and grasses. Moist foothill tundra comprises cottongrass (*Eriophorum* sp.) with dwarf shrubs, green alder (*Alnus crispa*) and dwarf birch (*Betula nana*). Drier tundra has mats of mountain avens (*Dryas* spp.), grasses and sedges. Above the alpine tundra, rock, snow and ice dominate.

Mammal species in the area include wolf (*Canis lupus*), grizzly bear (*Ursus arctos*), Canadian lynx (*Lynx canadensis*), Alaska moose (*Alces alces*), barrenground caribou (*Rangifer tarandus*), and beavers (*Castor canadensis*).

There are some subsistence and sport hunting, trapping and mining activities within the biosphere reserve. Research projects in the area include the ecology of large mammals, raptor biology, vegetation mapping, human recreational impact on resources, geology and archaeology and several continuous monitoring programmes.

#### Major ecosystem type

Temperate needle-leaf forest

#### Major habitats & land cover types

#### Location

63°20'N, 150°30'W

#### Area (hectares)

<b>Total</b>	782,000 = 1,931,540 ACRES
<b>Core area(s)</b>	
<b>Buffer zone(s)</b>	
<b>Transition area(s) when given</b>	
<b>Altitude (metres above sea level)</b>	+122 to +6,194
<b>Year designated</b>	1976
<b>Administrative authorities</b>	Denali National Park and Preserve National Park Service
<b>Research and monitoring...</b>	
<b>Brief description</b>	Large mammal ecology Vegetation ecology Air and water quality Geology and soils Archaeology Subsistence use Socio-economic studies Cultural resource studies
<b>Specific variables...</b>	
<b>Abiotic</b>	Air quality, geology, hydrology, soil.
<b>Biodiversity</b>	Ecology, mammals, vegetation studies/plant cover.
<b>Socio-economic</b>	Archaeology/Paleontology, cultural aspects, resource use, social/socio-economic aspects.
<b>Integrated monitoring</b>	<i>n.a.</i>
<b>Contact...</b>	
<b>Contact address</b>	Gordon Olson Denali National Park Denali Park - Box 9 99755 Alaska United States of America
<b>Telephone</b>	(1.907) 683 2294
<b>Fax</b>	(1.907) 683 9639
<b>E-mail</b>	<a href="mailto:gordon_olson@nps.gov">gordon_olson@nps.gov</a>
<b>Web site</b>	<a href="http://www.nps.gov/dena/">www.nps.gov/dena/</a>
<b>Contact address</b>	Stephen P. Martin Denali National Park Denali Park - Box 9 99755 Alaska United States of America

**Telephone** (1.907) 683 2294  
**Fax** (1.907) 683 9639  
**E-mail**  
**Web site** [www.nps.gov/dena/](http://www.nps.gov/dena/)

Related links...

[Biosphere reserve web site](#)

*Last updated: 2/21/2001*





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## Biosphere Reserve Information

United States of America

## GLACIER BAY-ADMIRALTY IS.

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## General Description

This biosphere reserve in southeastern Alaska consists of two units, Glacier Bay and Admiralty Island. Glacial advance and retreat that have been occurring since the mid Miocene shaped the landscape of the area. The latest episode of ice recession began only 200 years ago and the ice within the Glacier Bay has withdrawn about 95 km during this period.

Plant succession led to the establishment of pioneer plants (lichens, moss, alder, willow, soapberry and cottonwood) closest to the glacier. More mature forest associations of western hemlock (*Tsuga heterophylla*) and Sitka spruce (*Picea sitchensis*) occur at some distance. Admiralty Island comprises one of the greatest remaining blocks of productive old-growth temperate rain forest in the world. Shrublands, freshwater marshes and subtidal meadows are other plant communities found in both units.

The earliest evidence of human occupation in the area dates back some 10,000 years. In the 18th and 19th century, the Tlingits occupied the territory. Then, sporadic settlements arose in connection with European mining, fur-trading, logging, commercial fishing and pioneering. However, the area is only little impacted by humans and therefore gives a unique opportunity to study the plant succession and animal recolonization that follows glacier retreat. Local people have been actively involved in the development and review of the management plans for Glacier Bay National Park and Admiralty Island National Monument.

## Major ecosystem type

Temperate rainforest

## Major habitats &amp; land cover types

Snow-capped mountain ranges; coastal beaches; deep fjords; tidewater glaciers; coastal and estuarine waters; freshwater lakes

## Location

57°02' to 58°11'N; 132°25'W;  
58°10' to 59°15'N; 135°15' to 138°40'W

## Area (hectares)

## Total

1,515,015 x 2.47 = 3,742,087 ACRES

*Core area(s)*

*Buffer zone(s)*

*Transition area(s) when given*

**Altitude** (metres above sea level) 0 to +4,666

**Year designated** 1986

**Administrative authorities**

Research and monitoring...

**Brief description** Glacial geology  
Ecological succession

*Specific variables...*

**Abiotic** Geology, glaciology.

**Biodiversity** Phytosociology/Succession.

**Socio-economic** *n.a.*

**Integrated monitoring** *n.a.*

Contact...

**Contact address** Mark Laker  
Admiralty Island National Monument  
8465 Old Dairy Rd.  
99801 Juneau, Alaska  
United States of America

**Telephone** (1.907) 790 7480

**Fax** (1.907) 586 8795

**E-mail**

**Web site**

Related links...

**World Heritage Site:** Tatshenshini-Alesek / Klugane National Park / Wrangell-St Elias National Park and Reserve and Glacier Bay National Park  
Admiralty Island National Monument

*Last updated: 1/30/2002*





The MAB Programme

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## Biosphere Reserve Information

United States of America

## ALEUTIAN ISLANDS



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## General Description

The Aleutian Islands Biosphere Reserve and National Wildlife Refuge consist of most of the Aleutian Islands and almost all Amaknak Island. These islands extend in an arc from the Alaska Peninsula about 1,600 km to the west. Most of the islands are mountainous as emergent peaks of a submarine mountain range which also includes some active volcanoes.

The Aleutian Islands flora and fauna is composed of species from both the North American and Asian continents. The vegetation is classified as terrestrial-marine tundra composed of arctic-alpine species, dominated by heath, grass and composite families. In general, three plant communities can be distinguished: beach communities, lowland and upland tundra.

The Aleutian fauna has been described as a melting pot for faunal elements from two continents including some species which evolved in the Bering Sea area. One of the most unique features is the Aleutian Canada goose (*Branta canadensis leucopareia*), a threatened species which nests in the wild only here. This bird was exterminated from other Aleutian Islands as a result of the introduction of arctic fox (*Alopex lagopus*) during the time when the islands were leased for fox farming. The eradication of fox as well as of the introduced Norway rats is one of the main management issues in order to restore native bird life.

There are some villages within the biosphere reserve. Natives use the natural resources for fishing and hunting waterfowls and game as well as some livestock raising. There are considerable World War II debris and abandoned military installations which cause the contamination of land and sea.

Investigations are carried out regarding population status and ecology of sea otter (*Enhydra lutris*) and Steller sea lion (*Eumatopias jubata*). Archaeological research in the western Aleutians attempts to characterize historical and prehistorical biodiversity.

## Major ecosystem type

Tundra including coastal/marine component

<b>Major habitats &amp; land cover types</b>	Treeless volcanic islands with two distinct vegetational habitat types. Near the coast, a tall-plant association dominated by <i>Elymus arenarius</i> (Wild beach rye) and an interior short plant tundra association.
<b>Location</b>	54°51' to 52°55'N; 163°22' to 172°24'W
<b>Area (hectares)</b>	
<i>Total</i>	100,943 = 2,719,329 ACRES
<i>Core area(s)</i>	1,100,943
<i>Buffer zone(s)</i>	none
<i>Transition area(s) when given</i>	Reserve ends at mean low water around every island
<b>Altitude (metres above sea level)</b>	0 to +3,041
<b>Year designated</b>	1976
<b>Administrative authorities</b>	Alaska Maritime National Wildlife Refuge; Aleutian Islands Unit; U.S. Fish and Wildlife Service
<b>Research and monitoring...</b>	
<b>Brief description</b>	Marine bird populations, productivity, food habits and survival rates at 3 annual sites in Aleutian Island chain Breeding biology of Least Auklets Interactions of Norway rats on breeding Least and Crested auklets Aleutian Canada goose restoration Eradication of introduced arctic foxes Winter waterfowl populations monitoring Steller's sea lion population dynamics and biology Sea otter biology and reasons for recent population declines Archaeology and Aleut (Unangan) peoples settlement patterns in the Aleutian chain Volcanic activity and geological processes
<b>Specific variables...</b>	
<b>Abiotic</b>	Geology.
<b>Biodiversity</b>	Alien/Invasive/Exotic/Introduced species, biology, birds, breeding/reproduction, ecology, island systems/islands, mammals, methodologies, population genetics/population dynamics, productivity, reintroduction, restoration/rehabilitation/redevelopment, volcanic/geothermal systems/volcano.
<b>Socio-economic</b>	Anthropological studies/Anthropology, archaeology/paleontology.
<b>Integrated monitoring</b>	Management issues
<b>Contact...</b>	
<b>Contact address</b>	Jeff Williams Aleutian Islands Unit, Alaska Maritime National Wildlife Refuge PO Box 5251 99546 Adak, Alaska United States of America

**Telephone** (1.907) 592 2406  
**Fax** (1.907) 592 3473  
**E-mail** Jeff\_Williams@fws.gov  
**Web site** home.corecom.net/~usfws

Related links...

Biosphere reserve web site  
Aleutian Islands Unit (AIU)  
Terrestrial Ecosystem Monitoring Site

*Last updated: 3/15/2005*



United Nations Educational, Scientific and Cultural Organization



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## World Heritage

Heritage is our legacy from the past, what we live with today, and what we pass on to future generations. Our cultural and natural heritage are both irreplaceable sources of life and inspiration. Places as unique and diverse as the wilds of East Africa's Serengeti, the Pyramids of Egypt, the Great Barrier Reef in Australia and the Baroque cathedrals of Latin America make up our world's heritage.

What makes the concept of World Heritage exceptional is its universal application. World Heritage sites belong to all the peoples of the world, irrespective of the territory on which they are located.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) seeks to encourage the identification, protection and preservation of cultural and natural heritage around the world considered to be of outstanding value to humanity. This is embodied in an international treaty called the **Convention concerning the Protection of the World Cultural and Natural Heritage**, adopted by UNESCO in 1972.

A total of **34** were inscribed in the 29th session (29 cultural sites, 788 the number of natural sites and 23 cultural sites and 23 natural sites)

### Resources

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### UNESCO's World Heritage mission is to:

- encourage countries to sign the World Heritage Convention and to ensure the protection of their natural and cultural heritage;
- encourage States Parties to the Convention to nominate sites within their national territory for inclusion on the World Heritage List;
- encourage States Parties to establish management plans and set up reporting systems on the state of conservation of their World Heritage sites;
- help States Parties safeguard World Heritage properties by providing technical assistance and professional training;
- provide emergency assistance for World Heritage sites in immediate danger;
- support States Parties' public awareness-building activities for World Heritage conservation;
- encourage participation of the local population in the preservation of their cultural and natural heritage;
- encourage international cooperation in the conservation of our world's cultural and natural heritage.

URL: <http://whc.unesco.org/en/convention>

Local Govt 29/03

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## The U.S. Tentative List (Complete Te

Note: Complete text downloaded from US/ICOMOS gopher site.

Under the terms of the World Heritage Convention, each signatory nation is asked to submit to the World Heritage Committee a tentative list of properties, which it intends to nominate for inscription to the World Heritage List during the following five years. This tentative list constitutes the "Inventory" (provided for in Article 11 of the Convention) of the cultural and natural properties situated within the territory of the State Party and which are considered suitable for inclusion in the World Heritage List. The purpose of these tentative lists is to enable the Committee to evaluate with the widest possible context the "outstanding universal value" of each property nominated to the List.

### INDICATIVE LIST, UNITED STATES (by state)

#### ALABAMA

Moundville Site

#### ALASKA

Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge (Fur Seal Rookeries) C (vi); N (ii)

Arctic National Wildlife Refuge

Cape Krusenstern Archaeological District

Denali National Park

Gates of the Arctic National Park

Glacier Bay National Park and Preserve **INSCRIBED 1992**

Katmai National Park

Wrangell-St. Elias National Park and Preserve **INSCRIBED**

#### ARIZONA

Casa Grande National Monument

Grand Canyon National Park **INSCRIBED 1979**

Hohokam Pima National Monument

Lowell Observatory

Organ Pipe Cactus National Monument

Saguaro National Monument

San Xavier Del Bac

Taliesin West [added 17 Aug 90]

Ventana Cave

#### CALIFORNIA

Joshua Tree National Monument

Point Reyes National Seashore/Farallon Islands National Wildlife Refuge

Redwood National Park **INSCRIBED 1980**

Sequoia/Kings Canyon National Parks

Yosemite National Park **INSCRIBED 1984**



# RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

March 30, 2005

Representative Jim Elkins  
Alaska State House of Representatives  
Juneau, AK 99802

RE: HJR 16: Oppose UN Land Designations in Alaska

Dear Representative Elkins:

On behalf of the Resource Development Council for Alaska, Inc. (RDC), I am writing to support HJR 16 – Oppose UN Land Designations in Alaska.

RDC is a private, non-profit trade association representing individuals and companies from each of Alaska's basic industries — oil and gas, mining, timber, tourism and fisheries. Our membership also includes Native regional and village corporations, local communities and organized labor. RDC's mission is to help grow Alaska's economy through the responsible development of the state's natural resources.

ANILCA created a vast network of conservation system units in Alaska. The federal government currently lays claim to over 235 million acres in Alaska — 64 percent of the state's total land mass. Over 58 million acres of this land is officially designated Wilderness, giving Alaska 55 percent of the nation's total Wilderness lands. To put this number in perspective, Alaska's federally designated Wilderness lands are greater in size than each of the following states: Florida, Illinois, Minnesota, New York and Washington. In addition, the state of Alaska has created the largest state park system in the union.

Because of this level of protection, the creation of additional world heritage sites, marine biospheres, or international parks in Alaska is unnecessary. Such designations would severely limit the economic potential of resource development projects throughout our great state. Further, because of the "no more" clause of ANILCA, additional lands in Alaska are prohibited from being added as conservation system units. RDC believes Alaskans are best positioned to make decisions regarding our land and our resources. Therefore, we endorse the intent of this resolution to mandate the consent of the Alaska State Legislature and the U.S. Congress prior to the establishment of future world heritage sites, biosphere reserves, or any other type of international designations.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL for Alaska, Inc.

Jason Brune  
Projects Coordinator

- Founded 1973
- Executive Director  
Theodore J. Owens
- 2004-2005 Executive Committee
- John Shihaly, President
- Mark Harley, Sr., Vice President
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# **The WTO & Fisheries: An Issue of 'Accountability & Transparency'**

## **A Case of Global Production and Transfer Pricing Strategies versus Citizen-Taxpayer Rights**

In accordance with the Laws of the Sea, fisheries within the 200 nautical mile limits of countries represent national economic treasures. However, fish stocks aren't fenced-in by political boundaries such as these Exclusive Economic Zones (EEZs). This makes global accountability – the proper reporting of their catch and stock levels, and economic value – an important goal in preserving these resources and the sharing of their commonwealth.

Similarly, multinational corporations involved in world fisheries are not constricted by political boundaries. One way they "school up" in other nations is by the simple and legal means of direct foreign investment in host nation subsidiaries. Of course, their network of affiliates is usually under centralized control from the parent company back in the home nation.

Consequently, transparency – openness to the financial records of multinational enterprises (MNEs) and the intentions behind them – becomes an equally important consideration.

This lack of boundaries allows two concerning situations to develop in world fisheries. First, migratory stocks that leave one nation can be captured while on the high seas, or within the waters of another nation's EEZ. The latter may be by a MNE within its home nation's waters, or where it fishes under "the privateer's license" – *letters of marque* – within another nation's waters.

Second, MNEs may use ownership of buying and processing facilities in other nations as a means to secure "directive and control" over foreign resources. They can decide the means of production, where the host nation's fish are processed and into which product forms, who distributes them, and where they are marketed – even where profits occur or accrue.

These decisions can adversely affect the economic value of any host nation's fish products that are subject to the grasp of taxation. That is, profits are apportioned in the global corporation within the stages of production and in accordance with elements of wealth creation (labor, capital, know how, etc.).

The ability to extract taxes – in lieu of a national resource price for the catch of the fish or rights to its allocation – follows the production decisions and revenue and costs allocations of these MNEs. So, it all hinges on honesty and integrity in accounting records.

Again, accountability – this time for proper allocation of financial transactions to the activities associated with production and marketing circumstances, and methods of valuation – arises as a critical concern. Logically, transparency is required to ensure it.

These two issues are key to all global economic activity, in both goods and services, and are an important

part of the discussions of the World Trade Organization (WTO). *Accountability and transparency* are also crucial to foreign aid and other decisions, such as IMF or World Bank assistance, since much of the funds flow through corporations. Without financial standards, safeguards and access to information, banks, governments and citizens can't even keep score on the game of corporate globalization.

And since we are living in a globalized economy of "transnationalized capitalism", key economic issues include the rights of "democratized" governments and citizens versus the rights of MNEs regarding resources. This means to the values of resources and to the markets for products produced from them, as well as rewards for technical "know how" and services.

These rights involve not only taxation and the distribution of net of tax dollars (components of labor, operating expenses and supplies, overhead, amortization and profits), but also the ability to secure maximum commonwealth from value-added localized production. This is important so that resource wealth furthers economic increments in cycles of re-spending within a particular nation's boundaries.

Thus, in nations where fisheries "conservation and management" are mandated under special law, such as the U.S., "economic management" is paramount, too, in order to ensure those goals and even to pay for policy measures. Furthermore, global *accountability and transparency* are primary requirements not only to guarantee that fisheries are sustainable, but also to make sure that the fair value of these treasures becomes known, maybe even equitably shared.

### **Economic Sovereignty and Resource Rights:**

Put another way, dollars removed from an economy also remove associated economic multiplier effects – the repeated rewards of localized rounds of redistribution between suppliers (including laborers) and producers.

Accordingly, one of the key issues of critics of the WTO regarding resources involves where the various stages of production take place and who gets to earn the wages and incomes associated with them, and to tax it, if at all. Globalized production strategies easily affect the inherent ability of many nations to bear the burdens of government. Both personal taxation and taxes on product and services form the root ability to govern – the core issue of covering the costs of sovereignty.

This critic's main questions of the WTO are, "Will governments retain the sovereign right to know what goes on inside globalized corporations and their affiliates, to govern the reporting of their financial transactions and resource allocations, and

**the ability to tax their economic activities which occur (or even determine which should occur) within their realm?**

**Likewise, "If a nation is comprised of taxable citizens which provide its means and reason to govern, how will common rights to the wealth and health of its renewable resources be assured? In addition, "What will be the limits placed under the WTO on government- and citizen-rights to know about the internal financial and production workings of transnationalized businesses?"**

To answer these questions requires political and legal foundations and involves extensive, democratic debate – which rests on mores and values, and having the time to properly consider the extended consequences of decisions. **Ultimately, *accountability and transparency* become the keys to ensuring citizen and government rights. Nowhere is this more true, based on the author's experience, than in renewable national resources such as fisheries.**

And therein is a basic fear of the critics of the WTO, that citizens are not being included while personal and national rights are foregone. And the apex of their concern is about citizen-level rights to have a democratic voice and to constrain activities that may even be detrimental not only to humanity, but to the environment.

Under the WTO, they ask "Will products be allowed to bear appropriate social costs, amortization of environmental damage or even the burden of the costs of running a government: i.e. the cash drain of taxation? Or, will transnationalized corporations become the new rulers of our lives and our pockets?"

One can make a good case against most corporate taxation, save for including "aversion or repair costs" for environmentally harmful products. After all, costs are passed along in product prices. But, the corporate-versus laborer- (or resource harvester) "split of profits" has everything to do with the ability to tax a citizenry. And taxes are needed in order to maintain any democratically principled, economically capitalist, representative republic.

Big questions, and crucial concerns. In any case, *accountability and transparency* will be there as leading concerns, for without them, citizens and their governments will not even be able to keep score on the game of globalization.

For some U.S. fisheries, the problems have already risen to crisis proportions. In the North Pacific, foreign-controlled corporations (FCCs) practice creative bookkeeping to milk-off profits from the US while loading-in expenses, in order to reallocate profits to fit their global tax strategies. This technique is known as "abusive transfer pricing", and it is the leading tool of MNEs used to avoid the cash drains of taxation.

Likewise, multinational fishing companies can utilize catch strategies that damage sustainability of fish

stocks when they take fish in multiple nations' EEZs, though the fish may actually 'belong' to another nation. This appears to be the case for Alaskan salmon, and Japanese fleets 'privateering' in the Russian EEZ. Could this be in 'retaliation' for antitrust or tax law enforcement in the US, or a just a 'global policy adjustment'?

In the process, the catch rights of US fishermen have been adversely affected, and they have not been compensated for their losses. So, the WTO will also have to decide how to handle these complex 'adjustments' and if 'small businesses' also get financial protection involving resource rights granted by citizen-nations.

Again, the only way to know what is going on and resolve the issues is to maintain citizen rights to *accountability and transparency*.

#### **Abusive Transfer Pricing in Fisheries:**

To understand this global tax topic, there are some key terms and concepts that the reader will need to know. A "**transfer price**" is the price charged by one company to a related company, whenever they allocate income and expenses among themselves. This can be the price that affiliate charges for product obtained in the U.S. and then transferred to its overseas parent. It can also be expenses charged to the U.S. subsidiary by its foreign parent for management services (and labor) provided etc.

**The bottom line is whether or not the U.S. (host nation) company properly reflects income attributable to its operations in the U.S., or whether its foreign parent is using pricing strategies to avoid higher effective U.S. taxes. If the latter occurs, often against multiple IRS codes, the practice is known as "abusive transfer pricing" (ATP). When it is products that are used to "milk-off" or shift revenues overseas, while "loading-in costs" against them into the U.S. (or host nation) subsidiary, against tax authority codes, it is also known as "product laundering".**

Other useful terms are "over-invoiced imports (cost load-ins) and under-invoiced exports (milked-off revenues)". And when companies move product at understated weights in order to under-bill exports, "product manifesting" is the term. Thus, both price- and quantity-manipulation methods occur

An "arm's length price" is what the price would have been if the sales or services were between unrelated parties which literally stand "at arm's length" from each other. It is known in the world of taxation as the "comparable uncontrolled price" (CUP).

Transfer pricing is a highly important, international topic and the Organization for Economic Cooperation and Development (OECD) guidelines favor using the "CUP Method" based on a "Basic Arm's Length Standard" (BAL.S) to determine the amount

shifted and taxes avoided — generally preferred over other profit comparison or apportionment methods.

Let's revisit the late-1970's, after OPEC's 'supplier nation' efforts to form a cartel in resource supply. Quite another thing was happening in Alaska's fisheries — what *Groundswell* calls a buyers-as-owners cartel was being formed.

The world economies strove for balance by maintaining high differentials in interest rates — a primary engine of trade and investment — which favored Japan for over a decade, in an effort to "trilateralize" the world, and give Asia a place in global trade. A financial "bubble economy" resulted, and during that time, Japanese MNEs easily financed investments in Alaskan seafood processing facilities. After all, one key resource desired by Japan is the world's fish.

Meanwhile, domestic firms who were strapped with high interest rates throughout the late-1970's and well into the 1980's found themselves unable to fully invest and take advantage of U.S. EEZ rights. The leading problem was a lack of domestic investment, and long-term vision.

An argument was made that Japan is a primary seafood market, its consumers have both the funds and tastes, or economic need, and the situation somehow seemed fair. However, as time went by, consumer prices seemed little affected, while Alaskan fishermen seemed to get an ever-smaller piece of the economic pie.

So, a major concern became whether or not the spirit and intent of the 1978 Magnuson Fisheries Conservation and Management Act (MFCMA) was being sustained — the promise known as 'Americanization'. Or, was a criminal extraction of wealth occurring at the hands of transnational firms? And were a limited group of foreigners right back in control?

And the counter argument rears its head, again — Japanese firms invested, so shouldn't they have the right to determine where products are produced, and marketed, along with who gets what share? But what of the rest of the world's demand for seafood, especially after 'Mad-cow disease' and other health scares?

In the meantime, the transnationalized economy of the world progressed, and MNEs became increasingly sophisticated in keeping the profits for themselves. Even before the Japanese bubble burst, increasing pressures caused Japanese multinationals to take ever-greater risks in ensuring that cash drains were eliminated from their fishery businesses — especially the drains of taxation.

No nation's businesses seemed as expert in learning the practices of global tax strategies as did Japan's. After all, it is a nation built on using the world's resources while at the same time running an export-dominated economic structure while ignoring many domestic needs. And its people generally supported those goals.

The problem is, many of the techniques its corporations adopt in foreign nations are illegal there. And since the 1930's, the US has had Internal Revenue Service codes which cover the milking-off of profits from one affiliate to the other in order to avoid taxation — the realm of section 482 of the Internal Revenue Code: Transfer Pricing.

Beginning in the 1970's, certain Japanese fishing companies not only acquired US subsidiaries, but along with them got a host of product cost modeling and microeconomic information. Then, using their access to financial data along with access to raw product, they began the fine art of perfecting their 'transfer prices' — for both costs and revenues — until their US subsidiaries reflected little or no taxable profits, or better yet, deficits which earn tax loss carryforwards. **In fact, lack of book profits is a hallmark of transfer pricing abuse.**

Not only did they often manipulate actual financial values, but many even practiced what among Japanese firms is known as "customary overpack" in order to load more product weight into packages than was shown as the stated, or billable weight. Using these product-manifesting techniques, for example, they managed to get nearly an additional ten percent of surimi (pollock fish paste) into export packages and thus imported greater amounts into Japan than allowed under quota restrictions. Along with that, they diminished the revenues attributable to their US subsidiary and subject to US taxation.

Next, many bought sugar on the world market, paying import tariffs to US Customs, used it in their US facilities, then exported the product (surimi) to their Japanese affiliates. They loaded-in the full costs of the sugar into the US affiliate's books, and used these higher expenses to also lower taxable incomes. However, they later matched manufacturing records with importation documents and applied for 100% sugar drawbacks. And these funds could be taken outside US taxation by the sugar importing entity or some other affiliate.

In addition, they often charged technical fees for processing know how, that related to the product forms which foreign customers desire, against the US facility. These charges should arguably be attributable to Japanese sales affiliates, under IRS interpretation.

Meanwhile, US managers were not allowed to make their own decisions on means of production, product lines, or markets. Such foreign-based, centralized 'directive and control' was needed to maintain a system of globalized tax and production strategies designed to favor the home nation's parent company, first and foremost.

Likewise, they loaded-in technician labor costs, and failed to pass along to US employees the knowledge of how to process certain products despite the US being a leader in food technology and capability. In other cases, they also manipulated asset classifications to accelerate depreciation charges and amortize the costs of assets

more rapidly than allowed. Along with that, whenever US profits appeared imminent, despite the many bookkeeping tricks already performed, they could still use arbitrary charges or royalty assessments to further pull down US-side profitability.

In the end, the goal was met, as the US affiliate often became unprofitable, and thus nontaxable. Equally important, domestic investors seeing these losses were thus scared-off from investing in US fisheries and challenging for the rights to market US resources.

These events were all predicted in a 1979 Pacific Rim Study by University of Washington professor Jeremiah Sullivan and University of Alaska professor Per Heggelund. It was as if time stood still while their predictions of the effects "Foreign Investment in the US Seafood Industry" rolled in the door unchallenged.

So, in the end, "It's America's fault" again. That's why it is all the more important to wake-up now to the consequences and examine the situation, and the practices of vertically integrated, multinational seafood corporations as WTO rules develop.

#### Tax Coffers Drained by Global Strategies:

Let's digress from fisheries for a moment to examine the wider problem of corporations, which somehow manage not to pay any US income taxes at all.

In March 1999, the General Accounting Office (GAO) released a report about who pays taxes, and who doesn't, number GGD-99-39, "**Tax Administration: Foreign- and U.S.-Controlled Corporations That Did Not Pay U.S. Income Taxes, 1989-95.**"

The report was prepared for Senator Byron Dorgan (D-ND) and Congress, based on "long-standing concerns about whether foreign-controlled corporations (FCC) are abusing transfer prices and not paying income tax". It follows up on earlier reports, especially a 1995 GAO report, GGD-95-10', entitled, "**International Taxation: Transfer Pricing and Information on Nonpayment of Tax.**" These reports also cover U.S.-controlled corporations (USCCs) who pay NO income tax.

Despite the fact that this current report does not specifically determine whether the corporations were practicing ATP, nor name any firms, it contains some interesting and highly significant facts.

First, about 60,000 FCCs and 2.3 million USCCs filed U.S. income tax returns in 1995. Yet, "In each year from 1989 through 1995, a majority of corporations, both foreign- and U.S.-controlled, paid no U.S. income tax ... for a variety of reasons ... current-year operating losses, losses carried forward, ... or sufficient tax credits." Likewise, "Other corporations may report no taxable income because of the improper pricing of intercompany transactions." This latter situation is one of abusive transfer pricing.

Second, the report compares firms, saying "The percentage of FCCs not paying taxes ranged from 67 percent to 73 percent during those years, while the percentage of USCCs not paying taxes ranged from 59 to 62 percent." Moreover, looking at it another way, "in 1995, large FCCs paid \$8.31 of tax per \$1,000 in gross receipts, significantly less than the \$15.58 paid by large USCCs."

The earlier GAO report outlined that for 1991, approximately 35,300 FCCs doing business in the U.S. had \$360 billion in sales, and \$610 billion in assets, yet paid ZERO income taxes. Now, that number is as high as 43,800 FCCs. Taking one look at their products, and at national subsidies they sometimes receive, do you really believe they make no profits?

How much damage does ATP do to the US? Professors Simon Pak and John Zdanowicz of Florida International University recently released a report titled "**U.S. Trade With the World: An Estimate of 1998 Lost U.S. Federal Income Tax Revenues Due to Over-Invoiced Imports and Under-Invoiced Exports**". Using U.S. Customs' data, they state that "**The total estimated tax loss for 1998 is \$35.6 Billion [to] \$47.45 Billion.**" Again, this matches up to President Clinton's IRS based concerns about ATP, while running for office in 1992.

#### Difficulty in Dealing with the Problems of Accountability and Transparency in Fisheries:

Coming back to fisheries, in 1989, the National Marine Fisheries Service brought its product manifesting concerns to the IRS, which failed to act at that time. Yet, by 1991, the IRS was awakened by a case involving the largest Japanese seafood company and abusive transfer pricing concerns within its Alaskan subsidiaries.

Closely following that were other cases, involving both Japanese and Korean fishing ventures with US affiliates. And by 1997, the IRS had formed a Seafood Specialty Group in its Seattle international division specifically to examine these problems.

During the 1990's, several individuals filed personal lawsuits, which also hinged on abusive transfer pricing or tax fraud elements. A leading case involved the right of US managers to 'bonuses based on profits' and to the rights to technological 'know how' that was incorporated into Alaskan subsidiaries of Japanese-owned MNEs. These were issues of the accountability for multinational transactions. Even today, there are ongoing cases where these creative bookkeeping practices are key to unraveling the damage done to US citizens and firms by FCCs in fisheries, let alone tax coffer losses.

In addition, a key problem in prosecuting such cases involved the access to records - the transparency problem. Not only was this access required for court cases, but it was also essential for fisheries policy-

making and public testimony to what was actually occurring in foreign-owned Alaskan seafood affiliates.

In such cases, both the corporate power of resistance to production of records under legal discovery processes along with the taxpayer non-disclosure protections of the IRS served to damage both private and public interests. That resistance was bought and paid for through the use of fraudulently retained funds, recycled to further hide the fraud, and also hide the reasons for change in public policy.

Considering this, one can see how cases never even make the courtroom, especially when confidentiality agreements and gag-orders are leading tools of the corporate lawyers against 'poorer' plaintiffs.

Worse yet, certified public accountants (CPAs) and the work performed for these foreign affiliates are increasingly becoming buried behind a wall of 'lawyer-client privilege' that extends far darker than normal 'work-product privileges'. Large corporations practicing abusive tax methods bleed off millions and then use these funds to fight all comers, usually with the help of publicly-licensed CPAs.

In short, in the case of abusive transfer pricing, CPA has often come to mean *certified public accomplice*. And if the truth were to be known, this is a major source of revenue for the modern CPA firm who is also building up its staff of in-house lawyers just to gain such protection by using "beyond the public" privileges.

With increasing CPA engagements by foreign-owned firms who pay no taxes in the US, fighting off the IRS after having used such 'creative bookkeeping' techniques, the transnationals corrupt the very mechanisms of enforcement. This also corrupts the publicly licensed professionals whom citizens rely upon for ensuring *accountability and transparency*. Without a nation's accounting professionals adhering to licensed standards of public integrity and service, where are governments headed?

Similarly, without making the courtroom in fights to undo the damages of crooked corporations, citizens are not only denied justice, but society is denied an adequate look at the practices of such corporations.

Again, fish policy suffers, too. And remember, Alaska's assistant attorney general James Forbes declared in 1993, after examining these foreign fish companies on antitrust issues, that Alaska needs to consider their 'oligopsonistic' structure before making any fish policy.

So, *accountability and transparency* are key to maintaining the Civil Rights of a nation's citizens. And enforcement remains a key, because the lack of adequate *accountability and transparency* can cause an entire industry's economic structure to go awry. But when these corporations also use the power of ill-gotten gains to influence the body politic, what of the possibilities for adequate enforcement?

In a related concern, government officials often see their paths to personal glory paved with the campaign contributions of corporations and the accolades of having "created jobs". When in fact, concessions given to relocating subsidiaries often form the very basis for a lack of enforcement or obligation to bear a fair share of the burdens of government. Labor costs are often squeezed later, or jobs evaporate at the corporate whim.

The important factor is that local and national governments have blindly joined global corporations in local projects without any responsibility for 'global' concerns. This topic, alone, could occupy volumes. Yet, a critical point remains: governments need to decide whether or not their 'partners' are citizens or transnationalized capitalism, and its corporate masters. What are at stake are often the basic economic rights of all other businesses and wage earners.

What we see in Alaskan fisheries, in part today, is the demise of the independent harvester through lower fish prices, along with the effects on fishery practices. In large measure, these lower prices are the direct result of abusive transfer pricing along with the consolidation of processing firms and fleets.

And if fleets cannot secure their promised share of the economic pie, as partners or economic co-proxies with US processors, then the future of US fisheries 'economic management' under the MFCMA is at stake.

In 1998, testimony was given by *Groundswell* to the North Pacific fishing industry's Advisory Panel (AP) that for pollock alone, in a decade's time, it is conservatively estimated that over \$430 million was bled-off from these practices. The economic multiplier effects compute to approximately \$2.15 billion of negative effects on US fishing communities.

The AP then ordered the North Pacific Fisheries Management Council (NPFMC, or Council) to examine the market and fisheries grounds price effects of abusive transfer pricing before moving forward with its considerations of increased pollock allocations to what are primarily Japanese-owned FCCs in the shoreside sector. The Council failed to adequately examine the situation – and again, the key issue remains *accountability and transparency*.

Another crucial factor in their failure may have been the 'conflicts of interest' on the Council itself. And, again, without adequate disclosure, *accountability and transparency*, and the ability of citizens to act upon what is learned, foreign "agents of influence" were apparently able to manipulate fish policy, once more, to their gain at the expense of US taxpayers and resource owners.

In turn, this led to bad legislation in the form of the ill-named American Fisheries Act (AFA) of 1998, which effectively destroyed competition in the North Pacific pollock industry and awarded FCCs undue resource allocation rights – without ever resolving the problems of whether they pay their fair share in taxes.

Worse yet, it left all US firms vulnerable to continued misstatements of true worth for product exports.

Since these FCCs are often the buyers (or among its affiliated 'cartel-like' group) for product from other sectors, the entire industry is left to suffer from its effects.

With a conflicted board and insufficient action within fisheries management itself, the burden then falls solely upon the IRS for enforcement, and there are several key problems with that. First, the IRS rarely recovers but a fraction of the milked-off revenues and taxes. Second, the net-of-tax dollars are not recovered to multiply in the US economy. Third, domestic investors still have no accurate and honest information upon which to base their financing decisions regarding US fisheries, and the foreign firms maintain further hegemony over US resources.

Fourth, other economic sectors (such as harvesters, i.e. labor) become subject to overpowering influences illegally gained by other sectors. So, along with *accountability and transparency* goes enforcement. After all, enforcement of national laws is one of the more important reasons we pay taxes.

#### **WTO – A Case of Transnational Capitalism versus Citizen-Based Democracies:**

It is not only for fisheries that knowledge of abusive transfer pricing is essential to understanding resource and manufacturing etc. trade. This is predicted to be the leading global financial and tax concern of the next century. Already, world governments are rushing to develop adequate protections, and even individual regions or states within nations are concerned.

What is at risk in the evolving economy of 'transnationalized capitalism' are the important standards of generally accepted accounting principles which stem from public concern and a desire to ensure that all users of financial reports are adequately informed. What is at risk is the ability of nations and agencies to develop adequate laws, regulations and other protections along with proper policy regarding world resources.

What is ultimately at risk is the rights of citizenry and the right to effective democratic governments. And if we are not careful in creating the WTO's rules, in the end, the laboring masses will be paid poorly and taxed heavily, suffer tremendous losses of freedom, and see individual economic choices taken away as governments meet their demise and transnationalized capitalism rules.

It might even be said that transparency and accountability are the keys to a free humanity, itself. And without individual rights and powers, including the rights to know, does anyone really believe that corporations themselves will have the 'soul' to protect our resources and meet multiple individual needs?

**Should we even strive for a WTO if citizens don't have at least a power equal to, even exceeding that of the legal constructs called corporations? After**

**all, don't corporate rights stem from the legal grants given them from citizens themselves? And, if the corporate form has gone awry and is overwhelming the very legal systems which created it, isn't it the right of citizens to reform its legal boundaries? So, shouldn't we really be working on a taxpaying- and product consuming- citizens trade organization, rather than a corporate globalist-dominated WTO?**

**In conclusion, for fisheries, the issues of abusive transfer pricing, the needs of *accountability and transparency*, and concerns of foreign investment join other important WTO topics such as genetically-modified organisms, phytosanitary restrictions, ecosystem and resource sustainability concerns, and the allowance of tax and other subsidies.**

**Interestingly, a failure to adequately control these transnational corporations and prosecute abusive transfer pricing (ATP) is equivalent to granting foreigners a subsidy in US fisheries for coming here to take our resources away on the cheap. This redefines the cliché to be "TAX-FREE trade."**

**Thus, the enforcement of ATP laws by all world governments seems key to ensuring that the goals of the WTO to eliminate subsidies and false-values – and ensure international competitiveness 'free' from disparate tariffs or taxes – are met.**

Finally, we are still left with other questions. Just how does the WTO plan to uphold global fish sustainability and ecosystem policy? By what mechanism will that occur, and how will a 'consensus-based' WTO restrain corporate greed? Will a WTO decision against the octopus (a parent company) also apply to its global tentacles? Or will a ruling against one nation's firms also apply to all of their many globalized operations?

So, not forgetting Nature, with all the big political fish eating all the little political fish, what will be the destiny of the real fish?

Stephen R. Laufen, *Groundswell Fisheries Movement* Grass-roots, fair trade advocacy in North Pacific Fisheries. (E-mail: [staufen@seanet.com](mailto:staufen@seanet.com))

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Steven Toffin



## NEW ENGLAND FISH COMPANY

PIEF SEATTLE, WASH. 98119 • AREA CODE 206 • 284-2750  
SINCE 1868

1. POLITICS

June 27, 1977

President Jimmy Carter  
The White House  
Washington, D. C. 20500

Dear Mr. President:

On March 1, 1977 the Fishery Conservation and Management Act of 1976 went into effect, creating what has now become known as the 200-mile fishery zone. Implementation caused immediate conflict with a number of foreign nations, principally Japan and Korea; and the magnitude of the strategic national opportunity involved has created a public and Congressional controversy as to the meaning of the law and whether it will be implemented by your Administration.

The economic, social and political implications to the people of the United States are enormous and there is a growing public constituency for action. This matter is receiving significant, growing media coverage and widespread support among labor and fishermen's groups (see Exhibit 1). The country needs from you a national policy statement and the leadership that this opportunity deserves.

Briefly, the national opportunity includes:

1. The ability to increase the U. S. catch from 4 to 5 billion pounds to over 27 billion pounds annually (Exhibit 2).
2. The ability to take long-term control of a strategic food resource which has political, economic and social characteristics as formidable as the U. S. wheat supply (Exhibit 2).
3. The opportunity to increase U. S. sales of seafood at the processor level from \$3 billion to \$7 billion annually.
4. The opportunity to create an increase in U. S. fishery related jobs from 450,000 today to a minimum of 628,000 jobs (Exhibit 3).
5. An opportunity to reverse a \$1.5 billion annual balance of payments deficit accrued by the current net U. S. importing of seafood to perhaps as much as \$2 billion inflow (Exhibit 4).

4. REVENUE

3. U.S.

4. FOREIGN EXCHANGE

President Jimmy Carter  
The White House

June 27, 1977  
Page Two

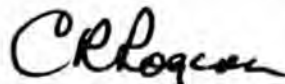
6. The ability, with the seafood processing industry fully developed, to provide the local and federal revenue to build the schools, hospitals, roads and other community infrastructure for coastal communities, thereby establishing a solid financial foundation for the full and permanent development of the U. S. fishing industry and the survival of coastal communities where fishing has been the heritage of the people.
7. An opportunity to manage our fish protein resources in a manner which will insure their conservation and their long-term survival; in other words, an opportunity to sustain our fish protein resources for future generations.

The problem of the moment is twofold within the government. There is insufficient recognition of the magnitude of this issue, its importance to the people of the United States, and the criticality of each decision that is made. Implementing rules and regulations are in the process of being formulated and these rules will dictate whether or not a fully integrated national fishing industry will develop. It is of the utmost importance that shortsighted precedent be absolutely avoided. Secondly, and more specifically, a NOAA ruling announced in the June 17, 1977 Federal Register effectively derailed the growth program in direct contradiction to its own stated intentions and in direct contradiction to rules declared by regional councils that were created under the Congressional Act to provide directed management and to its announced intentions to hold public hearings on the issue before it was resolved. This specific issue, and other related legal issues, are described more fully in Exhibit 5.

Mr. President, I urge you to make a strong policy statement in favor of the development of an integrated United States fishing and processing industry and marshal the forces of the Executive Branch behind it. I will be more than happy to help you create a national agenda on this issue up to and including the organization and execution of a Presidential Commission similar to the White House Commission on Food, Nutrition and Health in which I participated in 1969.

I would be happy to meet with you or whatever member of your staff or cabinet you direct to clarify or pursue this matter.

With kind personal regards,



C. R. Rogers  
Chairman and President

CRR/lf

Enclosures

1. POLITICS

# CRS Report for Congress

## The Magnuson-Stevens Fishery Conservation and Management Act: Reauthorization Issues for the 106<sup>th</sup> Congress

May 31, 1999

Daniel A. Waldeck,  
Presidential Management Intern  
and  
Eugene H. Buck,  
Senior Analyst in Natural Resources Policy  
Resources, Science, and Industry Division



a strong commitment to resource sustainability and possess culturally derived desires to pass along "their" fishery to future generations. One proposal to provide additional support for small boat and family fisherman is to restrict U.S. imports to fish harvested by fishing fleets that use conservation measures comparable to those required in the United States. However, some fishery scientists note that providing additional support to small fishermen by constraining imports might violate World Trade Organization obligations and international law by restricting access to U.S. markets, and violate U.S. commitment to remove subsidies that support overcapitalization.

### **Transfer Pricing**

Commercial fishing interests are concerned about transfer pricing, especially in North Pacific fisheries. This is not currently addressed in the MSFCMA. "Transfer price" is the price charged by one company to a related company, for allocating income and expenses among themselves. These "intra-firm transfers" are covered under the Internal Revenue tax code at 26USC482. Some U.S. fishing companies allegedly are not properly reflecting income attributable to their operations within the United States, while some foreign parent companies may be using pricing strategies to avoid higher U.S. taxes. In addressing "abusive" transfer pricing, Congress could consider amending the MSFCMA to require full disclosure of all financial documents and transfer pricing criteria to U.S. authorities.

Others believe that this issue is not germane to reauthorization of the MSFCMA, suggesting that this "tax and trade" issue is more appropriate to the jurisdiction of other congressional committees — such as Ways and Means, and Finance

### **Reliability of Management Models**

Section 404(c)(1) of the MSFCMA establishes requirements for the Secretary to initiate and maintain fishery research to carry out the purposes, policy, and provisions of the Act.

Some fishery managers note a concern regarding the need for additional data to verify the assumptions used in stock assessment models. Particularly, they assert that the management analyses garnered from Virtual Population Analysis (VPAs) Models could be improved by expanding the use of age-growth<sup>77</sup> information.

To address these concerns, some fishery managers suggest that Congress might consider authorizing funds for expanded age and growth research. For example, regional age and growth research centers could coordinate information among state

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<sup>77</sup> Age-growth analysis uses fish scales and otoliths ("ear" bones used for balance and orientation) to assess age relative to length. These hard structures have annual growth rings, much like rings in a tree trunk, that can be used to estimate the age of a fish. However, some fishery scientists note that traditional age-growth research, using hard parts to discern fish age, is not applicable in tropical regions because fish growth is not subject to discrete seasonal changes. In tropical regions, "length-based" methods are used, where age is estimated from length modes.