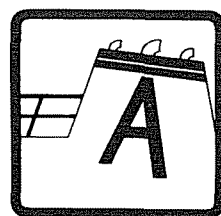


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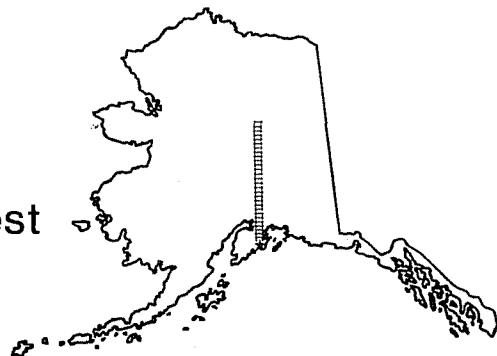
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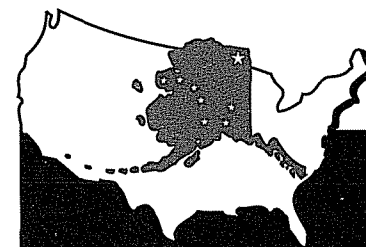


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Resource Review

December 1993 A monthly publication of the Resource Development Council, Inc.

OPA liability regulations “unenforceable”

Alaskans from Kodiak to Kotzebue
send clear message to Washington

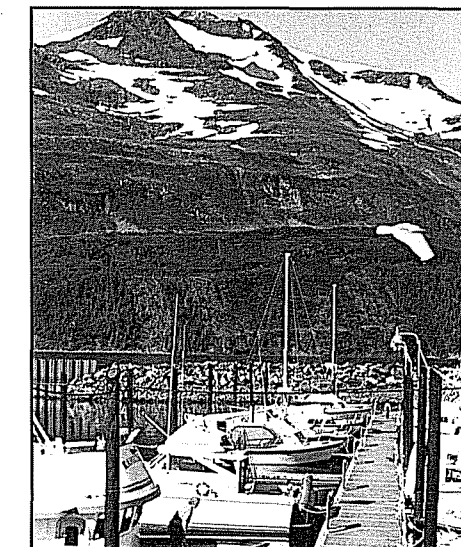
Alaskans, rural and urban, from Kodiak to Teller, and from all walks of life, are sending in a wave of critical comments to the U.S. Minerals Management Service (MMS) over the development of new regulations that would require corporations and individuals alike to post \$150 million in liability insurance before they can legally move or store oil or oil products across navigable waters.

In response to a feature article in the October *Resource Review* and a recent RDC “Action Alert,” Alaskans are writing MMS in large numbers to tell federal regulators how the financial responsibility requirements of the Oil Pollution Act of 1990 (OPA '90) will affect their businesses and livelihoods.

So far the message MMS is hearing is that the financial responsibility requirements of OPA '90 will adversely affect many segments of the economy and “result in unenforceable regula-

tions,” according to Tom Fry, Director of MMS.

In late August, MMS published an “Advanced Notice of Proposed Rulemaking” in the Federal Register aimed at implementing the financial responsibility section of OPA '90. The financial responsibility requirements of the law apply to both commercial and private operations and can be read to literally include any person or persons transporting or storing any oil or oil products on or over navigable waters. The law makes no exceptions for quantity. In theory, if one moves as little as five gallons of oil or diesel on a sled



The financial liability requirements of OPA '90 will also apply to private and public marinas.

behind a snowmachine across navigable waters, that person is responsible to the OPA '90 requirements.

State, federal and municipal facilities, as well as schools, airports, boat harbors, electric cooperatives, bulk fuel tank owners, wilderness lodges and many businesses and individuals would fall under the requirements.

In the past, a \$35 million liability bond was required for Outer Continental Shelf (OCS) facilities, but OPA '90 increased financial responsibility to \$150 million and expanded its application to navigable waters. According to

(Continued to page 4)

“It appears that the private insurance market does not have the capacity to provide for the financial responsibility requirement, even if it was financially feasible for those subject to the requirement to obtain it.”
- Mayor Jerome Selby, Kodiak Island Borough

1994: A look ahead



Message from the
Executive Director
by
Becky L. Gay

Citizens' Advisory Commission on Federal Areas: Support improved funding for the Commission and encourage its continued activities and oversight of federal actions.

Regulatory Reform:

- General:** Work on regulatory reform to streamline permitting, create realistic regulations and improve the regulatory climate for resource industries.
- Legislative intent/oversight:** Support constitutional amendment to provide for a super-majority of the legislature to override regulations which do not conform to original intent.
- Wetlands permitting:** Continue working with the state and federal permitting agencies to allow for flexibility and an Alaska solution to national wetlands permitting priorities, in particular, "no net loss."

Litigation:

- Civil Nuisance Actions:** Support legislation to address costs to resource industries of civil nuisance litigation.

- Recovery of Attorney Fees:** Support legislation to request that the Alaska Supreme Court modify its interpretation of Alaska Civil Rule 82 to permit all prevailing parties to recover attorney fees and costs, including those who prevail over parties represented by special litigation organizations opposed to natural resource development in the state.
- Liability Reform:** Support liability reform legislation to limit increasing costs to business.

Other:

- ANWR education & advocacy:** Support legislative action on the ANWR issue for opening the 1002 study area lands for oil and gas exploration. Work to stop Wilderness designation. Support funding for activities to educate and lobby at the national, state and local level.
- 470 Fund reform:** Support legislation (SB 215/HB 238) to make management of the state Oil and Hazardous Substance Release Response Fund (470 Fund) more consistent with original purpose when 470 Fund was revamped in 1989.
- Citizen's oversight councils/non-development groups:** Monitor and review funding sources, scope of activities as applied to resource development, contracts awarded and political actions which are counter to legislative intent and/or official state policy.
- Transportation:** Support funding for maintenance and improvements on the Dalton Highway. Continue to support access corridors, construction of new transportation facilities, and maintenance of existing infrastructure to included airports, ports, and highways throughout Alaska.

Land Management:

- Mental Health lands settlement:** Support a resolution to this issue which fairly treats valid third party interests, returns original trust lands, encourages responsible development on trust lands and promotes a stable climate for resource development in Alaska.
- Exploration licensing:** Support legislation (SB 150 and HB 199) to augment present oil and gas competitive leasing program.
- Exploration incentives:** Support legislation (SB 151 and HB 200) to establish tax credits for eligible wells and geophysical work in concert with exploration licensing proposal.
- Forestry:** Support funding and increased action to address spruce bark beetle infestation on state lands. Support action to enable the Reforestation Fund.
- Land designations/exchanges/buy-outs:** Analyze for direct or cumulative effect on resource industries, communities and Alaska's economic development future.
- Title 38:** Support changes which improve opportunities for resource development, reduce conflicting or confusing language, delete unnecessary actions, increase efficiency and improve responsiveness to the public.

The Resource Development Council (RDC) is Alaska's largest privately funded nonprofit economic development organization working to develop Alaska's natural resources in an orderly manner and to create a broad-based, diversified economy while protecting and enhancing the environment.

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"The economic transitions that we are dealing with in the 1990s challenge us like we have never been challenged before," said Jerry Hood, a high-level Teamsters Local 959 executive. "We are challenged to make development and environmental interests compatible under a new administration in Washington."



"Alaskans can become artificially poor if they are not allowed to responsibly develop and produce oil, timber and minerals which exist here," exclaimed House Speaker Ramona Barnes. Barnes spoke at a special conference legislative luncheon forum featuring five other legislative leaders.



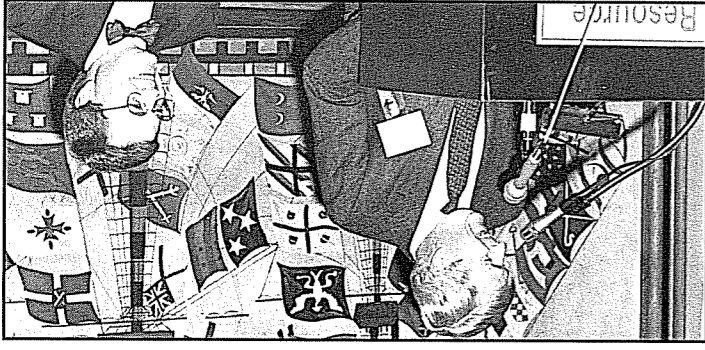
John Tracy, KTUU-Channel 2 Editor, Anchorage Daily News, to address the media's perspective of resource development and the economy.



Scott Feierabend of the National Wildlife Federation and Pam Brodie of the Sierra Club joined a panel of Native corporation officials to debate environmental imperatives on Native lands.



Don Shinkle of Wal-Mart Stores, Inc., joined other major national and local retailers in a panel discussion on the retail boom in urban Alaska.



John Knebel, President of the American Mining Congress, told conference delegates about Washington's agenda for Alaska and the West.

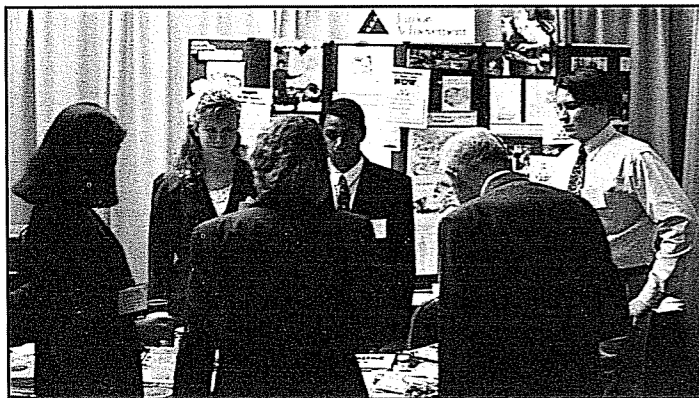


Johnne Binkley, Vice President of the Alaska Visitors Association, focused on the rapidly expanding tourism industry.

Photo essay: RDC's Annual Conference

From the resource producer to the preservationist and the consumer to the national retailer, RDC's 14th Annual Conference, "Alaska's Economy in Transition: Exploring Common Ground," attracted over 300 people and 47 dynamic speakers to address transformations in Alaska's local economies and resource industries.

Advancing resource education



ARK, a Junior Achievement Company, in partnership with AMEREF, is producing the Alaska Resource Kit this winter for placement in Alaska schools. The JA company is comprised of 12 high school students from throughout the Anchorage School District. The students exhibited the kit at RDC's conference last month.



Lower 48 journalists Graham Fysh and Debra Saunders, who spoke at the RDC conference last month, also addressed a student forum at Bartlett High School. Standing at left next to the journalists is Bartlett English teacher Diana Lloyd. Conference keynote speaker John Knebel, along with RDC's Paul Glavinovich, spoke before students at East Anchorage High School.

Cloud: A look back ...

(Continued from page 3)

Throughout all of this year, our board members and staff have worked tirelessly attending meetings, studying issues, and drafting comments. Thank you all for a job well done. Merry Christmas and happy New Year!

- Through a series of lawsuits filed in 1993, the State of Alaska is trying to make the federal government live up to its part of the statehood bargain and pay for taking away income opportunities.

- The Alaska Department of Environmental Conservation (ADEC) worked hard to bring reason and balance to water quality regulations forced on the State by the EPA. Few communities and industries can economically comply with regulatory requirements other than those proposed by ADEC.

- The Healy clean-coal project was nearly killed by the Clinton Administration because of the possibility that it might generate a steam plume visible from Denali National Park up to 144 hours a year — in the darkness of winter when the park road and its facilities are closed. After months of negotiations, the Feds and the prospective operator have reached a deal allowing construction of the \$227 million plant.

At least we're not the only ones with our hands full. The Alaska Department of Fish and Game is trying to protect caribou and moose from wolves, animal rights activists are trying to protect wolves by attacking tourists, tourism executives are trying to protect tourists from animal rights activists and the Feds continue to shoot reindeer from helicopters because they were imported to Alaska 100 years ago by missionaries trying to feed starving Natives.

There are more issues, but this is the season to be thankful, optimistic and helpful to those in need.

Oil survey...

(Continued from page 4)

to Brady, is that by a seven to one ratio, Alaskans are personally favorable toward the oil industry; however, those who are unfavorable are nearly twice as likely to express their feelings as those who are favorable. "This survey documents the fact that state officials and legislators predominately hear from a vocal minority who generally oppose resource development while the vast majority of Alaskans are supportive," Brady said.

The survey found that most Alaskans continue to believe the state is facing a serious budget crisis and solidly favor reduced state spending versus increased taxes to balance the budget. When asked what taxes should be raised, if tax increases become necessary, the top two preferred responses were implementing a sales tax (38%) or a personal income tax (26%).

According to the survey, Alaskans overwhelmingly support a \$50 million fund to be available to respond to possible future oil spills and nearly four out of five believe the contribution currently paid by the oil industry should remain in the fund until it builds up to \$50 million. Most Alaskans strongly disapprove of the state's current practice of drawing from the fund to pay for operating expenses of the Department of Environmental Conservation and for other purposes which keep the fund balance below \$50 million.



Thoughts from the President

by
James L. Cloud

1993: A look back

Satchel Paige, a famous pitcher, once remarked, "Don't look back, the bastards might be gaining on you."

A review of resource issues during 1993 reveals that Satchel was right:

- The Alaska Legislature worked on important bills during 1993 designed to thwart nuisance lawsuits and prevent agencies from administratively closing public lands to responsible resource development.

- The scope of the Mental Health Lands issue was reduced in size from 8 million acres to 1.5 million acres by the courts, pending appeal.

- President Clinton threw out the "1 percent exemption" on compensatory mitigation for wetlands development and adopted a new "no net loss" rule. The battle for reasonable and fair regulations has moved from the Administration to Congress. RDC and the Alaska Wetlands Coalition continue to press for a fair wetlands policy.

- The President also threw out plans for an EPA Alaska region which would have meant that regulators would go to church and shop with the regulated.

- A new federal land czar took over 190 million acres of federal lands in Alaska during 1993. Secretary of the Interior Bruce Babbitt appointed preservationists to key posts and is on record opposing multiple use principals on federal lands.

- RDC staff provided administrative services to the Alaska Mineral and Energy Resource Education Fund (AMEREF) and is working with Junior Achievement to manufacture resource kits used by elementary school teachers. The AMEREF kits help teachers educate children about Alaska's minerals and energy resources and their role in society.

- The U.S. Fish and Wildlife Service, as well as major national preservation groups, are pushing for more Wilderness in western and eastern Alaska. A conspiracy buff would assert that "they are trying to box us in." Of course, "they" wouldn't do that, would they?

- State and federal forestry officials are losing ground to the spruce bark beetle infestation. Literally hundreds of thousands of acres are lost each year. Whole forests are turning brown and becoming fuel for a fiery disaster — such a waste of resource, not to mention the air pollution when it all goes up in smoke.

- Alaska Pulp Corporation closed its doors after attempting to get reasonable access to timber under its contract with the U.S. Forest Service. Hundreds of Sitka residents are out of work and millions of tax dollars have been lost as a result of this closure. Meanwhile, Ketchikan Pulp Company has filed administrative claims against the Forest Service for not supplying the entire volume of timber called for under the bilateral contract between KPC and the Forest Service.

- Senator Ted Stevens was able to postpone a measure to expand buffer zones along streams and wetlands in the Tongass National Forest. In addition to the buffer zone requirements mandated by the 1990 Tongass Reform Act and the Alaska Forest Practices Act, this move would have resulted in further cuts in the harvestable timber base of the Tongass.

- In response to demands from environmentalists, new Forest Service chief Jack Ward Thomas put on hold a major timber sale on Prince of Wales Island. The timber is vital to Ketchikan Pulp Company's operations and any further delay in harvesting will aggravate an already critical supply situation at the company's sawmill and pulp mill.

- Not content with shutting down over two-thirds of the commercial forest lands in the Tongass to logging, environmentalists have petitioned the federal government to list a subspecies of the gray wolf in the forest as a threatened species — even though there is no evidence the wolf population is declining. The designation, if granted, would lead to further restrictions on logging to protect the animal's habitat.

- The Endangered Species Act reached into Alaska this summer temporarily closing the Southeast salmon fishery to avoid possible interference with a couple of salmon that might go up the Columbia River system to spawn in Idaho. These kind of actions cost tens of millions of dollars to fishermen, processors and retailers, not to mention lost tax revenues to the U.S. Treasury.

- The Minerals Management Service in August issued a notice of proposed rulemaking that will increase the amount of financial responsibility required of persons transporting any amount of petroleum products over navigable waters, wetlands, streams or lakes from \$35 million to \$150 million. The previous rules had covered only offshore facilities handling oil.

- Congress continues to work on changes to the General Mining Law that could make it uneconomical to explore and develop minerals on federal lands.

(Continued to page 6)

Amendments to statute offer only solution to regulatory dilemma

(Continued from page 1)

Fry, the term "navigable waters" includes most of the surface waters in the United States and adjacent wetlands. Moreover, "offshore facilities" is considered, under the law, any facility located in, on or under any of the navigable waters of the United States.

"These definitions seem to create a financial responsibility requirement for any activity that can spill oil and is located in, on, or under most of the surface waters of the United States and adjacent wetlands," Fry said. "This goes beyond the offshore oil platforms with which the MMS is familiar."

Fry confirmed that OPA '90 applies to state and municipal governments that operate facilities. "This could be significant to states such as Alaska, where many small communities maintain and operate oil fueled electric generating facilities."

Fry said public responses center mostly on the broad scope of the definition "offshore facility" and the probability that \$150 million in liability bonding would not be available or could not be afforded the majority of those potentially affected by the law.

"At \$150 million, we believe that very few companies can self-insure; therefore, insurance, as evidence of oil spill financial responsibility, will probably gain increasing importance when the oil spill financial responsibility requirements of OPA '90 are implemented," Fry said.

The MMS would like to be able to develop approaches to implement OPA '90 in a reasonable and balanced way that preserves the purpose of financial responsibility without creating economic hardships, Fry said. "We are trying to determine what, if any, flexibility is available within the confines of the statute."

So far, however, the federal agency claims the language of the statute leaves it with very little discretion. Fry warned

unless the agency follows the law as literally stated, "our regulations may fail on one or more key issues if challenged in the courts."

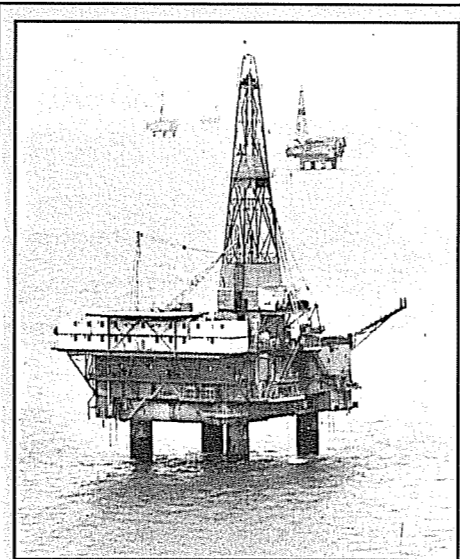
The financial responsibility section of the law is based on broad definitions such as "offshore facility," "navigable waters" and "responsible parties." RDC is urging MMS to seek amendments to the statute to address these definitions and bring regulations in line with the original intent of Congress.

Representative Gail Phillips, Majority Leader of the Alaska House of Representatives, warned Secretary of the Interior Bruce Babbitt that MMS's newly proposed rules will have dire consequences on Alaskans if they go into effect.

"A requirement for \$150 million in liability bonding would affect a major portion of our industries, schools, individuals and transporters of any fuel source to rural Alaska so adversely that it would force them out of business entirely," Phillips warned. "In particular, the lack of any minimum quantity of oil covered under these rules would force individuals storing only a few gallons for generators or other equipment to violate the law or get the \$150 million in liability insurance."

The Kodiak Island Borough passed a resolution opposing the financial responsibility section of OPA '90, noting that the proposed rulemaking "represents an unfunded federal mandate to the State and local governments in Alaska." The resolution warned that the rulemaking will hit local governments and small operators especially hard, potentially causing serious financial hardship. "It appears that the private insurance market does not have the capacity to provide for the financial responsibility requirement, even if it was financially feasible for those subject to the requirement to obtain it," the resolution stated.

MMS is considering holding a public hearing in Anchorage in February.



By a 7-1 ratio, Alaskans are personally supportive of the oil industry, but those who are unfavorable are nearly twice as likely to express their feelings as those who are favorable, according to a recent survey.

Alaskans favor oil industry

By a wide margin, Alaskans believe oil and gas development has been conducted in an environmentally-safe manner, according to a statewide survey.

The survey, conducted by Dittman Research Corporation for the Alaska Oil and Gas Association, also found that nearly 90 percent of Alaskans surveyed expressed the opinion that oil and gas development has been good for Alaska.

"The survey results clearly show that Alaskans recognize the economic benefits oil and gas activities provide to the state and that Alaskans support resource development," said Judy Brady, Executive Director of AOGA.

According to the survey, nearly three out of four Alaskans believe oil and gas development has been conducted in an environmentally-safe manner and nearly 70 percent support oil and gas exploration within the ANWR Coastal Plain. Among long-time residents, support for ANWR exploration was even stronger.

Another significant finding, according

(Continued to page 6)

Sea Life Center in the works

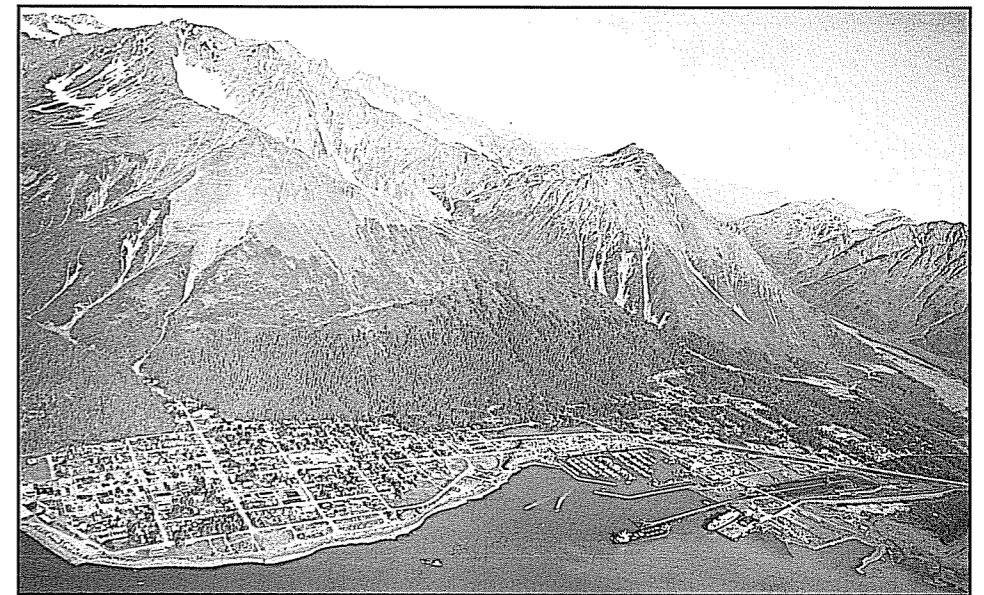
Alaska's coastal waters host one of the greatest concentrations of marine animals in the world — 33 species of marine mammals and 66 kinds of sea-birds. Yet Alaska has no place to care for sick marine mammals and seabirds, study them under controlled conditions or view them in their undersea environment.

The newly-proposed Alaska Sea Life Center in Seward would fill all three gaps with a unified triad of programs — marine research, rehabilitation of stranded marine animals, and public education focused on marine seabird and mammal biology. The project is being advanced by the Institute of Marine Sciences of the University of Alaska, the City of Seward and the Seward Association for the Advancement of Marine Science (SAAMS).

Sharon Anderson, a long-time resident of Seward and a member of the SAAMS board of directors, told a RDC breakfast meeting gathering in December that scientists, who currently go elsewhere to study Alaskan marine birds and mammals in a controlled setting, will have facilities and support at the Center to conduct basic and applied research on arctic and sub-arctic species.

Located on the shore of Resurrection Bay on property donated by the City of Seward, the Alaska Sea Life Center would include a variety of tanks and pools of varying sizes to house marine mammals, seabirds, fish and invertebrates. Also included would be a large laboratory facility for scientific research, and an animal hospital at which sick or injured marine mammals and birds would receive care.

The program will operate with the advice and cooperation of the National Marine Fisheries Service, the Alaska Department of Fish and Game and the U.S. Fish and Wildlife Service.



The Alaska Sea Life Center would be located on land donated by the City of Seward. The site would be along the waterfront at far left.

"There is no reason why environmental stewardship groups and resource industries, whether they be tourism, timber, minerals, fisheries or oil, cannot work together to build a healthy Alaska economy, too, for generations to come through projects like the Sea Life Center."

- Sharon Anderson, board member, SAAMS

Stellar sea lions, sea otters and seabirds will be featured in underwater and outdoor habitat settings with the grandeur of Resurrection Bay as a natural backdrop. Inside, large walls of acrylic will create the sense that the viewer, too, is submerged in the ocean environment.

"The Center will become a showcase, demonstrating how public concerns about the environment can be translated into tangible research, management and rehabilitation programs that yield healthier marine environment, said Anderson, who also serves on the RDC Board of Directors. "There is no reason why environmental stewardship groups and resource industries, whether they be tourism, timber, minerals, fisheries or oil, cannot work together to build a healthy Alaska economy, too, for generations to come through projects like the Sea Life Center."

Proponents of the Center have raised \$14.5 million and are seeking \$25 million in funding from the \$900 million Exxon Valdez Settlement Fund. Feasibility evaluations, utilities and topographic studies and various environmental, water and wave analyses have

been conducted. A master plan, which will be completed in February, will identify all permits required. Once full funding for the \$40 million facility is secured, construction will begin. Doors could open by the spring of 1997.

Anderson reported environmental groups support the project in concept, but oppose using Exxon Valdez settlement funds. They prefer to use settlement funds for acquisition of private land and timber rights in Prince William Sound and along the Gulf of Alaska.

With considerable public support for ongoing scientific research in the region, the Exxon Valdez Oil Spill Trustee Council has endorsed the concept, but has yet to give its outright approval to the project. It has, however, included the proposal on its list of proposed 1994 projects now awaiting public comment.

Anderson, enthusiastically championing the project, believes the Sea Life Center is a win-win proposal for the environment and the Kenai Peninsula economy. It would add jobs to the local economy, boost tourism and provide long-term research well into the 21st century.



THURSDAY

Petroleum Club of Anchorage
4101 Credit Union Drive (South side of Sea Galley Restaurant)

January 1994

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Reservations are required for each meeting. Please call 276-0700 by noon Wednesday.
Doors open at 7 a.m., presentations begin at 7:30 a.m.

Members: Breakfast: \$10.50, Coffee & Pastry: \$5.50
Non-Members: Breakfast: \$12.00, Coffee & Pastry: \$6.00

Jan. 6: **Tongass Logging Under Siege**
Martin Pihl, President and General Manager, Ketchikan Pulp Company

Jan. 13: **New Decision on RS-2477 Rights-of-way**
Anna Plager, RS-2477 Project Manager, AK Dept. of Natural Resources

Jan. 20: **Top Five Transportation Issues in '94**
Commissioner Bruce Campbell, Alaska Dept. of Transportation

Jan. 27: **Community Development Quotas**
Karl Ohls, Executive Director, Western Alaska Fisheries Development Ass.

