

HB

359

Original sponsor: Gardiner

Offered: 4/20/79
Referred: Rules

*No
repealed*

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR HOUSE BILL NO. 359

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to salmon enhancement."

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

8 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

9 (1) efficiently enhancing the salmon fisheries will result in a
10 substantial contribution to increased food production and is an appropriate
11 use of the resource;

12 (2) efficiently enhancing the common property salmon fisheries
13 will result in a general benefit to the state and in a greater direct benefit
14 to the commercial, subsistence, and sport fisheries;

15 (3) a direct economic benefit to the commercial fisheries results
16 from efficient salmon enhancement and includes enhanced economic return to
17 those persons commercially harvesting the resource;

18 (4) efficient salmon enhancement will result in increased economic
19 benefit to the coastal and interior regions of the state;

20 (5) regional user involvement in salmon enhancement planning and
21 production will promote maximum benefit to the users as well as maximum
22 resource protection;

23 (6) fisheries commerce in the coastal and interior regions of the
24 state overlap many local government boundaries, is not tied to local govern-
25 ment boundaries, and is primarily in the unorganized borough;

26 (7) it is impracticable for the framework of local government in
27 the state to be the vehicle for efficient aquaculture development;

28 (8) regional organizations comprised of user groups will effec-
29 tively promote aquaculture development in the state;

16 - *Sheet of Fish & Game*
10 - *Fisheries & Fisher Reg*

1 (9) the most equitable and nondiscriminatory method for providing
2 revenues for regional salmon enhancement is to authorize regional associa-
3 tions to assess percentage royalty shares against those persons commercially
4 harvesting the resource within the region.

5 (b) It is the purpose of AS 16.10.375 - 16.10.620 to provide for con-
6 tinuing efficient aquaculture development in the coastal and interior regions
7 of the state in a manner which equally affects and benefits all persons
8 similarly situated and to encourage the development of small, private, non-
9 profit hatcheries that may provide important benefits to the state through
10 increased employment, educational training, and research opportunities.

11 * Sec. 2. AS 16.10.440(b) is amended to read:

12 (b) The Board of Fisheries may, after the issuance of a permit by
13 the commissioner, amend by regulation adopted in accordance with the
14 Administrative Procedure Act (AS 44.62), the terms of the permit re-
15 lating to the harvest of broodstock fish by hatchery operators and the
16 specific locations designated by the department for harvest. The Board
17 of Fisheries may not adopt any regulations nor take any action regarding
18 the issuance or denial of any permits required in (PROMULGATE REGULA-
19 TIONS NECESSARY TO IMPLEMENT) AS 16.10.400 - 16.10.470.

20 * Sec. 3. AS 16.10.510(9) is amended to read:

21 (9) make grants for organizational and planning purposes to
22 qualified regional associations which have formed a nonprofit corpora-
23 tion, in amounts not exceeding \$100,000 per region and up to an addi-
24 tional \$100,000 on a 50/50 cash matching basis with the regional associ-
25 ations which have an authorized royalty assessment under AS 16.10.530 or
26 AS 16.10.540. The state portion of the matching share shall be avail-
27 able when a final vote for assessments is made under AS 16.10.530 or
28 AS 16.10.540. This provision also applies to qualified regional asso-
29 ciations which have formed a nonprofit corporation before June 24, 1977.

Fishery Enhancement

1 * Sec. 4. AS 16.10.520(b) is amended to read:

2 (b) Loans for the total project costs may be made if the commis-
3 sioner determines that the applicant has sufficient financial resources
4 to insure the establishment of an equity position in the project equal
5 to 10 per cent of the loan within six years or less, either through
6 a royalty [AN] assessment levied under AS 16.10.530 or AS 16.10.540 or
7 other means approved by the commissioner. For purposes of this subsec-
8 tion, "total project costs" includes planning and construction costs for
9 the facility and the cost of operations for not more than the first six
10 years. The costs for operations shall be loaned on an annual basis.

11 * Sec. 5. AS 16.10.520(c) is amended to read:

12 (c) All loans must be secured by collateral satisfactory to the
13 commissioner, including but not limited to a first deed of trust,
14 assignment of lease and leasehold improvements, sale of surplus fish
15 from the hatchery, or royalty assessments from fishermen levied under
16 AS 16.10.530 - 16.10.540.

17 * Sec. 6. AS 16.10.530 is amended to read:

18 Sec. 16.10.530. ROYALTY ASSESSMENT ON SALE OF SALMON. (a) The
19 commissioner, on request of the qualified regional association for the
20 area in which the royalty assessment is to be levied, and after consul-
21 tation with the commissioner of fish and game and after reaching any
22 necessary agreements with local governments, shall establish areas in
23 which a royalty [AN] assessment shall be levied on the sale of one or
24 more species of salmon caught by persons holding entry permits [LICENSED]
25 under AS 16.43.010 - 16.43.380 [AS 16.05.540 - 16.05.600], in the area
26 in which the royalty assessment is to be levied. A request by the
27 qualified regional association shall include a description of compliance
28 with (e) of this section. The commissioner shall determine whether the
29 procedural requirements under (e) of this section were followed and

1 whether the proposed assessment is reasonable. A royalty [AN] assess-
2 ment levied under this section shall be for the purpose of providing
3 revenue for the qualified regional association for the area in which the
4 royalty assessment is made. The rate and conditions of royalty assess-
5 ments, including species to be involved, shall be stated by the appro-
6 priate qualified regional association in conjunction with the request to
7 the commissioner under this subsection. The royalty assessment may be
8 equal to either two or three per cent of the fair market value of the
9 fish but may not exceed three per cent of the fair market value of the
10 fish.

11 (b) (repealed)

12 (c) The commissioner and the appropriate qualified regional asso-
13 ciation must agree on a means of collection of the royalty assessment
14 and the commissioner may, by regulation, require its collection by
15 buyers of the salmon upon the sale of which a royalty [AN] assessment is
16 levied.

17 (d) The royalty assessment shall terminate

18 (1) upon request of the qualified regional corporation when
19 all financial obligations relating to the royalty assessments have been
20 met; or

21 (2) upon majority vote at an election held under (h) of this
22 section, in the area in which the royalty assessment is levied either
23 before any financial obligations relating to the royalty assessment
24 have been incurred or after all financial obligations relating to the
25 royalty assessment have been met.

26 (e) Before a royalty [AN] assessment is made under this section,
27 the qualified regional association for the area in which the royalty
28 assessment is to be levied shall hold an initial public meeting to
29 explain and discuss the necessity for the royalty assessment and to

1 explain the registration procedure established under (f) of this sec-
2 tion. Reasonable public notice of the meeting shall be sent to all
3 limited entry permit holders actively participating in a fishery in the
4 area, posted in at least three centrally located public places in the
5 area, and published in at least one newspaper of general circulation at
6 least one time a week for three consecutive weeks in the area, if one
7 exists. The notice shall briefly state the amount of the royalty assess-
8 ment and a short general description of the purposes for which the
9 royalty assessment money will be used. A ballot shall be mailed to all
10 limited entry permit holders actively participating in a fishery in the
11 area at least 20 days before the initial public meeting and contain a
12 copy of the notice and ask the question whether a royalty [AN] assess-
13 ment shall be imposed. At the public meeting the returned ballots shall
14 be counted by a special committee appointed by the regional association
15 for that purpose, and a vote by written ballot shall be taken on the
16 question from among the limited entry permit holders present at the
17 initial public meeting. After the vote is taken at the initial meeting
18 a second public meeting shall be held, upon the limited notice of publi-
19 cation in a newspaper of general circulation, each day for five consecu-
20 tive days and the mailing of personal notice to all limited entry permit
21 holders who actively participate in a fishery in the area at least
22 14 days before the second public meeting, to give those who did not vote
23 by written ballot at the initial public meeting an opportunity to vote.
24 These votes shall be counted with the votes counted at the initial
25 meeting. A majority vote for the royalty assessment is required from
26 the combined total of the returned ballots and the votes by ballot cast
27 at both public meetings, before a royalty [AN] assessment may be im-
28 posed. No person may vote twice.

29 (f) The qualified regional association shall establish standard

1 registration procedures for voting on royalty assessments under this
2 section.

3 (g) A limited entry permit holder who would be qualified to vote
4 on a royalty assessment levied by a regional corporation may request
5 the commissioner to reduce or terminate a royalty assessment in the
6 region. The commissioner may terminate or reduce the royalty assess-
7 ment if he finds the royalty assessment to be unreasonable or to be no
8 longer needed by the regional association to meet the purposes of
9 AS 16.10.372 - 16.10.620.

10 (h) Upon receipt of a petition requesting termination of the
11 royalty assessment and signed by not less than 10 per cent of the number
12 of persons qualified to vote under (e) of this section in the election
13 levying the royalty assessment in the area, the commissioner shall
14 determine if there are any outstanding financial obligations relating
15 to the royalty assessment. If the commissioner determines that there
16 are no outstanding financial obligations relating to the royalty assess-
17 ment, the commissioner shall notify the qualified regional association
18 for the area of his determination. The qualified regional association
19 shall, within two months after receiving notice of the commissioner's
20 determination, hold public meetings and mail ballots in accordance
21 with (e) of this section. The ballots shall ask the question whether
22 the royalty assessment for the area shall be continued. Only a person
23 who is qualified to vote in accordance with (e) of this section may
24 receive and cast a ballot under this subsection.

25 * Sec. 7. AS 16.05.540(a) is amended to read:

26 (a) In place of or in addition to an assessment levied under
27 AS 16.10.530, an association of persons who hold entry permits (LI-
28 CENSED) under AS 16.43.010 - 16.43.380 [AS 16.05.540 - 16.05.600], which
29 consists of at least 51 per cent of the persons holding entry permits

1 [SO LICENSED] and actively participating in a fishery to be benefited by
2 a hatchery program, may levy and collect an assessment from among its
3 members for the purpose of securing and repaying a loan made under
4 AS 16.10.510.

5 * Sec. 8. AS 44.62.330(a) is amended by adding a new paragraph to read:

6 (46) Department of Commerce and Economic Development con-
7 cerning the Fisheries Enhancement Loan Program (AS 16.10.500 - 16.10.-
8 620).

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#3 359 ^{more} CARL Rosser

not just users involved.

#5 line 20 currently reads (3) ^{to} regional involvement in salmon enhancement planning and production will assure maximum economic return as well as maximum resource protection

regional user

split to
commercial - dept.

#5

regional user involvement in salmon enhancement planning and production will promote maximum benefit to the users.

user controlled

Why: regional user verbage ^{will} should include various groups that should be included in the planning, enhancement when regional involvement is too restrictive.

#8 line 28

on (8) user-controlled regional organizations will most effectively ensure efficient aquaculture development in the state.

to regional associations comprised of user groups will effectively promote aquaculture development in the state.

All the various groups represented
Back to multiple interests

Why: Basically same reason as #5 change. regional associations comprised of user groups keeps door open for invol.

line 19
page 6, Sec 8. AS 16.10.440(b)
is repealed -

This entire line to be eliminated

~~delete this to Section~~

SECTION: 16.10.440(b) The Board of Fisheries
may ^{promulgate} ~~adopt~~ regulations, ~~in accordance with~~
~~the Administrative Procedure Act~~ necessary
to implement AS 16.10.400 - 16.10.460
[AS 16.10.400 - 16.10.470]

By repealing 16.10.440(b) The Board of
Fisheries would no longer be involved
in aquaculture. It would then be entirely
left up to the Commissioner of Fish + Game.
Repealing 16.10.440(b) would ~~rep~~ eliminate
Bas involvement in.

16.10.400	Perm. to For Salmon Hatcheries
16.10.410	Hatchery Regs Permit Issuance
16.10.420	Conditions of Permit
16.10.430	Alteration, Suspension
16.10.440	Regulation
16.10.443	Department assistance in Egg Source.
16.10.475	Inspection.
16.10.450	Sale of Salmon + Salmon Eggs. by Hatchery.

16.10.460 Inspection of Hartney
16.10.470 Annual Report.

MOST people feel it is desirable
having the Bd oversee management
of State Resources
The management of the fishery should
be in purview of the board. Limiting
ating

A M E N D M E N T

#1

Offered in the SENATE

By Kerttula

TO: SENATE CS FOR HOUSE BILL NO. 359

Page 1, line 6:

Delete "salmon"; after "enhancement" add the following: "of the salmon fishery through private hatchery development"

Page 7, between lines 4 and 5:

Insert the following new material:

"* Sec. 8. AS 16.43 is amended by adding new sections to read:

ARTICLE 5B. SPECIAL HARVEST AREA ENTRY PERMITS.

Sec. 16.43.335. SPECIAL HARVEST AREA ENTRY PERMITS. (a) In addition to entry permits, interim-use permits, and educational permits, the commission may issue special harvest area entry permits to holders of private, nonprofit hatchery permits issued by the Department of Fish and Game under AS 16.10.400 - 16.10.475.

(b) The commission may issue special harvest area entry permits notwithstanding the establishment of maximum or optimum numbers under AS 16.43.240 and 16.43.290.

Sec. 16.43.337. TERMS AND CONDITIONS OF SPECIAL HARVEST AREA ENTRY PERMITS. (a) Special harvest area entry permits may be applied for on an annual basis and shall be issued for a term of one year. A permit is nontransferable.

(b) A special harvest area entry permit may only be issued for the applicable area designated by the Department of Fish and Game as a special harvest area.

(c) The annual fee for a special harvest area entry permit shall be specified by commission regulation under the authority of AS 16.43.-160.

Sec. 16.43.339. DISPOSITION OF FISH. Fish caught under the authority of a special harvest area entry permit are the property of the permit holder. The permit holder may sell the fish if the proceeds are used in the manner described in AS 16.10.450.

Sec. 16.43.341. AUTHORIZED GEAR. For the purposes of harvesting salmon, a special harvest area entry permit holder may employ any fishing gear designated as legal gear in the applicable special harvest area by the Board of Fisheries.

Sec. 16.43.343. ADOPTION OF REGULATIONS. (a) Use privileges granted under AS 16.43.335 - 16.43.341 are subject to the regulations of the Board of Fisheries.

(b) The commission, after consultation with the Department of Fish and Game, shall adopt regulations which are reasonably necessary to implement AS 16.43.335 - 16.43.341."

Renumber following section accordingly.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
507 455 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 24, 1979

SUBJECT: Sectional analysis - SCS HB 359
(Work Order No. 7188)

TO: Senator Jalmar Kerttula

FROM: Kenneth E. Vassar, Legislative Counsel *KV*

You have requested a sectional analysis of the Senate Resources Committee's substitute for House Bill 359 (An Act relating to salmon enhancement).

The first section of the bill (page 1, lines 8 - 29, and page 2, lines 1 - 10) expresses various legislative findings relating to the benefits to be achieved by efficient salmon enhancement in the state. Subsection (c) of that section attributes certain purposes to AS 16.10.375 - 16.10.620 which relate to efficient aquaculture development in certain parts of the state to encourage the development hatcheries and provide employment, educational training, and research opportunities.

Section 2 of the bill (page 2, lines 11 - 19) amend AS 16.10.-440(b). The effect of the amendment would be to limit the regulatory power of the Board of Fisheries in relation to the provisions of AS 16.10.470 (these sections of the law relate to salmon hatchery permits). Currently, the Board of Fisheries has the power, under this section, to "promulgate regulations necessary to implement" these sections. The proposed amendment would limit the board's regulatory power in this specific area by allowing the board to adopt regulations amending the terms of permits issued under AS 16.10.-400 - 16.10.470 which relate to the harvest of broodstock fish by hatchery operators and to the specific locations designated by the department for harvest by the hatchery operators. The amendment would specifically provide that the board may not adopt regulations or take any action regarding the issuance or denial of a permit.

Sections 3 - 6 of the bill (page 2, lines 20 - 29, pages 3 - 5, and page 6, lines 1 - 24) insert the word "royalty" before "assessment" wherever the latter appears in AS 16.10.-500 - 16.10.620 (fisheries enhancement loan program). This is the only amendment provided in sections 3 - 5 of the bill (page 2, lines 20 - 29, and page 3, lines 1 - 16). AS 16.10.-500 - 16.10.620 establishes a loan program for hatchery operators. The purpose of the assessments is to secure and provide a means of repaying the loans made under those sections.

Section 6 of the bill (page 3, lines 17 - 29, pages 4 - 5, and page 6, lines 1 - 24) amends AS 16.10.530. In addition to adding the word "royalty" as mentioned above, the section would amend the following subsections of AS 16.10.530 in the following manner:

- (a) (1) requires qualified regional associations to reach "any necessary agreements with local governments" before levying assessments;
 - (2) replaces obsolete language by providing that the assessment is levied upon the sale of salmon caught by persons "holding entry permits" rather than persons "licensed under AS 16.05.540 - 16.05.600;
 - (3) restricts the amount of the assessment to either two or three per cent of the fair market value of the fish.
- (d) adds a new paragraph (2) which allows for the termination of a royalty assessment in accordance with procedures described in (h) of the section.

It also adds the following new subsections:

- (g) an entry permit holder who would be qualified to vote on the levy of the assessment may request the commissioner to reduce or terminate an assessment in the region; the commissioner may reduce or terminate the assessment if he finds it to be unreasonable or no longer necessary for the purposes of the hatchery;
- (h) alternatively, the assessment may be terminated by an election called by petition of 10 per cent of the persons qualified to vote for the levy of an assessment in a region. The commissioner will terminate the assessment only if there are no outstanding financial obligations relating to the assessment.

Section 7 of the bill (page 6, lines 25 - 29, and page 7, lines 1 - 4) amend AS 16.10.540(a) by replacing the obsolete language "persons licensed under AS 16.05.540 - 16.05.600" with "persons holding entry permits."

Section 8 (page 7, lines 5 - 8) amends AS 44.62.330(a) by adding a new paragraph (46). The effect of this amendment is to place the activities of the Department of Commerce and Economic Development relating to the Fisheries Enhancement Loan Program under the administrative adjudication provisions of the Administrative Procedure Act.

KEV:nem

March 27, 1979

RE: HB 359 Salmon Enhancement

A word on the above bill which is now in Senate Resources. While the first section of this bill contains a list of findings and purposes of dubious validity, I have no desire to argue the premises related to aquaculture. I am greatly disturbed, however, at the effect of the apparently innocuous Section 8 which simply states "AS 16.10.440 (b) is repealed."

This sub-paragraph reads as follows:

(b) The Board of Fisheries may promulgate regulations necessary to implement §§400-470 of this chapter.

✓ Deletion of this portion of the statute would put the Board of Fisheries out of the aquaculture business and leave it entirely up to the Commissioner. In testimony before the House Resources Committee, Speaker Gardiner stated that it had not been the original intent of the legislature that the Board be in a position to scrutinize matters relating to aquaculture.

I question this. ✓

Many years before Representative Gardiner attained to the Legislature, far-thinking lawmakers determined the desirability of having a Board to oversee the management of the State's fishery resources. Time has proven the value of this decision, though many of today's problems stem from failure of the Board to exercise close enough scrutiny over the activities of the Department, its top administrator, and lesser bureaucrats.

Aquaculture will, it is fervently hoped, contribute to the total salmon stocks available to the common property fishery. The management of this fishery is, without argument, within the purview of the Board. It seems strange to contend that the Board must manage but can have no voice in providing direction to efforts the result of which it must inevitably deal with.

Passage of this section would be a disastrous, precedent-setting action. It would place the Commissioner of Fish and Game (and the Department) another step further beyond the control of the Board and further imbalance a relationship originally intended (at least in part) to be a check-and-balance situation. I am disappointed to see Terry make this proposal. One should not speculate upon the existence of any possible quid pro quo's between the proponents of this legislation and members of the Department but I do believe strongly that Section 8 of this bill should be deleted by the Senate (preferably in the Resources Committee) or we can expect to find some foxes in the henhouse at some time in the future.

This is why our founding fathers provided for a Board.