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COMMITTEE REPORT

HOUSE

4/24/81

FURTHER:

(11)

Date:

March 12, 1982

Mr. Speaker:

The Committee on RESOURCES has had HR 528

"An Act making miscellaneous amendments to the fish and game code (AS 16)."

under consideration and reports it back as follows:

do pass [] do not pass

[] do pass with attached amendments(s)

replace with CS for HR 528 RESOURCES same title
[] new title
and recommends _____

[] AND attaches a "Letter of Intent" [] New Fiscal Note

[] reports it back without recommendation

[] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

[Signature]

CHAIRMAN

SECTION-BY-SECTION ANALYSIS

Sections 1, 3, 5, 6, and 24 would change the word "chapter" to read "title", where appropriate, so that the powers and duties of the boards, commissioner and department, and definitions, apply to the entire title. The legislature first enacted AS 16.05 in 1959 and at that time it was the entire fish and game code. When AS 16.10 -- AS 16.40 were added, the various powers or obligations established in AS 16.05 should have been, but were not, amended to cover the new chapters. This oversight has left gaps in the statutes which need to be corrected.

Section 2 would expressly authorize the commissioner of fish and game to conduct research and enter into cooperative agreements and contracts.

In addition to cooperative agreements, it is also appropriate for the department to enter into contracts or to make grants for specific projects. Section 2 also would require the commissioner to establish criteria governing department grants and contracts to insure that those expenditures are a wise investment of public money.

Sections 4 and 5 would authorize peace officers to arrest persons violating the fish and game title and permit the officers to execute warrants. The word "chapter" is changed to "title" so that uniform enforcement procedures will apply to all of Title 16. In addition, the requirement that offenders be brought before a magistrate "immediately" is, in this amendment, dropped. This would delete an unnecessary burden imposed on protection officers. Also, the mandatory requirement that deputies arrest all offenders is stricken because an arrest for certain minor violations may not be appropriate and could result in unnecessary expenditures for enforcement and prosecution.

*Brown
intent*

Section 7 would delete the requirement that fish and game enforcement officers provide an "intent to search" statement before conducting a warrantless search. This requirement is not necessary to make a warrantless search valid under art. I, sec. 14, of the Alaska Constitution, and can cause an otherwise valid search to be considered invalid.

Section 8 changes the purposes of board regulations from "conservation and development of the resource" to "conservation or development" of the resource which would recognize that not all board regulations need to serve both a conservation and a development function (e.g., gear restrictions, closed areas and other clearly conservation provisions). This section also expresses

the purpose, implicit in "development," of benefiting the interest of the economy or general welfare of the state (e.g., allocations among user groups and subsistence provisions). This change is consistent with art. VIII of the Alaska Constitution and with AS 16.05.020(2).

Sections 9 and 11 set out the authority of the Board of Fisheries and the Board of Game, respectively, to set quotas and bag limits. No express authorizations exist for harvest levels or sex and size limitations, even though regulations of this nature are basic to resource management and have been adopted based on interpretations of other board powers. This authority should be made express as a legal safeguard.

Sections 10 and 13 would clarify the appropriate authority of the boards to engage in biological research, which is a departmental function.

The Board of Game does not adopt regulations regarding investigation of predators, which is an administrative function of the department. It does, however, establish methods and means and harvest levels for the taking of predators or other competitors through regulations. Section 12 would amend existing law to reflect this fact.

Section 14 would eliminate the burden upon sport fishing license vendors who must distinguish between long-term nonresidents and short-term sojourners when issuing 10-day and one-day licenses. The problem arose because the definition of "visitor" included only temporary nonresidents and did not include long-term nonresidents or those awaiting residency status. Vendors have been unable to distinguish between classes of nonresidents. The proposed change is fair and will be more efficient to administer.

Sections 15 and 16 would make technical amendments to AS 16.05.340(a)(9), and AS 16.05.340(b) to clarify the meaning of existing law.

AS 16.05.390 currently requires license vendors to monthly transmit revenues to the Department of Revenue. Section 17 would provide flexibility in the law, so that vendors who sell many licenses could be required by the department to submit transmittals more frequently than once per month; conversely, vendors who sell few licenses can be allowed to submit transmittals less frequently, perhaps two or three times per year. This will provide for the collection of revenue as needed for management and enforcement purposes and permit the timely investment of revenues.

In section 18, existing law which describes areas no longer used in the management of king crab would be deleted.

In 1975, AS 16.05.831(a) was enacted to prohibit the waste of salmon. However, that section contains an ambiguity that could nullify the law's effectiveness. Section 19 would clarify the scope of the law and make it enforceable by expressly providing that any salmon for sale, whether to a private individual or a commercial buyer, may not be wasted.

Section 20 would make grammatical changes in the anadromous fish protection statute to correct an apparent deficiency. Currently, only a person or agency desiring to use, divert, obstruct, pollute or change the flow or bed of an anadromous fish stream must first notify the commissioner. In order to make AS 16.05.870 enforceable, notification would be required before any activity which may change the stream or pollute the stream.

Section 21 would restrict the criminal sanctions in AS 16.05.900 to apply only to AS 16.05.870 -- 16.05.895, relating to anadromous fish protection. The basic penalty section for Title 16 would be moved to a new section (AS 16.05.925 contained in section 23 of the bill) under the "general provisions" article, where it more logically belongs.

Sections 22 and 23. The basic prohibition contained in Title 16 is that it is unlawful to possess fish and game unless permitted by statute or a regulation of the boards. This prohibition and accompanying penalty are AS 16.05.920(a) and 16.05.900(a), respectively. Section 23 would set out the general penalty section separately in AS 16.05.925. Through apparent oversight which resulted from enactment of AS 16.20 well after enactment of AS 16.05, certain prohibitions were created by regulation without an enforceable penalty. Proposed AS 16.05.925 would provide a uniform penalty for the violation of a regulation adopted under AS 16.05 or AS 16.20. Also, section 22 changes "made" to "adopted," with regard to regulations, for the sake of consistent terminology. Section 23 makes the penalty a class A misdemeanor to conform with sentencing under AS 12.55.035 and 12.55.135.

Section 24. This section is the basic definition section for AS 16. Three of the definitions contained in this section would be amended as follows:

- (1) the definition of "fish" would be amended to include parts of the fish; this would affect enforcement, for example, when salmon roe is sold separately from the carcass;

(2) the definition of "game" would be amended to include reptiles; this would provide regulatory authority to control the importation of undesirable snakes and other reptiles into the state;

(3) in AS 16.05.940(11), "rules and regulations promulgated" would be changed to "regulations adopted" for the sake of consistent terminology and to remove a redundant use of terms; and

(4) the definition of "fur dealing" would be rewritten for clarity and to correct punctuation errors.

Section 25 would add a criminal sanction for wasting herring. Existing law prohibits this waste but does not clearly specify a criminal penalty.

Section 26. During a recent Bristol Bay price dispute, the department's role in setting up mediation was hampered by the need to actually "certify" that one-third of the registered fishermen were involved in a price dispute, as provided under existing law. Given the information available, this is not always possible; consequently, this section would amend AS 16.10.280 to allow the department's determination of a price dispute to be based on an estimate of the number of fishermen involved.

Section 27 would correct a technical error in the land description of the Susitna Flats State Game Refuge, established by ch. 140, SLA 1976.

Section 28 would add a criminal sanction for possession of raw horns or antlers of wild food animals without the edible meat. Existing law fails to specify the appropriate criminal penalty.

AS 16.35.200 requires consent in writing, from the board for deployment of poisons. Section 29 would transfer this function to the department through regulations to be adopted by the board.

Section 30 would repeal the following laws:

(1) AS 16.05.25(a)(9) and 16.05.255(a)(8). These provisions empower the boards to adopt regulations for cooperative agreements to promote research, education and to train persons for management. These are administrative functions and do not require board regulations. The repeal of these sections will permit the separation of the rule-making functions of the boards from the administrative functions of the commissioner.

(2) AS 16.05.632. This section requires the issuance of identification tags for king crab pots or buoys in areas where king crab pot limits are in effect. I propose the repeal of these requirements because these requirements impose a substantial and unnecessary burden upon fishermen who must obtain and display the tags, as well as upon the state which must issue the tags and enforce the requirements. In addition, there appears to be little biological justification for king crab pot limits and law enforcement officers have often presented evidence to the board demonstrating that the use limits are not enforceable. Because this statute does not enhance enforcement, and has no identifiable conservation and development purpose, it should be repealed.

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(3) AS 16.05.835 and AS 16.10.120. These sections establish a maximum length for salmon seine vessels and prohibit the use of drum seines, respectively. The two prohibitions are essentially duplicated by regulations of the Board of Fisheries (5 AAC 39.160 and 5 AAC 39.155, respectively). After the introduction of limited entry in the salmon net fisheries, there has been increasing interest in removing the prohibitions in some seine fishing areas. The statutes are inflexible; they should be repealed which would enable the Board of Fisheries to determine vessel limits by reasonable regulations based on conservation and development considerations for each area of the state under AS 16.05.251(a)(4).

(4) AS 16.05.903. Legislation creating the Alaska Big Game Photo Contest was enacted in 1975. The original intent was that revenues from entry fees and the sale of a published volume of the winning photographs would generate enough money to pay for cash prizes and operating expenses. Unfortunately, the revenues from the sale fell far short -- less than 20 percent of the costs were recovered during the first year. The 1975 legislation created public criticism of the department with respect to spending priorities and proper use of the taxpayer's money. The repeal will not affect the continuation of the department's annual Wildlife Photo Contest.

(5) AS 16.10.230(1). This section provides exemptions to the unlawful taking of migratory fish and shellfish in high seas areas designated by the Board of Fisheries. The International Pacific Salmon Fisheries Commission no longer exists and enactment of the federal Fisheries Conservation and Management Act (P.L. 94-265) makes the exemptions

set out in the statute obsolete; therefore, this subsection should be repealed.

(6) AS 16.15.101 - 16.15.090. This chapter created the Alaska Fisheries Experimental Laboratory which no longer exists.

(7) AS 16.35.010 - 16.35.180. These sections relate to bounties which are no longer paid. The bounties on seals are in conflict with the Marine Mammal Protection Act of 1972, which preempted these state laws. In addition, AS 16.05.255 provides that the Board of Game may establish bounties through the adoption of regulations. The remainder of these sections pertain to employment of trappers and hunters for predator control, and have become obsolete.

Proposed amendments to HB 528

Page 2, line 28: Delete Section 7

Page 3, line 13: Delete Section 8

Page 5, line 16: Delete Section 17, or alternatively:

line 22: Delete: "as directed by the commissioner of revenue"
and replace with:
"soon as practicable after the last day of each
calendar month or quarter, as directed by the
commissioner of revenue"

Page 6, line 19: Delete: "who constructs"
and replace with:
"which intends to construct"

line 26: after "activity", insert:
"set out in this subsection"

Page 13, line 13: Delete: "16.05.835,"

line 14: Delete: "16.10.120"

MEMORANDUM

State of Alaska

TO: Legislative File
Paul Conger
Department of Public Safety
Juneau

DATE: February 11, 1982

FILE NO:

TELEPHONE NO:

FROM: Lt. Colonel Tetzlaff
Deputy Director
Fish & Wildlife Protection
Anchorage

SUBJECT: HB 528

On February 4, 1982 at 2:00 p.m., an informal meeting was held with the House Resource Sub-Committee in reference to the revision of Title 16 as per HB 528. Present were Sutcliffe, Crussendorf, Vaske, three legislative aides and myself.

Prior to this meeting I met with Larry Edfelt of ADF&G who briefed me on the bill and where this sub-committee was hung up and/or had some enforcement questions that were raised at previous committee meetings.

Their questions were focused primarily on Section 16.05.180 power to search without warrant. And particularly that part that requests deleting the written receipt, page 3, lines 5 through 12.

I explained what is required of 16.05.180 as written today in that not only does the officer have to have probable cause to search under this section but must submit to the person he is going to search or to the person in control of the property a signed, written statement that he is going to search. I explained that this is strictly an additional administrative step required of any officer that enforces Title 16 and that it does not make an invalid search valid and/or does it give the officer any more or less authority. But it may invalidate an otherwise valid search if not complied with.

In other words it is strictly an additional administrative requirement of any officer that enforces Title 16 and in particular conducts a warrantless search. In 1959 Attorney General Opinion No. 15 says:

Requirement of written signed statement objectionable but valid. --The amendment requiring a written signed statement of the reason for the search is objectionable but valid. It is objectionable because it unnecessarily ties the hands of the field agents charged with enforcement of the fish and game laws, and is a provision which is quite uncommon, if not unique.

I could not explain the intent of this part of 16.05.180. Although later Judge Williams provided me with the attached. A copy was given to Sutcliffe.

February 11, 1982

The bottom line is I personally feel the committee or a part thereof feels by eliminating this requirement they would be giving us more authority and/or to search at random.

OT/rt
attachments

cc: Colonel Stickles
Lt. Mills



District Court

State of Alaska

JUNEAU COURT and OFFICE BUILDING

POUCH U

JUNEAU, ALASKA

99811

CHAMBERS OF
GERALD O. WILLIAMS, JUDGE

February 4, 1982

Resources Committee
Alaska State Legislature
Juneau, Alaska

In re: AS 16.05.180 "Intent to Search"

Gentlemen:

Colonel Tetzlaff indicated to me that your Committee has expressed some interest in the above section, its history, and its present impact and effect upon Fish and Wildlife Enforcement operations. I am pleased to provide the following information.

I am familiar with the statute when it was originally drafted by the Legislative Affairs Agency in 1959 as a part of the basic legislative program for the re-organization of the State Government programs following Statehood. As a Staff Officer of the Department of Territorial Police at the time, I worked with the Legislative Affairs Agency in the original drafting of the Fish and Game Law Enforcement Provisions.

It was the intent of the Legislative Affairs Agency to draft a statutory authority which would provide a basic legal framework for wildlife law enforcement which was at least analogous to the statutory authority provided to the U.S. Fish and Wildlife Service which provided these services before Statehood. The USD&WS had broad powers in conducting searches and seizures incidental to wildlife enforcement and used this authority regularly during their operations in Alaska.

We incorporated substantially the same statutory language. However, the Legislative Committee was prevailed upon by their attorney members, particularly Mr. Wendell Kay, as I recall to seriously dilute the search and seizure authority which the bill was intended to provide. Some members of the Legislature felt that a broader search and seizure should be allowed for fish and game enforcement, and a compromise was suggested by Mr. Kay wherein the present language was incorporated. This language did not

Resources Committee

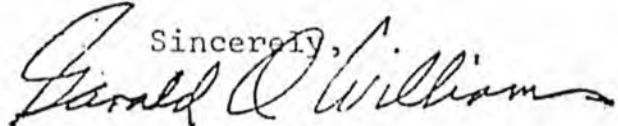
Page Two

February 4, 1982

broaden their authority, it has the opposite effect, but restricts it even more than the common-law authority which peace officers have to conduct search and seizures in every other area of criminal law enforcement.

This provision serves no legal purpose, is confusing and at the very least imposes a constricting effect on Fish and Wildlife Enforcement Officers. I say it has no legal effect, because if the issue were ever reviewed by the Alaska Supreme Court, I am convinced in my own mind that they would rule that it is merely "administrative" and should be dispensed with. Unfortunately, it is confusing to the officers themselves, to the public, and provides a touchstone for argument to defense attorneys and a confusing requirement which legally untrained Magistrate's frequently feel is fundamental to the entire issue of the search and seizure involved. I would suggest that from what Col. Tetzlaff has relayed to me concerning the Committee's own review of this section, that you too wonder what the hell it is supposed to mean. I would submit, that it represents nothing other than a well known defense attorneys ploy to confuse his fellow legislators and confound the law and law enforcement.

Sincerely,



Gerald O. Williams
District Court Judge

GOW/kw



HB 528

District Court

State of Alaska

JUNEAU COURT and OFFICE BUILDING

POUCH U

JUNEAU, ALASKA

99811

February 4, 1982

CHAMBERS OF
GERALD D. WILLIAMS, JUDGE

Resources Committee
Alaska State Legislature
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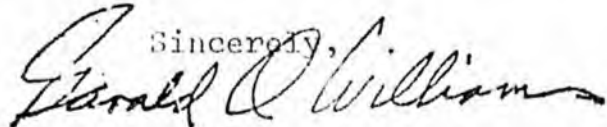
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February 4, 1982

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Sincerely,



Gerald O. Williams
District Court Judge

GOW/kw

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. House Bill 528
 Title Act making miscellaneous amendments to Fish & Game code (AS16)
 Requested by House Resources Committee Date 2-5-82

II. FISCAL DETAIL
 Agency Affected Department of Public Safety
 Program Category Affected NRMEC
 BRU, Program, Or Subprogram(s) Affected Fish & Wildlife Protection
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No Fiscal Impact

IV. DATE 2-5-82 PREPARED BY *Don Tezloff*
 AGENCY Department of Public Safety
 PHONE 269-5534
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named) *Auto*
 33-001 (Rev. 12/81)

ENTERED FEB 0 4 1982