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STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

465-2600

5 1983
BILL SHEFFIELD, GOVERNOR

POUCH 0 - JUNEAU 99811

April 4, 1983

The Honorable Richard Shultz
House of Representatives
Co-Chairman House Resources
Pouch V
Juneau, Alaska 99811

Dear Mr. Shultz:

Please accept this letter as a reiteration of DEC's position on HB 256 (attached). This department objects to proposed legislation to amend AS 16.10.020 to read DEC instead of DHSS. The permitting responsibility contained in .020 more appropriately belongs to the Department of Fish and Game and could easily blend into their current Title 16 permitting activities.

Accordingly this department supports amending AS 16.10.010 to read Department of Fish and Game instead of DEC and amending AS 16.10.020 to read Department of Fish and Game instead of DHSS. This would support the intent of Title 16.

Please feel free to call me or Randy Bayliss of my staff (465-2653) with any questions you may have on this position. Thank you for your attention to this matter.

Sincerely,



Richard A. Nave
Commissioner

cc: Bruce Baker, DFG
Paddy McGuire, DFG
Randy Bayliss

HB 256 - RELATING TO PERMITS FOR
DEVELOPMENT OF SALMON STREAMS

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
POSITION PAPER

BEFORE THE HOUSE RESOURCES COMMITTEE
March 23, 1983

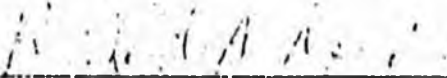
This department objects to proposed legislation to amend AS 16.10.020 to read DEC instead of DHSS, based upon the following reasoning: -

1. Passage would result in duplication of existing permit functions in the Department of Fish and Game (AS 16.05.840-870).

2. This section is more habitat or enhancement-oriented than water quality.

3. DF&G staff agree that the permitting responsibilities contained in these two sections could be easily blended into DF&G's current Title 16 permitting activities.

The department does support amending AS 16.10.010 to read Department of Fish and Game instead of DEC and amending AS 16.10.020 to read Department of Fish and Game instead of DHSS. This would support the intent of Title 16 and minimize implementation costs.



Richard A. Nevel
Commissioner

commercial purposes and by the Alaska Constitution, art. VIII, § 15, providing that "no exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the state." They were further modified by the enactment by the first state legislature of a law making it unlawful to erect, moor or maintain fish traps (SLA 1959, ch. 17), and by a later

enactment (SLA 1959, ch. 95) making it unlawful to operate fish traps and prescribing penalties therefor. (See AS 16.10.070 — 16.10.110). Metlakatla Indian Community, Annette Island Reserve v. Egan, Sup. Ct. Op. No. 42 (File Nos. 21—23), 362 P.2d 901 (1961), vacated and remanded on other grounds, 369 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1962).

Chapter 10. Fisheries and Fishing Regulations.

Article

1. Interference with Streams and Waters (§§ 16.10.010 — 16.10.055)
2. Fish Traps and Other Illegal Fishing Devices (§§ 16.10.060 — 16.10.130)
3. Herring Spawn (§§ 16.10.140 — 16.10.173)
4. Migratory Fish and Shellfish (§§ 16.10.180 — 16.10.230)
5. Transportation of Fish and Shellfish (§§ 16.10.240 — 16.10.250)
6. Purchase of Fish (§§ 16.10.270 — 16.10.296)
7. Commercial Fishing Loan Act (§§ 16.10.300 — 16.10.370)
8. Salmon Hatcheries (§§ 16.10.375 — 16.10.475)
9. Fisheries Enhancement Loan Program (§§ 16.10.500 — 16.10.620)

Article 1. Interference with Streams and Waters.

Section

10. Interference with salmon spawning streams and waters
20. Group. — for permit or license
30. Violation of §§ 10 — 55 of this chapter a misdemeanor
40. Disposition of money received for fines and penalties

Section

50. Construction of §§ 10 — 50 of this chapter
55. Interference with commercial fishing gear

Sec. 16.10.010. Interference with salmon spawning streams and waters. It is unlawful for a person to

(1) obstruct, divert or pollute waters of the state, either fresh or salt, utilized by salmon in the propagation of the species, by felling trees or timber in those waters, casting, passing, throwing or dumping any tree limbs or foliage, underbrush, stumps, rubbish, earth, stones, rock or other debris, or passing or dumping sawdust, planer shavings, or other waste or refuse of any kind in those waters;

(2) erect a dam, barricade or obstruction to retard, conserve, impound or divert these waters to prevent, retard or interfere with the free ingress or egress of salmon into these waters in the natural spawning or propagation process;

(3) render the waters inaccessible or uninhabitable for salmon for that purpose without first applying for and obtaining a permit or license from the Department of Environmental Conservation. The application shall set out the name and style of the person or concern, describe the waters and location and state in particular the plans, purpose and intention for which the application is made. (§ 39-2-31 ACLA 1949; am § 12 ch 117 SLA 1949; am § 6 ch 104 SLA 1971; am § 12 ch 208 SLA 1975)

Effect of amendment. — The 1975 amendemnt substituted "Department of Environmental Conservation" for "Department of Health and Social Services" at the end of the first sentence of

paragraph (3) and substituted "set out" for "set forth" near the beginning of the second sentence of that paragraph. Am. Jur. reference. — 22 Am. Jur., Fish and Fisheries, § 34 et seq.

16.10.020. Grounds for permit or license. If in the judgment of Department of Health and Social Services, the purpose of the applicant for the permit or license is to develop power, obtain water for civic, domestic, irrigation, manufacturing, mining or other purposes tending to develop the natural resources of the state, the department may grant the permit or license and may require the applicant to construct and maintain adequate fish ladders, fishways or other means by which fish may pass over, around or through the dam, obstruction or diversion in the pursuit of the propagation or spawning process. (§ 39-2-32 ACLA 1949; am § 12 ch 117 SLA 1949; am § 6 ch 104 SLA 1971)

Revisors's note (1962). — Under AS 16.05.840 the commissioner of fish and game determines when a fishway or other similar device should be constructed.

Sec. 16.10.030. Violation of §§ 10 — 55 of this chapter a misdemeanor. A person who violates §§ 10 — 55 of this chapter is guilty of a misdemeanor and, upon conviction is punishable by a fine of not less than \$100 nor more than \$500. (§ 39-2-33 ACLA 1949; am § 13 ch 208 SLA 1975)

Effect of amendment. — The 1975 amendment substituted "§§ 10 — 55" for "§§ 10 — 50."

Sec. 16.10.040. Disposition of money received for fines and penalties. The proceeds of all fines and penalties imposed under §§ 10 — 50 of this chapter shall be paid into the general fund and they shall be immediately available for expenditure by the Department of Fish and Game. (§ 39-2-34 ACLA 1949)

Sec. 16.10.050. Construction of §§ 10 — 50 of this chapter. Sections 10 — 50 of this chapter do not affect the vested rights or privileges granted by federal statute to any person. (§ 39-2-35 ACLA 1949)

Sec. 16.10.055. Interference with commercial fishing gear. A person who wilfully or with reckless disregard of the consequences of his activity, interferes with or damages the commercial fishing gear of another person is guilty of a misdemeanor. For the purposes of this section "interference" means the physical disturbance of gear which results in economic loss or loss of fishing time, and "reckless disregard of the consequences" means a lack of consideration for the consequences of one's acts in a manner that is reasonably likely to damage the property of another. (§ 1 ch 55 SLA 1971)

- Section
- 60. [Repealed]
- 70. Fish traps un waters in
- 80. Federal comp
- 90. Penalties for chapter
- 100. Fish traps or waters

Sec. 16.10/ Repealed b

Editor's note derived from § :

Sec. 16.10/ state. It is u floating, pile- lands, tidela prevent the ordinarily w operated in o

Purpose. — 16.10.070 — measure. Its of relief of ec fishermen, to supply of a competition in had every rigl applicable to unless its poli Natives while curtailed. Met) Annette Island Op. No. 42 (Fil (1961), vacate grounds, 369 U 2d 562 (1962). Fish trap. principally of across or part;

Sec. 16.1 chapter sha Stat. 339, v Alaska, unc other prope be held by I



Alaska State Legislature

House of Representatives

March 1, 1983

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

Rep. Schultz

*10:30 AM
Sandy
Rep*

MEMORANDUM

TO: Representative Joe Flood

FROM: Mark K. Johnson
Staff Counsel *MK*

MAR 23 REC'D

SUBJECT: "An Act relating to permits for the development of natural resources affecting salmon spawning streams and waters."

This legislation represents a technical change to AS 16.10.020. The present statute calls for the Department of Health & Social Services to make certain determinations regarding the use of water and development of water power when those activities would have an effect on fisheries.

Research reveals that the Department of Health & Social Services has never possessed the technical capability to perform this function and is not currently performing it. Similar statutes in title 16 suggest that if the function is to be performed, it should be performed by the Department of Environmental Conservation. It could also be argued that the Department of Fish and Game should be the responsible agency. Regardless of which of these two agencies is designated, it is clear that the Department of Health & Social Services is not the appropriate agency. Committee hearings would hopefully resolve the Fish & Game/Environmental Conservation issue.

No statement on the advisability of the statute or of the agency implementing it is intended by this proposed legislation. Those questions should be resolved by committee deliberations.

Marking

STATE OF ALASKA 1984 LEGISLATIVE SESSION
HOUSE RESOURCES COMMITTEE

FISCAL NOTE

Revision Date: November 30, 1983

JAN 14 REC'D

I. REQUEST

Bill/Resolution No.: CSHB 256
Title: Permits for Development of Streams
Sponsor: House Resources Committee
Requestor: _____
Date of Request: _____

II. FISCAL DETAIL

Agency Affected: Fish and Game
Program Category Affected: NRMEC
BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						
TOTAL						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

OFFICE OF
MANAGEMENT & BUDGET

NOV 30 1983

BUDGET REVIEW

I. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Beverly Reaume
Division: Administration
Approved by Commissioner: [Signature]
Department: Fish and Game

Phone: 465-4120
Date: _____
Date: 11/29/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

9/14/83

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Richard A. Neve
Commissioner

STATE OF ALASKA
FISCAL NOTE

Revision Date April 6, 1983

I. REQUEST

Bill/Resolution No.: CS for HB 256
 Title: "resources affecting salmon spawning."
 Sponsor: Resources
 Requestor: Flood, Ueling & Grussendorf

II. FISCAL DETAIL

Agency Affected: FISH & GAME
 Program Category Affected: N/A
 BRU, Program of Subprogram(s) Affected: N/A

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

No Fiscal Impact

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Beverly Reaume Phone: 455-4120
 Division: Administration Date: April 6, 1983
 Approved by Commissioner: Don W. Collinsworth Date: April 7, 1983
 Department: FISH & GAME

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BILL SHEFFIELD, GOVERNOR

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April 4, 1983

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