

SCOMM

#48:19

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

POUCHY - STATE CANTON
JANUARY, ALASKA 99511
907-465-3888

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Special Committee on Fisheries, 3/12/85, 8:30 am



Official Business

Alaska State Legislature

House of Representatives

Special Committee on Fisheries

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

March 11, 1985

SECTIONAL ANALYSIS OF HB 260

"An Act relating to legislative policy on herring stripping;
and providing for an effective date."

Section One: Repeals a legislative finding that, notwithstanding a statutory policy of full utilization, the benefits of herring stripping may outweigh the waste in some circumstances. Those circumstances exist when (1) the resource is large enough "to support a stripping industry without substantially reducing the availability of herring for other uses" and (2) the stripping takes place in areas with a developing seafood industry.

Section Two: Provides for an immediate effective date.

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM

March 12, 1985

SUBJECT: Effect of HB 260
TO: Representative Marco Pignalberi
FROM: Edward H. Hein *EH*
Legislative Counsel

You have asked whether herring stripping is currently illegal and also what would be the effect of HB 260 as currently drafted.

Under AS 16.10.173 it is a class A misdemeanor to "waste or cause to be wasted any commercially taken herring." Waste is defined in a way that includes herring stripping. Section 1, ch. 27, SLA 1980, however, states a "legislative policy" that "notwithstanding AS 16.10.173, the disposal of herring carcasses is acceptable" if two stated conditions are met. This is, in my opinion, an inartfully drawn exception to the ban on stripping. Nonetheless, it is apparent that the legislature intended to create the exception. The better legal argument is that the legislature did effectively create an exception to the ban and that it must be given effect. It is not clear from the language of the session law who is to make the initial determination of whether the conditions have been met in any given case.

If one wants to eliminate any question that commercial herring is banned, section 1, ch. 27, SLA 1980 must be repealed. That is what HB 260 does.

EHH:ojb
J12/083

Article 3. Herring Spawn.

Section

140 -- 170. [Repealed]

172. Legislative policy on utilization of herring

Section

173. Utilization of commercially taken herring

Secs. 16.10.140 -- 16.10.170.

Repealed by § 2 ch 91 SLA 1970.

Sec. 16.10.172. Legislative policy on utilization of herring. The legislature finds the following: (1) extensive and valuable herring populations are available for harvest in waters subject to the jurisdiction of the state; (2) commercial markets are available for herring processed in several forms; (3) one processing technique presently employed involves deliberately permitting decomposition of the herring carcass to allow for removal and subsequent sale of the roe product, with the consequence that the flesh is unusable and discarded. The legislature declares that the process referred to in (3) of this section is wasteful and does not constitute utilization of this resource for the maximum benefit of the people. Therefore, it is the policy of the legislature that this process should be eliminated to the fullest extent possible. (§ 1 ch 9 SLA 1977)

Effective date. — Section 2, ch. 9, SLA 1977, provides: "This Act takes effect January 1, 1978."

Sec. 16.10.173. Utilization of commercially taken herring. (a) It is unlawful for a person, as defined in AS 01.10.060 and including a joint venture, to waste or to cause to be wasted any commercially taken herring.

(b) As used in this section, "waste" means the failure to use the flesh of commercially taken herring for reduction to meal, production of fish food, human consumption, food for domestic animals, scientific or educational purposes, or round herring bait. Normal, inadvertent loss of flesh associated with the uses described in this subsection which cannot be prevented by practical means does not constitute waste. The commissioner may authorize other uses of commercially taken herring not inconsistent with the intent of this section and § 172 of this chapter at his discretion upon receipt of a request accompanied by a detailed justification.

(c) For purposes of this section, "flesh" means all muscular body tissue surrounding the bony skeleton of the herring.

(d) The Board of Fisheries may adopt regulations under the Administrative Procedure Act (AS 44.62) it considers necessary for implementation of this section. The board may delegate its authority under this section to the commissioner.

(e) The provisions of this section do not apply to herring taken commercially in the Bering Sea (including appurtenant bays, sounds, estuaries, and water of the state) north of 56° North Latitude, until January 1, 1979. (§ 1 ch 9 SLA 1977)

Effective date. — Section 2, ch. 9, SLA 1977, provides: "This Act takes effect January 1, 1978."

Article 3. Herring Spawn.

Section

175. Removal of herring from state

Sec. 16.10.172. Legislative policy on utilization of herring.

Editor's notes. — Section 1, ch. 27, SLA 1980 provides: "LEGISLATIVE FINDINGS AND POLICY ON HERRING STRIPPING. (a) Notwithstanding AS 16.10.172, the legislature finds that in cer-

tain circumstances the processing technique described in AS 16.10.172(3), commonly referred to as "stripping", provides benefits of such importance to the state economy that the benefits may

§ 16.10.173

FISH AND GAME

§ 16.10.200

outweigh the waste involved in the process.

"(b) It is the policy of the legislature that notwithstanding AS 16.10.173 the disposal of herring carcasses is acceptable only if

"(1) the herring is taken from waters in which the herring population is large enough to support a stripping industry

without substantially reducing the availability of the herring for other uses; and

"(2) the stripping process is conducted in an area of the state where local industry either does not exist or, if it does exist, it is insufficient to provide reasonable economic support to the people who live in the area."

Sec. 16.10.173. Utilization of commercially taken herring.

Editor's notes. — Section 2, ch. 27, SLA 1980 provides: "HERRING STRIPPING. (a) Notwithstanding AS 16.10.173 and until July 1, 1982, the stripping of commercially taken herring for the purpose of removing and selling the roe product is authorized if the herring is taken from and the carcass disposal process occurs in the Bering Sea.

"(b) The Board of Fisheries shall adopt

regulations in accordance with the Administrative Procedure Act (AS 44.62) [AS 44.62.010 — 44.62.650] regarding disposal of herring carcasses for each administrative area where disposal occurs.

"(c) The provisions of AS 46.03.100 apply to the disposal of herring carcasses under this section."

Sec. 16.10.175. Removal of herring from state. (a) It is unlawful for a person to remove herring from the state before the herring has been frozen or otherwise processed for shipment.

(b) In this section, "processed for shipment" includes, but is not limited to, icing, stripping or salting of the herring; however, it does not include salting of the herring if five percent or more of the body weight of the herring consists of roe. (§ 3 ch 27 SLA 1980)

Sec. 46.03.100. Waste disposal permit. (a) A person who conducts an operation which results in the disposal of solid or liquid waste material or heated process or cooling water into the waters or onto the land of the state must procure a permit from the department before disposing of the waste material or water. The permit must be obtained for direct disposal and for disposal into publicly operated sewerage systems.

(b) This section does not apply to a person discharging only domestic sewage into a sewerage system. (§ 3 ch 120 SLA 1971; am § 3 ch 220 SLA 1976)

Effect of amendment. — The 1976 amendment in the first sentence of subsection (a), substituted "an operation" for "a commercial or industrial operation,"

inserted "or heated process or cooling water" and "or onto the land," and added "or water" to the end of the sentence.

Sec. 46.03.110. Waste disposal permit procedure. (a) An application for a permit shall be made on forms prescribed by the department or on forms prescribed by the United States Environmental Protection Agency and shall contain the name and address of the applicant, a description of his operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other information considered necessary by the department. Application for permit shall be made at least 60 days before commencement of a proposed discharge.

(b) Upon receipt of a proper application the department shall publish notice of the application in two separate publications of a newspaper of general circulation within the general area in which the disposal of waste material is proposed to be made. The notice may also be published in other appropriate information media. The notice shall include a statement that a person who wants to present his views to the department in regard to the application may do so in writing to the department within 30 days of the second publication of the notice. The written response entitles the writer to a copy of the application.

(c) When the department receives an application, the commissioner shall immediately send copies of the application to the commissioner of fish and game, the commissioner of natural resources, the commissioner of commerce and economic development and the commissioner of health and social services.

(d) The department may specify in a permit the terms and conditions under which waste material may be disposed of. The terms and conditions shall be directed to avoiding pollution and to otherwise carry out the policies of this chapter. No permit may be effective for a period in excess of five years from the date of issuance.

(e) If the department has certified a National Pollutant Discharge Elimination System permit under sec. 401 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. sec. 1341), and the United States Environmental Protection Agency has issued that permit to a person, the department may waive the requirements of this section, and adopt the federal permit as the permit required under § 100 of this chapter. (§ 3 ch 120 SLA 1971; am § 6 ch 104 SLA 1971; am § 116 ch 218 SLA 1976; am §§ 4, 5 ch 220 SLA 1976)

Effect of amendments. — The first 1976 amendment substituted "commissioner of commerce and economic development" for "commissioner of economic development" in subsection (c).

The second 1976 amendment inserted "or on forms prescribed by the United States Environmental Protection Agency" in the first sentence of subsection (a) and added subsection (e).