

SCOMM

#48:23

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HR 467
 Title : "an act relating to the herding of fish"
 Sponsor : Rep. Goll
 Requestor : House Fisheries
 Date of Request : 1/21/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : Fish & Wildlife Protection
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Kathy Niles, Administrative Ass't
 Division : Commissioner's Office

Phone : 465-4336
 Date : 1/17/86

Approved by Commissioner : [Signature]
 Agency : Public Safety

Date : 1-17-86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

[illegible]

**HOUSE
COMMITTEE REPORT**

RESOURCES
JUDICIARY

Date referred: 1/17/86

FURTHER REFERRALS: FINANCE

DATE: _____

The HOUSE SPECIAL COMMITTEE
ON FISHERIES Committee has considered SSHB 467

"An Act relating to the herding of fish."

and recommends:

- [] do pass
[] do not pass
[] do pass with attached amendment(s)
[] no recommendation
[X] replace with CS SSHB 467 [X] same title
[] new title

and recommends _____

[] further referral to the _____ Committee

- and attaches: [] letter of intent
[] first fiscal note
[] new fiscal note
[X] zero fiscal note

SIGNING DO PASS:

Peter J. ...
M. J. ... w/ amendments
John B. ... w/ am.

SIGNING OTHER RECOMMENDATIONS:

James J. ... No Rec. without Amendment
A. J. ... MARROU NO REC

Peter J. ...
Chairman

RESOURCES JUDICIARY

FURTHER REFERRALS: 9 FINANCE

DATE: _____

"An Act relating to the herding of fish."

☐ do pass
☐ do not pass
☐ do pass with attached amendment(s)
☐ no recommendation
☒ replace with CS SS HB 467 (7/2/62) ☒ same title
☐ new title

and recommends do pass

[] further referral to the Committee

and attaches: [] letter of intent
[] first fiscal note
[] new fiscal note
[X] zero fiscal note

SIGNING OTHER RECOMMENDATIONS:

Navarve

Binkley.

SIGNING OTHER RECOMMENDATIONS:
 Roger J. Akins No Rec without Amendments
 A. J. M. Marrou No Rec

Peter J. ...
Chairman



Official Business

Alaska State Legislature

House of Representatives

Special Committee on Fisheries

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

M E M O R A N D U M

January 18, 1986

TO: Members
House Special Committee on Fisheries

FROM: Representative Peter Goll
Chairman *Peter Goll*

SUBJECT: SSHB 467

The first meeting this session of the House Special Committee on Fisheries will take place at 8:30 a.m. Tuesday, January, 21, 1986, in Room 17 of the Capitol Building. Up for consideration will be SSHB 467, An Act relating to the herding of fish.

This legislation is designed to prevent the use of aircraft in the herding of fish into commercial fishing gear. I drafted the legislation at the request of commercial fishermen who wished to halt what they considered to be a dangerous and unfair use of aircraft in fishing operations.

This concern was raised when a helicopter was successfully used to drive herring from shallow waters into a waiting seine during the Sitka herring fishery last spring. The estimated value of helicopter-aided haul of herring was \$400,000.

The fishermen who approached me contend the practice not only represented an unfair use of aircraft but endangered other vessels crowded into an extremely small fishing area. The Department of Fish and Game and Division of Fish and Wildlife Protection have voiced concern about the practice becoming more widespread.

As the attached correspondence from the Departments of Law and Fish and Game reveal, present law does not provide the state with the necessary legal tools to halt the herding of fish by aircraft. After discussing the matter with the Department of Law, I introduced the sponsor substitute to shift the focus of enforcement from the fisherman to the pilot.

House Bill 467
January 18, 1986
Page Two

The sponsor substitute is patterned after a regulation prohibiting the use of aircraft to herd or drive wildlife. This regulation has been successfully used several times, the most recent conviction coming in a case where a big game guide used an airplane to drive brown bear toward his clients.

Some attorneys in the Department of Law believe the actions of an aircraft in driving fish toward a fishing net will be easier to prove than the mental state of a fisherman.

commodity bidding business." In other words, a crab stick is a crab stick is a crab stick.

While some experts claim "the end of the boom is nowher: in sight" and suggest that the market could hit a billion pounds by 1990, Berelson offers a more sobering vision. "Once the novelty wears off," he said, "the consumer will be disenchanted if quality slips. People have too many options today, and low quality gets lost in the backwater."

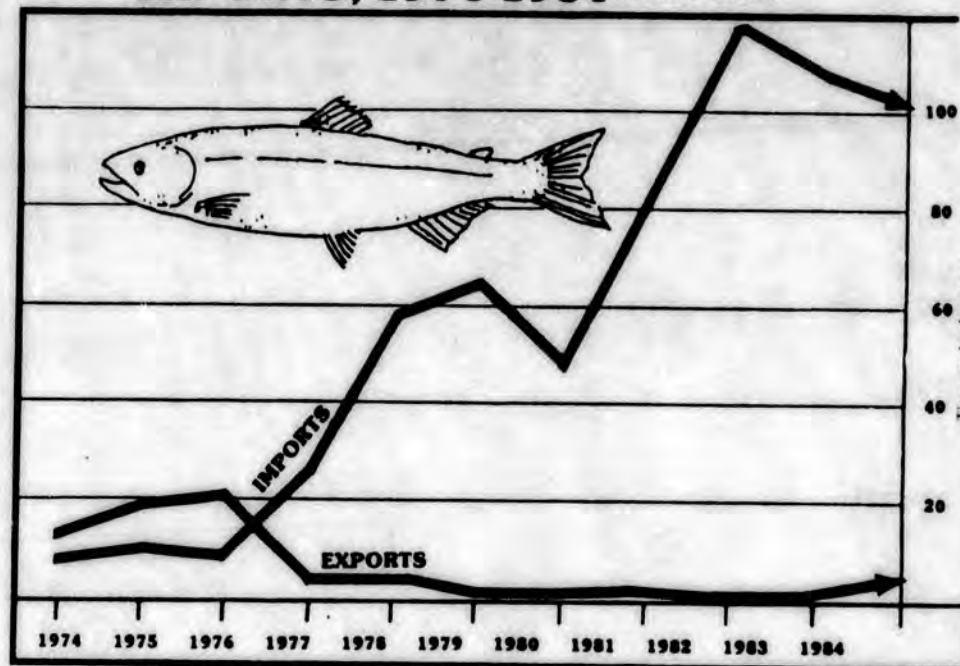
Hopefully, Berelson's boom and doom scenario is premature, but it'll be up to the industry to see that quality and value stay high. Seafood analogs don't have to go the way of the fish stick.

Fish sticks don't even have to go the way of the fish stick, judging from the new products in John Oaksmith's freezer case at Fisherman's Terminal. How about minced pollock nuggets or reformed pollock fillets from the 'Arctic Trawler?' Solves the problem of portioning small fillets and you'd be surprised how they hang together. Breaded or not, here they come. Good, too!

If you've got a helicopter, here's a tip for next year: Sitka herring. One enterprising skipper reportedly nailed 400 tons by stretching his net across the mouth of a bay filled with herring and seiners trying to catch them. When the herring saw the helicopter hovering overhead like a giant eagle, they split for deep water, right into the waiting purse seine. Now who would ever have thought of that?

Speaking of herring, you already know the Southeast prices, \$1000 a ton for seine and \$1350 for gillnet. Beats the pants off of last year, and bodes well for the next herring stops. No doubt you'll know the halibut price by the time the issue hits the streets. At press time all we know is that last year's cold storage fish have been spoken for and everyone's waiting for the Canadians to deliver the

JAPAN SALMON IMPORTS AND EXPORTS, 1974-1984 (PRODUCT WEIGHT)



Prior to passage of the Magnuson Act, Japan caught 65% of its salmon on the high seas and exported more than it imported. Since then imports have grown steadily along with demand, and by 1983 the high seas catch represented only 15% of the total supply.

the fresh again. Prices should start high for them and drop like a rock when the rest hits the wharf.

U.S. Customs law requires that some species, including rockfish, taken by a Canadian vessel must be caught within their territorial waters (12-miles) if direct delivery is made to U.S. ports. Under the provisions of the IPHC, however, a Canadian fisherman is allowed to deliver halibut directly to ports in the United States. "As far as we know he doesn't need anything [in the way of special permit]" -

MEMORANDUM

State of Alaska

TO: Steven Pennoyer
Deputy Commissioner
Dept. of Fish & Game

Norman C. Gorsuch
Attorney General

FROM: By: Larri Irene Spengler
Assistant Attorney General
Department of Law

DATE: May 29, 1985

FILE NO:

TELEPHONE NO: 465-3600

SUBJECT: helicopter herring
herding

Attached is a copy of a letter I recently prepared in response to questions from Representative Ben Grussendorf on the herding of herring by helicopter. It sounds as though he and Representative Goll are concerned about the same episode. As you can see, I agree with your analysis, and have added more information, in response to the specific questions put by Representative Grussendorf.

LIS:dlm

Attachment

cc w/attachment: Representative Peter Goll ✓
Ken Parker, ADF&G

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 29, 1985

REPLY TO:

☐ 1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ 1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☒ POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

The Honorable Ben Grussendorf
Speaker of the House
P.O. Box 928
Sitka, Alaska 99835

Re: helicopter herring herding

Dear Representative Grussendorf:

You have asked several questions based on an incident which apparently occurred during the Sitka herring sac roe fishery in April, involving the herding of herring by a helicopter. The activity as you described it involved a helicopter hovering near the beach a few feet above the water, frightening the herring away from the aircraft. This is probably not illegal under current statutes and regulations. It is fairly clear that the helicopter would be exempt from vessel licensing requirements, since vessel is defined in AS 16.05.940(27) as a floating craft. However, the pilot of the helicopter would probably have to have a commercial fishing license, since commercial fisherman is defined in AS 16.05.940(4) as individuals who participate directly or indirectly in the taking of fish.

The activity you described probably does not constitute waste of herring, which would be prohibited by AS 16.10.173. That statute defines waste as the failure to use the flesh of commercially-taken herring for certain specified purposes, which does not seem on its face to apply. In any event, there would be a factual question. Further, the prohibition on wanton waste in AS 16.30.010 applies only to specified game animals.

The Board of Fisheries technically has the authority to prohibit the use of helicopters or aircraft in fishing, under the general regulatory powers set out in AS 16.05.251(a). However, it has been the experience of the Department of Public Safety, Division of Fish and Wildlife Protection, in the past that such prohibitions are very hard to enforce, if not virtually impossible. The board does not have the authority to prohibit helicopters or airplanes from flying at certain heights or speeds, nor from entering certain areas. That authority is preempted by the

Hon. Ben F. Grussendorf
Speaker of the House

May 29, 1985
Page 2

federal government through the FAA. Therefore, if helicopters or airplanes are present above an area where fishing is going on, it is necessary to prove that the helicopter or airplane was participating in the fishing, in association with a vessel or set of gear below. It might be helpful for you to contact the Division of Fish and Wildlife Protection about the enforcement problems.

Of course, putting aside the enforcement problems, any individual may submit a regulatory proposal to the Board of Fisheries under 5 AAC 96.610. Interested people could contact the Department of Fish and Game, Division of Boards, 465-4110, about the time frame for submitting such proposals. Of course, simply because a proposal is submitted does not mean the board will automatically adopt it in regulation, since the board must weigh all factors, including enforceability.

If you have any further questions, please give me a call.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: /s/
Larri Irene Spengler
Assistant Attorney General

LIS:dlm

cc: Elizabeth A. Stewart
Director
Division of Boards
Department of Fish & Game

Captain Jack Jordan
Division of Fish & Wildlife Protection
Department of Public Safety

MEMORANDUM

State of Alaska

TO: Larri I. Spengler
Assistant Attorney General
Department of Law

DATE: May 22, 1985

FILE NO:

TELEPHONE NO: 465-4100

FROM: Steven Pennoyer *S Pennoyer*
Deputy Commissioner
Department of Fish and Game

SUBJECT: Commercial
Fishing--Aircraft

Representative Goll sent two of his constituents over to talk to us about an incident that occurred during the 1985 Sitka Sound herring sac-ro-e fishery. The two, who are participants in that fishery, observed a helicopter being used to herd herring into a seine. They felt that type of activity was illegal, and that both the aircraft and the pilot should be licensed. We told them that as far as we could determine, there are no laws that prohibit the harassing of fish or the use of aircraft to take fish. It did seem clear that AS 16.05.940(27) would exempt such aircraft from the vessel licensing requirements, and that since the pilot's activities were a direct participation in the taking of fish, he would have to have a Commercial Fisheries Entry Commission permit or a crew member's license.

Representative Goll requested that if we determined that the helicopter's activities were not prohibited by law, we would ask you for your determination. If you agree with us, I think Representative Goll will plan on introducing some type of legislation to prohibit or restrict the activity.

cc: The Honorable Peter Goll
Ken Parker

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF FISH AND GAME
OFFICE OF THE COMMISSIONER**

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: 907 / 465-4100

June 11, 1985

The Honorable Peter Goll
Alaska State House
P. O. Box 581
Haines, AK 99827

JUN 14 1985

Dear Representative Goll:

Thank you for your letter of May 28 regarding use of aircraft in fishing. We will be available to assist you in developing the recommendations, although, quite frankly, I am not sure what the "solution" will be.

The first decision point is: what are the problems and what needs to be done about it. The use of aircraft has its advantages and disadvantages. In some locations, for example, the Togiak herring fishery, the use of spotters makes the fishery operate efficiently. On the flip side, driving herring with a helicopter in a very fast-paced fishery, like Sitka herring, can cause management problems. These two factors will most likely have to be considered in any piece of legislation which is drafted. Also, in some cases, restricted use of aircraft could have allocative overtones, i.e., big boat vs. small boat, local vs. nonlocal, and seine vs. gill net. The department will have to be careful to not appear to favor one side over the other as we assist you and then testify before the various legislative committees.

An equally difficult task is going to be the forging of something that is enforceable. The major problem the Board of Fisheries has had with requests to restrict the use of aircraft is that its authorities are limited in the field. I expect the Legislature will have the same problem. While both bodies can restrict the use of aircraft in fishing operations, the state cannot control the airspace; only the federal government has the authority. So, what happens is a situation where if restrictions are in place, the pilot and fishermen can avoid citation by saying the aircraft was used for supplies or navigation, and the state must prove otherwise. This is the experience we had when spotter aircraft were prohibited in the Kodiak herring fishery.

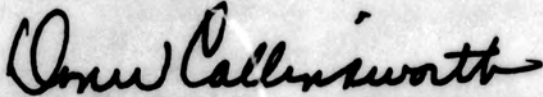
The Honorable
Peter Goll

-2-

June 11, 1985

My staff will be glad to contribute our past experience regarding regulations relative to the use of aircraft in fishing operations to your drafting process. I will ask Bob Clasby to work directly with Rodger Painter on this.

Sincerely,

A handwritten signature in cursive script, reading "Don W. Collinsworth".

Don W. Collinsworth
Commissioner

cc: Bob Clasby
Rodger Painter
Larri Spengler

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 467
 Title : "an act relating to the herding of fish"
 Sponsor : Rep. Goll
 Requestor : House Fisheries
 Date of Request : 1/21/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : Fish & Wildlife Protection
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Kathy Niles, Administrative Ass't
 Division : Commissioner's Office

Phone : 465-4336
 Date : 1/17/86

Approved by Commissioner : [Signature]
 Agency : Public Safety

Date : 1-17-86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)