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LEGISLATIVE AFFAIRS AGENCY

DEC 23 1985
MEMORANDUM

December 20, 1985

SUBJECT: CSSB 245 (Resources) (latest draft)
TO: Sen. Arliss Sturgulewski
Chairman, Senate Resources Committee
FROM: Ed Hein, LAA *EA*

Enclosed is the bill draft requested by Frank Homan. I have made an additional change in section 2. AS 12. 80.050 is of questionable legal validity because it has the effect of changing a Supreme Court Rule and was not adopted by a 2/3 vote. See the Revisor's Note following the text of the section in the statutes. Consequently, I thought it best to sidestep the 2/3 voting question in this bill by avoiding language that specifically says that a photograph is admissible evidence, as the previous language of the bill appeared to do. Now the section is more clearly directed to the prosecutor, instead of to the court. The purpose of this section is to assure that gear is not held for evidence longer than necessary and I think the new language will accomplish this goal.

February 26, 1986

Senator Fred Zharoff
Pouch V
Juneau, Alaska 99811

Dear Fred,

I have recieved the copy of the draft of HB 245, relating to the theft of commercial fishing gear, that you sent me for comment. Thanks.

I understand the reasons for the deletion of the provisions for mandatory sentencing and am sorry to have seen them go. I think they would have contributed to the deterrent effect on these types of crimes, but I appreciate the other problems that presumptive sentencing invloves, too.

I support the bill without the above, but would suggest that maybe a bit more teeth could be reintroduced along the deterrent lines if, under sec. 3, the court HAD to impose a suspension of commercial fishing privileges for one year after the FIRST conviction, rather than the second, then suspension of those priveleges for two years after the second conviction, etc, or maybe even two years after the first. Whatever is realistic, I guess, to get it into law---you have a better handle on that than I do.

Anyway, I like the bill, and hope to see it become a law sometime soon. Theft of commercial fishing gear has been an all too lightly handled offence for long enough.

Thanks for all your work on this bill.

Sincerely,

Dave S.

David Shrader
412 Willow St.
Kodiak, Alaska 99615

4-4-85

APR 9 1985

Hon: Fred Zarhoff:

I strongly support any anti-theft legislation as concerns the fishing industry.

I personally feel a thief should be denied a commercial fishing license forever!

Respectfully,



R. E. DeVol, R. S.
Industrial Chemist
Box 355
Kodiak, Alaska 99615



BUSINESS • FISHERMEN • PROCESSORS • INDIVIDUALS

ALASKA COASTAL COMMUNITIES ALLIANCE

P.O. Box 382 Kodiak, Alaska 99615 Phone (907) 486-5096

April 17, 1985

Senator Fred Zharoff
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Zharoff:

I am writing on behalf of the Alaska Coastal Communities Alliance. At our most recent board of directors meeting, David Shrader presented us with a work draft of your proposed Senate Bill relating to the theft of commercial fishing gear. An extensive discussion of the bill ensued, the results of which I would like to convey to you.

First, the general intent of the bill was received with overwhelming approval. As you are aware, with the difficult economic times in the fisheries the last several years there has been an increasing gear theft problem in our area. Because thefts most often occur at sea, or with stored gear on land when the gear or equipment is left unattended, apprehension and successful prosecution of offenders is rare and difficult. Therefore, when an individual is caught and successfully prosecuted it is imperative that the offender be appropriately punished if our laws are to have any deterrent value.

We did feel, however, that a \$500 minimum should also be established for theft of commercial fishing gear. We suggest this because we support the mandatory jail term for those convicted of gear theft, yet we do not feel, for example, that a young first offender who might be caught shoplifting, say a box of fish hooks, should be subject to a mandatory one year jail term.

There was also a consensus on the part of our members that the law should define active and lost fishing gear. It is not unusual for a fisherman to find a lost crab pot whose owner is impossible to identify. In such a circumstance it is an accepted practice for the finder to retrieve and keep the pot. A problem could arise if an original owner later identified the pot and claimed that it was in fact not lost. To further illustrate, this sort of problem could arise with beachcombed buoys and gear. If the law precisely defined the appropriate terms this sort of situation could be avoided to the benefit of all. We realize that our suggestion will complicate your worthy effort on our behalf, but we feel that time spent now writing a good and workable law will be well worth the effort.

The Alaska Coastal Communities Alliance would like to thank you for your past and present attentiveness to the needs and welfare of our fishing community. We would like to reaffirm our support for your intent in writing this bill. We hope you are able to bring this effort to a successful conclusion.

Thank you.

Sincerely,

Kevin B. O'Leary
Kevin B. O'Leary
Chairman, A.C.C.A.

cc: Representative Dave Thompson

April 2, 1984

Representative Fred Zharoff
Alaska State Legislature
Pouch V MS 3100
Juneau, Alaska 99811

Dear Fred,

This letter is to thank you for returning my telephone call the other day, and giving me the opportunity to express my thoughts concerning the need for stiffer penalties for those convicted of second degree theft of commercial fishing gear.

As I mentioned during our conversation, I feel that the difficulties faced by victims and enforcement officials in establishing evidence which would identify suspects, and the lack of any real mandatory minimum sentencing for those few who are in fact ultimately convicted, has created a situation that presents absolutely no deterrent to this type of criminal activity.

In addition, the ramifications of the theft of commercial fishing gear are inherently far-reaching; not only does the loss of the gear itself present immediate hardship to the victims of this type of crime, but the ability of the victim and his crew to make a living in future is also impaired very significantly. In the few cases where the gear IS recovered it can be tied up in the court system as evidence for the duration of the proceedings, still not available to the victims to try to make a living with.

I feel that the implementation of mandatory minimum sentences would definitely increase the law's deterrent impact. Also, in addressing the point that jail space is at a premium in our state, I would point out that convictions for this type of crime will continue to be very hard to get, and few and far between. I doubt that the number of convictions will increase at all, and for those few who are convicted, jail time will still be relatively short, while the benefit of the establishment of a significant mandatory minimum sentence will hopefully reduce the number of occasions this crime occurs. This may be an especially important time for the implementation of such deterrent legislation, as times seem to be particularly tough in the fishing industry at present, with little relief on the immediate horizon.

The mandatory minimum sentence I would suggest for each count of second degree theft of commercial fishing gear (first offense) is: one year in jail, AND loss of the privilege to fish commercially in Alaska for three years. Maximum penalties should also be increased to deter repeat offenders, to five years in jail and permanent loss of the fishing privilege. First, third, and fourth degree theft of fishing gear should probably be increased proportionally as well.

Thanks for considering my views on this situation, Fred. I'm looking forward to addressing you as "Senator".

Sincerely,

Dave S.
David Shrader
Box 128 Kodiak, Ak 99615

March 22, 1985

Senator Fred Zharoff
Pouch V MS 3100
Juneau, Alaska 99811

Dear Fred,

This is to advise you of my wholehearted support for your introduction of SB 245, "An Act relating to the Theft of Commercial Fishing Gear."

The theft of commercial fishing gear implies so much more than just the property value of the gear itself---it represents a very serious impairment to the victim's, and his crew's, ability to make a living for himself and his family, not only for the season during which the theft took place, but also for succeeding years beyond that.

Also, because so much fishing in Alaska is done in remote areas, fishing gear is particularly vulnerable to theft, and although an unwritten "code of trust" does exist generally among fishermen in an area, fishing gear, especially set gear such as crab pots which are left unattended for several days sometimes, that "code of trust" can not prevent blatant criminal actions.

I feel that the increased mandatory penalties are most definitely in order, and will definitely act as a deterrent to criminals, making them at least think twice before committing an illegal act such as theft.

Thanks very much for introducing this bill---I hope to see it become a law soon.

Sincerely,

David S

David Shrader
412 Willow
Kodiak, Alaska 99615

Dear Senator Zharoff & Representative Dave Thompson

I am writing on behalf of the Alaska Coastal Communities Alliance. At our most recent board of directors meeting, David Shrader presented us with a work draft of your proposed Senate Bill relating to the theft of commercial fishing gear. An extensive discussion of the bill ensued, the results of which I would like to convey to you.

First, the general intent of the bill was received with overwhelming approval. As you are aware, with the difficult economic times in the fisheries the last several years there has been an increasing gear theft problem in our area. Because thefts most often occur at sea, or with stored gear on land when the gear or equipment is left unattended, apprehension and successful prosecution of offenders is rare and difficult. Therefore, when an individual is caught and successfully prosecuted it is imperative that the offender be appropriately punished if our laws are to have any deterrent value.

We did feel however, that a \$500 minimum should also be established for theft of commercial fishing gear. We suggest this because we support the mandatory jail term for those convicted of gear theft, yet we do not feel for example, that a young first offender who might be caught shoplifting, say a box of fish hooks, should be subject to a mandatory one year jail term.

There was also a consensus on the part of our members that the law should define active and lost fishing gear. It is not unusual for a fisherman to find a lost crab pot whose owner is impossible to identify. In such a circumstance it is an accepted practice for the finder to retrieve and keep the pot. A problem could arise if an original owner later identified the pot and claimed that it was in fact not lost. To further illustrate, this sort of problem could arise with beachcombed bouys and gear. If the law precisely defined the appropriate terms this sort of situation could be avoided to the benefit of all. We realize that our suggestion will complicate your worthy effort on our behalf, but we feel that time spent now writing a good and workable law will be well worth the effort.

The Alaska Coastal Communities Alliance would like to thank you for your past and present attentiveness to the needs and welfare of our fishing community. We would like to reaffirm our support for your intent in writing this bill. We hope you are able to bring this effort to a successful conclusion. Thank you.

Sincerely,

Kevin B. O'Leary

Kevin B. O'Leary
Chairman A.C.C.A.

Alliance backs Zharoff bill to boost gear theft penalties

By CHRIS BLACKBURN
Special Correspondent

The Alaska Coastal Communities Alliance has given "overwhelming approval" to the general intent of Sen. Fred Zharoff bill to increase the penalties for the theft of commercial fishing gear.

Senate Bill 245, as introduced, makes the theft of commercial fishing gear a class C felony and provides for a mandatory jail sentence.

"With the difficult economic times in the fisheries the last several years there has been an increasing gear theft problem in our area," the alliance wrote Zharoff.

"Because thefts most often occur at sea, or with stored gear on land when the gear or equipment is left unattended, apprehension and successful prosecution of offenders is rare and difficult.

"Therefore, when an individual is caught and successfully prosecuted, it is imperative that the offender be appropriately punished if our laws are to have any deterrent value," the alliance wrote.

The alliance supports the mandatory jail term for gear theft,

but suggests that a \$500 minimum fine be also established so that a "young first offender who might be caught shoplifting, say a box of fish hooks," is not subject to a mandatory jail term.

The alliance members also felt that the final law should define active and lost fishing gear to avoid putting fishermen who retrieve derelict gear in a position where they might be accused of gear theft.

"It is not unusual for a fisherman to find a lost crab pot whose owner is impossible to identify. In such a circumstance it is an accepted practice for the finder to retrieve and keep the pot," the alliance wrote.

Those who pick up buoys while beachcombing could also at some point be accused of fishing gear theft unless some distinction is made between active and lost fishing gear, the alliance wrote.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

POUCH V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474 • 465-3844 (Labor and Commerce Committee)

*SB
HB 331
file*

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

M E M O R A N D U M

TO: Senator Patrick M. Rodey
Chairman - Senate Judiciary Committee

FROM: Senator Fred F. Zharoff

DATE: March 10, 1986

RE: HB 331

I respectfully request that a hearing be scheduled as soon as possible for House Bill 331, "An Act relating to the theft of commercial fishing gear". The bill presently is before your committee.

HB 331 is a companion piece of legislation to a bill I introduced last year, SB 245. Both bills were introduced in response to complaints from commercial fishermen about their problems with gear theft.

I also wish to discuss with you the possibility of a committee substitute which would incorporate elements of the Senate bill into the House bill.

Mr. Karl Ohls of my staff has complete background information on the bill. Please feel free to have your staff contact him for the details.

Thank you for your consideration.

1985

KODIAK ISLAND BOROUGH
RESOLUTION NO. 85-34-R

A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY SUPPORTING SENATE BILL 245 AND HOUSE BILL 331 CONCERNING THE THEFT OF COMMERCIAL FISHING GEAR.

WHEREAS, Senate Bill 245 and House Bill 331 have been introduced and provide a definition for theft of commercial fishing gear as a crime of theft in the second degree, and

WHEREAS, this crime is then punishable, upon conviction, by a sentence of a term of imprisonment of not more than five years and forfeiture of commercial fishing license and all limited entry permits, and

WHEREAS, theft of commercial fishing gear is an ongoing problem and a real detriment to the financial stability of Kodiak Island's large fishing fleet, and

WHEREAS, this problem has become even more serious with the limited amounts of fish resources available for harvest.

NOW, THEREFORE, BE IT RESOLVED by the Kodiak Island Borough Assembly that Senate Bill 245 and House Bill 331 should be passed by the Legislature and signed into law, and

BE IT FURTHER RESOLVED that copies of this resolution be sent to the following individuals:

Honorable Bill Sheffield, Governor of Alaska
Honorable Patrick Rodey, Chairman, Senate Judiciary Committee
Honorable Arliss Sturgulewski, Chairman, Senate Resources Committee
Honorable M. M. Miller, Chairman, House Judiciary Committee
Honorable Albert P. Adams, Chairman, House Finance Committee
Honorable Fred F. Zharoff, Senator District N
Honorable David W. Thompson, Representative District 27

PASSED AND APPROVED this 4th day of April, 1985.

KODIAK ISLAND BOROUGH

By Thomas H. Peterson
Borough Mayor

ATTEST:

By Shirley Miller, CMC
Borough Clerk

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE COURT OF APPEALS OF THE STATE OF ALASKA

JODY D. THOMAS,)	
)	
Appellant,)	File No. A-721
)	
v.)	<u>O P I N I O N</u>
)	
STATE OF ALASKA,)	
)	
Appellee.)	[No. 549 - December 6, 1985]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Kodiak, Roy H. Madsen, Judge.

Appearances: Michael J. Wall, Assistant Public Defender, Kodiak, Dana Fabe, Public Defender, Anchorage, for Appellant. Susan S. McLean, Assistant District Attorney, Robert C. Anderson, District Attorney, Kodiak, and Harold M. Brown, Attorney General, Juneau, for Appellee.

Before: Bryner, Chief Judge, Coats and Singleton, Judges.

COATS, Judge.

Jody Thomas was convicted, following a jury trial, of four counts of theft in the second degree, AS 11.46.130(a)(1), one count of theft in the third degree, AS 11.46.140(a)(1), and one count of theft in the fourth degree, AS 11.46.150(a). Judge Roy Madsen sentenced Thomas to sentences totaling eight years with four suspended on the four counts of second-degree theft. Thomas also received concurrent sentences of one year with six months suspended on the count of third-degree theft, and

ninety days on the count of fourth-degree theft. In addition Thomas was convicted, based on his no contest plea, of failure to appear for trial on these charges and received a concurrent sentence of two years with one suspended. Judge Madsen placed Thomas on probation, and as a special condition of probation ordered Thomas not to engage in any aspect of commercial fishing. Thomas appeals to this court, arguing that his sentence is excessive and that the special condition of probation is unjustified. We reverse.

Thomas, acting as the skipper of the fishing vessel Moonsong, supervised a crew of two people and engaged in numerous thefts of crab pots from around Kodiak Island. The thefts took place over a period of two months, and at least six fishing vessels had crab pots stolen. According to the presentence report the total value of the crab pots that Thomas stole was at least \$9,000 and was possibly as high as \$17,000. Thomas was thirty-seven at the time of these offenses and had no prior felony convictions. He had prior misdemeanor convictions for taking wildlife out of season and failure to appear, and had three prior convictions for commercial fishing without a valid permit.

The most serious theft offense of which Thomas was convicted, theft in the second degree, is a class C felony. The offense covers the theft of property or services in the amount of \$500 to \$25,000. AS 11.46.130. The maximum sentence is five years, the presumptive sentence for a second felony offender is two years, and for a third felony offender three years. AS 12.55.125(e). Thomas argues that as a first felony offender he should have received a sentence of less than the two-year presumptive sentence for a second felony offender unless his case can be classified as exceptional. See Austin v. State, 627 P.2d 657 (Alaska App.

1981). In sentencing Thomas, Judge Madsen referred to the Austin case and clearly found that Thomas' case was exceptional.

In making this determination Judge Madsen referred to aggravating factors which are specified in AS 12.55.155. Although we might question Judge Madsen's determination on some of the aggravating factors which he found, he found that Thomas' conduct was "among the most serious conduct included in the definition of the offense." AS 12.55.155(c)(10). We believe that the other aggravating factors which he found were subsumed within this finding. In finding that this was an exceptional case, Judge Madsen emphasized that stealing crab pots was particularly hard to detect, and had a very adverse effect on the crab fishing industry. The fisherman whose crab pots were stolen lost not only the crab pot but the crab which he might catch in the pot. The thefts involved a large number of crab pots and many different incidents over a nearly two-month period of time. We conclude that, based upon these findings, Judge Madsen could find that the theft offenses were particularly serious. In evaluating Judge Madsen's sentence we also must consider the fact that Thomas was convicted of failing to appear for his trial and that he had prior misdemeanor convictions.

However, we note that if all of Thomas' theft offenses are consolidated, the total value of the property which he stole was estimated to be \$17,000 at most. Theft in the second degree includes theft of property from \$500 up to \$25,000. Therefore, if all of Thomas' theft offenses are combined the value of the property which he stole does not come close to being above the upper limit for theft in the second degree. In Karr v. State, 686 P.2d 1192 (Alaska 1984), the supreme court upheld a sentence of ten years with five suspended for a first felony offender

with no prior record. However, that offense involved embezzlement of \$356,000 and more than fifty thefts over a two year period. Id. at 1196. Additionally, in Brezenoff v. State, 658 P.2d 1359 (Alaska App. 1983) we upheld a sentence of eight years with four suspended for a first felony offender who embezzled over \$140,000. However, Brezenoff's offense involved a substantially greater amount of money than is involved in Thomas' case, and Brezenoff was convicted of a class B felony, theft in the first degree, as a result. See also Fields v. State, 629 P.2d 46, 52-53 (Alaska 1981) (sentence of nine years with four years suspended was reversed. The supreme court held that the sentence should not exceed six years with three suspended. Fields had no significant criminal record, and received about \$25,500 through fraudulent sales of securities); Huff v. State, 598 P.2d 928, 935-36 (Alaska 1979) (A real estate salesman embezzled \$6,500 from a client. The supreme court upheld a three year sentence for embezzlement, but reduced a five-year concurrent sentence for perjury to three years.); Amidon v. State, 565 P.2d 1248, 1263 (Alaska 1977) (The supreme court held that three-year sentences for two first offenders convicted of embezzling \$65,000 should be reduced to sentences not to exceed one year.).

Based upon these cases and the presumptive sentences provided for class C felony offenders under the revised code, we conclude that even though Thomas' case could properly be termed exceptional, the sentence which Judge Madsen imposed was clearly mistaken. Although Judge Madsen could find that this was an aggravated theft offense, and also impose some additional time to serve because of the failure to appear charge, we note that under the revised code three years to serve is the presumptive sentence for a third felony offender convicted of a class C

felony. We conclude that Judge Madsen should not have imposed a sentence greater than five years with two years suspended.

This brings us to the special condition of probation that Judge Madsen imposed, preventing Thomas from engaging in any aspect of commercial fishing. A sentencing judge has broad authority to fashion special conditions of probation. However, conditions of probation must be "reasonably related to the rehabilitation of the offender and the protection of the public and . . . not unduly restrictive of liberty." Roman v. State, 570 P.2d 1235, 1240 (Alaska 1977); Edison v. State, ___ P.2d ___ Op. No. 546 at p.3 (Alaska App., November 29, 1985). Conditions which restrict constitutional rights are subject to special scrutiny to determine whether the restriction serves the goals of rehabilitation of the offender and protection of the public. Roman, 570 P.2d at 1241.

Thomas has been a commercial fisherman in Alaska for sixteen years. This appears to be his primary occupation. On the other hand, Thomas' current offenses are closely tied to his occupation as a fisherman, and he has three prior commercial fishing violations for not having a commercial license. It appears to us that the trial court could reasonably conclude that some restriction on Thomas' ability to fish commercially was related to his rehabilitation and was necessary to protect the public. However, since a restriction on Thomas' ability to fish commercially restricts his primary means of livelihood, we believe that the restriction must be particularly carefully scrutinized to make sure that it is narrowly drawn. It seems clear to us that the special condition of probation which prevents Thomas from engaging in any aspect of commercial fishing is far

too broad. We therefore vacate this special condition of probation and remand to the trial court for further proceedings on this issue.

REVERSED and REMANDED.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 331
 Title: "An Act relating to theft of commercial fishing gear."
 Sponsor: Thompson
 Requestor: Special Comm. on Fisheries
 Date of Request: 4/15/85

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: _____
NRMEC
 BRU, Program or Subprogram(s) Affected: Fish & Wildlife Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING				-		
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Marcia Lynn McKenzie
 Division: Administrative Services

Phone: 465-4350
 Date: 4/15/85

Approved by Commissioner: Robert J. Sundberg
 Agency: Public Safety

Date: 4/15/85

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 331 (Jud)
 Title : "An Act relating to the theft
 of commercial fishing gear."
 Sponsor : Rep. Thompson
 Requestor : Senate Judiciary
 Date of Request : 4/14/86

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						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : *K Niles* Kathy Niles, Admin Assistant Phone : 465-4336
 Division : Commissioner's Office Date : 4/14/86
 Approved by Commissioner : *[Signature]* Date : 4/14/86
 Agency : Public Safety

Distribution (by Agency preparing fiscal note) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

HB 284

SOUTHEASTERN ALASKA
SEINE BOAT OWNERS & OPERATORS

P.O. BOX 9579
KETCHIKAN, ALASKA
99901
mailing address

907-225-5156

728 WATER STREET
KETCHIKAN, ALASKA
99901

April 9, 1986

Representative John Sund
P.O. Box V
Juneau, Alaska 99811

Dear Representative Sund,

Thank you for your information on vessel insurance and subsistence.

Insurance is becoming an increasing problem for our fleet. The large majority of the southeast seine fleet is still made up of wood boats. Finding insurance for wood hulls is becoming difficult and the price is becoming prohibitive. P & I insurance is an even scarier problem. P & I rates are skyrocketing. Since most seiners owe money on their boats and our crews are too large to be made up of family members, the option of not carrying insurance is not really available. So lots of seiners are scrambling, trying to get covered for the 1986 season.

Knowledgeable insurance people tell us that rates will never be as low as they have been in the past. Forming pools, individually incorporating so that our liability is limited to our fishing operation, encouraging legislation to modify the Jones Act, and increasing the safety of our operations are ways seiners are attempting to "solve" the problem. I don't know the best way the state of Alaska can help, but at this time it looks to me like it can help by making it easier to form pools, by helping fishermen get the federal Jones Act modified, by continuing support of the Division of Insurance and by providing resources for transfer of safety and seaworthiness information.

Regarding subsistence, we are also very concerned about the effects of the subsistence priority on the commercial fisheries. As long as any other user group is given priority over commercial fishing, there is a large potential for negative impacts on our industry. Whether this potential is realized depends on the content of the subsistence legislation and the way the department and the courts interpret this legislation.

So far, the Board of Fish and ADF&G have used common sense in interpreting the subsistence priority in Southeast Alaska and I don't believe any of the commercial groups have lost fishing opportunities because of the subsistence law. Our fear is that somewhere else in Alaska the courts or ADF&G will set the precedent that subsistence goals must be met before commercial fishing is allowed, and that then this precedent will be applied to Southeast.

If a subsistence law is interpreted in this fashion then almost all of the

Southeast streams listed by ADF&G as having been authorized for subsistence fishing could potentially impact commercial fishing. Systems with the most potential are Klawock (seining in District 4), Hetta-Eek (seining in District 3 and 4), Hugh Smith Lake (gillnetting and seining in District 1), Karta (gillnetting in District 6, seining in District 2), Basket Bay (seining in District 12 and 14), Chilkat River (gillnetting in District 15, seining in District 12 and 14), and the Taku River (gillnetting in District 11, seining in District 12 and 14). Klawock is the major sockeye system with depressed stocks and poses the immediate problem for the seine fleet. (Hopefully, this potential Klawock problem may be solved by the production of sockeye at the Klawock hatchery.) As long as the department and Board of Fish do not point their finger at the Noyes Island fishery as an interceptor of Klawock sockeye, we are okay, but if future tagging information were to show that this fishery does have an impact then ADF&G might be forced to significantly curtail our District 4 fishery, even if Klawock sockeye are an insignificant part of our catch.


ALSO
SITKOH
BAY
SEINING
IN DISTRICTS
12 & 13

To prevent significant curtailment of commercial fishing, I think the content or the intent of the subsistence legislation should address the following:

- 1.) It should not result in a significant increase or the potential for a significant increase in the number of subsistence fish taken.
- 2.) If a priority to harvest the resource must be given then it should be limited to subsistence users.
- 3.) Commercial and sport fisheries should be managed in such a way that over the long term subsistence users will have the opportunity to harvest their traditional number of fish. This means that in most years of normal or above normal returns subsistence users will have the opportunity to harvest their traditional number. They can not be "guaranteed" this opportunity in years of low abundance. In fact, there can be no guarantees. No one can guarantee that a fish harvester will catch the fish that are available. No one can guarantee that stocks will be as strong as the predicted return. If ADF&G had to "guarantee" fish to a "subsistence" system no matter what the condition of the stocks, then their management would always have to be extremely conservative and the state and commercial fisheries would accordingly suffer a loss of income.
- 4.) The economy of a rural community should never be threatened by the significant curtailment of that community's commercial fishing for the purpose of guaranteeing the availability of subsistence fish.
- 5.) When stocks are low in a subsistence system, management should be able to attempt to satisfy subsistence needs by allowing subsistence fishing in other available systems or by substituting another species for the traditional one.

I hope you can make use of my comments. Thank you for the information.

Sincerely,


John Peckham
President

Hein
4/17/86 ✓

Original sponsors: Thompson, Sund,
Marrou and Taylor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
 2 SENATE CS FOR CS FOR HOUSE BILL NO. 331 (Judiciary)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the theft of commercial fishing
 7 gear."

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

9 * Section 1. AS 12.55.045 is amended by adding a new subsection to read:

10 (d) In a case in which the defendant is convicted of a violation
 11 of AS 11.46.120 - 11.46.150 and in which the property is commercial
 12 fishing gear as defined in AS 16.43.990, the court shall consider the
 13 victim's need for, and may order, restitution that may include compen-
 14 sation for loss of income.

15 * Sec. 2. AS 12.80.050 is amended by adding a new subsection to read:

16 (c) In a prosecution for a violation of AS 11.46.120 - 11.46.150
 17 in which the property is commercial fishing gear as defined in AS 16.-
 18 43.990, the gear shall be returned to the owner as soon as possible.
 19 The prosecutor may obtain photographs of the gear for use as evidence
 20 in accordance with (a) and (b) of this section.

21 * Sec. 3. AS 16.05.710 is amended by adding a new subsection to read:

22 (b) Upon a first conviction of a person for a violation of
 23 AS 11.46.120 - 11.46.150 in which the property is commercial fishing
 24 gear as defined in AS 16.43.990, the court shall, in addition to the
 25 penalty imposed by law, order a suspension of the person's commercial
 26 fishing privileges for one year. Upon a second or subsequent convic-
 27 tion, the court shall, in addition to the penalty imposed by law,
 28 order a suspension of the person's commercial fishing privileges for
 29 two years.

Alaska State Legislature

DISTRICT 27
AKHIOK
CHIGNIK
CHIGNIK LAGOON
CHIGNIK LAKE
CHINIAK
IVANOF BAY
KARLUK
KODIAK
LARSEN BAY
OLD HARBOR
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April 8, 1986

To: Senator Pat Rodey
Chair, Senate Judiciary

From: Representative Dave Thompson *DWT*

Re: HB 331

This is to confirm my request to have HB 331, Theft of Commercial Fishing Gear, heard in Judiciary. I support the changes requested by Senator Fred Zharoff, and would like to have it heard as soon as possible.

Thank you.

c.c.: Senator Fred Zharoff



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

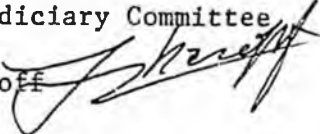
P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474 • 465-3844 (Labor and Commerce Committee)

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Patrick Rodey
Chairman - Senate Judiciary Committee

FROM: Senator Fred F. Zharoff 

DATE: April 18, 1986

RE: Amendment to HB 331

I wish to request that the following amendment be made to the Judiciary Committee Substitute for HB 331, "An Act relating to the theft of commercial fishing gear."

(b) in Sec. 3 (page 1, lines 22 and 23) should be amended to read:

(b) Upon a first conviction of a person for a violation of AS 11.46.120 - 11.46.130 (11.46.150) in which the property is commercial fishing gear....

The effect of the amendment is to make the suspension of commercial fishing privileges applicable only to individuals convicted of first or second degree theft (class B and C felonies).