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LEGISLATIVE AFFAIRS AGENCY

DEC 23 1985

MEMORANDUM

December 20, 1985

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

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.

Hein
12/23/85 ✓

Original sponsor: Zharoff

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 245 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

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
10 read:

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

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

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

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

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

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two years.

MEMORANDUM

TO: KARL OHLS
FROM: TOM PANAMAROFF *Tom Pan.*
DATE: OCTOBER 30, 1985
SUBJ: ALASKA COASTAL COMMUNITIES ALLIANCE MEETING

This memo is to inform you of what happened at the Alaska Coastal Communities Alliance meeting last night that we should be aware of.

The first item was the gear theft bills. Sue McLean, the DA from Kodiak described how the bills would be enforced. She said that the Alliance should support the restitution and the use of pictures sections of CS HB 331. She said that these are great ideas, but the section dealing with the pictures would need to pass by 2/3 majority of each house to be legally binding due to a recent court decision. I wanted to talk to her about this because I didn't understand what she was talking about, but she was in a hurry and left as soon as she was done talking about the bills.

She went on to say that section 3 of CS HB 331 would give the courts more authority in the sentencing for gear theft, but probably in practice would not do much.

The question about protecting someone who finds gear was brought up. She said that to commit the crime of theft takes 3 things; conduct, mental state (ie intent), and recklessness (ie circumstances: finding a lot of pots in one area probably means they are stored there, therefore recklessness, but finding one stray pot or one buoy on the beach is not recklessness).

SB 235 would make theft of gear a felony no matter what. She said that 99% of gear thefts are a felony anyway under statute because theft of anything valued at \$500 or more is a felony. Almost all gear theft involves property valued at more than \$500.

As far as prosecuting a kid who steals a box of fish hooks. She did not feel that anyone would prosecute the kid under SB 235 for this because it clearly is not the intent of the legislature to do this. A problem such as this may be cleared up with a letter of intent.

The Alliance was in favor of the restitution and pictures for evidence sections in CS HB 331. What they would like to do is amend CS HB 331 so that even a first time conviction of gear theft that is a felony (ie gear valued at over \$500) have a mandatory suspension of fishing privileges for a time certain. Possibly one year for first conviction, two years for second, and three years for third and subsequent convictions. They backed off from the suspension of fishing for life clause in SB 235.

Also, they backed off on the presumptive sentence. Their main priority was mandatory suspension of fishing privileges for a time certain. They felt that this was an acceptable compromise to get something passed that would at least have some teeth.

The Alliance was also concerned about Commissioner Collinsworth's plan to back away from state funded shellfish and groundfish research in hopes that the feds will come in and fund the state for the research. The Alliance feels that this strategy is too risky. Apparently this research is not built into ADF&G's base budget and is listed in increments that may not make it in the Governor's budget. They plan on being very vocal about the ADF&G budget regarding research and stock assessments.

They are also supportive of capital funding for the Kitoi Bay hatchery and the FRED division's Karluk red salmon replenishment project.

Kevin O'leary was very concerned that the NPFMC was going to bring back the halibut limited entry fight under the term "long-line limited entry", which would include halibut disguised under black cod. At the next Alliance meeting (Dec. 2) they will formulate a strategy to fight this if it is brought up at the December NPFMC meeting.

The last thing that they wanted Fred to be aware of is that they are very upset about the Southeast limited entry on black cod, tanner crab, and brown king crab. They feel that if there is L.E. on these species in S.E., then those fishermen who have a L.E. permit to fish those in S.E. should not be able to fish that species in another part of the state too. (ie if someone holds a S.E. tanner crab permit, that person must fish tanners in S.E. only, and can not move to another area, such as Kodiak, to fish tanners after the season is over in S.E.) They were pretty hot over that one.

Ole Harder suggested that the Alliance request the Governor to look into the possibility of bringing in foreign floaters for next summer's salmon season because there will be more fish than the canneries on the island can handle. This met with some grumbles from processors who were at the meeting : the Alliance did not want to take a position on this one.

That's about it. It was a very interesting meeting. Ole says "Hi."

Offered: 5/9/85
Referred: Finance

Original sponsors: Thompson, Sund
and Marrou

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 331 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST-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
10 read:

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

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

17 (c) In a prosecution for a violation of AS 11.46.120 - 11.46.150
18 in which the property is commercial fishing gear as defined in AS 16.-
19 43.990, the gear shall be returned to the owner as soon as possible,
20 and photographs of the gear may be used as evidence in place of the
21 actual gear.

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

23 (b) Upon a second or subsequent conviction of a person for a
24 violation of AS 11.46.120 - 11.46.150 in which the property is commer-
25 cial fishing gear as defined in AS 16.43.990, the court ^{shall} may, in addi-
26 tion to the penalty imposed by law, order a suspension of the person's
27 commercial fishing privileges, ~~for one year.~~

Introduced: 3/21/85
Referred: Resources and
Judiciary

1 IN THE SENATE

BY ZHAROFF

2 SENATE BILL NO. 245

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST 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 11.46.130(a) is amended to read:

10 (a) A person commits the crime of theft in the second degree if
11 the person commits theft as defined in AS 11.46.100 and

12 (1) the value of the property or services is \$500 or more
13 but less than \$25,000;

14 (2) the property is a firearm or explosive; [OR]

15 (3) the property is taken from the person of another; or

16 (4) the property is commercial fishing gear.

17 * Sec. 2. AS 12.55.125(e) is amended to read:

18 (e) A defendant convicted of a class C felony may be sentenced
19 to a definite term of imprisonment of not more than five years, and
20 shall be sentenced to the following presumptive terms, subject to
21 adjustment as provided in AS 12.55.155 - 12.55.175:

22 (1) if the offense is a second felony conviction, two
23 years;

24 (2) if the offense is a third felony conviction, three
25 years;

26 (3) if the offense is a first felony conviction, and the
27 defendant knowingly directed the conduct constituting the offense at a
28 uniformed or otherwise clearly identified peace officer, fire fighter,
29 correctional officer, emergency medical technician, paramedic,

*Insert
House
bill
provisions.*

Delete

Delete

1 ambulance attendant, or other emergency responder who was engaged in
2 the performance of official duties at the time of the offense, one
3 year;

4 (4) if the offense is a first felony conviction under
5 AS 11.46.130(a)(4), one year.

6 * Sec. 3. AS 12.55.125(g) is amended to read:

7 (g) If a defendant is sentenced under (c), (d)(1), (d)(2),
8 (e)(1), (e)(2), (e)(4), or (i) of this section, except to the extent
9 permitted under AS 12.55.155 - 12.55.175,

10 (1) imprisonment may not be suspended under AS 12.55.080;

11 (2) imposition of sentence may not be suspended under AS
12 12.55.085;

13 (3) terms of imprisonment may not be otherwise reduced.

14 * Sec. 4. AS 12.55.155(a) is amended to read:

15 (a) If a defendant is convicted of an offense and is subject to
16 sentencing under AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2),
17 (e)(4), or (i) and

18 (1) the presumptive term is four years or less, the court
19 may decrease the presumptive term by an amount as great as the pre-
20 sumptive term for factors in mitigation or may increase the presump-
21 tive term up to the maximum term of imprisonment for factors in aggra-
22 vation;

23 (2) the presumptive term of imprisonment is more than four
24 years, the court may decrease the presumptive term by an amount as
25 great as 50 percent of the presumptive term for factors in mitigation
26 or may increase the presumptive term up to the maximum term of impris-
27 onment for factors in aggravation.

28 * Sec. 5. AS 16.05.710 is amended by adding a new subsection to read:

29 (b) Upon conviction of a person for a violation of

Delete

permit suspended for
first conviction.
Left open for
future convictions

1 AS 11.46.130(a)(4), the court shall, in addition to the penalty im-
2 posed by law, order a forfeiture of the commercial fishing license and
3 all limited entry permits and interim-use permits held by the person.
4 In addition, upon a first ~~or second~~ conviction for a violation of
5 AS 11.46.130(a)(4), the person is ineligible for future issuance of a
6 commercial fishing license and future issuance or transfer of a
7 limited entry permit or interim-use permit for a period of three ^{One year.}
8 years. Upon a third conviction, the person is permanently ineligible
9 for future issuance of a commercial fishing license and future issu-
10 ance or transfer of a limited entry permit or interim-use permit.

delete

third or subsequent
upon ~~second~~ conviction - 2 years

~~upon third and subsequent convictions 3 years~~

APR 27 1985

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - SB 246

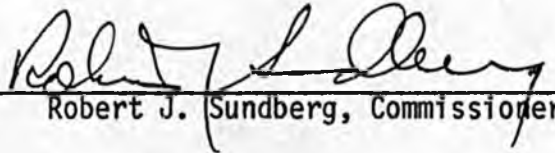
Support

SB 246 - "An Act relating to the suspension and revocation of interim-use permits and limited entry permits."

The Department of Public Safety supports Senate Bill 246 that would provide for a person who has intentionally violated or is intentionally violating a commercial fishing law or regulation to have his fishing permit suspended pending an administrative review or hearing.

This would allow for those fishermen who would intentionally violate state fishery laws to be removed from the fishery pending the administrative proceedings, thus eliminating the opportunity to continue to intentionally violate the fishery laws in total disregard for the fishery resources.

We are proposing an amendment on Page 4, Line 20 and 21 by deleting Department of Public Safety and by inserting the Limited Entry Commission as designating a Hearing Officer.



Robert J. Sundberg, Commissioner

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 246
 Title: interim-use & limited entry permits
 Sponsor: Zharoff
 Requestor: Senate Resource
 Date of Request: 4/26/85

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 84	FY 85	FY 86	FY 87	FY 88	FY 89
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	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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


POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Captain J. R. Nutgrass Phone: 269-5589
 Division: Fish & Wildlife Protection Date: 4/23/85

Approved by Commissioner:  Date: 4/25/85
 Agency: Department of Public Safety

Distribution (by Agency preparing fiscal note):

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

APR 11 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