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SENATE COMMITTEE REPORT

FURTHER

RESOURCES  
FINANCE

4/8/88

DATE TURNED INTO OFFICE 4-11-88

Mr. President:

STATE AFFAIRS Committee considered CSSSHB 346 (Res)

authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for elderly persons; efd

and recommended

[ ] replace with \_\_\_\_\_ CS \_\_\_\_\_ ) [ ] same title  
[ ] or adopt \_\_\_\_\_ CS \_\_\_\_\_ ) [ ] new title

[ ] attached amendment(s) and

do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to \_\_\_\_\_

[ ] letter of intent adopted \_\_\_\_\_

Committee  attached or [ ] adopted fiscal note(s)  
[ ] new [ ] updated or  previous  
 zero [ ] fiscal impact

MEMBERS SIGNING/DO PASS

*P. Kelly (DO PASS)*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OTHER RECOMMENDATIONS

*Lee Ferry Robee*  
*Lee Ferry - No Rec*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Sen. Bill Wood*  
Chairman signature and recommendation

[ ] Committee Backup attached

# Alaska State Legislature

## House of Representatives

Al Adams  
Chairman  
Committee on Finance

WHILE IN SESSION  
P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3706

OUT OF SESSION  
P.O. Box 333  
Kotzebue, Alaska 99752  
(907) 442-3320

1024 W. 6th  
Anchorage, Alaska 99501  
(907) 274-0615

Official Business

DATE: April 8, 1988

TO: Senator Mitch Abood, Chair  
Senate State Affairs

FROM: Representative Al Adams, Chair *ADA*  
House Finance Committee

RE: House Resources Committee Substitute for House Bill 346, "An Act authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for elderly persons; and providing for an effective date."

*MR 8 1988*

Herein is a history, analysis and supporting documents on the aforementioned legislation that I would like scheduled in the Senate State Affairs Committee at your earliest convenience.

This bill would allow the Board of Fisheries to open fishing areas otherwise closed to those age 60 or over if this act was consistent with resource conservation goals. Currently the Board lacks the statutory authority to allow for these exceptions.

This issue was brought to my attention because of an incident on the Unalakleet River where fishing was suspended yet the community and local Fish and Game Department staff realized that continued fishing by the elderly would cause no harm to the resource. The Southern Norton Sound Fish and Game Advisory Committee endorsed passage of legislation that would permit the board to make these exceptions, according to Chairman Weaver Ivanoff. Upon further investigation, it appears the problem has not been limited to this particular area of the state but on occasion has presented problems in Homer and Anchorage.

This knowledge led to my sponsorship of the bill that has taken a change somewhat in form but not in intent since its introduction. The first change involved a sponsor substitute to change the age cut-off for the elderly from age 65 to age 60. This was an important alteration in that it created consistency with other statutory exceptions for the elderly such as the provisions that allow this age group to cease purchase of hunting, fishing or trapping licenses. According to the Attorney General's office, if there were a constitutional challenge to special treatment of this age group, the consistency of this age cut-off throughout statutes would provide knowledge that this was not an arbitrary choice of age and legal security from an individual section of statute being challenged successfully.

When the bill was in the House Resources Committee in its original form, it provided exceptions for those age 12 or under in addition to the elderly age group. When the issue of a need for legislative findings to support reasons for special treatment of the

age 12 and under group emerged, it was found to be difficult to arrive at these justifications. As a result, and with my support, the Resources Committee removed the younger group leaving the provisions for the elderly intact.

Another question that arose during Finance Committee hearing involved whether in the instance of subsistence activities in a boat, whether all of the people participating in the activity would need to be age 60 or over. Norm Cohen of the Office of the Commissioner of Fish and Game has replied that most probably the Board of Fisheries would adopt regulations that limited direct involvement in the subsistence activity to those over age 60. For example, younger people could ride in the boat but not operate it or become involved in setting or pulling the net.

For its length, the bill is relatively simple as shown in the following sectional analysis:

- Sect 1: Findings section that cites the difficulty the elderly may have in access to fishing areas.
- Sect 2: Cites the criteria for the Board of Fisheries to use when establishing regulations that now includes the elderly provision.
- Sect 3: Immediate effective date.

The bill has no fiscal impact.

Please feel free to contact Martha Stewart of my staff if you have further questions. She will also be available to testify at committee hearings in the Senate. I would appreciate any assistance you can offer to expedite this bill's passage.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An act authorizing the Board of Fisheries to establish noncommercial fishing seasons...  
Sponsor: Adams, Goll  
Requestor: HOUSE Resources  
Agency Affected: Public Safety  
BRU: FISH & WILDLIFE PROTECTION  
Components: Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated.

JNR  
2/10/88

Prepared by: Captain Conrad G. Seibel C. Seibel Phone: 269-5509  
Division: Fish & Wildlife Protection Date: 2/2/88  
Approved by Commissioner: [Signature] Date: 2-10-88  
Agency: Department of Public Safety

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Fish and Game  
 Title: Authorizing Bd. of Fish to BRU: Boards  
establish fishing areas for children & elderly  
 Sponsor: Wams and Goll Components: \_\_\_\_\_  
 Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
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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: Beth Stewart Phone: 465-4100  
 Division: Boards Date: 2/11/88  
 Approved by Commissioner: [Signature] Date: 2/11/88  
 Agency: Fish and Game

Distribution (by preparer):

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



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
**BILL ANALYSIS**

DEPARTMENT <b>Fish and Game</b>	DIVISION <b>Boards</b>	BILL NUMBER <b>HB 346</b>	SPONSOR <b>Adams &amp; Goll</b>
SHORT TITLE OF BILL <b>An act authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for children and elderly persons; and providing and providing for an effective date.</b>			
DEPARTMENT POSITION <b>Neutral</b>			
PREPARED BY <b>Beth Stewart</b>	DATE <b>2/11/88</b>	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE <b>2/11/88</b>

**SUMMARY**

OTHER AGENCIES AFFECTED BY BILL <b>Board of Fisheries</b>	CONSTITUENT GROUP(S) AFFECTED BY BILL <b>Fishermen</b>
ORGANIZATIONAL SUPPORT FOR BILL <b>Unknown</b>	ORGANIZATIONAL OPPOSITION TO BILL <b>Unknown</b>

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Introduced by Adams & Goll

ANALYSIS OF BILL/PROGRAM EFFECTS

In the past, the board has received proposals to establish restricted areas and seasons for people in certain age groups, or for those with physical handicaps. The Attorney General's Office advised the board that those proposals were beyond the scope of their authority. This bill would clarify that authority. In addition, there have been questions about the constitutionality of such arrangements under the exclusive fisheries or equal protection clauses of the Alaska Constitution. To address these concerns, the Attorney General's Office has suggested that the legislation include a set of findings in the bill sufficient to justify the special treatment of these groups.

AMENDMENTS PROPOSED

**RECEIVED**

FEB 12 1988

LEGISLATIVE FINANCE

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5572 SSTA HB 346 - HB 354

144

formal hearing has been concluded. (Eff. 3/25/83, Reg. 85)

Authority: AS 16.05.340 AS 16.05.460  
AS 16.05.380 AS 43.05.080  
AS 16.05.390 AS 44.25.020

**15 AAC 116.070. FEES, REPORTS, AND LICENSE INVENTORY DUE WHEN LICENSE OFFICER APPOINTMENT EXPIRED, SUSPENDED, OR REVOKED.** The reporting and accounting obligations of the license officer, all money collected, except the license officer's commission, and all license inventory are due by the last day of the month following the month during which the license officer appointment expired, was suspended, or was revoked. (Eff. 3/25/83, Reg. 85)

Authority: AS 16.05.340 AS 16.05.460  
AS 16.05.380 AS 43.05.080  
AS 16.05.390 AS 44.25.020

**ARTICLE 2.  
LICENSING**

**Section**

- 100. Qualifications for license and proof of qualification
- 110. Persons exempt from licensing requirements
- 120. Refund of license fees
- 130. Lost or destroyed licenses

**15 AAC 116.100. QUALIFICATIONS FOR LICENSE AND PROOF OF QUALIFICATION.** (a) Only natural persons may be issued licenses under AS 16.05 and this chapter.

(b) An applicant claiming entitlement to a resident license or special status license has the burden of proving to the license officer that he is entitled to the license and shall take an oath administered by the license officer certifying the truthfulness of the applicant's status.

(c) The license officer shall accept as adequate proof of residency an Alaska driver's license, voter registration card, school records, proof of home ownership or rental receipts, tax records, employment records, or court or other governmental agency records, showing that the applicant is a resident. (Eff. 3/25/83, Reg. 85)

Authority: AS 16.05.330 AS 43.05.080  
AS 16.05.360 AS 44.25.020  
AS 16.05.450

**15 AAC 116.110. PERSONS EXEMPT FROM LICENSING REQUIREMENTS.** (a) A person who is 60 years of age or older and who has been a resident of Alaska for one year or more, and is currently a resident, may apply for a permanent identification card from the department for purposes of AS 16.05.400. In this subsection, "one year" means any 12-consecutive-month period preceding the date of application.

(b) A person who has lawfully obtained a permanent identification card under (a) of this section is not required to obtain hunting, fishing, or trapping licenses to engage in those activities.

(c) If a person who has been issued a permanent identification card ceases to be a resident of Alaska, that person must surrender the card to the department. (Eff. 3/25/83, Reg. 85; am 6/17/84, Reg. 90)

Authority: AS 16.05.400  
AS 43.05.080  
AS 44.25.020

**15 AAC 116.120. REFUND OF LICENSE FEES.** (a) License officers may not refund license fees. A person who wishes a refund of a license fee must apply directly to the department.

(b) A refund of a license fee will be granted by the department only if the licensee or his representative demonstrates that

(1) he or she was unable to make any use of the license as a result of death, or serious, disabling illness or injury occurring after purchase of the license and before the opening of any season for which the license could have been used; in the case of illness or injury, the illness or injury must have lasted until all seasons for which the license could be used are closed;

(2) the opening of all seasons to which the license applied were permanently cancelled, rendering the license unusable at any time during the year for which it was issued; or

(3) other extraordinary circumstances beyond the control and reasonable anticipation of the licensee exist, which the department determines to justify a refund.

STEVE COWPER, GOVERNOR

**DEPARTMENT OF FISH AND GAME**

**OFFICE OF THE COMMISSIONER**

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802  
PHONE (907) 465-4100

January 29, 1988

The Honorable Al Adams  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

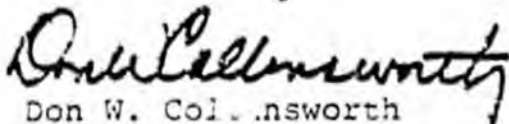
Dear Representative Adams:

The department has reviewed HB 346 authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for children and elderly persons, and have the following comments.

In the past, the board has received proposals to establish restricted areas and seasons for people in certain age groups, or for those with physical handicaps. The Attorney General's Office advised the board that those proposals were beyond the scope of their authority. This bill would clarify that authority. In addition, there have been questions about the constitutionality of such arrangements under the exclusive fisheries or equal protection clauses of the Alaska Constitution. To address these concerns, the Attorney General's Office has suggested that the legislation include a set of findings in the bill sufficient to justify the special treatment of these groups.

If the Legislature wishes to give the board this authority, I am certain that the board will consider any proposals it receives for these types of fisheries.

Sincerely,



Don W. Collinsworth  
Commissioner

STATE OF ALASKA  
THE LEGISLATURE

PO BOX 1 STATE CAPITOL  
UNFAU ALASKA 995  
1-7-88 15

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 26, 1988

SUBJECT:            Constitutionality of HB 346  
TO:                 Representative Al Adams  
FROM:              Edward H. Hein *EH*  
                      Legislative Counsel

You have asked whether HB 346 is constitutional. The bill authorizes the Board of Fisheries to establish restricted noncommercial fishing seasons and areas for children and elderly persons, if consistent with resource conservation goals and if necessary to assist these two groups to participate in sport, personal use, or subsistence fishing.

The authorization provided in the bill is consistent with the mandate of Art. VIII, secs. 1, 2, 4, and 5 of the Alaska Constitution. These sections provide (emphasis supplied):

SECTION 1. STATEMENT OF POLICY. It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

SECTION 2. GENERAL AUTHORITY. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

SECTION 4. SUSTAINED YIELD. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

SECTION 5. FACILITIES AND IMPROVEMENTS. The legislature may provide for facilities, improvements, and services to

Representative Al Adams

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January 26, 1988

assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

In keeping with this constitutional mandate, the authority given to the Board of Fisheries is clearly for a public purpose and is very narrowly drawn. The exercise of the board's power is subject to two conditions: the establishment of restricted seasons and areas must be consistent with resource conservation goals, and must also be necessary in order to help children and the elderly to participate in noncommercial fishing. In other words, the circumstances must be such that these groups would not be able to participate adequately in fishing without this sort of assistance from the board.

It is envisioned that areas which would be set aside for children and elderly persons would be areas that otherwise would not be open to the public. These would be areas in which the fish stocks could not withstand extensive effort beyond that anticipated by children and the elderly. An example would be a creek in Anchorage that is not currently open to fishing, but which could serve nicely as a place for children to learn how to fish.

Finally, although virtually any law that allows a government agency to give special treatment to certain groups has a potential for abuse, the board is required to exercise its authority in a manner consistent with the constitution. The regulations adopted should not be any more restrictive or discriminatory than necessary to accomplish the goals of the legislation. It is assumed, moreover, that the board will act in accordance with the legal advice of the Attorney General's office.

EHH:bb  
wkb2/005