

HB

262

(7)

Date Referred: March 31, 1989

FURTHER REFERRALS: RESOURCES

Date of Committee Action: 4/25/89

The JUDICIARY Committee considered:

HB 262

HOUSE BILL NO. 262 [HIGH SEAS INTERCEPTION OF SALMON]  
"An Act relating to the high seas interception of salmon."

RECOMMENDATIONS:

- [  ] be replaced with CS HB 262 [  ] the same title
- [  ] have attached amendment(s) [  ] a new title
- [  ] do pass
- [  ] do not pass
- [  ] no recommendation
- [  ] individual recommendations
- [  ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):  
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- [  ] fiscal impact \_\_\_\_\_
- [  ] zero fiscal note \_\_\_\_\_
- [  ] zero with analysis \_\_\_\_\_

- [  ] fiscal note(s) \_\_\_\_\_
- [  ] zero fiscal note(s) 3/31/89 J. H. 3/31/89 <sup>DPS</sup>
- [  ] zero fn/analysis \_\_\_\_\_

SIGNING DO PASS:

SIGNING:  
(Check approp. column)

Do Not Pass No Rec Amend

Peter J. ...

David ...

Larry ...

...

...

...

...

...

...

...

SIGNING	Do Not Pass	No Rec	Amend
<u>...</u>		<input checked="" type="checkbox"/>	
<u>...</u>		<input checked="" type="checkbox"/>	

Peter J. ... / ...  
Chairman's Signature

Original sponsor: Rules/Governor

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 262 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the high seas interception of  
7 salmon."

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

9 \* Section 1. AS 16.10 is amended by adding new sections to read:

10 ARTICLE 10. HIGH SEAS INTERCEPTION OF SALMON.

11 Sec. 16.10.750. FINDINGS AND PURPOSE. (a) The legislature  
12 finds that

13 (1) the salmon fishing industry is among the state's larg-  
14 est industries and generates hundreds of millions of dollars and  
15 thousands of jobs each year; the salmon fishery is vitally important  
16 to commercial, subsistence, personal use, and sport fishing interests,  
17 and to the state's developing tourist industry;

18 (2) the state is committed to maintaining and enhancing its  
19 wild stocks of salmon by careful management, by initiating a 20-year  
20 rebuilding program, and by investing in the fishing industry;

21 (3) millions of Alaska salmon are being caught and injured  
22 by high seas fisheries that intercept salmon contrary to state, feder-  
23 al, or international law; the high seas interception of Alaska salmon  
24 defeats the state's management and rebuilding programs, deprives the  
25 state of a return on its investment in the fishing industry, and  
26 detrimentally affects subsistence and sport fishing uses of Alaska  
27 salmon;

28 (4) vessels that engage in the high seas interception of  
29 salmon can move relatively freely and undetected from region to region

1 in the North Pacific and thus are able to harvest whatever species is  
2 most readily available or most valuable; by moving farther westward, a  
3 greater proportion of the take is Asian salmon; moving eastward re-  
4 sults in a greater proportion of the take being Alaska salmon; al-  
5 though there is intermixing of Asian and North American salmon stocks,  
6 scientific evidence proves that even a minimal harvest of salmon  
7 within the migratory range of each species will contain Alaska salmon;

8 (5) the illegal taking of salmon detrimentally affects the  
9 Alaskan fishing industry; the illegal taking of Alaska salmon is of  
10 primary concern because of the direct and immediate effect on the  
11 state; in addition, the illegal taking of Asian salmon is also of  
12 concern because depletion of those stocks will ultimately result in a  
13 shifting of high seas fishing efforts, both legal and illegal, to  
14 Alaska salmon;

15 (6) high seas interception of salmon occurs beyond the  
16 exclusive economic zone of the United States, or through incursion  
17 within the exclusive economic zone and the state's territorial sea, by  
18 vessels that are usually not registered in this state; moreover, these  
19 vessels are not based in Alaska and can thus avoid detection more  
20 easily than Alaska-based vessels; as a practical matter, it is ex-  
21 tremely difficult to directly or indirectly regulate the vessels  
22 themselves; it is therefore necessary to prohibit activities within  
23 the state that give aid, comfort, and financial incentives to high  
24 seas interception of salmon.

25 (b) The purpose of AS 16.10.750 - 16.10.800 is to prevent re-  
26 sources, facilities, and expertise within the state from being avail-  
27 able to promote or facilitate the high seas interception of salmon or  
28 the making of intercepted salmon ready for or accessible to world  
29 markets.

1           Sec. 16.10.760.   TRAFFICKING IN INTERCEPTED SALMON.   (a) A  
2 person commits the offense of trafficking in intercepted salmon if the  
3 person

4           (1) buys, sells, trades, processes, or possesses salmon, or  
5 attempts to buy, sell, trade, process, or possess salmon, with reck-  
6 less disregard that the salmon has been, or will be, obtained by high  
7 seas interception;

8           (2) provides financing, premises, equipment, supplies,  
9 services, power, or fuel used to buy, sell, trade, process, or possess  
10 salmon, with reckless disregard that the salmon has been, or will be,  
11 obtained by high seas interception; or

12           (3) acts as a broker or middleman, or otherwise acts on  
13 behalf of another party, to arrange for or negotiate, or attempts to  
14 arrange for or negotiate, the purchase, sale, trade, processing, or  
15 possession of salmon, with reckless disregard that the salmon has  
16 been, or will be, obtained by high seas interception.

17           (b) Trafficking in intercepted salmon is a class C felony.

18           Sec. 16.10.770.   FALSIFICATION RELATED TO HIGH SEAS INTERCEPTION  
19 OF SALMON.   (a) A person commits the offense of falsification related  
20 to high seas interception of salmon if the person creates, utters, or  
21 possesses a written instrument related to salmon, or makes an asser-  
22 tion for the purpose of having a written instrument related to salmon  
23 created, uttered, or accepted, with reckless disregard that the salmon  
24 was obtained by high seas interception and that the written instrument  
25 or assertion conveys misleading or untrue information about the owner-  
26 ship, possession, processing, origin, destination, route of shipping,  
27 type, condition, or time, place, and manner of the taking of the  
28 salmon.

29           (b) In this section

1 (1) "utter" has the meaning given in AS 11.46.580(b);

2 (2) "written instrument" has the meaning given in AS 11.-  
3 46.580(b) and includes ships' logs and papers, bills of lading and  
4 sale, documents relating to processing, shipping, and customs, and  
5 information stamped on or affixed to cans, crates, containers,  
6 freight, or a means of storage or packaging.

7 (c) Falsification related to high seas interception of salmon is  
8 a class C felony.

9 Sec. 16.10.780. ASSISTING A VESSEL IN HIGH SEAS INTERCEPTION OF  
10 SALMON. (a) A person commits the offense of assisting a vessel in  
11 high seas interception of salmon if, with reckless disregard that a  
12 vessel is in possession of salmon obtained by high seas interception  
13 or that the owner or operator of the vessel intends to engage in the  
14 imminent interception of salmon, the person

15 (1) moves persons, cargo, or other property to or from the  
16 vessel;

17 (2) services or repairs the vessel or its equipment;

18 (3) provides the vessel with power, supplies, equipment, or  
19 fuel;

20 (4) provides the vessel with information, other than weath-  
21 er reports, capable of aiding the high seas interception of salmon or  
22 frustrating or avoiding detection, including communicating the move-  
23 ments, intentions, or activities of state or federal law enforcement  
24 officials or other fishing vessels; or

25 (5) is in charge of a docking facility, harbor, or anchor-  
26 age, and permits the vessel to dock or anchor, or to remain docked or  
27 anchored.

28 (b) It is an affirmative defense, as defined in AS 11.81.900(b),  
29 to a violation of this section, if the person honestly and reasonably

1 believed that the assistance provided to the vessel was necessary for  
2 humanitarian or environmental purposes.

3 (c) In this section

4 (1) "environmental purpose" means the intent to prevent or  
5 minimize adverse ecological effects to water quality;

6 (2) "humanitarian purpose" means the intent to provide  
7 medical services for a sick or injured person, or to prevent the loss  
8 of human life;

9 (3) "owner or operator of the vessel" means a person who

10 (A) has an ownership interest in the vessel;

11 (B) has authority to control or direct the vessel's  
12 activities; or

13 (C) physically operates a vessel or its equipment.

14 (d) Assisting a vessel in high seas interception of salmon is a  
15 class A misdemeanor.

16 Sec. 16.10.790. FINES. Notwithstanding the provisions of  
17 AS 12.55.035(b) and (c), a person convicted of an offense under  
18 AS 16.10.760 - 16.10.780 may be sentenced to pay a fine not exceeding  
19 the greater of

20 (1) \$100,000;

21 (2) three times the pecuniary gain realized by the person  
22 as a result of the offense; or

23 (3) if the person is convicted under AS 16.10.760, two  
24 times the fair market value of the salmon involved or contemplated in  
25 the commission of the offense.

26 Sec. 16.10.800. DEFINITIONS. In AS 16.10.750 - 16.10.800

27 (1) "high seas interception," "interception," or a similar  
28 term, means the unauthorized catching, taking, or harvesting of salmon  
29 for other than sport, subsistence, or personal use purposes,

1 throughout the migratory range of each species, by a vessel not regis-  
2 tered under the laws of this state;

3 (2) "process" means affecting the condition or location of  
4 salmon, including preparation, packaging, storage, refrigeration, or  
5 transportation;

6 (3) "reckless disregard" has the meaning given for "reck-  
7 lessly" in AS 11.81.900(a);

8 (4) "salmon" means Pacific salmon and steelhead, and parts  
9 of Pacific salmon and steelhead, whether mature or immature, processed  
10 or unprocessed; and

11 (5) "unauthorized" means contrary to a statute or regu-  
12 lation of the United States or the state, or to a treaty or interna-  
13 tional fishery agreement, or in violation of a foreign law.

go1029hE✓  
Utermohle  
4/20/89

Original sponsor: Rules/Governor

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 262 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the high seas interception of  
7 salmon."

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14 est industries and generates hundreds of millions of dollars and  
15 thousands of jobs each year; the salmon fishery is vitally important  
16 to commercial, subsistence, personal use, and sport fishing interests,  
17 and to the state's developing tourist industry;

18 (2) the state is committed to maintaining and enhancing its  
19 wild stocks of salmon by careful management, by initiating a 20-year  
20 rebuilding program, and by investing in the fishing industry;

21 (3) millions of Alaska salmon are being caught and injured  
22 by high seas fisheries that intercept salmon contrary to state, feder-  
23 al, or international law; the high seas interception of Alaska salmon  
24 defeats the state's management and rebuilding programs, deprives the  
25 state of a return on its investment in the fishing industry, and  
26 detrimentally affects subsistence and sport fishing uses of Alaska  
27 salmon;

28 (4) vessels that engage in the high seas interception of  
29 salmon can move relatively freely and undetected from region to region

1 in the North Pacific and thus are able to harvest whatever species is  
2 most readily available or most valuable; by moving farther westward, a  
3 greater proportion of the take is Asian salmon; moving eastward re-  
4 sults in a greater proportion of the take being Alaska salmon; al-  
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7 within the migratory range of each species will contain Alaska salmon;

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9 Alaskan fishing industry; the illegal taking of Alaska salmon is of  
10 primary concern because of the direct and immediate effect on the  
11 state; in addition, the illegal taking of Asian salmon is also of  
12 concern because depletion of those stocks will ultimately result in a  
13 shifting of high seas fishing efforts, both legal and illegal, to  
14 Alaska salmon;

15 (6) high seas interception of salmon occurs beyond the  
16 exclusive economic zone of the United States, or through incursion  
17 within the exclusive economic zone and the state's territorial sea, by  
18 vessels that are usually not registered in this state; moreover, these  
19 vessels are not based in Alaska and can thus avoid detection more  
20 easily than Alaska-based vessels; as a practical matter, it is ex-  
21 tremely difficult to directly or indirectly regulate the vessels  
22 themselves; it is therefore necessary to prohibit activities within  
23 the state that give aid, comfort, and financial incentives to high  
24 seas interception of salmon.

25 (b) The purpose of AS 16.10.750 - 16.10.800 is to prevent re-  
26 sources, facilities, and expertise within the state from being avail-  
27 able to promote or facilitate the high seas interception of salmon or  
28 the making of intercepted salmon ready for or accessible to world  
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1           Sec. 16.10.760.   TRAFFICKING IN INTERCEPTED SALMON.   (a) A  
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4           (1) buys, sells, trades, processes, or possesses salmon, or  
5 attempts to buy, sell, trade, process, or possess salmon, with reck-  
6 less disregard that the salmon has been, or will be, obtained by high  
7 seas interception;

8           (2) provides financing, premises, equipment, supplies,  
9 services, power, or fuel used to buy, sell, trade, process, or possess  
10 salmon, with reckless disregard that the salmon has been, or will be,  
11 obtained by high seas interception; or

12           (3) acts as a broker or middleman, or otherwise acts on  
13 behalf of another party, to arrange for or negotiate, or attempts to  
14 arrange for or negotiate, the purchase, sale, trade, processing, or  
15 possession of salmon, with reckless disregard that the salmon has  
16 been, or will be, obtained by high seas interception.

17           (b) Trafficking in intercepted salmon is a class C felony.

18           Sec. 16.10.770.   FALSIFICATION RELATED TO HIGH SEAS INTERCEPTION  
19 OF SALMON.   (a) A person commits the offense of falsification related  
20 to high seas interception of salmon if the person creates, utters, or  
21 possesses a written instrument related to salmon, or makes an asser-  
22 tion for the purpose of having a written instrument related to salmon  
23 created, uttered, or accepted, with reckless disregard that the salmon  
24 was obtained by high seas interception and that the written instrument  
25 or assertion conveys misleading or untrue information about the owner-  
26 ship, possession, processing, origin, destination, route of shipping,  
27 type, condition, or time, place, and manner of the taking of the  
28 salmon.

29           (b) In this section

1 (1) "utter" has the meaning given in AS 11.46.580(b);

2 (2) "written instrument" has the meaning given in AS 11.-  
3 46.580(b) and includes ships' logs and papers, bills of lading and  
4 sale, documents relating to processing, shipping, and customs, and  
5 information stamped on or affixed to cans, crates, containers,  
6 freight, or a means of storage or packaging.

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13 or that the owner or operator of the vessel intends to engage in the  
14 imminent interception of salmon, the person

15 (1) moves persons, cargo, or other property to or from the  
16 vessel;

17 (2) services or repairs the vessel or its equipment;

18 (3) provides the vessel with power, supplies, equipment, or  
19 fuel;

20 (4) provides the vessel with information, other than weath-  
21 er reports, capable of aiding the high seas interception of salmon or  
22 frustrating or avoiding detection, including communicating the move-  
23 ments, intentions, or activities of state or federal law enforcement  
24 officials or other fishing vessels; or

25 (5) is in charge of a docking facility, harbor, or anchor-  
26 age, and permits the vessel to dock or anchor, or to remain docked or  
27 anchored.

28 (b) It is an affirmative defense, as defined in AS 11.81.900(b),  
29 to a violation of this section, if the person honestly and reasonably

1 believed that the assistance provided to the vessel was necessary for  
2 humanitarian or environmental purposes.

3 (c) In this section

4 (1) "environmental purpose" means the intent to prevent or  
5 minimize adverse ecological effects to water quality;

6 (2) "humanitarian purpose" means the intent to provide  
7 medical services for a sick or injured person, or to prevent the loss  
8 of human life.

9 (d) Assisting a vessel in high seas interception of salmon is a  
10 class A misdemeanor.

11 Sec. 16.10.790. FINES. Notwithstanding the provisions of  
12 AS 12.55.035(b) and (c), a person convicted of an offense under  
13 AS 16.10.760 - 16.10.780 may be sentenced to pay a fine not exceeding  
14 the greater of

15 (1) \$100,000;

16 (2) three times the pecuniary gain realized by the person  
17 as a result of the offense; or

18 (3) if the person is convicted under AS 16.10.760, two  
19 times the fair market value of the salmon involved or contemplated in  
20 the commission of the offense.

21 Sec. 16.10.800. DEFINITIONS. In AS 16.10.750 - 16.10.800

22 (1) "high seas interception," "interception," or a similar  
23 term, means the unauthorized catching, taking, or harvesting of salmon  
24 for other than sport, subsistence, or personal use purposes, through-  
25 out the migratory range of each species, by a vessel not registered  
26 under the laws of this state;

27 (2) "process" means affecting the condition or location of  
28 salmon, including preparation, packaging, storage, refrigeration, or  
29 transportation;

1           (3) "reckless disregard" has the meaning given for "reck-  
2 lessly" in AS 11.81.900(a);

3           (4) "salmon" means Pacific salmon and steelhead, and parts  
4 of Pacific salmon and steelhead, whether mature or immature, processed  
5 or unprocessed; and

6           (5) "unauthorized" means contrary to a statute or regu-  
7 lation of the United States or the state, or to a treaty or interna-  
8 tional fishery agreement, or in violation of a foreign law.

1 IN THE HOUSE

~~BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR~~

2

CS FOR HOUSE BILL NO. 262 ( )

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the high seas interception of  
7 salmon."

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

9 \* Section 1. AS 16.10 is amended by adding new sections to read:

10 ARTICLE 10. HIGH SEAS INTERCEPTION OF SALMON.

11 Sec. 16.10.750. FINDINGS AND INTENT. (a) The legislature finds *that*  
12 ~~the following:~~

13 (1) The salmon fishing industry is among <sup>*the state's*</sup> Alaska's largest  
14 industries and generates hundreds of millions of dollars and thousands  
15 of jobs each year; <sup>*fishing*</sup> The fishery is vitally important to commercial,  
16 subsistence, personal use, and sport <sup>*fishing*</sup> interests, and to the state's  
17 developing tourist industry;

18 (2) <sup>*the state*</sup> ~~Alaska~~ is committed to maintaining and enhancing its  
19 wild stocks of salmon by careful management, by initiating a 20-year  
20 rebuilding program, and by investing in the fishing industry;

21 (3) Millions of Alaska salmon are being caught and injured  
22 by high seas <sup>*fisheries that are intercept salmon*</sup> interception which is ~~contrary to~~ state, federal, or  
23 international law; <sup>*of Alaska salmon*</sup> This high seas interception <sup>*of Alaska salmon*</sup> defeats the state's  
24 management and rebuilding programs, deprives the state of a return on  
25 its investment in the fishing industry, and detrimentally affects  
26 subsistence and sport <sup>*fishing*</sup> <sup>*uses*</sup> of Alaska salmon

27 (4) Vessels that engage in the high seas interception of  
28 salmon can move relatively freely and undetected from region to region  
29 in the North Pacific <sup>*fishing*</sup> and <sup>*are thus*</sup> able to harvest whatever species is

1 most readily available or most valuable. By moving farther westward,  
2 a greater proportion of <sup>the take is</sup> Asian salmon ~~are taken~~; moving eastward re-  
3 sults in a greater proportion of the take being Alaska salmon<sub>x</sub>; ~~Al-~~  
4 though there is intermixing of Asian and <sup>North</sup> American salmon stocks,  
5 scientific evidence proves that even a minimal harvest of salmon  
6 within the migratory range of each species will contain Alaska salmon<sub>x</sub>;

7 (5) The illegal taking of any Pacific salmon detrimentally  
8 affects the Alaska fishing industry<sub>x</sub>; The illegal taking of Alaska  
9 salmon is of primary concern because of the direct and immediate  
10 effect on <sup>the state</sup> Alaska<sub>x</sub>; In addition, the illegal taking of Asian salmon is  
11 also of concern because depletion of those stocks will ultimately  
12 result in a shifting of high seas fishing efforts, both legal and  
13 illegal, to Alaska salmon<sub>x</sub>;

14 (6) High seas interception <sup>of salmon occurs</sup> ~~is committed~~ beyond the exclu-  
15 sive economic zone of the United States, or through <sup>incursions</sup> ~~excursions~~ within  
16 <sup>submarine economic and the state's</sup> the zone, ~~including within Alaska's~~ territorial sea, by vessels that  
17 are usually not registered in this state<sub>x</sub>; Moreover, these vessels are  
18 not based in Alaska and can thus avoid detection more easily than  
19 Alaska-based vessels<sub>x</sub>; As a practical matter, it is extremely diffi-  
20 cult to directly or indirectly regulate the vessels themselves<sub>x</sub>; It is  
21 therefore necessary to <sup>prohibit</sup> ~~regulate~~ activities within the <sup>state</sup> ~~State~~ of Alaska  
22 <sup>that</sup> ~~which~~ give aid, comfort, and financial incentives to high seas inter-  
23 ception <sup>of salmon</sup>;

AS 16.10.750 - 16.10.900

24 (b) The purpose of ~~this chapter~~ is to prevent resources, facil-  
25 ities, and expertise within the <sup>state</sup> ~~State~~ of Alaska from being available  
26 to promote or facilitate the <sup>high seas</sup> ~~interception~~ of Pacific salmon or the  
27 making of <sup>intercepted</sup> ~~the~~ salmon ready for or accessible to world markets.

28 Sec. 16.10.760. TRAFFICKING IN INTERCEPTED SALMON. (a) A  
29 person commits the offense of trafficking in intercepted salmon if the

1 person

2 (1) buys, sells, trades, processes, or possesses salmon, or  
3 attempts to buy, sell, trade, process, or possess salmon, with reck-  
4 less disregard that the salmon has been, or will be, obtained by high  
5 seas interception;

6 (2) provides financing, premises, equipment, supplies,  
7 services, power, or fuel used to <sup>buy</sup> ~~purchase~~, sell, trade, process, or  
8 possess salmon, with reckless disregard that the salmon has been, or  
9 will be, obtained by high seas interception; or

10 (3) acts as a broker or middleman, or otherwise acts on  
11 behalf of another party, to arrange for or negotiate, or attempts to  
12 arrange for or negotiate, the purchase, sale, trade, processing, or  
13 possession of salmon, with reckless disregard that the salmon has  
14 been, or will be, obtained by high seas interception.

15 (b) Trafficking in intercepted salmon is a class C felony.

16 Sec. 16.10.770. FALSIFICATION RELATED TO HIGH SEAS INTERCEPTION  
17 OF SALMON. (a) A person commits the offense of falsification related  
18 to high seas interception of salmon if the person creates, utters, or  
19 possesses a written instrument related to salmon, or makes an asser-  
20 tion for the purpose of having ~~such~~ a written instrument created,  
21 uttered, or accepted, with reckless disregard that the salmon was  
22 obtained <sup>by</sup> ~~by~~ interception and that the written instrument or assertion  
23 conveys misleading or untrue information about the ownership, pos-  
24 session, processing, origin, destination, route of shipping, type,  
25 condition, or time, place, and manner of the taking of the salmon.

26 (b) ~~As used~~ in this section

27 (1) "utter" has the meaning given in AS 11.46.580(b)(~~X~~);

28 (2) "written instrument" has the meaning given in  
29 AS 11.46.580(b)(~~X~~) and specifically includes ships' logs and papers.

1 bills of lading and sale, documents relating to processing, shipping,  
2 and customs, and ~~any~~ information stamped on or affixed to cans,  
3 crates, containers, freight, or ~~any~~<sup>a</sup> means of storage or packaging.

4 (c) Falsification related to high seas interception of salmon is  
5 a class C felony.

6 Sec. 16.10.780. ASSISTING A VESSEL IN HIGH SEAS INTERCEPTION OF  
7 SALMON. (a) A person commits the offense of assisting a vessel in  
8 high seas interception of salmon if, with reckless disregard that a  
9 vessel is in possession of salmon obtained by <sup>high seas</sup> interception or that the  
10 person ~~in charge~~<sup>A</sup> of the vessel intends to engage in the imminent  
11 interception of salmon, the ~~defendant~~<sup>person</sup>

12 (1) moves cargo or other property to or from the vessel;

13 (2) services or repairs the vessel or its equipment;

14 (3) provides the vessel with power, supplies, equipment, or  
15 fuel;

16 (4) provides the vessel with information, other than weath-  
17 er reports, capable of aiding the high seas interception of salmon or  
18 frustrating or avoiding detection, including communicating the move-  
19 ments, intentions, or activities of state or federal law enforcement  
20 officials or other fishing vessels; or

21 (5) is ~~a person~~ in charge of a docking facility, harbor, or  
22 anchorage, and permits the vessel to dock or anchor, or to remain  
23 docked or anchored.

24 (b) It is an affirmative defense, as defined in AS 11.81.-  
25 900(b) ~~(X)~~, to a violation of this section, if the person honestly and  
26 reasonably believed that the assistance provided to the vessel was  
27 necessary for humanitarian or environmental purposes.

28 (c) ~~As used~~ in this section ~~X~~

29 (1) ~~X~~ "environmental purpose" <sup>means the intent</sup> ~~is one designed~~ to prevent

1 or minimize adverse ecological effects to water quality;  
2 (2) ~~a~~ "humanitarian purpose" <sup>means the intent</sup> ~~is one~~ designed to provide  
3 medical services for a sick or injured person, or to prevent the loss  
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7 Sec. 16.10.790. FINES. ~~(a)~~ Notwithstanding the provisions of  
8 AS 12.55.035(b), <sup>and (c)</sup> a person convicted of an offense under <sup>AS 16.10.760-16.10.780</sup> ~~this chapter~~  
9 may be sentenced to pay a fine ~~which is~~ <sup>that not exceeding</sup> the greater of

- 10 (1) \$100,000;
- 11 (2) three times the pecuniary gain realized by the <sup>salmon</sup> ~~defen-~~  
12 ~~dant~~ as a result of the offense; or
- 13 (3) if the <sup>salmon</sup> ~~defendant~~ is convicted under AS 16.10.750, two  
14 times the fair market value of the salmon involved or contemplated in  
15 the commission of the offense.

16 Sec. 16.10.800. DEFINITIONS. ~~As used in~~ AS 16.10.750 -  
17 16.10.800 ~~X~~

- 18 (1) ~~"Alaska salmon" means salmon that spawn in fresh or~~  
19 ~~estuarine waters of Alaska;~~
- 20 (2) ~~"exclusive economic zone" has the meaning given in~~  
21 ~~16 U.S.C. 1802;~~
- 22 (3) ~~"high seas interception," "interception," or a similar~~  
23 ~~term, means the unauthorized catching, taking, or harvesting of~~  
24 ~~salmon, throughout the migratory range of each species, by a vessel~~ <sup>other than for sport, personal use, or</sup>  
25 ~~not registered under the laws of this state;~~ <sup>substituted</sup>  
26 (2) ~~with~~ "with reckless disregard" has the meaning given for  
27 "recklessly" in AS 11.81.900(a) ~~(X)~~;
- 28 (3) ~~with~~ "procession <sup>of</sup> salmon" means affecting the condition or  
29 location of salmon, including preparation, packaging, storage,

1 refrigeration, or transportation;

2 (4) ~~65~~ "salmon" means Pacific salmon and steelhead, and parts  
3 of Pacific salmon and steelhead, whether mature or immature, processed  
4 or unprocessed; and

5 (5) ~~67~~ "unauthorized" means contrary to a statute or regu-  
6 lation of the United States or ~~the State~~ <sup>the State</sup> of Alaska, or to a treaty or  
7 international fishery agreement, or in violation of ~~any~~ <sup>a</sup> foreign law.

**Article 6. Definitions.****Section  
900. Definitions**

**Sec. 11.81.900. Definitions.** (a) For purposes of this title unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(b) In this title, unless otherwise specified or unless the context requires otherwise,

(1) "affirmative defense" means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the defendant has the burden of establishing the defense by a preponderance of the evidence;

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO

CRIMINAL DIVISION CENTRAL OFFICE  
P.O. BOX KC  
JUNEAU, ALASKA 99811-0310  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5593  
PHONE: (907) 279-7424

April 17, 1989

The Honorable Peter Goll  
The Honorable Max Gruenberg  
Alaska House of Representatives  
P.O. Box V  
Juneau, Alaska 99811

Re: CS HB 262 ( )

Dear Representatives Goll and Gruenberg:

The purpose of this letter is to respond to comments about HB 262 from the legislative affairs agency, which were contained in a April 14 memorandum to Representative Goll attached to a draft committee substitute. The points raised in the memorandum primarily relate to the definition of the term "high seas interception". As explained below, no significant changes in the proposed committee substitute are required. The five points raised were as follows:

1. The first point raised in the memorandum was that it is often the "retention" of salmon, rather than the initial taking, which is illegal, and that the definition of "high seas interception" should therefore be changed to prohibit retention.

The phrase "catching, taking, or harvesting" in the definition is based on similar language in the federal Magnuson Act. The critical language, however, in the proposed definition is the word "unauthorized". If the incidental "catching" of salmon is authorized, then it does not become "high seas interception" until the salmon has been illegally retained, i.e., "unauthorized ... taking or harvesting". In my opinion, "unauthorized retention" is a narrower phrase than "unauthorized catching, taking, or harvesting", and I see no valid reason to deviate from the federal language.

2. The second issue is whether the definition of "high seas interception" should exclude the state's territorial seas and inland waters because sport fishermen might be subject to the law. If this change were made, the prosecution would be required to prove beyond a reasonable doubt not only that the salmon was taken beyond state waters, but also that the person who trafficked in the salmon or who assisted a vessel, was aware of that risk. Since it

may be difficult to prove exactly where the salmon was caught, the definition should not be changed as recommended by the legislative affairs agency.

However, just so there is no confusion on this point, it might be worthwhile to add the phrase "other than for sport, personal use, or subsistence purposes," to the definition of "high seas interception". It can be inserted on page five of the committee substitute, on line 22 following the word "species,".

3. The third point was that the definition of "high seas interception" excludes vessels registered in Alaska that might also be involved in illegal interception. One reason for excluding Alaska-registered vessels is explained in paragraph six of the legislative findings on page two: it is easier for unregistered vessels (those which cannot legally fish in Alaska waters) to escape detection. Another reason is that state-registered vessels do not appear to be a significant part of the problem of high seas interception. Finally, unless state-registered vessels are excluded, an Alaskan fisherman would be engaged in "high seas interception" by violating any one of the many state fishing laws, such as straying too far over the line (even unintentionally) into a closed area.

4. The fourth point made in the legislative affairs memorandum was that a person cooperating with law enforcement officials could be "theoretically subject" to prosecution for assisting a vessel. At common law, a person who acts at the direction of a law enforcement officer does not possess the "general criminal intent" necessary for prosecution. In Alaska that concept has been codified in AS 11.81.420. In other words, a tow truck operator who hauls away a stolen car at the direction of a police officer cannot be prosecuted for possessing stolen property; an informant who buys drugs at the direction of the police cannot be prosecuted for possession of narcotics; a person who assists a police officer in making an arrest cannot be prosecuted for assault. Similarly, a tugboat operator who guides a Coast Guard-seized fishing vessel into port, or the harbormaster "who provides services or docking facilities to this seized vessel" could not be prosecuted.

5. The final point was that the section on fines specifies a fixed amount and that judges do not have the discretion to impose a lesser fine. This comment is based on a reading of the phrase "may be sentenced" which is entirely too narrow, and I believe the current wording gives courts discretion to impose any fine up to the amount specified. However, I have no objection to substituting the words "not exceeding" for "that is" on page five, line 11, of the committee substitute, so that the wording is precisely the same as in AS 12.55.035(c).

The Honorable Peter Goll  
The Honorable Max Gruenberg  
CS HB 262 ( )

April 17, 1989  
Page 3

I have also reviewed the technical drafting changes made in the committee substitute, and I disagree with two:

a. Page three, line 22: the word "such" should be put back in following the word "having", otherwise the phrase "related to salmon" would have to be repeated following the words "written instrument" on line 22.

b. Page four, line 13: for clarity the word "person" should be changed back to "defendant" because two different persons are mentioned in the previous four lines.

Finally, there are three other changes which should be made, one of which I mentioned during my brief testimony before the committee:

c. Page four, line 14: the word "persons," should be added following the word "moves".

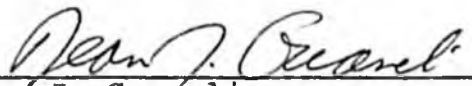
d. Page five, line 16: the statutory reference should be to "AS 16.10.760" instead of "AS 16.10.750".

e. Page five, line 26: the word "person" should be defined to include corporations and other similar entities. Although the definition of "person" in AS 11.81.900(b) includes a corporation, the word is not defined in AS 16.05.940, the general definition section in Title 16, and therefore it would be prudent to do so.

If you or any member of your staffs have questions about the bill, please call me.

Sincerely,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By:   
Dean J. Guaneli  
Assistant Attorney General

## City/State

B

# Indictments delivered in salmon scam

## Feds net 3 companies, 19 people in smuggling ring

SAN FRANCISCO (AP) — A federal grand jury Wednesday indicted three companies and 19 people allegedly involved in an elaborate scam to smuggle 1.5 million pounds of illegally caught salmon into the United States, repackage it and sell it in Japan.

The indictments for conspiracy, smuggling and other charges ended a 2½-year investigation into a scheme officials said was designed to circumvent treaty between the United States, Japan and Canada. That treaty limits the importation of salmon into each country to the amount harvested and exported by the others.

The fishermen, based in Tai-

wan and working with others in Singapore, Hong Kong and the United States, took the salmon unlawfully on the high seas and imported, boxed and packaged it as a product of Japan to the port of San Francisco, said U.S. Attorney Joseph P. Russoniello.

The salmon was then taken to Oakland and transported to Bellingham, Wash., where it was re-labeled and reboxed as product of the United States, to be shipped frozen to Japan for sale there at prices three to five times higher than U.S. prices.

"This rather elaborate

scheme involved fish brokers, processors and fisheries, as well as the fishermen," Russoniello said.

The operation was "particularly insidious," Russoniello said, because it threatened the supply of salmon originating off the North American coast from Alaska to Canada, Washington, Oregon and California.

"When you put together the prospect of this unchartered, unregulated fishing with the (Alaskan oil spill) catastrophe we've experienced, you can see that in the future all of this supply could

be depleted and we would lose this very precious natural resource," Russoniello said.

Dr. William Evans, assistant secretary of commerce and administrator of the National Oceanic and Atmospheric Administration, called the indictments "a very significant event."

"We look at this as a conservation issue," he said. "These are salmon that we can't manage."

The illegal salmon catches also hurt the United States economically, he said.

"With Japan we have one of

the few positive trade balances in the area of fisheries that we have with any countries," he said. "This kind of illegal activity eats very seriously into that market for American fishermen. We have a number of other (cases) that are being worked on and one of the things we're pushing for, with customs and the departments of justice, state and commerce, is to make sure that we shut down this kind of activity once and for all."

The salmon scam investigation began with the seizure of 580,000 pounds of fish 2½ years

ago and represents "the tip of the iceberg" of illegal fishing, said John Hensley, assistant regional commissioner of U.S. Customs.

"We are going to pursue with vigor these trans-shipments of illegal fish," he said.

Fifty thousand pounds of the 580,000 pounds seized were distributed to the poor and needy in the San Francisco Bay area, through the San Jose Food Bank, and the rest was sold on the open market, Russoniello said. That 580,000 pounds had a wholesale value in the United States of \$1.67 million, he said.

"We do not believe this (illegal fishing) is the tip of the iceberg. See Salmon, page B-4

## Salmon: 19 indicted in alleged scam

Continued from page B-1

gal fishing) has stopped as a result of the investigation that's been done," he said. "We have very serious concerns that even as we stand here today people may be planning for the future unlawful harvesting of salmon. We hope they get the message that we're not going to let up on

this."

Evans said most of the illegal salmon originated off the North American coast and were taken incidental to gill net fishing for squid on the high seas.

"There are thousands of nautical miles of gill net spread across the ocean for the purposes of catching squid," he said. "However, there's a very, very high in-

cidental take of salmon. The salmon, because of Taiwanese law, cannot be packaged and sold to the world's biggest market, Japan. Therefore, this very elaborate scheme was developed in order to circumvent this."

Among those named in the indictments were Wescon Trading International Inc. of San Bruno, Calif., an importer-exporter and

broker of seafood. Its president, Kunioki Takayama, and two subsidiaries, Aqua Meal Co. and Mustika Hawaii Corp, were mentioned but not indicted. Also indicted was Kenichi Haramoto of Fuji Express Co. in South San Francisco.

Haramoto is a U.S. citizen and Takayama is a permanent resident, Russoniello said.

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

cc  
94B262

March 31, 1989

The Honorable Sam Cotten  
Speaker of the House  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the high seas interception of salmon. These provisions are needed so that the State of Alaska can do everything within its authority to prevent persons within this state from furthering the illegal high seas taking of one of the state's most valuable renewable resources.

Although the federal Magnuson Act may preempt much of the field of high seas fishery regulation, the State of Alaska has broad latitude to prohibit conduct occurring wholly within its territorial jurisdiction. Therefore, this proposed bill is not in conflict with federal law. A section-by-section description of the bill follows.

Proposed AS 16.10.750 sets out legislative findings to establish a basis for legislation in this area. These findings adopt the position taken by the federal government, that the mobility of the high seas fishing fleets and the intermixing of salmon species make high seas interception an international concern, and that the salmon-producing countries in the North Pacific have a legitimate interest in the preservation of each other's salmon stocks. By making findings in this area, it relieves the state of having to prove which precise species has been taken in any specific instance.

Proposed AS 16.10.760 is intended to prohibit trafficking in intercepted salmon by covering a wide range of conduct engaged in by dealers in illegal salmon products and the persons who assist them. The phrase "will be obtained by high seas interception" is intended to cover those situations in which the salmon that is the subject of the trafficking has not yet been harvested but the circumstances cause the person to be aware of a risk that it will be taken by high seas interception.

The word "attempts" is used in this provision to prohibit conduct that constitutes a "substantial step" toward commission of the offense and to treat such a person as a principal. Thus, entering into a contract would constitute a completed offense, whether it is viewed as buying or selling, or merely an attempt to buy or sell. However, it is not intended that a completed, formal contract be proven in order to establish an "attempt," but only that a substantial step was taken. Offers to buy or to sell that do not rise to the level of a substantial step are adequately dealt with by the "solicitation" provisions in AS 11.16 and AS 11.31.110.

In situations in which the offer is actually completed or in which the deal goes far enough so that an attempt can be proven, class C felony penalties provide up to five years imprisonment. This is the same penalty that would be provided under current Alaska theft statutes for someone who steals more than \$500 of salmon, and is also consistent with penalties under the Lacey Act, which governs federal fish and game violations. However, under current law, these tough federal felony penalties do not apply to much of the high seas interception of salmon.

Instead, lower penalties under the Magnuson Act (six months maximum imprisonment) currently apply to much of the conduct covered by this proposed bill. The reason for this is that the Lacey Act specifically does not apply to any activity regulated by a fishery management plan under the Magnuson Act. Thus, to the extent that these proposed state laws are violated because of a violation of Magnuson (see the proposed definition of "high seas interception"), the Lacey Act will not apply and the applicable felony penalties can only come from state law. This bill will help fill that gap.

Proposed AS 16.10.770 prohibits falsification of documents that makes it difficult to discover the true origin of illegally taken high seas salmon. This offense is comparable to forgery in many ways and in fact borrows the definitions of certain terms in the criminal forgery statutes. Like forgery of contracts or public records, it is also proposed to be a class C felony.

Proposed AS 16.10.780 is the final criminal statute in this bill. It prohibits the use of shore-based resources and facilities from being used to aid vessels that engage in the high seas interception of salmon, except in emergency circumstances. There is a potential overlap between this section and the "trafficking" provisions in proposed AS 16.10.750, since both would apply to a person who provides supplies or services to process or possess intercepted salmon. However this section is intended to specifically apply to those who provide services to vessels, even if the

vessel has also the capability to operate as a processing plant.

This section is consistent with the principle of necessity in AS 11.81.320 by providing an "affirmative defense" if the assistance was rendered for humanitarian or environmental purposes. An affirmative defense is one that must be proven by the defendant by a preponderance of the evidence. Without such a provision it would be extremely difficult for the state to prove that the defendant did not believe that the assistance was necessary, especially in cases in which the vessel has already left port.

Because shore-based service providers might be considered to be less "culpable," this offense is proposed to be a class A misdemeanor, which provides up to one year imprisonment.

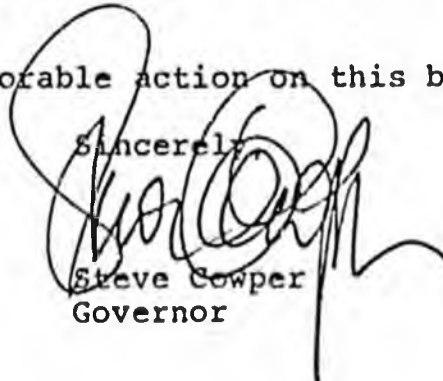
Proposed AS 16.10.790 provides a special type of fine for offenses created under the bill so as to take the profit motive out of this type of activity. In general, the bill establishes a fine which is the greater of (1) \$100,000, (2) triple the profit, or (3) with "trafficking" offenses under proposed AS 16.10.760, double the value of the salmon contemplated in the deal.

The standard criminal code provisions levy a fine of three times the pecuniary gain, but only if the defendant is an organization. This separate provision for fines is therefore proposed because the present \$50,000 limit for individuals convicted of class C felonies and the \$5,000 limit for class A misdemeanors will not provide a sufficient financial deterrent.

Proposed AS 16.10.800 provides needed definitions for terms used in this bill.

I urge your prompt and favorable action on this bill.

Sincerely,



Steve Cowper  
Governor

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: An Act relating to the high  
seas interception of salmon  
Sponsor: Rules Committee  
Requestor: Governor

Agency Affected: Fish and Game  
BRU: Commercial Fisheries, Sport  
Fish, Subsistence  
Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

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

**ANALYSIS : (Attach a separate page if necessary)**

Prepared by: Robert C. Clasby Phone: 465-4210  
Division: Commercial Fisheries Date: 3/22/89  
Approved by Commissioner: Orville Pillensworth Date: 3-22-89  
Agency: \_\_\_\_\_

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

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Public Safety  
 Title: High seas interception of  
salmon BRU: Fish & Wildlife Protection  
 Sponsor: Rules Committee Component: \_\_\_\_\_  
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach separate page if necessary)

Enforcement of these new provisions will be undertaken as part of the Division of Fish and Wildlife Protection's ongoing efforts to enforce regulations regarding Alaska's fishing industry. Greater resources would allow us to provide increased enforcement, but this bill would not itself have additional fiscal impact on the Division.

Prepared by: Gavie A. Horetski, Deputy Commissioner Phone: 465-4322  
 Division: Office of the Commissioner Date: 3/22/89

Approved by Commissioner: Arthur English Date: 3/22/89  
 Agency: Department of Public Safety