

H B

2 6 2

HOUSE COMMITTEE REPORT

(9)

Date Referred: April 26, 1989

FURTHER REFERRALS:

Date of Committee Action: 5-4-89

The RESOURCES 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 (Res) 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 _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) 7+8 3/31/89

zero with analysis _____

zero fn/analysis Pul. Safety 3/22/89

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass
No Rec
Amend

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

	Do Not Pass	No Rec	Amend

[Signature]
Chairman's Signature




Alaska State Legislature

HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 468-3718

MEMORANDUM

TO: House Resources Committee

FROM: Representative Cliff Davidson 

DATE: May 4, 1989

SUBJECT: CSHB 262 (Resources) - High seas interception of salmon

Bill Report

CSHB 262 makes a number of findings concerning the negative effect that harvest of salmon on the high seas has on the fishery and the Alaskan economy and the difficulty of detecting and enforcing the ban on high seas harvest of salmon. CSHB 262 indicates that its purpose is to prevent resources, facilities, and expertise within the state from being available to promote or facilitate the high seas interception of salmon.

High seas interception of salmon means the unauthorized harvest of salmon for other than sport, subsistence, or personal use purposes throughout the migratory range of each species by vessels not registered in Alaska or beyond Alaska's territorial sea by a vessel registered in Alaska.

CSHB 262 creates the crime of trafficking in intercepted salmon, which is a class C felony. A person commits trafficking in intercepted salmon if the person

(1) buys, sells, trades, processes or possesses salmon, or attempts to do so, with reckless disregard that the salmon has been, or will be, obtained by high seas interception;

(2) knowingly provides financing, premises, equipment, supplies, services, power, or fuel used to purchase, sell, trade, process, or possess salmon that has been, or will be, obtained by high seas interception;

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

CSHB 262 creates the crime of falsification related to high seas interception of salmon, which is a class C felony. A person commits this crime if the person creates, utters, or possesses a written instrument related to salmon or makes an assertion for the purpose of having such an instrument created, uttered, or accepted, with reckless disregard that the salmon has been, or will be, obtained by high seas interception and that the instrument or assertion conveys misleading or untrue information about the ownership, origin, manner of taking, etc. of the salmon.

A class C felony is punishable by up to five years' imprisonment for a first offense and is subject to presumptive terms of 2 years and 3 years for subsequent offenses.

CSHB 262 creates the crime of assisting a vessel in high seas interception of salmon, which is a class A misdemeanor. A person commits the offense of assisting a vessel in high seas interception of salmon if, knowing that a vessel is in possession of salmon obtained by high seas interception or that the person in charge of the vessel intends to engage in the imminent interception of salmon, the person

- (1) moves persons or cargo to or from the vessel,
- (2) services or repairs the vessel or its equipment,
- (3) provides the vessel with power, supplies, equipment, or fuel,
- (4) provides the vessel with information, other than weather reports, capable of aiding the high seas interception of salmon or frustrating or avoiding detection, including communicating the movements, etc., of law enforcement officials or other fishing vessels; or
- (5) is in charge of a docking facility and permits the vessel to dock or anchor.

It is an affirmative defense if the person honestly and reasonably believed that the assistance provided to the vessel was necessary for humanitarian or environmental purposes or to prevent a significant loss of property. The defense cannot be raised unless the person provided immediate notice to law enforcement authorities.

Class A misdemeanors are punishable by imprisonment of up to one year.

CSHB 262 provides that a fine may be imposed for any of these crimes that is up to \$100,000, three times the pecuniary gain realized by the defendant as a result of the offense, or, if the defendant is convicted trafficking, two times the market value of the salmon involved or contemplated in the commission of the offense.

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 99501-5993
PHONE: (907) 279-7424

May 2, 1989

The Honorable Cliff Davidson, Co-Chair
The Honorable Curt Menard, Co-Chair
House Resources Committee
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

Re: CSHB 262 (Jud) (high seas interception)

Dear Representatives Davidson and Menard:

This letter is about CSHB 262 (Jud), relating to high seas interception of salmon, which I understand may soon be considered by the House Resources Committee. When the bill was passed out of the House Judiciary Committee, Rep. Gruenberg expressed some remaining concern, now also expressed by a member of your staff, over the distinction between registered and unregistered vessels.

Illegal fishing by unregistered vessels is labelled "high seas interception" under the bill and people who deal with or aid these unregistered vessels would be subject to prosecution. Illegal fishing by vessels registered in Alaska is not labelled as "high seas interception" under the committee substitute as it now is drafted. The question which has been raised is whether distinguishing between these two groups raises any constitutional issues based on theories involving improper reliance on durational residency, state citizenship or national origin.

As you know, in enacting new laws one of the primary responsibilities of a legislature is to make distinctions, create classifications, and identify exceptions that will achieve the legislature's goals. It is not the function of the equal protection clause, the right to travel clause, or any other section of the constitution, to prohibit legitimate line drawing, particularly in the area of commercial fishing, where the courts have traditionally accorded the legislature a large measure of latitude in protecting the state's fishery resources.

As long as distinctions are not made on a constitutionally impermissible basis such as race or national origin, or give improper advantages to Alaska residents over

The Honorable Cliff Davidson, Co-Chair
The Honorable Curt Menard, Co-Chair

May 2, 1989
Page - 2 -

residents from other states, the courts will give great deference to legislative decisionmaking.¹ In short, the distinction made in this bill between registered and unregistered vessels will be upheld because there is clearly a legitimate basis for the distinction.

This bill makes no mention of residency, citizenship, or status as an alien of persons who are labelled as engaging in high seas interception, nor does it make any reference at all to the identity of the persons who might be prosecuted for dealing in intercepted salmon or aiding that activity. Although the bill does not make distinctions between the individuals involved, it properly makes distinctions between vessels.

As I explained in a previous letter to Reps. Goll and Gruenberg, there are a number of reasons for excluding state-registered vessels from the provisions of this bill. Among those reasons are that registered vessels cannot so easily escape detection because of their ties to the state, that there is no evidence that registered vessels are a significant problem in the illegal taking of salmon beyond Alaska's territorial waters, and that the law would be far too broad and overly inclusive if the provisions of this bill were triggered every time a registered vessel violated any one of the many state fishing regulations. In addition, during my testimony in the House Judiciary Committee, I noted that there is already a detailed and comprehensive set of state laws and regulations to govern illegal fishing by registered vessels within the areas most frequented by those vessels.

There are thus valid, constitutionally permissible, reasons why the bill does not affect people who deal with state-registered vessels. The legislature may nonetheless decide that

¹ The equal protection analysis is slightly different under the federal and state constitution. Under federal law, "suspect" classifications based on race, for example, or laws affecting fundamental rights such as voting, for example, must withstand what is known as the "strict scrutiny" test, which requires that the law be based on a "compelling government interest". Everything else is constitutional if there exists a "rational basis" for the distinction being made in the law. The Alaska Supreme Court also uses the "compelling state interest" test in the same circumstances as under federal constitutional law, but has already held that commercial fishing is not a fundamental right. With all other classifications the requirement is that the distinction made in the law must bear "a fair and substantial relationship" to a legitimate governmental interest. *Isakson v. Rickey*, 550 P.2d 359 (Alaska 1976). This has been called a "sliding scale" analysis that balances the governmental need for the law with the individual rights involved.

The Honorable Cliff Davidson, Co-Chair
The Honorable Curt Menard, Co-Chair

May 2, 1989
Page - 3 -

it wants to more directly address the possibility that a registered vessel might illegally take salmon on the high seas. In order to accomplish this result, without at the same time creating a law that is too broad, it would be possible to include state-registered vessels under the definition of high seas interception when the fishing occurs beyond Alaska's territorial sea. Fishing by registered vessels within Alaska's jurisdiction would still not be considered high seas interception, although trafficking in salmon taken illegally by registered vessels in Alaska waters would continue to be punished by misdemeanor penalties under state law (AS 16.05.920 -- 925), and felony penalties under federal law (16 USC 3372 -- 3373).

To make this change, language should be added (page 6, line 2) to the definition of "high seas interception" so it would read:

the unauthorized catching, taking, or harvesting of salmon for other than sport, subsistence, or personal use purposes, throughout the migratory range of each species by a vessel not registered under the laws of this state, or beyond Alaska's territorial sea by a vessel registered under the laws of this state

Two other changes were recommended by your staff, to which I have no objection. First, your staff pointed out that it may be inappropriate to prohibit someone from towing a vessel which is adrift to safety, or otherwise preventing significant loss of property, even if no human life or environmental damage is otherwise at stake. To accomplish this result in a way that avoids having the exception swallow the rule, language could be added (page 5, line 2) to proposed AS 16.10.780(b) so it would read:

It is an affirmative defense, as defined in AS 11.81.900(b), to a violation of this section, if the person honestly and reasonably believed that the assistance provided to the vessel was necessary for humanitarian or environmental purposes, or to prevent a significant loss of property. To be entitled to raise an affirmative defense under this subsection, the person must provide immediate notice, by the quickest available means, to the United States Coast Guard or the Alaska Department of Public Safety, indicating the type of assistance being provided and the circumstances requiring the assistance.

Second, your staff indicated that the mental state for certain specific provisions in the bill would be more appropriate if it required proof of a knowing violation, rather than one committed with reckless disregard of the circumstances. To make this change the word "knowing" should be substituted for "with

The Honorable Cliff Davidson, Co-Chair
The Honorable Curt Menard, Co-Chair

May 2, 1989
Page - 4 -

reckless disregard" in two places: page 3, line 10 and also at page 4, line 11. A definition for "knowing" should then be provided so it is clear it has the same meaning as "knowingly" in AS 11.81.900(a).

If you have questions or comments, or if there is anything else I can do to assist in the speedy passage of this important legislation, please contact me.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: *Dean J. Guapeli*
Dean J. Guapeli
Assistant Attorney General

cc: The Honorable Peter Goll
The Honorable Max Gruenberg

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

cc
74B262

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 offense 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.

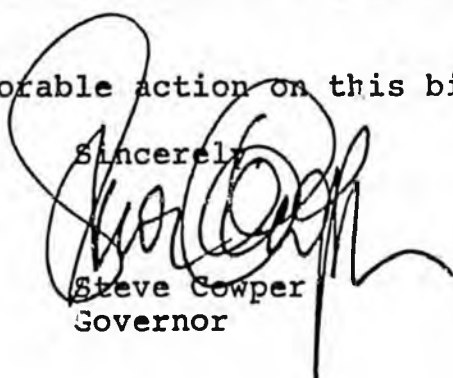
Proposed AS 16.10.790 provides a special type of fine for offenses created under the bill so as to take the profit motive out of this type of activity. In general, the bill establishes a fine which is the greater of (1) \$100,000, (2) triple the profit, or (3) with "trafficking" offenses under proposed 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						
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	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: RC Robert C. Clasby
Division: Commercial Fisheries

Phone: 465-4210
Date: 3/22/89

Approved by Commissioner: Orin Pellensworth
Agency: _____

Date: 3-22-89

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 BRU: Fish & Wildlife Protection
salmon
 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-
---------	-----	-----	-----	-----	-----	-----

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	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)

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: Gayle 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