

SB

41

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB 41

Revision Date: _____ Dept. Affected: Fish and Game
 Title: Reports by Fishing Vessels Not Registered BRU: Commercial Fisheries Manage. & Dev.
 Under the Laws of the State: _____ Component: Fisheries Management
 Sponsor: Senator Taylor
 Requester: Senate Resources COMPONENT SERIAL NO. 1241

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 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)

The proposed legislation should not have any fiscal or programmatic impact on the Commercial Fisheries Management and Development Division.

Prepared by: Bob Clabv
 Division: Commercial Fisheries Management and Development
 Approved by Commissioner: [Signature]
 Agency: _____

Phone: 465-4210
 Date: 1/26/95
 Date: 1.30.95

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SENATE COMMITTEE REPORT
First Committee of Referr.

DATE: 1/20/95

FURTHER: Finance

Date of 5-Day Notice: 1-25-95
 (in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2-3-95

Resources Committee considered SB 41

Relating to reports by fishing vessels that are not registered under the laws of the state.

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:
 same title
 new title
 House Bill:
 technical change
 new: SCR# _____

SIGNING WITH RECOMMENDATIONS:	DP	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i> needs judiciary oversight	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
CHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
ADEFG	1-23-95	<input checked="" type="checkbox"/>	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

W

DEPARTMENT OF FISH AND GAME

POSITION PAPER

Bill No. HB 113 / SB 41

Sponsor: Rep. Williams *Sen Taylor*

Division: Commercial Fisheries Management and Development

Bill Title: Reports by Fishing Vessels That Are Not Registered Under the Laws of the State.

Department Position: Support

Background/Legislative Intent:

Canadian commercial salmon trollers commonly fish close to the international boundary in Dixon Entrance. Frequently, these vessels enter Alaskan waters to anchor for the night. While at anchor, they do occasionally clean and ice fish. Because of the controversy surrounding the Pacific Salmon Treaty, the use of Alaska harbors by Canadian vessels disturbs some Alaskans. There is also the possibility of illegal fishing by the vessels while in Alaskan waters. The intent of the proposed legislation is to have the Board of Fisheries adopt regulations that will allow the state to more closely monitor the activities of Canadian vessels while in Alaskan waters. This will not only prevent illegal fishing, but reassure concerned Alaskans that Canadian vessels are not taking advantage of their access to our waters to engage in illegal fishing.

Analysis of Bill/Program Effects:

The proposed legislation explicitly grants the Board of Fisheries the authority to adopt regulations that will require a foreign fishing vessel to report to the state information on fish they have aboard their vessel when it is in or transuding state waters. The adoption of this legislation and subsequent adoption of regulations requiring the reporting by a foreign fishing vessel should not have a negative impact on the division's programs. The adoption of such regulations may assist in the prevention of illegal fishing by foreign vessels.

Commissioner's Signature

Frank Rue

Frank Rue, Acting Interim Commissioner

Date

1-30-95

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY

STATE OF ALASKA

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130 Seeward Street, Suite 409

Juneau, Alaska 99801-2105

MEMORANDUM

February 1, 1995

SUBJECT: Authority of the State to Impose Reporting Requirements on Fishing Vessels Not Registered Under the Laws of the State (HB 113)

TO: Representative Bill Williams

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum is in response to the query of Pete Ecklund of your staff as to whether the state may impose reporting requirements on a fishing vessel not registered under the laws of the state (foreign fishing vessels).

HB 113 provides that the Board of Fisheries may adopt regulations requiring foreign fishing vessels present in or transiting the water of the state to report the quantity, species, and origin of fish on board to the Department of Fish and Game. In the context of HB 113, a foreign fishing vessel is any fishing vessel that is not registered under the laws of the state, i.e. fishing vessels from another state or another country. Generally to be registered under the laws of the state, a fishing vessel must have a commercial fishing vessel license issued by the state. The Board of Fisheries is authorized under AS 16.05.475 to adopt a definition of "registered under the laws of the state" for purposes of that statute but has not done so.

The primary constraint on the authority of the state to enact a provision such as that proposed by HB 113 is the interstate and foreign commerce provisions of the United States Constitution (Article 1, sec. 8, cl. 3). The commerce clause gives power to the Congress to regulate foreign and interstate commerce and limits the power of the states to erect barriers against interstate and foreign trade.

The commerce clause is not an absolute barrier to state laws affecting interstate or foreign commerce. The state retains authority under its general police powers to regulate matters of legitimate local concern, even though interstate and foreign commerce may be affected. Maine v. Taylor, 477 U.S. 131, 138, 91 L.Ed.2d 110, 120 (1986). In reviewing a state law affecting commerce, the courts distinguish between state laws that affirmatively discriminate against interstate and foreign commerce and those that place only an incidental burden on commerce.

Representative Bill Williams

February 1, 1995

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State laws that fall into the first group, by directly discriminating against commerce or by having an effect that discriminates against commerce, are subjected to demanding scrutiny by the courts. The burden falls on the state to demonstrate that the law serves a legitimate local purpose and that the purpose cannot be served as well by nondiscriminatory means. Maine, 477 U.S. at 138, 91 L.Ed.2d at 121. Laws that fall into the second group violate the commerce clause only if the burden that they impose on commerce are clearly excessive to the putative local benefits.

The first issue to be resolved is whether HB 113 falls into the first group by discriminating against interstate and foreign commerce or the second group by only incidentally affecting commerce. The distinction between the two groups is often a function of whether the purpose or effect of the law is economic protectionism. Pacific Northwest Venison Producers v. Smitch, 20 F.3d 1008 (9th Cir. 1994). If HB 113 is viewed as affirmatively discriminating against interstate and foreign commerce, the state must be able to establish that it is pursuing a legitimate state interest, unrelated to economic protectionism. A law that pursues the goal of economic protectionism is per se invalid under the commerce clause.

The state's interest in protecting fish resources is a recognized justification for state laws affecting interstate and international commerce. Hughes v. Oklahoma, 441 U.S. 322, 60 L.Ed.2d 250 (1979). If the purpose of the HB 113 is to protect state fishery resources by preventing illegal fishing by foreign fishing vessels while they are in state waters, the state would be able to establish that it is pursuing an appropriate goal. However as the purpose of the law become less oriented toward the conservation of state resources and more oriented toward protecting the economic interests of Alaska fishermen, the ability of the state to satisfy the requirements of the commerce clause decreases. The state must also be able to show that it cannot achieve its purpose by a less discriminatory means. If HB 113 is directed at addressing a problem that is posed only by foreign fishing vessels, such as illegal fishing by foreign fishing vessels while they are temporarily in state water, there could not be any less discriminatory means available to the state to achieve its purpose. Also, as long as the reporting requirement is the least burdensome measure available to achieve that goal, then the state law should be able to survive scrutiny under the commerce clause. A simple reporting requirement that could be satisfied by radio or by a phone call is more likely to be consistent with the requirements of the commerce clause, than would a requirement that foreign fishing vessels report to the nearest Fish and Game office and be subjected to a physical inspection by a fish and game officer.

If HB 113 falls into the second group then the state need only show that the local benefit of the law justifies the burden placed on commerce. Under this analysis, the conservation and protection of fishery resources are a legitimate local concern. New York State Trawlers Association v. Jorling, 16 F.3d 1303 (2d Cir. 1994). A simple reporting requirement would probably be a slight burden on foreign vessels and not be clearly excessive in relation to the benefit derived by the state by imposing the requirement.

Representative Bill Williams

February 1, 1995

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In the abstract, it would seem that the state could easily justify imposing a reporting requirement on foreign fishing vessels in state water and still conform with the requirements of the federal commerce clause. However, the ultimate issue will be whether the actual reporting requirement as adopted by the Board of Fisheries is consistent with the federal commerce clause. In adopting a reporting requirement for foreign fishing vessels, the Board of Fisheries must be very careful as to the purposes for which it is establishing the requirement and as to the degree of burden that is imposed on foreign fishing vessels.

There is no obstacle, that I am aware of, to assertion of state jurisdiction over foreign fishing vessels while they are present in state water. A cursory review of the Magnuson Fishery Conservation and Management Act has not uncovered any provisions that would deprive the state of its authority to regulate activities of foreign fishing vessels in state water.

The laws of the state are equally applicable to nonresidents and aliens who are present in the state. The only possible exception being a treaty that restricts the power of the state to arrest a foreign national, such as treaties relating to diplomatic immunity. There are no treaties that I am aware of that would prevent the state from arresting fishermen who are foreign nationals. The Department of Law has not reported any such problems in exercising criminal jurisdiction over foreign nationals.

If I may be of further assistance, please advise.

GU lmb

95-109 lmb

Alaska State Legislature



Senator Robin L. Taylor

State Capitol
Bureau Alaska 99501-2252
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907-465-1422
52 Front Street
Sitka, Alaska 99801
907-225-6100
907-225-6111

Memorandum

DATE: March 2, 1995

TO: Senator Mike Miller, Chairman
Senate Rules Committee

FROM: Senator Robin Taylor *RT*

RE: SB 41 Federal agency jurisdictional
question

CC: Senate Resource Committee Members

While Senate Bill 41 was being considered in the Senate Resources Committee Senator Pearce expressed concern about possible federal jurisdiction regarding SB 41, her concerns have been addressed. After the bill was referred to the Judiciary Committee, I sent a letter to the United States Coast Guard asking for comments. They articulated concerns with nomenclature in the legislation and so the Judiciary Committee adopted a committee substitute to address their expressed concerns.

The Coast Guard indicated the U.S. Department of Commerce might want to comment. Commerce sent a letter stating they had no comments to offer at this time. I have attached both letters to this memorandum for your review.

Alaska State Legislature



Senator Robin L. Taylor

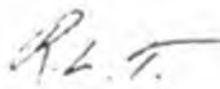
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Juneau, Alaska 99801-3182
907-586-3873
Fax 907-586-3922

542 Esprit Street
Ketchikan, Alaska 99901
907-229-8088
Fax 907-229-0713

Memorandum

DATE: January 31, 1995

TO: Senator Loren Leman, Chairman
Senate Resources Committee

FROM: Senator Robin Taylor 

SUBJECT: SB 41, relating to reports by foreign fishing vessels not registered under the laws of the state

Thank you for the prompt hearing on Senate Bill 41. This legislation would require foreign fishing vessels transiting or lying in state waters to report their catch by species, quantity and the area where harvested.

It was introduced at the request of the Ketchikan Trollers Committee. In a letter to me and Representative Williams the trollers committee stated that this requirement would result in better harvest information during the season. The letter continued "southeast Alaskan fishermen are suffering irreparable harm at the U.S./Canada Pacific Salmon Treaty due to the inability or unwillingness of fishery managers in British Columbia to monitor this growing fishery." This legislation would allow the Alaska Department of Fish and Game to better monitor in-season catch statistics.

The fishery is located in southern Southeast Alaska off of Cape Chacon and Cape Muzon. In a period of five years the fishery has gone from a relatively minor one with a dozen or so trollers to a modern freezer fleet, that at times exceeds 100 vessels. These boats are targeting Alaskan and Canadian salmon just off our coast. Since a run to Canadian harbors is some 30 miles across waters exposed to the ocean -- the Canadian boats more often than not anchor in state waters until their holds are full.

While it would be ideal to have the board of fish implement this for the upcoming season, timing considerations probably preclude this from occurring until next year. The Department of Fish and Game has said this measure will be given a zero fiscal note.

Attached is backup and a sponsor statement for the committee packets.

Alaska State Legislature

Chairman
Judiciary Committee

Vice Chairman
Transportation Committee

Member
Regulatory Committee
Western Legislative Forum Task Force



Senator Robin L. Taylor

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Senate Bill 41

Sponsor Statement

Relating to reports by fishing vessels not registered under the laws of the state

This legislation would require foreign fishing vessels transiting or lying in state waters to report their catch by species, quantity and the area where harvested.

The bill was introduced at the request of the Ketchikan Trollers Committee in response to the rapid expansion of the fishery off Cape Muzon and Cape Chacon. It has gone from a relatively minor fishery with a dozen or so trollers, to a modern freezer fleet, that is at times in excess of 100 vessels. It will be possible to monitor this fishery because a transit to Canadian harbors is some 30 miles across waters exposed to the ocean -- so the ships often anchor in state waters until their holds are full.

In a letter to Senator Taylor and Representative Williams, the trollers committee states, "southeast Alaskan fishermen are suffering irreparable harm at the U.S./Canada Pacific Salmon Treaty due to the inability or unwillingness of fishery managers in British Columbia to monitor this growing fishery." The letter continues, "these reporting requirements would result in better harvest information during the season."

While it would be ideal to have the board of fish implement this for the upcoming season, timing considerations preclude this from occurring until next year. The Department of Fish and Game is said to have given this measure a zero fiscal note. I encourage your support of this measure.

January 13, 1995

Senator Robin Taylor
Representative Bill Williams
State Capitol
Juneau, AK 99801

Dear Robin and Bill,

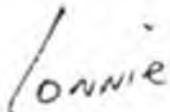
Enclosed is a proposal from the trustees of the Ketchikan Trollers Committee that foreign fishing vessels with salmon aboard which enter Alaskan waters be required to report the quantity and harvest area of these fish to the nearest Alaska Department of Fish & Game personnel or Fish & Wildlife Protection officer

The particular problem that we are trying to address is the lack of appropriate harvest information from the booming Canadian salmon troll fishery off Cape Chacon and Cape Muzon at the Alaskan border. Southeast Alaskan fishermen are suffering irreparable harm at the U S /Canada Pacific Salmon Treaty due to the inability or unwillingness of fishery managers in British Columbia to monitor this growing fishery.

We urge you to introduce joint legislation to address this situation. Please note that we are not asking for the State to interfere inappropriately with the ongoing federal negotiations and actions regarding the "disputed" zone in Dixon Entrance. Our proposal addresses only those foreign fishing vessels which enter waters that undisputedly are under Alaskan jurisdiction.

Thank you for taking the time to consider our proposal. We hope you find that it merits consideration and action

Sincerely,



Lonnie Haughton, Secretary/Treasurer
Ketchikan Trollers Committee
Box 3006
Ketchikan, AK 99901
(907) 225-1289 & 225-0600 fax

cc: Dave Gaudet, Alaska Department of Fish & Game
Dale Kelley, Alaska Trollers Association
Jim Bacon, Southeast Alaska Seiners
Geoff Bullock, United Southeast Alaska Gillnetters
Representative Jerry Mackie
Mayor Dennis Watson, City of Craig
Gary Freitag, SSRAA

**Proposal by the Ketchikan Trollers Committee
to require that all foreign salmon fishing vessels that enter Alaskan waters
be required to report to the Alaska Department of Fish & Game**

The Problem -

Within the last five years there has been a dramatic increase in the number of Canadian salmon trollers fishing in the "disputed waters" at the Alaskan border near Cape Chacon and Cape Muzon and anchoring each night in Alaskan harbors (Nichols Bay and McLeod Bay). A border fishery that once attracted no more than a dozen trollers now has, at times, in excess of 100 vessels targeting Alaskan and Canadian salmon. Many of these vessels are state-of-the-art freezer trollers, with large crews, that are able to fish until their holds are full.

The magnitude and effect of this shift in salmon harvesting from the British Columbia side of Dixon Entrance over towards the Alaskan border is impossible to determine because:

- a. there is absolutely minimal monitoring of their border fishery by the British Columbia enforcement vessels.
- b. the reporting requirements for British Columbia fishermen are extremely lax.
- c. B.C. salmon managers are unable (or unwilling) to provide information in a timely and appropriate manner, and
- d. what data is available does not adequately differentiate the sub-areas in or near Dixon Entrance in which salmon harvesting has occurred.

The lack of appropriate information about this growing border fishery may mask an overharvest of Alaskan stocks and definitely harms Alaska during negotiations of the U.S./Canada Pacific Salmon Treaty.

The Solution -

Most of the Canadian trollers that participate in the border fishery in this "disputed" zone are allowed (for safety considerations) to anchor each night in harbors that are undisputedly in the jurisdiction of the United States and the State of Alaska. It is the recommendation of the Ketchikan Trollers Committee that legislation be enacted to require the operators of all foreign fishing vessels with salmon aboard that enter undisputed Alaskan waters to report the following information to the Alaska Department of Fish & Game:

- a. the quantity of salmon, per species, aboard the vessel, and
- b. the area where these fish have been harvested.

Additional Details -

- a. the "report" should be provided in person or via radio-telephone to the nearest ADF&G office or Fish & Wildlife Protection enforcement vessel within 48 hours of entering Alaska and prior to departing Alaskan waters (note that British Columbia has an extremely effective marine radio network that enables all vessels in the area of Dixon Entrance to access the land-based telephone systems).
- b. the reported harvest area and catch should be specific enough to allow ADF&G to accumulate data to evaluate the overall potential of these harvests to impact Alaskan stocks.
- c. failure to provide a timely or accurate report will subject the offending fisherman to a substantial fine and/or seizure of the vessel and its fishhold contents.
- d. failure to report prior to departing Alaskan waters will subject the offending vessel and its owners to a fine and/or seizure if the vessel again enters Alaska.
- e. Alaskan fishery enforcement officers and ADF&G personnel should be authorized and directed to board foreign fishing vessels in undisputed Alaskan waters in order to enforce these regulations.