

SB

19

FISCAL NOTE

No. 1

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: _____

Version: SB 19

(S) Publish Date: 2/6/97

Revision Date: _____

Dept. Affected: Public Safety

Title: An Act relating to the Commissioner of Fish and Game

BRU: Fish and Wildlife Protection

Component: Detachments

Sponsor: Senator Sharp

Requestor: S RES

COMPONENT SERIAL NO. 0490

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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-
CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 97) impact: \$ -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.)
This Bill will not impact this Department's programs or budget.

Prepared By: Lt. Joel L. Hard

Phone: 269-5409

Division: Fish and Wildlife Protection

Date: January 31, 1997

Approved by Commissioner: Dee Smith

Date: 1/31/97

Agency: Ronald L. Otte, Department of Public Safety

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Alaska State Legislature

SENATOR
BERT SHARP
DISTRICT P
CO-CHAIRMAN
SENATE FINANCE COMMITTEE
MEMBER
RESOURCE COMMITTEE




Senate

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MEMORANDUM

TO: Representative Scott Ogan, Co-chair
House Resources Committee

FROM: Senator Bert Sharp, Co-Chair
Senate Finance Committee 

SUBJ: Request for Hearing on SB 19

DATE: March 24, 1997

I am making a second request for a hearing on SB 19, "An Act relating to enforcement of federal laws relating to fish and game: and repealing the power and duty of the Commissioner of Fish and Game to assist in the enforcement of federal laws relating to fish and game." Senate Bill 19 was a section in SB 77 which was passed by both bodies last year and vetoed by Governor Knowles. Please schedule as soon as it is conveniently possible.

Thank you.



REPRESENTING
GOLDEN HEART
OF ALASKA

Alaska State Legislature

SENATOR
BERT SHARP
DISTRICT P
CO-CHAIRMAN
SENATE FINANCE COMMITTEE
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SPONSOR STATEMENT

SB 19 - Senator Bert Sharp Fish & Game Com'n'r Not To Enforce Federal Law

Senate Bill 19 repeals the present statutory mandate <AS 16.05.050.(1)> that the State of Alaska will assist the federal government agencies in the enforcement of federal laws and regulations as they apply to fish and game resources in Alaska.

In light of aggressive federal actions to assume management of fish and game over large areas of our state in violation of our statehood compact, I believe repeal of this statute is prudent and in the best interests of the citizens of Alaska. I urge your expeditious and favorable approval of SB 19.



REPRESENTING
GOLDEN HEART
OF ALASKA

0-LS0173\E
Utermohle
4/15/97

Adopted

HOUSE CS FOR SENATE BILL NO. 19(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS SHARP, Taylor, Donley

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to enforcement of federal laws relating to fish and game; and
2 repealing the power and duty of the commissioner of fish and game to assist
3 in the enforcement of federal laws relating to fish and game."

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

5 *Section 1. AS 16.05.050(1) is repealed.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322
FAX: (907) 465-4362

April 8, 1997

LA
Maniche
File with SB19

The Honorable Bert Sharp
Alaska State Senate
Alaska Capitol, Room 516
Juneau, AK 99801-1182

Dear Senator Sharp:

I am very concerned about the impact of Senate Bill 19 on the ability of the Division of Fish & Wildlife Protection (FWP) to cooperate and work with federal agencies in protecting Alaska's fish and game resources. During a phone conversation with Deputy Commissioner Smith earlier this session you indicated the legislation was not intended to effect FWP in their enforcement activities. However, it appears from the bill's current language that it may well have an effect on FWP officers in the performance of their enforcement duties.

I have enclosed a letter from the Attorney General which sets out the legal issues the Department of Law feels will be issues if the legislation becomes law. While I cannot comment with any degree of authority on the legal issues, I do see operational problems for FWP personnel.

Currently FWP troopers are "cross designated" and can enforce federal wildlife laws. It appears that under the current wording of the proposed legislation they may be precluded from taking any enforcement action on federal violations. Even if their involvement was limited to the gathering of evidence the defendants would most certainly make an effort to prevent the introduction of the evidence based on the language in SB 19 if it becomes law.

Additionally, "cross designation" works both ways and federal officers are not likely to provide assistance to the state officers since the state officers do not provide reciprocal assistance to them.

I see the above examples as potentially detrimental to the fish and games resources of the State of Alaska. Therefore, I urge you to craft language that will not tie the hands of the FWP troopers who work daily to ensure that Alaskans can enjoy and utilize the fish and wildlife bounty of this great state.

Sincerely,



Ronald L. Otte
Commissioner

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 485-3800
FAX: (907) 465-2075

April 8, 1997

Representative Bill Hudson, Co-Chair
Representative Scott Ogan, Co-Chair
and members
House Resources Committee
Alaska State Legislature, State Capitol

Dear Representatives Hudson, Ogan,
and members of the House Resources Committee:

The present version of Senate Bill 19 prohibits a state employee from assisting with the enforcement of federal fish and game laws that are "in conflict with" Alaska fish and game laws. The Department of Law has the following concerns about implementing that bill if it becomes law.

I believe the principal purpose of the bill is to prevent the state from assisting with implementation of the federal subsistence law, Title VIII of ANILCA. That law, following the *McDowell* decision, differs from the present state law, AS 16.05.258, regarding who is eligible for the subsistence priority.

The term "in conflict with," however, could be applied outside of the subsistence context. That is because the term is inherently vague. Courts have given it various meanings.

A common interpretation is that there is "conflict" between two laws when one law allows an activity that the other law prohibits, and vice versa. *Cozart v. Carran*, 11 N.E.2d 245 (Ohio 1937); *Otto v. Wearty*, 27 N.E. 2d 190, 192 (Ohio App. 8 Dist., 1940); *City of Columbus v. Glascock*, 189 N.E.2d 889, 891 (Ohio App. 1962); *Village of Struthers v. Sokol*, 140 N.E. 519, 521 (Ohio 1923); *City of Portland v. Jackson*, 826 P.2d 37, 43 (Or.App. 1992). Thus, laws that are different but are "compatible as a whole" are not in conflict. *Id.* Similarly, "in conflict with" does not necessarily mean different from. *In re Robertson*, 20 F.Supp. 270, 273 (N.D.Tex. 1936). For two laws to be "in conflict", it is not necessary that they are directly opposite, but rather that they are incompatible such that both could not apply in a given situation. *Spencer v. State*, 520 N.E.2d 106, 109 (Ind.App. 1 Dist. 1988).¹

¹ Ironically, under that interpretation, the federal and state subsistence laws may not be "in conflict." Since ANILCA applies only to "public lands" and AS 16.05.258 applies elsewhere, there is no instance where they would legally overlap, that is, "apply in a given situation."

The courts themselves are in conflict over the meaning of the term. In one opinion, laws that punished the same act were "in conflict." *People v. Zook*, 197 P.2d 851, 852 (Cal. App. 1948). In another opinion, laws that identically defined and prohibited an act, and even imposed different penalties, were not "in conflict." *Cincinnati v. Thompson*, 643 N.E.2d 1157, 1172 (Ohio App. 1994).

Besides legal ambiguity, there are practical situations where the bill's impact is unclear. Presently, state fish and wildlife protection officers are "cross deputized" to enforce federal wildlife laws. The present bill would likely prevent a state officer from arresting, reporting, or even collecting evidence of violations of federal subsistence laws. In that event, the officer may have to formally revoke any oath he or she has taken to uphold and enforce federal law. If a state official were inadvertently or indirectly involved in gathering any particular evidence, the defendant could ask the court to prohibit that evidence from being introduced at trial. It could handicap the entire prosecution of the crime. See *Wallace v. State*, Op. No. 1514 (Alaska App., Feb. 23, 1997).

In addition to the federal subsistence law, Alaska fish and wildlife protection officers are called on to assist the enforcement and prosecution of other federal wildlife laws, such as the Marine Mammal Protection Act ("MMPA"), the Endangered Species Act ("ESA"), the Magnuson Act ("MFCMA"), and the Migratory Bird Treaty Act. Except for the ESA (See AS 16.20.180-.210), there are no Alaska equivalents to those laws, and therefore, no direct conflict between federal and state enactments. There are, however, disagreements about how the federal laws are being implemented. For example, Alaska has objected to proposed listings under the ESA and to federal management actions inside state waters under the MFCMA.

There are also instances where the courts have concluded that federal laws have preempted state laws in certain areas. For example, Alaska laws regulating certain activities on the Walrus Island State Game Sanctuary are preempted by the MFCMA. *State v. Amariak*, 893 P.2d 1273 (Alaska 1995). The only effective way for state managers of the Sanctuary to protect the walrus population is through that federal law. It is uncertain whether those situations -- where the state differs with certain steps taken to implement federal law or where the federal law has displaced state law - would be interpreted as "conflicts" under this bill.

Cross deputization works both ways. If the state stops assisting with the enforcement of federal wildlife laws, officers of the National Marine Fisheries Service (NMFS), the Fish and Wildlife Service, and the Bureau of Land Management would have little incentive to enforce Alaska wildlife laws.

It is important to realize that combined enforcement actions have been very successful. For example, in 1992 an effort involving U.S. Coast Guard vessels and aircraft, NMFS agents, and state officers documented illegal bottom trawling in state waters. Joint teams boarded and inspected approximately fifty vessels, and in the end, thirteen vessels were convicted. The state recovered more than six million dollars in criminal and civil fines. Illegal trawling has not been

Rep. Bill Hudson, Co-Chair
Rep. Scott Ogan, Co-Chair

April 8, 1997
Page 3

detected since.

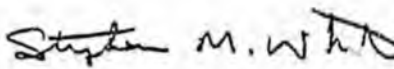
If federal cooperation is withdrawn in response to this bill, the Department of Public Safety does not have resources to fill the gap. As a result, fewer overall violations of Alaska fish and game law would be detected and prosecuted.

It is not clear whether the bill governs more than law enforcement. Presently, state officials exchange information with federal subsistence counterparts, and they comment on proposals to the Federal Subsistence Board. They also desire to participate in a joint committee that reviews technical information in proposals to the Federal Subsistence Board. If those activities are prohibited, Alaska may miss opportunities to positively affect federal subsistence decisions.

I offer these comments hoping that the intent for Senate Bill 19 will be clarified as the bill is being considered by the House Resources Committee.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Stephen M. White
Assistant Attorney General

cc: Senator Bert Sharp
Commissioner Ron Otte
Colonel John Glass
Pat Pourchot
Deborah Behr
Chrystal Smith

SMW:lt

April 8, 1997

Re: Senate Bill No. 19

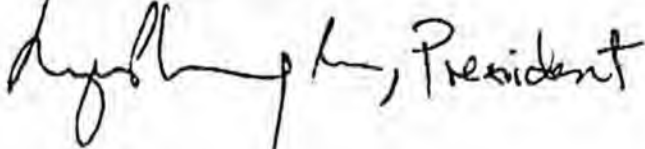
In light of the proposed Senate Bill No. 19, "Act relating to enforcement of federal laws relating to fish and game, and repealing the power and duty of the commissioner of fish and game to assist in the enforcement of federal laws relating to fish and game." The villages in the YK delta will from hereafter, if SB 19 is passed, will refuse to obey State Laws that relate to fish and game management within the Yukon Kuskokwim Delta Wildlife Refuge, including the reserved waters. The residents of Fairbanks and Anchorage, including those in Southeast can implement laws that relate to their respective areas, as sponsored by their own legislators, or for that matter within their own districts.

AVCP and it's member villages will work with USFWS to implement their own license fees for the execution of their management, i.e. hunts, etc., and will implement within it an out of region license fee that is higher than those living in rural regions. Drastic and improper action by these three Renegates in trying to deal with the issues related to rural areas that negatively affect the citizens of the State of Alaska (are we considered to be citizens?) can only be met with drastic actions that are improper to the people who introduce such legislation.

It seems that the three republicans who introduced this proposed legislation only want the state to go into the direction of anarchy. We may have to ask for federal intervention again, such as requesting that Federally funded programs for fish and game management and other programs be funded directly to Native organizations by regions, bypassing the State of Alaska altogether. This will prevent legislation that supports anarchy from being implemented in our region, as proposed by these three legislators from the urban State of FAKE.

cc. Governor Tony Knowles
Senator Al Adams
Senator Lyman Hoffman
Senator Georgianna Lincoln
Senator Jerry Mackie
Senator Sean Parnell
Senator Robin Taylor
Senator Bert Sharp
Senator Dave Donley
Representative Ivan M. Ivan
Representative Richard Foster
Representative Reggie Joulc
Representative Bill Williams
Representative Irene Nicholia
AFN
US Senator Ted Stevens
US Senator Frank Murkowski
Congressman Don Young
USFWS
Traditional/LRA Councils

Sincerely,
Glenn Fredericks, Chairman

 , President

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(3) have necessary power to accomplish the foregoing including, but not limited to, the power to delegate authority to subordinate officers and employees of the department. (§ 4 art I ch 94 SLA 1959; am § 1 ch 110 SLA 1970)

Opinions of attorney general. — The commissioner of fish and game has the power to adopt procedural rules to implement AS 16.05.870 and to establish by regulation the standards under which permits will be issued under AS 16.05.870. March 4, 1975 Op. Att'y Gen.

Under existing statutory and regulatory provisions the progeny of birds held in captivity under a collecting permit from the Department of Fish and Game do not automatically become the property of the permittee; they remain subject to the same ownership interest the state retains in the adults, unless the permit and applicable regulations specify otherwise. Oct. 20, 1987 Op. Att'y Gen.

It is well within the authorities of the Board of Game under AS 16.05.255(a) and the Department of Fish and Game under this section to determine by regulation the point at which certain animals are deemed feral and subject to whatever game regulations the board may wish to adopt. A board or departmental regulation defining "feral animal" would be applicable statewide regardless of land ownership. July 30, 1987 Op. Att'y Gen.

In light of the commissioner's statutory charge to "manage, protect, maintain, improve, and extend the fish . . . resources of the state," emergency orders can be issued to protect sustained yield, based on conservation concerns. Aug. 1, 1990 Op. Att'y Gen.

NOTES TO DECISIONS

Veto power. — The Commissioner of the Department of Fish and Game does not have the authority to effectively veto a decision of the Board of Fisheries.

Peninsula Mktg. Ass'n v. Rosier, 890 P.2d 567 (Alaska 1995).

Sec. 16.05.030. Status of commissioner. [Repealed, § 40 ch 206 SLA 1975.]

Sec. 16.05.040. Compensation of commissioner. The commissioner is entitled to the compensation fixed by law and, subject to appropriate state travel regulations, is entitled to reimbursement for actual and necessary traveling and other expenses incurred in the discharge of official duties. (§ 5 art I ch 94 SLA 1959)

Sec. 16.05.050. Powers and duties of commissioner. The commissioner has, but not by way of limitation, the following powers and duties:

(1) to assist the United States Fish and Wildlife Service in the enforcement of federal laws and regulations pertaining to fish and game;

(2) through the appropriate state agency and under the provisions of AS 36.30 (State Procurement Code), to acquire by gift, purchase, or lease, or other lawful means, land, buildings, water, rights-of-way, or other necessary or proper real or personal property when the acquisition is in the interest of furthering an objective or purpose of the department and the state;

(3) under the provisions of AS 36.30, to design and construct hatcheries, pipelines, rearing ponds, fishways, and other projects beneficial for the fish and game resources of the state;

(4) to accept money from any person under conditions requiring the use of the money for specific purposes in the furtherance of the protection, rehabilitation, propagation, preservation, or investigation of the fish and game resources of the state or in settlement of claims for damages to fish or game resources;

(5) to collect, classify, and disseminate statistics, data and information that, in the commissioner's discretion, will tend to promote the purposes of this title except AS 16.51 and AS 16.52;

(6) to take capture, propagate, transport, buy, sell, or exchange fish or game or eggs for propagating, scientific, public safety, or stocking purposes;

(7) under the provisions of AS 36.30, to provide public facilities where necessary or proper to facilitate the taking of fish or game, and to enter into cooperative agreements with any person to effect them;

(8) to exercise administrative, budgeting, and fiscal powers;

(9) under the provisions of AS 36.30, to construct, operate, supervise, and maintain vessels used by the department;

(10) to authorize the holder of an interim-use permit under AS 16.43 to engage on an experimental basis in commercial taking of a fishery resource with vessel, gear, and techniques not presently qualifying for licensing under this chapter in conformity with standards established by the Alaska Commercial Fisheries Entry Commission;

(11) not later than January 31 of each year, to provide to the commissioner of revenue the names of those fish and shellfish species that the commissioner of fish and game designates as developing commercial fish species for that calendar year; a fish or shellfish species is a developing commercial fish species if, within a specified geographical region,

(A) the optimum yield from the harvest of the species has not been reached;

(B) a substantial portion of the allowable harvest of the species has been allocated to fishing vessels of a foreign nation; or

(C) a commercial harvest of the fish species has recently developed;

(12) to initiate or conduct research necessary or advisable to carry out the purposes of this title except AS 16.51 and AS 16.52;

(13) to enter into cooperative agreements with agencies of the federal government, educational institutions, or other agencies or organizations, when in the public interest, to carry out the purposes of this title except AS 16.51 and AS 16.52;

(14) to implement an on-board observer program authorized by the Board of Fisheries under AS 16.05.251(a)(13); implementation

(A) must be as unintrusive to vessel operations as practicable; and

(B) must make scheduling and scope of observers' activities as predictable as practicable;

(15) to sell fish caught during commercial fisheries test fishing operations;

(16) to establish and charge fees equal to the cost of services provided by the department, including provision of public shooting ranges, broodstock and eggs for private nonprofit hatcheries, department publications, and other direct services, and reasonable fees for the use of state facilities managed by the department; fees established under this paragraph for tours of hatchery facilities, commercial use of sport fishing access sites, and for operation of state hatchery facilities by private aquaculture associations are not subject to the cost limit under AS 37.10.050(a);

(17) to permit and regulate aquatic farming in the state in a manner that ensures the protection of the state's fish and game resources and improves the economy, health, and well-being of the citizens of the state;

(18) to operate state housing and facilities for employees, contractors, and others in support of the department's responsibilities and to charge rent that is consistent with applicable collective bargaining agreements, or, if no collective bargaining agreement is applicable, competitive with market conditions; rent received from tenants shall be deposited in the general fund;

(19) to petition the Alaska Commercial Fisheries Entry Commission, unless the Board of Fisheries disapproves the petition under AS 16.05.251(g), to establish a moratorium on new entrants into commercial fisheries

(A) that have experienced recent increases in fishing effort that are beyond a low, sporadic level of effort;

(B) that have achieved a level of harvest that may be approaching or exceeding the maximum sustainable level for the fishery; and

(C) for which there is insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the fishery.

(§§ 6, 11 art I ch 64 SLA 1959; am § 1 ch 42 SLA 1963; am § 2 ch 227 SLA 1970; am § 2 ch 79 SLA 1973; am § 12 ch 79 SLA 1979; am § 1 ch 82 SLA 1982; am § 2 ch 132 SLA 1984; am § 2 ch 76 SLA 1986; am § 7 ch 106 SLA 1986; am § 29 ch 138 SLA 1986; am § 6 ch 145 SLA 1988; am §§ 19, 20 ch 36 SLA 1990; am § 1 ch 211 SLA 1990; am § 2 ch 34 SLA 1991; am § 38 ch 30 SLA 1992; am § 1 ch 54 SLA 1996)

Revisor's notes. —
was renumbered as former (19).

Effect of amendm
effective June 9, 1988

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