

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6491 SENATE RESOURCES

895

SHARED REVENUE - CITIES AND BOROUGHES

CIS 192	Saint Michael	3,111.57	2,190.23	921.34
CSP 331	Saint Paul	144,789.86	101,917.58	42,872.29
CSP 978	Sand Point	167,222.23	108,529.08	58,693.15
CIS 106	Savoonga			
CIS 583	Saxman			
CIS 191	Scammon Bay			
CIS 058	Selawik			
CIS 624	Seldovia	12,500.00	8,798.75	3,701.25
COS 266	Seward	220,692.30	155,345.31	65,346.99
CIS 190	Shaqeluk			
CIS 189	Shaktoolik			
CSP 522	Sheldon Point			
CIS 105	Shishmaref			
CIS 188	Shungnak			
CIS 396	Skaqway			
CIS 564	Soldotna			
CIS 187	Stebbins			
CIT 855	Tanana			
CIT 473	Teller			
CIS 272	Tenakee Springs	147.92	104.16	43.82
CTB 301	Thorne Bay			
CIT 854	Toqiak	53,216.22	37,529.36	15,786.96
CTB 223	Toksook Bay	141.12	99.22	41.79
CIT 305	Tuluksak			
CIT 186	Tununak			

Subtotal this page 601,921.33 414,513.90 127,407.58

SHARED REVENUE - CITIES AND BOROUGHS

CIU 258	Unalakleet			
CIU 215	Unalaska	944,291.94	664,687.10	279,604.84
CIU 198	Upper Kalskaq			
CIV 401	Valdez	165,389.73	116,418.01	48,971.97
CIW 222	Wainwright			
CIW 185	Wales			
CIW 159	Wasilla			
CWM 304	White Mountain			
CIW 474	Whittier	24,527.46	17,264.99	7,262.59
CIW 559	Wrangell	29,059.99	26,799.65	11,269.24
CIY 479	Yakutat	134,217.41	94,475.63	39,741.78

CITIES	Subtotal - Page 7	1,306,485.68	919,635.27	386,850.41
	Page 6	601,921.33	414,513.90	187,407.53
	Page 5	690,761.12	486,126.74	204,634.39
	Page 4	1,622,193.74	1,110,127.33	512,056.41
	Page 3	615,576.12	433,204.03	182,372.09
	Page 2	1,175,661.11	827,447.96	348,213.25
	Page 1	376,494.36	244,269.54	132,224.92

Total Cities	6,339,002.81	4,435,221.57	1,903,781.24
Total Boroughs	4,927,126.14	3,462,497.50	1,464,628.64
GRAND TOTAL	11,266,128.95	7,897,719.07	3,368,409.88

43.75.032

§ 43.75.034

REVENUE AND TAXATION

§ 43.75.130

memorial
ay claim a
equent tax
proved for

"(c) The department shall prepare an application form for a credit under this section.

disapprove an application for a credit under this section not later than 60 days after receiving the application."

"(d) The department shall approve or

ction for a
tions com-
tax liabil-

Sec. 43.75.034. Tax credit report [Repealed effective February 15, 1992]. Not later than the 15th legislative day of each regular legislative session the Department of Revenue, in conjunction with the Department of Commerce and Economic Development, shall submit to the legislature a report on the fisheries business tax credit program under AS 43.75.032. The report shall describe the expenditures for which a credit was approved during the previous tax year and, if possible, the increase in employment and processing capacity by the fisheries businesses for which the credit was approved. (§ 2 ch 79 SLA 1986; r § 8 ch 79 SLA 1986)

his section

made was
xpayer for
been ap-

Postponed repeal. — Section 8, ch. 79, SLA 1986 repeals this section, effective February 15, 1992.

made was
ubstantial

Article 3. General Provisions.

ars in the
r purposes
it is under

Section	Section
130. Refund to local governments	140. Definitions
133. Provision of information to municipalities	

or a credit

Sec. 43.75.130. Refund to local governments. (a) Except as provided in (d) of this section, the commissioner of revenue shall pay (1) to each unified municipality and to each city located in the unorganized borough, 50 percent of the amount of tax revenue collected in the municipality from taxes levied under this chapter;

ation for a
iving the

(2) to each city located within a borough, 25 percent of the amount of tax revenue collected in the city from taxes levied under this chapter; and

95.
ng center
nsship to
industrial
ties of the
the park.

*Fish
tax
refunds*

(3) to each borough
(A) 50 percent of the amount of tax revenue collected in the area of the borough outside cities from taxes levied under this chapter; and
(B) 25 percent of the amount of tax revenue collected in cities located within the borough from taxes levied under this chapter.

re than 100
tribution.
approve a
f the fisher-
dit is in ar-
heries busi-
for purposes
is not in ar-
administra-

(b) For purposes of this section, tax revenue collected under AS 43.75.015 from a person entitled to a credit under AS 43.75.032 shall be calculated as if the person's tax had been collected without applying the credit.

(c) [Repealed effective January 1, 1992] Within 60 days after a credit is approved under AS 43.75.032 for a capital expenditure involving a shore-based fisheries business facility or cooperative seafood industrial park located or to be located in a municipality, the municipality may adopt an ordinance directing the department to reduce the municipality's refund under this section over a period of not more

than three years by an amount not exceeding 25 percent of the capital expenditure.

(d) Notwithstanding the provisions of (a)(2) and (a)(3)(B) of this section, the commissioner shall pay

(1) to each city that is located in a borough incorporated after June 16, 1987 the following percentages of the tax revenue collected in the city from taxes levied under this chapter:

(A) 45 percent of the taxes collected during the calendar year in which the borough is incorporated;

(B) 40 percent of the taxes collected during the first calendar year after the calendar year in which the borough is incorporated;

(C) 35 percent of the taxes collected during the second calendar year after the calendar year in which the borough is incorporated; and

(D) 30 percent of the taxes collected during the third calendar year after the calendar year in which the borough is incorporated; and

(2) to each borough that is incorporated after June 16, 1987 the following percentages of the tax revenue collected in the cities located within the borough from taxes levied under this chapter:

(A) 5 percent of the taxes collected during the calendar year in which the borough is incorporated;

(B) 10 percent of the taxes collected during the first calendar year after the calendar year in which the borough is incorporated;

(C) 15 percent of the taxes collected during the second calendar year after the calendar year in which the borough is incorporated; and

(D) 20 percent of the taxes collected during the third calendar year after the calendar year in which the borough is incorporated.

(e) Notwithstanding the provisions of (d) of this section, a city may adopt an ordinance to transfer a portion of the funds received under (d)(1) of this section to the borough in which the city is located.

(f) In this section, "tax revenue collected" includes the amount credited against taxes under AS 43.75.018. (§ 6 ch 155 SLA 1962; am § 75 ch 69 SLA 1970; am § 10 ch 218 SLA 1976; am § 11 ch 79 SLA 1979; am § 10 ch 117 SLA 1981; am § 73 ch 74 SLA 1985; am §§ 4, 7 ch 79 SLA 1986; am § 8 ch 58 SLA 1987; am §§ 1, 2 ch 80 SLA 1987)

Postponed repeal. — Section 7, ch. 79, SLA 1986 repeals subsection (c), effective January 1, 1992.

Revisor's notes. — Subsection (f) enacted as (d). Renumbered in 1987.

Effect of amendments. — The 1985 amendment in paragraph (1) substituted "unified Municipality" for "municipality unified under AS 29.68.240 - 29.68.440."

The 1986 amendment added subsections (b) and (c).

The first 1987 amendment added subsection (f).

The second 1987 amendment in subsection (a) substituted "Except as provided in (d) of this section, the" for "The" at the beginning of the section and substituted "under" for "by" throughout the subsection and added subsections (d) and (e).

43.35.130

§ 43.35.140

REVENUE AND TAXATION

§ 43.40.010

Sec. 43.35.140. Gambling not legalized. AS 43.35.100 — 43.35.150 do not legalize gambling. (§ 4 ch 116 SLA 1949; am § 1 ch 53 SLA 1951)

Cross references. — For limitations on authorized gaming activities, see AS 05.15.180.

Sec. 43.35.150. Violations and penalties. (a) It is unlawful for a person to (1) distribute in the state a punchboard for which the license tax provided in AS 43.35.100 — 43.35.150 is not paid; or (2) maintain for use, or permit the use of, in a place or premises occupied by the person a punchboard upon which the license stamp is not affixed.

(b) A person violating a provision of AS 43.35.100 -- 43.35.150 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$500. (§ 5 ch 116 SLA 1949 am § 1 ch 53 SLA 1951)

Chapter 40. Motor Fuel Tax.

Section

- 10. Tax on transfers or consumption of motor fuel and expenditure of proceeds
- 30. Refund for nonhighway use
- 35. Other refunds and credits
- 50. Refund claim by affidavit

Section

- 60. Separate invoices
- 70. Refund warrants
- 80. Examination of books and records
- 95. Preservation of books and records
- 100. Definitions

Collateral references. — 71 Am. Jur. 2d, State and Local Taxation, §§ 616 — 634; 53 Am. Jur. 2d, Licenses, §§ 30, 46 — 58.

State tax on or in respect of goods shipped in interstate commerce to consignee for sale on consignor's account without previous sale or order for purchase, 4 ALR2d 244.

Loading or unloading interstate freight in performance of obligation resting upon one other than interstate carrier as inter-

state commerce as regards local taxation, 10 ALR2d 651.

State taxation of motor carriers as affected by commerce clause, 17 ALR2d 421.

Power of legislature to remit, release, or compromise tax claim, 28 ALR2d 1425.

Financial hardship or inability to pay taxes as rendering inapplicable statutes denying remedy by injunction against assessment or collection of tax, 65 ALR2d 530.

Sec. 43.40.010. Tax on transfers or consumption of motor fuel and expenditure of proceeds. (a) There is levied a tax of eight cents a gallon on all motor fuel sold or otherwise transferred within the state, except that

(1) the tax on aviation gasoline is four cents a gallon,

(2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon, and

(3) the tax on all aviation fuel other than gasoline is two and one-half cents a gallon.

(b) There is levied a tax of eight cents a gallon on all motor fuel consumed by a user, except that

(1) the tax on aviation gasoline consumed is four cents a gallon,

(2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon, and

(3) the tax on all aviation fuel other than gasoline is two and one-half cents a gallon.

(c) Every dealer who sells or otherwise transfers motor fuel in the state shall collect the tax at the time of sale, and remit the total tax collected during each calendar month of each year to the department by the last day of each succeeding month. Every user shall likewise remit the tax accrued on motor fuel actually used by the user during each month. If the monthly tax return is timely filed, one percent of the total monthly tax due, limited to a maximum of \$100, may be deducted and retained to cover the expense of accounting and filing the monthly tax return. At the time the remittance is made, each dealer or user shall submit a statement to the department showing all fuel which the dealer or user has distributed or used during the month.

(d) *[Repealed, § 3 ch 166 SLA 1976.]*

(e) Sixty per cent of the proceeds of the revenue from the taxes on aviation fuel, excluding the amount determined to have been spent by the state in its collection, shall be refunded to a municipality owning and operating or leasing and operating an airport in the proportion that the revenue was collected at the municipal airport. All other proceeds of the taxes on aviation fuel shall be paid into a special aviation fuel tax account in the state general fund. The legislature may appropriate funds from this account for aviation facilities.

(f) The proceeds from the revenue from the tax on motor fuel used in boats and watercraft of all descriptions shall be deposited in a special watercraft fuel tax account in the general fund. The legislature may appropriate from this account for water and harbor facilities.

(g) The proceeds of the revenue from the tax on all motor fuels, except as provided in (e), (f) and (j) of this section, shall be deposited in a special highway fuel tax account in the state general fund. The legislature may appropriate funds from it for expenditure by the Department of Transportation and Public Facilities directly or as matched with available federal-aid highway money for maintenance of highways, construction of highway projects and ferries included in the program provided for in AS 19.10.150, including approaches, appurtenances and related facilities and acquisition of rights-of-way or easements, and other highway costs including surveys, administration, and related matters. All departments of the state government authorized to spend funds collected from taxes imposed by this chapter shall perform, when feasible, all construction or reconstruction projects by contract

Aviation
fuel

0.010

§ 43.40.010

REVENUE AND TAXATION

§ 43.40.010

and

fuel

n.
ions

and

the
tax
nent
wise
ring
the
cted
hly
user
the

s on
t by
ing
ion
her
vi-
nay

l in
cial
nay

ols,
l in
the
he
as
of
he
te-
se-
nd
to
m.
ict

after the projects have been advertised for competitive bids, except that, when feasible, arrangements shall be made with political subdivisions to carry out the construction or reconstruction projects. If it is not feasible for the work to be performed by state engineering forces, the commissioner of transportation and public facilities may contract on a professional basis with private engineering firms for road design, bridge design, and services in connection with surveys. If more than one private engineering firm is available for the work the contracts shall be entered into on a negotiated basis.

(h) All motor fuel tax receipts shall be paid into the general fund and distributed to the proper accounts in the general fund. Valid motor fuel tax refund claims shall be paid from the highway fuel tax account in the general fund.

(i) Within 30 days after the legislature convenes the Department of Transportation and Public Facilities shall submit an annual budget covering anticipated revenues and their expenditure, for the consideration and approval by the legislature. The budget shall cover all money collected or anticipated to be collected under this chapter for the year following the adjournment of each regular session of the legislature.

(j) The proceeds from the tax on motor fuel used in snow vehicles and, unless a tax refund is applied for under AS 43.40.040, other internal combustion engines not used in or in conjunction with a motor vehicle licensed to be operated on public ways shall be deposited in a special nonpublic highway use account in the general fund. The legislature may appropriate from this account to the Department of Transportation and Public Facilities for trail staking and shelter construction and maintenance.

(k) The tax on the transfer or consumption of motor fuel provided for in this section does not apply to liquified petroleum gas.

(l) If a dealer has a reasonable belief at the time of sale or transfer that fuel that is sold or transferred is not to be used as motor fuel, the dealer need not collect the motor fuel tax. If the tax is not collected, the dealer shall obtain a certificate of use from the buyer or transferee stating that the fuel that has been or will be purchased or received is not intended for use as motor fuel. The department may not collect the motor fuel tax from a dealer for fuel for which a certificate of use has been properly obtained under this subsection. A certificate of use is not required for fuel for any domestic purpose in a single or multiple unit private dwelling, including mobile homes, or for fuel which is at least 10 percent alcohol by volume. An annual certificate of use is required for all other exemptions listed under AS 43.40.100(2), except certificate of use needs under AS 43.40.100(2)(K) will be determined by the department. The dealer shall retain a copy of each certificate of use obtained under this subsection for examination or audit on request by the department. The form of a certificate of use may be prescribed by

regulation adopted by the department. (§ 48-5-2 ACLA 1949; am § 1 ch 80 SLA 1951; am § 1 ch 47 SLA 1955; am §§ 1, 2 ch 27 SLA 1957; am § 1 ch 134 SLA 1957; am § 1 art VI title II ch 152 SLA 1957; am § 2 art V title III ch 152 SLA 1957; am § 2 ch 124 SLA 1959; am §§ 1, 2 ch 20 SLA 1960; am § 1 ch 150 SLA 1960; am § 1 ch 110 SLA 1961; am § 1 ch 136 SLA 1961; am §§ 1 — 3 ch 131 SLA 1962; am § 1 ch 130 SLA 1968; am § 10 ch 143 SLA 1968; am §§ 1, 2 ch 216 SLA 1968; am §§ 1 — 3 ch 158 SLA 1970; am § 3 ch 58 SLA 1971; am §§ 1, 2 ch 124 SLA 1971; am §§ 2, 3 ch 125 SLA 1971; am §§ 1 — 3 ch 153 SLA 1972; am § 3 ch 166 SLA 1976; am §§ 1, 2 ch 116 SLA 1977; am § 4 ch 82 SLA 1982; am §§ 1, 2 ch 87 SLA 1983)

Cross references. — For civil penalty imposed for failure to file a return or report, or pay the full amount of a tax, or a portion or a deficiency of the tax, see AS 43.05.220.

Effect of amendments. — The 1962 amendment added subsection (l).

The 1983 amendment, in subsection (c), added the present third sentence and deleted "motor" preceding "fuel" in the last sentence, and in subsection (f), added the present fourth and fifth sentences.

OPINIONS OF ATTORNEY GENERAL

The purpose of the dedication of the taxes on motor fuels contained in subsection (g) of this section is public highways. 1959 Op. Att'y Gen., No. 9.

A proposed alteration going to the geographical area of expenditure rather than to the special purpose of a dedication, does not contravene the constitution. 1959 Op. Att'y Gen., No. 9.

The 1957 amendment to this section, which reduced the tax on motor fuel used in commercial fishing crafts for purposes of commercial fishing from five cents to two cents per gallon, effected no change in

the dedication inasmuch as the reduction in the tax was coupled with an exemption from the refund of three cents per gallon formerly allowed to users of fuel in commercial fishing craft for commercial purposes. Nothing has been done which increased or decreased the dedication. 1959 Op. Att'y Gen., No. 14.

The Civil Air Patrol is exempt from taxation under the Alaska Motor Fuel Oil Tax Act because it is an instrumentality of the federal government, but volunteer members of Civil Air Patrol are not exempt. 1961 Op. Att'y Gen., No. 26.

Sec. 43.40.020. Penalty for violation. [Repealed. § 46 ch 113 SLA 1980. For criminal penalties, see AS 43.05.290.]

Sec. 43.40.030. Refund for nonhighway use. (a) Except as specified in AS 43.40.010(j), a person who uses motor fuel to operate an internal combustion engine is entitled to a refund of six cents a gallon if

- (1) the tax on the motor fuel has been paid;
- (2) the motor fuel is not aviation fuel, or motor fuel used in or on watercraft; and
- (3) the internal combustion engine is not used in or in conjunction with a motor vehicle licensed to be operated on public ways.

(b) The entire tax levied by this chapter shall be refunded to the purchaser on that part of the motor fuel used in a foreign country on which the tax has been paid when the fuel is sold and delivered in the state for non-highway use in a foreign country.

SB 153

FISH TAX SUPPLEMENTAL BY DISTRICT

<u>DIST</u>	<u>COMMUNITY</u>	<u>AMOUNT</u>
A	Ketchikan Gateway Borough	45,349.73
A	City of Ketchikan	37,146.70
A	Petersburg	167,732.29
A	Wrangell	<u>11,269.24</u>
	Total Dist A	261,497.96
B	Sitka	93,773.68
B	Haines Borough	43,452.39
B	Haines	88.15
B	Hoonah	14,008.70
B	Take	7,146.94
B	Klawock	2,743.67
B	Pelican	36,740.56
B	Tenakee Springs	43.82
B	Yakutat	<u>39,741.78</u>
	Total Dist B	237,739.69
C	Juneau	<u>6,949.32</u>
	Total Dist C	6,949.32
D	Kenai Peninsula Borough	436,618.12
D	Homer	50,413.98
D	Kenai	107,441.85
D	Seldovia	<u>3,701.25</u>
	Total Dist D	598,175.20
E	Mat-Su Borough	24.38
E	Cordova	240,157.78
E	Seward	65,346.99
E	Valdez	48,971.97
E	Whittier	<u>7,262.58</u>
	Total Dist E	361,763.70
F-I	Anchorage	<u>70,475.03</u>
	Total Dist F-I	70,475.03
J	Nenana	<u>247.54</u>
	Total Dist J	247.54

K	Fairbanks North Star Borough	124.06
K	Fairbanks	<u>2.13</u>
	Total Dist K	126.19
L	Northwest Arctic Borough	3.07
L	Kotzebue	3.07
L	St. Michael	<u>921.34</u>
	Total Dist L	927.48
M	Aniak	70.02
M	Anvik	267.70
M	Bethel	8,899.43
M	Fortuna Ledge	2,786.73
M	Galena	483.61
M	Mekoryuk	18.56
M	Mountain Village	7,943.58
M	Nulato	161.53
M	Toksook Bay	<u>41.79</u>
	Total Dist M	20,672.95
N	Bristol Bay Borough	416,848.28
N	Kodiak Island Borough	340,474.08
N	Aleutians East Borough	3,344.57
N	Akutan	132,224.82
N	Chignik	85,319.52
N	Clark's Point	13,063.33
N	Dillingham	435.47
N	King Cove	201,591.37
N	Kodiak	260,768.82
N	Larsen Bay	1,593.10
N	St. Paul	42,872.28
N	Sand Point	58,693.15
N	Togiak	15,786.96
N	Unalaska	<u>279,604.84</u>
	Total Dist N	1,852,620.59
	Statewide Total	3,411,195.65

Resolution of the Alaska Municipal League

Resolution No. 89-36

**A RESOLUTION URGING THE LEGISLATURE TO PASS A
SUPPLEMENTAL APPROPRIATION FOR FULL FUNDING
OF THE RAW FISH TAX PROGRAM**

WHEREAS, under the provisions of AS 43.75.130, the State of Alaska annually remits a share of raw fish tax revenues to the municipalities from which the tax was collected, and

WHEREAS, the amount of these revenues, as provided in the statute, is based on the actual raw fish taxes collected from processors located within a given municipality, and

WHEREAS, the State of Alaska has failed to return the full amount to the municipalities as provided in the statutes, and

WHEREAS, the State Legislature failed to appropriate sufficient monies to fund the Raw Fish Tax Program;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the Alaska State Legislature to pass a supplemental appropriation fully funding the Raw Fish Tax Program and TO authorize prompt remittance of the balance due the affected municipalities.

BE IT FURTHER RESOLVED that the Alaska Municipal League requests the State to adopt legislation, regulations, and policies that will ensure the appropriation of the full share of Raw Fish Tax revenues due municipalities by August 1 of each year.

CITY OF KODIAK
RESOLUTION NUMBER 30-88

A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK URGING THE LEGISLATURE TO PASS A SUPPLEMENTAL APPROPRIATION FOR FULL FUNDING OF THE RAW FISH TAX PROGRAM

WHEREAS, under the provisions of AS 43.75.130, the City of Kodiak annually receives a share of raw fish tax revenues collected by the State; and

WHEREAS, the amount of these revenues, as provided in the statute, is based on the actual raw fish taxes collected from processors located within the municipality; and

WHEREAS, the State of Alaska has failed to return the full amount to the municipalities as provided in the statutes; and

WHEREAS, the amount due the City of Kodiak, as computed by the State Department of Revenue from calendar year 1987 returns, was \$880,678.22 and the State remitted only \$619,909.40, a shortfall of \$260,768.82; and

WHEREAS, the State Legislature failed to appropriate sufficient monies to fund the Raw Fish Tax Program,

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Kodiak, Alaska, respectfully petitions the Alaska State Legislature to pass a supplemental appropriation fully funding the Raw Fish Tax Program and to authorize prompt remittance of the balance due the City of Kodiak and all other municipalities.

BE IT FURTHER RESOLVED the City Council respectfully petitions the Alaska State Legislature change the process by which the remittance of the local municipal share of the raw fish tax is distributed so as to provide timely payments to the appropriate municipalities.

PASSED AND APPROVED this 2TH day of SEPTEMBER, 1988.

CITY OF KODIAK


MAYOR

ATTEST:


CITY CLERK

STATE OF ALASKA

DEPARTMENT OF REVENUE

STEVE COWPER, GOVERNOR

STATE OFFICE BUILDING
P.O. BOX SA
JUNEAU, ALASKA 99811-0400

February 15, 1989

The Honorable Betty Fahrenkamp
Alaska State Senate
P.O. Box V
Juneau, AK 99811

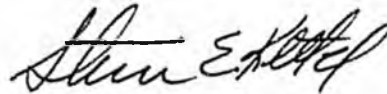
FEB 16 1989

RE: SB153
Supplemental Revenue Sharing

Dear Senator Fahrenkamp:

In committee this morning you requested information concerning back taxes owed by fish processing companies. I have attached the most recent copy of our tax assessment summary which reports all assessments the Department has issued by tax type. Note that fish tax assessments total \$10.6 million, of which \$2.3 million is in appeals and \$4 million has been judged to be not collectable. The remaining \$4.3 million is currently in collection status. As these taxes are collected they represent funds subject to sharing with the municipalities and boroughs. If I can be of further assistance please give me a call.

Sincerely,



Steven E. Kettel
Director
Income & Excise Audit Division
(907) 465-2320

SEK:lr

89-52

S B

164

Date of 5-DAY NOTICE 3/23/89
IN ACCORDANCE WITH UNIFORM RULE 23

U

FURTHER FINANCE

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 4/21/89

2/8/89

Mr. President:

Resources

SB 164

Committee considered _____

additional penalties for violation of commercial fishing laws and
forfeiture of limited entry permits and to transfer of limited entry permits
to avoid forfeiture; efd

and recommended:

replace with CS SB 164 (Resources) same title
 attached amendment(s) and new title

_____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) attached ^{Commerce, Fish & Game} zero fiscal impact
 appropriation no FN attached Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Reik Hallford
Julius Sturgis
Al Glendon
Paul C. Hauff
John

Butter Johnson ^{do pass}
Chairman signature and recommendation

Committee backup attached

... of ...

limited entry permits; or

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Penalties for Violation of
Commercial Fishery Laws
 Sponsor: Zharoff
 Requestor: _____

Agency Affected: Fish and Game
 BRU: Commercial Fisheries
 Components: Commercial Fisheries
Special Projects

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						
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						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by Robert C. Clasby Phone: 465-4210
 Division: Commercial Fisheries Date: 2/13/89
 Approved by Commissioner: Armenakis P. Poulos Date: 2/14/89
 Agency: Fish and Game

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

FISCAL NOTE

REQUEST:

Revision Date: 4/22/89 Agency Affected: Commerce & Econ. Dev.
 Title: An Act relating to additional penalties for violation of commercial fishing laws BRU: Investments
 Sponsor: Zharoff Components: _____
 Requestor: Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Martin J. Richard, Director Phone: 465-2510
 Division: Investments Date: 12/11/89
 Approved by Commissioner: Larry Mercurieff Date: 12/12/89
 Agency: Department of Commerce & Economic Development

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

COMPARISONS OF HB-201, SB-164, and CFEC draft

I will compare the three proposed amendments of penalties for commercial fishing violations by giving the proposals of each draft. Analysis will follow.

1. Additional penalty after 1st or 2nd conviction:

A. CURRENT LAW

MAY suspend c.f. license and right to obtain CFEC permit for a period not more than one year. or

MAY suspend 1 or more CFEC permits and right to obtain c.f. license for not more than one year.

B. HB-201

No changes proposed.

C. SB-164

Same as current; only difference is that penalties have been specified as 2 classes: with or without permits.

D. CFEC PROPOSAL

MAY suspend any or all of a person's c.f. privileges for not more than one year (basically same as current)

2. Additional penalty after 3rd or subsequent conviction:

A. CURRENT LAW

SHALL suspend c.f. license and right to obtain CFEC permit for not more than 3 years. or

SHALL suspend 1 or more CFEC permits and right to obtain c.f. license for not more than 3 years.

B. HB-201

No changes proposed.

C. SB-164

SHALL FORFEIT all CFEC permits. or

SHALL suspend c.f. license and right to obtain permit for not more than 3 years.

D. CFEC PROPOSAL

SHALL suspend all c.f. privileges for not more than 3 years.

3. Regarding transfer or sale of permit during proceedings or suspension.

A. CURRENT LAW

During suspension permit card may not be issued nor may permit be transferred or sold.

B. HB-201

1. During proceedings against permit holder, permit may not be permanently transferred unless allowed by the court.

2. During suspension, a permit card may not be issued to permit holder and permit holder's permit may not be sold or transferred.

C. SB-164

Application to transfer a permit under 16.43.170 must be accompanied by an affidavit that the transfer is not made for the purpose of avoiding forfeiture of the permit. If the permit is transferred to avoid forfeiture, the transfer is void and the permit subject to forfeiture. It is prima facie evidence of intent to avoid forfeiture if proceedings in which the permit may be forfeited are pending against the transferor.

D. CFEC PROPOSAL

A permit subject to possible suspension by the court under (a) or (b) of this section may not be permanently transferred by the person charged except on order of the court.

4. Definitions. The only definition which differs is c.f. privileges.

A. CURRENT: Not defined.

B. HB-201: Privilege of participating in an activity for which a c.f. license is required and the privilege of obtaining a c.f. license.

C. SB-164: Privilege of participating in an activity for which a c.f. license is required.

D. CFEC PROPOSAL: includes a c.f. license, the ability to obtain a c.f. license, a limited entry permit, and the ability to obtain a limited entry permit.

5. Other differences.

SB-164 also addresses the disposition of a CFEC permit that has been forfeited.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

March 20, 1989

The Honorable Bettye Fahrenkamp, Chair
Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Re: SB 164

Dear Senator Fahrenkamp:

We have reviewed Senate Bill ("SB") 164, relating to "additional penalties for violation of commercial fishing laws and forfeiture of limited entry permits and to transfer of limited entry permits to avoid forfeiture," and would like to bring a few matters to your attention.

First, under section 1, substantially different penalties would apply depending on whether the person held a limited entry permit at the time the violation occurred. If, as a policy matter, it is believed desirable to have different penalties apply based on that distinction, it would be helpful to have the record reflect the reasons such a distinction was made. For example, why should a permit holder, upon a first or second conviction, not have the person's right to obtain a limited entry permit suspended while a person not holding a limited entry permit could have that right suspended? It would be helpful if, in the legislative record, there is some justification for this disparity of treatment if, as a policy matter, it is believed that such a disparity is appropriate.

Second, under section 1, AS 16.05.710(a) would be repealed and reenacted to apply to "[a] person convicted of a misdemeanor for violating AS 16.05.440 -- 16.05.690 or a federal or state commercial fishing statute or regulation." Proposed AS 16.05.710(a)(1)(A) and (B) and (2)(A) and (B), on the other hand, address convictions "for violating a commercial fishing statute or regulation." This might lead to some confusion because the language is not as explicit as that used earlier in the section. To clear up any confusion, the phrase "violating a commercial fishing statute or regulation" used in subsections (1)(A)

The Honorable Bettye Fahrenkamp

March 20, 1989
Page 2

and (B) and (2)(A) and (2) could be replaced by the phrase "such a violation," which would refer back to the earlier reference to "a misdemeanor for violating AS 16.05.440 -- 16.05.690 or a federal or state commercial fishing statute or regulation."

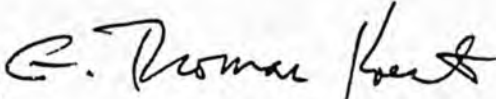
Finally, in section 6, the proposed new subsection (f) to be added to AS 16.43.170 includes the following sentence: "A person who falsifies an affidavit under this subsection is guilty of perjury under AS 11.56.210." It is a common practice in the state for notaries not to place a person under oath before signing an affidavit. Accordingly, the appropriate reference should be to unsworn falsification under AS 11.56.210, not perjury under AS 11.56.200.

We hope you find these comments helpful. If we can provide any additional information, please contact us at your convenience.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:


G. Thomas Koester
Assistant Attorney General

GTK:d1m

cc: Senator Zharoff
Representative Davidson
Representative Menard
Representative Foster

Bob Evans
Assistant Chief of Staff
Legislative Liaison
Office of the Governor

Bruce Twomley, Chairman
Commercial Fisheries Entry Commission



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259


DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLANDS • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

TO: Senator Bettye Fahrenkamp
Chair - Senate Resources Committee

FROM: Senator Fred F. Zharoff 

DATE: March 6, 1989

RE: CS For Senate Bill 164 - "An Act relating to additional penalties for violation of commercial fishing laws and for theft of commercial fishing gear, forfeiture of limited entry permits, and transfer of limited entry permits; and providing for an effective date."

I request the Senate Resources Committee to consider CSSB 164 in place of SB 164. The attached draft committee substitute corrects the problems noted in the Department of Commerce & Economic Development's position paper, also attached.

CSSB 164 is designed to solve several problems with regard to the enforcement of Alaska's commercial fishing laws.

-- It strengthens the penalties for commercial fishing violations by requiring the permanent forfeiture of all limited entry permits, rather than three year suspension, upon an individual's third conviction.

-- It closes a loophole in the present law by preventing an individual from legally transferring their permit or permits to avoid suspension or forfeiture.

-- It defines "commercial fishing privilege". Current law provides for the suspension of commercial fishing privileges, but does not define them.

More and more commercial fishermen tell me they feel they are forced to break the law in order to make a season because everyone else is doing it. This situation will only get worse until the economic risk associated with violating the law is greater than the economic reward. The permanent forfeiture of limited entry permits is the most effective way to remedy this situation.

CSSB 164 provides for forfeited permits to be, essentially, retired from the fishery. The number of permits issued in almost all fisheries in Alaska either meets or exceeds the optimum number. This feature will help stabilize participation in the fisheries.

The main part of the bill is the forfeiture provision in Sec. 1. The remaining sections of the bill close loopholes and clarify the enforcement of

the present law (Sec. 2, 3, 4, 8) and specify what is to happen to permits that are forfeited (Sec. 5, 6, 9).

The following backup information is attached:

1. Sectional analysis.
2. Position paper and fiscal note from the Department of Commerce and Economic Development.
3. Bill analysis prepared by the Department of Fish and Game.
4. Memorandum from Mr. David Ingram, Commercial Fisheries Entry Commission hearing officer, explaining the amendments that are needed for the present statute.
5. Attorney General's opinion, dated Feb. 7, 1989, explaining why, under present law, the commission cannot prevent individuals from transferring permits to avoid suspension.
6. Article from the Bristol BayTimes, July 8, 1988.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILLIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

SECTIONAL ANALYSIS

CS For Senate Bill 61 -- "An Act relating to additional penalties for violation of commercial fishing laws and for the theft of commercial fishing gear, forfeiture of limited entry permits, and transfer of limited entry permits; and providing for an effective date."

SECTION 1

Rewrites 16.05.710(a) to provide for the forfeiture of limited entry permits upon an individual's third conviction for the violation of commercial fishing laws.

SECTION 2

Clarifies the language in the existing statute.

SECTION 3

Prevents an individual from transferring a permit to avoid forfeiture or suspension.

SECTION 4

Redefines "commercial fishing license" to include a limited entry permit. Adds new definitions of "commercial fishing privilege" and "commercial fishing statute or regulation".

SECTION 5

Requires forfeited limited entry permits to be returned to the Commercial Fisheries Entry Commission, unless they are being used as security for a loan.

SECTION 6

Directs the Department of Commerce and Economic Development to sell forfeited permits that have been used as security for a loan and use the proceeds to pay the debt, with the excess deposited in the general fund. Prohibits the department from selling the permits to individuals who have either forfeited permits or have them under suspension.

SECTION 7

Prevents an individual from holding a permit if their permits have already been forfeited or if their permits are under a court-ordered suspension.

SECTION 8

voids the transfer of a limited entry permit if it was done in violation of a forfeiture or suspension order.

SECTION 9

Describes the procedures the Alaska Commercial Fishing and Agriculture Bank shall follow if a forfeited permit -- used as collateral for a CFAB loan -- is returned.

SECTION 10

Makes clear that the penalties in the bill will not apply to pending cases. They will apply to crimes committed after the effective date of this act.

SECTION 11

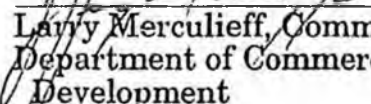
Immediate effective date.

SB 164: "An Act relating to additional penalties for violation of commercial fishing laws and forfeiture of limited entry permits and the transfer of limited entry permits to avoid forfeiture; and providing for an effective date."

This legislation stipulates penalties that a court may impose upon a person convicted of violating federal or state commercial fishing statutes or regulations. Existing statute allows the court to suspend a person's limited entry permits and licenses for up to three years. This legislation would require the forfeiture of all persons' limited entry permits upon third or subsequent convictions. This legislation also contains provisions aimed at preventing a person from transferring a limited entry permit to avoid forfeiture. If, however, an affected permit is securing a loan through our agency or the Commercial Fishing and Agriculture Bank, then that permit may be transferred after a foreclosure action has been completed.

In addition, SB 164 states that the department may not sell an entry permit obtained in a foreclosure action to a person who has forfeited an interim use or entry permit as a result of this legislation. It is anticipated that this provision will have minimal impact on our department's ability to promptly advertise and sell permits, as required under AS 16.10.337.

While the Department of Commerce and Economic Development is neutral on this legislation, there is one potential problem area that should be noted. AS 16.10.337 contains a requirement that all proceeds from the sale of a permit in excess of the amount needed to retire the debt and cover expenses go back to the borrower. As a result, a person who has a loan against a limited entry permit may be able to recoup a portion of his/her investment in the permit in spite of a forfeiture action, whereas, a similar person without a loan would forfeit his/her entire investment.


Larry Mercurieff, Commissioner
Department of Commerce and Economic
Development

Date: 2/14/88

LM/GW/dgl3353D
021689a

FISCAL NOTE

REQUEST:

Revision Date: 2/8/89
 Title: An Act relating to additional penalties for violation of commercial fishing laws
 Sponsor: Zharoff
 Requestor: Resources
 Agency Affected: Commerce & Econ. Dev.
 BR: Investments
 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						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Martin J. Richard, Director Phone: 465-2510
 Division: Investments Date: 2/16/89
 Approved by Commissioner: Larry Merculieff Date: 2/10/89
 Agency: Department of Commerce & Economic Development

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



3.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Commercial Fisheries	BILL NUMBER SB 164	SPONSOR Zharoff
SHORT TITLE OF BILL Penalties for Violation of Commercial Fishery Laws			
DEPARTMENT POSITION Neutral			
PREPARED BY Robert Clabv	DATE 2/10/89	COMMISSIONER'S SIGNATURE <i>Arman H. Deluy</i>	DATE 2/14/89

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Public Safety Law Commercial Fisheries	CONSTITUENT GROUP(S) AFFECTED BY BILL Commercial Fishermen
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Unknown

ANALYSIS OF BILL/PROGRAM EFFECTS

Passage of this bill should have no direct affects on the division's programs.

AMENDMENTS PROPOSED

None

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

MEMORANDUM

STATE OF ALASKA

TO: Trooper Joe D'Amico
S.I.S.
Division of Fish and
Wildlife Protection
Dept. of Public Safety
5700 E. Tudor Road
Anchorage, AK 99507

DATE: February 8, 1989

FILE NO:

TELEPHONE NO:

SUBJECT: Problems found
in AS 16.05.710

FROM: David A. Ingram *DAL*
Managing Hearing Officer
Commercial Fisheries
Entry Commission
P.O. Box KB
Juneau, AK 99811

As requested by Lt. Mills, I have put together a summary of the problems that we have identified with AS 16.05.710 (Attachment 1 hereto); the statute enacted last year to allow a court to suspend fishing privileges for simple fishing violations as opposed to violations of the Limited Entry Act, AS 16.43. I have also attached draft revisions of the statute for your discussion.

We (meaning F&WP and CFEC) experienced problems with AS 16.05.710 shortly after it was enacted last year. Trooper Dick Dykema at your King Salmon office cited Lowell Stambaugh for a fishing violation, and shortly thereafter, Stambaugh filed a request with CFEC to permanently transfer his entry permit to his father. CFEC refused to complete the transfer pending the outcome of Stambaugh's trial. Stambaugh's father went to court here in Juneau and obtained a November 18 order (Attachment 2 hereto) to the effect that CFEC has no authority under AS 16.05.710 or any other statute to suspend the transferability of an entry permit pending the outcome of a trial. Clearly, the absence of a provision granting such authority was either an oversight by the Legislature, or it believed we had the authority elsewhere. Unless permits are nontransferable pending the outcome of a trial, we can expect many others to get rid of them in advance of trial (to a relative as Stambaugh did, to a friend, to a spouse, etc.) and defeat the intent of the statute.

The court was clearly correct in ruling that the current version of AS 16.05.710 does not expressly grant CFEC the authority to suspend the transferability of a permit pending trial. I have drafted a proposed revision of the statute (Attachment 3) incorporating a provision that creates such a suspension. This particular problem is the most glaring deficiency in the existing statute. Since other difficulties have been experienced and others are foreseeable, however, I have proposed other changes to the statute as well. I have also attached a draft of the more comprehensive changes (Attachment 4). Those changes and the reasons therefor are as follows:

FILE

AS 16.05.710(a) Suspension of Fishing Privileges.

As it currently exists, (a) sets up a conflict with (b) that a court is likely to find confusing. As you'll note, (a) lists specific fishing privileges that can be suspended (a commercial fishing license, ability to obtain a commercial fishing license, a limited entry permit, and the ability to obtain a limited entry permit). In (b), however, reference is made to the suspension of "fishing privileges" without stating what they are. A court might well conclude that the fishing privileges in (b) must be something different than in (a) because of the different language used. My solution has been to make the language in (a) comport with that in (b), i.e., consistently refer to the suspension of "fishing privileges" and define those privileges as being the person's licenses and permits and their ability to obtain other licenses and permits.

Another problem with (a) is that it's vague in referring to what laws are involved. It says that the suspensions can be imposed due to violations of "AS 16.05.440 - AS 16.05.690 or a federal or state commercial fishing statute or regulation." The main problem with this language is that "commercial fishing statute or regulation" is vague and probably too broad. My proposal attempts to cure those problems by clarifying, in (d), what laws are involved and what is meant by a "commercial fishing statute or regulation."

Another problem with (a) as it currently exists is the "either/or" alternatives available to a judge, neither of which are effective. If the judge suspends the person's "commercial fishing license and the right to obtain a limited entry permit," for instance, it may appear that the person is precluded from fishing, but that's not true. Nowhere does it say he can't obtain another commercial license, but for that matter, he may not need one. If he already has a limited entry permit, he can use it as a crewman's license to fish in any fishery and can still use it to fish as a permit holder in the fishery for which the permit was issued. See AS 16.05.480. Conversely, if the court selected the other alternative and suspended "one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license" the person still isn't precluded from obtaining another limited entry permit that could be used in the fishery for which it was issued and could also be used to crew in any fishery. My solution has been to do away with the "either/or" approach and, instead, give the judge the flexibility to penalize the offender just a little (by suspending only one permit, perhaps) or a lot (by suspending all fishing privileges, i.e., all commercial fishing licenses

and permits he may hold as well as his ability to obtain other commercial fishing licenses and permits. This is done by simply referring to "fishing privileges)" as the Legislature has already done in (b) and then defining what is encompassed by that term in (d).

AS 16.05.710(b)

Since it's apparent that the Legislature intended to severely punish one who steals another's fishing gear, I have added language that makes it clear that all of a person's commercial fishing privileges are suspended.

AS 16.05.710(c)

This is the most crucial part of the revision. I have built in the language necessary to make an entry permit nontransferable pending the outcome of the trial unless the court orders that it may be transferred. This is absolutely necessary to avoid the reoccurrence of the incident last fall in which CFEC was ordered to allow a defendant to transfer away his permit prior to trial. I have also made the nontransferability provision applicable to those permits facing possible suspension under (b) based upon a theft conviction.

I drafted the nontransferability provision as I did, giving the court the ability to order CFEC to allow a transfer, in order to protect an accused against stalling tactics by the state and to give the court the discretion to allow a transfer when it's clear to the court that a suspension will not be part of a sentence.

AS 16.05.710(d)

In this definition section, I have included those definitions referred to above and have tightened up others.

I trust that you will find these changes suitable to enforcement needs.

DAI:dan

cc:

Bob Evans
Lt. Rod Mills

Current Version

Sec. 16.05.710. Suspension of commercial license and entry permit. (a) A person convicted of a misdemeanor for violating AS 16.05.440 — 16.05.690 or a federal or state commercial fishing statute or regulation is, in addition to other penalties provided by law, subject to the following penalties:

(1) upon a first or second conviction the court may suspend, for a period of not more than one year,

(A) the person's commercial fishing license and the right to obtain a limited entry permit; or

(B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license; and

(2) upon a third or subsequent conviction the court shall suspend, for a period of not more than three years,

(A) the person's commercial fishing license and the right to obtain a limited entry permit; or

(B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license.

(b) Upon a first conviction of a person for a violation of AS 11.46.120 — 11.46.130 in which the property is commercial fishing gear as defined in AS 16.43.990, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for one year. Upon a second or subsequent conviction, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for two years.

(c) During the period for which a limited entry permit is suspended under (a) of this section a permit card may not be issued and the permit may not be transferred or sold.

(d) In this section

(1) "commercial fishing license" includes a crew member license;

(2) "Limited entry permit" includes an interim use permit. (§ 11 art III ch 94 SLA 1959; am § 1 ch 112 SLA 1961; am § 1 ch 75 SLA 1966; am § 3 ch 73 SLA 1986; am §§ 1, 2 ch 46 SLA 1988)

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 ROSS GLEN STAMBAUGH,)
4 Plaintiff,)
5 v.)
6 COMMERCIAL FISHERIES ENTRY)
7 COMMISSION, STATE OF ALASKA,)
8 Defendant.)

FILED IN THE TRIAL COURTS
STATE OF ALASKA - JUD. DISTRICT
AT

NOV 18 1988

By _____ PG Debut

No. 1JU-88-1839 Civil

9
10 PRELIMINARY INJUNCTION

11 Plaintiff has moved for issuance of a temporary
12 restraining order. After notice, both sides were heard. The
13 CFEC, through counsel, has opposed the motion.

14 The court has considered the brief of plaintiff, the
15 evidence, and the arguments of counsel. The court finds that
16 the requirements for preliminary injunctive relief have been
17 fulfilled: AS 16.05.710 allows no other conclusion.

18 It is hereby ordered that the CFEC is enjoined from
19 suspending approval of the license transfer application
20 regarding Limited Entry no. S03T 55709U solely on the basis of
21 the proposed Transferor's pending criminal charges.

22 The CFEC is hereby ordered to process the application
23 in accordance with AS 16.43.170(b) and 20 AAC 05.1700 et seq.,
24 without regard to the possible consequences of the criminal
25 action.

This is not a mandatory injunction, and does not

1 compel transfer of the permit in question. It merely restrains
2 suspension of transfer proceedings because criminal charges are
3 pending against the transferor. Therefore, for example, if the
4 CFEC moves under AS 16.43.960, it clearly has the authority to
5 suspend the permit holder's ability to transfer the permit upon
6 issuance of a show cause order. AS 16.43.960(b)(5). There may
7 also be other bases for such an action, not addressed here.
8 This court rules only that the CFEC may not suspend transfer
9 because a charge is pending against the transferor. AS
10 16.05.710.

11 No bond is required.

12 IT IS SO ORDERED.

13 Done at Juneau, Alaska this 18th day of November, 1988.

14 *Walter L. Carpenetti*

15 WALTER L. CARPENETTI
16 Superior Court Judge

17
18 CERTIFICATION

19 The undersigned certifies that on the 18th day of
20 November, 1988, a true copy of this
21 document was served on the following attorneys:
STEVEN MARKS; GARY AMENDOLA

22 BY *[Signature]*

23
24
25
Attachment #2
(2 of 2)

DRAFT

IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to commercial fishing violations;
and providing for an effective date."

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

*Section 1. AS 16.05.710(c) is amended to read:

(c) A limited entry permit subject to possible suspension by the court under (a) or (b) of this section may not be permanently transferred by the person charged except upon order of the court. During the period for which a limited entry permit is suspended under (a) or (b) of this section, a permit card may not be issued and the permit may not be transferred.

Section 2. This Act takes effect immediately under AS 01.10.070(c).

Attachment #3

DRAFT

IN THE HOUSE

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to commercial fishing violations;
and providing for an effective date."

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

*Section 1. AS 16.05.710(a) is repealed and reenacted to read:

(a) Upon a person's first or second conviction of a misdemeanor for violating a federal or state commercial fishing statute or regulation, the court may, in addition to other penalties imposed by law, suspend any or all of the person's commercial fishing privileges for a period of not more than one year. Upon a third or subsequent conviction, the court shall, in addition to other penalties imposed by law, suspend all of the person's commercial fishing privileges for a period of not more than three years.

*Section 2. AS 16.05.710(b) is amended to read:

(b) Upon a first conviction of a person for a violation of AS 11.46.120 - 11.46.130 in which the property is commercial fishing gear as defined in AS 16.43.990, the court shall, in addition to the penalty imposed by law, order a suspension of all of the person's commercial fishing privileges for one year. Upon a second or subsequent conviction, the court shall, in addition to the penalty imposed by law, order a suspension of all of the person's commercial fishing privileges for two years.

Attachment #4
(1073)

*Section 3. AS 16.05.710(c) is amended to read:

(c) A limited entry permit subject to possible suspension by the court under (a) or (b) of this section may not be permanently transferred by the person charged except upon order of the court.

During the period for which a limited entry permit is suspended under (a) or (b) of this section, a permit card may not be issued and the permit may not be transferred.

*Section 4. AS 16.05.710(d) is repealed and reenacted to read:

(d) In this section:

- (1) "commercial fishing license" includes a crewmember license;
- (2) "limited entry permit" includes entry permits and interim-use permits issued under AS 16.43;
- (3) "commercial fishing statute or regulation" includes those statutes found in AS 16.05, AS 16.10, and elsewhere in the Alaska Statutes and those regulations adopted by the Board of Fisheries and the commissioner of the Department of Fish and Game that regulate the conduct of those engaged in commercial fishing activities by establishing requirements relating to licenses and permits; catch records and reports; size, nature and use of fishing vessels, sites and gear; time, place and method of taking fishery resources; possession, transportation, sale, barter, and waste of fishery resources; and other aspects of commercial fishing.

Attachment #4
(2 of 3)

(4) 'commercial fishing privileges' includes a commercial fishing license, the ability to obtain a commercial fishing license, a limited entry permit, and the ability to obtain a limited entry permit.

*Section 5. This Act takes effect immediately under AS 01.10.070(c).

Attachment #4
(3 of 3)

Many fishing violators nearing limit of law

by Andrew deValpine
Staff Writer

Close to one-third of the fishermen arrested for fishing violations so far are repeat offenders; one more violation and they could lose their permits, according to the Alaska Division of Fish and Wildlife Protection.

Three violations in 10 years is the limit before the permit is taken.

"There's real potential," said protection officer Lt. Tom Schwantes. "Ten years is a long time."

Almost 30 boats have been cited from the Egegik district, mostly for fishing over the district's lines. All but one have pleaded no contest and been fined five to \$10,000 plus forfeiting fish.

Besides losing permits, three-time violators will be fined three times the value of the product on their boat in addition to a \$15,000 fine. Schwantes thinks the stiff penalties are keeping violations down, though his officers have been busy. Especially in Egegik.

"We started our first big push on (June) 20th. We made our first cases on the 21st," Schwantes said. Most offenses were

for fishing over the district's boundary line some up to one mile.

"They just get to fighting on the line and leap frogging," Schwantes said of the more than 700 boats competing for salmon there. As the tides ebb and flow, Protection is going from the north to south of the bay. But because of a manpower and equipment shortage, enforcement officers can't be on both ends of the line at the same time, Schwantes said; fishing is already frenzied by the time enforcement arrives since it usually takes an hour and a half to go from the north end of the line to the south.

Other districts in Bristol Bay have been relatively quiet, but none match the effort in Egegik. Ugashik, with 50 boats maximum, has only had one opening, and that was a "clean" one, Schwantes said. One officer characterized the season here as a "real gentleman's fishery."

In the Naknek/Kvichak area, where more than 600 boats have registered to fish, the biggest problems have been with transfers and registration. Nor has the Nushagak caused problems. "It doesn't seem to be nearly as aggressive as Egegik," he said.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 485-3473 • 485-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

Revised

SECTIONAL ANALYSIS

CS For Senate Bill 164 -- "An Act relating to additional penalties for violation of commercial fishing laws and for the theft of commercial fishing gear, forfeiture of limited entry permits, and transfer of limited entry permits; and providing for an effective date."

~~SECTION 1~~

Deleted — Rewrites 16.05.710(a) to provide for the forfeiture of limited entry permits upon an individual's third conviction for the violation of commercial fishing laws.

SECTION 1

Clarifies the language in the existing statute.

SECTION 2

Prevents an individual from transferring a permit to avoid forfeiture or suspension by making the transfer subject to an order of the court.

SECTION 3

Redefines "commercial fishing license" to include a limited entry permit. Adds new definitions of "commercial fishing privilege" and "commercial fishing statute or regulation".

~~SECTION 5~~

Deleted — Requires forfeited limited entry permits to be returned to the Commercial Fisheries Entry Commission, unless they are being used as security for a loan.

~~SECTION 6~~

Partially

Deleted

Directs the Department of Commerce and Economic Development to sell forfeited permits that have been used as security for a loan and use the proceeds to pay the debt, with excess proceeds deposited in the general fund. Prohibits the department from selling the permits to individuals who have either forfeited permits or who have them under suspension.

SECTION 4

SECTION ~~X~~ 5

Prevents an individual from holding a permit if their permits ~~have already been forfeited or if their permits~~ are under a court-ordered suspension.

SECTION ~~X~~ 6

Voids the transfer of a limited entry permit if it was done in violation of a ~~forfeiture or~~ suspension order.

~~SECTION 9~~

Deleted ✓

Describes the procedures the Alaska Commercial Fishing and Agriculture Bank shall follow if a forfeited permit -- used as collateral for a CFAB loan -- is returned to CFAB. Excess funds from CFAB's sale of the permit shall be transmitted to the Commercial Fisheries Entry Commission for deposit in the general fund.

SECTION ~~10~~ 7

Makes clear that the penalties in the bill will not apply to pending cases. They will apply to crimes committed after the effective date of this act.

SECTION ~~11~~ 8

Immediate effective date.

Original sponsor: Zharoff

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 164 (Resources)

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 additional penalties for viola-
7 tion of commercial fishing laws and for theft of
8 commercial fishing gear, forfeiture of limited entry
9 permits, and transfer of limited entry permits; and
10 providing for an effective date."

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

12 * Section 1. AS 16.05.710(a) is repealed and reenacted to read:

13 Deleted (a) A person convicted of a misdemeanor for violating a state
14 commercial fishing statute or regulation is, in addition to other
15 penalties provided by law, subject to the following penalties:

16 (1) if the person held a limited entry permit at the time
17 the violation occurred, the court

18 (A) upon the person's first or second conviction for
19 violating a federal or state commercial fishing statute or regu-
20 lation while holding a limited entry permit, may suspend, for a
21 period of not more than one year, any or all of the person's
22 commercial fishing privileges; and

23 (B) upon the person's third or subsequent conviction
24 for violating a federal or state commercial fishing statute or
25 regulation while holding a limited entry permit, shall forfeit
26 [all] the person's limited entry permits and shall suspend the
27 person's commercial fishing privileges for a period of not more
28 than three years; or

29 (2) if the person did not hold a limited entry permit at

1 the time the violation occurred, the court

2 (A) upon the person's first or second conviction for
3 violating a federal or state commercial fishing statute or regu-
4 lation while not holding a limited entry permit, may suspend, for
5 a period of not more than one year, any or all of the person's
6 commercial fishing privileges; and

7 (B) upon the person's third or subsequent conviction
8 for violating a federal or state commercial fishing statute or
9 regulation while not holding a limited entry permit, shall sus-
10 pend, for a period of not more than three years, the person's
11 commercial fishing privileges.

12 * ~~Sec. 2~~ AS 16.05.710(b) is amended to read:
13 ~~Sec. 1~~

14 (b) Upon a first conviction of a person for a violation of
15 AS 11.46.120 - 11.46.130 in which the property is commercial fishing
16 gear as defined in AS 16.43.990, the court shall, in addition to the
17 penalty imposed by law, suspend all [ORDER A SUSPENSION] of the per-
18 son's commercial fishing privileges for one year. Upon a second or
19 subsequent conviction, the court shall, in addition to the penalty
20 imposed by law, suspend all [ORDER A SUSPENSION] of the person's
21 commercial fishing privileges for two years.

22 * Sec. ~~1~~² AS 16.05.710(c) is amended to read:

23 (c) If proceedings in which a limited entry permit may be for-
24 feited or suspended under this section are pending against a permit
25 holder, the permit may not be permanently transferred, except upon the
26 order of the court in which the proceedings are pending, and a perma-
27 nent transfer of the permit, except upon the order of the court, is
28 void. During the period for which a limited entry permit or the
29 permit holder's privilege to hold a limited entry permit is suspended
under [(a) OF] this section, a permit card may not be issued to the

1 permit holder and the permit holder's permit may not be transferred or
2 sold.

3 * Sec. ~~4~~³ AS 16.05.710(d) is repealed and reenacted to read:

4 (d) In this section

5 (1) "commercial fishing license" means a limited entry
6 permit or a crew member license;

7 (2) "commercial fishing privilege" means the privilege of
8 participating in an activity for which a commercial fishing license is
9 required and the privilege of obtaining and holding a commercial
10 fishing license;

11 (3) "commercial fishing statute or regulation" means a
12 statute or regulation that regulates the conduct of a person engaged
13 in commercial fishing activities by establishing requirements relat-
14 ing to fishing licenses and permits; catch records and reports; size,
15 nature, or use of fishing vessels, sites, and gear; time, place, or
16 manner of taking fishery resources; possession, transportation, sale,
17 barter, or waste of fishery resources; or other aspects of commercial
18 fishing;

19 (4) "limited entry permit" means an entry permit or an
20 interim use permit issued under AS 16.43.

21 * Sec. 5. AS 16.05.710 is amended by adding a new subsection to read:

22 Deleted - (e) A limited entry permit forfeited under this section must be
23 returned to the Alaska Commercial Fisheries Entry Commission. The
24 limited entry permit may not be reissued, unless the limited entry
25 permit is taken as security for a loan under AS 16.10.333 or AS 44.-
26 81.230 or the limited entry permit is for a fishery in which new
27 limited entry permits are being issued under AS 16.43.330. If the
28 limited entry permit forfeited under this section is taken as security
29 for a loan under

1 (1) AS 16.10.333, the limited entry permit must be trans-
2 ferred under AS 16.10.337; or

3 (2) AS 44.81.230, the limited entry permit must be trans-
4 ferred under AS 44.81.252.

5 Deleted * Sec. 6. AS 16.10.337 is amended by adding new subsections to read:

6 (e) An entry permit forfeited under AS 16.05.710 and available
7 for transfer under this section shall be offered to the commission, if
8 the permit is subject to a buy-back program under AS 16.43.290 -
9 16.43.330, at a price equal to the amount outstanding on the note plus
10 costs the department directly incurred in administering the loan. If
11 the commission does not exercise its right to purchase the permit
12 within 30 days after it receives the offer or if the permit is not
13 subject to a buy-back program under AS 16.43.290 - 16.43.330, the
14 department shall promptly advertise and sell the permit. If the
15 proceeds of the sale of a permit exceed the amount necessary to pay
16 the note in full, plus penalties, costs of administration of the note,
17 and attorney fees, the commissioner shall deposit the excess in the
18 general fund. Nothing in this subsection affects the right of the
19 commissioner to institute legal action for a deficiency resulting from
20 the sale of a permit forfeited under AS 16.05.710. In addition to a
21 deficiency, the debtor is liable for the costs of administering the
22 note and for costs and attorney fees.

23 Sec. 4 (e)(d) The department may not sell an entry permit under this
24 section to a person who has forfeited an interim-use or entry permit
25 under AS 16.05.710 or whose privilege to obtain or hold an entry
26 permit is suspended under AS 16.05.710.

27 * Sec. 5 AS 16.43.140 is amended by adding a new subsection to read:

28 (d) A person may not hold an interim-use or entry permit issued
29 or transferred under this chapter or transferred under AS 16.10.337 or

1 AS 44.81.250 or 44.81.252, if the person ~~has ever forfeited an interim~~
2 ~~in use or entry permit under AS 16.05.710 or the person~~ is subject to
3 a current order under AS 16.05.710 suspending the person's privilege
4 to obtain or hold an interim use or entry permit.

5 * Sec. ~~6~~ AS 16.43.170 is amended by adding a new subsection to read:

6 (f) The permanent transfer of an entry permit is void if pro-
7 ceedings in which the entry permit may be ~~forfeited or~~ suspended under
8 AS 16.05.710 are pending against the permit holder at the time of
9 transfer unless the transfer of the entry permit is ordered by the
10 court in which the proceedings are pending.

11 * Sec. 9. AS 44.81 is amended by adding a new section to read:

12 Sec. 44.81.252. TRANSFER OF ENTRY PERMITS AFTER FORFEITURE. (a)
13 Upon forfeiture under AS 16.05.710 of an entry permit that is taken as
14 security for a loan under AS 44.81.230, the bank shall offer the
15 commission a right of first refusal, if the permit is subject to a
16 buy-back program under AS 16.43.290 - 16.43.330, at a price equal to
17 the amount outstanding on the note plus costs the bank directly in-
18 curred in administering the loan.

19 (b) If the commission does not exercise its right of first
20 refusal within 30 days after it receives the offer, or if the permit
21 is not subject to a buy-back program under AS 16.43.290 - 16.43.330,
22 the bank shall promptly sell the permit to a qualified person, chosen
23 as provided in this subsection, who assumes the note subject to all
24 rights and liabilities of the original debtor. The commission shall
25 provide the bank with a list of persons chosen by lottery who qualify
26 as transferees of entry permits under AS 16.43 and regulations adopted
27 by the commission and who have met the residency and commercial fish-
28 ing participation requirements of AS 44.81.210(a)(20). The bank shall
29 then determine, in order of presentation, any remaining

1 qualifications. The bank shall allow the first applicant meeting all
2 qualifications to assume the note. If the commission is unable to
3 provide a list of one or more qualified persons within 15 days, or if
4 no person listed is determined by the bank to be qualified to assume
5 the note, the bank may sell the permit to an individual commercial
6 fisherman who has been a state resident for two years immediately
7 preceding the date of the sale.

8 (c) If the proceeds of the sale exceed the amount necessary to
9 pay the note in full, plus penalties, costs of administration of the
10 note, and attorney fees, the bank shall transmit the excess to the
11 commission for deposit in the general fund.

12 (d) Nothing in this section affects the right of the bank to
13 institute legal action for a deficiency resulting from the sale of a
14 permit forfeited under AS 16.05.710. In addition to a deficiency, the
15 debtor is liable for the costs of administering the note and for costs
16 and attorney fees.

17 * Sec. 10. The provisions of this Act are applicable to cases involving
18 a commercial fishing violation or theft of commercial fishing gear that
19 occurs on or after the effective date of this Act.

20 * Sec. N⁸. This Act takes effect immediately under AS 01.10.070(c).

6-0309E ✓
Utermohle
3/28/89

Original sponsor: Zharoff

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 164 (Resources)

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 additional penalties for viola-
7 tion of commercial fishing laws and for theft of
8 commercial fishing gear, forfeiture of limited entry
9 permits, and transfer of limited entry permits; and
10 providing for an effective date."

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

12 * Section 1. AS 16.05.710(a) is repealed and reenacted to read:

13 (a) A person convicted of a misdemeanor for violating a state
14 commercial fishing statute or regulation is, in addition to other
15 penalties provided by law, subject to the following penalties:

16 (1) if the person held a limited entry permit at the time
17 the violation occurred, the court

18 (A) upon the person's first or second conviction for
19 violating a federal or state commercial fishing statute or regu-
20 lation while holding a limited entry permit, may suspend, for a
21 period of not more than one year, any or all of the person's
22 commercial fishing privileges; and

23 (B) upon the person's third or subsequent conviction
24 for violating a federal or state commercial fishing statute or
25 regulation while holding a limited entry permit, shall forfeit
26 all the person's limited entry permits and shall suspend the
27 person's commercial fishing privileges for a period of not more
28 than three years; or

29 (2) if the person did not hold a limited entry permit at

1 the time the violation occurred, the court

2 (A) upon the person's first or second conviction for
3 violating a federal or state commercial fishing statute or regu-
4 lation while not holding a limited entry permit, may suspend, for
5 a period of not more than one year, any or all of the person's
6 commercial fishing privileges; and

7 (B) upon the person's third or subsequent conviction
8 for violating a federal or state commercial fishing statute or
9 regulation while not holding a limited entry permit, shall sus-
10 pend, for a period of not more than three years, the person's
11 commercial fishing privileges.

12 * Sec. 2. AS 16.05.710(b) is amended to read:

13 (b) Upon a first conviction of a person for a violation of
14 AS 11.46.120 - 11.46.130 in which the property is commercial fishing
15 gear as defined in AS 16.43.990, the court shall, in addition to the
16 penalty imposed by law, suspend all [ORDER A SUSPENSION] of the per-
17 son's commercial fishing privileges for one year. Upon a second or
18 subsequent conviction, the court shall, in addition to the penalty
19 imposed by law, suspend all [ORDER A SUSPENSION] of the person's
20 commercial fishing privileges for two years.

21 * Sec. 3. AS 16.05.710(c) is amended to read:

22 (c) If proceedings in which a limited entry permit may be for-
23 feited or suspended under this section are pending against a permit
24 holder, the permit may not be permanently transferred, except upon the
25 order of the court in which the proceedings are pending, and a perma-
26 nent transfer of the permit, except upon the order of the court, is
27 void. During the period for which a limited entry permit or the
28 permit holder's privilege to hold a limited entry permit is suspended
29 under [(a) OF] this section, a permit card may not be issued to the

1 permit holder and the permit holder's permit may not be transferred or
2 sold.

3 * Sec. 4. AS 16.05.710(d) is repealed and reenacted to read:

4 (d) In this section

5 (1) "commercial fishing license" means a limited entry
6 permit or a crew member license;

7 (2) "commercial fishing privilege" means the privilege of
8 participating in an activity for which a commercial fishing license is
9 required and the privilege of obtaining and holding a commercial
10 fishing license;

11 (3) "commercial fishing statute or regulation" means a
12 statute or regulation that regulates the conduct of a person engaged
13 in commercial fishing activities by establishing requirements relat-
14 ing to fishing licenses and permits; catch records and reports; size,
15 nature, or use of fishing vessels, sites, and gear; time, place, or
16 manner of taking fishery resources; possession, transportation, sale,
17 barter, or waste of fishery resources; or other aspects of commercial
18 fishing;

19 (4) "limited entry permit" means an entry permit or an
20 interim use permit issued under AS 16.43.

21 * Sec. 5. AS 16.05.710 is amended by adding a new subsection to read:

22 (e) A limited entry permit forfeited under this section must be
23 returned to the Alaska Commercial Fisheries Entry Commission. The
24 limited entry permit may not be reissued, unless the limited entry
25 permit is taken as security for a loan under AS 16.10.333 or AS 44.-
26 81.230 or the limited entry permit is for a fishery in which new
27 limited entry permits are being issued under AS 16.43.330. If the
28 limited entry permit forfeited under this section is taken as security
29 for a loan under

1 (1) AS 16.10.333, the limited entry permit must be trans-
2 ferred under AS 16.10.337; or

3 (2) AS 44.81.230, the limited entry permit must be trans-
4 ferred under AS 44.81.252.

5 * Sec. 6. AS 16.10.337 is amended by adding new subsections to read:

6 (e) An entry permit forfeited under AS 16.05.710 and available
7 for transfer under this section shall be offered to the commission, if
8 the permit is subject to a buy-back program under AS 16.43.290 -
9 16.43.330, at a price equal to the amount outstanding on the note plus
10 costs the department directly incurred in administering the loan. If
11 the commission does not exercise its right to purchase the permit
12 within 30 days after it receives the offer or if the permit is not
13 subject to a buy-back program under AS 16.43.290 - 16.43.330, the
14 department shall promptly advertise and sell the permit. If the
15 proceeds of the sale of a permit exceed the amount necessary to pay
16 the note in full, plus penalties, costs of administration of the note,
17 and attorney fees, the commissioner shall deposit the excess in the
18 general fund. Nothing in this subsection affects the right of the
19 commissioner to institute legal action for a deficiency resulting from
20 the sale of a permit forfeited under AS 16.05.710. In addition to a
21 deficiency, the debtor is liable for the costs of administering the
22 note and for costs and attorney fees.

23 (f) The department may not sell an entry permit under this
24 section to a person who has forfeited an interim-use or entry permit
25 under AS 16.05.710 or whose privilege to obtain or hold an entry
26 permit is suspended under AS 16.05.710.

27 * Sec. 7. AS 16.43.140 is amended by adding a new subsection to read:

28 (d) A person may not hold an interim-use or entry permit issued
29 or transferred under this chapter or transferred under AS 16.10.337 or

1 AS 44.81.250 or 44.81.252, if the person has ever forfeited an inter-
2 im-use or entry permit under AS 16.05.710 or the person is subject to
3 a current order under AS 16.05.710 suspending the person's privilege
4 to obtain or hold an interim use or entry permit.

5 * Sec. 8. AS 16.43.170 is amended by adding a new subsection to read:

6 (f) The permanent transfer of an entry permit is void if pro-
7 ceedings in which the entry permit may be forfeited or suspended under
8 AS 16.05.710 are pending against the permit holder at the time of
9 transfer unless the transfer of the entry permit is ordered by the
10 court in which the proceedings are pending.

11 * Sec. 9. AS 44.81 is amended by adding a new section to read:

12 Sec. 44.81.252. TRANSFER OF ENTRY PERMITS AFTER FORFEITURE. (a)
13 Upon forfeiture under AS 16.05.710 of an entry permit that is taken as
14 security for a loan under AS 44.81.230, the bank shall offer the
15 commission a right of first refusal, if the permit is subject to a
16 buy-back program under AS 16.43.290 - 16.43.330, at a price equal to
17 the amount outstanding on the note plus costs the bank directly in-
18 curred in administering the loan.

19 (b) If the commission does not exercise its right of first
20 refusal within 30 days after it receives the offer, or if the permit
21 is not subject to a buy-back program under AS 16.43.290 - 16.43.330,
22 the bank shall promptly sell the permit to a qualified person, chosen
23 as provided in this subsection, who assumes the note subject to all
24 rights and liabilities of the original debtor. The commission shall
25 provide the bank with a list of persons chosen by lottery who qualify
26 as transferees of entry permits under AS 16.43 and regulations adopted
27 by the commission and who have met the residency and commercial fish-
28 ing participation requirements of AS 44.81.210(a)(20). The bank shall
29 then determine, in order of presentation, any remaining

1 qualifications. The bank shall allow the first applicant meeting all
2 qualifications to assume the note. If the commission is unable to
3 provide a list of one or more qualified persons within 15 days, or if
4 no person listed is determined by the bank to be qualified to assume
5 the note, the bank may sell the permit to an individual commercial
6 fisherman who has been a state resident for two years immediately
7 preceding the date of the sale.

8 (c) If the proceeds of the sale exceed the amount necessary to
9 pay the note in full, plus penalties, costs of administration of the
10 note, and attorney fees, the bank shall transmit the excess to the
11 commission for deposit in the general fund.

12 (d) Nothing in this section affects the right of the bank to
13 institute legal action for a deficiency resulting from the sale of a
14 permit forfeited under AS 16.05.710. In addition to a deficiency, the
15 debtor is liable for the costs of administering the note and for costs
16 and attorney fees.

17 * Sec. 10. The provisions of this Act are applicable to cases involving
18 a commercial fishing violation or theft of commercial fishing gear that
19 occurs on or after the effective date of this Act.

20 * Sec. 11. This Act takes effect immediately under AS 01.10.070(c).
21
22
23
24
25
26
27
28
29

Original sponsor: Zharoff

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 164 (Resources)

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 additional penalties for viola-
7 tion of commercial fishing laws and for theft of
8 commercial fishing gear and to transfer of limited
9 entry permits; and providing for an effective date."

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

11 * Section 1. AS 16.05.710(b) is amended to read:

12 (b) Upon a first conviction of a person for a violation of
13 AS 11.46.120 - 11.46.130 in which the property is commercial fishing
14 gear as defined in AS 16.43.990, the court shall, in addition to the
15 penalty imposed by law, suspend all [ORDER A SUSPENSION] of the per-
16 son's commercial fishing privileges for one year. Upon a second or
17 subsequent conviction, the court shall, in addition to the penalty
18 imposed by law, suspend all [ORDER A SUSPENSION] of the person's
19 commercial fishing privileges for two years.

20 * Sec. 2. AS 16.05.710(c) is amended to read:

21 (c) If proceedings in which a limited entry permit may be sus-
22 pending under this section are pending against a person, the permit may
23 not be permanently transferred, except upon the order of the court in
24 which the proceedings are pending, and a permanent transfer of the
25 permit, except upon the order of the court, is void. During the
26 period for which a person's limited entry permit or a person's privi-
27 lege to obtain a limited entry permit is suspended under [(a) OF] this
28 section, a permit card may not be issued to the person and the per-
29 son's permit may not be transferred or sold.

1 * Sec. 3. AS 16.05.710(d) is repealed and reenacted to read:

2 (d) In this section

3 (1) "commercial fishing license" means a limited entry
4 permit or a crew member license;

5 (2) "commercial fishing privilege" means the privilege of
6 participating in an activity for which a commercial fishing license is
7 required and the privilege of obtaining and holding a commercial
8 fishing license;

9 (3) "commercial fishing statute or regulation" means a
10 statute or regulation that regulates the conduct of a person engaged
11 in commercial fishing activities by establishing requirements relat-
12 ing to fishing licenses and permits; catch records and reports; size,
13 nature, or use of fishing vessels, sites, and gear; time, place, or
14 manner of taking fishery resources; possession, transportation, sale,
15 barter, or waste of fishery resources; or other aspects of commercial
16 fishing;

17 (4) "limited entry permit" means an entry permit or an
18 interim-use permit issued under AS 16.43.

19 * Sec. 4. AS 16.10.337 is amended by adding a new subsection to read:

20 (e) The department may not sell an entry permit under this
21 section to a person whose privilege to obtain or hold an entry permit
22 is suspended under AS 16.05.710.

23 * Sec. 5. AS 16.43.140 is amended by adding a new subsection to read:

24 (d) A person may not hold an interim-use or entry permit issued
25 or transferred under this chapter or transferred under AS 16.10.337 or
26 AS 44.81.250 or 44.81.252, if the person is subject to a current order
27 under AS 16.05.710 suspending the person's privilege to obtain or hold
28 an interim-use or entry permit.

29 * Sec. 6. AS 16.43.170 is amended by adding a new subsection to read:

1 (f) The permanent transfer of an entry permit is void if pro-
2 ceedings in which the entry permit may be suspended under AS 16.05.710
3 are pending against the permit holder at the time of transfer unless
4 the transfer of the entry permit is ordered by the court in which the
5 proceedings are pending.

6 * Sec. 7. The provisions of this Act are applicable to cases involving
7 a commercial fishing violation or theft of commercial fishing gear that
8 occurs on or after the effective date of this Act.

9 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Current Version

Sec. 16.05.710. Suspension of commercial license and entry permit. (a) A person convicted of a misdemeanor for violating AS 16.05.440 — 16.05.690 or a federal or state commercial fishing statute or regulation is, in addition to other penalties provided by law, subject to the following penalties:

(1) upon a first or second conviction the court may suspend, for a period of not more than one year,

(A) the person's commercial fishing license and the right to obtain a limited entry permit; or

(B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license; and

(2) upon a third or subsequent conviction the court shall suspend, for a period of not more than three years,

(A) the person's commercial fishing license and the right to obtain a limited entry permit; or

(B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license.

(b) Upon a first conviction of a person for a violation of AS 11.46.120 — 11.46.130 in which the property is commercial fishing gear as defined in AS 16.43.990, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for one year. Upon a second or subsequent conviction, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for two years.

(c) During the period for which a limited entry permit is suspended under (a) of this section a permit card may not be issued and the permit may not be transferred or sold.

(d) In this section

(1) "commercial fishing license" includes a crew member license;

(2) "Limited entry permit" includes an interim use permit. (§ 11 art III ch 94 SLA 1959; am § 1 ch 112 SLA 1961; am § 1 ch 75 SLA 1966; am § 3 ch 73 SLA 1986; am §§ 1, 2 ch 46 SLA 1988)



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

SECTIONAL ANALYSIS

CS For Senate Bill 164 -- "An Act relating to additional penalties for violation of commercial fishing laws and for the theft of commercial fishing gear, forfeiture of limited entry permits, and transfer of limited entry permits; and providing for an effective date."

SECTION 1

Rewrites 16.05.710(a) to provide for the forfeiture of limited entry permits upon an individual's third conviction for the violation of commercial fishing laws.

SECTION 2

Clarifies the language in the existing statute.

SECTION 3

Prevents an individual from transferring a permit to avoid forfeiture or suspension by making the transfer subject to an order of the court.

SECTION 4

Redefines "commercial fishing license" to include a limited entry permit. Adds new definitions of "commercial fishing privilege" and "commercial fishing statute or regulation".

SECTION 5

Requires forfeited limited entry permits to be returned to the Commercial Fisheries Entry Commission, unless they are being used as security for a loan.

SECTION 6

Directs the Department of Commerce and Economic Development to sell forfeited permits that have been used as security for a loan and use the proceeds to pay the debt, with excess proceeds deposited in the general fund. Prohibits the department from selling the permits to individuals who have either forfeited permits or who have them under suspension.

SECTION 7

Prevents an individual from holding a permit if their permits have already been forfeited or if their permits are under a court-ordered suspension.

SECTION 8

Voids the transfer of a limited entry permit if it was done in violation of a forfeiture or suspension order.

SECTION 9

Describes the procedures the Alaska Commercial Fishing and Agriculture Bank shall follow if a forfeited permit -- used as collateral for a CFAB loan -- is returned to CFAB. Excess funds from CFAB's sale of the permit shall be transmitted to the Commercial Fisheries Entry Commission for deposit in the general fund.

SECTION 10

Makes clear that the penalties in the bill will not apply to pending cases. They will apply to crimes committed after the effective date of this act.

SECTION 11

Immediate effective date.

SM 164

will be personally accompanied while hunting by a person who is qualified under the terms of (a) of this section. A person who falsifies the required affidavit is guilty of perjury under AS 11.56.200.

(c) [Repealed, § 27 ch 71 SLA 1986.]

(d) A nonresident who violates (a) of this section, or who fails to furnish an affidavit under (b) or (e) of this section, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$5,000, or by both.

(e) An applicant for a nonresident big game tag for the taking of moose or caribou shall first furnish to the state, on a form provided by the state, an affidavit showing where the applicant will be hunting and what guiding, transportation, or other big game hunting services the applicant will be employing. A person who falsifies an affidavit under this subsection is guilty of perjury under AS 11.56.200. (§ 1 ch 86 SLA 1967; am §§ 39, 40 ch 59 SLA 1982; am § 1 ch 74 SLA 1982; am § 1 ch 111 SLA 1984; am §§ 24, 25, 27 ch 71 SLA 1986; am §§ 9, 10 ch 160 SLA 1988)

Effect of amendments. — The 1988 amendment, effective June 17, 1988, inserted "or (e)" in subsection (d) and added subsection (e).

Article 4. Licensing of Commercial Fishing Crewmembers and Vessels.

<p>Section 710. Suspension of commercial license and entry permit 720. [Repealed] 722. Strict liability commercial fishing penalties</p>	<p>Section 723. Misdemeanor commercial fishing penalties</p>
--	--

Sec. 16.05.710. Suspension of commercial license and entry permit. (a) A person convicted of a misdemeanor for violating AS 16.05.440 — 16.05.690 or a federal or state commercial fishing statute or regulation is, in addition to other penalties provided by law, subject to the following penalties:

(1) upon a first or second conviction the court may suspend, for a period of not more than one year,

(A) the person's commercial fishing license and the right to obtain a limited entry permit; or

(B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license; and

(2) upon a third or subsequent conviction the court shall suspend, for a period of not more than three years,

(A) the person's commercial fishing license and the right to obtain a limited entry permit; or

(B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license.

05.710

who is
classifies
10.

ails to
misde-
or not
both.
ing of
led by
nting
vices
davit
1 ch
1982;
§§ 9,

added

rs

hing

try
AS
ute
ect

r a

1 a

r-

d.

a

r-

(b) Upon a first conviction of a person for a violation of AS 11.46.120 — 11.46.130 in which the property is commercial fishing gear as defined in AS 16.43.990, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for one year. Upon a second or subsequent conviction, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for two years.

(c) During the period for which a limited entry permit is suspended under (a) of this section a permit card may not be issued and the permit may not be transferred or sold.

(d) In this section

(1) "commercial fishing license" includes a crew member license;

(2) "Limited entry permit" includes an interim use permit. (§ 11 art III ch 94 SLA 1959; am § 1 ch 112 SLA 1961; am § 1 ch 75 SLA 1966; am § 3 ch 73 SLA 1986; am §§ 1, 2 ch 46 SLA 1988)

Effect of amendments. — The 1988 amendment, effective May 25, 1988, repealed and reenacted subsection (a), which formerly related to the same subject matter, and added subsections (c) and (d).

Editor's notes. — Section 6 of ch. 46,

SLA 1988, which amended this section, provides: "Notwithstanding the provisions of this Act, in a case pending on May 25, 1988 involving a commercial fishing violation that occurred before May 25, 1988, the court shall apply the law that was in effect on the date the violation occurred."

Sec. 16.05.720. Penalties. [Repealed, § 5 ch 46 SLA 1988.]

Sec. 16.05.722. Strict liability commercial fishing penalties.

(a) A person who without any culpable mental state violates AS 16.05.440 — 16.05.690, or a regulation of the Board of Fisheries or the department governing commercial fishing, is guilty of a violation and upon conviction is punishable by a fine of not more than

- (1) \$3,000 for a first conviction; and
- (2) \$6,000 for a second or subsequent conviction.

(b) In addition, the court shall order forfeiture of any fish, or its fair market value, taken or retained as a result of the commission of the violation. For purposes of this subsection, it is a rebuttable presumption that all fish found on board a fishing vessel used in or in aid of a violation, or found at the fishing site, were taken or retained in violation of AS 16.05.440 — 16.05.690 or a commercial fisheries regulation of the Board of Fisheries or the department. It is the defendant's burden to show by a preponderance of the evidence that fish on board or at the site were lawfully taken and retained.

(c) A person charged with a violation under this section is entitled to a trial by court but not by jury, and is not entitled to representation at public expense. (§ 3 ch 46 SLA 1988)

Effective dates. — Section 7, ch. 46, SLA 1988, makes this section effective May 25, 1988, in accordance with AS 01.10.070(c).

Editor's notes. — Section 6 of ch. 46, SLA 1988, which enacted this section, pro-

vides: "Notwithstanding the provisions of this Act, in a case pending on May 25, 1988 involving a commercial fishing violation that occurred before May 25, 1988, the court shall apply the law that was in effect on the date the violation occurred."

Sec. 16.05.723. Misdemeanor commercial fishing penalties.

(a) A person who negligently violates AS 16.05.440 — 16.05.690, or a regulation of the board of fisheries or the department governing commercial fishing, is guilty of a misdemeanor and in addition to punishment under other provisions in this title, including AS 16.05.195 and 16.05.710, is punishable upon conviction by a fine of not more than \$15,000 or by imprisonment for not more than one year, or by both. In addition, the court shall order forfeiture of any fish, or its fair market value, taken or retained as a result of the commission of the violation, and the court may forfeit any vessel and any fishing gear, including any net, pot, tackle, or other device designed or employed to take fish commercially, that was used in or in aid of the violation. Any fish, or its fair market value, forfeited under this subsection may not also be forfeited under AS 16.05.195. For purposes of this subsection, it is a rebuttable presumption that all fish found on board a fishing vessel used in or in aid of a violation, or found at the fishing site, were taken or retained in violation of AS 16.05.440 — 16.05.690 or a commercial fisheries regulation of the board of fisheries or the department, and it is the defendant's burden to show by a preponderance of the evidence that fish on board or at the site were lawfully taken and retained.

(b) If a person is convicted under this section of one of the following offenses, then, in addition to the penalties imposed under (a) of this section, the court may impose a fine equal to the gross value of the fish found on board or at the fishing site at the time of the violation:

- (1) commercial fishing in closed waters;
- (2) commercial fishing during a closed period or season;
- (3) commercial fishing with unlawful gear, including a net, pot, tackle, or other device designed or employed to take fish commercially; or

(4) commercial fishing without a limited entry permit holder on board if the holder is required by law or regulation to be present.

(c) Upon a third misdemeanor conviction within a period of 10 years for an offense listed in (b) of this section or any combination of offenses listed in (b) of this section, the court shall impose, in addition to any penalties imposed under (a) of this section, a fine equal to three times the gross value of the fish found on board or at the fishing site at the time of the offense, or a fine equal to \$10,000, whichever is greater. (§ 3 ch 46 SLA 1988)

S B

165



Alaska State Legislature

Senator Mike Szymanski

While in Session:
PO Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4978/4979

Interim
3111 C Street
Suite 510
Anchorage, AK 99503
(907) 561-7617

FEB 21 1989

165 E. Parks Hwy.
Suite 105
Wasilla, AK 99687
(907) 376-MIKE

TO: Senator Bettye Fahrenkamp
Chair, Senate Resources Committee

FROM: *Mike Szymanski*
Senator Mike Szymanski

DATE: February 16, 1989

SUBJECT: Request for Committee Hearing on SB165,
Chelatna Public Use Area

I formally request a hearing be held at your earliest convenience in the Senate Resources Committee on Senate Bill 165, an Act relating to Chelatna Public Use Area.

The Chelatna Public Use Area comprises approximately 300,000 acres. Most of this land is in the Sunflower Basis subregion of the Susitna Area Plan. A variety of lands are included -- muskegs, riparian forests and alpine zones.

This Bill conforms to the management intent adopted by the Department of Natural Resources and Department of Fish and Game. The legislation protects the trumpeter swan nesting areas and a portion of the wildlife habitat, and provides for several other uses, including timber harvest, road access and mining.

I have additional reference material which I will make available prior to the hearing date.

Senate District E

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

OFFICE OF THE COMMISSIONER

February 27, 1989

The Honorable Bettye Fahrenkamp
Chair, Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

Subject: Senate Bill 165, An act establishing the Chelatna Public Use Area.

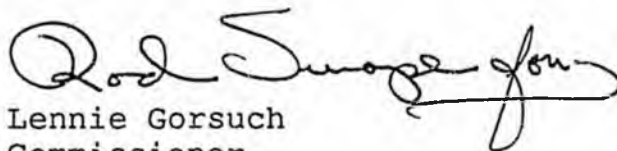
Position: The department supports this bill as a by-product of the Susitna Area Plan. The area plan was adopted by the commissioner and completed with the cooperation of other state agencies.

Background: The Commissioner of Natural Resources adopted the Susitna Area Plan on April 24, 1985. The proposed Chelatna Public Use Area falls within the boundary of this plan which provides for legislative designation of areas to be managed for specific uses or retained in public ownership.

This bill recognizes traditional uses, including mining, in appropriate areas, and provides for management under the Susitna Area Plan until adoption of a management plan for the Chelatna Public Use Area.

Thank you for the opportunity to comment.

Sincerely,



Lennie Gorsuch
Commissioner

cc: Bill Sponsor
Committee Members
Bob Evans
Denby Lloyd
Gary Gustafson

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 165

PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 15-Feb-89 Agency Affected: Natural Resources
 Title: An Act establishing the Chelatna BRU: Parks Management
 Public Use Area: _____
 Sponsor: Szymanski and Kertulla Components: Parks Management
 Requestor: Senate Resources

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	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 15-Feb-89

Approved by Commissioner: Lennie Gorsuch Date: 15-Feb-89
 Agency: Department of Natural Resources

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

S B

167

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : SB 167
PUBLISH DATE :

FISCAL NOTE

REQUEST:

Revision Date: 7-Feb-90 Agency Affected: Natural Resources
 Title: An Act establishing the Goodpaster BRU: Land & Water Management
 Public Use Area _____
 Sponsor: Fahrenkamp Components: _____
 Requestor: Senate Resources Land & Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky Phone: 465-2424
 Division: Commissioner's Office Date: 7-Feb-90
 Approved by Commissioner: Lennie Gorsuch Date: 7-Feb-90
 Agency: Department of Natural Resources

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

Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN, RESOURCES COMMITTEE
119 N. CUSHMAN STREET, SUITE 201
FAIRBANKS, ALASKA 99701
OFFICE (907) 452-4882
HOME (907) 456-2899



Senate

WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
CAPITOL, ROOM 125
OFFICE (907) 465-3834
HOME (907) 780-6027

MEMORANDUM

TO: Senate Resources Committee Members

FROM: Senator *Bettye Fahrenkamp*

DATE: February 7, 1990

RE: CSSB 167 An Act relating to the Tanana Valley State Forest and establishing the Goodpaster Public Use Area

CSSB 167 differs from the original in four substantial areas:

- *the size of the proposed public use area is reduced by about 50% to approximately 200,000 acres as shown in the red outline of the map
- *timberland is added to the state forest
- *no land is removed from the Tanana Valley State Forest, but a special unit of the forest is established in which no harvesting or roads are allowed
- *mineral entry is explicitly allowed

Since the introduction of this bill, a Department of Natural Resources Goodpaster Working Group was established to review the various management plans as they relate to the Goodpaster River corridor. Public workshops were conducted in Delta and Fairbanks and a preliminary management plan will be presented for public hearings in April.

In spite of this effort, several crucial issues remain which, unfortunately, could not be addressed in the plan. As a result, a new version of SB 167 has been drafted.

Section 1, AS 41.17.400(d)(1), pages 1 - 29, describes the boundaries of the Tanana Valley State Forest and the new entity, General Forest Land.

Section 1, AS 41.17.400(d)(2), pages 20 - 31, describes the corresponding new entity, Special Forest Management Land. This is the area of the forest, no longer proposed to be part of the public use area, that is now proposed to be either in a no harvest status, or winter harvest only status.

Section 2, As 41.17.400, page 31, adds new subsection (e) which describes what can and can not be done in the new special unit of the forest. In the sections shown on the map in orange (about 57,000 acres), no timber harvesting would be allowed, nor could any roads be constructed under this bill. The remaining special lands, at the head of Indian Creek and along the north bank of of the Tanana River, shown in solid black, could be harvested in the winter only (about 16,000 acres).

Approximately 32,000 acres of nearby timbered land are added to the state forest, outlined in black on the map.

Section 3, 41. 23.160(d), page 34, lines 18 - 23, states explicitly that the public use area is open to mineral entry. This was inadvertently left out of the original bill.

6-0453E
Bradley
1/29/90

Original sponsor(s): SEN. FAHRENKAMP

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 167 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Tanana Valley State Forest
7 and establishing the Goodpaster Public Use Area."

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

9 * Section 1. AS 41.17.400(d) is amended to read:

10 (d) The Tanana Valley State Forest includes the state-owned or
11 acquired land and water lying within the following described parcels:

12 (1) General Forest Land

13 Township 1 North, Range 2 East, Fairbanks Meridian

14 Sections 1 - 3

15 Sections 10 - 12

16 Sections 13 - 15: N1/2

17 Township 1 North, Range 3 East, Fairbanks Meridian

18 Section 1: E1/2, E1/2SW1/4, SW1/4SW1/4, SE1/4NW1/4

19 Section 2: NW1/4, NW1/4SW1/4

20 Sections 3 - 5

21 Section 6: N1/2

22 Section 7: E1/2E1/2

23 Sections 8 - 9

24 Section 10: NW1/4SW1/4, N1/2NW1/4, SW1/4NW1/4

25 Section 11: E1/2, S1/2SW1/4

26 Sections 12 - 14

27 Section 15: S1/2NE1/4, NE1/4NE1/4, S1/2

28 Township 1 North, Range 4 East, Fairbanks Meridian

29 Sections 1 - 12

1 Sections 1 - 3
2 Sections 10 - 15
3 Sections 22 - 26
4 Sections 35 - 36
5 Township 2 North, Range 2 East, Fairbanks Meridian
6 Sections 34 - 36
7 Township 2 North, Range 3 East, Fairbanks Meridian
8 Sections 13 - 16
9 Sections 21 - 29
10 Sections 31 - 36
11 Township 2 North, Range 4 East, Fairbanks Meridian
12 Sections 5 - 8
13 Sections 17 - 19
14 Section 30: N1/2
16 Township 2 North, Range 3 West, Fairbanks Meridian
16 Section 11: S1/2
17 Section 12: S1/2
18 Section 13 - 17
19 Sections 19 - 24
20 Township 2 North, Range 5 West, Fairbanks Meridian
21 Section 1
22 Section 2: N1/2
23 Section 3: N1/2
24 Sections 4 - 8
25 Section 9: N1/2
26 Section 11: S1/2
27 Sections 12 - 14
28 Section 15: S1/2
29 Section 17: N1/2

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

6-0453E
Bradley
1/29/90

Original sponsor(s): SEN. FAHRENKAMP

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 167 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Tanana Valley State Forest
7 and establishing the Goodpaster Public Use Area."

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

9 * Section 1. AS 41.17.400(d) is amended to read:

10 (d) The Tanana Valley State Forest includes the state-owned or
11 acquired land and water lying within the following described parcels:

12 (1) General Forest Land

13 Township 1 North, Range 2 East, Fairbanks Meridian

14 Sections 1 - 3

15 Sections 10 - 12

16 Sections 13 - 15: N1/2

17 Township 1 North, Range 3 East, Fairbanks Meridian

18 Section 1: E1/2, E1/2SW1/4, SW1/4SW1/4, SE1/4NW1/4

19 Section 2: NW1/4, NW1/4SW1/4

20 Sections 3 - 5

21 Section 6: N1/2

22 Section 7: E1/2E1/2

23 Sections 8 - 9

24 Section 10: NW1/4SW1/4, N1/2NW1/4, SW1/4NW1/4

25 Section 11: E1/2, S1/2SW1/4

26 Sections 12 - 14

27 Section 15: S1/2NE1/4, NE1/4NE1/4, S1/2

28 Township 1 North, Range 4 East, Fairbanks Meridian

29 Sections 1 - 12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Sections 16 - 18
Township 1 North, Range 5 East, Fairbanks Meridian
Sections 6 - 10
Sections 15 - 16
Township 1 North, Range 4 West, Fairbanks Meridian
Section 5: W1/2
Sections 6 - 11
Section 15
Sections 16 - 24
Section 27
Section 28: NE1/4, NE1/4SE1/4
Section 29: S1/2, W1/2NW1/4
Sections 30 - 32
Section 33: W1/2
Township 1 North, Range 5 West, Fairbanks Meridian
Township 1 North, Range 8 West, Fairbanks Meridian
Sections 17 - 20
Sections 29 - 34
Section 35: W1/2
Township 1 North, Range 9 West, Fairbanks Meridian
Sections 13 - 36
Township 1 North, Range 10 West, Fairbanks Meridian
Sections 13 - 36
Township 1 North, Range 11 West, Fairbanks Meridian
Sections 5 - 7
Sections 18 - 19
Sections 30 - 36
Township 1 North, Range 12 West, Fairbanks Meridian
Township 1 North, Range 13 West, Fairbanks Meridian

1 Sections 1 - 3
2 Sections 10 - 15
3 Sections 22 - 26
4 Sections 35 - 36
5 Township 2 North, Range 2 East, Fairbanks Meridian
6 Sections 34 - 36
7 Township 2 North, Range 3 East, Fairbanks Meridian
8 Sections 13 - 16
9 Sections 21 - 29
10 Sections 31 - 36
11 Township 2 North, Range 4 East, Fairbanks Meridian
12 Sections 5 - 8
13 Sections 17 - 19
14 Section 30: N1/2
15 Township 2 North, Range 3 West, Fairbanks Meridian
16 Section 11: S1/2
17 Section 12: S1/2
18 Section 13 - 17
19 Sections 19 - 24
20 Township 2 North, Range 5 West, Fairbanks Meridian
21 Section 1
22 Section 2: N1/2
23 Section 3: N1/2
24 Sections 4 - 8
25 Section 9: N1/2
26 Section 11: S1/2
27 Sections 12 - 14
28 Section 15: S1/2
29 Section 17: N1/2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Sections 18 - 19

Sections 21 - 36

Township 2 North, Range 10 West, Fairbanks Meridian

Sections 4 - 7

Township 2 North, Range 11 West, Fairbanks Meridian

Sections 1 - 12

Sections 16 - 21

Sections 28 - 33

Township 2 North, Range 12 West, Fairbanks Meridian

Township 2 North, Range 13 West, Fairbanks Meridian

Sections 1 - 30

Sections 33 - 36

Township 2 North, Range 14 West, Fairbanks Meridian

Sections 23 - 26

Township 3 North, Range 2 West, Fairbanks Meridian

Section 7: Tract E, ASLS 81-20

Section 8: Tracts H,J,K,L, ASLS 81-20

Section 17: Tracts M,N,O, ASLS 81-20

Section 18: Tracts A,B, ASLS 81-20

Section 19

Township 3 North, Range 3 West, Fairbanks Meridian

Section 13

Sections 19 - 36

Township 3 North, Range 4 West, Fairbanks Meridian

Section 3: west of Washington Creek

Sections 4 - 7

Section 8: west of Washington Creek

Sections 9 - 10: west of Washington Creek

Section 17: west of Washington Creek

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Sections 18 - 36
Township 3 North, Range 5 West, Fairbanks Meridian
Section 1
Sections 4 - 5: north of left limit of Tatalina
River
Sections 6 - 7
Sections 11 - 36
Township 3 North, Range 6 West, Fairbanks Meridian
Sections 1 - 12
Township 3 North, Range 7 West, Fairbanks Meridian
Sections 1 - 3
Sections 10 - 12
Township 3 North, Range 10 West, Fairbanks Meridian
Sections 1 - 10
Sections 15 - 33
Township 3 North, Range 11 West, Fairbanks Meridian
Sections 1 - 3
Sections 10 - 15
Sections 19 - 36
Township 3 North, Range 12 West, Fairbanks Meridian
Sections 19 - 21: east of right limit of Hutlitakwa
Creek
Sections 22 - 29
Section 30: east of right limit of Hutlitakwa Creek
Sections 31 - 36
Township 3 North, Range 13 West, Fairbanks Meridian
Sections 3 - 4
Section 9
Sections 16 - 17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Sections 19 - 20
Section 21: W1/2
Sections 25 - 26: east of right limit of Hutlitakwa
Creek
Sections 29 - 32
Sections 34 - 35: east of right limit of Hutlitakwa
Creek
Section 36
Township 3 North, Range 14 West, Fairbanks Meridian
Section 25: E1/2
Section 36
Township 4 North, Range 5 West, Fairbanks Meridian
Section 1: west of left limit of Tatalina River
Sections 2 - 10
Sections 11 - 12: west of left limit of Tatalina
River
Sections 14 - 15: west of left limit of Tatalina
River
Sections 16 - 21
Section 22: west of left limit of Tatalina River
Sections 27 - 28: west of left limit of Tatalina
River
Sections 29 - 32
Section 33: west of left limit of Tatalina River
Township 4 North, Range 6 West, Fairbanks Meridian
Section 1
Sections 10 - 15
Sections 22 - 36
Township 4 North, Range 7 West, Fairbanks Meridian

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Sections 25 - 29

Sections 32 - 36

Township 4 North, Range 13 West, Fairbanks Meridin

Section 27

Section 33: SE1/4

Section 34

Township 5 North, Range 5 West, Fairbanks Meridian

Sections 1 - 2: west of Slate Creek

Sections 3 - 5

Section 6: E1/2

Section 7: E1/2

Sections 8 - 11

Section 12: west of Slate Creek

Sections 13 - 17

Section 18: E1/2

Sections 19 - 36

Township 6 North, Range 4 West, Fairbanks Meridian

Section 5: west of Alyeska Pipeline right-of-way and
north of left limit of Slate Creek

Section 6: west of Alyeska Pipeline right-of-way

Sections 7 - 8: west of left limit of Slate Creek

Sections 18 - 19: west of left limit of Slate Creek

Township 6 North, Range 5 West, Fairbanks Meridian

Sections 1 - 4

Section 5: E1/2

Section 8: E1/2

Sections 9 - 16

Section 17: E1/2

Sections 20 - 23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Sections 24 - 26: west of left limit of Slate Creek
Sections 27 - 29
Sections 32 - 34
Section 35: west of left limit of Slate Creek
Township 7 North, Range 4 West, Fairbanks Meridian
Sections 30 - 31: west of Alyeska Pipeline right-
of-way
Township 7 North, Range 5 West, Fairbanks Meridian
Section 15: west of Alyeska Pipeline right-of-way
Section 16: E1/2
Section 21: E1/2
Sections 22 - 23: west of Alyeska Pipeline
right-of-way
Sections 25 - 26: west of Alyeska Pipeline
right-of-way
Section 27
Section 28: E1/2
Section 33: E1/2
Sections 34 - 36
Township 15 North, Range 11 East, Copper River Meridian
Sections 1 - 2
Section 3: excl. ASLS 78-42
Sections 4 - 8
Sections 17 - 19
Section 30
Section 31
Township 16 North, Range 11 East, Copper River Meridian
Sections 1 - 3
Sections 10 - 15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Sections 22 - 36
Township 16 North, Range 12 East, Copper River Meridian
Sections 1 - 12
Sections 14 - 22
Sections 28 - 32
Township 17 North, Range 11 East, Copper River Meridian
Sections 1 - 3
Sections 10 - 15
Township 17 North, Range 12 East, Copper River Meridian
Sections 5 - 6: west of Eagle Trail
Sections 7 - 8
Section 9: west of Eagle Trail
Sections 15 - 16: west of Eagle Trail
Sections 17 - 21
Sections 22 - 23: west of Eagle Trail
Section 26: west of Eagle Trail
Sections 27 - 34
Section 35: west of Eagle Trail
Township 18 North, Range 11 East, Copper River Meridian
Section 26: west of Eagle Trail
Sections 27 - 33
Sections 34 - 36: west of Eagle Trail
Township 19 North, Range 8 East, Copper River Meridian
Sections 1 - 2: east of left limit of Tanana River
Sections 12 - 13: east of left limit of Tanana River
Sections 24 - 25: east of left limit of Tanana River
Township 19 North, Range 9 East, Copper River Meridian
Sections 1 - 21
Sections 22 - 25: north of left limit of Tanana

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

River

Sections 28 - 32: north of left limit of Tanana

River

Township 19 North, Range 13 East, Copper River Meridian

Sections 1 - 4

Sections 5 - 6: excl. F028758

Sections 7 - 16

Section 17: northeast of Tanana River

Section 18: north of Tanana River

Section 20: northeast of Tanana River

Section 21: north of Tanana River

Sections 22 - 27

Section 28: north of Tanana River

Section 29: east of Tanana River

Section 34: north and east of Tanana River

Section 35: north of Tanana River

Section 36

Township 19 North, Range 14 East, Copper River Meridian

Township 19 North, Range 15 East, Copper River Meridian

Township 20 North, Range 8 East, Copper River Meridian

Sections 1 - 2

Section 3: east of Alaska Highway

Section 10: east of Alaska Highway

Sections 11 - 13

Section 14: east of Alaska Highway

Section 23: east of Alaska Highway

Sections 24 - 25

Section 26: east of Alaska Highway

Section 35: east of Alaska Highway

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Section 36

Township 20 North, Range 9 East, Copper River Meridian

Township 20 North, Range 10 East, Copper River Meridian

Township 20 North, Range 11 East, Copper River Meridian

Sections 1 - 16

Section 17: excl. NA, Par. C, F12548

Section 18

Sections 20 - 23

Sections 28 - 29

Section 32

Section 33: excl. USS 4377, NA Par. A, F12549, NA,

Par. B, F- 14422

Township 20 North, Range 12 East Copper River Meridian

Sections 20 - 23

Section 24: excl. NA, F-12107

Sections 25 - 29

Sections 34 - 36

Township 20 North, Range 13 East, Copper River Meridian

Township 21 North, Range 8 East, Copper River Meridian

Sections 8 - 17

Sections 21 - 25

Sections 26 - 27: excl. USS 3620

Section 34: excl. USS 5622A

Section 36

Township 21 North, Range 9 East, Copper River Meridian

Township 21 North, Range 10 East, Copper River Meridian

Township 22 North, Range 5 East, Copper River Meridian

Sections 1 - 12

Sections 13 - 18: north of Alaska Highway