

HOUSE JUDICIARY COMMITTEE
March 6, 1986
1:30 P.M.

MEMBERS PRESENT

Rep. M. Mike Miller
Rep. John Sund
Rep. Don Clocksin
Rep. Max Gruenberg
Rep. Randy Phillips
Rep. Fritz Pettyjohn
Rep. Robin Taylor

MEMBERS ABSENT

None

COMMITTEE CALENDAR

HB 194, An Act relating to a cause of action and sentencing for certain offenses involving discriminatory harassment.

HB 467, An Act relating to the herding of fish.

WITNESS REGISTER

Rep. Peter Goll
District 2(D)
Alaska State Legislature
Box V
Juneau, Alaska 99811
Position Statement: Sponsor of HB 467

Gayle Horetski
Criminal Division
Department of Law
Box KC
Juneau, Alaska 99811
Position Statement: Does not support HB 467 as is.

Bob Clasby
Dept. of Fish and Game
Box 3-2000
Juneau, Alaska 99811
Position Statement: In support of HB 467.

Bob Blake
United Fishermen of Alaska
Cordova District Fisheries Union
175 So. Franklin St.
Juneau, Alaska 99801
Position Statement: In support of HB 467.

Joe Geldhof
Assistant Attorney General
Dept. of Law
Pouch K
Juneau, Alaska 99811
Position Statement: In support of HB 194 with CS

PREVIOUS ACTION

HB 194	DATE		PAGE	ACTION
	02/13/85	(H)	341	Read the first time - referrals
	02/13/85	(H)	341	Governor's transmittal letter
	02/13/85	(H)	341	Zero fiscal note Judiciary, Finance, Rules
HB 467				
	01/13/86	(H)	1782	Read the first time - referrals
	01/17/86	(H)	1816	Sponsor substitute introduced
	01/22/86	(H)	1844	Fish Rpt CS(Fish) 5DP 1NR 1AM
	01/22/86	(H)	1844	Zero fiscal note
	02/12/86	(H)	2045	Res Rpt CS(Fish) 6DP 2NR
	02/12/86	(H)	2045	Letter of intent w/Res Rpt Judiciary, Finance, Rules

ACTION NARRATIVE

TAPE 147, SIDE ONE
NUMBER 000

Chairman Miller called the meeting to order at 1:35. Present were Representatives Sund, Clocksin, Miller, Phillips, Pettyjohn, Gruenberg and Taylor.

Rep. Peter Goll, sponsor of HB 467, testified. Rep. Goll explained the bill to be simple, stating only that herding fish with aircraft is illegal. Rep. Goll sponsored the bill at the request of numerous fishing organizations throughout the State. The language in the bill is consistent with statutes regarding game. The issue of "spotting" has been raised and is not addressed in the bill because the use of aircraft in the air is under the jurisdiction of the Federal Aviation Administration, and unless a direct effect on the resource can be documented, there is a question of jurisdiction. There is controversy

over whether or not spotting should be permitted. The Department of Public Safety needs to be able to determine if an aircraft is spotting or herding, therefore, according to testimony given to the House Resources Committee, the Department feels only the most flagrant offenses will be prosecuted. Rep. Goll felt passage of the bill would discourage 99% of pilots from herding.

Number 070

Rep. Miller asked whether Rep. Goll was satisfied with the \$1,000 fine amount, and his opinion of the confiscation of aircraft. Rep. Goll replied confiscating aircraft would be valuable and appropriate as it is consistent with the confiscation of gear in other commercial fishing violations. The burden is on the pilot and not on the fisherman as proving the fish were herded would be too difficult. Rep. Goll felt the amount of the fine should be up to the committee.

Number 114

Rep. Clocksin asked if there is a definition of "herd" or "drive" in the regulation pertaining to wildlife. Rep. Goll answered no, however it has never been an issue in court. Rep. Clocksin stated he does not favor heavy fines, however he does not feel a \$1,000 fine to be sufficient. Rep. Clocksin questioned whether forfeiting the fish or paying for the value of the fish would be a better approach. Rep. Goll explained the bill was directed toward the pilot as it would be too difficult to prove the fisherman was in collusion with the aircraft. Rep. Goll stated the need for the bill came from a well publicized helicopter incident in Sitka, and felt the bill is necessary to clarify what is legal in commercial fishing operations.

Number 165

Rep. Clocksin asked if herding is used in other fisheries. Rep. Goll answered he was aware of a salmon herding law but did not know its history. Rep. Sund explained it is illegal to herd salmon from a closed area of water to an open area of water, but there is no prohibition from herding in open water and gave gillnetters running their nets as an example. Rep. Clocksin suggested granting the authority to the Department of Fish and Game to regulate herding by fishery.

Number 178

Bob Blake, representing the United Fishermen of Alaska and the Cordova District Fishermen, testified. Mr. Blake noted

the House Resources Committee and Special Committee on Fisheries has discussed prohibiting specific types of aircraft and different altitudes. Mr. Blake has observed aircraft landing on water too shallow for a boat, and herding the fish into deeper water so that they could be caught. Mr. Blake felt herding fish by aircraft should be prohibited year round, not just during the herring season. Rep. Pettyjohn asked why herding should be disallowed in an open area. Mr. Blake stated the markers have not been changed for ten years in many areas and in the case he referred to, the fish should have been part of the escapement. Mr. Blake felt the practice to be unethical.

Number 275

Rep. Sund did not feel the fine to be sufficient and asked Mr. Blake his opinion. Mr. Blake answered the penalty is not important because in most cases the fish would still be alive since the offender would have to be seen by Fish and Wildlife officers. In the high pressure fisheries such as the herring fishery, confiscating the fish would be enough of a deterrent.

Number 315

Bob Clasby, represented the Department of Fish and Game. Mr. Clasby stated the Department is supportive of the bill. Rep. Sund asked what the penalties are for other fish and game violations. Mr. Clasby answered to his knowledge they were Class B misdemeanors. Rep. Sund asked if the gear and vessel could be confiscated. Mr. Clasby replied yes, usually for fishing in closed waters. Rep. Clocksin asked what the penalty is for herding fish from a closed to open area. Mr. Clasby answered a Class B misdemeanor. Rep. Clocksin asked if forfeiture automatically applied to every crime. Mr. Clasby stated no.

Number 349

Rep. Gruenberg asked if there was a federal regulation to apply to this situation. Mr. Clasby thought there was. Rep. Gruenberg asked how difficult it would be to deputize state fish and wildlife officers so that they could enforce a federal regulation. Mr. Clasby answered a cooperative enforcement agreement between the federal agency and the Department of Public Safety would be needed, however there is a reluctance to do that because of jurisdictional court problems.

Number 392

Gayle Horetski, of the Department of Law, testified. Ms. Horetski expressed concern with the language of HB 467,

specifically the term "disturbed". Ms. Horetski felt the bill allows prosecution of an aircraft unintentionally herding fish. Rep. Sund stated in such a case, collusion with a fisherman would have to be proved and suggested making the boat owner liable also. Rep. Gruenberg suggested the following language: "A person may not intentionally drive or herd fish by aircraft." Rep. Gruenberg asked Ms. Horetski if she was aware of a federal regulation regarding herding fish with aircraft. Ms. Horetski said she was not. Rep. Gruenberg noted he contacted the FAA regarding the State's jurisdiction over aircraft herding fish and they felt the State does have the jurisdiction and cited the statute regulating game. Ms. Horetski stated she would refer Rep. Gruenberg's concerns to Larri Spengler of the Department of Law. Rep. Gruenberg also felt the Letter of Intent to be obscure.

Number 582

Rep. Taylor felt the bill to be an attempt to pass a law to regulate a commercial advantage within the industry. He felt a law should not be passed because a fisherman came up with a successful method of catching fish. Rep. Sund stated the bill is a way of dealing with the technological aspects of a commercial fishery which is heavily regulated. Rep. Taylor restated his feeling that passing criminal laws to enforce methods and manners of fishing on commercial fishermen to be the wrong approach. He suggested taking a look at the entire Fish and Game Code and rewriting it.

Number 609

Rep. Phillips asked if the legislation was introduced because of the helicopter incident in Sitka. Mr. Blake answered yes, but it would be discriminatory to direct the bill solely at helicopters.

TAPE 147, SIDE TWO
Number 033

Rep. Clocksin offered two amendments. The first inserts the word "intentionally" before the word "drive". The second amendment adds a new subparagraph (c) as follows: "Equipment used in, or in aid of, a violation of this section, may be seized and disposed of as provided in AS 16.05.190.

Rep. Taylor stated he was not opposed to passing the bill out of committee as he felt the bill is what his constituents want, however he felt the committee should not be passing criminal laws to enforce methods and manners of competition in a commercial fishery.

A question was called on Rep. Clocksin's first amendment. There being no objection, the amendment passed.

Number 142

Rep. Gruenberg questioned if a penalty less than the forfeiture could be imposed under the language in Rep. Clocksin's second amendment. Ms. Horetski stated forfeiture is not mandatory.

The question was called for Rep. Clocksin's second amendment. Representatives Taylor and Pettyjohn objected. Rep. Taylor felt confiscating a \$200,000 aircraft to be unfair because numerous cases are based on a technical violation and are ludicrous.

Rep. Sund felt the penalties are usually not commensurate with the amount of damage done to the resource. Rep. Gruenberg stated he was not comfortable allowing forfeiture because the Court was given no other alternative.

Rep. Clocksin called for the question. Opposed to the amendment were Representatives Gruenberg, Taylor, and Pettyjohn. Representatives Miller, Phillips, Clocksin and Sund voted for the amendment. The amendment passed.

Rep. Sund made a motion to move the bill out of committee with individual recommendations. There being no objection, the motion passed.

Number 281

The committee discussed HB 194. Rep. Clocksin explained the committee substitute. Most of the original bill has been deleted which included the criminal penalties and the presumptive and mandatory sentences as a result of the criminal penalties. Section 12 on page 9, requiring the court system to report to the Human Rights Commission civil cases filed, has been deleted at the Court System's request because they are not computerized to provide that information. Section 2 of the committee substitute is the aggravating factor provision from the original bill (page 8, lines 24-26). This section is already statute except for the words "religion" and "sexual orientation". The words "sexual orientation" have been added to line 17 on page 1 of the committee substitute and the word "mental" has been added to line 18. The effect of the bill is to provide civil action for damage to a person or their property, with the intent to intimidate or harass because of the person's race, sex, sexual orientation, color, creed, ancestry, religion, national origin, or physical or mental ability.

Rep. Clocksin proposed adding sexual orientation because it is his belief that physical injury and damage to property occurs often because of a person's sexual orientation. A recent example occurred in Anchorage, regarding a murder trial involving people luring homosexuals from bars to rob and murder them.

Number 363

Rep. Phillips asked if this bill would have made a difference in the sentencing in the case in Anchorage. Rep. Clocksin replied he did not think a sentence had been handed down yet, however, the bill would have made a difference.

Number 376

Joe Geldhof, Assistant Attorney General, testified. Mr. Geldhof stated the Department of Law's concerns with the initial bill have been appreciably reduced and they support the committee substitute. The bill would give judges a little more flexibility to add larger penalties in appropriate cases.

Rep. Taylor asked why the bill applied to civil law when Rep. Clocksin referred to criminal law. Rep. Clocksin stated Section 1 provides a civil action that does not presently exist in the law and Section 2 amends the aggravating factors for a presumptive sentence.

Number 401

Rep. Taylor felt the bill to be too restrictive. Rep. Pettyjohn asked the present state of the common law regarding the civil liability of a parent who is negligent in controlling their child. Rep. Clocksin answered he assumed the parent could be held liable, but negligence would have to be proved.

Rep. Taylor moved the following amendment: omit the word "sexual orientation" from the bill. Rep. Clocksin objected. The objection failed with Representatives Taylor and Pettyjohn voting for it, and all others opposed.

Rep. Clocksin moved the committee substitute out of committee with individual recommendations. There being no objection, the motion passed.

Chairman Miller adjourned the meeting at 2:53 P.M.