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**FISHERIES IN ALASKA.**

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**HEARINGS**

BEFORE THE

*U.S. Congress. House*

**COMMITTEE ON THE TERRITORIES**

OF THE

**HOUSE OF REPRESENTATIVES.**

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**FEBRUARY 16, 1906.**

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WASHINGTON:  
GOVERNMENT PRINTING OFFICE.  
1906.

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## FISHERIES IN ALASKA.

COMMITTEE ON TERRITORIES,  
HOUSE OF REPRESENTATIVES,  
*Friday, February 16, 1906.*

The CHAIRMAN. We will proceed with the hearing on House bill 13543, introduced by Mr. Cushman, for the protection of the fisheries of Alaska.

### STATEMENT OF HON. FRANCIS W. CUSHMAN.

Mr. CUSHMAN. Mr. Chairman, I have no purpose to make any extended statement in regard to the details of the provision of this bill H. R. 13543, but I may say that this bill in general reenacts many provisions of existing law in reference to the fisheries in Alaska and adds thereto some new and comprehensive provisions regarding the fisheries in Alaska. I would like, with the consent of the committee, to introduce this morning and have statements made by a number of gentlemen who are here from the Department of Commerce and Labor and the Bureau of Fisheries, which is under that Department, and who are more familiar with this subject than I am. I will first call upon Mr. Evermann.

The CHAIRMAN. Will you indicate, or have some one else indicate, where your bill proposes to enact new provisions?

Mr. CUSHMAN. Certainly; that is the idea of this hearing, and that point will be clearly explained as this hearing proceeds.

### STATEMENT OF MR. BARTON W. EVERMANN.

Mr. CUSHMAN. What is your official position?

Mr. EVERMANN. I have charge of the division of scientific inquiry in the Bureau of Fisheries.

Mr. CUSHMAN. Under the Department of Commerce and Labor?

Mr. EVERMANN. Yes, sir.

Mr. CUSHMAN. Are you familiar with the law as it now exists covering fisheries in the waters of Alaska?

Mr. EVERMANN. I have some acquaintance with it.

Mr. CUSHMAN. Please proceed and state to the committee, briefly, the substance of the law as it now exists in relation to the fisheries in the waters of Alaska, and also the proposed changes which this pending bill, if enacted into law, would make in the law as it now exists.

Mr. EVERMANN. I think, perhaps, the best way to get at the matter would be to take the sections of this bill in connection with each section of the law as it now exists and consider them together. The first part of section 1 of this bill is the same as existing law.

Mr. POWERS. Is there any change?

Mr. EVERMANN. I could not say but there may be some verbal changes; none of importance, however.

Mr. CUSHMAN. In the latter part of this section, where it provides for the return of salmon fry to the water by packers, etc., does this bill provide, the same as the existing law does, for exemption from taxation in proportion to the amount of salmon fry returned to the water?

Mr. EVERMANN. Starting in with the words "*Provided, however,*" in line 14, page 1, there is some slight change in the wording, but the exemption is the same. Under existing requirements each salmon-canning company is required to maintain a hatchery in Alaska and return to the streams 10 red salmon fry for each salmon canned or utilized in any way. The enforcement of that provision has been found to be impracticable. The regulation has not been enforced and it is impossible to enforce it. Everyone acquainted with the subject, the cannery men, the Bureau of Fisheries, and the agents who have been up there from year to year, all agree that it is impossible to enforce the provisions of the regulation in that respect.

Mr. CUSHMAN. State the reasons briefly.

Mr. EVERMANN. The streams in southeast Alaska which carry red salmon are few in number. Many companies can few red salmon, and some can cheaper species, such as the humpbacked salmon and the dog salmon. These fisheries are located in places where the red salmon do not go and where spawning red salmon can not possibly be obtained. Three or four companies may fish off the mouth of the same stream for red salmon, and it would be impossible for three or four companies to put three or four different hatcheries on that stream and operate them to any advantage. The provision will amount to the same thing as in the existing regulation. It will exempt the companies from the tax on the salmon canned in proportion to the number of red salmon fry which they return to the waters, counting 10 fry for each adult salmon utilized.

The second provision of that section is new. There is no such regulation existing providing for the efficiency of such hatcheries. It was thought best that the Department should keep in touch with each hatchery to determine whether it was efficient or not and whether they were returning to the waters as many red salmon as the superintendent employed by the company stated they were.

Section 2 is entirely new. Under existing regulations no provision is made for the disposition of the revenue derived from the tax to be applied to the fisheries. More than a million dollars have been collected from the salmon tax, but not until last year was one cent applied to the maintenance of the fisheries. Last year Congress appropriated \$50,000 for one fishery in Alaska. That was the first step in that direction. This section contemplates the establishment of a fund, which shall be drawn upon from time to time as occasion may require for the construction of additional hatcheries at these salmon fisheries. It is not believed that the fish industry can go on in a way which will insure permanency without applying some sort of intelligent control. So section 2 is meant to cover that point.

Mr. CUSHMAN. That section is really drawn not only in the interest of the Government for the maintenance of salmon in Alaskan waters, but also is in the interest of Alaskan fishermen in giving

them the benefit of the tax which they pay and which is to be turned directly back for the maintenance of the supply of fish in the waters of Alaska?

Mr. EVERMANN. Yes, sir. The first proviso has been suggested by the canning interest.

Section 3 is in general the same as existing law. The wording is essentially the same, and there is no change in the purpose of the section.

Section 4 is the same as existing law, but it is more clearly defined. The present regulations are more or less ambiguous, so that it is difficult for a fisherman to determine whether he is fishing legally or not. This defines what shall be the legal fishing limits.

As to the erection of dams and fishing traps, that is in the present regulations. Under existing law it is difficult to tell where the mouth of a stream is. It is left to the foreman, and his opinion would vary from time to time and be modified by the run of fish. This makes it possible to determine exactly, for the purposes of this act, what shall be regarded as the mouth of a stream. It is the purpose to prevent fishing in such places as those where it would be possible for a seine to catch practically all the fish coming in.

Mr. CUSHMAN. Referring to the first portion of section 4 of this bill, in relation to the "placing of any dam, barricade, fish wheel, or other obstruction in any of the waters of Alaska above mean low tide," what is the existing law in relation to the placing of obstructions?

Mr. EVERMANN. It is essentially the same on that point. Section 5 is the same as existing law with slight modifications and some changes in the species which are mentioned. The old law is ambiguous and not satisfactory, because it not only prevented fishing for, but it protected the fish known as the Dolly Varden trout. Everyone knows that they are a very objectionable species in the fact that they devour the eggs of better fish. It is one of the worst enemies of the useful salmon, and this section is so drawn as not to protect that species of fish.

In line 7, "any river less than 500 feet in width" is new, and is intended to prevent that high destructiveness which is possible in narrow channels. These narrow channels are as bad as rivers. "Or after January 1, 1907, in the waters of Wood River." The purpose of this is to give the canners one year leeway regarding Wood River, but after that to close that stream. It is one of the important streams in which salmon in Bristol Bay run.

Section 6 is the same as existing law. The latter part of it is meant not so much for the protection of the salmon as to prevent disputes between rival fishing companies.

Mr. CUSHMAN. That is the old law?

Mr. EVERMANN. Yes, sir. Section 7 simply changes the weekly open season from Saturday to Sunday. Two years ago, when the special salmon commission was appointed and went to Alaska to consider these questions the members of the commission interviewed the superintendents of the canneries in Alaska and the foremen, and there was not one who was not in favor of this change from Saturday to Sunday. Under the present law the Indians there are compelled to fish on Sunday and are prohibited from fishing on Saturday. They have religious scruples, most of them, on the subject, and

Father Duncan, manager of the Metlakahla Indian settlement, is very much in favor of this change; and no one objects to it, so far as I know.

There is one clause in section 7 that is new. The old regulation required the pot of the salmon trap to be closed during the weekly closed season. The result was that the fish would lie alongside the leader and run into the trap so soon as the pot was opened. The proposed provision will require 100 feet of the leader next to the pot to be lifted, which will permit the salmon to pass on.

Section 8 is a modification of existing law. It defines the size of the stream, lagoon, or channel in which fishing is permitted; and where doubt exists as to where the mouth of the stream really is, the agents place markers there which, for the purposes of this act, will indicate the mouth of a stream. There would be no objection on the part of companies.

Section 9, so far as I now recall, is essentially the same as existing law.

Section 10 is new. It is meant to prevent irresponsible canners from putting up decaying fish that might prove unwholesome.

Section 11 is the same as an existing regulation.

Section 12 is new. There has, in the past, been a practice more or less prevalent among some canning companies to place fictitious labels on the product or to furnish the product unlabeled to the jobber and let the jobber put on any label he pleased; and the result has been that a poor grade of goods has been labeled—for instance, "Choice Columbia Salmon." I have in mind one case where inferior goods were labeled "Choice Hudson River Salmon" and "Spring Salmon." This section is meant to provide against that practice.

Mr. POWERS. Do you think you have that drawn sufficiently strong? Do you think that will prevent it? It is an easy matter to send it in unmarked. In the State of Maine we have found that they would can sardines, and they were compelled to place labels on every single box, case, and package to state exactly what it is. I do not think this provision will prevent it.

Mr. EVERMANN. The Department would have no objection to making section 12 stronger.

Mr. POWERS. It should be made stronger to have effect.

The CHAIRMAN. I suggest that an amendment be framed to cover that.

Mr. EVERMANN. Such a bill was drawn two or three years ago, and, I think, introduced by Representative Humphrey, which covered it fully.

Section 13 is the same as now existing in all essential features. The same is true of section 14.

Section 15 simply provides that the Secretary of Commerce and Labor shall depute from his staff such force as may be adequate for the protection of the fisheries.

Sections 16, 17, and 18, so far as I see, are similar to existing laws.

In 1903, at the request of the President, the Commissioner of Fish and Fisheries appointed a special commission to go to Alaska to make a study of the conditions of the salmon fisheries. That committee devoted the entire summer and fall of that year and some members of that committee have devoted practically all the time since



to a study of certain phases of the salmon question. That commission made a report, which was published as House Document 477.

The CHAIRMAN. In connection with what bill?

Mr. EVERMANN. They made a special report to the Secretary of Commerce and Labor, which he transmitted to the President in January, 1904. It was published as House Document 477. The provisions of Mr. Cushman's bill are based practically entirely on the recommendations of that salmon commission.

Mr. POWERS. Section 16 says "that any person violating the provisions of this act shall be punished by a fine not exceeding \$1,000 or imprisonment for a term of ninety days." Naturally everyone engaged in fishing up there is a corporation, and there are very few individuals. Do you mean by that provision that every employee of a corporation shall be fined that amount?

Mr. EVERMANN. The legal phases of the matter I would refer to the Solicitor of the Department, Mr. Sims, who is here.

Mr. POWERS. You can not imprison a corporation. Does that mean that you shall take any employee who violates the law and who may be working for a corporation doing business there? I assume that three-fourths of the business is done by corporations.

The CHAIRMAN. They largely employ Indians?

Mr. EVERMANN. Individuals are employed by corporations, and many individuals fish independently and sell their fish to the companies. White men as well as Indians do this.

Mr. POWERS. Does that apply to the Indians doing fishing, or does it apply to the corporations?

Mr. CUSHMAN. It applies to everybody.

Mr. EVERMANN. I should think it would apply to everyone doing fishing there.

Mr. POWERS. To individuals as well as corporations?

Mr. EVERMANN. Mr. Sims, the Solicitor, will be glad to give an interpretation of that clause.

Mr. POWERS. It would be hard on the Indian employees, but not sufficient for the corporation. A thousand dollars would not mean much to a corporation doing a large business.

Mr. EVERMANN. The superintendents of the canneries can not individually go and inspect the fishing, and unless some responsibility is thrown upon the individual nothing can be done.

Mr. CUSHMAN. I would like to have you hear a statement of Mr. Bowers, United States Fish Commissioner.

#### STATEMENT OF MR. GEORGE M. BOWERS, COMMISSIONER OF FISH AND FISHERIES.

Mr. CUSHMAN. You are United States Commissioner of Fish and Fisheries?

Mr. BOWERS. Yes, sir; under the Department of Commerce and Labor.

Mr. CUSHMAN. Would you make to the committee in your own way a brief statement in reference to the pending bill and any changes sought to be made thereby in existing law in reference to fishing in the waters of Alaska?

Mr. BOWERS. I do not think I wish to say anything in addition to what Mr. Evermann has already stated. The Secretary's report, sent to the chairman of the Committee on Territories, gives the views of the Department on this subject. We are convinced that this bill, if passed, will bring about the condition intended by the regulations for the protection of the fisheries in Alaska. I have a copy of the Secretary's letter, which I will read.

The letter was read, as follows:

DEPARTMENT OF COMMERCE AND LABOR,  
OFFICE OF THE SECRETARY,

*Washington, February 6, 1906.*

SIR: I am in receipt of your letter of the 31st ultimo, transmitting a copy of the bill (H. R. 13543) "For the protection and regulation of the fisheries of Alaska," introduced by Hon. F. W. Cushman and referred to your committee.

In reply to your request for a report, you are informed that sections 3 to 18, inclusive, of the bill submitted by you are substantially the same as the draft of a bill prepared by this Department and heretofore submitted to Congress. Sections 1 and 2 of the bill now under consideration include provisions for the payment of a tax, the issuance of a license, and the creation of a permanent "Alaskan fisheries fund," to be used under the direction of the Secretary of Commerce and Labor for the protection, regulation, investigation, and inspection of the Alaskan fisheries and hatcheries.

In my opinion the provisions of the bill introduced by Mr. Cushman are exactly what is needed in the way of legislation for the protection and regulation of the fisheries of Alaska. For this reason the Department indorses the bill submitted, and urgently recommends its passage.

In order to avoid confusion which may arise by virtue of the fact that the Department has heretofore been called upon to comment upon a number of other bills on the same subject introduced at this session of Congress, I deem it advisable at this time to briefly review the situation and to make the following statements:

The agitation occasioned by the encroachment of aliens upon the salmon fisheries of Alaska last spring was followed by a general investigation of the whole subject of Alaskan fisheries by this Department, looking toward the more efficient protection and regulation of those interests. During the progress of this investigation the Department learned that the recommendations and suggested statutory changes contained in the report of the Alaskan Salmon Commission, under date of November 13, 1903, in document No. 477, Fifty-eighth Congress, second session, had not been acted upon. Accordingly, a committee consisting of Mr. George M. Bowers, Commissioner of Fisheries, as chairman, Dr. Barton W. Evermann, chief of the division of scientific inquiry, and Mr. Howard M. Kutchin, special agent of the Bureau of Fisheries, was appointed to make a thorough investigation and report such recommendations with reference to amending the law and existing regulations governing the fisheries of Alaska as to them seemed desirable and necessary.

Based upon the report of this committee, a bill was prepared by this Department which represents its ideas upon the subject. The bill, as drawn, amends and reenacts certain provisions of existing laws with reference to the fisheries of Alaska; contains a provision in addition thereto to prevent the impairment and exhaustion of these fisheries, with the object of placing them under a regular and permanent condition of production; provides that the fishing industry shall be subject to such rules and regulations as the Secretary of Commerce and Labor may deem necessary, and which he is authorized to make and establish; provides that those persons returning fry to the waters shall be entitled to a certain exemption in the matter of tax; provides a penalty for the wanton destruction of fish; covers the making of reports on the products of Alaskan waters, and makes ample provision for the enforcement of the law and regulations. These provisions are all contained in the bill introduced by Mr. Cushman (H. R. 13543), now under consideration.

As before stated, a draft of this bill was submitted to the Speaker of the House of Representatives under date of January 18, 1906. Under date of January 6, 1906, the committee on fisheries of the Senate submitted to the Department, for comment, a copy of the bill (S. 1459) "To encourage private salmon hatcheries in Alaska." The Department replied to this communication

under date of January 17, 1906, submitting a draft of the bill prepared by it, with the statement that it represented the ideas of the Department upon the subject of the protection and regulation of the salmon fisheries.

Without going further into detail as to this matter, it will perhaps be sufficient to state that the bill now submitted (H. R. 13543) not only completely embodies the ideas of the Department on this subject, but contains certain additional provisions which, in my opinion, are highly desirable and should be enacted into law.

Very respectfully,

V. H. METCALF, *Secretary.*

HON. EDWARD L. HAMILTON,

*Chairman Committee on Territories, House of Representatives.*

Mr. CUSHMAN. Referring to section 1 of this bill (H. R. 13543), it provides for the procurement of a license before engaging in the business. Now, this bill provides that the license shall be obtained by the man or the company running a fish cannery, a fish saltery, or manufacturing fertilizer from fish product. There is no license required of the man or the company who merely catch fish. Also, the first section of this bill provides that those engaged in canning fish or salting fish or manufacturing fish fertilizer shall pay a certain tax on those products. The tax provided for in this bill is exactly the same tax as is now collected under existing law. This bill does not authorize the collection of any tax from the man who merely catches fish. Now, Mr. Bowers, are not these provisions exactly similar to existing law?

Mr. BOWERS. They are similar to existing law.

Mr. CUSHMAN. Parties prosecuting these same industries in Alaska are now required to first obtain a license and afterwards to pay a tax?

Mr. BOWERS. Yes, sir; under existing law. You understand that in the absence of objection this bill stands as the view of the Department. We do not wish to do anything antagonistic to the industry in Alaska, nor do we want legislation that might be detrimental to the canneries; still I think it was wise to give the representatives of the canneries an opportunity to be heard. I feel that when they come here it might be well to have some expert of the Department appear again or be present at the hearing.

The CHAIRMAN. The committee will be glad to have some one from your Department appear.

#### STATEMENT OF MR. EDWIN W. SIMS, SOLICITOR OF THE DEPARTMENT OF COMMERCE AND LABOR.

The CHAIRMAN. You are the solicitor of the Department of Commerce and Labor?

Mr. SIMS. Yes, sir.

The CHAIRMAN. There is one provision of this bill to which I want to call your attention, as solicitor and legal representative of the Department, and that is the feature of the bill which provides that the catching of fish shall be subject to such rules and regulations as the Secretary of Commerce and Labor may establish.

Mr. SIMS. That is section 3.

The CHAIRMAN. I wish you would give us a little statement in reference to that section and your interpretation of it.

Mr. SIMS. That section provides that the catching or killing, except with rod, spear, or gaff, of any fish of any kind or species whatsoever in any of the waters of Alaska within 1 marine league of

the shore shall be subject to such rules and regulations as the Secretary of Commerce and Labor may deem necessary, and which he is authorized to make and establish for the purpose of preventing the impairment or exhaustion of the fisheries, and for the purpose of placing them under a regular and permanent condition of production. In my judgment the authority granted to the Secretary of Commerce and Labor by existing law to establish and enforce regulations is wholly inadequate to meet existing conditions. Section 179 of title 1 of the act of March 3, 1899, known as the "Alaskan Code," and which, so far as I am aware, is the only provision authorizing the Secretary of Commerce and Labor, or anyone else, to establish regulations with reference to Alaskan fisheries, limits the authority granted to regulations necessary to insure the enforcement of provisions of law relating exclusively to "the salmon fisheries of Alaska."

The authority granted by section 3 of the bill under consideration is broad enough to enable the Secretary of Commerce and Labor to make regulations to protect and develop all the fisheries of Alaska. It is not limited to salmon. It is also broader in that it authorizes regulations which would be effective at any place where fishing operations are conducted within the 3-mile limit. Under existing law, regulations made by him are practically limited to fishing operations conducted upon the rivers and streams of Alaska.

In my opinion, it is highly important that any law enacted contain a provision of the kind indicated. As the matter now stands, the Department is expressly directed by the act creating it to foster, promote, and develop the fisheries industry, without having authority to enact regulations to prevent or prohibit practices which are detrimental to that industry. The authority here requested would have been of material assistance in enabling the Secretary of Commerce and Labor to prevent the encroachment of the Japanese upon the Alaskan salmon fisheries last year. I also have in mind another case where a lack of the authority in question placed the Department in an embarrassing position. The matter I refer to was the taking of fish in Alaska for fertilizer. Reports indicate that the Alaskan fisheries are developing rapidly and as they develop the conditions change. In view of this fact it would, in my opinion, be impossible to draft a law which will cover all cases. For this reason the officer charged with the promotion and development of the fisheries, the Secretary of Commerce and Labor, should be vested with authority to enact such rules and regulations as the situation from time to time seems to require.

The CHAIRMAN. The Department drew that section with that idea in view?

Mr. SIMS. Yes, sir.

The CHAIRMAN. In relation to the prohibition of aliens fishing in American waters—

Mr. CUSHMAN. That has not yet been reported by the committee. It was referred to a subcommittee, and is another bill.

The CHAIRMAN. The Chair so understands.

Mr. CUSHMAN. It is a separate bill.

The CHAIRMAN. This is broad authority to be vested in a department.

Mr. CUSHMAN. I was going to ask the Solicitor to give the committee his views as to how far it goes—it not only gives the Secretary

authority to make regulations under existing laws, but to a certain extent goes further than that, and takes in matters not provided for in existing law.

Mr. SIMS. The section in question does no more than authorize the Secretary of Commerce and Labor to establish such regulations as may be necessary for the enforcement of the proposed law, and to establish regulations not inconsistent with law for the purpose of preventing the impairment or exhaustion of the fisheries. In the absence of a section of this kind there would be a want of authority to regulate the subject generally. For instance, this bill does not contain any express provision of law regulating or prohibiting the taking of fish for fertilizer. The right to take fish in Alaskan waters for fertilizer came up during the past year. It may come up again. Assuming that the business of taking fish for fertilizer is a business which should be permitted only under suitable regulations, there would, in the absence of this section, be no one with authority to establish regulations with reference to it. It is obvious that the power to regulate these important fisheries should be vested with some officer of the Government. The Department of Commerce and Labor is charged with the protection and development of these fisheries, and in my judgment that is where the power to enact general regulations should be lodged. As expressed in the organic act, the object of the Department is to foster, promote, and develop commerce, the fisheries industry, etc., and I believe that it will not do anything prejudicial to those interests.

The CHAIRMAN. Could we not put into the bill certain matters which it might be advisable to have controlled by legislation, specifying them, so as to restrict the power of the Department?

Mr. SIMS. There is this to be said about that. No person knows what conditions will arise. The fisheries of Alaska are developing rapidly, and it is important that power be given to direct this development along proper lines by means of suitable regulations.

Mr. STANLEY. Would it not be possible to draw a general law which would cover practically all conditions which now exist and submit it to this committee, and in that way we could set the precedent of having law made by Congress and not elsewhere? Could not the evils you suggest be remedied by such legislation?

Mr. SIMS. It is the belief of the Department that the bill now under consideration covers every contingency that has arisen up to this time. The purpose of section 3 is twofold. Under it the Secretary of Commerce and Labor has the authority to establish rules and regulations necessary to carry out its provisions. He also has authority under it to establish rules to regulate emergency matters concerning which the law is silent. There would, so far as I am aware, be no occasion for exercising at this time the authority to regulate entirely new matters. I believe the bill contains provisions to regulate every matter which has arisen up to this time. The authority granted is not a great deal broader than that granted by existing law. Those provisions of the Alaskan Code to which I have referred authorize the Secretary of Commerce and Labor to establish regulations governing the taking of salmon on the rivers and streams of Alaska. The provisions of section 3 of this bill authorize the Secretary to establish regulations to govern the taking of all kinds of fish in any of the

waters of Alaska subject to the jurisdiction of the United States—that is, all those waters within the 3-mile limit.

Mr. STANLEY. In that case this committee would have to pass a blanket power giving the Secretary of that Department authority to define just what punishment might be required to make it effective.

Mr. SIMS. This bill defines and fixes the punishment.

Mr. STANLEY. If a new contingency should arise which is not now in existence and which might do wrong to the interests of Alaska, or do injury to the fishing interests, you would have to define the offenses and also fix the punishment, would you not?

Mr. SIMS. The regulations would define the offense, and the proposed law fixes a punishment for violating such regulations as may be established by the Secretary in pursuance of the authority therein granted.

The CHAIRMAN. This section provides for fishing by rod, spear, or gaff, and any species of fish whatever in the waters within the jurisdiction shall be subject to such rules and regulations as the Secretary may deem necessary. It does not seem that that would be objectionable, provided it would not work an impairment of the industry or an exhaustion of the fisheries. That might relate to future legislation in order to make it effective unless we have rules and regulations to provide for something not now existing.

Mr. STANLEY. There has been made, from time to time, decisions by the Commissioner of Internal Revenue and rules and regulations with incidental punishment that has obscured the law. It is impossible now to tell what is contrary to law and what is contrary to the rules and regulations and the interpretations of the Department upon the laws passed by Congress. I intend to take that subject before the Supreme Court and have adjusted the question of the validity of the law as to the Department making regulations on special subjects not authorized by Congress. I think the provisions of this act are dangerous unless you know exactly what penalty is to be imposed for each specific violation. That can be done when you know the conditions and when the conditions arise.

Mr. KLEPPER. I hardly see why you need to enact anything else except section 3, and leave the regulations to the Department. We can strike out all the rest of it. I think that by careful reading you will see, aside from the methods pointed out, that under the reading of the section the entire regulation might be left to the Department.

Mr. STANLEY. Take the regulation of the Department, for instance, that tobacco in the leaf in less quantity than a case or bale is manufactured tobacco and subject to taxation; and there are thousands of other rulings of the Department that have the force and effect of law and yet have never been considered by a committee nor authorized by Congress. It is leading to the abrogation by Congress of authority to make laws. It ought to be curbed as much as possible. I want to ask Mr. Sims if he thinks it is possible for the experts to point out the evils now existing, or which are likely to arise, and then to draw a bill to prohibit not only the evils now existing, but certain practices that may arise from the conditions that exist there.

Mr. SIMS. I believe that the bill now under consideration by this committee is sufficient to cover all the conditions that have arisen up to this time. I can best demonstrate the necessity of vesting in the Secretary general authority to establish regulations to meet the con-

ditions as they arise by again calling your attention to two matters which arose in the Department during the past year. For instance: In the early spring the Department was advised that several Japanese expeditions were being fitted out in Japan for the purpose of raiding the salmon fisheries of Alaska. The salmon packers and others who had also received this information petitioned the Department to take steps to prevent the threatened encroachment of the Japanese fishermen. It developed upon investigation, however, that the Secretary was not vested with authority to establish rules or regulations which would prohibit the Japanese from taking fish in Alaskan waters, nor could he in any way effectively prevent their operations. In this connection it may be proper in me to state that the Secretary requested and secured the services of a revenue cutter, which found the Japanese at Attu Island. It appeared that the Japanese had observed no customs regulations, and the captain of the cutter ordered them to leave within twenty-four hours. This they did.

Then a little later in the year the Department again found its hands tied when the question of its authority to regulate the taking of fish for fertilizer came up. The bill under consideration is silent as to the matter of taking fish for fertilizer for the reason that this industry has apparently not yet reached that point where it is necessary to regulate it. If it develops later on, however, that the conduct of the fish-fertilizer business is injuring the valuable fisheries of Alaska, some one should have authority to establish regulations which will stop improper practices. Generally speaking, this section is no broader than similar provisions in other laws. The immigration law, the Chinese-exclusion law, and many other laws contain a provision authorizing the officer charged with their enforcement to make regulations necessary to effectively carry out their provisions, and the Supreme Court has sustained actions based upon regulations properly made under these laws.

The CHAIRMAN. I would suggest that Mr. Cushman take the matter up and see how far we can limit the power that is desired to be given and still accomplish the purpose which is sought.

Mr. CUSHMAN. I will be glad to do that and report to the committee at a future meeting.

Mr. SIMS. Mr. Cushman suggests that I refer to the matter of licenses as covered in section 1 of the bill. The sum required to be paid for a license is the same as that now required to be paid by the Alaskan Code. The material difference between existing law and section 1 of the bill under consideration is that the bill provides that the money derived from the issuance of licenses shall constitute a permanent appropriation, to be known as the "Alaskan fisheries fund." It also amends existing law with reference to the payment of a license fee by providing that any person, company, or corporation maintaining a salmon hatchery and returning to the streams and waters fished by it red-salmon fry shall be exempt from such portion of the tax as would be due on as many salmon or other fish as would be equal to one-tenth of the number of red-salmon fry returned to the waters.

The CHAIRMAN. What about penalties?

Mr. SIMS. Section 16 provides that any person violating the provisions of the act or the regulations established in pursuance thereof shall, upon conviction, be punished by a fine not exceeding \$1,000 or

by imprisonment for a term of ninety days, or by both fine and imprisonment at the discretion of the court. The section also provides that vessels, apparatus, or equipment used or employed in violating the act or regulations may be seized and forfeited.

At the time this bill was under consideration in the Department it was understood that practically all the fishing in Alaska was done by individuals. The Indians and others have nets and other apparatus with which they take the fish. After the fish are taken by the individuals they are sold to the canneries, which, I assume, are operated in most cases by corporations. The person or individual owning the cannery purchases from the Indians or others who catch the fish. Under the section, as now drawn, the person who laid the net or took the fish unlawfully would be subject to a fine and the apparatus used would be subject to seizure. I think, however, that the suggestion that corporations should be expressly included in this section is a good one. In my judgment the section should be amended so as to include "person or corporation."

**STATEMENT OF MR. HOWARD M. KUTCHIN, SPECIAL AGENT OF THE DEPARTMENT OF COMMERCE AND LABOR, ALASKAN SALMON FISHERIES.**

Mr. CUSHMAN. Will you make a brief statement to the committee in relation to the general subject of salmon fisheries in Alaska with reference to the proposed change that this bill would make in the existing law?

Mr. KUTCHIN. The subject has been gone over so thoroughly by gentlemen who have preceded me that it leaves me very little to say. In relation to section 3, which has been discussed, I want to make this comment: That existing law, as you will see by reference to it, gives jurisdiction simply over rivers, streams, and channels of Alaskan waters.

The great bulk of fishing for salmon is done upon the sea beaches or in the bays and in contiguous waters. Very little fishing is done in the rivers of southeastern Alaska, which contains mostly small streams. In central Alaska and Bering Sea the streams are large and much of the fishing is done in the streams. As a matter of fact, existing law as it applies to southeastern Alaska is inoperative for the reason stated. Section 3 amplifies existing law by covering all waters where fishing is done, and aside from the question debated in regard to the abrogation by Congress of its authority, the effect sought to be gained is very important and is one of the salient features in this bill. If the language of the bill is objected to, strike out that provision and define the intent so that it shall be within the scope of the law. It is very important that the object of that section should be made quite specific and its enforcement unquestionable.

Mr. STANLEY. I agree with you entirely in that. You have knowledge of the conditions that exist and of the abuses of the fishing privileges in Alaska?

Mr. KUTCHIN. I have a good knowledge of that, I think.

Mr. STANLEY. Don't you think it is possible for a gentleman like yourself to go carefully over the abuses that now exist, either in violation of existing law or such abuses that should be prohibited by



enactment for this purpose, in such a way at the present time as to protect the fisheries of Alaska?

Mr. KUTCHIN. I thoroughly believe that.

Mr. STANLEY. If that can be done, and I am sure it can be, do you believe that there is any danger of injury being done that would escape the regulations of the Department?

Mr. KUTCHIN. I think not. I can say in reference to that that under existing law certain regulations were prescribed by persons familiar with the situation. I think I have here a paper which gives the law and the regulations.

The CHAIRMAN. Does your pamphlet give the present law?

Mr. KUTCHIN. It is a circular for the information of persons connected with the fisheries.

The CHAIRMAN. Does it give the present law?

Mr. KUTCHIN. Yes; except one or two clauses which do not apply. It gives the restriction law and all the regulations.

The CHAIRMAN. Could not you incorporate the section referred to, so as to make it complete, and put it in your remarks?

Mr. KUTCHIN. I could. The law will be found in the criminal code of Alaska, except that one section has been changed.

The CHAIRMAN. The reason I make that suggestion is that members of the committee and members of the House, when the matter comes up, would like to have it readily accessible.

Mr. KUTCHIN. I can not give it to you from memory, but I can incorporate in my remarks the circular which gives the entire law, the clause in relation to the enforcement of the law, and the penalty for violations.

The CHAIRMAN. Let Mr. Cushman incorporate that in his examination of the subject.

Mr. KUTCHIN. I will furnish that later.

[The circular mentioned is herewith given in full, together with the omitted section (No. 182) alluded to:]

[1902. Department circular No. 8. Division of Special Agents.]

#### LAW AND REGULATIONS FOR PROTECTION OF SALMON FISHERIES OF ALASKA.

TREASURY DEPARTMENT.

OFFICE OF THE SECRETARY.

Washington, D. C., January 24, 1902.

The law relating to the salmon fisheries of Alaska, and the regulations thereunder, promulgated on February 18, 1901, with modifications, are published for the information of all concerned.

#### LAW.

Chapter twelve of the act of March 3, 1899, entitled "An act to define and punish crimes in the district of Alaska and to provide a code of criminal procedure for said district," reads in part as follows, viz:

SEC. 179. That the erection of dams, barricades, fish wheels, fences, or any such fixed or stationary obstructions in any part of the rivers or streams of Alaska, or to fish for or catch salmon or salmon trout in any manner or by any means, with the purpose or result of preventing or impeding the ascent of salmon to their spawning ground, is hereby declared to be unlawful, and the Secretary of the Treasury is hereby authorized and directed to remove such obstructions and to establish and enforce such regulations and surveillance as may be necessary to insure that this prohibition and all other provisions of law relating to the salmon fisheries of Alaska are strictly complied with.

SEC. 180. That it shall be unlawful to fish, catch, or kill any salmon of any variety except with rod or spear above the tide waters of any creeks or rivers of less than five hundred feet width in the Territory of Alaska, except only for purposes of propagation, or to lay or set any drift net, set net, trap, pound net, or seine for any purpose across the tide waters of any river or stream for a distance of more than one-third of the width of such river, stream, or channel, or lay or set any seine or net within one hundred yards of any other net or seine which is being laid or set in said stream or channel, or to take, kill, or fish for salmon in any manner, or by any means, in any of the waters of the Territory of Alaska, either in the streams or tide waters, except Cook Inlet, Prince William Sound, Bering Sea, and the waters tributary thereto, from midnight on Friday of each week until six o'clock antemeridian of the Sunday following; or to fish for or catch, or kill in any manner, or by any appliances except by rod or spear, any salmon in any stream of less than one hundred yards in width in the said Territory of Alaska between the hours of six o'clock in the evening and six o'clock in the morning of the following day of each and every day of the week.

SEC. 181. That the Secretary of the Treasury may, at his discretion, set aside any streams as spawning grounds, in which no fishing will be permitted; and when, in his judgment, the results of fishing operations on any stream indicate that the number of salmon taken is larger than the capacity of the stream to produce, he is authorized to establish weekly close seasons, to limit the duration of the fishing season, or to prohibit fishing entirely for one year or more, so as to permit salmon to increase: *Provided, however,* That such power shall be exercised only after all persons interested shall have been given a hearing, of which hearing due notice must be given by publication: *And provided further,* That it shall have been ascertained that the persons engaged in catching salmon do not maintain fish hatcheries of sufficient magnitude to keep such streams fully stocked.

SEC. 182. That to enforce the provisions of law herein and such regulations as the Secretary of the Treasury may establish in pursuance thereof he is authorized and directed to appoint one inspector of fisheries, at a salary of one thousand eight hundred dollars per annum, and two assistant inspectors, at a salary of one thousand six hundred dollars each per annum; and he will annually submit to Congress estimates to cover the salaries and actual traveling expenses of the officers hereby authorized and for such other expenditures as may be necessary to carry out the provisions of law herein.

SEC. 183. That any person violating the provisions of sections one hundred and seventy-nine, one hundred and eighty, and one hundred and eighty-one of this act or the regulations established in pursuance of section one hundred and eighty-two of this act shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars or imprisonment at hard labor for a term not exceeding ninety days, or both such fine and imprisonment, at the discretion of the court; and further, in case of the violation of any of the provisions of section one hundred and seventy-nine, and conviction thereof, a further fine of two hundred and fifty dollars per diem will be imposed for each day that the obstruction or obstructions therein are maintained.

#### REGULATIONS.

1. The provisions of this act are applicable to all the territorial waters of Alaska, including tide waters, lagoons, bays, coves, straits, inlets, bayous, rivers, streams, and the beach approaches to the same.

2. Traps, whether "fixed or stationary obstructions" (built of piles and webbing), or constructed of webbing and floats and susceptible to removal from place to place, are declared to be obstructions which "impede the ascent of salmon to their spawning grounds" and their use is hereby forbidden, except that such traps extending across the tide waters of any river, stream, or channel not more than one-third of the width of such river, stream, or channel may be so used as provided in section 180 of said act: *Provided,* That such traps shall be open so as to allow the unobstructed passage of fish through the same from midnight on Friday of each week until 6 o'clock antemeridian of the Sunday following, as is prescribed in section 180 of said act.

3. It is forbidden to lay any seine, gill, or other net within 100 yards of the mouth on either side, or immediately abreast of the mouth, of any river or stream whereby the setting or hauling of the said seine, gill, or other net, it may drift wholly or partially across and operate to close the mouth of said river or stream.

4. The wanton destruction of salmon is declared to be unlawful. Whoever is guilty thereof is hereby declared to be subject to the penalties provided for specific violations of the act referred to.

5. All persons, companies, or corporations engaged in salmon packing, salting, or smoking, in the district of Alaska, shall make detailed annual reports of such business, upon forms furnished by this Department, to the agent of the Treasury for the protection of the salmon fisheries, covering all such facts as may be required for the information of the Department. Such reports shall be sworn to by the superintendent, manager, or other person having knowledge of the facts, a separate blank form being used for each establishment in cases where more than one cannery or saltery is conducted by a person, company, or corporation; and the same shall be filed with the said agent at the close of the fishing season, and not later than November first.

6. During the period of inspection of the salmon fisheries by the special agent of this Department the person in charge of each fishery visited shall furnish the said agent with such information regarding the run of fish, the pack secured, the probable results of the season's work, and such other facts as may be required to afford him a basis for an intelligent preliminary report of the year's business and the state of the fisheries.

7. Each person, company, or corporation taking salmon in Alaskan waters shall establish and conduct, at or near the fisheries operated by him or them, a suitable artificial propagating plant or hatchery; and shall produce yearly and place in the natural spawning waters of each fishery so operated red salmon fry in such numbers as shall be equal to at least ten times the number of salmon of all varieties taken from the said fisheries, by or for him or them, during the preceding fishing season. The management and operation of such hatcheries shall be subject to such rules and regulations as may hereafter be prescribed by the Secretary of the Treasury. They shall be open to inspection by the authorized official of this Department; annual reports shall be made giving full particulars of the number of male and female salmon stripped, the number of eggs treated, the number and percentage of fish hatched, and all other conditions of interest. And there shall be made a sworn yearly statement of the number of fry planted and the exact location where said planting was done.

L. J. GAGE, *Secretary*.

NOTE.—Section 182 is omitted from the circular embodying the law and regulations for the protection of the salmon fisheries of Alaska, to which reference was made. This provision was changed in an amendment to the sundry civil appropriation act of 1897-98, which enacted that in lieu of an inspector and two assistant inspectors "there shall be appointed by the President, by and with the advice and consent of the Senate, one agent, at a salary of two thousand five hundred dollars per annum, and an assistant agent, at a salary of two thousand dollars per annum."

The latter act is now in force. Section 15 of H. R. bill No. 13543 takes the place of section 182 as amended.

Mr. KUTCHIN. In regard to this it illustrates the case just adverted to. We have a set of regulations, and while we recognize the fact that some of those regulations transcend the letter of the law, they were made as sweeping as possible in order to attempt to bulldoze, so to speak, those outside of the purview of the precise wording of the law. The whole question of the establishment and location of hatcheries is not mentioned in the law, but is in the regulations, and I suspect that anybody who contested it could frustrate the efforts of the Government in the enforcement of such a regulation. The regulations also define the waters of Alaska and attempt to establish jurisdiction over them. The law says, "the rivers, streams, and channels." The regulations cover all the waters and the bays, lagoons, rivers, and beach approaches to the same.

The CHAIRMAN. Does this bill which we have before us cover sufficiently the waters intended to be covered?

Mr. KUTCHIN. Section 3 does. It says any waters within the jurisdiction of the United States within 1 marine league of coast, bays,

etc. It covers all waters within the jurisdiction of the United States. That is the salient point of that clause.

Mr. LLOYD. Suppose that the committee should say, after the word "sixty-seven," "is hereby prohibited, except as in this act provided."

Mr. KUTCHIN. I think it ought to be made as distinct as possible.

Mr. LLOYD. To make prohibitive the catching of fish except as in this bill provided.

Mr. KLEPPER. About what percentage of fishing is done within a marine league?

Mr. KUTCHIN. The salmon fishing is all done within the 1-league limit.

Mr. KLEPPER. Under the terms of section 3 it is properly left to the regulations of the Secretary of Commerce and Labor.

Mr. KUTCHIN. I would favor it being made so by law.

Mr. STANLEY. The fishing is done by corporations?

Mr. KUTCHIN. Largely.

Mr. STANLEY. Are they incorporated in the United States?

Mr. KUTCHIN. I think they are mostly.

Mr. STANLEY. Then I think it would be well to say all corporations so engaged should be incorporated in the States, and is it necessary to state in their articles of incorporation the extent of their business?

Mr. KUTCHIN. I recall the fact that there are two or three companies not incorporated in the United States. They should be brought under the antialien act. That act should be made to cover those people. I know persons from British Columbia are packing salmon in Alaska.

The CHAIRMAN. Does the antialien act reach them?

Mr. KUTCHIN. They defeat the scope of that proposed act by having the canneries held by some American citizen, but of course they have to comply with the immigration laws. They can not take in alien fishermen.

Mr. HIGGINS. Do I understand you to say that the corporations are incorporated in the United States?

Mr. KUTCHIN. Yes; with the exceptions noted.

Mr. HIGGINS. Are they incorporated under the law and get licenses?

Mr. KUTCHIN. They are incorporated under the laws of the States, with the exceptions noted. Some years ago I recommended to the Department that licenses be required of all persons engaged in fishing in Alaska. This law should apply, and the location should be stated, so that the Department could have a tab on them. There is no record of them now, except when an official goes up there and finds them. At first I did not know where any of the salmon-packing plants were located. There are about sixty there now, and it is desirable that a law should require them to go on record in advance of location. In reference to the penalty for violation of the law, I would make it clearer than has been done in this bill.

In regard to covering corporations and exempting individuals, I would say that fully 90 per cent of all fish taken in Alaska are taken by persons doing piecework. Only about a dozen individuals are canning or salting salmon on their own behalf. The great bulk of the business is done by corporations, and the corporations employ fishermen and pay them by the piece, and they also furnish boats and gear to the Indians. The Indians and others catch the fish and get

so much per hundred for them. It is all-important that every individual who fishes should be included, and also every corporation. Sometimes the law may be violated and the violation encouraged by corporations, but more frequently they have no knowledge of it. In every case which I have reported I have reported against corporations as well as individuals.

Mr. SULZER. Don't you think that this proposed law should contain a provision that native Indians may at all times take sufficient fish for the use of their families?

Mr. KUTCHIN. I think that the bill does that. I think that corporations should be encouraged in the propagation of salmon. I think that ought to be in the bill.

Mr. CUSHMAN. It is specifically provided for in the antialien bill.

Mr. SULZER. It ought to be provided for in this bill.

Mr. KUTCHIN. I do not think I have any further remarks to offer on the subject.

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