

SB

53

January 15, 1979

President of the Senate  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a bill amending the definition of vessel in the Fish and Game Code (AS 16.05) to exclude float planes. The bill would eliminate the present requirement for commercial fishing vessel licenses for float planes used for delivering fish. The general consensus is that this requirement is unnecessary, burdensome, and unintended.

Sincerely,

*S/JS*

Jay S. Hammond  
Governor

Article 7. General Provisions.

Section  
 905. Alien activities prohibited  
 910. Penalty  
 920. Certain acts made unlawful

Section  
 930. Exempted activities  
 940. Definitions  
 950. Title of the chapter

**Sec. 16.05.905. Alien activities prohibited.** Alien persons not lawfully admitted to the United States are prohibited from engaging in commercial fishing activities or taking marine mammals in the territorial waters of the State of Alaska as they presently exist or may be extended in the future. (§ 1 ch 85 SLA 1964)

**Sec. 16.05.910. Penalty.** Any alien person who violates § 905 of this chapter is guilty of a misdemeanor, and upon conviction is punishable by a confiscation and forfeiture of the fishing vessel used in such violation, or by imprisonment of any such person for not more than one year, or by fine of not more than \$10,000, or by all or any two of the foregoing punishments. (§ 2 ch 85 SLA 1964)

**Sec. 16.05.920. Certain acts made unlawful.** (a) Unless permitted by this chapter or by regulation made under this chapter, it is unlawful for a person to take, possess, transport, sell, offer to sell, purchase, or offer to purchase fish, game or marine aquatic plants, or any part of fish, game or aquatic plants, or a nest or egg of fish or game.

(b) No person may knowingly disturb, injure, or destroy a notice, signboard, seal, tag, aircraft, boat, vessel, automobile, paraphernalia, equipment, building or other improvement or property of the department used in the administration or enforcement of this chapter, or a poster or notice to the public concerning the provisions of this chapter, or regulation adopted under this chapter, or a marker indicating the boundary of an area closed to hunting, trapping, fishing or other special use under this chapter. No person may knowingly destroy, remove, tamper with, or imitate a seal or tag issued or used by the department or attached under its authority to a skin, portion, or specimen of fish or game, or other article for the purpose of identification or authentication in accordance with this chapter or a regulation adopted under this chapter. (§ 28 art I ch 94 SLA 1959; am § 3 ch 110 SLA 1970)

State may regulate extraterritorial fishing. — Paramount rights in the seabed and subsoil beyond the three-mile limit were vested in the federal government. However, that principle of federal exclusivity does not preclude state regulation of fishery resources in the waters over that seabed. *State v. Sieminski*,

Sup. Ct. Op. No. 1339 (File No. 2544), 556 P.2d 929 (1976).

Enforcement of the state's regulatory scheme in a case involving scallop fishing activities in extraterritorial waters was within the sphere of the state's prerogative to regulate extraterritorial fishing. *State v.*

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Sieminski, Sup. Ct. Op. No. 1339 (File No. 2544), 556 P.2d 929 (1976).

As to constraints on state regulation of extraterritorial fishing efforts, see State v. Sieminski, Sup. Ct. Op. No. 1339 (File No. 2544), 556 P.2d 929 (1976).

Citing this section in an information instead of former AS 16.05.250 was not reversible error. — See Theodore v. State, Sup. Ct. Op. No. 305 (File No. 550), 407 P.2d 182 (1965), cert. denied, 384 U.S. 951, 86 S. Ct. 1570, 16 L. Ed. 2d 547 (1966).

Applied in Biele v. State, Sup. Ct. Op. No. 87 (File No. 152), 371 P.2d 811 (1962); Graybill v. State, Sup. Ct. Op. No. 1045 (File No. 1939), 522 P.2d 539 (1974); State v. Bundrant, Sup. Ct. Op. No. 1232 (File Nos. 2295, 2435, 2444), 546 P.2d 530 (1976); Graybill v. State, Sup. Ct. Op. No. 1234 (File No. 2386), 545 P.2d 629 (1976); Schuster v. State, Sup. Ct. Op. No. 1305 (File No. 2911), 553 P.2d 925 (1976); Nathanson v. State, Sup. Ct. Op. No. 1310 (File No. 2541), 554 P.2d 456 (1976).

**Sec. 16.05.930. Exempted activities.** (a) This chapter does not prevent the collection or exportation of fish and game, a part of fish or game or a nest or egg of a bird for scientific or educational purposes, or for propagation or exhibition purposes under a permit which the department may issue and prescribe the terms thereof.

(b) This chapter does not prohibit a person from taking fish or game during the closed season, in case of dire emergency, as defined by regulation promulgated by the appropriate board.

(c) Section 920 of this chapter does not prohibit rearing and sale of fish from private ponds, the raising of wild animals in captivity for food or the raising of game birds for the purpose of recreational hunting or game hunting preserves, under regulation promulgated by the appropriate board.

(d) No nondomestic animals of any species may be transferred or transported from the state under (a) of this section unless approved by the Board of Game in regular or special meeting. Animals transferred or transported under (a) of this section shall be animals that are certified by the department to be surplus and unnecessary to the sustained yield management of the resource. Each application for a permit under (a) of this section shall be accompanied by a statement prepared by the Department of Fish and Game examining the probable environmental impact of the action. (§ 28 art 1 ch 94 SLA 1959; am § 1 ch 7 SLA 1972; am § 2 ch 104 SLA 1972; am § 4 ch 82 SLA 1974; am §§ 16, 17 ch 206 SLA 1975; am § 1 ch 20 SLA 1976)

Effect of amendments. — The 1974 amendment deleted "or fur purposes" following "food" near the middle of subsection (c).

The 1975 amendment inserted "appropriate" near the end of subsections (b) and (c).

The 1976 amendment added subsection (d).

**Sec. 16.05.940. Definitions.** In this chapter

(1) "a board" means either the Board of Fisheries or the Board of Game;

(2) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other

SLA 1959; am § 2 ch 96 SLA 1963; am § 2 ch 73 SLA 1970; am § 11 ch 105 SLA 1977)

**Effect of amendment.** — The 1977 amendment, effective January 1, 1978, rewrote paragraphs (1) and (2) and substituted "other than one to which a permit has been issued" for "which is not exempt" in paragraph (3).

### Article 7. General Provisions.

#### Section

930. Exempted activities

940. Definitions

#### Sec. 16.05.930. Exempted activities.

(e) This chapter does not prevent the traditional barter of fish and game taken by subsistence hunting or fishing, except that the commissioner may prohibit the barter of subsistence-taken fish and game by regulation, emergency or otherwise, if a determination on the record is made that the barter is resulting in a waste of the resource, damage to fish stocks or game populations, or circumvention of fish or game management programs.

(am § 13 ch 151 SLA 1978)

#### **Effect of amendments.**

The 1978 amendment added subsection (e).

As the rest of the section was not affected by the amendment, it is not set out.

**Editor's note.** — As to legislative intent, see § 1, ch. 151, SLA 1978, in the 1978

Temporary and Special Acts and Resolutions in Binder 9.

**Legislative history report.** — For report on ch. 151, SLA 1978 (SB 960), see 1978 House Journal, p. 1154.

#### Sec. 16.05.940. Definitions. In this chapter

(2) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; and the term "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish;

(17) "subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(26) "subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible

by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter or sharing for personal or family consumption; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

(27) "barter" means the exchange or trade of fish or game, or their parts, taken for subsistence uses

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

(am § 12 ch 105 SLA 1977; am §§ 14, 15 ch 151 SLA 1978)

Effect of amendments.

The 1977 amendment, effective January 1, 1978, deleted "or to the spouse of a commercial fisherman who does not receive income separate and distinct from that of the commercial fisherman spouse as a result of the spouse's participation" following "directly or indirectly participate in the taking" in paragraph (2).

The 1978 amendment substituted "subsistence uses" for "personal use and not for sale or barter" in paragraph (17) and added paragraphs (26) and (27).

As the rest of the section was not affected by the amendments, it is not set out.

Editor's note.

As to legislative intent, see § 1, ch. 151, SLA 1978, in the 1978 Temporary and Special Acts and Resolutions in Binder 9.

Legislative history report. — For report on ch. 151, SLA 1978 (SB 960), see 1978 House Journal, p. 1154.

Chapter 10. Fisheries and Fishing Regulations.

Article 2. Fish Traps and Other Illegal Fishing Devices.

Section

130. Penalties for violation of §§ 120—125 of this chapter

Sec. 16.10.130. Penalties for violation of §§ 120—125 of this chapter. A person who violates §§ 120—125 of this chapter is guilty of a misdemeanor, and upon conviction is punishable by imprisonment for not more than six months, or by a fine of not more than \$1,000, or by both. (§ 2 ch 26 SLA 1959; am § 4 ch 103 SLA 1977)

Effect of amendment. — The 1977 amendment, effective August 1, 1978, substituted "§§ 120 — 125" for "§ 120" near the beginning of the section.

Article 7. Commercial Fishing Loan Act.

Section

310. Powers of the department
320. Limitations on loans
333. Loans for purchase of Alaska limited entry permits
335. Default and foreclosure

Section

337. Deficiencies and transfer of entry permits after foreclosure
339. Regulations
342. Special account established
360. Definitions

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fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking, or to the spouse of a commercial fisherman who does not receive income separate and distinct from that of the commercial fisherman spouse as a result of the spouse's participation; and the term "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish;

(3) "commercial fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid subsistence permit in possession, if required by statute or regulation, is considered prima facie evidence of commercial fishing if commercial fishing gear as specified by regulation is involved in the taking, fishing for, or possession of fish, shellfish or other fish resources;

(4) "commissioner" means the commissioner of fish and game unless specifically provided otherwise;

(5) "department" means the Department of Fish and Game unless specifically provided otherwise;

(6) "fish" means any species of aquatic fin fish, invertebrates and amphibians, in any stage of their life cycle, found in or introduced into the state;

(7) "fish or game farming" means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and "captivity" means having the fish or game under positive control, as in a pen, pond, or an area of land or water which is completely enclosed by a generally escape-proof barrier;

(8) "fur dealing" means engaging in the business of buying, selling, or trading in animal skins. The term does not apply to a hunter or trapper selling the animal skins he has legally taken, or to a person, other than a fur dealer, purchasing animal skins for his own use;

(9) "game" means any species of bird and mammal, including a feral domestic animal, found or introduced in the state, except domestic birds and mammals; and game may be classified by regulation as big game, small game, fur bearers or other categories considered essential for carrying out the intention and purposes of this chapter;

(10) Repealed by § 2 ch 32 SLA 1968;

(11) "hunting" means the taking of game under this chapter and the rules and regulations promulgated under it;

(12) "nonresident" means a person who is not a resident;

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(13) "operator" means the individual by law made responsible for the operation of the vessel;

(14) "resident" means a person who for 12 consecutive months maintained a permanent place of abode in the state and who continually maintained his voting residence in the state; and in the case of a partnership, association, joint stock company, trust, or corporation, "resident" means one that has its main office or headquarters in the state; however, a member of the military service who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of this chapter, and the dependent of a resident member of the military service, who has been living in the state for the preceding year is a resident for the purposes of this chapter, and a person who is an alien but who for one year has maintained a permanent place of abode in the state is a resident for the purposes of this chapter;

(15) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure under this chapter by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

(16) "sport fishing" means the taking of or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries;

(17) "subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources for personal use and not for sale or barter, with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(18) "take" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

(19) "taxidermy" means tanning, mounting, processing, or other treatment or preparation of fish or game, or any part of fish or game, as a trophy, for monetary gain, including the receiving of the fish or game or parts of fish or game for such purposes;

(20) "trapping" means the taking of mammals declared by regulation to be fur bearers;

(21) "vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the state;

(22) "visitor" means a nonresident or alien temporarily sojourning in the state as a visitor or tourist;

(23) "aquatic plant" means any species of plant, excluding the rushes, sedges and true grasses, growing in a marine aquatic or intertidal habitat;

(24) "fish derby" means a contest in which prizes are awarded for catching fish;

(25) "fishing derby association" means a civic, service or charitable organization in the state, not for pecuniary profit, whose primary purpose is to promote interest in fishing for recreational purposes and which has been in existence for five years before applying for a permit under this chapter, but does not include an organization formed or operated for gaming or gambling purposes. (§ 2 art I ch 95 SLA 1959; am §§ 1 — 4 ch 131 SLA 1960; am § 1 ch 21 SLA 1961; am §§ 1, 2 ch 102 SLA 1961; § 9 art III ch 94 SLA 1959; am § 23 ch 131 SLA 1960; am § 1 ch 160 SLA 1962; am §§ 13, 14 ch 31 SLA 1963; am § 2 ch 32 SLA 1968; am § 3 ch 73 SLA 1970; am § 1 ch 91 SLA 1970; am § 4 ch 110 SLA 1970; am § 1 ch 90 SLA 1972; am § 5 ch 82 SLA 1974; am §§ 26, 82 ch 127 SLA 1974; am §§ 18 — 20 ch 206 SLA 1975)

**Effect of amendments.** The first 1974 amendment deleted "fur" following "fish" near the beginning of paragraph (7).

The second 1974 amendment substituted "one year" for "three years" near the end of paragraph (14). Near the end of paragraph (2), the amendment substituted "spouse" for "wife," "the commercial fisherman spouse" for "her husband," and "the spouse's participation" for "her participation."

The 1975 amendment rewrote paragraph (1) and substituted "Board of Fisheries" for "board" at the end of paragraphs (16) and (17).

**Editor's note.** — Section 12, ch. 105, SLA 1977, effective January 1, 1978, amended paragraph (2) to read as follows: "(2) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes

who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; and the term "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish;"

**Legislative committee reports.** — For report on ch. 32, SLA 1968 (HCSCSSB 50 am), see 1968 House Journal, p. 169. For report on ch. 127, SLA 1974 (SCSHE 817 am S), see 1974 House Journal, p. 657.

**Paragraph (14) does not grant special resident privileges to military personnel.** 1964 Op. Att'y Gen., No. 2.

**For construction of "commercial fisherman" under former law,** see *Martinsen v Mullaney*, 12 Alas. 455, 85 F. Supp. 76 (D. Alas. 1949).

**Sec. 16.05.950. Title of the chapter.** This chapter may be cited as the Fish and Game Code. (§ 1 art I ch 94 SLA 1959)

**Chapter supersedes federal law.** — When the various articles of the state law providing for the administration, management and conservation of fish and wildlife became effective, acts of Congress on the same subject were no longer of any force. *Metlakatla Indian Community, Annette Island Reserve v. Egan*, Sup. Ct. Op. No. 42 (File Nos. 21 — 23), 362 P.2d 901 (1961), vacated and remanded on other grounds, 369 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1962).

There is no intimation in the Alaska Statehood Act of an intent that any United States administration under the

commercial fishery laws be carried out after the state had been certified as capable of its own management. *Metlakatla Indian Community, Annette Island Reserve v. Egan*, Sup. Ct. Op. No. 42 (File Nos. 21 — 23), 362 P.2d 901 (1961), vacated and remanded on other grounds, 369 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1962).

Upon Alaska's admission on January 3, 1959, the Alaska game laws and acts regulating commercial fisheries as "territorial laws," continued in force, but were modified by Ordinance No. 3 of the state constitution prohibiting the use of fish traps for the taking of salmon for

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