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Alaska State Legislature
House of Representatives

Special Committee on Fisheries

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Juneau, Alaska 99811
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JACK MCBRIDE
FRED ZHAROFF

MEMORANDUM

DATE: April 22, 1983

TO: House Resources Committee
FROM: House Special Committee on Fisheries *Ad*
SUBJECT: CS SB 136 (Res) (efd added)

The House Special Committee on Fisheries would like to extend to you its support of CS SB 136 (Res) (efd added). If this bill is not passed out this session, we risk continued unnecessary harrassment of set gill netters during the 1983 salmon season.

Currently, the statutes and regulations require that the permit holder be physically present during the operation of the set net except when traveling to and from the site to sell the catch. This is interpreted to mean within sight or earshot of the site. Existing and historical practices of set netters conflict with this law. For example, set gill netters often have more than one site operating on one permit. In situations like this, the nets are picked at the same time and the permit holder is not able to be at both sites. Another example of a current violation is if the permit holder is in the set net cabin while his crew is picking the set net.

CS SB 136 (Res) (efd added) would clarify the legislature's intent by defining "fishing site" and adding another exemption to the current physically present requirement. The new definition of "fishing site" includes any structure providing shelter in support of the fishing operation. This would allow the permit holder to be at the set net site's shelter. The new exemption to actually being physically present would allow the permit holder to be at or traveling to or from the location of other stationary gear of the permit holder.

These two changes would allow the current and historical practices of set netters to continue without violation of the law. We feel that this bill is needed to correct current misinterpretations and support its quick passage.

(11) establishing seasons, areas, quotas and methods of harvest for aquatic plants;

(12) establishment of the times and dates during which the issuance of fishing licenses, permits and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under AS 16.43.010 — 16.43.380.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62.010 — 44.62.650) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources. (§ 3 ch 206 SLA 1975; am § 2 ch 218 SLA 1976; am § 4 ch 151 SLA 1978; am §§ 1, 2 ch 110 SLA 1980)

Effect of amendments. — The 1978 amendment added subsection (b).

The 1980 amendment inserted "disease" near the middle of paragraph (8) of subsection (a), and inserted "and regulating" near the beginning of paragraph (10) of subsection (a).

Editor's note. As to legislative intent, see § 1, ch. 151, SLA 1978, in the 1978 Temporary and Special Acts and Resolves.

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

NOTES TO DECISIONS

The Board of Fisheries has the power to make decisions affecting the utilization of fishery resources. Kenai Peninsula Fisherman's Coop. Ass'n v. State, Sup. Ct. Op. No. 2358 (File No. 5072), 628 P.2d 897 (1981).

Differential treatment not prohibited. — While Alaska Const., art. VIII, § 15, does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment by the Board of Fisheries of such diverse user groups as commercial, sports, and subsistence fishermen. Kenai Peninsula Fisherman's Coop. Ass'n v. State, Sup. Ct.

Op. No. 2358 (File No. 5072), 628 P.2d 897 (1981).

Establishment of use priorities. — While the Board of Fisheries did have the authority to establish priorities of use between recreational and commercial fisheries of the salmon stocks in the Upper Cook Inlet, the policy and option establishing these priorities were regulations which should have been adopted pursuant to the provisions of the Administrative Procedure Act, AS 44.62.010 — 44.62.650. Kenai Peninsula Fisherman's Coop. Ass'n v. State, Sup. Ct. Op. No. 2358 (File No. 5072), 628 P.2d 897 (1981).

Sec. 16.05.253. Operation of stationary fishing gear. The Board of Fisheries may require a person who holds a limited entry permit or

an interim-use permit under AS 16.43 to be physically present during the operation of net gear or other stationary fishing gear operated from a beach or riparian site, except when the permit holder is traveling to and from the site of a sale of fish caught in the gear. (§ 1 ch 94 SLA 1982)

Effective dates. — Section 7, ch. 94, June 16, 1982, in accordance with SLA 1982, makes this section effective 01.10.070(c).

Sec. 16.05.255. Regulations of the Board of Game. (a) The Board of Game may make regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62.010 — 44.62.650) for

(1) setting apart game reserve areas, refuges and sanctuaries in the waters or on the lands of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishment of open and closed seasons and areas for the taking of game;

(3) establishment of the means and methods employed in the pursuit, capture and transport of game;

(4) setting quotas and bag limits on the taking of game;

(5) classifying game as game birds, song birds, big game animals, fur bearing animals, predators or other categories;

(6) investigating and determining the extent and effect of predation and competition among game in the state, exercising control measures considered necessary to the resources of the state and designating game management units or parts of game management units in which bounties for predatory animals shall be paid;

(7) engaging in biological research, watershed and habitat improvement, and game management, protection, propagation and stocking;

(8) entering into cooperative agreements with educational institutions and state, federal, or other agencies to promote game research, management, education, and information and to train men for game management;

(9) prohibiting the live capture, possession, transport, or release of native or exotic game or their eggs;

(10) establishing the times and dates during which the issuance of game licenses, permits and registrations and the transfer of permits and registrations between registration areas and game management units or subunits is allowed.

(b) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62.010 — 44.62.650) permitting the taking of game for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of game resources on a sustained-yield basis. Whenever it is necessary to restrict the taking of game to assure the maintenance of

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE:

March 3, 1983

465-4322

Senator Bettye Fahrenkamp
Chairman, Senate Resources Committee
Pouch V
Juneau, Alaska 99811

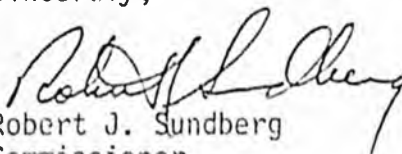
Dear Senator Fahrenkamp:

Re: SB 136

Our main concern with the proposed amendment is what will constitute the "immediate vicinity". Without a definition or statement of fact outlining when a permit holder is considered to be in the immediate vicinity will create confusion for the fishermen, Alaska Department of Fish & Game and Fish & Wildlife Protection personnel.

In addition, the wording of "immediate vicinity" could be found to be vague and open legal interpretation by the courts.

Sincerely,


Robert J. Sundberg
Commissioner

SB 136 AN ACT RELATING TO THE OPERATION OF STATIONARY FISHING GEAR.

SPONSOR: MULCAHY

Amends the statute regarding the operation of stationary fishing gear to include a definition of "physically present" to mean "in the immediate vicinity of the gear". Under current statute, the Board of Fisheries may require a person who holds a limited entry permit or an interim-use permit to be physically present during the operation of net gear or other stationary fishing gear (from a beach or river bank or lake shore).

Spoke with Troy in Sen. Mulcahy's office:

The intent of SB 136 is to statutorily allow permit holders to not be constantly present at their nets. In Kodiak, these fishermen are allowed to have 2 nets, usually set up a couple miles apart. They hire crew to "pick" the nets as soon as the fish hit. Fish and Wildlife Protection has been giving citations to crew members who are "picking" nets when the permit holder is not present.

Under current statute, the permit holder is exempted from being present if he's delivering fish. Troy indicated other exemptions are needed. The AG's current opinion defines "physically present" as within shouting distance. Though vague, "immediate vicinity" is intended to be a broader definition of "physically present".

An additional factor: The Board of Fisheries has adopted regulations in some areas of the State that allow the permit holder to not be physically present during the operation of his stationary fishing gear.

Troy indicated much work is yet to be done on this bill. SB 136 has been referred to the Resources Subcommittee on Fisheries.

SUMMARY OF CS SB 136 (Res)

This bill will provide several exemptions to the present requirement that a permit holder be physically present during the operation of stationary fishing gear (set nets, etc.)

The first exemption is already in the present AS 16.05.253; when going to and from the site of a sale of fish caught in the gear.

The second exemption will allow a person to operate or supervise the operation of another piece of gear that is located in another area of the fishing site. This is necessary as gear may be split up and be several miles apart.

The third exemption is to allow a person to be temporarily absent from the fishing site to perform duties directly related to the operation of the gear. This could include such things as fixing a broken outboard motor, mending web, etc. A person could also be absent from the gear to perform physical needs, such as sleeping or eating.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

COMMERCIAL FISHERIES ENTRY COMMISSION

POUCH KB
JUNEAU, ALASKA 99811

February 7, 1983

Senator Mulcahy
State Capitol
Pouch U (MS3100)
Juneau, AK 99811

RE: Set net gear operation

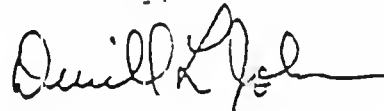
Dear Senator Mulcahy:

At your request Commissioner Williams had staff research last session's proposed Bill CSHB637 and offers the following suggested wording to clarify the operation of set net gear:

*Section 1. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.253. OPERATION OF STATIONARY FISHING GEAR. The required physical presence of the permit holder at the site of stationary gear operated from a beach or riparian location will not be construed to mean more than being in the immediate vicinity of the gear. The permit holder is allowed to leave the vicinity only for the purpose of delivering his commercial catch.

Sincerely,



Derrill L. Johnson
Director, Admin. and Operations

DLJ:dan

Attachments

Memo Williams/Stewart 1-25-83 ADF&G & CFEC Statutes & Regs.
Burton/Gross Letter 8-6-75 Chapter 130, SLA 1975
Memo Chuckwuk/Simon 1-21-82 HB 637
Gen. Provisions/pages 163, 167, 168, 175 & Amendment 116

cc: Emil Notti
Legislative Assistant
Office of the Governor
(with attachments)

MEMORANDUM

State of Alaska

TO: John Williams
Chairman

DATE: January 25, 1983

FILE NO:

TELEPHONE NO:

FROM: Beth Stewart ^{BJS}
Special Assistant

SUBJECT: ADF&G and CFEC Statutes &
Regulations Concerning Set
Net Operations

The following excerpts from the ADF&G Finfish Regulations and the CFEC statute deal directly or indirectly with the operation of stationary gear.

ADF&G REGULATIONS

5 AAC 39.107. OPERATION OF NET GEAR. basically requires that the interim-use or entry permit holder for any net gear be physically present during the operation of gear and that he or she "personally operate or assist in the operation of net gear."

During the December 1982 Board of Fisheries meeting, the board adopted new sections to this regulation that will exempt A-Y-K set net and fishwheel permit holders from the "physical presence" requirement to the extent that they may leave this gear unattended while it is in the water (see attachment).

5 AAC 39.130. REPORTS REQUIRED OF PROCESSORS, BUYERS, AND FISHERMEN requires that the permit holder sign the fish ticket. When viewed together with AS 16.43.150(b) and 5 AAC 39.107, this regulation has caused some problems for Protection because set net operators are required to remain on site with their permit cards in their possession as well as be present during the delivery of fish with their permit cards in hand to imprint and sign fish tickets. In areas where set netters must travel some distance to deliver their fish, this group of regulations and statutes would require the permit holder to pull his gear out of the water while he made his deliveries (see attachment).

5 AAC 39.280. IDENTIFICATION OF STATIONARY FISHING GEAR requires that the gear (buoys) be marked with the permit holder's 5-digit CFEC permit serial number (see attachment).

5 AAC 18.331. GILL NET SPECIFICATIONS AND OPERATION. This regulation is specific to the Kodiak area and reads in part:

"The aggregate length of set gill nets used by an individual may not exceed 150 fathoms. No more than two set gill nets may

be operated by the individual holding the valid interim-use or entry permit card for that gear."

5 AAC 18.335. MINIMUM DISTANCE BETWEEN UNITS OF GEAR. This regulation is also specific to Kodiak and says, "No part of a set gill net may be set or operated within 900 feet of any part of another set gill net."

CFEC STATUTE

AS 16.43.140. PERMIT REQUIRED. (b) reads, "A permit is not required of a crewman or other person assisting in the operation of a unit of gear engaged in the commercial taking of fishery resources as long as the holder of the entry permit or the interim-use permit for that particular unit of gear is at all times present and actively engaged in the operation of the gear."

AS 16.43.150. TERMS AND CONDITIONS OF ENTRY PERMIT; ANNUAL RENEWAL. (this is duplicated for IUP's in AS 16.43.220(c))
(b) "The holder of an entry permit shall have the permit in his possession at all times when engaged in the operation of gear for which it was issued."