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# Alaska State Legislature

## Senate

RESOURCES SUBCOMMITTEE ON FISHERIES

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

March 15, 1983

TO: Senator Bettye Fahrenkamp, Chairman  
Senate Resources Committee

FROM: Senate Resources Subcommittee on Fisheries

SUBJ: SB 136

The subcommittee has taken testimony and recommends replacing SB 136 with CS SB 136(Res) and reports CS SB 136(Res) back to the committee as a whole with the following recommendations.

Members	Recommendation
Senator Mulcahy	<u>Do Pass But. Fahrenkamp</u>
Senator Eliason	<u>" " " " " "</u>
Senator Gilman	<u>Do Pass Eliason</u>

## SELECTED ALASKA STATUTES

**PROVISIONS.** The Board of Fisheries may provide for the purposes of secs 180-230 of this chapter, migratory fish and migratory shellfish in the manner governing the manner, means, conditions and migratory shellfish applicable in

**PROHIBITED.** It is unlawful for a person to fish in high sea areas designated by the Board of Fisheries. Regulations promulgated by the Board of Fisheries for migratory fish and migratory shellfish in the manner, means, conditions, barter, offer to barter, give or transport migratory fish or migratory shellfish.

**OFFER PROHIBITED.** It is unlawful for a person to sell in the state migratory fish or migratory shellfish if they were taken in violation of a rule or regulation governing the taking of migratory fish or shellfish by the board or the commissioner.

**VIOLATION OF SEC 200 or 210 OF THIS CHAPTER.** Any person who violates sec 200 or 210 of this chapter is guilty of a misdemeanor and is punishable by a fine of not more than \$5,000, or by imprisonment.

**PROHIBITION OF KING, DUNGENESS OR TANNER CRAB.** No person shall export or send from this state any live king crab, dungeness crab, species *Cancer magister*, or species *Decapoda*, except that all of these species may be packed in ice.

**VIOLATION OF SEC 240 OF THIS CHAPTER.** Any person who violates sec 240 of this chapter is guilty of a misdemeanor and is punishable by a fine of not more than one year, or by both. Each vessel and equipment used in or on the water by the person is grounds for suspension of the license of the person if the person is a holder of a license of Fish and Game.

**WEIGHT OF THE POUND.** (a) A primary buyer shall determine the average weight of the fish to be purchased shall be determined by the buyer and seller agree in writing upon the average weight of the fish to be purchased.

**VIOLATION OF SEC 130 OF THIS CHAPTER.** Any person who violates sec 130 of this chapter is guilty of a misdemeanor and is punishable by a fine of not more than one year, or by both.

**RELATIONSHIP BETWEEN FISHERMEN AND FISH PROCESSORS.** Any person who violates sec 130 of this chapter is guilty of a misdemeanor and is punishable by a fine of not more than one year, or by both.

and Game, and fish processors on the price to be paid for salmon, and no agreement has been reached up to 120 days before the opening of the salmon fishing season in that area, a representative from the Department of Labor shall intervene as mediator of the dispute upon request of either party.

**SEC 16.43.140. PERMIT REQUIRED.** (a) After January 1, 1974, no person may operate gear in the commercial taking of fishery resources without a valid entry permit or a valid interim-use permit issued by the commission.

(b) 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.

(c) A person may hold more than one interim-use or entry permit issued or transferred under this chapter only for the following purposes:

- (1) fishing more than one type of gear;
- (2) fishing in more than one administrative area;
- (3) harvesting particular species for which separate interim-use or entry permits are issued.

**SEC 16.43.150. TERMS AND CONDITIONS OF ENTRY PERMIT; ANNUAL RENEWAL.** (a) Each entry permit authorizes the permittee to operate a unit of gear within a specified administrative area.

(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.

(c) Each entry permit is issued for a term of one year and is renewable annually.

(d) Failure to renew an entry permit for a period of two years from the date of last renewal results in a forfeiture of the entry permit to the commission, except as waived by the commission for good cause.

(e) An entry permit constitutes a use privilege which may be modified or revoked by the legislature without compensation.

(f) An entry permit survives the death of the holder.

(g) Except as provided in AS 16.10.333-16.10.337, and in AS 44.81.230-44.81.250 an entry permit may not be:

- (1) pledged, mortgaged, leased, or encumbered in any way;
- (2) transferred with any retained right of repossession or foreclosure, or
- (3) attached, distrained, or sold on execution of judgment or under any process of order of any court.

(h) Upon the death of an entry permit holder, the permanent permit shall be transferred by the commission directly to the surviving spouse by right of survivorship unless a contrary intent is manifested. When no spouse survives, the rights of the decedent pass as part of his estate.

**SEC 16.43.170. TRANSFER OF ENTRY PERMITS.** (a) Except as provided in AS 16.10.333-16.10.337, and in AS 44.81.230-44.81.250 entry permits and interim use permits are transferable only through the commission as provided in this section and sec 130 of this chapter and under regulation adopted by the commission.

(b) Except as provided in (c) of this section, the holder of an entry permit may transfer his permit to another person or to the commission upon 60 days notice of intent to transfer under regulations adopted by the commission. No sooner than 60 days nor later than 12 months from the date of notice to the commission, the holder of an entry permit may transfer his permit if the proposed transferee, other than the commis-

**GENERAL PROVISIONS**

(26) an abalone iron is a flat device used for taking abalone and which is more than 1 inch (25mm) in width and less than 24 inches (61 cm) in length and with all prying edges rounded and smooth.

Authority: AS 16.05.251(a)(4)

**5 AAC 39.107. OPERATION OF NET GEAR.** (a) Each fisherman shall operate or assist in operating only one type of net gear at any one time.

(b) The person who holds a valid interim-use or entry permit card for any net gear shall be physically present during the operation of the gear.

(c) Each interim-use or entry permit holder shall personally operate or assist in the operation of the net gear. "Personally operate or assist in the operation" means being physically present at the net gear site and operating net gear or assisting or supervising some portion of the immediate fishing operation.

(d) No person may operate or assist in the operation of fishing net gear unless the interim-use or entry permit card holder for that gear is in compliance with (c) of this section.

Authority: AS 16.05.251(a)(4)

**5 AAC 39.110. CREWMEMBER FISHING LICENSE REQUIREMENTS.** (a) Each commercial fisherman who does not hold a valid interim-use or entry permit card issued by the Commercial Fisheries Entry Commission shall obtain a crewmember fishing license before fishing in any waters of Alaska. A crewmember fishing license is not required for the holder of a valid interim-use or entry permit card.

(b) Not more than one crewmember fishing license may be obtained by a person during any one calendar year.

(c) A crewmember licensee who does not hold a valid interim-use or entry permit card may crew in any fishery if the holder of a valid interim-use or entry permit card for that fishery is present and actively engaged in the operation of a fishing gear.

(d) A valid interim-use or entry permit card holder may crew in any fishery

(e) In this section "crew" means the activities of a commercial fisherman as defined in AS 16.05.940(2) and "present and actively engaged in the operation of" means being present at the gear site and operating gear or assisting or supervising some portion of the immediate fishing operation.

Authority: AS 16.05.251(a)(4),(5),(12)  
AS 16.05.450  
AS 16.05.480

**5 AAC 39.115. DESIGNATION OF SALMON NET REGISTRATION AREA.** A person who holds salmon net gear permits for more than one registration area listed in sec. 120(d) of this chapter shall designate upon a form provided by the Commercial Fisheries Entry Commission the specific area in which he desires to net fish in that year. The area so designated must be an area for which the person holds a valid salmon net permit.

Authority: AS 16.05.251(4),(5)and(12)

KODIAK  
SALMON

AND LOW WATER MARKS) Set gill nets shall be operated in substantially a straight line. No more than 25 fathoms of each net may be used as a single hook. The inshore end of the set gill net shall be attached to the shore above the mean low water mark.

Justification: In most places on Kodiak Island the beaches are shallow at low water and the seine lead has to be longer so that the net does not come in contact with the bottom to catch unwanted species. It would also keep the net off of the rocks and barnacles and save the fisherman from having to repair his net as often.

Proposed by: James P. Yatsik (333)

148

5 AAC 18.331. GILL NET SPECIFICATIONS AND OPERATION. (Regulation page 61). Require that gill net permit holder be present at main camp or general vicinity of gear.

The proposed regulation reads as follows:

5 AAC 18.331. GILL NET SPECIFICATIONS AND OPERATION. 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. Seine webbing may be used on the shore end between high and low water marks. Set gill nets shall be operated in substantially a straight line. No more than 25 fathoms of each net may be used as a single hook. The inshore end of the set gill net shall be attached to the shore above the mean low water mark,

The permit holder must be present at the main camp of the gill net operation or in the general vicinity of the set net gear.

Justification: A housekeeping proposal to clarify the traditional methods of set gillnetting on Kodiak Island. The idea is to bring the regulations into agreement with what is actually taking place in the set gillnet fishery.

Proposed by: Sid Omlid (327)

149

5 AAC 18.331(61) Adds a definition of single hook.

The proposed regulation reads as follows:

5 AAC 18.331 GILL NET SPECIFICATIONS AND OPERATION. 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. Seine webbing may be used on the shore end between high and low water marks. Set gill nets shall be operated in substantially a straight line. No more than 25 fathoms of each net may be used as a single hook. The inshore end of the set gill net shall be attached to the shore above the mean low water mark. A single hook is defined as a change in only one direction from the main body of the net such that the end of the net does not point back toward the body of the net forming a trap or a bag.

Justifications:

Preston  
39.107  
Toll

## GENERAL PROVISIONS

(26) an abalone iron is a flat device used for taking abalone and which is more than 1 inch (25mm) in width and less than 24 inches (61 cm) in length and with all prying edges rounded and smooth

Authority: AS 16.05.251(a)(4)

5 AAC 39.107. OPERATION OF NET GEAR. (a) Each fisherman shall operate or assist in operating only one type of net gear at any one time

(b) The person who holds a valid interim-use or entry permit card for any net gear shall be physically present during the operation of the gear.

(c) Each interim-use or entry permit holder shall personally operate or assist in the operation of the net gear. "Personally operate or assist in the operation" means being physically present at the net gear site and operating net gear or assisting or supervising some portion of the immediate fishing operation.

(d) No person may operate or assist in the operation of fishing net gear unless the interim-use or entry permit card holder for that gear is in compliance with (c) of this section.

*See Amendment*

Authority: AS 16.05.251(a)(4)

5 AAC 39.110. CREWMEMBER FISHING LICENSE REQUIREMENTS. (a) Each commercial fisherman who does not hold a valid interim-use or entry permit card issued by the Commercial Fisheries Entry Commission shall obtain a crewmember fishing license before fishing in any waters of Alaska. A crewmember fishing license is not required for the holder of a valid interim-use or entry permit card.

(b) Not more than one crewmember fishing license may be obtained by a person during any one calendar year.

(c) A crewmember licensee who does not hold a valid interim-use or entry permit card may crew in any fishery if the holder of a valid interim-use or entry permit card for that fishery is present and actively engaged in the operation of a fishing gear.

(d) A valid interim-use or entry permit card holder may crew in any fishery.

(e) In this section "crew" means the activities of a commercial fisherman as defined in AS 16.05.940(2) and "present and actively engaged in the operation of" means being present at the gear site and operating gear or assisting or supervising some portion of the immediate fishing operation.

Authority: AS 16.05.251(a)(4),(5),(12)

AS 16.05.450

AS 16.05.480

5 AAC 39.115. DESIGNATION OF SALMON NET REGISTRATION AREA. A person who holds salmon net gear permits for more than one registration area listed in sec. 120(d) of this chapter shall designate upon a form provided by the Commercial Fisheries Entry Commission the single area in which he desires to net fish in that year. The area so designated must be an area for which the person holds a valid salmon net permit

Authority: AS 16.05.251(4),(5)and(12)

12/5/82

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5 AAC 39.107. (b) (c) OPERATION OF NET GEAR. (Regulation page 125) and 5 AAC 39,108. (a) (b) (c) OPERATION OF FISHWHEELS. (New Section). Specify that stationary salmon gear may be unattended in the Kotzebue-Northern Area, Norton Sound-Port Clarence Area, Yukon Area and Kuskokwim Area.

The proposed regulation reads as follows:

5 AAC 39.107. OPERATION OF NET GEAR.

(b) The person who holds a valid interim-use or entry permit card for any net gear shall be physically present during the operation of the gear except that salmon set gill net gear may be unattended in the Kotzebue-Northern Area, Norton Sound-Port Clarence area, Yukon Area and Kuskokwim Area.

(c) Each interim-use or entry permit holder shall personally operate or assist in the operation of the net gear. "Personally operate or assist in the operation" means being physically present at the net gear site and operating net gear or assisting or supervising some portion of the immediate operation except that salmon set gill net gear may be unattended in the Kotzebue-Northern Area, Norton Sound-Port Clarence Area, Yukon Area and Kuskokwim Area.

5 AAC 39.108. OPERATION OF FISHWHEELS.

(a) The person who holds a valid interim-use or entry permit card for a fishwheel shall be physically present during the operation of the gear except that fishwheels may be unattended in the Kotzebue-Northern Area, Norton Sound-Port Clarence Area, Yukon Area, and Kuskokwim Area.

(b) Each interim-use or entry permit holder shall personally operate or assist in the operation of a fishwheel. "Personally operate or assist in the operation" means being physically present at the fishwheel site and operating fishwheel or assisting or supervising some portion of the immediate fishing operation except that fishwheels may be unattended in the Kotzebue-Northern Area, Norton Sound-Port Clarence Area, Yukon Area, and Kuskokwim Area.

(c) No person may operate or assist in the operation of a fishwheel unless the interim-use or entry permit card holder is in compliance with (b) of this section.

Justification: In the Arctic-Yukon-Kuskokwim region salmon fishermen traditionally are not continuously physically present at their fishing sites when stationary gear is operating. Commercial salmon fishing periods are up to 48 hours in duration and fish camps are often several miles from fishing sites. Requiring fishermen to be continuously present at their fishing sites (A.S. 16.05.253) would cause an unnecessary inconvenience. This proposal does not adversely affect the conservation of the resource, development of the commercial fishery or the subsistence fishery.

**GENERAL PROVISIONS**

(1) have participated during the previous season in the fishery for which he is requesting an extension;

(2) have applied, before the registration deadline, for an interim-use or entry permit and vessel license for the fishery for which he is requesting an extension; and

(3) provide written documentation that will substantiate the reasons that registration was not completed by the deadline.

Authority: AS 16.05.065

AS 16.05.051 (a) (3), (4), (5), (7) and (12)

**5 AAC 39.130. REPORTS REQUIRED OF PROCESSORS, BUYERS AND FISHERMEN.** (a) Each person, company, firm or other organization who is the first purchaser of raw fish, or who catches and processes, or has processed his own fish or byproducts of fish shall:

(1) furnish to the department each calendar year before operating a written statement of intent to operate with a description of the nature, extent and location of the operation on forms available from the department, forms will not be processed and fish tickets will not be issued without certification that surety bonds as required by AS 16.10.290-296 have been posted with the Commissioner of Labor and that a valid Alaska Business License or Fisheries Business License has been issued by the Department of Revenue;

(2) submit, no later than April 1, an operator's accurate and complete summary of activity for each Intent to Operate form filed for the previous year or a signed statement of nonactivity on forms available from the department;

(3) furnish, verbally or in writing, purchasing or production records as requested by the department or its representative.

(b) Each buyer of raw fish and each fisherman selling to buyers not licensed to process fish, and each person or company who catches and processes his own catch or has that catch processed by another person or company shall keep a record of each landing on ADF&G fish tickets. Fish tickets must be submitted to a local representative of the department at least once a week, or as otherwise specified by the department for each particular area and fishery. The operator of any fishing vessel whose port of landing is in the United States but outside Alaska, or who sells, transfers or delivers fish in the Seaward Biological Influence Zones shall submit a completed ADF&G fish ticket, or an equivalent document containing all of the information required on an ADF&G fish ticket, to the department before the fish are transported out of the jurisdiction of the state. The record must include the following:

(1) the name of the individual or company buying the fish, the processor code assigned to each buyer by the department, and the signature of the buyer or his representative;

✓(2) the full name and signature of the permit holder;

(3) the name of the Coast Guard number of the vessel employed in taking the fish;

(4) the date of the landing of the fish;

1982 Fish Regs

Yakalaga district of the Yakutat

AC 12 100 and 09 100)

June 30, the Cinder River and August 1 through December 31, the Alaska Peninsula Area (5 AAC

)

must be kept immediately available upon request to any peace of-

halibut fishing.

ing vessels are as follows:

essel that is to be used to take at vessel with the department,

oth a hand troll and a power troll

ig a form provided by the depart-

non troll fishing vessel must be

operator of any fishing vessel that gear shall register that vessel by EC vessel license application or

ffective December 31, 1982  
05 251(a) (2), (4), (5) and (12)  
15 490  
15 510

for an extension of registration shall

## GENERAL PROVISIONS

(5) the permanent vessel license plate number, or for set gill nets and fishwheels, the fisherman's five digit CFEC permit serial number;

(6) the type of gear by which the fish were taken;

(7) the nearest headland or bay or statistical catch area in which the fish were taken;

(8) information applicable to the following species:

(A) the number and pounds of salmon by species;

(B) the number and pounds of king, dungeness and Tanner crab;

(C) the pounds of other fish or shellfish by species;

(9) the Commercial Fisheries Entry Commission permit number of the operator of the unit of gear with which the fish were taken, imprinted on the fish ticket from the valid permit card, the imprinting requirement of this paragraph may be suspended by a local representative of the department after presentation by the fisherman of documentation from the department or the Commercial Fisheries Entry Commission that the permit card has been lost, transferred or destroyed. If the above suspension is granted, then the buyer or fisherman shall write the permit number on the fish ticket;

(10) other information the department may require.

(c) Each fisherman shall furnish to the buyer factual catch data necessary for completion of reports required by the department.

(d) Each shellfish fisherman shall furnish in writing to the department, directly or through the buyer, data necessary for reports required by the department.

(e) The following information regarding the transporting of unprocessed fish shall be transmitted to an authorized representative of the department either verbally, in writing or by telephone:

(1) the number and species of salmon taken in any regulatory area shall be reported before being transported to any other area out of the state;

(2) the numbers or pounds by species of all other fish shall be reported before being transported out of the state.

(f) Operators of floating fish processing vessels shall report in person, or by radio or telephone to the local representative of the department located within the management area of intended operation before the start of processing operations. The report must include the initial processing location by district or subdistrict, the exact latitude and longitude of the location and the date of intended operation. Before moving the operation and upon arriving at a new location, the operator shall notify the local department representative in person, or by radio or telephone of the new location of operation by district or subdistrict and exact latitude and longitude of the location. The local representative of the department may waive all or part of the above requirements if he determines they are not necessary for the conservation or management of the fishery in that area.

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(g) In the Arctic-Yukon-Kuskokwim organization who or which purchase their by-products shall submit to the commercial salmon and salmon roe purchaser or processor of commercial fish the department at least 24 hours before it was taken.

5 AAC 39.140. INSPECTORS. Inspection, representatives of the department to all canneries, salteries and processors.

5 AAC 39.145. ESCAPE POTS. A side wall of all shellfish traps having a perimeter equal to or exceeding 100 feet, the opening must be laced, sewn or stapled with natural fiber no larger than 120 thread. Pot lid tie-down straps secured with natural fiber larger than 120 thread, as a substitute for metal.

5 AAC 39.150. EXPLOSIVES. Possession, use or sale of an explosive, chemical or other hazardous material is prohibited, except that chemical by-products may be used.

5 AAC 39.155. SEINE DRUMS. No drum shall be used aboard any seine vessel a seine drum.

5 AAC 39.160. MAXIMUM LENGTH. A seine vessel may be longer than 100 feet overall length, except vessels registered in the state before January 1, 1965.

5 AAC 39.165. TRAWL GEAR. Possession, use or sale of gear for any commercial fishing purposes.

(1) Hinchinbrook Entrance. Commercial Tanner crab fishing season in the Hinchinbrook Entrance (147° W long to Johnstone Point, 147° 30' W long to Middle Point, east of a line from Middle Point to 146° 50' W long), north a line from Middle Point to Zaikol Bay and Port Etches.

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ve ceased fishing when all the rings are out of

ed to have d fishing when both ends of

ave ceased fishing when all of the lead line is

ed, a purse seine vessel may not have or use  
depth, without purse rings attached, and with a

Authority: AS 16.05.251(4)

**REGULATIONS AND OPERATION.** (a) The maximum  
ted from any salmon troll vessel is as follows:

lines except that no more than six lines may  
ward Biological Influence Zone north of the  
Spencer.

gurdy one line to which multiple leaders and

one line with no more than one leader with no  
hooks per leader.

rods or an aggregate of two hand troll gurdies  
of.

or use for taking bait, a fishing rod equipped  
of mesh size of no more than 2 1/2 inches and  
0 gill net thread

all vessel must display its permanent vessel  
symbols of black on a white background. Each  
ches in height, with lines at least one inch in  
red on both sides of the cabin or hull so as not  
I be displayed at all times until the end of the

### GENERAL PROVISIONS

(d) Each registered hand troll vessel must display the letters HT in permanent block letters. Each letter must be painted on both sides of the vessel hull or cabin in a color contrasting with the background, at least eight inches in height, at least one half inch in width, plainly visible and unobscured at all times. The letters must be displayed at all times until the end of the calendar year. No hand troll vessel may display its permanent vessel license (ADF&G) number in any location other than on the vessel license plate

(e) No more than six troll gurdies may be mounted on board any salmon power troll vessel. No more than two troll gurdies and four fishing rods may be on board any salmon hand troll vessel.

(f) No salmon power troll vessel may be used to take salmon with had troll gear once that vessel has been licensed and marked as required in (c) of this subsection.

(g) Only single hooks may be on board any salmon troll vessel or used in taking of salmon.

(h) For purposes of this section:

(1) a troll gurdy is a spool type device designed to deploy and retrieve troll lines, weights and lures and does not include a reel attached to a fishing rod.

(2) a hand troll gurdy is a troll gurdy powered by hand or hand crank that is not mounted on or used in conjunction with a fishing rod.

(3) a fishing rod is a tapered often jointed rod equipped with a hand grip and line guides and upon which is mounted a hand powered reel used to deploy and retrieve the trolling line.

(4) a downrigger is a device designed to be used with a fishing rod to deploy a troll line to a selected depth and retrieve the downrigger line and weight.

(5) a downrigger is a troll gurdy.

Authority: AS 16.05.251(a) (4), (5) and (7)

✓ **5 AAC 39.280. IDENTIFICATION OF STATIONARY FISHING GEAR.** (a) The owner or operator of a set gill net or fishwheel in operation shall place in a conspicuous place on or near the set gill net or fishwheel the name of the fisherman operating it, together with the fisherman's five digit CFEC permit serial number. Numbers must be at least six inches in height with lines at least one inch wide and of a color contrasting with the background. The identification name and numbers for fishwheels must be placed on the side of the fishwheel facing midstream of the river.

(b) In addition to the requirements of (a) of this section, the owner or operator of a set gill net in operation shall have at each end of the set gill net a red keg, buoy or cluster of floats or in the case of set gill nets anchored to land shall have a red keg, buoy or cluster of floats at the outer end of the net. The kegs, buoys, or cluster of floats must be plainly and legibly marked with the fisherman's five digit CFEC permit serial number

Authority: AS 16.05.251(a) (5)

# Alaska State Legislature

BETTYE FAHRENKAMP  
CHAIRMAN  
ROBERT H. ZIEGLER, SR.  
VICE-CHAIRMAN  
DICK ELIASON - PAUL FISCHER  
VIC FISCHER - BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
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(907) 465-3835

## Senate

### Committee on Resources

TO: Senate Resources Committee Members  
FROM: Senate Resources Committee Staff  
RE: March 25 Hearing  
DATE: March 24, 1983

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On Friday, March 25 at 3:00 pm in the Beltz Room, the following bills will be heard:

SB 120 AN ACT RELATING TO SOIL AND WATER CONSERVATION.

The sponsor of SB 120 has requested that the Committee consider Sponsor Substitute for SB 120 in lieu of the original bill.

SSSB 120 creates the Soil and Water Conservation Board in place of the Soil Conservation Board, and replaces the current system of one Soil Conservation District (which includes the area of the entire state) divided into subdistricts, with a system of Soil and Water Conservation Districts.

The membership of the Board is increased to allow for appointment of 1 member from each of 5 geographic areas of the state; each board member must be a producer of renewable resources and have a cooperative agreement with a soil and water conservation district, rather than possessing land as is currently required. The Board's advisory duties are increased to allow them to hold public hearings and to review appeals. The Commissioner of DNR is authorized to appoint an executive director and clerical staff to assist the Board.

The following 3 bills have passed out of the Resources Subcommittee on Fisheries. Recommendations of the Subcommittee have been incorporated into draft Committee Substitutes, which will be discussed by Senator Mulcahy, Subcommittee Chairman, at the hearing.

CSSB 73 AN ACT RELATING TO COMMERCIAL FISHING LOANS, which changes the residency requirement for a commercial fishing loan from 5 years to 2 years.

CSSB.136 AN ACT RELATING TO THE OPERATION OF STATIONARY FISHING GEAR, which provides exemptions to the present requirement that a permit holder be physically present during the operation of stationary fishing gear.

CSSB 156 AN ACT RELATING TO THE SALE, LEASE OR GRANT OF STATE HATCHERY FACILITIES, which allows the Commissioner of Fish and Game to sell, lease, or grant a state hatchery facility to a qualified regional aquaculture association.

The following two bills will also be heard:

SR 2 RELATING TO THE CROSS ISLAND WELL

SR 2 resolves that the North Slope Borough not impose restrictions in addition to those already required by the state on the operator of the Cross Island Well in the Beaufort Sea.

SB 151 AN ACT RELATING TO REGIONAL RESOURCE DEVELOPMENT AUTHORITIES.

The Committee will be considering further a Committee Substitute for SB 151. Additional amendments to the CS are still being prepared, and will be submitted to you under separate cover prior to Friday's hearing.

It is hoped that final Committee action could be taken on several of these bills.

# STATE OF ALASKA

## DEPARTMENT OF LAW

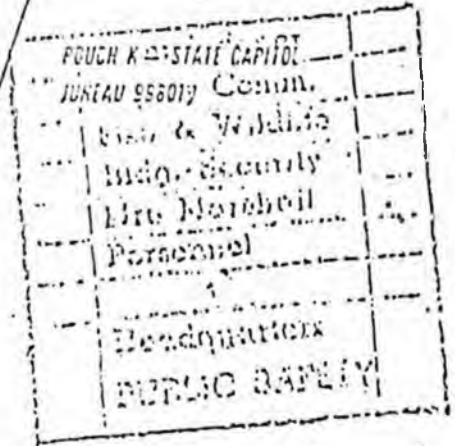
OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, Governor

August 6, 1975

Honorable Richard L. Burton  
Commissioner  
Department of Public Safety  
State of Alaska  
450 Whittier Street  
Juneau, Alaska 99811

Re: Chapter 130, SLA 1975  
AS 16.05.540  
AS 16.43.140  
5 AAC 21.330  
20 AAC 05.100



Dear Commissioner Burton:

This is in response to your request of July 15, 1975, for an opinion regarding the requirements of Chapter 130, SLA 1975 and other applicable statutes and regulations as they apply to the operation of set nets.

Chapter 130 amends AS 16.05.540, imposing certain conditions on the issuance of gear licenses, and the related prohibitions statute, AS 16.05.670(e). The language which is in need of interpretation is as follows:

"Each applicant shall personally operate or assist in the operation of the licensed fishing gear. 'Operating or assisting in the operation of licensed fishing gear' means being present at the gear site and operating, assisting, or supervising the immediate fishing operation."

We concede that, given the frequency of family-operated set net sites, a number of hypothetical situations come to mind which do not appear to be clearly prohibited or condoned by Section 540, as amended. Consequently, there will continue to be many instances where it will be up to the judgment of the protection officer in question as to whether a citation should be issued. Nevertheless, while this statute does not draw distinct, identifiable lines as to conduct proscribed, we believe that a number of general principles may be derived from its language. These principles should provide reasonably adequate guidelines to protection officers investigating set net operations.

### Physical Presence

Section 540 first requires that the gear license holder be "present at the gear site". Standing alone, this provision is rather difficult to interpret, since it has no relation to what the licensee is doing at the time. It relates merely to the geographical location of the licensee with respect to the geographical location of the set net. Consequently, this language must be read in conjunction with the other dictates of

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Section 540.

Operation, Assistance, or Supervision

Section 540 also specifies that the licensee be engaged in one of three functions while being physically present at the gear site: operation of the gear, assistance in the operation of the gear, or supervision of the operation of the gear. "Operation" and "assistance" would, if anything, be stricter standards of behavior than "supervision", so we will concentrate on the meaning of supervision.

On the one side, the Legislature has recognized the practicalities of set net operations. As you correctly pointed out, they did not elect to follow the extremely stringent requirements laid out in State v. Eppes. Consequently, it is apparent that they expected that while other members of the family might be engaged in the actual deployment of the net, the licensee might be involved in preparing meals, repairing a vessel, or other support functions which, although not directly connected to the physical maneuvering of the gear itself, are part of the maintenance of the family lifestyle on the set net site. As a result, we do not interpret "supervision" to mean that the licensee must be in physical contact with the fishing gear at all stages of operation. "Supervision", as that term is generally understood, does not necessarily require that the supervisor have constant, direct involvement and command of the operation of the net itself.

On the other hand, "supervision" clearly contemplates that the supervisor shall, at all times, exercise control over the activity being supervised. Moreover, Section 540 requires that "supervision" be exercised over the "immediate fishing operation" [emphasis added], and there is no provision or expectation that the licensee be able to delegate his supervisory responsibilities to a subordinate. Thus, Section 540 dictates that supervision be exerted over more than merely the general family activities at the set net site: it must be over the immediate fishing operation, which is synonymous with the physical operation of the set net gear. Therefore, while the licensee need not be literally standing over his assistants while they operate the net, the combination of (1) required physical presence at the gear site and (2) of required supervision of the immediate fishing operation means that the licensee must be immediately available to make any decision or handle any emergency which may arise, and must be capable of arriving in very short order to take charge of the situation.

In summary, while the licensee might legitimately be on the beach mending a net or collecting firewood, he cannot be out of the area where taking immediate command of the actual fishing activity is not possible. Therefore, the following guidelines are applicable:

1. The licensee must, at all time., be within sight or earshot of the assistants actually operating the gear.
2. The licensee's assistants must be able to attract the licensee's attention immediately.

Honorable Richard L. Burton

August 6, 1975

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3. The licensee must be able to arrive at the actual location of the net in time to make any of the many decisions which are involved in successfully operating a set net.

4. If the licensee cannot comply with all three of the above at any time, operation of the set net must be terminated during that time.

In the context of the foregoing requirements, the question arises as to what, if any, demands are placed on the licensee by the subject statute when the net is merely in the water entangling fish and is not being handled in any manner by the licensee or his assistants. Our response is that we do not construe Section 540 as requiring the physical presence of the licensee during these periods of time. "Operate", as employed in this statute, is synonymous with "tending". That "operate" was not intended by the Legislature to contemplate all facets of "deployment" (any time the gear is in the water) is clear by analogy to AS 16.05.630. Read together, Sections 540 and 630 require that a gear licensee "operate or assist in the operation of" shellfish pots, which by their nature are stationary, unattended gear. Certainly the Legislature did not desire physical presence during all phases of shellfish pot deployment, since to do so would render shellfish fishing economically and logistically impractical.

#### Limited Entry Definitions

Your memorandum also cited 20 AAC 05.100(a) and (b), which in effect requires the entry permit holder for a set net to be "present and actively engaged in the operation of the gear". Note that this language parallels that in AS 16.43.140. While at first glance this may appear to be a stricter standard than that set forth in AS 16.05.540, the inherent ambiguities in the phrase "actively engaged" do not support such an interpretation. There is no indication that the Legislature meant "actively engaged" to demand the manner of participation described in State v. Eppes. As a result, we would make applicable to this section the same construction and guidelines which we set out above for Chapter 130, SLA 1975, amending AS 16.05.540.

#### Board of Fish and Game Regulation

5 AAC 21.330, a regulation adopted by the Board of Fish and Game, contains somewhat different wording than that found in AS 16.05.540, as amended. This regulation was approved by the Board in 1974 to provide some resolution of the set net operation problem in the event the bill which ultimately became Chapter 130 was not passed by the Legislature. Aside from its grammatical improvements over the wording of Chapter 130, however, it possesses no differences in substance.

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

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

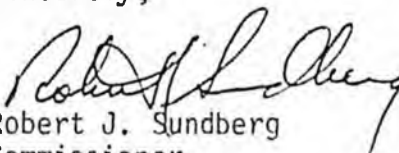
Dear Senator Fahrenkamp:

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

# MEMORANDUM

State of Alaska

TO: John Williams  
Chairman

DATE: January 25, 1983

FILE NO:

TELEPHONE NO:

FROM: Beth Stewart <sup>BTS</sup>  
Special Assistant

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

The following excerpts from the ADF&G Fishing 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."

# STATE OF ALASKA

## COMMERCIAL FISHERIES ENTRY COMMISSION

BILL SHEFFIELD, GOVERNOR

POUCH KB  
JUNEAU, ALASKA 99811

February 7, 1983

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

RE: Set net gear operation

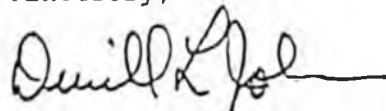
Dear Senator Mulcahy:

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)