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STATE OF ALASKA  
THE LEGISLATURE

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JUNEAU, ALASKA 99811  
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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	5/6/85	1:30 pm
" "	5/8/85	1:30 pm

COMMITTEE REPORT  
HOUSE

(7)

FURTHER: FINANCE

1/24/85

Date: \_\_\_\_\_

The Committee on JUDICIARY has had HB 331

"An Act relating to the theft of commercial fishing gear."

under consideration and recommends:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HB 331 (JUD)  same title
- new title

and recommends \_\_\_\_\_

- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

\_\_\_\_\_  
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MEMBERS HAVING  
OTHER RECOMMENDATIONS:

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CHAIRMAN

# SUPERIOR FISHERIES OF ALASKA, INC.

705 MULDOON #53 ANCHORAGE ALASKA 99504

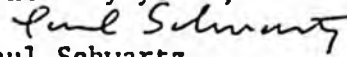
April 4 1985

The Honorable Dave Thompson  
Ak State House of Representatives  
Pouch V  
Juneau, Ak 998]]

Dear Mr. Thompson,

Thank you for introducing HB 33], an act relating to the theft of commercial fishing gear. Could this be amended to include commercial mariculture gear? We grow scallops in cages, and theft of gear is always a problem. Please let me know how we can support you on this.

Sincerely yours,



Paul Schwartz  
President, SFA Inc.



BUSINESS • FISHERMEN • PROCESSORS • INDIVIDUALS

## ALASKA COASTAL COMMUNITIES ALLIANCE

P.O. Box 382 Kodiak, Alaska 99615 Phone (907) 486-5096

April 17, 1985

Senator Fred Zharoff  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Zharoff:

I am writing on behalf of the Alaska Coastal Communities Alliance. At our most recent board of directors meeting, David Shrader presented us with a work draft of your proposed Senate Bill relating to the theft of commercial fishing gear. An extensive discussion of the bill ensued, the results of which I would like to convey to you.

First, the general intent of the bill was received with overwhelming approval. As you are aware, with the difficult economic times in the fisheries the last several years there has been an increasing gear theft problem in our area. Because thefts most often occur at sea, or with stored gear on land when the gear or equipment is left unattended, apprehension and successful prosecution of offenders is rare and difficult. Therefore, when an individual is caught and successfully prosecuted it is imperative that the offender be appropriately punished if our laws are to have any deterrent value.

We did feel, however, that a \$500 minimum should also be established for theft of commercial fishing gear. We suggest this because we support the mandatory jail term for those convicted of gear theft, yet we do not feel, for example, that a young first offender who might be caught shoplifting, say a box of fish hooks, should be subject to a mandatory one year jail term.

There was also a consensus on the part of our members that the law should define active and lost fishing gear. It is not unusual for a fisherman to find a lost crab pot whose owner is impossible to identify. In such a circumstance it is an accepted practice for the finder to retrieve and keep the pot. A problem could arise if an original owner later identified the pot and claimed that it was in fact not lost. To further illustrate, this sort of problem could arise with beachcombed buoys and gear. If the law precisely defined the appropriate terms this sort of situation could be avoided to the benefit of all. We realize that our suggestion will complicate your worthy effort on our behalf, but we feel that time spent now writing a good and workable law will be well worth the effort.

The Alaska Coastal Communities Alliance would like to thank you for your past and present attentiveness to the needs and welfare of our fishing community. We would like to reaffirm our support for your intent in writing this bill. We hope you are able to bring this effort to a successful conclusion.

Thank you.

Sincerely,

Kevin B. O'Leary  
Chairman, A.C.C.A.

cc: Representative Dave Thompson

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 331  
 Title: "An Act relating to theft of commercial fishing gear."  
 Sponsor: Thompson  
 Requestor: Special Comm. on Fisheries  
 Date of Request: 4/15/85

FISCAL DETAIL

Agency Affected: Public Safety  
 Program Category Affected: \_\_\_\_\_  
NRMEC  
 BRU, Program or Subprogram(s) Affected: Fish & Wildlife Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>GENERAL FUND</b>						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Marcia Lynn McKenzie Phone: 465-4350  
 Division: Administrative Services Date: 4/15/85  
 Approved by Commissioner: Robert J. Sundberg Date: 4/15/85  
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
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 Office of Management and Budget  
 Impacted Agency(ies)

stantial, was clearly adequate and measured up to the standards which the court of appeals has laid down in such cases. *Yoho v. United States*, 14 Alaska 174, 202 P.2d 241 (9th Cir. 1953).

Prosecution could waive felony and prosecute for misdemeanor. — If on trial a misdemeanor (e.g., larceny) turned

out to be a felony (e.g., robbery), then the prosecution could in such cases waive the felony, and prosecute only for the constituent misdemeanor, supposing the misdemeanor be proved. *Perkins v. United States*, 16 Alaska 471, 237 F.2d 857 (9th Cir. 1956).

**Sec. 11.46.120. Theft in the first degree.** (a) A person commits the crime of theft in the first degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is \$25,000 or more.

(b) Theft in the first degree is a class B felony. (§ 4 ch 166 SLA 1978)

## NOTES TO DECISIONS

**Sentence upheld.** — Trial court did not err in sentencing defendant to 10 years' imprisonment with five years suspended and ordering her to pay \$300,000 restitution upon her conviction of embezzlement by an employee for money taken prior to January 1, 1980, and of theft in the first degree for money taken after January 1, 1980, the effective date for the revised criminal code. *Karr v. State*, Ct. App. Op. No. 230 (File No. 7011), 660 P.2d 450 (1983).

While no violence was involved, trial court properly found that appellant's

embezzlement of \$140,000 from her employer over a one-year period was among the most serious conduct prescribed by the statute and served to distinguish it from prior cases in which substantial sentences for embezzlement were disapproved, and eight-year sentence with four years suspended was not excessive. *Brezenoff v. State*, Ct. App. Op. No. 226 (File No. 7117), 658 P.2d 1359 (1983).

Cited in *Po'nam v. State*, Sup. Ct. Op. No. 2251 (File No. 3475), 629 P.2d 35 (1980).

**Sec. 11.46.130. Theft in the second degree.** (a) A person commits the crime of theft in the second degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$500 or more but less than \$25,000;

(2) the property is a firearm or explosive; or

(3) the property is taken from the person of another.

(b) Theft in the second degree is a class C felony. (§ 4 ch 166 SLA 1978)

## NOTES TO DECISIONS

**Failure to preserve evidence.** — Convictions for second-degree theft were reduced to convictions for third-degree theft where the state failed to preserve the scrap copper which was the object of the theft. *Hatfield v. State*, Ct. App. Op. No. 257 (File No. 6371, 6732), 663 P.2d 987 (1983).

Applied in *Null v. State*, Ct. App. Op.

No. 77 (File No. 5565), 642 P.2d 1361 (1982); *Williams v. State*, Ct. App. Op. No. 106 (File No. 5993), 648 P.2d 603 (1982).

Quoted in *Frankson v. State*, Ct. App. Op. No. 92 (File No. 6029), 645 P.2d 225 (1982).

Stated in *Leuch v. State*, Sup. Ct. Op. No. 2419 (File No. 5255), 633 P.2d 1006 (1981).

Cited in *Williams v. State*, Sup. Ct. Op. (File No. 6870), 655 P.2d 1319 (1982); No. 2147 (File No. 3901), 614 P.2d 1384 (1980); *Namen v. State*, Ct. App. Op. No. 264 (File No. 5662), 665 P.2d 557 (1983).

**Sec. 11.46.140. Theft in the third degree.** (a) A person commits the crime of theft in the third degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services is \$50 or more but less than \$500; or

(2) the property is a credit card.

(b) Theft in the third degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

## NOTES TO DECISIONS

**Failure to preserve evidence.** — Convictions for second-degree theft were reduced to convictions for third-degree theft where the state failed to preserve the scrap copper which was the object of the theft. *Hatfield v. State*, Ct. App. Op. No. 257 (File Nos. 6371, 6732), 663 P.2d 987 (1983).

**Remand for vacation of sentence.** — Where defendant appealed from convictions and sentences simultaneously entered for the offenses of first-degree robbery and theft by taking in the third degree on the ground that all of the elements involved in his conviction of theft by taking in the third degree were necessarily included in his conviction for the of-

fense of first-degree robbery and thus, the imposition of separate sentences on the theft and robbery charges was precluded by double jeopardy, and on appeal the state confessed error as to this issue and requested that the judgment and commitment entered as to the lesser offense of theft be vacated upon remand to the superior court, the court remanded for that purpose. *Dunn v. State*, Ct. App. Op. No. 158 (File Nos. 5567, 5697), 653 P.2d 1071 (1982).

Cited in *Law v. State*, Sup. Ct. Op. No. 2301 (File No. 4552), 624 P.2d 284 (1981); *Wasson v. State*, Ct. App. Op. No. 141 (File No. 6072), 652 P.2d 117 (1982).

**Sec. 11.46.150. Theft in the fourth degree.** (a) A person commits the crime of theft in the fourth degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is less than \$50.

(b) Theft in the fourth degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

**Sec. 11.46.160. Theft of lost or mislaid property.** (a) A person commits theft of lost or mislaid property if the person obtains property of another knowing that the property was lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient and the person fails to take reasonable measures to restore the property to the owner with intent to deprive the owner of the property.

(b) As used in this section "reasonable measures" includes notifying the identified owner or a peace officer. (§ 4 ch 166 SLA 1978)

ciently comports with the requirements of due process. *Noden v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2808 (File No. 6495), P.2d (1984).

**Opportunity to submit additional evidence.** — When the commission reopens the evidence period to extend to applicants a new opportunity to submit additional evidence, it is required to conform to the mandate of this section and its

hearing requirement. *Forquer v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2784 (File Nos. 5849, 5930, 5931), P.2d (1984).

Quoted in *White v. Alaska Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2793 (File No. 6298), P.2d (1984).

Stated in *Ostman v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2792 (File No. 6199), P.2d (1984).

**Sec. 16.43.270. Initial issuance of entry permits.**

**NOTES TO DECISIONS**

**"Person" referred to in subsection (a).** — The person referred to in the last sentence of subsection (a) must be a qualified applicant referred to in the remainder of the section. *Wickersham v. State, Com. Fisheries Entry Comm'n*, Sup.

Ct. Op. No. 2807 (File No. 5780), P.2d (1984).

Quoted in *Noden v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2808 (File No. 6495), P.2d (1984).

**Article 7. General Provisions.**

**Section**

**990. Definitions**

**Sec. 16.43.990. Definitions.** In this chapter

(1) "commission" means the Alaska Commercial Fisheries Entry Commission;

(2) "economically healthy fishery" means a fishery that yields a sufficient rate of economic return to the fishermen participating in it to provide for, among other things, the following:

(A) maintenance of vessels and gear in satisfactory and safe operating condition; and

(B) ability and opportunity to improve vessels, gear and fishing techniques, including, when permissible, experimentation with new vessels, new gear, and new techniques;

(3) "fishery" means the commercial taking of a specific fishery resource in a specific administrative area with a specific type of gear; however, the commission may designate a fishery to include more than one specific administrative area, gear type, or fishery resource;

(4) "gear" means the specific apparatus used in the commercial harvest of a species, including but not limited to purse seines, drift gill nets, set gill nets, and troll gear;

(5) "person" means a natural person and does not include a corporation, company, partnership, firm, association, organization, business trust, or society;

(6) "present ability to actively participate" means the person applying for a permit is physically able to harvest fish in the fishery

and has reasonable access to commercial fishing gear of the type utilized in that fishery;

(7) "priority classification" means the allocation of potential permit applicants into reasonable groupings of similarly situated applicants and the priority ranking of those groupings according to the extent to which they satisfy the standards of preference;

(8) "type of gear" means a customary and identifiable classification of gear and shall include:

(A) those classifications for which separate regulations were adopted by the Board of Fisheries and for which separate gear licenses were required by former AS 16.05.550 — 16.05.630; and

(B) distinct subclassifications of gear such as "power" troll gear and "hand" troll gear;

(9) "unit of gear" means the maximum amount of a specific type of gear which can be fished under a single gear license subject to regulations established by the Board of Fisheries defining the legal requirements for that type of gear. (§ 1 ch 79 SLA 1973; am §§ 32, 33 ch 206 SLA 1975; am § 11 ch 47 SLA 1981; am § 70 ch 6 SLA 1984)

**Effect of amendments.** — The 1984 amendment, effective February 14, 1984, made a series of technical changes in subparagraph (A) of paragraph (8).

**NOTES TO DECISIONS**

Cited in *Ostman v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2792 (File No. 6199), P.2d (1984); *Noden v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2808 (File No. 6495), P.2d (1984); *Wickersham v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2807 (File

## ARTICLE IX.

## DOCUMENTARY EVIDENCE

**Rule 901. Requirement of Authentication or Identification.**

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims, except as provided in paragraphs (a) and (b) below:

(a) Whenever the prosecution in a criminal trial offers (1) real evidence which is of such a nature as not to be readily identifiable, or as to be susceptible to adulteration, contamination, modification, tampering, or other changes in form attributable to accident, carelessness, error or fraud, or (2) testimony describing real evidence of the type set forth in (1) if the information on which the description is based was acquired while the evidence was in the custody or control of the prosecution, the prosecution must first demonstrate as a matter of reasonable certainty that the evidence is at the time of trial or was at the time it was observed properly identified and free of the possible taints identified by this paragraph.

(b) In any case in which real evidence of the kind described in paragraph (a) of this rule is offered, the court may require additional proof before deciding whether to admit or exclude evidence under Rule 403. (Added by Supreme Court Order 364 effective August 1, 1979)

**EDITOR'S NOTE:** Section 44, Chapter 143, Session Laws of Alaska 1982, provides that "AS 12.80.050, added in sec. 40 of this Act [Chapter 143, Session Laws of Alaska 1982], has the effect of amending Rule 901, Alaska Rules of Evidence, by specifying requirements for the authentication of photographic evidence of property unlawfully taken or damaged."

Amendment of indictment or information with respect to name or capacity of person alleged to have been victim of crime as ground for continuance, 85 ALR2d 1204.

Power of court to make or permit amend-

ment of indictment with respect to allegations as to nature of activity, happening, or circumstances, 17 ALR3d 1285.

Use of abbreviation in indictment or information, 92 ALR3d 494.

**Sec. 12.80.030. Taxation of costs.** No costs may be taxed to the defendant in a criminal action or proceeding begun or prosecuted in any of the courts of the state unless otherwise ordered by supreme court rule. (§ 1 ch 50 SLA 1963)

**Sec. 12.80.040. Violations and infractions.** Except as provided in AS 11.81.900(b) and AS 28.40.050(d), all laws of the state relating to misdemeanors apply to violations and infractions, including the powers of peace officers, the jurisdiction of courts and the periods for commencing actions and for bringing a case to trial. (§ 42 ch 102 SLA 1980)

**Legislative history reports.** — For report on ch. 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supple-

ment, No. 44 (May 29, 1980) 1980 House Journal Supplement, No. 44 (May 29, 1980).

**Sec. 12.80.050. Photographic evidence of property wrongfully taken or damaged.** (a) In a criminal proceeding or a children's court proceeding involving the wrongful taking or damaging of property, photographs of the property are competent evidence of the property and are admissible in the proceeding to the same extent as if the property had been introduced as evidence.

(b) Photographs of property that are to be introduced as evidence under this section shall be accompanied by a written description of the property, the name of the owner of the property, the location where the alleged crime occurred, the name of the investigating peace officer, the date the photograph was taken, and the name and signature of the photographer. The written description shall be signed by the investigating peace officer under penalty of perjury under AS 09.63.020. (§ 40 ch 143 SLA 1982)

**Revisor's notes.** — To the extent that the provisions of this section conflict with Rule 901 of the Alaska Rules of Evidence,

the rule controls, as sec. 44, ch. 143, SLA 1982 did not receive the required 2/3 vote in the legislature.

**NOTES TO DECISIONS**

Applied in *Hatfield v. State*, Ct. App. Op. No. 257 (File Nos. 6371, 6732), 663 P.2d 987 (1983).