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HOUSE  
COMMITTEE REPORT

(7)

Date referred: 4/16/86

FURTHER REFERRALS: FINANCE

DATE: Apr 21, 1986

The LABOR & COMMERCE Committee has considered SB 469

"An Act exempting commercial fishermen from workers' compensation coverage."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with \_\_\_\_\_  same title
- replace with \_\_\_\_\_  new title

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

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal note
  - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

\_\_\_\_\_

*Mike Favara*

*Steve Korman*

*Mike...*

*...*

*...*

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*Mike Favara*  
Chairman

Pouch V  
Juneau, Alaska 99811

Alaska State Legislature  
House of Representatives

Phone:  
(907) 465-3892



Labor and Commerce Committee

LETTER OF INTENT - SB 469  
4/21/1986

It is the intent of the Legislature that SB 469, An Act exempting commercial fishermen from workers' compensation coverage, be used to clarify potential issues, not to imply that fishermen may have been covered by workers' compensation prior to the enactment of the legislation.

Introduced: 4/1/86  
Referrd : Labor and Commerce

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE SENATE

2

SENATE BILL NO. 469

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act exempting commercial fishermen from workers'

7

compensation coverage."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 23.30.230 is amended by adding a new subsection to

10 read:

11 (b) A commercial fisherman, as defined in AS 16.05.940, is not

12 covered by this chapter.

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

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

**REQUEST**

Bill/Resolution No. : SB 469  
 Title : "An Act exempting commercial  
 Fishermen from Workers' Compensation"  
 Sponsor : Senate Labor & Commerce  
 Requestor : Senate Labor & Commerce  
 Date of Request : 4/2/86

**FISCAL DETAIL**

Agency Affected : Labor  
 BRU : Workers' Compensation  
 Components : Workers' Compensation

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		-0-	-0-	-0-	-0-	-0-

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by: Jacqueline McClintock Phone: 465-2790  
 Division: Workers' Compensation Date: 4/3/86  
 Approved by Commissioner: Jim Robison Date: 4/3/86  
 Agency: Labor

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

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Prepared by : Jacqueline McClintock Phone : 465-2790  
 Division : Workers' Compensation Date : 4/3/86

Approved by Commissioner : Jim Robison Date : 4/3/86  
 Agency : Labor

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor

AS16.05.940

CHAPTER = 16.05  
 SECTION = 16.05.940  
 TITLE = 16  
 HEADINGS TITLE 16.  
 Fish and Game.  
 CHAPTER 05.  
 Fish and Game Code.  
 ARTICLE 7.  
 General Provisions.  
 CITATION Sec. 16.05.940.

CATCH LINE

DEFINITIONS.

TEXT In AS 16.05 - AS 16.40

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

(2) "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;

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

(4) "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;

(5) "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;

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

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

(8) "domestic mammals" include musk oxen, bison, and reindeer, if they are lawfully owned;

(9) "fish" means any species of aquatic finfish, invertebrate, or amphibian, in any stage of its life cycle, found in or introduced into the state, and includes any part of such aquatic finfish, invertebrate, or amphibian;

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

(11) "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;

(12) "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;

(13) "fur dealing" means engaging in the business of buying, selling, or trading in animal skins, but does not include the sale of animal skins by a trapper or hunter who has legally taken the animal, or the purchase of animal skins by a person, other than a fur dealer, for the person's own use;

(14) "game" means any species of bird, reptile, 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 AS 16.05 AS 16.40;

(15) "hunting" means the taking of game under AS 16.05 - AS 16.40 and the regulations adopted under those chapters;

(16) "nonresident" means a person who is not a resident of the state;

(17) "nonresident alien" means a person who is not a citizen of the United States and whose permanent place of abode is not in the United States;

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

(19) "resident" means a person who for 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained a 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 paragraph, 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 paragraph, 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 paragraph;

(20) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure under AS 16.05 - AS 16.40 by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

(21) "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;

(22) "subsistence fishing" means the taking of, 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;

(23) "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;

(24) "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;

(25) "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;

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

(27) "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,

but does not include aircraft.

HISTORY (Sec. 2 art I ch 95 SLA 1959; am secs. 1 - 4 ch 131 SLA 1960; am sec. 1 ch 21 SLA 1961; am secs. 1, 2 ch 102 SLA 1961; sec. 9 art VII ch 94 SLA 1959; am sec. 23 ch 131 SLA 1960; am sec. 1 ch 160 SLA 1962; am secs. 13, 14 ch 31 SLA 1963; am sec. 2 ch 32 SLA 1968; am sec. 3 ch 73 SLA 1970; am sec. 1 ch 91 SLA 1970; am sec. 4 ch 10 SLA 1970; am sec. 1 ch 90 SLA 1972; am sec. 5 ch 82 SLA 1974; am secs. 26, 82 ch 127 SLA 1974; am secs. 18 - 20 ch 206 SLA 1975; am sec. 12 ch 105 SLA 1977; am secs. 14, 15 ch 151 SLA 1978; am sec. 1 ch 78 SLA 1979; am sec. 1 ch 24 SLA 1980; sec. 4 ch 74 SLA 1982; am sec. 24 ch 132 SLA 1984)

R0601 \* END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS23.30.230 DOCUMENT

CHAPTER = 23.30

SECTION = 23.30.230

TITLE = 23

HEADINGS TITLE 23.

Labor and Workers' Compensation.

CHAPTER 30.

Alaska Workers' Compensation Act.

ARTICLE 6.

General Provisions.

CITATION Sec. 23.30.230.

CATCH LINE

PERSONS NOT COVERED.

TEXT As defined by regulations adopted by the board, part-time baby sitters, cleaning persons, harvest help and similar part-time or transient help are not covered by this chapter.


HISTORY (Sec. 33(3) ch 193 SLA 1959)

R0601 \* END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

Bill No. SB No. 469

Date April 3, 1986

Title "An Act exempting commercial fishermen from workers' compensation coverage."

Contact:  Jacquie McClintock  
465-2790

The Department has no objection to the provisions of SB 469 exempting commercial fishermen from workers' compensation coverage.

This legislation does not change any current practice in Alaska's Workers' Compensation System, but does serve to clarify "twilight zone" issues of potentially overlapping coverage that have resulted from various Supreme Court decisions.

APPROVED:



Jim Robison  
Commissioner



Official Business

# Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V  
State Capitol  
Juneau, Alaska 99811

SB 469: Summary

This measure exempts commercial fisherman from workers' compensation coverage and seeks to correct a potentially difficult situation which developed out of a 1962 Alaska Supreme Court Case. (See back up report)

Currently, commercial fisherman have access to injury compensation under Federal Maritime Law, and workers comp coverage would provide duplicate remedies. Without this exemption, a vessel owner would be required to carry both P&I coverage for federal maritime remedies, as well as a workers' compensation policy. As a further consideration, it was not the original intention of the workers' compensation act that commercial fisherman be provided such coverage, and this measure clarifies that exemption in statute.

A REPORT ON THE COST AND AVAILABILITY  
OF MARINE INSURANCE IN ALASKA

BY

A. W. HALL

SENIOR ADVISOR, SENATE ADVISORY COUNCIL  
30 January 1986

STATE OF ALASKA  
LEGISLATIVE COUNCIL  
OFFICE OF THE CLERK  
JANUARY 30, 1986

BACK UP INFORMATION

fledgling self insurance program with limited capital reserves should not be subject to such risk. Fortunately, such insurance is obtainable from private insurance companies although at a high premium. If the present efforts to improve the system of providing compensation for injured fishermen are successful, then premium costs should be reduced.

#### C. THE ALASKA WORKMAN'S COMPENSATION LAW

It is recommended that an amendment be passed to the Alaska Workman's Compensation law that exempts commercial fishermen from the provisions of the act. This is desirable for the following reasons.

1. It was not the original intent of the act that commercial fishermen be covered by it.
2. Fishermen have access to a system of injury compensation under maritime law.
3. A duplication of programs is unnecessarily confusing and is unaffordably expensive.
4. Although described as inadequate, the existing system of compensating injured fishermen is presently under study for the purpose of possible congressional overhaul. A solution defined by federal law would be much more definitive and efficient than a system characterized by overlapping jurisdictions and duplications of effort and cost.

#### D. COMMERCIAL FISHERIES MANAGEMENT

It is recommended that a legislative resolution be passed requesting that safety be a factor to be considered in the development of all fishery management plans and regulations.

#### E. EDUCATION

It is recommended that the University of Alaska be directed to investigate the possibility of developing instructional programs on fishing vessel risk management or safety at sea that could be taught through the marine advisory program or community college system.

It is quite possible that a program such as this could be an important part of any organized effort to improve the safety record of the fishing industry. Like driver education programs it could be used as a means to improve individual abilities using reduced insurance premiums as an incentive.

#### F. MANDATORY SAFETY REQUIREMENTS

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\*\*ADMITTED IN WASHINGTON & ALASKA  
OTHERS NOT ADMITTED IN WASHINGTON


February 10, 1986

Craig S. Wiese  
University of Alaska  
Marine Advisory Program  
P.O. Box 103160  
Anchorage, Alaska 99510

Dear Craig:

Enclosed you will find a brief summary of the presentation I made at the seminar. I hope this is sufficient for your purposes.

Very truly yours,

  
Michael A. Barcott

MAB:kl  
10831

Enclosure

The insurance crisis in the marine industry in Alaska is, in part, merely a reflection of the fact that litigation costs and awards are getting higher. This fact is in turn, in part, merely a reflection of the fact that the fishing industry in Alaska has numerous dangers inherent in the industry. In one area, however, insurance premiums are higher than need be because of an unnecessary duplication of coverage and remedies to fishermen. The nature of that duplication and the ease with which it can be eliminated are easily explained.

In 1962 the Alaska Supreme Court considered the case of a fisherman who was injured on his vessel while that vessel was tied to a dock. It was undisputed that this fisherman would have available to him the full panoply of federal maritime remedies which are generally seen as extremely generous and beneficent to the fishermen. The question presented to the Alaska Supreme Court was whether the fisherman was also entitled to benefits under the terms of the Alaska Workers' Compensation Act. Looking to two factors, the court concluded that this fisherman fell within the "twilight zone" of coverage between the federal maritime remedies and the Alaska Workers' Compensation Act, and was entitled to the benefits of either or both. See Cordova Seafoods v. Estes, 370 P.2d 180 (1962). The factors looked to by the Alaska Supreme Court in determining that there was coverage under the Alaska Workers' Compensation Act were (1) the fact that the employee had

some shore-side duties (digging bait); and (2) that the nature of his fishing business was inherently of a local concern.<sup>1/</sup>

Virtually all fishermen have some shoreside duties including mending gear, storing pots, buying food for the galley, or other such activities. Under the Estes case, those fishermen are entitled to benefits under the Alaska Workers' Compensation Act if injured while the vessel is tied up to the dock. If the fisherman does not have Alaska Workers' Compensation coverage in addition to his standard P&I coverage, there is a presumption under the Alaska Workers' Compensation Act that the accident was caused by the negligence of the vessel owner and that there was no contributory negligence on the part of the injured employee. See AS 23.30.080. These claims can be asserted in civil litigation. There may be coverage under the standard P & I policy for such litigation. However, the vessel owner comes into such a lawsuit with one hand tied behind his back because of the presumptions which exist if there is no insurance. In addition, if there is no insurance and the employee should chose to pursue his workers' compensation remedy, the vessel owner will have to pay any such award out of his pocket. Depending upon the severity of the

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<sup>1/</sup> Subsequently, in 1981, the Alaska Supreme Court concluded that a fisherman who was injured while his vessel was underway was not entitled to the benefits of the Alaska Workers' Compensation Act. See Anderson v. Alaska Packers Assoc., 635 P.2d 1182 (Alaska 1981).

injury, such awards can easily reach six figures. With this twofold penalty for the failure to insure under the Alaska Workers' Compensation Act the prudent owner must carry both a standard P&I policy for federal maritime remedies and a workers' compensation policy. This overlap in coverages need not exist and creates an unnecessary expense to the vessel owner.

A fisherman working on a fishing vessel has available to him extremely generous remedies under the federal maritime law. The only time that such a fisherman is additionally entitled to the benefits of the Alaska Workers' Compensation Act is in the fortuitous event that his injury occurs while the vessel is tied up. Fishermen who are injured at sea do not have available to them the remedies of the Alaska Workers' Compensation Act. The normal shore-based employee does not have available to him the benefits of the federal maritime law. It is only in this peculiar case of a fisherman who is injured while his vessel is tied up that duplicate coverage exists. There is no justifiable policy reason for providing such a duplication of remedies when that duplication mandates increased insurance costs. The most effective way of eliminating this coverage is through the Alaska legislature. Coverage under the terms of the Alaska Workers' Compensation Act is purely a matter of state law. Such coverage can easily be eliminated with a very minor amendment to the Alaska Workers' Compensation Act. Such an amendment would preclude the necessity of the vessel owner having Alaska Workers' Compensation

Act coverage. Although this is but a very small slice of the insurance premium, it is a simple, justifiable, and easily obtained legislative remedy to partially reduce the significant exposure that a vessel owner has for personal injury insurance premiums.