SB

469

BILL HISTORY

HOUSE CALENDAR: [illegible]

BILL	SB0469
PAGE	02196
DATE	04/01/86
CHAMBER	SENATE
TEXT	SENATE BILL NO. 469 by the Labor and Commerce Committee, entitled: "An Act exempting commercial fishermen from workers's compensation coverage." was read the first time and referred to the Labor and Commerce Committee.

BILL	SB0469
PAGE	02297
DATE	04/10/86
CHAMBER	SENATE
TEXT	The Labor and Commerce Committee considered SENATE BILL NO. 469 (exempting commercial fishermen from workers' compensation coverage) and a majority of the committee recommended do pass. The report was signed by Senator Zharoff, Chairman and concurred in by Senators Sackett and Ray. Fiscal note is zero. SENATE BILL NO. 469 was referred to the Rules Committee.

BILL	SB0469
PAGE	02314
DATE	04/11/86
CHAMBER	SENATE
TEXT	The Rules Committee considered SENATE BILL NO. 469 (exempting commercial fishermen from workers' compensation coverage) and recommended calendar April 14. The report was signed by Senator Kelly, Chairman and concurred in by Senators Bennett, Coghill, Josephson and Faiks. SENATE BILL NO. 469 will be on the April 14 calendar.

BILL	SB0469
PAGE	02339
DATE	04/14/86
CHAMBER	SENATE
TEXT	Senator Halford moved and asked unanimous consent that SENATE BILL NO. 469 be held to the April 15 calendar. Without objection, the bill will be on the April 15 calendar. SENATE BILL NO. 469 (exempting commercial fishermen from workers' compensation coverage) which was held from April 14 was read the second time. Senator Halford moved and asked unanimous consent that SENATE BILL NO. 469 be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered. SENATE BILL NO. 469 was read the third time. The question being: "Shall SENATE BILL NO. 469 (exempting commercial fishermen from workers' compensation coverage) pass the Senate?" The roll was taken with the following result:

BILL SB0469
PAGE 02353
DATE 04/15/86
CHAMBER SENATE
TEXT SB 469 3RD

Yeas:	17	Abood, Bennett, DeVries, Eliason, Fahrenkamp, Faiks, Ferguson, Fischer Pau., Fischer Vic, Halford, Josephson, Kelly, Ray, Rodey, Sturgulewski, Zharoff, Ziegler
Nays:	0	
Excused:	1	Coghill
Absent:	2	Kerttula, Sackett

and so, SENATE BILL NO. 469 passed the Senate and was referred to the Secretary for engrossment.
SENATE BILL NO. 469 was engrossed, signed by the President and Secretary and transmitted to the House for consideration.

BILL SB0469
PAGE 02737
DATE 04/16/86
CHAMBER HOUSE
TEXT SENATE BILL NO. 469, by the Labor & Commerce Committee, entitled:

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

was read the first time and referred to the Labor & Commerce and Finance Committees.

BILL SB0469
PAGE 02820
DATE 04/22/86
CHAMBER HOUSE
TEXT The Labor and Commerce Committee has considered SENATE BILL NO. 469 (exempting commercial fishermen from workers' compensation coverage) and reports it back as follows: Navarre (Chairman), Koponen, Davis, Boucher, Collins and Hanley recommend do pass.
A letter of intent, signed by Navarre (Chairman), appears below:

House Labor & Commerce Committee
Letter of Intent
for
SB 469

"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."
SB 469 was referred to the Finance Committee.

Workers' Comp (exempting fishermen)

SENATE BILL NO. 469, by the Labor & Commerce Committee. Would exempt commercial fishermen from state workers' compensation laws. Would take effect 90 days after governor signs bill.

Introduced April 1, 1986 and referred to Labor & Commerce.

Workers' Comp (exempting fishermen)

SENATE BILL NO. 469, (see page 404). Reported back to the Senate April 10 by Labor & Commerce recommending it do pass. Concurring: Zharoff (Chair), Sackett and Ray. To Rules.

Workers' Comp. (exempting fishermen)

SENATE BILL NO. 469, (see pages 404;443). Received in the House 4/16/86 and referred to Labor & Commerce and Finance.

Workers' Compensation (exempting fishermen)

SENATE BILL NO. 469, (see pages 404;443). Passed the Senate April 15, 1986, 17-0-1-2. Excused: Gaghill. Absent: Kerttula, Sackett.

Workers' Compensation (exempting fishermen)

SENATE BILL NO. 469, (see pages 404;443;484;487). Reported back to the House April 22, 1986 by Labor & Commerce recommending that it do pass. Concurring were Navarre (chair), Koponen, Davis, Boucher, Collins and Hanley. Referred to Finance.

The following letter of intent accompanied the committee report:

> "It is the intent of the Legislature that SB 469, An Act exempting commercial fisherman 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."

HOUSE

COMMITTEE REPORT

(11)

Date referred: 4/22/86

FURTHER REFERRALS:

DATE: 5-10-86

The FINANCE Committee has considered SB 469

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

and recommends:

[X] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with _____ [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
~~[X] zero fiscal note~~ 4/3/86 same

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman

CHAIRMAN'S INFORMATION: SB 465

1) BILL TITLE: "An act exempting commercial fisherman from workers' compensation coverage."

a) Introduced: Senate Labor and Commerce Committee

b) Co-sponsors:

2) INTENT: This measure exempts commercial fisherman from workers comp coverage, and seeks to eliminate a duplicate remedy available to injured fisherman. Currently, fisherman have access to compensation under federal maritime law, but a 1962 Alaska Supreme Court decision afforded duplicate coverage for fisherman when injured "shoreside".

Without this exemption, a vessel owner could be required to carry both P&I ocverage for federal remedies as well as workers comp.

FISCAL NOTE: 0 (Not yet received from the Dept of Labor)

3) ADDITIONAL REFERRALS: Sen Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption? Would you like to have a CS with "Findings" language and an effective date?

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.

Bill No. SB No. 469

Date April 18, 1986

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

Contact Jacque 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.

We recommend a statement or finding be included making it clear to the courts that the legislative intent of the bill is to clarify potential issues, not to infer that fishermen may have been covered by workers' compensation prior to enactment of the legislation.

APPROVED:

Jim Robison
Commissioner

POSITION PAPER/Department of Labor

I would set aside the trial court's findings, express and implied, and would reverse the judgment appealed from and order that a decree be entered for the defendant Innes.

CORDOVA FISH & COLD STORAGE COMPANY and Underwriters Lloyds of London, Appellants,

v.

Gerald T. ESTES and Alaska Workmen's Compensation Board, composed of B. G. Johnson, Chairman, A. D. Wallace, member, and L. H. Shaffer, member, Appellees.

No. 126.

Supreme Court of Alaska.

Jan. 26, 1962.

Rehearing Denied April 11, 1962.

Workmen's compensation case. The Alaska Industrial Board made an award of compensation to a fisherman against a cannery operator, and, on appeal, the Superior Court of the State of Alaska, First District, James A. von der Heydt, J., affirmed. The cannery operator appealed. The Supreme Court, Dimond, J., held that State Compensation Act applied to injuries sustained by crab fisherman, moving crab pots on boat deck, where he was hired to fish crab for local cannery on percentage basis, crabbing was daytime operation conducted in inland waters of state, state had primary and vital concern with his well-being and any maritime interest involved was slight so that application of state compensation system could not cause any undesirable disuniformity in maritime law.

Affirmed.

1. Workmen's Compensation ⇐93

State Compensation Act applied to injuries sustained by crab fisherman where he was hired to fish crab for local cannery on percentage basis, crabbing was daytime operation conducted in inland waters of state, state had primary and vital concern with his well-being and any maritime interest involved was slight or marginal so that application of state compensation system could not cause any undesirable disuniformity in maritime law. A.C.L.A.1949, §§ 43-3-1 to 43-3-39 as amended; Longshoremen's and Harbor Workers' Compensation Act, § 1, 33 U.S.C.A. § 901.

2. Workmen's Compensation ⇐1446

Determination of whether employer-employee relation existed between cannery operator and fisherman hired on percentage basis was discretionary with board, and finding of such relationship was supported by evidence. A.C.L.A.1949, § 43-3-9.

F. M. Doogan (of Faulkner, Banfield, Boochever & Doogan), Juneau, for appellants.

Ralph E. Moody, Atty. Gen., and John E. Havelock, Asst. Atty. Gen., for appellees.

Before NESBETT, C. J., and DIMOND and AREND, JJ.

DIMOND, Justice.

Estes, a crab fisherman, suffered a back injury at the end of a fishing day while moving crab pots on the deck of a boat which was tied to a dock. The Alaska Industrial Board made an award under the Alaska workmen's compensation act,[1] finding that he had sustained a compensable injury arising out of the course of his employment with Cordova Fish & Cold Storage Company. On appeal to the superior court the Board's decision was affirmed. Cordova has appealed to this court—its principal point being that no relief could be given under the Alaska act because of the supremacy of maritime law.

1. Sections 43-3-1 to 43-3-39, ACLA 1949, as amended. This statute was in effect at the time of the injury in 1958. It has since been superseded by a new law, SLA 1959, ch. 193.

[1] The root of the problem is found in the Jensen [2] case, decided by the Supreme Court in 1917. It was held that New York's Workmen's Compensation Act, McKinney's Consol.Laws c. 67, could not constitutionally be applied to a stevedore fatally injured on board ship while engaged in unloading cargo at a New York pier. The court announced the doctrine that state legislation can have no application if it "works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations." [3] Since Jensen's injuries were maritime, the locus being on navigable waters, and since the nature of his employment was maritime, it was determined that application of the state compensation act would prejudice the uniformity of maritime law.

The court recognized, however, that there would be instances where the general maritime law may be affected by state legislation.[4] The first of these, as applied to workmen's compensation, was exemplified in the Rohde [5] case, decided in 1922. Applying a doctrine previously worked out in a death act case,[6] the Supreme Court held that the uniformity of maritime law is not prejudiced by application of a state law to maritime employment which is local in character, and that work is deemed local if it has no direct relation to navigation or commerce.[7] Thus emerged the "maritime but local" doctrine, following which a considerable body of case law developed classifying borderline cases one way or the other.[8]

An illustrative case involving an Alaskan fisherman, where the employment was held to be of local concern, is Alaska Packers Ass'n v. Marshall [9], decided by the Court of Appeals for the Ninth Circuit in 1938. Two men were employed to fish for the company, which included operation of a fishing vessel. In addition, they had shoreside duties such as working in the cannery, conditioning the fishing vessels, and mending fishing gear. They were customarily on the boat fishing from Monday to Saturday during the salmon run.[10] They ate and slept on the vessel, and approximately once every twenty-four hours delivered their catch to a lighter anchored on the fishing grounds. While they were engaged in fishing, and had been away from shore for several days, the vessel was destroyed in a storm and both men were drowned.

The question for determination was whether the state compensation act applied.[11] The court recognized the dual character of the employment: in one aspect, local, because the men never sailed their boats beyond a few miles from the cannery to which their catch was taken; and in another aspect, maritime, because they sailed their boats in navigable waters. But the court found from considering the details of the employment contract that the gathering of the cannery's raw materials was a mere incident in the canning process and there-

2. Southern Pac. Co. v. Jensen, 244 U.S. 205, 37 S.Ct. 524, 61 L.Ed. 1086 (1917).

3. Id., 244 U.S. at 216, 37 S.Ct. at 529 (61 L.Ed. at 1098).

4. Id., 244 U.S. at 216, 37 S.Ct. at 529 (61 L.Ed. at 1098).

5. Grant Smith-Porter Ship Co. v. Rohde, 257 U.S. 469, 42 S.Ct. 157, 66 L.Ed. 321, 25 A.L.R. 1008 (1922).

6. Western Fuel Co. v. Garcia, 257 U.S. 233, 242, 42 S.Ct. 89, 66 L.Ed. 210, 214 (1921).

7. Grant Smith-Porter Ship Co. v. Rohde, supra note 5, 257 U.S. at 475–476, 42 S.Ct. 157 (66 L.Ed. at 324).

8. A selection of "maritime but local" cases is found in 2 Larson, Workmen's Compensation Law § 89.22 (1952), and in Davis v. Dept. of Labor, 317 U.S. 249, 253 n. 2, 63 S.Ct. 225, 87 L.Ed. 246, 249 (1942).

9. 95 F.2d 270 (9th Cir. 1938).

10. The period of the salmon run at this time was about 20 days.

11. The California act, rather than that of Alaska, was relied upon, presumably since the contract of employment was made in California. See Alaska Packers Ass'n v. Indus. Acc. Comm., 294 U.S. 532, 55 S.Ct. 518, 79 L.Ed. 1044 (1935).

fore local in character. It was held that there was a single locus of employment and that there was no disturbance of uniformity of employer-employee relationship if certain portions of the contract were to be regarded as maritime, and yet the employment status were to be controlled by state law. The court determined that the regulation of the rights, obligations and consequent liabilities of the company to the two men, by application of state law, would not work prejudice to any characteristic feature of maritime law. It was held, in fact, that "To deny compensation *would work deep prejudice to the compensation system*, now so widely accepted as 'necessarily' an incident to such creative service as supplying the material to this food canning plant, and which enlightened statesmanship, with its eyes opened to modern concepts of human relations, has enacted in so many of the states." [12] Application of the state compensation act was held not barred by the Jensen doctrine.

We hold that the control of Estes' status as an employee comes within the principles of the Marshall case. Estes had been hired by Joseph Balestrieri, operator of Cordova Fish & Cold Storage Company, to fish crab on a percentage basis. Balestrieri furnished the boat and repairs and hired and paid a helper. The crabbing was a daytime operation conducted in the inland waters of the state within a couple of hundred yards to a mile from shore. It consisted of Estes taking the boat out, baiting the pots and submerging them, and returning to the City of Cordova for the night. The next morning he would again take the boat out and lift the pots, remove the crabs, and rebait the pots and again submerge them. He then returned to the shore-based cannery with the crab. It took twenty minutes to get to the crab pots, six to eight hours lifting pots, and from 45 minutes up to an hour to return. In addition to the fishing, when bait was not available for purchase, Estes dug it on the land. This was an essential part of the crabbing operation.

In Marshall the court found that the fishing incidents of the employment were by function and distance local to the cannery and part of the canning enterprise.[13] The same situation exists here. The primary function of Estes' employment was to provide raw materials for the cannery operation. That the fishing was necessarily local to Cordova's plant is shown by the fact that the catch could not be sold to any other cannery. The distance was local since the fishing was done within a relatively short distance from the cannery. Estes had a shore duty, since at times he was required to dig bait—a necessity if crab were to be caught.

Considering these aspects of employment, predominantly local in character, we find that the state has a primary and vital concern with Estes' status and well-being. If there is any maritime interest involved, it is slight or marginal. We do not see how the operation of the state compensation system can cause any undesirable disuniformity in the scheme of maritime law.[14]

In support of its argument that maritime law provides the exclusive remedy, Cordova cites Parker v. Motor Boat Sales,[15] decided by the Supreme Court in 1941. This case concerned an employee of a store which sold boats and maritime supplies. He was hired primarily as a janitor and porter, and his work was almost entirely on land. He went along with another employee in a small boat in a river to test an outboard motor, and was drowned when the boat capsized. The Supreme Court affirmed an award made under the Longshoremen's and Harbor Workers' Act,[16] reversing the court

12. Alaska Packers Ass'n v. Marshall, supra note 9, 95 F.2d at 283.

13. Id., 95 F.2d at 281–282.

14. Cf. Kossick v. United Fruit Co., 365 U.S. 731, 740, 81 S.Ct. 886, 6 L.Ed.2d 56, 63 (1961).

15. 314 U.S. 244, 62 S.Ct. 221, 86 L.Ed. 184 (1941), reversing 116 F.2d 789 (4th Cir. 1941).

16. 44 Stat. 1424 (1927), 33 U.S.C.A. § 901 (1957).

of appeals. That court had held that the decedent's employment was so local in character that the state compensation act, rather than the federal act, was applicable.[17] The Supreme Court stressed that the maritime character of the employment was not to be determined by the habitual performance of duties on land, but by the activity in which decedent was engaged at the time of the accident, that is, riding in a boat on a navigable river.[18]

This decision would appear to have done away with the "maritime but local" doctrine, and to have established the rule that states could not validly provide relief for an injury occurring on navigable waters.[19] It would support Cordova's argument on this appeal, if it had been the last word on the subject by the highest court. But it was not. In 1942 the Supreme Court decided Davis v. Dept. of Labor,[20] which involved a steel worker who, while engaged in dismantling a bridge across a navigable river, fell into the river and was drowned. This time the Supreme Court held that the state compensation act could be applied. It based its decision not on the "local concern" exception to maritime employment, but on a new concept. It found that certain employees occupied "that shadowy area within which, at some undefined and undefinable point, state laws can validly provide compensation."[21] This was denominated as a "twilight zone in which the employees must have their rights determined case by case, and in which particular facts and circumstances are vital elements."[22] Relying on the fact that the decedent was, as a matter of actual administration, protected under the state compensation act, and that there was no conflicting process of administration since no action had been taken under the Longshoremen's and Harbor Workers' Act, the court found the facts of the case did not overcome the strong presumption of constitutionality in favor of the state statute.

The significance of this case, it has been said, "lies in its obvious attempt to set up a means of escape for the difficulties in drawing a line between State and Federal Authority under the doctrine of the Jensen case."[23] Its practical effect, it has been said elsewhere, is to permit an employee in a situation such as in Davis to recover either under the federal act or a state statute[24], and to resolve all borderline cases "in favor of coverage by the first act under which application is made by the claimant."[25] If that is what Davis holds, it would seem clear that Estes' employment would fall within the twilight zone and that state compensation coverage would be valid. As a matter of actual administration, Estes is in fact protected by the Alaska statute, the Alaska Industrial Board having found the act was intended to include commercial fishermen such as Estes.[26]

17. Motor Boat Sales, Inc. v. Parker, 116 F.2d 789 (4th Cir. 1941).

18. Parker v. Motor Boat Sales, Inc., 314 U.S. 244, 247, 62 S.Ct. 221, 86 L.Ed. 184, 189 (1941).

19. Gilmore & Black, The Law of Admiralty at 348 (1957); 2 Larson, Workmen's Compensation Law § 89.23(b) at 413 (1952).

20. 317 U.S. 249, 63 S.Ct. 225, 87 L.Ed. 246 (1942).

21. Id., 317 U.S. at 253, 63 S.Ct. 225 (87 L.Ed. at 248).

22. Id., 317 U.S. at 256, 63 S.Ct. 225 (87 L.Ed. at 250).

23. Moores' Case, 323 Mass. 102, 80 N.E. 2d 478, 480 (1948), aff'd. Bethlehem Steel Co. v. Moore, 335 U.S. 874, 69 S.Ct. 239, 93 L.Ed. 417 (1948), approved Baskin v. Industrial Accident Commission, 338 U.S. 854, 70 S.Ct. 99, 94 L.Ed. 523 (1949).

24. Justice Frankfurter's concurring opinion in Davis v. Dept. of Labor, 317 U.S. 249, 259, 63 S.Ct. 225, 87 L.Ed. 246, 252 (1942).

25. 2 Larson, Workmen's Compensation Law § 89.24, at 414 (1952).

26. The act was clearly intended to encompass the fishing industry. § 43-3-5 ACLA 1949 permitted one entitled to compensation to have a lien against the employer's property. As an example of what the statute meant, it was stated: "In the case of an employee injured or killed while engaged in fishing or in the packing, canning, or salting of fish, or

There was no conflicting process of administration between federal and state law, since Estes sought relief only under the Alaska act. Under these circumstances, together with those relating to Estes' employment, we could rely as the Supreme Court did in Davis on the presumption of constitutionality in favor of Alaska's statute as it pertains to Estes, and affirm the Board's determination on that ground.

Cordova argues, however, that Estes was a seaman, and that the twilight zone doctrine relates only to overlap between the Longshoremen's and the Harbor Workers' Act and state compensation statutes, and not between state acts and seamen's remedies. That proposition appears to be supported by a 1948 decision of the Court of Appeals for the First Circuit.[27] In 1956 the opposite view was expressed by a state court which held that the twilight zone approach was not limited to longshoremen, but included seamen as well.[28]

It is probably unnecessary for us to pass upon that question. We do not perceive any real difference between (1) the connection that must exist between a state and employment involving some maritime interest to come within the twilight zone, and (2) the connection that must exist between a state and such employment to come within the maritime and local concept. The general idea appears to us to be the same: a recognition of the right of a state to confer the kind of protection it thinks wise on persons or employments in which it has a legitimate interest. In a realistic sense, that interest is just as significant where Estes is concerned as it is for other employees of Cordova who work ashore in the cannery.[29] We find that all of the circumstances of the case point to an accommodation favoring application of the state compensation act, and that this will not interfere with the true demands of maritime law.

[2] The second point raised by Cordova is that Estes cannot recover under the Alaska compensation act in any event because no employer-employee relationship existed between Cordova and him. The Board found otherwise on the basis that Cordova had the right to control, the right to hire and fire, and that it furnished the tools Estes needed, that is, the boat and the pots.

The pertinent statutory provision which was in effect at the time of injury reads as follows:

> Any person rendering service for another, other than as an independent contractor, or as expressly excluded herein, is presumed to be an employee within the meaning of this Act. The term "independent contractor" shall be taken to mean, for the purposes of this Act, any person who renders service, other than manual labor, for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.[30]

This means that one is to be regarded as an employee if the principal has the right to control the details of the work. It is clear from the Board's decision that it had evidence before it on the four principal factors showing right of control, namely: (1) direct evidence of right or exercise of control; (2) method of payment; (3) furnishing of equipment; and (4) the right to fire.[31] The findings of the Board showed it considered evidence that Balestrieri hired and paid a helper for Estes; that the man-

other branch of the fish industry, the lien shall extend to the entire packing, fishing, salting or canning plant or establishment and all property used in connection therewith; * * *."

27. Gahagan Const. Corp. v. Armao, 165 F.2d 301, 301 (1st Cir. 1948), cert. denied, 333 U.S. 876, 68 S.Ct. 905, 92 L.Ed. 1152 (1948).

28. Beadle v. Mass. Bonding & Ins. Co., 87 So.2d 339 (La.App. 1956).

29. See 2 Larson, Workmen's Compensation Law § 89.30 (1952).

30. Section 43-3-9 ACLA 1949.

31. 1 Larson, Workmen's Compensation Law § 44.00 (1952).

ner of payment was on a percentage basis; that the employer furnished the boat, repairs and crab pots; and that Balestrieri fired Estes on one occasion. From this evidence the Board determined the employer-employee relationship did exist. Its determination should not be reversed unless there was an abuse of discretion.[32] We perceive none. The finding that the employer-employee relationship existed between the parties is supported by the evidence.

The judgment is affirmed.

AREND, J., concurs in the result.

Fred A. POPE, Appellant,

v.

Phil C. ANDERSON, and Multi-Venture of Fairbanks, Alaska, Inc., an Alaskan Corporation, Appellees.

Phil C. ANDERSON, and Multi-Venture of Fairbanks, Alaska, Inc., an Alaskan Corporation, Appellants,

v.

Fred A. POPE, Appellee.

Nos. 79, 89.

Supreme Court of Alaska.

March 3, 1962.

Rehearing Denied April 13, 1962.

Suit against owner and operator of tractor to recover damages for injuries sustained by plaintiff when dozer blade attached to tractor fell, while operator was attempting to change angle of blade, causing arm of blade to strike plaintiff. The Superior Court, Fourth District, Everett W. Hepp, J., entered judgment dismissing the suit on the merits, and plaintiff appealed and defendants cross-appealed. The Supreme Court, Von der Heydt, Superior Court Judge, held, inter alia, that the evidence was insufficient to establish prima facie negligence of defendants and that failure to find that tractor operator had duty to inspect center pin, by which dozer blade was attached to tractor, before attempting to change angle of blade and warn plaintiff of dangerous condition was not error, in view of uncontroverted testimony of operator, testifying as plaintiff's witness.

Judgment affirmed and cross-appeal dismissed.

1. Automobiles ⇨244(2)

Evidence was insufficient to establish prima facie negligence of owner or operator of tractor, being sued for injuries sustained by plaintiff when dozer blade attached to tractor fell, while operator was attempting to change angle of blade, causing arm of blade to strike plaintiff. Rules of Civil Procedure, rule 41(b).

2. Automobiles ⇨244(2)

Failure to find that tractor operator was negligent in failing to inspect center pin, by which dozer blade was attached to tractor, before attempting to change angle of blade and warn plaintiff of dangerous condition was not error, in view of uncontroverted testimony of tractor operator, testifying as plaintiff's witness in suit against owner and operator of tractor for injuries sustained by plaintiff when dozer blade fell. Rules of Civil Procedure, rule 41(b).

3. Appeal and Error ⇨843(2)

Where dismissal of action for failure to establish prima facie negligence was affirmed on appeal, defendants' contentions on cross-appeal that trial court erred in failing to make findings as to assumption of risk by plaintiff and that plaintiff was acting

32. "Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." Alaska Administrative Procedure Act; SLA 1959, ch. 143, art. VII, § 25(2) [§ 2A-12-25 ACLA Cum.Supp. 1959.]

THE SUPREME COURT OF THE STATE OF ALASKA

WILBUR G. ANDERSON, Appellant, v. ALASKA PACKERS ASSOCIATION; ALASKA PACIFIC ASSURANCE COMPANY; ALASKA WORKERS' COMPENSATION BOARD, Appellees.	File No. 5101 O P I N I O N [No. 2436 - November 13, 1981]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, James K. Singleton, Judge.

Appearances: James F. Vollintine, Anchorage, for Appellant. Charles P. Flynn, Burr, Pease & Kurtz, Inc., Anchorage, for Appellees.

Before: Rabinowitz, Chief Justice, Connor, Burke and Matthews, Justices, and Cooke, Superior Court Judge.* (Compton, Justice, not participating.)

BURKE, Justice.

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* Cooke, Superior Court Judge, sitting by assignment made pursuant to article IV, section 16 of the Constitution of Alaska.

This is an appeal from a final judgment of the superior court affirming a decision of the Alaska Workers' Compensation Board. The Board's decision denied an injured seaman's claim for benefits under the Alaska Workers' Compensation Act, AS 23.30.005-.270. We affirm, having concluded that the claim is one subject to the exclusive jurisdiction of the United States.

Appellant Wilbur G. Anderson, a commercial fisherman, was injured on June 17, 1977, when he became entangled in a winch aboard the Crane, a purse seine vessel owned by Alaska Packers Assocation. Anderson, the captain of the vessel, was operating the Crane under a lease agreement with Alaska Packers. The injury occurred while the vessel was fishing in navigable waters, approximately one mile from Chignik Lagoon, a small coastal village in southwestern Alaska.

Anderson filed a claim against Alaska Packers and its insurance carrier, Alaska Pacific Assurance Company, contending that he was an employee of Alaska Packers and, therefore, entitled to compensation benefits under the Alaska Workers' Compensation Act. The Alaska Workers' Compensation Board ruled that Anderson was an independent contractor, rather than an employee of Alaska Packers, and

denied his claim. On appeal to the superior court, the Board's decision was affirmed. This appeal followed.[1]

I

The United States Constitution, article III, section 2, provides that "[t]he judicial power [of the federal government] shall extend to all cases . . . of admiralty and maritime jurisdiction . . . ." Section 1333 of title 28 of the United States Code gives the federal district courts "original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." Gilmore and Black define admiralty jurisdiction as extending

> to all waters, salt or fresh, with or without tides, natural or artificial, which are in fact navigable in interstate or foreign water commerce, whether or not the particular body of water is wholly within a state, and whether or not the occurrence or transaction that is the subject matter of the suit is confined to one state.

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1. The superior court affirmed the Board's decision upon the ground that there was substantial evidence supporting its conclusion that Anderson was an independent contractor. The court's decision did not address the question of exclusive federal jurisdiction, although the issue was raised in a timely fashion and discussed at oral argument. The Board, in its decision, did mention this issue, but the Board, like the superior court, apparently concluded that it had jurisdiction to consider Anderson's claim on the strength of our holding in Cordova Fish & Cold Storage Co. v. Estes, 370 P.2d 180 (Alaska 1962).

G. Gilmore & C. Black, The Law of Admiralty § 1-11, at 32 (2d ed. 1975) (footnote omitted).

The policy behind the grant of exclusive jurisdiction is to ensure a nationally uniform system of maritime law. The Lottawanna, 88 U.S. (21 Wall.) 558, 575, 22 L. Ed. 654, 662 (1874), cited with approval in Moragne v. States Marine Lines, 398 U.S. 375, 402, 26 L. Ed. 2d 339, 357 (1970).

The United States Supreme Court recently had occasion to discuss the interrelationship of state compensation laws and the exclusive federal admiralty jurisdiction. Justice Brennan wrote for a unanimous court in Sun Ship, Inc. v. Pennsylvania, 447 U.S. 715, 65 L. Ed. 458 (1980) that:

> The evolution of the law of compensation for workers injured in maritime precincts is familiar. In 1917, Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917), declared that States were constitutionally barred from applying their compensation systems to maritime injuries, and thus interfering with the overriding federal policy of a uniform maritime law. Subsequent decisions invalidated congressional efforts to delegate compensatory authority to the States within this national maritime sphere. Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, (1920); State v. Washington V.W.C. Dawson & Co., 264 U.S. 219, (1924). At the same time, the Court began to narrow the Jensen doctrine by identifying circumstances in which the subject of litigation might be maritime yet "local in character," and thus amenable to relief under state law. Western Fuel Co. v. Garcia, 257 U.S.

> 233, 42 S.Ct. 89, 66 L.Ed. 210 (1921); Grant Smith-Porter Ship Co. v. Rohde, 257 U.S. 469, 42 S.Ct. 157, 66 L.Ed. 321 (1922). And, in 1927, Congress was finally successful in extending a measure of protection to marine workers excluded by Jensen by enacting a federal compensation law--the Longshoreman's and Harbor Workers' Compensation Act [LHWCA], 33 U.S.C. § 901 et seq. That statute provided, in pertinent part, that "[c]ompensation shall be payable [for an injury] . . . occurring upon the navigable waters of the United States . . . if recovery . . . through workmen's compensation proceedings may not validly be provided by State law."

Id. at 717, 65 L. Ed. at 458.

Excluded from the coverage of the LHWCA at their own request, see Gilmore & Black, supra, at 427, were masters or members of the crew of vessels, 33 U.S.C. § 902(3), as these "seamen" were covered by the traditional maritime remedies of maintenance and cure, the Jones Act (46 U.S.C. § 688), and liability for unseaworthiness of a vessel. These divisions between persons doing similar work, or doing work subject to characterization as being in one or more categories, engendered questions in the courts in the years following the Jensen decision. Concerning those covered by the LHWCA, the Sun Ship court spoke of three "jurisdictional spheres":

> At the furthest extreme, Jensen commanded that nonlocal maritime injuries fall under the LHWCA. "Maritime but local" injuries "upon the navigable waters of

> the United States," 33 U.S.C. § 903(a), could be compensated under the LHWCA or under state law. And injuries suffered beyond navigable waters--albeit within the range of federal admiralty jurisdiction--were remediable only under state law.

Sun Ship, 447 U.S. at 719, 65 L. Ed. at 462.

The use of the term "sphere," as opposed to a term denoting precise boundaries between federal and state jurisdiction, was appropriate because, as the court recognized, "the boundary at which state remedies gave way to federal remedies was far from obvious in individual cases." Id. at 718, 65 L. Ed. at 461. The difficulties led the court to establish "a regime of concurrent jurisdiction," id., in the "twilight zone" between federal and state compensation programs. Davis v. Dept. of Labor, 317 U.S. 249, 87 L. Ed. 246 (1942). The high court has not created a twilight zone between the state acts and the traditional seaman's remedies, Gilmore & Black, supra, at 434, but the commentators see little reason why seamen should not also be entitled to the benefits of a twilight zone theory of jurisdiction. Id. at 434 n.335; 4 A. Larson, The Law of Workmen's Compensation § 90.41 (1980).

It seems apparent that Anderson is indeed a "seaman" within the meaning that term has come to have. See Offshore Co. v. Robinson, 266 F.2d 769, 779 (5th Cir. 1959); 4 A. Larson, supra, § 90.21. Anderson is also plainly excluded from the coverage of the LHWCA as a master or

member of the crew of the Crane. 33 U.S.C. § 902(3). We find it unnecessary to determine whether there is a twilight zone between the seamen's remedies and the workers' compensation system because we find Anderson's employment "on his vessel in navigable waters is in 'clear daylight' . . ." Alaska Indus. Bd. v. Alaska Packers Ass'n, 186 F.2d 1015, 1917 (9th Cir. 1951).

As noted, the twilight zone was created because of the difficulty encountered in determining when an injury was of a "maritime but local" nature. 4 A. Larson, supra, § 89.51, at 16-258 to 16-259. The cases in the area of local concern centered around activities with a close connection to the land, and not on persons engaged in traditional maritime occupations and tasks. Thus, in London Guarantee & Accident Co. v. Indus. Accident Comm'n, 279 U.S. 109, 73 L. Ed. 632 (1929), the court refused to apply the local concern exception to the claim on behalf of a seaman engaged in an effort to board a boat that had broken loose from its mooring less than a mile from shore. Though the decedent was employed only on vessels that operated within five miles of the shore for pleasure fishing, it was held that the state could not constitutionally make a compensation award. Id. at 125, 73 L. Ed. at 637.

Anderson seeks to avoid a similar holding by citation of our decision in Cordova Fish & Cold Storage Co.

v. Estes, 370 P.2d 180 (Alaska 1962). Estes relied on the "maritime but local" exception to the Jensen rule, and the injured claimant there was engaged in moving crab pots on the deck of a boat tied to a dock. Id. In view of the London Guarantee holding,[2] we see no way to extend Estes to the injury that occurred to Anderson while he was actually engaged in fishing on navigable waters.

We note that other cases in which the local concern doctrine was invoked to provide a state remedy for an injury within the admiralty jurisdiction involve facts, like Estes, with a closer connection to land-based activity than to traditional maritime work. See cases cited in 4 A. Larson, supra, § 90.30, at 16-352 n.70. Where the facts

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2. While it has been suggested several times since the Jensen case was decided that the Court had abandoned the principles stated there, e.g., Note, Has the Jensen Case Been Jettisoned?, 2 Stan. L. Rev. 536 (1950), the case instead has "a tenacity which refuses to acquiesce in occasional contemporary reports of its final rejection . . . ." Flowers v. Travelers Ins. Co., 258 F.2d 220 (5th Cir. 1958), cert. denied, 359 U.S. 920, 3 L. Ed. 2d 582 (1959). Thus, in Askew v. Am. Waterways Operators, Inc., 411 U.S. 325, 36 L. Ed. 2d 280 (1973), the court noted its prior statement that "Jensen and its progeny mark isolated instances where 'state law must yield to the needs of a uniform federal maritime law when this Court finds inroads on a harmonious system,'" id. at 338, 36 L. Ed. 2d at 289, and stated that such instances occur with respect "to suits relating to the relationship of vessels, plying the high seas and our navigable waters, and to their crews." Id. at 344, 36 L. Ed. 2d at 293. We hold here that Anderson's case comes within the Court's description of Jensen's applicability.

instead show a claimant engaged in wholly maritime work, the courts have declined to lengthen the shadow of the twilight zone, and have remitted the claimants to their federal remedies. E.g., Bearden v. Leon C. Breaux Towing Co., 365 So. 2d 1192 (La. App. 1978); Valley Towing Co. v. Allen, 109 So. 2d 538 (Miss. 1959). We do likewise here.

The superior court's judgment is AFFIRMED.

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

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

SENATE BILL NO. 469

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act exempting commercial fishermen from workers' compensation coverage."

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

* Section 1. AS 23.30.230 is amended by adding a new subsection to read:

(b) A commercial fisherman, as defined in AS 16.05.940, is not covered by this chapter.

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.

BILL SUMMARY

Bill No. SB No. 469

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

Date April 3, 1986

Contact: Jacque 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

POSITION PAPER/Department of Labor

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						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Jacque 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

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

BY
A. W. HALL
SENIOR ADVISOR, SENATE ADVISORY COUNCIL

30 January 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 by 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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FRANK M. DOOGAN (1923-1977)

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

FEB 24 1986

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 fishermen 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 fishermen was also entitled to benefits under the terms of the Alaska Workers' Compensation Act. Looking to two factors, the court concluded that this fishermen 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.[1/]

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 fishermen 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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1/ Subsequently, in 1981, the Alaska Supreme Court concluded that a fishermen 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 fishermen working on a fishing vessel has available to him extremely generous remedies under the federal maritime law. The only time that such a fishermen 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 fishermen 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.

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 III 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 110 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.