

S S H B

3 4 6

HOUSE COMMITTEE REPORT

Date referred: 3/16/88

FURTHER REFERRALS:

DATE: 3-21-88

The Finance Committee has considered SSHB 346

"An Act authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for children and elderly persons; and providing for an effective date."

RECOMMENDS:

- replace with CS SS HB 346 (Res) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note ^{2/10/88}_{2/11/88} same as previous zero fiscal note published 3/16/88
- zero with analysis

SIGNING DO PASS:

Adams Ale Adams

Pouchot Paul Pouchot

Gall John Gall

SWACK Ed Swack

Boyer Mark Boyer

Larson Ronald Larson

Wallis Ray Wallis

Davis Michael Davis

SIGNING OTHER RECOMMENDATIONS:

Rieger Steve Rieger

Brown Tay Brown No Rec

Frank Frank No Rec.

Ale Adams
Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An act authorizing the Board of Fisheries to establish noncommercial fishing seasons...
 Sponsor: Adams, Goll
 Requestor: House Resources

Agency Affected: Public Safety
 BRU: Fish & Wildlife Protection
 Components: Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated.

JNR
2/10/88

Prepared by: Captain Conrad G. Seibel *C. Seibel* Phone: 269-5509
 Division: Fish & Wildlife Protection Date: 2/2/88
 Approved by Commissioner: David H. ... Date: 2-11-88
 Agency: Department of Public Safety

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

RECEIVED
FEB 11 1988

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Fish and Game
 Title: Authorizing Bd. of Fish to BRU: Boards
establish fishing areas for children & elderly
 Sponsor: Adams and Goll Components: _____
 Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Beth Stewart Phone: 465-4100
 Division: Boards Date: 2/11/88

Approved by Commissioner: [Signature] Date: 2/11/88
 Agency: Fish and Game

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

DECLARATION
 FEB 19 1988
 LEGISLATIVE FINANCE

FILE 3/1/88

Original sponsors: Adams, Goll
and Wallis

1 IN THE HOUSE BY THE RESOURCES COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 346 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act authorizing the Board of Fisheries to estab-
7 lish noncommercial fishing seasons and areas for
8 elderly persons; and providing for an effective
9 date."

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

11 * Section 1. FINDINGS. The legislature finds that many people 60 years
12 of age and older may need separate seasons and areas in order to continue
13 sport, personal use, or subsistence fishing because they are generally less
14 able to gain access to fishing areas that may be open to all age groups.

15 * Sec. 2. AS 16.05.251(a) is amended to read:

16 (a) The Board of Fisheries may adopt regulations it considers
17 advisable in accordance with the Administrative Procedure Act (AS 44.-
18 62) for

19 (1) setting apart fish reserve areas, refuges, and sanctu-
20 aries in the waters of the state over which it has jurisdiction,
21 subject to the approval of the legislature;

22 (2) establishing open and closed seasons and areas for the
23 taking of fish; if consistent with resource conservation and develop-
24 ment goals, the board may adopt regulations establishing restricted
25 seasons and areas necessary for persons 60 years of age and older to
26 participate in sport, personal use, or subsistence fishing;

27 (3) setting quotas, bag limits, harvest levels, and sex and
28 size limitations on the taking of fish;

29 (4) establishing the means and methods employed in the

1 pursuit, capture, and transport of fish;

2 (5) establishing marking and identification requirements
3 for means used in pursuit, capture, and transport of fish;

4 (6) classifying as commercial fish, sport fish, personal
5 use fish, subsistence fish, or predators or other categories essential
6 for regulatory purposes;

7 (7) watershed and habitat improvement, and management,
8 conservation, protection, use, disposal, propagation, and stocking of
9 fish;

10 (8) investigating and determining the extent and effect of
11 disease, predation, and competition among fish in the state, exercis-
12 ing control measures considered necessary to the resources of the
13 state;

14 (9) prohibiting and regulating the live capture, posses-
15 sion, transport, or release of native or exotic fish or their eggs;

16 (10) establishing seasons, areas, quotas, and methods of
17 harvest for aquatic plants;

18 (11) establishing the times and dates during which the
19 issuance of fishing licenses, permits, and registrations and the
20 transfer of permits and registrations between registration areas is
21 allowed; however, this paragraph does not apply to permits issued or
22 transferred under AS 16.43;

23 (12) regulating commercial, sport, subsistence, and personal
24 use fishing as needed for the conservation, development, and utiliza-
25 tion of fisheries;

26 (13) requiring, in a fishery, observers on board fishing
27 vessels, as defined in AS 16.05.475(d), that are registered under the
28 laws of the state, as defined in AS 16.05.475(c), after making a
29 written determination that an on-board observer program

1 (A) is the only practical data-gathering or enforce-
2 ment mechanism for that fishery;
3 (B) will not unduly disrupt the fishery;
4 (C) can be conducted at a reasonable cost; and
5 (D) can be coordinated with observer programs of other
6 agencies, including the National Marine Fisheries Service, North
7 Pacific Fishery Management Council, and the International Pacific
8 Halibut Commission;
9 (14) establishing nonexclusive, exclusive, and superexclu-
10 sive registration and use areas for regulating commercial fishing.
11 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: An act authorizing the Board of Fisheries to establish noncommercial fishing seasons... BRU: Fish & Wildlife Protection
 Sponsor: Adams, Goll Components: Enforcement
 Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated.

JNR
2/10/88
 Prepared by: Captain Conrad G. Seibel *C. Seibel* Phone: 269-5509
 Division: Fish & Wildlife Protection Date: 2/2/88
 Approved by Commissioner: *Donald H. ...* Date: 2-11-88
 Agency: Department of Public Safety

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Fish and Game
 Title: Authorizing Bd. of Fish to BRU: Boards
establish fishing areas for children & elderly
 Sponsor: Adams and Goll Components: _____
 Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
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LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Beth Stewart *BS* Phone: 465-4100
 Division: Boards Date: 2/11/88

Approved by Commissioner: *Wmua* Date: 2/11/88
 Agency: Fish and Game

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Boards	BILL NUMBER HB 346	SPONSOR Adams & Goll
SHORT TITLE OF BILL An act authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for children and elderly persons; and providing and providing for an effective date.			
DEPARTMENT POSITION Neutral			
PREPARED BY Beth Stewart	DATE 2/11/88	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 2/11/88

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Board of Fisheries	CONSTITUENT GROUP(S) AFFECTED BY BILL Fishermen
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Introduced by Adams & Goll

ANALYSIS OF BILL/PROGRAM EFFECTS

In the past, the board has received proposals to establish restricted areas and seasons for people in certain age groups, or for those with physical handicaps. The Attorney General's Office advised the board that those proposals were beyond the scope of their authority. This bill would clarify that authority. In addition, there have been questions about the constitutionality of such arrangements under the exclusive fisheries or equal protection clauses of the Alaska Constitution. To address these concerns, the Attorney General's Office has suggested that the legislation include a set of findings in the bill sufficient to justify the special treatment of these groups.

AMENDMENTS PROPOSED

RECEIVED
FEB 12 1988

LEGISLATIVE FINANCE

Alaska State Legislature

House of Representatives



Official Business

Al Adams
Chairman
Committee on Finance

WHILE IN SESSION
P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3706

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3320

1024 W. 6th
Anchorage, Alaska 99501
(907) 274-0615

DATE: January 29, 1988

TO: Representative Adelheid Herrmann
Co-chair, House Resources Committee

Representative Sam Cotton
Co-chair, House Resources Committee

FROM: Representative Al Adams, ^{AAA}Chair
House Finance Committee

RE: HB 346 "An Act Authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for children and elderly persons; and providing for an effective date."

I would like to request that HB 346 be scheduled in the Resources Committee at your earliest convenience.

This bill would allow the Board of Fisheries to open closed fishing areas to elderly residents and children under age 12 as long as those decisions meet conservation goals. The type of fishing allowed would be limited to personal use, sport and subsistence fishing.

Concerns emerged in Unalakleet as well as other areas of the state where rivers were closed to fishing but continued sport and subsistence fishing by residents in the aforementioned age groups would not harm conservation efforts. The Board of Fisheries lacked the statutory authority to grant exemptions. This bill would provide it.

Attached is a legal interpretation which supports the constitutionality of the bill. Also attached is a statement from the Department of Fish and Game.

Kotzebue's Fish and Game Advisory Committee and the Southern Norton Sound Fish and Game Advisory Committee have expressed verbal support and will send written endorsement later this month following their next meetings.

STEVE COWPER, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: (907) 465-4100

January 29, 1988

The Honorable Al Adams
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

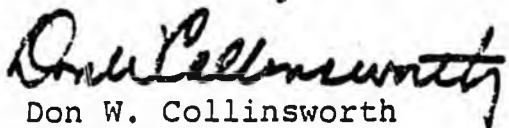
Dear Representative Adams:

The department has reviewed HB 346 authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for children and elderly persons, and have the following comments.

In the past, the board has received proposals to establish restricted areas and seasons for people in certain age groups, or for those with physical handicaps. The Attorney General's Office advised the board that those proposals were beyond the scope of their authority. This bill would clarify that authority. In addition, there have been questions about the constitutionality of such arrangements under the exclusive fisheries or equal protection clauses of the Alaska Constitution. To address these concerns, the Attorney General's Office has suggested that the legislation include a set of findings in the bill sufficient to justify the special treatment of these groups.

If the Legislature wishes to give the board this authority, I am certain that the board will consider any proposals it receives for these types of fisheries.

Sincerely,



Don W. Collinsworth
Commissioner

STATE OF ALASKA
THE LEGISLATURE

POUCH 1 STATE CAPITOL
UNIVERSAL ALASKA PAPER
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 26, 1988

SUBJECT: Constitutionality of HB 346
TO: Representative Al Adams
FROM: Edward H. Hein *EH*
 Legislative Counsel

You have asked whether HB 346 is constitutional. The bill authorizes the Board of Fisheries to establish restricted noncommercial fishing seasons and areas for children and elderly persons, if consistent with resource conservation goals and if necessary to assist these two groups to participate in sport, personal use, or subsistence fishing.

The authorization provided in the bill is consistent with the mandate of Art. VIII, secs. 1, 2, 4, and 5 of the Alaska Constitution. These sections provide (emphasis supplied):

SECTION 1. STATEMENT OF POLICY. It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

SECTION 2. GENERAL AUTHORITY. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

SECTION 4. SUSTAINED YIELD. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

SECTION 5. FACILITIES AND IMPROVEMENTS. The legislature may provide for facilities, improvements, and services to

Representative Al Adams

Page 2

January 26, 1988

assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

In keeping with this constitutional mandate, the authority given to the Board of Fisheries is clearly for a public purpose and is very narrowly drawn. The exercise of the board's power is subject to two conditions: the establishment of restricted seasons and areas must be consistent with resource conservation goals, and must also be necessary in order to help children and the elderly to participate in noncommercial fishing. In other words, the circumstances must be such that these groups would not be able to participate adequately in fishing without this sort of assistance from the board.

It is envisioned that areas which would be set aside for children and elderly persons would be areas that otherwise would not be open to the public. These would be areas in which the fish stocks could not withstand extensive effort beyond that anticipated by children and the elderly. An example would be a creek in Anchorage that is not currently open to fishing, but which could serve nicely as a place for children to learn how to fish.

Finally, although virtually any law that allows a government agency to give special treatment to certain groups has a potential for abuse, the board is required to exercise its authority in a manner consistent with the constitution. The regulations adopted should not be any more restrictive or discriminatory than necessary to accomplish the goals of the legislation. It is assumed, moreover, that the board will act in accordance with the legal advice of the Attorney General's office.

EHH:bb
wkb2/005

formal hearing has been concluded. (Eff. 3/25/83, Reg. 85)

Authority: AS 16.05.340 AS 16.05.460
AS 16.05.380 AS 43.05.080
AS 16.05.390 AS 44.25.020

15 AAC 116.070. FEES, REPORTS, AND LICENSE INVENTORY DUE WHEN LICENSE OFFICER APPOINTMENT EXPIRED, SUSPENDED, OR REVOKED. The reporting and accounting obligations of the license officer, all money collected, except the license officer's commission, and all license inventory are due by the last day of the month following the month during which the license officer appointment expired, was suspended, or was revoked. (Eff. 3/25/83, Reg. 85)

Authority: AS 16.05.340 AS 16.05.460
AS 16.05.380 AS 43.05.080
AS 16.05.390 AS 44.25.020

ARTICLE 2. LICENSING

Section

- 100. Qualifications for license and proof of qualification
- 110. Persons exempt from licensing requirements
- 120. Refund of license fees
- 130. Lost or destroyed licenses

15 AAC 116.100. QUALIFICATIONS FOR LICENSE AND PROOF OF QUALIFICATION. (a) Only natural persons may be issued licenses under AS 16.05 and this chapter.

(b) An applicant claiming entitlement to a resident license or special status license has the burden of proving to the license officer that he is entitled to the license and shall take an oath administered by the license officer certifying the truthfulness of the applicant's status.

(c) The license officer shall accept as adequate proof of residency an Alaska driver's license, voter registration card, school records, proof of home ownership or rental receipts, tax records, employment records, or court or other governmental agency records, showing that the applicant is a resident. (Eff. 3/25/83, Reg. 85)

Authority: AS 16.05.330 AS 43.05.080
AS 16.05.360 AS 44.25.020
AS 16.05.450

15 AAC 116.110. PERSONS EXEMPT FROM LICENSING REQUIREMENTS. (a) A person who is 60 years of age or older and who has been a resident of Alaska for one year or more, and is currently a resident, may apply for a permanent identification card from the department for purposes of AS 16.05.400. In this subsection, "one year" means any 12-consecutive-month period preceding the date of application.

(b) A person who has lawfully obtained a permanent identification card under (a) of this section is not required to obtain hunting, fishing, or trapping licenses to engage in those activities.

(c) If a person who has been issued a permanent identification card ceases to be a resident of Alaska, that person must surrender the card to the department. (Eff. 3/25/83, Reg. 85; am 6/17/84, Reg. 90)

Authority: AS 16.05.400
AS 43.05.080
AS 44.25.020

15 AAC 116.120. REFUND OF LICENSE FEES. (a) License officers may not refund license fees. A person who wishes a refund of a license fee must apply directly to the department.

(b) A refund of a license fee will be granted by the department only if the licensee or his representative demonstrates that

(1) he or she was unable to make any use of the license as a result of death, or serious, disabling illness or injury occurring after purchase of the license and before the opening of any season for which the license could have been used; in the case of illness or injury, the illness or injury must have lasted until all seasons for which the license could be used are closed;

(2) the opening of all seasons to which the license applied were permanently cancelled, rendering the license unusable at any time during the year for which it was issued; or

(3) other extraordinary circumstances beyond the control and reasonable anticipation of the licensee exist, which the department determines to justify a refund.

1 IN THE HOUSE

BY ADAMS AND GOLL

2

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 346

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act authorizing the Board of Fisheries to estab-
lish noncommercial fishing seasons and areas for
children and elderly persons; and providing for an
effective date."

7

8

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

10

* Section 1. AS 16.05.251(a) is amended to read:

11

(a) The Board of Fisheries may adopt regulations it considers
advisable in accordance with the Administrative Procedure Act (AS 44.-
62) for

12

13

14

(1) setting apart fish reserve areas, refuges, and sanctu-
aries in the waters of the state over which it has jurisdiction,
subject to the approval of the legislature;

15

16

17

18

(2) establishing open and closed seasons and areas for the
taking of fish; if consistent with resource conservation goals and
necessary to assist children and elderly persons to participate in
sport, personal use, and subsistence fishing, the board may adopt
regulations establishing restricted seasons and areas for persons 12
years of age and younger and 60 years of age and older;

19

20

21

22

(3) setting quotas, bag limits, harvest levels, and sex and
size limitations on the taking of fish;

23

24

25

(4) establishing the means and methods employed in the
pursuit, capture, and transport of fish;

26

27

(5) establishing marking and identification requirements
for means used in pursuit, capture, and transport of fish;

28

29

1 (6) classifying as commercial fish, sport fish, personal
2 use fish, subsistence fish, or predators or other categories essential
3 for regulatory purposes;

4 (7) watershed and habitat improvement, and management,
5 conservation, protection, use, disposal, propagation, and stocking of
6 fish;

7 (8) investigating and determining the extent and effect of
8 disease, predation, and competition among fish in the state, exercis-
9 ing control measures considered necessary to the resources of the
10 state;

11 (9) prohibiting and regulating the live capture, posses-
12 sion, transport, or release of native or exotic fish or their eggs;

13 (10) establishing seasons, areas, quotas, and methods of
14 harvest for aquatic plants;

15 (11) establishing the times and dates during which the
16 issuance of fishing licenses, permits, and registrations and the
17 transfer of permits and registrations between registration areas is
18 allowed; however, this paragraph does not apply to permits issued or
19 transferred under AS 16.43;

20 (12) regulating commercial, sport, subsistence, and personal
21 use fishing as needed for the conservation, development, and utiliza-
22 tion of fisheries;

23 (13) requiring, in a fishery, observers on board fishing
24 vessels, as defined in AS 16.05.475(d), that are registered under the
25 laws of the state, as defined in AS 16.05.475(c), after making a
26 written determination that an on-board observer program

27 (A) is the only practical data-gathering or enforce-
28 ment mechanism for that fishery;

29 (B) will not unduly disrupt the fishery;

1 (C) can be conducted at a reasonable cost; and
2 (D) can be coordinated with observer programs of other
3 agencies, including the National Marine Fisheries Service, North
4 Pacific Fishery Management Council, and the International Pacific
5 Halibut Commission;
6 (14) establishing nonexclusive, exclusive, and superexclu-
7 sive registration and use areas for regulating commercial fishing.
8 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).