

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 00/2

9391 HOUSE RESOURCES

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**Page Three**  
**Draft 0-LS0879\H Changes**  
**CSHB 285 ( ), 2/16/98**

15. Added a new subsection to AS 16.10.33 that terminates the debtor's interest in the permit as of the date the commission revokes the permit. This is found in Section 3.

16. Section 4 adds an amendment to AS 16.10.337(a) that refers to new subsection found in Section 3.

17. Sections 5, 6, 7, 8 and 9 were added at the request of the Commercial Fisheries Entry Commission. A memorandum from Bruce Twomley, Chair of the CFEC, is attached explaining the changes in those statutes.

18. Section 12 repeals AS 16.05.710(a) and (d)(1). AS 16.05.710(a) is the subsection that allowed the courts to revoke or suspend a commercial fishing permit under Title 16 violations. AS 16.05.710 (d)(1) is the definition for commercial fishing law. A new definition for commercial fishing law is found on page 4, line 28. The definitions that have not been deleted are applicable to the other provisions in AS 16.05.710.

**MEMORANDUM****STATE OF ALASKA  
COMMERCIAL FISHERIES ENTRY COMMISSION****TO:** Tom Wright**DATE:** February 17, 1998**FAX:** 465-4589**PHONE:** (907) 789-6160 VOICE  
(907) 789-6170 FAX**FROM:** Bruce Twomley, Chairman **SUBJECT:** Sections 5-9, 2/16/98 Work Draft, CS  
for IIB 285

Tom, as you requested, the following paragraph is my understanding of the proposed amendments to AS 16.43.970 in Sections 5-9, 2/16/98 Work Draft, CS for HB 285:

Sections 5 through 9 amend but do not change the effects of the current AS 16.43.970 addressing violations of the Limited Entry Act. Violations of the law by fishers may still result in suspension and revocation of fishing privileges under the existing standards. However, references to "forfeiture" of fishing privileges by the court are eliminated in favor of referrals by the court to the Alaska Commercial Fisheries Entry Commission for suspension or revocation of fishing privileges as directed. It is believed suspension and revocation of fishing privileges by the Commission is more consistent with Alaska Legislature's determination that fishing privileges administered by the Commission are use privileges and not property under AS 16.43.150(e).

**cc:** George Utermohle

CS FOR HOUSE BILL NO. 285(RES)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVE IVAN

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to suspension or revocation of commercial fishing permits,  
2 licenses, and privileges; and providing for an effective date."

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

4 \* Section 1. AS 16.43 is amended by adding new sections to read:

5 Article 6A. Point System for Commercial Fishing Violations.

6 Sec. 16.43.850. Point system. (a) For the purpose of identifying frequent  
7 violators of commercial fishing laws, " commission shall adopt regulations  
8 establishing a uniform system for the suspension of commercial fishing privileges by  
9 assigning demerit points for convictions for violations of commercial fishing laws that  
10 are reported to the commission under AS 16.43.875. The commission shall assess  
11 demerit points against a permit holder for each violation of commercial fishing laws  
12 in accordance with (b) and (c) of this section. The commission shall assess points  
13 against a permit holder for the fishery in which the violation of commercial fishing  
14 laws occurred.

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(b) The commission shall assess demerit points against a permit holder for a conviction of a violation of commercial fishing laws under AS 16.05.723, 16.05.831; AS 16.10.055, 16.10.070 - 16.10.090, 16.10.100, 16.10.110, 16.10.120 - 16.10.130, 16.10.165, 16.10.173, 16.10.200 - 16.10.220, 16.10.240, 16.10.250, and 16.10.760 - 16.10.790 for the following violations in accordance with this schedule:

- (1) fishing in closed waters . . . . . 6 points
- (2) fishing during closed season or period . . . . . 6 points
- (3) fishing with more than the legal amount of gear . . . . . 4 points
- (4) fishing with gear not allowed in fishery . . . . . 6 points
- (5) fishing before expiration of transfer period . . . . . 6 points
- (6) interfering with commercial fishing gear . . . . . 4 points
- (7) fishing with more than the legal amount of gear  
on vessel . . . . . 4 points
- (8) improper operation of fishing gear . . . . . 4 points
- (9) employing an unlicensed crewmember . . . . . 2 points
- (10) fishing without required documents . . . . . 2 points
- (11) fishing with improperly marked or unmarked vessel . . 2 points
- (12) fishing with improperly marked or unmarked gear . . . 2 points
- (13) permit holder not present when required . . . . . 6 points
- (14) fishing with underlength or overlength vessel . . . . . 6 points
- (15) wanton waste of fishing resources . . . . . 4 points.

(c) The number of points assessed against a permit holder for a conviction of a violation of commercial fishing laws under AS 16.05.722 must be one-half of the points assessed for a conviction of a violation of commercial fishing laws under AS 16.05.723.

(d) The commission shall suspend a permit holder's commercial fishing privileges for a fishery for a period of

- (1) one year if the permit holder accumulates 12 or more points during any consecutive 36-month period as a result of convictions for violations of commercial fishing laws in the fishery;
- (2) two years if the permit holder accumulates 16 or more points during

1 any consecutive 48-month period as a result of convictions for violations of  
2 commercial fishing laws in the fishery;

3 (3) three years if the permit holder accumulates 18 or more points  
4 during any consecutive 60-month period as a result of convictions for violations of  
5 commercial fishing laws in the fishery.

6 **Sec. 16.43.855. Assessment of points.** (a) Notice of each assessment of  
7 points shall be given to the permit holder. Notice shall also be given to the permit  
8 holder before the expiration of a suspension of commercial fishing privileges under  
9 AS 16.43.850(d) that subsequent violations of commercial fishing laws in the fishery  
10 may result in further suspensions of the permit. The notice may be given by first class  
11 mail.

12 (b) The time periods provided for in AS 16.43.850 for the accumulation of  
13 points shall be based on the date of conviction, either on a plea of guilty, nolo  
14 contendere, or a forfeiture of bail or collateral, or as a result of a trial, for violation of  
15 a commercial fishing law.

16 (c) The assessment of points against a permit holder by the commission under  
17 AS 16.43.850 - 16.43.895 is in addition to, and not in substitution for, other provisions  
18 of this title and is not a substitute for any penalty imposed by a court.

19 (d) If points are assessed against a permit holder who holds a commercial  
20 fishing permit under an emergency transfer approved by the commission under  
21 AS 16.43.180, the same number of points shall also be assessed against the transferor  
22 of the permit. Points assessed against the transferor of the permit under this subsection  
23 shall be included in calculations made under AS 16.43.850(d).

24 **Sec. 16.43.860. Reduction of points.** Two points shall be deducted from the  
25 total points assessed against a permit holder for a fishery if the permit holder has not  
26 been convicted of a violation of commercial fishing laws in the fishery during the 12-  
27 month period after the date of the last conviction in the fishery for which the permit  
28 holder was assessed points.

29 **Sec. 16.43.865. Suspension.** (a) A permit holder whose commercial fishing  
30 privileges for a fishery are suspended under AS 16.43.850 - 16.43.895 may not obtain  
31 an entry permit or interim-use permit for that fishery during the period of the

1 suspension of the privileges. During the period for which the permit holder's privilege  
2 to obtain an entry permit or interim-use permit for a fishery is suspended under this  
3 section, the commission may not issue a permit card to the permit holder for that  
4 fishery.

5 (b) A permit holder whose privilege of obtaining a commercial fishing permit  
6 for a fishery is suspended under (a) of this section may engage in the fishery only  
7 under a crewmember license.

8 (c) If, during the period for which a permit holder's commercial fishing  
9 privileges for a fishery are suspended, the commission establishes a limited entry  
10 system for the fishery, the permit holder shall be eligible to obtain an entry permit for  
11 that fishery to the extent that the permit holder qualifies for the entry permit under  
12 regulations adopted by the commission. If the permit holder qualifies for an entry  
13 permit for the fishery, the commission shall withhold issuance of the entry permit until  
14 the period of the suspension imposed under AS 16.43.850 - 16.43.895 has expired.

15 **Sec. 16.43.870. Notice and appeal.** The commission shall provide notice of  
16 determinations of the commission under AS 16.43.850 - 16.43.895. Respondents may  
17 request a hearing under regulations adopted by the commission under AS 16.43.110.

18 **Sec. 16.43.875. Required notice to commission.** (a) A court that convicts  
19 a person of a violation of commercial fishing laws under this title or under a regulation  
20 adopted under this title shall forward a record of the conviction to the commission on  
21 a weekly basis.

22 (b) A conviction on a plea of nolo contendere accepted by the court or a  
23 forfeiture of bail or collateral deposited to secure a defendant's appearance in court  
24 that has not been vacated, or as a result of trial, is a conviction for purposes of  
25 AS 16.43.850 - 16.43.895.

26 **Sec. 16.43.895. Definitions for AS 16.43.850 - 16.43.895.** In AS 16.43.850 -  
27 16.43.895,

28 (1) "commercial fishing law" means a statute or regulation that  
29 regulates the conduct of a person engaged in commercial fishing activities by  
30 establishing requirements relating to fishing licenses and permits; catch records and  
31 reports; size, nature, quantity, or use of fishing vessels, sites, and gear; time, place, or

1 manner of taking fishery resources; possession, transportation, sale, barter, or waste of  
2 fishery resources; or other aspects of commercial fishing;

3 (2) "commercial fishing permit" means an entry permit or an interim-  
4 use permit issued under this chapter;

5 (3) "commercial fishing privileges" means the privilege of participating  
6 in an activity for which a commercial fishing permit is required and the privilege of  
7 obtaining a commercial fishing permit;

8 (4) "permit holder" includes the holder of a commercial fishing permit  
9 as the result of an emergency transfer, an applicant for a commercial fishing permit  
10 if the applicant's commercial fishing permit was suspended under AS 16.43.850 -  
11 16.43.895, and a person whose privilege of obtaining a commercial fishing permit for  
12 a fishery is suspended under AS 16.43.850 - 16.43.895.

13 \* Sec. 2. AS 16.05.723(a) is amended to read:

14 (a) A person who negligently violates AS 16.05.440 - 16.05.690, or a  
15 regulation of the Board of Fisheries or the department governing commercial fishing,  
16 is guilty of a misdemeanor and in addition to punishment under other provisions in this  
17 title, including AS 16.05.195 [AND 16.05.710], is punishable upon conviction by a  
18 fine of not more than \$15,000 or by imprisonment for not more than one year, or by  
19 both. In addition, the court shall order forfeiture of any fish, or its fair market value,  
20 taken or retained as a result of the commission of the violation, and the court may  
21 forfeit any vessel and any fishing gear, including any net, pot, tackle, or other device  
22 designed or employed to take fish commercially, that was used in or in aid of the  
23 violation. Any fish, or its fair market value, forfeited under this subsection may not  
24 also be forfeited under AS 16.05.195. For purposes of this subsection, it is a  
25 rebuttable presumption that all fish found on board a fishing vessel used in or in aid  
26 of a violation, or found at the fishing site, were taken or retained in violation of  
27 AS 16.05.440 - 16.05.690 or a commercial fisheries regulation of the Board of  
28 Fisheries or the department, and it is the defendant's burden to show by a  
29 preponderance of the evidence that fish on board or at the site were lawfully taken and  
30 retained.

31 \* Sec. 3. AS 16.10.335 is amended by adding a new subsection to read:

1 (g) If a limited entry permit that has been pledged as security under  
 2 AS 16.10.333 or 16.10.338 is revoked under AS 16.43.970, the debtor's interest in the  
 3 permit is terminated by operation of law without further notice as of the date that the  
 4 revocation takes effect.

5 \* Sec. 4. AS 16.10.337(a) is amended to read:

6 (a) Upon a foreclosure on an entry permit as provided in AS 16.10.335 or the  
 7 termination of a debtor's interest in an entry permit under AS 16.10.335(g), the  
 8 commissioner shall offer the commission a right of first refusal if the permit is subject  
 9 to a buy-back program under AS 16.43.290 - 16.43.330 at a price equal to the amount  
 10 outstanding on the note plus any costs the department directly incurred in  
 11 administering the loan.

12 \* Sec. 5. AS 16.43.970(a) is repealed and reenacted to read:

13 (a) A person who violates a provision of this chapter or a regulation adopted  
 14 under this chapter is, upon conviction, guilty of a class B misdemeanor and is  
 15 punishable by a fine of not more than \$5,000 for a first conviction, and a fine of not  
 16 more than \$10,000 for a second or third conviction. Upon a first or second conviction  
 17 under this subsection, the court may in its discretion also order the commission to  
 18 suspend the commercial fishing privileges of the person for a period of not more than  
 19 three years and to revoke one or more or all commercial fishing permits held by the  
 20 person. Upon a third or subsequent conviction under this subsection, the person is also  
 21 subject to a loss of commercial fishing privileges as provided under (i) of this section.  
 22 This subsection does not apply to violations of AS 16.43.140(a).

23 \* Sec. 6. AS 16.43.970(b) is amended to read:

24 (b) A person who knowingly makes a false statement to the commission for  
 25 the purpose of obtaining a benefit, including the issuance, renewal, duplication, or  
 26 transfer of an entry or interim-use permit or vessel license or a person who assists  
 27 another by knowingly making a false statement to the commission for the purpose of  
 28 obtaining a benefit for another, is guilty of the crime of unsworn falsification as set  
 29 out in AS 11.56.210. Upon conviction, the person is also subject to suspension of  
 30 commercial fishing privileges and revocation of commercial fishing permits under  
 31 (i) of this section [(1) SHALL FORFEIT TO THE COMMISSION ALL INTERIM-

1 USE PERMITS AND ENTRY PERMITS AND (2) LOSES ELIGIBILITY FOR  
 2 INTERIM-USE PERMITS AND FOR ENTRY PERMITS FOR A PERIOD OF  
 3 THREE YEARS].

4 \* Sec. 7. AS 16.43.970(f) if amended to read:

5 (f) A commercial fishing [AN ENTRY] permit revoked [FORFEITED] under  
 6 this section that is pledged [TAKEN] as security for a loan under AS 16.10.333, or  
 7 16.10.338, or AS 44.81.231 shall be reassigned as provided in AS 16.10.337 or  
 8 AS 44.81.250.

9 \* Sec. 8. AS 16.43.970(g) is amended to read:

10 (g) A person who violates the provisions of AS 16.43.140(a) is

11 (1) upon a first conviction, guilty of a class B misdemeanor and may  
 12 be sentenced to a definite term of imprisonment of not more than 90 days, or forfeiture  
 13 of the person's fishing vessel, or both, and shall be sentenced to a fine of not less than  
 14 \$5,000 nor more than \$10,000 and loss of commercial fishing privileges under (i) of  
 15 this section [FOR A PERIOD OF ONE YEAR AFTER THE DATE OF  
 16 CONVICTION];

17 (2) upon a second conviction, guilty of a class A misdemeanor and may  
 18 be sentenced to a definite term of imprisonment of not more than one year, and shall  
 19 be sentenced to a fine of not less than \$10,000 nor more than \$20,000, forfeiture of  
 20 the person's fishing vessel, and loss of commercial fishing privileges under (i) of this  
 21 section [FOR A PERIOD OF TWO YEARS AFTER THE DATE OF CONVICTION];

22 (3) upon a third or subsequent conviction, guilty of a class A  
 23 misdemeanor and may be sentenced to a definite term of imprisonment of not more  
 24 than one year, and shall be sentenced to a fine of not less than \$20,000 nor more than  
 25 \$50,000, forfeiture of the person's fishing vessel, and loss of commercial fishing  
 26 privileges under (i) of this section [FOR A PERIOD OF FIVE YEARS AFTER THE  
 27 DATE OF CONVICTION].

28 \* Sec. 9. AS 16.43.970 is amended by adding new subsections to read:

29 (i) Upon the conviction of a person for an offense described under (a), (b), or  
 30 (g) of this section, the court shall immediately notify the commission of the conviction.  
 31 The notice provided by the court shall be accompanied by an order suspending

1 commercial fishing privileges and revoking commercial fishing permits under (a) of  
2 this section, as appropriate. The commission shall, upon receipt of

3 (1) an order from the court under (a) of this section, suspend the  
4 commercial fishing privileges of a person for the period set by the court and revoke  
5 commercial fishing permits held by the person as directed by the court;

6 (2) a notice from the court that a person has been convicted of a third  
7 or subsequent violation of (a) of this section, suspend all commercial fishing privileges  
8 of the person for a period of three years from the date of conviction and revoke all  
9 commercial fishing permits held by the person;

10 (3) a notice from the court that a person has been convicted of a  
11 violation described under (b) of this section, suspend all commercial fishing privileges  
12 of the person for a period of three years from the date of conviction and revoke all  
13 commercial fishing permits held by the person;

14 (4) a notice from the court that a person has been convicted of a  
15 violation described under (g)(1) of this section, suspend all commercial fishing  
16 privileges of the person for a period of one year from the date of conviction;

17 (5) a notice from the court that a person has been convicted of a  
18 violation described under (g)(2) of this section, suspend all commercial fishing  
19 privileges of the person for a period of two years from the date of conviction;

20 (6) a notice from the court that a person has been convicted of a  
21 violation described under (g)(3) of this section, suspend all commercial fishing  
22 privileges of the person for a period of five years from the date of conviction.

23 (j) In this section, "commercial fishing permit" and "commercial fishing  
24 privileges" have the meanings given in AS 16.43.895.

25 \* Sec. 10. AS 44.81.247 is amended by adding a new subsection to read:

26 (b) If a limited entry permit that has been pledged as security under  
27 AS 44.81.231 is revoked under AS 16.43.970, the debtor's interest in the permit is  
28 terminated by operation of law without further notice as of the date that the revocation  
29 takes effect.

30 \* Sec. 11. AS 44.81.250(a) is amended to read:

31 (a) Upon foreclosure of a pledge of an entry permit under AS 44.81.241 -

1           44.81.249 or the termination of a debtor's interest in an entry permit under  
2           AS 44.81.247(b), the bank shall determine if the permit is subject to a buy-back  
3           program under AS 16.43.290 - 16.43.330 and, if it is subject to a buy-back program,  
4           shall offer the permit to the commission at a price equal to the outstanding  
5           indebtedness on the loan.

6           \* Sec. 12. AS 16.05.710(a) and 16.05.710(d)(1) are repealed.

7           \* Sec. 13. APPLICABILITY. This Act applies to violations of commercial fishing laws  
8           that occur on or after the effective date of this Act.

9           \* Sec. 14. This Act takes effect immediately under AS 01.10.070(c).

Sec. 16.05.722. Strict liability commercial fishing penalties.

(a) A person who without any culpable mental state violates AS 16.05.440 - 16.05.690, or a regulation of the Board of Fisheries or the department governing commercial fishing, is guilty of a violation and upon conviction is punishable by a fine of not more than

(1) \$3,000 for a first conviction;

(2) \$6,000 for a second conviction or for a subsequent conviction not described in (3) of this subsection; and

(3) \$9,000 for a third or subsequent conviction within a 10-year period.

(b) In addition, the court shall order forfeiture of any fish, or its fair market value, taken or retained as a result of the commission of the violation. For purposes of this subsection, it is a rebuttable presumption that all fish found on board a fishing vessel used in or in aid of a violation, or found at the fishing site, were taken or retained in violation of AS 16.05.440 - 16.05.690 or a commercial fisheries regulation of the Board of Fisheries or the department. It is the defendant's burden to show by a preponderance of the evidence that fish on board or at the site were lawfully taken and retained.

(c) A person charged with a violation under this section is entitled to a trial by court but not by jury, and is not entitled to representation at public expense.

History -

(sec. 3 ch 46 SLA 1988; am sec. 1 ch 47 SLA 1995)

Amendment Notes -

The 1995 amendment, effective August 24, 1995, in subsection (a), added "conviction or for a subsequent conviction not described in (3) of this subsection; and" at the end of paragraph (2), added the paragraph (3) designation, in paragraph (3), added "\$9,000 for a third" at the beginning and "within a 10-year period" at the end, and made a minor stylistic change.

Editors Notes -

Section 6 of ch. 46, SLA 1988, which enacted this section, provides: "Notwithstanding the provisions of this Act, in a case pending on May 25, 1988 involving a commercial fishing violation that occurred before May 25, 1988, the court shall apply the law that was in effect on the date the violation occurred."

Decisions -

No absolute liability. - This section does not establish absolute liability; the statute simply eliminates culpable mental state as an element of specified fish and game violations.

*Clucas v. State*, 815 P.2d 384 (Alaska Ct. App. 1991).

"First in time, first in right" defense. - Because the "first in time, first in right" defense does not implicate the culpable mental state involved in a case, prosecution of a fish and game case under this section does not preclude the defense from being raised. *Clucas v. State*, 815 P.2d 384 (Alaska Ct. App. 1991).

Sanction of fine and forfeiture. - This section states that fishermen may be sanctioned in two ways for their conduct - fine and forfeiture. The statute allows the state to seize the illegal catch itself, or, if it has already been sold, the statute allows the state to seize the proceeds or fair market value of the sale. *McCann v. State*, 817 P.2d 484 (Alaska Ct. App. 1991).

Intent of forfeiture language. - The clear intent of the forfeiture language in this section is to prevent the violator from profiting in any way from the illegal catch. Nothing in the statute allows for a forfeiture in order to "make the state whole". *McCann v. State*, 817 P.2d 484 (Alaska Ct. App. 1991).

No offset of violator's operating costs. - This section makes no provision, in a forfeiture

order, for offsetting the fair market value of the illegal catch with the violator's operating costs. Millman v. State, 841 P.2d 190 (Alaska Ct. App. 1992).

Forfeiture order was improper. - where the state fined defendant the maximum amount, seized undersized crabs, and ordered him to pay a percentage of the fair market value of the seized crabs. McCann v. State, 817 P.2d 484 (Alaska Ct. App. 1991).

Maximum fine upheld. - Findings that defendant caught a "high percentage" of undersized crabs and that he exhibited "extreme carelessness" in using a bent measuring stick to measure the crabs constituted sufficient justification for the imposition of the maximum fine. McCann v. State, 817 P.2d 484 (Alaska Ct. App. 1991).

Quoted in Waiste v. State, 808 P.2d 286 (Alaska Ct. App. 1991).

Cited in State v. Lawler, Ct. App. Op. No. 1473 (File No. A-5728), P.2d (1996).

Sec. 16.05.723. Misdemeanor commercial fishing penalties.

(a) A person who negligently violates AS 16.05.440 - 16.05.690, or a regulation of the Board of Fisheries or the department governing commercial fishing, is guilty of a misdemeanor and in addition to punishment under other provisions in this title, including AS 16.05.195 and 16.05.710, is punishable upon conviction by a fine of not more than \$15,000 or by imprisonment for not more than one year, or by both. In addition, the court shall order forfeiture of any fish, or its fair market value, taken or retained as a result of the commission of the violation, and the court may forfeit any vessel and any fishing gear, including any net, pot, tackle, or other device designed or employed to take fish commercially, that was used in or in aid of the violation. Any fish, or its fair market value, forfeited under this subsection may not also be forfeited under AS 16.05.195. For purposes of this subsection, it is a rebuttable presumption that all fish found on board a fishing vessel used in or in aid of a violation, or found at the fishing site, were taken or retained in violation of AS 16.05.440 - 16.05.690 or a commercial fisheries regulation of the Board of Fisheries or the department, and it is the defendant's burden to show by a preponderance of the evidence that fish on board or at the site were lawfully taken and retained.

(b) If a person is convicted under this section of one of the following offenses, then, in addition to the penalties imposed under (a) of this section, the court may impose a fine equal to the gross value of the fish found on board or at the fishing site at the time of the violation:

- (1) commercial fishing in closed waters;
- (2) commercial fishing during a closed period or season;
- (3) commercial fishing with unlawful gear, including a net, pot, tackle, or other device designed or employed to take fish commercially; or
- (4) commercial fishing without a limited entry permit holder on board if the holder is required by law or regulation to be present.

(c) Upon a third misdemeanor conviction within a period of 10 years for an offense listed in (b) of this section or any combination of offenses listed in (b) of this section, the court shall impose, in addition to any penalties imposed under (a) of this section, a fine equal to three times the gross value of the fish found on board or at the fishing site at the time of the offense, or a fine equal to \$10,000, whichever is greater

History -

(sec. 3 ch 46 SLA 1988)

Editors Notes -

Section 6 of ch. 46, SLA 1988, which enacted this section, provides: "Notwithstanding the provisions of this Act, in a case pending on May 25, 1988 involving a commercial fishing violation that occurred before May 25, 1988, the court shall apply the law that was in effect on the date the violation occurred."

Decisions -

Legislative intent. - Although this section is broadly worded, it does not supersede all Board of Fisheries regulations that specify a mens rea other than negligence. Given the lack of any clear expression of legislative intent, such an interpretation would be unwarranted. *Waiste v State*, 808 P.2d 286 (Alaska Ct. App. 1991).

Forfeiture only of fish for which convicted. - Subsection (a) of this section provides for the mandatory forfeiture only of fish taken or retained as a result of the violation for which the defendant has been convicted. When the statute is so construed, the defendant must still overcome the presumption that all fish on board his vessel were taken as the result of the violation for which he was convicted. *McNabb v. State*, 860 P.2d 1294 (Alaska Ct. App. 1993).

Amount of fine not dependent on violation. - Unlike the forfeiture authorized by subsection (a) of this section, the fine provided for in subsection (b) of the statute does not depend on the amount of fish taken as a result of the violation. The statute contemplates a fine which is based on the value of the fish on board a vessel, whether they were taken illegally or not. *McNabb v. State*, 860 P.2d 1294 (Alaska Ct. App. 1993).

Cited in *McCann v. State*, 817 P.2d 484 (Alaska Ct. App. 1991); *Scudero v. State*, Ct. App. Op. No. 1469 (File No. A-5954), P.2d (1996).

Sec. 16.10.333. Loans for purchase of Alaska limited entry permits.

(a) Loans under AS 16.10.310(a) may be made to an individual commercial fisherman for the purchase of a limited entry permit upon certification by the commission that the fisherman is a person who qualifies as a transferee for the permit under AS 16.43 and the regulations adopted by the commission.

(b) Upon approval by the commissioner, the permit to be purchased may be pledged as security for a loan under (a) of this section, if

(1) the certificate for the pledged permit lists the commissioner as the legal owner of the permit;

(2) the certificate for the pledged permit lists the debtor as the equitable owner of the permit;

(3) all annual permit cards issued under the pledged permit list the name of the debtor;

(4) all obligations and responsibilities of a permit owner are assumed by the debtor;

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit and their obligation is limited to satisfaction of the note and payment of costs directly incurred by the department in administering the loan.

(c) The commissioner is not liable for any act or omission resulting from permit ownership nor will that act or omission affect the commissioner's title to the permit or the commissioner's rights under it.

(d) Upon satisfaction of the note by the debtor, the commissioner shall certify to the commission that the note has been satisfied.

(e) Upon certification as provided in (d) of this section, the commission shall amend the permit certificate to list the debtor as the legal owner.

(f) [Repealed, sec. 34 ch 79 SLA 1985]

History -

(sec. 4 ch 83 SLA 1978, am sec. 1 ch 106 SLA 1980; am sec. 8, 34 ch 79 SLA 1985)

Cross References -

For the reassignment of entry permits taken as security for loans after such permits are revoked, see AS 16.43.960(i).

Decisions -

Cited in *Anderson v. Anderson*, 736 P.2d 320 (Alaska 1987)

Sec. 16.10.337. Deficiencies and transfer of entry permits after foreclosure.

(a) Upon a foreclosure on an entry permit as provided in AS 16.10.335, the commissioner shall offer the commission a right of first refusal if the permit is subject to a buy-back program under AS 16.43.290 - 16.43.330 at a price equal to the amount outstanding on the note plus any costs the department directly incurred in administering the loan.

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 - 16.43.330, the department shall promptly advertise and sell the permit. If the proceeds of the sale of a permit exceed the amount necessary to pay the note in full, plus penalties, costs of administration of the note, and attorney fees, the excess shall be transferred by the commissioner to the debtor. At any time until the permit has been sold under this subsection the debtor may repurchase the permit by paying the department the amount necessary to pay the note in full, plus penalties, costs of administration of the note, and attorney fees, as determined by the commissioner.

(c) [Repealed, sec. 72 ch 113 SLA 1982].

(d) Nothing in this section affects the right of the commissioner to institute legal action for a deficiency resulting from a default on a note given under AS 16.10.333. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees.

History -

(sec. 4 ch 83 SLA 1978; am sec. 72 ch 113 SLA 1982; am sec. 5 ch 7 SLA 1983)

Cross References -

For the reassignment of entry permits taken as security for loans after such permits are revoked, see AS 16.43.960(i).

Sec. 16.43.110. Regulations and hearing procedures.

(a) The commission may adopt regulations, consistent with law, necessary or proper in the exercise of its powers or for the performance of its duties under this chapter.

(b) The commission shall adopt regulations, consistent with due process of law, that govern practice and procedure and the conduct of all investigations, hearings, and proceedings which it holds.

(c) The Alaska Rules of Evidence apply to investigations, hearings, and proceedings before the commission, except when the commission determines that their application is not required in order to assure fair treatment of all parties and that the evidence is relevant and of the sort on which responsible persons are accustomed to rely in the conduct of serious matters.

(d) The commission, a commissioner, or an employee authorized by the commission may administer oaths, certify to all official acts, and issue subpoenas and other process to compel the attendance of witnesses and the production of testimony, records, papers, accounts, and documents in an inquiry, investigation, hearing, or proceeding before the commission in any part of the state. The commission may petition a court to enforce its subpoenas or other process.

(e) The commission shall adopt regulations to provide for the correction of administrative error.

History -

(sec. 1 ch 79 SLA 1973; am sec. 1 ch 47 SLA 1981; am sec. 6 ch 145 SLA 1984)

Decisions -

Fees upheld. - Limited Entry Act fees were intended to substitute for the previous differential gear license fees as the means of ensuring nonresident contribution toward the cost; therefore, the 3:1 differential in fees was a proper implementation of the purposes of the Act. *Carlson v. State*, 798 P.2d 1269 (Alaska 1990).

Quoted in *Simpler v. State*, 723 P.2d 227 (Alaska 1986); *Johns v. Commercial Fisheries Entry Comm'n*, 758 P.2d 1256 (Alaska 1988).

Cited in *Kalmakoff v. State*, 693 P.2d 844 (Alaska 1985)

Sec. 16.43.120. Application of Administrative Procedure Act.

(a) The administrative adjudication procedures of AS 44.62 (Administrative Procedure Act) do not apply to adjudicatory proceedings of the commission except that final administrative determinations by the commission are subject to judicial review as provided in AS 44.62.560 - 44.62.570.

(b) AS 44.62.010 - 44.62.320 and 44.62.640 apply to regulations adopted by the commission.

History -

(sec. 1 ch 79 SLA 1973)

Decisions -

The right to preemptorily challenge a judge - exists in an appeal to the superior court from a final administrative determination of the Alaska Commercial Fisheries Entry Commission. *State, Com. Fisheries Entry Comm'n v. Polushkin*, 628 P.2d 6 (Alaska 1981).

Rejection of application for permit constituted final administrative determination - where there was no more time to submit evidence or alter the decision through administrative means. *Ostman v. State, Com. Fisheries Entry Comm'n*, 678 P.2d 1323 (Alaska 1984).

Timeliness of functional administrative appeal. - An applicant's independent action brought in superior court some three years after the commission's denial of his application for an entry permit, from which decision he had failed to make an administrative appeal, was functionally an administrative appeal and subject to dismissal for failure to state a claim upon which relief could be granted, since the action was untimely, and a court decision, rendered subsequent to the denial of his request, which invalidated a regulation similar to that upon which his denial was based, would not be applied retroactively so as to require the commission to reconsider the application. *Haynes v. State, Com. Fisheries Entry Comm'n*, 746 P.2d 892 (Alaska 1987).

Applied in *White v. Alaska Com. Fisheries Entry Comm'n*, 678 P.2d 1319 (Alaska 1984).

Quoted in *Anderson v. State, Com. Fisheries Entry Comm'n*, 654 P.2d 1320 (Alaska 1982).

Cited in *Wickersham v. State, Com. Fisheries Entry Comm'n*, 680 P.2d 1135 (Alaska 1984).

Sec. 44.81.231. Pledge of permits.

(a) A limited entry permit issued under AS 16.43 may be pledged by the holder as security for a loan authorized under AS 44.81.236 if the certificate for the pledged permit lists the bank as the legal owner of the permit and the pledger as the equitable owner of the permit.

(b) Annual permit cards issued under the pledged permit must be in the name of the equitable owner who shall be responsible for compliance with the laws that govern the permit as if the equitable owner were the holder of the permit.

(c) Co-borrowers or guarantors on a loan secured by one or more pledged permits do not have a right in the pledged permit of the equitable owner, whether by subrogation or other manner.

(d) Upon payment of the loan, the bank shall certify to the Commercial Fisheries Entry Commission that the loan has been repaid, and the commission shall amend the permit certificate to list the equitable owner as the holder, and the legal interest of the bank shall terminate.

(e) In anticipation of a possible foreclosure under AS 44.81.241 - 44.81.250, the equitable owner of a permit that is pledged as security for the loan may nominate a person to whom the permit may be transferred if the pledge is foreclosed under AS 44.81.245.

History -

(sec. 19 ch 34 SLA 1996)

Effective Date Notes -

Section 19, ch. 34, SLA 1996, which enacted this section, took effect on August 20, 1996.

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter that added this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

Decisions -

Cited in *Anderson v. Anderson*, 736 P.2d 320 (Alaska 1987) (decided under former AS 44.81.230).

Sec. 44.81.250. Transfer of entry permits after foreclosure.

(a) Upon foreclosure of a pledge of an entry permit under AS 44.81.241 - 44.81.249, the bank shall determine if the permit is subject to a buy-back program under AS 16.43.290 - 16.43.330 and, if it is subject to a buy-back program, shall offer the permit to the commission at a price equal to the outstanding indebtedness on the loan.

(b) If the permit is not subject to a buy-back program, or if the commission fails to buy back the permit within 30 days after the commission receives the offer, the bank shall sell the permit to a person who qualifies as a transferee of an entry permit under AS 16.43 and the regulations adopted by the commission. The bank shall give preference to an offer to purchase a permit made by a state resident if the price offered is equal to or greater than the price offered by a nonresident. If the proceeds of the sale of a permit exceed the amount necessary to pay the indebtedness in full, the bank shall remit the excess to the borrower.

(c) At any time before foreclosure of a pledge of a permit, or within 30 days following foreclosure of a pledge of a permit, the equitable owner or former equitable owner may nominate a person to assume the loan. A person nominated must qualify as a transferee of the permit under AS 16.43 and must qualify to assume the loan under the requirements of the bank. If the person qualifies, the permit shall be transferred to the nominee upon the nominee's assumption of the loan.

(d) This section does not affect the right of the bank to institute legal actions against the borrowers, guarantors, or other sureties for performance to collect the indebtedness owing on the loan and to take other legal action on the collateral securing the loan.

History -

(sec. 5 ch 53 SLA 1979; am sec. 15 - 17 ch 51 SLA 1980; am sec. 6 - 8 ch 70 SLA 1989; am sec. 6 ch 39 SLA 1991; am sec. 37 ch 30 SLA 1992; am sec. 22 ch 34 SLA 1996)

Revisors Notes -

Formerly AS 44.54.250. Renumbered in 1980.

Amendment Notes -

The 1989 amendment, effective May 31, 1989, added "If the debtor has not previously nominated a qualified person to assume the note under AS 44.81.230(f)" at the beginning of the second sentence in subsection (b); inserted the reference to "44.81.210(a)(20)" in the first sentence in subsection (d); and added subsection (e).

The 1991 amendment, effective June 13, 1991, in subsection (d), substituted "note for a loan made under" for "note given under" and inserted "44.81.225," and "or 44.81.235," and made a stylistic change.

The 1992 amendment, effective May 16, 1992, deleted "and commercial fishing participation" following "met the residency" in the second sentence of subsection (c).

The 1996 amendment, effective August 20, 1996, rewrote this section.

Editors Notes -

Section 28, ch. 34, SLA 1996 provides that the 1996 amendments made by that chapter to this section do not affect "a contract, cause of action, liability, penalty, or proceeding existing, incurred, or accrued on August 20, 1996," and do not affect "an action of the Alaska Commercial Fishing and Agriculture Bank taken before August 20, 1996."

PO Box 532  
King Salmon, AK 99613  
TEL 907-246-7483  
FAX 907-246-8376

January 26, 1997

Honorable Senator Rick Halford  
Juneau, AK

Dear Senator Halford:

Illegal fishing in Bristol Bay is increasing annually. We all hear of commercial fishers fishing over the line, in closed waters during the cover of darkness or fog, before their 48 hour transfer time is up, with extra gear, and before the fishing period is open. These are some examples of what is happening. We need legislation to deter illegal fishing.

With today's illegal fishers it is like the modern day gold rush with no marshal in town. A 12 point system on the permits and boat, plus a monetary fine just like an Alaska drivers' license is recommended. Some fishers feel they do not have to adhere to the rules and regulations and make the statement, "If I get caught fishing over the line it's a \$2500 fine. The cost of doing business. No big thing. I cleared \$7000 before I was caught. I still made money with the fine." The person who fished legally becomes frustrated.

With the point system an illegal fisher would receive 6 points against the permit and 6 points against the boat, plus a monetary fine. Illegal fishers would no longer be saying, "That its the cost of doing business." With this system both the permit and boat are at stake with only 6 more points left on each before being removed from the fishery. Then most cases of illegal fishing would cease because the penalties are too high.

If that permit and boat was put on the market to be sold, points against the permit and boat would be attached. It would drive down the value of the permit and boat giving a person without a permit and boat a chance to buy into a fishery at a lower cost. Also, if there was a permit and boat on the market that had no points attached the value would go up.

A person who had acquired 12 points on the permit and boat within five years the permit and boat would be removed from the fishery forever. The person whose name was on the permit would not be able to fish in the fishery again either as a permit holder or crew person.

A person who had points deducted from the permit and boat and had no more point deductions within five years the permit and boat would resort back to zero points.

The legislation must include the same penalties for fisheries that aren't included under the limited entry program, such as, the herring fishery. The penalties received would be administered under the Limited Entry system.

The points attached to each violation has to be severe enough to deter the person from doing any illegal fishing.

The following are suggested penalties that should be against the boat and permit:

Fishing in Closed Waters-----6 points

Fishing with Extra Gear-----6 points

Selling Subsistence Fish-----6 points

-(with subsistence permit revoked for 5 years)

Fishing Before 48 Hour Transfer Period-----5 points

Boats Fishing with Extra Gear Onboard-----4 points

Fishing Between Set-Net Sites-----4 points

Crew Fishing Without License-----1 point

Boat Fishing Without Necessary Paperwork

-Blue Card Registration-----1 point

Numbers Covered on Boat-----Warning

-next offense-----1 point

Buoy Not Marked-----Warning

-next offense-----1 point

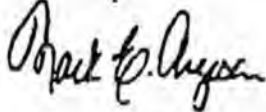
Sites

Fishing more than two 25 Fathom Sites with 1 permit---6 points

Drifting-----6 points

If you agree with this concept, legislation is needed. If you have any questions or need further clarification please call me at 246-7483. Any legal fisher shouldn't disagree with this approach.

Sincerely,



Mark E. Angasan

**HB**

**296**

# FISCAL NOTE

**STATE OF ALASKA  
1998 LEGISLATIVE SESSION**

**BILL NO. HB 296**

Revision Date (Note if correction) \_\_\_\_\_ Dept. Affected DCED  
 Title Extend the Alaska Minerals Commission BRU Trade & Development  
 Component Trade & Development  
 Sponsor Rep. Brice  
 Requester House Resources Component Serial No. 2277

**Expenditures/Revenues (Thousands of Dollars)**

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The Alaska Minerals Commission has annual expenditures of \$6,700 for ongoing administrative costs, based on funds spent in FY97. The expenditures include travel, per diem, meeting expenses, preparation and printing of the annual report. Projected expenses are contained in DCED's proposed FY99 operating budget.

Prepared by Karl Ohls Phone 465-5467  
 Division Trade & Development Date Jan. 29, 1998  
 Approved by Commissioner Deborah B. Sedwick Date 1/29/98  
 Agency House Resources

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# Representative Tom Brice

## ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205  
Fairbanks, AK 99701  
907-456-7423 / Fax: 451-9293  
*While in Juneau*  
State Capitol  
Juneau, AK 99801-1182  
907-465-3466

### Memorandum

To: Representative Bill Hudson  
Co-Chairman, Alaska State Legislature

From: Representative Tom Brice 

Date: January 12, 1998

RE: HB 296 "An act extending the termination date of the Alaska Minerals Commission."

I respectfully request that this bill is scheduled for a hearing in your committee.



# Representative Tom Brice

## ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205  
Fairbanks, AK 99701  
907-456-7423 / Fax: 451-9293  
*While in Juneau*  
State Capitol  
Juneau, AK 99801-1182  
907-455-3466

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### REPRESENTATIVE TOM BRICE SPONSOR STATEMENT for HB 296

The State of Alaska has an enormous wealth of mineral deposits and mines within its borders. The total value of the minerals industry increased 23 percent in 1996 alone to a record \$1,029.0 million, the first time that the industry has exceeded the one-billion dollar mark in a single year. Estimates say that the total value of the industry will continue to grow with proper management.

The Alaska Minerals Commission is composed of 11 members who are experts in the various aspects of the minerals industry. The Governor appoints five members and the President of the Senate and the Speaker of the House each appoint three members to the commission to serve at their pleasure.

The Alaska Minerals Commission, established under the Department of Commerce and Economic Development, makes recommendations to the Governor and the Legislature concerning appropriate mineral development within the state. The Commission also makes recommendations on ways to mitigate governmental constraints on development of minerals.

The Alaska Minerals Commission is of obvious necessity to the continuing prosperity of the minerals industry in the state. Presently, the Alaska Minerals Commission will be dissolved in January 1999. HB 296 extends the termination date of the Commission to February 1, 2004.

Thank you for your support.





# ALASKA MINERS ASSOCIATION, INC.

801 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 275-7897 Telephone: (907) 276-0347

January 16, 1998

Honorable ~~Bill Hudson~~  
Honorable Scott Ogan  
Co-Chairmen, House Resources Committee  
Capitol Building  
Juneau, AK 99801

RE: House Bill 296, Extending the Alaska Minerals Commission

Dear Representatives Hudson and Ogan,

The Alaska Miners Association supports extending the termination date of the Alaska Minerals Commission as proposed in House Bill 296. The establishment of the Alaska Minerals Commission in 1986 and the work that the Commission has accomplished since that time can be credited as significant factors that have helped advance the mining industry during the past few years.

The Alaska Minerals Commission provides a venue for review and evaluation of issues affecting the minerals industry in an objective and non-partisan manner. The value of this Commission has been recognized by other states and countries and although I do not know if any similar legislation has been passed, I do know that some other jurisdictions have worked on such legislation.

We urge passage of House Bill 296. If we can be of further assistance in this manner please contact me.

Sincerely,

Steven C. Borell, P.E.  
Executive Director

cc: Representative Tom Brice  
Representative Gene Therriault  
Representative John Davies

**ALASKA EARTH SCIENCES**  
11341 Olive Lane  
Anchorage, Alaska 99515  
Phone: (907) 522-4664 Fax: 349-3557  
E-Mail: AKrocks@alaska.net

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DATE: January 12, 1998

TO: Representative Tom Brice

ATTN: Scott

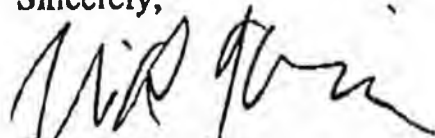
NUMBER OF PAGES: 1  
(including this page)

FROM: T. K. Hinderman

---

I would like to express support for continued funding for the Alaska Minerals commission as addressed in HB 296. The commission has been a very functional voice for the mineral industry in the past, and we would like to see the support continue. The overall cost is a very minor line in the overall budget, and the mineral industry as a whole is poised to make a significant contribution to the state economy for the first time since the second world war.

Sincerely,



Toni K. Hinderman  
Consulting Exploration Geologist  
General Partner, Alaska Earth Sciences

JAN 20 1998

*Newmont Alaska Limited*

1818 Old Steese Highway North

Fairbanks, Alaska 99712

(907) 457-1794

FAX 457-1801

January 17, 1998

Rep Tom Brice

FAX: 465-2937

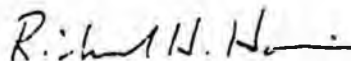
Re: HB 296 - Minerals Commission

Dear Rep Brice:

I understand you are introducing a bill which extends the Minerals Commission for another five years. We strongly support the efforts of the commission and the intent of your bill. The work of the commission in promoting mineral development in Alaska, particularly by Dick Swainbank here in Fairbanks, is important to the state and we hope it continues.

Thank you for introducing the bill and good luck with its passage.

Sincerely,



Rich Harris  
Regional Geologist

# Kvaerner Environmental

15 January, 1998

Representative Tom Brice  
Alaska State Legislature  
State Capitol  
Juneau, Alaska  
99801- 1182

Dear Representative Brice,

I am writing this letter in support of HB 296 of which you are the main sponsor. This bill extends the termination date for the Alaska Minerals Commission until 2004.

The Alaska Minerals Commission, through its meetings and annual report to the Alaska Legislature and Governor has proven itself to be a very effective factor in the advancement of the Alaska Minerals Industry. Recent successes in Alaska mining, such as the Fort Knox Mine near Fairbanks and the Interior Alaska exploration boom, owe much to the past and ongoing efforts of the Minerals Commission.

The Minerals Commission has sparked meaningful changes beneficial to Alaska Mining (with the jobs and revenues for Alaska communities and the state) in such broad ranging issues as; settlement of the mental health lawsuit, municipal taxation of resources in place, diminutive discharges, exploration incentive program, and the very successful statewide airborne geophysical program.

The Commissions modest budget and staff support through the Department of Commerce and Economic Development is a model of how public- private partnerships can work effectively.

I fully support extension of the Commission as spelled out in HB 296. Please call if I may be of any assistance in moving this important bill through the legislative process.

Thanks for your efforts.

Sincerely,



Albert H. Clough, P. Geol.

**KVÆRNER**

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 110800  
JUNEAU, ALASKA 99811-0800  
PHONE: (907) 465-2500  
FAX: (907) 465-5442  
TDD: (907) 465-5437

January 20, 1998

Representative Tom Brice  
State Capitol, Room 426  
Juneau, Alaska 99801-1182

Representative Brice,

The Department of Commerce and Economic Development supports HB 296, which extends the life of the Alaska Minerals Commission. The Alaska Minerals Commission is a formal link between industry representatives and state government, bringing varied and in-depth minerals experience to topics being considered by state government.

The Commission presents and supports governmental actions, that assist and promote resource exploration, facilitate mineral and coal development, and improve the regulatory environment for production of mineral products. For example, the DGGs airborne geophysical survey program has attracted more than \$10,000,000 in exploration funds to the Fairbanks District, along with substantial increased exploration activity as the geophysics program expands to other areas. Exemption of natural resources from municipal taxation, advancing RS2477 access through State lands, limiting administrative closure of State land, and opening closed State land to mineral entry have further established Alaska's standing as a premier mining region. Continuing support and vigilance from the Minerals Commission ensures progress in these and other issues of interest to the industry.

Sincerely,

Jeffrey W. Bush  
Deputy Commissioner

cc: Pat Pourchot, Legislative Director

**HB**

**310**

# HOUSE COMMITTEE REPORT

(9)

Date Referred to Committee: January 30, 1998

FURTHER REFERRALS:

Date of Committee Action: 2/12/98

The RESOURCES Committee considered:

HB 310

HOUSE BILL NO. 310

UTILIZATION OF GROUND FISH

"An Act relating to the utilization of groundfish; and providing for an effective date."

recommends it be replaced  the same title  
 with the following committee substitute \_\_\_\_\_  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_  
 fiscal note(s) \_\_\_\_\_  fiscal note(s) \_\_\_\_\_  
 zero fiscal note(s) \_\_\_\_\_  zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Paul Dye</i> <span style="float: right;"><i>Dye</i></span>		-	✓	
<i>W. F. Williamson</i> <span style="float: right;"><i>William</i></span>			✓	
<i>Tamara Barnes</i> <span style="float: right;"><i>Barnes</i></span>			✓	
<i>Beverly Masak</i> <span style="float: right;"><i>Masak</i></span>			✓	
<i>Scotty ...</i> <span style="float: right;"><i>Ogan</i></span>	✓			
<i>Bill Hudson</i> <span style="float: right;"><i>Hudson</i></span>	✓			

CHAIR'S SIGNATURE *Bill Hudson* *Scotty ...*

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. HB 310

Revision Date (Note if correction) \_\_\_\_\_ Dept. Affected Fish and Game  
 Title Utilization of groundfish BRU CFMD  
 Component Fisheries management  
 Sponsor Rep. Austerman  
 Requester House Fisheries Component Serial No. 1941

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: \_\_\_\_\_

**POSITIONS**

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

Prepared by Bgb Clasby  
 Division Commercial Fisheries Management and Development  
 Approved by Commissioner: Frank Rue  
 Agency Fish and Game

Phone 465-6100  
 Date 1/21/98  
 Date 1/21/98

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# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. HB 310 |

Revision Date (Note if correction) 1/14/98 Dept. Affected Public Safety  
 Title An Act relating to the utilization of groundfish BRU Fish and Wildlife Protection  
 taken in a commercial fishery; providing for an effective date Component Delachments  
 Sponsor Rep. Austerman  
 Requester House Spec. Committee on Fisheries Component Serial No. 490

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: 0.0

**POSITIONS**

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

This bill would require all commercial fishers to retain and process for lawful utilization designated groundfish species caught as bycatch during any commercial fishery. This bill is consistent with Department program objectives and will not adversely impact the Division's budget.

Prepared by Captain Joel L. Hard  
 Division Fish and Wildlife Protection  
 Approved by Commissioner Ronald L. Otte [Signature]  
 Agency Department of Public Safety

Phone 746-9139  
 Date 1/14/98  
 Date 1/14/98

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**REPRESENTATIVE ALAN AUSTERMAN** Alaska State Legislature

P.O. Box 2368, Kodiak, Alaska 99615 (907) 486-5930 • Session: State Capitol, Juneau, Alaska 99801 465-2487

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**MEMORANDUM**

TO: Representative Scott Ogan, Co-Chair  
✓ Representative Bill Hudson, Co-Chair  
House Resources Committee



FROM: Representative Alan Austerman, Chair  
House Special Committee on Fisheries

DATE: January 29, 1998

RE: House Bill 310

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House Bill 310, relating to utilization of groundfish, will be referred to your committee. I respectfully request that a hearing for HB 310 be scheduled for the Resources committee at your earliest possible convenience.

If you have any questions regarding scheduling this legislation, please contact my staff, Amy Daugherty, at x4230.

Thank you in advance for your consideration of this request.

NEWS RELEASE (97-136)  
Steven Pennoyer  
907-586-7221

79 PMY  
December 5, 1997  
4:50 p.m.  
For Immediate Release

**NMFS ISSUES IMPROVED RETENTION/IMPROVED UTILIZATION (IR/IU)  
REGULATIONS FOR THE BERING SEA AND ALEUTIAN ISLANDS AREA (BSAI)**

The National Marine Fisheries Service (NMFS) is implementing an IR/IU program for the BSAI according to Steven Pennoyer, Administrator, Alaska Region, NMFS. This program will require all vessels fishing for groundfish in the BSAI to retain all pollock and Pacific cod beginning January 3, 1998, and all rock sole and yellowfin sole beginning January 1, 2003. This program also establishes a 15-percent minimum utilization standard for all at-sea processors; for pollock and Pacific cod beginning January 3, 1998, and for rock sole and yellowfin sole beginning January 1, 2003.

The final rule issuing these IR/IU regulations was published in the Federal Register on December 3, 1997 (62 FR 63880) and will become effective January 3, 1998.

This press release provides notice that a regulatory change has occurred. Do not rely upon it to guide you in complying with the regulatory change. To obtain information concerning the new regulatory requirements, consult the applicable regulation published in the Federal Register, or contact the Sustainable Fisheries Division, NMFS, 907-586-7228.

To: Amy

NEWS RELEASE (97-140)  
Steven Pennoyer  
907-586-7221

December 19, 1997  
3:00 p.m.  
For Immediate Release

NMFS ISSUES IMPROVED RETENTION/IMPROVED UTILIZATION  
REGULATIONS FOR THE GULF OF ALASKA

The National Marine Fisheries Service (NMFS) is implementing an Improved Retention/Improved Utilization (IR/IU) program for the Gulf of Alaska (GOA) according to Steven Pennoyer, Administrator, Alaska Region, NMFS. This program establishes minimum retention and utilization requirements for all vessels fishing for groundfish in the GOA. Minimum retention and utilization requirements will apply to pollock and Pacific cod beginning January 12, 1998, and shallow water flatfish beginning January 1, 2003.

The final rule issuing these IR/IU regulations was published in the Federal Register on December 12, 1997 (62 FR 65379) and will become effective January 12, 1998.

This press release provides notice that a regulatory change has occurred. Do not rely upon it to guide you in complying with the regulatory change. To obtain information concerning the new regulatory requirements, consult the applicable regulation published in the Federal Register, or contact the Sustainable Fisheries Division, NMFS, 907-586-7228.

**Frank Rue, Commissioner**



Public Communications  
P.O. Box 25526  
Juneau, Alaska 99802-5526  
(907) 465-6167

## Alaska Department of Fish and Game

# NEWS

FOR IMMEDIATE RELEASE  
Tuesday, January 27, 1998

CONTACT: Geron Bruce (907) 465-6143  
or Diane Regan (907) 465-6167

### **NEW REQUIREMENTS REDUCE WASTE IN POLLOCK FISHERY** *Department of Fish and Game Supports Corresponding State Bill*

Juneau – The Alaska Department of Fish and Game is supporting legislation in the state House of Representatives to reduce waste in the commercial pollock fisheries off Alaska's coast.

House Bill 310 would bring Alaska in compliance with new federal regulations that took effect when the pollock season opened on January 20 in the Gulf of Alaska and the Bering Sea. The regulations affect fishing vessels, as well as onshore and offshore processors.

The North Pacific Fisheries Management Council and the Alaska Board of Fisheries, working concurrently, have adopted regulations that will require fishing vessels to retain all pollock harvested in the directed fishery. Federal regulations also require offshore processors to fully utilize Pacific cod when directed fishing for this species is open.

Corresponding state regulations for the utilization of Pacific cod by onshore processors will require legislation extending the authority of the state board. Kodiak representative Alan Austerman has introduced this legislation as House Bill 310. The Department of Fish and Game supports this legislation and is working with Representative Austerman to achieve passage during this legislative session.

House Bill 310 is scheduled for a hearing before the House Special Committee on Fisheries at 5:00 p.m. today.

###



# REPRESENTATIVE ALAN AUSTERMAN Alaska State Legislature

P.O. Box 2368, Kodiak, Alaska 99615 (907) 486-5930 • Session: State Capitol, Juneau, Alaska 99801 465-2487

## Sponsor Statement HB 310

HB 310 extends, to other groundfish species, the current ban in state law regarding the waste of pollock. It authorizes the Alaska Board of Fisheries to require processors to meet minimal standards for the utilization of other groundfish in addition to pollock, similar to regulations adopted by the Secretary of Commerce for offshore processors. The legislation is necessary because current state law only prohibits the waste of pollock and not other groundfish species, such as Pacific cod, rock sole, and yellowfin sole.

The State of Alaska and the North Pacific Fisheries Management Council are moving in concert to reduce waste in the groundfish fisheries of the Gulf of Alaska and Bering Sea. For several years the North Pacific Fisheries Management Council has been studying ways to reduce the discard of fish caught in the groundfish fisheries of the Bering Sea and Gulf of Alaska. The Council has determined that a large proportion of the fish discarded are discarded for economic reasons; in particular, pollock, Pacific cod, rock sole and yellowfin sole are being discarded at unacceptably high rates.

The council selected pollock and Pacific cod as targets for immediate inclusion in its plan to increase retention and utilization (IR/IU). Yellowfin sole and rock sole are scheduled to be included in the IR/IU program beginning January 1, 2003. The Council plan requires: 1) catcher vessels to retain all fish harvested of the species designated for IR/IU when directed fishing for these species is open, or the Maximum Retainable Bycatch (MRB) when directed fisheries for these species is closed; 2) a product be retained from every fish harvested; 3) processors to produce primary products that utilize at least fifteen percent of the total weight of the harvested species subject to IR/IU rules.

During the Council deliberations on IR/IU, the State of Alaska agreed to adopt a corresponding program for shorebased processors and vessels fishing for groundfish in state waters. The National Marine Fisheries Service has recently implemented a program for improved retention of pollock and Pacific cod for vessels operating in the Gulf of Alaska and Bering Sea exclusive economic zones. The state board of Fisheries has acted to adopt mirroring regulations for the retention of pollock and Pacific cod by fishing vessels and for the utilization of pollock by processors. However, without this legislation, the board cannot regulate the utilization of Pacific cod by processors.



UNITED STATES DEPARTMENT OF COMMERCE  
 National Oceanic and Atmospheric Administration  
 National Marine Fisheries Service  
 P.O. Box 21688  
 Juneau, Alaska 99802-1688

September 3, 1997

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To Dave  
 Barton

Mr. Richard B. Lauber  
 Chairman, North Pacific  
 Fishery Management Council  
 605 West 4th Avenue  
 Anchorage, Alaska 99501-2252

Dear Rick:

On September 3, 1997, I approved Amendment 49 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. Amendment 49 establishes an improved retention/improved utilization (IR/IU) program for groundfish of the Bering Sea and Aleutian Islands Management Area.

A final rule implementing Amendment 49 will be published in the Federal Register shortly. We anticipate that the effective date for the IR/IU program will be January 1, 1998. This date, however, is contingent on action by the State of Alaska which must implement IR/IU regulations to govern shore-based processors. We believe that simultaneous implementation of both programs is necessary. \*

Sincerely,

*Steven Penzoyer*

Steven Penzoyer  
 Administrator, Alaska Region

Dave -  
 FYI

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*[Signature]*



September 29, 1997

NMFS statement for the record on the implementation of the Improved Retention and Improved Utilization Programs for the Bering Sea/Aleutian Islands (BSAI) and Gulf of Alaska (GOA).

On September 3rd NMFS approved Amendment 49 to implement an IR/U program for the BSAI. The comment period on Amendment 49 for the Gulf is still open so we have not made a decision to approve or disapprove the IR/U program for the GOA. However, if approved, the GOA program is also on schedule for a January 1, 1998 implementation. In the letter to the Council announcing approval of Amendment 49 to the BSAI we projected an effective date for the program of January 1, 1998, but indicated that this date would be contingent on action by the State to implement parallel regulations to govern onshore processors. We believe that catcher boat operators could be placed in an untenable position if Federal regulations require full retention of pollock and cod and some processors refuse to accept deliveries of those species. Since then we have received word from the State that a parallel IR/U program may not be in place before mid-1998 because statutory changes are necessary before the State can proceed with a full IR/U program. However, the State has indicated that on an interim basis it will be able to regulate onshore retention and utilization of pollock under its existing statutory authority to prohibit roe-stripping and waste of pollock. We believe that the concerns of the catcher boat fleet will be largely addressed if the State is able to regulate onshore processing of pollock as this is the species of greatest concern to the catcher boat fleet. We therefore intend to proceed with the January 1 implementation date for the IR/U program in the BSAI based on the understanding that the State will implement interim IR/U regulations to govern onshore processing of pollock AND that the State will proceed with the development of a full IR/U program for onshore processors to be implemented as soon as possible. And I again just reemphasize that this will apply to the Gulf as well provided that the Secretary does approve that amendment.



(4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

**(d) FISHERY OBSERVER FUND.**--There is established in the Treasury a North Pacific Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

**(e) SPECIAL PROVISIONS REGARDING OBSERVERS.--**

(1) The Secretary shall review--

(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of this section, to provide coverage for vessels and owners against liability from civil suits by observers, and

(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

(2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection (b)(2) of this section, unless the Secretary determines that--

(A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and

(B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant.

104-297

**(f) BYCATCH REDUCTION.**--In implementing section 303(a)(11) and this section, the North Pacific Council shall submit conservation and management measures to lower, on an annual basis for a period of not less than four years, the total amount of economic discards occurring in the fisheries under its jurisdiction.

The Agency's generic certification for promulgation of new SNURs appears on June 2, 1997 (62 FR 29684) (FRL-5597-1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

#### X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This is not a major rule as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements.

Dated: June 18, 1997.

Ward Penberthy,

Acting Director, Chemical Control Division,  
Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

#### PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.5867 to read as follows:

#### § 721.5867 Substituted phenol.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance generically identified as substituted phenol (PMNs P-89-1125, P-91-87, P-92-41, P-92-511, P-94-1527, and P-94-1755) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (where n = 1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

[FR Doc. 97-16760 Filed 6-25-97; 8:45 am]

BILLING CODE 6560-50-F

#### DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 970611133-7133-01; I.D. 052997B]

RIN: 0648-AJ36

#### Fisheries of the Exclusive Economic Zone Off Alaska; Improved Retention/Improved Utilization

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 49 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). Amendment 49 would require all vessels fishing for groundfish in the Bering Sea and Aleutian Islands Management Area (BSAI) to retain all pollock and Pacific cod beginning January 1, 1998, and all rock sole and yellowfin sole beginning January 1, 2003. This proposed rule would establish a 15-percent minimum utilization standard for all at-sea processors for pollock and Pacific cod beginning January 1, 1998, and for rock sole and yellowfin sole beginning January 1, 2003. This action is necessary to respond to socioeconomic needs of the fishing industry that have been identified by the North Pacific Fishery Management Council (Council) and is intended to further the goals and objectives of the FMP.

**DATES:** Comments on the proposed rule must be received at the following address by August 11, 1997.

**ADDRESSES:** Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the proposed FMP amendment and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendment 49 are available from NMFS at the above

address, or by calling the Alaska Region, NMFS at 907-586-7228. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

**FOR FURTHER INFORMATION CONTACT:** Kent Lind, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries in the exclusive economic zone of the BSAI are managed by NMFS under the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679.

The Council has submitted Amendment 49 for Secretarial review and a notice of availability of the FMP amendment was published on June 5, 1997 (62 FR 30835), with comments on the FMP amendment invited through August 4, 1997. Comments may address the FMP amendment, the proposed rule, or both, but must be received by August 4, 1997, to be considered in the approval/disapproval decision on the FMP amendment. All comments received by August 4, 1997, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision on the FMP amendment.

#### Management Background and Need for Action

In September 1996, the Council approved an Improved Retention/Improved Utilization (IR/IU) program as Amendment 49 to the FMP.

Amendment 49 is the result of over 3 years of analysis and debate of alternative solutions to the problem of discards occurring in the groundfish fisheries off Alaska. Approximately 600 million lbs (273,000 mt) of groundfish were discarded annually in the groundfish fisheries of the BSAI. In each of the last several years, which represents an unacceptably high level of discard and waste in the opinion of the Council, the fishing industry, and the American public. The bulk of these groundfish discards are "economic" discards (i.e., catch that is discarded voluntarily for economic reasons). Economic discards include fish of the target species that are the wrong sex or of a size not suitable for the processing equipment being used, species of lower

value than the target species or for which viable markets do not exist, and damaged fish rendered unsuitable for processing.

Because such discards are counted against the overall total allowable catch (TAC) established for each species, they do not represent a direct biological concern. However, they represent foregone harvest opportunities for other fishing operations that might otherwise target and utilize those fish. Furthermore, the high levels of discards represent an important social policy issue, which the fishing industry and the Council choose to address.

One of the Council's Comprehensive Fishery Management Goals, adopted in 1984, is to "Minimize the catch, mortality, and waste of non-target species, and reduce the adverse impacts of one fishery on another." In adopting this goal, the Council recognized that fish caught as bycatch in one fishery represent an allocation away from any target fishery for the bycatch species. This is especially so when a bycatch species (e.g., pollock), is fully utilized by other sectors of the industry.

In addition, a priority objective of the FMP is to "provide for the rational and optimal use, in a biological and socioeconomic sense, of the region's fisheries resources as a whole." Consistent with these goals and objectives, many of the management programs passed by the Council and enacted by NMFS are aimed at reducing the bycatch of non-target species and thereby increasing the relative amounts of each species that are taken and utilized by target fisheries. In this context, bycatch is broadly understood to mean the unintended capture or mortality of fish regardless of whether the unwanted bycatch is subsequently discarded.

The issues of bycatch and discards of groundfish resources have been long-term subjects of Council concern. In 1993, the Council began discussion and scoping analyses of specific alternatives aimed at reducing bycatch and discards. A common thread among these alternative programs was to provide incentives to reduce the bycatch of unwanted species and to increase the utilization of those species that are caught. Alternative programs under analysis included: Individual fishing quotas for groundfish species; a "Harvest Priority" program, which would provide for quota set-asides for vessels exhibiting low bycatch rates of non-target species; and mandates for retention and utilization, with the built-in incentives for fishing operations to avoid catch of unwanted species. While other alternatives were discussed,

primary focus was given to these three alternative programs.

After public testimony and debate, the Council decided to further narrow its focus on mandatory retention and utilization requirements as the most expeditious and direct method to address groundfish discards. In addition, the Council believed that a mandatory retention program would provide significant incentives for industry to avoid bycatch in the first place and develop more selective fishing gear and methods.

In 1994, the Council examined bycatch and discard statistics and concluded that two species, pollock and rock sole, were being discarded at unacceptably high rates. The Council initially proposed an IR/IU program that would be limited to discards of pollock and rock sole in the midwater pollock and rock sole fisheries, respectively. An "Implementation Issues Assessment" was completed in March 1995 and presented to the Council's Advisory Panel (AP) and Scientific and Statistical Committee. In September 1995, the Council appointed an industry committee as a sounding board for implementation issues related to the proposed IR/IU program. Subsequently, on advice of the industry committee and the AP, Pacific cod and yellowfin sole were added to the program because discard rates for those species were also determined to be unacceptably high. The Council also extended the program to all groundfish fisheries and gear types because applying IR/IU regulations to specific target fisheries was determined to be unworkable. In December 1995, at the request of the Council, NMFS began preparation of a formal analysis Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) of the proposed IR/IU program.

The analysis determined that pollock, Pacific cod, rock sole, and yellowfin sole represent approximately 76 percent of the total discards of allocated groundfish in the BSAI groundfish fisheries (over the period of the analysis). The Council concluded that by requiring 100 percent retention of these four species, initially pollock and Pacific cod, and subsequently yellowfin and rock sole, the Council's objective of "substantially reducing discards of unprocessed groundfish" in these fisheries could be achieved. The expressed intent of the Council was to implement a program that "would provide an incentive for fishermen to avoid unwanted catch, increase utilization of fish that are taken, and thus reduce discards of whole fish." The following Problem Statement

accompanied the Council's December 1995 action:

In managing the fisheries under its jurisdiction, the North Pacific Fishery Management Council is committed to: (1) Assuring the long-term health and productivity of fish stocks and other living marine resources of the North Pacific and Bering Sea ecosystem; and (2) reducing bycatch, minimizing waste, and improving utilization of fish resources in order to provide the maximum benefit to present generations of fishermen, associated fishing industry sectors, communities, consumers, and the nation as a whole. These commitments are also reflected in the Council's CRP [Comprehensive Rationalization Plan] problem statement.

The Council's overriding concern is to maintain the health of the marine ecosystem to ensure the long-term conservation and abundance of the groundfish and crab resources. As a response to this concern, a program to promote improved utilization and effective control/reduction of bycatch and discards in the fisheries off Alaska should address the following problems:

1. Bycatch and discard loss of groundfish, crab, herring, salmon, and other non-target species.
2. Economic loss and waste associated with the discard mortality of target species harvested but not retained for economic reasons.
3. Inability to provide for a long-term, stable fisheries-based economy due to loss of fishery resources through wasteful fishing practices.
4. The need to promote improved retention and utilization of fish resources by reducing waste of target groundfish species to achieve long-term sustainable economic benefits to the nation.

At the April 1996 Council meeting, the IR/IU Industry Working Group and NMFS staff made their respective reports to the AP and Council. In response, again at the urging of the AP, and supported by public testimony, the Council further modified the IR/IU options under consideration. The Council identified two retention options, the no-action or "Status Quo" alternative and a "species-based" approach. The Council also identified three utilization options (in addition to the "Status Quo" alternative), each dictating, to a greater or lesser degree, the form and extent of processing of the retained catch.

The revised proposal would apply only to BSAI groundfish fisheries, extend to all gear types, and require 100 percent retention of pollock, Pacific cod, rock sole, and yellowfin sole. In the case of the two flatfish species, the revised proposal also examined two additional sub-options: (1) Incrementally phasing in 100 percent retention over a period of time, or (2) delaying implementation of the 100 percent retention requirement until a specified date in the future. In

Legislative Review

either case, however, the Council indicated its intent to require 100 percent retention of pollock and Pacific cod for all operations beginning January 1, 1998.

In September 1996, after extensive debate and public testimony, the Council took final action on the IR/IU program and adopted it as Amendment 49 to the FMP. The retention option adopted by the Council would require full retention of pollock and Pacific cod beginning January 1, 1998, and full retention of rock sole and yellowfin sole beginning January 1, 2003.

The utilization option adopted by the Council, the least restrictive of the three options under consideration, would allow retained catch of the four groundfish species to be processed into any product form, regardless of whether the resulting product is suitable for direct human consumption. Of present products, only meal, bait, and offal are regarded as not suitable for direct human consumption, with offal considered to be processing waste rather than a product form.

The Council also established a 15-percent minimum utilization rate or aggregate product recovery rate (PRR) by species. NMFS has calculated average PRRs for each species/product

combination produced in the groundfish fisheries off Alaska. These standard PRRs are established in regulation at Table 3 of 50 CFR part 679. Because the lowest NMFS PRR for a non-roe, primary product produced from an IR/IU species is 16 percent (for deep skin pollock fillets), the IR/IU Industry Working group concluded that a 15-percent minimum utilization rate was achievable for all sectors of the industry and would allow for variations in actual PRRs by size of fish and season. If, under certain circumstances, a processor falls below 15 percent for a particular primary product, the vessel operator would be able to meet the minimum utilization requirement by retaining sufficient ancillary products to bring the aggregate utilization rate above 15 percent.

On October 11, 1996, the President signed into law the Sustainable Fisheries Act of 1996 (Public Law 104-297) which reauthorized and amended the Magnuson-Stevens Act. Several provisions of the Magnuson-Stevens Act now provide statutory authority for regulatory programs to improve retention and utilization in the groundfish fisheries off Alaska. Section 303(a)(11) of the Magnuson-Stevens Act requires the Council to "establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include

conservation and management measures that, to the extent practicable and in the following priority—(A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided." In implementing this provision of the Act, the Council is further required under section 313(f) to "submit conservation and management measures to lower, on an annual basis for a period of not less than 4 years, the total amount of economic discards occurring in the fisheries under its jurisdiction." The proposed IR/IU program, submitted by the Council, is intended to meet these statutory requirements.

#### Elements of the Proposed IR/IU Program

##### *Affected Vessels and Processors*

The proposed IR/IU program would apply to all vessels fishing for groundfish in the BSAI and all at-sea processors processing groundfish harvested in the BSAI, regardless of vessel size, gear type, or target fishery. Because the Magnuson-Stevens Act does not authorize NMFS to regulate on-shore processing of fish, the requirements of this proposed rule would not be extended to shore-based processors.

The Council has assumed that the State of Alaska (State) will implement a parallel IR/IU program for shore-based processors. In testimony at the September 1996 and April 1997 Council meetings, the State indicated its intent to implement parallel IR/IU regulations for the shore-based processing sector. Parallel State regulations are especially necessary to address the relationship between the processing plant and the delivering vessel. A shore-based IR/IU program must require a processor to accept all IR/IU species offered for delivery by a vessel fishing for groundfish in the BSAI. Otherwise, rejection of deliveries by a processor would be the equivalent of discarding of IR/IU species by that processor.

##### *IR/IU Species*

The proposed IR/IU program would define four groundfish species as IR/IU species: pollock, Pacific cod, rock sole, and yellowfin sole. Retention and utilization requirements would apply to pollock and Pacific cod beginning January 1, 1998. Rock sole and yellowfin sole would be added to the program beginning January 1, 2003. The purpose of the 5-year delay for rock sole and yellowfin sole is to provide industry with sufficient time to develop more selective fishing techniques and/or markets for these fish.

#### *Minimum Retention Requirements*

The proposed rule would establish minimum retention requirements by vessel type (catcher vessel, catcher/processor, and mothership), and by the directed fishing status of the IR/IU species (open to directed fishing, closed to directed fishing, and retention prohibited). In general, vessel operators would be required to retain 100 percent of their catch of an IR/IU species unless a closure to directed fishing limits retention of that species. When a closure to directed fishing limits retention of an IR/IU species, the vessel operator would be required to retain all catch of that species up to the maximum retainable bycatch (MRB) amount in effect for that species, and catch in excess of the MRB amount must be discarded. The specific retention requirements by vessel type and directed fishing status are set out in table format at § 679.27(c) of the proposed regulations and are summarized below.

##### *Catcher Vessels*

Operators of catcher vessels would be required to retain all IR/IU species brought on board the vessel until the catch is lawfully transferred to an authorized party (e.g., a federally licensed processor or buying station). This requirement applies to all IR/IU species brought on board a vessel, whether harvested by the vessel itself, or transferred from another vessel. When an IR/IU species is closed to directed fishing, vessel operators would be required to retain all fish of that species brought on board the vessel up to the MRB amount in effect for that species, and discard all catch in excess of the MRB amount in effect for that species. When regulations require an IR/IU species to be treated as a prohibited species, retention of that species would be prohibited, and all catch of that species would have to be discarded.

##### *Catcher/Processors and Motherships*

Operators of catcher/processors and motherships would be required to retain a primary product from all IR/IU species brought on board the vessel until the product is lawfully transferred or offloaded to an authorized party. Because catcher/processors and motherships process groundfish at sea, discarding of processing waste from IR/IU species would be allowed provided that a primary product is retained from each fish that is brought on board the vessel. No restrictions would exist on the type of primary product produced from each IR/IU species provided that all primary and ancillary products are logged in the vessel's daily cumulative

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production logbook (DCPL). Whole fish could be considered a product for the purpose of this program provided that they are logged as whole fish in the vessel's DCPL.

When an IR/IU species is closed to directed fishing, operators of catcher/processors and motherhips would have to retain a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products equals the MRB amount in effect for that species. Catch or production in excess of the MRB amount would have to be discarded. If a closure requires an IR/IU species to be treated as a prohibited species, retention would be prohibited and all catch of that species would have to be discarded.

#### Retention Requirements Under Directed Fishing Closures

NMFS assesses each groundfish TAC annually to determine how much of a species' TAC is needed as bycatch in other groundfish fisheries. The remainder is made available as a directed fishing allowance. NMFS closes a species or species group to directed fishing when the directed fishing allowance for that species has been reached in order to leave sufficient portions of the TAC to provide for bycatch in other fisheries. However, if TAC is reached, retention of that species becomes prohibited and all catch of the species must be discarded. Under existing regulations, a species or species group may be open to directed fishing, closed to directed fishing, or retention may be prohibited.

Directed fishing is defined in regulations as "any fishing activity that

results in the retention of an amount of a species or species group on board a vessel that is greater than the MRB amount for that species or species group." The MRB amount for a species is calculated as a percentage (by weight) of the species closed to directed fishing relative to the weight of other species that are open for directed fishing and retained on board the vessel. On catcher/processors, which retain product rather than whole fish, the MRB amount is determined using round-weight equivalents, which are calculated using NMFS PRRs established by regulation at Table 3 of 50 CFR part 679. The MRB percentage for each species is established in regulation at Table 11 of 50 CFR part 679. When a species is closed to directed fishing, bycatch amounts of the species may still be retained on board a vessel, up to the MRB amount in effect for that species and catch in excess of the MRB amount must be discarded.

The MRB percentages serve as a management tool to slow down the rate of harvest of a species closed to directed fishing, and to reduce the incentive for fishing vessels to target on that species. In most cases, an MRB of 20 percent is established to slow the harvest rate of a species, yet avoid significant discard amounts of these species to the extent they are taken as bycatch in other open groundfish fisheries. Directed fishing closures are also made when a fishery has reached a prohibited species bycatch allowance, or to prevent overfishing of another groundfish species taken as bycatch.

Under the proposed IR/IU program, if a vessel's bycatch of an IR/IU species exceeds an MRB amount in effect for

that species, all catch in excess of the MRB amount would have to be discarded. Under such a circumstance, monitoring, enforcement, and compliance with the IR/IU program will be complicated. This situation is most likely to occur in trawl fisheries where bycatch of pollock is prevalent. Directed fishing for pollock (by inshore and offshore sectors) typically is closed from late February or early March until release of the second seasonal allowance of pollock on September 1. During this time, pollock may be a prevalent bycatch species in Pacific cod and flatfish fisheries and could comprise more than 20 percent (the MRB percentage for pollock) of total catch by some vessels. If this occurs, a vessel may be required to simultaneously retain and discard portions of the catch of an IR/IU species. The relationship between the proposed IR/IU program and directed fishing closures is illustrated in the two following examples.

#### Example 1: Simultaneous Compliance With IR/IU and a Directed Fishing Closure on a Catcher Vessel

Table 1 provides an example of a catcher vessel on a hypothetical fishing trip for Pacific cod while pollock is closed to directed fishing. In this example, IR/IU requirements apply only to pollock and Pacific cod as would be the case prior to 2003. The example shows the vessel operator retaining all Pacific cod and retaining pollock up to the 20 percent MRB in effect for pollock. Catch of other groundfish species not governed by the IR/IU program may be retained or discarded subject to other regulations and the discretion of the vessel operator. To simplify the example, all catch of other groundfish species is shown as discarded.

TABLE 1.—HYPOTHETICAL FISHING TRIP FOR A CATCHER VESSEL FISHING FOR PACIFIC COD WHILE DIRECTED FISHING FOR POLLOCK IS CLOSED (CATCH AND DISCARDS SHOWN IN MT)

Haul No.	Haul weight	Pacific cod			Pollock			Other species		
		Total	Ret.	Disc.	Total	Ret.	Disc.	Total	Ret.	Disc.
1 .....	60.0	25.0	25.0	0.0	25.0	5.0	20.0	10.0	0.0	10.0
Subtotal .....	60.0	25.0	25.0	0.0	25.0	5.0	20.0	10.0	0.0	10.0
2 .....	50.0	40.0	40.0	0.0	5.0	5.0	0.0	5.0	0.0	5.0
Subtotal .....	110.0	65.0	65.0	0.0	30.0	10.0	20.0	15.0	0.0	15.0
3 .....	55.0	35.0	35.0	0.0	10.0	10.0	0.0	10.0	0.0	10.0
Subtotal .....	165.0	100.0	100.0	0.0	40.0	20.0	20.0	25.0	0.0	25.0
4 .....	50.0	45.0	45.0	0.0	3.0	3.0	0.0	2.0	0.0	2.0
Total .....	215.0	145.0	145.0	0.0	43.0	23.0	20.0	27.0	0.0	27.0

Table 1 shows the vessel operator retaining and discarding pollock during the course of the fishing trip to remain in compliance with the proposed IR/IU program and the MRB amount in effect

for pollock. The disposition of pollock in each haul is as follows:

*Haul 1.* This haul of 60 mt contains 25 mt of Pacific cod, 25 mt of pollock, and 10 mt of other groundfish. The

vessel operator retains all 25 mt of Pacific cod in compliance with IR/IU, at his discretion discards the other groundfish and retains an amount of pollock equal to 20 percent of the

retained catch of species open to directed fishing, or 5 mt (25 mt of retained Pacific cod  $\times 0.2 = 5$  mt).

**Haul 2.** This haul of 50 mt contains 40 mt of Pacific cod, 5 mt of pollock and 5 mt of other groundfish. The vessel operator retains all 40 mt of Pacific cod in compliance with IR/IU, at his discretion discards the 5 mt of other groundfish, and retains all 5 mt of pollock. At this point, the vessel's MRB amount for pollock equals 13 mt (65 mt retained Pacific cod  $\times 0.2 = 13$  mt) and the cumulative retained catch of pollock equals 10 mt, therefore all pollock from this haul must be retained.

**Haul 3.** This haul of 55 mt contains 35 mt of Pacific cod, 10 mt of pollock and 10 mt of other groundfish. The vessel operator retains all 35 mt of Pacific cod in compliance with IR/IU, at his discretion discards the 10 mt of other groundfish, and retains all 10 mt of pollock. At this point, the vessel's MRB amount for pollock equals 20 mt (100 mt retained Pacific cod  $\times 0.2 = 20$

mt) and the cumulative retained catch of pollock equals 20 mt.

**Haul 4.** This haul of 50 mt contains 45 mt of Pacific cod, 3 mt of pollock and 2 mt of other groundfish. The vessel operator retains all 45 mt of Pacific cod in compliance with IR/IU, at his discretion discards the 2 mt of other groundfish and retains all 3 mt of pollock. At this point, the vessel's MRB amount for pollock equals 29 mt (145 mt retained Pacific cod  $\times 0.2 = 29$  mt) and the cumulative retained catch of pollock equals 23 mt.

At the time of delivery, the vessel's fish ticket should show landed weights of 145 mt for Pacific cod and 23 mt for pollock and the processor will report 20 mt of pollock discards and 27 mt of other groundfish discards in the NMFS daily cumulative production logbook. In this example, the delivery weight of pollock as a percentage of the delivery weight of Pacific cod is equal to 15.9 percent, which is less than the 20 percent MRB percentage for pollock. In

addition, the vessel's logbook will show 20 mt of pollock discards. Nevertheless, the vessel would be in compliance with the proposed IR/IU regulations because retention of the extra 20 mt of pollock from haul 1 would have exceeded the MRB amount for pollock at the time that haul 1 was brought on board.

*Example 2: Simultaneous Compliance With IR/IU and a Directed Fishing Closure on a Catcher/Processor*

Tables 2 and 3 provide an example of a catcher/processor beginning a hypothetical rock sole fishing trip during which some species are open to directed fishing and other species are closed to directed fishing. In this example, IR/IU requirements would apply to all four IR/IU species as would be the case after 2003. A hypothetical distribution of catch, retention and discard of 100 mt of groundfish under the existing status quo is displayed on Table 2, and under the proposed IR/IU program with all four IR/IU species on Table 3. Fishery status for all species in the catch is indicated as either open, closed, or retention prohibited.

TABLE 2.—HYPOTHETICAL DISTRIBUTION OF A 100 MT HAUL OF GROUND FISH FOR A CATCHER/PROCESSOR PARTICIPATING IN THE BSAI ROCK SOLE FISHERY, UNDER THE STATUS QUO

Round weight catch and discard				Retained products and round-weight equivalents			
Species	Status of fishery	Round wt. catch	Round wt. discard	Product	NMFS PRR <sup>1</sup>	Product wt.	Round-wt. equivalent
Rock sole	Open	52.0	31.0	H&G w/roe	0.8	16.8	21.0
Yellowfin sole	Open	8.0	4.0	H&G eastern cut	0.65	1.3	2.0
Other flatfish	Open	7.0	4.0	H&G eastern cut	0.65	1.95	3.0
Pacific cod	Open	8.0	5.0	H&G eastern cut	0.47	1.41	3.0
Sablefish	Open	0.1	0.0	H&G western cut	0.68	0.07	0.1
Other groundfish	Open	3.1	3.1	None		0.0	0.0
Subtotal		76.2	47.1				29.1
Pollock	Closed	20.0	18	H&G eastern cut	0.56	1.12	2.0
Greenland turbot	Closed	0.2	0.1	H&G eastern cut	0.65	0.07	0.1
Alaska mackerel	Closed	0.7	0.2	H&G eastern cut	0.61	0.31	0.5
Arrowtooth	Closed	2.3	2.3	H&G eastern cut		0.0	0.0
Rockfish	Prohibited	0.6	0.6	None		0.0	0.0
Subtotal		23.8	21.2				2.6
Total		100.0	68.3				31.7

<sup>1</sup> The actual PRR realized by a particular vessel may vary from the NMFS standard PRR due to the size of fish, time of year, and adjustment of processing equipment. However, NMFS standard PRRs are always used when calculating round-weight equivalents for the purpose of determining MRB amounts. As a result, the round-weight equivalent amount for a particular product may not equal the actual round weight of fish used to produce that product.

<sup>2</sup> Round-weight equivalent of retained groundfish used to calculate MRB amounts for species closed to directed fishing.

TABLE 3.—HYPOTHETICAL DISTRIBUTION OF A 100 MT HAUL OF GROUND FISH FOR A CATCHER/PROCESSOR PARTICIPATING IN THE BSAI ROCK SOLE FISHERY, WITH IR/IU REQUIREMENTS FOR POLLOCK, PACIFIC COD, ROCK SOLE AND YELLOWFIN SOLE

Round weight catch and discard				Retained products and round-weight equivalents			
Species	Status of fishery	Round wt. catch	Round wt. discard	Product	NMFS PRR	Product wt.	Round-wt. equivalent <sup>1</sup>
Rock sole	Open	52.0	0.0	H&G w/roe	0.8	41.6	52.0
Yellowfin sole	Open	8.0	0.0	H&G eastern cut	0.65	3.9	8.0
Other flatfish	Open	7.0	4.0	H&G eastern cut	0.65	1.95	3.0
Pacific cod	Open	8.0	0.0	H&G eastern cut	0.47	3.78	8.0
Sablefish	Open	0.1	0.0	H&G western cut	0.68	0.07	0.1
Other groundfish	Open	3.1	3.1	None		0.0	0.0

TABLE 3.—HYPOTHETICAL DISTRIBUTION OF A 100 MT HAUL OF GROUND FISH FOR A CATCHER/PROCESSOR PARTICIPATING IN THE BSAI ROCK SOLE FISHERY, WITH IR/IU REQUIREMENTS FOR POLLOCK, PACIFIC COD, ROCK SOLE AND YELLOWFIN SOLE—Continued

Round weight catch and discard				Retained products and round-weight equivalents			
Species	Status of fishery	Round wt. catch	Round wt. discard	Product	NMFS PRR	Product wt.	Round-wt. equivalent <sup>1</sup>
Subtotal		76.2	7.1				69.1 <sup>1</sup>
Pollock	Closed	20.0	6.2 <sup>2</sup>	H&G eastern cut	0.56	7.73	13.8
Greenland turbot	Closed	0.2	0.1	H&G eastern cut	0.65	0.07	0.1
Atka mackerel	Closed	0.7	0.2	H&G eastern cut	0.61	0.31	0.5
Arrowtooth	Closed	2.3	2.3	H&G eastern cut		0.0	0.0
Rockfish	Prohibited	0.6	0.6	None		0.0	0.0
Subtotal		23.8	9.4				14.4
Total		100.0	16.5				83.5

<sup>1</sup> Round-weight equivalent of retained groundfish used to calculate MRB amounts for species closed to directed fishing.

<sup>2</sup> Pollock catch in excess of the MRB amount that must be discarded.

In Table 3, the vessel's hypothetical retained and discarded catch is redistributed from Table 2 to show that:

1. All catch of Pacific cod, yellowfin sole, and rock sole must be retained because the directed fisheries for these species are open.

2. Catch of groundfish open to directed fishing, other than Pacific cod, yellowfin sole, and rock sole, may be retained or discarded subject to other regulations.

3. With the exception of pollock, catch of groundfish closed to directed fishing may be retained up to the MRB amount.

4. Catch of pollock, for which the directed fishery is closed, must be retained up to the MRB. At that point, all additional bycatch of pollock must be discarded. Because the vessel is a catcher/processor, MRB calculations are made using round-weight equivalents of the vessel's retained products. The MRB percentage for pollock is 20 percent. In Table 3, the round-weight equivalent of retained catch of species open to directed fishing is 69.1 mt. Therefore, a round-weight equivalent of primary pollock products equal to 13.8 mt ( $69.1 \text{ mt} \times 0.2 = 13.8 \text{ mt}$ ) must be retained and the remainder of the catch ( $20 \text{ mt} - 13.8 \text{ mt} = 6.2 \text{ mt}$ ) must be discarded.

5. Catch of Greenland turbot and Atka mackerel do not exceed MRB percentages, so all of this catch may be retained or discarded at the discretion of the operator. Retention of rockfish is prohibited and all catch of rockfish must be discarded.

Note that in Example 2, the vessel is beginning a fishing trip and no other catch or products are retained on board. When the vessel continues the fishing trip, MRB calculations would be made based on all retained catch during the fishing trip as shown in Example 1,

rather than the retained catch from each individual haul.

Examples 1 and 2 illustrate simple cases of one species for which the vessel operator must retain a portion of the catch to meet the proposed retention standards but must simultaneously discard the remainder to comply with a pollock directed fishing closure. As more species are closed to directed fishing, or placed on prohibited status, monitoring the exact quantities of each bycatch species that must be retained and discarded will become more complicated for industry, observers, and enforcement officers.

#### Additional Retention Requirements

##### Bleeding Codends and Shaking Longline Gear

The minimum retention requirements outlined above apply to all fish of each IR/IU species that are brought on board a vessel. Any activity intended to cause the discarding of IR/IU species prior to their being brought on board a vessel, such as bleeding codends or shaking fish off longlines, would be prohibited. NMFS recognizes that some escapement of fish from fishing gear does occur in the course of fishing operations. Therefore, incidental escapement of IR/IU species, such as fish squeezing through mesh or dropping off longlines, would not be considered a violation unless the escapement is intentionally caused by action of the vessel operator or crew.

##### At-Sea Discard of Products

In addition to the retention requirements outlined above, the proposed rule would prohibit the at-sea discard of products from any IR/IU species. This would include any IR/IU product that has been frozen, canned, or reduced to meal.

##### Discard of Fish or Product Transferred From Other Vessels

The retention requirements of this proposed rule would apply to all IR/IU species brought on board a vessel, whether caught by that vessel or transferred from another vessel. Discard of IR/IU species or products that were transferred from another vessel would be prohibited.

##### R/IU Species Used as Bait

IR/IU species could be used as bait provided the bait is physically attached to authorized fishing gear when deployed. Dumping IR/IU species as loose bait (e.g., chumming) would be prohibited. Minimum Utilization Requirements

Beginning January 1, 1998, all catcher/processors and motherships would be required to maintain a 15 percent utilization rate for each IR/IU species. Calculation of a vessel's utilization rate would depend on the type of vessel (catcher/processor or mothership) and directed fishing status of the IR/IU species in question. The minimum utilization requirements by vessel type and directed fishing status are set out in tables at §679.27(h) of the proposed regulations and are summarized below.

##### Catcher/Processors

As a catcher/processor, when directed fishing for an IR/IU species is open, the total weight of retained or lawfully transferred products from IR/IU species harvested during a fishing trip would have to equal or exceed 15 percent of the round weight catch of that species during the fishing trip. When directed fishing for an IR/IU species is closed, the weight of retained products would have to equal or exceed either 15 percent of the MRB amount in

effect for that species or 15 percent of the round weight catch of that species, whichever is lower. When retention of an IR/IU species is prohibited, there would be no minimum utilization rate and any retention of fish or products would be prohibited.

#### Motherships

On a mothership, when directed fishing for an IR/IU species is open, the total weight of retained or lawfully transferred products from an IR/IU species received during a reporting week must equal or exceed 15 percent of the round weight of that species received during the same reporting week. When directed fishing for an IR/IU species is closed, the weight of retained products would have to equal or exceed 15 percent of the MRB amount in effect for that species or 15 percent of the round weight catch of that species, whichever is lower. When retention of an IR/IU species is prohibited, there would be no minimum utilization rate and any retention of fish or products would be prohibited.

#### Simultaneous Compliance With Retention and Utilization

A vessel operator must simultaneously meet both the minimum retention standard and the minimum utilization standard to be in compliance with the proposed IR/IU program. Compliance with either standard in the absence of the other would be considered a violation.

#### Recordkeeping Requirements

This proposed rule includes changes to existing recordkeeping requirements to aid the monitoring and enforcement of the IR/IU program. Beginning January 1, 1998, all catcher vessels and catcher/processors that are currently required to maintain NMFS logbooks would be required to log the round weight catch of pollock and Pacific cod in the NMFS catcher vessel daily fishing logbook (DFL) or catcher/processor DCPL on a haul-by-haul or set-by-set basis. Motherships would be required to log the receipt round weight of pollock and Pacific cod in the mothership DCPL on a delivery-by-delivery basis. Beginning January 1, 2003, this requirement would extend to rock sole and yellowfin sole. These changes are necessary to provide vessel operators and enforcement agents with round weight information for each IR/IU species in order to monitor compliance with the IR/IU program.

#### Technical Changes to Existing Regulations

The definition of "round weight or round-weight equivalent" at § 679.2

would be changed by restricting the definition to "round-weight equivalent". The term "round weight" is already defined by NMFS in regulations appearing at 50 CFR part 600. In addition, regulations at § 679.50(c)(1), which specify observer coverage requirements for motherships based on "round weight or round-weight equivalent" of groundfish processed, would be revised by removing the term "round weight." Observer coverage requirements for motherships during a calendar month would therefore be based only on the round-weight equivalent of groundfish processed. This change is necessary because the terms "round weight" and "round-weight equivalent" would no longer be synonymous under the proposed rule.

#### Classification

At this time, NMFS has not determined that Amendment 49 is consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period, which ends August 4, 1997.

This proposed rule contains a revised collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This collection-of-information requirement has been submitted to OMB for approval. The catcher vessel DFL, catcher/processor DCPL and mothership DCPL would be revised to require that vessel operators log the round weight of each IR/IU species on a haul-by-haul basis for catcher vessels and catcher/processors and a delivery-by-delivery basis for motherships. The estimated current and new public reporting burdens for these collections of information are as follows: For catcher vessels using fixed gear, the estimated burden would increase from 20 minutes to 23 minutes; for catcher vessels using trawl gear, the estimated burden would increase from 17 minutes to 22 minutes; for catcher/processors using fixed gear, the estimated burden would increase from 32 minutes to 35 minutes; for catcher/processors using trawl gear, the estimated burden would increase from 29 minutes to 34 minutes; for motherships, the estimated burden would increase from 28 to 33 minutes. Send comments regarding reporting burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens to NMFS and OMB (see ADDRESSES).

*Public comment is sought regarding* Whether this proposed collection of

information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

An RIR was prepared for this proposed rule that describes the management background, the purpose and need for action, the management action alternatives, and the social impacts of the alternatives. The RIR also estimates the total number of small entities affected by this action and analyzes the economic impact on these small entities.

An IRFA was prepared as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. The analysis examines the economic effects of this proposed rule by fishery and gear type and makes the following conclusions: (1) The economic effects of the proposed rule on vessels using longline, jig, and pot gear would not be significant; (2) the economic effects of the proposed rule on trawl catcher vessels and shore-based processors would not be significant; and (3) the economic effects of the proposed rule on trawl catcher/processor operations may or may not be significant depending upon the fishery as well as the size and processing capacity of the vessel in question.

Under the category of trawl catcher/processors, the economic effects on vessels participating in the pollock, sablefish, Greenland turbot, rockfish, and Atka mackerel fisheries would not be significant. However, the economic effects on vessels participating in the Pacific cod, rock sole, yellowfin sole, flathead sole and "other" flatfish fishery would be significant. This is because the bycatch of IR/IU species in these fisheries is substantial. The quantity of additional retained catch that operators in these fisheries would be required to handle under the proposed rule would impose significant operational costs on these fisheries, taken as a whole. This is especially true for products for which markets are limited or undeveloped (e.g., small Pacific cod, male rock sole,

and head-and-gut (H&G) pollock). Current prices for these products may be insufficient to cover the costs of their production.

In general, the impacts on any individual factory trawler operation would vary inversely with the size and configuration of the vessel, hold capacity, processing capability, markets and market access, as well as the specific composition and share of the total catch of the four IR/IU species. The burden would tend to fall most heavily upon the smallest, least diversified operations among the current fleet. In addition, the groundfish vessel moratorium, proposed license limitation program, and U.S. Coast Guard load-line requirements severely limit reconstruction to increase vessel size and/or processing capacity. These restrictions are expected to further limit the ability of smaller catcher/processors to adapt to the proposed IR/IU program.

NMFS data indicate that in 1995, 44 at-sea processors participated in the BSAI Pacific cod trawl fishery (4 motherships and 40 catcher/processors); 38 at-sea processors participated in the BSAI rock sole fishery (2 motherships and 36 catcher/processors); 48 at-sea processors participated in the BSAI yellowfin sole fishery (4 motherships and 44 catcher/processors); 19 catcher/processors participated in the flathead sole fishery; and 23 at-sea processors participated in the "other" flatfish fishery (1 mothership and 22 catcher/processors).

The IRFA further concludes that catcher/processors participating in the Pacific cod fishery with the capability to fillet product would face no significant burden in complying with the proposed IR/IU program. Catcher/processors in the Pacific cod fishery that are limited to H&G product would be significantly disadvantaged because viable markets for H&G pollock do not exist. For this reason, catcher/processors limited to H&G product would be significantly disadvantaged in every fishery where substantial quantities of pollock bycatch occurs.

The physical limitations of the current fleet of catcher/processors that operate in the rock sole, yellowfin sole, flathead sole, and "other" flatfish fisheries could make adaptation to, and compliance with, the proposed IR/IU program effectively impossible. The result may be that adoption of the proposed rule would create such an operational barrier that the rock sole fishery would be discontinued, or alternatively the small-vessel fleet,

which currently comprises this fishing fleet, might be displaced by larger and more operationally diversified fleets of

vessels, (e.g., larger catcher/processors and motherships).

The no action alternative was rejected because, under a continuation of the current regulations, underutilized groundfish catches would result in an unacceptably high level of discards.

The option of requiring retention of rock sole and yellowfin sole to be phased-in beginning with the first year of the program was rejected in favor of postponing retention requirements for these species for 5 years to provide the opportunity for these fisheries to adapt and attempt to come into compliance with the proposed program.

The utilization options requiring all retained catches of the four species to be processed for direct human consumption and limiting the production of fish meal from the four species were rejected as too restrictive.

The RFA requires that the IRFA describe significant alternatives to the proposed rule that accomplish the stated objectives of the applicable statutes and that minimize any significant impact on small entities. Consistent with the stated statutory objectives, the IRFA must discuss significant alternatives to the proposed rule such as (1) establishing different reporting requirements for small entities that take into account the resources available to small entities; (2) consolidation or simplification of reporting requirements; (3) the use of performance rather than design standards; and (4) allowing exemptions from coverage for small entities. The economic impacts imposed by this rule would not be alleviated by modifying reporting requirements for small entities. Where relevant, this proposed rule employs performance standards rather than design standards and allows maximum flexibility in meeting its requirements. The Council also considered and rejected the following alternatives that might have mitigated impacts on small businesses. (1) An alternative that would have allowed exemptions or modified phase-in periods based on vessel size, was rejected because it would have diluted the reductions in bycatch and discards and would have provided an unfair competitive advantage to a certain sector of the industry. (2) A "harvest priority program" that would have rewarded vessels demonstrating low bycatch rates was rejected because it would not reduce discard rates expeditiously enough. (3) A voluntary bycatch and discard reduction program was rejected because it would not have met statutory requirements of the Magnuson-Stevens Act.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Administrator, Alaska Region, NMFS determined that fishing activities conducted under this rule would not affect endangered and threatened species listed or critical habitat designated pursuant to the Endangered Species Act in any manner not considered in prior consultations on the groundfish fisheries of the BSAI.

#### List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: June 19, 1997.

Rolland A. Schmittgen,  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

#### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definitions of "IR/IU" and "IR/IU species" are added in alphabetical order and the heading and the definition of "round weight or round-weight equivalent" are revised to read as follows:

##### § 679.2 Definitions.

*IR/IU* means the Improved retention/Improved utilization program set out at § 679.27.

*IR/IU species* means any groundfish species that is regulated by a retention or utilization requirement set out at § 679.27.

*Round-weight equivalent* means the weight of groundfish calculated by dividing the weight of the primary product made from that groundfish by the PRR for that primary product as listed in Table 3 of this part, or, if not listed, the weight of groundfish calculated by dividing the weight of a primary product by the standard PRR as determined using the best available evidence on a case-by-case basis.

3. In § 679.5, paragraphs (c)(3)(I)(G) and (e)(2)(II)(F) are added to read as follows:

##### § 679.5 Recordkeeping and reporting.

(c) " " "

(3) " " " "  
 (ii) " " " "  
 (G) The round weight catch of pollock and Pacific cod.

(e) " " " "  
 (2) " " " "  
 (ii) " " " "  
 (F) The receipt round weight of pollock and Pacific cod.

4. Section 679.27 is added to read as follows:

**§ 679.27 Improved Retention/Improved Utilization Program.**  
 (a) *Applicability.* The retention and utilization requirements of this section apply to any vessel fishing for groundfish in the BSAI or processing groundfish harvested in the BSAI.  
 (b) *IR/IU species.* The following species are defined as "IR/IU species" for the purposes of this section:  
 (1) Pollock  
 (2) Pacific cod  
 (3) (beginning January 1, 2003) rock sole

(4) (beginning January 1, 2003) yellowfin sole  
 (c) *Minimum retention requirements—*(1) *Definition of retain on board.* Notwithstanding definitions at 50 CFR part 600, for this purpose of this section, to retain on board means to be in possession of on board a vessel.  
 (2) The following table displays minimum retention requirements by vessel category and directed fishing status:

If you own or operate a	And	You must retain on board until lawful transfer
(i) Catcher vessel .....	(A) Directed fishing for an IR/IU species is open ... (B) Directed fishing for an IR/IU species is prohibited. (C) Retention of an IR/IU species is prohibited .....	All fish of that species brought on board the vessel. All fish of that species brought on board the vessel up to the MRB amount for that species. No fish of that species.
(i) Catcher/ processor .....	(A) Directed fishing for an IR/IU species is open ... (B) Directed fishing for an IR/IU species is prohibited. (C) Retention of an IR/IU species is prohibited .....	A primary product from all fish of that species brought on board the vessel. A primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRB amount for that species. No fish or product of that species.
(i) Mothership .....	(A) Directed fishing for an IR/IU species is open ... (B) Directed fishing for an IR/IU species is prohibited. (C) Retention of an IR/IU species is prohibited .....	A primary product from all fish of that species brought on board the vessel. A primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRB amount for that species. No fish or product of that species.

(d) *Bleeding codends and shaking longline gear.* Any action intended to discard or release an IR/IU species prior to being brought on board the vessel is prohibited. This includes, but is not limited to bleeding codends and shaking or knocking fish off longline gear.

(e) *At-sea discard of product.* Any product from an IR/IU species that has been frozen, canned, or reduced to meal may not be discarded at sea.

(f) *Discard of fish or product transferred from other vessels.* The retention requirements of this section apply to all IR/IU species brought on board a vessel, whether harvested by that vessel or transferred from another vessel. At-sea discard of IR/IU species or products that were transferred from another vessel is prohibited.

(g) *IR/IU species as bait.* IR/IU species may be used as bait provided that the deployed bait is physically secured to

authorized fishing gear. Dumping of unsecured IR/IU species as bait (chumming) is prohibited.

(h) *Minimum utilization requirements.*

(1) *Catcher/processors.* If you own or operate a catcher/processor, the minimum utilization requirement for an IR/IU species harvested in the BSAI is determined by the directed fishing status for that species according to the following table:

If . . .	Your total weight of retained or lawfully transferred products produced from the catch of that IR/IU species during a fishing trip must . . .
(i) Directed fishing for an IR/IU species is open.	Equal or exceed 15 percent of the round weight catch of that species during the fishing trip.
(ii) Directed fishing for an IR/IU species is prohibited.	Equal or exceed 15 percent of the round weight catch of that species during the fishing trip or 15 percent of the MRB amount for that species, whichever is lower.
(iii) Retention of an IR/IU species is prohibited.	Equal zero.

(2) *Motherships.* If you own or operate a mothership, the minimum utilization requirement for an IR/IU species harvested in the BSAI is determined by the directed fishing status for that species according to the following table:

If . . .	Your weight of retained or lawfully transferred products produced from deliveries of that IR/IU species received during a reporting week must . . .
(i) Directed fishing for an IR/IU species is open.	Equal or exceed 15 percent of the round weight of that species received during the reporting week.

If . . .	Your weight of retained or lawfully transferred products produced from deliveries of that IR/IU species received during a reporting week must . . .
(ii) Directed fishing for an IR/IU species is prohibited.	Equal or exceed either 15 percent of the round weight of that species received during the reporting week or 15 percent of the MRB amount for that species, whichever is lower.
(iii) Retention of an IR/IU species is prohibited.	Equal zero.

5. In § 679.50, paragraphs (c)(1)(i) and (c)(1)(ii) are revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 1997.

(c) . . .

(1) . . .

(i) A mothership of any length that processes 1,000 mt or more in round-weight equivalent of groundfish during a calendar month is required to have an observer aboard the vessel each day it receives or processes groundfish during that month.

(ii) A mothership of any length that processes from 500 mt to 1,000 mt in round-weight equivalent of groundfish during a calendar month is required to have an observer aboard the vessel at least 30 percent of the days it receives or processes groundfish during that month.

[FR Doc. 97-16697 Filed 6-25-97; 8:45 am]

BILLING CODE 3810-22-P

**ORDER CERTIFYING THE ADOPTION, AMENDMENT, OR REPEAL  
OF REGULATIONS OF THE ALASKA BOARD OF FISHERIES**

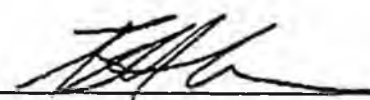
The attached two pages of regulations dealing with commercial groundfish fishing are hereby certified to be a correct copy of the regulations that the Alaska Board of Fisheries adopted, amended, or repealed at its October 21-24, 1997 meeting in Girdwood, Alaska under the authority of AS 16.05.251 and AS 16.10.165 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

On the record, in considering public comments, the Alaska Board of Fisheries paid special attention to the cost to private persons of the regulatory action being taken.

The regulations described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.


DATE: 10-31-97  
Juneau, Alaska

  
Robert Bosworth, Deputy Commissioner  
Alaska Department of Fish and Game

**FILING CERTIFICATION**

I, Fran Ulmer, Lieutenant Governor for the State of Alaska, certify that on

Dec 1, 1997, at 11:30 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

  
Fran Ulmer, Lieutenant Governor  
State of Alaska

Effective: December 31, 1997

Register: 144, January 1998

Post-it* Fax Note	7671	Date	<u>12/30</u>	# of pages	<u>3</u>
To	<u>Geron Roice</u>	From	<u>Cawl Collins</u>		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #	<u>3332</u>	Fax #			

TITLE 5. FISH AND GAME.  
PART 1. COMMERCIAL AND SUBSISTENCE  
FISHING AND PRIVATE NONPROFIT  
SALMON HATCHERIES.

CHAPTER 28. GROUND FISH FISHERY.

ARTICLE 2. GENERAL SPECIFICATIONS.

5 AAC 28.070 is amended by adding a new subsection (e) to read:

5 AAC 28.070. GROUND FISH POSSESSION AND LANDING REQUIREMENTS.

(e) A CFEC permit holder operating a vessel fishing for groundfish shall retain

(1) all pollock and Pacific cod taken when a directed fishery for pollock or

Pacific cod is open; or

(2) the maximum retainable bycatch of pollock and Pacific cod taken, specified

in 50 C.F.R. 679.20, when ~~directed fishing~~ <sup>a directed fishery</sup> for pollock or Pacific cod is closed. (Eff.

6/15/95, Register 134; am 12/31/98, Register 144)

Authority: AS 16.05.060

AS 16.05.251

*revised as of  
October 1, 1996  
and  
amended  
through  
May 7, 1997,*

5 AAC 28 is amended by adding a new section to read:

5 AAC 28.075. UTILIZATION OF POLLOCK TAKEN IN A COMMERCIAL FISHERY. (a) A processor <sup>or processor's agent</sup> that accepts delivery <sup>of</sup> or purchases groundfish from a vessel shall accept delivery of all pollock retained by the vessel under 5 AAC 28.070(e).

(b) A processor that accepts delivery <sup>of</sup> or purchases ~~groundfish~~ <sup>pollock</sup> retained under 5 AAC 28.070(e) ~~is required to~~ <sup>shall</sup> utilize a portion of each fish ~~and~~ <sup>in order to</sup> achieve at least 15 percent utilization of the flesh <sup>by weight based on</sup> of the total weight of pollock accepted or purchased. <sup>the</sup>

~~(c)~~ <sup>sub</sup> In this section,

for  
[  
]

(2) ~~the~~ "utilization" means use of the flesh of pollock <sup>by processing it</sup> for human consumption, for production of food for domestic animals or fish, or for reduction to meal, ~~or the production of other product forms consistent with AS 16.10.165~~ <sup>scientific, display, or educational purposes.</sup>

(1) ~~the~~ "flesh" <sup>has the meaning given in AS 16.10.165(2),</sup> means all muscular body tissues ~~surrounding the skeleton~~ and does not include roe; (Eff. 12/31/98, Register 144 )

Authority: AS 16.05.251

AS 16.10.165

**HB**

**364**

Alaska State House of Representatives  
House District 39

Session

Alaska State Capitol  
Juneau, Alaska 99801-1182  
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1-800-323-4942  
Fax: (907) 465-4589  
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Interim

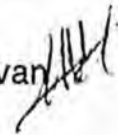
P.O. Box 137  
Akiak, Alaska 99552  
Phone: (907) 765-7526



**Representative Ivan M. Ivan**

**MEMORANDUM**

TO: Representative Scott Ogan, Co-Chair  
Representative Bill Hudson, Co-Chair  
House Resources Committee

FROM: Representative Ivan M. Ivan 

DATE: February 3, 1998

RE: Request for Hearing-House Bill 364

---

Please consider this request to hear House Bill 364: "An Act requiring nonresident hunters to be accompanied when hunting moose; and providing for an effective date."

This bill requires nonresident hunters to be accompanied by a registered guide while hunting moose.

Thank you for your consideration of my request. Please do not hesitate to contact me if I can answer any questions or provide further information.

IMI:tw

# Alaska State House of Representatives House District 39

## Session

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Juneau, Alaska 99801-1182  
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## Interim

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Phone: (907) 765-7526

**Representative Ivan M. Ivan**

## SPONSOR STATEMENT - HOUSE BILL 364

The purpose of House Bill 364 is to require nonresident hunters to be accompanied in the field by a registered guide while hunting moose. With present moose antler restrictions for nonresident hunters, a 50 inch minimum in most game management units, there are major conservation reasons for this guide requirement.

- The inability of inexperienced hunters to judge 50 inch minimum antler requirements.
- Abandonment of sub legal moose constitutes a wasteful situation.
- Inability of unaccompanied nonresidents to care for and preserve large amounts of moose meat.

There are benefits for the requirement of a registered guide in these hunts,

- Guided hunts would reduce the number of nonresidents harvesting moose in direct competition with local hunters.
- The responsibility of judging legal bulls and the preservation of meat is placed on the guide which is subject to tight scrutiny by enforcement and commerce.
- The state would be compensated for land use fees paid to DNR. These fees are not collectible from drop off hunts conducted by transporters or air taxi operators.

- Hunting pressure would be more widely dispersed instead of concentrated.

One of my main concerns, however, is the waste of meat. Transporters cannot be held responsible for spoilage or wanton waste while guides by law must make certain that waste does not occur or else risk the consequences of losing his or her guide license.

## Guide Requirement for Non-Resident Moose Hunters

In 1990 the Alaska Board of Game extended the 50-inch minimum moose antler requirement to every nonresident moose hunt in all twenty-six Game Management Units. This regulation temporarily reduced the nonresident harvest of moose, but despite this regulatory effort, nonresident demand for moose hunts and harvest have increased. This market is now dominated by lower priced, unguided moose hunts, which only a decade ago were confined to a minimal air taxi drop-off effort and unlicensed outfitters. Presently there are a growing number of commercial air-taxi operators responding to this demand for unaccompanied hunts.

These operations are conducted in many game management units that are characterized by (1) longer open moose seasons, (2) accessible by air and reasonable flight time, (3) easily accessed land, lake, or river landing areas, and (4) convenient to major airports. This large nonresident demand has created an industry dedicated to volume traffic with little responsibility to resource conservation, environmental impacts, or concern for conflicts with local residents. Moreover, these drop off operations have adopted guiding techniques without similar regulatory restrictions.

Operators catering to drop off hunters and outfitting unaccompanied nonresidents are not subject to most of the regulatory and ethical restraints placed on registered guides. Consequently, responsibility to the client and the resource are minor considerations. Profits are based on the ability to rapidly place and remove clients to and from the field. Reduction in season length and implementation of a 50-inch antler restriction has not precluded air taxi operators from concentrating nonresident hunters in certain locations. Conversely, guided moose hunts require random placement of camps with a high level of responsibility to the hunting client and to resource conservation concerns.

The Department of Natural Resources requires that a guides' spike camps be moved every two weeks insuring minimal disturbance to habitat. In addition another important consideration for this use of state lands is that fees are required of registered guides to establish spike camps. Commercial air taxi operators and their unaccompanied nonresident clients are not held responsible for the environmental impact of their activities in the field, pay no fees, and are not required to move camps.

Disregard for traditional rural hunting areas is another negative aspect of the unguided drop off industry. Documented conflicts with rural resident hunters in the Holitna River and Galena areas provide evidence of these practices. Rural residents do most of their hunting by boat on accessible river systems where most of the conflicts with drop off hunters has occurred. Success is mainly opportunistic along river systems and unaccompanied nonresident hunters have little time to correctly judge moose antlers. A registered guide would not intentionally place clients in areas where residents frequently hunt. Guided clients are paying for a wilderness experience, not a repeat of what hunters encounter in the lower 48 states. Guides prefer to operate in open upland habitat where

conditions are maximized for viewing moose, providing ample opportunity to judge antler size.

A major conservation related problem is that the average nonresident who has never hunted moose cannot with any certainty judge the antler size of moose. There is evidence to suggest that considerable abandonment and waste of under sized bull moose is occurring. Spoilage of meat in the field is also a problem, especially on raft hunts. Unaccompanied hunters may be unable to care for meat during a lengthy raft trip. Unguided hunters are responsible for salvage of meat; however transporters can not legally be held responsible for spoilage or wanton waste. In contrast, guides are required by law to make certain that this waste does not occur.

Legislative determinations required guides to accompany nonresidents for some big game species for conservation reasons. Title 16 requires that nonresidents must be accompanied in the field by a registered guide when hunting Dall sheep, grizzly/brown bear, and mountain goats. These requirements were first based on conservation reasons and secondarily for safety reasons. For instance the full curl horn requirements for Dall sheep is certainly standardized and easily judged in comparison to the arbitrary fifty inch antler minimum for bull moose. The brow tine requirement, while somewhat simplifying antler judgement, doesn't guarantee errors will not be made. Thus, comparing the criteria used for big game species requiring a guide, the 50-inch moose antler requirement for nonresidents is the most arbitrary and difficult to judge. Present regulations require that a registered guide must accompany only nonresident alien moose hunters.

I suggest that with present moose antler restrictions there are sufficient conservation related grounds to require nonresidents hunting moose to be accompanied by a registered guide. These grounds are as follows:

1. The inability of inexperienced moose hunters to judge 50 inch minimum antler requirements.
2. Abandonment of sub legal moose constitutes a wasteful situation.
3. Inability of unaccompanied nonresidents to care for and preserve large amounts of moose meat.

Secondary benefits of requiring a registered guide:

1. Guided hunts would reduce the number of nonresidents harvesting moose in direct competition with local hunters.
2. Requiring a registered guide places the responsibility of judging legal bull moose and the preservation of meat on the shoulders of the closely regulated guiding industry subject to tight scrutiny by enforcement and commerce agencies.
3. The state would be compensated for land use fees paid to the Dept. of Natural Resources (Fees now not collectible from drop off hunts).
4. Hunting pressure would be more widely dispersed instead of concentrated.

Note: This draft revision was prepared by Peter E.K. Shepherd on January 1, 1998.

*Pete Shepherd*

BRISTOL BAY NATIVE ASSOCIATION  
P. O. BOX 310  
DILLINGHAM, ALASKA 99576  
(907) 842-5257

RESOLUTION FY 98-21  
by  
THE FULL BOARD OF DIRECTORS

WANTON WASTE OF GAME

WHEREAS: residents of the Bristol Bay villages have observed increased sport hunting activities in the regional drainages; and

WHEREAS: much of the sport hunting, by fly-in guided and unguided hunters, appears to be directed at trophy hunting, and there have been many instances of wasted meat; and

WHEREAS: moose and caribou stocks in the Bristol Bay region drainages are declining.

NOW THEREFORE BE IT RESOLVED by the Board of Directors of the Bristol Bay Native Association considers the wanton waste of game, particularly moose and caribou by sport hunters in the Bristol Bay region drainage to be a serious and increasing problem, and

BE IT FURTHER RESOLVED that the Board of Directors that the Alaska Department of Fish and Game, and other agencies as appropriate, take regulatory, enforcement, or other measures as appropriate, to reduce the wanton waste of game by sport hunters in the Bristol Bay drainages.

Signed: Donald J. Nelson  
President

CERTIFICATION.

I, the undersigned Secretary of the Bristol Bay Native Association, hereby certify that the foregoing resolution was passed by majority vote of the Full Board of Directors of the Bristol Bay Native Association at a duly called and noticed meeting this 7 Day of October, 1997, and that a quorum was present.

Signed: Marianne Nelson  
Secretary

Sec. 16.05.407. Nonresident hunting big game animals must be accompanied.

(a) It is unlawful for a nonresident to hunt, pursue, or take brown bear, grizzly bear, mountain goat, or sheep in this state, unless personally accompanied by

(1) a person who is licensed as a registered guide, master guide, class-A assistant guide, or an assistant guide under AS 08.54; or

(2) a resident over 19 years of age who is

(A) the spouse of the nonresident; or

(B) related to the nonresident, within and including the second degree of kindred, by marriage or blood.

(b) An applicant for a nonresident big game tag for the taking of an animal specified in (a) of this section shall first furnish to the state, on a form provided by the state, an affidavit showing that the applicant will be personally accompanied while hunting by a person who is qualified under the terms of (a) of this section. A person who falsifies the required affidavit is guilty of perjury under AS 11.56.200.

(c) [Repealed, Sec. 27 ch 71 SLA 1986].

(d) A nonresident who violates (a) of this section, or who fails to furnish an affidavit under (b) of this section, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$5,000, or by both.

(e) [Repealed, Sec. 18 ch 37 SLA 1989].

(f) An applicant for a nonresident hunt permit for the taking of an animal specified in (a) of this section shall, if requested by the department, first furnish to the department proof of prior authorization to use federal or private land where the permit hunt will occur. The authorization shall be provided to the applicant by the registered guide or master guide with whom the applicant has contracted to guide the permit hunt.

History -

(Sec. 1 ch 86 SLA 1967; am Sec. 39, 40 ch 59 SLA 1982; am Sec. 1 ch 74 SLA 1982; am Sec. 1 ch 111 SLA 1984; am Sec. 24, 25, 27 ch 71 SLA 1986; am Sec. 9, 10 ch 160 SLA 1988; am Sec. 5 - 7, 18 ch 37 SLA 1989; am Sec. 6, 7 ch 33 SLA 1996)

Revisors Notes -

Enacted as AS 16.05.405. Renumbered in 1967.

In 1989, "is" was deleted from the beginning of subsection (a)(2)(F) to correct a manifest error in the original enactment.

Cross References -

For construction of the 1996 amendments, see Sec. 15, ch. 33, SLA 1996 in the Temporary and Special Acts. For transitional provisions relating to the 1996 amendments, see Sec. 13 and 14, ch. 33, SLA 1996 in the Temporary and Special Acts.

Amendment Notes -

The 1988 amendment, effective June 17, 1988, inserted "or (e)" in subsection (d) and added subsection (e).

The 1989 amendment, effective May 12, 1989, substituted "mountain goat" for "polar bear" in the first paragraph of subsection (a); rewrote paragraph (a)(1); deleted "or (e)" following "under (b)" in subsection (d); repealed subsection (e); and added subsection (f).

The 1996 amendment, effective May 23, 1996, in subsection (a), substituted "registered guide, master guide, class-A assistant guide, or an assistant guide under AS 08.54" for "guide-outfitter, class-A assistant guide-outfitter or assistant guide-outfitter by the big game commercial services board" in paragraph (1) and, in subsection (f), deleted "state," preceeding

"federal" in the first sentence. substituted "registered guide or master guide" for "guide-outfitter" and "guide" for "guide-outfitter" in the second sentence. and made a minor stylistic change.

AG Opinions -

The state can require an Alaska resident to have a guide if there is a sufficient factual basis to support the need for residents to be accompanied by a guide. Mar. 14, 1988 Op. Att'y Gen.

In general, the validity of big game guide requirements is premised upon the need to protect public resources and the hunting public. Hazards of rugged terrain, dangerous animals, and inclement weather have also been raised as justifications for requiring hunters to be accompanied by guides. Similarly, the need to protect public resources from hunters unfamiliar with state conservation laws has also been cited as a basis for requiring a guide. Mar. 14, 1988 Op. Att'y Gen.

Decisions -

Cited in *Owsichek v. State*, 763 P.2d 488 (Alaska 1988).

Collateral Refs -

Constitutionality of state laws which discriminate against nonresidents or aliens as to fishing and hunting rights, 52 L. Ed. 2d 824.

0-LS1455B  
- Utermohle  
3/19/98

**CS FOR HOUSE BILL NO. 364( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTIETH LEGISLATURE - SECOND SESSION**

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVE IVAN

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to transporters of big game hunters, moose hunting orientation  
2 courses, and nonresident big game tags for moose; and providing for an effective  
3 date."

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

5 \* **Section 1.** AS 08.54.650 is amended by adding a new subsection to read:

6 (d) In order to maximize the use of game taken by clients of transporters, a  
7 transporter shall contact clients at least once every three days while the clients are in  
8 the field and, if necessary, transport meat of game taken by the clients out of the field  
9 before waste or spoilage can occur.

10 \* **Sec. 2.** AS 08.54.720(a) is amended to read:

11 (a) It is unlawful for a

12 (1) person who is licensed under this chapter to knowingly fail to  
13 promptly report to the Department of Public Safety, division of fish and wildlife  
14 protection, and in no event later than 20 days, a violation of a state game, guiding, or

1 transportation services statute or regulation that the person reasonably believes was  
2 committed by a client or an employee of the person;

3 (2) person who is licensed under this chapter to intentionally obstruct  
4 or hinder or attempt to obstruct or hinder lawful hunting engaged in by a person who  
5 is not a client of the person;

6 (3) class-A assistant guide or an assistant guide to knowingly guide a  
7 hunt except while employed and supervised by a registered guide;

8 (4) person who holds any class of guide license to knowingly enter or  
9 remain on private land without prior authorization during the course of providing big  
10 game hunting services;

11 (5) registered guide to knowingly engage in providing big game hunting  
12 services outside of

13 (A) a game management unit for which the registered guide is  
14 certified; or

15 (B) a use area for which the registered guide is registered under  
16 AS 08.54.750 unless the registration requirement for the area has been  
17 suspended by the Department of Fish and Game;

18 (6) person to knowingly guide without having a current registered  
19 guide, class-A assistant guide, or assistant guide license and hunting license in actual  
20 possession;

21 (7) registered guide to knowingly fail to comply with AS 08.54.610(e);

22 (8) person who is licensed under this chapter to knowingly

23 (A) commit or aid in the commission of a violation of this  
24 chapter, a regulation adopted under this chapter, or a state game statute or  
25 regulation; or

26 (B) permit the commission of a violation of this chapter, a  
27 regulation adopted under this chapter, or a state game statute or regulation that  
28 the person knows or reasonably believes is being or will be committed without

29 (i) attempting to prevent it, short of using force; and

30 (ii) reporting the violation;

31 (9) person without a current registered guide license to knowingly

- 1 guide, advertise as a registered guide, or represent to be a registered guide;
- 2 (10) person without a current master guide license to knowingly
- 3 advertise as, or represent to be, a master guide;
- 4 (11) person without a current registered guide license to knowingly
- 5 outfit a big game hunt, advertise as an outfitter of big game hunts, or represent to be
- 6 an outfitter of big game hunts;
- 7 (12) person to knowingly provide transportation services to big game
- 8 hunters without holding a current registered guide license or transporter license;
- 9 (13) person without a current transporter license to knowingly advertise
- 10 as, or represent to be, a transporter;
- 11 (14) class-A assistant guide or an assistant guide to knowingly contract
- 12 to guide or outfit a hunt;
- 13 (15) person licensed under this chapter to knowingly violate a state
- 14 statute or regulation prohibiting waste of a wild food animal or hunting on the same
- 15 day airborne;
- 16 (16) person to knowingly provide big game hunting services
- 17 [SERVICE] or transportation services during the period for which the person's license
- 18 to provide that service is suspended or revoked;
- 19 (17) registered guide, except in the defense of life or property, to
- 20 knowingly personally take
- 21 (A) big game while accompanying a client in the field; or
- 22 (B) a species of big game if the registered guide is under
- 23 contract with a client to provide a guided hunt for that species of big game and
- 24 the client is in the field;
- 25 (18) person who is licensed as a registered guide, a class-A assistant
- 26 guide, or an assistant guide, except in the defense of life or property, to knowingly
- 27 personally take big game while a client of the registered guide by whom the person
- 28 is employed is in the field unless the person is not participating in, supporting, or
- 29 otherwise assisting in providing big game hunting services to a client of the registered
- 30 guide by whom the person is employed; [OR]
- 31 (19) person who is licensed as a transporter, or who provides

1 transportation services under a transporter license, to knowingly accompany or remain  
2 in the field with a big game hunter who is a client of the person except as necessary  
3 to perform the specific duties of embarking or disembarking big game hunters, their  
4 equipment, or big game animals harvested by hunters; this paragraph does not apply  
5 to a person who holds both a transporter license and any class of guide license issued  
6 under this chapter; or

7 (20) person who is licensed as a transporter to knowingly fail to  
8 comply with AS 08.54.650(d).

9 \* Sec. 3. AS 08.54.720(b) is amended to read:

10 (b) In addition to a disciplinary sanction imposed under AS 08.54.710, a  
11 person who commits an offense set out in (a)(1) - (7) or (17) - (20) [(a)(1) - (7), (17),  
12 (18), OR (19)] of this section is guilty of a misdemeanor and is punishable by a fine  
13 of not more than \$10,000 or by imprisonment up to one year, or both.

14 \* Sec. 4. AS 08.54.720(r) is amended to read:

15 (f) In addition to the penalties set out in (b) - (e) of this section and a  
16 disciplinary sanction imposed under AS 08.54.710,

17 (1) the court may order the department to suspend the guide license or  
18 transporter license of a person who commits a misdemeanor offense set out in (a)(1),  
19 (3) - (5), (7), or (17) - (20) [(a)(1), (3) - (5), (7), (17), (18), OR (19)] of this section  
20 for a specified period of not more than three years;

21 (2) the court shall order the department to suspend the guide license or  
22 transporter license of a person who commits a misdemeanor offense set out in (a)(2)  
23 or (8) - (14) of this section for a specified period of not less than one year and not  
24 more than five years;

25 (3) the court shall order the department to suspend the guide license or  
26 transporter license for a specified period of not less than three years, or to permanently  
27 revoke the guide license or transporter license, of a person who commits an offense  
28 set out in (a)(15) or (16) of this section; and

29 (4) all guns, fishing tackle, boats, aircraft, automobiles, or other  
30 vehicles, camping gear, and other equipment and paraphernalia used in, or in aid of,  
31 a violation of (a) of this section may be seized by persons authorized to enforce this

1 chapter and may be forfeited to the state as provided under AS 16.05.195.

2 \* Sec. 5. AS 16.05.050 is amended by adding a new paragraph to read:

3 (20) to provide moose hunting orientation courses for residents and  
4 nonresidents.

5 \* Sec. 6. AS 16.05.340(a)(15) is amended to read:

6 (15) Nonresident big game tags

7 A nonresident may not take a big game animal without previously purchasing a  
8 numbered, nontransferable, appropriate tag, issued under this paragraph. The tag must  
9 be affixed to the animal immediately upon capture and must remain affixed until the  
10 animal is prepared for storage, consumed, or exported. A tag issued but not used for  
11 an animal may be used to satisfy the tagging requirement for an animal of any other  
12 species except moose for which the tag fee is of equal or less value.

- 13 (A) Bear, black, each . . . . . \$ 225
- 14 (B) Bear, brown or grizzly, each . . . . . 500
- 15 (C) Bison, each . . . . . 450
- 16 (D) Caribou, each . . . . . 325
- 17 (E) Deer, each . . . . . 150
- 18 (F) Elk, each . . . . . 300
- 19 (G) Goat, each . . . . . 300
- 20 (H) Moose, each . . . . . 400

21 A nonresident may not obtain a moose tag unless the nonresident furnishes proof  
22 of completion of a moose hunting orientation course offered by the department  
23 or furnishes an affidavit showing that the nonresident will be personally  
24 accompanied while moose hunting by a person who is licensed as a registered  
25 guide, master guide, class-A assistant guide, or assistant guide under AS 08.54.

- 26 (I) Sheep, each . . . . . 425
- 27 (J) Wolf, each . . . . . 30

28 A nonresident is not required to have a nonresident wolf tag to take a wolf in a game  
29 management unit if the Board of Game has adopted an intensive management program  
30 under AS 16.05.255 for all or a portion of the game management unit.

- 31 (K) Wolverine, each . . . . . 175

- 1 (L) Musk oxen, each ..... 1,100
- 2 \* Sec. 7. This Act takes effect January 1, 1999.

**HB**

**373**

# FISCAL NOTE

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

**BILL NO. HB373**

Revision Date: \_\_\_\_\_ Dept Affected: Natural Resources  
 Title: An Act relating to forests and forestry practices BRU: Resource Development  
 Component: Forest Management & Development  
 Sponsor: Rep. Phillips  
 Requestor: House Resources Component Serial No. 435

(Thousands of Dollars)

Expenditures/Revenues	FY99	FY00	FY01	FY02	FY03	FY04
<b>OPERATING EXPENDITURES</b>						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES (fund code)</b>	0.0	0.0	0.0	0.0	0.0	0.0

(Thousands of Dollars)

FUND SOURCE	FY99	FY00	FY01	FY02	FY03	FY04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: \$ 0.0

**POSITIONS**

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

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

This bill changes the Forest Resources and Practices Act requirements on private land along anadromous waters and tributaries to anadromous waters. Notably, it adds buffers on Type B anadromous streams. Based on the distribution of stream types, there will be an estimated 21% increase in the number of buffered stream miles. DNR is the lead agency for enforcing the Act. Additional buffers will require additional staff time for office review of notifications (3 mo. each annually for 2 existing seasonal Forester II positions in Southeast Alaska), and field review of variation requests and violations (19 days/year). In the first year (FY 99), training will be needed for landowners, operators, and staff on proper implementation of the new standards. This will require two training sessions, one each in southeast and southcentral Alaska.

Prepared by: Jeff Jahnke, Director Phone: 465-3379  
 Division: Forestry Date: 10-Feb-98  
 Approved by Commissioner: [Signature] Date: 2-11-98  
 Agency: Natural Resources

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**  
 For further distribution information call the Governor's Legislative Office

**HOUSE BILL 373**  
**“An Act relating to forests and forestry practices.”**

MADAME SPEAKER, I AM PLEASED TO PRESENT TO THE  
BODY TODAY THE FORESTRY BILL YOU INTRODUCED TO  
ENHANCE THE PROTECTION OF ALASKA'S SALMON  
RESOURCES AND WATER QUALITY.

THIS LEGISLATION RESULTS FROM A COOPERATIVE EFFORT  
BETWEEN TIMBER AND FISHING INDUSTRIES,  
ENVIRONMENTAL GROUPS AND STATE AGENCIES TO  
IMPROVE THE EXISTING FOREST PRACTICES ACT.

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education  
State of Alaska

# FISCAL NOTE

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**BILL NO. HB373**

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(Thousands of Dollars)

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MISCELLANEOUS						
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<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES (fund code)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**POSITIONS**

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(Attach a separate page if necessary)

This bill changes the Forest Resources and Practices Act requirements on private land along anadromous waters and tributaries to anadromous waters. Notably, it adds buffers on Type B anadromous streams. Based on the distribution of stream types, there will be an estimated 21% increase in the number of buffered stream miles. DNR is the lead agency for enforcing the Act. Additional buffers will require additional staff time for office review of notifications (3 mo. each annually for 2 existing seasonal Forester II positions in Southeast Alaska), and field review of variation requests and violations (19 days/year). In the first year (FY 99), training will be needed for landowners, operators, and staff on proper implementation of the new standards. This will require two training sessions, one each in southeast and southcentral Alaska.

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 Date: 10-Feb-98  
 Date: 2-11-98

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We have two options available to us in terms of estimating the fiscal impact of this bill:

1. Guess at it and ask for an increase in funding.

OR

2. Experience the impact of this legislation and once we know what it means in terms of staff and resources request the funding at that time.

We choose not to ask for additional funds for implementation of this bill at this time because of the uncertainty of the impact. However, passage of this legislation will impact DNR's forest practices program. The existing program currently is not fully funded, and field presence has already declined from the level expected by the Forest Practices Act. In 1991, DNR conducted 160 field inspections for each 100 notifications of operations received. In 1996-97, this ratio declined to 90 inspections per 100 notifications. The adequacy of funding for the FPA is not the issue this legislation is trying to address - this issue will need to be discussed in a different forum.

With the passage of this bill, review of notifications will take longer, further reducing available field time. Existing staff time for field visits will be spread over more buffers and requests for variation. Less staff time will be available to train operators and landowners, and to prevent violations. More time will be needed for enforcement actions following violations, rather than on cooperative work to prevent problems.

**HOUSE BILL 373**  
**“An Act relating to forests and forestry practices.”**

MADAME SPEAKER, I AM PLEASED TO PRESENT TO THE  
BODY TODAY THE FORESTRY BILL YOU INTRODUCED TO  
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BETWEEN TIMBER AND FISHING INDUSTRIES,  
ENVIRONMENTAL GROUPS AND STATE AGENCIES TO  
IMPROVE THE EXISTING FOREST PRACTICES ACT.

IN 1996, THE BOARD OF FORESTRY ESTABLISHED THE  
“FOREST RESOURCES PRACTICES ACT SCIENCE AND  
TECHNICAL COMMITTEE” TO REVIEW AN IDENTIFIED  
CONCERN REGARDING STREAM BUFFERS IN ALASKA. THE  
GROUP INCLUDED SCIENTISTS FROM TIMBER, COMMERCIAL  
FISHING AND ENVIRONMENTAL COMMUNITIES AS WELL AS  
FEDERAL AND STATE AGENCIES.

THE SCIENCE AND TECHNICAL COMMITTEE MADE  
RECOMMENDATIONS TO THE BOARD OF FORESTRY THAT  
ADD PROTECTIVE MEASURES TO THE RIPARIAN STANDARDS  
ESTABLISHED IN STATUTE FOR PRIVATE FOREST LANDS IN  
THE COASTAL FORESTS FROM KETCHIKAN TO KODIAK.