

**NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE DEPARTMENT OF FISH AND GAME**

BRIEF DESCRIPTION

The Department of Fish and Game proposes changes to regulations relating to updating reporting requirements of fishermen, processors, buyers, exporters, and operators of certain commercial fishing vessels, transporting requirements, and methods used by the Department of Fish and Game to announce certain emergency orders.

The Department of Fish and Game proposes to adopt regulation changes in Title 5 of the Alaska Administrative Code, dealing with reporting requirements of fishermen, processors, buyers, exporters, and operators of certain commercial fishing vessels, transporting requirements, and announcement of emergency orders, including the following:

- (1) **5 AAC 39.130. Reports required of fishermen, processors, buyers, exporters, and operators of certain commercial fishing vessels; transporting requirements** is proposed to be changed to update certain provisions regarding reporting, including application for intent to operate and submission of fish tickets in paper form and under the e-Landings Electronic Reporting System, and update definition of terms used in the section.
- (2) **5 AAC 39.195. Announcement of emergency orders** is proposed to be changed to include certain methods and media that the department uses to announce emergency orders and were not included, and in some cases not available, when the regulation originally became effective, and remove methods that are obsolete.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Kevin J. Messing, Fisheries Regulations Program Coordinator, Department of Fish and Game, P.O. Box 115526, Juneau, AK 99811-5526. Additionally, the Department of Fish and Game will accept comments by facsimile at (907) 465-2604 and by electronic mail at kevin.messing@alaska.gov. The comments must be received no later than 5:00 p.m. on November 12, 2014.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Kevin J. Messing at (907) 465-6124 no later than November 5, 2014 to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact Kevin J. Messing, Fisheries Regulations Program Coordinator at the mailing address, telephone number or email address above.

After the public comment period ends, the Department of Fish and Game will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. **You should comment during the time allowed if your interests could be affected.**

Statutory Authority: AS 16.05.020; AS 16.05.050; AS 16.05.671; AS 16.05.690

Statutes Being Implemented, Interpreted, or Made Specific: AS 16.05.060; AS 16.05.671; AS 16.05.690

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: 10/10/14



Forrest Bowers, Deputy Director
Division of Commercial Fisheries
Department of Fish and Game

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

2. General subject of regulation: Reporting requirements for certain fishermen, processors, buyers, exporters, and operators of certain commercial fishing vessels, transporting requirement, and announcements of emergency orders.
3. Citation of regulation (may be grouped): 5 AAC 39.130; 5 AAC 39.195
4. Department of Law file number: JU2013200619
5. Reason for the proposed action:
 - compliance with federal law
 - compliance with new or changed state statute
 - compliance with court order
 - development of program standards
 - other: (please list)
6. Appropriation/Allocation: Natural Resources/Commercial Fisheries
7. Cost of implementation to the state agency and available funding (in thousands of dollars):
No costs are expected in FY 2015 or in subsequent years
8. The name of the contact person for the regulations:

Name: Kevin J. Messing
Title: Regulations Program Coordinator
Address: P.O. Box 115526
Juneau, AK 99811-5526

Telephone: (907) 465-6124
E-mail address: kevin.messing@alaska.gov

9. The origin of the proposed action: staff of state agency

10. Date: 10/10/14

Prepared by: 
Name: Kevin J. Messing
Title: Regulations Program Coordinator
Telephone: (907) 465-6124

Title 5. Fish and Game.

Chapter 39. General Provisions.

Article 1. General.

5 AAC 39.130 is amended to read:

5 AAC 39.130. Reports required of fishermen, processors, buyers, exporters, and operators of certain commercial fishing vessels; transporting requirements. (a) **Before operating during a calendar year, an** [AN] individual, company, firm, or other organization that is the first purchaser of raw fish, catches and processes fish or byproducts of fish, catches and has fish or byproducts of fish processed by another person or company, or catches and exports fish or byproducts of fish shall **submit** [(1) FURNISH] to the department [EACH CALENDAR YEAR BEFORE OPERATING,] a completed intent to operate application on a form [,] provided by the department **or the application available online. An** [; AN] individual, company, firm, or other organization described in this subsection may begin to operate only after receiving

(1) a written authorization from the [(A)] department to begin operating, along with the individual's or organization's code plate number [FOR THE CURRENT YEAR] or code plate [AND FISH TICKETS] for the current year; or

(2) access to the eLandings Electronic Reporting System after completing and submitting an online operator documentation and user agreement form on the Interagency eLandings Electronic Reporting System's website

[(B) NATIONAL MARINE FISHERIES SERVICE TO BEGIN
OPERATING AN ELANDINGS OPERATION;

(2) FURNISH, VERBALLY OR IN WRITING, PURCHASING OR
PRODUCTION RECORDS AS REQUESTED BY THE COMMISSIONER OR THE
COMMISSIONER'S DESIGNEE;

(3) SUBMIT, ON A FORM PROVIDED BY THE DEPARTMENT, NO LATER
THAN APRIL 1, A

(A) COMMERCIAL OPERATOR'S ANNUAL REPORT (COAR),
WHICH IS AN OPERATOR'S ACCURATE AND COMPLETE SUMMARY OF
ACTIVITY FOR EACH INTENT TO OPERATE APPLICATION FORM FILED FOR
THE PREVIOUS YEAR; OR

(B) SIGNED STATEMENT OF NON-ACTIVITY FOR THE
PREVIOUS YEAR].

(b) **Before operating during a calendar year, a** [A] catcher-seller must **submit a**
completed application on a [COMPLETE A REGISTRATION] form provided by the
department **or the application available online** [EACH CALENDAR YEAR] and may begin to
operate only after receiving

(1) a written authorization from the [(1)] department to begin operating, along
with the catcher-seller's code plate number [FOR THE CURRENT YEAR] or code plate [AND
FISH TICKETS] for the current year; or

(2) **access to the eLandings Electronic Reporting System for the current year after completing and submitting an online operator documentation and user agreement form on the Interagency eLandings Electronic Reporting System's website** [NATIONAL MARINE FISHERIES SERVICE TO BEGIN OPERATING AN ELANDINGS OPERATION].

(c) **An individual, company, firm, or other organization described in (a) of this section and a catcher-seller** [THE FIRST PURCHASER OF RAW FISH, A CATCHER-SELLER, OR AN INDIVIDUAL OR COMPANY THAT CATCHES AND PROCESSES OR EXPORTS THAT INDIVIDUAL'S OR COMPANY'S OWN CATCH OR HAS THAT CATCH PROCESSED OR RECEIVED BY ANOTHER INDIVIDUAL OR COMPANY,] shall record each delivery on an ADF&G fish ticket. **A fish ticket must be completed for all harvest, processing, and offloading of fish or byproducts of fish in the waters of Alaska.** [THE OPERATOR OF A FISHING VESSEL THAT HARVESTS OR OFF-LOADS FISH IN THE WATERS OF ALASKA MUST COMPLETE AN ADF&G FISH TICKET.] Fish tickets must be **finalized and** submitted to a local representative of the department within seven days after delivery [OR FINAL DELIVERY IF MULTIPLE DELIVERIES ARE MADE], or as otherwise specified by the department, for each particular area and fishery, **including a fish ticket generated and printed from the eLandings Electronic Reporting System that is signed by both the seller and purchaser.** The operator of a fishing vessel that has fished in the waters of Alaska whose port of delivery is outside this state, or who sells, transfers, receives, or delivers fish in the Exclusive Economic Zone (EEZ), shall submit a completed hailed weight **fish ticket** form or an ADF&G fish ticket to the department before the fish are transported out of the jurisdiction of this state. At the time of delivery, or as otherwise directed by the department, fish tickets must include the following:

(1) the name of the

(A) individual, [OR] company, **firm, or other organization** that is the first purchaser of raw fish;

(B) [,] catcher-seller;

(C) [,] catcher-exporter; **or**

(D) [, OR] catcher-processor;

(2) [,] the assigned processor code imprinted on the fish ticket from the code plate issued by the department, **the assigned processor code handwritten on the fish ticket if instructed by an authorized representative of the department,** or the electronically captured information from the **eLandings Electronic Reporting System;**

(3) [CFEC PERMIT CARD, AND] the signature of the individual or a company representative **of the first purchaser, catcher-seller, catcher-exporter, or catcher-processor** [TO WHOM THE CODE PLATE IS ISSUED OR THE ELANDINGS SYSTEM OPERATION IS AUTHORIZED];

(4) [(2)] the full name and signature of the CFEC permit holder at the time of delivery, including the time of delivery to a commercial fish transporter as specified in AS 16.05.671;

(5) [(3)] the name, or the United States Coast Guard number or Department of Transportation number, of the vessel employed in taking the fish, **if applicable;**

(6) [(4)] the date fishing gear was deployed and the date [OF] the delivery of the fish **is completed**;

(7) [(5)] the permanent **ADF&G** vessel license plate number, **if applicable** [OR, IF A FISHING OPERATION DOES NOT POSSESS A VESSEL LICENSE PLATE NUMBER, THE FIVE-DIGIT MISSING VALUE CODE NUMBER 99999];

(8) [(6)] the type of gear by which the fish were taken by gear code number;

(9) [(7)] the ADF&G statistical area **or areas**, district **or districts**, and subdistrict **or subdistricts in which the fish were taken**, and, **if required by a local representative of the department**, the nearest headland or bay in which the fish were taken;

(10) the following [(8)] information applicable to the following species [, AND AS FOUND ON THE DEPARTMENT'S ADF&G=HRZFC 101 FORM]:

(A) the number, pounds, delivery condition code, product designation code, [OVERAGE CODE,] and disposition code, **including any applicable overage code**, of salmon **and salmon roe**, by species;

(B) the [POUNDS, DELIVERY CONDITION CODE, PRODUCT DESIGNATION CODE, OVERAGE CODE, AND DISPOSITION CODE OF SALMON ROE, BY SPECIES;

(C) THE] number **or** [,] pounds, delivery condition code, product designation code, [OVERAGE CODE,] and disposition code, **including any applicable overage code**, of other finfish, by species;

(C) [(D)] the number, pounds, delivery condition code, product designation code, [OVERAGE CODE,] and disposition code, **including any applicable overage code**, of king, Dungeness, and Tanner crab;

(D) [(E)] the number or pounds, delivery condition code, product designation code, [OVERAGE CODE,] and disposition code, **including any applicable overage code**, of other shellfish, by species;

(E) [(F)] REPEALED 12/5/2009;

(G) the weight **modifier** [MODIFICATION CODE NUMBER] applicable to the eLandings **Electronic Reporting System, such as with ice and slime** [SYSTEM];

(F) [(H)] the pounds or tons, **and delivery condition code**, of herring;

(G) [(I)] partial deliveries of groundfish as specified in 5 AAC 28.070(f);

(11) [(9)] the CFEC permit number of the operator of the unit of gear with which the fish were taken, imprinted on the fish ticket from the valid permit card or electronically captured from the valid permit card; the imprinting requirement under this paragraph may be suspended by a local representative of the department after presentation by the commercial fisherman of documentation from the department or CFEC that the permit card has been **damaged, lost, stolen, or is in the process of a valid transfer** [TRANSFERRED OR DESTROYED]; if a suspension is granted, the buyer or commercial fisherman must **handwrite**

[WRITE] the **name of the permit holder, the permit holder's permit number, and, if applicable, the permanent ADF&G vessel license plate number**, on the fish ticket;

(12) [(10)] the number **or pounds** of fish of any species retained by a commercial fisherman for that person's own use [AS SPECIFIED IN 5 AAC 39.010];

(13) [(11)] the number of licensed crewmembers, including the vessel operator on board the vessel;

(14) [(12)] the number of certified onboard observers **on board the vessel**, if applicable;

(15) [(13)] the management program code, if using the eLandings **Electronic Reporting System** [SYSTEM];

(16) [(14)] the permanent **ADF&G** vessel license plate number of the tender vessel or vehicle used to tender fish, if applicable;

(17) [(15)] use of a dual permit and the second CFEC permit number, if **required by the department** [APPLICABLE];

(18) [(16)] any other information that the commissioner **or the commissioner's designee** determines is necessary.

(d) An individual may not possess a fish ticket that has been imprinted with a CFEC permit number until the time of delivery, except for a fish ticket that has been imprinted with a

CFEC permit number for fish that have been transferred to a permitted commercial fish transporter for delivery to a processor.

(e) A buyer of fish harvested through a CDQ program, as described in 6 AAC 93.080, that is operating in the EEZ shall electronically submit a fish ticket at least one time per week. The buyer may use the consolidated fish ticket feature in the eLandings Electronic Reporting System, including seaLandings, to generate the fish ticket. In this subsection, "week" means a seven-day period of time that begins on Sunday and ends on Saturday.

(f) An individual, company, firm, or other organization described in (a) of this section and a catcher-seller, shall furnish, verbally or in writing, purchasing, production, or other information as requested by the commissioner or the commissioner's designee.

(g) Not later than April 1, an individual, company, firm, or other organization described in (a) of this section shall submit on a form provided by the department a Commercial Operator's Annual Report (COAR), which is an operator's accurate and complete summary of activity for each intent to operate application form filed for the previous year, or a signed statement of non-activity for the previous year. If applicable, the department will not issue a written authorization to begin operating or approve access to the eLandings Electronic Reporting System for the current year under (a) of this section to an applicant unless the applicant has complied with the reporting requirements of this subsection. In addition, the department will not issue a written authorization or approve access to the eLandings Electronic Reporting System for the current year to an applicant that did not submit the applicant's COAR for the year that is before the previous year until

the applicant complies the applicable reporting requirements of this subsection for that year.

(h) [(e)] A commercial fisherman shall furnish to the buyer factual catch data necessary for completion of reports required by the commissioner **or the commissioner's designee.**

(i) [(f)] A processor using the eLandings **Electronic Reporting** System must electronically submit the initial landing report at the completion of the delivery, and submit to the department the final landing report and **a signed copy of** the eLandings fish ticket within seven days.

(j) [(g)] A commercial [SHELLFISH] fisherman shall submit to the department **verbally,** in writing, or electronically through the eLandings **Electronic Reporting** System, directly or through the buyer, data necessary for reports required by the commissioner **or the commissioner's designee.**

(k) [(h)] Unless otherwise specified in this chapter, in addition to other requirements of this section, each person that is the first purchaser of or that first processes raw groundfish or halibut shall comply with the record keeping and electronic reporting requirements through **the** eLandings **Electronic Reporting** System or any other reporting requirements in 50 C.F.R. 679.5, revised as of **October 1, 2013** [DECEMBER 15, 2008].

(l) The commissioner may, by emergency order, close a fishing season and immediately reopen a fishing season during which a different reporting requirement is in effect, as determined by the commissioner.

(m) In addition to the other provisions [(i) NOTWITHSTANDING (a)] of this section, if the commissioner **or the commissioner's designee** determines it is necessary, the following information regarding the transporting, **delivery, or shipping** of unprocessed fish must be transmitted to an authorized local representative of the department either verbally, in writing, or by **radio or** telephone:

(1) the number and species of salmon taken in a regulatory area must be reported before being transported to any other area or out of this state;

(2) the numbers or pounds, by species, of all other fish must be reported before being transported out of this state;

(3) the number or pounds, by species of fish, taken by a catcher-seller must be reported upon delivery, or before transporting or shipping the fish within the state.

(n) [(j)] An operator of a floating fish processing vessel shall report in person, or by radio or telephone, to the local representative of the department located within the management area of intended operation before the start of processing operations. The report must include the initial processing location by district or subdistrict, the exact latitude and longitude of the location, and the date of intended operation. Before moving the operation and upon arriving at a new location, the operator shall notify the local representative of the department in person, or by radio or telephone, of the new location of operation by district or subdistrict and exact latitude and longitude of the location. A local representative of the department may waive all or part of the requirements of this subsection upon determining that the requirements are not necessary for the conservation or management of the fishery in that area.

(o) In [(k) FOR PURPOSES OF] this section,

(1) "buyer-exporter" means the first purchaser of unprocessed fish or a fishery resource from a commercial fisherman and **that exports out of this state the** [TRANSPORTS THAT UNPROCESSED] fish or fishery resource **either unprocessed or custom processed** [OUT OF THIS STATE];

(2) "catcher-exporter" means a commercial fisherman who exports or attempts to export out of this state unprocessed **or custom processed** fish that were legally taken by the catcher-exporter;

(3) "catcher-processor" means a commercial fisherman who catches and sells processed or unprocessed fish or fish products and

(A) exports the fish processed or unprocessed out of this state;

(B) processes or has the fish custom processed for sale in this state or out of this state;

(4) "catcher-seller" means a commercial fisherman who sells or attempts to sell unprocessed fish that were legally taken by the catcher-seller

(A) to the general public for use for noncommercial purposes;

(B) for use as bait for commercial or noncommercial purposes;

(C) to restaurants, grocery stores, and established fish markets;

(D) by shipping the fish to a licensed buyer, processor, or exporter within this state;

(5) "commercial fish transporter" means those individuals whose activities require a permit under AS 16.05.671;

(6) **"custom processed" means that the fish is processed by a fisheries business that does not own the fish being processed;**

(7) "delivery" means offloading fish for sale or for transport to a buyer for later sale;

(8) **"dual permit" means the use of additional fishing gear on board a vessel or set gillnet site under two CFEC permits as allowed under the applicable provisions in this title;**

(9) **"eLandings Electronic Reporting System"** [(7) "ELANDINGS SYSTEM"]

(A) means the electronic and Internet based reporting system **maintained** [DEVELOPED] by the department, the National Marine Fisheries Service, **Alaska** **Region**, and the International Pacific Halibut Commission to provide an alternative to paper fish tickets;

(B) includes the following:

(i) eLandings, which is a web application for shore side and Internet capable vessels;

(ii) seaLandings, which is a desktop application for sea vessels without Internet capability; [AND]

(iii) tLandings, which is **a portable data storage** [A THUMB DRIVE] application for [SALMON AND OTHER] tender **and other** operations;

(10) [(8)] "first purchaser"

(A) means the person that first purchases raw fish directly from the commercial fisherman for the purchaser's own business and does not act as a buying agent for another business;

(B) includes a

- (i) buyer-exporter;
- (ii) floating processor;
- (iii) independent buyer; and
- (iv) shorebased processor;

(11) "fish ticket" includes

(1) a department issued paper copy form for recording harvest; and

(2) an electronically generated record of harvest from the eLandings

Electronic Reporting System;

(12) [(9)] "floating processor" **includes** [MEANS] the operator of a vessel who

(A) operates as a catcher-processor;

(B) is the first purchaser of an unprocessed fishery resource from a commercial fisherman who caught the fish and

(i) exports that resource, processed or unprocessed, out of this state;

(ii) [(B)] processes that resource or has that resource custom processed;

(13) [(10)] "independent buyer" means the first purchaser of an unprocessed fishery resource from a commercial fisherman for sale **as unprocessed fishery resource within this state** to a shorebased processor, floating processor, or buyer-exporter;

(14) "partial delivery" means the offloading of fish for sale or for transport to a buyer for later sale of only a portion of the total harvest from one vessel's trip, excluding catch retained for

(A) personal use under 5 AAC 39.010;

(B) bait under applicable provisions of this title;

(15) "trip" means

(A) for a vessel on which fish are harvested but not processed, the period of time from when the vessel commences fishing until completion of the final delivery; a trip may include one or more partial deliveries;

(B) for an at-sea processing vessel, a period of time designated by the department, such as every seven days;

(16) [(11)] "shorebased processor" means **a land-based** [THE] first purchaser **that purchases** [OF] unprocessed fishery resource from a commercial fisherman **and** that [IS ON LAND AND]

(A) exports that resource, processed or unprocessed, out of this state;

(B) processes that resource or has that resource custom processed. (In effect before 1981; am 6/28/81, Register 78; am 4/16/83, Register 86; am 5/31/85, Register 94; am 7/23/88, Register 107; am 6/14/90, Register 115; am 7/26/90, Register 115; am 8/2/90, Register 115; am 5/2/92, Register 122; am 6/2/95, Register 134; am 6/2/96, Register 138; am 12/8/96, Register 140; am 5/31/98, Register 146; am 3/13/2004, Register 169; am 5/26/2006, Register 178; am 8/8/2007, Register 183; add'l am 8/8/2007, Register 183; am 8/15/2008, Register 187; am 5/23/2009, Register 190; am 12/5/2009, Register 192; am 4/28/2011, Register 198; am ___/___/_____, Register _____)

Authority: AS 16.05.020 AS 16.05.060 AS 16.05.690
 AS 16.05.050 AS 16.05.671

Editor's note: The Interagency eLandings Electronic Reporting System's website can be accessed at <https://elandings.alaska.gov/>.

The department's hailed weight **fish ticket form (ADFG HWT1)** is [FORM (ADF&G=hrzHWT 1) AND ADF&G=hrzFC 101 FORM REQUIRED IN 5 AAC 39.130(c) ARE] available on the department's website at **http://www.adfg.alaska.gov/static/license/fishing/pdfs/hailed_weight_ft.pdf** [HTTP://WWW.CF.ADFG.STATE.AK.US].

5 AAC 39.195 is amended to read:

5 AAC 39.195. Announcement of emergency orders. Announcement of emergency orders will be publicized and made known to interested persons, fishermen, buyers, packers, and canneries by one or more of the following means if possible:

- (1) radio transmission by department stations;
- (2) notices posted at canneries and public places;
- (3) press releases and announcements in
 - (A) the department's website;**
 - (B) local newspapers;** and
 - (C) commercial radio stations;**
- (4) **telephone message hotline;**
- (5) **electronic mail;**
- (6) **facsimile transmission; and**

(7) other appropriate public notification media [TELEGRAMS AND
COMMERCIAL RADIO FACILITIES]. (In effect before 1988; am ___/___/_____, Register
_____)

Authority: AS 16.05.020 AS 16.05.060