

Alaska Department of Fish and Game

2013–2014 Commercial Finfish and Shellfish Fishing General Regulation & Statute Provisions



This booklet contains statutes and general provisions regarding commercial fisheries in the State of Alaska. This booklet covers the period June 2013 through June 2014 or until the 2014 book is available, whichever occurs first.

Note to Readers: These statutes and administrative regulations were excerpted from the Alaska Statutes and the Alaska Administrative Code (AAC) based on the official regulations on file with the Lieutenant Governor. There may be errors or omissions that have not been identified and changes that occurred after this printing. **This booklet is intended as an informational guide only. To be certain of the current laws, refer to the official statutes and the AAC.**

Changes to Regulations in this booklet: The regulations appearing in this booklet may be changed by emergency regulation or emergency order at any time. Supplementary changes to the regulations in this booklet will be available at offices of the Department of Fish and Game.

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For information on alternative formats and questions on this publication, please contact the Regulation Program Coordinator at (907) 465-6124.

ADF&G Mission Statement

The Alaska Department of Fish and Game’s mission is to manage, protect, maintain, and improve the fish, game and aquatic plant resources of Alaska. The primary goals are to ensure that Alaska’s renewable fish and wildlife resources and their habitats are conserved and managed on the sustained yield principle, and the use and development of these resources are in the best interest of the economy and well-being of the people of the state.

Guiding Principles

- Seeking excellence in carrying out its responsibilities under state and federal law, the department will:
- Provide for the greatest long-term opportunities for people to use and enjoy Alaska’s fish, wildlife and habitat resources.
- Improve public accessibility to, and encourage active involvement by the public in, the department’s decision making processes.
- Build a working environment based on mutual trust and respect between the department and the public, and among department staff.
- Maintain the highest standards of scientific integrity and provide the most accurate and current information possible.
- Foster professionalism in department staff, promote innovative and creative resource management, and provide ongoing training and education for career development.

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COMMERCIAL FISHERIES, MANAGEMENT FIELD OFFICES**

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Commercial Fisheries Entry Commission

Juneau 789-6160

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Title 16. Fish and Game.

Chapter 05. Fish and Game Code and Definitions.

Sec. 16.05.050. Powers and duties of the commissioner. The commissioner has, but not by way of limitation, the following powers and duties:

(1) through the appropriate state agency and under the provisions of AS 36.30 (State Procurement Code), to acquire by gift, purchase, or lease, or other lawful means, land, buildings, water, rights-of-way, or other necessary or proper real or personal property when the acquisition is in the interest of furthering an objective or purpose of the department or state;

(2) under provisions of AS 36.30, to design and construct hatcheries, pipelines, rearing ponds, fishways, and other projects beneficial for the fish and game resources of the state;

(3) to accept money from any person under conditions requiring the use of the money for specific purposes in the furtherance of the protection, rehabilitation, propagation, preservation, or investigation of the fish and game resources of the state or in settlement of claims for damages to fish or game resources;

(4) to collect, classify, and disseminate statistics, data and information that, in the commissioner's discretion, will tend to promote the purposes of this title except AS 16.51 and AS 16.52;

(5) to take, capture, propagate, transport, buy, sell, or exchange fish or game or eggs for propagating, scientific, public safety, or stocking purposes;

(6) under the provisions of AS 36.30, to provide public facilities where necessary or proper to facilitate the taking of fish or game, and to enter into cooperative agreements with any person to effect them;

(7) to exercise administrative, budgeting, and fiscal powers;

(8) under the provisions of AS 36.30, to construct, operate, supervise, and maintain vessels used by the department;

(9) to authorize the holder of an interim-use permit under AS 16.43 to engage on an experimental basis in commercial taking of a fishery resource with vessel, gear, and techniques not presently qualifying for licensing under this chapter in conformity with standards established by the Alaska Commercial Fisheries Entry Commission;

(10) not later than January 31 of each year, to provide to the commissioner of revenue the names of those fish and shellfish species that the commissioner of fish and game designates as developing commercial fish species for that calendar year; a fish or shellfish species is a developing commercial fish species if, within a specified geographical region,

(A) the optimum yield from the harvest of the species has not been reached;

(B) a substantial portion of the allowable harvest of the species has been allocated to fishing vessels of a foreign nation; or

(C) a commercial harvest of the fish species has recently developed;

(11) to initiate or conduct research necessary or advisable to carry out the purposes of this title except AS 16.51 and AS 16.52;

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(12) to enter into cooperative agreements with agencies of the federal government, educational institutions, or other agencies or organizations, when in the public interest, to carry out the purposes of this title except AS 16.51 and AS 16.52;

(13) to implement an on-board observer program authorized by the Board of Fisheries under AS 16.05.251(a)(13); implementation

(A) must be as unintrusive to vessel operations as practicable; and

(B) must make scheduling and scope of observers' activities as predictable as practicable;

(14) to sell fish caught during commercial fisheries test fishing operations;

(15) to establish and charge fees equal to the cost of services provided by the department, including provision of public shooting ranges, broodstock and eggs for private nonprofit hatcheries, department publications, and other direct services, and reasonable fees for the use of state facilities managed by the department; fees established under this paragraph for the use of hatchery facilities, commercial use of sport fishing access sites, and for operation of state hatchery facilities as private aquaculture association, are not subject to cost limit under AS 37.10.050(a);

(16) to permit and regulate aquatic farming in the state in a manner that ensures the protection of the state's fish and game resources and improves the economy, health, and well-being of the citizens of the state;

(17) to operate state housing and facilities for employees, contractors, and others in support of the department's responsibilities and to charge rent that is consistent with applicable collective bargaining agreements, or, if no collective bargaining agreement is applicable, competitive with market conditions; rent received from tenants shall be deposited in the general fund;

(18) to petition the Alaska Commercial Fisheries Entry Commission, unless the Board of Fisheries disapproves the petition under AS 16.05.251(g), to establish a moratorium on new entrants into commercial fisheries

(A) that have experienced recent increases in fishing effort that are beyond a low, sporadic level of effort;

(B) that have achieved a level of harvest that may be approaching or exceeding the maximum sustainable level for the fishery; and

(C) for which there is insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the fishery;

(19) to promote fishing, hunting, and trapping and preserve the heritage of fishing, hunting, and trapping in the state.

(b) The commissioner shall annually submit a report to the Board of Game regarding the department's implementation during the preceding three years of intensive management programs that have been established by the board under AS 16.05.255 for identified big game prey populations.

Sec. 16.05.055. On-board observer program. (a) The commissioner may enter into appropriate contracts and agreements with agencies, such as the National Marine Fisheries Service, the North Pacific Fishery Management Council, and the International Pacific

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Halibut Commission, designed to ensure that on-board observer programs conducted in the fisheries of the state are coordinated and consistent with each other for vessels operating in state and federal water.

(b) The master of a vessel, as a condition of participating in a fishery for which an on-board observer program is authorized by the Board of Fisheries under AS 16.05.251, shall consent in writing to the placement of an observer aboard the vessel.

Sec. 16.05.060. Emergency orders. (a) This chapter does not limit the power of the commissioner or an authorized designee, when circumstances require, to summarily open or close seasons or areas or to change weekly closed periods on fish or game by means of emergency orders.

(b) The commissioner or an authorized designee may, under criteria adopted by the Board of Fisheries, summarily increase or decrease sport fish bag limits or modify methods of harvest for sport fish by means of emergency orders.

(c) An emergency order has the force and effect of law after field announcement by the commissioner or an authorized designee. An emergency order adopted under this section is not subject to the AS 44.62 (Administrative Procedure Act).

Sec. 16.05.065. Application extension. (a) The commissioner shall extend the time and dates during which application may be made for fish or game registration if the commissioner finds that

(1) the conservation and management of the fish or game resource will not be affected adversely; and

(2) the failure to timely apply is the result of excusable neglect.

(b) The fee for an extension granted under this section is \$45.

(c) As used in this section, "excusable neglect" does not include unfamiliarity with or ignorance of applicable laws and regulations. In order to show excusable neglect, a person must have demonstrated, before the registration deadline, an intent to harvest fish or game.

Sec. 16.05.070. Regulations as evidence. Regulations of a board and of the commissioner, including emergency openings and closures, are admissible as evidence in the courts of the state in accordance with AS 44.62 (Administrative Procedure Act).

Sec. 16.05.080. Limitation of power. Nothing in this chapter authorizes the department or a board to change the amount of fees or licenses.

Sec. 16.05.092. Fisheries rehabilitation, enhancement, and development. The department shall

(1) develop and continually maintain a comprehensive, coordinated state plan for the orderly present and long-range rehabilitation, enhancement, and development of all aspects of the state's fisheries for the perpetual use, benefit, and enjoyment of all citizens and revise and update this plan annually;

(2) encourage the investment by private enterprise in the technological development and economic utilization of the fisheries resources;

(3) through rehabilitation, enhancement, and development programs do all things necessary to ensure perpetual and increasing production and use of the food resources of state waters and continental shelf areas;

(4) prepare a comprehensive annual report, containing detailed information regarding its accomplishments under this section and proposals of plans and activities for the next fiscal year, and notify the legislature not later than 20 days after the convening of each regular session that the report is available.

Sec. 16.05.100. Fish and game fund established. There is created a revolving fish and game fund, which shall be used exclusively for the following:

(1) to carry out the purposes and provisions of this title, except AS 16.51 and AS 16.52, or other duties that may be delegated by the legislature to the commissioner or the department;

(2) to pay the principal of and interest on revenue bonds issued under AS 37.15.765 – 37.15.799 to finance the construction and renovation of fisheries rehabilitation, enhancement, and development projects that benefit sport fishing; and

(3) to carry out such purposes and objectives within the scope of this title except AS 16.51 and AS 16.52 as may be directed by the donor of any such funds.

Sec. 16.05.150. Enforcement authority. The following persons are peace officers of the state and they shall enforce this title except AS 16.51 and AS 16.52:

(1) an employee of the department authorized by the commissioner;

(2) a police officer in the state;

(3) any other person authorized by the commissioner.

Sec. 16.05.160. Duty to arrest. Each peace officer designated in AS 16.05.150 shall arrest a person violating a provision of this title except AS 16.51 and AS 16.52, or any regulation adopted under this title except AS 16.51 and AS 16.52, in the peace officer's presence or view, and shall take the person for examination or trial before an officer or court of competent jurisdiction unless in the judgment of the peace officer it would be in the state's best interest to issue a warning or a citation under AS 16.05.165.

Sec. 16.05.165. Form and issuance of citation. (a) When a peace officer stops or contacts a person concerning a violation of this title except AS 16.51 and AS 16.52 or of a regulation adopted under this title except AS 16.51 and AS 16.52 that is a misdemeanor, the peace officer may, in the officer's discretion, issue a citation to the person as provided in AS 12.25.175 – 12.25.230.

(b) The supreme court shall specify by rule or order those misdemeanors that are appropriate for disposition without court appearance, and shall establish a schedule of bail amounts. Before establishing or amending the schedule of bail amounts required by this subsection, the supreme court shall appoint and consult with an advisory committee consisting of two law enforcement officers of the Department of Public Safety engaged in fish and wildlife protection, two representatives of the Department of Fish and Game, two district court judges, and the chairpersons of the House and Senate Judiciary Committees of the legislature. The maximum bail amount for an offense may not exceed the maximum fine specified by law for that offense. If the misdemeanor for which the citation is issued may be disposed of without court appearance, the issuing peace officer shall write on the citation the amount of bail applicable to the violation.

(c) If a person cited for a misdemeanor for which a bail amount has been established under (b) of this section does not contest the citation, the person may, on or before the 30th day after the date of the citation, mail or personally deliver to the clerk of the court in which

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the citation is filed by the peace officer

(1) the amount of bail indicated on the citation for that offense; and

(2) a copy of the citation indicating that the right to an appearance is waived, a plea of no contest is entered and the bail is forfeited.

(d) When bail has been forfeited under (c) of this section, a judgment of conviction shall be entered. Forfeiture of bail and all seized items is a complete satisfaction for the misdemeanor. The clerk of the court accepting the bail shall provide the offender with a receipt stating that fact if requested.

(e) A person cited under this section is guilty of failure to obey a citation under AS 12.25.230 if the person fails to pay the bail amount established under (b) of this section or fails to appear in court as required.

(f) Notwithstanding other provisions of law, if a person cited for a misdemeanor for which a bail amount has been established under (b) of this section appears in court and is found guilty, the penalty that is imposed for the offense may not exceed the bail amount for that offense established under (b) of this section.

Sec. 16.05.170. Power to execute warrant. Each peace officer designated in AS 16.05.150 may execute a warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of this title except AS 16.51 and AS 16.52, and may, with a search warrant, search any place at any time. The judge of a court having jurisdiction may, upon proper oath or affirmation showing probable cause, issue a warrant in all cases.

Sec. 16.05.180. Power to search without warrant. Each peace officer designated in AS 16.05.150 may without a warrant search any thing or place if the search is reasonable or is not protected from searches and seizures without warrant within the meaning of art. I, Sec. 14, Alaska State Constitution, which specifically enumerates "persons, houses and other property, papers and effects." However, before a search without warrant is made a signed written statement by the person making the search shall be submitted to the person in control of the property or object to be searched, stating the reason the search is being conducted. A written receipt shall be given by the person conducting the search for property which is taken as a result of the search. The enumeration of specific things does not limit the meaning of words of a general nature.

Sec. 16.05.190. Seizure and disposition of equipment. Guns, traps, nets, fishing tackle, boats, aircraft, automobiles or other vehicles, sleds, and other paraphernalia used in or in aid of a violation of this chapter or a regulation of the department may be seized under a valid search, and all fish and game, or parts of fish and game, or nests or eggs of birds, taken, transported, or possessed contrary to the provisions of this chapter or a regulation of the department shall be seized by any peace officer designated in AS 16.05.150. Upon conviction of the offender or upon judgment of the court having jurisdiction that the item was taken, transported, or possessed in violation of this chapter or a regulation of the department, all fish and game, or parts of them are forfeited to the state and shall be disposed of as directed by the court. If sold, the proceeds of the sale shall be transmitted to the proper state officer for deposit in the general fund. Guns, traps, nets, fishing tackle, boats, aircraft, or other vehicles, sleds, and other paraphernalia seized under the provisions of this chapter or a regulation of the department, unless forfeited by order of the court, shall be returned, after completion of the case and payment of the fine, if any.

Sec. 16.05.195. Forfeiture of equipment. (a) Guns, traps, nets, fishing gear, vessels,

aircraft, other motor vehicles, sleds, and other paraphernalia or gear used in or in aid of a violation of this title or AS 08.54, or regulation adopted under this title or AS 08.54, and all fish and game or parts of fish and game or nests or eggs of birds taken, transported or possessed contrary to the provisions of this title, or regulation adopted under it, may be forfeited to the state

(1) upon conviction of the offender in a criminal proceeding of a violation of this title in a court of competent jurisdiction; or

(2) upon judgment of a court of competent jurisdiction in a proceeding in rem that an item specified above was used in or in aid of a violation of this title or a regulation adopted under it.

(b) Items specified in (a) of this section may be forfeited under this section regardless of whether they were seized before instituting the forfeiture action.

(c) An action for forfeiture under this section may be joined with an alternative action for damages brought by the state to recover damages for the value of fish and game or parts of them or nests or eggs of birds taken, transported or possessed contrary to the provisions of this title or a regulation adopted under it.

(d) It is no defense that the person who had the item specified in (a) of this section in possession at the time of its use and seizure has not been convicted or acquitted in a criminal proceeding resulting from or arising out of its use.

(e) Forfeiture may not be made of an item subsequently sold to an innocent purchaser in good faith. The burden of proof as to whether the purchaser purchased the item innocently and in good faith shall be on the purchaser.

(f) An item forfeited under this section shall be disposed of at the discretion of the department. Before the department disposes of an aircraft it shall consider transfer of ownership of the aircraft to the Alaska Wing, Civil Air Patrol.

Sec. 16.05.200. Power to administer oaths. Each peace officer designated in AS 16.05.150 may administer to or take from any person, an oath, affirmation, or affidavit when it is for use in a prosecution or proceeding under or in the enforcement of this chapter.

Sec. 16.05.221. Boards of fisheries and game. (a) For purposes of the conservation and development of the fishery resources of the state, there is created the Board of Fisheries composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the board, and with a view to providing diversity of interest and points of view in the membership. The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Fisheries, but shall be ex official secretary.

(b) For purposes of the conservation and development of the game resources of the state, there is created a Board of Game composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the board, and with a view to providing diversity of interest and points of view in the membership. The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the

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Board of Game, but shall be ex officio secretary.

(c) Members of the Board of Game serve staggered terms of three years and, except as provided in AS 39.05.080(4), each member serves until a successor is appointed. An appointment to fill a vacancy in the membership of the Board of Game shall be made in the same manner as the original appointment and, except as provided in AS 39.05.080(4), an appointment to fill a vacancy is for the balance of the unexpired term.

(d) Members of the Board of Fisheries serve staggered terms of three years. The terms of members of the board begin on July 1. Notwithstanding AS 39.05.080(1), by April 1 of the calendar year in which the term expires, the governor shall appoint a person to fill the vacancy that will arise on the board due to expiration of the term of a member of the board and submit the name of the person to the legislature for confirmation. If a vacancy arises on the board, the governor shall, within 30 days after the vacancy arises, appoint a person to serve the balance of the unexpired term and submit the name of the person to the legislature for confirmation. A person appointed to fill the balance of an unexpired term shall serve on the board from the date of the appointment until the earlier of the expiration of the term or the failure of the legislature to confirm the person under AS 39.05.080.

Sec. 16.05.241. Powers excluded. The boards have regulation-making powers as set out in this chapter, but do not have administrative, budgeting, or fiscal powers.

Sec. 16.05.251. Regulations of the Board of Fisheries. (a) The Board of Fisheries may adopt regulations it considers advisable in accordance with the AS 44.62 (Administrative Procedure Act) for

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

(2) establishing open and closed seasons and areas for the taking of fish; if consistent with resource construction and development goals, the board may adopt regulations establishing restricted seasons and areas necessary for

(A) persons 60 years of age and older to participate in sport, personal use, or subsistence fisheries; or

(B) persons under 16 years of age to participate in sport fishing;

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

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

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

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

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

(8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;

(9) prohibiting and regulating the live capture, possession, transport, or release

of native or exotic fish or their eggs;

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

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

(12) regulating commercial, sport, guided sport fish, subsistence, and personal use fishing as needed for the conservation, development, and utilization of fisheries;

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

(A) is the only practical data-gathering or enforcement mechanism for that fishery;

(B) will not unduly disrupt the fishery;

(C) can be conducted at a reasonable cost; and

(D) can be coordinated with observer programs of other agencies, including the National Marine Fisheries Service, North Pacific Fishery Management Council, and the International Pacific Halibut Commission;

(14) establishing nonexclusive, exclusive, and superexclusive registration and use areas for regulating commercial fishing;

(15) regulating resident or nonresident sport fishermen as needed for the conservation, development, and utilization of fishing resources;

(16) requiring unlicensed fishing vessels present in or transiting the waters of the state to report to the department the quantity, species, and origin of fish on board; in this paragraph, "unlicensed fishing vessel" means a fishing vessel that is not licensed under AS 16.05.490 – 16.05.530;

(17) promoting fishing and preserving the heritage of fishing in the state.

(b) Repealed 1986.

(c) If the Board of Fisheries denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for explanation, whichever is later.

(d) Regulations adopted under (a) of this section must, consistent with sustained yield and the provisions of AS 16.05.258, provide a fair and reasonable opportunity for the taking of fishery resources by personal use, sport, and commercial fishermen.

(e) The Board of Fisheries may allocate fishery resources among personal use, sport, guided sport, and commercial fisheries. The board shall adopt criteria for the allocation of fishery resources and shall use the criteria as appropriate to particular allocation decisions. The criteria may include factors such as

(1) the history of each personal use, sport, guided sport, and commercial fishery;

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(2) the number of residents and nonresidents who have participated in each fishery in the past and the number of residents and nonresidents who can reasonably be expected to participate in the future;

(3) the importance of each fishery for providing residents the opportunity to obtain fish for personal and family consumption;

(4) the availability of alternative fisheries resources;

(5) the importance of each fishery to the economy of the state;

(6) the importance of each fishery to the economy of the region and local area in which the fishery is located;

(7) the importance of each fishery in providing recreational opportunities for residents and nonresidents.

(f) Except as expressly provided in AS 16.40.120(e) and 16.40.130, the Board of Fisheries may not adopt regulations or take action regarding the issuance, denial, or conditioning of a permit under AS 16.40.100 or 16.40.120, the construction or operation of a farm or hatchery required to have a permit under AS 16.40.100, or a harvest with permit issued under AS 16.40.120.

(g) The Board of Fisheries shall consider a request of the commissioner for approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery under AS 16.43.225 at the board's next regular or special meeting that follows the receipt by the board of the request for approval of the petition and that allows time for the notice required under this subsection. The board may consider the request of the commissioner for approval of the petition only after 15 days' public notice of the board's intention to consider approval of the petition. The board shall consider whether the commissioner, in support of the request for approval of the petition, has adequately shown that the fishery meets requirements for a moratorium on new entrants under AS 16.05.050. The board by a majority vote of its members at the meeting when the petition must be considered shall approve or disapprove the petition.

(h) The Board of Fisheries shall adopt by regulation a policy for the management of mixed stock fisheries. The policy shall provide for the management of mixed stock fisheries in a manner that is consistent with sustained yield of wild fish stocks.

(i) Notwithstanding AS 16.43.140(c)(5), the board may adopt, at a regularly scheduled meeting at which the board considers regulatory proposals for management of a specific salmon fishery, a regulation to allow a person who holds two entry permits for that salmon fishery an additional fishing opportunity appropriate for that particular fishery.

Sec. 16.05.253. Operation of stationary fishing gear. (a) The Board of Fisheries may require a person who holds a limited entry permit or an interim-use permit under AS 16.43 to be physically present at a beach or riparian fishing site during the operation of net gear or other stationary fishing gear at the site, except when the permit holder is at or traveling to or from the location of

(1) a sale of fish caught in the gear; or

(2) other stationary gear of the permit holder.

(b) In this section, "fishing site" means fishing site as defined by the Board of Fisheries and includes any structure used for providing shelter in support of the operation of the net

gear or other stationary fishing gear.

Sec. 16.05.258. Subsistence use and allocation of fish and game. (a) Except in nonsubsistence areas, the Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks or populations, that are customarily and traditionally taken or used for subsistence. The commissioner shall provide recommendations to the boards concerning the stock and population identifications. The boards shall make identifications required under this subsection after receipt of the commissioner's recommendations.

(b) The appropriate board shall determine whether a portion of a fish stock or game population identified under (a) of this section can be harvested consistent with sustained yield. If a portion of a stock or population can be harvested consistent with sustained yield, the board shall determine the amount of the harvestable portion that is reasonably necessary for subsistence uses and

(1) if the harvestable portion of the stock or population is sufficient to provide for all consumptive uses, the appropriate board

(A) shall adopt regulations that provide a reasonable opportunity for subsistence uses of those stocks or populations;

(B) shall adopt regulations that provide for other uses of those stocks or populations, subject to preferences among beneficial uses; and

(C) may adopt regulations to differentiate among uses;

(2) if the harvestable portion of the stock or population is sufficient to provide for subsistence uses and some, but not all, other consumptive uses, the appropriate board

(A) shall adopt regulations that provide a reasonable opportunity for subsistence uses of those stocks or populations;

(B) may adopt regulations that provide for other consumptive uses of those stocks or populations; and

(C) shall adopt regulations to differentiate among consumptive uses that provide for a preference for the subsistence uses, if regulations are adopted under (B) of this paragraph;

(3) if the harvestable portion of the stock or population is sufficient to provide for subsistence uses, but no other consumptive uses, the appropriate board shall

(A) determine the portion of the stocks or populations that can be harvested consistent with sustained yield; and

(B) adopt regulations that eliminate other consumptive uses in order to provide a reasonable opportunity for subsistence uses; and

(4) if the harvestable portion of the stock or population is not sufficient to provide a reasonable opportunity for subsistence uses, the appropriate board shall

(A) adopt regulations eliminating consumptive uses, other than subsistence uses;

(B) distinguish among subsistence users, through limitations based on

(i) the customary and direct dependence on the fish stock or game population by the subsistence user for human consumption as a mainstay of livelihood;

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(ii) the proximity of the domicile of the subsistence user to the stock or population; and

(iii) the ability of the subsistence user to obtain food if subsistence use is restricted or eliminated.

(c) The boards may not permit subsistence hunting or fishing in a nonsubsistence area. The boards, acting jointly, shall identify by regulation the boundaries of nonsubsistence areas. A nonsubsistence area is an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community. In determining whether dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of an area or community under this subsection, the boards shall jointly consider the relative importance of subsistence in the context of the totality of the following socio-economic characteristics of the area or community:

(1) the social and economic structure;

(2) the stability of the economy;

(3) the extent and the kinds of employment for wages, including full-time, part-time, temporary, and seasonal employment;

(4) the amount and distribution of cash income among those domiciled in the area or community;

(5) the cost and availability of goods and services to those domiciled in the area or community;

(6) the variety of fish and game species used by those domiciled in the area or community;

(7) the seasonal cycle of economic activity;

(8) the percentage of those domiciled in the area or community participating in hunting and fishing activities or using wild fish and game;

(9) the harvest levels of fish and game by those domiciled in the area or community;

(10) the cultural, social, and economic values associated with the taking and use of fish and game;

(11) the geographic locations where those domiciled in the area or community hunt and fish;

(12) the extent of sharing and exchange of fish and game by those domiciled in the area or community;

(13) additional similar factors the boards establish by regulation to be relevant to their determinations under this subsection.

(d) Fish stocks and game populations, or portions of fish stocks and game populations not identified under (a) of this section may be taken only under nonsubsistence regulations.

(e) Takings and uses of fish and game authorized under this section are subject to regulations regarding open and closed areas, seasons, methods and means, marking and identification requirements, quotas, bag limits, harvest levels, and sex, age, and size limitations. Takings and uses of resources authorized under this section are subject to AS 16.05.831 and AS 16.30.

(f) For purposes of this section, "reasonable opportunity" means an opportunity,

as determined by the appropriate board, that allows a subsistence user to participate in a subsistence hunt or fishery that provides a normally diligent participant with a reasonable expectation of success of taking of fish or game.

Sec. 16.05.259. No subsistence defense. In a prosecution for the taking of fish or game in violation of a statute or regulation, it is not a defense that the taking was done for subsistence uses.

Sec. 16.05.260. Advisory committees. The Board of Fisheries and the Board of Game may adopt regulations they consider advisable in accordance with AS 44.62 (Administrative Procedure Act) establishing, at places in the state designated by the individual boards, advisory committees to be composed of persons well informed on the fish or game resources of the locality. The boards shall set the number and terms of each of the members of the advisory committees, shall delegate one member of each committee as chairman, and shall give the chairman authority to hold public hearings on fish or game matters. Recommendations from the advisory committees shall be forwarded to the appropriate board for their consideration but if the Board of Fisheries or the Board of Game chooses not to follow the recommendations of the local advisory committee the appropriate board shall inform the appropriate advisory committee of this action and state the reasons for not following the recommendations. The commissioner shall delegate authority to advisory committees for emergency closures during established seasons. The commissioner is empowered to set aside and make null and void only opening of seasons set by the advisory committees under this section. The appropriate board shall adopt the necessary regulations governing these closures.

Sec. 16.05.270. Delegation of authority to commissioner. For the purpose of administering AS 16.05.251 and 16.05.255, each board may delegate authority to the commissioner to act in its behalf. If there is a conflict between the board and the commissioner on proposed regulations, public hearings shall be held concerning the issues in question. If, after the public hearings, the board and the commissioner continue to disagree, the issue shall be certified in writing by the board and the commissioner to the governor who shall make a decision. The decision of the governor is final.

Sec. 16.05.280. Removal of board members. The governor may only remove a board member for inefficiency, neglect of duty, or misconduct in office, or because the member while serving on the board is convicted of a misdemeanor for violating a statute or regulation related to fish or game or of a felony, and shall do so by delivering to the member a written copy of the charges and giving the member an opportunity to be heard in person or through counsel at a public hearing before the governor or a designee upon at least 10 days' notice by registered mail. The member may confront and cross-examine adverse witnesses. Upon removal, the governor or a designee shall file in the proper state office the findings and a complete statement of all charges made against the member.

Sec. 16.05.310. Special board meetings. A board may meet at any time upon the call of the commissioner or upon the request of two board members.

Sec. 16.05.315. Joint board meetings. The Board of Fisheries and the Board of Game may hold a joint meeting upon the call of the commissioner or a board to resolve any conflicts in regulations of the boards and to consider matters, as determined by the commissioner or a board, that require the consideration of both boards.

Sec. 16.05.440. Expiration date for licenses. Licenses issued under AS 16.05.440 – 16.05.723 expire at the close of December 31 following their issuance or, for licenses that are valid for two years, after December 31 of the year after the year of issuance, and shall

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be renewed upon application and payment of the license fees required by AS 16.05.440 – 16.05.723.

Sec. 16.05.450. Issuance of licenses; disclosure for child support purposes. (a) The commissioner or an authorized agent shall issue a crewmember fishing license under AS 16.05.480 to each qualified person who files a written application at a place in the state designated by the commissioner, containing the reasonable information required by the commissioner together with the required fee. The commissioner shall require the reporting of the applicant's social security number on the application. The application shall be simple in form and shall be executed by the applicant under the penalty of unsworn falsification in the second degree.

(b) The Alaska Commercial Fisheries Entry Commission shall issue a vessel license under AS 16.05.490 to each qualified vessel for which a written application has been filed, at a place in the state designated by the commission, containing the reasonable information required by the commission together with the required fee. The application shall be simple in form and shall be executed by the applicant under the penalty of unsworn falsification in the second degree.

(c) Repealed 1977.

(d) Upon request, the commissioner shall provide a social security number provided under (a) of this section to the child support enforcement agency created in AS 25.27.010, or the child support enforcement agency of another state, for child support purposes authorized under law.

Sec. 16.05.475. Registration of fishing vessels. (a) A person may not employ a fishing vessel in the water of the state unless it is registered under the laws of the state. Vessels registered under the laws of another state, and persons residing in another state are not excused from this provision.

(b) The term "employ", as used in this section, shall be defined by the Board of Fisheries through the adoption of regulations under AS 44.62 (Administrative Procedure Act). The definition may include any activities involving the use or navigation of fishing vessels.

(c) The term "registered under the laws of the state", as used in this section, shall be defined by the Board of Fisheries through the adoption of regulations under AS 44.62 (Administrative Procedure Act). The definition may include any existing requirements regarding registration, licenses, permits, and similar matters imposed by law or regulation together with modifications of them and with any additional requirements the board finds necessary to maximize the authority of the state to apply and enforce fisheries regulations under 16 U.S.C. 1801 – 1882 (Fishery Conservation and Management Act of 1976).

(d) In this section "fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for

(1) fishing; or

(2) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Sec. 16.05.480. Commercial fishing license; disclosure for child support purposes. (a) A person engaged in commercial fishing shall obtain a commercial fishing license and retain the license in possession and readily available for inspection during fishing operations. An

entry permit or interim-use permit entitles the holder to participate as a gear operator in the fishery for which the permit is issued and to participate as a crewmember in any fishery. A crewmember fishing license is not transferable and entitles the holder to participate as a crewmember in any fishery.

(b) A person applying for a commercial fishing license under this section shall provide the person's social security number. A person applying for a resident commercial fishing license under this section shall also provide proof of residence that the department requires by regulation.

(c) Repealed 1978.

(d) Upon request, the department or the Alaska Commercial Fisheries Entry Commission shall provide a social security number provided by an applicant for a license under this section to the child support enforcement agency created in AS 25.27.010, or the child support enforcement agency of another state, for child support purposes authorized under law.

(e) Except as provided under AS 16.05.470 and AS 23.35.060, fees collected from the sale of crewmember fishing licenses under this section may be appropriated into the fish and game fund.

(f) Repealed 2001.

(g) A resident engaged in commercial fishing who is 11 years of age or older and who does not hold an entry permit or an interim-use permit shall pay a fee of \$60 for an annual crewmember fishing license. A resident engaged in commercial fishing who is less than 11 years of age and who does not hold an entry permit or an interim-use permit shall pay an annual fee of \$5.

(h) A nonresident engaged in commercial fishing who is 11 years of age or older and who does not hold an entry permit or an interim-use permit shall pay a base fee of \$60 for an annual crewmember fishing license, plus an amount, established by the department by regulation, that is as close as practicable to the maximum allowed by law. A nonresident engaged in commercial fishing who is less than 11 years of age and who does not hold an entry permit or an interim-use permit shall pay an annual base fee of \$5 plus an amount, established by the department by regulation, that is as close as practicable to the maximum allowed by law.

(i) Notwithstanding (g) and (h) of this section, a resident or nonresident engaged in commercial fishing who does not hold an entry permit or an interim-use permit may obtain a seven-day crewmember fishing license under this subsection. During the period for which the license is valid, a person who holds a seven-day crewmember fishing license may not engage in fishing with a rod and reel while present on a commercial fishing vessel. The fee for a seven-day crewmember fishing license is \$30.

(j) In this section, "commercial fishing license" includes an entry permit and an interim-use permit issued under AS 16.43 and a crewmember fishing license.

Sec. 16.05.490. Vessel license. As a condition to delivery or landing of fish or engaging in commercial fishing in the state, a license is required for a commercial vessel.

Sec. 16.05.495. Vessel license exemption. A vessel used exclusively for the commercial capture of salmon in commercial salmon administrative management areas that include state water between the latitude of Point Romanof and the latitude of Cape Newenham, and state water surrounding Nunivak Island, or at a set net site, is exempt from the licensing

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requirements of AS 16.05.490.

Sec. 16.05.510. Unlicensed vessel unlawful. A person may not operate a vessel to which AS 16.05.490 – 16.05.530 apply without a vessel license, whether the absence of a vessel license results from initial failure to purchase or from another reason.

Sec. 16.05.520. Number plate. (a) The vessel license includes a permanent number plate. The number plate shall be accompanied by a tab affixed to it designating the year to be fished. A number plate is not transferable, and it shall be considered a permanent fixture upon the vessel upon which it is originally placed. It shall be securely fastened well forward on the port side in plain sight. On a vessel with a superstructure, the plate shall be fastened on the port side of the superstructure. A number plate remains the property of the state. The Alaska Commercial Fisheries Entry Commission may establish by regulation a reasonable fee for the initial issuance of a permanent number plate. If a permanent number plate is accidentally defaced, mutilated, destroyed, or lost, the person owning or operating the vessel shall immediately apply for and may obtain a duplicate upon furnishing the Alaska Commercial Fisheries Entry Commission with the pertinent facts and a payment of a reasonable fee established by the commission by regulation that is not less than \$2.

(b) If a vessel carrying a number plate is lost, destroyed, or sold, the owner shall immediately report the loss, destruction, or sale to the Alaska Commercial Fisheries Entry Commission.

Sec. 16.05.530. Renewal of vessel license. (a) Upon payment of the vessel license fee and filing of the name and address of the owner of the vessel or the owner’s authorized agent, the name and number of the vessel, a description of the vessel, the vessel license number, if any, the area to be fished, and other reasonable information required by the Alaska Commercial Fisheries Entry Commission, the commission shall issue a permanent number plate and a vessel license. If the vessel has a permanent number plate, the commission shall issue a vessel license and tab designating the year the license is valid. The tab shall be placed in the space provided on the permanent number plate.

(b) For calendar year 2006 and following years, the annual fee for a vessel license issued or renewed under this section is set according to the overall length, as defined by the United States Coast Guard, of the vessel under the following schedule:

- (1) 0 – 25 feet.....\$24
- (2) over 25 feet – 50 feet.....60
- (3) over 50 feet – 75 feet.....120
- (4) over 75 feet – 100 feet..... 225
- (5) over 100 feet – 125 feet..... 300
- (6) – (13) over 125 feet.375 – 900

Sec. 16.05.632. Identification of shellfish pots or buoys, or both, used in the taking of king crab and requirements for buoys. (a) Registration tags for the identification of shellfish pots or buoys, or both, used in the taking of king crab are required in areas in which the board has regulations limiting the total amount of shellfish pots allowed per vessel. Registration tags shall

- (1) be issued by the department under regulations adopted by the board;
- (2) be nontransferable;

(3) be individually numbered, designating the year of issuance;

(4) be permanently affixed to each shellfish pot or buoy, or both, used in the taking of king crab, whichever in the determination of the board is appropriate for identification, and in a manner determined to be appropriate by the board;

(5) conform to other requirements determined to be appropriate by the board; and

(6) be issued and renewed for a fee equal to the cost of obtaining the registration tags plus reasonable administrative costs, under procedures determined to be appropriate by the department.

(b) The unauthorized production, reproduction, sale, exchange, distribution, or use of registration tags required in (a) of this section is prohibited.

(c) In addition to meeting other requirements imposed by law, each shellfish pot used in the taking of king crab shall be connected to one durable "sea lion" buoy of an appropriate type and diameter as specified by the board. The buoy shall conform to other specifications determined to be appropriate by the board.

(d) Repealed 1989.

(e) In this section,

(1) "board" means the Board of Fisheries;

(2) "registrations tags" means any tag, tape, or other identification device or method determined to be appropriate by the board.

Sec. 16.05.660. License exemption. A person may, by complying with the \$5 license requirement of AS 16.05.340(a)(6), take not more than 2,000 pounds each of tom cod, blue cod, smelt, pickerel, white fish, and spider crab a year from waters of the state.

Sec. 16.05.665. Falsification of application for license. (a) A person who knowingly makes a false statement as to a material fact on an application for a license under AS 16.05.440 – 16.05.660 is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than six months, or by both.

(b) A license issued under AS 16.05.440 – 16.05.660 to a person convicted under (a) of this section is void.

(c) A person whose license is void under (a) and (b) of this section may not obtain another license of the same type for a period of not less than two nor more than three years from the date of conviction by the court.

Sec. 16.05.671. Transportation and sale of certain fish by an agent of the fisherman who caught the fish. (a) A person may transport and sell commercially taken fish as the agent of the commercial fisherman who caught the fish if the person holds a fish transporter permit issued by the commissioner under this section.

(b) The commissioner may issue a fish transporter permit to a natural person. A fish transporter permit authorizes the permittee to transport and sell commercially taken fish as the agent of the commercial fisherman who caught the fish. A fish transporter may not buy or possess fish received for transport unless the fish transporter also holds the appropriate licenses, permits, and other authorizations required to buy or process fish.

(c) A person who applies for a fish transporter permit under this section shall provide the person's social security number to the department. Upon request of the child support

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enforcement agency created under AS 25.27.010, or a child support agency or another state, the department shall provide a social security number provided by an applicant for a fish transporter permit under this section to that agency for child support purposes authorized under law.

(d) A commercial fisherman may authorize a fish transporter to transport and sell fish on behalf of the fisherman as the agent of the fisherman. The fish transporter shall complete a fish ticket in accordance with procedures prescribed by the department for each fisherman who transfers fish to the fish transporter. The fish ticket must accompany the fish transferred to the fish transporter while the fish are in possession of the fish transporter. The fish transporter shall present the fish ticket for inspection upon request by a peace officer or representative of the commissioner. The fish transporter shall present the fish ticket to the buyer of the fish at the time of sale. The buyer of the fish shall complete the fish ticket by inserting the buyer's information as required by the department, including the weight or count of fish purchased. The buyer shall return a copy of the fish ticket to the commercial fisherman on whose behalf the fish are sold.

(e) A commercial fisherman who transfers fish to a fish transporter to transport and sell fish on behalf of the fisherman shall provide the fish transporter with all required information that the fisherman would have to provide to the buyer of the fish if the fisherman were to personally sell the fish to the buyer. The fish transporter who sells fish as the agent of a commercial fisherman shall provide all information to the buyer of the fish that the commercial fisherman would have to provide to the buyer if the fisherman were to personally sell the fish.

(f) A commercial fisherman may also hold a fish transporter permit. A commercial fisherman who holds a fish transporter permit may simultaneously transport or sell fish that the fisherman caught as well as fish caught by other fisherman. A commercial fisherman who is simultaneously operating as a fish transporter shall physically possess

(1) the fish ticket completed under (d) of this section for the fish being transported or sold on behalf of another fisherman; and

(2) other documentation that may be prescribed by the commissioner by regulation.

(g) The commissioner may adopt regulations the commissioner considers necessary to implement this section. The regulations may not conflict with regulations or management plans adopted by the Board of Fisheries. The regulations may include

(1) criteria for determining areas or fisheries for which transporter permits may not be issued because

(A) fish transporter operations may alter harvest rates for the area or fishery to the extent that conservation of the resource is jeopardized, may significantly impair the ability of the department to accurately determine catch or effort levels, or may interfere with fishery management, allocation, or enforcement matters;

(B) a fishery is managed through allocations of the harvest to individuals, such as trip limits or quota shares; or

(C) combining of catches by multiple fisherman on a vessel may impair the ability of the department to accurately determine the incidental catch by each fisherman;

(2) requirements for timely and accurate reporting and record keeping; or

(3) procedures to maintain quality of harvested resources.

(h) Fish transferred to the possession of a fish transporter under the authority of this section are property of the fisherman who caught the fish until the fish are sold to a buyer by the fish transporter on behalf of the fisherman.

(i) In this section, "fish" means fish legally harvested and retained in salmon, herring, or Pacific cod fisheries.

Sec. 16.05.675. Landing permits. (a) A person who does not hold a limited entry permit or interim-use permit issued under AS 16.43 or a fish transporter permit issued under AS 16.05.671 may not deliver or land fish in the state unless the person

(1) holds a valid federal permit to operate commercial fishing gear in the fishery conservation zone; and

(2) has been issued a landing permit by the Alaska Commercial Fisheries Entry Commission.

(b) The commissioner may by regulation establish eligibility requirements for the issuance of a landing permit.

(c) The commissioner may authorize the Alaska Commercial Fisheries Entry Commission to issue landing permits for a fishery if the commissioner has made a written finding that the issuance of landing permits for that fishery is consistent with state resource conservation and management goals.

Sec. 16.05.680. Unlawful practices. (a) It is unlawful for a person, or an agent or representative of the person,

(1) to employ, in the harvesting, transporting, or purchasing of fish, a fisherman who neither is licensed under AS 16.05.480 nor is the holder of a permit issued under AS 16.43;

(2) to purchase fish from a person who is not

(A) the holder of a limited entry, interim-use, or landing permit issued under AS 16.43;

(B) a fish transporter who is selling the fish as the agent of the holder of a limited entry, interim-use, or landing permit issued under AS 16.43; or

(C) exempt under AS 16.05.660; or

(3) to purchase fish from an association other than one to which a permit has been issued under AS 16.05.662.

(b) A person may not sell salmon that was not harvested under the authority of the entry permit, interim-use permit, or landing permit under which the salmon is sold. For purposes of this subsection, salmon sold by a fish transporter on behalf of the commercial fisherman who harvested the salmon is salmon harvested under the authority of the limited entry, interim-use, or landing permit under which the salmon is sold.

Sec. 16.05.685. Processing on commercial crab fishing vessels. (a) Crab of any species may not be processed on a commercial crab fishing vessel unless

(1) the vessel remains within one registration area from the time the crab is caught to the time of dock delivery;

(2) the operator of the vessel notifies the department of proposed changes in location before moving to another registration area; and

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(3) the operator of the vessel provides quarters for inspectors of the department who may inspect the crab catch on the vessel at any time.

(b) The restrictions set out in (a) of this section do not apply to processing aboard the fishing vessel for and as donations to charity, for consumption aboard the vessel, or for dockside retail sales from the vessel.

(c) In this section,

(1) "process" means to butcher, cook, chill, or freeze crab for commercial use;

(2) "registration area" means a specific king crab registration area as designated by regulation of the Board of Fisheries.

Sec. 16.05.690. Record of purchases. (a) Each buyer of fish shall keep a record of each purchase showing the name or number of the vessel from which the catch involved is taken, the date of landing, vessel license number, pounds purchased of each species, number of each species, and the Department of Fish and Game statistical area in which the fish were taken, and other information the department requires. Records may be kept on forms provided by the department. Each person charged with keeping the records shall report them to the department in accordance with regulations adopted by the department.

(b) A person may not knowingly enter false information on a fish ticket or supply false information to a person who is recording information on a fish ticket.

Sec. 16.05.710. Suspension of commercial license and entry permit. (a) Upon the conviction of a person for a misdemeanor or felony violation of a commercial fishing law of this state, in a fishery other than a commercial salmon fishery, the court, in addition to other penalties imposed by law,

(1) may suspend one or more of the person's commercial fishing privileges and licenses for a period of not more than one year if the conviction is the person's first or second misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law of this state, in a fishery other than a commercial salmon fishery, or another jurisdiction; or

(2) shall suspend one or more of the person's commercial fishing privileges and licenses for a period of not more than three years, if the conviction is the person's third or subsequent misdemeanor or felony conviction within a 10-year period for violating a commercial fishing law of this state, in a fishery other than a commercial salmon fishery, or another jurisdiction.

(b) Upon a first conviction of a person for a violation of AS 11.46.120 – 11.46.130 in which the property is commercial fishing gear as defined in AS 16.43.990, the court shall, in addition to the penalty imposed by law, suspend one or more of the person's commercial fishing privileges and licenses for one year. Upon a second or subsequent conviction for a violation of AS 11.46.120 – 11.46.130 or a similar law of another jurisdiction in which the property is commercial fishing gear as defined in AS 16.43.990, the court shall, in addition to the penalty imposed by law, suspend one or more of the person's commercial fishing privileges and licenses for two years.

(c) If proceedings in which commercial fishing privileges or licenses may be suspended under this section are pending against a limited entry permit holder, the permit holder's limited entry permit may not be permanently transferred, unless allowed by order of the court in which the proceedings are pending, and a permanent transfer of the permit, unless

allowed by order of the court, is void. During the period for which a limited entry permit or the permit holder's right to obtain a limited entry permit or to engage in an activity for which a limited entry permit is required is suspended under this section, a permit card may not be issued to the permit holder and the permit holder's permit may not be transferred or sold.

(d) In this section,

(1) "commercial fishing law" means a statute or regulation that regulates the conduct of a person engaged in commercial fishing activities by establishing requirements relating to fishing licenses and permits; catch records and reports; size, nature, or use of fishing vessels, sites, and gear; time, place, or manner of taking fishery resources; possession, transportation, sale, barter, or waste of fishery resources; or other aspects of commercial fishing;

(2) "commercial fishing license" means a limited entry permit or a crewmember license;

(3) "commercial fishing privilege" means the privilege of participating in an activity for which a commercial fishing license is required and the privilege of obtaining a commercial fishing license;

(4) "limited entry permit" means an entry permit or an interim-use permit issued under AS 16.43.

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 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 the 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.

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 fisheries, 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,

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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 on board or at the fishing site at the time of the offense, or a fine equal to \$10,000, whichever is greater.

Sec. 16.05.730. Management of wild and enhanced stocks of fish. (a) Fish stocks in the state shall be managed consistent with sustained yield of wild fish stocks and may be managed consistent with sustained yield of enhanced fish stocks.

(b) In allocating enhanced fish stocks, the board shall consider the need of fish enhancement projects to obtain brood stock. The board may direct the department to manage fisheries in the state to achieve an adequate return of fish from enhanced stocks to enhancement projects for brood stock; however, management to achieve an adequate return of fish to enhancement projects for brood stock shall be consistent with sustained yield of wild fish stocks.

(c) The board may consider the need of enhancement projects authorized under AS 16.10.400 and contractors who operate state-owned enhancement projects under AS 16.10.480 to harvest and sell fish produced by the enhancement project that are not needed for brood stock to obtain funds for the purposes allowed under AS 16.10.450 or 16.10.480(d). The board may exercise its authority under this title as it considers necessary to direct the department to provide a reasonable harvest of fish, in addition to the fish needed for brood stock, to an enhancement project to obtain funds for the enhancement project if the harvest is consistent with sustained yield of wild fish stocks. The board may adopt a fishery management plan to provide fish to an enhancement project to obtain funds for the purposes allowed under AS 16.10.450 or 16.10.480(d).

(d) In this section, "enhancement project" means a project, facility, or hatchery for the enhancement of fishery resources of the state for which the department has issued a permit.

Sec. 16.05.735. Management of offshore fisheries. The state may assume management of the fisheries in offshore water adjacent to the state in the absence of a federal fishery management plan or in the event that a federal fishery management plan delegates authority to the state to manage fisheries in the United States exclusive economic zone.

Sec. 16.05.785. Effect of failure to remove old markers. If the Board of Fisheries by regulation uses department markers to establish waters closed to commercial fishing and the state fails to remove old markers when new markers are posted to establish waters closed to commercial fishing, commercial fishing is expressly permitted in the waters between the new markers and the old markers until the old markers are removed.

Sec. 16.05.800. Public nuisances. A net, seine, lantern, snare, device, contrivance, and material while in use, had and maintained for the purpose of catching, taking, killing, attracting, or decoying fish or game, contrary to law or regulation of a board or the commissioner, is a public nuisance and is subject to abatement.

Sec. 16.05.810. Burden of proof. The possession of fish or game or a part of fish or game, or a nest or egg of a bird during the time the taking of it is prohibited is prima facie evidence that it was taken, possessed, bought, or sold or transported in violation of this chapter. The burden of proof is upon the possessor or claimant of it to overcome the presumption of illegal possession and to establish the fact that it was obtained and is possessed lawfully. This section does not apply

(1) during the first full 10 days after the time when a taking is prohibited, except as provided in (3) of this section;

(2) if the fish or game or part of fish or game is in a preserved condition whether frozen, smoked, canned, salted, pickled, or otherwise preserved; or

(3) with respect to crab aboard a commercial crab fishing vessel, during the first full three days after the time when a taking is prohibited.

Sec. 16.05.815. Confidential nature of certain reports and records. (a) Except as provided in (b) and (c) of this section, records required by regulations of the department concerning the landings of fish, shellfish, or fishery products, and annual statistical reports of fisherman, buyers, and processors required by regulation of the department are confidential and may not be released by the department or by the Alaska Commercial Fisheries Entry Commission except as set out in this subsection. The department may release the records and reports set out in this subsection to the Alaska Commercial Fisheries Entry Commission. The department and the Alaska Commercial Fisheries Entry Commission may release the records and reports set out in this subsection to the recipients identified in this subsection if the recipient other than a recipient under (5) – (9) of this subsection, agrees to maintain the confidentiality of the records and reports. The department and the Alaska Commercial Fisheries Entry Commission may release

(1) any of the records and reports to the National Marine Fisheries Service and the professional staff of the North Pacific Fishery Management Council as required for preparation and implementation of the fishery management plans of the North Pacific Fishery Management Council within the exclusive economic zone;

(2) any of the records and reports to the professional staff of the Pacific States Marine Fisheries Commission who are employed in the Alaska Fisheries Information Network project for the purpose of exchanging information with users authorized by the department;

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(3) any of the records and reports to the Department of Revenue to assist the department in carrying out its statutory responsibilities;

(4) records or reports of the total value purchased by each buyer to a municipality that levies and collects a tax on fish, shellfish, or fishery products if the municipality requires records of the landings of fish, shellfish, or fishery products to be submitted to it for purposes of verification of taxes payable;

(5) such records and reports as necessary to be in conformity with a court order;

(6) on request, the report of a person to the person whose fishing activity is the subject of the report, or to a designee of the person whose fishing activity is the subject of the report;

(7) on request, annual statistical reports of a fisherman, buyer, or processor to the fisherman, buyer, or processor whose activity is the subject of the report, or to a designee of the fisherman, buyer, or processor whose activity is the subject of the report;

(8) any of the records and reports to the Department of Public Safety for law enforcement purposes;

(9) fish tickets, fish ticket information, records required of sport fishing guides, and annual statistical reports of fishermen, buyers, and processors and information in those reports to the law enforcement personnel of the National Marine Fisheries Service and the National Oceanic and Atmospheric Administration for the purpose of enforcing fishery laws in waters of this state and in waters of the exclusive economic zone adjacent to this state;

(10) fish tickets, fish ticket information, and records required of sport fishing guides regarding halibut to the International Pacific Halibut Commission;

(11) any of the records and reports to the child support enforcement agency created in AS 25.27.010, or the child support enforcement agency of another state, for child support purposes authorized under law;

(12) any of the records and reports to the Department of Natural Resources to assist the department in carrying out its statutory responsibilities in regard to sport fishing operations and sport fishing guides within the Kenai River Special Management Area under AS 41.21.500 – 41.21.514;

(13) fish ticket information and records or reports of the total value purchased by each fisherman, buyer, or processor to the National Marine Fisheries Service for the purpose of enforcing the industry fee system of a fishing capacity reduction program under 16 U.S.C. 1861a (Magnuson-Stevens Fishery Conservation and Management Act).

(b) Except as provided in (c) of this section, records or reports received by the department which do not identify individual fishermen, buyers, or processors or the specific locations where fish have been taken are public information.

(c) Crab stock abundance survey information that reveals crab catch by sampling location is confidential and is not subject to inspection or copying under AS 40.25.110 – 40.25.120 until the close of the fishing season for which the survey was conducted.

(d) Except as otherwise provided in this section, the department shall keep confidential (1) personal information contained in fish and wildlife harvest and usage data; and (2) the records of the department that concern (A) telemetry radio frequencies of monitored species; (B) denning sites; (C) nest locations of raptors that require special attention; (D)

the specific location of animal capture sites used for wildlife research or management; and (E) the specific location of fish and wildlife species. The department may release records and information that are kept confidential under this subsection if the release is necessary to comply with a court order, if the requestor is a state or federal agency, if the requestor is under contract with the state or federal agency to conduct research on a fish or wildlife population, or if the requestor has been authorized by the department to perform specific activities and agrees to use the records and information only for purposes as provided under a contract or agreement with the department. After 25 years, the records and information that are kept confidential under this subsection become public records subject to inspection and copying under AS 40.25.110 – 40.25.140 unless the department determines that the release of the records or information may be detrimental to the fish or wildlife population. In this subsection, "personal information" has the meaning given in AS 40.25.350.

Sec. 16.05.831. Waste of salmon. (a) A person may not waste salmon intentionally, knowingly, or with reckless disregard for the consequences. In this section, "waste" means the failure to utilize the majority of the carcass, excluding the viscera and sex parts, of a salmon intended for

- (1) sale to a commercial buyer or processor;
- (2) consumption by humans or domesticated animals; or
- (3) scientific, educational, or display purposes.

(b) The commissioner, upon request, may authorize other uses of salmon that would be consistent with maximum and wise use of the resource.

(c) A person who violates this section or a regulation adopted under it is punishable by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both. In addition, a person who violates this section is subject to a civil action by the state for the cost of replacing the salmon wasted.

Sec. 16.05.835. Maximum length of salmon seine and certain hair crab vessels. (a) Unless the Board of Fisheries has provided by regulation for the use of a longer vessel in a salmon seine fishery, a salmon seine vessel may not be longer than 58 feet overall length except vessels that have fished for salmon with seines in water of the state before January 1, 1962, as 50-foot, official Coast Guard register length vessels.

(b) A vessel engaged in the Bering Sea hair crab fishery within five miles of shore may not be longer than 58 feet overall length.

(c) In this section, "overall length" means the straight line length between the extremities of the vessel excluding anchor rollers.

Sec. 16.05.905. Activities by aliens prohibited. (a) Alien persons not lawfully admitted to the United States are prohibited from engaging in commercial fishing activities or taking marine mammals in the territorial waters of the state as they presently exist or may be extended in the future.

(b) An alien person who violates (a) of this section is guilty of a misdemeanor, and upon conviction is punishable by a confiscation and forfeiture of the fishing vessel used in the violation, or by imprisonment for not more than one year, or by fine or not more than \$10,000, or by all or any two of the foregoing punishments.

Sec. 16.05.920. Prohibited conduct generally. (a) Unless permitted by AS 16.05 – AS 16.40 or by regulation adopted under AS 16.05 – AS 16.40, a person may not take, possess,

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transport, sell, offer to sell, purchase, or offer to purchase fish, game, or marine aquatic plants, or any part of fish, game, or aquatic plants, or a nest or egg of fish or game.

(b) A person may not knowingly disturb, injure, or destroy a notice, signboard, seal, tag, aircraft, boat, vessel, automobile, paraphernalia, equipment, building or other improvement or property of the department used in the administration or enforcement of this title except AS 16.51 and AS 16.52, or a poster or notice to the public concerning the provisions of this title except AS 16.51 and AS 16.52, or regulation adopted under this title except AS 16.51 and AS 16.52, or a marker indicating the boundary of an area closed to hunting, trapping, fishing, or other special use under this title except AS 16.51 and AS 16.52. A person may not knowingly destroy, remove, tamper with, or imitate a seal or tag issued or used by the department or attached under its authority to a skin, portion, or specimen of fish or game, or other article for the purpose of identification or authentication in accordance with this title except AS 16.51 and AS 16.52 or a regulation adopted under this title except AS 16.51 and AS 16.52.

Sec. 16.05.925. Penalty for violations. Except as provided in AS 16.05.430, 16.05.665, 16.05.722, 16.05.723, 16.05.783, 16.05.831, 16.05.861, and 16.05.905, a person who violates AS 16.05.920 or AS 16.05.921, or a regulation adopted under this chapter or AS 16.20, is guilty of a Class A misdemeanor.

Sec. 16.05.930. Exempted activities. (a) This chapter does not prevent the collection or exportation of fish and game, a part of fish or game or a nest or egg of a bird for scientific or educational purposes, or for propagation or exhibition purposes under a permit that the department may issue and prescribe the terms thereof.

(b) This chapter does not prohibit a person from taking fish or game during the closed season, in case of dire emergency, as defined by regulation adopted by the appropriate board.

(c) AS 16.05.920 and 16.05.921 do not prohibit rearing and sale of fish from private ponds, the raising of wild animals in captivity for food, or the raising of game birds for the purpose of recreational hunting on game hunting preserves, under regulations adopted by the appropriate board. In this subsection, "animals" includes all animal life, including insects and bugs.

(d) Nondomestic animals of any species may not be transferred or transported from the state under (a) of this section unless approved by the Board of Game in regular or special meeting. Animals transferred or transported under (a) of this section shall be animals that are certified by the department to be surplus and unnecessary to the sustained yield management of the resource. Each application for a permit under (a) of this section shall be accompanied by a statement prepared by the department examining the probable environmental impact of the action.

(e) This chapter does not prevent the traditional barter of fish and game taken by subsistence hunting or fishing, except that the commissioner may prohibit the barter of subsistence-taken fish and game by regulation, emergency or otherwise, if a determination on the record is made that the barter is resulting in a waste of the resource, damage to fish stocks or game populations, or circumvention of fish or game management programs.

(f) A permit may not be required for possessing, importing or exporting mink and fox for fur farming purposes.

(g) AS 16.05.330 – 16.05.723 do not apply to an activity authorized by a permit issued under AS 16.40.100 or 16.40.120, or to a person or vessel employed in an activity authorized

by a permit issued under AS 16.40.100 or 16.40.120.

Sec. 16.05.940. Definitions. In AS 16.05 – AS 16.40,

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

(2) **"barter"** means the exchange or trade of fish or game, or their parts, taken for subsistence uses

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature;

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

(4) **"commercial fisherman"** means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; **"commercial fisherman"** includes the crews of tenders or other floating craft used in transporting fish, but does not include processing workers on floating fish processing vessels who do not operate fishing gear or engage in activities related to navigation or operation of the vessel; in this paragraph, **"operate fishing gear"** means to deploy or remove gear from state water, remove fish from gear during an open fishing season or period, or possess a gill net containing fish during an open fishing period;

(5) **"commercial fishing"** means the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid subsistence permit in possession, if required by statute or regulation, is considered prima facie evidence of commercial fishing if commercial fishing gear as specified by regulation is involved in the taking, fishing for, or possession of fish, shellfish or other fish resources;

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

(7) **"customary and traditional"** means the noncommercial, long-term, and consistent taking of, use of, and reliance upon fish or game in a specific area and the use patterns of that fish or game that have been established over a reasonable period of time taking into consideration the availability of the fish or game;

(8) **"customary trade"** means the limited noncommercial exchange, for minimal amounts of cash, as restricted by the appropriate board, of fish or game resources; the terms of this paragraph do not restrict money sales of furs and furbearers;

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

(11) **"domicile"** means the true and permanent home of a person from which the person has no present intention of moving and to which the person intends to return whenever the person is away; domicile may be proved by presenting evidence acceptable to the Boards of Fisheries and Game;

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

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

(14) **"fish or game farming"** means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and **"captivity"** means having the fish or game under positive control, as in a pen, pond, or an area of land or water that is completely enclosed by a generally escape-proof barrier; in this paragraph, **"fish"** does not include shellfish, as defined in AS 16.40.199;

(15) **"fish stock"** means a species, subspecies, geographic grouping or other category of fish manageable as a unit;

(16) **"fish transporter"** means a natural person who holds a fish transport permit issued under AS 16.05.671;

(17) **"fishery"** means a specific administrative area in which a specific fishery resource is taken with a specific type of gear; however, the Board of Fisheries may designate a fishery to include more than one specific administrative area, type of gear, or fishery resource; in this paragraph

(A) **"gear"** means the specific apparatus used in the harvest of a fishery resource; and

(B) **"type of gear"** means an identifiable classification of gear and may include

(i) classification for which separate regulations are adopted by the Board of Fisheries or for which separate gear licenses were required by former AS 16.05.550 – 16.05.630; and

(ii) distinct subclassification of gear such as "power" troll gear and "hand" troll gear or sport gear and guided sport gear;

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

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

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

(25) **"person with physical disabilities"** means a person who presents to the department either written proof that the person receives at least 70 percent disability compensation from a government agency for a physical disability or an affidavit signed by a physician licensed to practice medicine in the state stating that the person is at least 70 percent physically disabled;

(26) **"personal use fishing"** means the taking, fishing for, or possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal use and not for sale or barter, with gill or dip net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(27) **"resident"** means

(A) a person who for the 12 consecutive months immediately preceding

the time when the assertion of residence is made has maintained the person's domicile in the state and who is neither claiming residency in another state, territory, or country nor obtaining benefits under a claim of residency in another state, territory, or country;

(B) a partnership, association, joint stock company, trust, or corporation that has its main office or headquarters in the state; a natural person who does not otherwise qualify as a resident under this paragraph may not qualify as a resident by virtue of an interest in a partnership, association, joint stock company, trust, or corporation;

(C) a member of the military service, or United States Coast Guard, who has been stationed in the state for the 12 consecutive months immediately preceding the time when the assertion of residence is made;

(D) a person who is the dependent of a resident member of the military service, or the United States Coast Guard, and who has lived in the state for the 12 consecutive months immediately preceding the time when the assertion of residence is made; or

(E) an alien who for the 12 consecutive months immediately preceding the time when the assertion of residence is made has maintained the person's domicile in the state and who is neither claiming residency in another state, territory, or country nor obtaining benefits under a claim of residency in another state, territory, or country;

(28) "**rural area**" means a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area;

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

(30) "**sport fishing**" means the taking of or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries;

(31) "**subsistence fishing**" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources by a resident domiciled in a rural area of the state for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(33) "**subsistence uses**" means the noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; in this paragraph, "**family**" means persons related by blood, marriage, or adoption, and a person living in the household on a permanent basis;

(34) "**take**" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

(37) "**vessel**" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the

state, but does not include aircraft.

Editor's note: The definitions listed in this section are only those that pertain to fish. Definitions pertaining to game were intentionally left out.

Chapter 10. Fisheries and Fishing Regulations.

Sec. 16.10.010. Interference with salmon spawning streams and waters. (a) A person may not, without first applying for and obtaining a permit or license from the Department of Environmental Conservation,

(1) obstruct, divert, or pollute waters of the state, either fresh or salt, utilized by salmon in the propagation of the species, by felling trees or timber in those waters, casting, passing, throwing, or dumping tree limbs or foliage, underbrush, stumps, rubbish, earth, stones, rock, or other debris, or passing or dumping sawdust, planer shavings, or other waste or refuse of any kind in those waters;

(2) erect a dam, barricade, or obstruction to retard, conserve, impound, or divert the waters described in (1) of this subsection to prevent, retard, or interfere with the free ingress or egress of salmon into those waters in the natural spawning or propagation process;

(3) render the waters described in (1) of this section inaccessible or uninhabitable for salmon for spawning or propagation.

(b) The application for the permit or license referred to in (a) of this section must set out the name and style of the person or concern, describe the waters and location, and state in particular the plans, purpose, and intention for which the application is made.

Sec. 16.10.030. Penalty for violations of AS 16.10.010 – 16.10.050. A person who violates AS 16.10.010 – 16.10.050 is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$100 nor more than \$500.

Sec. 16.10.055. Interference with commercial fishing gear. A person who willfully or with reckless disregard of the consequences, interferes with or damages the commercial fishing gear of another person is guilty of a misdemeanor. For the purposes of this section "interference" means the physical disturbance of gear which results in economic loss of fishing time, and "reckless disregard of the consequences" means a lack of consideration for the consequences of one's acts in a manner that is reasonably likely to damage the property of another.

Sec. 16.10.070. Operation of fish traps. Fish traps, including but not limited to floating, pile-driven, or hand-driven fish traps, may not be operated in the state on or over state land, tideland, submerged land, or water. This section does not prevent the operation of small hand-driven fish traps of the type ordinarily used on rivers of the state that are otherwise legally operated in or above the mouth of a stream or river.

Sec. 16.10.100. Erection of fish traps prohibited on land or water owned by state. Fish traps, including but not limited to floating, pile-driven, or hand-driven fish traps, may not be erected, moored, or maintained on or over land, tideland, submerged land, or water owned or otherwise acquired by the state. This section does not prevent the maintenance, use, or operation of small, hand-driven fish traps of the type ordinarily used on rivers of the state which are otherwise legally maintained and operated in or above the mouth of a stream or river.

Sec. 16.10.110. Penalty for violations of AS 16.10.100. A person who violates AS 16.10.100 is guilty of a misdemeanor and is punishable by imprisonment for not more than one year

or by a fine of not more than \$5,000, or by both.

Sec. 16.10.120. Use of drum or reel in operation of purse seine. A person may not use, employ, or operate a drum or reel around which a purse seine is coiled, rolled, or looped for purposes of taking or removing fish from a body of water located on or over land or tideland owned by the state or over which the state has jurisdiction. This section does not prevent the use of power blocks or the use of a reel mounted on a seine skiff to haul in or let out the separate purse seine lead which is temporarily connected to the purse seine proper, as these terms are generally employed or used in the fishing industry.

Sec. 16.10.125. Use of termination device on shellfish and bottomfish pot required. The Board of Fisheries shall, by regulation, prescribe a termination device or devices for all shellfish and bottomfish pots. In this section "termination device" means a biodegradable seam or panel or other device that renders the pot incapable of holding shellfish or bottomfish for more than six months when it is continuously immersed in sea water.

Sec. 16.10.130. Penalty for violation of 16.10.120 or 16.10.125. A person who violates AS 16.10.120 or 16.10.125 is guilty of a misdemeanor, and upon conviction is punishable by imprisonment for not more than six months, or by a fine of not more than \$1,000, or by both.

Sec. 16.10.164. Policy on utilization of pollock. The legislature declares that stripping roe from pollock without utilizing the flesh is wasteful and does not constitute utilization of this resource for the maximum benefit of the people. Therefore, it is the policy of the state that

(1) roe stripping be eliminated to the fullest extent possible; and

(2) pollock taken in a commercial fishery should be utilized for human consumption to the fullest extent practicable.

Sec. 16.10.165. Utilization of groundfish taken in a commercial fishery. (a) Unless otherwise provided by law, a person may not recklessly waste or cause to be wasted groundfish taken in a commercial fishery.

(b) The Board of Fisheries may adopt regulations under AS 44.62 (Administrative Procedure Act) it considers necessary for implementation of this section. The board may delegate its authority under this section to the commissioner.

(c) A person who violates this section is guilty of a class A misdemeanor.

(d) Each day on which a violation of this section occurs is a separate violation.

(e) In this section

(1) "flesh" means all muscular body tissue surrounding the skeleton;

(2) "groundfish" means

(A) pollock; or

(B) other species of groundfish designated by the Board of Fisheries under authority of this section;

(3) "person" includes a joint venture;

(4) "waste" means the failure to use the flesh of groundfish for human consumption, reduction to meal, production of food for domestic animals or fish, bait, or scientific, display, or educational purposes; "waste" does not include normal, inadvertent loss of flesh associated with processing that cannot be prevented by practical means.

Sec. 16.10.172. Legislative policy on utilization of herring. The legislature finds the

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following: (1) extensive and valuable herring populations are available for harvest in waters subject to the jurisdiction of the state; (2) commercial markets are available for herring processed in several forms; (3) one processing technique presently employed involves deliberately permitting decomposition of the herring carcass to allow for removal and subsequent sale of the roe product, with the consequence that the flesh is unusable and discarded. The legislature declares that the process referred to in (3) of this section is wasteful and does not constitute utilization of this resource for the maximum benefit of the people. Therefore, it is the policy of the legislature that this process should be eliminated to the fullest extent possible.

Sec. 16.10.173. Utilization of commercially taken herring. (a) A person may not waste or cause to be wasted any commercially taken herring.

(b) The Board of Fisheries may adopt regulations under AS 44.62 (Administrative Procedure Act) it considers necessary for implementation of this section. The board may delegate its authority under this section to the commissioner.

(c) The provisions of this section do not apply to herring taken commercially in the Bering Sea (including appurtenant bays, sounds, estuaries, and water of the state) north of 56 North Latitude, until January 1, 1979.

(d) In this section,

(1) "flesh" means all muscular body tissue surrounding the bony skeleton of the herring;

(2) "person" has the meaning given in AS 01.10.060 and also includes a joint venture;

(3) "waste" means the failure to use the flesh of commercially taken herring for reduction to meal, production of fish food, human consumption, food for domestic animals, scientific or educational purposes, or round herring bait. Normal, inadvertent loss of flesh associated with the uses described in this subsection that cannot be prevented by practical means does not constitute waste. The commissioner may authorize other uses of commercially taken herring consistent with the intent of this section and AS 16.10.172 upon receipt of a request accompanied by a detailed justification.

(e) A person who violates this section is guilty of a class A misdemeanor.

Sec. 16.10.175. Removal of herring from state. (a) A person may not remove herring from the state before the herring has been frozen or otherwise processed for shipment.

(b) In this section, "processed for shipment" includes, but is not limited to, icing, stripping, or salting of the herring; however, it does not include salting of the herring if five percent or more of the body weight of the herring consists of roe.

Sec. 16.10.180. Legislative findings. The legislature finds and recognizes these facts:

(1) migratory fish and migratory shellfish are present in commercial quantities inside and outside the territorial waters of the state;

(2) migratory fish and migratory shellfish taken from the waters of the state are indistinguishable, in most cases, from those taken from the adjacent high seas;

(3) substantial quantities of migratory fish and migratory shellfish move inshore and offshore intermittently and at various times during a given year and in so doing often enter and leave territorial waters of the state;

(4) to conserve the migratory fish and migratory shellfish found inside the waters of the state it is necessary to strictly enforce local laws and regulations;

(5) by making certain laws and regulations enacted or adopted for the regulation of the coastal fishery applicable to the adjacent high sea areas, enforcement of these laws and regulations is facilitated;

(6) conservation regulations should not be adopted to impose economic sanctions.

Sec. 16.10.190. Regulations. The Board of Fisheries may adopt regulations to carry out the purposes of AS 16.10.180 – 16.10.230 defining the adjacent high sea areas, migratory fish, and migratory shellfish and to make coastal fishery regulations governing the manner, means, conditions, and time for the taking of migratory fish and migratory shellfish applicable in designated adjacent high sea areas.

Sec. 16.10.200. Unlawful taking prohibited. A person taking migratory fish and migratory shellfish in high sea areas designated by the Board of Fisheries or in violation of the regulations adopted by the Board of Fisheries governing the taking of migratory fish and migratory shellfish in the designated areas may not possess, sell, offer to sell, barter, offer to barter, give, or transport in the state, including the waters of the state, migratory fish or migratory shellfish.

Sec. 16.10.210. Unlawful sale or offer prohibited. A person may not possess, purchase, offer to purchase, sell, or offer to sell in the state migratory fish or migratory shellfish taken on the high seas knowing that they were taken in violation of a regulation adopted by the Board of Fisheries governing the taking of migratory fish or migratory shellfish in certain areas designated by the Board of Fisheries or the commissioner.

Sec. 16.10.220. Penalty for violation of AS 16.10.200 and 16.10.210. A person who violates AS 16.10.200 and 16.10.210 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$5,000 or by imprisonment for not more than one year, or by both.

Sec. 16.10.230. Exemptions. AS 16.10.180 – 16.10.220 do not apply to

(1) the use of nets for fishing for or taking salmon for the purposes of scientific investigation authorized by state law; and

(2) existing laws and regulations prohibiting the taking of salmon by means of nets on the high seas.

Sec. 16.10.240. Transportation of live crab. (a) A person may not take out of, ship, transport, or send from this state any live king crab, species *Paralithodes camtschatica*, live Dungeness crab, species *Cancer magister*, or live Tanner crab, species *Chionoecetes bairdi*, except that all of these species may be shipped live via air freight after pre-packaging.

(b) Notwithstanding (a) of this section, live Dungeness crab, species *Cancer magister*, may be taken, shipped, transported, or sent from the state by means of surface transportation if the crab are taken at a time and location in the state for which the Department of Environmental Conservation does not require seafood processors to test Dungeness crab for the presence of marine toxins.

Sec. 16.10.250. Penalty. A person, association, or corporation violating AS 16.10.240 or contributing to or cooperating in the violation of AS 16.10.240 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$5,000, or by imprisonment for not more than one year, or by both. Each unlawful removal of live crab is a separate offense. Vessels and equipment used in or in aid of a violation of AS 16.10.240 may be seized and

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disposed of as provided in AS 16.05.190. Conviction under AS 16.10.240 is grounds for suspension of a fishing license or permit by the department.

Sec. 16.10.265. Purchase of fish from permit holders. (a) An individual may not, while acting as a fish processor or primary fish buyer, or as an agent, director, officer, member, or employee of a fish processor, of a primary fish buyer, or of a cooperative corporation organized under AS 10.15, intentionally or knowingly make an original purchase of fish from a seller who does not hold

- (1) a landing permit, an entry permit, or an interim-use permit; or
- (2) a fish transporter permit under AS 16.05.671.

(b) An individual who violates (a) of this section is

(1) upon a first conviction, guilty of a class B misdemeanor and shall be sentenced to a fine of not less than \$1,000 nor more than \$5,000, and may be sentenced to a definite term of imprisonment of not more than 90 days;

(2) upon a second conviction, guilty of a class A misdemeanor and shall be sentenced to a fine of not less than \$5,000 nor more than \$10,000, and may be sentenced to a definite term of imprisonment of not more than one year;

(3) upon a third or subsequent conviction, guilty of a class A misdemeanor and shall be sentenced to a fine of not less than \$10,000 nor more than \$25,000, and may be sentenced to a definite term of imprisonment of not more than one year.

(c) The commissioner of revenue shall impose upon a fish processor, primary fish buyer, or cooperative corporation organized under AS 10.15, a civil fine equal to the value of fish purchased in violation of this section by (1) the fish processor or primary fish buyer if the fish processor or primary fish buyer is not a corporation; or (2) a director, officer, or employee in a policy-making position of the fish processor, of the primary fish buyer, or of the cooperative corporation. Value is based on the average price paid to fishermen at the time of the violation.

(d) The commissioner of commerce, community, and economic development may suspend or revoke a business license issued under AS 43.70.020 and the commissioner of revenue may suspend or revoke a license to engage in the business of processing or buying raw fish if the licensee or an officer, director, or employee in a policy-making position of the licensee has been convicted of three offenses under this section. Proceedings to suspend or revoke a license are governed by AS 44.62 (Administrative Procedure Act).

(e) An organization may not be criminally prosecuted under (a) of this section.

(f) In this section, "individual" means a natural person.

Sec. 16.10.267. Possession of permit and identification by seller. (a) When a fisherman sells fish, the fisherman shall possess

(1) a landing permit, entry permit, or interim-use permit issued or transferred to the fisherman under AS 16.43, or other document authorized by regulation to be used in place of an entry permit or interim-use permit; and

(2) an identification card that has been issued to the fisherman by a state or federal agency or other organization designated by the Department of Public Safety and that bears a photograph of the fisherman.

(b) If requested by the purchaser of the fish or by a peace officer, the fisherman or

fish transporter shall present for inspection the identification card, entry permit, interim-use permit, fish transporter permit, or other document required to be in the fisherman's or fish transporter's possession under (a) or (d) of this section.

(c) Examples of a suitable identification card required under (a)(2) and (d)(2) of this section are a motor vehicle operator's license issued under AS 28.15.111 and an identification card issued under AS 18.65.310.

(d) When a fish transporter sells fish as the agent of the commercial fisherman who caught the fish, the fish transporter shall possess

(1) a fish transporter permit and the fish ticket completed by the fish transporter under AS 16.05.671(d); and

(2) an identification card that has been issued to the fish transporter by a state or federal agency or other organization designated by the Department of Public Safety and that bears a photograph of the fish transporter.

(e) A person who violates this section is, upon conviction, guilty of a class B misdemeanor and may be sentenced to a definite term of imprisonment of not more than 90 days. In addition

(1) upon a first conviction for a violation of this section, the court may sentence the convicted person to pay a fine of not more than \$5,000 and may order the loss of commercial fishing privileges for a period of not more than three years from the date of conviction;

(2) upon a second conviction for a violation of this section, the court may sentence the convicted person to pay a fine of not more than \$10,000 and may order the loss of commercial fishing privileges for a period of not more than three years from the date of conviction;

(3) upon a third or subsequent conviction for a violation of this section, the court

(A) may sentence the convicted person to pay a fine of not more than \$10,000; and

(B) shall order that the convicted person lose commercial fishing privileges for a period of three years from the date of conviction.

Sec. 16.10.268. Notice of liability. (a) The commissioner of labor and workforce development shall print posters that contain notice of the requirements of AS 16.10.265. The commissioner shall distribute the posters to fish processors, primary fish buyers, and cooperative corporations organized under AS 10.15 for the purpose of buying fish.

(b) A fish processor, primary fish buyer, or cooperative corporation organized under AS 10.15 for the purpose of buying fish shall display in a prominent place on its business premises posters provided by the commissioner of labor under (a) of this section.

Sec. 16.10.269. Limitations. AS 16.10.265 and 16.10.267 do not apply to the purchase or sale of aquatic farm products from a holder of a permit issued under AS 16.40.100 or stock from a holder of a permit issued under AS 16.40.120.

Sec. 16.10.270. Purchase of fish by the pound. (a) A fish processor or primary fish buyer shall purchase raw fish by the pound. The poundage of the fish to be purchased shall be determined by weighing the fish unless both the buyer and seller agree in writing upon a sample weighing technique that will fairly determine the average weight of the fish purchased.

(b) A person who violates this section is guilty of a misdemeanor and upon conviction

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is punishable by imprisonment of not more than one year, or by a fine of not more than \$5,000, or by both.

Sec. 16.10.275. Regulations. The commissioner may adopt regulations to carry out the provisions of AS 16.10.270 – 16.10.296.

Sec. 16.10.280. Price disputes between fishermen and fish processors. In an area where a price dispute exists between at least one-third of the registered commercial fishermen for that area, as estimated by the Department of Fish and Game on the basis of information available to the department, and fish processors on the price to be paid for salmon, and no agreement has been reached up to 120 days before the opening of the salmon fishing season in that area, a representative from the Department of Labor and Workforce Development shall intervene as mediator of the dispute upon request of either party.

Sec. 16.10.294. Administrative and judicial orders. (a) – (d) Repealed by Executive Order No. 85. (1993).

(e) If the commissioner determines that a fish processor or primary fish buyer is acting in violation of AS 16.10.270 – 16.10.280, the commissioner shall give written notice prohibiting further action by the person as a fish processor or primary fish buyer. The prohibition continues until the person has submitted evidence acceptable to the commissioner showing that the violation has been corrected.

(f) A person affected by an order issued under AS 16.10.265 – 16.10.296 may seek equitable relief preventing the commissioner from enforcing the order.

(g) In an action instituted in the superior court by the commissioner or a representative of the commissioner, a person acting in the capacity of a fish processor or primary fish buyer in violation of AS 16.10.265 – 16.10.296 may be enjoined from acting as a fish processor or primary fish buyer.

Sec 16.10.296. Definitions. In AS 16.10.265 – 16.10.296, unless the context otherwise requires,

(1) "commissioner" means the commissioner of labor and workforce development;

(2) "fish" means any species of aquatic finfish, invertebrates and amphibians, shellfish, or any other raw fishery resource, in any stage of its life cycle, found in or introduced into the state, and includes fish eggs except fish eggs sold for stock enhancement purposes;

(3) "fish processor" means a person engaging or attempting to engage in a business for which a license is required under AS 43.75;

(4) "primary fish buyer" means a person, other than a cooperative corporation organized under AS 10.15, engaging or attempting to engage in the business of originally purchasing or buying any fishery resource in intrastate, interstate, or foreign commerce.

Sec. 16.10.455. Cost recovery fisheries. (a) A hatchery permit holder may harvest salmon for a facility in

(1) a special harvest area through agents, or employees of or persons under contract with the permit holder as provided under a permit from the department or regulations of the Board of Fisheries; or

(2) a terminal harvest area through the common property fishery under this section.

(b) A hatchery permit holder may, by a majority vote of the membership of the hatchery permit holder's board, elect to harvest surplus salmon produced at a facility in a terminal

harvest area established for that facility through the common property fishery. At the request of the hatchery permit holder and if the commissioner of fish and game determines that there are no allocative issues involved, and after reasonable consultation with affected commercial fishermen and the organizations of affected commercial fishermen, the commissioner may adopt regulations governing the harvest of surplus salmon in a terminal harvest area when the hatchery permit holder elects to harvest surplus salmon produced at a facility through a common property fishery. The regulations must specify the terms, conditions, and rules under which the common property fishery in the terminal harvest area shall be conducted, including requirements for hold inspections and reporting of harvests and sales of salmon taken in the terminal harvest area. Following adoption of regulations by the department, each year before March 10, the hatchery permit holder's board, by a majority vote of the board's membership, may determine whether the hatchery will operate under the regulations adopted under this subsection during the current calendar year, and shall notify the department if the hatchery intends to operate under the regulations adopted under this subsection. The Board of Fisheries may adopt regulations under AS 16.05.251 regarding a fisheries management plan governing operations under this subsection in a terminal harvest area, including allocation plans. Participation in the fishery must be open to all interim-use permit and entry permit holders who hold permits to operate a type of gear that may be used in the fishing district in which the terminal harvest area is located if that type of gear is authorized by regulation to be used in the terminal harvest area. An interim-use permit holder or an entry permit holder who takes salmon in a common property fishery in a terminal harvest area may sell the salmon to any fish buyer or processor who is licensed to do business in the state.

(c) As a condition of participation in a common property salmon fishery in a terminal harvest area under this section, a fisherman who participates in the fishery is subject to the payment of the assessment levied under (d) of this section. The assessment is levied on the value of salmon that the fisherman takes in the terminal harvest area and sells to a licensed buyer. The buyer of the salmon must be licensed under AS 43.75, and the buyer shall collect the assessment on salmon taken in a terminal harvest area at the time of purchase and remit the assessment to the Department of Revenue in accordance with regulations adopted by the Department of Revenue.

(d) The Department of Revenue may, by regulation, annually, by March 1 of each year, set the rate of the assessment levied on salmon taken in a terminal harvest area in consultation with the Department of Commerce, Community, and Economic Development, the hatchery permit holder, and representatives of affected commercial fishermen. The rate of the assessment shall provide sufficient revenue to cover debt service to the state, reasonable operating expenses, reasonable maintenance expenses, and development or maintenance of a reserve fund up to 100 percent of annual operating costs of the hatchery permit holder. In setting the rate of the assessment, the department shall consider the estimated return and harvest of salmon in the terminal harvest area, the projected price to be paid for salmon in the region, the amount of the existing reserve held by the hatchery permit holder, and the amount by which the assessment collected in previous years exceeded or fell short of the amount anticipated to be collected. The total rate of the assessment may not exceed 50 percent of the value of the salmon.

(e) The Department of Revenue shall deposit the assessments collected under this section in the general fund. The legislature may appropriate the funds collected under this section to the hatchery permit holder who operates a facility in the terminal harvest area in which the assessment was levied. A hatchery permit holder shall use funds appropriated

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under this subsection for the purposes set out under AS 16.10.450(a). The legislature may also appropriate funds collected under this section to the Department of Revenue for costs incurred by the department under this section.

(f) A person who violates a regulation adopted under (b) of this section is guilty of a violation under AS 16.05.722 or a misdemeanor under AS 16.05.723. A person who violates a regulation adopted by the Department of Revenue under (c) of this section is guilty of a class A misdemeanor.

(g) In this section,

(1) "facility" means a hatchery or salmon rehabilitation project for which a permit is issued under AS 16.10.400 – 16.10.470;

(2) "special harvest area" means an area designated by the commissioner or the Board of Fisheries where salmon returning to a hatchery may be harvested by the hatchery operators, and, in some situations, by the common property fishery;

(3) "terminal harvest area" means a harvest area, which may include a hatchery release site, established by the commissioner or the Board of Fisheries where salmon returning to a hatchery may be harvested by the common property fishery;

(4) "value" has the meaning given in AS 43.75.290.

Sec. 16.10.570. Access to the Chitina dip net fishery. The department, with the cooperation of the Department of Transportation and Public Facilities and the Department of Natural Resources, shall prepare a publication showing public access routes to fishing sites on public land for the Chitina dip net fishery. The department shall distribute the publication to persons who obtain a Chitina dip net fishing permit and to the public.

Sec. 16.10.750. Findings and purpose. (a) The legislature finds that

(1) the salmon fishing industry is among the state's largest industries and generates hundreds of millions of dollars and thousands of jobs each year; the salmon fishery is vitally important to commercial, subsistence, personal use, and sport fishing interests, and to the state's developing tourist industry;

(2) the state is committed to maintaining and enhancing its wild stocks of salmon by careful management, by initiating a 20-year rebuilding program, and by investing in the fishing industry;

(3) millions of Alaska salmon are being caught and injured by high seas fisheries that intercept salmon contrary to state, federal, or international law; the high seas interception of Alaska salmon defeats the state's management and rebuilding programs, deprives the state of a return on its investment in the fishing industry, and detrimentally affects subsistence and sport fishing uses of Alaska salmon;

(4) vessels that engage in the high seas interception of salmon can move relatively freely and undetected from region to region in the North Pacific and thus are able to harvest whatever species is most readily available or most valuable; by moving farther westward, a greater proportion of the take is Asian salmon; moving eastward results in a greater proportion of the take being Alaska salmon; although there is intermixing of Asian and North American salmon stocks, scientific evidence proves that even a minimal harvest of salmon within the migratory range of each species will contain Alaska salmon;

(5) the illegal taking of salmon detrimentally affect the Alaska fishing industry;

the illegal taking of Alaska salmon is of primary concern because of the direct and immediate effect on the state; in addition, the illegal taking of Asian salmon is also of concern because depletion of those stocks will ultimately result in a shifting of high seas fishing efforts, both legal and illegal, to Alaska salmon;

(6) high seas interception of salmon occurs beyond the exclusive economic zone of the United States, or through incursion within the exclusive economic zone and the state's territorial sea, by vessels that are usually not registered in this state; moreover, these vessels are not based in Alaska and can thus avoid detection more easily than Alaska-based vessels; as a practical matter, it is extremely difficult to directly or indirectly regulate the vessels themselves; it is therefore necessary to prohibit activities within the state that give aid, comfort, and financial incentives to high seas interception of salmon.

(b) The purpose of AS 16.10.750 – 16.10.800 is to prevent resources, facilities, and expertise within the state from being available to promote or facilitate the high seas interception of salmon or the making of intercepted salmon ready for or accessible to world markets.

Sec. 16.10.760. Trafficking in intercepted salmon. (a) A person commits the offense of trafficking in intercepted salmon if the person

(1) buys, sells, trades, processes, or possesses salmon, or attempts to buy, sell, trade, process, or possess salmon, with reckless disregard that the salmon has been, or will be, obtained by high seas interception;

(2) knowingly provides financing, premises, equipment, supplies, services, power, or fuel used to buy, sell, trade, process, or possess salmon that has been, or will be, obtained by high seas interception; or

(3) acts as a broker or middleman, or otherwise acts on behalf of another party, to arrange for or negotiate, or attempts to arrange for or negotiate, the purchase, sale, trade, processing, or possession of salmon, with reckless disregard that the salmon has been, or will be, obtained by high seas interception.

(b) Trafficking in intercepted salmon is a class C felony.

Sec. 16.10.770. Falsification related to high seas interception of salmon. (a) A person commits the offense of falsification related to high seas interception of salmon if the person creates, utters, or possesses a written instrument related to salmon, or makes an assertion for the purpose of having a written instrument related to salmon created, uttered, or accepted, with reckless disregard that the salmon was obtained by high seas interception and that the written instrument or assertion conveys misleading or untrue information about the ownership, possession, processing, origin, destination, route of shipping, type, condition, or time, place, and manner of the taking of the salmon.

(b) In this section

(1) "utter" has the meaning given in AS 11.46.580(b);

(2) "written instrument" has the meaning given in AS 11.46.580(b) and includes ships' logs and papers, bills of lading and sale, documents relating to processing, shipping, and customs, and information stamped on or affixed to cans, crates, containers, freight, or a means of storage or packaging.

(c) Falsification related to high seas interception of salmon is a class C felony.

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Sec. 16.10.780. Assisting a vessel a vessel in high seas interception of salmon. (a) A person commits the offense of assisting a vessel in high seas interception of salmon if, knowing that a vessel is in possession of salmon obtained by high seas interception or that the owner or operator of the vessel intends to engage in the imminent interception of salmon, the person

- (1) moves persons, cargo, or other property to or from the vessel;
- (2) services or repairs the vessel or its equipment;
- (3) provides the vessel with power, supplies, equipment, or fuel;

(4) provides the vessel with information, other than weather reports, capable of aiding the high seas interception of salmon or frustrating or avoiding detection, including communicating the movements, intentions, or activities of state or federal law enforcement officials or other fishing vessels; or

(5) is in charge of a docking facility, harbor, or anchorage, and permits the vessel to dock or anchor, or to remain docked or anchored.

(b) It is an affirmative defense, as defined in AS 11.81.900(b), to a violation of this section, if the person honestly and reasonably believed that the assistance provided to the vessel was necessary for humanitarian or environmental purposes or to prevent a significant loss of property. An affirmative defense under this section may not be raised, unless the person provided immediate notice, by the quickest available means, to the United States Coast Guard or the Department of Public Safety indicating the type of assistance being provided and the circumstances requiring the assistance.

(c) In this section

(1) "environmental purpose" means the intent to prevent or minimize adverse ecological effects to water quality;

(2) "humanitarian purpose" means the intent to provide medical services for a sick or injured person, or to prevent the loss of human life;

(3) "owner or operator of the vessel" means a person who

(A) has an ownership interest in the vessel;

(B) has authority to control or direct the vessel's activities; or

(C) physically operates a vessel or its equipment.

(d) Assisting a vessel in high seas interception of salmon is a class A misdemeanor.

Sec. 16.10.790. Fines. Notwithstanding the provisions of AS 12.55.035(b) and (c), a person convicted of an offense under AS 16.10.760 – 16.10.780 may be sentenced to pay a fine not exceeding the greater of

(1) \$100,000;

(2) three times the pecuniary gain realized by the person as a result of the offense;

or

(3) if the person is convicted under AS 16.10.760, two times the fair market value of the salmon involved or contemplated in the commission of the offense.

Sec. 16.10.800. Definitions. In AS 16.10.750 – 16.10.800

(1) "high seas interception," "interception," or a similar terms means the

unauthorized catching, taking, or harvesting of salmon for other than sport, subsistence, or personal use purposes,

(A) throughout the migratory range of each species, by a vessel not registered under the laws of this state; or

(B) beyond the territorial sea of the state by a vessel registered under the laws of the state;

(2) "knowing" or "knowingly" has the meaning given for "knowingly" in AS 11.81.900(a);

(3) "process" means affecting the condition or location of salmon, including preparation, packaging, storage, refrigeration, or transportation;

(4) "reckless disregard" has the meaning given for "recklessly" in AS 11.81.900(a);

(5) "salmon" means Pacific salmon and steelhead, and parts of Pacific salmon and steelhead, whether mature or immature, processed or unprocessed; and

(6) "unauthorized" means contrary to a statute or regulation of the United States or the state, or to a treaty or international fishery agreement, or in violation of a foreign law.

Chapter 43. Regulation of Entry Into Alaska Commercial Fisheries.

Sec. 16.43.100. Duties and general powers. (a) To accomplish the purposes set out in AS 16.43.010, the commission shall

(1) regulate entry into the commercial fisheries for all fishery resources in the state;

(2) establish priorities for the application of the provisions of this chapter to the various commercial fisheries of the state;

(3) establish administrative areas suitable for regulating and controlling entry into the commercial fisheries;

(4) establish, for all types of gear, the maximum number of entry permits for each administrative area;

(5) designate, when necessary to accomplish the purposes of this chapter, particular species for which separate interim-use permits or entry permits will be issued;

(6) establish qualifications for the issuance of entry permits;

(7) issue entry permits to qualified applicants;

(8) issue interim-use permits as provided in AS 16.43.210, 16.43.220, and 16.43.225;

(9) establish, for all types of gear, the optimum number of entry permits for each administrative area;

(10) administer the buy-back program provided for in AS 16.43.310 and 16.43.320 to reduce the number of outstanding entry permits to the optimum number of entry permits;

(11) provide for the transfer and reissuance of entry permits to qualified transferees;

(12) provide for the transfer and reissuance of entry permits for alternative types of legal gear, in a manner consistent with the purposes of this chapter;

(13) establish and administer the collection of the annual fees provided for in AS

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16.43.160;

(14) administer the issuance of commercial fishing vessel licenses under AS 16.05.490;

(15) issue educational entry permits to applicants who qualify under the provisions of AS 16.43.340 – 16.43.390;

(16) establish reasonable user fees for services;

(17) issue landing permits under AS 16.05.675 and regulations adopted under that section;

(18) establish and collect annual fees for the issuance of landing permits that reasonably reflect the costs incurred in the administration and enforcement of provisions of law related to landing permits;

(19) establish a moratorium on entry into commercial fisheries as provided in AS 16.43.225;

(20) administer, when necessary to accomplish the purposes of this chapter, a vessel permit system under AS 16.43.450 – 16.43.520; and

(21) when requested by a regional development organization formed under AS 44.33.895, provide to the organization, without charge, public information contained in the commission's data with respect to relevant fisheries, including limited fisheries, fishery participants, and limited entry permit holder's harvests and earnings.

(b) The commission may do all things necessary to the exercise of its powers under this chapter, whether or not specifically designated in this chapter.

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.

Sec. 16.43.140. Permit required. (a) After January 1, 1974, a person may not operate gear in the commercial taking of fishery resources without a valid entry permit or a valid interim-use permit issued by the commission.

(b) A permit is not required of a crewman or other person assisting in the operation of a unit of gear engaged in the commercial taking of fishery resources as long as the holder of the entry permit or the interim-use permit for that particular unit of gear is at all times present and actively engaged in the operation of the gear.

(c) A person may hold more than one interim-use or entry permit issued or transferred under this chapter only for the following purposes:

- (1) fishing more than one type of gear;
- (2) fishing in more than one administrative area;
- (3) harvesting particular species for which separate interim-use or entry permits are issued;

(4) if authorized by regulations of the commission, fishing an entire unit of gear in a fishery in which the commission has issued entry permits for less than a unit of gear under AS 16.43.270(d); under this paragraph, a person may not hold more than two entry permits for a fishery; however, the person may not

(A) fish more than one unit of gear in the fishery; or

(B) acquire a second entry permit for the fishery after the person has acquired an entry permit that authorizes the use of an entire unit of gear in the fishery;

(5) consolidation of the fishing fleet for a salmon fishery; however, a person may hold not more than two entry permits for a salmon fishery under this paragraph, but the person who holds two entry permits for a salmon fishery may not engage in fishing under the second entry permit.

Sec. 16.43.150. Terms and conditions of entry permit; annual renewal. (a) Except as may be otherwise provided under AS 16.43.270(d), an entry permit authorizes the permittee to operate a unit of gear within a specified fishery.

(b) The holder of an entry permit shall have the permit in possession at all times when engaged in the operation of gear for which it was issued.

(c) Each entry permit is issued for a term of one year and is renewable annually.

(d) Failure to renew an entry permit for a period of two years from the year of last renewal results in a forfeiture of the entry permit to the commission, except as waived by the commission for good cause. An entry permit may not be renewed until the fees for each preceding year during which the entry permit was not renewed are paid. However, failure to renew an entry permit in a year in which there is an administrative closure for the entire season for a specific fishery is good cause not to renew the entry permit. The commission shall waive the payment of fees for that year.

(e) An entry permit constitutes a use privilege that may be modified or revoked by the legislature without compensation.

(f) Except for permits that are not transferable under AS 16.43.170(e), an entry permit survives the death of the holder.

(g) Except as provided in AS 16.10.333 – 16.10.338, AS 44.81.215, 44.81.225, and 44.81.231 – 44.81.250, an entry permit may not be

- (1) pledged, mortgaged, leased, or encumbered in any way;
- (2) transferred with any retained right of repossession or foreclosure, or on any

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condition requiring a subsequent transfer; or

(3) attached, distrained, or sold on execution of judgment or under any other process or order of any court, except as provided in AS 16.43.170(g) and (h).

(h) Unless an entry permit holder has expressed a contrary intent in a will that is probated, the commission shall, upon the death of the permit holder, transfer the permanent permit by right of survivorship directly to the surviving spouse or, if no spouse survives, to a natural person designated by the permit holder on a form provided by the commission. If no spouse survives and if the person designated on the form, if any, does not survive, the permit passes as part of the permit holder's estate. A designation under this subsection must be acknowledged before a person authorized to administer an oath under AS 09.63.010 or must be witnessed by two persons who are qualified under AS 13.12.505 to witness the will of the permit holder. Except as provided in AS 16.10.333 – 16.10.337, AS 44.81.215, and 44.81.231 – 44.81.250, the permit is exempt from the claims of creditors of the estate.

(i) The holder of a transferable or nontransferable entry permit or of an interim-use permit may voluntarily relinquish the permit to the commission.

Sec. 16.43.225. Moratorium on new entrants into certain fisheries. (a) Subject to (b) of this section, the commission may establish a moratorium on new entrants into a fishery

(1) that has experienced recent increases in fishing effort that are beyond a low, sporadic level of effort;

(2) that has achieved a level of harvest that may be approaching or exceeding the maximum sustainable level for the fishery; and

(3) for which there is insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the fishery.

(b) The commission may establish a moratorium on new entrants into a fishery described in (a) of this section if

(1) the commissioner of fish and game, subject to AS 16.05.251(g), petitions the commission under AS 44.62.220 to establish a moratorium on new entrants into the fishery; and

(2) the commission finds that

(A) the fishery has reached a level of participation that may threaten the conservation and the sustained yield management of the fishery resource and the economic health and stability of commercial fishing; and

(B) the commission has insufficient information to conclude that the establishment of a maximum number of entry permits under AS 16.43.240 would further the purposes of this chapter.

(c) The commission may establish a moratorium under this section for a continuous period of up to four years. A fishery that has been subject to a moratorium under this section may not be subjected to a subsequent moratorium under this section unless five years have elapsed since the previous moratorium expired.

(d) While a moratorium is in effect, the commission shall conduct investigations to determine whether a maximum number of entry permits should be established under AS 16.43.240 by

(1) conducting research into conditions in the fishery;

(2) consulting with the Department of Fish and Game and the Board of Fisheries;
and

(3) consulting with participants in the fishery.

(e) The commission shall establish by regulation the qualifications for applicants for an interim-use permit for a fishery subject to a moratorium under this section. The qualifications must include the minimum requirements for past or present participation and harvest of the fishery. The commission may not issue an interim-use permit for a fishery subject to a moratorium under this section unless the applicant can satisfy the qualifications established under this subsection and establish the present ability and intent to participate actively in the fishery.

Sec. 16.43.950. Applications of regulations of Board of Fisheries. Nothing in this chapter limits the powers of the Board of Fisheries, including the power to determine legal types of gear and the power to establish size limitations or other uniform restrictions applying to a certain type of gear. Holders of interim-use permits or entry permits issued under this chapter are subject to all regulations adopted by the Board of Fisheries.

CHAPTER 39. GENERAL PROVISIONS.

Article 1. General.

5 AAC 39.001. Application of this chapter. Unless otherwise specified in this section or 5 AAC 01 – 5 AAC 77, requirements in this chapter apply to commercial fishing only, except that 5 AAC 39.002 and 5 AAC 39.999 applies to all of 5 AAC 01 – 5 AAC 77. Subsistence, personal use, and sport fishing regulations affecting commercial fishing vessels or affecting any other commercial fishing activity are set out in the subsistence fishing regulations in 5 AAC 01 and 5 AAC 02, personal use regulations in 5 AAC 77, and sport fishing regulations in 5 AAC 47 – 5 AAC 75.

5 AAC 39.002. Liability for violations. Unless otherwise provided in 5 AAC 01 – 5 AAC 41 or in AS 16, a person who violates a provision of 5 AAC 01 – 5 AAC 41 is strictly liable for the offense, regardless of his intent.

5 AAC 39.010. Retention of fish taken in a commercial fishery. (a) A person engaged in commercial fishing may retain finfish from lawfully taken commercial catch for that person's own use, including for the use as bait in a commercial fishery. Finfish retained under this section may not be sold or bartered.

(b) Except as otherwise specified in 5 AAC 01 – 5 AAC 39, a commercial fisherman shall report on an ADF&G fish ticket, at the time of delivery of the commercial catch, the number of steelhead retained from the commercial catch but not sold. For the purposes of this subsection, "delivery" means the offloading of the finfish for sale or for transport to a buyer for later sale.

5 AAC 39.105. Types of legal gear. (a) All gear shall be operated in a manner conforming to its basic design.

(b) The size of meshes of a gillnet shall be substantially consistent.

(c) All references to mesh size in the regulations are considered to be "stretched measure."

(d) Unless otherwise provided in this title, the following are legal types of gear:

(1) a **gillnet** is a net primarily designed to catch fish by entanglement in the mesh and consisting of a single sheet of webbing hung between cork line and lead line, and fished from the surface of the water;

(2) a **set gillnet** is a gillnet that has been intentionally set, staked, anchored, or otherwise fixed;

(3) a **drift gillnet** is a drifting gillnet that has not been intentionally staked, anchored, or otherwise fixed;

(4) a **purse seine** is a floating net designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line;

(5) a **hand purse seine** is a floating net designed to surround fish and which can be closed at the bottom by pursuing the lead line; pursuing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed;

(6) a **beach seine** is a floating net designed to surround fish which is set from and hauled to the beach;

(7) **power gurdy troll gear** consists of a line or lines with lures or baited hooks which are deployed, drawn through the water, and retrieved by means of a power troll gurdy, for which the power source may be hydraulic, electrical, or mechanical; power gurdy troll does not include hand troll gear;

(8) **hand troll gear** consists of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing or other types of trolling, and which are retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical or other assisting device or attachment;

(9) a **fish wheel** is a fixed, rotating device, with no more than four baskets on a single axle, for catching fish which is driven by river current or other means;

(10) a **trawl** is a bag-shaped net towed through the water to capture fish or shellfish;

(A) a **beam trawl** is a trawl with a fixed net opening utilizing a wood or metal beam;

(B) an **otter trawl** is a trawl with a net opening controlled by devices commonly called otter doors;

(C) a **pelagic trawl** is a trawl where the net, or the trawl doors or other trawl-spreading device, do not operate in contact with the seabed, and which does not have attached to it any protective device, such as chafing gear, rollers, or bobbins, that would make it suitable for fishing in contact with the seabed;

(11) a **pot** is a portable structure designed and constructed to capture and retain fish and shellfish alive in the water;

(12) a **ring net** is a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be non-rigid and collapsible so that when fishing it does not prohibit free movement of fish or shellfish across the top of the net;

(13) a **longline** is a stationary buoyed or anchored line or a floating, free drifting line with lures or baited hooks attached;

(14) a **shovel** is a hand-operated implement for digging clams or cockles;

(15) a **mechanical clam digger** is a mechanical device used or capable of being used for the taking of clams;

(16) a **scallop dredge** is a dredge-like device designed specifically for and capable of taking scallops by being towed along the ocean floor;

(17) a **fyke net** is a fixed, funneling (fyke) device used to entrap fish;

(18) a **lead** is a length of net employed for guiding fish into a seine or set gillnet;

(19) an **anchor** is a device used to hold a salmon fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor or being secured to another vessel or net that is anchored;

(20) a **herring pound** is an enclosure used primarily to retain herring alive over extended periods of time;

(21) **diving gear** is any type of hard hat or skin diving equipment, including scuba, a tethered, umbilical, surface-supplied system, and a snorkel;

(22) a **hydraulic clam digger** is a device using water or a combination of air and

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water to remove clams from their environment;

(23) a **grappling hook** is a hooked device with flukes or claws and attached to a line and operated by hand;

(24) a **dip net** is a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand;

(25) a **mechanical jigging machine** is a device that deploys a line with lures or baited hooks and retrieves that line with electrical, hydraulic, or mechanically powered assistance; a mechanical jigging machine allows the line to be fished only in the water column; a mechanical jigging machine must be attached to a vessel registered to fish with a mechanical jigging machine; the mechanical jigging machine may not be anchored or operated unattached from the vessel;

(26) an **abalone iron** is a flat device used for taking abalone and which is more than one inch (24 mm) in width and less than 24 inches (61 cm) in length and with all prying edges rounded and smooth;

(27) a **handline** is a hand-held line, with one or more hooks attached, which may only be operated manually; a handline is legal gear only for smelt in the Bristol Bay Area, described in 5 AAC 06.100;

(28) **dinglebar troll gear** consists of one or more lines, retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while the vessel is making way;

(29) a **sea urchin rake** is a hand-held implement, no longer than four feet, equipped with projecting prongs used to gather sea urchins;

(30) a **cast net** is a circular net with a mesh size of no more than one and one-half inches and weights attached to the perimeter which, when thrown, surrounds the fish and closes at the bottom when retrieved.

5 AAC 39.107. Operation of gear. (a) Each fisherman shall operate or assist in operating only one type of net gear at any one time.

(b) Throughout the period of operation of mobile net gear, a person who holds a valid CFEC permit for that gear must be physically present on board the vessel from which the net gear is operated.

(c) A CFEC permit holder shall personally operate or assist in the operation of mobile net gear. "Personally operate or assist in operation" means assisting or supervising some portion of the immediate operation.

(d) A person who holds a limited entry permit or an interim-use permit for stationary fishing gear must be physically present at a beach or riparian fishing site during the operation of net gear or other stationary fishing gear at the site, except when the permit holder is at or traveling to or from the location of (1) a sale of fish caught in the gear; or (2) other stationary gear of the permit holder. For purposes of this subsection "fishing site" includes any structure used for providing shelter in support of the operation of net gear or other

stationary gear.

(e) A person who holds a CFEC permit for the operation of stationary net gear or fish wheels shall be within a reasonable distance of the gear when at a point of sale or at the location of other stationary gear of that permit holder. A "reasonable distance" means a distance that ensures that the CFEC permit holder retains competent supervision of the gear.

(f) In the Yukon Area, as described in 5 AAC 05.100, a person who holds a CFEC permit for stationary fishing gear must be physically present for the initial deployment of the gear at the beginning of the commercial fishing period and at the end of the commercial fishing period to terminate operation of the gear.

(g) In the Yakutat District south of 59° 40' N. lat. in Yakutat Bay, a fishing site under AS 16.05.253(b) includes the CFEC permit holder's permanent place of residence in Yakutat.

5 AAC 39.109. Nonresident crewmember fishing license fees. The amount to be added, in accordance with AS 16.05.480(h), to the annual base fee for a nonresident crewmember fishing license is the additional amount calculated every three years by the Commercial Fisheries Entry Commission under 20 AAC 05.245(a)(7).

5 AAC 39.110. Crewmember fishing license requirements. (a) Each commercial fisherman who does not hold a valid interim-use or entry permit card issued by the Commercial Fisheries Entry Commission shall obtain a crewmember fishing license before fishing in any waters of Alaska. A crewmember fishing license is not required for the holder of a valid interim-use or entry permit card.

(b) Repealed 8/15/2008.

(c) A crewmember licensee who does not hold a valid CFEC permit may crew in any fishery if he or she is working for the holder of a valid CFEC permit for that fishery who is operating the fishing gear in the manner described in 5 AAC 39.107.

(d) A valid interim-use or entry permit card holder may crew in any fishery.

(e) In this section, "crew" means the activities of a commercial fisherman as defined in AS 16.05.940(4), who is actively engaged in the operation of fishing gear that is being operated in the manner described in 5 AAC 39.107.

(f) Each holder of a commercial fishing license, as required in AS 16.05.480(a), who is 16 years or age or older and participating in a commercial fishery in which crewmember participation is restricted by exclusive or superexclusive area registration requirements shall possess an identification card that has been issued to the commercial fishing license holder by a state or federal agency or other organization specified by the Department of Public Safety that bears a photograph of the commercial fishing license holder.

(g) The department will issue a duplicate crewmember license to a person whose crewmember license has been lost or destroyed and who submits a request for a duplicate crewmember license on a form prescribed by the department along with a \$5 duplicate crewmember license fee.

5 AAC 39.111. Personal identification required. A person who is in possession of a CFEC interim-use or entry permit card shall, upon the request of a buyer of fish or a peace officer of the state, present the personal identification required under AS 16.10.267(a)(2) to establish that the permit card is in the possession of the person to whom the permit card is issued.

5 AAC 39.112. Use of net pens and other holding devices. A net pen or other holding

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device may be used to hold live salmon or herring before processing only under the conditions specified in a commissioner's permit.

5 AAC 39.115. Designation of salmon net registration area. A person who holds salmon net gear permits for more than one registration area listed in 5 AAC 39.120(d) shall designate upon a form provided by the Commercial Fisheries Entry Commission the single area in which he desires to salmon net fish in that year. The area so designated must be an area for which the person holds a valid salmon net permit.

5 AAC 39.117. Vessel length; bulbous bow. (a) Notwithstanding any other provision in 5 AAC 01 – 5 AAC 39, the addition of a bulbous bow may cause a vessel, other than a vessel engaged in the Bering Sea hair crab fishery, to exceed an established vessel overall length limitation. Only that portion of the vessel comprising the bulbous bow may cause the vessel to exceed a vessel overall length limitation.

(b) For the purposes of this section, "bulbous bow" means a bulbous extension of the bow, below or predominately below the water line of a vessel, that is designed to increase stability or fuel efficiency and does not contain storage space or equipment that can be accessed from within the vessel.

5 AAC 39.119. Vessel identification. (a) Unless otherwise specified, a commercial fishing vessel required to be licensed under AS 16.05.490 must display its permanent vessel license plate number

(1) in permanent symbols at least 12 inches high and with lines at least one inch wide that contrast with the background;

(2) on both sides of the hull, cabin, or mast;

(3) in a manner such as to be plainly visible and unobscured; and

(4) at all times when registered to fish.

(b) Repealed 10/1/98.

(c) The following vessels are exempt from the requirements of this section:

(1) those exempt from licensing under AS 16.05.495;

(2) seine skiffs operating with a seine vessel.

5 AAC 39.120. Registration of commercial fishing vessels. (a) A person who owns a commercial fishing vessel or that person's authorized agent shall register that vessel by completing a vessel license application or renewal form and submitting it to the Commercial Fisheries Entry Commission, unless the vessel is not required to be licensed under AS 16.05.495. Vessel registration is required before fishing or transporting unprocessed fish in any waters of Alaska. A vessel, if it is in compliance with all regulations governing registration and if it displays a license issued under AS 16.05.530, unless the vessel is not required to be licensed under AS 16.05.495, is considered to be registered under the laws of the state and may take or transport unprocessed fish. It is unlawful to take, attempt to take or possess unprocessed fish aboard a vessel in the waters of Alaska unless the vessel is registered under the laws of the state. For purposes of this subsection

(1) "employ", as used in AS 16.05.475, means taking or attempting to take fish, or transporting fish which have been taken or any operation of a vessel aiding or assisting in the taking or transporting of unprocessed fish;

(2) "in compliance with all regulations governing registration" includes vessel

registration required by 5 AAC 28.020, 5 AAC 31.020, 5 AAC 31.030, 5 AAC 32.020, 5 AAC 32.030, 5 AAC 34.020, 5 AAC 34.030, 5 AAC 35.020, 5 AAC 35.030, 5 AAC 38.020 and 5 AAC 38.030, and includes district or subdistrict registration requirements of 5 AAC 03 – 5 AAC 38, and includes the provisions of this section;

(3) "registered under the laws of the state" means that a vessel displays a license described in 20 AAC 05.1958 and issued under AS 16.05.530, unless the vessel is not required to be licensed under AS 16.05.495, and that the registration provisions of 5 AAC 03 – 5 AAC 39 have been complied with and evidence of compliance is immediately available at all times during fishing or transporting operations, and can be shown upon request to an authorized representative of the department.

(b) Area registration requirements for shellfish vessels are as specified in the registration regulations in 5 AAC 31 – 5 AAC 38.

(c) Area registration requirements for salmon net fishing vessels are as follows:

(1) a person who owns a fishing vessel to be used to take salmon with net gear, or his authorized agent, shall register for an area by designating on the vessel license application or renewal form the vessel's one area of intended salmon net gear operation for the year; it is unlawful for a vessel to engage in salmon net fishing in an area other than the single area selected;

(2) in this section the term "area" means any registration area listed in (d) of this section, except that

(A) in salmon net Registration Area T, a vessel must also be registered by the department for a fishing district as required by 5 AAC 06.370;

(B) in salmon net Registration Area Y, a vessel must also be registered by the department for a fishing district as required by 5 AAC 05.370;

(C) a purse seine vessel registered for salmon net Registration Area M is also registered to operate purse seine gear in Registration Area F during the same registration year;

(3) a vessel registered for an area of salmon net fishing in compliance with (c)(1) of this section will be issued, by the Commercial Fisheries Entry Commission, a vessel license area tab for that year; it is unlawful for a vessel to fish in the area of registration unless the vessel displays the area tab on the vessel license number plate; no vessel owner or operator may possess for each vessel, or no vessel may display, more than one vessel license area tab;

(4) a person who owns a fishing vessel registered for an area of intended operation in compliance with (c)(1) of this section or his authorized agent may register it for a different salmon net registration area under the following conditions:

(A) the reregistration of a salmon net fishing vessel shall be authorized by the

(i) commissioner upon receipt of proof in writing that the vessel has been lost through sinking, destruction, or extensive mechanical breakdown, or that the vessel operator has suffered serious injury, sickness or death during the open season; or

(ii) Commercial Fisheries Entry Commission upon receipt of a written certification or personal affidavit stating that the vessel has not been used for salmon net

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fishing in the original area of registration during the current registration year;

(B) a person authorized to reregister a vessel must complete a reregistration form issued by the Commercial Fisheries Entry Commission and submit it to the commissioner together with any previously issued vessel license area tab;

(C) it is unlawful for a vessel to fish in the area of reregistration unless the vessel displays the appropriate area tab on the vessel license number plate;

(D) area reregistration under this section shall supersede the original area registration as if the original area registration had never been made;

(E) once a vessel has reregistered for another net registration area to replace a lost vessel, that vessel can not transfer back to its original net registration area during that season.

(d) Salmon net gear registration areas are as follows:

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A	Southeastern Alaska Area (5 AAC 33.100)
D	Yakutat Area (5 AAC 30.100)
E	Prince William Sound Area (5 AAC 24.100) and the Yakataga District of the Yakutat Area (5 AAC 30.200(a))
F	Atka–Amlia Islands Area (5 AAC 11.101)
H	Cook Inlet Area (5 AAC 21.100)
K	Kodiak Area (5 AAC 18.100)
L	Chignik Area (5 AAC 15.100)
M	Aleutian Islands and Alaska Peninsula Areas (5 AAC 12.100 and 5 AAC 09.100) and, from August 1 through August 31, the Atka–Amlia Islands Area (5 AAC 11.101) for purse seine gear only
T	Bristol Bay Area (5 AAC 06.100) and January 1 through December 31, the Cinder River and Inner Port Heiden Sections of the Alaska Peninsula Area and August 1 through December 31, that portion of the Ilnik Section within Ilnik Lagoon and all waters inside the Seal Islands of the Alaska Peninsula Area (5 AAC 09.200(a)(1) – (3))
W	Kuskokwim Area (5 AAC 07.100)
X	Arctic–Kotzebue Area (5 AAC 03.100)
Y	Yukon Area (5 AAC 05.100)
Z	Norton Sound–Port Clarence Area (5 AAC 04.100)

(e) Evidence of proper registration or licensing must be kept immediately available at all times during fishing operations and must be shown upon request to any peace officer of the state.

(f) The provisions of this section do not apply to halibut fishing.

5 AAC 39.123. Late registration. (a) To qualify for an extension of a registration or permit deadline set out in 5 AAC 01 – 5 AAC 39, a person must show that the person had demonstrated an intent to harvest fish before the deadline. An "intent to harvest fish" may be demonstrated by

- (1) renewing or applying for, before the deadline, a CFEC permit which is effective in the fishery and area for which extension is being requested;
- (2) participation during the previous season in the fishery in the requested area, unless entry into the fishery is limited and the person did not own a permit for that season;
- (3) purchasing or showing intent to purchase a vessel, permit, or fishing gear for the fishery before the deadline;
- (4) showing intent to start, starting, or completion of vessel or gear repair or maintenance for the fishery before the deadline; or
- (5) any other written documentation, such as loan applications, agreements with fish buyers, license applications, or other writings, which indicate the necessary intent to participate in the fishery before the deadline.

(b) In addition to (a) of this section, a person must demonstrate that failure to apply before the deadline was a result of excusable neglect. "Excusable neglect" may be demonstrated by

- (1) loss of registration or permit form in the mail, or other documentation which may demonstrate excusable carelessness or inattention on the part of authorized agents or other third parties;
- (2) receipt of incorrect information from a department official, which is substantiated by the appropriate official;
- (3) illness or injury of the individual or a member of his family that was serious enough to prevent him from meeting the deadline;
- (4) required government or military service; or
- (5) written documentation that will substantiate other unavoidable circumstances that prevented meeting the deadline.

5 AAC 39.128. Reporting requirements for unlicensed commercial fishing vessels in the waters of Alaska. (a) Before entering the waters of Alaska,

(1) an operator of an unlicensed commercial fishing vessel shall report by telephone, and shall leave a recorded report at a telephone number designated by the department for that purpose, or shall report by other means specified by the department. A report under this section must

- (A) identify the vessel and vessel operator;
- (B) certify that no unprocessed fish are on board the vessel;
- (C) include the destination, travel route, and dates of transit; and
- (D) include the quantity, species, and the location from which the fish were taken if any processed fish are on board the vessel.

(b) The commissioner may, upon request by a local representative of the department, waive all or part of the requirements of this section if the commissioner determines that compliance with this section is not necessary for conservation, management, or enforcement

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in a designated geographical area.

(c) For the purposes of this section,

(1) "commercial fishing vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for or equipped to be used for

- (A) commercial fishing;
- (B) fish processing;
- (C) fish transport; or
- (D) fish storage, including temporary storage;

(2) "unlicensed" means not licensed under AS 16.05.490 – 16.05.530.

Editor's note: For the purposes of 5 AAC 39.128, the designated phone number to report to the department is (907) 247-2334. Before Register 183, October 2007, the substance of 5 AAC 39.128 appeared in 5 AAC 39.130(k).

5 AAC 39.130. Reports required of fishermen, processors, buyers, exporters, and operators of certain commercial fishing vessels; transporting requirements. (a) 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

(1) furnish to the department each calendar year before operating, a completed Intent to Operate Application on a form, provided by the department; a individual, company, firm, or other organization described in this subsection may begin to operate only after receiving 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

(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) A catcher-seller must complete a registration form provided by the department each calendar year and may begin to operate only after receiving 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) National Marine Fisheries Service to begin operating an eLandings operation.

(c) 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. 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 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. 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 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 individual or company that is the first purchaser of raw fish, catcher-seller, catcher-exporter, or catcher-processor, the assigned processor code imprinted on the fish ticket from the code plate issued by the department or the electronically captured information from the CFEC permit card, and the signature of the individual or a company representative to whom the code plate is issued or the eLandings system operation is authorized;
- (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;
- (3) the name, or the United States Coast Guard number or Department of Transportation number, of the vessel employed in taking the fish;
- (4) the date fishing gear was deployed and the date of the delivery of the fish;
- (5) the permanent vessel license plate number or, if a fishing operation does not possess a vessel license plate number, the five-digit missing value code number 99999;
- (6) the type of gear by which the fish were taken by gear code number;
- (7) the ADF&G statistical area, district, and subdistrict, and the nearest headland or bay in which the fish were taken;
- (8) information applicable to the following species, and as found on the department's ADF&G _FC 101 form;
 - (A) the number, pounds, delivery condition code, product designation code, overage code, and disposition code of salmon, by species;
 - (B) the pounds, delivery condition code, product designation code, overage code, and disposition code of salmon roe, by species;
 - (C) the number, pounds, delivery condition code, product designation code, overage code, and disposition code of other finfish, by species;
 - (D) the number, pounds, delivery condition code, product designation code, overage code, and disposition code of king, Dungeness, and Tanner crab;
 - (E) the number or pounds, delivery condition code, product designation code, overage code, and disposition code of other shellfish by species;
 - (F) repealed 12/5/2009;
 - (G) the weight modification code number applicable to the eLandings system;
 - (H) the pounds or tons of herring;
 - (I) partial deliveries of groundfish as specified in 5 AAC 28.070(f);

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(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 lost, transferred, or destroyed; if a suspension is granted, the buyer or commercial fisherman must write the permit number on the fish ticket;

(10) the number of fish of any species retained by a commercial fisherman for that person's own use as specified in 5 AAC 39.010;

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

(12) the number of certified onboard observers, if applicable;

(13) the management program code, if using the eLandings system;

(14) the permanent vessel license plate number of the tender vessel or vehicle used to tender fish, if applicable;

(15) use of a dual permit and the second CFEC permit number, if applicable;

(16) any other information that the commissioner 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 commercial fisherman shall furnish to the buyer factual catch data necessary for completion of reports required by the commissioner.

(f) A processor using the eLandings System must electronically submit the initial landing report at the completion of the delivery, and submit to the department the final landing report and the eLandings fish ticket within seven days.

(g) A commercial shellfish fisherman shall submit to the department in writing or electronically through the eLandings System, directly or through the buyer, data necessary for reports required by the commissioner.

(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 System or any other reporting requirements in 50 C.F.R. 679.5 revised as of December 15, 2008. 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.

(i) Notwithstanding (a) of this section, if the commissioner determines it is necessary, the following information regarding the transporting of unprocessed fish must be transmitted to an authorized local representative of the department either verbally, in writing, or by 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 the state;

(2) the numbers or pounds, by species, of all other fish must be reported before

being transported out of the state.

(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 department representative 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.

(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 transports that unprocessed fish or fishery resource out of this state;

(2) "catcher-exporter" means a commercial fisherman who exports or attempts to export out of this state unprocessed 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) "delivery" means offloading fish for sale or for transport to a buyer for later sale;

(7) "eLandings System"

(A) means the electronic and Internet based reporting system developed by the department, the National Marine Fisheries Service, 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

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Internet capability; and

(iii) tLandings, which is thumb drive application for salmon and other tender operations;

(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;

(9) "floating processor" means the operator of a vessel who is the first purchaser of an unprocessed fishery resource from a commercial fisherman who caught the fish and

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

(B) processes that resource or has that resource custom processed;

(10) "independent buyer" means the first purchaser of an unprocessed fishery resource from a commercial fisherman for sale to a shorebased, floating processor, or buyer-exporter;

(11) "shorebased processor" means the first purchaser of unprocessed fishery resource from a commercial fisherman and

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

(B) processes that resource or has that resource custom processed.

Editor's note: The department's hailed weight form (ADF&G_HWT 1) and ADF&G_FC 101 form required in 5 AAC 39.130(c) are available on the department's website at <http://www.cf.adfg.state.ak.us>.

5 AAC 39.132. Annual statistical survey of processor capacity. (a) For fishery management or conservation purposes, or to assist the governor's determination on the issuance of foreign fish processing permits under 5 AAC 39.198, the commissioner or the commissioner's designee may conduct annual statistical surveys of fish buyers and processors intending to purchase and process fish for an upcoming fishing season.

(b) The commissioner, or the commissioner's designee, will determine annually the specific fisheries that require a statistical survey as specified in (a) of this section.

(c) The commissioner, or the commissioner's designee, will select survey participants based on the amount of fish the participants purchased and processed in the subject fishery in prior years. The participant's previous purchasing and processing activity will be assessed from fish ticket records, annual statistical reports required under 5 AAC 39.130(a)(2), and any other pertinent information collected by the department.

(d) The department will provide to selected survey participants written notification of the department's intent to conduct a statistical survey regarding the participant's intent and capacity to purchase and process fish in a fishery during the upcoming fishing season. Within

72 hours of receipt of the written notification of participation, a selected survey participant shall furnish to the department the name, mailing address, facsimile number, and telephone contact number for the person able to accurately provide the information requested on the participant's behalf.

(e) A statistical survey under this section will address the following data:

(1) the maximum amount of fish in pounds or numbers of fish that the participant intends to purchase and process during the upcoming fishing season;

(2) the approximate maximum daily amount of fish in pounds or numbers of fish that the participant intends to purchase and process in the upcoming fishing season;

(3) the approximate number of vessels or fishermen from which the participant intends to purchase and process fish;

(4) the number of tenders and remote fish buying stations that the participant intends to operate during the upcoming fishing season;

(5) the approximate beginning and ending dates for the time period the participant intends to purchase and process fish in the subject fishery;

(6) any anticipated changes in facilities, processes, or operations that would substantially change the intended purchasing and processing capacity in the subject fishery from the participant's operation the previous year; and

(7) any other information the commissioner or commissioner's designee determines to be important for fishery management or conservation purposes or for the governor's determinations regarding foreign fish processing permits.

(f) A buyer or processor selected to participate in the survey shall

(1) submit a complete and accurate response to the department by the return date specified on the survey; and

(2) immediately notify the department of any changes in purchasing and processing capacity plans compared to those previously reported in the survey.

(g) Annual survey responses that identify intended fish purchasing and processing activities are confidential as annual statistical reports under AS 16.05.815(a).

5 AAC 39.135. Requirements for releasing confidential information to third persons.

(a) A person requesting the release of confidential information to a third person regarding the requesting person's fishery landings shall make the request in the form of a limited power of attorney on a request form provided by the department. The department will make the request form available at its local and regional offices and its web site.

(b) The person requesting the release of information under this section shall indicate on the request form the time period that the person authorizes the department to release the information that is not less than 30 days and not more than one year from the date that the person signs the form.

(c) The person requesting the release of information under this section shall complete the request form as prescribed by the department. When submitting the form in person, the person shall produce a government-issued photo identification for inspection by a department employee. If the form is being submitted by mail, the person shall first have the form notarized. If the form is being sent by facsimile, the person shall first have the form notarized, and after facsimile transmission, shall mail the original form to the department

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office that the facsimile was sent. The department will not release information requested under this section until it receives the original, completed request form.

Editor's note: A copy of the release form can be found on the Department of Fish and Game's, Division of Commercial Fisheries, web site at www.cf.adfg.state.ak.us. A list of addresses and telephone and fax numbers for the Department of Fish and Game's local and regional offices can be found on the Division of Commercial Fisheries website at www.cf.adfg.state.ak.us/geninfo/contacts/offices.htm. In addition, copies of the release form, and addresses, and telephone and fax numbers, may be obtained at the Department of Fish and Game, Division of Commercial Fisheries, 1255 W. 8th Street, P.O. Box 25526, Juneau, Alaska 99802-5526: Phone (907) 465-4210.

5 AAC 39.140. Inspection of fishing establishments and vessels. (a) Representatives of the Department of Fish and Game or the Department of Public Safety shall have free and unobstructed access to all fishing vessels, canneries, salteries, and other land-based or floating processing establishments to inspect catch, equipment, gear, and operational compliance with AS 16 and regulations promulgated thereunder.

(b) Upon being approached by a vessel or aircraft under the control of a representative of the Departments of Fish and Game or Public Safety, the operator of a fishing vessel, catcher/processor, or floating processor shall be alert for, and immediately comply with, signals conveying enforcement intent. A vessel operator signaled to stop or heave to for boarding shall

- (1) stop immediately and lay to or maneuver in such a way as to permit the representative and his party to come aboard;
- (2) if requested, provide a safe ladder for the representative and his party;
- (3) when necessary to facilitate the boarding, provide a man rope, safety line and illumination of the ladder;
- (4) take such other actions as necessary to ensure the safety of the representative and party and to facilitate the boarding; and
- (5) make every effort to comply with all lawful orders given by the representative, except that the owner or operator of the vessel is solely responsible for navigation, supervision, and control of the vessel and his decisions shall be final in all matters pertaining to proper navigation and safety of the vessel crew, and fishing gear.

(c) On a vessel which catches and processes crab and is required to carry an observer under 5 AAC 39.645, the vessel operator must separate crab to be retained and, before butchering, must make those crab available to the observer for inspection.

(d) Notwithstanding the requirements of 5 AAC 30.392(c), 5 AAC 30.393, 5 AAC 33.392(d), and 5 AAC 33.393, upon request by a representative of the Department of Fish and Game or a peace officer of the state, a fisherman or processor shall relinquish the tag and head of adipose-fin-clipped salmon, and shall inform the representative or peace officer of the date and location of the catch, if known.

5 AAC 39.141. Onboard observer program. (a) The Board of Fisheries finds that, in particular fisheries, observers on board fishing vessels would greatly enhance management, primarily by facilitating information gathering, and by improving regulatory compliance. Onboard observers may be the only practical fishery monitoring, data-gathering, or enforcement mechanism in some Alaska fisheries where a large component of vessels,

such as catcher/processors and floating processors, rarely or never enter Alaskan ports. The Board of Fisheries, therefore, finds it necessary to authorize the Alaska Department of Fish and Game to implement onboard observer programs in particular fisheries when the board determines that it

- (1) is the only practical data-gathering or enforcement mechanism;
- (2) will not unduly disrupt the fishery; and
- (3) can be conducted at a reasonable cost.

(b) Every onboard observer shall have free and unobstructed access to inspect the catch, equipment, gear, or operations of the fishing vessel or the tender to which the observer is assigned, and to board vessels delivering to the vessel to which the observer is assigned and inspect the catches of vessels delivering to the vessel to which the observer is assigned while the vessel to which the observer is assigned is

- (1) within waters under the jurisdiction of the state;
- (2) taking or intending to take any species of fish; or
- (3) transporting or processing any species of fish.

(c) Onboard observers must be as unintrusive to vessel operations as practicable and must make the scope of their activities as predictable as possible in the performance of their assigned observer duties.

(d) Onboard observers are not required to obtain criminal or administrative search warrants to conduct their duties.

(e) Onboard observers shall carry out such scientific and other duties as deemed necessary or appropriate to manage, protect, maintain, improve, and extend the fish and aquatic plant resources of the state.

(f) Onboard observers shall have free access to all vessel location information at any time, including free and unobstructed access to vessel coordinates and depths for all sampled pots.

(g) Every independent contracting agent, and their office personnel and business agents while employed by the independent contracting agent and for six months after terminating that employment, may not work as an onboard observer.

5 AAC 39.142. Conflict of interest standards for onboard observers and independent contracting agents. (a) A department approved fisheries onboard observer

- (1) must be employed by
 - (A) an independent contracting agent who has been certified by the department; or
 - (B) the department;
- (2) may not have a financial interest in the observed fishery;
- (3) may not have a personal interest in the vessel to which he or she is assigned;
- (4) may not serve as a crew member or processing worker on the vessel to which he or she is assigned;
- (5) may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment promise,

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or in any other form, that is a benefit to the observer's personal or financial interests, under circumstances in which it could be reasonably inferred that the gift is intended to influence the performance of official duties, actions, or judgment;

(6) may not have been convicted of a misdemeanor or felony involving fraud, dishonesty, an "offense against the person" in violation of AS 11.41, arson under AS 11.46.400, or a fish and game misdemeanor or fish and game infraction with a penalty in excess of \$300 for a period of seven years preceding application to the onboard observer program;

(7) may not have a personal or financial interest, other than that of the observer's employee relationship, in the entity that employs the observer;

(8) may not spend more than 90 days on board any one vessel in 12 consecutive months, unless the 90-day limitation is waived by the department for good cause, except that an onboard observer may spend up to 120 days on board any one vessel in 12 consecutive months during a crab fishery that is 75 days or longer in duration;

(9) may be assigned to a vessel only upon approval by the department.

(b) An independent contracting agent who provides onboard observers

(1) may not be an individual, partnership, or corporation with a personal or direct financial interest in the proceeds of any vessel licensed to process or harvest in the affected fishery, other than the provision of observers;

(2) shall assign observers to vessels without regard to requests from vessel owners or operators for a specific individual;

(3) repealed 12/26/97;

(4) may not knowingly or negligently hire as an observer an individual who has a personal or financial interest, other than that of the observer's employee relationship, with the contracting agent;

(5) may not hire an observer on a commission basis;

(6) shall for each observer assignment to a vessel, submit to the department, upon request, a written statement, signed by the contracting agent under oath and subject to applicable criminal penalties, stating that the contracting agent does not have a personal interest and does not have a direct or subsidiary financial interest in the vessel or in fishing activities of the vessel;

(7) shall obtain and submit to the department, upon request, for each observer assignment to a vessel, a written statement, signed by the vessel owner, operator, or owner's agent, under oath and subject to applicable criminal penalties, stating that the vessel owner or operator does not have a personal interest and does not have a direct or subsidiary financial interest in the contracting agent.

(c) In this section

(1) "financial interest" means any source of income to, or a capital investment held by, an individual or the individual's spouse or blood relation up to and including the second degree of kindred;

(2) "personal interest" means an interest held or involvement by an individual, partnership, or corporation, or an individual's immediate family member or parent, including membership in any organization from which, or as a result of which, a person or organization

receives a benefit.

5 AAC 39.143. Onboard observer certification and decertification. (a) To become certified as a crab or scallop onboard observer, a person must first obtain a crab or scallop onboard observer trainee permit and complete the trainee requirements of this section. The department shall issue a crab or scallop onboard observer trainee permit to a person who completes training and orientation specified by the department and who passes, with a score of at least 90 percent, an exam administered by the department.

(b) Before embarking on each observer trip, a crab or scallop observer trainee shall participate in a briefing with the department.

(c) A observer trainee permit expires as follows:

(1) a crab observer trainee permit expires on the earlier of the

(A) 36th day after the crab observer trainee has participated in a briefing for an observer trip if, during this 36-day period, the trainee has not participated in a briefing with the department; or

(B) 180th day after the crab observer trainee permit was issued; however, if a crab trainee observer has been deployed at least once during the first 180 days after the observer permit was issued, the trainee permit may be extended up to 365 days, at the discretion of the department;

(2) a scallop observer trainee permit expires on the earlier of the

(A) 36th day after the scallop observer trainee has participated in a briefing for an observer trip if, during this 36-day period, the trainee has not participated in a debriefing with the department; or

(B) 180th day after the scallop observer trainee permit was issued; however if a scallop trainee observer has been deployed at least once during the first 180 days after the observer permit was issued, the trainee permit may be extended, up to 270 days at the discretion of the department.

(d) The commissioner may revoke a trainee permit for the reasons and under the procedures set out in (j) – (n) of this section. If revocation proceedings are pending on the date the permit would expire under (c)(1) of this section, the permit expires under that paragraph, and all rights under the permit cease. If revocation proceedings are pending on the date the permit would expire under (c)(2) of this section, the permit does not expire on that date, but is suspended until conclusion of the revocation proceedings. The trainee may not act under the permit during the period of suspension. The permit expires at the conclusion of the revocation proceedings unless the department determines that the permit should not be revoked and that the trainee should be certified as an observer under (f) of this section.

(e) A person whose crab or scallop observer trainee permit has expired or has been revoked may not be issued another trainee permit unless that person completes retraining and reorientation specified by the department and repasses, with a score of at least 90 percent, an exam administered by the department.

(f) The department shall certify as a crab or scallop onboard observer a trainee who

(1) has a valid crab or scallop observer trainee permit;

(2) has satisfactorily completed all assigned trainee tasks specified by the

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department in writing, or assigned verbally in person, or during radio, telephone, or other electronic communication transmission while the observer is deployed to a vessel;

(3) has not engaged in behavior described in (j) of this section;

(4) has completed the number of observer trips that the department, in its discretion, determines from debriefing the trainee are necessary to prepare the trainee to perform as a crab or scallop onboard observer; and

(5) is not the subject of revocation proceedings under this section.

(g) A trainee may appeal a denial of certification as a crab or scallop onboard observer to the commissioner. The appeal must be in writing and must be received by the commissioner within 15 days after the denial. The commissioner or the commissioner's designee shall conduct an investigation and review, and may hold a hearing on the matter. If a designee conducts an investigation and review or holds a hearing, the designee shall recommend action to the commissioner. The commissioner shall make a decision within 45 days after receiving an appeal. The commissioner's decision under this section is the final administrative action.

(h) Until the commissioner's decision in an appeal under (g) of this section, the trainee may act under the terms of a valid trainee permit. If, while an appeal under (g) of this section is pending, the permit expires under (c) of this section or is revoked under (d) of this section, all rights under the permit cease.

(i) Onboard observer certification expires as follows:

(1) for a crab observer who has not functioned as a crab onboard observer for 12 consecutive months, the onboard observer certification expires; to become recertified after 12 consecutive months of not functioning as a crab observer, a person must successfully complete all trainee and certification requirements set out in (a), (b), (c), (e), and (f) of this section;

(2) for a scallop observer who has not functioned as a scallop onboard observer for 12 consecutive months, the onboard observer certification expires; to become recertified after 12 consecutive months or more of not functioning as a scallop onboard observer, a person must successfully complete all trainee and certification requirements set out in (a), (b), (c), (e), and (f) of this section.

(j) An onboard observer certification may be revoked for any one of the following reasons:

(1) failure to satisfactorily complete all assigned tasks specified by the department in writing, or assigned verbally in person, or during radio, telephone, or other electronic communication transmission while the observer is deployed to a vessel;

(2) use, possession, or being under the influence of alcohol or an illegal controlled substance on board the assigned vessel, boarding any vessel under the influence of alcohol or an illegal controlled substance, missing an appointment with the department due to alcohol or an illegal controlled substance, or attending an appointment with the department under the influence of alcohol or an illegal controlled substance;

(3) engaging in violent or criminal behavior, including behavior that may endanger a person or property on the assigned vessel or that prevents the observer from performing tasks according to the standards of the onboard observer manual;

(4) soliciting or accepting items or services, other than basic life necessities, from

an operator, owner, or crewmember of a vessel to which the observer is assigned;

(5) failure to report known criminal behavior or cooperate with the investigation or prosecution of criminal behavior arising from fishing operations of the vessel to which the observer is assigned;

(6) engaging in sexual relations with an employee, operator, crewmember, officer, director, agent, owner, or shareholder of the vessel or any entity with ownership of, or management authority over, the vessel to which the observer is assigned while the observer is deployed to a vessel;

(7) repealed 7/21/99;

(8) exhibiting poor judgment or unprofessional behavior that interferes with the observer's ability to perform assigned tasks or results in a breach of confidentiality, lack of observer coverage, or other actions detrimental to the observer program.

(k) A certified onboard observer may be demoted to trainee status for failure to satisfactorily perform assigned tasks specified by the department.

(l) The department shall notify an observer in writing of its intent to revoke a certification or to demote a certified onboard observer to trainee status. Notice may be served by personal delivery or by sending the notice by certified mail, return receipt requested. The department may revoke the certification or may demote a certified onboard observer to trainee status if, within 45 days after serving or sending the notice, the department does not receive a written objection from the observer that specifies the reasons why revocation or demotion should not occur.

(m) If the department receives an objection under (l) or (n) of this section, the commissioner, or the commissioner's designee, shall conduct an investigation and review, and may hold a hearing on the matter. If a designee conducts the investigation and review, or holds a hearing, the designee shall recommend action to the commissioner. Until the commissioner's decision under this subsection, the observer may act under the terms of the certification. If the commissioner determines that one or more of the grounds for revocation of the certification have been met, the commissioner may revoke the certification. If the commissioner determines that one or more of the grounds for demotion have been met, the commissioner may demote the onboard observer to trainee status. The commissioner's determination under this subsection is the final administrative action.

(n) If the commissioner determines that the performance of an onboard observer creates an immediate, substantial threat to the orderly conduct of the fishery or the conservation of fishery resources, the commissioner, upon notice to the observer, without first conducting a hearing, may suspend the certification or may demote the observer to trainee status. If a certification is suspended or if an observer is demoted to trainee status under this subsection, the commissioner shall notify the observer, in writing, and specify the grounds for the immediate suspension or demotion. The observer may submit a written objection to the department's action that specifies the reasons why the certification should not be suspended or why the demotion should not occur. If an objection is not received within 45 days after the date that the notice was mailed or served by personal delivery, the commissioner shall notify the observer that the certification is revoked or that the observer is retained on trainee status, subject to (b) – (h) of this section, as the final administrative determination. Notice under this subsection may be served by personal delivery or certified mail, return receipt requested, to the observer's last known address. If a timely objection is received,

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the provisions of (m) of this section apply. The suspension or demotion terminates, and the observer is returned to certified observer status, if, within 90 days after the department's receipt of an objection, the commissioner

(1) makes the final administrative determination to return the observer to certified observer status;

(2) fails to provide notice of the revocation or demotion under this section; or

(3) fails to make a final determination under (m) of this section that revokes the certification or demotes the observer to trainee status.

(o) Repealed 12/26/97.

(p) In this section,

(1) "briefing" means a meeting between the department and a trainee in which the upcoming observer trip is discussed;

(2) "debriefing" means a meeting between the department and a trainee in which the trainee's last observer trip, and whether the trainee meets the criteria of (f) of this section, are discussed;

(3) "trainee" means a person who holds a crab or scallop onboard observer trainee permit and is a candidate to be a crab or scallop onboard observer.

5 AAC 39.144. Onboard observer independent contracting agent certification and decertification. (a) To become certified or to renew certification as an independent contracting agent authorized to provide onboard observers, an applicant must meet the requirements of this section. The department shall issue or renew an independent contracting agent certificate only after

(1) the applicant has completed a written application on a form provided by the department; in this application the applicant shall

(A) verify that the applicant is familiar with the requirements of 5 AAC 39.141 – 5 AAC 39.143, 5 AAC 39.146, 5 AAC 39.645, 5 AAC 39.646, and this section for onboard observers and contracting agents;

(B) acknowledge that the applicant's certification as an independent contracting agent will be subject to revocation by the commissioner at any time under the procedures set out in (e) – (j) of this section;

(C) designate an agent in this state for service of process;

(D) provide a current mailing address, daytime business phone number, and a contact or message phone number;

(E) provide all other information requested by the department to assist the department in administration, management, or enforcement of its onboard observer program or certification of onboard observer independent contracting agents;

(F) verify that the applicant is not precluded from certification under (i) of this section;

(2) the applicant has completed a written conflict-of-interest statement on a form provided by the department;

(3) the department has reviewed the application and the conflict-of-interest statement submitted under this section and has determined that the application is complete

and that no conflict of interest appears to exist under 5 AAC 39.142;

(4) the department has determined that certification is not precluded under (i) of this section.

(b) An independent contracting agent's certification expires on December 31 of the year it was issued unless a certification renewal application is received by the department before December 31 of that year, or unless the certification has been previously canceled or revoked under this section. The department shall renew a certification if a completed certification renewal application is timely received by the department and no revocation proceedings are pending against the contracting agent on the date the certification would expire or the application is received, and the department has determined that the applicant meets the requirements of this section.

(c) A certified independent contracting agent shall submit a new conflict-of-interest statement to the department

(1) within 30 days after any event that would change any information provided in the contracting agent's most recent conflict-of-interest statement;

(2) when submitting a certification renewal application described in (b) of this section; or

(3) at any time upon request by the department.

(d) The commissioner may revoke an independent contracting agent's certification as provided in (e) – (h) of this section. If revocation proceedings are pending on the date the certification would expire under (b) of this section, and if a certification renewal application has been received by the department, the certification will not expire on that date, but is suspended until the conclusion of the revocation proceedings. If a certification renewal application is received by the department before the contracting agent's certification would expire under (b) of this section and revocation proceedings begin after the certification has been renewed, the contracting agent may continue to operate under its existing certification until the conclusion of the revocation proceedings, unless a suspension has occurred under (g) of this section.

(e) An independent contracting agent's certification may be revoked for any of the following reasons:

(1) violation of conflict-of-interest standards in 5 AAC 39.142(b) by the contracting agent;

(2) failure to require employees to follow conflict-of-interest standards;

(3) a substantial violation of the requirements of 5 AAC 39.141, 5 AAC 39.143, 5 AAC 39.146, 5 AAC 39.645, 5 AAC 39.646, and this section;

(4) any other violation of the requirements of 5 AAC 39.141 – 5 AAC 39.143, 5 AAC 39.146, 5 AAC 39.645, 5 AAC 39.646, and this section that is not described in (1) and (3) that is not cured within a reasonable time specified by the department after the department has notified the contracting agent, in writing, of the violation;

(5) failure to respond, within the time specified by the department, to a request from the department for information, unless within the specified time the contracting agent demonstrates to the department that the request is unreasonable;

(6) failure to maintain an effective means of communication between the

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contracting agent and the department;

(7) failure to report known violations of conflict-of-interest standards or known attempts to violate conflict-of-interest standards;

(8) failure to report known criminal behavior by an observer or criminal behavior arising from fishing operations of the fishing vessel to which the contracting agent has assigned an observer;

(9) failure to cooperate with investigation or prosecution of an observer employed by the contracting agent or a fishing vessel for which the contracting agent has provided an observer.

(f) The commissioner shall notify an independent contracting agent, in writing, of its intent to revoke the contracting agent's certification. Notice under this subsection may be served by personal delivery or by sending the notice by certified mail, return receipt requested, to the contracting agent or to the agent's designee for service of process in this state. The commissioner may revoke the certification without further proceedings if, within 45 days after the date that the notice was mailed or served by personal delivery, the department does not receive a written objection from the contracting agent that specifies the reasons why the revocation should not occur.

(g) If the commissioner determines that the performance of an independent contracting agent creates an immediate, substantial threat to the orderly conduct of the fishery or the conservation of fishery resources, the commissioner, upon notice to the contracting agent, without first conducting a hearing, may suspend the certification. If a certification is suspended under this subsection, the commissioner shall notify the contracting agent in writing and specify the grounds for immediate suspension. The contracting agent may submit a written objection to the department's action that specifies the reasons why the revocation should not occur. If an objection is not received within 45 days after the date that the notice was mailed or served by personal delivery, the commissioner shall notify the contracting agent that the certification is revoked, subject to (a) – (c) and (i) of this section, as the final administrative determination. Notice under this subsection may be served by personal delivery or certified mail, return receipt requested, to the contracting agent or to the agent's designee for service of process in this state. If a timely objection is received, the provisions of (h) of this section apply. The suspension terminates within 90 days after the department's receipt of an objection, if the commissioner

(1) makes the final administrative determination to withdraw the suspension; or

(2) fails to make a final determination under (h) of this section.

(h) If the department receives a timely objection under (f) or (g) of this section, the commissioner, or the commissioner's designee, shall conduct an investigation and review and may hold a hearing on the matter. The contracting agent's certification shall remain in effect during an investigation and review unless it is suspended under (g) of this section. If a designee conducts the investigation and review or holds a hearing, the designee shall recommend action to the commissioner who may then adopt it as the final administrative determination. If the commissioner disagrees with the recommendation, the commissioner may reject the recommendation and review the record or conduct a new hearing to make a final administrative determination. If the commissioner determines that one or more of the grounds for revocation of certification have been met, the commissioner may revoke the certification. The commissioner's determination under this subsection is the final

administrative action.

(i) An independent contracting agent whose certification has been revoked under this section may not apply for a new certification for a period of one year following revocation. If the contracting agent is a partnership or corporation, its partners, shareholders who hold 20 percent or more of the corporation's outstanding stock, officers, directors, any person with management authority over the activity or activities that significantly contributed to the revocation may not apply for a contracting agent certification for a period of one year following revocation.

(j) The department may cancel an independent contracting agent's certification upon the request of the contracting agent. The department, in its discretion, may proceed with revocation proceedings despite a request for cancellation from a contracting agent.

(k) The provisions of (a) – (j) of this section do not apply until April 1, 1998 to an independent contracting agent approved by the department before the effective date of this section.

5 AAC 39.145. Escape mechanism for shellfish and bottomfish pots. Pot gear must include an escape mechanism in accordance with the following provisions:

(1) a sidewall, which may include the tunnel, of all shellfish and bottomfish pots must contain an opening equal to or exceeding 18 inches in length, except that in shrimp pots the opening must be a minimum of six inches in length. The opening must be laced, sewn, or secured together by a single length of untreated, 100 percent cotton twine, no larger than 30 thread. The cotton twine may be knotted at each end only. The opening must be within six inches of the bottom of the pot and must be parallel with it. The cotton twine may not be tied or looped around the web bars. Dungeness crab pots may have the pot lid tie-down straps secured to the pot at one end by a single loop of untreated, 100 percent cotton twine no larger than 60 thread, as a substitute for the above requirement; the pot lid must be secured so that, when the twine degrades, the lid will no longer be securely closed;

(2) all king crab, Tanner crab, shrimp, miscellaneous shellfish and bottomfish pots may, instead of complying with (1) of this section, satisfy the following: a sidewall, which may include the tunnel, must contain an opening at least 18 inches in length, except that shrimp pots must contain an opening at least six inches in length. The opening must be laced, sewn, or secured together by a single length of treated or untreated twine, no larger than 36 thread. A galvanic timed release (GTR) device, designed to release in no more than 30 days in salt water, must be integral to the length of twine so that, when the device releases, the twine will no longer secure or obstruct the opening of the pot. The twine may be knotted only at each end and at the attachment points on the galvanic timed release device. The opening must be within six inches of the bottom of the pot and must be parallel with it. The twine may not be tied or looped around the web bars;

(3) in an area open to commercial, personal use, sport, or subsistence fishing with pot gear, including a pot storage area, a registered commercial fishing vessel or a vessel used for personal use, sport, or subsistence fishing may not have on board the vessel or in the water, in fishing or stored condition, any bottomfish or shellfish pot gear that does not have an opening or rigging as specified in (1) or (2) of this section;

(4) all commercial, subsistence, personal use, and sport shellfish pots constructed with rigid mesh must have at least one opening in a sidewall of the pot which may include the tunnel, except Dungeness crab pots that have a pot lid tie-down that complies with (1)

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of this section; the opening in a king crab or Tanner crab pot must be equal to or exceed a 12-inch by 8-inch rectangle; the opening in a Dungeness crab pot must be equal to or exceed a 10-inch by 6-inch rectangle; the lower long edge of the opening must be parallel to, and within six inches of, the bottom of the pot; the opening in a shrimp pot must be equal to or exceed a four-inch square; the lower edge of the opening must be parallel to, and within six inches of, the bottom of the pot; the opening may be covered with a single panel secured to the pot with no more than four single loops of untreated, 100 percent cotton twine no larger than 30 thread; each single loop of cotton twine may contain only one knot and may not be laced along the opening; the panel must be attached to the pot in a manner that when the cotton twine degrades the panel will drop away from the pot exposing the opening completely.

5 AAC 39.146. Onboard observer briefing and debriefing. (a) An onboard observer shall attend a briefing before deployment on the observer's assigned vessel. An observer shall bring to the observer's briefing all equipment that is specified, in writing, by the department.

(b) An onboard observer shall immediately notify the department of the observer's departure from the assigned vessel. After departure, an observer shall return directly to the department office responsible for management of the fishery that the observer's assigned vessel participated in for a debriefing, unless the observer contacts the department for authorization to do otherwise.

(c) An onboard observer shall be briefed and debriefed only at the department office responsible for management of the fishery that the observer's assigned vessel participates in, unless the department authorizes a different department office. The observer's independent contracting agent shall schedule briefings and debriefings with the department at least 48 hours in advance.

(d) If an onboard observer's vessel returns to the port of briefing for any reason, the observer shall contact the department. The department may schedule a mid-trip debriefing which will allow a preliminary data check and provide the department an opportunity to resolve sampling problems or answer observer questions.

5 AAC 39.150. Explosives, chemicals and poisons unlawful. The use of an explosive, chemical or poison in the taking or killing of fish or shellfish is prohibited, except that chemical baits or lures may be used to attract shellfish.

5 AAC 39.155. Seine drums unlawful. It shall be unlawful to have mounted aboard any seine vessel a seine drum or reel around which a seine can be coiled or rolled.

5 AAC 39.163. Bottom Trawl Fisheries Management Plan. (a) The Board of Fisheries and the Department of Fish and Game are concerned about the bycatch of fish, particularly crab and halibut, by non-pelagic trawl gear used to harvest bottomfish. King and Tanner crab populations in most areas of the state are either depressed or declining and are in need of protection from human-induced mortality if they are to be allowed to rebuild to levels that will allow future harvests. Halibut populations, while high, are fully utilized in directed fisheries, and any additional harvest by nondirected fisheries may increase exploitation rates above those used to maintain a sustained harvest level. There is an indication that non-pelagic trawl gear may, at certain times and in certain locations, inflict unacceptable mortalities on these nondirected species. Since there is not, at this time, enough data available to quantify the effects of non-pelagic trawl fisheries on nondirected species, the board adopts the Bottom Trawl Fisheries Management Plan as a means of ensuring that the data can be obtained.

(b) The Board of Fisheries finds that in fisheries operating non-pelagic trawls, onboard observers provide the only effective means of collecting information essential to managing the resource. These fisheries generally harvest large numbers of prohibited finfish and shellfish that cannot be legally retained. Since a large portion of the prohibited species taken will be killed or seriously damaged in the trawl, avoidance of prohibited species is essential to conservation and wise use of the resource. Without onboard observers, scientifically reliable data on prohibited species catch and related biological information cannot be developed. In the absence of a reliable database, the department cannot effect time and area restrictions or set non-pelagic trawl catch quotas to provide protection for prohibited species.

(c) Based on findings that onboard observers provide the only way to establish reasonable resource protection measures in managing certain non-pelagic trawl fisheries, and consistent with 5 AAC 39.141 and AS 16.05.251(a)(12), a vessel may not operate non-pelagic trawl gear in waters specified in 5 AAC 39.164(a) without an onboard observer present. Because no management alternatives exist, other than disallowing operation of such vessels and gear, all costs associated with the observer are determined to be an attendant fishing-related cost and must therefore be borne by the vessel owner or operator on board whose vessel the observer serves.

(d) When sufficient reliable data has been collected to determine times and locations where non-pelagic trawl gear can be operated without significant detrimental impact on prohibited species, the limitations in this section and 5 AAC 39.164 will be appropriately modified.

5 AAC 39.164. Non-pelagic trawl gear restrictions. (a) Non-pelagic trawl gear may be operated in all waters of Tanner crab Registration Area J (5 AAC 35.500) only if, as may be required under 5 AAC 39.163(c), an onboard observer is present on the vessel when gear is being operated, only under the conditions of a permit issued by the commissioner, and only in locations and during periods not otherwise closed to non-pelagic trawling under (b) or (c) of this section. The permit

(1) must specify the locations and times when non-pelagic trawl gear may be operated;

(2) may restrict the amount of fish and shellfish that may be harvested within a specified location; and

(3) must be obtained in person at a department office located within the statistical area.

(b) Non-pelagic trawl gear may not be operated in waters of Alaska as follows:

(1) in the following waters of king crab Registration Area K (5 AAC 34.400) from January 1 through December 31:

(A) Chirikof Island closure, all waters within three miles of Chirikof Island;

(B) Alitak, Towers, and Geese Islands closure, all waters of Alitak Bay, Olga Bay, Alitak Flats, and Sitkinak Island enclosed by a line from Low Cape (57° N. lat., 154° 31' W. long.), to 57° N. lat., 154° 37.50' W. long., then a line following the three mile contour around Tugidak Island to 56° 28.50' N. lat., 153° 52' W. long., then a straight line to Cape Sitkinak (56° 33.50' N. lat., 153° 52' W. long.), to 56° 37' N. lat., 153° 48.50' W. long., then a line following the three mile contour to 56° 49' N. lat., 153° 38' W. long., then a straight line to the easternmost point of Twoheaded Island (56° 54.50' N. lat., 153° 33' W. long.), to a point on Kodiak Island at 56° 56' N. lat., 153° 36' W. long.;

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(C) Barnabas closure, all waters of Sitkalidak Strait, Kiliuda Bay, and Ugak Bay east of 153° 16' W. long., in Sitkalidak Passage and enclosed by a line from Black Point (56° 59.50' N. lat., 153° 18.50' W. long.) to 56° 57.50' N. lat., 153° 13.50' W. long., then a line along the three mile contour to 57° 20' N. lat., 152° 23' W. long., then a straight line to the southernmost tip of Ugak Island (57° 22' N. lat., 152° 18.50' W. long.), and west of a line from the northernmost tip of Ugak Island (57° 23.50' N. lat., 152° 17.50' W. long.) to Narrow Cape (57° 26' N. lat., 152° 19' W. long.);

(D) Chiniak Bay closure, all waters of Chiniak Bay and Monashka Bay enclosed by a line from Cape Chiniak (57° 37' N. lat., 152° 09' W. long.) to 57° 37' N. lat., 152° 02' W. long., then a line along the three mile contour to 57° 58' N. lat., 152° 17' W. long., then a straight line to East Cape on Spruce Island (57° 55' N. lat., 152° 19.50' W. long.) and east of 152° 30' W. long. in Ouzinkie Narrows;

(E) Marmot Island closure, all waters enclosed by a line from Pillar Cape on Afognak Island (58° 09' N. lat., 152° 06.50' W. long.), to Marmot Cape on Marmot Island (58° 10' N. lat., 151° 52' W. long.) and from Cape St. Hermogenes (58° 15' N. lat., 151° 47.50' W. long.) to 58° 08' N. lat., 151° 47.50' W. long., then a line along the three mile contour to 58° 05' N. lat., 152° 09.50' W. long., to Pillar Cape (58° 09' N. lat., 152° 06.50' W. long.);

(F) West Side closure, all waters of Uyak Bay, Uganik Bay, Viekoda Bay, Kupreanof Strait, Raspberry Strait, Malina Bay, Paramonof Bay, Foul Bay, and Shuyik Strait east of a line from Cape Uyak (57° 38.33' N. lat., 154° 20.33' W. long.) to Cape Ugat (57° 52.33' N. lat., 153° 50.67' W. long.) to Raspberry Cape (58° 03.58' N. lat., 153° 25' W. long.) to Black Cape (58° 24.50' N. lat., 152° 53' W. long.) to Party Cape on Shuyak Island (58° 37.17' N. lat., 152° 34' W. long.), west of 152° 30' W. long. in Shuyak Strait and west of 152° 50' W. long. in Whale Pass and Afognak Strait;

(G) Northeast Afognak closure, all waters east of 152° 30' W. long. in Shuyak Strait and enclosed by a line from Point Banks on Shuyak Island (58° 38' N. lat., 152° 19' W. long.) to 58° 42' N. lat., 152° 19' W. long., then a line following the three mile contour to 58° 08' N. lat., 151° 47.50' W. long., then a straight line to Cape St. Hermogenes on Marmot Island (58° 15' N. lat., 151° 47.50' W. long.) and north of a line from Pillar Cape (58° 09' N. lat., 152° 07' W. long.) to Marmot Cape (58° 10' N. lat., 151° 52' W. long.);

(H) Marmot Bay closure, all waters east of 152° 50' W. long. in Whale Pass and Afognak Strait, west of a line across Ouzinkie Narrows at 152° 30' W. long., and enclosed by a line from Pillar Cape on Afognak Island (58° 09' N. lat., 152° 06.50' W. long.) to 58° 05' N. lat., 152° 09.50' W. long., then a line following the three mile contour to 56° 58' N. lat., 152° 17' W. long., then a straight line to East Cape on Spruce Island (56° 55' N. lat., 152° 19.50' W. long.), including waters of Marmot, Kizhuyak, Kazakof and Izhut Bays;

(I) Cape Chiniak closure, all waters enclosed by a line from Cape Chiniak (57° 37' N. lat., 152° 09' W. long.) to 57° 37' N. lat., 152° 02' W. long., then a line following the three mile contour to 57° 20' N. lat., 152° 23' W. long., then a straight line to the southernmost tip of Ugak Island (57° 22' N. lat., 152° 18.50' W. long.) and east of a line from the northernmost tip of Ugak Island (57° 23.50' N. lat., 152° 17.50' W. long.) to Narrow Cape (57° 26' N. lat., 152° 19' W. long.);

(J) South Sitkalidak Strait closure, all waters enclosed by a line from Black Point (56° 59.50' N. lat., 153° 18.50' W. long.) to 56° 57.50' N. lat., 153° 13.50' W. long., then a line following the three mile contour to 56° 50' N. lat., 153° 37' W. long., then a straight

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line to the easternmost tip of Twoheaded Island (56° 54.50' N. lat., 153° 33' W. long.) to a point on Kodiak Island at 56° 56' N. lat., 153° 36' W. long., and waters west of 153° 16' W. long. in Sitkalidak Passage;

(K) Cape Ikolik closure, all waters enclosed by a line from Cape Ikolik to 57° 17.40' N. lat., 154° 55.60' W. long., then a line following the three mile contour to 57° N. lat., 154° 37.40' W. long., then a straight line to Low Cape (57° N. lat., 154° 31' W. long.);

(L) West Shuyak Island closure, all waters enclosed by a line from Point Banks on Shuyak Island (58° 38' N. lat., 152° 19' W. long., to 58° 42' N. lat., 152° 19' W. long.), then a line following the three mile contour southwest to 58° 30' N. lat., then a straight line east to Shuyak Island;

(M) Alaska Mainland closure, all state waters along the Alaska Peninsula south of the latitude of Cape Douglas (58° 51.10' N. lat.) and east of the longitude of Cape Kilokak (156° 19' W. long.);

(N) East Sitkinak closure, all waters enclosed by a line from Cape Sitkinak (56° 33.50' N. lat., 153° 52' W. long.) to 56° 37' N. lat., 153° 48.50' W. long., then a line following the three mile contour to 56° 28.50' N. lat., 153° 52' W. long., then a straight line to Cape Sitkinak on Sitkinak Island (56° 33.50' N. lat., 153° 52' W. long.);

(2) repealed 7/2/99;

(3) from January 1 through December 31, in waters of the Chignik groundfish registration area described in 5 AAC 28.500, and all waters west of the southernmost tip of Kupreanof Point, which are depicted as Territorial Sea on NOAA Chart #16540, 11th Ed., March 4, 1989 entitled, "Shumagin Island to Sanak Island," hereby adopted by reference, and all waters east of the longitude of Scotch Cap Light and south of Unimak Island and the Alaska Peninsula, which are depicted as Territorial Sea on NOAA Chart #16520, 21st Ed., April 15, 1989, entitled, "Unimak and Akutan Passes and Approaches," hereby adopted by reference, except the waters

(A) in the area enclosed by 55° 14' N. lat., 55° 34' N. lat., 159° 20' W. long., and 160° 04' W. long.;

(B) of Alaska around Sanak and Canton Islands north of 54° 22.80' N. lat. and east of 162° 41.83' W. long.;

(4) in the following waters of king crab Registration Area O (5 AAC 34.600) from January 1 through December 31:

(A) Akutan Bay closure, all waters of Akutan Bay south of a line from Akun Head (54° 18' N. lat., 165° 38' W. long.) to North Head (54° 13.50' N. lat., 165° 56' W. long.), and north of 54° 08' N. lat.;

(B) Unalaska Bay closure, all waters of Unalaska Bay enclosed by a line from Cape Cheerful (54° 01' N. lat., 166° 40' W. long.) to Cape Kalekta (54° 00.50' N. lat., 166° 22.50' W. long.);

(C) Makushin Bay closure, all waters of Makushin Bay enclosed by a line from Cape Kovrizhka (53° 51' N. lat., 167° 09.50' W. long.) to Cape Idak (53° 31.33' N. lat., 167° 48' W. long.) to Konets Head (53° 19' N. lat., 167° 51' W. long.);

(D) Inanudak Bay closure, all waters of Inanudak Bay enclosed by a line from Cape Aslik (53° 25' N. lat., 168° 24.50' W. long.) to Cape Illmalianuk (53° 16.50' N.

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lat., 168° 36' W. long.);

(E) Akun Bay closure, all waters of Akun Bay enclosed by a line from Billings Head (54° 17.50' N. lat., 165° 28.50' W. long.) to 54° 13' N. lat., 165° 24.50' W. long. on the opposite shore;

(F) Beaver Inlet closure, all waters of Beaver Inlet south of a line from Brundage Head (53° 56' N. lat., 166° 12.50' W. long.) to Cape Sedanka (53° 50.50' N. lat., 166° 05.33' W. long.) and north of 53° 42' N. lat.; and

(5) the department shall close, by emergency order, waters of king crab Registration Area T (5 AAC 34.800) in a manner that matches closures of the exclusive economic zone made by the federal government;

(6) the waters of Alaska of the Bering Sea between 162° W. long. to 164° W. long. and 56° N. lat. and 57° N. lat.;

(7) repealed 4/24/2009;

(8) the St. Lawrence Island Habitat Conservation Area as described in 50 C.F.R. Part 679, Table 45, as revised as of October 25, 2008;

(9) the Northern Bering Sea Research Area as described in 50 C.F.R. Part 679, Table 43, as revised as of October 25, 2008;

(10) the Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area as described in 50 C.F.R. Part 679, Table 44, as revised as of August 25, 2008;

(11) the waters of Alaska of the Bering Sea east of 162° W. long.

5 AAC 39.165. Trawl gear unlawful. A person may not use any type of trawl gear for any commercial fishing purposes in the following locations:

(1) waters of Prince William Sound enclosed by a line from Point Whitshed to Point Bentinck, and a line from Cape Hinchinbrook Light at 60° 14.25' N. lat., 146° 38.80' W. long. to Seal Rocks Light at 60° 09.78' N. lat., 146° 50.30' W. long. to Zaikof Point at 60° 18.48' N. lat., 146° 55.10' W. long., and from a point at 60° 11.00' N. lat., 147° 20.00' W. long. on the northwest side of Montague Island, north to a point at 60° 30.00' N. lat., 147° 20.00' W. long., then east to a point at 60° 30.00' N. lat., 147° W. long., then northeast to Knowles Head at 60° 41.00' N. lat., 146° 37.50' W. long.;

(2) the waters east of a line from Porcupine Point at 60° 44.60' N. lat., 146° 42.10' W. long. in Port Fidalgo to the southernmost tip of Bligh Island at 60° 48.30' N. lat., 146° 47.90' W. long. to the northernmost tip of Bligh Island at 60° 52.90' N. lat., 146° 46.00' W. long. to Rocky Point at 60° 57.00' N. lat., 146° 46.20' W. long.;

(3) the state waters of Bristol Bay, described in 5 AAC 06.100.

(4) Karluk River Closure: all waters of Alaska in the Kodiak Area that are approximately three miles on either side of the mouth of the Karluk River bounded on the north by a line from 57° 36.26' N. lat., 154° 23.73' W. long., to a point at the state waters boundary at 57° 38.51' N. lat., 154° 27.92' W. long., and bounded on the south by a line from 57° 32.34' N. lat., 154° 32.15' W. long., to a point at the state waters boundary at 57° 34.84' N. lat., 154° 36.80' W. long.

5 AAC 39.166. Mandatory retention of prohibited salmon species by commercial trawl vessels for counting and sampling. (a) The operator of a vessel taking groundfish with trawl gear in the waters of Alaska in the Bering Sea–Aleutian Islands Area described in

5 AAC 28.600 shall retain, on board the vessel or at the shoreside processing plant, salmon taken as bycatch with the trawl gear. After the salmon bycatch has been counted and sampled by a groundfish observer certified by the National Marine Fisheries Service (NMFS), the vessel operator shall provide for the disposal of the salmon in marine waters in a manner not inconsistent with applicable state or federal statutes and regulations.

(b) The operator of a vessel taking groundfish with trawl gear in federal waters adjacent to the area described in (a) of this section shall comply with (a) of this section if salmon taken as bycatch with the trawl gear are brought into the waters of Alaska.

(c) For the purposes of this section "sample" means to examine a portion of the bycatch, and may include

- (1) noting sex, species, length, and weight;
- (2) taking scale or tissue specimens; and

(3) taking other measurements or specimens considered necessary by either the groundfish observer or a representative of the department.

5 AAC 39.167. Commercial fishing gear prohibited in waters of Alaska surrounding essential fish habitat areas. (a) In the waters of Alaska surrounding essential fish habitat areas, as defined in 50 C.F.R. 679.22, as revised as of August 25, 2008 during state managed fisheries, the following commercial fishing gear is prohibited as follows:

(1) the Aleutian Islands Coral Habitat Protection Area is closed to nonpelagic trawl, scallop dredge, dinglebar troll, pot, and longline gear;

(2) the Aleutian Islands Habitat Conservation Area is closed to nonpelagic trawl gear;

(3) the Bowers Ridge Habitat Conservation Zone is closed to nonpelagic trawl, scallop dredge, and dinglebar troll gear;

(4) the Gulf of Alaska Coral Habitat Protection Areas are closed to nonpelagic trawl, scallop dredge, dinglebar troll, pot, and longline gear;

(5) the Alaska Seamount Habitat Protection Areas are closed to nonpelagic trawl, scallop dredge, dinglebar troll, pot, and longline gear.

5 AAC 39.170. Monofilament purse seine web unlawful. It is unlawful to use single- or multiple-strand monofilament purse seine web. For the purpose of this regulation, "monofilament" means any single filament having more than 50 denier, that is, weighing more than 50 grams per 9,000 meters of filament.

5 AAC 39.175. Use of lights prohibited. It is unlawful to use artificial lights to attract salmon out of closed waters for the purpose of a commercial taking.

5 AAC 39.180. Time limit for preservation of salmon. It is unlawful to preserve for sale as food any salmon, unless it has been canned, salted, iced, frozen, brine chilled, smoked, or dried within 48 hours after being killed.

5 AAC 39.185. Policy on closures due to illegal fishing. (a) Some fisheries have had a documented history of illegal commercial fishing dating back to 1968. Enforcement efforts by the Department of Public Safety have been largely ineffective in controlling this recurring problem on a long-term basis. The Board recognizes the difficulty of enforcement in some areas of the state and although the current regulations are sufficient to protect fish stocks, they may be ineffective due to special enforcement problems.

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(b) In the interest of the conservation of valuable renewable fish resources, the Board of Fisheries directs the commissioner, or his authorized designee, to take the following actions given the specified circumstances. If illegal fishing activities develop to the point that regulations pertaining to protection of fish stocks become ineffective, the commissioner shall consider closing the affected fishery by emergency order for a period of up to one week. When the fishery reopens and illegal fishing continues to be a problem, the appropriate fishery may be closed for an additional period of time. Continued violations may result in additional closures of the fishery.

5 AAC 39.190. Driving salmon prohibited. It is unlawful to drive or attempt to drive salmon from waters closed to salmon fishing.

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.

5 AAC 39.197. Unlawful possession of fish. No person may possess, purchase, sell, barter or transport fish within the state or within water subject to the jurisdiction of the state if that person knows or has reason to know that fish were taken or possessed in contravention of 5 AAC 03 – 5 AAC 39.

5 AAC 39.198. Foreing fish processing permits. (a) Except as provided in this chapter, a foreign fishing vessel is prohibited from engaging in fish processing in the internal waters of Alaska.

(b) A foreign fishing vessel may engage in fish processing in the internal waters of Alaska if

- (1) the foreign nation under which it is flagged will be a party to an agreement or a treaty, as required by 16 U.S.C. 1856(c), and during the time the vessel will engage in the fish processing;
- (2) the owner or operator of the foreign fishing vessel, or a person representing the owner or operator, applies to the governor for, and is granted, a foreign processing permit for the vessel to engage in fish processing in the internal waters of Alaska.

(c) The governor will not grant a permit under (b)(2) of this section if he determines that fish processors in Alaska have adequate capacity, and will use that capacity, to process all of the United States harvested fish from the fishery concerned that are landed in Alaska.

(d) In determining whether or not fish processors in Alaska have adequate capacity, and will use that capacity, to process all of the United States harvested fish from the fishery, the governor will, in his discretion, consider the following factors:

(1) the total allowable catch expected in the fishery;

(2) availability and capability of harvesting vessels in Alaska, seasonal fishing and processing schedules, and marketing and other similar conditions in the fishery concerned and in alternative fisheries;

(3) availability of labor, adequacy and condition of processing machinery, freezers, and cold storage facilities of fish processors in Alaska, and the ability, intent and plans of those processors to process particular species;

(4) economic considerations, including contracts, agreements, and negotiations for the purchase of United States harvested fish by processors in Alaska;

(5) geographical considerations including proximity of harvest areas to the facilities of fish processors in Alaska; and

(6) the extent to which fish processors in Alaska have processed particular species.

(e) An owner or operator of a foreign fishing vessel who submits an application for a permit to engage in fish processing in the internal waters of Alaska must

(1) state the reasons why fish processors in Alaska do not have adequate capacity, or will not use their capacity, to process all of the United States harvested fish from the fishery concerned that are landed;

(2) provide the following information:

(A) vessel description and identification;

(B) names and descriptions of the vessels, if known, from which the applicant will purchase fish;

(C) the species and quantity proposed to be processed and processing methods to be used;

(D) a description of the fishery from which the species will be harvested;

(E) the stage of development of the fishery as established, developing or undeveloped, and a statement of how the proposed operation in the fishery will help to achieve the full potential of the resources and provide benefits including employment, food supply, and revenue;

(F) the dates for which permission is sought;

(G) the specific locations in internal waters proposed for foreign processing;

(H) the qualifying governing international fisheries agreement or treaty, as required by 16 U.S.C. 1856(c);

(I) evidence of compliance with applicable federal and state regulations including state laws and regulations that apply to processing vessels;

(J) proof of financial ability to purchase the expected quantity of fish to be processed, at reasonable market conditions;

(K) the ultimate sales market for the product, and marketing information showing how the operation will benefit development of the United States fishing industry;

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(L) other information on the applicant's vessels, equipment, operations, and experience, reliance on local fishing vessel operations, and ability to benefit the United States fishing industry and residents of Alaska.

(f) In evaluating an application for a foreign processing permit, the governor will consider whether and to what extent the applicant and the applicant's nation have been, are, or will be contributing to the conservation, use, management, development, and enforcement of domestic fisheries programs.

(g) If a permit is granted, the governor will, in his discretion, designate times and areas of operations, species and quantities to be processed and other conditions of operation in order to attain desired benefits to the United States fishing industry.

(h) The governor will, in his discretion, suspend or terminate a permit granted under this section when he determines that processors in Alaska have adequate capacity, and will use that capacity, to process all United States harvested fish from the fishery and that the suspension or termination is necessary to achieve desired benefits to the United States fishing industry.

(i) The governor will, in his discretion, appoint a foreign processing advisory committee to obtain and review information regarding fish processing operations, including capacity determinations, in Alaska.

(j) In this section,

(1) "developed fishery" means a fishery in which United States processing capacity is available and has been used by United States fishermen and processors but not to the full extent of the total allowable catch in the fishery;

(2) "established fishery" means a fishery in which United States processing capacity has been available and has been used by United States fishermen and processors to the full extent of the total allowable catch in the fishery and in which full utilization by United States fishermen and processors is likely to continue;

(3) "fishery" means

(A) a stock or stocks of fish which may be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; or

(B) the commercial taking of these stocks;

(4) "foreign fishing vessel" means a vessel that is documented under the flag of a foreign nation and engages in fish processing;

(5) "internal waters of Alaska" means all waters within the boundaries of the state except those seaward of the baseline from which the territorial sea is measured;

(6) "processing" means the application of preservative methods to the flesh of fish to maintain quality and prevent deterioration, including

(A) storage and transportation of unprocessed fish;

(B) preparation for preservation;

(C) cooking, canning, smoking, salting, drying, freezing, icing, refrigeration, vacuum packing, gas, microwave preservation, and other preservation means;

(7) "total allowable catch" means the quantity of fish in a fishery that may be

harvested without detriment to sustained yield;

(8) "undeveloped fishery" means a fishery in which there has been no United States commercial fishing nor processing of the total allowable catch in the fishery.

Editor's note: Although 5 AAC 39.198 appears in Title 5 of the Alaska Administrative Code, it was amended effective 6/16/82, Register 83, by the governor under the Magnuson Fishery Management and Conservation Act, 16 U.S.C. 1801 et seq., and Article III of the Alaska Constitution. It was amended effective 9/30/84, Register 91, by the commissioner of commerce and economic development under an October 31, 1983 delegation of authority from the governor.

5 AAC 39.200. Application of fishery management plans. (a) The Board of Fisheries has implemented by regulation fishery management plans that provide the Department of Fish and Game with guidelines to be followed when making management decisions regarding the state's subsistence, commercial, sport and personal use fisheries. The primary goal of these management plans is to protect the sustained yield of the state's fishery resources while at the same time providing an equitable distribution of the available harvest between various users. The regulations contained in this section are intended to aid in the achievement of that goal and therefore will apply to all fishery management plans contained in 5 AAC 03 – 5 AAC 39.

(b) In some fishery management plans, the distribution of harvestable fish between various users is determined by the harvest that occurs during a specific time period, at a specific location or by a specific group or groups of users. At times fishermen, due to circumstances that are beyond the control of the department, such as weather or price disputes, will not harvest fish. When this happens in a fishery governed by a management plan, the goals of that plan may not be achieved. Therefore, when a fishery is open to the taking of fish and the group or groups of users whose catch determines the distribution of the harvest as set out in the applicable management plan is not taking the harvestable fish available to them, the department shall manage the fishery as if the available harvest is being taken. When determining the available harvest, the department shall consider the number of fish needed to meet spawning requirements, the number of fish present in the fishery and in spawning areas that are in excess of spawning requirements and the estimated harvesting capacity of the group or groups of users that would normally participate in the fishery.

5 AAC 39.205. Criteria for the allocation of fishery resources among personal use, sport, and commercial fisheries. Before adopting regulations that allocate fish among personal use, sport, and commercial fisheries, the board will, as appropriate to particular allocation decisions, consider factors such as those set out in AS 16.05.251(e).

5 AAC 39.210. Management plan for high impact emerging fisheries. (a) To guide management of high impact emerging commercial fisheries, a plan is needed that ensures resource conservation, minimizes impacts on existing users, and provides orderly development of new fishery resources.

(b) The department may regulate a commercial fishery as a high impact emerging commercial fishery if the commissioner determines that any of the following conditions apply to a species or species group in an area or region:

- (1) harvesting effort has recently increased beyond a low sporadic level;
- (2) interest has been expressed in harvesting the resource by more than a single user group;
- (3) the level of harvest might be approaching a level that might not be sustainable

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on a local or regional level;

(4) the board has not developed comprehensive regulations to address issues of conservation, allocation, and conduct of an orderly fishery.

(c) The commissioner shall notify the board if a determination is made to manage a fishery as a high impact emerging fishery.

(d) The department shall close a high impact emerging commercial fishery once it has been designated as such by the commissioner, and may not reopen the fishery until an interim management plan and associated regulations have been adopted by the commissioner. If an interim management plan and regulations have been adopted, the commissioner may allow the fishery to continue.

(e) The department shall develop an interim management plan for each high impact emerging commercial fishery. An interim management plan shall contain at least the following information:

(1) a review of the history of commercial exploitation of the species in Alaska and other relevant jurisdictions;

(2) a review of the life history of the organism;

(3) identification of specific management goals and objectives;

(4) an evaluation of potential impacts on existing users;

(5) designation and justification of the preferred management measures;

(6) an evaluation of the conservation impacts of the preferred management approach on non-target species and on non-target individuals of the same species;

(7) a plan for determining the productivity of the species and impact of the fishery;

(8) a list of proposed interim regulations;

(9) a cost estimate for plan implementation;

(10) an analysis of customary and traditional subsistence use patterns.

(f) The commissioner may adopt regulations and open the fishery consistent with measures identified in the interim management plan. The regulations will remain in effect until the board adopts regulations under (g) of this section.

(g) Upon completion of an interim plan, the department shall petition the board under 5 AAC 96.625 to consider adoption of the management plan and associated regulations at its next regularly scheduled meeting.

(h) The department may require onboard observers as specified in 5 AAC 39.141 and 5 AAC 39.645 on fishing vessels, catcher/processors, and floating processors that participate in high impact emerging commercial fisheries.

5 AAC 39.212. Forage Fish Management Plan. (a) This management plan governs the commercial harvesting of forage fish species in the waters of Alaska.

(b) The board finds that forage fish perform a critical role in the complex marine ecosystem by providing the transfer of energy from the primary and secondary producers to higher trophic levels. The higher trophic levels include many commercially important fish and shellfish species. Forage fish also serve as important prey species for marine mammals and seabirds.

(c) The board finds that abundant populations of forage fish are necessary to sustain healthy populations of commercially important species of salmon, groundfish, halibut, and shellfish.

(d) Except as otherwise provided in 5 AAC 03 – 5 AAC 39, forage fish may not be commercially taken.

(e) A vessel fishing in a directed groundfish fishery may retain a maximum allowable bycatch of forage fish equal to no more than two percent of the round weight or round weight equivalent of the groundfish on board the vessel.

(f) For the purposes of this section, "forage fish" means the following species of fish:

(1) Family Osmeridae (capelin, eulachon, and other smelts);

(2) Family Myctophidae (lanternfishes);

(3) Family Bathylagidae (deep-sea smelt);

(4) Family Ammodtidea (Pacific sand lance);

(5) Family Trichodontidae (Pacific sandfish);

(6) Family Pholidae (gunnels);

(7) Family Stichaeidae (pricklebacks, warbonnets, eelblennys, cockscombs, and shannys);

(8) Family Gonostomatidae (bristlemouths, lightfishes, and anglemouths);

(9) species of the Order Euphausiacea (krill).

Article 2. Salmon Fishery.

5 AAC 39.220. Policy for the management of mixed stock salmon fisheries. (a) In applying this statewide mixed stock salmon policy for all users, conservation of wild salmon stocks consistent with sustained yield shall be accorded the highest priority. Allocation of salmon resources under this policy will be consistent with the subsistence preference in AS 16.05.258, and the allocation criteria set out in 5 AAC 39.205, 5 AAC 75.017, and 5 AAC 77.007.

(b) In the absence of a regulatory management plan that otherwise allocates or restricts harvest, and when it is necessary to restrict fisheries on stocks where there are known conservation problems, the burden of conservation shall be shared among all fisheries in close proportion to their respective harvest on the stock of concern. The board recognized that precise sharing of conservation among fisheries is dependent on the amount of stock-specific information available.

(c) The board's preference in assigning conservation burdens in mixed stock fisheries is through the application of specific fishery management plans set out in the regulations. A management plan incorporates conservation burden and allocation of harvest opportunity.

(d) Most wild Alaska salmon stocks are fully allocated to fisheries capable of harvesting available surpluses. Consequently, the board will restrict new or expanding mixed stock fisheries unless otherwise provided for by management plans or by application of the board's allocation criteria. Natural fluctuations in the abundance of stocks harvested in a fishery will not be the single factor that identifies a fishery as expanding or new.

(e) This policy will be implemented only by the board through regulations adopted (1)

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during its regular meeting cycle, or (2) through procedures established in the Joint Board's Petition Policy (5 AAC 96.625), Subsistence Petition Policy (5 AAC 96.625(f)), Policy for Changing Board Agenda (5 AAC 39.999), or Subsistence Proposal Policy (5 AAC 96.615).

5 AAC 39.222. Policy for the management of sustainable salmon fisheries. (a) The Board of Fisheries (board) and Department of Fish and Game (department) recognize that

(1) while, in the aggregate, Alaska's salmon fisheries are healthy and sustainable largely because of abundant pristine habitat and the application of sound, precautionary, conservation management practices, there is a need for a comprehensive policy for the regulation and management of sustainable salmon fisheries;

(2) in formulating fishery management plans designed to achieve maximum or optimum salmon production, the board and department must consider factors including environmental change, habitat loss or degradation, data uncertainty, limited funding for research and management programs, existing harvest patterns, and new fisheries or expanding fisheries;

(3) to effectively assure sustained yield and habitat protection for wild salmon stocks, fishery management plans and programs require specific guiding principles and criteria, and the framework for their application contained in this policy.

(b) The goal of the policy under this section is to ensure conservation of salmon and salmon's required marine and aquatic habitats, protection of customary and traditional subsistence uses and other uses, and the sustained economic health of Alaska's fishing communities.

(c) Management of salmon fisheries by the state should be based on the following principles and criteria:

(1) wild salmon stocks and the salmon's habitats should be maintained at levels of resource productivity that assure sustained yields as follows:

(A) salmon spawning, rearing, and migratory habitats should be protected as follows:

(i) salmon habitats should not be perturbed beyond natural boundaries of variation;

(ii) scientific assessments of possible adverse ecological effects of proposed habitat alterations and the impacts of the alterations on salmon populations should be conducted before approval of a proposal;

(iii) adverse environmental impacts on wild salmon stocks and the salmon's habitats should be assessed;

(iv) all essential salmon habitat in marine, estuarine, and freshwater ecosystems and access of salmon to these habitats should be protected; essential habitats include spawning and incubation areas, freshwater rearing areas, estuarine and nearshore rearing areas, offshore rearing areas, and migratory pathways;

(v) salmon habitat in fresh water should be protected on a watershed basis, including appropriate management of riparian zones, water quality, and water quantity;

(B) salmon stocks should be protected within spawning, incubating, rearing, and migratory habitats;

(C) degraded salmon productivity resulting from habitat loss should be

assessed, considered, and controlled by affected user groups, regulatory agencies, and boards when making conservation and allocation decisions;

(D) effects and interactions of introduced or enhanced salmon stocks on wild salmon stocks should be assessed; wild salmon stocks and fisheries on those stocks should be protected from adverse impacts from artificial propagation and enhancement efforts;

(E) degraded salmon spawning, incubating, rearing, and migratory habitats should be restored to natural levels of productivity where known and desirable;

(F) ongoing monitoring should be conducted to determine the current status of habitat and the effectiveness of restoration activities;

(G) depleted salmon stocks should be allowed to recover or, where appropriate, should be actively restored; diversity should be maintained to the maximum extent possible, at the genetic, population, species, and ecosystem levels;

(2) salmon fisheries shall be managed to allow escapements within ranges necessary to conserve and sustain potential salmon production and maintain normal ecosystem functioning as follows:

(A) salmon spawning escapements should be assessed both temporally and geographically; escapement monitoring programs should be appropriate to the scale, intensity, and importance of each salmon stock's use;

(B) salmon escapement goals, whether sustainable escapement goals, biological escapement goals, optimal escapement goals, or inriver run goals, should be established in a manner consistent with sustained yield; unless otherwise directed, the department will manage Alaska's salmon fisheries, to the extent possible, for maximum sustained yield;

(C) salmon escapement goal ranges should allow for uncertainty associated with measurement techniques, observed variability in the salmon stock measured, changes in climatic and oceanographic conditions, and varying abundance within related populations of the salmon stock measured;

(D) salmon escapement should be managed in a manner to maintain genetic and phenotypic characteristics of the stock by assuring appropriate geographic and temporal distribution of spawners as well as consideration of size range, sex ratio, and other population attributes;

(E) impacts of fishing, including incidental mortality and other human-induced mortality, should be assessed and considered in harvest management decisions;

(F) salmon escapement and harvest management decisions should be made in a manner that protects non-target salmon stocks or species;

(G) the role of salmon in ecosystem functioning should be evaluated and considered in harvest management decisions and setting of salmon escapement goals;

(H) salmon abundance trends should be monitored and considered in harvest management decisions;

(3) effective management systems should be established and applied to regulate human activities that affect salmon as follows:

(A) salmon management objectives should be appropriate to the scale and intensity of various uses and the biological capacities of target salmon stocks;

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(B) management objectives should be established in harvest management plans, strategies, guiding principles, and policies, such as for mixed stock fishery harvests, fish disease, genetics, and hatchery production, that are subject to periodic review;

(C) when wild salmon stocks are fully allocated, new fisheries or expanding fisheries should be restricted, unless provided for by management plans or by application of the board's allocation criteria;

(D) management agencies should have clear authority in statute and regulation to

(i) control all sources of fishing mortality on salmon;

(ii) protect salmon habitats and control non-fishing sources of mortality;

(E) management programs should be effective in

(i) controlling human-induced sources of fishing mortality and should incorporate procedures to assure effective monitoring, compliance, control, and enforcement;

(ii) protecting salmon habitats and controlling collateral mortality and should incorporate procedures to assure effective monitoring, compliance, control, and enforcement;

(F) fisheries management implementation and outcomes should be consistent with regulations, regulations should be consistent with statutes, and effectively carry out the purpose of this section;

(G) the board will recommend to the commissioner the development of effective joint research, assessment, and management arrangements with appropriate management agencies and bodies for salmon stocks that cross state, federal, or international jurisdictional boundaries; the board will recommend the coordination of appropriate procedures for effective monitoring, compliance, control, and enforcement with those of other agencies, states, or nations;

(H) the board will work, within the limits of its authority, to assure that

(i) management activities are accomplished in a timely and responsive manner to implement objectives, based on the best available scientific information;

(ii) effective mechanisms for the collection and dissemination of information and data necessary to carry out management activities are developed, maintained, and utilized;

(iii) management programs and decision-making procedures are able to clearly distinguish, and effectively deal with, biological and allocation issues;

(I) the board will recommend to the commissioner and legislature that adequate staff and budget for research, management, and enforcement activities be available to fully implement sustainable salmon fisheries principles;

(J) proposals for salmon fisheries development or expansion and artificial propagation and enhancement should include assessments required for sustainable management of existing salmon fisheries and wild salmon stocks;

(K) plans and proposals for development or expansion of salmon fisheries and enhancement programs should effectively document resource assessments, potential impacts, and other information needed to assure sustainable management of wild salmon

stocks;

(L) the board will work with the commissioner and other agencies to develop effective processes for controlling excess fishing capacity;

(M) procedures should be implemented to regularly evaluate the effectiveness of fishery management and habitat protection actions in sustaining salmon populations, fisheries, and habitat, and to resolve associated problems or deficiencies;

(N) conservation and management decisions for salmon fisheries should take into account the best available information on biological, environmental, economic, social, and resource use factors;

(O) research and data collection should be undertaken to improve scientific and technical knowledge of salmon fisheries, including ecosystem interactions, status of salmon populations, and the condition of salmon habitats;

(P) the best available scientific information on the status of salmon populations and the condition of the salmon's habitats should be routinely updated and subject to peer review;

(4) public support and involvement for sustained use and protection of salmon resources should be sought and encouraged as follows:

(A) effective mechanisms for dispute resolution should be developed and used;

(B) pertinent information and decisions should be effectively disseminated to all interested parties in a timely manner;

(C) the board's regulatory management and allocation decisions will be made in an open process with public involvement;

(D) an understanding of the proportion of mortality inflicted on each salmon stock by each user group, should be promoted, and the burden of conservation should be allocated across user groups in a manner consistent with applicable state and federal statutes, including AS 16.05.251(e) and AS 16.05.258; in the absence of a regulatory management plan that otherwise allocates or restricts harvests, and when it is necessary to restrict fisheries on salmon stocks where there are known conservation problems, the burden of conservation shall be shared among all fisheries in close proportion to each fisheries' respective use, consistent with state and federal law;

(E) the board will work with the commissioner and other agencies as necessary to assure that adequately funded public information and education programs provide timely materials on salmon conservation, including habitat requirements, threats to salmon habitat, the value of salmon and habitat to the public and ecosystem (fish and wildlife), natural variability and population dynamics, the status of salmon stocks and fisheries, and the regulatory process;

(5) in the face of uncertainty, salmon stocks, fisheries, artificial propagation, and essential habitats shall be managed conservatively as follows:

(A) a precautionary approach, involving the application of prudent foresight that takes into account the uncertainties in salmon fisheries and habitat management, the biological, social, cultural, and economic risks, and the need to take action with incomplete knowledge, should be applied to the regulation and control of harvest and other human-

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induced sources of salmon mortality; a precautionary approach requires

(i) consideration of the needs of future generations and avoidance of potentially irreversible changes;

(ii) prior identification of undesirable outcomes and of measures that will avoid undesirable outcomes or correct them promptly;

(iii) initiation of any necessary corrective measure without delay and prompt achievement of the measure's purpose, on a time scale not exceeding five years, which is approximately the generation time of most salmon species;

(iv) that where the impact of resource use is uncertain, but likely presents a measurable risk to sustained yield, priority should be given to conserving the productive capacity of the resource;

(v) appropriate placement of the burden of proof, of adherence to the requirements of this subparagraph, on those plans or ongoing activities that pose a risk or hazard to salmon habitat or production;

(B) a precautionary approach should be applied to the regulation of activities that affect essential salmon habitat.

(d) The principles and criteria for sustainable salmon fisheries shall be applied, by the department and the board using the best available information, as follows:

(1) at regular meetings of the board, the department will, to the extent practicable, provide the board with reports on the status of salmon stocks and salmon fisheries under consideration for regulatory changes, which should include

(A) a stock-by-stock assessment of the extent to which the management of salmon stocks and fisheries is consistent with the principles and criteria contained in the policy under this section;

(B) descriptions of habitat status and any habitat concerns;

(C) identification of healthy salmon stocks and sustainable salmon fisheries;

(D) identification of any existing salmon escapement goals, or management actions needed to achieve these goals, that may have allocative consequences such as the

(i) identification of a new fishery or expanding fishery;

(ii) identification of any salmon stocks, or populations within stocks, that present a concern related to yield, management, or conservation; and

(iii) description of management and research options to address salmon stock or habitat concerns;

(2) in response to the department's salmon stock status reports, reports from other resource agencies, and public input, the board will review the management plan, or consider developing a management plan, for each affected salmon fishery or stock; management plans will be based on the principles and criteria contained in this policy and will

(A) contain goals and measurable and implementable objectives that are reviewed on a regular basis and utilize the best available scientific information;

(B) minimize the adverse effects on salmon habitat caused by fishing;

(C) protect, restore, and promote the long-term health and sustainability of

the salmon fishery and habitat;

(D) prevent overfishing; and

(E) provide conservation and management measures that are necessary and appropriate to promote maximum or optimum sustained yield of the fishery resource;

(3) in the course of review of the salmon stock status reports and management plans described in (1) and (2) of this subsection, the board, in consultation with the department, will determine if any new fisheries or expanding fisheries, stock yield concerns, stock management concerns, or stock conservation concerns exist; if so, the board will, as appropriate, amend or develop salmon fishery management plans to address these concerns; the extent of regulatory action, if any, should be commensurate with the level of concerns and range from milder to stronger as concerns range from new and expanding salmon fisheries through yield concerns, management concerns, and conservation concerns;

(4) in association with the appropriate management plan, the department and the board will, as appropriate, collaborate in the development and periodic review of an action plan for any new or expanding salmon fisheries, or stocks of concern; action plans should contain goals, measurable and implementable objectives, and provisions, including

(A) measures required to restore and protect salmon habitat, including necessary coordination with other agencies and organizations;

(B) identification of salmon stock or population rebuilding goals and objectives;

(C) fishery management actions needed to achieve rebuilding goals and objectives, in proportion to each fishery's use of, and hazards posed to, a salmon stock;

(D) descriptions of new or expanding salmon fisheries, management concern, yield concern, or conservation concern; and

(E) performance measures appropriate for monitoring and gauging the effectiveness of the action plan that are derived from the principles and criteria contained in this policy;

(5) each action plan will include a research plan as necessary to provide information to address concerns; research needs and priorities will be evaluated periodically, based on the effectiveness of the monitoring described in (4) of this subsection;

(6) where actions needed to regulate human activities that affect salmon and salmon's habitat that are outside the authority of the department or the board, the department or board shall correspond with the relevant authority, including the governor, relevant boards and commissions, commissioners, and chairs of appropriate legislative committees, to describe the issue and recommend appropriate action.

(e) Nothing in the policy under this section is intended to expand, reduce, or be inconsistent with, the statutory regulatory authority of the board, the department, or other state agencies with regulatory authority that impacts the fishery resources of the state.

(f) In this section, and in implementing this policy,

(1) **“allocation”** means the granting of specific harvest privileges, usually by regulation, among or between various user groups; “allocation” includes quotas, time periods, area restrictions, percentage sharing of stocks, and other management measures providing or limiting harvest opportunity;

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(2) **“allocation criteria”** means the factors set out in AS 16.05.251(e) considered by the board as appropriate to particular allocation decisions under 5 AAC 39.205, 5 AAC 75.017, and 5 AAC 77.007;

(3) **“biological escapement goal”** or **“(BEG)”** means the escapement that provides the greatest potential for maximum sustained yield; BEG will be the primary management objective for the escapement unless an optimal escapement or inriver run goal has been adopted; BEG will be developed from the best available biological information, and should be scientifically defensible on the basis of available biological information; BEG will be determined by the department and will be expressed as a range based on factors such as salmon stock productivity and data uncertainty; the department will seek to maintain evenly distributed salmon escapements within the bounds of a BEG;

(4) **“burden of conservation”** means the restrictions imposed by the board or department upon various users in order to achieve escapement, rebuild, or in some other way conserve a specific salmon stock or group of stocks; this burden, in the absence of a salmon fishery management plan, will be generally applied to users in close proportion to the users' respective harvest of the salmon stock;

(5) **“chronic inability”** means the continuing or anticipated inability to meet escapement thresholds over a four to five year period, which is approximately equivalent to the generation time of most salmon species;

(6) **“conservation concern”** means concern arising from a chronic inability, despite the use of specific management measures, to maintain escapements for a stock above a sustained escapement threshold (SET); a conservation concern is more severe than a management concern;

(7) **“depleted salmon stock”** means a salmon stock for which there is a conservation concern;

(8) **“diversity”** in a biological context, means the range of variation exhibited within any level of organization, such as among genotypes within a salmon population, among populations within a salmon stock, among salmon stocks within a species, among salmon species within a community, or among communities within an ecosystem;

(9) **“enhanced salmon stock”** means a stock of salmon that is undergoing specific manipulation, such as hatchery augmentation or lake fertilization, to enhance its productivity above the level that would naturally occur; “enhanced salmon stock” includes an introduced stock, where no wild salmon stock had occurred before, or a wild salmon stock undergoing manipulation, but does not include a salmon stock undergoing rehabilitation, which is intended to restore a salmon stock’s productivity to a higher natural level;

(10) **“escapement”** means the annual estimated size of the spawning salmon stock; quality of the escapement may be determined not only by numbers of spawners, but also by factors such as sex ratio, age composition, temporal entry into the system, and spatial distribution within the salmon spawning habitat;

(11) **“expanding fishery”** means a salmon fishery in which effective harvesting effort has recently increased significantly beyond historical levels and where the increase has not resulted from natural fluctuations in salmon abundance;

(12) **“expected yields”** mean levels at or near the lower range of recent historic harvests if they are deemed sustainable;

(13) “**genetic**” means those characteristics (genotypic) of an individual or group of salmon that are expressed genetically, such as allele frequencies or other genetic markers;

(14) “**habitat concern**” means the degradation of salmon habitat that results in, or can be anticipated to result in, impacts leading to yield, management, or conservation concerns;

(15) “**harvestable surplus**” means the number of salmon from a stock’s annual run that is surplus to escapement needs and can reasonably be made available for harvest;

(16) “**healthy salmon stock**” means a stock of salmon that has annual runs typically of a size to meet escapement goals and a potential harvestable surplus to support optimum or maximum sustained yield;

(17) “**incidental harvest**” means the harvest of fish, or other species, that is captured in addition to the target species of a fishery;

(18) “**incidental mortality**” means the mortality imposed on a salmon stock outside of directed fishing, and mortality caused by incidental harvests, interaction with fishing gear, habitat degradation, and other human-related activities;

(19) “**inriver run goal**” means a specific management objective for salmon stocks that are subject to harvest upstream of the point where escapement is estimated; the inriver run goal will be set in regulation by the board and is comprised of the SEG, BEG, or OEG, plus specific allocations to inriver fisheries;

(20) “**introduced stock**” means a stock of salmon that has been introduced to an area, or portion of an area, where that stock had not previously occurred; an “introduced stock” includes a salmon stock undergoing continued enhancement, or a salmon stock that is left to sustain itself with no additional manipulation;

(21) “**management concern**” means a concern arising from a chronic inability, despite use of specific management measures, to maintain escapements for a salmon stock within the bounds of the SEG, BEG, OEG, or other specified management objectives for the fishery; a management concern is not as severe as a conservation concern;

(22) “**maximum sustained yield**” or “**(MSY)**” means the greatest average annual yield from a salmon stock; in practice, MSY is achieved when a level of escapement is maintained within a specific range on an annual basis, regardless of annual run strength; the achievement of MSY requires a high degree of management precision and scientific information regarding the relationship between salmon escapement and subsequent return; the concept of MSY should be interpreted in a broad ecosystem context to take into account species interactions, environmental changes, an array of ecosystem goods and services, and scientific uncertainty;

(23) “**mixed stock fishery**” means a fishery that harvests fish from a mixture of stocks;

(24) “**new fishery**” means a fishery that new units of effort or expansion of existing effort toward new species, areas, or time periods, results in harvest patterns substantially different from those in previous years, and the difference is not exclusively the result of natural fluctuations in fish abundance;

(25) “**optimal escapement goal**” or “**(OEG)**” means a specific management objective for salmon escapement that considers biological and allocative factors and may differ from the SEG or BEG; an OEG will be sustainable and may be expressed as a range

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with the lower bound above the level of SET, and will be adopted as a regulation by the board; the department will seek to maintain evenly distributed escapements within the bounds of the OEG;

(26) **“optimum sustained yield”** or **“(OSY)”** means an average annual yield from a salmon stock considered to be optimal in achieving a specific management objective other than maximum yield, such as achievement of a consistent level of sustained yield, protection of a less abundant or less productive salmon stock or species, enhancement of catch per unit effort in sport fishery, facilitation of a non-consumptive use, facilitation of a subsistence use, or achievement of a specific allocation;

(27) **“overfishing”** means a level of fishing on a salmon stock that results in a conservation or management concern;

(28) **“phenotypic characteristics”** means those characteristics of an individual or group of salmon that are expressed physically, such as body size and length at age;

(29) **“rehabilitation”** means efforts applied to a salmon stock to restore it to an otherwise natural level of productivity; “rehabilitation” does not include an enhancement, which is intended to augment production above otherwise natural levels;

(30) **“return”** means the total number of salmon in a stock from a single brood (spawning) year surviving to adulthood; because the ages of adult salmon (except pink salmon) returning to spawn varies, the total return from a brood year will occur over several calendar years; the total return generally includes those mature salmon from a single brood year that are harvested in fisheries plus those that compose the salmon stock’s spawning escapement; “return” does not include a run, which is the number of mature salmon in a stock during a single calendar year;

(31) **“run”** means the total number of salmon in a stock surviving to adulthood and returning to the vicinity of the natal stream in any calendar year, composed of both the harvest of adult salmon plus the escapement; the annual run in any calendar year, except for pink salmon, is composed of several age classes of mature fish from the stock, derived from the spawning of a number of previous brood years;

(32) **“salmon”** means the five wild anadromous semelparous Pacific salmon species *Oncorhynchus sp.*, except steelhead and cutthroat trout, native to Alaska as follows:

(A) chinook or king salmon (*O. tshawytscha*);

(B) sockeye or red salmon (*O. nerka*);

(C) coho or silver salmon (*O. kisutch*);

(D) pink or humpback salmon (*O. gorbuscha*); and

(E) chum or dog salmon (*O. keta*);

(33) **“salmon population”** means a locally interbreeding group of salmon that is distinguished by a distinct combination of genetic, phenotypic, life history, and habitat characteristics, comprised of an entire stock or a component portion of a stock; the smallest uniquely identifiable spawning aggregation of genetically similar salmon used for monitoring purposes;

(34) **“salmon stock”** means a locally interbreeding group of salmon that is distinguished by a distinct combination of genetic, phenotypic, life history, and habitat characteristics or an aggregation of two or more interbreeding groups which occur within

the same geographic area and is managed as a unit;

(35) **“stock of concern”** means a stock of salmon for which there is a yield, management, or conservation concern;

(36) **“sustainable escapement goal”** or **“(SEG)”** means a level of escapement, indicated by an index or an escapement estimate, that is known to provide for sustained yield over a 5 to 10 year period, used in situations where a BEG cannot be estimated or managed for; the SEG is the primary management objective for the escapement, unless an optimal escapement or inriver run goal has been adopted by the board; the SEG will be developed from the best available biological information, and should be scientifically defensible on the basis of that information; the SEG will be determined by the department and will take into account data uncertainty and be stated as either a “SEG range” or “lower bound SEG”; the department will seek to maintain escapements within the bounds of the SEG range or above the level of a lower bound SEG;

(37) **“sustainable salmon fishery”** means a salmon fishery that persists and obtains yields on a continuing basis; characterized by fishing activities and habitat alteration, if any, that do not cause or lead to undesirable changes in biological productivity, biological diversity, or ecosystem structure and function, from one human generation to the next;

(38) **“sustained yield”** means an average annual yield that results from a level of salmon escapement that can be maintained on a continuing basis; a wide range of average annual yield levels is sustainable; a wide range of annual escapement levels can produce sustained yields;

(39) **“sustained escapement threshold”** or **“(SET)”** means a threshold level of escapement, below which the ability of the salmon stock to sustain itself is jeopardized; in practice, SET can be estimated based on lower ranges of historical escapement levels, for which the salmon stock has consistently demonstrated the ability to sustain itself; the SET is lower than the lower bound of the BEG and lower than the lower bound of the SEG; the SET is established by the department in consultation with the board, as needed, for salmon stocks of management or conservation concern;

(40) **“target species”** or **“target salmon stocks”** means the main, or several major, salmon species of interest toward which a fishery directs its harvest;

(41) **“yield”** means the number or weight of salmon harvested in a particular year or season from a stock;

(42) **“yield concern”** means a concern arising from a chronic inability, despite the use of specific management measures, to maintain expected yields, or harvestable surpluses, above a stock’s escapement needs; a yield concern is less severe than a management concern, which is less severe than a conservation concern;

(43) **“wild salmon stock”** means a stock of salmon that originates in a specific location under natural conditions; “wild salmon stock” may include an enhanced or rehabilitated stock if its productivity is augmented by supplemental means, such as lake fertilization or rehabilitative stocking; “wild salmon stock” does not include an introduced stock, except that some introduced salmon stocks may come to be considered “wild” if the stock is self-sustaining for a long period of time;

(44) **“action point”** means a threshold value for some quantitative indicator of stock run strength at which an explicit management action will be taken to achieve an optimal escapement goal.

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5 AAC 39.223. Policy for statewide salmon escapement goals. (a) The Department of Fish and Game (department) and the Board of Fisheries (board) are charged with the duty to conserve and develop Alaska's salmon fisheries on the sustained yield principle. Therefore, the establishment of salmon escapement goals is the responsibility of both the board and the department working collaboratively. The purpose of this policy is to establish the concepts, criteria, and procedures for establishing and modifying salmon escapement goals and to establish a process that facilitates public review of allocative issues associated with escapement goals.

(b) The board recognizes the department's responsibility to

(1) document existing salmon escapement goals for all salmon stocks that are currently managed for an escapement goal;

(2) establish biological escapement goals (BEG) for salmon stocks for which the department can reliably enumerate salmon escapement levels, as well as total annual returns;

(3) establish sustainable escapement goals (SEG) for salmon stocks for which the department can reliably estimate escapement levels when there is not sufficient information to enumerate total annual returns and the range of escapements that are used to develop a BEG;

(4) establish sustained escapement thresholds (SET) as provided in 5 AAC 39.222 (Policy for the Management of Sustainable Salmon Fisheries);

(5) establish escapement goals for aggregates of individual spawning populations with similar productivity and vulnerability to fisheries and for salmon stocks managed as units;

(6) review an existing, or propose a new, BEG, SEG and SET on a schedule that conforms, to the extent practicable, to the board's regular cycle of consideration of area regulatory proposals;

(7) prepare a scientific analysis with supporting data whenever a new BEG, SEG, or SET, or a modification to an existing BEG, SEG, or SET is proposed and, in its discretion, to conduct independent peer reviews of its BEG, SEG, and SET analyses;

(8) notify the public whenever a new BEG, SEG, or SET is established or an existing BEG, SEG, or SET is modified;

(9) whenever allocative impacts arise from any management actions necessary to achieve a new or modified BEG, SEG or SET, report to the board on a schedule that conforms, to the extent practicable, to the board's regular cycle of consideration of area regulatory proposals so that it can address allocation issues.

(c) In recognition of its joint responsibilities, and in consultation with the department, the board will

(1) take regulatory actions as may be necessary to address allocation issues arising from implementation of a new or modified BEG, SEG, and SET;

(2) during its regulatory process, review a BEG, SEG or SET determined by the department and, with the assistance of the department, determine the appropriateness of establishing an optimal escapement goal (OEG); the board will provide an explanation of the reasons for establishing an OEG and provide, to the extent practicable, and with the assistance of the department, an estimate of expected differences in yield of any salmon

stock, relative to maximum sustained yield, resulting from implementation of an OEG.

(d) Unless the context requires otherwise, the terms used in this section have the same meaning given those terms in 5 AAC 39.222(f).

5 AAC 39.230. Gear. Only those gillnets, seines, troll lines, fish wheels, spears or other appliances as provided for in 5 AAC 03 – 5 AAC 39 may be used to take salmon.

5 AAC 39.240. General gear specifications and operations. (a) A salmon fishing vessel shall operate, assist in operating, or have aboard it or any boat towed by it, only one legal limit of salmon fishing gear in the aggregate except as otherwise provided in this title.

(b) Unhung gear sufficient for mending purposes may be carried aboard fishing vessels.

(c) A purse seine, hand purse seine or beach seine may not be fished simultaneously with gillnet gear by any individual or vessel.

(d) Salmon fishing nets must be measured, either wet or dry, by determining the maximum or minimum distance between the first and last hanging of the net when the net is fully extended with traction applied at one end only.

(e) The interim-use or entry permit card holder is responsible for the operation of the net.

5 AAC 39.250. Gillnet specifications and operations. (a) The trailing of gillnet web is prohibited at any time or place where fishing is not permitted.

(b) Set gillnets shall be removed from the water during any closed period.

(c) The gillnet web in a gillnet must contain

(1) at least 30 filaments, each of which must be of equal diameter; or

(2) at least six filaments, each of which must be at least 0.20 millimeter in diameter.

(d) The float line and floats of gillnets must be floating on the surface of the water while the net is fishing, unless natural conditions cause the net to temporarily sink. The restriction of this subsection does not apply in the Arctic–Kotzebue Area (5 AAC 03.100), the Norton Sound–Port Clarence Area (5 AAC 04.100), the Yukon Area (5 AAC 05.100), the Kuskokwim Area (5 AAC 07.100), and the Kodiak Area (5 AAC 18.100).

5 AAC 39.260. Seine specifications and operations. (a) In the use of purse seines and hand purse seines, not more than one anchor may be used to hold the seine, lead and seine boat during a set.

(b) Repealed 3/26/76.

(c) Unless otherwise provided in 5 AAC 03 – 5 AAC 38, a purse seine is considered to have ceased fishing when all the rings are out of the water.

(d) A hand purse seine is considered to have ceased fishing when both ends of the seine are fast to the vessel.

(e) A beach seine is considered to have ceased fishing when all of the lead line is above the water on the beach.

(f) Where the use of leads is permitted, a purse seine vessel may not have or use more than one lead of legal length and depth, without purse rings attached, and with a minimum mesh size of seven inches, except that a lead may have a cork line border strip not to exceed five meshes of less than seven-inch meshes stretch measure and a lead line chafing strip not

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to exceed 25 meshes less than seven-inch stretch measure.

(g) If a purse seine and a lead are operated together

(1) the lead must be attached to the purse seine;

(2) the lead may be attached to only one end of the purse seine;

(3) the lead may not be attached at any other part of the purse seine;

(4) the web of the purse seine must overlap the web of the lead by at least one fathom, or the web of the purse seine must be sewn to the end of the lead for the entire depth of the shallowest net.

(h) One end, and only one end, of a seine lead may be attached to land above the waterline. If the lead is attached to land above the waterline, no other anchor may be used on the lead, purse seine, seine vessel, or skiff. "Anchor" is defined in 5 AAC 39.105(d)(19).

(i) During the operation of a purse seine, the propulsion engines of the seine vessel, or the skiff assisting the operation, must be running and the vessel must be controlling the configuration of the purse seine.

(j) A seine vessel must be attached to one end, and only one end, of a purse seine or lead when it is in operation. Any line used to make the attachment may not be more than 10 fathoms in length.

(k) A purse seine may not be used as a lead for another purse seine.

5 AAC 39.265. Retention of salmon taken in a commercial fishery. (a) The Board of Fisheries recognizes that at times during a commercial salmon season it may be necessary to require retention of all salmon species taken in a commercial net fishery for the purpose of conservation or development of the salmon resource.

(b) In a commercial salmon net fishery, if the commissioner determines that retention of all salmon species is necessary under this section, the commissioner may, by emergency order, close a commercial salmon net fishery and immediately reopen the fishery, during which all salmon species caught must be retained, unless otherwise specified in 5 AAC 01 – 77.

5 AAC 39.280. Identification of stationary fishing gear. (a) The owner or operator of a set gillnet or fish wheel in operation shall place in a conspicuous place on or near the set gillnet or fish wheel the name of the fisherman operating it, together with the fisherman's five-digit CFEC permit serial number. Numbers must be at least six inches in height with lines at least one inch wide and of a color contrasting with the background. The identification name and numbers for fish wheels must be placed on the side of the fish wheel facing midstream of the river.

(b) In addition to the requirements of (a) of this section, the owner or operator of a set gillnet in operation shall have at each end of the set gillnet a red keg, buoy, or cluster of floats, or, in the case of set gillnets anchored to land, shall have a red keg, buoy, or cluster of floats at the outer end of the net. The kegs, buoys, or clusters of floats must be plainly and legibly marked with the fisherman's five-digit CFEC permit serial number. The kegs, buoys, or clusters of floats may bear only a single number - that of the permit holder operating the gear. In the Upper Subdistrict of the Central District of the Cook Inlet Area, the operator of a set gillnet shall attach to the net a trailer buoy that floats at all times.

5 AAC 39.290. Closed waters. (a) Except as otherwise specified in this title, commercial

fishing for salmon is prohibited at all times in the waters of Alaska that are

- (1) within the fresh water of streams and rivers of this state;
- (2) within 500 yards of the fresh water of a stream that is a salmon stream;
- (3) over the beds or channels of fresh water of streams and rivers of this state.

(b) The department may post any closed area designated in (a) of this section by appropriate markers. The department shall place such markers as close as practically possible to the distance or location specified by the applicable regulation or emergency order. However, where markers have been deployed, it is unlawful to take salmon for commercial purposes on the streamward side of the area indicated by the markers and as described in (a) of this section.

(c) Where markers as described above have been lost or destroyed or are not in place, the area closed to commercial salmon fishing is as specified by the applicable regulation or emergency order.

(d) The Ugashik, Yukon and Kuskokwim Rivers, the Yakutat Area and any other river where a legal commercial fishery now exists are the only exceptions to this closure.

(e) The points established for stream mouths listed in the *Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fishes* under 5 AAC 95.011 do not apply to enforcement of this section or other regulations limiting the distance that commercial fishing may occur from the fresh water of a stream that is a salmon stream.

5 AAC 39.291. Boundary markers. The department may post a boundary described in regulation by an appropriate marker. The marker must be placed as close as possible to the location specified in the applicable regulation. Where markers have been lost or destroyed, the boundary is as specified in the applicable regulation.

Article 6. Shellfish Fishery.

5 AAC 39.645. Shellfish onboard observer program. (a) The Board of Fisheries (board) finds that onboard observers provide the only effective means of collecting essential biological and management data from catcher-processor and floating processor vessels that process shellfish, and from an adequate number of catcher vessels that take shellfish in the commercial fisheries described in (d) of this section. These data are necessary to achieve the requirements set out in 16 U.S.C. 1801 – 1883 (Magnuson-Stevens Act) and the federal Fisheries Management Plan for Bering Sea/Aleutian Islands King and Tanner Crab, dated July 18, 1998, including the sustained yield of the shellfish resource without overfishing. The department has traditionally collected essential biological and management data at the point of shoreside landing immediately before processing. The evolution to processing by catcher-processor and floating processor vessels in particular fisheries, and the lack of an adequate number of catcher-processor vessels in particular Bering Sea and Aleutian Islands crab fisheries that are required by this section to have an onboard observer on board the vessel, has seriously eroded the department's ability to adequately monitor harvests, assess the amount and type of bycatch occurring in the fisheries, and collect biological data for inseason management. Onboard observers are the only practical data-gathering mechanism for these fisheries without unduly disrupting the operation of these fisheries.

(b) Further, the board finds that, in particular shellfish fisheries, onboard observers provide the only effective means to enforce regulations that protect the shellfish resource. The board finds that catcher/processor catch statistics have clearly demonstrated that some

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operators of these vessels have routinely failed to comply with king and Tanner crab size limit regulations. Without onboard observer coverage, sublegal and female crab might be taken and processed immediately, making enforcement of size and sex regulations impossible.

(c) The cost of providing these onboard observers for catcher vessels and at-sea processors in the commercial Bering Sea and Aleutian Islands registration areas crab and special permit fisheries, excluding the Norton Sound and Kotzebue Sound Sections, will be borne by the department through the harvest and sale of crab or will be borne directly by the vessel. The costs of the observer requirements for catcher-processor vessels that retain processed crab after the close of a fishery, under 5 AAC 34.031(e)(4) and 5 AAC 35.031(c)(4), shall be borne by the vessel. In those cases, the cost for the department-approved observer shall be borne by the vessel. The department will have full authority and responsibility for deploying onboard observers on any vessel participating in the commercial Bering Sea and Aleutian Islands Area crab fisheries, or any fisheries conducted under a commissioner's permit, as necessary for fishery management and data-gathering needs. No acceptable management alternatives exist other than disallowing operation of a vessel that is required, but refuses to cooperate with an onboard observer program. The onboard observer program set out in this section is compatible with and complementary to the existing observer programs of other agencies.

(d) Based on the findings in (a) – (c) of this section, the department shall institute a mandatory onboard observer program, as follows:

(1) for all vessels that process Tanner crab, red king crab, blue king crab, or golden king crab, a department approved crab fishery onboard observer must be on board the vessel and acting in the capacity of a crab fishery onboard observer for 100 percent of the time that the vessel is acting in the capacity of a catcher-processor or a floating processor;

(2) the department shall require onboard observers for an adequate number of catcher vessels, or during the harvest of a percentage of the total harvest weight of each catcher vessel, participating in the rationalized Bering Sea/Aleutian Islands commercial crab fisheries harvesting IFQ, CDQ, or the Adak community allocation;

(3) the Bering Sea/Aleutian Islands rationalized crab fisheries where IFQ, CDQ, or the Adak community allocation are established include

(A) Registration Area O (Aleutian Islands) golden king crab, Registration Area O red king crab (west of 179° W. long.), Registration Area T (Bristol Bay) red king crab, Registration Area Q (Bering Sea) Pribilof District red and blue king crab, Registration Area Q St. Matthew Island Section of the Northern District blue king crab; and

(B) Registration Area J (Westward), Bering Sea District *C. opilio* (snow crab) and *C. bairdi* Tanner crab, excluding the Norton Sound Section;

(4) to meet catcher vessel observer coverage requirements, a department approved crab fishery onboard observer must be on board the catcher vessel and acting in the capacity of a crab onboard observer in the following registration areas during the following prescribed time periods:

(A) for Registration Area O (Aleutian Islands),

(i) during harvest of 100 percent of the total red king crab weight harvested by each catcher vessel while operating fishing gear west of 179° W. long., during each registration year;

(ii) during harvest of 50 percent of the total golden king crab weight harvested by each catcher vessel while operating fishing gear east of 174° W. long., during each of the three trimesters dated August 15 through November 15, November 16 through February 15, and February 16 through May 15, during each registration year; and

(iii) during harvest of 50 percent of the total golden king crab weight harvested by each catcher vessel while operating fishing gear west of 174° W. long., during each of the three trimesters dated August 15 through November 15, November 16 through February 15, and February 16 through May 15, during each registration year;

(B) for Registration Area Q (Bering Sea),

(i) during harvest of 100 percent of the total red and blue king crab weight harvested by each catcher vessel while operating fishing gear in the Pribilof District, during each registration year; and

(ii) during harvest of 100 percent of the total blue king crab weight harvested by each catcher vessel while operating fishing gear in the St. Matthew Island Section of the Northern District, during each registration year;

(C) for Registration Area T (Bristol Bay), during harvest of 20 percent of the total red king crab weight harvested by each catcher vessel while operating fishing gear, during each registration year, or the department may randomly select 20 percent of the catcher vessels harvesting Bristol Bay red king crab to carry onboard observers for 100 percent of the fishing time of each selected catcher vessel;

(D) for Tanner crab Registration Area J (Westward), Bering Sea District,

(i) during harvest of 30 percent of the total *C. opilio* (snow crab) weight harvested by each catcher vessel while operating fishing gear, during each registration year, or the department may randomly select 30 percent of the catcher vessels harvesting Bering Sea *C. opilio* (snow crab) to carry onboard observers for 100 percent of the fishing time of each selected catcher vessel; and

(ii) during harvest of 30 percent of the total *C. bairdi* Tanner crab weight harvested on each catcher vessel while operating fishing gear during each registration year or during a period when the department randomly selects between 30 percent and 100 percent of the catcher vessels engaged in directed harvest of *C. bairdi* Tanner crab to carry on board observers for 100 percent of the fishing time of each selected catcher vessel, unless a catcher vessel harvests *C. bairdi* Tanner crab as incidental catch during directed fishing for either Bristol Bay red king crab or Bering Sea snow crab, where observer coverage requirements for those directed fisheries would apply to the Tanner crab incidental harvest;

(5) onboard observers are required for the number of catcher vessels that the department determines are adequate to participate in the non-IFQ, non-CDQ, or non-Adak community allocation commercial crab fisheries that take shellfish in the following Bering Sea/Aleutian Islands shellfish fisheries:

(A) Registration Area O (Aleutian Islands), red king crab fishery east of 179° W. long.;

(B) Registration Area J (Eastern Aleutian and Western Aleutian Districts), Tanner crab fishery;

(C) Registration Area J (Westward), hair crab, snails, or other miscellaneous

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shellfish commercial fisheries that require a permit issued by the commissioner under 5 AAC 38.062;

(6) for vessels that take red or blue king crab in the Norton Sound Section of Registration Area Q, the department may require onboard observers on selected vessels;

(7) for vessels that take red or blue king crab in the Kotzebue Sound Section of Registration Area Q, the department may require onboard observers on selected vessels;

(8) the department may waive the onboard observer requirement for a vessel that processes crab at a place where a department sampler is located, if the sampler has reasonable access to the vessel and if the vessel is tied to a dock; all other vessel requirements remain in effect; the department may also waive the onboard observer requirement when an observer is taken ill or is injured while on board the vessel and is unable to function, or when in the judgment of the department the observer is unavailable despite the good faith effort of the vessel operator and for a reason that is beyond the control of the vessel operator; a request for a waiver and all supporting documentation must be submitted in writing;

(9) the department may place a representative of the department on board a processing vessel to perform tank inspections, or to verify the performance of an observer, without waiving the observer requirement.

(e) In addition to the permit requirements in 5 AAC 34.055 and 5 AAC 35.055, the permit for a vessel that processes Tanner crab, red king crab, blue king crab, or golden king crab must require that an observer, approved by the department and provided by the permittee, be briefed by the department for the fishery in which the vessel participates and that the observer be on board the vessel before the vessel obtains a tank inspection, before the vessel takes crab, and before the start of and during all processing operations. For the purposes of 5 AAC 34.055, 5 AAC 35.055, and 5 AAC 39.140, the observer is a representative of the department. All information collected by the observer is confidential property of the department. The department shall develop guidelines for approval of observers, including training requirements, conflict-of-interests standards, data collection schedules and standards, record keeping and reporting requirements, and other criteria needed to ensure accurate and objective reporting.

(f) Based on the findings in this section, it is the board's intent that a credible, fair, and enforceable observer program be implemented before the September 25, 1988 opening of the Bristol Bay red king crab fishery. Information gathered in this observer program is intended to promote both conservation and enforcement.

(g) Repealed 12/26/97.

(h) An employee or crewmember of a commercial crab catcher-processor, crab floating processor, crab catcher vessel, or scallop vessel may not be employed as a shellfish onboard observer for 12 consecutive months after the person's last day of employment on the crab catcher-processor, crab floating processor, crab catcher vessel or scallop vessel.

(i) When a vessel is required to carry an onboard observer, the vessel owner, owner's agent, or operator shall

(1) contract and pay for onboard observers through an independent contracting agent, unless the onboard observer is provided by the department;

(2) provide at least 48 hours advance notice to the contracting agent of an observer's arrival at a department area office for debriefing;

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(3) when carrying an observer trainee and within sufficient time to allow for debriefing before expiration of the trainee permit, ensure that the trainee is returned to the port where the department office responsible for management of the fishery the observer's assigned vessel participates in;

(4) provide adequate food and accommodations for the observer equal to those provided for the vessel's crew;

(5) provide to the observer daily catch information, including areas fished, number and pounds of shellfish landed, number of pots pulled by registration area, and other information specified by the department;

(6) provide a safe work area, necessary gear, opportunity, and sufficient time to allow the observer to adequately sample catch as specified by the department;

(7) ensure that the transfer of an observer between vessels is conducted in a timely manner, under safe conditions, and with the agreement of the observer involved;

(8) assure observer access to single side band (SSB) radio, fax, telex, or telephone so that catch reports from observers are received at the area management office as specified by the department;

(9) notify the observer before shellfish are brought on board to allow sampling, unless the observer specifically requests not to be notified; and

(10) provide proof of compliance with current United States Coast Guard Commercial Fishing Vessel Safety Examination requirements.

(j) An independent contracting agent that provides onboard observers under this section shall

(1) employ observers in compliance with all applicable state and federal laws and provide all necessary administrative and payroll functions for the observer employees;

(2) secure contracts directly with vessel owners and operators;

(3) provide the department with a certification training program plan and the qualifications of instructors for department approval no less than 30 days before implementation;

(4) provide the department with complete and legible transcripts, resumes, and other work history documents to qualify observer candidates no less than 30 days before training;

(5) provide observer training to meet certification requirements contained in 5 AAC 39.143;

(6) coordinate with the department to schedule observer certification examinations and provide observer sampling equipment for use at the examinations;

(7) provide all logistical support for observers, including room and board, travel to and from vessels, travel to and from the department examinations, and briefings and debriefings;

(8) assign observers to vessels without regard to requests from vessel owners and operators for, or for exclusion of, a specific observer; any request for, or for exclusion of, a specific observer shall be reported to the department by the contracting agent;

(9) provide, for each observer deployment, a complete set of all necessary observer

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sampling equipment as specified, in writing, by the department for an observer to complete a trip assignment;

(10) provide the department no less than 48 hours advance notice of an observer's scheduled arrival at the port where the department office responsible for management of the fishery the observer's assigned vessel participates in for briefings and debriefings;

(11) schedule all observer briefing and debriefing appointments directly with the department;

(12) maintain records of observers' scheduled briefing and debriefing dates, and observers' time on board a vessel to ensure compliance with maximum trip limits for trainee observers as specified in 5 AAC 39.143(c), and fully certified observers as specified in 5 AAC 39.142(a)(8);

(13) ensure that no less than 65 percent of observer deployment days per year per contractor are performed by certified observers.

(k) The department may conduct up to four examinations per year. The department shall conduct an examination when at least 10 observer candidates are scheduled to take the examination.

(l) When a vessel is required to carry an onboard observer, an employee, operator, crewmember, officer, director, agent, owner, or shareholder of the vessel or any entity with ownership of, or management authority over, of the assigned vessel may not

(1) impede, or interfere with an observer carrying out observer duties;

(2) interfere with or bias the sampling procedure employed by an observer, including physical or mechanical interference, or sorting or discarding of catch before sampling;

(3) tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer; or

(4) harass an observer by conduct that has sexual connotations, or by conduct that creates an intimidating, hostile, or offensive environment; for the purpose of this paragraph, "harass" means words, conduct, or action that being directed at the observer, annoys, alarms, or causes emotional distress in the observer.

5 AAC 39.646. Shellfish onboard observer trainee program qualifications and requirements. (a) To qualify as a crab or scallop onboard observer trainee, an applicant must have one of the following:

(1) a Bachelor degree in the sciences of biology, any branch of biology, or limnology; or

(2) a valid National Marine Fisheries Service observer certification; or

(3) other fisheries related education or work experience approved by the department.

(b) A crab or scallop onboard observer trainee must

(1) have the ability to use a radio for communications; and

(2) be physically able to carry out the duties of an observer and not be incapacitated by chronic or debilitating seasickness.

(c) Before an applicant may take the certification examination, the applicant must attend a training course approved by the department that provides instruction in the following subject areas:

- (1) identification of the species and sex of all shellfish species commercially fished in waters under the jurisdiction of the state;
- (2) how to accurately read a vernier caliper and properly measure shellfish species, and to use a fixed measuring gauge to determine legal size shellfish;
- (3) organizational structure of the shellfish regulations in this title and ability to reference appropriate regulations as required;
- (4) use of a radio for communications;
- (5) identification of Pacific cod, halibut, sablefish, and other fish species commonly caught as bycatch;
- (6) department sampling procedures;
- (7) performance of observer duties similar to those performed while on board a vessel.

5 AAC 39.670. Bering Sea/Aleutian Islands Individual Fishing Quota (IFQ) Crab Fisheries Management Plan. (a) This management plan applies to the management of the seven crab fisheries rationalized by the National Marine Fisheries Service (NMFS), including the Community Development Quota and the Adak community allocation, with management authority delegated to the Department of Fish and Game as referenced in the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs.

(b) The following fisheries are covered under the management plan in this section:

- (1) Bristol Bay red king crab (BBR);
- (2) Aleutian Islands red king crab (west of 179° W. long.) (WAI);
- (3) Aleutian Islands golden king crab (east of 174° W. long.) (EAG);
- (4) Aleutian Islands golden king crab (west of 174° W. long.) (WAG);
- (5) Saint Matthew Island Section blue king crab (SMB);
- (6) Pribilof District red and blue king crab (PIK);
- (7) Bering Sea snow crab (BSS);
- (8) Bering Sea Tanner crab (east of 166° W. long.) (EBT);
- (9) Bering Sea Tanner crab (west of 166° W. long.) (WBT).

(c) The following provisions apply to the fisheries specified in this section:

(1) a vessel participating in an Individual Fishing Quota (IFQ), Community Development Quota (CDQ), or the Adak community allocation crab fishery must have on board the vessel an activated vessel monitoring system (VMS) approved by NMFS;

(2) a vessel operator who is registered for one of the fisheries listed in (b) of this section may

(A) authorize other vessel operators who are registered for the same fishery to operate crab pot gear registered to that vessel; before a vessel operator may operate crab pot gear registered to another vessel, the registered operator of the pot gear must file a

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cooperative gear authorization form with the department authorizing other vessels to operate the crab pot gear;

(B) transfer gear operation rights and responsibilities to only one other vessel operator who is registered for that fishery and only under the following conditions:

(i) both the operator of the vessel relinquishing gear operation rights and responsibilities (relinquisher) and the vessel operator receiving those rights and responsibilities (recipient) must sign a gear operation transfer form giving the effective date and time of the transfer and the number of pots being transferred;

(ii) the gear operation transfer form must also be signed by a department representative before the pot bear transfer is valid and a copy of the gear operation transfer form bearing the original signatures of both the relinquisher and recipient vessel operator must be received by the department within 30 days of the effective date of the department representative signature; for the purposes of this subparagraph, the form must be submitted in person at the department's Dutch Harbor office, or by mail, or by facsimile;

(iii) the transfer of gear operation rights and responsibilities must occur and be validated within 14 days of the relinquishing vessel being active in the registration area where the pot gear is located;

(iv) the pot gear transfer must include all of the pot gear registered to the relinquishing vessel and that vessel's pot gear may not be split among more than one recipient vessel;

(3) each crab pot deployed must bear the ADF&G number of the vessel that initially registers the crab pot, and if deployed in a fishery with a crab pot limit, each pot must bear a buoy tag registered to the vessel registering that pot; in addition,

(A) an active vessel may collectively operate and transport crab pot gear of another registered and active vessel;

(B) when a vessel transports and deploys crab pot gear to the fishing grounds for another vessel, the vessel registered with the crab pot gear must be active in the registration area where the crab pot gear is deployed within seven days of the initial deployment;

(C) repealed 8/28/2005;

(D) a vessel's crab pot gear may not be deployed unless the vessel is actively participating in harvesting the species in the applicable area;

(E) for the purposes of this paragraph, a vessel is considered active in an area by becoming validly registered with the department and by VMS verification of the vessel in the registration area;

(F) a vessel that has completed fishing operations as specified in 5 AAC 39.675(b)(1) and (2) is not considered active in a registration area;

(4) no provision in this section allows an individual vessel operator to use a greater quantity of crab pot gear than otherwise authorized in the applicable provisions of 5 AAC 34 or 5 AAC 35;

(5) a vessel operator may harvest EBT and BBR, or WBT and BSS, concurrently, as follows:

(A) a vessel operator participating in the BBR fishery may retain EBT as

incidental harvest as specified in 5 AAC 35.506(i)(2);

(B) a vessel operator participating in the BSS fishery may retain WBT as incidental harvest as specified in 5 AAC 35.506(i)(1);

(C) a vessel operator participating in the WBT fishery may retain BSS as incidental harvest as specified in 5 AAC 35.506(j);

(6) a vessel operator may have a species of king or Tanner crab from an IFQ fishery and king crab from an Adak community allocation fishery or a species of king or Tanner crab from a CDQ fishery on board the vessel at the same time; a vessel operator may not have a species of king or Tanner crab from an IFQ fishery and a species of king or Tanner crab from a non-CDQ or non-IFQ fishery on board the vessel at the same time;

(7) an operator of a vessel participating in an IFQ, CDQ, or Adak community allocation crab fishery in the Bering Sea/Aleutian Islands area must notify the United States Coast Guard at least 24 hours before departing port when carrying crab pot gear;

(8) in addition to the registration requirements specified in 5 AAC 34 and 5 AAC 35, a vessel owner, or owner's agent, shall provide satisfactory proof of a current valid United States Coast Guard Commercial Fisheries Vessel Safety Decal before a registration certificate is issued;

(9) the operator of a vessel designated at the time of registration to operate the crab pot gear of another vessel shall be considered the agent of the vessel registered to operate the crab pot gear.

Editor's note: The contact phone number for the United States Coast Guard for Kodiak, Alaska is (907) 654-5588; Unalaska/Dutch Harbor, Alaska is (907) 581-6738; Anchorage, Alaska is (907) 229-8203; and Kenai, Alaska is (907) 398-6220.

The gear operation transfer form specified in 5 AAC 39.670(c)(2) may be sent to the department office in Dutch Harbor at Department of Fish and Game, P.O. Box 920587, Dutch Harbor, AK 99692-0587; Fax: (907) 581-1579.

5 AAC 39.675. Crab pot gear storage for Bering Sea/Aleutian Islands IFQ, CDQ, and Adak community allocation crab fisheries. (a) Notwithstanding any other provision of 5 AAC 34 – 5 AAC 35, king and Tanner crab pots may be stored outside of a designated storage area specified in 5 AAC 34.052 and 5 AAC 35.052 with all bait and bait containers removed and doors secured fully open for up to 14 days following the completion of fishing operations in a registration area. King and Tanner crab pots must be removed from the water or placed in long-term storage if left unattended for 14 days or longer. A vessel's registration is invalid after 14 days of inactivity in a registration area.

(b) For the purposes of this section, a vessel is considered to have completed fishing operations if the

(1) vessel operator contacts the department in Dutch Harbor to invalidate the vessel registration for that species and registration area within 72 hours of operating the last pot gear in the registration area;

(2) pot gear belonging to that vessel is removed from the water, placed into long-term storage, or is transferred to a recipient vessel as specified in 5 AAC 39.670(c)(2).

5 AAC 39.685. Operation of other gear for Bering Sea/Aleutian Islands IFQ crab fisheries. Persons and vessels participating in the Bering Sea/Aleutian Islands IFQ crab

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fisheries are exempt from the requirements specified in 5 AAC 34.053(1), 5 AAC 35.053(1), and 5 AAC 34.628.

5 AAC 39.690. Bering Sea/Aleutian Islands King and Tanner Crab Community Development Quota (CDQ) Fisheries Management Plan. (a) Male red, blue, and golden king crab and male Tanner crab may be taken in a Bering Sea/Aleutian Islands CDQ fishery only under the conditions of a permit issued by the commissioner. In Registration Area O, west of 174° W. long., male golden king crab may only be taken under the conditions of a permit issued by the commissioner for the community of Adak. The community of Adak golden king crab allocation will be managed under the CDQ regulations specified in this section. Female crab of these species may not be taken.

(b) In the Bering Sea/Aleutian Islands CDQ fishery,

(1) male golden king crab may only be taken in Registration Area O as described in 5 AAC 34.600 and male red king crab may only be taken in that portion of Registration Area O west of 179° W. long. as described in 5 AAC 34.600;

(2) male red king crab may be taken only in Registration Area T as described in 5 AAC 34.800, and male red and blue king crab may be taken in Registration Area Q as described in 5 AAC 34.900; and

(3) male Tanner crab may be taken only in the Bering Sea District of Registration Area J as described in 5 AAC 35.505(e).

(c) Male king crab and male Tanner crab may be taken only with pots.

(d) Unless otherwise specified in a permit issued under (e) of this section, an operator of a vessel fishing CDQ crab allocations shall comply with all regulations in 5 AAC 34, 5 AAC 35, and 5 AAC 39 that are applicable to the area and species of crab being fished.

(e) In the permit required in (a) of this section the commissioner may, as the commissioner determines it necessary for the conservation and management of the resource,

(1) specify the species of king or Tanner crab that may be taken;

(2) specify an area or areas open to CDQ fishing operations;

(3) specify registration requirements;

(4) specify fishing periods;

(5) specify gear requirements, including the numbers of pots;

(6) designate the poundage of the federal CDQ allocation of a species of king or Tanner crab that may be taken by a CDQ group in a registration area or portion of a registration area as follows:

(A) a CDQ fishery allocation is specified in the federal Fishery Management Plan for Bering Sea/Aleutian Islands king and Tanner crab;

(B) in the Norton Sound Section, the department shall calculate a CDQ fishery allocation, in pounds, based on the percentage of the total anticipated harvest for the commercial fishery and the CDQ fishery, combined;

(C) the department shall calculate the poundage of king or Tanner crab, as specified in the federal CDQ allocation determination that may be taken by each CDQ group;

(D) a person operating a vessel in a CDQ fishery may not exceed the CDQ

group allocation specified in this paragraph; a CDQ crab that retains crab in excess of the CDQ group allocation may have quota voluntarily transferred to that CDQ group from another eligible CDQ group with excess quota no later than June 30 of the current allocation year; if a CDQ group is unable to obtain quota for the excess crab, the crab shall be weighed, sold, and reported on an ADF&G fish ticket and all proceeds from the sale of CDQ crab in excess of the group allocation shall be surrendered to the state;

(7) except in the Norton Sound Section, a CDQ fishery for a king or Tanner crab species will open and close concurrent with the IFQ fishery for that species of king or Tanner crab;

(8) require onboard observers during fishing operations;

(9) require the operator of a vessel fishing CDQ crab allocations to notify the department of fishing time, delivery time, and delivery destination;

(10) establish reporting requirements;

(11) require logbooks;

(12) establish times and areas allowed for placement and removal of gear;

(13) establish times, areas, and conditions allowed for storage of gear;

(14) set out other conditions deemed necessary by the commissioner.

(f) A permit issued under (e) of this section will be considered the registration required by 5 AAC 34.020 or 5 AAC 35.020.

(g) Notwithstanding 5 AAC 34.005 and 5 AAC 35.005, participation by a CDQ permit holder in an exclusive or superexclusive king or Tanner crab fishery does not preclude a vessel or permit holder from participation in a CDQ crab fishery.

(h) Notwithstanding 5 AAC 34.005 and 5 AAC 35.005, participation by a CDQ permit holder in a CDQ king or Tanner crab fishery does not preclude a vessel or permit holder from participation in an exclusive or superexclusive crab fishery.

(i) Except in the Norton Sound Section, a vessel participating in a CDQ crab fishery must have on board the vessel an activated vessel monitoring system (VMS) approved by the National Marine Fisheries Service.

Editor's note: Copies of the federal Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crab, dated July 18, 1998 are available at the office of the North Pacific Fisheries Management Council at 605 West Fourth Avenue, Room 306, Anchorage, Alaska 99501-2252.

Article 7. Commercial Freshwater Fishery.

5 AAC 39.734. Identification of gear. All freshwater fishing gear, while in operation, must be plainly and legibly marked with the operator's name and permanent vessel license plate number of the vessel fishing the gear or the fishing permit number assigned by the department.

5 AAC 39.780. Permit required. (a) Whitefish, sheefish, char, trout, pike, burbot and lamprey in fresh and salt water may be taken or purchased under the authority of a permit issued by the commissioner or the commissioner's designee. Smelt may only be taken by, or purchased from, a person who meets the requirements of AS 16.05.660 and only under the authority of a permit issued by the commissioner or the commissioner's designee.

(b) The permit may be issued to either the fisherman or the buyer.

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(c) These species, when taken incidentally in conjunction with commercial salmon fishing, are legally taken and possessed without a permit, unless otherwise provided in this title.

(d) The following stipulations apply to both the permit holder or buyer and to fishermen selling their catch to the buyer:

(1) the time and area of fishing and type and amount of fishing gear may be designated;

(2) the species to be harvested may be designated and the number of fish may be limited.

Article 9. Definitions; Miscellaneous.

5 AAC 39.975. Definitions. In 5 AAC 01 – 5 AAC 39,

(1) **"alien"** means a person who is not a citizen of the United States, and who does not have a petition for naturalization pending before the district court;

(2) **"bag limit"** means the maximum legal take per person per day, even if part or all of the fish are preserved;

(3) **"buyer"** means a person who purchases fish from the fishermen who caught the fish or who, for commercial purposes, processes fish he has caught himself;

(4) **"depth of net"** means the perpendicular distance between cork line and lead line expressed as either linear units of measure or as a number of meshes, including all of the web of which the net is composed;

(5) repealed 2/18/73;

(6) **"gear"** means any type of fishing apparatus;

(7) **"inclusive season dates"** means whenever the doing of an act between certain dates or from one date to another is allowed or prohibited, the period of time thereby indicated includes both dates specified; the first date specified designates the first day of the period, and the second date specified designates the last day of the period;

(8) **"legal limit of fishing gear"** means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of boats in any particular regulatory area, district or section;

(9) **"local representative of the department"** means the nearest, most accessible professional employee of the department, a person designated by the commissioner or by a professional employee of the department to perform a specific function for the department and a law enforcement officer of the Department of Public Safety;

(10) **"salmon stream"** means a stream used by salmon, at any stage of life, for spawning, rearing, presence, or migration;

(11) **"stretched measure"** means the average length of any series of 10 consecutive meshes measured from inside the first knot and including the last knot when wet; the 10 meshes, when being measured, shall be an integral part of the net, as hung, and measured perpendicular to the selvages; measurements shall be made by means of a metal tape measure while the 10 meshes being measured are suspended vertically from a single peg or nail, under five-pound weight, except as otherwise provided in this title;

(12) repealed 6/30/79;

(13) "**waters of Alaska**" means the internal waters of the state including rivers, streams, lakes and ponds, the tidal zone of the state from mean higher high water to mean lower low water, and those waters extending three miles seaward of a line (the baseline) between the following points: (A) – (E)

Editor's note: A copy of the point by point definition of the baseline is available at local offices of ADF&G.

(F) and extending three miles seaward of all islands not enclosed by the above line;

(14) "**salmon stream terminus**" means a line drawn between the seaward extremities of the exposed tideland banks of any salmon stream at mean lower low water;

(15) repealed 8/14/70;

(16) "**ton**" means 2,000 pounds avoirdupois weight;

(17) "**king crab**" means any or all of the following species:

(A) *Paralithodes camtschaticus* (red king crab);

(B) *Paralithodes platypus* (blue king crab);

(C) *Lithodes couesi*;

(D) *Lithodes aequispinus* (golden king crab);

(18) "**Tanner crab**" means any or all of the following species:

(A) *Chionoecetes opilio* (snow crab);

(B) *Chionoecetes tanneri* (grooved Tanner crab);

(C) *Chionoecetes bairdi* (Tanner crab);

(D) *Chionoecetes angulatus* (triangle Tanner crab);

(19) "**Dungeness crab**" means the species *Cancer magister*;

(20) "**household**" means a person or persons having the same residence;

(21) "**groundfish**" or "**bottomfish**" means any marine finfish except halibut, osmerids, herring, and salmonids;

(22) "**to operate fishing gear**" means

(A) the deployment of gear or to have gear deployed in the waters of Alaska;

(B) the removal of gear from the waters of Alaska;

(C) the removal of fish or shellfish from the gear during an open season or period; or

(D) possession of a gillnet containing fish during an open fishing period, except that a net which is completely clear of the water is not considered to be operating for the purpose of minimum distance requirements;

(23) "**possession limit**" means the maximum number of fish a person may have in his possession if the fish have not been canned, salted, frozen, smoked, dried or otherwise preserved so as to be fit for human consumption after a 15-day period;

(24) "**hung measure**" means the maximum length of the cork line when measured

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wet or dry with traction applied at one end only;

(25) "**drainage**" means all of the waters comprising a watershed, including tributary rivers, streams, sloughs, ponds and lakes which contribute to the supply of the watershed;

(26) "**fresh water of streams and rivers**" means fresh water separated from salt water at the mouth of streams and rivers by a line drawn between the seaward extremities of the exposed tideland banks at the present stage of the tide;

(27) "**guideline harvest level**" means the preseason estimated level of allowable fish harvest which will not jeopardize the sustained yield of the fish stocks; an area, district, section or portion thereof may close to fishing before or after the guideline harvest level has been reached if principles of management and conservation dictate such action;

(28) "**peace officer of the state**" means a person defined in AS 16.05.150;

(29) "**processing**" means completion of

(A) cooking;

(B) canning;

(C) smoking;

(D) salting, which means uniformly mixing with a minimum salting level of at least 20 percent of the weight of the fish resources;

(E) drying; or

(F) freezing, which means to congeal and solidify the flesh of fish by abstraction of heat;

(30) "**domicile**" means the same as in AS 16.05.940(9); evidence of a person's domicile may include, but is not limited to, the following:

(A) statements made to obtain a license to drive, hunt, fish, or engage in an activity regulated by a government entity;

(B) affidavit of the person, or of other persons who may know of that person's domicile;

(C) place of voter registration;

(D) location of residences owned, rented, or leased;

(E) location of storage of household goods;

(F) location of business owned or operated;

(G) residence of spouse and minor children or dependents;

(H) governments to which taxes are paid;

(I) whether the person has claimed residence in another location for the purpose of obtaining benefits provided by the governments in that location;

(31) "**fishing site**" means a structure or vessel used by a CFEC permit holder for providing shelter in support of the operation of stationary net gear;

(32) "**net gear site**" means the in-water location of stationary net gear;

(33) "**seine vessel**" means the largest vessel, as determined by keel length, used to

operate a seine and the vessel from which the seine is set, and to which the seine is retrieved to;

(34) "**demersal shelf rockfish**" means any or all of the following *Sebastes* species:

- (A) repealed 4/30/91;
- (B) *S. pinniger* (Canary);
- (C) *S. nebulosus* (China);
- (D) *S. caurinus* (Copper);
- (E) *S. maliger* (Quilback);
- (F) repealed 4/30/91;
- (G) *S. helvomaculatus* (Rosethorn);
- (H) repealed 4/30/91;
- (I) *S. nigrocinctus* (Tiger);
- (J) *S. ruberrimus* (Yelloweye);
- (K) repealed 4/4/97;

(35) "**onboard observer**" means a representative of the Departments of Fish and Game or Public Safety who

(A) is certified by the Department of Fish and Game as having completed minimum training requirements;

(B) is living onboard a fishing or processing vessel for all or part of the period the vessel is at sea; and

(C) is monitoring fishing or processing activities and collecting harvest data essential to management and enforcement;

(36) "**rockfish**" means all species of the genus *Sebastes*;

(37) "**pelagic shelf rockfish**" means any or all of the following *Sebastes* species:

- (A) *S. ciliatus* (Dark);
- (B) *S. entomelas* (Widow);
- (C) *S. flavidus* (Yellowtail);
- (D) *S. melanops* (Black);
- (E) *S. mystinus* (Blue);
- (F) *S. variabilis* (Dusky);

(38) "**slope rockfish**" means any species of the genus *Sebastes* not specified as either demersal shelf rockfish or pelagic shelf rockfish;

(39) "**thornyhead rockfish**" or "**idiot rockfish**" means all species of the genus *Sebastolobus*;

(40) "**weathervane scallop**" means the species *Patinopecten caurinus*;

(41) "**mile**" means

- (A) a nautical mile when used in reference to marine waters;

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(B) a statute mile when used in reference to fresh water;

(42) "**miscellaneous shellfish**" means all shellfish and marine invertebrates, except shrimp, and king, Tanner, and Dungeness crab;

(43) "**total allowable catch**" or "**TAC**" means the annual harvest quota or the retainable catch allowed for a species or species group;

(44) "**individual fishing quota**" or "**IFQ**" means the annual allocation of pounds for harvest that represents a quota share holder's percentage of the total allowable catch;

(45) "**handicraft**" means a finished product in which the shape or appearance of the natural material has been substantially changed by skillful use of the hands, such as by sewing, carving, etching, scrimshawing, painting, or other means, and which has substantially greater monetary and aesthetic value than the unaltered natural material alone.

5 AAC 39.995. Water depth. Unless otherwise specified, water depths in 5 AAC 01 – 5 AAC 39 are to be measured from mean lower low water.

5 AAC 39.997. Abbreviations and symbols. (a) The abbreviations a.m. and p.m. indicate antemeridian and postmeridian respectively for either Standard Time or Daylight Saving Time in conformance with the official time in use for Alaska.

(b) The symbols °, ', ", indicate degrees, minutes, and seconds, respectively, of longitude or latitude, based upon the North American datum of 1983.

(c) Lat. and long. indicate latitude and longitude, respectively.

(d) E. indicates east, N. indicates north, W. indicates west, and S. indicates south. All bearings and directions shall be construed to be true bearings and true directions.

(e) ADF&G is the abbreviation for Alaska Department of Fish and Game.

(f) CFEC is the abbreviation for the Commercial Fisheries Entry Commission.

5 AAC 39.998. Petition policy for Category 2 management measures in a Bering Sea/Aleutian Islands king or Tanner crab fishery. The Board of Fisheries recognizes that in rare instances, circumstances may require regulatory changes outside the process described in 5 AAC 96.625(b) – (d). Notwithstanding 5 AAC 96.625(f), a petition for a regulatory change may be submitted under this section and 5 AAC 96.625(a) for a Category 2 management measure in a Bering Sea/Aleutian Islands king or Tanner crab fishery described in the federal Fishery Management Plan (FMP) for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands dated January 24, 1989. It is the policy of the Board of Fisheries that a petition submitted under this section will be denied and not scheduled for hearing unless the petition

(1) addresses a Category 2 management measure and is filed within 30 days from the date that the board adopted that Category 2 management measure;

(2) presents an issue that is not solely allocative; and

(3) presents new legal, biological, or management information that indicates the regulation may not be consistent with the federal FMP.

Editor's note: Copies of the federal Fishery Management Plan (FMP) for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands dated January 24, 1989 are available from the Office of the North Pacific Fisheries Management Council at 605 West Fourth Avenue, Room 306, Anchorage, Alaska, or by writing to the council at P.O.

Box 103136, Anchorage, Alaska 99510-3136.

5 AAC 39.999. Policy for changing board agenda. (a) The Board of Fisheries (board) will, in its discretion, change its schedule for consideration of proposed regulatory change in response to an agenda change request, submitted on a form provided by the board, in accordance with the following guidelines:

- (1) the board will accept an agenda change request only
 - (A) for a fishery conservation purpose or reason;
 - (B) to correct an error in a regulation; or
 - (C) to correct an effect on a fishery that was unforeseen when a regulation

was adopted;

- (2) the board will not accept an agenda change request that is predominantly allocative in nature in the absence of new information found by the board to be compelling;

- (3) the board will consider an agenda change request only at its first meeting in the fall, a request must be sent to the executive director of the board at least 45 days before the first meeting in the fall.

(b) The board will, in its discretion, change its schedule for consideration of proposed regulatory changes as reasonably necessary for coordination of state regulatory actions with federal fishery agencies, programs or laws.

(c) If the board, accepts an agenda change request under this section, the executive director shall notify the public and the department of the change in the board's schedule and when the board will consider the proposed regulatory change requested.

Chapter 93. Department Programs.

Article 3. Salmon Use.

5 AAC 93.310. Waste of salmon. (a) Unless authorized under 5 AAC 93.310 – 5 AAC 93.390, a person may not waste salmon intentionally, knowingly, or with reckless disregard for the consequences.

(b) Salmon is intended for a use listed in AS 16.05.831(a)(1) – (a)(3) if the salmon was taken by or is possessed by a person who has an authorization under state or federal law to take, process for sale or sell the salmon.

(c) In AS 16.05.831 and this section, the commissioner considers waste to not include (1) normal inadvertent loss of flesh associated with uses of salmon described in AS 16.05.831(a)(1) – (a)(3) or authorized in 5 AAC 93.310 – 5 AAC 93.390 where the loss cannot be prevented by practical means; or (2) failure to use or sell spoiled, diseased, or contaminated salmon flesh if the spoilage or contamination is not the result of intentional, knowing, or reckless actions; and, if the salmon could legally have been sold, the person disposing of the salmon complies with the requirements of (d) of this section.

(d) Before disposing of spoiled, diseased, or contaminated salmon that could legally have been sold, a person shall record the number of salmon in a logbook, available from the department, by date, species, and reason for disposal. By December 31 of the year of disposal, the person shall submit a completed logbook to the department.

(e) A logbook maintained, but not yet submitted under (d) of this section, shall be provided, upon request, to the department, the department's agent, or the Department of

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Public Safety for inspection.

(f) Logbooks submitted under this section are public documents.

(g) In this section,

(1) "flesh" means all muscular body tissue surrounding the skeleton;

(2) "person" has the meaning given in AS 01.10.060, including joint ventures and other business entities; for purposes of this section "person" does not include the state or the federal government.

Chapter 96. Local Fish and Game Advisory Committees and Regional Fish and Game Councils.

Article 5. Adoption of Fish and Game Regulations.

5 AAC 96.615. Subsistence proposal policy. (a) It is the policy of the Boards of Fisheries and Game to consider subsistence proposals for topics that are not covered by the notice soliciting proposals under 5 AAC 96.610(a). To be considered by a board, a subsistence proposal must be timely submitted under 5 AAC 96.610(a), and

(1) the proposal must address a fish or game population that has not previously been considered by the board for identification as a population customarily and traditionally used for subsistence under AS 16.05.258; or

(2) the circumstances of the proposal otherwise must require expedited consideration by the board, such as where the proposal is the result of a court decision or is the subject of federal administrative action that might impact state game management authority.

(b) A board may delegate authority to a review committee, consisting of members of the board, to review all subsistence proposals for any meeting to determine whether the conditions in (a) of this section apply.

(c) A board may decline to act on a subsistence proposal for any reason, including the following:

(1) the board has previously considered the same issue and there is no substantial new evidence warranting reconsideration; or

(2) board action on the proposal would affect other subsistence users who have not had a reasonable opportunity to address the board on the matter.

5 AAC 96.625. Joint board petition policy. (a) Under AS 44.62.220, an interested person may petition an agency, including the Boards of Fisheries and Game, for the adoption, amendment, or repeal of a regulation. The petition must clearly and concisely state the substance or nature of the regulation, amendment, or repeal requested, the reason for the request, and must reference the agency's authority to take the requested action. Within 30 days after receiving a petition, a board will deny the petition in writing, or schedule the matter for public hearing under AS 44.62.190 – 44.62.210, which require that any agency publish legal notice describing the proposed change and solicit comment for 30 days before taking action. AS 44.62.230 also provides that if the petition is for an emergency regulation, and the agency finds that an emergency exists, the agency may submit the regulation to the lieutenant governor immediately after making the finding of emergency and putting the regulation into proper form.

(b) Fish and game regulations are adopted by the Alaska Board of Fisheries and the Alaska Board of Game. At least twice annually, the boards solicit regulation changes. Several hundred proposed changes are usually submitted to each board annually. The Department of Fish and Game compiles the proposals and mails them to all fish and game advisory committees, regional fish and game councils, and to over 500 other interested individuals.

(c) Copies of all proposals are available at local Department of Fish and Game offices. When the proposal books are available, the advisory committees and regional councils then hold public meetings in the communities and regions they represent, to gather local comment on the proposed changes. Finally, the boards convene public meetings, which have lasted as long as six weeks, taking department staff reports, public comment, and advisory committee and regional council reports before voting in public session on the proposed changes.

(d) The public has come to rely on this regularly scheduled participatory process as the basis for changing fish and game regulations. Commercial fishermen, processors, guides, trappers, hunters, sport fishermen, subsistence fishermen, and others plan business and recreational ventures around the outcome of these public meetings.

(e) The Boards of Fisheries and Game recognize the importance of public participation in developing management regulations, and recognize that public reliance on the predictability of the normal board process is a critical element in regulatory changes. The boards find that petitions can detrimentally circumvent this process and that an adequate and more reasonable opportunity for public participation is provided by regularly scheduled meetings.

(f) The Boards of Fisheries and Game recognize that in rare instances circumstances may require regulatory changes outside the process described in (b) – (d) of this section. Except for petitions dealing with subsistence hunting or fishing, which will be evaluated on a case-by-case basis under the criteria in 5 AAC 96.615(a), it is the policy of the boards that a petition will be denied and not scheduled for hearing unless the problem outlined in the petition justifies a finding of emergency. In accordance with state policy expressed in AS 44.62.270, emergencies will be held to a minimum and are rarely found to exist. In this section, an emergency is an unforeseen, unexpected event that either threatens a fish or game resource, or an unforeseen, unexpected resource situation where a biologically allowable resource harvest would be precluded by delayed regulatory action and such delay would be significantly burdensome to the petitioners because the resource would be unavailable in the future.

Chapter 99. Subsistence Uses.

5 AAC 99.005. Boards of Fisheries subsistence finding standards. In the identification by the Board of Fisheries of fish stocks or portions of fish stocks that are customarily and traditionally taken or used by residents of this state for subsistence uses under 5 AAC 99.010(b), "subsistence way of life" means a way of life that is based on consistent, long-term reliance upon fish and game resources for the basic necessities of life.

5 AAC 99.010. Boards of fisheries and game subsistence procedures. (a) In applying a subsistence law, the Board of Fisheries and the Board of Game will provide for conservation and development of Alaska's fish and game resources according to sustained yield principles.

(b) Each board will identify fish stocks or game populations, or portions of stocks or populations, that are customarily and traditionally taken or used by Alaska residents for subsistence uses by considering the following criteria:

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(1) a long-term consistent pattern of noncommercial taking, use, and reliance on the fish stock or game population that has been established over a reasonable period of time of not less than one generation, excluding interruption by circumstances beyond the user's control, such as unavailability of the fish or game caused by migratory patterns;

(2) a pattern of taking or use recurring in specific seasons of each year;

(3) a pattern of taking or use consisting of methods and means of harvest that are characterized by efficiency and economy of effort and cost;

(4) the area in which the noncommercial, long-term, and consistent pattern of taking, use, and reliance upon the fish stock or game population has been established;

(5) a means of handling, preparing, preserving, and storing fish or game that has been traditionally used by past generations, but not excluding recent technological advances where appropriate;

(6) a pattern of taking or use that includes the handing down of knowledge of fishing or hunting skills, values, and lore from generation to generation;

(7) a pattern of taking, use, and reliance where the harvest effort or products of that harvest are distributed or shared, including customary trade, barter, and gift-giving; and

(8) a pattern that includes taking, use, and reliance for subsistence purposes upon a wide diversity of fish and game resources and that provides substantial economic, cultural, social, and nutritional elements of the subsistence way of life.

(c) When circumstances such as increased numbers of users, weather, predation, or loss of habitat may jeopardize the sustained yield of a fish stock or game population, each board will exercise all practical options for restricting nonsubsistence harvest of the stock or population and may address other limiting factors before subsistence uses are restricted below the level the board has determined to provide a reasonable opportunity. If all available restrictions for nonsubsistence harvests have been implemented and further restrictions are needed, the board will eliminate nonsubsistence consumptive uses, and reduce the take for subsistence uses in a series of graduated steps under AS 16.05.258(b)(4)(B) – the "Tier II" distinction – by distinguishing among subsistence users through limitations based on

(1) the customary and direct dependence on the fish stock or game population by the subsistence user for human consumption as a mainstay of livelihood;

(2) the proximity of the user's domicile to the stock or population; and

(3) the ability of the subsistence user to obtain food if subsistence use of the stock or population is restricted or eliminated.

5 AAC 99.015. Joint Board nonsubsistence areas. (a) The following areas are found by the Joint Board of Fisheries and Game to be nonsubsistence use areas:

(1) The **Ketchikan Nonsubsistence Area** is comprised of the following: within Unit 1(A), as defined in 5 AAC 92.450(1)(A), all drainages of the Cleveland Peninsula between Niblack Point and Bluff Point, Revillagigedo, Gravina, Pennock, Smeaton, Bold, Betton, and Hassler Islands; all marine waters of Sections 1-C, as defined by 5 AAC 33.200(a)(3), 1-D, as defined by 5 AAC 33.200(a)(4), 1-E, as defined by 5 AAC 33.200(a)(5), that portion of Section 1-F, as defined by 5 AAC 33.200(a)(6), north of the latitude of the southernmost tip of Mary Island and within one mile of the mainland and the Gravina and Revillagigedo Island shorelines; and that portion of District 2, as defined by 5 AAC

33.200(b), within one mile of the Cleveland Peninsula shoreline and east of the longitude of Niblack Point.

(2) The **Juneau Nonsubsistence Area** is comprised of the following: within Unit 1(C), as defined by 5 AAC 92.450(1)(C), all drainages on the mainland east of Lynn Canal and Stephens Passage from the latitude of Eldred Rock to Point Coke, and on Lincoln, Shelter, and Douglas islands; within Unit 4, as defined by 5 AAC 92.450(4), that portion of Admiralty Island that includes the Glass Peninsula, all drainages into Seymour Canal north of and including Pleasant Bay, all drainages into Stephens Passage west of Point Arden, the Mansfield Peninsula, all drainages into Chatham Strait north of Point Marsden; all marine waters of Sections 11-A and 11-B, as defined in 5 AAC 33.200(k)(1) and (k)(2), Section 12-B, as defined in 5 AAC 33.200(l)(2), and that portion of Section 12-A, as defined in 5 AAC 33.200(l)(1), north of the latitude of Point Marsden and that portion of District 15, as defined in 5 AAC 33.200(o), south of the latitude of the northern entrance to Berners Bay, and including Berners Bay.

(3) The **Anchorage-Matsu-Kenai Nonsubsistence Area** is comprised of the following: Units 7, as defined by 5 AAC 92.450(7) (except the Kenai Fjords National Park lands), 14, as defined by 5 AAC 92.450(14), 15, as defined by 5 AAC 92.450(15) (except that portion south and west of a line beginning at the mouth of Rocky River up the Rocky and Windy Rivers across the Windy River/Jakolof Creek divide and down Jakolof Creek to its mouth, including the islands between the eastern most point of Jakolof Bay and the eastern most point of Rocky Bay), 16(A), as defined by 5 AAC 92.450(16)(A); all waters of Alaska in the Cook Inlet Area, as defined by 5 AAC 21.100 (except those waters north of Point Bede which are west of a line from the eastern most point of Jakolof Bay north to the western most point of Hesketh Island including Jakolof Bay and south of a line west from Hesketh Island; the waters south of Point Bede which are west of the eastern most point of Rocky Bay; and those waters described in 5 AAC 01.555(b), known as the Tyonek subdistrict).

(4) The **Fairbanks Nonsubsistence Area** is comprised of the following: within Unit 20(A), as defined by 5 AAC 92.450(20)(A), east of the Wood River drainage and south of the Rex Trail but including the upper Wood River drainage south of its confluence with Chicken Creek; within Unit 20(B), as defined by 5 AAC 92.450(20)(B), the North Star Borough and that portion of the Washington Creek drainage east of the Elliot Highway; within Unit 20(D) as defined by 5 AAC 92.450(20)(D), west of the Tanana River between its confluence with the Johnson and Delta Rivers, west of the east bank of the Johnson River, and north and west of the Volkmar drainage, including the Goodpaster River drainage; and within Unit 25(C), as defined by 5 AAC 92.450(25)(C), the Preacher and Beaver Creek drainages.

(5) The **Valdez Nonsubsistence Area** is comprised of the following: within Unit 6(D), as defined by 5 AAC 92.450(6)(D), and all waters of Alaska in the Prince William Sound Area as defined by 5 AAC 24.100, within the March 1993 Valdez City limits.

(b) The provisions of this section do not apply during the period from April 28, 1994 until a final decision by the Alaska Supreme Court in *State v. Kenaitze*, No. S-6162, concerning the constitutionality of AS 16.05.258(c).

5 AAC 99.016. Activities permitted in a nonsubsistence area. (a) A nonsubsistence area is an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area of community. In a nonsubsistence area,

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the following activities will be permitted if so provided by the appropriate board by regulation:

- (1) general hunting, including drawing and registration permit hunts;
 - (2) personal use, sport, guided sport, commercial fishing, and other fishing authorized by permit.
- (b) Subsistence hunting and fishing regulations will not be adopted for these areas and the subsistence priority does not apply.