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Outlook

20 AAC 05.220: Gear codes Beach Seines

From Philip Sheridan [redacted]
Date Thu 10/15/2026 6:51 AM
To DFG, CFEC PublicQuestions (DFG sponsored) <DFG.CFEC.PublicQuestions@alaska.gov>

[redacted]

[redacted]

Having been an east side setnetter for over 40 years, I see a couple of major problems with adding beach seines as an alternative to set nets.
1. We already were given a commercial dipnet fishery in place of set nets in times of low king abundance. Adding beach seines would create gear conflicts among users in an "atlernative" gear type fishery. I believe doing so would turn into a circus in practical application. It needs to be one or the other, not both.
2. If priority spots for beach seines are not given to long time lease holders, you completely disenfranchise those of us who have made massive investments in obtaining and paying for the lease. The spectacle of everyone fighting(literally) over spots on the beach that requires a significant amount of space to operate a beach seine, is reason enough not to go down this road. I would not want to set up all my gear, only to have three other fisherman setup right on top of me. Leases have always kept setnetting an orderly fishery and detaching them from beach seines is a massive mistake if it goes forward.

Thank You for your consideration,

Phil Sheridan
[redacted]

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October 14, 2026

Commercial Fisheries Entry Commission

8800 Glacier Highway, Suite 109

Juneau, Alaska 99801

Re: Written Comment Opposing DOL No. 2026200363, Proposed Amendment to 20 AAC 05.220 (Beach Seine Gear Code Addition); CFEC Permit No. S04H-58304

Dear Commissioners:

I am submitting the enclosed Written Comment in opposition to DOL No. 2026200363, the Commission's proposed amendment to 20 AAC 05.220 that would add a beach seine gear code to set gillnet permits in Upper Cook Inlet. My comment deadline is November 16, 2026.

I hold CFEC Permit No. S04H-58304 (Eastside Set Net, Upper Cook Inlet). I also submitted a formal Petition to the Commission on or about September 28, 2026, requesting a determination that set beach seines constitute fish traps prohibited by Alaska Constitutional Ordinance No. 3.

The enclosed Written Comment sets out four independent grounds on which the Commission cannot lawfully proceed with DOL No. 2026200363:

1. Set beach seines satisfy all three elements of the functional fish trap test established in *Metlakatla Indian Community v. Egan*, 362 P.2d 901 (Alaska 1961), and are therefore prohibited by Ordinance No. 3 as a matter of constitutional law.
2. The Commission's own November 30, 2018 Resolution RC-64 declared beach weirs to be fish traps. The same constitutional analysis applies to beach seines.
3. The Alaska Department of Law's November 21, 2018 Attorney General Opinion No. 2018200692 flagged beach weirs as sufficiently similar to prohibited fish traps to require constitutional scrutiny. DOL No. 2026200363 raises the same concern.
4. The Commission's own April 6, 2026 formal comments to the Board of Fisheries (RC022) identified Limited Entry Act conflicts, new-fishery concerns, and a Department of Law review requirement that remain unsatisfied. The Commission cannot proceed to final action while its own prior legal analysis is unresolved.

I have attached as Exhibit A a copy of my Memorandum of Law in Support of Count XIII filed in *Clark et al. v. State of Alaska et al.*, Case No. 3KN-26-00515CI (Alaska Superior Court, Third Judicial District at Kenai, filed October 14, 2026). That memorandum provides the complete legal analysis supporting this comment.

I respectfully request that the Commission (1) suspend DOL No. 2026200363 pending resolution of my September 28, 2026 Petition, and (2) decline to add beach seine gear codes to set gillnet permits absent a definitive constitutional ruling by the Alaska Supreme Court.

Respectfully submitted,



Russell Clark
CFEC Permit No. S04H-58304
Eastside Set Net, Upper Cook Inlet
[redacted]

Enclosure: Written Comment Opposing DOL No. 2026200363 (with Exhibit A)

cc: Commissioner Tracy Welch, CFEC

Commissioner Rick Green, CFEC

Jennifer Findley, Law Specialist, CFEC

COMMERCIAL FISHERIES ENTRY COMMISSION
STATE OF ALASKA

WRITTEN COMMENT OPPOSING PROPOSED AMENDMENT
DOL No. 2026200363 | 20 AAC 05.220
Addition of Beach Seine Gear Code to Set Gillnet Permits

Submitted by: Russell Clark
CFEC Permit No. S04H-58304
Eastside Set Net, Upper Cook Inlet
[redacted]

Date: October 14, 2026
Comment Deadline: November 16, 2026
Docket: DOL No. 2026200363

I. INTRODUCTION

The Commercial Fisheries Entry Commission (Commission) has published DOL No. 2026200363, a proposed amendment to 20 AAC 05.220 that would add a beach seine gear code to set gillnet limited-entry permits in Upper Cook Inlet. The comment period closes November 16, 2026.

Russell Clark holds CFEC Permit No. S04H-58304 (Eastside Set Net, Upper Cook Inlet) and submits this comment in opposition. On or about September 28, 2026, Mr. Clark filed a formal Petition with the Commission requesting a determination that set beach seines constitute fish traps prohibited under Alaska Constitutional Ordinance No. 3 (1956). That petition is pending.

The Commission cannot lawfully proceed with DOL No. 2026200363 for four independent reasons. First, set beach seines are fish traps as a matter of constitutional law and cannot be authorized by administrative action. Second, the Commission's own November 30, 2018 Resolution RC-64 recognized that beach gear operating on the same functional principle is a fish trap. Third, the Alaska Department of Law raised the same constitutional concern in 2018, and that analysis applies with equal force here. Fourth, the Commission's own April 6, 2026 formal comments to the Board of Fisheries (RC022) identified Limited Entry Act conflicts, new-fishery concerns, and a Department of Law review requirement that have not been satisfied.

The complete legal analysis is set forth in Exhibit A, the Memorandum of Law in Support of Count XIII filed in *Clark et al. v. State of Alaska et al.*, Case No. 3KN-26-00515CI (Alaska Superior Court, Third Judicial District at Kenai, filed October 14, 2026). This written comment summarizes the grounds for opposition and incorporates Exhibit A by reference.

II. BACKGROUND

A. Constitutional Prohibition on Fish Traps

Alaska Constitutional Ordinance No. 3, ratified in 1956 and effective at statehood, provides in relevant part:

> *"The use of fish traps for the taking of salmon for commercial purposes is hereby prohibited in all the waters of the State of Alaska."*

Ordinance No. 3 is self-executing. It does not require implementing legislation and cannot be overridden by regulation. Any gear that constitutes a fish trap is categorically prohibited, regardless of the permit structure under which it operates.

B. The Metlakatla Functional Test

The Alaska Supreme Court established a three-element functional test for identifying a fish trap in *Metlakatla Indian Community v. Egan*, 362 P.2d 901, 903 (Alaska 1961). A fish trap is a device that:

1. obstructs the passage of fish;
2. allows fish to enter but prevents or impedes their exit; and
3. holds fish for later retrieval.

The test is functional, not based on gear name or regulatory classification. A device that satisfies all three elements is a fish trap regardless of what the Commission or the Legislature calls it.

C. DOL No. 2026200363

The proposed amendment would add a beach seine gear code to set gillnet limited-entry permits in Upper Cook Inlet under 20 AAC 05.220. A set beach seine is a net that is anchored to the shore at one end and set in an arc or straight line into tidal or nearshore waters, with the net left in position to intercept migrating salmon. When the tide or current drives salmon into the net, the fish cannot exit through the anchored end or through the mesh, and are held until the operator retrieves them.

On June 4, 2026, the Commission voted on whether to proceed with adding beach seine as an authorized gear type under 20 AAC 05.220. The vote was 1-1. A tie vote is not approval. The Commission has not authorized beach seine as a permissible gear type.

III. GROUNDS FOR OPPOSITION

A. Set Beach Seines Are Fish Traps Under Ordinance No. 3

Set beach seines satisfy all three elements of the *Metlakatla* functional test and are therefore prohibited fish traps.

Element One: Obstruction of fish passage. A set beach seine is anchored at the shore and extends into the water column, blocking the nearshore migration path used by salmon moving along the beach. The net forms a physical barrier across the fish's travel corridor.

Element Two: Entry permitted, exit impeded. Salmon swimming into the net cannot exit through the mesh (the mesh retains fish above a minimum size) and cannot exit through the shore-anchored end (blocked by the beach or shallow water). The gear is specifically designed to trap fish against the shore.

Element Three: Fish held for later retrieval. The net is left in position without continuous human attendance. Salmon accumulate in the net over time and are retrieved when the operator returns to the gear. This is functionally identical to the holding function of a classical fish trap.

Because set beach seines satisfy all three elements, they are fish traps under Ordinance No. 3. The Commission lacks authority to add a gear code for a constitutionally prohibited gear type. Adding a beach seine code to set gillnet permits under 20 AAC 05.220 would be void as in excess of constitutional authority.

B. The Commission's Own Resolution RC-64 (November 30, 2018) Confirms This Analysis

On November 30, 2018, the Commission adopted Resolution RC-64, in which the Commission formally declared that beach weirs operating in Cook Inlet function as fish traps within the meaning of Ordinance No. 3. Commission Chair Fate Putman and Commissioner Dale Kelley signed the resolution. The Commission's own analysis recognized that beach gear anchored to the shore and designed to intercept and hold salmon satisfies the *Metlakatla* functional test.

Set beach seines operate on the same functional principle as the beach weirs addressed in RC-64. Both types of gear are anchored to the beach, extend into tidal waters, obstruct salmon migration, prevent exit, and hold fish for retrieval. The constitutional analysis in RC-64 applies with equal force to the gear proposed in DOL No. 2026200363. The Commission is bound by its own prior constitutional determination absent a contrary ruling from the Alaska Supreme Court.

C. Alaska Department of Law Attorney General Opinion No. 2018200692

On November 21, 2018, the Alaska Department of Law issued Attorney General Opinion No. 2018200692 (Beausang & Meyen). The opinion advised that beach weirs deployed in Upper Cook Inlet are sufficiently similar to the prohibited fish traps of the pre-statehood era that their authorization without constitutional scrutiny would be inappropriate. The Department of Law raised the same three-element functional question identified in *Metlakatla* and advised caution.

DOL No. 2026200363 presents the same constitutional question addressed in that opinion. Set beach seines are at least as similar to prohibited fish traps as the beach weirs analyzed by the Department of Law. The Commission should not proceed with the proposed amendment without first obtaining a definitive constitutional ruling from the Alaska Supreme Court.

D. CFEC's Own April 6, 2026 Letter (RC022) Identifies the Same Legal Conflicts

On April 6, 2026, the Commission submitted formal comments to the Board of Fisheries on Proposal 192, designated RC022 and signed by Commission Chair Rick Green. That letter raised the same legal concerns that now apply directly to DOL No. 2026200363.

First, RC022 stated that if Proposal 192 removes the ability to use set gillnets and instead allows participation only by beach seine, the proposal "will go beyond a gear modification and more closely resemble the creation of a new fishery." RC022 further stated that CFEC "does not have statutory authority to impose or enforce limitations on a fishery that has not undergone limitation proceedings." DOL No. 2026200363 proposes exactly that administrative action: adding a beach seine gear code to S04H permits without limitation proceedings.

Second, RC022 identified that tying gear authorization to a lease site rather than the permit "would conflict with the structure of limited entry" under the Alaska Limited Entry Act. The proposed amendment raises the same structural conflict.

Third, RC022 noted that only approximately 99 of 283 DNR lease tracts in the fishery touch the shore, meaning beach seine authorization would effectively restrict participation to a subset of permit holders, constituting a limitation on fishing opportunities among existing participants without the limitation proceedings the Alaska Limited Entry Act requires.

Fourth, RC022 stated that implementation of beach seine authorization would require review by the Department of Law, "which typically takes 60 days or more," as well as regulatory drafting and a public comment process. No such DOL review has occurred in connection with DOL No. 2026200363. The Commission cannot lawfully proceed to final action without that review.

RC022 is the Commission's own formal analysis, on the public record, identifying the Limited Entry Act conflicts that DOL No. 2026200363 now proposes to implement without resolution. The Commission is not free to ignore its own prior legal analysis.

E. The Failed June 4, 2026 Vote Confirms the Question Is Unresolved

On June 4, 2026, the Commission voted 1-1 on whether to ratify beach seine as an authorized gear type. A tie vote does not constitute approval. The Commission as currently constituted lacks the votes to authorize this gear type. Proceeding with DOL No. 2026200363 while the constitutional question raised by Mr. Clark's September 28, 2026 Petition remains unresolved would prejudge that petition and produce permits of questionable legal validity that could not withstand constitutional challenge.

IV. REQUESTED RELIEF AND STATUTORY DEFICIENCIES

Mr. Clark respectfully requests that the Commission:

1. Suspend DOL No. 2026200363 pending resolution of the Petition filed by Russell Clark on or about September 28, 2026, requesting a formal determination that set beach seines are constitutionally prohibited fish traps under Ordinance No. 3;
2. Decline to add a beach seine gear code to set gillnet limited-entry permits absent a definitive ruling by the Alaska Supreme Court confirming that set beach seines do not constitute prohibited fish traps;

3. Complete the Department of Law review identified as required in the Commission's own April 6, 2026 comments (RC022) before taking any final action on DOL No. 2026200363; and
4. Issue a written determination on the September 28, 2026 Petition before any final action on DOL No. 2026200363.

V. BYPASSING THE REQUIRED PROCESS VIOLATES ALASKA'S PUBLIC TRUST DOCTRINE

The procedural failures identified above are not merely technical. They constitute a breach of the State's duty as trustee of Alaska's fishery resources under Article VIII of the Alaska Constitution.

A. Article VIII Establishes a Public Trust in Alaska's Fisheries

Article VIII, Section 3 of the Alaska Constitution provides that fish, wildlife, and waters in their natural state "are reserved to the people for common use." Article VIII, Section 15 provides that "[n]o exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State."

In *Owsichek v. State, Guide Licensing and Control Board*, 763 P.2d 488 (Alaska 1988), the Alaska Supreme Court held that Article VIII, Section 3 constitutionalizes common law public trust principles, imposing on the State "a trust duty to manage the fish, wildlife and water resources" of Alaska for the benefit of all the people. The Court struck down a statute that granted exclusive guide areas because those areas had private-property features inconsistent with the public trust. The same principle applies here: CFEC acts as trustee of the S04H fishery resource, and it cannot manage that resource through a truncated process that bypasses the statutory safeguards the Legislature enacted to protect the public interest.

B. The Shore-Access Inequality Creates an Unconstitutional Special Privilege

RC022 identified that only approximately 99 of 283 DNR lease tracts in the Upper Subdistrict touch the shore, meaning beach seine gear can only be physically operated by a subset of S04H permit holders who happen to hold shore-connected leases. Adding a beach seine gear code to all S04H permits without limitation proceedings effectively creates a special fishing privilege for those permit holders while leaving the remaining permit holders unable to use the gear in practice.

In *McDowell v. State*, 785 P.2d 1 (Alaska 1989), the Alaska Supreme Court held that Article VIII, Sections 3, 15, and 17 prohibit the State from limiting admission to a user group based on geography. While *McDowell* addressed subsistence priority rather than commercial gear authorization, its principle applies by direct analogy: a gear code that is functionally available only to permit holders with shore-connected lease sites creates exactly the kind of geographically-based special privilege Article VIII, Section 15 prohibits. The Commission cannot cure this constitutional defect by issuing a gear code to all S04H permit holders when the practical effect is to benefit only a fraction of them.

C. Proceeding Without Required Process Breaches the Trustee's Duty

The Limited Entry Act is the Legislature's implementation of the public trust doctrine as applied to commercial fisheries. Its requirements, including the new-fishery determination, the optimum number study, the limitation proceedings, and the Department of Law review, are not procedural technicalities. They are the safeguards by which the trustee ensures that changes to the common resource are made in the public interest, with public participation, and on an evidentiary record. Bypassing those steps is not a shortcut to the same outcome. It is a breach of the trustee's constitutional duty under *Owsichek*.

If CFEC proceeds to final action on DOL No. 2026200363 without completing the required statutory process, Mr. Clark will seek relief in Superior Court under Article VIII of the Alaska Constitution, independent of the fish trap constitutional claim pending in *Clark et al. v. State of Alaska et al.*, Case No. 3KN-26-00515CI.

VI. CONCLUSION

Set beach seines are fish traps prohibited by Alaska Constitutional Ordinance No. 3. The Commission's own Resolution RC-64 and the Alaska Department of Law's 2018 opinion confirm that beach gear anchored to the shore and designed to intercept and hold salmon raises a constitutional question that administrative regulation cannot resolve. The Commission's own April 6, 2026 formal comments (RC022) identified Limited Entry Act conflicts and a mandatory Department of Law review that have not been completed. The failed June 4, 2026 vote demonstrates that the Commission itself has not resolved the constitutional question. DOL No. 2026200363 should be suspended until the Alaska Supreme Court provides a definitive constitutional ruling and the Commission completes the legal review its own analysis requires.

The complete legal analysis is set forth in Exhibit A, incorporated herein by reference. Mr. Clark respectfully urges the Commission to deny DOL No. 2026200363.

Respectfully submitted,



Russell Clark
CFEC Permit No. S04H-58304
Eastside Set Net, Upper Cook Inlet
[redacted]

EXHIBIT A: Memorandum of Law in Support of Count XIII, *Clark et al. v. State of Alaska et al.*, Case No. 3KN-26-00515CI (Alaska Superior Court, Third Judicial District at Kenai, filed October 14, 2026) [attached]

Received in the Alaska Trial Courts on 10/14/2026.

Russell Clark
[redacted]
Pro Se Plaintiff

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT KENAI

RUSSELL CLARK, individually, Plaintiff, v. STATE OF ALASKA; ALASKA BOARD OF FISHERIES; ALASKA DEPARTMENT OF FISH AND GAME; and COMMERCIAL FISHERIES ENTRY COMMISSION, Defendants.	Case No. 3KN-26-00515CI PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF COUNT XIII OF THE FIRST AMENDED COMPLAINT

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF COUNT XIII

Set Beach Seines Constitute a Prohibited Fish Trap Under Alaska Constitutional Ordinance No. 3

I. Introduction

Plaintiff Russell Clark submits this memorandum in support of Count XIII of the First Amended Complaint. Count XIII alleges that set beach seines constitute fish traps prohibited under Alaska Constitutional Ordinance No. 3. Proponents of set beach seines have advanced four arguments for why the gear is legally distinct from prohibited fish traps: (1) structural definition, (2) the "active net" rule, (3) judicial deference, and (4) conservation intent. Each argument is addressed in turn. Under the controlling legal standard, none overcomes the constitutional classification of this gear as a fish trap.

The controlling legal standard is not administrative or regulatory. It is constitutional. The Alaska Supreme Court's definition in *Metlakatla Indian Community v. Egan*, 362 P.2d 901 (Alaska 1961), and the constitutional prohibition in Ordinance No. 3 are superior to any Board of Fisheries (BOF) regulation, CFEC gear code, or ADF&G emergency order. No agency can authorize what the Constitution forbids.

This memorandum draws on the record established in Plaintiff's September 28, 2026 Petition to CFEC (the "Petition"), incorporating RC-004, AGO No. 2018200692, RC-64, RC-65, RC-72, and RC-4 as adopted. Following the examination of each pro-seine argument, an affirmative showing establishes that set beach seine gear as deployed under RC-004 satisfies every element of the *Metlakatla* definition of a fish trap. The CFEC gear code structure provides further confirmation,

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followed by three independent evidentiary grounds from the Petition record.

II. Analysis I: The Structural Definition Argument

Pro-seine argument: A fish trap legally requires a "heart, pot, and spiller" design, meaning a specific architecture of permanent pilings, maze walls, and a fully enclosed underwater containment chamber. Because a set beach seine lacks those structural elements, it cannot be a fish trap.

Why this argument does not overcome the constitutional standard.

A. Metlakatla Does Not Require a "Heart, Pot, and Spiller"

The structural test is not found in the controlling authority. The Alaska Supreme Court's definition in *Metlakatla Indian Community v. Egan*, 362 P.2d 901, 903 (Alaska 1961), describes a fish trap by its *function*, not by a required checklist of components:

> *"A trap consists of tall stakes or mechanically driven piling extending from the shore to varying distances seaward... Wire or webbing is stretched across the stakes or piling... fish stopped by the webbing of a trap will eventually follow it seaward in an attempt to by-pass the obstruction. The wing or hook is constructed so as to discourage by-passing and divert the fish into the heart and pot, where they remain."*

The Court then added: "With some variations in construction, floating traps adapted to deep water are commonly used, and are highly productive." That sentence is dispositive. The Court explicitly acknowledged that fish traps come in structural variations. The specific architecture (pilings, heart, pot, spiller) describes the dominant historical form, not an exclusive definition. A "variation in construction" that still functions to intercept, passively hold, and enclose fish is a trap.

B. CFEC's Own Reasoning Confirms the Functional Test

On February 8, 2024, CFEC Research Section Lead Reid Johnson wrote to BOF Chair John Wood regarding BOF Proposals 103, 104, 139, and 140 (alternative gear in Upper Cook Inlet). Addressing the question of reef nets versus fish traps, the letter applied the *Metlakatla* definition and observed that reef nets differ from fish traps because they "may be managed so they do not block off large areas of water" and "do not have the same potential to block entire river systems." The letter also acknowledged that "[t]he definition and legality of a gear type is beyond the purview of CFEC."

CFEC's reasoning is instructive for its method, not as a binding legal ruling. The distinction CFEC drew was functional: it examined what reef nets *do*, not whether they have a spiller chamber or permanent pilings. Applying that same functional method to set beach seines reaches the opposite result. A set beach seine, unlike a reef net, does block a shoreline corridor, does intercept migrating salmon passively during hold time, and does enclose fish in a bag from which they cannot exit without human action. The functional criteria CFEC applied to distinguish reef nets from traps, applied consistently to set beach seines, support trap classification.

C. The Structural Checklist Is Not Found in the Constitutional Text

Ordinance No. 3 prohibits "fish traps" without defining them structurally. The constitutional convention adopted the prohibition in response to the functional harm: large-scale interception of

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migrating salmon concentrating wealth in a few hands. Importing a rigid structural checklist (heart + pot + spiller) as a precondition to trap classification would create a loophole the convention never intended and that the *Metlakatla* Court never authorized. The structural definition argument does not overcome this constitutional framework.

III. Analysis II: The "Active Net" and Human Attendance Argument

Pro-seine argument: Historical fish traps were illegal because they were automated and unmanned. Set beach seines require mandatory human attendance and an "active retrieval" mechanical cycle, making the gear categorically different, an "attended net fishery" rather than a passive trap.

Why this argument does not overcome the constitutional standard.

A. The Fish Trap Prohibition Is Not Premised on Lack of Attendance

Ordinance No. 3 does not say "unattended fishing gear is prohibited." It says fish traps are prohibited. Neither Ordinance No. 3 nor *Metlakatla* identifies the presence or absence of a human operator as the legal line between lawful gear and a trap.

The constitutional convention's concern was concentration of harvest and obstruction of migration, not automation as such. Cannery-operated fish traps were staffed by company employees who monitored and tended them. Attendance did not make those traps lawful. If human presence were the legal test, a trap-tender walking the catwalk of a historic fish trap daily would have rendered it legal. That conclusion is not supported by the text of the prohibition or its history.

B. The RC-004 Operational Data Shows Predominantly Passive Stationary Deployment

The "active retrieval" argument asserts that the retrieval cycle converts the total deployment into a mobile sweep. The actual operational data from RC-004 experimental permits addresses this directly.

RC-004 logs distinguish *hold time* (Net Set to Start Pull, the period when the net sits anchored and stationary in the water intercepting fish) from *pull time* (tractors drawing the bag closed). Measured against actual in-water deployment time:

- Gabriel permit (UCI-2024-01): hold time = **48.5%** of total in-water deployment
- Hollier permit (UCI-2024-03): hold time = **66.6%** of total in-water deployment
- Combined average: **55.6%** of actual deployment time in passive, stationary interception mode

For more than half of every actual deployment, the net is anchored, stationary, and passively intercepting migrating salmon. That is the core operational characteristic of a fish trap. A device that functions in passive stationary interception mode for 55.6% of its in-water time cannot be reclassified as active gear by the activities that occur the other 44.4%.

C. Administrative Designation as "Active" Does Not Override Constitutional Text

The BOF implemented the "active retrieval" clause through administrative code. Regulatory classification cannot constitutionally redefine prohibited gear. The Board has no authority to

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authorize fish traps by designating them under a different category. See Ordinance No. 3 (constitutional text superior to any BOF action). An administrative label of "active" does not change the physical operation of the net during hold time and does not overcome the constitutional standard.

IV. Analysis III: The Judicial Deference Argument

Pro-seine argument: Courts grant high judicial deference to the BOF as a specialized regulatory agency that explicitly structured beach seine gear to meet conservation goals. Therefore, courts will defer to the BOF's classification of set beach seines as lawful alternative gear.

Why this argument does not overcome the constitutional standard.

A. Judicial Deference Does Not Apply to Constitutional Questions

The doctrine of judicial deference to agency expertise applies to discretionary policy and scientific management decisions within the bounds of an agency's statutory authority. It does not apply when the question is whether agency action violates the state constitution.

Ordinance No. 3 is constitutional text. Courts do not defer to agencies on constitutional interpretation. A court asked whether beach seine gear constitutes a prohibited fish trap under Ordinance No. 3 will apply *de novo* constitutional review, not deferential review. The BOF's classification of its own gear as lawful is not entitled to deference on that question.

B. The Deference Argument Leads to Circular Logic

The deference argument, taken to its conclusion, would mean the BOF could never be held to violate Ordinance No. 3. It would only need to designate its gear a "conservation tool" to insulate it from constitutional review. The constitutional prohibition exists precisely because the convention did not trust legislative and regulatory majorities to resist the economic interests of large fishing operations. A deference rule that immunizes agency action from constitutional review would nullify the very mechanism the convention used to protect against regulatory capture. Courts applying *de novo* constitutional review are not bound by the agency's own classification of its gear.

C. The Board's Own Vote Reflects the Constitutional Line

BOF Proposal 174 proposed allowing a stationary or anchored seine, and the Board voted it down **0 to 7**. That supermajority rejection reflects the Board's own recognition that a stationary anchored seine is a fish trap. The Board then adopted RC-4 authorizing gear that is stationary and anchored during hold time for 55.6% of its deployment. That contradiction cannot be resolved by deference. It must be resolved by a court applying Ordinance No. 3.

D. Temporariness of Anchoring Is Not a Constitutional Defense

Proponents argue that fish traps were "permanent" structures while seines use "temporary, completely removable anchors." *Metlakatla* does not require permanence as an element of trap classification. The Court noted that "floating traps adapted to deep water are commonly used," and floating traps are not permanent. Temporariness of anchoring is not a constitutional defense.

V. Analysis IV: The Conservation and Selectivity Argument

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Pro-seine argument: Set beach seines are authorized as a selective conservation tool. Mesh restrictions prevent entanglement; live sorting allows king salmon to be released unharmed. This "diametrically opposes" the unselective, automated nature of historical fish traps. The gear's conservation intent places it outside the prohibition.

Why this argument does not overcome the constitutional standard.

A. Intent Does Not Define the Gear

Metlakatla does not define a fish trap by the operator's intent or the gear's conservation characteristics. The definition is operational: obstruction, passive capture, and confinement. A gear type that satisfies those elements is a trap regardless of whether its operator intends to release bycatch carefully afterward. What happens *after* fish are concentrated and enclosed does not change the legal character of the gear during the enclosure phase.

B. Live Sorting Describes Trap Operation, Not a Distinction From It

Proponents note that fishers wade into the water to hand-sort fish after the net is drawn closed. This sequence describes trap operation. Fish are first concentrated in a shallow pocket, enclosed, and then sorted. The enclosure phase is functionally identical to the "spiller" function: fish are concentrated in a confined space from which they cannot escape without human intervention. The sorting that follows is the *extraction* step. This operation confirms, rather than refutes, trap classification.

C. Selectivity Arguments Are Addressed to the Wrong Forum

The conservation and selectivity qualities of beach seines are legitimate fisheries management considerations for the BOF. They do not bear on the constitutional question. The constitutional convention did not carve out an exception to Ordinance No. 3 for fish traps that are selectively operated. The prohibition is categorical. If the conservation value of selective beach seine gear is compelling, the appropriate remedy is a constitutional amendment. The conservation argument, however well-founded as a policy matter, cannot overcome a categorical constitutional prohibition.

VI. Affirmative Case: Set Beach Seines Satisfy All Three Metlakatla Elements

Metlakatla identifies three operational elements of a fish trap. RC-004 experimental permit data, the State's own records, confirm that set beach seine gear satisfies each element.

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Metlakatla Element	Definition	RC-004 Beach Seine
1. Obstruction / Interception	A fence or netting that blocks or redirects migrating fish along their path	Net anchored to shore, extended across the tidal corridor, physically blocking migrating sockeye salmon
2. Passive, stationary capture	Fish enter and are held without operator intervention during the capture phase	Hold time (Net Set to Start Pull): 48.5% for UCI-2024-01; 66.6% for UCI-2024-03; 55.6% combined average. Net is stationary and passive throughout hold time.
3. Confinement until removal	Fish are enclosed and cannot exit without human intervention; later retrieved by operators	Both ends of net drawn to beach by tractor or winch; fish enclosed in bag; operators sort and remove catch. Fish cannot exit without human action.

All Three Elements Are Met

Element 1 (Obstruction): The net is anchored at one end to the shore and extended across the tidal migration corridor. Migrating salmon following the shoreline encounter the net and are redirected, the classic interception function *Metlakatla* describes.

Element 2 (Passive stationary capture): During hold time, no human operator is pulling, sweeping, or actively moving the net. The net sits anchored and stationary. Fish swim into and along the net and are held against it passively, without operator intervention, for an average of 55.6% of each in-water deployment. The "active retrieval" argument applies only to the subsequent pull phase; it does not apply to the capture phase, which is the element *Metlakatla* identifies.

Element 3 (Confinement until removal): When both ends of the net are drawn to the beach, the fish are enclosed in the bag formed by the net. They cannot exit. They are removed or released only when human operators open or sort the bag. This is functionally identical to the "spiller" stage of a traditional fish trap.

The Floating Trap Analogy Confirms This Reading

Metlakatla noted that "floating traps adapted to deep water are commonly used, and are highly productive." A floating trap shares with the beach seine its lack of permanent pilings. If the absence of permanent pilings does not remove a floating trap from the *Metlakatla* definition, the same absence does not remove a beach seine. The functional test controls in both cases.

VII. The CFEC Gear Code Structure Confirms Categorical Separation

CFEC gear codes under 20 AAC 05.220 reflect the agency's own categorical distinctions among fishing methods. Examining those codes alongside ADF&G elanding codes reveals that set beach

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seines have no recognized category and that the proposed regulatory vehicle for authorizing them crosses a categorical boundary the coding system itself reflects.

A. Gear Code 02 (Beach Seine) Is Already a Distinct Active-Gear Permit Type

CFEC gear code 02 designates conventional beach seines. Code 02 beach seines are defined by active encirclement: the net is deployed from a skiff in a sweeping arc, herding fish toward shore, with the vessel and crew in continuous motion during the set. Code 02 permits are issued separately from any gillnet permit. They authorize a specific, active-gear method.

Set beach seines as deployed under RC-004 do not operate in continuous motion. They are anchored at one end to the beach and extended into the water on a fixed line, stationary, for 55.6% of deployment time. They share the name "beach seine" but not the operational character that gear code 02 captures. The administrative designation of RC-4 gear as a beach seine does not alter this distinction; the gear code structure reflects the correct categorical difference between an active encirclement method (code 02) and a stationary interception method.

B. ADF&G Elanding Codes Separately Classify Traps and Weirs

ADF&G elanding codes, used to record commercial harvest, include two categories directly relevant to this analysis: Code 14 (Weir) and Code 90 (Trap). These codes are distinct from Code 02 (Beach Seine). Their separate existence in the elanding system reflects that Alaska fisheries administration has historically recognized weirs and traps as a category apart from active encirclement gear.

Set beach seine gear functions in the same manner as a beach weir. Both are shore-anchored. Both extend seaward to intercept migrating salmon. Both hold fish passively in a stationary net. Both enclose fish by mechanical closure. CFEC formally applied trap classification to beach weirs in RC-64. The elanding coding structure is consistent with that classification. Set beach seines belong in the same categorical column as Code 14 (Weir) and Code 90 (Trap), not Code 02 (Beach Seine).

C. No CFEC or ADF&G Gear Code for "Set Beach Seine" Exists

No CFEC gear code and no ADF&G elanding code exists for a "set beach seine" as a distinct category. The gear type authorized under RC-4 occupies a gap in the coding structure because it does not correspond to any recognized classification. The absence of a code is not merely administrative. It reflects that the State's fisheries management apparatus has never treated "set beach seine" as a gear type distinct from the categories that already exist: active encirclement seines (code 02), passive fixed gillnets (code 04), weirs (elanding code 14), and traps (elanding code 90). Gear that is stationary, shore-anchored, and intercepts fish passively fits the last two categories, not the first.

D. The Proposed 20 AAC 05.220 Amendment Crosses a Categorical Boundary

CFEC Notice of Proposed Changes DOL No. 2026200363, filed October 13, 2026, proposes to amend 20 AAC 05.220 to add beach seine use under set gillnet permits in Cook Inlet, citing 5 AAC 21.382(e). Written comments are due November 16, 2026.

The proposed amendment does not create a new gear code for set beach seines. It instead inserts beach seine use as a footnote exception within gear code 04 (set gillnet), which is the passive

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fixed-gear category. This is not a reclassification; it is the addition of an operationally distinct gear type into a permit category it does not match.

Set gillnets (code 04) are passive nets anchored at fixed points, held in place by anchors or floats, that fish entangle in as they swim by. Set gillnets do not enclose fish; fish are held by entanglement, not confinement. Set beach seines, by contrast, enclose fish by drawing both ends of the net to the beach, forming a bag from which fish cannot exit. Gillnet entanglement and beach seine enclosure are functionally different capture mechanisms. Inserting beach seine use into the set gillnet permit category does not change that the gear being authorized is an enclosure device, not a gillnet.

CFEC's own February 8, 2024 letter to the BOF recognized that adding seine gear to set gillnet permits would require significant review and might not be permissible: "The addition of these gear types to the Cook Inlet set gillnet permit type may not happen at all if it would pose a risk to limited entry." The proposed 20 AAC 05.220 amendment proceeds without the review that CFEC itself said would be required.

The proposed amendment cannot authorize what the Constitution prohibits. CFEC has authority to establish gear codes and issue permits within the limits set by the Alaska Constitution and statute. Ordinance No. 3 prohibits fish traps. If set beach seine gear constitutes a fish trap under the *Metlakatla* standard, CFEC cannot authorize it by attaching it to a code 04 permit, any more than the BOF could authorize it by adopting RC-4. The proposed amendment does not address the constitutional question; it assumes the answer.

E. Summary: What the Gear Code Structure Establishes

Four conclusions follow from the CFEC and ADF&G gear code structure:

1. Conventional beach seines (code 02) are already a recognized active-gear permit type. Set beach seines, as stationary interception gear, are operationally distinct from code 02 gear and cannot be categorized with it.
2. ADF&G separately codes traps (code 90) and weirs (code 14) as categories apart from active seines, reflecting that Alaska fisheries administration recognizes these as distinct gear types. Set beach seine gear shares its operational characteristics with code 14 and code 90 gear, not code 02.
3. No "set beach seine" gear code exists anywhere in the CFEC or ADF&G coding system. The absence of a code for this gear type confirms that the State has never recognized it as a distinct lawful category separate from traps and weirs.
4. The proposed 20 AAC 05.220 amendment (DOL No. 2026200363, October 13, 2026) adds beach seine use as an exception within the set gillnet permit category (code 04), not as a new code. This crosses the categorical boundary between active encirclement gear and passive enclosure gear and does not resolve the constitutional question.

VIII. Three Independent Grounds Not Addressed by Pro-Seine Arguments

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Beyond the four arguments examined above, three evidentiary facts in the official record independently establish that set beach seines are fish traps. None of these grounds are addressed by the pro-seine arguments, and none are answered by resort to structural definition, attendance, deference, or conservation intent.

A. The Alaska Department of Law Raised This Issue in 2018

On November 21, 2018, Assistant Attorneys General Seth Beausang and Brad Meyen wrote to BOF Executive Director Glenn Haight (AGO No. 2018200692) regarding Bristol Bay BOF Proposal 33, which proposed beach weirs for commercial salmon fishing. DOL stated:

> *"Beach weirs appear similar to fish traps prohibited by AS 16.10.070 and their design and implementation may require additional review."*

This memo shows that the State's own Department of Law identified that shore-anchored fixed net gear raises fish trap concerns under the statute. Set beach seines are functionally identical to beach weirs in every material respect: both are shore-anchored, extend seaward to intercept migrating salmon, hold fish passively in a stationary net, and enclose fish by mechanical closure. If the DOL analysis applies to beach weirs, it applies with equal force to set beach seines.

This 2018 memo was available to the Board and to the AAG advising the proceeding on May 1, 2026. It was not entered into the RC-4 record and was not addressed. The Board authorized a gear type its own Department of Law had previously flagged as potentially prohibited by the Alaska Constitution.

B. CFEC Formally Opposed Functionally Identical Gear on Fish Trap Grounds (RC-64)

On November 30, 2018, CFEC Chair Fate Putman and Commissioner Dale Kelley submitted RC-64, formally opposing BOF Proposal 33, stating that CFEC "opposes Proposal 33 on its face because the use of beach weirs in the manner proposed would constitute a 'fish trap', a gear type expressly prohibited under Alaska law," citing Ordinance No. 3, AS 16.10.070, and AS 16.10.100.

CFEC's prior formal position that this gear class is a prohibited fish trap cannot be selectively disregarded when CFEC's authority is otherwise cited in support of the gear. CFEC holds the same authority today, and its 2018 determination directly applies to the functionally identical gear authorized under RC-4.

C. AS 16.10.100's "Including But Not Limited To" Language Addresses Material Substitution

AS 16.10.100 prohibits fish traps "including but not limited to floating, pile-driven, or hand-driven fish traps" from being "erected, moored, or maintained on or over land, tideland, submerged land, or water owned or otherwise acquired by the state." The statute's only exception -- small hand-driven traps of the type ordinarily used on rivers, operated in or above a stream or river mouth -- has no application to ocean beach seines.

The legislature's deliberate use of "including but not limited to" anticipated that the fishing industry might attempt to achieve the same functional result through novel gear design, substituting netting for wire mesh, tractors for brailing cranes, temporary anchors for permanent pilings, while preserving the same operational function. The statute forecloses that maneuver. The name of the

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material used for enclosure does not change the legal character of the device.

The structural argument that the absence of permanent pilings, wire mesh, and a spiller chamber removes the gear from trap classification is exactly the substitution argument AS 16.10.100's "including but not limited to" language was written to foreclose.

D. The Three-Way Functional Comparison

The Petition's functional comparison across Beach Weir (Proposal 33), Set Beach Seine (RC-004), and Stationary Purse Seine (Proposal 174) is instructive:

Feature	**Beach Weir (P33)**	**Set Beach Seine (RC-004)**	**Purse Seine Stationary (P174)**
Fixed to shore/position	Yes	Yes	Yes (vessel anchored)
Passive interception during set	Yes	Yes - 55.6% combined avg. hold time	Yes
Fish enclosed	Yes - holding pen	Yes - bag formed by tractors	Yes - pursed bag
Active pursuit of fish	No	No	No
Fish exit without human action	No - held in pen	No - enclosed by tractors	No - pursed closed
Mechanical closure	Fixed fence/pen gate	Tractors draw both ends to beach	Purse line drawn closed
Gear stationary during fishing	Yes	Yes	Yes
Metlakatla elements met	All three	All three	All three
BOF/agency status	**Not authorized - fish trap**	**Authorized under RC-4, May 1, 2026**	**Rejected 0-7, Mar. 20, 2026**

The Board voted 0 to 7 on March 20, 2026 to reject Proposal 174 because a stationary anchored seine is a fish trap. Forty-two days later, on May 1, 2026, the same Board authorized set beach seine gear that is stationary by design for 55.6% of its in-water deployment time. That contradiction appears on the face of the official record and is not addressed by the pro-seine arguments.

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IX. The Pending CFEC Title 20 Proceeding Does Not Resolve the Constitutional Question

On October 13, 2026, CFEC published Notice of Proposed Changes DOL No. 2026200363, proposing to amend 20 AAC 05.220 to add beach seine as an authorized gear type under set gillnet permits in Cook Inlet. The written comment period closes November 16, 2026. That rulemaking proceeding has no bearing on this Court's resolution of Count XIII for five independent reasons.

A. The June 4, 2026 Failed Vote Confirms That Authorization Remains Incomplete

At the June 4, 2026 CFEC meeting, the Commission voted 1 to 1 on a motion to ratify beach seine as an authorized gear type under S04H set gillnet permits. A tied vote is not an affirmative authorization. The motion failed. Beach seine gear has not been ratified by the Commission as a permitted gear class for S04H permit holders.

The pending Title 20 proceeding is therefore the Commission's second attempt to authorize a gear type that it could not ratify at the Commission level. The existence of that proceeding confirms, on the agency's own record, that authorization is not complete. A court ruling now does not preempt a completed administrative process; it resolves a constitutional question that the administrative process cannot answer.

B. No Title 20 Proceeding Can Cure an Ordinance No. 3 Prohibition

Alaska Constitutional Ordinance No. 3 is self-executing and superior to all legislative, regulatory, and administrative enactments. CFEC's rulemaking authority derives from Title 16 and Title 20 of the Alaska Statutes. A regulation issued under delegated statutory authority cannot authorize what the Constitution prohibits.

If set beach seines constitute fish traps under Ordinance No. 3 and the *Metlakatla* functional standard, no Title 20 amendment can authorize their use. The constitutional question is one for this Court. CFEC's ongoing rulemaking neither expands this Court's jurisdiction nor narrows the constitutional prohibition it is asked to enforce.

C. CFEC Has Disclaimed Authority Over Gear Legality

CFEC's own February 8, 2024 letter (Reid Johnson to John Wood) states: "The definition and legality of a gear type is beyond the purview of CFEC." That disclaimer cannot be reconciled with a position that this Court should await CFEC's administrative resolution of a gear legality question. CFEC has affirmatively stated that gear legality is not within its authority. The pending rulemaking addresses administrative authorization, not constitutional legality -- two distinct questions.

An agency cannot disclaim authority over a question, initiate a proceeding that touches that question, and then invoke its own proceeding as grounds to defer judicial resolution of the underlying constitutional issue. CFEC's own disclaimer confirms that this Court is the proper forum.

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D. A Stay Pending CFEC Action Would Be Improper

The primary jurisdiction doctrine permits a court to stay proceedings pending agency resolution of a question that falls within the agency's special competence. It does not apply where (1) the underlying question is one of constitutional law rather than statutory or regulatory interpretation, (2) the agency has disclaimed competence over the question, or (3) the agency proceeding cannot resolve the dispositive issue.

All three conditions are present here. Whether set beach seines meet the *Metlakatla* functional definition of a fish trap is a constitutional question. CFEC has stated that gear legality is beyond its purview. And no Title 20 amendment can override Ordinance No. 3. Primary jurisdiction deference is therefore unavailable. This Court has authority and obligation to rule on Count XIII.

E. A Ruling Before CFEC Acts Prevents Mootness Arguments

If CFEC completes DOL No. 2026200363 and issues a regulation purporting to authorize beach seine under S04H permits, a future challenger faces the argument that the regulation superseded the prior gear code and that the question is therefore moot or transformed. A ruling on the constitutional question now establishes that the Ordinance No. 3 prohibition exists independently of any administrative gear code and cannot be mooted by subsequent rulemaking. Early resolution of Count XIII protects the integrity of the constitutional record.

X. Conclusion

The four pro-seine arguments do not overcome the constitutional standard:

1. **Structural definition:** *Metlakatla* defines a fish trap by function, not a required component checklist. "Variations in construction" are explicitly acknowledged by the Court. The heart/pot/spiller test does not appear in the controlling authority and does not provide a basis for constitutional distinction.
2. **Active net and attendance:** Ordinance No. 3 does not condition the prohibition on the absence of human attendance. RC-004 data shows passive stationary interception for 55.6% of actual in-water deployment time, the capture phase that defines trap operation. Administrative designation as "active" does not alter that physical operation.
3. **Judicial deference:** Courts apply *de novo* review on constitutional questions. Agency classification cannot self-authorize constitutionally prohibited gear. The Board's own 0-7 vote on Proposal 174 reflects its recognition of the constitutional line that RC-4 crosses 42 days later.
4. **Conservation intent:** The prohibition is categorical. Intent and selectivity practices are management considerations that do not bear on constitutional classification. Live sorting during extraction describes trap operation and does not change the legal character of the enclosure phase.

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Three independent evidentiary grounds in the official record reinforce this conclusion and are not addressed by the pro-seine arguments:

5. **Alaska Department of Law, 2018:** AGO No. 2018200692 (Beausang and Meyen, November 21, 2018) flagged shore-anchored fixed net gear as similar to prohibited fish traps under AS 16.10.070. That memo was not entered into the RC-4 record.
6. **CFEC formally opposed functionally identical gear:** RC-64 (November 30, 2018) formally opposed beach weirs as fish traps citing Ordinance No. 3, AS 16.10.070, and AS 16.10.100. CFEC's prior formal position on this gear class is part of the official record and applies with equal force to RC-4 gear.
7. **AS 16.10.100's "including but not limited to" language:** The legislature anticipated material substitution and wrote a statute that forecloses it. Substituting netting for wire, tractors for a brailing crane, or temporary anchors for permanent pilings does not change the legal character of the device.

The affirmative case is as follows: set beach seine gear as deployed under RC-004 intercepts migrating salmon (Element 1), holds them passively in a stationary net for the majority of each deployment (Element 2), and encloses them in a bag from which they cannot exit without human intervention (Element 3). All three *Metlakatla* elements are satisfied. The gear is a fish trap. Its authorization by the BOF under RC-4 violates Alaska Constitutional Ordinance No. 3, AS 16.10.100, and Article VIII, Section 15 of the Alaska Constitution.

Respectfully submitted,

DATED this 14th day of October, 2026, at Kenai, Alaska.



Russell Clark
Pro Se Plaintiff
[redacted]
CFEC Permit No. S04H-58304

Sources and Record

Metlakatla Indian Community v. Egan, 362 P.2d 901, 903 (Alaska 1961); see also *Organized Village of Kake v. Egan*, 369 U.S. 60 (1962) (affirming Alaska court judgment that state fish trap prohibition applied)

Alaska Constitutional Ordinance No. 3 (1956)

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Alaska Constitution, Article VIII, Section 15

AS 16.10.070; AS 16.10.100

AGO No. 2018200692 (Beausang and Meyen to Haight, Nov. 21, 2018) - DOL beach weir fish trap opinion

RC-64, CFEC opposition to BOF Proposal 33 as a fish trap (Fate Putman, Chair; Dale Kelley, Commissioner; November 30, 2018)

RC-004, Experimental Set Beach Seine Fishery Report (ADF&G, 2024) - Permits UCI-2024-01 (Gabriel), UCI-2024-03 (Hollier)

RC-004 Appendix A timestamp analysis - 129 individual sets, hold time as percentage of actual in-water deployment time

RC-65 (Gabriel, March 14, 2025); RC-72 (Chamberlain/Carlson Van Dort, March 15, 2025)

BOF Proposal 174 vote record (0-7, March 20, 2026); BOF Proposal 313 rejection (March 2025)

RC-4 as adopted May 1, 2026

CFEC Comments on BOF Proposals 103, 104, 139, and 140 (Reid Johnson to John Wood, February 8, 2024) - reef net vs. fish trap functional analysis; seine gear on set gillnet permits requires review

CFEC Comments on BOF Proposal 192 (Rick Green, April 6, 2026)

Attorney General's Order of Corrective Action (May 19, 2026)

CFEC Notice of Proposed Changes, DOL No. 2026200363 (October 13, 2026) - proposed amendment to 20 AAC 05.220 adding beach seine use under set gillnet permits in Cook Inlet; comment deadline November 16, 2026

20 AAC 05.220 (CFEC gear codes); 5 AAC 21.382(e) (cited in DOL No. 2026200363)

Pro-Seine Report: *Regulatory and Legal Standards Differentiating Set Beach Seines from Prohibited Fish Traps in Alaska* (arguments of proponents of beach seine gear addressed in Sections II-V of this memorandum)

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CERTIFICATE OF SERVICE

I certify that on this 14th day of October, 2026, a true and correct copy of the foregoing Plaintiff's Memorandum of Law in Support of Count XIII of the First Amended Complaint was served on counsel for Defendants via the TrueFiling electronic filing system upon:

Edward C. Lee, Assistant Attorney General
Kimberly K. Del Frate, Assistant Attorney General
Anadela Gallego, Assistant Attorney General
Jenna Combs, Assistant Attorney General
Office of the Attorney General
State of Alaska



Russell Clark
Pro Se Plaintiff

SUPPLEMENTAL COMMENT OF RUSSELL CLARK

PRO SE PERMIT HOLDER, S04H-58304

In the Matter of: DOL No. 2026200363

Proposed Amendment to 20 AAC 05.220

(Addition of Gear Code 02 to S04H Set Gillnet Permits)

Submitted by:

Russell Clark, Pro Se

[redacted]

[redacted]

CFEC Permit No. S04H-58304 (Eastside Set Net, Upper Cook Inlet)

Date: October 16, 2026

Pursuant to Russell Clark's timely-filed initial comment opposing DOL No. 2026200363, this supplemental comment presents six additional grounds developed from review of the ADF&G Experimental Set Beach Seine Fishery Report (UCI-2024-01, UCI-2024-03; Robert Begich, October 2024) (hereinafter RC004), the official Register 258 text of 5 AAC 21.382(g) as adopted at the May 1, 2026 Board of Fisheries special meeting, and photographic and video evidence of the actual 2024 experimental beach seine operations in statistical areas 244-32 and 244-41, Upper Cook Inlet Subdistrict (Exhibits A-1 and A-2, previously submitted to CFEC by separate email). These grounds demonstrate that CFEC cannot make the findings required by AS 16.43.140 based on the existing rulemaking record, and that the proposed amendment to 20 AAC 05.220 must be rejected.

GROUND I: THE REGULATION AUTHORIZES SIMULTANEOUS OPERATION OF TWO SEINES PER PERMIT WITH NO RESTRICTION ON SITES OR REDEPLOYMENT, ALLOWING MULTI-PERMIT HOLDERS TO MONOPOLIZE AVAILABLE BEACH AND ELIMINATE OTHER PARTICIPANTS

The proposed amendment authorizes gear code 02 (beach seine) as an alternative to set gillnet under existing S04H permits, premised on the assumption that effort per

permit will remain roughly equivalent to set gillnet effort. That premise is false on the face of the regulation as written.

Under 5 AAC 21.382(g)(1)(D), as adopted in Register 258:

> "fishing with a beach seine must occur from shore or waterline, with one end anchored on shore and the outside end set and retrieved back to the shore or waterline using a running line."

This provision defines the fishing act as the period from deployment until both ends are retrieved to shore. The moment both ends reach the shore or waterline, the seine has completed a set and is no longer fishing under the regulation. Nothing in 5 AAC 21.382(g)(1) restricts:

- the number of active seines per permit at any one time;

- the number of operating sites per permit;

- the interval between sets; or

- redeployment of a second seine while the first seine is being brailed.

The practical consequence is severe. A permit holder operating two sites may deploy Seine No. 1 at Site A, allow it to fish during the soak period, retrieve both ends to shore, and immediately deploy Seine No. 2 at Site B while Seine No. 1 is being cleared of fish. This continuous cycling doubles the effective harvest capacity per permit relative to what RC004 measured under single-site experimental conditions.

The impact is compounded by Alaska's limited entry permit structure. Each individual may hold a maximum of two S04H permits. A single two-permit holder operating four sites in continuous cycling occupies up to 7,200 linear feet of beach front. A husband and wife may hold four permits between them; at eight sites in continuous rotation that household occupies up to 14,400 linear feet of beach front, foreclosing all available beach to every other S04H permit holder and eliminating the set gillnet fishery from the same area through physical occupation of the shore. Each operating site requires a minimum of 1,200 linear feet of beach to accommodate deployment as the tide recedes and to account for tidal variation; DNR shore fishery leases are commonly developed with 1,198-foot spacing between nets. Family members holding additional permits compound the effect further, with no limit in the regulation on coordinated multi-household beach occupation.

This is not a hypothetical. The experimental permit holders identified in RC004 include permit holders who may hold multiple S04H permits. CFEC has not analyzed the beach monopolization risk created by the absence of any per-permit site or seine limit

in 5 AAC 21.382(g)(1). CFEC cannot make the findings required by AS 16.43.140 regarding the number of permits necessary to harvest the resource without waste and the economic effects on current participants without addressing this structural defect in the regulation.

GROUND II: THE RULEMAKING RECORD DOES NOT DISCLOSE THAT COMMERCIAL OPERATION REQUIRES PERMANENT BURIED CONCRETE INFRASTRUCTURE IN STATE TIDELANDS

The rulemaking record for DOL 2026200363 and the RC004 report describe beach seine as portable alternative gear. The actual 2024 experimental operations document a different reality.

Photographic evidence from the 2024 experimental permit operations (UCI-2024-01, UCI-2024-03) in statistical areas 244-32 and 244-41, received by permit holder Russell Clark from eyewitness Lance Alldrin via iMessage on July 11, 2024 at 7:15 a.m., and video footage of the same operations previously submitted to CFEC (Exhibit A-1), depicts the following infrastructure at each operating site:

Infrastructure Component	Specification
Outer anchor blocks (per site)	16,000 lb concrete, buried in tidal substrate
Inner beach anchor blocks (per site)	8,000 lb concrete, buried in tidal substrate
Retrieval equipment	Log skidder (cable/drum), Komatsu WB140 backhoe-loader
Additional equipment	John Deere tractor, second tractor, multiple trucks/vehicles
Crew	8 to 10 persons per haul-back
Fish handling	Multiple blue fish totes (capacity over 1,000 lbs each), vehicle transport

The outer anchor blocks alone weigh eight tons each. They are buried in the intertidal zone and are not removed between sets or at the end of the season. They are a permanent fixture in state tidelands. The log skidder generates the mechanical force necessary to retrieve the net against the drag of the lead line across the tidal flat. The backhoe is required to install and maintain the buried anchor blocks.

This infrastructure was not disclosed in the rulemaking record, not described in RC004, and not before the Board of Fisheries when it adopted 5 AAC 21.382(g) by a 4-to-2 vote on May 1, 2026. The Department of Law legal sufficiency review, signed May 15, 2026, found no legal problems, but that review was conducted without knowledge of this infrastructure. A rulemaking record that omits the physical reality of the authorized operation does not support the findings required by AS 16.43.140.

GROUND III: THE REGULATION CREATES A CONFLICT WITH DNR SHORE FISHERY LEASE HOLDERS THAT CFEC HAS NO AUTHORITY TO RESOLVE

Set gillnet permit holders in the Upper Cook Inlet Subdistrict, including Clark (S04H-58304), hold DNR shore fishery leases under AS 38.05.082 governing their operating sites in the intertidal zone. DNR does not recognize beach seine as an authorized use under existing set gillnet shore fishery leases.

This creates a conflict that 20 AAC 05.220 and 5 AAC 21.382(g)(1) together cannot resolve. ADF&G's gear authorization under 5 AAC 21.382(g)(1) permits the fishing method. It does not and cannot authorize use of a DNR-leased intertidal site for a gear type that DNR does not recognize under that lease. ADF&G and CFEC operate under separate statutory authorities from DNR and cannot expand the scope of a DNR lease by gear regulation.

A permit holder who receives gear code 02 authority under the proposed 20 AAC 05.220 amendment may be authorized by ADF&G to use beach seine but simultaneously in conflict with DNR at any site covered by an existing shore fishery lease. A beach seine operator who installs buried concrete anchor infrastructure at a site covered by another permit holder's DNR shore fishery lease places both parties in an unresolved conflict over state tidelands that neither ADF&G nor CFEC has jurisdiction to adjudicate.

The drafters of 5 AAC 21.382(g) addressed a related concern for dip net operators. Subsection (g)(3)(E), governing dip nets, states:

> "Nothing in this subsection affects or changes the terms or conditions of a lease and its lessee under AS 38.05.082 or a City of Kenai shore fishery lease and its lessee."

This protective language is entirely absent from subsection (g)(1) governing beach seine. The drafters knew how to write a shore lease protection clause and included one for dip nets. Its complete omission from the beach seine provisions leaves existing DNR lease holders without any regulatory protection against beach seine operators installing permanent infrastructure at their sites. CFEC cannot cure this gap by adding gear code 02 to 20 AAC 05.220.

GROUND IV: PERMANENT BURIED CONCRETE ANCHORS IN STATE TIDELANDS REQUIRE SEPARATE DNR AUTHORIZATION THAT HAS NOT BEEN OBTAINED OR ADDRESSED IN THE RULEMAKING RECORD

Installation of 16,000-pound and 8,000-pound concrete blocks buried in the intertidal zone is not a fishing gear question. It is a tidelands use question. DNR administers the intertidal zone under AS 38.05.082 and related statutes. A permanent structure in state tidelands requires DNR authorization regardless of ADF&G gear regulations.

The rulemaking record contains no evidence that:

- any DNR authorization was sought or obtained for the burial of anchor infrastructure during the 2024 experimental permit operations;

- ADF&G consulted with DNR regarding tidelands authorization requirements for commercial-scale beach seine operations before recommending adoption of 5 AAC 21.382(g);

- the Board of Fisheries was informed that commercial beach seine operations would require permanent buried infrastructure in DNR-administered tidelands; or

- a pathway exists for beach seine operators to obtain the necessary DNR tidelands authorization without displacing existing shore fishery lease holders.

CFEC's authority under AS 16.43 governs entry permits and gear codes. It does not extend to resolving competing claims to state tidelands between DNR lease holders and beach seine operators who must install permanent buried infrastructure to operate commercially. The proposed amendment to 20 AAC 05.220 should not be adopted until DNR has addressed the tidelands authorization question and confirmed that beach seine operations can be conducted commercially without conflicting with existing shore fishery lease holders.

GROUND V: THE EXPERIMENTAL DATA IN RC004 IS NOT PREDICTIVE OF ACTUAL COMMERCIAL EFFORT PER PERMIT AND CANNOT SUPPORT THE FINDINGS REQUIRED BY AS 16.43.140

RC004 measures catch per unit effort (CPUE) under single-site, single-seine experimental conditions. CFEC is being asked to add gear code 02 to S04H permits based on a rulemaking record premised on those conditions. The actual commercial operation authorized by the regulation differs from the experimental conditions in at least three material respects.

A. Multi-Site, Multi-Seine Operation

As established in Ground I, the regulation places no limit on the number of sites or seines per permit. RC004's CPUE data, collected under single-site conditions, does not predict the effective harvest capacity of a two-site, continuous-cycle commercial operation, let alone the four-site operation available to a two-permit holder or the

eight-site operation available to a husband-and-wife household holding four permits. ADF&G and CFEC have no data on multi-site beach seine CPUE in the Upper Subdistrict.

B. Industrial Infrastructure Not Present During Experimental Permits

RC004 does not describe the anchor block specifications, buried concrete infrastructure, or heavy equipment fleet visible in the Exhibit A-1 video previously submitted to CFEC (July 11, 2024). The experimental data does not reflect the operational capacity of a fully-equipped commercial beach seine operation with permanently installed anchor infrastructure at multiple sites.

C. RC004 Is an Internal ADF&G Document, Not Independent Science

RC004 is an internal ADF&G report produced in support of a predetermined policy outcome. The report's central question, whether beach seine can effectively replace set gillnet effort, is a policy conclusion, not a scientific finding. The experimental permit holder (Gabriel, UCI-2024-01) is a proponent of the proposed gear change who cooperated with ADF&G to design and conduct the experimental operations. RC004 does not document independent peer review, does not address the constitutional question raised by Alaska Const. Art. VIII, Sec. 15, and does not disclose the permanent buried anchor infrastructure required for commercial operation. CFEC should not predicate AS 16.43.140 findings on an agency advocacy document produced without independent verification.

GROUND VI: THE BEACH SEINE AUTHORIZED UNDER 5 AAC 21.382(g) IS TWICE THE LENGTH OF THE SET GILLNET AUTHORIZED UNDER THE SAME PERMIT, DOUBLING GEAR CAPACITY WITHOUT A NEW LIMITED ENTRY ANALYSIS

S04H set gillnet permits in the Upper Cook Inlet Subdistrict authorize gear of 35 fathoms in length. The beach seine authorized under 5 AAC 21.382(g) as adopted in Register 258 is 70 fathoms in length. The proposed amendment to 20 AAC 05.220 would add gear code 02 (beach seine) to existing S04H permits, replacing or supplementing 35-fathom set gillnet authority with 70-fathom beach seine authority under the same permit number.

This is a doubling of authorized gear length on the face of the regulation. It is not an incidental difference in gear type. A 70-fathom net intercepts 420 feet of beach. A 35-fathom net intercepts 210 feet of beach. Gear length directly determines the volume of water column and beach face swept per set and is a primary determinant of harvest capacity.

A. The Gear Length Doubling Is Not Addressed in the Limited Entry Record

CFEC issued S04H permits based on the entry level and effort associated with set gillnet gear at 35 fathoms. The permit system was designed and the number of permits limited based on that gear standard. Adding gear code 02 at 70 fathoms to existing S04H permits doubles the effective gear capacity of each permit without a new limited entry analysis under AS 16.43.140. CFEC cannot make the required findings regarding the number of permits necessary to harvest the resource without waste without addressing the fact that each amended permit will authorize twice the gear length on which the original entry determination was based.

B. The Gear Length Disparity Compounds the Two-Site Cycling Scheme

As established in Ground I, the regulation authorizes continuous two-site cycling under a single permit. A permit holder operating two sites with 70-fathom seines in continuous rotation deploys 140 fathoms of active gear under a permit issued for 35 fathoms. That is a 4-to-1 ratio of effective gear deployment relative to the permit basis.

Under Alaska limited entry law, each individual may hold a maximum of two S04H permits. A two-permit holder operating four sites in continuous rotation deploys 280 fathoms of active beach seine gear under permits collectively issued for 70 fathoms of set gillnet, a 4-to-1 ratio. A husband and wife holding four permits between them and operating eight sites in continuous rotation deploy 560 fathoms of active gear under permits collectively issued for 140 fathoms, the same 4-to-1 ratio. This is not a marginal increase in effort. It is a structural transformation of permit capacity that the existing limited entry record does not address.

The gear length disparity also compounds the beach occupancy analysis in Ground I. A 70-fathom seine set in an arc from shore and retrieved back to the beach requires substantially more linear beach front than a 35-fathom set gillnet anchored in place. The 1,200-foot minimum site footprint and the resulting beach front figures stated in Ground I therefore understate the actual displacement impact when the full arc of a 70-fathom seine is accounted for.

C. The RC004 CPUE Comparison Does Not Disclose the Gear Length Variable

RC004 compares beach seine catch-per-unit-effort to set gillnet catch-per-unit-effort as the basis for concluding that beach seine is a viable alternative gear for S04H permit holders. That comparison does not disclose that the beach seine tested is twice as long as the set gillnet it purports to replace. A longer net sweeping more beach per set will intercept more fish by geometry alone. RC004's CPUE comparison conflates gear efficiency with gear length and does not isolate the contribution of the additional 35 fathoms to the experimental catch data. CFEC cannot rely on that comparison to support a finding of equivalent effort per permit.

CONCLUSION

The six grounds presented in this supplemental comment demonstrate that the rulemaking record for DOL 2026200363 is materially incomplete. CFEC cannot make the findings required by AS 16.43.140 without:

- restricting the number of active seines and sites per permit to prevent beach monopolization by multi-permit holders under the continuous two-site cycling scheme authorized by the current regulatory text;

- disclosing and addressing the permanent buried concrete anchor infrastructure required for commercial operation, which was not before the Board of Fisheries when it voted;

- obtaining DNR confirmation that beach seine operations can be conducted commercially without conflicting with existing DNR shore fishery lease holders, given DNR's non-recognition of beach seine as an authorized use under existing set gillnet leases;

- addressing the complete absence of any shore lease protection clause in 5 AAC 21.382(g)(1), in contrast to the explicit protection provided at 5 AAC 21.382(g)(3)(E) for dip net operations;

- obtaining independent data on multi-site, commercial-scale beach seine CPUE that accurately predicts effort per permit under the gear as it will actually be operated; and

- conducting a new limited entry analysis under AS 16.43.140 that accounts for the fact that the beach seine authorized under 5 AAC 21.382(g) in Register 258 is 70 fathoms, twice the 35-fathom set gillnet standard on which existing S04H permits were issued, and that the two-site cycling scheme multiplies that disparity to a 4-to-1 ratio of deployed gear relative to the original permit basis.

Russell Clark respectfully requests that CFEC reject the proposed amendment to 20 AAC 05.220 (DOL No. 2026200363), or in the alternative, continue consideration pending resolution of the regulatory conflicts identified in this supplemental comment.

Respectfully submitted this 16th day of October, 2026.



Russell Clark, Pro Se

CFEC Permit No. S04H-58304

[redacted]

[redacted]

EXHIBIT A-1 (previously submitted to CFEC by separate email): Video footage of 2024 experimental set beach seine operations, North Kenai Beach, Upper Cook Inlet Subdistrict, statistical areas 244-32 and 244-41. Received by Russell Clark from eyewitness Lance Alldrin via iMessage, July 11, 2024, 7:15 a.m. Depicts beach seine operation including buried anchor infrastructure, heavy equipment fleet (log skidder, Komatsu WB140 backhoe-loader, John Deere tractor, additional tractor, vehicles), cork line arc enclosure, and haul-back crew. No vessel is present.

EXHIBIT A-2 (previously submitted to CFEC by separate email): Video footage of 2024 experimental set beach seine haul-back operation, Salamatof Beach, Upper Cook Inlet Subdistrict. Recorded by independent observer during the 2024 experimental permit season (observer identity to be confirmed). Depicts net being retrieved to shore by shore-based heavy equipment with 8 to 10 person crew; net contains salmon. No vessel is present.

PUBLIC COMMENT AND NOTICE TO AFFECTED USER GROUPS

CFEC DOL No. 2026200363 - Proposed Amendment to 20 AAC 05.220

Beach Seine (Gear Code 02) Added to S04H East Side Set Gillnet Permits

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TO: Commercial Fisheries Entry Commission

Email: DFG.CFEC.PublicQuestions@alaska.gov

Fax: (907) 789-6170

Mail: P.O. Box 110302, Juneau, AK 99811-0302

DATE: October 16, 2026

FROM: Russell Clark, Pro Se, CFEC Permit No. S04H-58304

I. WHAT THE CFEC IS VOTING ON - NOVEMBER 17, 2026

The Commercial Fisheries Entry Commission (CFEC) is scheduled to vote on November 17, 2026 on whether to add gear code 02 (beach seine) to S04H Cook Inlet East Side Set Gillnet permits. The proposed amendment to 20 AAC 05.220 would authorize beach seine operations for existing S04H East Side permit holders in the Upper Cook Inlet Subdistrict without separate limited entry analysis.

The proposal implements a Board of Fisheries action approved 4-to-2 on May 1, 2026. An earlier attempt to adopt the change as an emergency regulation at the June 4, 2026 CFEC meeting failed on a 1-to-1 split vote. The November 17 vote proceeds under the standard rulemaking process.

II. WHO IS AFFECTED

The proposed gear change is presented as an internal matter for the East Side Set Net fishery. It is not. The Upper Cook Inlet Subdistrict intercepts salmon stocks that migrate to river systems throughout Southcentral Alaska. Any increase in interception capacity on the east-side beach directly reduces escapement to those systems. Affected groups include:

User Group	Impact Pathway
S04H Set Gillnet Permit Holders (East Side Set Net)	Beach front monopolization by multi-permit households; physical displacement of set gillnet operations; gear competition on shared beach.
Upper Cook Inlet Drift Fleet (S01H, S02H permits)	Increased beach interception reduces fish reaching open water; allocation pressure shifts; any conservation-based closure triggered by beach interception impacts the drift fleet equally.
East Side River Systems (Kenai, Kasilof, Ninilchik, and other drainages)	Sockeye, Coho, and King runs bound for east-side rivers pass through the S04H beach area before entering their home rivers. Increased interception reduces escapement available to sport, personal-use, and subsistence fisheries on each of these systems.

Northern District In-River Groups (Susitna, Matanuska, Yentna, Deshka corridors)	Coho and King salmon bound for northern Cook Inlet tributaries transit the Upper Cook Inlet Subdistrict and are subject to interception by east-side gear before reaching their home rivers.
Mat-Su Valley In-River Groups (Coho and King fisheries)	Mat-Su Valley Coho and King returns have been subject to periodic emergency restrictions. Any gear that increases interception capacity compounds existing conservation concerns for these stocks.
Subsistence and Personal-Use Fisheries	Subsistence and personal-use priorities under AS 16.05.258 are satisfied from escapement after commercial harvest. Increased commercial interception at the beach directly competes with subsistence access.

III. BYCATCH MORTALITY RISK - NO ANALYSIS IN THE RULEMAKING RECORD

The rulemaking record for DOL No. 2026200363 contains no analysis of Coho or Chinook (King) salmon bycatch mortality risk. The ADF&G experimental permit report (RC004, October 2024) does not provide species composition data for the 2024 experimental sets, does not assess post-release mortality for non-target species, and does not account for the physical conditions of Upper Cook Inlet that differ materially from every published salmon seine mortality study.

Beach seines operated from the east shore of Upper Cook Inlet intercept the mixed-stock salmon run without the species or stock selectivity available to set gillnet operations. The 2024 experimental operations under commissioner permits UCI-2024-01 (Statistical Area 244-32, North Kenai Beach) and UCI-2024-03 (Statistical Area 244-41, Salamatof Beach) used 70-fathom seines retrieving the entire net to shore, capturing all species present in each set without distinction.

Published Baseline Mortality - Single Capture

Raby et al. (2018), published in ICES Journal of Marine Science (Vol. 75, No. 1), documented overall post-release mortality of 36.1% (95% CI: 29.9 to 42.9%) for Coho salmon captured in purse seine operations in the Strait of Georgia. Interior Fraser River Coho showed cumulative survival to river detection receivers of only 14%. Scale loss was the strongest single predictor of mortality.

Washington Department of Fish and Wildlife studies on the lower Columbia River, cited in Tuohy (2018, University of Washington), documented single-capture mortality of approximately 25% for Chinook captured in beach seine operations.

The Multiple-Capture Problem

The published mortality figures above reflect single-capture events only. The beach seine regulation at 5 AAC 21.382(g)(1)(D) places no limit on the number of sets per tide or the number of sites operated simultaneously. Continuous two-site rotation under a single permit allows one seine to be set and retrieved at Site A while a second seine is simultaneously set at Site B in the same tidal reach. Fish released at Site A continue migrating along the beach and may be captured again at Site B within the same tidal cycle

before physiological recovery from the first capture.

- Cortisol, blood lactate, and osmotic stress from a single seine capture require 4 to 24 hours to return to baseline levels in adult Pacific salmon.

- Scale loss, the strongest predictor of post-release mortality in Raby et al. (2018), is cumulative and irreversible. A fish losing scales in a first set loses additional scales in a second set.

- Stress hormones from sequential captures are additive, not reset between events.

No published study has measured cumulative mortality for Pacific salmon subjected to two or more sequential commercial seine captures within a single tidal cycle. The single-capture figures of 25% for Chinook and 36% for Coho represent a floor, not a ceiling. Cumulative two-event mortality likely exceeds 40 to 50% under favorable conditions and is higher still under Upper Cook Inlet conditions.

Upper Cook Inlet Conditions Not Present in Any Published Study

High Turbidity: Glacial silt from the Matanuska, Susitna, and other drainages produces near-zero visibility in the intertidal zone. The Fraser River and Strait of Georgia study environments are clear-water or low-turbidity. The lower Columbia River, while turbid, does not approach Upper Cook Inlet silt loads.

Extreme Tidal Currents: Upper Cook Inlet tidal ranges exceed 30 feet. Strong tidal currents during retrieval impose mechanical stress and abrasion on fish not present in any study environment. Tidal current also carries released fish from Site A toward Site B rapidly, reducing recovery time between capture events.

Sorting in Active Surf: Beach seine retrieval in Upper Cook Inlet occurs in the active surf zone. Species sorting, which determines which fish are released, occurs in this surf-zone environment. Stress imposed on released fish during surf-zone sorting is not quantified in any published study.

Crowding with Mixed Species: A 70-fathom seine retrieves all species without selectivity. Crowding density in the bunt during mechanical retrieval is substantially higher than conditions in the Raby et al. (2018) purse seine study.

Shallow Warm Intertidal Water: Shallow intertidal water in Upper Cook Inlet during the June through August season is substantially warmer than subtidal water. Water temperature is a documented amplifier of capture-stress mortality in Pacific salmon.

No Upper Cook Inlet Telemetry Data Exists

No telemetry study has been conducted to measure post-release survival for Coho or King salmon captured and released by beach seine in Upper Cook Inlet. RC004 contains no post-release survival analysis. Any mortality estimate must be extrapolated from studies conducted in materially different environments. Given the conditions described above, the published single-capture rates substantially understate actual mortality risk in Upper Cook Inlet beach seine operations.

IV. STOCK STATUS - 2023 ESCAPEMENT DATA

The stocks subject to this bycatch mortality risk are not at healthy abundance. ADF&G 2023 preliminary data for stocks transiting the S04H east-side beach area:

- Kenai River late-run Chinook: 13,922 fish at sonar; below the optimal escapement goal of 15,000 to 30,000.

- Deshka River Chinook: 3,741 fish; below the biological escapement goal of 9,000 to 18,000.

- Ninilchik River Chinook: 330 fish; below the sustainable escapement goal of 750 to 1,300.

- Little Susitna River Coho: incomplete count due to weir loss; sustainable escapement goal of 9,200 to 17,700 likely not met.

- Deshka River Coho: incomplete count; sustainable escapement goal of 10,200 to 24,100 projected not met.

- East Side Set Net commercial fishery: closed entirely in 2023 due to low King salmon abundance.

Imposing additional bycatch mortality on stocks already below escapement goals, and that triggered a full commercial closure in 2023, requires a level of biological justification the rulemaking record does not contain.

V. PROCEDURAL GAP - STATE BYCATCH ADVISORY BODY NOT CONSULTED

The State of Alaska operates the Alaska Bycatch Advisory Council (ABAC), established by the Commissioner of ADF&G to advise on bycatch impacts in Alaska commercial fisheries. The rulemaking record does not reflect any referral of the beach seine bycatch question to the ABAC, any ABAC review of Coho and King salmon mortality risk under continuous multi-site beach seine operations in Upper Cook Inlet, or any ABAC finding on the adequacy of the mortality data in the record.

The procedural concern is compounded by the following fact: one of the two experimental permit holders whose 2024 gear trials produced RC004 is a current member of the ABAC. That permit was issued by the same Commissioner who established the ABAC. The Council member who received a Commissioner permit to test the gear is now on the advisory body that would ordinarily evaluate the bycatch consequences of authorizing that gear permanently. The Council has not been asked to perform that evaluation.

When a member of the state bycatch advisory body is also one of the two experimental permit holders whose data supports the proposed authorization, the need for independent ABAC review is heightened, not reduced. CFEC should not proceed to a vote until the state body charged with evaluating bycatch risk has had an opportunity to do so through an untainted process.

VI. FISH TRAP DETERMINATION REQUEST - ALASKA CONST. ART. VIII, SEC. 15

Alaska Constitution Article VIII, Section 15 prohibits fish traps in Alaska waters. A formal determination request has been submitted to CFEC and the Department of Law asking whether a continuously operated, mechanically retrieved beach seine deployed in continuous rotation across a defined tidal reach constitutes a fish trap within the meaning of Article VIII, Section 15.

The beach seine configuration at 5 AAC 21.382(g)(1)(D) requires both ends of the net to be on shore at the conclusion of each set. A permit holder operating two sites in continuous tidal rotation deploys the gear as a permanent interception structure across the

migration corridor, repositioning between sets but maintaining continuous coverage of the same beach reach throughout each tidal cycle. The buried concrete anchor infrastructure and permanent tidelands fixtures documented in the 2024 experimental operations share functional characteristics with the fixed gear the constitutional prohibition was intended to address. The functional effect is the same as a fixed trap: migratory salmon transiting the east-side beach cannot pass without entering the gear.

A determination that the gear constitutes a fish trap would render the proposed amendment unconstitutional on its face. The threshold constitutional question must be resolved before the Commission votes on November 17, 2026.

VII. REQUESTED ACTION

- Postpone the November 17, 2026 vote pending: (1) a Department of Law written determination on the fish trap constitutional question under Article VIII, Section 15; (2) ADF&G production of species composition data from the 2024 experimental sets; and (3) completion of an independent bycatch mortality analysis accounting for Upper Cook Inlet-specific conditions and multiple-capture exposure.

- Require ADF&G to produce species composition data from the 2024 experimental sets before any gear authorization vote.

- Commission an independent telemetry study to measure post-release survival of Coho and King salmon captured and released under beach seine operations in Upper Cook Inlet before any permanent gear authorization takes effect.

- Include in the rulemaking record a cumulative mortality assessment for two-event sequential capture under the gear configuration permitted by 5 AAC 21.382(g)(1)(D).

- Refer the bycatch mortality question to the Alaska Bycatch Advisory Council for review and independent findings before any permanent beach seine gear authorization takes effect for S04H East Side Set Gillnet Permits.

- Resolve the pending fish trap determination request before proceeding to a vote. A threshold constitutional question cannot be deferred until after a permanent gear authorization is adopted.

- Submit written comments to DFG.CFEC.PublicQuestions@alaska.gov before November 17, 2026. Comments from commercial, sport, subsistence, and in-river user groups are part of the public record and must be considered by the Commission under AS 16.43.140.



Russell Clark, Pro Se

CFEC Permit No. S04H-58304

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Sources: Raby et al. (2018), "Population-specific mortality in coho salmon (Oncorhynchus kisutch) released from a purse seine fishery," ICES Journal of Marine Science, Vol. 75, No. 1, pp. 309-318

(doi:10.1093/icesjms/fsx129). Tuohy (2018), "Post-release survival of Chinook salmon and steelhead trout from an experimental commercial fish trap in the lower Columbia River," University of Washington Masters Thesis (citing WDFW beach seine and purse seine survival studies, Table 1-1). ADF&G 2023 Preliminary Cook Inlet Salmon Season Summary. ADF&G RC004 Experimental Set Beach Seine Fishery Report (October 2024). CFEC Notice of Proposed Regulations, DOL No. 2026200363, February 18, 2025.

[redacted] [redacted]

Outlook

Set Beach Seine - comments

From Richard Person [redacted]
Date Tue 11/3/2026 12:43 PM
To DFG, CFEC PublicQuestions (DFG sponsored) <DFG.CFEC.PublicQuestions@alaska.gov>

[redacted]

[redacted]

Commissioners Green and Welch & CFEC Team --

As a life-long Cook Inlet Eastside Setnetter, I am strongly opposed to adopting set beach seines as an alternate gear type for S04H permits. This gear type would be extremely allocative as you would need to have beach sites in order to fish one. As we all know, most S04H permit sites are off shore. In addition to this, some of the Eastside beaches would not support beach seine use due to rocks, debris, kelp, etc.

As far as fish quality and releasing king salmon, by nature, all these fish would need to be drug through the surf or an attempt made to release these fish in the surf.

According to a local gear supplier, addressing the cost for the average participant to switch to set beach seine gear would include the following:

- Building a new seine would range from $7,000 to $12,000.
- Heavy equipment would be required to deploy and pull the seine.

In summary, I am asking you to NOT accept Set Beach Seines as an alternate gear type.

Thank you for your attention to this matter and your service to the people of Alaska.

Richard J. Person

[redacted]

[redacted]

[redacted] [redacted]

Outlook

Comments Set Beach Seine

From Nancy Scow [redacted]
Date Sun 11/1/2026 9:23 PM
To DFG, CFEC PublicQuestions (DFG sponsored) <DFG.CFEC.PublicQuestions@alaska.gov>

[redacted]

[redacted]

To Commissioners Green and Welch

From Brian Scow
Eastside Salimantoff Beach permit # S04H 60738C
I oppose Set Beach Seine Nets and should be voided and sent back to the Board Of Fisheries.
The Board of Fisheries passed proposal 192 out of cycle with no representation from any user groups and the very same proposal failed in an earlier Board of fisheries meeting last year!
This is very rare to pass a proposal out of cycle and Totally wrong resulting in the Board of fisheries being Audited on processes in October 2026
I feel Set Beach seine nets need to be sent back to the board to be fixed and more studies and to make the new gear type legal under the state of Alaska laws
I suggest a Leader Net 200 ft long with a anchor on each end to lead all fish into commercial dip nets any King Salmon caught can be released immediately unharmed and the mortality rate would be extremely low way better than being trapped in a Seine and along with lots of other Salmon species they are not comfortable swimming with . I like my beach gill nets for that reason in 2025 we had 2 - 8 hr openings with our gill nets The first six sites on salimantoff east side Harvested 114 totes of Soceye to my Buy Station Scowfishing LLC in those 2 days 0 kings were caught out of 6 sites all verified by Luke from ADFG and 5 other Biologists this is Proff that the Kings don't swim with large numbers of sockeye and leader nets would work for all commercial fishermen and there is nothing wrong with our gill nets we are only allowed 1 per permit
Thank you for reading my comments if you have any Questions please call
Brian Scow [redacted]

[redacted]

[redacted]

October 28, 2026

To:
Alaska Commercial Fisheries Entry Commission
P.O. Box 110302
Juneau, Alaska 99811-0302

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Subject:
Public Comment and Questions on 20 AAC 05.220 – Opposition to Beach Seining in Cook Inlet

To the Members of the Commercial Fisheries Entry Commission,

I am writing on behalf of my family, who have long taken part in the Cook Inlet Commercial Set Net Fishery at Humpy Point Cohoe Beach. From fish traps and individual set net sites to the Limit Entry Act—from fishing Monday through Friday to no season openings—we have experienced it all, and it is deeply discouraging to see how far this fishery has come from its origins, possibly ending a multigenerational way of life. It may become merely a footnote in history books.

I am writing to oppose the proposed change to **20 AAC 05.220**, which would permit beach seining under a set gillnet permit in Cook Inlet.

Set gillnets have long been used here because of the region's extreme physical conditions and past management plans. Cook Inlet fishing sites were built for gillnets. The inlet has some of the largest tidal ranges in the world, swift currents, heavy

glacial silt, muddy and somewhat rocky-gravel bars, and vertical drop-off shorelines. Seining requires a large net curtain that closes at the bottom, along with heavy equipment and deep water for deployment. Operating a beach seine across these tides and mudflats—not to mention the rocks—is **functionally impossible at most sites.** Stationary, anchored gillnets are the only practical gear type that can safely fish these tides continuously. No historical guarantee exists that these geological sites can be fished safely, legally, and profitably with a beach seine.

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Introducing beach seine does not resolve conservation issues; instead, it turns a passive fishery into an active dredging operation that threatens nearshore habitat, crew safety, and the fish it aims to protect.

- From debris trap safety hazards: "tide rips," sweepers, and mud logs create tension and serious risks for those handling an unfamiliar, overloaded gear type.

- Debris-bycatch dilemma:
- Non-target fish, marine mammals, or seabirds are caught, with unknown amount of post-release mortality.
- Even if released "alive," the percentage of deaths remains unknown due to stress, lactic acid buildup from struggling, and physical trauma from crowding or the weight of the seine net dragged to shore.

- Inlet floor habitat destruction: To prevent loss of targeted salmon, a beach seine's lead lines must be heavy to maintain contact with the inlet bottom. Dragging these

lines acts like a dredge, gouging beds, churning silt, and uprooting nursery habitat used by other foraging fish.

Beach seines have been tested on a few Eastside set net fishery beaches, but results showed financial feasibility only for a select few with ideal beach conditions, weather, tide, and the advantage of being the only net fishing in the inlet. Even with an ideal location, the high cost of specialized nets and equipment is a major barrier—perhaps for a possible 2-day opening in August if the large king escapement count is favorable. This gear is unfeasible for the mass majority of Cook Inlet setnetters in the "real world," including those with unsuitable beaches or those fishing outside the beach zone without a physical location, rendering beach seining useless.

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Then there are added expensive gear overhauls. The financial strain on private individuals shifting from traditional set gillnetting to beach seine gear in Cook Inlet is a severe economic barrier, potentially exceeding $80,000 for a full setup or about $20,000 for families with existing heavy equipment. We are fortunate to have two tractors, however a quote from a few years ago placed a ready-to-use seine net at $10,000–$12,000; adding required hardware and rigging brings our cost close to $20,000.

A breakdown of these immediate capital needs and systemic risks clarifies the impact on independent permit holders:

Direct Capital Costs Per Operation:

- Beach Seine Net: $10,000–$15,000 for new, regulation-compliant gear.

- Retrofit: $6,000–$10,000 to adapt existing gear, if materials are available.

- Heavy Hardware & Rigging:
  - $5,000 (?) for high-strength blocks, heavier lines, and shore modifications needed for hauling.
  -
- 2 Heavy machinery tractors: specialized units required to bag and haul the net.
  - Used: $15,000–$32,000 each
  - New: $50,000

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- Logistics & Freight:

Unknown variable cost if local purchase fails, to ship bulky gear to remote Cook Inlet hubs.

Independent fishers face large upfront costs for a secondary gear type used only during conditional "emergency" conservation windows, offering little return. Supply chain delays will likely arise. A sudden regulatory change near the season could make timely delivery impossible for many.

Pushing a rule that suits only a minority leaves most traditional fishers stranded. I urge the Commission to reject this proposal.

I also submit the following formal questions regarding this action:

- **Feasibility Data:** Given that past testing only showed success on ideal beaches with no other nets in the water, what data justifies expanding this gear type to the rest of

the unfeasible, muddy, rocky, and swift-current locations in Cook Inlet?

- **Economic Barriers:** Did the Commission evaluate the high capital costs of purchasing new seine nets and specialized equipment, and how that financial burden impacts the greater majority of the fleet who might not be able to afford to convert?
- **Fleet Impact:** Since this gear is financially and operationally impossible for the vast majority of the fleet, is it the Commission's intent to leave traditional fishermen behind?
- **Rationale:** Is this beach seine fall under the same ruling as gill net under the King conservation... to use beach seines instead under specific low-abundance thresholds , when forecasted late-run king numbers reach at least 14,250 large fish... if so ... logically speaking why would an ESSN invest in new gear and equipment that's probably not feasible for their beach location and for possibly fish two days in August ?
- **Enforcement:** is it your plan to have both gear types being used either/ or ? How will the state enforce and monitor two completely different gear types operated under a single permit type? Is there a management plan for beach seining?
- **Allocation and Conflict:** Stationary setnets and mobile seines operate on completely opposite principles, making them fundamentally incompatible in the same tight space. What analysis has been done regarding how introducing mobile seines into areas with stationary setnets will cause gear conflicts and unfair harvest

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- **Scientific Uncertainty:** would you agree that there is a lack of data proving that king salmon , or any other by-catch caught in beach seines would survive after being released?

AND LASTLY...

- **Elimination of Gillnets:** Certain Board of Fisheries members have explicitly stated a desire and intent to remove gillnets from Cook Inlet. Is it the underlying intent of the Commission with this proposal to eventually get all gillnets out of Cook Inlet by forcing a transition to unfeasible gear?

Thank you for considering these comments and answering these questions.

Sincerely,

Susan Hermansen-Jent

Susan Hermansen-Jent

[redacted]

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11/2/2026

P.S. Added afterthought: I apologize upfront if some of this is redundant

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Look, I applaud the fishermen for finding a solution that works for their "ideal beach." However, a site-specific fit must not be mistaken for a universal solution.

The CFEC cannot safely or practically considering mandate beach seine nets for the entire East Side based on fewer than five successful tests conducted under pristine conditions.

CFEC has the power to approve this gear type, but you need to understand the practical, sometimes dangerous realities of the waters we will be fishing using your approved regulated gear type. Let me paint a picture of what this actually looks like on a beach that isn't "ideal."

Picture this at **high tide**: You're standing out there in the crashing surf, desperately trying to sort the catch. On the inlet side, you're throwing out the return fish, and on the shore side, you're dealing with the salmon. But you aren't out there alone. The currents don't just bring fish—they bring sharks, or worse, a whole family of them. You might also be wrestling with heavy kelp, stinging jellyfish, and a massive log or two tearing through your gear in the waves.

Then look at **low tide**: The surf drops, but the problem doesn't go away. Now you're stranded in heavy sand, forced to wade deep out into the possible muck just to release the non-target fish.

I can only assume that the tested beaches choose to drop their seine net perhaps under the perfect of conditions: a perfect day, weather, tide, and the peak of the run of targeted salmon

to perform their seine net test...however, those of us who have spent years fishing these specific sites don't need a test to know the truth. The sudden weather shifts out here completely rewrite the tides in minutes. This isn't a controlled environment. You cannot apply a one-size-fits-all rule to volatile waters. We need you to understand the actual environment before you make rules mandating us to work in. I'm unsure if the powers making these changes understand that all beaches aren't the same; what works for one doesn't necessarily work for another. That is the fundamental problem with the seine net. To work successfully, it absolutely needs no obstacles in its shore bottom so it can be cleanly bagged and dragged to shore.

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CFEC

Yes, as experienced fishermen, we are obviously not going to deploy a massive curtain of web if the weather turns bad... nor clear a path of shore... that's environmentally illegal. But even on a clear day, severe structural issues remain. An ideal beach doesn't have our rocky bottoms, steep slopes... of what I've seen of their sites is flat sandy beaches as far as you can see. We need you to consider approving rules based on real-world safety and feasibility... and realize this rollout seine gear is not feasible. Thank you

Susan Hermansen-Jent

Susan Hermansen -Jent

Russell Clark
[redacted]
[redacted]
CFEC Permit No. S04H-58304

November 13, 2026

Commercial Fisheries Entry Commission
PO Box 110302
Juneau, Alaska 99811-0302
Via Email: DFG.cfec.publicquestions@alaska.gov | Rick.green@alaska.gov | tracy.welch@alaska.gov | Jennifer.findley@alaska.gov

Re: Public Comment - DOL No. 2026200363 - Proposed Amendment to 20 AAC 05.220
(Addition of Beach Seine Gear Code 02 to S04H East Side Set Gillnet Permits)
Comment Deadline: November 16, 2026

Dear Commission Chair Green and Commissioners:

I submit this comment in opposition to DOL No. 2026200363, the proposed amendment to 20 AAC 05.220 that would add beach seine (gear code 02) as an authorized gear type under S04H East Side set gillnet permits. I hold CFEC Permit No. S04H-58304 and am a party in *Clark et al. v. State of Alaska et al.*, Case No. 3KN-26-00515CI, pending in the Alaska Superior Court, Third Judicial District at Kenai.

This comment is organized around a threshold legal defect the Commission itself identified in its October 30, 2026 response to my petition for rulemaking: CFEC has acknowledged, in a signed letter from Commission Chair Rick Green, that it lacks authority to make legal determinations about the gear it is now proposing to permanently authorize. That acknowledgment does not merely weigh against adoption of the proposed amendment. It disqualifies the rulemaking from proceeding.

I. The Commission's Own October 30, 2026 Letter Identifies the Threshold Defect

On September 28, 2026, I petitioned the Commission to determine that set beach seine gear as deployed under RC-004 and Commissioner's Permits UCI-2024-01 and UCI-2024-03 constitutes a fish trap prohibited under AS 16.10.070, AS 16.10.100, and Alaska Constitutional Ordinance No. 3. On October 30, 2026, Commission Chair Rick Green denied the petition. The denial letter states, in full relevant part:

> "The CFEC is not empowered to issue advisory opinions, nor to make legal determinations regarding Board of Fisheries (BOF) and Alaska Department of Fish and Game (ADF&G) actions. The submission of public comments to the BOF on a pending proposal does not constitute a legal opinion or directive. As a result, the petition is denied."

Letter from Rick Green, Commission Chair, to Russell Clark (Oct. 30, 2026) (Re: Petition for Rulemaking Received September 28, 2026) (Exhibit A).

The denial letter attributes CFEC's refusal to its inability to make legal determinations regarding 'Board of Fisheries (BOF) and Alaska Department of Fish and Game (ADF&G) actions.' That characterization does not match the petition. The petition asked CFEC to evaluate the legality of its own Commissioner's Permits -

UCI-2024-01 and UCI-2024-03 - and the gear those permits authorized under RC-004. It did not ask CFEC to review BOF or ADF&G actions. The denial's stated basis is a mischaracterization of the petition, and the mischaracterization itself is telling: CFEC was unable to articulate a legitimate ground for declining to evaluate the legality of its own experimental gear authorizations.

What the denial does establish, regardless of its stated rationale, is that the Commission has not made and does not intend to make any legal determination about whether the gear proposed for permanent authorization under 20 AAC 05.220 is lawful. That acknowledgment creates an irresolvable conflict with the proposed rulemaking: an agency cannot simultaneously decline to evaluate the legality of a gear type and proceed to permanently embed that gear type in its own regulations.

II. A Rulemaking Cannot Proceed Where the Agency Has Disclaimed Authority to Evaluate Legality

CFEC's rulemaking authority under AS 16.43 is bounded by the constitutional and statutory framework within which the Commission operates. That framework includes Alaska Constitutional Ordinance No. 3, which prohibits fish traps as a self-executing provision superior to all legislative and regulatory enactments, AS 16.10.070, which prohibits the use of fish traps in Alaska waters, and AS 16.10.100, which prohibits fish traps 'including but not limited to' floating, pile-driven, or hand-driven fish traps erected or maintained on state tidelands or submerged land.

The October 30 denial letter establishes that CFEC has not determined, and does not claim authority to determine, whether the gear proposed for authorization under 20 AAC 05.220 falls within those prohibitions. CFEC Research Section Lead Reid Johnson made the same point in his February 8, 2024 letter to BOF Chair Carlson Van-Dort, writing that 'the definition and legality of a gear type is beyond the purview of CFEC.'

A rulemaking that proceeds without any agency determination of whether the subject matter is lawfully within the agency's regulatory reach is arbitrary and contrary to law. The proposed amendment to 20 AAC 05.220 would add gear code 02 to S04H permits without the Commission ever having determined that doing so is constitutionally and statutorily permissible. That is not a gap in the record that can be filled by public comment. It is a threshold defect that voids the rulemaking.

III. The Gear Proposed for Authorization Satisfies the Functional Definition of a Fish Trap

The Alaska Supreme Court in *Metlakatla Indian Community v. Egan*, 362 P.2d 901 (Alaska 1961), defined fish traps by function, not by material or name: a fish trap is gear that (1) obstructs or intercepts migrating fish, (2) captures fish by passive stationary means, and (3) confines fish until human removal. RC-004 operational data confirm that set beach seine gear satisfies all three elements.

Metlakatla Element	**RC-004 Operational Evidence**
1. Obstruction / interception of migrating fish	The net is anchored to the beach and extended seaward across the nearshore tidal corridor - the migration lane sockeye, Chinook, and coho follow as they stage for river entry. The gear physically spans and intercepts that corridor during each set.

2. Passive stationary capture	RC-004 timestamp data show the net remained stationary and passively intercepting fish for an average of 55.6 percent of each in-water deployment (48.5 percent, UCI-2024-01/Gabriel; 66.6 percent, UCI-2024-03/Hollier). No vessel movement occurs during hold time. Fish enter the net without active pursuit.
3. Confinement until human removal	Both ends of the net are drawn to the beach by tractor or truck, enclosing fish in a narrowing pocket. Fish cannot exit. They are confined until the crew brails or sorts the catch by hand. This is functionally identical to the brailing operation that defined historical fish trap operation.

CFEC's own November 30, 2018 RC-64 submission formally opposed functionally identical beach weir gear on fish trap grounds under Ordinance No. 3, AS 16.10.070, and AS 16.10.100. Set beach seines deployed under RC-004 are operationally indistinguishable from beach weirs: both are shore-anchored, both extend seaward to intercept migrating salmon, both hold fish passively in a stationary net, and both enclose fish by mechanical closure at the beach end. The Commission's 2018 determination applies with equal force to the gear now proposed for permanent authorization.

IV. The Proposed Amendment Conflicts with 20 AAC 05.230(a)(1)(A), Effective January 1, 2027

The proposed amendment to 20 AAC 05.220 faces a direct internal conflict with a regulation already certified and effective. 20 AAC 05.230(a)(1)(A), certified by the Lieutenant Governor and effective January 1, 2027, defines the East Side Set Net Area as exclusive to gear type '04 - set gillnet,' as described in 20 AAC 05.220(a). Adding gear code 02 to 20 AAC 05.220 for permits that operate in an area already defined by regulation as exclusive to gear code 04 creates a direct internal contradiction between two simultaneously effective Title 20 regulations. The Commission has not addressed this conflict in the proposed rulemaking notice.

V. The Rulemaking Proceeds from an Incomplete Administrative Record

DOL No. 2026200363 is the Commission's second attempt to authorize this gear. At the June 4, 2026 CFEC meeting, the Commission voted 1 to 1 on a motion to ratify beach seine as an authorized gear type under S04H set gillnet permits. A tied vote is not an affirmative authorization. The motion failed. Beach seine gear was never ratified by the Commission as a permitted gear class for S04H permit holders. The current rulemaking proceeds as if that vote had not occurred and as if the authorization question had been resolved. It has not been.

The RC-004 experimental record that underlies this rulemaking also contains a material gap in the area of incidental king salmon and coho mortality. RC-004 logs document Chinook and coho present in experimental sets. No multiple-capture tracking was conducted. No post-release mortality model was applied. Scientific literature on salmon bycatch in net fisheries establishes that post-release mortality increases with water temperature, handling time, crowding stress, and air exposure - all conditions documented in RC-004 sets along the Cook Inlet foreshore in summer - and that cumulative mortality from multiple captures within the same tidal cycle is substantially higher than single-event estimates suggest. The administrative record contains no basis for estimating actual king or coho mortality attributable to beach seine interception in the Cook Inlet staging corridor. For stocks managed under stock-of-concern conditions, that gap cannot be filled after authorization.

VI. The Proposed Amendment Violates Alaska Constitution Article 8, Section 15

Alaska Constitution Article 8, Section 15 provides that no exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This provision is not a guideline or a policy preference. It is a self-executing constitutional mandate applicable to every state agency, including CFEC.

CFEC's own published description of the Commissioner role, available on the Commission's website under the Commissioners section, identifies Article 8, Sections 2, 3, 4, and 15 as the constitutional framework governing commissioner conduct. The Commission has therefore affirmatively represented to the public that its commissioners act within and are bound by the Article 8 prohibition on exclusive fishery privileges.

The proposed amendment to 20 AAC 05.220 cannot be reconciled with that prohibition. S04H East Side set gillnet permits authorize fishing in the nearshore tidal corridor of Upper Cook Inlet, where sockeye, Chinook, and coho stage during their approach to freshwater systems. Adding beach seine gear code 02 to those permits would authorize a subset of S04H permit holders who choose to operate beach seine gear to intercept fish in that corridor before those fish reach the fishing positions of set gillnet permit holders who do not deploy beach seine gear. That differential access is an exclusive privilege of fishery within the meaning of Article 8, Section 15 because it confers on beach seine operators a capture advantage in the shared nearshore corridor that is unavailable to other permit holders fishing the same stock in the same area.

Article 8, Section 4 reinforces this conclusion. Fish belonging to the State shall be utilized and maintained on the sustained yield principle. The RC-004 experimental record contains no assessment of the cumulative mortality impact of beach seine interception on king salmon and coho stocks managed under stock-of-concern conditions. A rulemaking that permanently authorizes additional interception gear in the staging corridor without addressing sustained yield implications for those stocks is inconsistent with the constitutional mandate CFEC's own website identifies as binding on its commissioners.

The Commission cannot authorize gear that creates an exclusive privilege of fishery in natural waters of the State. The proposed amendment does exactly that. No rulemaking authority under AS 16.43 extends to actions that contradict a self-executing constitutional provision. This is an independent ground requiring withdrawal of the proposed amendment.

VII. The Proposed Amendment Exceeds CFEC's Authority Under the Limited Entry Act

The Limited Entry Act, AS 16.43 et seq., establishes a permit system in which each entry permit specifies the fishery for which it is issued. CFEC defines fisheries by species, area, and gear type. S04H permits are for Cook Inlet salmon, East Side Set Net Area, gear code 04 set gillnet. That combination is the limited entry fishery. When the Act limits entry into a fishery, it limits entry into that specific combination. A permit holder has a vested property right in the permit as defined. The Alaska Supreme Court has recognized that limited entry permits are property rights protected by due process. The property right the existing S04H permit holder holds is in a permit that authorizes gear code 04 set gillnet in the designated area - not in a permit that may be administratively expanded to include additional gear types without the statutory process the Act prescribes.

Adding gear code 02 to existing S04H permits through 20 AAC 05.220 does two things the Limited Entry Act does not authorize by regulation alone.

First, it modifies the gear-type component of an existing limited entry fishery without the optimum number process the Act prescribes. AS 16.43.140 requires CFEC to determine the optimum number of entry permits for a fishery and to consider the economic health of that fishery before making entry determinations. Adding

beach seine as an authorized gear type within the S04H fishery is an entry determination: it expands who may effectively participate in the fishery and on what terms. No optimum number study for beach seine gear in the East Side Set Net Area has been conducted. CFEC's own February 2025 memo to the Board of Fisheries acknowledged that adding beach seine to S04H permits would require CFEC to append that gear type to existing permits and identified the allocation question as unresolved. The memo did not identify any optimum number analysis because none has been conducted. The Act's required process has not been followed.

Second, the proposed amendment confers new gear access rights on existing S04H permit holders without the allocation process the Act requires when access rights within a limited entry fishery are modified. Existing permit holders did not purchase their permits with beach seine rights attached. The commercial value and legal content of an S04H permit is defined by the gear code 04 set gillnet authorization it carries. Adding beach seine gear by regulation retroactively alters the terms of the limited entry system. It also creates a due process problem for other S04H permit holders: those who chose not to pursue beach seine experimental access are now subject to a rulemaking that would authorize competing gear in the same area on the same stocks, with no optimum number analysis of the impact on the existing fishery's economic health, and no allocation process for determining who among all S04H permit holders may access the new gear right.

The Limited Entry Act creates a specific statutory pathway for authorizing new gear types in existing limited entry fisheries. That pathway requires an optimum number determination, an economic health analysis, and a lawful allocation process. Rulemaking under AS 16.43.100 and AS 16.43.140 is not a substitute for those requirements. It is the vehicle through which those requirements must be satisfied before authorization. The proposed amendment bypasses the statutory pathway entirely. That is an independent ground requiring withdrawal of the proposed amendment.

VIII. The Rulemaking Fails to Meet the Governing Criteria for Gear Authorization

Independently of the authority defects addressed in Sections I through VII, the proposed amendment fails to satisfy the substantive criteria that govern CFEC gear authorization. Those criteria derive from the constitutional framework CFEC's own website identifies as binding on commissioners and from the institutional record the Commission has created since 2018. The deficiencies are seven and independent.

A. The Experimental Record Is Admittedly Incomplete. AS 16.05.050(a)(9) authorizes experimental Commissioner's Permits only to produce new information. In May 2026, ADF&G declined to issue new experimental permits for the 2026 season on the ground that permits in 2024 and 2025 'already showed beach seines effectively harvest sockeye while releasing non-target species' and that the department was 'unclear what new information another experimental permit would produce.' The same decision identified post-release mortality rates for king and coho salmon as a factor 'that would not be captured through a Commissioner Permit.' ADF&G's own findings therefore establish that the RC-004 record is exhausted on the basic harvest question and affirmatively incomplete on the mortality question. Permanent authorization through 20 AAC 05.220 is being pursued on a record that the administering agency has found insufficient to justify continued experimental authorization.

B. No Optimum Number Analysis Exists and No Research Has Been Commissioned. CFEC's research section has conducted no optimum number study for beach seine gear in the East Side Set Net Area. No such study appears anywhere in the administrative record for DOL No. 2026200363. The rulemaking notice does not identify any basis for determining how many beach seine authorizations would be appropriate, what impact that number would have on the economic health of the existing S04H fishery, or how the authorization

would be limited if demand exceeded any planned ceiling. CFEC has not explained how the number of beach seine operators will be determined or capped. The absence of this foundational analysis from the record is not a gap that briefing or public comment can fill. It is a research obligation the Commission has not discharged.

C. No Allocation Framework Exists. CFEC's February 2025 memo identified as an unresolved question how permits would be allocated if more S04H permit holders apply to use beach seine gear than are permitted to do so. The Anchorage Advisory Committee raised the same concern in its February 2025 comments, voting 7 to 4 against Proposal 313 in part because allocation questions remained unanswered. A rulemaking that creates a new gear access right without establishing how that right will be distributed among existing permit holders does not satisfy Article 8, Section 15's prohibition on exclusive privileges of fishery. The absence of an allocation framework means beach seine access remains a privilege of whoever obtained the original Commissioner's Permits, without a lawful basis for extending or limiting that access on a non-exclusive basis.

D. The Sustained Yield Record Is Insufficient. CFEC's own published constitutional framework identifies Article 8, Section 4's sustained yield principle as binding on commissioners. ADF&G's May 2026 decision found that post-release mortality from beach seines in the Upper Cook Inlet staging corridor 'would not be captured through a Commissioner Permit.' The RC-004 record contains no post-release mortality model for king salmon or coho, no multiple-capture tracking data, and no cumulative mortality estimate for fish passing through the interception zone across a tidal cycle. For stocks managed under stock-of-concern conditions, the absence of this data is not a gap that can be filled after permanent authorization. The sustained yield principle requires this determination before the gear is authorized, not after.

E. CFEC's 2018 Institutional Position Is Unreconciled. In RC-64 (November 30, 2018), CFEC formally opposed beach weir gear before the Board of Fisheries on fish trap grounds under Ordinance No. 3, AS 16.10.070, and AS 16.10.100. The October 30, 2026 denial letter claims CFEC lacks authority to make legal determinations about gear type legality. These two positions cannot both be correct. RC-64 is an exercise of exactly the authority the denial letter disclaims, applied to functionally identical gear. The rulemaking record contains no explanation of what changed between 2018 and 2026 in the legal framework, the gear, or the constitutional analysis. An agency that takes an institutional position on a legal question and later disclaims authority to take that position, without explanation, has not engaged in reasoned decisionmaking.

F. The Agency Cannot Authorize What It Cannot Evaluate. The October 30, 2026 denial letter states CFEC is not empowered to make legal determinations about the gear proposed for authorization. The rulemaking asks CFEC to do exactly that: permanently embed gear code 02 in its own regulations under AS 16.43 authority that is bounded by the constitutional and statutory framework the agency says it cannot evaluate. An agency that formally disclaims the power to determine whether a subject matter is lawful cannot proceed to a rulemaking that permanently authorizes that subject matter. The disclaimer and the rulemaking are mutually exclusive.

G. Advisory Opposition Is Universal. Every advisory body that has voted on this gear authorization has opposed it. The Kenai Advisory Council voted 10 to 1 to ban beach seines in Cook Inlet (Proposal 30). The Anchorage Advisory Committee voted 7 to 4 against Proposal 313, the companion Board of Fisheries proposal, citing the need for more testing. Advisory committee proceedings are part of the record on which CFEC's rulemaking rests. Universal advisory opposition, grounded in the same substantive concerns the RC-004 record itself supports, confirms that the experimental record has not produced the consensus that would support permanent authorization.

Each of these seven deficiencies is independently sufficient to require withdrawal of the proposed amendment. Together, and alongside the Limited Entry Act authority defect identified in Section VII, they demonstrate that the rulemaking lacks a foundation in law, fact, or institutional consistency. CFEC cannot cure these deficiencies through the November 17 vote. They are threshold defects that must be resolved before any vote is taken.

IX. Requested Commission Action

For the foregoing reasons, I respectfully request that the Commission:

1. Withdraw DOL No. 2026200363 without proceeding to a November 17, 2026 vote, on the ground that the Commission has disclaimed authority to evaluate the constitutional and statutory legality of the gear proposed for authorization, that the proposed amendment exceeds CFEC's authority under the Limited Entry Act as set out in Section VII, and that the rulemaking fails to satisfy the governing criteria set out in Section VIII above;

2. If the Commission declines to withdraw the proposed amendment, refer the threshold legality question - whether set beach seine gear as deployed under RC-004 constitutes a fish trap prohibited by Ordinance No. 3, AS 16.10.070, and AS 16.10.100 - to the Alaska Department of Law for a formal opinion before any vote is taken;

3. If the Commission proceeds to a vote, enter into the administrative record for DOL No. 2026200363 this comment, the October 30, 2026 petition denial letter (Exhibit A), and RC-64 (November 30, 2018), as evidence that the Commission was aware of the fish trap legal argument, the Article 8 Section 15 exclusive privilege argument, the Limited Entry Act authority defect identified in Section VII, the seven governing-criteria deficiencies identified in Section VIII, and the sustained yield gap in the administrative record, and proceeded without resolving any of them.

A vote to adopt the proposed amendment, taken with the administrative record in its current state, would authorize gear that the Commission itself has acknowledged it cannot evaluate for legality, that CFEC's own 2018 position identifies as a prohibited fish trap, that directly conflicts with a simultaneously effective Title 20 regulation defining the East Side Set Net Area as exclusive to set gillnet gear, that creates an exclusive privilege of fishery in natural waters of the State in violation of Alaska Constitution Article 8, Section 15, that exceeds CFEC's authority under the Limited Entry Act because no optimum number determination has been made and no allocation framework exists, and that fails to satisfy seven independent governing-criteria requirements. That is not a permissible exercise of rulemaking authority.

Respectfully submitted,

Russell Clark

Russell Clark
November 13, 2026
Pro Se | CFEC Permit No. S04H-58304
[redacted]
[redacted]

Clark et al. v. State of Alaska et al., Case No. 3KN-26-00515CI

Exhibit A: Letter from Rick Green, Commission Chair, to Russell Clark, Re: Petition for Rulemaking Received September 28, 2026 (October 30, 2026) (attached)

Commercial Fisheries Entry Commission

PO Box 110302
Juneau, Alaska 99811-0302
Main: 907-789-6160
Licensing: 907-789-6150
Fax: 907-789-6170

October 30, 2026

Via Email Only
Russell Clark
[redacted]

Re: Petition for Rulemaking Received September 28, 2026

Dear Mr. Clark:

On September 28, 2026, the Commercial Fisheries Entry Commission (CFEC) received your "Petition for CFEC Determination That Set Beach Seine Gear as Deployed Under RC-4 and Commissioner's Permits UCI-2024-01 and UCI-2024-03 Constitutes a Fish Trap Prohibited Under AS 16.10.070, AS 16.10.100, and Alaska Constitutional Ordinance No. 3". This letter shall serve as a response to each request enumerated in the petition.

The CFEC is not empowered to issue advisory opinions, nor to make legal determinations regarding Board of Fisheries (BOF) and Alaska Department of Fish and Game (ADF&G) actions. The submission of public comments to the BOF on a pending proposal does not constitute a legal opinion or directive. As a result, the petition is denied.

If you have any questions, please contact Jennifer Findley at jennifer.findley@alaska.gov.

Sincerely,

Signed by:
Rick Green
040A51A273BD46F...
Rick Green, Commission Chair

[redacted] [redacted]

Outlook

Support Beach Seines

From Amber Every [redacted]
Date Fri 11/13/2026 12:18 PM
To DFG, CFEC PublicQuestions (DFG sponsored) <DFG.CFEC.PublicQuestions@alaska.gov>
[redacted]

[redacted]

[redacted]

Hello,

I am asking for your support in allowing beach seines as an alternative gear type on our existing permits.

For the past 10 years, our fishery has been financially decimated by low king salmon abundance. Throughout this time, we have worked hard to identify alternative harvesting methods that will allow our families to remain viable while also being responsible stewards of a declining resource.

Our family was directly involved in testing beach seines as an alternative harvesting method. This approach provides an opportunity to harvest abundant sockeye salmon while minimizing our impact on king salmon. With a diverse fishery that spans approximately 80 miles of beach, we believe this is an important opportunity to adapt and sustain our way of life.

We recognize there is one vocal opponent to this effort, but the voices and livelihoods of the many families who depend on this fishery deserve to be heard as well. This is about more than beach seining, it is about keeping our permits viable, protecting our fishery heritage, and ensuring that future generations have the opportunity to continue harvesting salmon from the beaches where our families have fished for more than 100 years.

We are working closely with the Board of Fisheries and hope CFEC will not become an unnecessary roadblock to this process. Our goal is to find a practical, sustainable path forward that allows our families and this historic fishery to survive. My hope is that my grandson, who is a 5th generation East Side setnet fisherman will still have a viable fishery in the future.

Thank you for your time,

Amber Every

[redacted] [redacted]

Outlook

Support Adding Beach Seines

From Travis Every [redacted]
Date Fri 11/13/2026 11:57 AM
To DFG, CFEC PublicQuestions (DFG sponsored) <DFG.CFEC.PublicQuestions@alaska.gov>
[redacted]

[redacted]

[redacted]

Hello CFEC Commissioners,

I am writing in support of adding set beach seines as an approved alternative gear type to Commercial Fisheries Entry Commission (CFEC) permits.

Set beach seines offer a selective and effective harvest method for sockeye salmon, particularly during periods when king salmon abundance is low and conservation concerns require additional management considerations. This gear type provides an opportunity to harvest healthy sockeye returns while offering greater selectivity and flexibility in how fisheries are prosecuted.

The effectiveness and viability of this gear have already been demonstrated through 100% observed testing conducted with Alaska Department of Fish and Game (ADF&G) Sport Fish biologists. These trials have provided an opportunity to evaluate the gear firsthand and demonstrate its ability to effectively harvest sockeye salmon.

Allowing set beach seines as an alternative gear type would provide commercial fishermen with another viable harvest option, improve fishing opportunities when other gear types may be restricted or less practical, and help maintain economic activity during periods of low king salmon abundance.

The economic benefits would extend well beyond individual permit holders. Increased fishing opportunities would positively impact processors, local businesses, support services, fishing families, and communities throughout the Southcentral Alaska region.

Alaska's fisheries need adaptable management tools that balance conservation objectives with the economic sustainability of our commercial fishing industry. Set beach seines provide an opportunity to accomplish both.

I strongly encourage the CFEC and the appropriate regulatory agencies to consider adding set beach seines as an approved alternative gear type on existing permits. This would provide commercial fishermen with another proven, selective, and economically viable tool while supporting the long-term sustainability of Southcentral Alaska's fisheries and fishing communities.

[redacted]

[redacted] [redacted]

Thank you for your consideration and support.

Sincerely,

Travis Every
Eastside Setnetter

[redacted]

[redacted] [redacted]

Outlook

No on beach seines

From Beau Manley [redacted]
Date Sat 11/14/2026 2:08 PM
To Dfg.cfec.publicQuestion@alaska.gov <Dfg.cfec.publicQuestion@alaska.gov>

Please say no to beach seines. My name is John manley ben setnet fisherman for over 50y in cook inlet. To replace setnets with beach seine is not right and everyone knows it. Even the people pushing it knows it. It will have a negative affect in cook inlet not just the east side. Please say no to beach seine.

[redacted]

[redacted] [redacted]

Outlook

Concerns regarding potential changes to S04H gear types

From Lillian Person [redacted]
Date Sun 11/15/2026 6:39 PM
To DFG, CFEC PublicQuestions (DFG sponsored) <DFG.CFEC.PublicQuestions@alaska.gov>

[redacted]

[redacted]

Dear Commissioners Green, Welch, and the CFEC Team,

As a participant in our local fishery, I am writing to strongly oppose the proposal to adopt set beach seines for S04H permits.

My experience with the Eastside beaches tells me that this gear type is simply not compatible with our waters. Between the uneven terrain, kelp, and debris, many of our beaches cannot support this kind of operation. Beyond the logistical failure, it is clear that requiring participants to invest heavily in new equipment and machinery is not in our fleet's best interest. Furthermore, the welfare of the fish—specifically king salmon—is a top priority, and beach seining introduces risks that we should avoid.

I respectfully ask that the commission maintain the current gear regulations rather than adopting this proposed change. Thank you for your work and for listening to the community's concerns.

Sincerely,

Lillian Person

[redacted]

[redacted]

[redacted] [redacted]

Outlook

Opposed to seines in ESSN fisheries

From Gary & Sharon deiman [redacted]
Date Sun 11/15/2026 11:15 AM
To DFG, CFEC PublicQuestions (DFG sponsored) [redacted]

[redacted]

[redacted]

Dear Alaska Board of Fish and Game, 4/27/2026

I strongly oppose Proposal 192 and replacing set gillnets with set beach seines in the Upper Subdistrict. While the intent to reduce king salmon mortality is understandable, this proposal overlooks critical, practical realities that make a seine-based fishery both inefficient and, in many locations, nearly unworkable.

First, the location issue cannot be overstated. The existing set gillnet sites were established and proven over decades based on tidal flow, beach slope, substrate, and fish migration patterns. These sites are not universally compatible with beach seine operations. Many areas in the Upper Subdistrict have uneven bottoms, strong currents, and soft or obstructed shorelines that make deploying and retrieving a seine extremely difficult. What works for a drift or gillnet fishery does not automatically translate into a viable seine fishery.

Second, the difference in required materials and infrastructure is significant. Set gillnet operations are relatively straightforward and rely on gear that fishermen already own, maintain, and understand. Transitioning to a beach seine fishery would require substantial new investment in nets, lines, anchoring systems, and potentially additional labor and vessels. This is not a simple gear swap—it represents an entirely new fishery model. Expecting permit holders to absorb these costs without clear evidence of economic viability is unreasonable.

Most importantly, the proposal fails to adequately address the persistent and severe issue of seaweed. The Upper Subdistrict is well known for heavy weed loads, specifically near the mouth of the Ninilchik River, particularly during the proposed fishing period. Set gillnets already contend with this challenge, but beach seines would dramatically amplify the problem. Seines function by encircling and hauling everything in their path; in these waters, that would mean overwhelming quantities of seaweed. This would make sets excessively heavy, difficult to retrieve, and potentially unsafe to operate. In many cases, the volume of seaweed alone would render fishing impractical, if not impossible, regardless of fish presence.

Additionally, the handling requirements associated with seines—especially with mandatory live release of king and coho salmon—become far more complicated when nets are clogged with vegetation. Fish survival rates may not improve under these conditions, undermining one of the proposal's central goals.

In summary, Proposal 192 attempts to impose a one-size-fits-all solution on a highly variable and challenging fishery. It underestimates the importance of site-specific conditions, ignores the financial burden of transitioning to entirely new gear, and fails to realistically account for the overwhelming impact of seaweed in the Upper Subdistrict. For many permit holders, this would not be a modification of their operation—it would effectively eliminate their ability to fish.

For these reasons, I strongly urge you to reject this proposal.

Gary Deiman & Kelsey Deiman-Szymanski

[redacted]

Russell Clark
[redacted]
CFEC Permit No. S04H-58304

November 15, 2026

Commercial Fisheries Entry Commission
PO Box 110302
Juneau, Alaska 99811-0302
Via Email: DFG.cfec.publicquestions@alaska.gov | Rick.green@alaska.gov | tracy.welch@alaska.gov | Jennifer.findley@alaska.gov

Re: Supplemental Comment - DOL No. 2026200363 - Proposed Amendment to 20 AAC 05.220 (Addition of Beach Seine Gear Code 02 to S04H East Side Set Gillnet Permits)
Supplementing Comment Filed November 13, 2026

Dear Commission Chair Green and Commissioners:

I submit this supplemental comment to bring to the Commission's attention an additional Title 20 deficiency that emerged from review of the Board of Fisheries regulatory action adopted at its May 1, 2026 meeting (AG File 2026200190, effective June 17, 2026, Register 258, July 2026). That action amended 5 AAC 21.382 and directly affects the authority analysis for DOL No. 2026200363. This supplement adds one ground to the comment I filed on November 13, 2026 and does not restate the arguments made there.

I. The Proposed Amendment Cites a Regulation That Does Not Authorize a CFEC Permit Modification

The proposed amendment to 20 AAC 05.220 cites 5 AAC 21.382 as the regulatory basis for adding beach seine gear code 02 to S04H permits. Review of the enacted regulatory text confirms that this citation cannot support the proposed CFEC action.

The Board of Fisheries at its May 1, 2026 meeting amended 5 AAC 21.382(g) to add new subsection (g)(1), which provides in relevant part:

> "(g) In the Upper Subdistrict of the Central District set gillnet commercial fishery, (1) from June 20 through July 31 ... the Upper Subdistrict [set gillnet] fishery may open to S04H CFEC permit holders as follows: (A) the use of a beach seine, as described in 5 AAC 39.105(d)(6), is allowed as an alternative gear type for S04H CFEC permit holders; (B) an S04H commercial set gillnet CFEC permit holder may operate not more than one beach seine ..."

5 AAC 21.382(g)(1)(A)-(B), as amended, Register 258 (eff. 6/17/2026) (AG File 2026200190).

The same regulatory package adds 5 AAC 21.382(n), which authorizes the Commissioner of Fish and Game to issue up to ten cost-neutral Commissioner's Permits for beach seine gear to S04H permit holders registered in the Upper Subdistrict when the preseason king salmon forecast falls below 14,250 fish at 75 cm mid eye to tail fork and longer.

5 AAC 21.382(g)(1) is an ADF&G fishery management regulation adopted by the Board of Fisheries under AS 16.05.251. It authorizes S04H permit holders to use a beach seine as an operational gear alternative during specific fishery openings when defined king salmon abundance thresholds are met. It does not modify the CFEC gear code on those permits, does not direct CFEC to amend 20 AAC 05.220, and contains no language purporting to authorize a CFEC permit modification. The gear code printed on an S04H permit is a Title 20

matter within CFEC's separate jurisdiction under AS 16.43. 5 AAC 21.382(g)(1) does not reach that gear code.

II. An ADF&G Operational Regulation Under AS 16.05.251 Cannot Serve as Authority for a CFEC Permit Action Under AS 16.43

The proposed CFEC amendment and 5 AAC 21.382(g)(1) operate under different statutory authority exercised by different agencies. ADF&G and the Board of Fisheries act under AS 16.05.251 to manage fisheries and regulate gear during fishery openings. CFEC acts under AS 16.43 to administer the limited entry permit system, including the gear-type designations carried on individual permits. These are separate statutory schemes. The existence of an ADF&G operational gear authorization does not confer authority on CFEC to modify the permit. Citing an ADF&G regulation adopted under AS 16.05.251 as the basis for a CFEC permit modification under AS 16.43 conflates two agencies, two statutes, and two distinct regulatory instruments that serve different purposes.

The proposed amendment does not identify any provision of AS 16.43 that authorizes CFEC to add a second gear type to an existing limited entry permit class. No such provision exists. Adding beach seine as a gear type to existing S04H permits constitutes an entry determination for a new fishery combination requiring, at minimum, the optimum number process and allocation framework identified in the November 13, 2026 comment. The citation to 5 AAC 21.382 does not supply that authority and cannot substitute for the statutory process the Limited Entry Act requires.

III. The Cited Regulation Is Subject to Pending Legal Challenge and Cannot Ground Permanent Rulemaking

5 AAC 21.382(g)(1), the regulation the proposed CFEC amendment cites as its operational basis, is itself the subject of pending legal challenge. I am a plaintiff in *Clark et al. v. State of Alaska et al.*, Case No. 3KN-26-00515CI, pending in the Alaska Superior Court, Third Judicial District at Kenai, before Judge Joanis. That action challenges the Board of Fisheries regulatory action reflected in AG File 2026200190 on administrative procedure and legality grounds.

An agency cannot predicate permanent rulemaking on a regulation whose legal validity is unresolved in active litigation. If 5 AAC 21.382(g)(1) is set aside by the court in Clark v. Alaska, the foundational citation the proposed CFEC amendment relies upon collapses with it. Any permanent gear code modification CFEC adopts on the basis of that citation would rest on a voided regulatory predicate.

The Commission is therefore being asked to permanently add beach seine gear code 02 to S04H entry permits by relying on a citation that (1) does not authorize a CFEC permit modification as a matter of statutory authority, (2) operates under a different statute administered by a different agency, and (3) is under active legal challenge in Superior Court. None of these problems is curable through the rulemaking process. Each is an independent ground requiring withdrawal of DOL No. 2026200363.

This supplemental comment is submitted for inclusion in the administrative record of DOL No. 2026200363. I request that it be considered together with the comment filed November 13, 2026 prior to any Commission vote on the proposed amendment.

Respectfully submitted,

Russell Clark
Pro Se | CFEC Permit No. S04H-58304
[redacted]

Clark et al. v. State of Alaska et al., Case No. 3KN-26-00515CI (Alaska Super. Ct., 3d Dist. at Kenai)

[redacted] [redacted]

Outlook

Asking for Authorization of set beach seine gear on existing S04H permit cards

From Lisa Gabriel [redacted]
Date Mon 11/16/2026 10:02 AM
To DFG, CFEC PublicQuestions (DFG sponsored) <DFG.CFEC.PublicQuestions@alaska.gov>

[redacted]

[redacted]

Commissioners Welch and Green,

We are Brian and Lisa Gabriel, commercial fishermen and owners of three S04H limited entry permits in the Upper Cook Inlet Eastside Setnet (ESSN) fishery. We have fished in the North Kalifornsky statistical area for 39 years. We are the original developers and one of the testing families of the set beach seine system.

We ask that CFEC authorize beach seines as alternative gear on existing S04H permit cards.

Background

At the March 2024 Upper Cook Inlet Finfish meeting, the Board of Fish (BOF) adopted the Upper Cook Inlet King Salmon Stock of Concern Management Plan (SOC). The adoption of the SOC prescribed management of the Eastside Setnet Fishery (ESSN) that included severe reductions in harvest opportunity. At that meeting, the board adopted dipnets as alternative commercial gear. Subsequently, they were adopted by CFEC and allowed as alternative gear on SO4H permit cards. Also at that meeting, the BOF and Alaska Department of Fish and Game (ADFG) asked ESSN fishermen to explore alternative gear that selectively harvested sockeye and released kings alive.

Other participants and we conducted an experimental set beach seine project in the summer of 2024. The 2024 experimental set beach seine project operated under experimental permits UCI-2024-01 and UCI-2024-03. The *Experimental Set Beach Seine Fishery Report A Summary for Permits UCI-2024-01 and UCI-2024-03* by Robert Begich, notes that UCI-2024-01 fished 17 days and UCI-2024-03 fished for 7 days, resulting in 364 sets and retrievals during that time at four different beach locations. All harvested fish were caught during concurrent dip net emergency openings. The total number of Sockeye harvested during the experiment was 20,522 fish.

The project demonstrated that the gear could harvest Sockeye while releasing all encountered Chinook alive. The report identifies 13 Chinook encounters, including one fish over 34 inches. All Chinook salmon were immediately identified and released alive and in excellent condition.

This report was presented to the Board of Fisheries at the 2025 Statewide meeting, with the request to implement beach seines as an alternative gear in the SOC based on the testing results. A significant change to our proposal resulted in seines not being adopted.

In the 2025 season, two eight-hour gillnet openings were prosecuted after projecting the large king threshold of 14,250 Chinook recovery goal.

In March 2026, at the BOF Statewide Meeting, RC 177 was introduced and later became Board-generated Proposal 192, which was deliberated at the May 1, 2026, special meeting. At that meeting, Proposal 192 removed gillnets from the SOC and adopted beach seines when the recovery goal was projected to be met.

The remaining issue is that CFEC did not adopt the emergency action that authorized seines on the SO4H permit card at the June 4, 2026 meeting. As of this date, the only authorized gear on an SO4H permit card in the SOC is dipnets.

Clawing back Allocation

The practical harvest hierarchy should be understood in terms of fishing capacity and the restrictions under which each gear operates in the ESSN fishery: The table below is a comparison of harvest between effort and gear type per year from 2024-2026 before and after the adoption of SOC.

Estimated Historical Harvest Share and Current Harvest of the ESSN Fishery under SOC

Year	Total UCI Sockeye Return	Estimated Full Setnet Share Outside SOC*	Gillnet Participants Fished	Days Fished	Gillnet Harvest SOC	Dipnet Participants Fished	Dipnet Days Fished	Commercial Dipnet Harvest **	Set Beach Seine Permits Fished	Combined Days Fished	Set Beach Seine Permits	Set Beac Seir Harv
2024	6.6 Million	1,167,540			0	80	24	27,547	2	17	2	20,5
2025	12.1 Million	2,421,895	82	2	42,992	107	30	134,130				0
2026	4.7 Million	583,024			0	107	30	62,550				0

[redacted]

[redacted] [redacted]

***The historical benchmark is based on the 20-year average relationship between ESSN harvest and drift gillnet harvest. The tables show the estimated historical harvest of the ESSN fishery. We are well below the historical harvest allocation.**

**** 2024 reflects 3 days per week fishing with one dipnet per person. 2025 reflects 5 days per week with one dipnet per person. 2026 reflects 5 days per week with 4 dipnets per person.**

Estimated ESSN Historical Harvest Share in the SOC

Year	Total UCI Sockeye Return	Estimated ESSN Historical Harvest Share*	Gillnets Under SOC	Commercial Dipnets	Set Beach Seines	Total SOC Harvest Per Year	SOC Harvest as % of Historical ESSN Share
2024	6.6 million	1,167,540	0	27,547	20,522	**48,069**	**4.1%**
2025	12.1 million	2,421,895	42,992	134,130	0	**177,122**	**7.3%**
2026	4.7 million	583,024	0	62,550	0	**62,550**	**10.7%**

Important: The percentages compare actual SOC gear harvest with the estimated historical ESSN harvest share. They are not formal regulatory allocation percentages.

This is a practical comparison of harvest opportunity for the ESSN fishery, not a claim that every site or season will produce the same results. The SOC restrictions reduced the capacity of traditional setnets in 2024 and 2025, and with actions taken by Proposal 192, they were removed in 2026. With that, seines and dipnets should be evaluated as additional tools, not assumed to replace the historical harvest capacity of the unrestricted ESSN gillnet fishery. Currently, dipnets are the only harvest option in the SOC.

What the Dipnet Participation Data Shows

Commercial dipnets are already an authorized alternative gear, but their availability does not establish that they provide broad or equivalent harvest opportunity or effort by ESSN permit holders. ADF&G's Soldotna Office provided daily in-season salmon harvest data showing the Upper Cook Inlet Commercial District Deliveries per day and gear type.

The percentages in the table below represent daily deliveries relative to registered ESSN permits based on Upper Cook Inlet Commercial Salmon Inseason Harvest data.

2026 Average Daily Dipnet Participation

Period	Average daily dipnet deliveries	Percentage of 325 Registered ESSN permits
June 22-July 7	11.6	3.6%
July 8 -July 31	36.0	11.1%

We are not suggesting that commercial dipnets have no value or that no ESSN permit holder benefits from them. The point is, the existence of dipnets does not demonstrate broad, practical, or equivalent access to meaningful sockeye harvest for the ESSN fleet, even though they are available on every permit.

A limited number of dipnet participants should not be treated as proof that dipnets provide sufficient alternative opportunity, nor should projected seine participation be used to deny authorization before fishermen have had the opportunity to make their own decisions regarding the gear. Fishermen originally did not support dipnets, but some have found ways to incorporate them into their business plan. Each permit holder should be allowed to assess the suitability and economics of a gear type for their own business.

Comparatively, set beach seines could be fished by groups of permit holders. It is estimated that 75% of the permits registered in the ESSN fishery operate within family groups. These fishing operations have historically functioned as family groups in Cook Inlet. Typically, they share expenses, equipment, infrastructure, housing, crew, beach access, insurance, and other resources. These groups typically represent many permits.

2026 ESSN Permits with Group Association

Beach and Statistical Area	Estimated Permits With Beach Association	2026 Total Permits Renewed	2026 Group Association Rate*
Ninilchik-(244-21)	66	90	73%
Coho Beach (244-22)	76	121	63%
South K-Beach (244-31)	34	54	63%
North K-Beach (244-32)	48	58	83%
Salamatof (244-41)	55	59	93%
East Forelands (244-42)	40	44	91%
Total	**319**	**325 ESSN Registered/**	**75%**

[redacted]

[redacted] [redacted]

		426 Permits renewed with CFEC**	

***This table represents the permits registered in 2026 with CFEC using historical associations of each permit to groups who have access to a beach. Note: Data from CFEC permit records, DNR leases, and 2020 ADFG Buoy Registration records.**

****Total CFEC permits registered in 2026 do not agree with ESSN area registration data from ADFG. 101 permits could include latent permits or permits that have moved out of the ESSN area since 2020.**

Bifurcated Fishery

The ESSN fishery has operated as a bifurcated fishery for many years. The fishery is divided by the Blanchard Line, which separates the Kasilof and Kenai Districts. Its management has historically recognized that different areas of the fishery require different fishing opportunities, restrictions, and opening schedules to meet conservation objectives. These distinctions are not new; they are an established method of how ADFG manages the fishery.

Management differences also include the 600-foot fishery, the ½-mile fishery in the Kasilof section, fishing periods between the Kasilof and Kenai Districts, and differences in gear web size and net depth by area. These management boundaries and restrictions were developed to address conservation needs and the different run timing of Chinook, Coho, and Sockeye salmon to the Kenai and Kasilof Rivers.

Within the current Kenai River Late-Run Chinook Salmon Management Plan (KRLRCS), 5 AAC 21.359 (e) (3) (F) states, “Upper Subdistrict set gillnet commercial fishing periods that are limited under this section may be limited to fishing within 600 feet of the mean high tide mark and are exempt from hour and gear limitations identified under (e) (3) (A-E).”

The KRLRCS management plan recognizes the need for differentiated fishing opportunities and includes provisions allowing Sockeye salmon harvest within 600 feet of the shore while providing additional protection for Chinook salmon. This is another example of how the Department has used area-specific restrictions within the ESSN fishery to balance sockeye harvest opportunities during Chinook salmon conservation.

At the June 4, 2026 meeting of CFEC, to consider adding beach seines as an emergency measure, Commissioner Welch stated her concerns that beach seines were replacing gill nets in the SOC. Regarding her point, the intentions of the set beach seine developers, testers, or proposers were never to remove setnets from the SOC. It was intended to include seines as an alternative gear to be utilized under the 14,250 large Chinook recovery goal, only in the SOC, in addition to the commercial dipnets.

Traditional set gillnets remain the most efficient and established harvest tool when traditional fishing opportunity is available. That is not disputable. However, under the SOC plan, that tool has been removed by the BOF. Our fleet will address that issue at the scheduled Upper Cook Inlet BOF meeting in March of 2027. Understand that a no vote to authorize beach seines on SO4H permits does not bring set gillnets back into the SOC plan.

Set beach seines have been developed, tested under actual fishing conditions, observed, documented, and authorized by the Board of Fisheries in the SOC. Testing reveals that they will significantly enhance the economic viability of our fishery while in the SOC. We ask CFEC to complete the corresponding permit-card authorization of seines on existing S04H permits and allow permit holders to choose whether this additional gear option works for them.

Respectfully,

Brian and Lisa Gabriel

Upper Cook Inlet Eastside Setnet Permit Holders

[redacted] [redacted]k

Outlook

Beach Seine Support

From Eric Nyce [redacted]
Date Mon 11/16/2026 10:58 AM
To DFG, CFEC PublicQuestions (DFG sponsored) <DFG.CFEC.PublicQuestions@alaska.gov>

[redacted]

[redacted]

To who it may concern,

I Am writing in support of beach seine use during years of low king salmon abundance. This is a proven method to efficiently harvest sockeye and release kings in the water, preventing any mortality. 75% of Setnetters have a shore lease or a historical beach net that they could use this gear type on, and the remaining 25% can continue to dip net until set nets are allowed once again. These nets should be directly tied to our shore leases as it will require our existing infrastructure to fish in an orderly fashion without any king mortality. A structured fishery based around our shore lease permits and infrastructure will allow for a reduced but effective fishery during low king returns.

Sincerely,

Eric Nyce
Salamantof Fishermen

[redacted] [redacted]

Outlook

support for Beach Seines

From Paul Crookston [redacted]
Date Mon 11/16/2026 12:44 PM
To DFG, CFEC PublicQuestions (DFG sponsored) <DFG.CFEC.PublicQuestions@alaska.gov>

[redacted]

[redacted]

Dear CFEC Commissioners,

I am writing to express my strong support for allowing set beach seines as an alternative gear type on existing East Side setnet permits.

I am a third generation commercial fisherman, and for my family, fishing has always been much more than a source of income. It is part of who we are. It is a tradition passed down through generations, built on hard work, sacrifice, and a deep connection to the resource and the communities that depend on it.

Today, I am deeply concerned that this way of life is at risk of disappearing.

Over the past decade, declining king salmon abundance and the resulting restrictions have placed tremendous financial pressure on our fishery. I understand and support the importance of protecting king salmon for future generations. However, the reality is that the restrictions on our traditional fishing methods have made it increasingly difficult for families like mine to continue participating in a fishery that has been part of our lives for generations.

I believe allowing set beach seines represents one of the most promising opportunities we have to preserve the future of the East Side setnet fishery.

This alternative gear type could provide a way to responsibly harvest abundant sockeye salmon while eliminating impacts on king salmon. Rather than forcing fishing families out of the industry, it would give us an opportunity to adapt to changing conditions while continuing to contribute to the local economy and the communities we have supported for generations.

What makes this issue especially personal to me is my hope that my children will have the same opportunity to participate in this fishery that I have enjoyed throughout my life. Some of my most meaningful experiences and memories have come from commercial fishing, and I want my children to have the opportunity to build those same memories, learn the value of hard work, and carry forward our family's fishing heritage.

I worry that without meaningful changes, there may not be a viable fishery left for them to inherit.

[redacted]

[redacted] [redacted]

I recognize that there are biological, regulatory, and management challenges that must be addressed. But I also believe we should be working together to find practical solutions that balance conservation with the economic survival of the families who depend on this fishery.

We are not asking to abandon our traditional fishery or disregard the need to protect king salmon. **We are asking for the opportunity to adapt so that our fishery can survive.**

I respectfully urge CFEC to support allowing set beach seines as an alternative gear type on existing East Side setnet permits and to work cooperatively with the Board of Fisheries to make this opportunity possible.

I hope that future generations will look back and recognize that, when our fishery faced some of its greatest challenges, we chose to find a way forward rather than allow generations of fishing heritage to disappear.

Thank you for your consideration and for recognizing the importance of preserving both our salmon resources and the families whose lives have been built around them.

Sincerely,

Paul Crookston
Third-Generation East Side Setnet Fisherman

[redacted]

[redacted] [redacted]

Outlook

Re: CFEC - Notice of Public Meeting 11/17/2026

From Gary Hollier [redacted]
Date Mon 11/16/2026 1:12 PM
To Findley, Jennifer N (CFEC) <jennifer.findley@alaska.gov>

[redacted]

I am Gary L Hollier. I am a 73 year life long resident of Kenai, Ak
I have been fishing the ESSN fishery since 1971.
My family owns 8 SO4H(set net permits for Cook Inlet).
We fish in Stat area 244 32.
I/ We are AGAINST making beach seines an alternative gear in the ESSN fishery.
Thank you,
Gary L Hollier
Kenai, Ak
[redacted]

[redacted]

[redacted] [redacted]

Outlook

Support of Beach Seine in Stock of Concern Plan

From jason hudkins [redacted]
Date Mon 11/16/2026 1:28 PM
To DFG, CFEC PublicQuestions (DFG sponsored) <DFG.CFEC.PublicQuestions@alaska.gov>
[redacted]

[redacted]

[redacted]

To Whom It May Concern:

I am writing in support of adding set beach seines as a legal gear type to ESSN permits.

Fisheries are not static. Salmon abundance, migration patterns, and management needs change over time. Fishing regulations and permitted gear types must be capable of evolving alongside those changes. We cannot expect our fisheries, or the families who depend on them, to survive indefinitely if we are unwilling to consider responsible alternatives. Our fishing families have a tremendous investment in the future of the ESSN fishery. We want to continue harvesting salmon responsibly, supporting our communities, and passing this way of life down to future generations. But preserving our fishing heritage requires the ability to adapt.

The Alaska Board of Fisheries has tasked the East Side Setnet (ESSN) fishery with identifying alternative harvesting methods that can selectively target sockeye salmon while allowing for the live release of Chinook salmon. The 2024 ADF&G-sanctioned, 100% observed set beach seine experiment demonstrated this approach could be successful.

If adopted, set beach seines would:

- **Complement, not replace, traditional setnets.** It is allowing for an alternative harvesting method similar to dip netting while in the king salmon stock of concern plan.
- **Be accessible to the majority of fishing sites.** While not every location is suitable, most sites throughout the fishery have the geography and conditions necessary to utilize this method.
- **Provide a more selective harvesting opportunity.** It allows fishermen to target abundant sockeye salmon while providing for the live release of non-targeted species, including Chinook salmon.
- **Help restore economic viability.** After years of restrictions and reduced fishing opportunities, families need additional ways to make their permits and operations financially sustainable.

[redacted]

- **Benefit local and state economies.** Commercial fishing supports more than individual permit holders. It sustains local businesses, processors, communities, and state revenue.

I am optimistic the CFEC will base this decision on the merits of the gear, the available 2024 Set Beach Seine results, and the long-term interests of the fishery.

Thank you for your time and consideration. I sincerely hope CFEC will support adding set beach seines as a legal gear type to ESSN permits and provide our fishery with another opportunity to move forward.

Respectfully,

Jason Hudkins

November 16, 2026

Commercial Fisheries Entry Commission

Cook Inlet beach seine proposal — DOL File No. 2026200363

Dear Commissioners,

I am writing in my personal capacity as a longtime East Side Setnet (ESSN) fisherman and S04H permit holder. **I ask CFEC to defer the proposed beach seine amendment until the Board of Fish addresses gear eligibility for S04I permits in the Kenai River late-run king salmon stock-of-concern plan.** The Board of Fish should act first on any changes needed to the SOC plan. CFEC can then consider what changes are needed to its permit regulations to implement that decision.

I previously supported adding beach seines and dipnets as options during conservation restrictions. I opposed Proposal 192 because it replaced the plan's setnet openings with beach seine openings. Any future authorization should make beach seines an additional option and provide for setnet openings when conservation conditions allow.

I ask the Commission to address three issues before taking final action.

- **S04I permits in 2027.** CFEC's proposal refers to the Cook Inlet Area, while the Board of Fish's plan expressly names S04H holders in both the beach seine and commercial dipnet provisions. What will fishermen be able to use when their permits are reassigned to S04I under HB 117? A CFEC gear amendment alone would leave the S04H language in the plan in place. Any necessary changes to the plan should be adopted by the Board of Fish before CFEC acts on alternative gear.
- **Shoreline access.** How many existing permit holders can actually fish a beach seine under the shore-anchor, running-line, and 600-foot spacing requirements? CFEC's April memo reported that only 99 of the 283 DNR lease tracts it reviewed appeared to touch shore. The Commission should determine how many lawful, workable sites are available.
- **Limited Entry Act.** If replacing setnet openings with shore-dependent gear limits practical access to a smaller group of permit holders, what is CFEC's basis for treating it as the same limited-entry fishery? If CFEC considers it a separate fishery, how would the Act's entry procedures apply?

Please defer the amendment and work with the Board of Fish and ADF&G to resolve these issues on the public record. Permit holders need clear answers about setnets, dipnets, and beach seines before making reassignment and gear decisions for 2027.

Thank you for considering my comments.

Respectfully,



Norm Darch
ESSN Permit Holder
Kenai, Alaska

[redacted] [redacted]

Outlook

I Support of Set Beach Seines

From Alan Crookston [redacted]
Date Mon 11/16/2026 2:58 PM
To DFG, CFEC PublicQuestions (DFG sponsored) <DFG.CFEC.PublicQuestions@alaska.gov>

[redacted]

[redacted]

Dear CFEC Commissioners,

My grandfather started fishing on Salamatof Beach in 1956; my dad was eight years old then. He is now 70 years old, and he has fished on that beach every year.

I was born into the fishing and grew up fishing at the site with my grandpa, grandma, aunts, uncles, parents, and siblings. Today I still fish this same site with my children, who are now high school age.

I have seen the ESSN go from being something that the state was proud of to now being the most discriminated user group in Alaska. The restriction placed on these ESSN families is nothing more than discrimination disguised as conservation. If this pattern continues, the industry will not survive.

My family has literally had our fishing business and livelihood taken from us by the state of Alaska. We have been on the brink of bankruptcy for the past 8 years, and we are historically one of the most productive beaches in Alaska.

In an effort to survive, ADFG asked people from industry to propose solutions. This is how the Set Beach Seine (SBS) originated. The group of the best, smartest, and most experienced fishermen put their heads together and developed this SBS method - and it works!

I qualified for a Commissioner's Permit in 2025, and I fished the SBS. Here is what I learned:

1. They can relatively easily be used with our existing gear.

2. The cost to get set up was minimal (like under $3K).

[redacted]

[redacted] [redacted]

3. They do not harm Kings; the few Kings captured showed no stress and were released back into the Inlet without any impact.

4. It was still an effective way to harvest sockeye, especially during times of abundance; this will greatly benefit families like mine as well as the great community, and it helps curtail the disastrous over-excapement that has been happening.

Based on current ocean conditions and the Chinook numbers, it does not look like we are coming out of this SOC anytime soon. The SBS allows some of the fleets' most productive fishermen to harvest sockeye without harming kings; it is a tool to use that works.

I strongly urge the CFEC to give us fishermen this tool to use for survival. I can confidently say that the impact on the Chinook number will essentially be zero.

I have heard that last year the SBS permits did not pass mainly because "it was not fair to all fishermen." This complete inequity has always been the case with the ESSN! There have always been more productive beach sites, and those sites have always been far more productive than the outside. Fishing is like agriculture; there is top land and bottom land. Furthermore, those on the beach have invested 50 times what the outside fishermen have invested, maybe more. This type of inequity can be said of any fishing group.

Furthermore, the previous set net plan of using set nets is not fair at all. It is only an 8-hour opener on the flood tide, which only a beach fisherman can do! This has originally and historically been a BEACH fishery. The SBS fit to this methodology is fine.

The SBS gives those original beach fishermen a chance to survive where they have always existed, while those not on the beach can stick with the status quo.

Many opposed to the SBS are moving from their less productive beaches to the Salamatof area because of its productivity - because the commercial dipnet allows them to do this. They like the pickings in this new area, and so they are trying to put their stake in and claim new spots. This is not where their initial leases are, and this territory grab was caused by the commercial dipnet proposal.

If individuals are not able to participate in the SBS, then they can still use the commercial dipnet option, just as before - nothing has changed for them other than they get to move to a more productive area.

The biggest crime that needs to be resolved is the debacle that we have SBS in the plan instead of our setnets, but yet NO PERMITS available to fish the SBS; this has to be fixed.

[redacted] [redacted]

My family (6 permits now) is in favor of using the SBS and encourages the CFEC commissioners to vote accordingly.

Respectfully,

Alan Crookston
[redacted]

[redacted]

[redacted] [redacted]

Outlook

Cook Inlet Set Beach Seines

From Ted Crookston [redacted]
Date Mon 11/16/2026 3:45 PM
To DFG, CFEC PublicQuestions (DFG sponsored) <DFG.CFEC.PublicQuestions@alaska.gov>
[redacted]

[redacted]

[redacted]

Hello CFEC officials:

I am a multigenerational setnetter. 60+ years experience.

I actively worked on the testing of the set beach seine experiment and was given my own individual commissioner's experimental permit in 2025. I, with my family and other crew members, constructed a seine net, set up rigging and tested the gear and filed reports including observer notes with the ADFG.

I support approving set beach seines as an alternative gear type in the ESSN fishery.

Set beach seines were never envisioned as replacements for set nets. They are not. However, during the King Salmon Stock of Concern plan set beach seines, once approved, can be used as a harvest tool for the abundance of sockeye while assuring king salmon are not harvested. This will enable the preservation of the ESSN sockeye fishery while the king salmon stock rebuilds.

The historical and traditional setnet fishery was a shore based fishery. All of the traditional legacy shore based setnet sites and associated shore fishery leases can use set beach seines in some varying manner.

The very nature of the ESSN fishery has dissimilar and unequal characteristics between different fishing sites and operations. While not a perfect solution for every single situation, the approval of and the appropriate utilization of set beach seines during the SOC plan can, on the whole, be a vital tool in maintaining the setnet fishing industry into the future — WHICH WILL CERTAINLY BENEFIT ALL SETNET FISHERMAN.

Ted Crookston
[redacted]

[redacted]

[redacted] [redacted]

Outlook

Beach Seine on Salamantof Beach

From Jackie Ostroot [redacted]
Date Mon 11/16/2026 5:02 PM
To DFG, CFEC PublicQuestions (DFG sponsored) <DFG.CFEC.PublicQuestions@alaska.gov>

[redacted]

[redacted]

To who it may concern,
I am writing in support of beach seine use during years of low king salmon abundance.
This is a proven method to efficiently harvest sockeye and release kings in the water, preventing any mortality. 75% of Setnetters have a shore lease or a historical beach net that they could use this gear type on, and the remaining 25% can continue to dip net until set nets are allowed once again. These nets should be directly tied to our shore leases as it will require our existing infrastructure to fish in an orderly fashion without any king mortality.
A structured fishery based around our shore lease permits and infrastructure will allow for a reduced but effective fishery during low king returns.
Sincerely,

Jackie Ostroot
Salamantof Fishermen
[redacted]

[redacted]