

Approved Proposal Number	Applicable regulations	Language location	Brief Summary	Date and time of vote	Comments
1	5 AAC 28.647(d)(3)(B)(iii)-(iv)	RC 10	Adds language that specifies 'Alaska Time' to the opening time of the Aleutian Islands Subdistrict commercial state-waters season for Pacific cod.	10/28 at 9:28am	5 AAC 28.647(c)(2)(A)-(B) was removed from RC 10 and replaced by the equivalent citation of the language in RC 17 as indicated that is the Board intent after the passage of proposal 2.
1	5 AAC 28.647(d)(6)	RC 10	Specifies that 'round' pounds are used for commercial harvest and possession limits of Pacific cod in the Aleutian Islands Subdistrict and also removes the language that containing a daily reporting requirement to the department.	10/28 at 9:28am	Proposal 1 was a department submitted proposal.
1	5 AAC 28.647(d)(8)	RC 10	Adds language clarifying operation of gear during deliveries and partial deliveries.	10/28 at 9:28am	Is a new paragraph
1	5 AAC 28.647(d)(9)	RC 10	Adds reporting requirements for vessels participating in the Aleutian Islands Subdistrict commercial state-waters season for Pacific cod.	10/28 at 9:28am	Is a new paragraph with subparagraphs (A)-(C) added
1	5 AAC 28.647(k)	RC 10	Adds gear operating requirements after the closure of the Aleutian Islands Subdistrict commercial state-waters season for Pacific cod.	10/28 at 9:28am	Is a new subsection
1	5 AAC 28.647(l)	RC 10	Adds definitions specific to 5 AAC 28.647 for "day" and "harvest"	10/28 at 9:28am	Is a new subsection
2	5 AAC 28.647(c)(2)	Intent in RC 17	Adds 'or close' to accommodate newly added language in subsequent subparagraph that was modified in RC 17.	10/28 at 9:44am	
2	5 AAC 28.647(c)(2)(A)	RC 17	Changes the specifications for the opening of the Aleutian Islands Subdistrict commercial state-waters season for Pacific cod.	10/28 at 9:44am	
2	5 AAC 28.647(c)(2)(B)	RC 17	Removes season opening specifications for certain vessels participating in the Aleutian Islands Subdistrict commercial state-waters season for Pacific cod and replaces the language with season closure specifications for certain vessels participating in that fishery.	10/28 at 9:44am	
2	5 AAC 28.647(d)(2)	RC 17	Eliminates the allowance of longlining groundfish pots in the Aleutian Islands Subdistrict commercial state-waters season for Pacific cod.	10/28 at 9:44am	
2	5 AAC 28.647(d)(3)	RC 17	Modifies the vessel specifications to now only include the Aleutian Islands Subdistrict for the commercial state-waters season for Pacific cod.	10/28 at 9:44am	
5	5 AAC 28.647(d)(3)(A)-(C)	RC 17	Removes the Adak Section from certain vessel specifications in the Aleutian Islands Subdistrict for the commercial state-waters season for Pacific cod, changed vessels allowed to participate in the fishery from 60 feet or less to 100 feet or less that operate pot gear and simplified vessel length specifications for all other gear types.	10/28 at 9:44am	Citation restructuring eliminated subsubparagraphs under (B) and added subparagraph (C)
2	5 AAC 28.647(f)	RC 17	Designates the Aleutian Islands Subdistrict as an exclusive registration area only and removes the departments authority to designate the Aleutian Island Subdistrict as a nonexclusive registration area for Pacific cod, which is restored in a new subsection.	10/28 at 9:44am	
2	5 AAC 28.647(k)	RC 17	Adds language allowing the department flexibility to change harvest limits, exclusivity, qualifying vessels to participate in the fishery for the specific purpose of achieving the GHL as well as clarifies landing requirements if the season is closed and immediately reopened under this subsection.	10/28 at 9:44am	Is a new subsection
6	5 AAC 28.648(e)(1)(A)	Intent in RC 16	Establishes new provisions for determining the annual GHL in the state-waters Pacific cod commercial fishery in the Dutch Harbor Subdistrict as a percentage of the total allowable harvest of Pacific cod for federal Bering Sea Subarea with step up and step down provisions.	10/28 at 10:13am	
7	5 AAC 28.629(h)-(j)	In the proposal	Adds language specifying gear marking requirements for groundfish pots operating in commercial fisheries in the Bering Sea-Aleutian Islands Area, adds a provision allowing groundfish pots to be longlined in the Aleutian Islands Subdistrict commercial Pacific cod and Aleutian Islands-Western District commercial sablefish fisheries as well as specifies gear marking requirements for pots longlined in those fisheries.	10/28 at 10:40am	Are all new subsections. A verbal amendment was added by Captain Frenzel in 5 AAC 28.629(j) to change the language submitted in the proposal requiring the letters 'GFL' to be changed to 'LP' and additional language added to (j) 'the buoy may bear only the number of the vessel operating the gear'.
7	5 AAC 28.681	In the proposal	Adds language specifying landing requirements for groundfish in the Bering Sea - Aleutian Islands Area.	10/28 at 10:40am	
8	5 AAC 28.577(l)	In the proposal	Adds language specifying the corresponding National Weather Service marine forecast area for the South Alaska Peninsula Area as Area PKZ155.	10/28 at 10:42am	
10	5 AAC 28.640(b)	In the proposal	Adds language to clearly define harvest allocation in the commercial sablefish fishery in the Aleutian Islands and Western Districts as five percent of the federal acceptable biological catch.	10/28 at 10:52am	

10 5 AAC 28.640(j)	In the proposal	Adds a definition for "acceptable biological catch" specific to the Aleutian Islands District and Western District of the South Alaska Peninsula Area Sablefish Management Plan.	10/28 at 10:52am	Is a new subsection
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Shellene Hutter
Department of Fish and Game

FROM: April Simpson, Office of the Lieutenant Governor
465.4081 

DATE: February 24, 2023

RE: Filed Permanent Regulations: Board of Fisheries

Board of Fisheries regulations re: Groundfish Fisheries in the Alaska Peninsula,
Aleutians, Bering Sea, and Chignik regions - Board Meeting October 2022 (5 AAC 01 -
99)

Attorney General File:	2022200302
Regulation Filed:	2/24/2023
Effective Date:	3/26/2023
Print:	245, April 2023

cc with enclosures: Colleen Bailey, Department of Law
Judy Herndon, LexisNexis



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Law

CIVIL DIVISION

P.O. Box 110300
Juneau, Alaska 99811
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February 24, 2023

The Honorable Nancy Dahlstrom
Lieutenant Governor
State of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

Re: *5 AAC 01-99, Board of Fisheries - AK Peninsula/Aleutians/Bering
Sea/Chignik Pacific Cod Board Meeting October 2022*

Our file: 2022200302

Dear Lieutenant Governor Dahlstrom:

The Department of Law has reviewed the attached regulations of the Board of Fisheries against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This letter constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations were adopted by the Board of Fisheries after the close of the public comment period.

The regulations concern changes to 5 AAC 28 for groundfish fisheries in the Alaska Peninsula, Aleutian Islands, Bering Sea, and Chignik regions.

The September 12, 2022 public notice and the January 11, 2023 order certifying changes both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are incorporated into the attached copy of the regulations.

Sincerely,

TREG TAYLOR
ATTORNEY GENERAL

By: **Rebecca C. Polizzotto**
Rebecca C. Polizzotto
Chief Assistant Attorney General
Legislation, Regulations, and
Legislative Research Section

Digitally signed by
Rebecca C. Polizzotto
Date: 2023.02.24
08:59:15 -09'00'

RCP/ehp

CC w/enclosure: Shellene Hutter
Department of Fish and Game

Aaron Peterson, Assistant Attorney General
Department of Law

Steven C. Weaver, Assistant Attorney General
Department of Law

**ORDER CERTIFYING THE CHANGES TO REGULATIONS
OF THE ALASKA BOARD OF FISHERIES**

The attached 10 pages of regulations, changes to 5 AAC 28 for groundfish fisheries in the Alaska Peninsula, Aleutian Islands, Bering Sea, and Chignik regions are certified to be a correct copy of the regulation changes that the Alaska Board of Fisheries adopted at its public hearing held from October 27th – 28th, 2022 in Anchorage, Alaska under the authority of AS 16.05.251 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

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

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

DATE: 1/11/2023
Anchorage, Alaska

DocuSigned by:
Doug Vincent-Lang
32E3FEFE58284DB...

Douglas S. Vincent-Lang, Commissioner
Department of Fish and Game

April Simpson for
↑

FILING CERTIFICATION

I, Nancy Dahlstrom, Lieutenant Governor for the State of Alaska, certify that on February 24, 2023 at 2:44 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

for *April Simpson*
Nancy Dahlstrom, Lieutenant Governor
State of Alaska

Effective: March 26, 2023.

Register: 245, April 2023.

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, NANCY DAHLSTROM, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employees to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on December 11th, 2022.



Nancy Dahlstrom
.....

**NANCY DAHLSTROM
LIEUTENANT GOVERNOR**

Title 5. Fish and Game.

Part 1. Commercial and Subsistence Fishing and Private Nonprofit Salmon Hatcheries.

Chapter 28. Groundfish Fishery.

Article 9. South Alaska Peninsula Area (Registration Area M).

5 AAC 28.577(l) is amended to read:

(l) The opening of the state-waters season for vessels using pot gear will be delayed for 24 hours if the National Weather Service marine forecast issued at 4:00 a.m. on the scheduled opening date specified in (e)(1) of this section [FOR THE CURRENT DAY AND NIGHT OR THE FOLLOWING DAY AND NIGHT FOR THE STATE WATERS BETWEEN CASTLE CAPE AND CAPE SARICHEF] contains a gale warning. If, after the initial weather delay, the following day's 4:00 a.m. National Weather Service marine forecast [FOR THE CURRENT DAY AND NIGHT OR THE FOLLOWING DAY AND NIGHT] contains a gale warning, the opening of the state-waters season will be delayed an additional 24 hours. The season opening delays may continue on a rolling 24-hour basis for **not more than** seven days beyond the initial opening date. [WHEN] **The** [THE] season will open **not later than seven days after the scheduled opening date as specified in (e)(1) of this section** regardless of any gale warning forecast. **For the purposes of this subsection, the corresponding National Weather Service marine forecast area for the South Alaska Peninsula Area is Area PKZ155.**

(Eff. 4/4/97, Register 142; am 11/27/97, Register 144; am 5/31/98, Register 146; am 7/21/99, Register 151; am 5/31/2001, Register 158; am 5/15/2004, Register 170; am 5/30/2007, Register 182; am 5/16/2010, Register 194; am 4/20/2012, Register 202; am 2/23/2014, Register 209; am 2/28/2016, Register 217; am 2/21/2019, Register 229; am 3 /26 / 2023, Register 245)

Authority: AS 16.05.060 16.05.251

Article 10. Bering Sea - Aleutian Islands Area (Registration Area O).

5 AAC 28.629 is amended by adding new paragraphs to read:

(h) At least one buoy on each groundfish pot must be legibly marked with the permanent ADF&G vessel license plate number of the vessel operating the gear. The buoy may bear only the number of the vessel operating the gear. The number must be placed on the top one-half of the buoy in numerals at least four inches high, one-half inch wide, and in a color that contrasts with the color of each buoy. The buoy markings must be visible on the buoy above the water's surface when the buoy is attached to the groundfish pot.

(i) A groundfish pot may not be attached to a line connected to another groundfish pot, except that, in the Aleutian Islands-Western District sablefish fishery, groundfish pots may be connected if each end of the buoy line is marked as specified in (j) of this section.

(j) Each end of a groundfish pot longline must have a buoy attached and each buoy must be marked with the permanent ADF&G vessel license plate number of the vessel operating the longlined groundfish pot gear; each buoy must have the letters LP to designate the gear as longlined groundfish pot gear and each buoy may bear only the number of the vessel operating the gear. The numbers and letters must be marked on the top one-half of each buoy in numbers and letters that are at least four inches high, one-half inch wide, and in a color that contrasts with the color of each buoy; all buoy markings must be visible on the buoys above the water's surface when the buoys are attached to the longlined groundfish pot gear. For the purposes of this section, "longlined" means more than one groundfish pot is attached to a stationary, buoyed, and anchored line. (Eff. 4/4/97, Register 142; am 7/5/2000, Register 155; am 5/19/2001, Register

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158; am 5/31/2001, Register 158; am 1/16/2005, Register 173; am 2/13/2005, Register 173; am 10/16/2011, Register 200; am 6/1/2013, Register 206; am 8/27/2016, Register 219; am 3 /26 / 2023, Register 245)

Authority: AS 16.05.251

5 AAC 28.640(b) is amended to read:

(b) The commercial fishing season for sablefish in state waters will open and close concurrently with the federal IFQ season for directed fishing for sablefish in the adjacent federal waters, unless closed by emergency order. **During a state-waters season, the combined guideline harvest level for sablefish in the Aleutian Islands District and the Western District of the South Alaska Peninsula is five percent of the federal acceptable biological catch for sablefish in the combined federal Bering Sea and Aleutian Islands Subareas.**

5 AAC 28.640 is amended by adding a new subsection to read:

(j) In this section, “acceptable biological catch” means the annual acceptable biological catch (ABC) established by the North Pacific Fishery Management Council for Bering Sea and Aleutian Islands sablefish, including the harvest of sablefish in a state-waters season under the management plan as described in this section. (Eff. 5/31/2001, Register 158; am 5/15/2004, Register 170; am 5/16/2010, Register 194; am 5/1/2011, Register 198; am 6/1/2013, Register 206; am 6/5/2016, Register 218; am 5/31/2019, Register 230; am 3 /26 / 2023, Register 245)

Authority: AS 16.05.060 16.05.251

The introductory language of 5 AAC 28.647(c)(2) is amended to read:

(2) all waters of the Aleutian Islands Subdistrict shall open or close as follows:

...

5 AAC 28.647(c)(2)(A) is amended to read:

(A) the fishing season for nonpelagic trawl gear, pot gear, longline gear, hand troll gear, and mechanical jigging machines shall open February 1 at noon Alaska Time or four days after the Bering Sea and Aleutian Islands parallel "A" season for the catcher-vessel greater than or equal to 60 feet in overall length pot gear fishery is closed, whichever occurs first;

5 AAC 28.647(c)(2)(B) is amended to read:

(B) the fishing season for vessels over 60 feet in overall length using pot [NONPELAGIC TRAWL] gear shall close when 25 percent of the guideline harvest level has been taken by those [AND] vessels or December 31, whichever occurs first; the restrictions under this paragraph do not apply to a season reopened under (k) of this section [OVER 100 FEET IN OVERALL LENGTH USING POT GEAR, AT 12:00 NOON ON MARCH 15];

5 AAC 28.647(d)(2) is amended to read:

(2) Pacific cod may be taken only with groundfish pots, mechanical jigging machines, longline, nonpelagic trawl, and hand troll gear [GROUND FISH POTS MAY BE LONG LINED; EACH END OF THE GROUND FISH POT LONG LINE MUST HAVE A BUOY ATTACHED AND EACH BUOY MUST BE MARKED WITH THE PERMANENT

ADF&G VESSEL PLATE NUMBER OF THE VESSEL OPERATING THE GROUND FISH LONGLINED POT GEAR AND THE LETTERS "GFL" TO DESIGNATE THE GEAR AS LONGLINED GROUND FISH POT GEAR; THE NUMBERS AND LETTERS MUST BE MARKED ON THE TOP ONE-HALF OF THE BUOY IN NUMBERS AND LETTERS THAT ARE AT LEAST FOUR INCHES HIGH, ONE-HALF INCH WIDE, AND IN A COLOR THAT CONTRASTS WITH THE COLOR OF THE BUOY; THE BUOY MARKINGS MUST BE VISIBLE ON THE BUOY ABOVE THE WATER SURFACE WHEN THE BUOY IS ATTACHED TO THE LONGLINED POT GEAR; FOR THE PURPOSES OF THIS PARAGRAPH, "LONGLINED" MEANS MORE THAN ONE GROUND FISH POT IS ATTACHED TO A STATIONARY, BUOYED, AND ANCHORED LINE];

5 AAC 28.647(d)(3) is repealed and readopted to read:

- (3) a vessel used to harvest Pacific cod in the Aleutian Islands Subdistrict with
 - (A) longline gear, may not be more than 58 feet in overall length;
 - (B) nonpelagic trawl gear or mechanical jigging machines may not be more than 60 feet in overall length;
 - (C) except as otherwise provided in (k) of this section, pot gear may not be more than 100 feet in overall length.

5 AAC 28.647(d)(6) is amended to read:

(6) a vessel may harvest up to 150,000 **round** pounds of Pacific cod per day and may not have more than 150,000 **round** pounds of unprocessed Pacific cod on board the vessel at any time; a vessel may not have on board the vessel more processed fish than the round weight

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equivalent of the fish reported on ADF&G fish tickets [A VALIDLY REGISTERED VESSEL MUST REPORT DAILY TO THE DEPARTMENT THE POUNDS OF PACIFIC COD TAKEN AND ON BOARD THE VESSEL];

5 AAC 28.647(d) is amended by adding new paragraphs to read:

(8) once an offload begins, a vessel may not operate groundfish gear until all Pacific cod onboard the vessel is delivered; partial deliveries may occur as specified in 5 AAC 28.070, however, vessels may not operate groundfish gear in between partial deliveries including partial deliveries to shorebased processors, floating processors, tenders, transporters, or motherships;

(9) during the state-waters season, an owner or operator of a validly registered vessel must report, as specified by the department

(A) the amount of gear operated by the vessel during the designated period;

(B) the number of round pounds of Pacific cod retained during the designated period; and

(C) any other information that the commissioner determines is necessary for the management and conservation of the fishery.

5 AAC 28.647(f) is amended to read:

(f) The Aleutian Islands Subdistrict is an exclusive registration area for Pacific cod during a state-waters season [IF AT ANY TIME AFTER CLOSURE OF THE DUTCH HARBOR SUBDISTRICT STATE-WATERS PACIFIC COD SEASON FOR POT GEAR AS

DESCRIBED IN 5 AAC 28.648, THE COMMISSIONER DETERMINES THAT THE GUIDELINE HARVEST LEVEL FOR PACIFIC COD WILL NOT BE ACHIEVED BY DECEMBER 31, THE COMMISSIONER MAY CLOSE, BY EMERGENCY ORDER, THE FISHING SEASON AND IMMEDIATELY REOPEN A STATE-WATERS SEASON DURING WHICH THE ALEUTIAN ISLANDS SUBDISTRICT IS DESIGNATED AS A NONEXCLUSIVE REGISTRATION AREA FOR PACIFIC COD].

5 AAC 28.647 is amended by adding new subsections to read:

(k) If at any time after March 15, the commissioner determines that the guideline harvest level for Pacific cod will not be achieved by December 31, the commissioner may close the fishing season by emergency order and immediately reopen a state-waters season during which the following may be implemented to increase the harvest rate in an attempt to reach the guideline harvest level:

- (1) removal of the 150,000 round pound daily harvest limit;
- (2) designation as a nonexclusive registration area;
- (3) removal of the 25 percent harvest limit for pot gear vessels greater than 60 feet

in overall length;

- (4) allowance for nonpelagic trawl gear up to 100 feet in overall length;
- (5) allowance for pot gear vessels up to 125 feet in overall length;
- (6) if the season is closed and immediately reopened under this subsection, a

vessel participating in the state-waters season when it was closed will not be required to comply with landing requirements until the season is closed again.

(l) At the closure of the state-waters season, all fishing gear must be removed from the water, except that pot gear may be stored in the water with all bait and bait containers removed and doors secured fully open. Pot gear stored in the water after closure of the state-waters season may not be retrieved until all Pacific cod onboard the vessel is delivered.

(m) For the purposes of this section,

(1) “day” means the 24-hour period of time between 12:00 midnight and 11:59 p.m. of the same calendar day;

(2) “harvest” means the total weight of fish or number of shellfish removed from the water by commercial fishing operations. (Eff. 2/27/2006, Register 177; am 5/10/2006, Register 178; am 12/24/2006, Register 180; am 4/24/2009, Register 190; am 5/16/2010, Register 194; am 5/1/2011, Register 198; am 6/17/2011, Register 198; am 6/25/2011, Register 198; am 10/16/2011, Register 200; am 4/20/2012, Register 202; am 2/23/2014, Register 209; am 2/28/2016, Register 217; am 2/21/2019, Register 229; am 1/18/2020, Register 233; am 2/28/2020, Register 233; am 3/26/2023, Register 245)

Authority: AS 16.05.060 AS 16.05.251

((Note to Publisher: please change period at the end of 5 AAC 28.647(d)(7) to a semicolon))

5 AAC 28.648(e)(1)(A) is amended to read:

(A) for pot gear **in 2023, 12** [8] percent of the estimated total allowable harvest of Pacific cod for the federal Bering Sea Subarea; if the guideline harvest level established under this **subparagraph** [PARAGRAPH] is achieved **during two consecutive** [IN A] calendar **years** [YEAR], the guideline harvest level will increase by **one** [1] percent of

the estimated total allowable harvest **beginning** the subsequent calendar year; **a** [A]
guideline harvest level established under this subparagraph

(i) may not exceed 15 percent of the estimated total allowable
harvest of Pacific cod for the federal Bering Sea Subarea;

(ii) **if not achieved during two consecutive calendar years will
be reduced by one percent of the estimated total allowable harvest of Pacific
cod for the federal Bering Sea Subarea beginning the subsequent calendar
year, but may not be reduced below 10 percent of the estimated total
allowable harvest;** and

(iii) [(ii)] is considered to have been achieved if, by November 15,
90 percent of that guideline harvest level is projected to be harvested by the end
of that calendar year; and

(Eff. 2/23/2014, Register 209; am 2/28/2016, Register 217; am 2/21/2019, Register 229; am
3 / 26 / 2023, Register 245)

Authority: AS 16.05.060 16.05.251

5 AAC 28.681 is amended by adding a new subsection to read:

(b) After 72 hours following the closure of any directed groundfish season within the
Bering Sea-Aleutian Islands Area, a vessel that participated in that fishery may not have that
species of groundfish on board unless

(1) that species has been designated as bycatch for another directed fishery and
the amount on board that vessel is permissible under retained bycatch restrictions specified in
regulation; or

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(2) the vessel has been delayed due to extraordinary circumstances beyond the control of the vessel operator, and the vessel operator has contacted a local representative of the department no later than 72 hours following the closure of the season and the representative has granted a reasonable amount of time for the vessel to reach the port of delivery or processing location; any amount of additional time shall be determined under the assumption that the vessel departed the fishing grounds immediately after the closure and proceeded directly to the port of delivery or processing location. (Eff. 5/31/2001, Register 158; am 3 /26/ 2023, Register 245)

Authority: AS 16.05.251

((Publisher – please add (a) to beginning of section to denote new subsections in use))