

ALASKA LEGISLATURE

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Summary of Changes, ver U — ver L | HB 188 — Regional Fisheries Trusts

Note: Because two committee substitutes have been proposed in House Fisheries, this summary of changes is broken out into two sections: the lower section of this document describes the changes from HB 188 as introduced to HB 188 version M. Version M is the draft CS that was introduced to the committee at the start of the 2018 session. The upper section of this document describes the changes between version M and the current draft CS, version L.

Ver M — Ver L

Changes “improve access by Alaskans to fisheries” to “improve access to Alaska fisheries” in **Section 1(10)**. This conforms section 1 with the removal, in version M, of the Alaska residency requirement.

Removes **Section 17(a)(23)** in conformance with changes to AS 16.44.060(c).

Adds **Section 29** to provide that a regional fisheries trust must approve the emergency transfer of any permit that has been temporarily transferred from the fisheries trust. The emergency transferee must also be qualified under 16.44.080.

Rewards part of **Section 30(a)** (section 29 in version M), pg 13, lns 18-20, to clarify that an individual is legally considered a temporary transferee only after being approved by the Commercial Fisheries Entry Commission (CFEC). Also adds “or AS 16.43.180(c)” to the end of the subsection in order to conform with the addition of section 29.

Slightly rewards **Section 32(c)** and **Section 32(d)** (section 31 in version M) to conform with the addition of section 35 in version L.

Adds **Section 35** to ensure that when an emergency transferee is assessed demerit points, the same points are assessed against the transferor. This is currently the case for emergency transferred permits; the addition of section 35 ensures the same standards apply to people who emergency transfer a permit from a fisheries trust under proposed AS 16.43.180(c).

Amends **Section 36** (section 34 in version M) to make explicit that demerit points cannot be applied to a fisheries trust.

Amends **Section 39(l)(1) and (l)(2)** (section 37 in version M) to clarify that a fisheries trust has discretion to request a temporary transfer be revoked if the temporary transferee's fishing privileges are suspended for longer than the remaining period of the temporary transfer. The prior version unintentionally gave this power to fisheries trusts in cases where the temporary transferee's fishing privileges were suspended for longer than the total period of the temporary transfer.

Amends **proposed AS 16.44.010(b)(2)** by replacing "state residents' ability to participate in" with "access to." This conforms this paragraph with the removal, in version M, of the Alaska residency requirement.

Amends **proposed AS 16.44.010(b)(3)** by removing "in the state." This conforms this paragraph with the removal, in version M, of the Alaska residency requirement.

Deletes **proposed AS 16.44.010(e) (version M)**. The Department of Commerce, Community, and Economic Development's (DCCED's) Division of Economic Development, where regional fisheries trusts would be administratively housed, does not conduct audits. Regional fisheries trusts will remain subject to special audits of the Division of Legislative Audit.

Amends **proposed AS 16.44.020(i)** to provide greater specification to staff compensation requirements. Instead of "reasonable," version L requires that compensation of fisheries trust staff shall not exceed that of state employees with comparable duties. This change provides clearer guidance to a fisheries trust.

Deletes **proposed AS 16.44.030(c) (version M)**. This change does not remove DCCED's authority to adopt regulations enforcing proposed AS 16.44.030, if the Department chooses to do so (that authority is still provided by section 53). But given that other sections of the bill do not provide for specific regulatory authority, we did not want the inclusion of AS 16.44.030(c) to imply that DCCED lacked regulatory authority over other aspects of fisheries trust operations.

Changes "16.44.060(a)" to "16.44.060" in **proposed AS 16.44.050(a)(8)**. This was a drafting choice that makes no substantive change.

Amends **proposed AS 16.44.050(b)(1)** to conform with the addition of AS 16.44.050(d).

Adds **proposed AS 16.44.050(d)** to allow a fisheries trust board to prohibit certain individuals from receiving temporary transfers from the fisheries trust. Version L gives a fisheries trust authority to choose to prohibit temporary transfers to anyone who already holds a limited entry permit in another fishery (in order to increase opportunity for new fishermen) or who has had their fishing privileges suspended by CFEC. AS 16.44.050(d)(2) was included in version M as AS 16.44.080(d). New subsection AS 16.44.050(d) also requires that the board apply any restrictions as blanket restrictions; the decision to prohibit a temporary transfer under 16.44.050(d) can't be made on a case-by-case basis.

Adds **proposed AS 16.44.060(b)** to clarify that no more than one fisheries trust is eligible to hold a particular type of limited entry permit. Though it has never been the intention, there are some situations (such as with statewide permits) where version M could have been interpreted to allow more than one fisheries trust to hold a particular type of limited entry permit. The added language also states that if more than one fisheries trust would otherwise be considered eligible to hold a permit type, that type of permit may only be held by a fisheries trust established in the region of the state that is home to the greatest number of holders of that permit type. For example, only a fisheries trust established in the Southeast region would be able to acquire salmon power troll permits. No other fisheries trust would be allowed to acquire salmon power troll permits, even if a Southeast fisheries trust is never established.

Amends **proposed AS 16.44.060(c)** to lighten the burden on a fisheries trust to acquire a strictly quantitatively proportional portfolio of permits, in response to comments that some types of permits (i.e. those in more entry-level fisheries) would be more appropriate for a fisheries trust to acquire. The new language states that a fisheries trust shall still endeavor to hold permits of all types within its region, but gives fisheries trusts greater flexibility to determine which permits they acquire.

Clarifies **proposed AS 16.44.060(d)** to ensure that CFEC has authority to enforce all of section 16.44.060 by adding “or receive by transfer” to pg 26, ln 6. Language in version M may not have provided adequate authority for CFEC to enforce proposed AS 16.44.060(f).

Amends **proposed AS 16.44.060(e)** to explicitly prohibit “leasing” of entry permits temporarily transferred from a fisheries trust. This brings 16.44.060(e) into alignment with existing AS 16.43.150(g), which prohibits leasing of limited entry permits and distinguishes a temporary transfer from a lease.

Amends **proposed AS 16.44.070(b)** to provide that an individual may not fish permits temporarily transferred from any fisheries trust for more than six cumulative years. Prior versions only applied the six-year cap to permits of any one type. Version L makes clear that the six-year limit is a lifetime cap on temporary transfers, regardless of permit type.

Rewords **proposed AS 16.44.070(c)**, but does not make a substantive change.

Adds language to **proposed AS 16.44.080** allowing a regional fisheries trust to require someone bidding for a permit to provide further evidence of their ability to safely and successfully participate in the fishery. The sort of things an RFT could require a bidder show under this section include insurance coverage, a market for their fish, a veteran fishermen who has agreed to serve as a mentor, or a suitable vessel and gear. This was added in response to feedback from fishermen. Subsection 16.44.080(d) of version M has been moved to AS 16.44.050(d) in version L.

Amends **Section 56** (section 54 in version M) by removing the word “land area of the” before “state” to clarify that fisheries trust regions encompass both land and water area.

Amends **Section 56(a)(1)** to provide that fisheries trust region boundaries shall be based on CFEC administrative areas as described in regulation on January 1, 2018 rather than on the effective date of section 41 of the act (section 39 in version M). The boundaries will need to be drawn prior to the effective date of section 41.

Adds **Section 56(b)(2)** to address the fact that certain CFEC salmon administrative areas include very few communities, and would therefore not function well as separate fisheries trust regions. Under version L, a fisheries trust region may not have fewer than five communities.

Ver U — ver M

Throughout version M

The term “lease” has been replaced with “temporary transfer” and “lessee” with “temporary transferee” in order to better align HB 188 with the language and structure of existing limited entry law. The procedures by which fisheries trusts temporarily transfer permits differs somewhat from the procedures by which fisheries trusts leased permits in prior versions. Most notably, the Commercial Fisheries Entry Commission (CFEC) is given a stronger oversight role of temporary transfers than of leases. Substantive changes to policy associated with the “lease” to “temporary transfer” change have been described in the section-by-section analysis below. We have not, however, identified and described instances where the language change does not result in a substantive policy difference relative to prior versions before the committee. We made this choice to preserve readability of this document and make it easier to identify substantive changes.

Section-by-section changes

Adds **Section 2** to legally distinguish regional fisheries trusts from trust companies as defined in title 6, chapter 26.

Adds **Section 6** to account for the fact that regional fisheries trusts may now temporarily transfer permits to non-Alaskans.

Adds **Section 12** to make a newly identified conforming amendment.

Adds **Section 14** to make a newly identified conforming amendment.

Amends **Section 16** (section 12 in version U) to clarify that only individuals holding permits, not temporary transferees, may form an association to levy a hatchery assessment.

Adds two paragraphs to section **Section 17, (22) and (25)**, to conform with sections that require CFEC to approve the temporary transfer of limited entry permits and determine equitable methods of reissuance should a fisheries trust fail and permits revert to CFEC. Also splits paragraph (22) of version U (section 13) into two paragraphs, (23) and (24).

Removes conforming amendments to **AS 16.43.140(c)** (in section 14 of version U) that Legislative Legal deemed unnecessary in the new version.

Amends **Section 22** (section 17 of version U) to reflect that leasing of permits is prohibited in the new draft. **Section 22** now allows temporary transfer of permits.

Adds **Section 28** to provide for the emergency transfer of permits temporarily transferred from a fisheries trust.

Adds **Section 29**, which describes the procedures a regional fisheries trust must follow in order to temporarily transfer a permit.

- The fisheries trust must provide CFEC with identifying information for the permit and the temporary transferee, as well as the terms of the temporary transfer and other information CFEC requires.
- CFEC must approve or deny temporary transfers within 15 days after receiving all required information. CFEC can deny a temporary transfer if the transferee is not qualified under AS 16.44.080.

CFEC can revoke a temporary transfer if the temporary transferee's fishing privileges are suspended, if the temporary transferee doesn't pay agreed upon fees to the fisheries trust, or if the temporary transferee turns out not to be qualified to fish the permit.

A limited entry permit held by a fisheries trust may only be fished by a qualified transferee approved under this section.

Adds **Section 37**, which provides:

- If an fisheries trust is dissolved, the permits held by the fisheries trust revert to CFEC and are made available for reissuance. CFEC must determine equitable methods of reissuance that ensure the state receives fair market value for the permits (see also Section 17, paragraph (a)(25)).
- CFEC can't revoke or transfer a permit away from a fisheries trust solely due to the actions of a temporary transferee.
- If a temporary transferee's fishing privileges are suspended for longer than the period of the temporary transfer, the fisheries trust may request CFEC revoke the temporary transfer. If a suspension is shorter than the period of the temporary transfer, a fisheries trust may only request CFEC revoke the temporary transfer if the temporary transferee asks first.

Amends **proposed AS 16.44.010(a) in Section 39** (section 31 in version U) to provide for a "limited authorization." Only three fisheries trusts may be established in the state, in order for the program to be tested and vetted. Except for an initial period after the bill's effective date (see addition of **Section 55** below), fisheries trusts are established on a first-come, first-served basis. Requires municipalities to provide Department of Commerce, Community, and Economic Development (DCCED) with draft bylaws and a business plan for a fisheries trust when the municipalities request authorization to establish the fisheries trust.

Amends **proposed AS 16.44.010(d)** in **Section 39** (section 31 in version U) to provide that in the event a fisheries trust dissolves, the permits held by the trust revert to CFEC and may be reissued. All other rights and property of the fisheries trust pass to the state.

Rearranges language in **proposed AS 16.44.020(c)** and **(d)** in **Section 39** (section 31 in version U) to clarify how unincorporated communities may be represented on fisheries trust boards. Also makes clear that unincorporated communities may be represented on boards from the beginning if the application for a fisheries trust requests they be included. Also adds language requiring the Governor to appoint individuals with a diversity of experience relevant to the operations of a fisheries trust to the board, including at least two board members with experience in the commercial fishing industry.

Changes wording in **proposed AS 16.44.040(a)** in **Section 39** (section 31 in version U) from “fees levied under AS 16.43.160” to “permit-related fees levied under AS 16.43.160.” No substantive change.

Amends **proposed AS 16.44.050(a)(3)** in **Section 39** (section 31 in version U) to make more explicit that when borrowing funds, a fisheries trust may not pledge permits as security.

Amends **proposed AS 16.44.050(a)(6)** in **Section 39** (section 31 in version U) to provide that a fisheries trust must temporarily transfer permits according to the process described in section 29. Also removes explicit reference to “lease to own” because provisions in the new draft already allow a fisheries trust to permanently transfer a permit to a former temporary transferee. Deletes phrase about termination of a lease upon default; the new draft provides comparable authority in section 29.

Adds **proposed AS 16.44.050(a)(7)** in **Section 39** (section 31 in version U), to conform with the overall change from “lease” to “temporary transfer” and the new provisions in section 29.

Amends **proposed AS 16.44.050(b)(1)** in **Section 39** (section 31 in version U) to provide that temporary transfers, unlike leases, are subject to CFEC review and approval.

Rewords **proposed AS 16.44.050(b)(4)** in **Section 39** (section 31 in version U), related to procedures for revoking temporary transfers.

Rewords **proposed AS 16.44.050(b)(5)** in **Section 39** (section 31 in version U). No substantive change.

Amends **proposed AS 16.44.050(c)** in **Section 39** (section 31 in version U). A fisheries trust may prioritize bids based on one or more of four criteria: applicant’s historical participation in the fishery, access to other economic opportunity, record of participation in fisheries organizations and management, and expected economic contribution to the fisheries trust region. These criteria are based on court- and agency-vetted standards used by other state programs. Version U provided a much more vague allowance to prioritize bids consistent with the overall purposes of regional fisheries trusts.

Adds **proposed AS 16.44.050(d)** and **(e)** in **Section 39** (section 31 in version U), explicitly prohibiting a fisheries trust from holding interim-use permits, vessel permits, or quota share for a federally managed fishery, as the latter is defined in AS 16.10.360.

Amends **proposed AS 16.44.060** in **Section 39** (section 31 in version U). A fisheries trust now cannot acquire a permit in a fishery with fewer than 40 permits. The permit holding cap is now calculated as 2.5% of the permits in a given fishery, rounded to the nearest whole number rather than rounded up to the nearest whole number. The prohibition on a temporarily transferred permit being pledged, mortgaged, or encumbered in any way has been rewritten. Last, a new subsection requires that a fisheries trust must receive fair market value for any permit it permanently transfers away from the trust.

Rewards **proposed AS 16.44.070(c)** in **Section 39** (section 31 in version U) and allows that a temporarily transferred permit may be emergency transferred by a temporary transferee.

Replaces **proposed AS 16.44.070(e)** in **Section 39** (section 31 in version U). The old subsection provided that a fisheries trust could include terms in a lease agreement that provided a “lease to own” arrangement. This explicit authority is no longer necessary, as a fisheries trust is allowed to permanently transfer a permit to a former temporary transferee under AS 16.44.050(a)(4). The new **proposed AS 16.44.070(e)** addresses a different topic: making clear that fisheries trusts rather than temporary transferees are responsible for paying CFEC permit renewal fees.

Adds **proposed AS 16.44.070(f)** in **Section 39** (section 31 in version U), which allows a fisheries trust to request CFEC revoke a temporary transfer only in the select cases described in AS 16.43.190(d) and AS 16.43.960(l).

Removes **proposed AS 16.44.080(a), (c) and (e)** in **Section 39** (section 31 in version U), which required fisheries trusts to only provide permits to residents of Alaska and defined domicile. This was removed due to constitutional concerns.

Adds **proposed AS 16.44.080(a)(3)** and **(a)(4)** in **Section 39** (section 31 in version U), prohibiting a fisheries trust from temporarily transferring a permit to a person unable to participate in the fishery or a person who sits on a fisheries trust board (the latter was already prohibited in proposed AS 16.44.020(g); this restates the prohibition).

Adds **proposed AS 16.44.080(d)** in **Section 39** (section 31 in version U), allowing a fisheries to decline to temporarily transfer a permit to an individual who has previously had a temporary transfer revoked.

Adds **Sections 41** and **42** and amends **Section 43** (section 33 in version U) to provide that a temporary transferee must pay an applicable salmon enhancement tax but, due to their temporary connection to the fishery, cannot vote in an election to impose or terminate a salmon enhancement tax. Version U inadvertently exempted temporary transferees from paying salmon enhancement taxes.

Adds **Sections 44** and **45** to provide that a temporary transferee must pay an dive fishery management assessment but, due to their temporary connection to the fishery, cannot vote in an election to impose, amend, or terminate a dive fishery management assessment. Version U inadvertently overlooked dive fishery management assessments.

Adds **Sections 46** and **47** to provide that a temporary transferee must pay an applicable salmon fishery assessment but, due to their temporary connection to the fishery, cannot vote in an election to impose, amend, or terminate a salmon fishery assessment. Version U inadvertently overlooked salmon fishery assessments.

Replaces section 34 in version U with **Section 48** to provide that a temporary transferee must pay an applicable permit buyback assessment. Version U inadvertently exempted temporary transferees from permit buyback assessments.

Adds **Section 49** and amends **Section 50** (section 35 in version U) to provide that a temporary transferee must pay an applicable seafood development tax but, due to their temporary connection to the fishery, cannot vote in an election to impose, amend, or terminate a seafood development tax. Version U inadvertently exempted temporary transferees from seafood development taxes.

Amends **Section 54** (section 39 in version U) to clarify that fisheries trust boundaries shall be based on the boundaries of CFEC salmon administrative areas. Version U did not specify exactly which boundaries to use. Section 54 also updates the year of the report to be considered under paragraph (a)(2).

Adds **Section 55**, which provides a process for determining which regions will participate in the limited authorization. Gives regions between January 1, 2019 and April 1, 2019 to apply to DCCED to establish a fisheries trust. If three or fewer regions apply, all those regions may establish fisheries trusts after July 1, 2019. Additional regions may then establish fisheries trusts on a first-come, first-served basis until three have been established. If more than three regions apply before April 1, 2019, DCCED, in consultation with the Department of Fish & Game, shall choose which regions may establish fisheries trusts based on the out-migration of fishing opportunity from the region since 1980 and the strength of the region's application. This section ensures the first regions do not rush the process of planning for a fisheries trust.

Amends **Section 56** (section 40 in version U) to provide an immediate effective date for transition provisions related to DCCED drawing regional boundaries and regions applying to establish fisheries trusts.

Amends **Section 57** to provide a later effective date in light of the new session.