

ALASKA LEGISLATURE

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Sectional Analysis, ver R | HB 188 — Regional Fisheries Trusts

Section 1.

The Alaska Legislature recognizes that access to commercial fishing opportunities for Alaska’s coastal communities has dwindled, resulting in compounding economic distress for fishing communities, fishermen, and the people who depend on them. This section’s legislative findings examine how the problem has grown in the forty years since Alaska’s fisheries were limited and proposes a solution that would provide a new, tightly controlled path of entry to Alaska’s commercial fisheries: regional fisheries trusts.

Section 2.

Conforming change to existing law. Legally distinguishes regional fisheries trusts from trust companies as defined in title 6, chapter 26.

Section 3.

Conforming change to existing law. A fisherman who leases a permit from a regional fisheries trust must follow existing requirements that permit holders be physically present to operate stationary fishing gear.

Section 4.

Conforming change. A fisherman who leases a permit from a regional fisheries trust may fish the commercial gear allowed by that permit.

Section 5.

Conforming change. If crewmembers do not hold permits, or lease permits from a regional fisheries trust, they must buy crew licenses to commercial fish.

Section 6.

Conforming change. You may buy a seven-day commercial fishing license if you do not hold a limited entry permit or lease a permit from a fisheries trust.

Section 7.

Conforming change. Clarifies that 16.05.480, “commercial fishing license; disclosure for child support purposes,” applies to individuals leasing permits from a fisheries trust.

Section 8.

Conforming change. Someone who leases a permit through a fisheries trust follows the same laws as a person holding their own permit regarding legally landing and delivering fish.

Section 9.

Conforming change. Someone who leases a permit through a fisheries trust follows the same laws as a person holding their own permit regarding harvesting, transporting, and selling commercial fish.

Section 10.

If someone’s commercial fishing license and/or privileges are in the process of being suspended by ADF&G (under conditions in 16.05.710), a fisheries trust cannot lease them a permit.

Section 11.

Conforming change. Allows fish buyers and processors to legally purchase fish from someone leasing a permit from a fisheries trust.

Section 12.

Conforming change. Fishermen who lease a permit from a fisheries trust follow the same participation rules for hatchery fishing as fishermen holding their own permits.

Section 13.

Gives the Alaska Commercial Fisheries Entry Commission (CFEC) the power to stop a regional fisheries trust from acquiring a permit if the trust is violating permit holding rules in AS 16.44.060.

Section 14.

Conforming change. A person leasing a permit from a regional fisheries trust has the same right to participate in commercial fishing activities as a person who holds their own permit.

Section 15.

Conforming change. A fisherman leasing a permit from a fisheries trust can fish in the region with the gear specified by that permit.

Section 16.

Conforming change. The requirement to have a permit at all times when commercial fishing applies equally to someone leasing a permit from a regional fisheries trust as it does to a person who holds their own permit.

Section 17.

A fisheries trust can lease a limited entry permit to qualified individual. This section continues to prohibit any other entity from leasing limited entry permits.

Section 18.

A fisherman who holds their own limited entry permit can transfer it to a fisheries trust in the event of their death. If the permit holder leaves instructions to transfer their permit to a trust, but the trust does not exist, the permit passes on as part of the permit holder's estate.

Section 19.

A person leasing a permit from a regional fisheries trust cannot will that permit to anyone in the event of their death. A lessee cannot relinquish a leased permit to CFEC. Clarifies that a person leasing a permit from a trust has the same use privileges and rights in a fishery as an person who holds their own permit.

Section 20.

Unlike a person who holds their own permit, someone who leases a permit from a regional fisheries trust cannot qualify for a reduced annual permit renewal fee if they fall within eligibility standards for the food stamp program.

Section 21.

The lease of a permit to an individual from a regional fisheries trust does not qualify as a transfer of the permit.

Section 22.

Conforming change. A person who holds their own permit can transfer that permit to a regional fisheries trust within the same time constraints (no sooner than 60 days, and no more than twelve months after the permit holder has given notice) as they can transfer permits to other individuals or the CFEC.

Section 23.

Conforming change. If the number of existing permits is below the optimum level for the fishery, provides the option for CFEC to issue additional limited entry permits to regional fisheries trusts under the same rules as for individuals.

Section 24.

Conforming change. Fishermen who lease permits from fisheries trusts will be assessed demerit points for fishing violations in the same way as fishermen who hold their own permits. Lessees can have their fishing privileges suspended.

Section 25.

Conforming change. Those who lease permits will be notified of demerits for violating commercial fishing laws in the same way as a person holding their own permit is notified.

Section 26.

Conforming change. For both lessees and people holding their own permits, demerits for commercial fishing law violations are additions (not substitutions) to any penalties imposed by the court system.

Section 27.

If CFEC levies demerit points against a fisherman leasing a permit from a regional fisheries trust, CFEC must notify the trust.

Section 28.

Laws on the suspension of commercial salmon fishing privileges apply equally to fishermen who lease permits from regional fisheries trusts as they do to fishermen holding their own permits. Additionally, if an individual's salmon fishing privileges are revoked, they cannot lease a salmon fishing permit from a regional fisheries trust.

Section 29.

Laws which allow CFEC to revoke, suspend, or transfer permits from fishermen who provide false information to benefit themselves apply equally to those who lease permits through regional fisheries trusts as they do to people holding their own permits. CFEC can require fisheries trusts to terminate leases with fishermen who provide or refuse to correct false information, and can revoke entry permits held by trusts which provide or refuse to correct false information.

Section 30.

In AS 16.43, regional fisheries trust fall under the definition of "entity."

Section 31.

Creates new chapter (AS 16.44), Regional Fisheries Trusts.

AS 16.44.10

A fisheries trust can be formed if $\frac{2}{3}$ of the municipalities in a defined fisheries trust region jointly inform the Department of Commerce, Community, and Economic Development (DCCED) of their consensus (without a $\frac{2}{3}$ consensus, no fisheries trust can be established). The municipalities must also provide DCCED draft bylaws and a business plan for the fisheries trust.

Each trust has a public purpose: to prevent economic distress among fishermen, to improve state residents' ability to participate in state fisheries, to empower communities to achieve economic self-sufficiency, and to promote conservation of Alaska's fisheries.

Each trust is an instrumentality of the state — administratively, a public corporation under DCCED, but with independent legal existence from the state, and governed by its own board (see 16.44.020).

DCCED will delineate each fisheries trust region in consultation with Alaska Department of Fish and Game (ADF&G). DCCED may annually audit each trust, and dissolve a trust if it is insolvent. If a regional trust is dissolved, the region may later establish a new one.

In order to test and vet the fisheries trust program, no more than three fisheries trust may be established until further action from the legislature. Fisheries trusts will be established on a first-come, first-served basis, except in the first year following the bill's effective date (see section 40).

AS 16.44.020 Addresses regional fisheries trust boards, membership meetings, and locations.

Each trust is governed by a board of directors: one resident from each municipality in the fisheries trust region sits on the board. Each director is appointed by the governor from a list of nominees provided by their municipality. Municipalities can choose to allow unincorporated communities to nominate directors — see AS 16.44.050(a)(2)).

Directors will serve staggered three-year terms, and can serve up to 12 years total. A quorum is a majority of members. Boards can elect an executive committee and hire staff. They can also share staff between trusts or with other specific regional entities such as nonprofit hatchery associations, village or regional Native corporations, Alaska regional development organizations (ARDORs), or other entities related to commercial fishing or regional services. Unless a trust shares administrative resources with another entity and needs to be in its physical proximity, trusts must be headquartered in the community in the region with the most permits as of January 1, 2017.

Board members cannot lease permits from the trust.

Section 16.44.030 Addresses administrative expenses, compensation, and fees due to DCCED.

Administrative expenses for the trusts must be minimal. Board members may be provided reasonable compensation. To ensure trusts are self-sustaining and do not impose costs on the state, the DCCED commissioner can charge fees to trusts to reimburse the department for costs that the trusts may incur.

Section 16.44.040 Clarifies that fisheries trusts are tax exempt from state, local governments, school districts, and other political subdivisions of the state. Trusts are not exempt from paying CFEC fees on permits they own. Fisherman who lease permits from trusts must pay the applicable fees, taxes, or assessments, such as the fisheries business, fisheries enhancement, and seafood development tax.

Section 16.44.050 Spells out powers of fishery trusts, including the power to adopt bylaws, expand board membership to include unincorporated municipalities in the region, borrow money for the acquisition of limited entry permits, hold, transfer, or receive permits for fisheries in their region, lease limited entry permits to qualified Alaskans, accept grants and donations, and use extra revenue on projects and programs which support commercial fishermen.

Fisheries trusts can lease permits to individuals through a competitive bid process, and must set and make public criteria for that bidding. The bid process can be designed so that it best meets the purposes of the trust. Trusts must set lease terms which maintain their financial solvency, and they must invest lease revenue in the purchase of additional entry permits to the greatest extent possible.

Section 16.44.055 Lease revenue earned by the trust can be used only to acquire permits, operate the trust, and support programs and projects that benefit commercial fisherman.

Section 16.44.060 Trusts can acquire permits only for fisheries within their region. Trusts must maintain a diverse portfolio of permits, proportional to the distribution of all permits for fisheries within their region. There is a hard cap on the number of permits a trust can hold: 2.5% of the permits in each fishery within their region. The Commercial Fisheries Entry Commission can stop transfers that violate proportional distribution or the permit holding cap.

Section 16.44.070 Gives trusts the power to set lease terms for permits. Leases cannot last longer than six years. Permits cannot be “subleased” by the lessee. Trusts may set up lease-to-own programs.

Section 16.44.80 Requires a fisherman who leases a permit from a trust be a resident of Alaska, defined as someone who makes their “true and permanent home” in Alaska, from which they have no intention of moving. If a fisherman already holds a limited entry permit, the fisherman cannot lease a permit in that fishery from a trust. Staff members of the trust (or staff of a regional organization which shares administrative capacity with the trust) cannot lease permits from the trust. The trust has the right to terminate the lease of anyone who no longer qualifies as a resident.

Section 16.44.099 Defines board, commission, commissioner, department, entry permit, fisheries trust, and fishery, as each word is used in the regional fisheries trust chapter, AS 16.44.

Section 32.

Employees of fisheries trusts are in the exempt service.

Section 33.

Clarifies that a “person holding a limited entry permit” does not include someone leasing a permit from a fisheries trust under the section on the salmon enhancement tax (AS 43.76.040).

Section 34.

Clarifies that a “person holding a limited entry permit” does not include someone leasing a permit from a fisheries trust under the section on the permit buyback assessment tax (AS 43.76.040).

Section 35.

Clarifies that a “person holding a limited entry permit” or “entry permit holder” does not include someone leasing a permit from a fisheries trust under the section on the seafood development tax (AS 43.76.350).

Section 36.

Adds the duties of overseeing fisheries trusts as laid out in the bill under AS 16.44 to the official duties of DCCED.

Section 37.

Allows CFEC and the commissioner of DCCED to immediately adopt regulations that might be necessary to establish and regulate fisheries trusts.

Section 38.

Requires the length of the terms of the first group of board directors for a fisheries trust to be determined by lot.

Section 39.

DCCED and ADF&G will create fisheries trust regions based on the boundaries of CFEC administrative areas and using CFEC's designations of communities local to given fisheries regions. Every community in the state shall be in a fisheries trust region.

Section 40.

Gives regions until January 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 January 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 January 1, 2019, DCCED, in consultation with ADF&G, 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 regions do not rush the process of planning for a fisheries trust.

Section 41.

Provides an immediate effective date for section 37, allowing the adoption of necessary regulations.

Section 42.

Provides a January 1, 2018 effective date for the rest of the bill.