

**CS FOR HOUSE BILL NO. 198(FIN)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

**Offered: 4/22/97**

**Referred: Rules**

**Sponsor(s): REPRESENTATIVES WILLIAMS, Hudson, Kookesh, Grussendorf, Elton, James**

**SENATORS Taylor, Mackie, Leman**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to regional dive fishery development associations and to dive**  
2 **fishery management assessments; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **\* Section 1.** AS 16.40 is amended by adding a new section to read:

5 **Article 4. Development of Dive Fisheries.**

6 **Sec. 16.40.240. Regional dive fishery development associations.** (a) The  
7 commissioner shall assist in and encourage the formation of qualified regional dive  
8 fishery development associations for the purpose of developing dive fisheries in  
9 administrative areas of the state in which dive fisheries exist. A regional dive fishery  
10 development association is qualified if the commissioner determines that the regional  
11 association

12 (1) is incorporated as a nonprofit corporation under AS 10.20;

13 (2) represents commercial fishermen who participate in each dive  
14 fishery in the region; and

- 1 (3) possesses a board of directors that
- 2 (A) is representative of commercial dive fishermen who fish in
- 3 each of the significant commercial dive fishing areas in the administrative area;
- 4 (B) has a member who is representative of fish processors who
- 5 process dive fishery resources in the administrative area; and
- 6 (C) has a member who is representative of municipalities in the
- 7 administrative area.

8 (b) In this section, "administrative area" has the meaning given in

9 AS 43.76.210.

10 \* **Sec. 2.** AS 43.76 is amended by adding new sections to read:

11 **Article 3. Dive Fishery Management Assessment.**

12 **Sec. 43.76.150. Dive fishery management assessment.** (a) A dive fishery

13 management assessment on fishery resources taken by dive gear shall be levied on the

14 value of the fishery resource taken in dive gear fishery. The species of fishery

15 resources subject to the assessment and the rate of the assessment, as determined under

16 (b) - (e) of this section, shall be determined by an election under AS 43.76.160.

17 (b) A person holding a limited entry permit for dive gear or an interim-use

18 permit for dive gear issued under AS 16.43 shall pay a dive fishery management

19 assessment of one percent on a species of fishery resources that is subject to the

20 assessment as determined by an election under AS 43.76.160, that is taken by dive

21 gear, and that the person removes from the state or transfers to a buyer in the state.

22 (c) A person holding a limited entry permit for dive gear or an interim-use

23 permit for dive gear issued under AS 16.43 shall pay a dive fishery management

24 assessment of three percent on a species of fishery resources that is subject to the

25 assessment as determined by an election under AS 43.76.160, that is taken by dive

26 gear, and that the person removes from the state or transfers to a buyer in the state.

27 (d) A person holding a limited entry permit for dive gear or an interim-use

28 permit for dive gear issued under AS 16.43 shall pay a dive fishery management

29 assessment of five percent on a species of fishery resources that is subject to the

30 assessment as determined by an election under AS 43.76.160, that is taken by dive

31 gear, and that the person removes from the state or transfers to a buyer in the state.

(e) A person holding a limited entry permit for dive gear or an interim-use permit for dive gear issued under AS 16.43 shall pay a dive fishery management assessment of seven percent on a species of fishery resources that is subject to the assessment as determined by an election under AS 43.76.160, that is taken by dive gear, and that the person removes from the state or transfers to a buyer in the state.

(f) A dive fishery management assessment may only be levied or collected on a fishery resource in an administrative area if

(1) there exists in that administrative area an association determined by the commissioner of fish and game to be a qualified regional dive fishery development association under AS 16.40.240; and

(2) the species of fishery resource subject to the dive fishery management assessment and the rate of the dive fishery management assessment, as provided under (b) - (e) of this section, is approved by an election under AS 43.76.160.

**Sec. 43.76.160. Election to approve, amend, or terminate dive fishery management assessment.** (a) A qualified regional dive fishery development association may conduct an election under this section after the commissioner of fish and game approves

(1) the notice to be published by the qualified regional dive fishery development association; the notice must describe the species of fishery resources subject to the dive fishery management assessment and the rate of the dive fishery management assessment to be approved, amended, or terminated at the election;

(2) the ballot to be used in the election; and

(3) the registration and voting procedure for the approval, amendment, or termination of the dive fishery management assessment.

(b) The dive fishery management assessment is levied under AS 43.76.150(b), (c), (d), or (e) in an administrative area on the effective date stated on the ballot if

(1) the assessment is approved by a majority vote of the eligible interim-use permit and entry permit holders voting in an election held in the administrative area under this section; and

(2) the election results are certified by the commissioner of fish and

1 game.

2 (c) In conducting an election under this section, a qualified regional dive  
3 fishery development association shall adopt the following procedures:

4 (1) the qualified regional dive fishery development association in the  
5 administrative area shall hold at least one public meeting not less than 30 days before  
6 the date on which ballots must be postmarked to be counted in the election to explain,  
7 as appropriate, the reason for approval or amendment of the proposed dive fishery  
8 management assessment, the reason for the proposed rate of the dive fishery  
9 management assessment, or the reason for termination of the dive fishery management  
10 assessment and to explain the registration and voting procedure to be used in the  
11 election; the qualified regional dive fishery development association shall provide  
12 notice of the meeting by

13 (A) mailing the notice to each eligible interim-use permit and  
14 entry permit holder;

15 (B) posting the notice in at least three public places in the  
16 administrative area; and

17 (C) publishing the notice in at least one newspaper of general  
18 circulation in the administrative area at least once a week for two consecutive  
19 weeks before the meeting;

20 (2) the qualified regional dive fishery development association shall  
21 mail two ballots to each eligible interim-use permit and entry permit holder; the first  
22 ballot shall be mailed not more than 45 days before the date ballots must be  
23 postmarked to be counted in the election; the second ballot shall be mailed not less  
24 than 15 days before the date ballots must be postmarked to be counted in the election;  
25 the qualified regional dive fishery development association shall adopt procedures to  
26 ensure that only one ballot from each eligible interim-use permit and entry permit  
27 holder is counted in the election;

28 (3) the ballot must

29 (A) indicate the species of fishery resources subject to the dive  
30 fishery management assessment;

31 (B) indicate whether the election relates to a dive fishery

management assessment under AS 43.76.150(b), (c), (d), or (e);

(C) ask the question whether the dive fishery management assessment on the fishery resources addressed on the ballot shall be approved, amended, or terminated, as appropriate;

(D) indicate the boundaries of the administrative area in which the dive fishery management assessment will be levied or terminated;

(E) provide an effective date for the approval, amendment, or termination of the dive fishery management assessment; and

(F) indicate the date on which returned ballots must be postmarked in order to be counted;

(4) the ballots shall be returned by mail and shall be counted by an auditor selected by the qualified regional dive fishery development association and approved by the commissioner of fish and game; the qualified regional dive fishery development association shall pay the costs of counting the ballots.

(d) The commissioner of fish and game shall certify the results of an election under this section if the commissioner determines that the requirements of (a) and (c) of this section have been satisfied.

(e) A qualified regional dive fishery development association may employ or contract with another person to administer an election under this section subject to the supervision of the association.

(f) Except as otherwise provided under AS 43.76.170 and 43.76.180, an election to amend the rate of a dive fishery management assessment or to terminate a dive fishery management assessment shall be conducted under the same procedures established under (a), (c), and (d) of this section for an election to approve a dive fishery management assessment.

(g) In this section, "eligible interim-use permit and entry permit holder" means an individual who, 90 days before the date ballots must be postmarked to be counted in an election under this section, is listed in the records of the Alaska Commercial Fisheries Entry Commission as the legal holder of an interim-use permit for dive gear or an entry permit for dive gear that authorizes the individual to fish commercially in the administrative area for the species of fishery resource for which the dive fishery

1 management assessment is to be approved, amended, or terminated.

2 **Sec. 43.76.170. Amendment of dive fishery management assessment.** (a)

3 The rate of the dive fishery management assessment levied on a species of fishery  
4 resources under AS 43.76.150(b), (c), (d), or (e) may be amended by the commissioner  
5 of revenue upon majority vote at an election held under AS 43.76.160 in the  
6 administrative area in which the dive fishery management assessment is levied.

7 (b) The commissioner of revenue shall amend the rate of a dive fishery  
8 management assessment under (a) of this section following an election in an  
9 administrative area if

10 (1) a petition, that is signed by at least 25 percent of the number of  
11 persons who voted under AS 43.76.160 in the most recent election approving or  
12 amending the dive fishery management assessment on the species of fishery resources  
13 in the administrative area that are the subject of the petition, is presented to the  
14 commissioner of fish and game requesting amendment of the rate of the dive fishery  
15 management assessment on a species of fishery resources; the petition must state  
16 whether the proposed rate of the dive fishery management assessment is to be levied  
17 under AS 43.76.150(b), (c), (d), or (e); only a person who would be eligible to vote  
18 in an election to amend the rate of the assessment may validly sign the petition;

19 (2) an election is held in accordance with AS 43.76.160; the ballot must  
20 ask the question whether the dive fishery management assessment on a species of  
21 fishery resources taken in the administrative area shall be amended and must state  
22 whether the dive fishery management assessment on the species of fishery resources  
23 is to be levied under AS 43.76.150(b), (c), (d), or (e) if the assessment is amended; the  
24 ballot must be worded so that a "yes" vote is for amendment of the dive fishery  
25 management assessment and a "no" vote is for continuation of the current dive fishery  
26 management assessment;

27 (3) a majority of the eligible interim-use permit and entry permit  
28 holders who vote in the election cast a ballot for the amendment of the dive fishery  
29 management assessment; in this paragraph, "eligible interim-use permit and entry  
30 permit holders" has the meaning given in AS 43.76.160; and

31 (4) the qualified regional dive fishery development association provides

1 notice of the election in accordance with AS 43.76.160 within two months after  
2 receiving notice from the commissioner of fish and game that a valid petition under  
3 (1) of this subsection has been received.

4 **Sec. 43.76.180. Termination of dive fishery management assessment.** (a)

5 The dive fishery management assessment levied on a species of fishery resources under  
6 AS 43.76.150(b), (c), (d), or (e) shall be terminated by the commissioner of revenue  
7 upon majority vote at an election held under AS 43.76.160 in the administrative area  
8 in which the dive fishery management assessment is levied.

9 (b) The commissioner of revenue shall terminate a dive fishery management  
10 assessment under (a) of this section following an election in an administrative area if

11 (1) a petition, that is signed by at least 25 percent of the number of  
12 persons who voted under AS 43.76.160 in the most recent election approving or  
13 amending the dive fishery management assessment on the species of fishery resources  
14 in the administrative area that are the subject of the petition, is presented to the  
15 commissioner of fish and game requesting termination of the dive fishery management  
16 assessment on a species of fishery resources; only a person who would be eligible to  
17 vote in an election to repeal the assessment may validly sign the petition;

18 (2) an election is held in accordance with AS 43.76.160; the ballot must  
19 ask the question whether the dive fishery management assessment on a species of  
20 fishery resources taken in the administrative area shall be terminated; the ballot must  
21 be worded so that a "yes" vote is for continuation of the dive fishery management  
22 assessment and a "no" vote is for termination of the dive fishery management  
23 assessment;

24 (3) a majority of the eligible interim-use permit and entry permit  
25 holders who vote in the election cast a ballot for the termination of the dive fishery  
26 management assessment; in this paragraph, "eligible interim-use permit and entry  
27 permit holders" has the meaning given in AS 43.76.160; and

28 (4) the qualified regional dive fishery development association provides  
29 notice of the election in accordance with AS 43.76.160 within two months after  
30 receiving notice from the commissioner of fish and game that a valid petition under  
31 (1) of this subsection has been received.

**Sec. 43.76.190. Collection of assessment.** (a) A buyer who acquires a fishery resource that is subject to a dive fishery management assessment levied under AS 43.76.150(b), (c), (d), or (e) shall collect the dive fishery management assessment at the time of purchase and shall remit the total dive fishery management assessment collected during each calendar quarter to the Department of Revenue by the last day of the month following the end of the calendar quarter. In this subsection, "calendar quarter" means each of the three-month periods ending March 31, June 30, September 30, and December 31.

(b) A buyer who collects the dive fishery management assessment shall maintain records of the value of each species of fishery resources that is subject to an assessment that is purchased in each administrative area of the state.

(c) The owner of fishery resources removed from the state is liable for payment of the dive fishery management assessment levied under AS 43.76.150(b), (c), (d), or (e) if, at the time the fishery resource is removed from the state, the assessment payable on the fishery resource has not been collected by a buyer. If the owner of the fishery resource is liable for payment of the dive fishery management assessment under this subsection, the owner shall comply with the requirements under (a) and (b) of this section to remit the assessment to the Department of Revenue and to maintain records.

(d) The dive fishery management assessment collected under this section shall be deposited in the general fund.

**Sec. 43.76.200. Funding for qualified regional dive fishery development associations.** (a) The legislature may make appropriations of revenue collected under AS 43.76.190 to the Department of Fish and Game for funding of the qualified regional dive fishery development association in the administrative area in which the assessment was collected. Funds received under this section by a qualified regional dive fishery development association may be expended in accordance with the annual operating plan developed under (b) of this section.

(b) The Department of Fish and Game shall develop an annual operating plan with the cooperation of the regional dive fishery development association on or before a date specified by the Department of Fish and Game. The qualified regional dive fishery development association shall cooperate with the Department of Fish and Game



1 in the development of the annual operating plan. The annual operating plan must  
 2 describe the activities for which the funding will be expended, including identification  
 3 of species and areas for which bioassessment surveys will be conducted, a description  
 4 of management and research activities to be performed, planning for dive fisheries, and  
 5 administrative activities of the association. Funds appropriated to the Department of  
 6 Fish and Game for funding of qualified regional dive fishery development associations  
 7 may not be disbursed by the department or expended by the association, except for  
 8 administration of the association, unless the annual operating plan has been approved  
 9 by the association and the Department of Fish and Game. If an annual operating plan  
 10 has not been approved by the association and the Department of Fish and Game, the  
 11 Department of Fish and Game may not disburse and the association may not expend  
 12 funds received from the department for administration of the association in an amount  
 13 that exceeds the amount of administrative expenses authorized under the annual  
 14 operating plan for the prior fiscal year.

15 (c) A qualified regional dive fishery development association receiving funding  
 16 under this section shall submit an annual financial report to the Department of Fish and  
 17 Game on a form provided by the Department of Fish and Game. The Department of  
 18 Fish and Game may, by regulation, require that a qualified regional dive fishery  
 19 development association use a uniform system of accounting and may audit the use of  
 20 funding received under this section by the association.

21 (d) This section does not establish a dedication of a state tax or license.

22 (e) This section does not restrict or qualify the authority of the Department of  
 23 Fish and Game or the Board of Fisheries under AS 16.

24 **Sec. 43.76.210. Definitions.** In AS 43.76.150 - 43.76.210,

25 (1) "administrative area" means an area established by the Alaska  
 26 Commercial Fisheries Entry Commission under AS 16.43.200 for regulating and  
 27 controlling entry into fisheries using dive gear;

28 (2) "buyer" means a person who acquires possession of a fishery  
 29 resource from the person who caught the fishery resource, regardless of whether there  
 30 is an actual sale of the fishery resource, but does not include a person engaged solely  
 31 in interstate transportation of goods for hire;

1                   (3) "fishery resource" means fish, shellfish, or marine invertebrates  
2           taken or landed under the authority of a limited entry permit or interim-use permit  
3           issued under AS 16.43 for dive gear;

4                   (4) "qualified regional dive fishery development association" means an  
5           association that is qualified under AS 16.40.240;

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

7       \* **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).