

ALASKA LEGISLATURE

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Sectional Analysis, ver L | 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 economic distress for fishing communities, fishermen, and the people who depend on them. This section's legislative findings examine the economic benefits of access to commercial fisheries and proposes 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 with a limited entry permit temporarily transferred from a regional fisheries trust ("temporary transferee under AS 16.43.190") or emergency transferred under current law ("temporary transferee under AS 16.43.180") must follow existing requirements that permit holders be physically present to operate stationary fishing gear.

Section 4

Conforming change to existing law. A temporary transferee may fish the commercial gear allowed by the temporarily transferred permit. This applies the same rules to a temporary transferee and an individual permit holder.

Section 5

Conforming change. Alaska residents must hold a permit, be a temporary transferee, or have a crew member license in order to commercially fish.

Section 6

Conforming change. Non-residents must hold a permit, be a temporary transferee, or have a crew member license in order to commercially fish.

Section 7

Conforming change. You may only buy a seven-day commercial fishing license if you do not hold a limited entry permit and are not a temporary transferee.

Section 8

Conforming change. Clarifies that the term “commercial fishing license” in AS 16.05.480, “commercial fishing license; disclosure for child support purposes,” encompasses temporarily transferred permits.

Section 9

Conforming change. A temporary transferee of a limited entry permit can deliver or land fish in the state without a separate permit. This applies the same rules to a temporary transferee and an individual permit holder.

Section 10

Conforming change. Temporary transferees can be employed by commercial fisheries businesses and can sell fish. This applies the same rules to a temporary transferee and an individual permit holder.

Section 11

If proceedings are pending to suspend someone’s commercial fishing privileges under AS 16.05.710, a regional fisheries trust may not temporarily transfer a permit to that person.

Section 12

Conforming change. A person legally fishing with a temporarily transferred permit isn’t subject to penalties under AS 16.05.723(b).

Section 13

Conforming change. Fish buyers and processors can legally purchase fish from a temporary transferee.

Section 14

Conforming change. A temporary transferee can sell the fish they catch.

Section 15

Conforming change. Fishermen with temporarily transferred permits and individual permit holders can both fish in hatchery terminal harvest areas, under the same rules.

Section 16

Conforming change. Replaces “persons” with “individuals” for clarification.

Section 17

Adds additional duties to the Commercial Fisheries Entry Commission (CFEC) necessary for it to carry out its responsibilities under the bill.

Section 18

Conforming change. A temporary transferee can legally operate commercial fishing gear. This applies the same rules to a temporary transferee and an individual permit holder.

Section 19

Conforming change. People without CFEC permits can assist temporary transferees in the operation of commercial fishing gear so long as the temporary transferee is present and also engaged in operating the gear. This applies the same rules to a temporary transferee and an individual permit holder.

Section 20

Conforming change. A temporarily transferred permit authorizes a temporary transferee to fish.

Section 21

Conforming change. A temporary transferee must have their permit in physical possession when fishing. This applies the same rules to a temporary transferee and an individual permit holder.

Section 22

Conforming change. Limited entry permits can be legally temporarily transferred by a regional fisheries trust or by an individual permit holder if the permit holder is unable to fish.

Section 23

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

Section 24

A person with a permit temporarily transferred from a regional fisheries trust cannot will that permit to anyone in the event of their death, nor relinquish that permit to CFEC. Clarifies that a temporary transferee has the same use privileges and rights in a fishery as an individual permit holder.

Section 25

If a regional fisheries trust temporarily transfers a permit to a low-income person, the fisheries trust does not qualify for reduced permit renewal fees.

Section 26

A limited entry permit may be temporarily transferred by a regional fisheries trust in accordance with AS 16.43.190.

Section 27

A permit holder can transfer their permit to a regional fisheries trust. The same rules apply (including 60 days' notice) as for a transfer to another individual or CFEC.

Section 28

CFEC shall adopt regulations allowing people who have permits temporarily transferred from a regional fisheries trust to emergency transfer those permits if they are unable to fish.

Section 29

When a temporary transferee emergency transfers their permit, the fisheries trust that holds the permit must approve the emergency transferee. The emergency transferee is held to the terms of the temporary transfer, and must meet the same qualifications as a temporary transferee of the fisheries trust.

Section 30

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 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 individual approved under section 30.

Section 31

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 in addition to individuals.

Section 32

Conforming change. Temporary transferees will be assessed demerit points for salmon fishing violations in the same way as individual permit holders. Temporary transferees can have their salmon fishing privileges suspended in the same way as individual permit holders.

Section 33

Conforming change. Temporary transferees will be notified of demerits for violating commercial salmon fishing laws in the same way as an individual permit holder.

Section 34

Conforming change. For both temporary transferees and individual permits holders, demerits for commercial salmon fishing law violations are additions (not substitutions) to any penalties imposed by the court system.

Section 35

Conforming change. If demerit points are assessed against an emergency transferee fishing a permit held by a fisheries trust, the demerit points also apply to the temporary transferee. This applies the same standard to individual permit holders and temporary transferees.

Section 36

If CFEC levies demerit points against a fisherman with a permit temporarily transferred from a regional fisheries trust, CFEC must notify the fisheries trust. Points cannot be assessed against a fisheries trust.

Section 37

Conforming change. Laws on the suspension of commercial salmon fishing privileges apply equally to temporary transferees as they do to individual permit holders. Additionally, if an individual's salmon fishing privileges are suspended, they cannot fish a salmon permit temporarily transferred from a regional fisheries trust.

Section 38

Laws which allow CFEC to revoke, suspend, or transfer permits from fishermen who provide false information to benefit themselves apply equally to temporary transferees and individual permit holders.

CFEC can revoke the temporary transfer of a permit to a fisherman who provides or refuses to correct false information, and can revoke entry permits held by fisheries trusts which provide or refuse to correct false information.

Section 39

If an fisheries trust is dissolved, the permits held by the fisheries trust revert to CFEC and are made available for reissuance.

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 remaining period of the temporary transfer, the RFT may request CFEC revoke the temporary transfer. If a suspension is shorter than the remaining period of the temporary transfer, an RFT may only request CFEC revoke the temporary transfer if requested by the temporary transferee.

Section 40

In AS 16.43, regional fisheries trust fall under the definition of "entity." This makes fisheries trusts subject to sanction under AS 16.43.960(a).

Section 41

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

AS 16.44.10

A fisheries trust can only 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.

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).

Each trust has a public purpose: to prevent economic distress among fishermen, to improve access to 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 fisheries trust regions in consultation with Alaska Department of Fish and Game (ADF&G). DCCED may dissolve a fisheries trust if it is insolvent. If a regional trust is dissolved, the region may later establish a new one.

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. Unincorporated communities can nominate directors for appointment if municipalities choose to include representatives of unincorporated communities in their original application to establish a fisheries trust, or if board members appointed from municipalities later choose to include unincorporated communities — see AS 16.44.050(a)(2)). If an unincorporated community has an entity that receives community assistance payments under AS 29.60.865, that entity nominates board members to the governor.

The governor must appoint board members who have a diversity of experience relevant to the operations of a fisheries trust, including at least two individuals with experience in commercial fishing.

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 be the temporary transferee of a permit from a 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. Fisheries trusts are not exempt from paying CFEC fees on permits they hold. Temporary transferees must pay applicable fees, taxes, or assessments, such as the fisheries business tax and assessments levied under AS 43.76.

Section 16.44.050

Spells out powers of fisheries 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, temporarily transfer limited entry permits to qualified applicants, accept grants and donations, and use extra revenue on projects and programs which support commercial fishermen.

Fisheries trusts must select individuals to receive temporarily transferred permits through a competitive bid process, and must set and make public the rules governing the bidding process. Fisheries trusts must design their temporary transfer programs in a way which maintains their financial solvency, and they must invest revenue in the purchase of additional entry permits to the greatest extent possible.

A fisheries trust may choose 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.

A fisheries trust may choose to prohibit certain individuals from receiving temporary transfers: individuals who already hold a limited entry permit (in any fishery); individuals who have had a temporary transfer revoked in the past; and individuals who have had their commercial fishing privileges suspended in the past.

A fisheries trust may not hold quota share for a federally managed permit. A fisheries trust may not

hold a state vessel permit.

Section 16.44.055

Revenue earned by a regional fisheries trust can be used only to acquire permits, operate the fisheries trust, and support programs and projects that benefit commercial fisherman.

Section 16.44.060

Fisheries trusts can acquire permits only for fisheries within their region. A fisheries must acquire permits of different types within its region. A fisheries trust may not acquire permits in fisheries with fewer than 40 transferable limited entry permits.

No more than one fisheries trust may hold a permit of a particular type. 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.

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. CFEC can block transfers that violate this section.

A temporarily transferred permit cannot be leased, pledged, mortgaged, or encumbered in any way.

A fisheries trust may not permanently transfer an entry permit unless the trust receives fair market value for the permit. CFEC is empowered to determine fair market value.

Section 16.44.070

Gives fisheries trusts the power to set terms for the temporary transfer of permits. A single person can't fish a temporarily transferred permit for longer than six cumulative years. Temporary transferees can't further transfer permits except as provided by emergency transfer regulations. A fisheries trust can't restrict how, when, or where a temporary transferee fishes or sells fish. Fisheries trusts are responsible for CFEC renewal fees. Fisheries trusts can only revoke temporary transfers for reasons defined in AS 16.43.190(d) and AS 16.43.960(l).

Section 16.44.080

A temporarily transferred permit may not be provided to:

- A fisherman who already holds a limited entry permit in the fishery.
- Staff or board members of a fisheries trust or staff of a regional organization which shares administrative capacity with the trust.
- An individual unable to demonstrate ability to actively participate in the fishery.
- An individual with proceedings pending against them to suspend their commercial fishing privileges.

In addition, a fisheries trust may require bidders for a permit to provide further evidence of their ability to actively, safely, and successfully participate in the fishery. Evidence may include things like

proof the bidder has a working boat and gear, has insurance, has a market for their fish, or has a relationship with an experienced fisherman who has agreed to serve as a mentor.

A fisheries trust must make a reasonable effort to ensure a temporary transferred is qualified under this section.

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 42

Employees of fisheries trusts are in the exempt service.

Section 43

Due to their temporary connection to the fishery, a temporary transferee of a fisheries trust permit can't vote in an election to impose a salmon enhancement tax.

Section 44

Due to their temporary connection to the fishery, a temporary transferee of a fisheries trust permit can't vote in an election to terminate a salmon enhancement tax.

Section 45

A temporary transferee of a fisheries trust permit must pay an applicable salmon enhancement tax.

Section 46

Due to their temporary connection to the fishery, a temporary transferee of a fisheries trust permit can't vote in an election to approve or terminate a dive fishery management assessment. A temporary transferee is subject to an applicable dive fishery management assessment.

Section 47

Conforming change. A temporary transferee of a fisheries trust permit must pay an applicable dive fishery management assessment.

Section 48

Due to their temporary connection to the fishery, a temporary transferee of a fisheries trust permit can't vote in an election to approve, amend, or terminate a salmon fishery assessment.

Section 49

A temporary transferee of a fisheries trust permit must pay an applicable salmon fishery assessment.

Section 50

A temporary transferee of a fisheries trust permit must pay an applicable permit buy-back assessment.

Section 51

Due to their temporary connection to the fishery, a temporary transferee of a fisheries trust permit can't vote in an election to approve, amend, or terminate a seafood development tax. A temporary transferee is subject to an applicable seafood development tax.

Section 52

Conforming change. A temporary transferee of a fisheries trust permit must pay an applicable seafood development tax.

Section 53

Adds the duties of overseeing fisheries trusts as laid out in the bill under AS 16.44 to the official duties of the Department of Commerce, Community, and Economic Development (DCCED).

Section 54

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

Section 55

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

Section 56

DCCED and ADF&G will create fisheries trust regions based on the boundaries of CFEC salmon 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. No fisheries trust region may have fewer than five communities.

Section 57

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 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 58

Provides an immediate effective date for sections 54, 56, and 57, allowing the adoption of necessary regulations, establishment of fisheries trust regions, and applications for fisheries trusts to be established.

Section 59

Provides a July 1, 2019 effective date for the rest of the bill.