

HOUSE BILL NO. 198

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES WILLIAMS, Hudson, Kookesh, Grussendorf, Elton

Introduced: 3/14/97

Referred: House Special Committee on Fisheries, Resources

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 and
9 cooperative management of dive fisheries in administrative areas of the state in which
10 dive fisheries exist. A regional dive fishery development association is qualified if the
11 commissioner determines that the regional 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 is representative of commercial
 2 dive fishermen who fish in each of the significant commercial dive fishing areas in the
 3 administrative area.

4 (b) In this section, "administrative area" has the meaning given in
 5 AS 43.76.210.

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

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

8 **Sec. 43.76.150. Dive fishery management assessment.** (a) A person holding
 9 a limited entry permit for dive gear or an interim-use permit for dive gear issued under
 10 AS 16.43 shall pay a dive fishery management assessment on fishery resources taken
 11 by dive gear that the person removes from the state or transfers to a buyer in the state.
 12 The species of fishery resources subject to the assessment and the rate of the
 13 assessment, in cents a pound, must be determined by an election under AS 43.76.160.

14 (b) A dive fishery management assessment under (a) of this section may only
 15 be levied or collected on a fishery resource in an administrative area if

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

19 (2) the species of fishery resource subject to the dive fishery
 20 management assessment and the rate of the dive fishery management assessment is
 21 approved by an election under AS 43.76.160.

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

26 (1) the notice to be published by the qualified regional dive fishery
 27 development association; the notice must describe the species of fishery resources
 28 subject to the dive fishery management assessment and must include the rate of the
 29 dive fishery management assessment, in cents a pound, to be approved, amended, or
 30 terminated at the election;

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

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

3 (b) The dive fishery management assessment is levied under AS 43.76.150 in
4 an administrative area on the effective date stated on the ballot if

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

8 (2) the election results are certified by the commissioner of fish and
9 game.

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

12 (1) the qualified regional dive fishery development association in the
13 administrative area shall hold at least one public meeting not less than 30 days before
14 the date on which ballots must be postmarked to be counted in the election to explain,
15 as appropriate, the reason for approval or amendment of the proposed dive fishery
16 management assessment, the reason for the proposed rate of the dive fishery
17 management assessment, or the reason for termination of the dive fishery management
18 assessment and to explain the registration and voting procedure to be used in the
19 election; the qualified regional dive fishery development association shall provide
20 notice of the meeting by

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

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

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

28 (2) the qualified regional dive fishery development association shall
29 mail two ballots to each eligible interim-use permit and entry permit holder; the first
30 ballot shall be mailed not more than 45 days before the date ballots must be
31 postmarked to be counted in the election; the second ballot shall be mailed not less

1 than 15 days before the date ballots must be postmarked to be counted in the election;
2 the qualified regional dive fishery development association shall adopt procedures to
3 ensure that only one ballot from each eligible interim-use permit and entry permit
4 holder is counted in the election;

5 (3) the ballot must

6 (A) indicate the species of fishery resources subject to the dive
7 fishery management assessment and the rate of the dive fishery management
8 assessment, in cents a pound, to be levied on the fishery resources under
9 AS 43.76.150 if the ballot measure is approved;

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

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

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

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

19 (4) the ballots shall be returned by mail and shall be counted by the
20 commissioner of fish and game or by a person approved by the commissioner of fish
21 and game.

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

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

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

1 fishery management assessment.

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

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

10 The rate of the dive fishery management assessment levied on a species of fishery
11 resources under AS 43.76.150 may be amended by the commissioner of revenue upon
12 majority vote at an election held under AS 43.76.160 in the administrative area in
13 which the dive fishery management assessment is levied.

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

17 (1) a petition, that is signed by at least 25 percent of the number of
18 persons who voted under AS 43.76.160 in the election approving the dive fishery
19 management assessment on the fishery resource in the administrative area, is presented
20 to the commissioner of fish and game requesting amendment of the rate of the dive
21 fishery management assessment on a species of fishery resources; the petition must
22 state the proposed rate, in cents a pound, of the dive fishery management assessment;
23 only a person who would be eligible to vote in an election to amend the rate of the
24 assessment may validly sign the petition;

25 (2) an election is held in accordance with AS 43.76.160; the ballot must
26 ask the question whether the dive fishery management assessment on a species of
27 fishery resources taken in the administrative area shall be amended and must state the
28 rate of the dive fishery management assessment on the species of fishery resources that
29 would take effect if the assessment is amended; the ballot must be worded so that a
30 "yes" vote is for amendment of the dive fishery management assessment and a "no"
31 vote is for continuation of the current dive fishery management assessment;

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

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

9 **Sec. 43.76.180. Termination of dive fishery management assessment.** (a)
10 The dive fishery management assessment levied on a species of fishery resources under
11 AS 43.76.150 may be terminated by the commissioner of revenue upon majority vote
12 at an election held under AS 43.76.160 in the administrative area in which the dive
13 fishery management assessment is levied.

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

16 (1) a petition, that is signed by at least 25 percent of the number of
17 persons who voted under AS 43.76.160 in the election approving the dive fishery
18 management assessment on the fishery resource in the administrative area, is presented
19 to the commissioner of fish and game requesting termination of the dive fishery
20 management assessment on a species of fishery resources; only a person who would
21 be eligible to vote in an election to repeal the assessment may validly sign the petition;

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

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

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

5 **Sec. 43.76.190. Collection of assessment.** (a) A buyer who acquires a fishery
6 resource that is subject to a dive fishery management assessment levied under
7 AS 43.76.150 shall collect the dive fishery management assessment at the time of
8 purchase and shall remit the total dive fishery management assessment collected during
9 each month to the Department of Revenue by the last day of the next month.

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

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

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

22 **Sec. 43.76.200. Funding for qualified regional dive fishery development**
23 **associations.** (a) The legislature may make appropriations of revenue collected under
24 AS 43.76.190 to the Department of Fish and Game for funding of the qualified
25 regional dive fishery development association in the administrative area in which the
26 assessment was collected. Funds received under this section by a qualified regional
27 dive fishery development association may be expended for the costs of cooperative
28 management, research, and planning for dive fisheries and of administration of the
29 association.

30 (b) A qualified regional dive fishery development association receiving funding
31 under this section shall develop an annual operating plan with the cooperation of the

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

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

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

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

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

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

31 (2) "buyer" means a person who acquires possession of a fishery

1 resource from the person who caught the fishery resource, regardless of whether there
2 is an actual sale of the fishery resource, but does not include a person engaged solely
3 in interstate transportation of goods for hire;

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

7 (4) "qualified regional dive fishery development association" means an
8 association that is qualified under AS 16.40.240.

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