

SENATE BILL NO. 173

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY SENATOR TAYLOR

Introduced: 4/11/97

Referred: Resources, Finance

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 person holding

13 a limited entry permit for dive gear or an interim-use permit for dive gear issued under

14 AS 16.43 shall pay a dive fishery management assessment on fishery resources taken

15 by dive gear that the person removes from the state or transfers to a buyer in the state.

16 The species of fishery resources subject to the assessment and the rate of the

17 assessment, as a percentage of the value of the fishery resource, must be determined

18 by an election under AS 43.76.160.

19 (b) A dive fishery management assessment under (a) of this section may only

20 be levied or collected on a fishery resource in an administrative area if

21 (1) there exists in that administrative area an association determined by

22 the commissioner of fish and game to be a qualified regional dive fishery development

23 association under AS 16.40.240; and

24 (2) the species of fishery resource subject to the dive fishery

25 management assessment and the rate of the dive fishery management assessment is

26 approved by an election under AS 43.76.160.

27 **Sec. 43.76.160. Election to approve, amend, or terminate dive fishery**

28 **management assessment.** (a) A qualified regional dive fishery development

29 association may conduct an election under this section after the commissioner of fish

30 and game approves

31 (1) the notice to be published by the qualified regional dive fishery

1 development association; the notice must describe the species of fishery resources
2 subject to the dive fishery management assessment and must include the rate of the
3 dive fishery management assessment, as a percentage of the value of the fishery
4 resource, to be approved, amended, or terminated at the election;

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

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

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

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

13 (2) the election results are certified by the commissioner of fish and
14 game.

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

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

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

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

30 (C) publishing the notice in at least one newspaper of general
31 circulation in the administrative area at least once a week for two consecutive

1 weeks before the meeting;

2 (2) the qualified regional dive fishery development association shall
3 mail two ballots to each eligible interim-use permit and entry permit holder; the first
4 ballot shall be mailed not more than 45 days before the date ballots must be
5 postmarked to be counted in the election; the second ballot shall be mailed not less
6 than 15 days before the date ballots must be postmarked to be counted in the election;
7 the qualified regional dive fishery development association shall adopt procedures to
8 ensure that only one ballot from each eligible interim-use permit and entry permit
9 holder is counted in the election;

10 (3) the ballot must

11 (A) indicate the species of fishery resources subject to the dive
12 fishery management assessment and the rate of the dive fishery management
13 assessment, as a percentage of the value of the fishery resource, to be levied
14 on the fishery resources under AS 43.76.150 if the ballot measure is approved;

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

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

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

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

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

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

31 (e) A qualified regional dive fishery development association may employ or

1 contract with another person to administer an election under this section subject to the
2 supervision of the association.

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

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

15 **Sec. 43.76.170. Amendment of dive fishery management assessment.** (a)
16 The rate of the dive fishery management assessment levied on a species of fishery
17 resources under AS 43.76.150 may be amended by the commissioner of revenue upon
18 majority vote at an election held under AS 43.76.160 in the administrative area in
19 which the dive fishery management assessment is levied.

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

23 (1) a petition, that is signed by at least 25 percent of the number of
24 persons who voted under AS 43.76.160 in the election approving the dive fishery
25 management assessment on the fishery resource in the administrative area, is presented
26 to the commissioner of fish and game requesting amendment of the rate of the dive
27 fishery management assessment on a species of fishery resources; the petition must
28 state the proposed rate, as a percentage of the value of the fishery resource, of the dive
29 fishery management assessment; only a person who would be eligible to vote in an
30 election to amend the rate of the assessment may validly sign the petition;

31 (2) an election is held in accordance with AS 43.76.160; the ballot must

1 ask the question whether the dive fishery management assessment on a species of
2 fishery resources taken in the administrative area shall be amended and must state the
3 rate of the dive fishery management assessment on the species of fishery resources that
4 would take effect if the assessment is amended; the ballot must be worded so that a
5 "yes" vote is for amendment of the dive fishery management assessment and a "no"
6 vote is for continuation of the current dive fishery management assessment;

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

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

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

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

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

28 (2) an election is held in accordance with AS 43.76.160; the ballot must
29 ask the question whether the dive fishery management assessment on a species of
30 fishery resources taken in the administrative area shall be terminated; the ballot must
31 be worded so that a "yes" vote is for continuation of the dive fishery management

1 assessment and a "no" vote is for termination of the dive fishery management
2 assessment;

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

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

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

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

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

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

31 **Sec. 43.76.200. Funding for qualified regional dive fishery development**

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

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

25 (c) A qualified regional dive fishery development association receiving funding
26 under this section shall submit an annual financial report to the Department of Fish and
27 Game on a form provided by the Department of Fish and Game. The Department of
28 Fish and Game may, by regulation, require that a qualified regional dive fishery
29 development association use a uniform system of accounting and may audit the use of
30 funding received under this section by the association.

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

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

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

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

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

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

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

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

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