

CS FOR HOUSE BILL NO. 104(FSH) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES

Amended: 5/8/99

Offered: 3/10/99

Sponsor(s): REPRESENTATIVES HUDSON, Austerman, Harris, Kapsner, Kookesh, James

A BILL

FOR AN ACT ENTITLED

1 **"An Act revising the procedures and authority of the Alaska Commercial Fisheries**
2 **Entry Commission, the Board of Fisheries, and the Department of Fish and Game**
3 **in regard to a moratorium on participants or vessels, or both, in certain fisheries;**
4 **and providing for an effective date."**

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

6 *** Section 1.** AS 16.43.220 is amended by adding a new subsection to read:

7 (d) An interim-use permit issued for a fishery subject to a moratorium on entry
8 of new participants into a fishery under AS 16.43.225 may not be transferred except
9 as provided for by emergency transfers under AS 16.43.180.

10 *** Sec 2.** AS 16.43.225(a) is repealed and reenacted to read:

11 (a) The commission may establish a moratorium on entry of new participants
12 or vessels, or both, into a fishery, if the commission finds that a moratorium is
13 necessary

14 (1) to promote the conservation and sustained yield management of the

1 state's fishery resource and the economic health and stability of commercial fishing in
2 the state; and

3 (2) for one or more of the following purposes:

4 (A) to allow time for the commission, in consultation with the
5 Department of Fish and Game and the Board of Fisheries, as appropriate, to
6 investigate and evaluate management alternatives, including establishment of
7 a maximum number of entry permits under AS 16.43.240;

8 (B) to allow the commission time to develop regulatory or
9 legislative proposals to address needs of the fishery that cannot be met under
10 existing statutes or regulations;

11 (C) to allow the Department of Fish and Game and the Board
12 of Fisheries to open a fishery or potential fishery that would otherwise remain
13 closed for protection against over harvest resulting from open access into the
14 fishery.

15 * **Sec. 3.** AS 16.43.225(c) is amended to read:

16 (c) The commission may establish a moratorium under this section for a
17 continuous period of up to four years. A **moratorium established under this section**
18 **may be extended for no more than two additional years if necessary to serve a**
19 **purpose described under (a) of this section. After a moratorium on entry of new**
20 **participants or vessels into a fishery has expired, the** fishery [THAT HAS BEEN
21 SUBJECT TO A MORATORIUM UNDER THIS SECTION] may not be subjected
22 to a subsequent moratorium **on entry of either new participants or new vessels into**
23 **the fishery** [UNDER THIS SECTION] unless five years have elapsed [SINCE THE
24 PREVIOUS MORATORIUM EXPIRED].

25 * **Sec. 4.** AS 16.43.225(d) is amended to read:

26 (d) While a moratorium is in effect, the commission shall **investigate and**
27 **evaluate management alternatives, including establishment of** [CONDUCT
28 INVESTIGATIONS TO DETERMINE WHETHER] a maximum number of entry
29 permits [SHOULD BE ESTABLISHED] under AS 16.43.240, by

30 (1) conducting research into conditions in the fishery;

31 (2) consulting with the Department of Fish and Game and the Board

1 of Fisheries; and

2 (3) consulting with participants in the fishery **and other members of**
 3 **the public.**

4 * **Sec. 5.** AS 16.43.225(e) is repealed and reenacted to read:

5 (e) The commission shall establish, by regulation, the eligibility criteria for
 6 applicants for an interim-use permit, interim-use vessel permit, or both, for a fishery
 7 subject to a moratorium under this section. The eligibility criteria for an interim-use
 8 permit for a fishery that is subject to a moratorium for a purpose described under
 9 (a)(2)(A) or (B) of this section must address the minimum requirements for past or
 10 present participation and harvest in the fishery as of a qualification date described in
 11 AS 16.43.260(f)(1) or (2). When establishing the eligibility criteria for an interim-use
 12 permit for a fishery that is subject to a moratorium solely for the purpose described
 13 under (a)(2)(C) of this section, the commission may establish the criteria based upon

14 (1) the minimum requirements for past or present participation and
 15 harvest

16 (A) in the fishery as of the qualification date described in
 17 AS 16.43.260(f)(1) or (2); or

18 (B) in a similar or related fishery if the fishery for which the
 19 interim-use permit is being considered has either remained closed in years
 20 immediately before the qualification date or has never been open; or

21 (2) a combination of the minimum requirements for past or present
 22 participation in the fisheries described in (1)(A) and (B) of this subsection.

23 * **Sec. 6.** AS 16.43.225 is amended by adding new subsections to read:

24 (f) The commission may not issue an interim-use permit or an interim-use
 25 vessel permit for a fishery subject to a moratorium under this section unless the
 26 applicant satisfies the qualifications established under (e) of this section and establishes
 27 the present ability and intent to participate actively in the fishery.

28 (g) A permit issued under this section is a use privilege that may be modified
 29 or revoked by law without compensation.

30 (h) The commission may charge a fee for the privileges conveyed by an
 31 interim-use vessel permit issued under this section. The fee must reasonably reflect

1 the rate of economic return for the relevant fishery, except that, by regulation, the
2 commission may provide for a reduced fee for an applicant who has a family income
3 falling within the federal poverty guidelines as adjusted by the commission to reflect
4 appropriate cost-of-living differentials.

5 (i) Unless provided otherwise by a state statute or regulation, neither an
6 interim-use permit or an interim-use vessel permit issued under this section nor the use
7 of the permit or a permitted vessel in a fishery subject to a moratorium under this
8 section may be used to establish eligibility for a permit in the fishery after the
9 expiration of the moratorium.

10 (j) The commission may adopt regulations providing for the transfer of an
11 interim-use vessel permit to another vessel if the original permitted vessel is sunk,
12 destroyed, or damaged to the extent that the vessel is inoperable for the fishery for
13 which the permit is issued. An interim-use vessel permit holder may not transfer an
14 interim-use vessel permit to another person or entity.

15 (k) As permitted by federal law and consistent with this chapter, the
16 commission may establish a moratorium on entry of new participants or vessels, or
17 both, into offshore fisheries adjacent to territorial waters of the state.

18 (l) In addition to the penalties imposed under AS 16.43.960, the commission
19 may also revoke, suspend, or transfer all interim-use vessel permits for violations under
20 AS 16.43.960(a).

21 (m) In addition to the penalties imposed under AS 16.43.970(a), upon a first
22 or second conviction under AS 16.43.970, the court may in its discretion order a
23 forfeiture of interim-use vessel permits and a loss of eligibility for future issuance of
24 interim-use vessel permits, or order a suspension for a period of not more than three
25 years of fishing rights under interim-use vessel permits held or to be held. Upon a
26 third conviction under AS 16.43.970, all interim-use vessel permits held are forfeited,
27 and the vessel for which the permits are issued loses eligibility for future issuance of
28 interim-use vessel permits for a period of three years.

29 (n) Notwithstanding AS 16.05.815 and AS 16.43.975, the commission may
30 release to the owner of a vessel information on the vessel's history of harvests in a
31 fishery that is necessary to apply for an interim-use vessel permit under this section.

1 (o) This section does not alter the requirement for an interim-use permit or
2 entry permit under AS 16.43.140 or a vessel license under AS 16.05.490 - 16.05.530.

3 (p) Nothing in this section limits the powers of the Board of Fisheries or the
4 Department of Fish and Game.

5 (q) The commission shall annually inform the Board of Fisheries and the
6 Department of Fish and Game of

7 (1) petitions received by the commission that request the commission
8 to adopt regulations establishing a moratorium on entry of new participants or vessels
9 into a fishery and the action taken by the commission in response to each petition;

10 (2) the fisheries that are currently subject to a moratorium on entry of
11 new participants or vessels;

12 (3) the status of investigations to determine whether a maximum
13 number of entry permits should be established for a fishery that is currently subject to
14 a moratorium on new entrants; and

15 (4) the fisheries that are currently subject to a moratorium on new
16 entrants for which the commission has determined that the level of participation in the
17 fishery requires that entry into the fishery be limited in order to achieve the purposes
18 of this chapter.

19 * **Sec. 7.** AS 16.43.260(f) is amended to read:

20 (f) When the commission establishes the maximum number of entry permits
21 under AS 16.43.240 for a fishery that is subject to a moratorium **on entry of new**
22 **participants** under AS 16.43.225, **the commission shall determine which one of the**
23 **following three dates listed in (1) - (3) of this subsection shall be used to**
24 **determine the priority classification among applicants. Each** [AN] applicant for
25 an entry permit for the fishery shall be assigned to a priority classification based **on**
26 [SOLELY UPON] the applicant's qualifications as of

27 **(1) January 1 of the year during which the commission established**
28 **the moratorium;**

29 **(2) the date of the commission's order providing for public notice**
30 **of the proposed regulatory action to establish the moratorium; or**

31 **(3) the date of the commission's order providing for public notice**

1 of the proposed regulatory action to establish the maximum number [THE
2 EFFECTIVE DATE OF THE STATUTE OR REGULATION ESTABLISHING THE
3 MORATORIUM].

4 * **Sec. 8.** AS 16.43.911 is amended by adding a new subsection to read:

5 (f) A moratorium on the entry of new vessels into a fishery described under
6 AS 16.43.901 or 16.43.906 may be extended for not more than two additional years
7 if necessary to serve a purpose for which the respective moratorium under
8 AS 16.43.901 or 16.43.906 was established. The extension of a moratorium under this
9 subsection supersedes a contrary provision of AS 16.43.901 or 16.43.906.

10 * **Sec. 9.** REPEAL OF AS 16.43.901. (a) Section 5, ch. 126, SLA 1996, as amended by
11 sec. 5 ch. 97, SLA 1997, is repealed.

12 (b) If before July 1, 2000, the Alaska Commercial Fisheries Entry Commission

13 (1) exercises its authority under AS 16.43.911(f), added by sec. 8 of this Act,
14 to extend a moratorium on entry of new vessels into a fishery described under AS 16.43.901,
15 then AS 16.43.901 is repealed on the earlier of

16 (A) the termination of the extended moratorium established by the
17 commission under AS 16.43.911(f), added by sec. 8 of this Act; or

18 (B) July 1, 2002; or

19 (2) does not exercise its authority under AS 16.43.911(f), added by sec. 8 of
20 this Act, to extend a moratorium on entry of new vessels into a fishery described under
21 AS 16.43.901, then AS 16.43.901 is repealed July 1, 2000.

22 * **Sec. 10.** REPEAL OF AS 16.43.906. (a) Section 6, ch. 97, SLA 1997, is repealed.

23 (b) If before July 1, 2001, the Alaska Commercial Fisheries Entry Commission

24 (1) exercises its authority under AS 16.43.911(f), added by sec. 8 of this Act,
25 to extend a moratorium on entry of new vessels into a fishery described under AS 16.43.906,
26 then AS 16.43.906 is repealed on the earlier of

27 (A) the termination of the extended moratorium established by the
28 commission under AS 16.43.911(f), added by sec. 8 of this Act; or

29 (B) July 1, 2003; or

30 (2) does not exercise its authority under AS 16.43.911(f), added by sec. 8 of
31 this Act, to extend a moratorium on entry of new vessels into a fishery described under

1 AS 16.43.906, then AS 16.43.906 is repealed July 1, 2001.

2 * **Sec. 11.** REPEAL OF AS 16.43.911. AS 16.43.911 is repealed on the later of the date
3 of repeal of AS 16.43.901 or the date of repeal of AS 16.43.906.

4 * **Sec. 12.** AS 16.05.050(a)(19), 16.05.251(g); and AS 16.43.225(b) are repealed.

5 * **Sec. 13.** This Act takes effect immediately under AS 01.10.070(c).