

CS FOR HOUSE BILL NO. 104(FSH)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES

Offered: 3/10/99

Referred: Resources

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6 * **Section 1.** AS 16.43.225(a) is repealed and reenacted to read:

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

10 (1) to promote the conservation and sustained yield management of the
11 state's fishery resource and the economic health and stability of commercial fishing in
12 the state; and

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

14 (A) to allow time for the commission, in consultation with the

1 Department of Fish and Game and the Board of Fisheries, as appropriate, to
 2 investigate and evaluate management alternatives, including establishment of
 3 a maximum number of entry permits under AS 16.43.240;

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

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

11 * **Sec. 2.** AS 16.43.225(c) is amended to read:

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

21 * **Sec. 3.** AS 16.43.225(d) is amended to read:

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

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

27 (2) consulting with the Department of Fish and Game and the Board
 28 of Fisheries; and

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

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

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

10 (1) the minimum requirements for past or present participation and
 11 harvest

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

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

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

19 * **Sec. 5.** AS 16.43.225 is amended by adding new subsections to read:

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

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

26 (h) The commission may charge a fee for the privileges conveyed by an
 27 interim-use vessel permit issued under this section. The fee must reasonably reflect
 28 the rate of economic return for the relevant fishery, except that, by regulation, the
 29 commission may provide for a reduced fee for an applicant who has a family income
 30 falling within the federal poverty guidelines as adjusted by the commission to reflect
 31 appropriate cost-of-living differentials.

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

6 (j) The commission may adopt regulations providing for the transfer of an
7 interim-use vessel permit to another vessel if the original permitted vessel is sunk,
8 destroyed, or damaged to the extent that the vessel is inoperable for the fishery for
9 which the permit is issued.

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

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

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

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

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

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

31 (q) The commission shall annually inform the Board of Fisheries and the

1 Department of Fish and Game of

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

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

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

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

14 * **Sec. 6.** AS 16.43.260(f) is amended to read:

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

22 **(1) January 1 of the year during which the commission established**
23 **the moratorium;**

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

26 **(3) the date of the commission's order providing for public notice**
27 **of the proposed regulatory action to establish the maximum number** [THE
28 EFFECTIVE DATE OF THE STATUTE OR REGULATION ESTABLISHING THE
29 MORATORIUM].

30 * **Sec. 7.** AS 16.43.911 is amended by adding a new subsection to read:

31 (f) A moratorium on the entry of new vessels into a fishery described under

1 AS 16.43.901 or 16.43.906 may be extended for not more than two additional years
 2 if necessary to serve a purpose for which the respective moratorium under
 3 AS 16.43.901 or 16.43.906 was established. The extension of a moratorium under this
 4 subsection supersedes a contrary provision of AS 16.43.901 or 16.43.906.

5 * **Sec. 8.** REPEAL OF AS 16.43.901. (a) Section 5, ch. 126, SLA 1996, as amended by
 6 sec. 5 ch. 97, SLA 1997, is repealed.

7 (b) If before July 1, 2000, the Alaska Commercial Fisheries Entry Commission
 8 (1) exercises its authority under AS 16.43.911(f), added by sec. 7 of this Act,
 9 to extend a moratorium on entry of new vessels into a fishery described under AS 16.43.901,
 10 then AS 16.43.901 is repealed on the earlier of

11 (A) the termination of the extended moratorium established by the
 12 commission under AS 16.43.911(f), added by sec. 7 of this Act; or

13 (B) July 1, 2002; or

14 (2) does not exercise its authority under AS 16.43.911(f), added by sec. 7 of
 15 this Act, to extend a moratorium on entry of new vessels into a fishery described under
 16 AS 16.43.901, then AS 16.43.901 is repealed July 1, 2000.

17 * **Sec. 9.** REPEAL OF AS 16.43.906. (a) Section 6, ch. 97, SLA 1997, is repealed.

18 (b) If before July 1, 2001, the Alaska Commercial Fisheries Entry Commission
 19 (1) exercises its authority under AS 16.43.911(f), added by sec. 7 of this Act,
 20 to extend a moratorium on entry of new vessels into a fishery described under AS 16.43.906,
 21 then AS 16.43.906 is repealed on the earlier of

22 (A) the termination of the extended moratorium established by the
 23 commission under AS 16.43.911(f), added by sec. 7 of this Act; or

24 (B) July 1, 2003; or

25 (2) does not exercise its authority under AS 16.43.911(f), added by sec. 7 of
 26 this Act, to extend a moratorium on entry of new vessels into a fishery described under
 27 AS 16.43.906, then AS 16.43.906 is repealed July 1, 2001.

28 * **Sec. 10.** REPEAL OF AS 16.43.911. AS 16.43.911 is repealed on the later of the date
 29 of repeal of AS 16.43.901 or the date of repeal of AS 16.43.906.

30 * **Sec. 11.** AS 16.05.050(a)(19), 16.05.251(g); and AS 16.43.225(b) are repealed.

31 * **Sec. 12.** This Act takes effect immediately under AS 01.10.070(c).