

SENATE BILL NO. 143

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE BY REQUEST

Introduced: 4/13/99

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a vessel-based commercial fisheries limited entry system;
2 relating to management of offshore fisheries; and providing for an effective date."

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

4 * **Section 1. FINDINGS.** The legislature finds that

5 (1) the conventional commercial fisheries limited entry system, which limits
6 the entry of natural persons into a fishery, may not adequately protect the economic health and
7 stability of certain fisheries in this state;

8 (2) a system that limits the number of vessels that may engage in a fishery
9 may be necessary to regulate certain existing, developing, or future fisheries in order to
10 promote the conservation and sustained yield management of Alaska's fishery resource and
11 the economic health and stability of commercial fishing in this state;

12 (3) the existing moratorium on entry of new vessels into the Bering Sea
13 Korean hair crab fishery (AS 16.43.901) expires on June 30, 2000, and the existing vessel
14 moratorium for the weathervane scallop fisheries in state waters (AS 16.43.906) expires on

1 June 30, 2001;

2 (4) the United States Department of Commerce has taken action to restrict
3 access to groundfish, crab, and scallop fisheries in the waters of the United States exclusive
4 economic zone adjacent to the state water of Alaska using a vessel-based limited entry system;

5 (5) a vessel-based limited entry system may be necessary to facilitate state
6 management of fisheries that overlap with federally managed fisheries in the United States
7 exclusive economic zone, especially for fisheries under a federal limited entry system; and

8 (6) a vessel-based limited entry system may be necessary to achieve compatible
9 state and federal management and enforcement of fisheries.

10 * **Sec. 2.** AS 16.43 is amended by adding new sections to read:

11 **Article 6A. Vessel Permit System.**

12 **Sec. 16.43.450. Vessel permit system.** (a) The commission may establish a
13 vessel permit system for a fishery if the commission determines

14 (1) that the regulation of entry into the fishery is necessary to achieve
15 the purposes of this chapter;

16 (2) that a vessel permit system would achieve the purposes of this
17 chapter; and

18 (3) that

19 (A) limiting the number of participants in the fishery under
20 AS 16.43.140 - 16.43.330 would not achieve the purposes of this chapter; or

21 (B) regulating the number of vessels in the fishery would
22 facilitate state management of a fishery that occurs in the United States
23 exclusive economic zone or both the United States exclusive economic zone
24 and state water; in making a determination under this subparagraph, the
25 commission shall consider relevant provisions of the federal fishery
26 management program for the fishery.

27 (b) For a fishery in which the federal government has delegated management
28 authority in the United States exclusive economic zone to the state, the commission
29 may, to the extent consistent with this chapter, adopt regulations to ensure that the
30 vessel permit system complies with applicable federal laws.

31 (c) If the commission establishes a vessel permit system for a fishery that

1 involves more than one fishery resource, type of gear, or administrative area, the
 2 commission may limit, as the commission determines appropriate, the fishery resources
 3 that may be harvested under the vessel permit, the types of gear that may be used
 4 under the vessel permit, or the areas where fishing may occur under the vessel permit.

5 The commission shall adopt criteria, as appropriate, for determining

6 (1) how restrictions on fishery resources, types of gear, and areas fished
 7 are established for individual vessel interim-use permits and vessel entry permits; and

8 (2) how eligibility to take a particular fishery resource, to use a
 9 particular type of gear, or to fish in a particular area is established.

10 (d) The commission may, after consultation with the Department of Fish and
 11 Game, regulate the fishing capacity or effort authorized under a vessel permit if the
 12 commission finds that limitations on fishing capacity or effort are necessary to achieve
 13 the purposes of this chapter. The commission shall adopt criteria, as appropriate, for
 14 measuring the fishing capacity or effort of a vessel and for determining how
 15 restrictions on vessel fishing capacity or effort are established for individual vessel
 16 interim-use permits and vessel entry permits. The criteria may be based on past
 17 participation.

18 (e) The commission may adopt restrictions on fishing capacity and effort,
 19 fishery resources taken, types of gear used, and areas fished under a vessel permit at
 20 the time of initial issuance of vessel permits or at a later time.

21 (f) The commission shall adopt regulations limiting the number of vessel
 22 permits that may be held by a permit holder or group of related permit holders if the
 23 commission finds that the concentration of ownership of vessels in a fishery is contrary
 24 to the purposes of this chapter.

25 **Sec. 16.43.460. Initial issuance of vessel permits.** (a) For each fishery in
 26 which the commission establishes a vessel permit system, the commission shall
 27 establish qualifications for vessel interim-use permits and vessel entry permits,
 28 including the qualification date and the eligibility period, and qualifications for
 29 receiving transferable and nontransferable vessel entry permits. In adopting
 30 qualifications for transferable and nontransferable vessel entry permits, the commission
 31 shall consider

1 (1) information provided by the Department of Fish and Game,
2 participants in the fishery, owners of vessels and gear used in the fishery, and other
3 interested parties;

4 (2) the level of past participation and harvest in the fishery, the nature
5 of the fishery, and the need to ensure the manageability of the fishery and conservation
6 of the fishery resource.

7 (b) Pending the issuance of vessel entry permits for a fishery for which the
8 commission has established a vessel permit system, the commission shall issue a vessel
9 interim-use permit to a person or entity for each vessel that the commission finds is
10 potentially eligible to receive a vessel entry permit. A vessel interim-use permit is
11 renewable from year to year; however, a vessel interim-use permit expires at the end
12 of the period for which the permit was issued and may not be renewed after a final
13 determination by the commission that the vessel is or is not eligible for a vessel entry
14 permit.

15 (c) The commission shall adopt regulations regarding the substitution of
16 another vessel by the applicant for a vessel permit if the vessel used to establish
17 eligibility for a vessel permit is lost before the initial issuance of the permit for the
18 vessel.

19 **Sec. 16.43.470. Holders of vessel permits.** (a) The commission may issue
20 a vessel interim-use permit or vessel entry permit to a person or entity who has a legal
21 ownership interest in the vessel identified on the permit.

22 (b) The commission shall adopt regulations for determining which person or
23 entity shall receive a vessel permit for a vessel if the vessel was owned by more than
24 one legal owner during the period established by the commission to determine
25 eligibility for the vessel permit.

26 (c) If the commission establishes a vessel permit system under AS 16.43.450 -
27 16.43.530 for a fishery that is subject to a moratorium on entry of new vessels under
28 AS 16.43.901 or 16.43.906, the commission may incorporate some or all of the vessel
29 eligibility criteria established for the moratorium into the eligibility criteria for vessel
30 permits issued under the vessel permit system.

31 (d) The permit holder shall post a vessel permit in a prominent location on the

1 vessel identified on the permit so that the permit is readily available for inspection
2 while the vessel is operating in the fishery for which the permit is issued.

3 **Sec. 16.43.480. Optimum number range of vessel permits.** (a) If, after the
4 initial issuance of vessel entry permits for a fishery, the commission determines that
5 a long-term biological or economic change has occurred in the fishery, the
6 commission, in consultation with the Department of Fish and Game, shall establish the
7 optimum number range of vessel entry permits for the fishery.

8 (b) In determining the optimum number range of vessel entry permits, the
9 commission shall seek to facilitate sound management of the fishery and to promote

10 (1) the economic health and stability of the fishery;

11 (2) broad access to the fishery;

12 (3) conservation of the resource; and

13 (4) quality seafood products and to discourage waste of harvested fish.

14 (c) The commission may increase or decrease the optimum number range of
15 vessel entry permits for a fishery if the commission finds that an established long-term
16 change in the biological or economic condition of the fishery has occurred and that the
17 number of vessel entry permits that are necessary to achieve the goals set out in (b)
18 of this section has substantially changed.

19 (d) If the optimum number range of vessel entry permits is less than the
20 number of outstanding vessel permits for the fishery, the commission may adopt
21 regulations to allow the voluntary consolidation of vessel entry permits by permit
22 holders. The commission may investigate procedures to permanently reduce the
23 number of vessel permits issued for a fishery to within the optimum number range.

24 (e) If the optimum number range of vessel entry permits is greater than the
25 number of permits authorized for the fishery, the commission shall issue additional
26 vessel entry permits for vessels presently able to actively engage in the fishery until
27 the number of vessel entry permits is consistent with the optimum number range for
28 the fishery. The commission shall obtain fair market value for new vessel entry
29 permits issued under this subsection. The commission shall determine whether the
30 additional vessel entry permits issued under this subsection are transferable or
31 nontransferable.

1 **Sec. 16.43.490. Transfer and expiration of vessel entry permits.** (a) The
2 commission may adopt regulations authorizing the transfer of a transferable vessel
3 entry permit to an eligible transferee. The transferee of a vessel permit must have a
4 legal ownership interest in the vessel identified on the vessel permit.

5 (b) The commission may adopt regulations authorizing the simultaneous
6 transfer of a transferable vessel entry permit to an eligible transferee and the
7 substitution of another vessel for the vessel identified on the permit under
8 AS 16.43.500.

9 (c) The commission may prohibit the involuntary transfer of a vessel permit.

10 (d) The commission shall adopt regulations relating to the expiration of
11 nontransferable vessel entry permits.

12 **Sec. 16.43.500. Substitution of vessels.** (a) The commission may adopt
13 regulations providing for the permanent or temporary substitution, after the initial
14 issuance of vessel permits, of another vessel for the vessel that is identified on a vessel
15 permit. A permit holder must have a legal ownership interest in the vessel that is
16 permanently substituted for the vessel identified on the permit. Upon the approval of
17 a permanent substitution of a vessel, the commission shall issue a new vessel permit
18 for the substituted vessel. The commission may require that the permit holder have
19 an ownership interest in a temporarily substituted vessel.

20 (b) A substituted vessel and the operation of the substituted vessel are subject
21 to all terms and conditions attached to the vessel permit at the time that the vessel
22 permit is transferred from the original vessel to the substituted vessel.

23 **Sec. 16.43.510. Renewal of vessel permits.** (a) A vessel entry permit or
24 vessel interim-use permit is issued for one year and must be renewed annually.

25 (b) A vessel entry permit or vessel interim-use permit may not be renewed
26 until the fees for each preceding year during which the permit has not been renewed
27 are paid.

28 (c) Failure to renew a vessel entry permit or a vessel interim-use permit for
29 two consecutive years from the year of last renewal results in a forfeiture of the permit
30 unless the forfeiture is waived by the commission for good cause. If an administrative
31 closure of a fishery occurs for an entire season, the commission may not count the

1 season toward the two-year period.

2 **Sec. 16.43.520. Vessel permit fees.** (a) The commission shall establish fees
3 for the issuance and annual renewal of vessel entry permits and vessel interim-use
4 permits. Annual fees established under this subsection may not exceed \$2,500 and
5 shall reasonably reflect the rate of economic return for the fishery.

6 (b) The commission shall waive the payment of annual vessel permit fees for
7 a fishery in which there was an administrative closure for the entire season.

8 (c) Subject to AS 37.10.050(a), the commission may establish fees for
9 processing applications for vessel permits, for transfer of vessel permits, and for
10 permanent and temporary substitution of vessels.

11 (d) The commission may charge interest at a rate not to exceed the legal rate
12 of interest established in AS 45.45.010(a) on fees established under the section that are
13 more than 60 days overdue.

14 **Sec. 16.43.530. General vessel permit provisions.** (a) A person may not
15 operate a vessel or use a vessel to take fish in a commercial fishery for which a vessel
16 interim-use permit or vessel entry permit is required unless the appropriate vessel
17 permit has been issued for the vessel and is posted in a prominent location on the
18 vessel.

19 (b) The operator of a vessel for which a vessel permit has been issued shall
20 comply with the terms of the vessel permit while the vessel is operated in the fishery
21 for which the permit is issued.

22 (c) A vessel interim-use permit and a vessel entry permit constitute a use
23 privilege that may be modified or revoked by order of the commission or by law
24 without compensation.

25 (d) AS 16.43.450 - 16.43.530 do not alter the requirement for an interim-use
26 permit or entry permit under AS 16.43.140 or a vessel license under AS 16.05.490 -
27 16.05.530.

28 (e) Nothing in AS 16.43.450 - 16.43.530 limits the powers of the Board of
29 Fisheries or the Department of Fish and Game.

30 (f) Notwithstanding AS 16.05.815 and AS 16.43.975, the commission may
31 release to the owner of a vessel information on the vessel's history of harvests in a

1 fishery that is necessary to apply for a vessel permit under AS 16.43.450 - 16.43.530.

2 * **Sec. 3.** AS 16.05.735 is amended to read:

3 **Sec. 16.05.735. Management of offshore fisheries.** The state may assume
4 management of a fishery [THE SCALLOP FISHERIES] in offshore water adjacent to
5 the state in the absence of a federal fishery management plan for the fishery
6 [SCALLOPS] or in the event that a federal fishery management plan for the fishery
7 [SCALLOPS] delegates authority to the state to manage the fishery [SCALLOP
8 FISHERIES] in the United States exclusive economic zone.

9 * **Sec. 4.** AS 16.43.010(a) is amended to read:

10 (a) It is the purpose of this chapter to promote the conservation and the
11 sustained yield management of Alaska's fishery resource and the economic health and
12 stability of commercial fishing in Alaska by regulating and controlling entry of
13 participants and vessels into the commercial fisheries in the public interest and
14 without unjust discrimination.

15 * **Sec. 5.** AS 16.43.100(a) is amended to read:

16 (a) To accomplish the purposes set out in AS 16.43.010, the commission shall
17 (1) regulate entry into the commercial fisheries for all fishery resources
18 in the state;
19 (2) establish priorities for the application of the provisions of this
20 chapter to the various commercial fisheries of the state;
21 (3) establish administrative areas suitable for regulating and controlling
22 entry into the commercial fisheries;
23 (4) establish, for all types of gear, the maximum number of entry
24 permits for each administrative area;
25 (5) designate, when necessary to accomplish the purposes of this
26 chapter, particular species for which separate interim-use permits or entry permits will
27 be issued;
28 (6) establish qualifications for the issuance of entry permits;
29 (7) issue entry permits to qualified applicants;
30 (8) issue interim-use permits as provided in AS 16.43.210, 16.43.220,
31 and 16.43.225;

1 (9) establish, for all types of gear, the optimum number of entry
2 permits for each administrative area;

3 (10) administer the buy-back program provided for in AS 16.43.310
4 and 16.43.320 to reduce the number of outstanding entry permits to the optimum
5 number of entry permits;

6 (11) provide for the transfer and reissuance of entry permits to qualified
7 transferees;

8 (12) provide for the transfer and reissuance of entry permits for
9 alternative types of legal gear, in a manner consistent with the purposes of this chapter;

10 (13) administer the collection of the annual fees provided for in
11 AS 16.43.160;

12 (14) administer the issuance of commercial fishing vessel licenses under
13 AS 16.05.490;

14 (15) issue educational entry permits to applicants who qualify under the
15 provisions of AS 16.43.340 - 16.43.390;

16 (16) establish reasonable user fees for services;

17 (17) issue landing permits under AS 16.05.675 and regulations adopted
18 under that section;

19 (18) establish and collect annual fees for the issuance of landing
20 permits that reasonably reflect the costs incurred in the administration and enforcement
21 of provisions of law related to landing permits; [AND]

22 (19) establish a moratorium on entry into commercial fisheries as
23 provided in AS 16.43.225; **and**

24 **(20) administer the vessel permit system authorized under**
25 **AS 16.43.450 - 16.43.530.**

26 * **Sec. 6.** AS 16.43.240(b) is amended to read:

27 (b) When the commission finds that a fishery, not designated as a distressed
28 fishery under AS 16.43.230 or not subject to a moratorium under AS 16.43.225, has
29 reached levels of participation that require the limitation of entry **under AS 16.43.140**
30 **- 16.43.330** in order to achieve the purposes of this chapter, the commission shall
31 establish the maximum number of entry permits for that fishery.

1 * **Sec. 7.** AS 16.43.240(c) is amended to read:

2 (c) When the commission finds that a fishery subject to a moratorium under
3 AS 16.43.225 has reached levels of participation that require the limitation of entry
4 **under AS 16.43.140 - 16.43.330** in order to achieve the purposes of this chapter, the
5 commission shall establish the maximum number of entry permits for that fishery.

6 * **Sec. 8.** AS 16.43.960(a) is amended to read:

7 (a) The commission may revoke, suspend, or transfer all entry or interim-use
8 permits, **vessel entry permits, or vessel interim-use permits** held by a person **or**
9 **entity** who knowingly provides or assists in providing false information, or fails to
10 correct false information provided to the commission for the purpose of obtaining a
11 benefit for self or another, including the issuance, renewal, duplication, or transfer of
12 an entry or interim-use permit, [OR] vessel license, **vessel entry permit, or vessel**
13 **interim-use permit**. The commission may suspend, **as appropriate**, that person's **or**
14 **entity's** eligibility to hold an entry or interim-use permit, **vessel entry permit, or**
15 **vessel interim-use permit** for a period not to exceed three years, and may impose an
16 administrative fine of not more than \$5,000 on the person **or** [. THE COMMISSION
17 MAY ALSO IMPOSE AN ADMINISTRATIVE FINE OF NOT MORE THAN \$5,000
18 ON AN] entity whose officers, employees, representatives, or agents knowingly
19 provide or assist in providing false information, or fail to correct false information
20 provided, to the commission for the purpose of obtaining a benefit.

21 * **Sec. 9.** AS 16.43.970(a) is amended to read:

22 (a) A person who violates a provision of this chapter or a regulation adopted
23 under this chapter **or an entity that violates a provision of AS 16.43.450 - 16.43.530**
24 **or a regulation adopted under AS 16.43.450 - 16.43.530** is, upon conviction, guilty
25 of a class B misdemeanor and is punishable by a fine of not more than \$5,000 for a
26 first conviction, and a fine of not more than \$10,000 for a second or third conviction.
27 Upon a first or second conviction under this subsection, the court may in its discretion
28 also order the commission to suspend the commercial fishing privileges of the person
29 **or entity** for a period of not more than three years and to revoke one or more or all
30 commercial fishing permits held by the person **or entity**. Upon a third or subsequent
31 conviction under this subsection, the person **or entity** is also subject to a loss of

1 commercial fishing privileges as provided under (i) of this section. This subsection
2 does not apply to violations of AS 16.43.140(a).

3 * **Sec. 10.** AS 16.43.970(b) is amended to read:

4 (b) A person **or entity** who knowingly makes a false statement to the
5 commission for the purpose of obtaining a benefit, including the issuance, renewal,
6 duplication, or transfer of an entry or interim-use permit, [OR] vessel license, **vessel**
7 **interim-use permit, or vessel entry permit,** or a person who assists another by
8 knowingly making a false statement to the commission for the purpose of obtaining
9 a benefit for another, is guilty of the crime of unsworn falsification as set out in
10 AS 11.56.210. Upon conviction, the person **or entity** is also subject to suspension of
11 commercial fishing privileges and revocation of commercial fishing permits under (i)
12 of this section.

13 * **Sec. 11.** AS 16.43.970(d) is amended to read:

14 (d) If a permit holder is charged by the state with violating a provision of this
15 chapter or a regulation adopted under this chapter, the holder may not transfer [,
16 UNDER AS 16.43.170,] any interim-use or entry permit **under AS 16.43.170 or any**
17 **transferable vessel entry permit under AS 16.43.450 - 16.43.530** [,] until after the
18 final adjudication or dismissal of the charges.

19 * **Sec. 12.** AS 16.43.970(e) is amended to read:

20 (e) Notwithstanding any other provision of this section, an interim-use or entry
21 permit **or a transferable vessel entry permit** may not be transferred while under
22 suspension, without the consent of the commission.

23 * **Sec. 13.** AS 16.43.970(f) is amended to read:

24 (f) A commercial fishing **entry** permit revoked under this section that is
25 pledged as security for a loan under AS 16.10.333, or 16.10.338, or AS 44.81.231 shall
26 be reassigned as provided in AS 16.10.337 or AS 44.81.250.

27 * **Sec. 14.** AS 16.43.970(i) is amended to read:

28 (i) Upon the conviction of a person **or entity** for an offense described under
29 (a), (b), or (g) of this section, the court shall immediately notify the commission of the
30 conviction. The notice provided by the court shall be accompanied by an order
31 suspending commercial fishing privileges and revoking commercial fishing permits

1 under (a) of this section, as appropriate. The commission shall, upon receipt of

2 (1) an order from the court under (a) of this section, suspend the
3 commercial fishing privileges of a person or entity for the period set by the court and
4 revoke commercial fishing permits held by the person or entity as directed by the
5 court;

6 (2) a notice from the court that a person or entity has been convicted
7 of a third or subsequent violation of (a) of this section, suspend all commercial fishing
8 privileges of the person or entity for a period of three years from the date of
9 conviction and revoke all commercial fishing permits held by the person or entity;

10 (3) a notice from the court that a person or entity has been convicted
11 of a violation described under (b) of this section, suspend all commercial fishing
12 privileges of the person or entity for a period of three years from the date of
13 conviction and revoke all commercial fishing permits held by the person or entity;

14 (4) a notice from the court that a person has been convicted of a
15 violation described under (g)(1) of this section, suspend all commercial fishing
16 privileges of the person for a period of one year from the date of conviction;

17 (5) a notice from the court that a person has been convicted of a
18 violation described under (g)(2) of this section, suspend all commercial fishing
19 privileges of the person for a period of two years from the date of conviction;

20 (6) a notice from the court that a person has been convicted of a
21 violation described under (g)(3) of this section, suspend all commercial fishing
22 privileges of the person for a period of five years from the date of conviction.

23 * **Sec. 15.** AS 16.43.970(j)(1) is amended to read:

24 (1) "commercial fishing permit" means an entry permit, [OR] an
25 interim-use permit, a vessel entry permit, or a vessel interim-use permit issued
26 under this chapter;

27 * **Sec. 16.** AS 16.43.980(a) is amended to read:

28 (a) The commission shall prepare an annual report and notify the legislature
29 that it is available. The report must [SHALL] include but not be limited to the
30 following:

31 (1) a progress report on the reduction of entry permits to optimum

1 levels;

2 (2) recommendations for additional legislation relating to the regulation
3 of entry **of participants and vessels** into Alaska commercial fisheries.

4 * **Sec. 17.** AS 16.43.990 is amended by adding a new paragraph to read:

5 (10) "entity" means a corporation, company, partnership, firm,
6 association, organization, joint venture, business trust, society, or other legal entity
7 other than a natural person.

8 * **Sec. 18.** REGULATIONS. The Alaska Commercial Fisheries Entry Commission may
9 adopt regulations under AS 44.62 (Administrative Procedure Act) that the commission finds
10 necessary to implement this Act. The regulations may not take effect before July 1, 1999.

11 * **Sec. 19.** Section 18 of this Act takes effect immediately under AS 01.10.070(c).

12 * **Sec. 20.** Except as provided in sec. 19 of this Act, this Act takes effect July 1, 1999.