

SENATE CS FOR CS FOR HOUSE BILL NO. 216(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 4/17/02

Referred: Judiciary, Resources

Sponsor(s): HOUSE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the emergency order authority of the commissioner of fish and game**
2 **and to meetings of the Board of Fisheries."**

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

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 FINDINGS AND INTENT. (a) The legislature finds that

7 (1) in rare instances, circumstances may require changes to fishery
8 management regulations outside of the process prescribed in the Joint Board Petition Policy
9 adopted by the Board of Fisheries and the Board of Game;

10 (2) emergencies should be held to a minimum and rarely be found to exist;

11 (3) a fish resource emergency is

12 (A) an unforeseen event that threatens fish resources; or

13 (B) an unforeseen resource situation in which a biologically allowable
14 resource harvest of a fish resource would be precluded by delayed regulatory action

1 and the delay would significantly burden the public because the fish resource would be
2 unavailable in the future;

3 (4) the ability to respond quickly to changing conditions on the fishing
4 grounds is often necessary for efficient use of fish resources and to avoid undue burden on the
5 public;

6 (5) the commissioner of fish and game is, in certain circumstances, better able
7 to respond quickly to changing conditions on the fishing grounds.

8 (b) The legislature also finds that

9 (1) public participation in the Board of Fisheries process for developing
10 fishery management regulations is an important element of the process;

11 (2) members of the public rely on the predictability of the Board of Fisheries
12 process in order to insure an opportunity to participate in the development of regulations that
13 are important to the public;

14 (3) public participation in the Board of Fisheries process would be enhanced
15 and surprises and inconvenience to the public would be avoided if the procedures for setting
16 the agenda of the Board of Fisheries were formalized.

17 (c) It is the intent of the legislature to

18 (1) clarify the roles of the Board of Fisheries and the commissioner of fish and
19 game and to recognize that, in the rare circumstances where immediate action is necessary,
20 the commissioner is better able to respond quickly to changing conditions on the fishing
21 grounds by authorizing the commissioner to supersede a regulatory action of the board as
22 necessary to assure efficient management of fishery resources;

23 (2) formalize the procedures for setting the agenda for meetings of the Board
24 of Fisheries in order to provide adequate notice and to avoid surprises and inconvenience to
25 the public that is affected by the decisions of the board;

26 (3) maintain the customary practice by which the Board of Fisheries may
27 change its meeting agenda to correct errors in regulations, to address unforeseen
28 consequences of regulations, and to address fishery conservation issues, but to further require
29 that an agenda change to address a fishery conservation issue be subject to the determination
30 by the commissioner of fish and game that a conservation issue does exist and that the issue
31 cannot be resolved under current regulations.

1 * **Sec. 2.** AS 16.05.060 is amended by adding a new subsection to read:

2 (d) Notwithstanding (a) of this section, the commissioner may, on the basis of
3 new information, supersede a regulatory decision of the Board of Fisheries by
4 exercising authority under this section to allow or extend a fishing season to prevent
5 the loss of a biologically allowable resource harvest that would otherwise be precluded
6 by delayed action and be unavailable in the future. The commissioner may exercise
7 authority under this subsection only upon a determination that the basis for the board's
8 regulatory provisions can be adequately addressed. This authority may not be used for
9 the purpose of summarily changing the allocation of fishery resources among users
10 established by regulation. An emergency order issued under this subsection does not
11 supersede or amend regulatory decisions by the board beyond the scope or time set out
12 in the emergency order. This subsection does not amend or repeal the process of
13 petitions for regulatory proposals to the Board of Fisheries under AS 44.62
14 (Administrative Procedure Act) or regulations adopted jointly by the Board of
15 Fisheries and the Board of Game.

16 * **Sec. 3.** AS 16.05.300 is amended by adding a new subsection to read:

17 (c) The Board of Fisheries shall adopt regulations establishing procedures for
18 proposing, adopting, and amending the agenda for meetings of the board. The board
19 may amend an adopted agenda in response to a request to consider a matter that is not
20 on the adopted agenda in order to (1) address a fishery conservation issue if the
21 commissioner concurs in the determination of the board that a fishery conservation
22 issue exists and that the issue cannot be resolved under current regulations, (2) correct
23 an error in a regulation adopted by the board, or (3) address an unforeseen
24 consequence on a fishery of a regulation adopted by the board. The board may not
25 consider a request for an amendment of an adopted agenda unless the request for the
26 amendment is accompanied by substantial evidence that the request complies with this
27 subsection and the regulations adopted by the board. This subsection does not restrict
28 the board's authority to schedule and consider regulatory changes as reasonably
29 necessary for coordination with federal fishery agencies, programs, and laws.