

HOUSE BILL NO. 473

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

**BY REPRESENTATIVE SEATON BY REQUEST OF THE JOINT LEGISLATIVE SALMON INDUSTRY
TASK FORCE**

Introduced: 2/16/04

Referred: House Special Committee on Fisheries, Labor and Commerce, Resources

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to limited joint venture fish processing businesses and to liability for**
2 **the payment of the fisheries business tax; and providing for an effective date."**

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. The Alaska State Legislature finds that

7 (1) the number of salmon processors operating in Alaska is declining;

8 (2) ex-vessel salmon prices are declining to historically low levels and fishing
9 families are experiencing severe economic hardship;

10 (3) there is currently no license for intermediate-sized fish processing
11 operations between individual direct marketing operations and large processing plants and
12 catcher-processor vessels;

13 (4) the commercial salmon fishing fleet in Alaska is overcapitalized and
14 requires cost-effective means of safely processing and marketing its catch.

1 * **Sec. 2.** AS 16.05.050(a) is amended to read:

2 (a) The commissioner has, but not by way of limitation, the following powers
3 and duties:

4 (1) to assist the United States Fish and Wildlife Service in the
5 enforcement of federal laws and regulations pertaining to fish and game;

6 (2) through the appropriate state agency and under the provisions of
7 AS 36.30 (State Procurement Code), to acquire by gift, purchase, or lease, or other
8 lawful means, land, buildings, water, rights-of-way, or other necessary or proper real
9 or personal property when the acquisition is in the interest of furthering an objective or
10 purpose of the department and the state;

11 (3) under the provisions of AS 36.30, to design and construct
12 hatcheries, pipelines, rearing ponds, fishways, and other projects beneficial for the fish
13 and game resources of the state;

14 (4) to accept money from any person under conditions requiring the
15 use of the money for specific purposes in the furtherance of the protection,
16 rehabilitation, propagation, preservation, or investigation of the fish and game
17 resources of the state or in settlement of claims for damages to fish or game resources;

18 (5) to collect, classify, and disseminate statistics, data and information
19 that, in the commissioner's discretion, will tend to promote the purposes of this title
20 except AS 16.51 and AS 16.52;

21 (6) to take, capture, propagate, transport, buy, sell, or exchange fish or
22 game or eggs for propagating, scientific, public safety, or stocking purposes;

23 (7) under the provisions of AS 36.30, to provide public facilities where
24 necessary or proper to facilitate the taking of fish or game, and to enter into
25 cooperative agreements with any person to effect them;

26 (8) to exercise administrative, budgeting, and fiscal powers;

27 (9) under the provisions of AS 36.30, to construct, operate, supervise,
28 and maintain vessels used by the department;

29 (10) to authorize the holder of an interim-use permit under AS 16.43 to
30 engage on an experimental basis in commercial taking of a fishery resource with
31 vessel, gear, and techniques not presently qualifying for licensing under this chapter in

1 conformity with standards established by the Alaska Commercial Fisheries Entry
2 Commission;

3 (11) not later than January 31 of each year, to provide to the
4 commissioner of revenue the names of those fish and shellfish species that the
5 commissioner of fish and game designates as developing commercial fish species for
6 that calendar year; a fish or shellfish species is a developing commercial fish species
7 if, within a specified geographical region,

8 (A) the optimum yield from the harvest of the species has not
9 been reached;

10 (B) a substantial portion of the allowable harvest of the species
11 has been allocated to fishing vessels of a foreign nation; or

12 (C) a commercial harvest of the fish species has recently
13 developed;

14 (12) to initiate or conduct research necessary or advisable to carry out
15 the purposes of this title except AS 16.51 and AS 16.52;

16 (13) to enter into cooperative agreements with agencies of the federal
17 government, educational institutions, or other agencies or organizations, when in the
18 public interest, to carry out the purposes of this title except AS 16.51 and AS 16.52;

19 (14) to implement an on-board observer program authorized by the
20 Board of Fisheries under AS 16.05.251(a)(13); implementation

21 (A) must be as unintrusive to vessel operations as practicable;

22 and

23 (B) must make scheduling and scope of observers' activities as
24 predictable as practicable;

25 (15) to sell fish caught during commercial fisheries test fishing
26 operations;

27 (16) to establish and charge fees equal to the cost of services provided
28 by the department, including provision of public shooting ranges, broodstock and eggs
29 for private nonprofit hatcheries, department publications, and other direct services, and
30 reasonable fees for the use of state facilities managed by the department; fees
31 established under this paragraph for tours of hatchery facilities, commercial use of

1 sport fishing access sites, and for operation of state hatchery facilities by private
2 aquaculture associations are not subject to the cost limit under AS 37.10.050(a);

3 (17) to permit and regulate aquatic farming in the state in a manner
4 that ensures the protection of the state's fish and game resources and improves the
5 economy, health, and well-being of the citizens of the state;

6 (18) to operate state housing and facilities for employees, contractors,
7 and others in support of the department's responsibilities and to charge rent that is
8 consistent with applicable collective bargaining agreements, or, if no collective
9 bargaining agreement is applicable, competitive with market conditions; rent received
10 from tenants shall be deposited in the general fund;

11 (19) to petition the Alaska Commercial Fisheries Entry Commission,
12 unless the Board of Fisheries disapproves the petition under AS 16.05.251(g), to
13 establish a moratorium on new entrants into commercial fisheries

14 (A) that have experienced recent increases in fishing effort that
15 are beyond a low, sporadic level of effort;

16 (B) that have achieved a level of harvest that may be
17 approaching or exceeding the maximum sustainable level for the fishery; and

18 (C) for which there is insufficient biological and resource
19 management information necessary to promote the conservation and sustained
20 yield management of the fishery;

21 **(20) not later than December 1 of each year, to provide to the**
22 **commissioner of revenue the names of those fish and shellfish species that the**
23 **commissioner of fish and game designates as species that may be caught and**
24 **processed by limited joint venture fish processing businesses during the next**
25 **calendar year.**

26 * **Sec. 3.** AS 43.75.015(c) is amended to read:

27 (c) A person engaging or attempting to engage in a fisheries business who first
28 actually and physically processes the fishery resource, or a person who purchases a
29 fishery resource that is **processed** [FROZEN] from a person excluded by
30 AS 43.75.017 from liability for the tax, is liable for and shall pay to the department the
31 entire tax imposed by this section. In determining this tax liability, the person may

1 deduct from the value of the fishery resources processed the value of fishery resources
 2 that are canned or processed for other fisheries businesses. A person taking the
 3 deduction authorized by this subsection shall report all information relating to the
 4 deduction in accordance with regulations adopted by the department.

5 * **Sec. 4.** AS 43.75.015 is amended by adding a new subsection to read:

6 (d) Instead of the taxes levied under (a) or (b) of this section, a person who
 7 processes a fishery resource under a limited joint venture fisheries business license is
 8 liable for and shall pay a tax equal to

9 (1) three percent of the value of the developing commercial fish
 10 species processed during the year; and

11 (2) five percent of the value of a commercial fish species not subject to
 12 (1) of this subsection.

13 * **Sec. 5.** AS 43.75.017 is amended to read:

14 **Sec. 43.75.017. Exclusion from fisheries business tax.** A person is not liable
 15 for the fisheries business tax under AS 43.75.015 when the fishery resource is
 16 **processed** [FROZEN] aboard

17 **(1)** a fishing vessel if

18 **(A)** [(1)] the vessel is operated as a commercial fishing vessel
 19 under a valid commercial fishing license;

20 **(B)** [(2)] the fishery resource is not processed beyond heading,
 21 gutting or cleaning, freezing, and glazing;

22 **(C)** [(3)] the fishery resource was caught by the vessel; and

23 **(D)** [(4)] the fishery resource is sold [BY THE PERSON
 24 CLAIMING AN EXCLUSION FROM THE TAX] to a fisheries business
 25 licensed under **AS 43.75.020(a); or**

26 **(2) a vessel owned or leased by a member of a limited joint venture**
 27 **fish processing business licensed under AS 43.75.020(c) if the fishery resource**
 28 **was**

29 **(A) caught in the fishery in which the business operates;**

30 **and**

31 **(B) sold to a fisheries business licensed under**

1 AS 43.75.020(a) [THIS CHAPTER].

2 * **Sec. 6.** AS 43.75.020 is amended by adding a new subsection to read:

3 (c) Instead of a license issued under (a) of this section, the department may
4 issue an annual limited joint venture fisheries business license to a limited joint
5 venture fish processing business. A limited joint venture fisheries business license
6 authorizes a member of a limited joint venture fish processing business to process
7 fishery resources on a commercial fishing vessel, not exceeding 65 feet in overall
8 length, owned or leased by the member of the business if the fishery resources were
9 caught by that vessel or another vessel owned or leased by another member of the
10 business. Each member of a limited joint venture fish processing business who
11 engages in fishing must hold a commercial fishing permit issued under AS 16.43 for
12 the fishery in which the business operates. A member of a limited joint venture fish
13 processing business who engages only in processing of fish is not required to hold a
14 commercial fishing permit issued under AS 16.43. Each person who is a member of
15 the limited joint venture fish processing business, each commercial fishing vessel
16 operated by the limited joint venture fish processing business, and the fishery in which
17 the business operates shall be listed in the application for the license and on the license
18 issued by the department. Only a commercial fishing vessel listed on the license may
19 be operated by the business. The department may not authorize the substitution of
20 another vessel for a vessel listed on the license. The person who operates a vessel on
21 which a fishery resource is processed is responsible for compliance with applicable
22 Department of Environmental Conservation regulations governing seafood processing
23 and food handling in regard to that fishery resource and with applicable Department of
24 Fish and Game regulations relating to reporting by seafood processors and completing
25 fish tickets in regard to fishery resources that are sold to a buyer other than a fisheries
26 business licensed under AS 43.75.020(a). Each person who is a member of a limited
27 joint venture fish processing business is solely liable for the payment of taxes and
28 assessments due under this chapter, AS 16.51, and AS 43.76 on the fishery resources
29 that the person catches and either sells or exports from the state. A person may be a
30 member of only one limited joint venture fish processing business for each fishery in
31 which the person participates. A limited joint venture fish processing business may

1 not operate more than five commercial fishing vessels to either catch, process, or catch
2 and process fishery resources. In this subsection,

3 (1) "fishery" has the meaning given in AS 16.43.990;

4 (2) "fishery resource" means a fish or shellfish species designated by
5 the commissioner of fish and game as a species that may be caught and processed by a
6 limited joint venture fish processing business.

7 * **Sec. 7.** AS 43.75.290(7) is amended to read:

8 (7) "value" means

9 (A) **the market value of the fishery resource as determined**
10 **by the prevailing price paid to fishermen for the fishery resource of the**
11 **same kind and quality by fisheries businesses in the same region or**
12 **market area where the fishery resource was taken if the fishing resource**

13 **(i) was taken on a boat owned or leased by a person**
14 **who holds a limited joint venture fish processing business license**
15 **under AS 43.75.020(c); and**

16 **(ii) was sold to a buyer other than a fisheries**
17 **business licensed under AS 43.75.020(a);**

18 **(B) for fishery resources other than those described in (A)**
19 **or (C) of this paragraph,** the market value of the **fishery** [FISHERIES]
20 resource if the taking of the **fishery** [FISHERIES] resource is done in
21 company-owned or company-subsidized boats operated by employees of the
22 company or in boats that are operated under lease to or from the company or
23 other arrangement with the company and if the **fishery** [FISHERIES] resource
24 is delivered to the company; in this subparagraph, "company" means a
25 fisheries business, a subsidiary of a fisheries business, or a subsidiary of a
26 parent company of a fisheries business; **"company" does not include a**
27 **limited joint venture fish processing business licensed under**
28 **AS 43.75.020(c);** or

29 **(C) [(B)]** for **fishery** [FISHERIES] resources other than those
30 described in (A) **or (B)** of this paragraph, the actual price paid for the **fishery**
31 [FISHERIES] resource by the fisheries business to the fisherman, including

1 indirect consideration and bonus amounts paid for fuel, supplies, gear, ice,
 2 handling, tender fees, or delivery, whether paid at the time of purchase of the
 3 **fishery** [FISHERIES] resource or tendered as a deferred or delayed payment;
 4 in this subparagraph, "delivery" means

5 (i) transportation of the **fishery** [FISHERIES] resource
 6 from the boat or vessel on which the product was taken to a tender; or

7 (ii) if delivery was not to a tender, transportation of the
 8 **fishery** [FISHERIES] resource from the boat or vessel on which the
 9 product was taken to a shore-based facility in which delivery of the
 10 **fishery** [FISHERIES] resource is normally accepted.

11 * **Sec. 8.** AS 43.76.025(a) is amended to read:

12 (a) **Except as otherwise provided under (d) of this section, a** [A] buyer who
 13 acquires **fishery** [FISHERIES] resources that are subject to a salmon enhancement tax
 14 imposed by AS 43.76.010, 43.76.011, or 43.76.012 shall collect the salmon
 15 enhancement tax at the time of purchase, and shall remit the total salmon enhancement
 16 tax collected during each month to the **Department of Revenue** [DEPARTMENT] by
 17 the last day of the next month.

18 * **Sec. 9.** AS 43.76.025 is amended by adding a new subsection to read:

19 (d) A person who is a member of a limited joint venture fish processing
 20 business licensed under AS 43.75.020(c) is liable for the payment of a salmon
 21 enhancement tax imposed by AS 43.76.010, 43.76.011, or 43.76.012 and shall remit
 22 the amount of the tax due to the Department of Revenue if ownership of the salmon
 23 caught by the person and processed by the business is transferred to a buyer who is not
 24 a fisheries business licensed under AS 43.75.020(a). If a person is liable for payment
 25 and remittance of the salmon enhancement tax under this subsection, the person shall
 26 maintain records reflecting the region designated under AS 16.10.375 in which the
 27 salmon was caught and shall report the person's liability for payment and remittance of
 28 the tax before April 1 after close of the calendar year. The person shall remit the total
 29 salmon enhancement tax due under this subsection during the calendar year to the
 30 department before April 1 after close of the calendar year.

31 * **Sec. 10.** AS 43.76.120(a) is amended to read:

1 (a) **Except as otherwise provided under (e) of this section, a** [A] buyer who
 2 acquires salmon that is subject to a salmon marketing tax imposed by AS 43.76.110
 3 shall collect the salmon marketing tax at the time of purchase and shall remit the total
 4 salmon marketing tax collected during each month to the Department of Revenue by
 5 the last day of the next month.

6 * **Sec. 11.** AS 43.76.120 is amended by adding a new subsection to read:

7 (e) A person who is a member of a limited joint venture fish processing
 8 business licensed under AS 43.75.020(c) is liable for the payment of a salmon
 9 marketing tax imposed by AS 43.76.110 and shall remit the amount of the tax due to
 10 the Department of Revenue if ownership of the salmon caught by the person and
 11 processed by the business is transferred to a buyer who is not a fisheries business
 12 licensed under AS 43.75.020(a). If a person is liable for payment and remittance of
 13 the salmon marketing tax under this subsection, the person shall maintain records of
 14 the value of salmon caught by the person and processed by the business on which the
 15 tax is due under this subsection and shall make reports to the department before
 16 April 1 after close of the calendar year. The person shall remit the total salmon
 17 marketing tax due under this subsection during the calendar year to the department
 18 before April 1 after close of the calendar year.

19 * **Sec. 12.** AS 43.76.190(a) is amended to read:

20 (a) **Except as otherwise provided under (e) of this section, a** [A] buyer who
 21 acquires a fishery resource that is subject to a dive fishery management assessment
 22 levied under AS 43.76.150(b), (c), (d), or (e) shall collect the dive fishery management
 23 assessment at the time of purchase and shall remit the total dive fishery management
 24 assessment collected during each calendar quarter to the Department of Revenue by
 25 the last day of the month following the end of the calendar quarter. In this subsection,
 26 "calendar quarter" means each of the three-month periods ending March 31, June 30,
 27 September 30, and December 31.

28 * **Sec. 13.** AS 43.76.190 is amended by adding a new subsection to read:

29 (e) A person who is a member of a limited joint venture fish processing
 30 business licensed under AS 43.75.020(c) is liable for payment of the dive fishery
 31 management assessment levied under AS 43.76.150(b), (c), (d), or (e) and shall remit

1 the amount of the assessment due to the Department of Revenue if ownership of the
 2 fishery resource caught by the person and processed by the business is transferred to a
 3 buyer who is not a fisheries business licensed under AS 43.75.020(a). If a person is
 4 liable for payment and remittance of the dive fishery management assessment under
 5 this subsection, the person shall maintain records of the value of each species of
 6 fishery resources harvested by the person and processed by the business on which the
 7 assessment is due under this subsection. The person shall remit the total dive fishery
 8 management assessment due under this subsection during the calendar year to the
 9 department before April 1 after close of the calendar year.

10 * **Sec. 14.** AS 43.76.260(a) is amended to read:

11 (a) **Except as otherwise provided under (f) of this section, a** [A] buyer who
 12 acquires salmon that is subject to a salmon fishery assessment levied under
 13 AS 43.76.220 shall collect the salmon fishery assessment at the time of purchase and
 14 shall remit the total salmon fishery assessment collected during each month to the
 15 **Department of Revenue** [DEPARTMENT] by the last day of the next month.

16 * **Sec. 15.** AS 43.76.260 is amended by adding a new subsection to read:

17 (f) A person who is a member of a limited joint venture fish processing
 18 business licensed under AS 43.75.020(c) is liable for the payment of a salmon fishery
 19 assessment levied under AS 43.76.220 and shall remit the amount of the assessment
 20 due to the Department of Revenue if ownership of the salmon caught by the person
 21 and processed by the business is transferred to a buyer who is not a fisheries business
 22 licensed under AS 43.75.020(a). If a person is liable for payment and remittance of
 23 the salmon fishery assessment under this subsection, the person shall maintain records
 24 of the value of salmon caught by the person and processed by the business that is
 25 subject to the assessment under this subsection. The person shall remit the total
 26 salmon fishery assessment due under this subsection during the calendar year to the
 27 department before April 1 after close of the calendar year.

28 * **Sec. 16.** AS 43.76.310(a) is amended to read:

29 (a) **Except as otherwise provided under (f) of this section, a** [A] buyer who
 30 acquires fish that are subject to a permit buy-back assessment imposed by
 31 AS 43.76.300 shall collect the permit buy-back assessment at the time of purchase and

1 shall remit the total permit buy-back assessment collected during each month to the
 2 **Department of Revenue** [DEPARTMENT] by the last day of the next month.

3 * **Sec. 17.** AS 43.76.310 is amended by adding a new subsection to read:

4 (f) A person who is a member of a limited joint venture fish processing
 5 business licensed under AS 43.75.020(c) is liable for the payment of a permit buy-
 6 back assessment imposed by AS 43.76.300 and shall remit the amount of the
 7 assessment due to the Department of Revenue if ownership of the fish caught by the
 8 person and processed by the business is transferred to a buyer who is not a fisheries
 9 business licensed under AS 43.75.020(a). If a person is liable for payment and
 10 remittance of the permit buy-back assessment under this subsection, the person shall
 11 maintain records of the value of fish caught by the person and processed by the
 12 business during a calendar year that are subject to this subsection and shall make
 13 reports to the department before April 1, after close of the calendar year. The person
 14 shall remit the total permit buy-back assessment due under this subsection during the
 15 calendar year to the department before April 1 after close of the calendar year.

16 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
 17 read:

18 **ADOPTION OF REGULATIONS.** (a) The Department of Revenue shall adopt
 19 regulations the department considers necessary for the administration of secs. 3 - 17 of this
 20 Act, but the regulations may not take effect until January 1, 2005.

21 (b) The commissioner of fish and game shall adopt regulations the commissioner
 22 considers necessary for the implementation of AS 16.05.050(a), as amended by sec. 2 of this
 23 Act, but the regulations may not take effect until January 1, 2005.

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

25 * **Sec. 20.** Except as provided under sec. 19 of this Act, this Act takes effect January 1,
 26 2005.