

SENATE BILL NO. 347

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY SENATOR BEN STEVENS BY REQUEST

Introduced: 2/16/04
Referred: Resources

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to moratoria on entry of new participants or vessels into a commercial**
2 **fishery; relating to the establishment of a moratorium on entry of new vessels into state**
3 **groundfish fisheries in the Gulf of Alaska and adjacent state marine water; and**
4 **providing for an effective date."**

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

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

8 FINDINGS AND PURPOSE IN REGARD TO A MORATORIUM ON ENTRY OF
9 NEW VESSELS INTO STATE GROUND FISH FISHERIES IN THE GULF OF ALASKA.

10 (a) The Alaska State Legislature finds that

11 (1) the North Pacific Fishery Management Council has undertaken an analysis
12 of the Gulf of Alaska groundfish fisheries in the United States exclusive economic zone off
13 Alaska and has begun consideration of action that may result in significant restrictions on the
14 number of fishermen and vessels that may participate in those fisheries;

1 (2) restricting participation in the federal Gulf of Alaska groundfish fisheries
2 will probably result in a shift of fishermen and fishing vessels into the groundfish fisheries in
3 the water of the State of Alaska;

4 (3) an influx of a significant number of fishermen and fishing vessels into the
5 state groundfish fisheries could result in overcapitalization and overutilization of the
6 groundfish fisheries in state water;

7 (4) the state must maintain control of the growth of the groundfish fishery in
8 state water pending the completion of the study being undertaken by the North Pacific Fishery
9 Management Council and pending a study by the Alaska Commercial Fisheries Entry
10 Commission and the Department of Fish and Game in order to address growth of the state
11 groundfish fishery and whether limits on participation by fishermen or fishing vessels is
12 appropriate to facilitate the development, conservation, and utilization of the groundfish
13 fisheries of the state;

14 (5) a moratorium on entry of new commercial fishing vessels into the state
15 groundfish fisheries of the Gulf of Alaska is necessary to prevent overcapitalization and
16 overutilization of state groundfish fisheries pending the completion of the studies by the North
17 Pacific Fishery Management Council and the Alaska Commercial Fisheries Entry
18 Commission and the Department of Fish and Game.

19 (b) The purpose of this Act is to provide for the establishment of a temporary
20 moratorium on entry of new vessels into the state groundfish fisheries of the Gulf of Alaska
21 and adjacent state marine water in order to

22 (1) promote conservation of the groundfish fishery resource and prevent
23 economic distress among groundfish fishermen and those dependent upon them for a
24 livelihood;

25 (2) provide an opportunity for the state to anticipate and plan for the
26 consequences of federal management of the groundfish fisheries of the United States
27 exclusive economic zone off Alaska;

28 (3) minimize hardship on fishermen by grandfathering those vessels that meet
29 eligibility criteria while effectively limiting the growth of the state groundfish fishery during
30 the period of the temporary moratorium.

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

1 (a) The commission may establish a moratorium on entry of new persons or
 2 vessels, or both, into a commercial fishery if the commission finds that the moratorium
 3 is necessary

4 (1) to promote the conservation and sustained yield management of the
 5 fishery resource and the economic health and stability of the commercial fishery; and

6 (2) either

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

10 (B) to allow the Department of Fish and Game or the Board of
 11 Fisheries to open a commercial fishery that would otherwise remain closed to
 12 protect a fishery resource from overexploitation resulting from unrestricted
 13 access to the fishery.

14 * **Sec. 3.** AS 16.43.225(b) is repealed and reenacted to read:

15 (b) The commission may establish a moratorium in one or more fisheries or
 16 for one or more fishery resources, gear types, or administrative areas within a fishery.

17 * **Sec. 4.** AS 16.43.225(c) is amended to read:

18 (c) The commission may establish a moratorium under this section for a
 19 continuous period of up to four years. **The commission may extend the period of a**
 20 **moratorium for a continuous period of not more than two years if necessary to**
 21 **achieve a purpose described under (a) of this section.** A fishery that has been
 22 subject to a moratorium under this section may not be subjected to a subsequent
 23 moratorium under this section unless five years have elapsed since the previous
 24 moratorium expired.

25 * **Sec. 5.** AS 16.43.225(d) is amended to read:

26 (d) While a moratorium is in effect, the commission shall **study and evaluate**
 27 **alternatives for management of entry into the fishery under this chapter**
 28 [CONDUCT INVESTIGATIONS TO DETERMINE WHETHER A MAXIMUM
 29 NUMBER OF ENTRY PERMITS SHOULD BE ESTABLISHED UNDER
 30 AS 16.43.240] by

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

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

3 (3) consulting with participants in the fishery.

4 * **Sec. 6.** AS 16.43.225(e) is amended to read:

5 (e) The commission shall establish by regulation **a qualification date and**
6 **eligibility criteria** [THE QUALIFICATIONS] for applicants for an interim-use
7 permit, **vessel interim-use permit, or both** for a fishery subject to a moratorium
8 under this section. The **eligibility criteria for an interim-use permit or vessel**
9 **interim-use permit for a fishery subject to a moratorium under this section**
10 [QUALIFICATIONS] must include the minimum requirements for past or present
11 participation and harvest in the fishery **as of the qualification date established by**
12 **the commission. The commission shall issue**

13 **(1) an interim-use permit to a person who satisfies the eligibility**
14 **criteria established under this subsection;**

15 **(2) a vessel interim-use permit to a person or entity who was the**
16 **owner, as of the qualification date established under this subsection, of a vessel**
17 **that satisfies the eligibility criteria established under this subsection for a vessel**
18 **interim-use permit for the fishery** [THE COMMISSION MAY NOT ISSUE AN
19 INTERIM-USE PERMIT FOR A FISHERY SUBJECT TO A MORATORIUM
20 UNDER THIS SECTION UNLESS THE APPLICANT CAN SATISFY THE
21 QUALIFICATIONS ESTABLISHED UNDER THIS SUBSECTION AND
22 ESTABLISH THE PRESENT ABILITY AND INTENT TO PARTICIPATE
23 ACTIVELY IN THE FISHERY].

24 * **Sec. 7.** AS 16.43.225 is amended by adding new subsections to read:

25 (f) If the commission establishes a moratorium under this section for a fishery
26 that involves more than one fishery resource, type of gear, or administrative area, the
27 commission may limit, as the commission determines appropriate, the fishery
28 resources that may be harvested, the types of gear that may be used, and the areas
29 where fishing may occur under an interim-use permit or a vessel interim-use permit
30 issued for the fishery. The commission shall adopt criteria, as appropriate, for
31 determining how

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

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

5 (g) If the commission establishes a moratorium on entry of new vessels into a
6 fishery, the commission may regulate the fishing capacity that a vessel may employ
7 under the vessel interim-use permit issued for the vessel. The commission shall, as
8 appropriate, adopt criteria for determining how restrictions on vessel fishing capacity
9 are established for vessel interim-use permits. The criteria may be based on past
10 participation in the fishery. The commission may define fishing capacity in terms of
11 quantity of fishing gear, fishing vessel size, or other characteristics determined by the
12 commission to affect the fishing capacity of vessels employed in the fishery.

13 (h) A vessel interim-use permit issued under this section

14 (1) constitutes a use privilege that may be modified or revoked by law
15 without compensation;

16 (2) may not be

17 (A) transferred to another person or entity;

18 (B) pledged, mortgaged, leased, or encumbered in any way;

19 (C) attached, distrained, or sold on execution of judgment or
20 under any other process or order of any court;

21 (3) does not alter the requirement for an interim-use permit under
22 AS 16.43.140 or a vessel license under AS 16.05.490 - 16.05.520.

23 (i) The commission shall establish fees for the issuance and annual renewal of
24 vessel interim-use permits issued under this section. The fee for the vessel interim-use
25 permit must reasonably reflect the rate of economic return for the fishery.

26 (j) The commission may adopt regulations providing for the substitution of
27 another vessel for the vessel that is identified on a vessel interim-use permit if the
28 vessel for which the vessel interim-use permit was originally issued under this section
29 is sunk, destroyed, or damaged to the extent that the vessel is unable to operate in the
30 fishery for which the permit is issued.

31 (k) Unless otherwise provided by law or by a regulation adopted by the

1 commission, the commission may not consider participation in a fishery by a person or
 2 vessel that occurs during the period of the moratorium in determining eligibility for
 3 fishing privileges under a subsequent limitation on entry or participation in the fishery.

4 (l) Unless the application of a provision of this chapter to an interim-use
 5 permit issued under this section conflicts with this section or the purpose of this
 6 section, an interim-use permit issued under this section is subject to all provisions of
 7 this chapter governing interim-use permits.

8 (m) Nothing in this section limits the powers of the Board of Fisheries or the
 9 Department of Fish and Game.

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

14 * **Sec. 8.** 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 under AS 16.43.225,
 17 **the commission shall establish a qualification date to be used to determine the**
 18 **priority classification among applicants. Each** [AN] applicant for an entry permit
 19 for the fishery shall be assigned to a priority classification based [SOLELY] upon the
 20 applicant's qualifications as of the **qualification** [EFFECTIVE] date **established**
 21 **under AS 16.43.225** [OF THE STATUTE OR REGULATION ESTABLISHING
 22 THE MORATORIUM].

23 * **Sec. 9.** AS 16.43 is amended by adding a new section to read:

24 **Sec. 16.43.908. Vessel permits for Gulf of Alaska groundfish fisheries.** (a)
 25 Notwithstanding AS 16.43.225, the commission shall issue annual vessel permits for
 26 commercial fishing vessels used in the Gulf of Alaska groundfish fisheries under this
 27 section. The commission shall issue vessel permits to a vessel upon application by the
 28 vessel owner. The commission shall issue separate vessel permits for each fishery.
 29 The Gulf of Alaska groundfish fisheries are

- 30 (1) Eastern Gulf of Alaska groundfish bottom trawl fishery;
 31 (2) Eastern Gulf of Alaska groundfish mid-water trawl fishery;

- 1 (3) Eastern Gulf of Alaska groundfish longline fishery;
- 2 (4) Eastern Gulf of Alaska groundfish pot fishery;
- 3 (5) Prince William Sound groundfish bottom trawl fishery;
- 4 (6) Prince William Sound groundfish mid-water trawl fishery;
- 5 (7) Prince William Sound groundfish longline fishery;
- 6 (8) Prince William Sound groundfish pot fishery;
- 7 (9) Cook Inlet groundfish bottom trawl fishery;
- 8 (10) Cook Inlet groundfish mid-water trawl fishery;
- 9 (11) Cook Inlet groundfish longline fishery;
- 10 (12) Cook Inlet groundfish pot fishery;
- 11 (13) Kodiak groundfish bottom trawl fishery;
- 12 (14) Kodiak groundfish mid-water trawl fishery;
- 13 (15) Kodiak groundfish longline fishery;
- 14 (16) Kodiak groundfish pot fishery;
- 15 (17) Chignik groundfish bottom trawl fishery;
- 16 (18) Chignik groundfish mid-water trawl fishery;
- 17 (19) Chignik groundfish longline fishery;
- 18 (20) Chignik groundfish pot fishery;
- 19 (21) South Alaska Peninsula groundfish bottom trawl fishery;
- 20 (22) South Alaska Peninsula groundfish mid-water trawl fishery;
- 21 (23) South Alaska Peninsula groundfish longline fishery;
- 22 (24) South Alaska Peninsula groundfish pot fishery.

23 (b) A vessel permit is a use privilege authorizing the vessel to engage in a
 24 specific groundfish fishery. A vessel permit must describe the fishery resource, the
 25 type of gear, and the area for which the vessel permit is issued. The use privilege
 26 conveyed by a vessel permit may be modified or revoked by the legislature without
 27 compensation.

28 (c) On or after January 1, 2005, a commercial fishing vessel may not use
 29 bottom trawl, mid-water trawl, longline, or pot gear to take groundfish in a fishery in
 30 the state water of the Gulf of Alaska and the adjacent state marine water unless a
 31 vessel permit for that fishery has been issued for the vessel under this section. This

1 subsection does not prohibit the use of a commercial fishing vessel to take groundfish
2 using gear other than bottom trawl, mid-water trawl, longline, or pot gear, if the taking
3 and retention of the groundfish is permitted under regulations adopted by the Board of
4 Fisheries.

5 (d) The commission may not issue a vessel permit under this section to a
6 commercial fishing vessel for a Gulf of Alaska groundfish fishery for the period
7 January 1, 2005, through December 31, 2007, inclusive, unless the vessel has, on or
8 after January 1, 1998, and before the effective date of this Act, made a documented
9 landing of groundfish in the fishery for which the permit is to be issued. The
10 commission may by regulation extend the moratorium on entry of new vessels into the
11 Gulf of Alaska groundfish fisheries established under this section for a maximum
12 period of two years until January 1, 2010, if the commission finds that the extension of
13 the moratorium is necessary to achieve the purposes set out in sec. 1 of this Act.

14 (e) Participation of a person or a vessel in a Gulf of Alaska groundfish fishery
15 on or after the effective date of this Act may not be used to establish eligibility for a
16 use privilege for a groundfish fishery that may be issued after the termination of the
17 moratorium authorized under this section.

18 (f) Subsections (d) - (e) of this section may be superseded by regulations
19 adopted by the commission under subsequent legislation enacted by the legislature
20 authorizing the regulations.

21 (g) If a commercial fishing vessel that qualifies for a vessel permit under this
22 section or that is issued a vessel permit under this section is sunk, destroyed, or
23 damaged, to the extent that the vessel is inoperable for a Gulf of Alaska groundfish
24 fishing season, the commission may, upon the request of the owner of the vessel,
25 reissue the vessel permit to another commercial fishing vessel with an overall length
26 and horsepower rating that does not exceed the overall length and horsepower rating
27 of the vessel that was sunk, destroyed, or damaged.

28 (h) A vessel permit is valid for the calendar year that is inscribed on the
29 license. The annual fee for a vessel permit is

- 30 (1) \$650 for a vessel used in a bottom trawl or mid-water trawl fishery;
31 (2) \$450 for a vessel used in a longline fishery;

1 (3) \$250 for a vessel used in a pot fishery.

2 (i) During the moratorium established by this section, the commission shall, in
3 cooperation with the Department of Fish and Game, conduct investigations to
4 determine appropriate alternatives for management of entry into Gulf of Alaska
5 groundfish fisheries in the state. The commission shall submit proposals to the
6 legislature for legislation or constitutional amendments necessary to implement the
7 recommendations of the commission.

8 (j) The commission may adopt regulations that the commission considers
9 necessary to implement this section.

10 (k) This section does not apply to a vessel used in the Prince William Sound
11 sablefish fishery, northern Southeast Inside sablefish fishery, or the southern Southeast
12 Inside sablefish fishery.

13 (l) In this section,

14 (1) "Chignik" means the marine water of the Chignik groundfish
15 fishery registration area, as defined by the Board of Fisheries;

16 (2) "Cook Inlet" means the marine water of the Cook Inlet groundfish
17 fishery registration area, as defined by the Board of Fisheries;

18 (3) "Eastern Gulf of Alaska" means the marine water of the Eastern
19 Gulf of Alaska groundfish fishery registration area, as defined by the Board of
20 Fisheries;

21 (4) "groundfish" means a species of marine finfish other than halibut,
22 osmerids, herring, or salmonids;

23 (5) "Gulf of Alaska" means the marine water of the state adjacent to
24 the Gulf of Alaska that is north and west of Dixon Entrance to the westward extent of
25 state water of the Aleutian Islands;

26 (6) "Gulf of Alaska groundfish fishery" means a fishery in which
27 groundfish are taken in a specified administrative or registration area using a specified
28 type of fishing gear that is either bottom trawl, mid-water trawl, pot, or longline gear;

29 (7) "Kodiak" means the marine water of the Kodiak groundfish fishery
30 registration area, as defined by the Board of Fisheries;

31 (8) "landed" means the act of offloading for sale, or for transport to a

1 buyer for later sale, or catching and processing of groundfish taken in a groundfish
 2 fishery in state water for sale as evidenced by a Department of Fish and Game fish
 3 ticket;

4 (9) "Prince William Sound" means the marine water of the Prince
 5 William Sound groundfish fishery registration area, as defined by the Board of
 6 Fisheries;

7 (10) "South Alaska Peninsula" means the marine water of the South
 8 Alaska Peninsula groundfish fishery registration area, as defined by the Board of
 9 Fisheries.

10 * **Sec. 10.** AS 16.43.911(c) is amended to read:

11 (c) Notwithstanding AS 16.05.815 and AS 16.43.975, the commission may
 12 release to the owner of a vessel information on the vessel's history of harvests in a
 13 fishery that is necessary to apply for a vessel permit under **AS 16.43.901 - 16.43.908**
 14 [AS 16.43.901 - 16.43.906].

15 * **Sec. 11.** The uncodified law of the State of Alaska enacted in sec. 6, ch. 97, SLA 1997, as
 16 amended by sec. 6, ch. 30, SLA 2000, is amended to read:

17 Sec. 6. AS 16.43.906, added by sec. 3 of this Act, **is** [AND AS 16.43.911
 18 ARE] repealed July 1, 2004.

19 * **Sec. 12.** AS 16.05.050(a)(19), 16.05.251(g), AS 16.43.227, and 16.43.228 are repealed.

20 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
 21 read:

22 CONTINGENT RETROSPECTIVITY. If this Act does not take effect before July 1,
 23 2004, secs. 10 - 11 of this Act are retrospective to June 30, 2004.

24 * **Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).