

CS FOR SENATE BILL NO. 347(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 3/8/04

Referred: Finance

Sponsor(s): SENATOR BEN STEVENS BY REQUEST

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 vessel permits for, and the establishment of a moratorium on entry of**
3 **new vessels into, state Gulf of Alaska groundfish fisheries; and providing for an effective**
4 **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 WITH REGARD TO A MORATORIUM ON ENTRY
9 OF NEW VESSELS INTO STATE GULF OF ALASKA GROUND FISH FISHERIES. (a)

10 The Alaska State Legislature finds that

11 (1) the goal of the state is to

12 (A) protect, maintain, and improve the fishery resources of the state,

13 and manage the use and development of those fishery resources in the best interest of

14 the economy and the well-being of the people of the state, consistent with the

1 sustained yield principle; and

2 (B) promote the conservation and sustained yield management of
3 Alaska fishery resources and the economic health and stability of commercial fishing
4 in the state by regulating and controlling entry of participants and vessels into
5 commercial fisheries in the public interest and without unjust discrimination;

6 (2) the North Pacific Fishery Management Council has undertaken an analysis
7 of the Gulf of Alaska groundfish fisheries in the United States exclusive economic zone off
8 Alaska and has begun consideration of action that may result in significant reductions in the
9 number of fishermen and vessels that may participate in those fisheries;

10 (3) in order to adequately protect state groundfish fishery resources of the Gulf
11 of Alaska and to protect those dependent upon the groundfish fisheries from economic
12 distress, management measures must be considered that will mitigate effects from the
13 pressures that will result from rationalization in the federal groundfish fisheries adjacent to
14 state groundfish fisheries;

15 (4) a timely, temporary moratorium on effort in the state-managed groundfish
16 fisheries west of Cape Suckling will control growth during development of a long-term plan
17 for the management of state Gulf of Alaska groundfish fisheries.

18 (b) The purposes of the moratorium on entry of new vessels into the state Gulf of
19 Alaska groundfish fisheries established by this Act are to

20 (1) immediately impose a moratorium on entry of new vessels into the state
21 Gulf of Alaska groundfish fisheries west of Cape Suckling to temporarily protect Alaska
22 fisheries, fishermen, and those dependent on them for a livelihood from potential adverse
23 consequences of action the North Pacific Fishery Management Council is expected to take to
24 reduce participation in the Gulf of Alaska groundfish fisheries in the United States exclusive
25 economic zone off Alaska, while avoiding unnecessary restrictions on entry to Alaska
26 commercial fisheries;

27 (2) require, during the state Gulf of Alaska groundfish fishery vessel
28 moratorium in state water, study of whether permanent limitation on entry into these
29 groundfish fisheries is necessary and, if so, whether statutory changes are necessary in order
30 to implement an effective limited access program in those groundfish fisheries; and

31 (3) provide time to pursue statutory or regulatory changes necessary to

1 provide for the long-term management of Alaska groundfish fisheries.

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

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

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

8 (2) either

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

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

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

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

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

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

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

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

1 AS 16.43.240] by

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

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

5 (3) consulting with participants in the fishery.

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

7 (e) The commission shall establish by regulation **a qualification date and**
8 **eligibility criteria** [THE QUALIFICATIONS] for applicants for an interim-use
9 permit, **vessel permit, or both** for a fishery subject to a moratorium under this section.

10 The **eligibility criteria for an interim-use permit or vessel permit for a fishery**
11 **subject to a moratorium under this section** [QUALIFICATIONS] must include the
12 minimum requirements for past or present participation and harvest in the fishery **as of**
13 **the qualification date established by the commission. The commission shall issue**

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

16 **(2) a vessel permit to a person or entity who, as of the qualification**
17 **date of application owns a vessel that satisfies the eligibility criteria established**
18 **under this subsection for a vessel permit for the fishery** [THE COMMISSION
19 MAY NOT ISSUE AN INTERIM-USE PERMIT FOR A FISHERY SUBJECT TO A
20 MORATORIUM UNDER THIS SECTION UNLESS THE APPLICANT CAN
21 SATISFY THE QUALIFICATIONS ESTABLISHED UNDER THIS SUBSECTION
22 AND 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 species of
28 fishery resource that may be harvested, the types of gear that may be used, and the
29 areas where fishing may occur under an interim-use permit or a vessel permit issued
30 for the fishery. The commission shall adopt criteria, as appropriate, for determining
31 how

1 (1) restrictions on fishery resources, types of gear, and areas fished are
2 established for individual interim-use permits and vessel 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 permit issued for the vessel. The commission shall, as appropriate,
8 adopt criteria for determining how restrictions on vessel fishing capacity are
9 established for vessel permits. The criteria may be based on past participation in the
10 fishery. The commission may define fishing capacity in terms of quantity of fishing
11 gear, fishing vessel size, or other characteristics determined by the commission to
12 affect the fishing capacity of vessels employed in the fishery.

13 (h) A vessel 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 vessel, person, or entity, except as
18 provided under (j) of this section;

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

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

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

24 (i) The commission shall establish fees for the issuance and annual renewal of
25 vessel permits issued under this section. The annual fee for the vessel permit must
26 reasonably reflect the rate of economic return for the fishery and may not exceed
27 \$1,000.

28 (j) The commission may, in the regulations establishing a moratorium under
29 this section, provide for

30 (1) the substitution of another vessel for the vessel that is identified on
31 a vessel permit if the vessel for which the vessel permit was originally issued is sunk,

1 destroyed, or damaged to the extent that the vessel is unable to operate in the fishery
2 for which the permit is issued;

3 (2) a vessel permit to be reissued to the new owner of a vessel that is
4 identified on the vessel permit if the ownership of the vessel changes during the
5 moratorium;

6 (3) the substitution of a shorter vessel for the vessel identified on a
7 vessel permit if

8 (A) the Board of Fisheries has adopted a vessel size restriction
9 that prohibits the use of the vessel identified on the vessel permit in the fishery
10 for which the vessel permit was issued;

11 (B) the substitute vessel complies with the vessel size
12 restrictions adopted by the Board of Fisheries for the fishery for which the
13 vessel permit was issued; and

14 (C) the substitute vessel is owned by the person or entity that
15 owned the vessel identified on the vessel permit.

16 (k) Unless otherwise provided by law or by a regulation adopted by the
17 commission, the commission may not consider participation in a fishery by a person or
18 vessel that occurs during the period of the moratorium in determining eligibility for
19 fishing privileges under a subsequent limitation on entry or participation in the fishery.

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

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

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

29 * **Sec. 8.** AS 16.43.260(f) is amended to read:

30 (f) When the commission establishes the maximum number of entry permits
31 under AS 16.43.240 for a fishery that is subject to a moratorium under AS 16.43.225,

1 **the commission shall establish a qualification date to be used to determine the**
 2 **priority classification among applicants. Each** [AN] applicant for an entry permit
 3 for the fishery shall be assigned to a priority classification based [SOLELY] upon the
 4 applicant's qualifications as of the **qualification** [EFFECTIVE] date **established**
 5 **under this subsection** [OF THE STATUTE OR REGULATION ESTABLISHING
 6 THE MORATORIUM].

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

8 **Sec. 16.43.908. Vessel permits for Gulf of Alaska groundfish fisheries. (a)**

9 The commission shall issue annual vessel permits under this section for commercial
 10 fishing vessels used on or after January 1, 2005, in the state Gulf of Alaska groundfish
 11 fisheries. The commission shall issue vessel permits to a vessel upon application by
 12 the vessel owner. The commission shall issue a separate vessel permit for each
 13 fishery. The Gulf of Alaska groundfish fisheries are

- 14 (1) Prince William Sound groundfish non-pelagic trawl fishery;
- 15 (2) Prince William Sound groundfish pelagic trawl fishery;
- 16 (3) Prince William Sound groundfish longline fishery;
- 17 (4) Prince William Sound groundfish pot fishery;
- 18 (5) Cook Inlet groundfish non-pelagic trawl fishery;
- 19 (6) Cook Inlet groundfish pelagic trawl fishery;
- 20 (7) Cook Inlet groundfish longline fishery;
- 21 (8) Cook Inlet groundfish pot fishery;
- 22 (9) Kodiak groundfish non-pelagic trawl fishery;
- 23 (10) Kodiak groundfish pelagic trawl fishery;
- 24 (11) Kodiak groundfish longline fishery;
- 25 (12) Kodiak groundfish pot fishery;
- 26 (13) Chignik groundfish non-pelagic trawl fishery;
- 27 (14) Chignik groundfish pelagic trawl fishery;
- 28 (15) Chignik groundfish longline fishery;
- 29 (16) Chignik groundfish pot fishery;
- 30 (17) South Alaska Peninsula groundfish non-pelagic trawl fishery;
- 31 (18) South Alaska Peninsula groundfish pelagic trawl fishery;

1 (19) South Alaska Peninsula groundfish longline fishery;

2 (20) South Alaska Peninsula groundfish pot fishery.

3 (b) A vessel permit is a use privilege authorizing the vessel to engage in a
4 specific groundfish fishery if that fishery is authorized by the Board of Fisheries. A
5 vessel permit must describe the fishery resource, the type of gear, and the area for
6 which the vessel permit is issued. The use privilege conveyed by a vessel permit may
7 be modified or revoked by the legislature without compensation.

8 (c) Except as provided in (m) of this section, on or after January 1, 2005, a
9 commercial fishing vessel may not use pelagic trawl, non-pelagic trawl, longline, or
10 pot gear, as defined by the Board of Fisheries, to take groundfish in a state Gulf of
11 Alaska groundfish fishery unless a vessel permit for that fishery has been issued for
12 the vessel under this section. This subsection does not prohibit the use of a
13 commercial fishing vessel to take groundfish using gear other than pelagic trawl, non-
14 pelagic trawl, longline, or pot gear, if the taking and retention of the groundfish is
15 permitted under regulations adopted by the Board of Fisheries.

16 (d) Notwithstanding AS 16.43.225, the commission may not issue a vessel
17 permit under this section to a commercial fishing vessel for a Gulf of Alaska
18 groundfish fishery for the period January 1, 2005, through December 31, 2008,
19 inclusive, unless the vessel has, on or after January 1, 1998, and before the effective
20 date of this Act, made a documented landing of groundfish in the area using the type
21 of gear for which the permit is to be issued. The commission may by regulation
22 extend the moratorium on entry of new vessels into the Gulf of Alaska groundfish
23 fisheries established under this subsection for a maximum period of two years until
24 January 1, 2011, if the commission finds that the extension of the moratorium is
25 necessary to achieve the purposes of the moratorium.

26 (e) Participation of a person or a vessel in a Gulf of Alaska groundfish fishery
27 during the moratorium established under (d) of this section may not be used to
28 establish eligibility for a use privilege for a groundfish fishery that may be issued after
29 the termination of the moratorium authorized under this section.

30 (f) Subsections (d) - (e) of this section may be superseded by regulations
31 adopted by the commission under subsequent legislation enacted by the legislature

1 authorizing the regulations.

2 (g) If, during the moratorium established under (d) of this section, a
3 commercial fishing vessel that qualifies for a vessel permit under this section or that is
4 issued a vessel permit under this section is sunk, destroyed, or damaged, to the extent
5 that the vessel is inoperable for a state Gulf of Alaska groundfish fishery, the
6 commission may, upon the request of the owner of the vessel, reissue the vessel permit
7 to another commercial fishing vessel with an overall length that does not exceed the
8 overall length of the vessel that was sunk, destroyed, or damaged by more than ten
9 percent.

10 (h) During the moratorium established under (d) of this section, the
11 commission shall, upon request of the new owner of a vessel and submission of proof
12 of ownership, reissue a vessel permit to the new owner of a vessel if the ownership of
13 the vessel identified on the vessel permit is transferred.

14 (i) During the moratorium established under (d) of this section, a vessel permit
15 may be transferred to a shorter vessel that is substituted for the vessel identified on a
16 vessel permit if

17 (A) the Board of Fisheries has adopted a vessel size restriction
18 that prohibits the use of the vessel identified on the vessel permit in the fishery
19 for which the vessel permit was issued;

20 (B) the substitute vessel complies with the vessel size
21 restrictions adopted by the Board of Fisheries for the fishery for which the
22 vessel permit was issued; and

23 (C) the substitute vessel is owned by the person or entity that
24 owned the vessel identified on the vessel permit.

25 (j) A vessel permit is valid for the calendar year that is inscribed on the vessel
26 permit. The annual fee for a vessel permit is

27 (1) \$500 for each pelagic trawl fishery or non-pelagic trawl fishery;

28 (2) \$250 for each pot fishery or longline fishery;

29 (k) During the moratorium established under (d) of this section, the
30 commission shall, in cooperation with the Department of Fish and Game and the
31 Board of Fisheries, conduct investigations to determine appropriate alternatives for

1 management of entry into Gulf of Alaska groundfish fisheries in the state. The
2 commission shall submit proposals to the legislature for legislation or constitutional
3 amendments necessary to implement the recommendations of the commission.

4 (l) The commission may adopt regulations that the commission considers
5 necessary to implement this section.

6 (m) Notwithstanding other provisions of this section, a vessel permit issued
7 under this section is not required of a vessel while that vessel is participating in the
8 Prince William Sound sablefish fishery or a halibut fishery managed under a federal
9 individual fishery quota system.

10 (n) In this section,

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

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

15 (3) "groundfish" means a species of marine finfish other than halibut,
16 osmerids, herring, or salmonids;

17 (4) "Gulf of Alaska" means the marine water of the state adjacent to
18 the Gulf of Alaska that is west of the latitude of Cape Suckling to the westward extent
19 of state water of the Aleutian Islands;

20 (5) "Gulf of Alaska groundfish fishery" means a fishery in which
21 groundfish are taken in a specified administrative or registration area in the Gulf of
22 Alaska using a specified type of fishing gear that is either pelagic trawl, non-pelagic
23 trawl, pot, or longline gear;

24 (6) "Kodiak" means the marine water of the Kodiak groundfish fishery
25 registration area, as defined by the Board of Fisheries;

26 (7) "landing" means the act of offloading for sale, or for transport to a
27 buyer for later sale, or catching and processing of groundfish taken in a halibut or
28 groundfish fishery in state water for sale as evidenced by a Department of Fish and
29 Game fish ticket;

30 (8) "Prince William Sound" means the marine water of the Prince
31 William Sound groundfish fishery registration area, as defined by the Board of

1 Fisheries;

2 (9) "South Alaska Peninsula" means the marine water of the South
3 Alaska Peninsula groundfish fishery registration area, as defined by the Board of
4 Fisheries.

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

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

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

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

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

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

17 CONTINGENT RETROSPECTIVITY. If this Act does not take effect before July 1,
18 2004, secs. 10 - 11 of this Act are retrospective to June 30, 2004.

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