

CS FOR SENATE BILL NO. 113(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 4/26/05

Referred: Finance

Sponsor(s): SENATOR BEN STEVENS BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to entry into and management of Gulf of Alaska groundfish fisheries."**

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

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

5 FINDINGS AND PURPOSE. (a) The Alaska State Legislature finds that

6 (1) groundfish fisheries in the Gulf of Alaska are facing significant challenges
7 from changing economic conditions and fishery management practices in the federal
8 exclusive economic zone that affect fisheries and fishery resources in a manner that is likely
9 to increase pressures on groundfish stocks;

10 (2) some form of limitation on access into the fisheries may be necessary to
11 provide for the economic health of fishermen in the Gulf of Alaska groundfish fisheries and
12 those dependent upon them for a livelihood and to ensure conservation of the biological and
13 capital resources of the fishery;

14 (3) groundfish fisheries in the Gulf of Alaska are prosecuted by a diverse
15 fishing fleet using many different types of gear and sizes of vessels to harvest multiple species

1 of groundfish;

2 (4) the current forms of limited entry authorized under AS 16.43 may not be
3 well-suited to promote the best interests of the State of Alaska in the Gulf of Alaska
4 groundfish fisheries;

5 (5) the Alaska Board of Fisheries has led an effort to explore how best to
6 respond to the changes facing the Gulf of Alaska groundfish fisheries;

7 (6) the Alaska Board of Fisheries has concluded that either the board or the
8 Alaska Commercial Fisheries Entry Commission or both the board and the commission
9 should have statutory authority, applicable only to the Gulf of Alaska groundfish fisheries, to
10 limit participation in the fisheries to persons or vessel owners, or both, with a history of
11 participation in the fisheries;

12 (7) the Alaska Board of Fisheries has concluded that, for the Gulf of Alaska
13 groundfish fisheries, the board or commission, or both, should have authority to allocate
14 differential, exclusive harvest shares to persons or vessel owners, or both, either individually
15 or as members of a harvesting association, based on the history of harvests in the fishery;

16 (8) because the Gulf of Alaska groundfish fisheries are managed by harvest
17 limits, dedicated access privileges may be feasible and appropriate and may better serve the
18 goals of resource conservation, prevention of economic distress among fishermen and those
19 dependent upon fishermen for a livelihood, and promoting the safety of fishermen involved in
20 the fisheries.

21 (b) It is the purpose of this Act to authorize a new type of access limitation program,
22 called a dedicated access privilege program, as best serves the interests of the State of Alaska.
23 The dedicated access privilege program, if adopted and implemented, should result in the
24 allocation of harvest share privileges, in Gulf of Alaska groundfish fisheries, except for
25 mechanical jigging machine fisheries, in a manner that serves the purposes of limited entry
26 under art. VIII, sec. 15, Constitution of the State of Alaska, with the least impingement on the
27 open access principles embodied in art. VIII, Constitution of the State of Alaska.

28 * **Sec. 2.** AS 16.05 is amended by adding a new section to article 5 to read:

29 **Sec. 16.05.740. Allocation of Gulf of Alaska groundfish fishery resources.**

30 (a) If the Alaska Commercial Fisheries Entry Commission has adopted a dedicated
31 access privilege program under AS 16.43.530, the holder of a dedicated access

1 privilege is entitled to share in the overall harvest authorized by the Board of Fisheries
2 to the extent provided by the dedicated access privilege.

3 (b) The Board of Fisheries may adopt regulations to allocate portions of the
4 harvestable surplus of Gulf of Alaska groundfish species to associations of dedicated
5 access privilege holders authorized by the board based on the combined dedicated
6 access privileges held by the members of each association.

7 (c) In considering whether to approve allocation of Gulf of Alaska groundfish
8 species, to the extent practicable, the board shall seek to promote

9 (1) sound fishery management;

10 (2) resource conservation;

11 (3) the economic health of the commercial Gulf of Alaska groundfish
12 fisheries;

13 (4) the economy of the state and of regions of the state dependent on
14 the Gulf of Alaska groundfish fisheries;

15 (5) the enforcement and enforceability of the allocations;

16 (6) coordination with the fishery management system for Gulf of
17 Alaska groundfish fisheries in the adjacent federal exclusive economic zone;

18 (7) the safety of participants in the commercial Gulf of Alaska
19 groundfish fisheries;

20 (8) other important goals as identified by the board.

21 * **Sec. 3.** AS 16.43.210(a) is amended to read:

22 (a) For each fishery that is not subject to a maximum number of entry permits
23 under AS 16.43.240 and not subject to a moratorium under AS 16.43.225 **or a**
24 **dedicated access privilege program under AS 16.43.530**, the commission shall issue
25 interim-use permits under regulations adopted by the commission to all applicants who
26 can establish their present ability to participate actively in the fishery for which they
27 are making application.

28 * **Sec. 4.** AS 16.43.210 is amended by adding a new subsection to read:

29 (f) An interim-use permit for a fishery subject to a dedicated access privilege
30 program established under AS 16.43.530 may be issued only to a person who qualifies
31 under regulations adopted by the commission under AS 16.43.530.

1 * **Sec. 5.** AS 16.43 is amended by adding new sections to read:

2 **Article 7A. Gulf of Alaska Groundfish Fisheries.**

3 **Sec. 16.43.530. Dedicated access privileges for Gulf of Alaska groundfish**
 4 **fisheries.** (a) If the commission finds that entry into a Gulf of Alaska groundfish
 5 fishery should be limited on the basis of dedicated access privileges to serve the
 6 purposes of this chapter, the commission may adopt regulations, developed in
 7 conjunction with the Board of Fisheries, that are necessary to establish and implement
 8 a dedicated access privilege program for that fishery. The amount of dedicated access
 9 privileges initially issued to qualified applicants under a dedicated access privilege
 10 program may be based on the quantity of qualified past landings credited to the
 11 applicant.

12 (b) In adopting a dedicated access privilege program for a Gulf of Alaska
 13 groundfish fishery, to the extent practicable, the commission shall seek to promote

- 14 (1) sound fishery management;
- 15 (2) resource conservation;
- 16 (3) the economic health of the commercial Gulf of Alaska groundfish
 17 fisheries;
- 18 (4) the economy of the state and of regions of the state dependent on
 19 the Gulf of Alaska groundfish fisheries;
- 20 (5) the enforcement and enforceability of the allocations;
- 21 (6) coordination with the fishery management system for Gulf of
 22 Alaska groundfish fisheries in the adjacent federal exclusive economic zone;
- 23 (7) the safety of participants in the commercial Gulf of Alaska
 24 groundfish fisheries;
- 25 (8) other important goals as identified by the commission.

26 (c) If the commission adopts regulations under (a) of this section to establish a
 27 dedicated access privilege program, the commission shall in writing

- 28 (1) identify how a limitation on access into the fishery on the basis of
 29 dedicated access privileges serves the purposes of this chapter;
- 30 (2) describe why other access limitation programs authorized under
 31 this chapter would not best serve the purposes of the chapter, would not be feasible, or

1 would not serve the best interests of the State of Alaska and its citizens;

2 (3) describe why other feasible access limitation programs authorized
3 under this chapter would be expected to be more exclusive than the dedicated access
4 privilege program adopted by the commission.

5 (d) Regulations adopted by the commission to establish a dedicated access
6 privilege program under this section must address

7 (1) the qualification date, eligibility period, landings threshold, and
8 years of participation in the fishery to be used to determine qualified landings in the
9 fishery, qualified applicants, and initial access to implement the dedicated access
10 privilege program;

11 (2) the permits that must be held by qualified interim-use permit
12 holders, entry permit holders, vessel owners, dedicated access privilege holders, and
13 commercial fishing license holders before and after dedicated access privileges are
14 issued;

15 (3) qualifications for receiving and holding an interim-use permit for a
16 fishery subject to a dedicated access privilege program and requisite restrictions on the
17 holder of an interim-use permit under a dedicated access privilege program;

18 (4) whether the qualified past landings are to be credited, solely or
19 partially, to interim-use permit holders, entry permit holders, vessel owners, or
20 commercial fishing license holders;

21 (5) whether qualified past landings or the dedicated access privileges
22 based on those qualified landings are transferable and the terms and conditions under
23 which the landings or privileges may be transferred;

24 (6) whether dedicated access privileges expire or attenuate over time
25 and the terms and conditions under which the privileges expire or attenuate;

26 (7) the procedures by which persons or vessels without qualified past
27 landings may gain entry into the fishery;

28 (8) the process by which the commission will prevent the fishery from
29 becoming too exclusive;

30 (9) other issues the commission determines appropriate.

31 (e) In this section,

1 (1) "groundfish" means a species of marine finfish other than halibut,
2 osmerids, herring, or salmonids;

3 (2) "Gulf of Alaska groundfish fishery" means a fishery in the Gulf of
4 Alaska in which groundfish are taken in a specified administrative or registration area
5 using a specified type of fishing gear that is either pelagic trawl, non-pelagic trawl,
6 pot, or longline gear; "Gulf of Alaska groundfish fishery" does not include mechanical
7 jigging machine fisheries.

8 **Sec. 16.43.535. Dedicated access privileges; general provisions.** (a) A
9 dedicated access privilege issued under AS 16.43.530 constitutes a use privilege that
10 may be modified or revoked by order of the commission or by law without
11 compensation.

12 (b) A dedicated access privilege issued under AS 16.43.530 may not be
13 pledged, mortgaged, encumbered, attached, distrained, or sold on execution of
14 judgment or under any other process or order of any court.

15 (c) Nothing in AS 16.43.530 - 16.43.540 limits the powers of the Board of
16 Fisheries or the Department of Fish and Game.

17 (d) Notwithstanding AS 16.05.815 and AS 16.43.975, the commission or the
18 Department of Fish and Game may release to the owner of a vessel information on the
19 vessel's history of harvests in a fishery that is necessary to apply for a dedicated access
20 privilege issued under AS 16.43.530.

21 **Sec. 16.43.540. Dedicated access privileges; fees.** (a) The commission shall
22 establish fees for the issuance and renewal of dedicated access privileges. Fees
23 established under this subsection must reasonably reflect the rate of economic return
24 of the dedicated access privileges.

25 (b) Subject to AS 37.10.050(a), the commission may establish fees for
26 processing applications for dedicated access privileges and, if authorized by the
27 commission, transfer of dedicated access privileges.

28 (c) The commission may charge interest at a rate not to exceed the legal rate
29 of interest established in AS 45.45.010(a) on fees established under this section that
30 are more than 60 days overdue.

31 * **Sec. 6.** AS 16.43.945 is amended to read:

1 **Sec. 16.43.945. Commercial fishing privileges exempt from claims of**
 2 **creditors.** Except as provided in AS 16.10.333 - 16.10.338, AS 16.43.170(g),
 3 AS 44.81.215, and 44.81.231 - 44.81.250, commercial fishing privileges granted under
 4 this chapter, including entry permits **and dedicated access privileges**, are exempt
 5 from claims of creditors, including claims under AS 09.38.065 and AS 45.29.408.

6 * **Sec. 7.** 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, **or dedicated access**
 9 **privileges** held by a person or entity who knowingly provides or assists in providing
 10 false information, or fails to correct false information provided to the commission for
 11 the purpose of obtaining a benefit for self or another, including the issuance, renewal,
 12 duplication, or transfer of an entry or interim-use permit, vessel license, vessel entry
 13 permit, [OR] vessel interim-use permit, **or dedicated access privilege**. The
 14 commission may suspend, as appropriate, that person's or entity's eligibility to hold an
 15 entry or interim-use permit, vessel entry permit, [OR] vessel interim-use permit, **or**
 16 **dedicated access privilege** for a period not to exceed three years, and may impose an
 17 administrative fine of not more than \$5,000 on the person or entity whose officers,
 18 employees, representatives, or agents knowingly provide or assist in providing false
 19 information, or fail to correct false information provided, to the commission for the
 20 purpose of obtaining a benefit.

21 * **Sec. 8.** AS 16.43.960(b) is amended to read:

22 (b) The commission shall serve the respondent personally or by certified or
 23 registered mail with a notice to show cause why the proposed action should not take
 24 place. The notice to show cause must

25 (1) be supported by an affidavit, which may be made on information or
 26 belief, setting out the facts that are the basis of the proposed actions;

27 (2) provide for a least 30 days' notice of the place, date, and time of the
 28 hearing where the respondent may present evidence in opposition to the proposed
 29 action; unless waived in writing by the respondent, the hearing shall be held within the
 30 judicial district in which the respondent resides if the respondent resides in the state;
 31 the hearing place shall be at the discretion of the commission for those respondents

1 residing outside the state;

2 (3) specify the statutes or regulations violated;

3 (4) state with particularity the action proposed to be taken;

4 (5) indicate to the respondent that the respondent's ability to
5 permanently transfer the permits **or dedicated access privileges that** [WHICH] are
6 the subject of the show cause proceedings has been suspended as of the date of the
7 notice and will continue to be suspended until the exhaustion of all administrative and
8 judicial remedies; and

9 (6) provide other information the commission considers proper.

10 * **Sec. 9.** AS 16.43.960(c) is amended to read:

11 (c) A permit **or dedicated access privilege** subject to show cause proceedings
12 under this section may not be transferred after the date of the notice in (b) of this
13 section pending exhaustion of all administrative and judicial remedies arising from
14 action taken under this section.

15 * **Sec. 10.** AS 16.43.960(g) is amended to read:

16 (g) The provisions of this section apply to conduct occurring after January 1,
17 1973, but do not affect a permit **or dedicated access privilege** held by a person who is
18 a bona fide purchaser. Failure to correct false information is a continuing offense.

19 * **Sec. 11.** AS 16.43.970(b) is amended to read:

20 (b) A person or entity who knowingly makes a false statement to the
21 commission for the purpose of obtaining a benefit, including the issuance, renewal,
22 duplication, or transfer of an entry or interim-use permit, vessel license, vessel
23 interim-use permit, [OR] vessel entry permit, **or dedicated access privilege**, or a
24 person who assists another by knowingly making a false statement to the commission
25 for the purpose of obtaining a benefit for another, is guilty of the crime of unsworn
26 falsification as set out in AS 11.56.210. Upon conviction, the person or entity is also
27 subject to suspension of commercial fishing privileges and revocation of commercial
28 fishing permits under (i) of this section.

29 * **Sec. 12.** AS 16.43.970(d) is amended to read:

30 (d) If a permit holder **or a dedicated access privilege holder** is charged by
31 the state with violating a provision of this chapter or a regulation adopted under this

1 chapter, the holder may not transfer any interim-use or entry permit under
 2 AS 16.43.170, [OR] any transferable vessel entry permit under AS 16.43.450 -
 3 16.43.520, or any dedicated access privilege until after the final adjudication or
 4 dismissal of the charges.

5 * **Sec. 13.** AS 16.43.970(e) is amended to read:

6 (e) Notwithstanding any other provision of this section, an interim-use or entry
 7 permit, [OR] transferable vessel entry permit, or dedicated access privilege may not
 8 be transferred while under suspension, without the consent of the commission.

9 * **Sec. 14.** AS 16.43.970(j)(2) is amended to read:

10 (2) "commercial fishing privileges" means the privilege of
 11 participating in an activity for which a commercial fishing permit or dedicated access
 12 privilege is required and the privilege of obtaining a commercial fishing permit or
 13 dedicated access privilege.

14 * **Sec. 15.** AS 16.43.990 is amended by adding a new paragraph to read:

15 (12) "dedicated access privilege" means a harvest-use privilege issued
 16 by the commission under AS 16.43.530 that authorizes the holder of the privilege to
 17 harvest a specified portion of the overall harvest of a specified fishery resource
 18 allowed by the Board of Fisheries in a specified fishery.