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BY WAUGAMAN, BUTROVICH, LEWIS,
KOSLOSKY, BLODGETT, SMITH,
HAGGLAND, HARRIS, THOMAS,
V. PHILLIPS, B. PHILLIPS

1 IN THE SENATE

2 SENATE BILL NO. 57

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating a Department of Commercial Fisheries
7 within the executive branch; and providing for the
8 Board of Commercial Fisheries to head the department."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 16.05 is amended by adding new sections to read:

11 ARTICLE 2. THE DEPARTMENT OF COMMERCIAL FISHERIES.

12 Sec. 16.05.221. CREATION OF DEPARTMENT. There is created within
13 the state government a principal department to be known as the Depart-
14 ment of Commercial Fisheries.

15 Sec. 16.05.224. CREATION OF BOARD. There is created at the head
16 of the Department of Commercial Fisheries a Board of Commercial
17 Fisheries consisting of seven members.

18 Sec. 16.05.227. APPOINTMENT OF MEMBERS. (a) The seven members
19 of the board shall be appointed by the governor without regard to
20 political affiliation, subject to confirmation by a majority of the
21 members of the legislature in joint session.

22 (b) The seven members are entitled to the expenses, travel and
23 per diem allowances provided by law.

24 (c) A member may act and receive compensation from his appoint-
25 ment until his confirmation or rejection by the legislature.

26 Sec. 16.05.230. TERM OF OFFICE. The members of the board shall
27 be appointed for overlapping four-year terms. A member appointed to
28 fill a vacancy serves for the unexpired term of the member he succeeds.

29 Sec. 16.05.233. QUORUM AND CHAIRMAN. (a) Five members consti-

1 tute a quorum.

2 (b) The board shall elect a chairman for a term set by the board.

3 **Sec. 16.05.236. REMOVAL OF BOARD MEMBERS.** The governor may remove
4 a board member for inefficiency, neglect of duty, or misconduct in
5 office by delivering to him a written copy of the charges and giving
6 him an opportunity to be heard in person or through counsel at a
7 public hearing before the governor or his designee upon at least 10
8 days' notice by registered mail. The member has the right to confronta-
9 tion by and cross-examination of all witnesses against him. Upon
10 removal, the governor or his designee shall file a complete statement
11 of all charges made against the member and the findings in the proper
12 state office.

13 **Sec. 16.05.239. MEETINGS.** The board shall meet at least quarterly.
14 Meetings may be called by the chairman or by a majority of the members
15 of the board. Meetings shall be held in Juneau unless a majority of
16 the members of the board changes the place of a meeting.

17 **Sec. 16.05.242. LEGAL ASSISTANCE.** The Department of Law shall
18 provide all legal services for the board.

19 **Sec. 16.05.245. COMMISSIONER.** (a) The board shall appoint the
20 commissioner of commercial fisheries with the approval of the governor.
21 The commissioner shall be the principal executive officer of the
22 department.

23 (b) The commissioner shall be appointed without regard to
24 political affiliation. He shall be a qualified executive with knowledge
25 of the requirements for the protection, management, conservation, and
26 restoration of the commercial fish resources of the state.

27 (c) The commissioner shall be appointed by the board for a term
28 of five years. He may be removed for cause during his term of office
29 by four members of the board with the approval of the governor.

1 (d) The commissioner shall receive the salary set out in AS 39.-
2 20.080.

3 (e) The commissioner shall employ and remove all classified
4 personnel in the department subject to the State Personnel Act (AS 39.-
5 25). He may employ and remove personnel in the exempt or partially
6 exempt service subject to the approval of the board. Personnel in the
7 exempt or partially exempt service have a right of appeal to the board
8 if they are removed.

9 Sec. 16.05.248. LIMITATIONS OF BOARD MEMBERS. No member of the
10 board may be a candidate for public office during his term of office.

11 Sec. 16.05.251. POWERS AND DUTIES OF BOARD. The board or its
12 authorized designee has, but not by way of limitation, the following
13 powers and duties:

14 (1) assist the United States Fish and Wildlife Service in
15 the enforcement of federal laws and regulations pertaining to commer-
16 cial fish;

17 (2) through the appropriate state agency, acquire by gift,
18 purchase, or lease, or other lawful means, lands, buildings, water,
19 rights-of-way, or other necessary or proper real or personal property
20 when the acquisition is in the interest of furthering an objective or
21 purpose of the department and the state;

22 (3) design and construct hatcheries, pipelines, rearing
23 ponds, fishways, and other projects beneficial for the commercial
24 fish resources of the state;

25 (4) accept money from any person under conditions requiring
26 the use of the money for specific purposes in the furtherance of the
27 protection, rehabilitation, propagation, preservation, or investigation
28 of the commercial fish resources of the state or in settlement of
29 claims for damages to commercial fish and game resources;

1 (5) collect, classify, and disseminate statistics, data and
2 information as in its discretion will tend to promote the objects of
3 this chapter relating to commercial fish;

4 (6) capture, propagate, transport, buy, sell, or exchange
5 commercial fish or game or eggs for propagating, scientific or stocking
6 purposes;

7 (7) procure insurance, in addition to workmen's compensation
8 insurance, for employees of the department against injury or death
9 occasioned by special hazards in connection with their duties;

10 (8) provide public facilities where necessary or proper to
11 facilitate the taking of commercial fish, and enter into cooperative
12 agreements with any person to effect them;

13 (9) the supervision and maintenance, including construction
14 and operation, of vessels used by the Department of Commercial Fish-
15 eries.

16 Sec. 16.05.254. EMERGENCY OPENINGS AND CLOSURES. This chapter
17 does not limit the power of the board or its authorized designee, when
18 circumstances require, to summarily open or close seasons or areas or
19 to change weekly closed periods on commercial fish by means of
20 emergency orders. An emergency order has the force and effect of law
21 after field announcement by the board or its authorized designee. An
22 emergency order adopted under this section is not subject to the
23 Administrative Procedure Act (AS 44.62).

24 Sec. 16.05.257. RULES AND REGULATIONS AS EVIDENCE. Rules and
25 regulations of the board, including emergency openings and closures,
26 are admissible as evidence in the courts of the state in accordance
27 with the Administrative Procedure Act (AS 44.62).

28 Sec. 16.05.260. LIMITATION OF POWER. Nothing in this chapter
29 authorizes the board to change the amount of fees or licenses.

1 **Sec. 16.05.263. COMMERCIAL FISHERIES FUND ESTABLISHED.** There is
2 created a revolving commercial fisheries fund, which shall be used
3 exclusively (1) to carry out the purposes and provisions of this
4 chapter or other duties that may be delegated by the legislature to
5 the board or the department relating to commercial fish; and (2)
6 to carry out the purposes and objectives within the scope of the
7 chapter relating to commercial fish which may be directed by the donor
8 of the funds.

9 **Sec. 16.05.266. COMPOSITION OF FUND.** The commercial fisheries
10 fund shall be made up of the following money and other money the legis-
11 lature appropriates, which shall be deposited and retained in the fund
12 until expended;

13 (1) money received from the sale of state commercial
14 fishing licenses and special permits;

15 (2) money received in settlement of a claim or loss caused
16 by damage to the commercial fish resources of the state;

17 (3) money received from federal, state, or other govern-
18 mental unit, or from a private donor for commercial fish purposes;

19 (4) interest earned upon money in the fund;

20 (5) money from any other source.

21 **Sec. 16.05.269. DIVERSION OF FUNDS PROHIBITED.** No funds accruing
22 to the state from commercial fishing licenses or permit fees may be
23 diverted to a purpose other than the protection, propagation, investiga-
24 tion, and restoration of commercial fish resources, and the expenses of
25 administering of the commercial fish divisions of the department.

26 **Sec. 16.05.272. BUDGET AND FISCAL POWERS.** The board has rule-
27 making powers as set out in this chapter. The commissioner has
28 responsibility and authority for the preparation and execution of
29 a budget and for the other fiscal affairs of the department, subject

1 to the approval of the board.

2 **Sec. 16.05.275. PROMULGATION OF REGULATIONS.** The board shall
3 promulgate regulations which are necessary to carry out the provisions
4 of this chapter. All regulations shall be promulgated under the
5 Administrative Procedure Act (AS 44.62).

6 **Sec. 16.05.278. RULES AND REGULATIONS.** The board may make rules
7 and regulations it considers advisable for

8 (1) setting apart commercial fish reserve areas, refuges
9 and sanctuaries in the waters or on the lands of the state over which
10 it has jurisdiction, subject to the approval of the legislature;

11 (2) establishment of open and closed seasons and areas for
12 commercial fish;

13 (3) establishment of the means and methods employed in the
14 pursuit, capture, and transport of commercial fish;

15 (4) setting quotas and bag limits on the taking of commer-
16 cial fish;

17 (5) engaging in biological research, watershed and habitat
18 improvement, commercial fish management, protection, propagation and
19 stocking;

20 (6) investigating and determining the extent and effect of
21 predation and competition among commercial fish in the state and
22 exercising control measures considered necessary to commercial fish
23 resources of the state;

24 (7) entering into cooperative agreements with educational
25 institutions and state, federal, or other agencies to promote commercia
26 fish research, management, education, and information and to train men
27 for commercial fish management;

28 **Sec. 16.05.284. DELEGATION OF AUTHORITY TO COMMISSIONER.** For
29 the purposes of administering secs. 278 and 281 of this chapter, the

1 board may delegate authority to the commissioner to act in its behalf.

2 Sec. 16.05.287. ENFORCEMENT AUTHORITY, ETC. Secs. 140, 150,
3 160, 170, 180, 190, 200 and 210 of this chapter also apply to the
4 department, board and commissioner of commercial fisheries.

5 Sec. 16.05.290. ANADROMOUS FISH. Anadromous fish are commercial
6 fish and not sport fish under the provisions of this chapter. Sport
7 fishing licenses issued by the Department of Sport Fish and Game cover
8 the catching of anadromous fish under the regulations issued by the
9 board of commercial fisheries.

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

11 Sec. 16.05.946. ADDITIONAL DEFINITIONS. (a) In secs. 220 - 320
12 and 440 - 720 of this chapter

13 (1) "board" means the Board of Commercial Fisheries;

14 (2) "commissioner" means the commissioner of commercial
15 fisheries;

16 (3) "department" means the Department of Commercial
17 Fisheries.

18 (b) In secs. 800 - 940 of this chapter "department", "board",
19 and "commissioner" refer to either the Department of Sport Fish and
20 Game or the Department of Commercial Fisheries, whichever is appropriate.

21 * Sec. 3. AS 44.15.010(11) is amended to read:

22 (11) Department of Commercial Fisheries [FISH AND GAME]

23 * Sec. 4. AS 44.39.010 is repealed and re-enacted to read:

24 Sec. 44.39.010. BOARD AND COMMISSIONER OF COMMERCIAL FISHERIES.

25 There is at the head of the Department of Commercial Fisheries a
26 Board of Commercial Fisheries. The commissioner of commercial
27 fisheries is the principal executive officer of the department.

28 * Sec. 5. AS 44.39.080 is amended to read:

29 Sec. 44.39.080. DUTIES OF DEPARTMENT. The Department of

1 Commercial Fisheries [FISH AND GAME] shall administer the state program
2 for the conservation and development of the state's commercial fisheries
3 [, SPORT FISH, BIRDS, GAME AND FUR BEARING ANIMALS].

4 * Sec. 6. Upon initial appointment, the board shall be appointed as
5 follows: one member for one year, two for two years, three for three years
6 and one for four years.

7 * Sec. 7. The following are repealed: AS 16.05.010 - 16.05.130; AS 16.-
8 05.220 - 16.05.320; AS 16.05.940(1), (4) and (5); AS 44.39.030 - 44.39.050.

9 * Sec. 8. The Department of Commercial Fisheries is hereby vested with
10 the duties, powers, and responsibilities relating to commercial fish formerly
11 exercised and held by the Department of Fish and Game.