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Referred: Resources, Judiciary
and Finance

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

CS
2 HOUSE BILL NO. 126

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the regulation of entry into Alaska
7 commercial fisheries; and providing for an effective
8 date."

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

10 * Section 1. AS 16 is amended by adding a new chapter to read:

11 CHAPTER 43. REGULATION OF ENTRY INTO

12 ALASKA COMMERCIAL FISHERIES.

13 ARTICLE 1. CREATION OF THE ALASKA COMMERCIAL

14 FISHERIES ENTRY COMMISSION.

15 Sec. 16.43.010. PURPOSES AND FINDINGS OF FACT. (a) It is the
16 purpose of this chapter to promote the economic health and stability
17 of commercial fishing in Alaska and the conservation and sustained
18 yield management of Alaska's fishery resource by regulating and con-
19 trolling entry into the commercial fisheries in the public interest and
20 without unjust discrimination. It is also the purpose of this chapter
21 to prevent economic distress among fishermen by stabilizing the levels
22 of participation in the commercial harvest of the species listed in
23 this section at levels reasonably commensurate with the ability of the
24 resource to provide a livelihood for the fishermen participating in
25 that harvest.

26 (b) The legislature finds that commercial fishing for the species
27 listed in this section has reached levels of participation, on either
28 a statewide or area basis, that have impaired or threaten to impair the
29 economic welfare of the fishermen participating in the harvest, the

1 overall economic efficiency of the harvest and the sustained yield
2 management of the fishery resource:

- 3 (1) red salmon (*Oncorhynchus nerka*)
- 4 (2) pink salmon (*Oncorhynchus gorbuscha*)
- 5 (3) chum salmon (*Oncorhynchus keta*)
- 6 (4) coho salmon (*Oncorhynchus kisutch*)
- 7 (5) king salmon (*Oncorhynchus tshawytscha*)

8 Sec. 16.43.020. ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION. (a)

9 There is established the Alaska Commercial Fisheries Entry Commission
10 as a regulatory and quasi-judicial agency of the state. The commission
11 consists of five members appointed by the governor and confirmed by
12 the legislature in joint session.

13 (b) The governor shall designate one member of the commission as
14 chairman of the commission. The member designated shall serve as
15 chairman for a term of two years, and may be designated chairman for
16 successive two-year terms.

17 Sec. 16.43.030. TERM OF OFFICE; VACANCY. (a) The members of the
18 commission shall be appointed for terms of four years. Members may be
19 removed by the governor only for cause.

20 (b) A vacancy on the commission shall be filled by appointment by
21 the governor and the appointment shall be confirmed by the legislature
22 in joint session. A member selected to fill a vacancy shall hold office
23 for the balance of the full term for which his predecessor on the com-
24 mission was appointed.

25 (c) A vacancy on the commission does not impair the authority of
26 a quorum of commissioners to exercise all the powers and perform all
27 the duties of the commission.

28 Sec. 16.43.040. QUORUM. Three members of the commission constitute
29 a quorum for the transaction of business, for the performance of a duty,

1 or for the exercise of a power of the commission.

2 Sec. 16.43.050. QUALIFICATIONS. Because the duties of the com-
3 mission require a high degree and a broad range of professional experi-
4 ence, two members shall have been commercial fishermen in Alaska, one
5 member shall have been a fisheries management specialist in Alaska, one
6 member shall be an attorney licensed to practice in Alaska, and one
7 member shall be from the general public.

8 Sec. 16.43.055. COMPENSATION. Members of the commission are in the
9 exempt service and shall receive an initial annual salary at range 28, step
10 B of the state pay plan, subject to merit raises as approved by the governor.

11 Sec. 16.43.060. LEGAL COUNSEL. The attorney general is the legal
12 counsel for the commission. He shall advise the commission in legal
13 matters arising in the discharge of its duties and represent the com-
14 mission in suits to which it is a party.

15 Sec. 16.43.070. EMPLOYMENT AND COMPENSATION OF PERSONNEL. (a)
16 The commission may employ those persons necessary to carry out the
17 purposes of this chapter. Employees of the commission are in the exempt
18 service under AS 39.25.110.

19 (b) In addition to its staff of regular employees, the commission
20 may contract for and engage the services of consultants, experts and
21 hearing officers as necessary.

22 ARTICLE 2. POWERS AND DUTIES OF THE COMMISSION.

23 Sec. 16.43.120. GENERAL POWERS. (a) To accomplish the purposes
24 set out in sec. 10 of this chapter the commission shall:

- 25 (1) establish administrative areas suitable for regulating
26 and controlling entry into the commercial fisheries;
27 (2) establish, for all types of gear, the maximum number of
28 units of gear for each administrative area;
29 (3) establish qualifications for the issuance of entry per-

1 mits to gear operators;

2 (4) issue entry permits to qualified applicants for up to
3 the maximum number of units of gear established for each administrative
4 area;

5 (5) provide for the transfer and reissuance of entry permits
6 to qualified transferees;

7 (6) provide for the transfer and reissuance of entry permits
8 for alternative types of legal gear, in a manner consistent with the
9 purposes of this chapter;

10 (7) issue interim entry permits as provided in sec. 190 of
11 this chapter;

12 (8) administer the collection of the annual fees provided
13 for in sec. 240 of this chapter.

14 (b) The commission may do all things necessary to the exercise
15 of its powers under this chapter, whether or not specifically designated
16 in this chapter.

17 Sec. 16.43.130. ADMINISTRATIVE AUTHORITY, REGULATIONS AND HEARING
18 PROCEDURES. (a) The commission may adopt regulations, not inconsis-
19 tent with the law, necessary or proper in the exercise of its powers
20 or for the performance of its duties under this chapter.

21 (b) The commission shall adopt regulations, consistent with due
22 process of law, which govern practice and procedure and the conduct
23 of all investigations, hearings and proceedings which it holds.

24 (c) Common law and statutory rules of evidence apply to investi-
25 gations, hearings and proceedings before the commission, except when the
26 commission determines that their application is not required in order
27 to assure fair treatment of all parties and that the evidence is rele-
28 vant and of the sort on which responsible persons are accustomed to rely
29 in the conduct of serious matters.

1 (d) The commission, each commissioner or an employee authorized
2 by the commission may administer oaths, certify to all official acts,
3 and issue subpoenas and other process to compel the attendance of wit-
4 nesses and the production of testimony, records, papers, accounts and
5 documents in an inquiry, investigation, hearings, or proceeding before
6 the commission in any part of the state. The commission may petition
7 a court of this state to enforce its subpoenas or other process.

8 Sec. 16.43.140. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a)
9 The administrative adjudication procedures of the Administrative Pro-
10 cedure Act (AS 44.62) do not apply to adjudicatory proceedings of the
11 commission except that final administrative determinations by the
12 commission are subject to judicial review as provided in AS 44.62.560 -
13 44.62.570.

14 (b) AS 44.62.10-320, 44.62.640 and 44.62.650 apply to regulations
15 adopted by the commission.

16 ARTICLE 3. ESTABLISHMENT OF MAXIMUM NUMBER OF UNITS OF GEAR.

17 Sec. 16.43.150. ADMINISTRATIVE AREAS. (a) The commission shall
18 establish administrative areas suitable for regulating and controlling
19 entry into the commercial fisheries for species listed in sec. 10 of
20 this chapter. The commission shall make the administrative areas
21 reasonably compatible with the geographic areas for which specific
22 commercial fishing regulations are written and according to which the
23 legality of types of gear is defined by the Board of Fish and Game.

24 (b) The commission may modify or change the boundaries of admini-
25 strative areas when necessary and consistent with the purposes of this
26 chapter.

27 Sec. 16.43.160. STANDARDS. The maximum number of units of gear,
28 for each type of gear and for each administrative area, shall be estab-
29 lished by the commission based upon a reasonable balance of the fol-

1 lowing general standards.

2 (1) The number of units of gear which will result in an
3 average level of income to the fishermen participating in that fishery
4 which is adequate and sufficiently stable to sustain a professional
5 fishery.

6 (2) The number of units of gear that is sufficient to fully
7 harvest the allowable commercial take of the fishery resource. Where
8 the allowable commercial take fluctuates substantially from year to
9 year, the number of units of gear is that sufficient to fully harvest
10 the allowable commercial take during any year.

11 (3) The number of units of gear that is manageable (using
12 the standard methods for conservation regulation including manipulation
13 of seasons, fishing periods and catch quotas), without a substantial
14 risk of impairing the sustained yield management of the resource.

15 (4) The number of units of gear commensurate with the history
16 and traditions of the particular fishery which is reasonable and con-
17 sistent with the purposes of this chapter.

18 Sec. 16.43.170. REVISIONS OF MAXIMUM NUMBER OF UNITS OF GEAR.

19 (a) The commission may increase or decrease the maximum number of units
20 of gear for a type of gear or an administrative area, when one or more
21 of the following conditions makes a change desirable considering the
22 purposes of this chapter.

23 (1) An established long-term change in the biological con-
24 dition of the fishery has occurred which substantially alters the maxi-
25 mum number of units of gear permissible applying the standards set forth
26 in sec. 160 of this chapter.

27 (2) An established long-term change in market conditions has
28 occurred, directly affecting the fishery, which substantially alters the
29 maximum number of units of gear permissible under the standards set

1 forth in sec. 160 of this chapter.

2 (3) An established long-term change in the commercial fishery
3 resulting from regulations adopted by the Board of Fish and Game, which
4 substantially alters the maximum number of units of gear permissible
5 under the standards set forth in sec. 160 of this chapter.

6 (b) The commission may decrease the maximum number of units of
7 gear for a type of gear or an administrative area only when provision
8 has been made for the reasonable compensation of each person required
9 to surrender an outstanding entry permit.

10 ARTICLE 4. ENTRY PERMITS.

11 Sec. 16.43.180. PERMIT REQUIRED. (a) After January 1, 1974, no
12 person may operate gear engaged in the commercial taking of a species
13 listed in sec. 10 of this chapter without a valid entry permit or a
14 valid interim entry permit issued by the commission.

15 (b) A permit is not required of a crewman or other person assis-
16 ting in the operation of a unit of gear engaged in the commercial
17 taking of a species enumerated in sec. 10 of this chapter if the holder
18 of an entry permit or an interim entry permit is at all times present
19 and actively engaged in the operation of that particular unit of gear.

20 (c) A person may hold more than one entry permit issued or trans-
21 ferred pursuant to this chapter for any of the following purposes.

22 (1) Fishing more than one type of gear.

23 (2) Fishing in more than one administrative area.

24 (3) Fishing for other species for which separate entry per-
25 mits are issued.

26 Sec. 16.43.190. INTERIM ENTRY PERMIT; QUALIFICATIONS. (a)
27 Pending the establishment of maximum number units of gear pursuant to
28 secs. 160-170 of this chapter and the issuance of entry permits pur-
29 suant to sec. 180 of this chapter, the commission shall issue interim

1 entry permits under regulations promulgated by the commission for each
2 type of gear and for each administrative area, to all applicants who
3 can establish their present ability and intent to participate actively
4 in the fishery.

5 (b) Before the issuance of the maximum number of entry permits
6 for a given administrative area, the commission may issue interim
7 entry permits to any applicant who may later become eligible for an
8 entry permit pursuant to sec. 220 of this chapter.

9 Sec. 16.43.200. ENTRY PERMIT QUALIFICATIONS. (a) Following the
10 establishment of the maximum number units of gear pursuant to sec. 160
11 of this chapter, the commission shall adopt regulations setting forth
12 the qualifications for entry permits for each administrative area
13 and for each type of gear. The regulations shall define reasonable
14 priority classifications of similarly situated potential applicants
15 based upon a reasonable balance of all the following standards of pre-
16 ference.

- 17 (1) Degree of economic dependence upon the fishery.
- 18 (2) Extent of past participation in the fishery.
- 19 (3) Present ability and intent to participate actively
20 in the fishery.

21 Sec. 16.43.210. APPLICATION FOR ENTRY PERMIT. (a) The commission
22 shall establish the opening and closing dates, places and form of appli-
23 cation for entry permits for each type of gear and each administrative
24 area. The commission may require the submission of specific verified
25 evidence establishing the applicant's qualifications under the regula-
26 tions adopted pursuant to sec. 200 of this chapter.

27 (b) When an applicant is unable to establish his qualifications
28 for an entry permit by submitting the specific verified evidence re-
29 quired in the application by the commission, he may request and obtain

1 an administrative adjudication of his application according to the
2 procedures established in secs. 130-140 of this chapter. At the hearing
3 he may present alternative evidence of his qualifications for an entry
4 permit.

5 Sec. 16.43.220. ISSUANCE OF ENTRY PERMITS. (a) After the closing
6 date for applications established by the commission under sec. 210(a)
7 of this chapter, the commission shall assign each qualified applicant to
8 the appropriate priority classification as determined under sec. 200
9 based upon the evidence of his qualification established pursuant to
10 sec. 210 of this chapter.

11 (b) The commission shall issue entry permits, for an administra-
12 tive area and a type of gear, first to all qualified applicants in the
13 highest priority classification, and then to all qualified applicants
14 in each descending priority classification, until the number of entry
15 permits issued equals the maximum number of units of gear established
16 pursuant to secs. 160-170 of this chapter for the administrative area
17 and the type of gear.

18 (c) If, within the lowest priority classification of qualified
19 applicants to which some entry permits may be issued, there are more
20 applicants than there are entry permits to be issued, then the alloca-
21 tion of entry permits within that priority classification shall be by
22 lottery.

23 (d) If, at the time entry permits are issued, some applicants
24 are still appealing the findings of an administrative adjudication pur-
25 suant to sec. 210 of this chapter, a sufficient number of entry permits
26 shall be reserved out of the permits to be issued, to protect the
27 rights of those applicants, assuming all the appeals will be resolved
28 in favor of the applicants. In the event that all appeals are not
29 resolved in favor of the applicants, the remaining entry permits shall

1 be allocated to the next most qualified applicants as provided in (a),
2 (b) and (c) of this section.

3 Sec. 16.43.230. TERMS AND CONDITIONS OF ENTRY PERMIT. (a) Each
4 entry permit gives the permittee a personal right to operate a unit of
5 a specified type of gear within a specified administrative area.

6 (b) The permittee must have the entry permit in his possession
7 at all times when engaged in the commercial taking of a species enumer-
8 ated in sec. 10 of this chapter.

9 (c) Each entry permit is issued for an initial term of one year,
10 and confers upon the permittee a permanent right of renewal. Failure
11 to renew an entry permit annually does not result in the loss of the
12 right to renew the permit upon payment of all accrued annual fees,
13 except that failure to renew an entry permit for a period of five years
14 from the date of issue or date of last renewal shall result in a for-
15 feiture of the entry permit.

16 (d) The commission may establish terms and conditions upon which
17 entry permits may survive the death of the permittee.

18 (e) Except as provided by the commission, an entry permit may not
19 be pledged or hypothecated and is not subject to attachment, distraint,
20 or sale on execution of judgment.

21 Sec. 16.43.240. FEES. There is an annual fee of \$50 for the
22 issuance and annual renewal of entry permits or interim entry permits.
23 The commission may adopt regulations revising the amount of renewal fees
24 to reflect the cost of administering this chapter. Fees collected under
25 this section shall be paid into the general fund.

26 Sec. 16.43.250. TRANSFER OF ENTRY PERMITS. (a) The holder of an
27 entry permit may apply to the commission to transfer his permit to
28 another person. If the proposed transferee can establish present ability
29 and intent to participate actively in the fishery, and the proposed

1 transfer is otherwise consistent with the purposes of this chapter,
2 the commission shall approve the transfer application and reissue
3 the entry permit to the transferee.

4 (b) When otherwise consistent with the purposes of this chapter,
5 the commission may adopt regulations providing for the transfer and
6 reissuance of entry permits within a given administrative area from one
7 type of gear to another type of gear. The regulations shall reflect
8 the relative differences in average efficiency of different types of
9 gear and shall establish transfer ratios between types of gear which
10 will maintain a stable level of fishing within that administrative
11 area.

12 Sec. 16.43.260. NEW ENTRY. Whenever additional entry permits
13 become available for issuance, either due to an increase in the maximum
14 number of units of gear pursuant to sec. 170 of this chapter or the for-
15 feiture of existing entry permits pursuant to sec. 230(c) of this
16 chapter, the commission shall adopt regulations consistent with the
17 purposes of this chapter, providing for the issuance of such permits.

18 ARTICLE 5. GENERAL PROVISIONS.

19 Sec. 16.43.270. APPLICATIONS OF REGULATIONS OF BOARD OF FISH
20 AND GAME. Nothing in this chapter limits the powers of the Board of
21 Fish and Game, including the power to determine legal types of gear,
22 and the power to establish size limitations or other uniform restrictions
23 applying to a certain type of gear. Holders of entry permits issued
24 pursuant to this chapter are subject to all valid regulations adopted
25 by the Board of Fish and Game.

26 Sec. 16.43.280. PENALTIES. A person who violates sec. 180 of
27 this chapter or a rule or regulation promulgated under this chapter is
28 guilty of a misdemeanor and, upon conviction, is punishable by a fine
29 of not more than \$5,000 for a first conviction, a fine of not more than

1 \$10,000 for a second conviction, and a fine of not more than \$10,000,
2 and the permanent loss of eligibility for an entry permit, for a third
3 conviction.

4 Sec. 16.43.290. DEFINITIONS. In this chapter

5 (1) "allowable commercial take" means the approximate size
6 range of the anticipated commercial harvest of a species under sustained
7 yield management implemented by regulations adopted by the Board of
8 Fish and Game and emergency regulations adopted by the Commissioner of
9 Fish and Game;

10 (2) "commission" means Alaska Commercial Fisheries Entry
11 Commission;

12 (3) "gear" means the specific apparatus used in the commer-
13 cial harvest of a species, and includes, by way of example, purse
14 seines, drift gill nets, set gill nets, and troll gear;

15 (4) "type of gear" means a customary and identifiable classi-
16 fication of gear including those classifications for which separate
17 regulations are adopted by the Board of Fish and Game and for which
18 separate gear licenses are required by AS 16.05.550-630.

19 (5) "unit of gear" means the maximum amount of a specific
20 type of gear which can be fished under a single gear license subject
21 to all valid regulations established by the Board of Fish and Game de-
22 fining the legal requirements for that type of gear;

23 (6) "priority classification" means the allocation of po-
24 tential or actual permit applicants into reasonable groupings of simi-
25 larly situated applicants and the priority ranking of those groupings
26 according to the extent to which they satisfy the statutory standards
27 of preference;

28 (7) "reasonable compensation" means the lesser of either the
29 cost of acquiring by transfer and purchase an equivalent entry permit

1 for the same registration area, or the difference in value between the
2 fair market value of gear without an entry permit and the fair market
3 value of gear with an entry permit.

4 * Sec. 2. AS 44.62.330(a) is amended by adding a new subsection to read:

5 (35) Alaska Commercial Fisheries Entry Commission

6 * Sec. 3. This Act takes effect on July 1, 1973.

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