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1 IN THE SENATE

BY SACKETT

2

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 187

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

ELEVENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the harvesting and utilization of
7 salmon in certain fisheries; and providing for an
8 effective date."

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

10 * Sec. 1. FINDINGS. (a) The legislature finds that

11 (1) certain salmon fisheries of the state have uniquely different
12 characteristics with regard to the history and patterns of harvest, use and
13 regulation that separate them from more traditional fisheries and make them
14 deserving of special attention;

15 (2) the major freshwater salmon fisheries in the Yukon and
16 Kuskokwim River drainages currently reflect major allocation divisions
17 between subsistence use and commercial export harvest, distinguishing these
18 fisheries from other fisheries in the state;

19 (3) the history of the upper Yukon River (Holy Cross to Canadian
20 Border) fisheries reveals that subsistence utilization far exceeded com-
21 mercial export until the late 1960's; before the early 1970's, the upper
22 Yukon River commercial fisheries primarily relied on and supplied local or
23 intrastate commercial markets;

24 (4) the longstanding reliance on local and intrastate markets for
25 the commercial fisheries of the upper Yukon River developed sporadic and
26 unstable fisheries resulting from the whims of market conditions beyond the
27 control of the participants;

28 (5) the strong and continuing dependence of persons living in the
29 upper Yukon River drainages on a subsistence economy, in connection with the

1 sporadic and unstable commercial markets for salmon, resulted, in the average
2 case, of subsistence harvestors and users of salmon supplementing the sub-
3 sistence economy and their own livelihoods from commercial sales when markets
4 were available;

5 (6) regulation of the subsistence and commercial fisheries on the
6 Yukon below the present location of Holy Cross by the federal government,
7 before statehood, emphasized subsistence needs; regulation of the subsistence
8 and commercial fisheries on the Yukon River, from Holy Cross upstream, by the
9 federal government before statehood was virtually nonexistent;

10 (7) regulation of the Yukon River subsistence and commercial
11 salmon fisheries by the state, after statehood, primarily focused on the
12 fishery downriver from Holy Cross; the significance of the use of traditional
13 gear for commercial fishing from Holy Cross upstream was not comprehensively
14 addressed by regulation until 1975;

15 (8) historically, the types of gear primarily used on the upper
16 Yukon have been the set gill net and the fish wheel; as a result, on the
17 upper Yukon, as well as in other areas where land-anchored gear was utilized
18 for the harvest of salmon, at least several members of each harvesting family
19 participated in and developed economic reliance on

20 (A) the operation of gear units; and

21 (B) the direct barter and sale of fresh, smoked, and dried
22 salmon within their region and indirect sales, through intermediaries,
23 to fish buyers outside their region;

24 (9) many persons with past participation in and economic reliance
25 on the commercial fisheries of the upper Yukon River, who apparently suffered
26 significant hardship by being excluded from the fishery, were not adequately
27 notified of the significance of the original application period;

28 (10) the original decision to limit entry into the commercial
29 fisheries in the upper Yukon River in 1975, under the provisions of AS 16.43,

1 did not include a consideration of the significance of many of the findings
2 included in (1) - (9) of this subsection or of other material more particu-
3 larly set out in the records of this legislature; the result was unjust
4 discrimination against a number of persons.

5 (b) The legislature further finds that it is necessary to regulate all
6 aspects of the salmon fishery on the Yukon River in a manner that applies
7 equally to all persons similarly situated, consistent with the purposes of
8 resource conservation and to prevent economic distress among the fishermen
9 and those dependent on the fishermen for a livelihood.

10 (c) The legislature further finds that additional study into the lower
11 Yukon River, the Kuskokwim River and other commercial fisheries of the state
12 that developed primarily to supplement subsistence economies is necessary in
13 order to regulate those commercial fisheries in a manner that will apply
14 equally to all persons similarly situated, consistent with the purposes of
15 resource conservation and to prevent economic distress among fishermen in
16 those commercial fisheries and those dependent on the fishermen for a liveli-
17 hood.

18 * Sec. 2. DECLARATION OF POLICY. It is the policy of the state to apply
19 all laws and regulations relating to the harvest of the salmon resources of
20 the state in a manner that will not create an exclusive right or special
21 privilege of fishery, and will apply equally to all persons similarly situ-
22 ated, consistent with the purposes of resource conservation, to prevent
23 economic distress among fishermen and those dependent on the fishermen for a
24 livelihood and to promote the efficient development of aquaculture in the
25 state.

26 * Sec. 3. AS 16.43.010 is amended to read:

27 Sec. 16.43.010. PURPOSE AND FINDINGS OF FACT. (a) It is the
28 purpose of this chapter to promote the conservation and the sustained
29 yield management of Alaska's fishery resource and the economic health

1 and stability of commercial fishing in Alaska by regulating and control-
2 ling entry into the commercial fisheries in the public interest and
3 without unjust discrimination consistent with art. 8, sec. 15 of the
4 state constitution.

5 (b) The legislature finds that commercial fishing for fishery
6 resources has sustained [REACHED] levels of participation, on both a
7 statewide and an area basis, that have impaired or continue to threaten
8 to impair the economic welfare of the fisheries of the state, the over-
9 all efficiency of the harvest in certain appropriate areas, and the
10 sustained yield management of the fishery resource.

11 (c) The legislature further finds that certain traditional commer-
12 cial salmon fisheries which developed from interstate market demands
13 have long suffered from overcapitalization, a situation in which the sum
14 of individual efforts to achieve efficiency leads to inefficiency of the
15 total fleet. In overcapitalized fisheries, profits are marginal, the
16 probability of business failure is high, and the fishing strategies
17 which lead to over capitalization tend to defeat the intended conserva-
18 tion effect of gear restrictions, quotas, minimum size, and other regu-
19 lations. In these fisheries it may be appropriate to consider the opti-
20 mal effort allowable to maximize the net economic yield.

21 (d) The legislature further finds that certain fresh water commer-
22 cial salmon fisheries were developed and exist primarily to supplement
23 local subsistence economies. In those fisheries it is appropriate to
24 consider the maximum effort allowable to sustain reasonable average
25 annual gross revenues, consistent with sound fishery management poli-
26 cies and techniques and the necessary allowable subsistence needs.

27 * Sec. 4. AS 16.43.140(a) is amended to read:

28 (a) After January 1, 1974, no person, or family partnership, as
29 defined in AS 16.43.187(b), may operate gear in the commercial taking of

1 fisheries resources without a valid entry permit or a valid interim-use
2 permit issued by the commission.

3 * Sec. 5. PURPOSE. It is the purpose of AS 16.43.186 - 16.43.199 to
4 regulate entry into certain freshwater commercial salmon fisheries in a
5 manner that applies equally to all persons similarly situated, consistent
6 with art. 8, sec. 15 of the state constitution, by providing a mechanism to
7 consider the maximum effort allowable to sustain reasonable average annual
8 gross revenues, consistent with sound fishery management policies and tech-
9 niques and the necessary allowable subsistence needs.

10 * Sec. 6. AS 16.43.160(a) is amended to read:

11 (a) The commission shall establish annual fees for the issuance and
12 annual renewal of entry permits, [OR] interim-use permits, fresh water
13 interim-use permits, or fresh water entry permits. The amount paid by a
14 permit holder under the provisions of AS 16.05.480 shall be credited by
15 the commission toward payment of the fee charged under this section. No
16 more than one credit may be obtained annually by a person.

17 * Sec. 7. AS 16.43 is amended by adding new sections to read:

18 ARTICLE 3A. FRESHWATER SALMON FISHERIES.

19 Sec. 16.43.186. FRESHWATER ENTRY PERMITS. (a) In addition to
20 entry permits, interim-use permits, educational permits, and special
21 harvest area permits, the commission shall issue a freshwater entry
22 permit or a freshwater interim-use permit to a person who establishes
23 his qualifications for a freshwater entry or a freshwater interim-use
24 permit in the administrative areas and subdistricts designated in
25 AS 16.43.192.

26 (b) A freshwater entry permit may be issued for a term of five
27 years only; however, a fresh water entry permit may be renewed subject
28 to AS 16.43.191(c).

29 (c) A freshwater entry permit authorizes the permit holder to

1 operate a unit of gear only within the administrative area or subdis-
2 trict specified on the freshwater entry permit.

3 (d) A freshwater entry permit constitutes a use privilege which
4 may be modified or revoked by the legislature without compensation.

5 (e) A freshwater entry permit survives the death of the holder.

6 (f) Except as provided in AS 16.10.330 - 16.10.337, a freshwater
7 entry permit may not be

8 (1) pledged, mortgaged, leased, or encumbered in any way;

9 (2) transferred with any retained right of possession,
10 repossession or foreclosure; or

11 (3) attached, distrained, or sold on execution of judgment or
12 under any other process or court order.

13 (g) Upon the death of a freshwater entry permit holder, the permit
14 shall be transferred by the commission directly to the surviving spouse
15 by right of survivorship unless a contrary intent is manifested. When
16 no spouse survives, the rights of the decedent pass as part of his
17 estate.

18 Sec. 16.43.187. STANDARDS FOR ISSUANCE OF FRESHWATER ENTRY
19 PERMITS. (a) The commission shall adopt regulations establishing
20 qualifications for ranking applicants for freshwater entry permits
21 according to the degree of hardship which they would suffer by exclusion
22 from the fishery. The regulations shall define priority classifications
23 of similarly situated applicants based on a reasonable balance of the
24 following hardship standards:

25 (1) extent of past participation in the fishery since 1960 or
26 extent of participation since initial permit issuance, including but not
27 limited to the number of years of participation in the fishery when
28 commercial markets were readily available;

29 (2) degree of economic dependence on the fishery during the

1 years commercial markets were readily available, including but not
2 limited to a percentage of income derived from the fishery, reliance on
3 all alternative sources of income, availability of alternative occupa-
4 tions, and investment in vessels and gear.

5 (b) If the individuals in a family have applied for a freshwater
6 entry permit for the same species and type of gear, and all the indi-
7 viduals in the family have failed to qualify for the freshwater entry
8 permit, the commission shall accumulate the qualifications of each of
9 the individuals for the freshwater entry permit. The commission shall
10 issue a freshwater family partnership entry permit if the family's
11 cumulative qualifications result in placing the partnership in a
12 category designated in (c) of this section. For the purposes of this
13 subsection "individuals in the family" means persons within the first
14 degree of consanguinity.

15 (c) The commission shall designate by regulation the priority
16 classification of applicants who would suffer major economic hardship by
17 exclusion from the fishery.

18 (d) The commission shall designate by regulation the priority
19 classification of applicants who would suffer significant economic
20 hardship by exclusion from the fishery.

21 (e) The commission shall designate by regulation the priority
22 classification of applicants who would suffer only minor economic
23 hardship by exclusion from the fishery.

24 Sec. 16.43.188. APPLICATION FOR ISSUANCE OF FRESHWATER ENTRY
25 PERMITS. (a) The commission shall accept applications for freshwater
26 entry permits only from applicants who have harvested fishery resources
27 commercially.

28 (b) The commission shall establish opening and closing dates,
29 places and form of application for freshwater entry permits for units

1 designated in this chapter. The commission may require the submission
2 of specific verified evidence establishing the qualifications of the
3 applicant under the regulations adopted under AS 16.43.187.

4 (c) If an applicant is unable to establish his qualifications for
5 a freshwater entry permit by submitting the specific verified evidence
6 required in the application by the commission, he may request and obtain
7 an administrative adjudication of his application according to the
8 procedure established in AS 16.43.110(b). At the hearing he may present
9 alternative evidence of his qualifications for a freshwater entry
10 permit.

11 (d) An applicant shall be assigned to a priority classification
12 based solely on his qualifications as of January 1 of the year during
13 which the commission establishes the maximum number of entry permits for
14 the fishery for which the application has been made.

15 Sec. 16.43.189. ISSUANCE OF FRESHWATER ENTRY PERMITS. (a) The
16 commission shall first issue freshwater entry permits for each fishery
17 subdistrict management area to all qualified applicants in the priority
18 classification designated under AS 16.43.187(c) and then to qualified
19 applicants in order of descending priority classification, until the
20 number of freshwater entry permits issued equals the maximum number of
21 freshwater entry permits originally established by the commission under
22 AS 16.43.240, or subsequently established by the commission under
23 AS 16.43.191. A person who is within a priority classification speci-
24 fied under AS 16.43.187(c) or who validly holds an entry permit for the
25 same fishery as of January 1, 1979, may not be denied a freshwater entry
26 permit.

27 (b) If, before January 1, 1982, and thereafter during any five-
28 year period for which the maximum number of freshwater entry permits
29 have been established by the commission under AS 16.43.191, a freshwater

1 entry permit reverts to, is returned to, or is revoked by the state for
2 any reason, the freshwater entry permit shall be made available to all
3 qualified applicants in the priority classifications designated under
4 AS 16.43.187(d) in order of descending priority classification, unless
5 it is necessary to reserve freshwater entry permits under (d) of this
6 section.

7 (c) If, within the lowest priority classification of qualified
8 applicants to which some freshwater entry permits may be issued, there
9 are more applicants than there are freshwater entry permits to be
10 issued, then the allocation of freshwater entry permits within that
11 priority classification shall be by lottery.

12 (d) If, at the time freshwater entry permits are issued, appli-
13 cants are still appealing the findings of an administrative adjudication
14 under AS 16.43.188, a sufficient number of permits shall be reserved out
15 of the permits to be issued to protect the rights of those applicants,
16 assuming all appeals will be resolved in favor of the applicants. The
17 remaining freshwater entry permits shall be allocated to the next most
18 qualified applicants.

19 Sec. 16.43.190. SPECIAL INTERIM-USE PERMITS. The commission,
20 after consulting with the commissioner of fish and game, may authorize
21 special one-year freshwater interim-use permits if the commission finds
22 that changes in the biological conditions of the fishery, or changes in
23 the market conditions directly affecting the fishery, have occurred
24 which substantially demonstrate that one-year interim-use permits should
25 be issued in order to meet the purposes of AS 16.43.186 - 16.43.199.
26 The special one-year freshwater interim-use permit shall be made avail-
27 able to all qualified applicants in the priority classifications desig-
28 nated under AS 16.43.187(d) and (e) in order of descending priority
29 classification.

1 Sec. 16.43.191. MAXIMUM NUMBER OF FRESHWATER ENTRY PERMITS. (a)
2 Not later than June 1, 1981, and each five years after June 1, 1981, the
3 commission shall establish the maximum number of freshwater entry per-
4 mits for the administrative areas and subdistricts designated in AS 16.-
5 43.192 for a five-year period based on a reasonable balance of the
6 following general standards:

7 (1) the number of freshwater entry permits sufficient to
8 maintain a healthy fishery that will result in a reasonable average
9 annual gross revenue to all fishermen participating in the fishery;

10 (2) the number of freshwater entry permits necessary to
11 harvest the allowable commercial take of the fishery resource during
12 all years, consistent with sound fishery management techniques and
13 the necessary allowable subsistence harvest of the fishery resource.

14 (b) In considering whether to increase or decrease the maximum
15 number of freshwater entry permits for a freshwater fishery during a
16 five-year period, the commission shall consider whether one or both of
17 the following conditions makes a change desirable, considering the
18 purposes of AS 16.43.186 - 16.43.199:

19 (1) an established change in the biological condition of the
20 fishery which substantially demonstrates that an alteration of the
21 maximum number of freshwater entry permits is permissible in applying
22 the standards set out in (a) of this section;

23 (2) an established change in the market conditions directly
24 affecting the fishery, which substantially demonstrates that an altera-
25 tion of the maximum number of freshwater entry permits established under
26 this section is permissible.

27 (c) If the commission decreases the maximum number of freshwater
28 entry permits for a fishery, the commission shall apply the standards
29 for issuance set out in AS 16.43.187 in determining which freshwater

1 entry permit holders may renew their permits.

2 Sec. 16.43.192. UPPER YUKON FRESHWATER FISHERY. (a) The com-
3 mercial fisheries in the Upper Yukon, that portion of the Yukon River
4 from one mile downstream from Horse Island, below Holy Cross, to the
5 Canadian Border, and all tributaries, are designated as freshwater
6 fisheries subject to the provisions of AS 16.43.185 - 16.43.199. The
7 commission shall accept applications for freshwater entry permits from
8 all applicants who have harvested salmon fishery resources commercially
9 before January 1, 1976. All persons who participated in the operation
10 of gear used to harvest salmon commercially shall be ranked according to
11 the priority classifications designated in AS 16.43.187.

12 (b) For the purpose of limiting entry into the fisheries, the
13 Yukon River and its tributaries include the following administrative
14 areas:

15 (1) Lower Yukon -- that portion of the Yukon River, and
16 tributaries, downstream from a point one mile downstream from Horse
17 Island, below Holy Cross.

18 (2) Upper Yukon -- that portion of the Yukon River, and
19 tributaries, upstream from a point one mile downstream from Horse
20 Island, below Holy Cross.

21 (3) The Upper Yukon administrative area includes the follow-
22 ing subdistrict administrative areas:

23 (A) Upper Yukon Subdistrict 1 -- that portion of the
24 Yukon River from a point one mile downstream from Horse Island,
25 below Holy Cross to the confluence of the Yukon and the Bonasila
26 Rivers;

27 (B) Upper Yukon Subdistrict 2 -- that portion of the
28 Yukon River upstream from the confluence of the Yukon River and the
29 Bonasila River to a point one mile upstream from the village of

1 Bishop Mountain;

2 (C) Upper Yukon Subdistrict 3 -- that portion of the
3 Yukon River from a point one mile upstream from the village of
4 Bishop Mountain to the mouth of Illinois Creek near Kallands;

5 (D) Upper Yukon Subdistrict 4 -- that portion of the
6 Yukon River from a point at the mouth of Illinois Creek near
7 Kallands upstream to the United States-Canadian border, not in-
8 cluding the Tanana River drainage;

9 (E) Upper Yukon Subdistrict 5 -- the Tanana River drain-
10 age.

11 (c) For the purposes of harvesting salmon resources commercially
12 in the upper Yukon River administrative area subdistricts 2 - 5, fresh-
13 water entry permits may be employed for the use of set gill nets and
14 fish wheels only.

15 Sec. 16.43.193. DEFINITIONS. In AS 16.43.185 - 16.43.192,

16 (1) "fishery" means the commercial taking of a specific
17 fishery resource in a specific administrative area or subdistrict with a
18 specific type of gear;

19 (2) "healthy fishery" means a fishery that yields a suffi-
20 cient rate of economic return to the fishermen participating in it to
21 provide for, among other things, the following:

22 (A) maintenance of gear, and vessels associated with the
23 operation of gear, and satisfactory and safe operating conditions;
24 and

25 (B) ability and opportunity to improve vessels and gear;

26 (3) "person" means a natural person or a family partnership
27 as defined in AS 16.43.187(c), and does not include a corporation,
28 company, partnership, firm, association, organization, business, trust,
29 or society;

1 (4) "present ability to actively participate" means the
2 person applying for a permit, or a member of the family partnership, is
3 physically able to harvest fish in the fishery and has reasonable access
4 to fishing gear of the type utilized in that fishery;

5 (5) "priority classification" means the allocation of
6 potential permit applicants for a five-year period into reasonable
7 groupings of similarly situated applicants and the priority ranking of
8 those groupings according to the extent to which they satisfy the stan-
9 dards of preference.

10 * Sec. 8. AS 16.43.240(b) is amended to read:

11 (b) When the commission finds that a fishery not designated as a
12 distressed fishery under AS 16.43.230 has reached levels of participa-
13 tion which require the limitation of entry in order to achieve the
14 purposes of this chapter and art 8, sec. 15 of the state constitution,
15 the commission shall establish the initial maximum number of entry
16 permits for that fishery and shall thereafter regulate entry into those
17 fisheries in a manner which is consistent with this chapter.

18 * Sec. 9. This Act takes effect immediately in accordance with AS 01.10.-
19 070(c).