

CS FOR HOUSE BILL NO. 137 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/14/91
Referred: Rules

Sponsor(s): REPRESENTATIVES GRUSSENDORF, Hudson, Koponen, Ulmer, Gruenberg, B.Davis, Mackle, C.Davis, Kubina, Taylor

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing the Alaska Commercial Fisheries Entry Commission to establish a
2 moratorium on new entrants into the Southeast Alaska dungeness crab fishery and certain
3 other commercial fisheries, relating to petitions by the commissioner of fish and game for
4 the establishment of a moratorium, and relating to qualifications for entry permits; and
5 providing for an effective date."

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

7 * **Section 1. FINDINGS.** The legislature finds that

8 (1) the continuation of a new and emerging commercial fishery may be threatened by the
9 lack of adequate biological and resource management information necessary to determine the amount
10 of fishing effort that a fishery resource can sustain;

11 (2) the continuation of a new and emerging commercial fishery may be threatened by an
12 increase in fishing effort that is coupled with a lack of sufficient biological and resource management
13 information necessary to ascertain, consistent with the principles of sustained yield, whether the fishery

1 can support additional fishing effort;

2 (3) the provisions of the current commercial fisheries limited entry statutes, developed
3 for commercial salmon fisheries, may not be appropriate for certain new and emerging commercial
4 fisheries in the state;

5 (4) the time consuming process required to consider, adopt, and implement a limited entry
6 program for a fishery, coupled with public discussion of a proposal for limiting entry into the fishery,
7 can stimulate a rush of new entrants into the fishery before the limited entry program can be
8 implemented.

9 * Sec. 2. AS 16.05.050 is amended by adding a new paragraph to read:

10 (20) to petition the Alaska Commercial Fisheries Entry Commission to establish
11 a moratorium on new entrants into certain commercial fisheries as provided in AS 16.43.225 if
12 the commissioner has requested and received approval of the petition from the Board of Fisheries
13 under AS 16.05.251(g).

14 * Sec. 3. AS 16.05.251 is amended by adding a new subsection to read:

15 (g) The Board of Fisheries shall consider a request of the commissioner for approval of
16 a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on
17 new entrants into a commercial fishery under AS 16.43.225 at the board's next regular or special
18 meeting that follows the receipt by the board of the request for approval of the petition and that
19 allows time for the notice required under this subsection. The board may consider the request
20 of the commissioner for approval of the petition only after 15 days' public notice of the board's
21 intention to consider approval of the petition. The board shall approve a petition of the
22 commissioner to the Alaska Commercial Fisheries Entry Commission for the establishment of
23 a moratorium on new entrants into a commercial fishery under AS 16.43.225 if the board finds
24 that

25 (1) the fishery that is the subject of the petition has experienced recent increases
26 in fishing effort that are beyond a low, sporadic level of effort and has achieved a level of
27 harvest that may be approaching or exceeding the maximum sustainable level for the fishery; and

28 (2) there is insufficient biological and resource management information that is
29 necessary to promote conservation and sustained yield management of the fishery.

30 * Sec. 4. AS 16.43.100(a) is amended to read:

31 (a) To accomplish the purposes set out in AS 16.43.010, the commission shall [:]

- 1 (1) regulate entry into the commercial fisheries for all fishery resources in the
- 2 state;
- 3 (2) establish priorities for the application of the provisions of this chapter to the
- 4 various commercial fisheries of the state;
- 5 (3) establish administrative areas suitable for regulating and controlling entry into
- 6 the commercial fisheries;
- 7 (4) establish, for all types of gear, the maximum number of entry permits for each
- 8 administrative area;
- 9 (5) designate, when necessary to accomplish the purposes of this chapter,
- 10 particular species for which separate interim-use permits or entry permits will be issued;
- 11 (6) establish qualifications for the issuance of entry permits;
- 12 (7) issue entry permits to qualified applicants;
- 13 (8) issue interim-use permits as provided in AS 16.43.210, [AND] 16.43.220, and
- 14 16.43.225;
- 15 (9) establish, for all types of gear, the optimum number of entry permits for each
- 16 administrative area;
- 17 (10) administer the buy-back program provided for in AS 16.43.310 and 16.43.320
- 18 to reduce the number of outstanding entry permits to the optimum number of entry permits;
- 19 (11) provide for the transfer and reissuance of entry permits to qualified
- 20 transferees;
- 21 (12) provide for the transfer and reissuance of entry permits for alternative types
- 22 of legal gear, in a manner consistent with the purposes of this chapter;
- 23 (13) administer the collection of the annual fees provided for in AS 16.43.160;
- 24 (14) administer the issuance of commercial fishing vessel licenses under
- 25 AS 16.05.490;
- 26 (15) issue educational entry permits to applicants who qualify under the provisions
- 27 of AS 16.43.340 - 16.43.390;
- 28 (16) establish reasonable user fees for services;
- 29 (17) issue landing permits under [IN ACCORDANCE WITH] AS 16.05.675 and
- 30 regulations adopted under that section; [AND]
- 31 (18) establish and collect annual fees for the issuance of landing permits that

1 reasonably reflect the costs incurred in the administration and enforcement of provisions of law
2 related to landing permits; and

3 (19) establish a moratorium on entry into commercial fisheries as provided
4 in AS 16.43.225.

5 * Sec. 5. AS 16.43.180(a) is amended to read:

6 (a) The commission shall adopt regulations providing for the temporary emergency
7 transfer of entry permits and interim-use permits when illness, disability, death, required military
8 or government service, or other unavoidable hardship prevents the permit holder from
9 participating in the fishery. To alleviate hardship pending a final determination of the permit
10 holder's eligibility for an entry permit, the commission shall adopt regulations providing for the
11 temporary emergency transfer of an interim-use permit issued under AS 16.43.210(b) or
12 16.43.225.

13 * Sec. 6. AS 16.43.210(a) is amended to read:

14 (a) Pending the establishment of the maximum number of entry permits under
15 AS 16.43.240 and the issuance of entry permits under AS 16.43.270, the commission shall issue
16 interim-use permits under regulations adopted by the commission for each fishery, not subject
17 to a moratorium under AS 16.43.225, to all applicants who can establish their present ability
18 to participate actively in the fishery for which they are making application.

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

20 Sec. 16.43.225. MORATORIUM ON NEW ENTRANTS INTO CERTAIN FISHERIES.

21 (a) Subject to (b) of this section, the commission may establish a moratorium on new entrants
22 into a fishery

23 (1) that has experienced recent increases in fishing effort that are beyond a low,
24 sporadic level of effort;

25 (2) that has achieved a level of harvest that may be approaching or exceeding the
26 maximum sustainable level for the fishery; and

27 (3) for which there is insufficient biological and resource management information
28 necessary to promote the conservation and sustained yield management of the fishery.

29 (b) The commission may establish a moratorium on new entrants into a fishery described
30 in (a) of this section if

31 (1) the commissioner of fish and game, with the approval of the Board of

1 Fisheries, petitions the commission under AS 44.62.220 to establish a moratorium on new
2 entrants into the fishery; and

3 (2) the commission finds that

4 (A) the fishery has reached a level of participation that may threaten the
5 conservation and the sustained yield management of the fishery resource and the
6 economic health and stability of commercial fishing; and

7 (B) the commission has insufficient information to conclude that the
8 establishment of a maximum number of entry permits under AS 16.43.240 would further
9 the purposes of this chapter.

10 (c) The commission may establish a moratorium under this section for a continuous
11 period of up to four years. A fishery that has been subject to a moratorium under this section
12 may not be subjected to a subsequent moratorium under this section unless five years have
13 elapsed since the previous moratorium expired.

14 (d) While a moratorium is in effect, the commission shall conduct investigations to
15 determine whether a maximum number of entry permits should be established under
16 AS 16.43.240 by

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

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

19 and

20 (3) consulting with participants in the fishery.

21 (e) The commission shall establish by regulation the qualifications for applicants for an
22 interim-use permit for a fishery subject to a moratorium under this section. The qualifications
23 must include the minimum requirements for past or present participation and harvest in the
24 fishery. The commission may not issue an interim-use permit for a fishery subject to a
25 moratorium under this section unless the applicant can satisfy the qualifications established under
26 this subsection and establish the present ability and intent to participate actively in the fishery.

27 Sec. 16.43.227. SOUTHEAST ALASKA DUNGENESS CRAB FISHERY. (a) The
28 commission may establish a moratorium on new entrants into the southeast Alaska dungeness
29 crab fishery for a continuous period of up to four years without complying with
30 AS 16.43.225(a) - (c). While the moratorium is in effect, the commission shall

31 (1) conduct the investigation required under AS 16.43.225(d);

1 (2) establish by regulation the qualifications for an interim-use permit for the
2 fishery, including minimum requirements for past or present participation and harvest in the
3 fishery; and

4 (3) issue interim-use permits for the fishery to applicants who satisfy the
5 qualifications established under (2) of this subsection and who establish the present ability and
6 intent to participate actively in the fishery.

7 (b) Notwithstanding AS 16.43.225, for the purposes of this chapter

8 (1) an interim-use permit issued under this section shall be treated as an interim-
9 use permit issued under AS 16.43.225;

10 (2) a moratorium established under this section shall be treated as a moratorium
11 established under AS 16.43.225

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

13 (b) When the commission finds that a fishery, not designated as a distressed fishery under
14 AS 16.43.230 or not subject to a moratorium under AS 16.43.225, has reached levels of
15 participation that [WHICH] require the limitation of entry in order to achieve the purposes of
16 this chapter, the commission shall establish the maximum number of entry permits for that
17 fishery.

18 * **Sec. 9.** AS 16.43.240 is amended by adding a new subsection to read:

19 (c) When the commission finds that a fishery subject to a moratorium under
20 AS 16.43.225 has reached levels of participation that require the limitation of entry in order to
21 achieve the purposes of this chapter, the commission shall establish the maximum number of
22 entry permits for that fishery.

23 * **Sec. 10.** AS 16.43.260(a) is amended to read:

24 (a) The commission shall accept applications for entry permits only from applicants who
25 have harvested fishery resources commercially while participating in the fishery as holders of
26 gear licenses issued under AS 16.05.536 - 16.05.670 or [AND] interim-use permits under
27 AS 16.43.210(a) or 16.43.225 before the qualification date established in (d), [OR] (e), or (f) of
28 this section. The commission may specify by regulation the calendar years of participation that
29 will be considered for eligibility purposes.

30 * **Sec. 11.** AS 16.43.260(d) is amended to read:

31 (d) Except as provided in (e) or (f) of this section, an applicant shall be assigned to a

1 priority classification based solely upon the applicant's qualifications as of January 1, 1973.

2 * Sec. 12. AS 16.43.260(e) is amended to read:

3 (e) Except as provided in (f) of this section, when [WHEN] the commission establishes
4 the maximum number of entry permits for a particular fishery under AS 16.43.240 after
5 January 1, 1975, an applicant shall be assigned to a priority classification based solely upon the
6 applicant's qualifications as of January 1 of the year during which the commission establishes
7 the maximum number of entry permits for the fishery for which application is made.

8 * Sec. 13. AS 16.43.260 is amended by adding a new subsection to read:

9 (f) When the commission establishes the maximum number of entry permits under
10 AS 16.43.240 for a fishery that is subject to a moratorium under AS 16.43.225, an applicant for
11 an entry permit for the fishery shall be assigned to a priority classification based solely upon the
12 applicant's qualifications as of the effective date of the regulation establishing the moratorium.

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