

HB

204

FISCAL NOTE

NO. _____
 Bill version: HB 204
 (H) Publish Date: 3/25/97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Fish and Game
 Title: An Act revising the procedures and authority of the Alaska
Commercial Fisheries Entry Commission BRU: Commercial Fisheries (Limited) Entry Commission
 Sponsor: House Special Committee on Fisheries Component: Limited Entry Program Administration
 Requester: House Special Committee on Fisheries COMPONENT SERIAL NO. 0471

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact.

Prepared By: Roger Kolden Phone: 789-6160
 Agency: Commercial Fisheries (Limited) Entry Commission Date: 3/21/97
 Approved by Commissioner: Bruce Twomley
 Agency: Commercial Fisheries (Limited) Entry Commission Date: 3/21/97

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REPRESENTATIVE ALAN AUSTERMAN Alaska State Legislature

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M E M O R A N D U M

TO: Representative Scott Ogan, Co-Chair
Representative Bill Hudson, Co-Chair
House Resources Committee

FROM: Representative Alan Austerman, Chair
House Special Committee on Fisheries

DATE: April 2, 1997

RE: House Bill ~~19~~ 204

House bill 204, "relating to moratoria on commercial fisheries entry" has been referred to your committee. I respectfully request that a hearing for HB 204 be scheduled for the Resources committee at your earliest possible convenience.

If you have any questions regarding scheduling this legislation, please contact my staff, Amy Daugherty, at x4230.

Thank you in advance for your consideration of this request.

Alaska State Legislature

House Resources Committee

Co-Chair Scott Ogan
(907) 465-3715
FAX (907) 465-3265
Capitol Building, Room 124
Juneau, Alaska 99801



Co-Chair Bill Hudson
(907) 465-6820
FAX (907) 465-2273
Committee Meetings
T/Th 1 - 4 p.m.

Vice Chair: Beverly Masek,

Representatives Ramona Barnes, Fred Dyson, Joe Green, Reggie Joule, Irene Nicholia, William Williams

TO: Chief Clerk

FROM: Representative Bill Hudson, *Bill* Co-Chairman
House Resources Committee

SUBJECT: HB204 Committee Report

DATE: April 16, 1997

The House Resources Committee incorrectly reported the committee action taken on Tuesday, April 15 regarding HB204: Moratoria on Commercial Fisheries Entry.

Please amend the committee report to correctly reflect the passage of CSHB204, with the same title, as the version actually passed by the committee.

ALASKA STATE LEGISLATURE



House of Representatives
Special Committee on Fisheries

Sponsor Statement

HB 204

HB 204 amends the existing moratorium law to provide a workable and effective moratorium tool as part of Alaska's existing fisheries management process. The current moratorium statute has proved unworkable and confusing. The current process involves a multi-step where a fisher seeking a moratorium must first go to the Commissioner of Fish and Game, who, in turn must seek authorization from the Board of Fisheries. Once authorization is granted from the Board of Fisheries, the Commissioner may then petition the Commercial Fisheries Entry Commission to provide a moratorium.

The Commission is then authorized to go forward if it can make findings required by the current statute, which are difficult to understand and mutually inconsistent.

This cumbersome and confusing process prevents a quick response in fisheries that are growing too rapidly to ensure effective management. As a result, the resource and the economic livelihood of fishers could be jeopardized. In some situations, ADF&G's only recourse is to close the fishery or refuse to open a new fishery if effort cannot be controlled.

HB 204 would allow fishers seeking a moratorium to petition the commission directly. This legislation would also give the commission the authority to place a moratorium on vessels and gear as well as individuals. This is important in a fishery like the Bering Sea Korean hair crab fishery where large vessels may use a number of different skippers in a season.

Under the current statute, eligibility to participate during the moratorium is based on past participation. This requirement precludes the use of a

moratorium in new fisheries or in fisheries that have remained closed for years. In these two situations, participation levels in an open-access fishery may be initially too great to promote resource conservation and sustainable fisheries. HB 204 would allow the commission to implement a moratorium in such fisheries and base eligibility on other reasonable standards such as participation in similar fisheries.

Additionally, HB 204 would allow the state to extend its moratorium authority to offshore fisheries adjacent to state waters when consistent with federal law.

Improving the moratorium law is consistent with our concern for developing and protecting jobs, as well as streamlining government and resource protection.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 204

- 1 Page 3, lines 25 - 26:
- 2 Delete all material.
- 3 Insert "vessel permit to another vessel if the original permitted vessel is sunk,
- 4 destroyed, or damaged to the extent that the vessel is inoperable for the fishery for which the
- 5 permit is issued."

Petersburg Vessel Owners Association

P.O. Box 232
Petersburg, Alaska 99833
Phone (907) 772-9323 Voice and Fax

April 10, 1997

Representative Bill Hudson
Co-Chair, House Committee
on Resources
Alaska State Legislature
Juneau, AK 99802

Dear Representative Hudson:

Limiting a fishery is the management strategy of last resort; any efforts to streamline this process must be carefully crafted to avoid needlessly restricting Alaskan's access to the resource. The current CFEC law contains certain checks and balances and strict guidelines to insure that there are no other management options available before a moratorium is issued and a fishery limited. Considering these parameters, we have the following concerns about provisions in HB 204.

Section 1 (a) of HB 204 would alter the criteria for placing a fishery under moratorium. According to the legislation, the CFEC would need to show that a moratorium would "promote the conservation and sustained yield management and the economic health and stability of commercial fishing." Technically, the CFEC could establish a moratorium on a fishery regardless of the level of harvest or participation and still be accomplishing that goal. Current statute requires a fishery have increased effort or be approaching or exceeding the maximum sustainable level of harvest to be considered for a moratorium. We believe the language in section 1 (a) of HB 204 needs to be strengthened to include the criteria currently used by the CFEC under AS 16.43.225(a) (1-3).

Section 2 (b) (2) of HB 204 would allow CFEC to establish a moratorium on fisheries that do not yet exist and have no participants. In determining who qualifies for a permit for these new fisheries, the commission would consider participation in similar or related fisheries. This provision could create a situation where the only Alaskans receiving limited entry permits for new fisheries are those already participating in commercial fisheries. This would needlessly restrict Alaskan's access to the resource and the opportunity to earn a living by participating in the state's commercial fisheries. The authority to develop and manage an emerging fishery should remain with the Board of Fisheries. We recommend this provision be deleted from the legislation.

Section 2 (b) (3) We would prefer that if CFEC establishes a moratorium, it do so to develop management alternatives in conjunction with the Board of Fisheries and the Department of Fish and Game, not the legislature. The public already has the option to approach the legislature to develop proposals if it so desires, though it is our hope the

legislature would only consider introducing legislation when both the CFEC and the Board of Fisheries are unable to address the needs of a particular fishery. We believe the CFEC will be granted sufficient authority under Section 2 (b) (1) to establish a moratorium to allow time for consultation with ADF&G and the Board, and we recommended deleting this provision from HB 204.

Section 2 repeals the current statute requiring the commission to determine a fishery has reached a level of participation that may threaten the conservation and sustained yield management of the resource before a moratorium is established. We believe this criteria must be met before access to the resource is limited; we recommend amending the bill to include language at AS 16.43.225 (b) (2) (a).

Lastly, HB 204 eliminates any checks and balances that exist in the limited entry law. Under HB 204, the CFEC is virtually an autonomous agency no longer dependent on the Board of Fisheries or the Department of Fish and Game for the authority to establish a moratorium. While we empathize with the commission's concerns that the current process is cumbersome, we are not willing to give CFEC sole authority to determine whether a fishery should be limited. At some level, the CFEC should be required to gain the approval of the Board of Fisheries before proceeding.

Without a specific problem statement from the CFEC it is impossible to suggest language which may address their concerns, but we hope this letter outlines some of the contentious points as well as possible solutions. If you or your staff have any questions, please feel free to contact us at 772-9323.

Thank you for your consideration.

Sincerely,



Liz Cabrera
Director

cc:

Sen. Robin Taylor
Rep. Ben Grussendorf
United Fishermen of Alaska
Kodiak Seiners Association

MEMORANDUM

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION


TO: The Honorable Tony Knowles
Governor of Alaska

DATE: February 4, 1997

HAND - CARRY

FAX NO.: 789-6170

TELEPHONE NO.: 789-6160

FROM: COMMERCIAL FISHERIES
ENTRY COMMISSION
 Dale Anderson, Commissioner
Marlene Johnson, Commissioner
Bruce Twornley, Chairman
Mail Stop: 0302

SUBJECT: Improved Moratorium
Legislation for
Commercial Fisheries

1. Introduction: The Task for the Alaska Commercial Fisheries Entry Commission and the Alaska Department of Fish and Game

Last July, you signed into law HB 547 and HB 538, that, respectively, established a four-year moratorium in the Southeast Alaska dive fisheries and the Bering Sea Korean hair crab fishery. At the time your July 3, 1996 letter (copy attached) to The Honorable Drue Pearce, President of the Senate and The Honorable Gail Phillips, Speaker of the House, expressed concern about fisheries management decisions made by legislation, and you asked the Commercial Fisheries Entry Commission and the Department of Fish and Game to review existing statutes and recommend changes to existing law to provide more workable and effective general moratorium provisions.

2. Problems of the Existing Moratorium Law

We are happy to undertake this task because we recognize (1) the dysfunctionality of the current moratorium provisions and (2) the heavy burden on individual fishers to seek legislation to achieve a moratorium in their fisheries. This memo suggests ideas for new legislation to provide a functional moratorium tool as part of Alaska's existing fisheries management process.

Existing statutes do provide a means to establish a moratorium in a commercial fishery. However, as your valued staff member Mary McDowell well recognizes, the current statutes are unworkable. We worked with Ms. McDowell at the time this legislation was developed, and the final product to emerge from the Legislature bore little resemblance to the legislation originally supported by Senator Eliason.

One seeking a moratorium must first go to the Commissioner of Fish and Game, who, in turn, must seek authorization from the Board of Fisheries. AS 16.43.225; AS 16.05.251(g). If the Board of Fisheries authorizes the Commissioner to go forward, the Commissioner may then petition the Commercial Fisheries Entry Commission to provide a moratorium. *Id.*

The Commission is then authorized to go forward if it can make the findings required by AS 16.43.225(b)(2). However, the Commission must also meet the requirements of AS 16.43.225(a), which are inconsistent with those of AS 16.43.225(b)(2). Additionally, the standards set forth in AS 16.43.225(a) are difficult to understand and mutually inconsistent.

This cumbersome and confusing, multi-step process prevents quick response in fisheries that are growing too rapidly to ensure effective management. As a result, the resource and the economic livelihood of the fishers could be jeopardized. In some situations, ADF&G's only recourse is to close the fishery or refuse to open a new fishery if effort cannot be controlled.

Petitioners should be able to approach CFEC directly to request a moratorium in their fisheries. The Alaska Department of Fish and Game would not be bypassed in such a procedure. Unless the Alaska Department of Fish and Game could defend a moratorium proposal from the standpoint of resource conservation, our proposal could not realistically go forward. All moratoria to date were adopted because additional advice, regulations or new laws were needed to formulate an effective management plan. Consultations with industry, ADF&G, the Board of Fisheries and the Legislature are extremely important during a temporary moratorium.

In short, the ambiguity and inconsistency of the standards in the existing legislation create an obstacle to a moratorium. Additionally, by the time one pursued the matter before the Board of Fish, through ADF&G's Commissioner, and then before CFEC, the situation sought to be addressed by a moratorium would likely be aggravated by additional participants wanting to beat a moratorium deadline.

3. CFEC Suggestions for Better Moratorium Legislation

Our ideas below suggest more effective procedure and standards that we believe we and the public could understand and apply.

(a) The purpose of a moratorium is to quickly put a lid on participation levels in order to buy time to develop better management tools and avoid risks from greater participation. The Entry Commission has existing authority to make permanent decisions to limit entry into a commercial fishery. In contrast, a moratorium would likely be limited to four years. Therefore, it is difficult to justify the more burdensome existing procedure for establishing a moratorium. We recommend the Commission be authorized to establish a moratorium under appropriate standards, so fishers are required to go to only one agency.

(b) Appropriate standards can be found in the existing limited entry legislation. Limited entry under the existing system is authorized when limiting a fishery would "promote the conservation and sustained yield management of Alaska's fishery resource and the economic health and stability of commercial fishing in Alaska" AS 16.43.010(a). We propose

*MUS - 2/10
 CFEC/ADFG
 to submit*

legislation that would authorize a moratorium when necessary to serve these same statutory purposes, but where it can not be shown (for example, due to lack of sufficient information) that limited entry under the existing system would be most beneficial.

* (c) Another problem with the existing moratorium legislation is the qualification date can only be the effective date of the regulation adopted following the full administrative procedure. In practice, this can not be accomplished in less than four months, and if a fishery is open during the process, large numbers of new participants can enter the fishery in the hope of beating the moratorium qualification date. We have recent examples of this well-known phenomenon. We believe a moratorium could be more effective if the qualification date could clearly be authorized as the date of public notice of the proposal for a moratorium (or another reasonable date). Such a qualification date would allow the Commission to provide actual notice of the proposal to anyone holding a license in the fishery as well as anyone purchasing a license in the fishery from that date forward.

(d) CFEC should be able to use a moratorium instead of limited entry if new or additional information surfaces during the regulatory process that suggests reconsideration of a proposed limitation.

Our recent proposal to limit entry into the Southeast shrimp pot fishery is a case in point. There was substantial support for our proposal, but the record that developed from the public hearings pointed toward a greatly increased number of permit holders above the level ADF&G said was manageable. Participation levels in the fishery had already swelled, and continued to rise in anticipation of limited entry. CFEC either had to adopt a higher maximum number or allow the open-access shrimp fishery to continue escalating unchecked. Either choice resulted in a fishery with a large number of participants.

The shrimp fishery might have benefitted from a moratorium rather than limited entry, but CFEC did not have that option. A moratorium would have allowed a period with no further increase in participants, during which time CFEC could have consulted with ADF&G and the Board of Fisheries about the most effective way to manage this rapidly expanding fishery. A moratorium could have allowed time for ADF&G and the Board to adopt regulations establishing a management plan for the fishery or additional regulations defining shrimp pot gear. These regulations would have provided the means for a limited entry program, if adopted, to effectively control effort, protect the resource and maintain the economic viability of the fishery.

(e) Eligibility to participate during the moratorium could be based on past participation prior to the qualification date or other reasonable standards that serve the purposes of the legislation. This alternative is important, because there are fisheries that remain closed for fear participation levels would be too great to sustain them if reopened. Similarly, there are potential new fisheries that would not be opened for the same reason. In such fisheries, there would be no recent past participation to measure for purposes of eligibility. Alternatives such as a lottery to select a manageable number of participants would be useful. Eligibility to participate in a lottery could be conditioned on relevant fishing experience and other reasonable criteria. This authority could allow fishers and the state (through additional jobs and revenue) to benefit from a fishery that would otherwise remain closed.

The Honorable Tony Nowles -4-

February 4, 1997

The Southeast sea urchin dive fishery is a good example of a new fishery that could have benefitted from improvements in the current moratorium statutes. ADF&G had been reluctant to open new urchin fisheries because there may be too many divers for the available resource. CFEC could not implement a moratorium under existing statutes because of the difficulty in applying the standards and the lack of history of participation on which to base eligibility. The Legislature was left to create a moratorium for the Southeast dive fisheries (including sea urchins), but over 500 persons will be eligible to fish in a new sea urchin fishery.

(f) To be effective, moratorium authority would need to be available to limit vessels and gear as well as individuals. Additionally, the four-year limit to the duration of a moratorium is the standard the Legislature has so far embraced. It would be useful if the moratorium could be extended beyond four years provided certain standards could be met: for example, in the event that additional legislation was required to provide the means to rationalize a fishery.

4. Conclusion and Recommendation

If the ideas presented here appear to be workable and desirable, we would be happy to consult with the Department of Law to develop specific statutory language. Our experience with proposed legislation affecting limited entry leads us to make a recommendation: limited entry legislation has been most successful when real fishers promoted the legislation and enlisted sponsorship by their local legislators. There are various groups of fishers who might have a direct stake in such legislation. For example, demersal shelf rockfish fishers from Sitka might have an interest in this matter. Paul Larson, Deputy Director, Commercial Fisheries Management and Development, has also suggested participants in the new groundfish fisheries emerging in State waters might see such legislation as a valuable tool to check growth in their fisheries.

We suggest improving the moratorium law would be consistent with your concern for developing and protecting jobs, as well as streamlining government and resource protection. A workable moratorium law would allow CFEC to do the job the Legislature intended it to do, and allow the Legislature to focus on other issues.

Attachment

cc: Jim Ayers, Chief of Staff
Mary McDowell, Special Assistant for Fisheries
Patrick Pourchot, Legislative Director
Shari Kochman, Deputy Legislative Director
Frank Rue, Commissioner, ADF&G
David Benton, Deputy Commissioner, ADF&G
Robert C. Clasby, Director, CFMD
Paul R. Larson, Deputy Director, CFMD
Steven Daugherty, Assistant Attorney General

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

PO Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

July 3, 1996

The Honorable Drue Pearce
President of the Senate
716 W. 4th Avenue, Suite 500
Anchorage, AK 99501-2133

The Honorable Gail Phillips
Speaker of the House
716 W. 4th Avenue, Suite 620
Anchorage, AK 99501-2133

RECEIVED

JUL - 5 1996

ALASKA DEPARTMENT OF FISH AND GAME
ENTRY CONTROL SECTION

Dear President Pearce and Speaker Phillips:

Today I am signing House Bill 547, establishing a four-year moratorium on entry into the Southeast Alaska dive fisheries, and House Bill 538, establishing a four-year moratorium for the Bering Sea Korean hair crab fishery and providing for a vessel permit limited entry system. While there are important pragmatic reasons to implement provisions of these bills, I am concerned about the legislation from a public policy and resource management standpoint.

Addressing management of specific fisheries through legislation is not the ideal approach. Alaska's fisheries management system has proven highly effective in maintaining healthy and sustainable resources because it is run by scientists, professional fisheries administrators, and boards and commissions, rather than through the legislative process.

However, over the last few years, situations in several developing fisheries have pointed out that the provisions in existing law regarding the imposition of a moratorium are cumbersome and ineffective. The lack of sufficient funding for the Department of Fish and Game to conduct needed biological research on new or developing fisheries aggravates this situation. Thus, in fisheries such as those addressed in HB 547 and HB 538, we find ourselves having to quickly impose a moratorium through legislation to prevent damage to a fragile resource or the economic health and stability of a dynamic fishery.

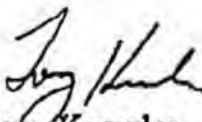
Given the current lack of workable alternative approaches, I recognize several compelling reasons for signing these bills. These include:

- Significant increases in numbers of participants, both recent and anticipated, and the lack of adequate information threaten the conservation of stocks and the stability of these fisheries.
- Severe budget constraints on the Department of Fish and Game prevent gathering of sufficient information and necessitate conservative management of these fisheries.
- A veto of these bills and return to open access could create a stampede into these fragile fisheries. A moratorium will allow a "time out" for proper evaluation to ensure a well managed fishery providing conservation of the resources and sustained economic opportunity for Alaskans in the future.
- The bills establish moratoriums of set duration, not permanent limitations. Nor do they require limited entry. The moratoriums will provide opportunity for public participation in the design of future management options for each of the fisheries, as well as cooperation between the Commercial Fisheries Entry Commission, the Department of Fish and Game, and the Board of Fisheries.

As these bills demonstrate, we need to develop new statutes that provide our professional fisheries managers with the means to easily establish a moratorium in a particular fishery when the need arises. Therefore, I am directing the Commercial Fisheries Entry Commission to work with the Department of Fish and Game to review existing statutes and to recommend changes to make the fishery moratorium provisions more workable and effective.

I will provide the legislature with the results of this review and look forward to working with its members on amending our statutes. The goal is to avoid the need for future emergency legislation for our developing fisheries as exhibited by these two bills.

Sincerely,


Tony Knowles
Governor

cc: Commissioner Frank Rue
Dept. of Fish and Game

Bruce Twomley, Chair,
Commercial Fisheries Entry Commission