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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 Twomley, 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.

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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

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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.

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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

AMENDMENT

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."

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. 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

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JUL - 5 1996

COMMUNICATIONS 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.

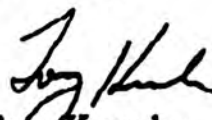
Given the current lack of workable alternative approaches, I recognize several compelling reasons for signing these bills. These include:

- 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

ALASKA STATE LEGISLATURE



House of Representatives
Special Committee on Fisheries

Sponsor Statement

HB 204

HB 204 amends the existing moratorium law to provide for a workable and effective moratorium process as part of Alaska's existing fisheries management. The current moratorium statute has proved unworkable and confusing.

The current process involves multiple steps 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.

Thank you for hearing HB 204, Mr. Chairman. I am Amy Daugherty, staff to the House Special Committee on Fisheries, who sponsored this bill.

HB 204 amends the existing moratorium law to provide a workable and effective moratorium tool as part of Alaska's existing fisheries management process.

There is a cumbersome process in place where a fisher seeking a moratorium first goes to the Commissioner of Fish and Game, who, in turn seeks authorization from the Board of Fisheries. Once the BOF authorization is granted to the Commissioner, he then petitions the Commercial Fisheries Entry Commission to provide a moratorium. The Commission can then go forward if it can make the findings required by the current statute, which are difficult to understand and mutually inconsistent.

The current statutory process prevents a quick response in fisheries that are growing too rapidly to ensure effective management. As a result the resource and economic livelihood of fishers is often 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 also gives 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 or scallop 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.

Rep. Austerman, chairman of the Fisheries Committee, is willing to accept the CS you drafted.

MEMORANDUM**STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION****TO:** SB145 / HB204 file**DATE:** March 26, 1997**FAX NO.:** 789-6170**TELEPHONE NO.:** 789-6160**FROM:** Dale Anderson, Commissioner
COMMERCIAL FISHERIES
ENTRY COMMISSION**SUBJECT:** proposed amendment

To: Annette Kreitzer, Aide to Senator Leman
Amy Daugherty, Aide to Representative Austerman

I would like to see the following change made to SB145 / HB204. There is no substantive change but it makes the provision more easily read and understood. It also adds the phrase "original permitted vessel" for a point of clarification.

Please call me if there are any questions. Thanks.

Page 3, line 25 and 26

original:

(j) The commission may adopt regulations providing for the transfer of a vessel permit for a vessel that is sunk, destroyed, or damaged to the extent that the vessel is inoperable for the fishery for which the permit is issued to another vessel.

suggested change:

(j) The commission may adopt regulations providing for the transfer of a vessel permit to another vessel if the original permitted vessel is sunk, destroyed, or damaged to the extent that it is inoperable for the fishery for which the permit is issued.