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FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB194
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
Title: Fees for commercial fishing licenses and BRU: Comm Fish (Limited) Entry Comm
permits Component: Comm Fish (Limited) Entry Comm
Sponsor: Representative Stevens
Requester: House Fisheries Component Number: 471

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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						
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CHANGE IN REVENUES ()	(470.0)	*	*	*	*	*
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attachment for explanation. Enactment of this bill could reduce future state liabilities for payments of refunds and interest to non-resident fishermen for fees paid in fiscal year FY2002 and beyond depending upon final outcome of Carlson v. State lawsuit.

Prepared by: Roger Kolden Phone 790-6950
Division: Commercial Fisheries Entry Commission Date/Time 3/23/01 4:11 PM
Approved by: Mary McDowell Date 03/23/2001
Agency: Commercial Fisheries Entry Commission

For distribution information, call the Governor's Legislative Office

HB 194 Fiscal Note - Estimates of Potential Fiscal Impacts*

- If HB194 is enacted (with resident fees capped at \$300), CFEC's fee-generated revenues could drop by approximately \$500.0 per licensing year, beginning with licenses for 2002, which the Commission will begin issuing in the late fall of 2001.

A Supreme Court ruling in *Carlson v. State* is expected in the summer of 2002, making a final determination of an allowable method for calculating the maximum nonresident fee differential. That method would then determine the fiscal impacts of the provisions of HB 194 in future years.

If the state prevails in its arguments to the Supreme Court regarding what state expenditures may be included in the formula, the provisions of HB 194 will generate *more* revenue from nonresident fees than the provisions of existing statute would generate.

- If HB 194 is NOT enacted, and the state continues charging fees under its current fee structure, potentially large additional liabilities will continue to accrue to the state under the Carlson lawsuit. Under the Superior Court decision, the state is continuing to accrue new, additional refund and interest costs of approximately \$1.13 million per year. If the state wins on any of the issues it is appealing to the Supreme Court, that annual figure could be reduced, and if the plaintiffs win of the issues they appeal, the additional liability that accrues to the state each year could be larger than that figure.
- If the state were to come into compliance with the Superior Court decision *without* changing the statute (that is, charge fees in accordance with both the existing statutory language, including the mandate that nonresident fees shall be three times the resident fees, *and* with the court's formula for calculating the maximum dollar amount by which nonresident fees may exceed resident fees), CFEC's fee-generated revenues would decline by more than \$3 million per year.

**Assumptions Used in Making Calculations:*

1. *Numbers of permits distributed among five fee classes will be the same as in 2000 (the most recent licensing year figures available). Note that distribution of permits among fee classes varies considerably from year to year, so calculations made for one year based on fee class distribution in another year will necessarily be very rough estimates.*
2. *Continued use of five fee classes, with resident/base fees being increased by 20% in each class (HB194 caps resident/base fees at \$300, a 20% increase over current cap of \$250, so assume all classes increase in same proportion)*
3. *Estimate allowable nonresident permit differential for 2002 at \$111, which is average of allowable differentials over the most recent four years under provisions of Superior Court ruling in Carlson class action lawsuit (calculated by OMB).*

NOTE: Revenues generated from permit fees have been in decline since 1994 due to fewer permits being renewed and some fisheries moving into lower fee classes due to declines in economic returns. Permit fees generated about \$4.3 million in 1997, \$4.1 million in 1998, \$4 million in 1999, and \$3.8 million in 2000. Assuming continuation of that trend, 2002 revenues will likely decline further even under existing statute and use of the 3-to-1 fee differential.

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Representative Gary Stevens

SPONSOR STATEMENT - HB 194

HB 194, "An act relating to fees for commercial fishing licenses and permits", repeals current statute that requires the Commercial Fisheries Entry Commission (CFEC) to charge non-resident fishers three times the amount charged a resident fisher and replaces it with a provision that gives them the authority to charge non-resident fishers the maximum amount allowed by the court. Which in some cases, may be more than 3 to 1.

As you may be aware, in 1982 Carlson and other nonresident commercial fishers sued CFEC alleging that the resident-nonresident fee differential violates the Commerce Clause and the Privileges and Immunities Clause of the U.S. Constitution. Caselaw holds that any difference in commercial license and permit fees may only be based on the amount that residents pay for the pertinent state services through taxes that are not also paid by nonresidents. Thus, the court established a formula that is used to compute the maximum difference that the state can charge for nonresident license and permit fees.

However, in a court trial in June 2000, the superior court ruled that some, but not all, of the budget categories identified by the state may be counted when calculating the annual expenditures for commercial fisheries management. By disallowing four of the six categories, the State of Alaska is faced with a potential \$30 million liability. The State will be appealing that decision to the Supreme Court and will be arguing that the other four budget categories should be included in the formula. Meanwhile, as we continue to charge non-residents three to one, the states liability continues to grow.

By passing this piece of legislation, CFEC will discontinue the practice of charging three to one and instead will charge the maximum amount that is allowed by the court. In other words, starting in January, CFEC would calculate the fee differential based on the two budget categories that the court has allowed. However, the Department of Law is hopeful that they will prevail in their appeal and once the court makes its final ruling, CFEC will be able to include some, if not all, of the other four budget categories into the formula.

Sectional Analysis of HB 194

Prepared by CFEC

Section 1. (CLARIFIES provisions in this section of current law and removes crewmember fees to be addressed elsewhere – see section 2.)

Current 16.05.480(a), which would be replaced by section 1 of this bill, reads:

- (a) A person engaged in commercial fishing shall obtain a commercial fishing license. Except as provided in (f) of this section, the fee for the license is \$60 for residents and \$125 for nonresidents. Except for those that are also entry or interim-use permits, all commercial fishing licenses are nontransferable. The commercial fishing license shall be retained in the possession of the licensee, readily accessible for inspection at all times. No more than one fee may be charged annually against a person. For the purposes of this section, "commercial fishing license" includes entry permits and interim-use permits issued under AS 16.43 and crewmember fishing licenses.

Revisions made in section 1:

- Remove the fees for crewmembers from this section of law (see section 2 for new location)
- Clarifies what each of the three types of "commercial fishing licenses" entitle the holder to do (entry permit, interim-use permit, and crewmember license – see definition section p.2, line 15 of bill)
- States that crewmember licenses are nontransferable while removing incorrect implication that all entry and interim-use permits are transferable (as some limited entry permits and all interim-use permits are also nontransferable).
- Makes clear that person must hold a permit for each particular fishery in which they participate as a gear operator. (Current provision about paying only one fee is confusing as it was intended to refer only to crewmember licenses.)

Section 2. Adds subsections to 16.05.480 ESTABLISHING FEES FOR CREWMEMBER LICENSES for 2002 and following years.

(g) **For residents:**

Over 11 years of age: \$60

Under 11 years of age: \$5

(h) **For nonresidents:**

Over 11 years of age: \$60 plus an additional amount that does not exceed the maximum allowed by law (that is, an amount calculated using formula determined to be constitutionally acceptable by court ruling in Carlson case.)

Under 11 years of age: \$5 plus added amount which does not exceed maximum allowed by law.

Section 3. "Housekeeping" language -- simply adds two words, "establish and," to #13 on statutory list of things CFEC is authorized to do.

Section 4. "Housekeeping" change -- just deletes an obsolete and confusing provision in current law.

Section 5. -- PRIMARY PROVISION OF THE BILL ADDRESSING CARLSON CASE ISSUE: Removes the currently required 3-to-1 differential and establishes annual FEES FOR ENTRY AND INTERIM-USE PERMITS for 2002 and following years.

(e) Resident permit fees shall be no less than \$10 and no more than \$300, and reasonably reflect different rates of economic return for different fisheries.

Nonresident permit fees shall be the resident fee plus an amount that does not exceed the maximum amount allowed by law (that is, an amount calculated using formula determined to be constitutionally acceptable by court ruling in Carlson case.)

(f) "Poverty Fees" shall be no more than 50% of regular fees the permit holder (whether resident or nonresident) would otherwise pay. Also sets out standards for determining eligibility for the reduced fee. .

Sections 6-8. Effective date provisions which keep current fee structure in place for permits and crewmember licenses issued for 2001 (even if purchased after passage of the bill), and making the new fees effective immediately for all permits and licenses issued for 2002 and beyond. This is to accommodate the fact that during the final months of 2001, permits and licenses will still be issued for use during the final months of 2001, while permits and licenses for 2002 will also be sold for the coming year. Keeps fees for all permits and licenses issued for a given use year consistent regardless of purchase date.

Section 6 (in combination with section 8) repeals current fees as of Jan. 1, 2002:

16.05.480(f) -- \$5 crewmember license for residents and nonresidents under 11 years of age.

16.43.160(b) -- section mandating the 3-to-1 nonresident-to-resident permit fee differential

16.43.160(c) -- poverty fees

Section 7. Makes new crewmember, permit, and poverty fees and most of "housekeeping" provisions in bill effective immediately.

Section 8. Makes repealers in section 6, and the revisions made in section 1, effective on Jan.1, 2002.

HB 194, "Commercial Fishing Permit and Crewmember Fees"

Prepared by CFEC

	Current Annual Fee	Annual Fee Under Proposed Legislation HB 194
Resident Permit	Range from no less than \$10 to not more than \$250 & reasonably reflect different rates of economic return for different fisheries. (Currently, by regulation, five fee classes of \$50, 100, 150, 200, and 250)	Range from no less than \$10 to not more than \$300 & reasonably reflect different rates of economic return for different fisheries. (Actual fees for each fee class would be adopted by regulation) [Sec.5]
Non-resident Permit	3 times the fees established for residents (Currently, by regulation, five fee classes of \$150, 300, 450, 600, and 750)	Resident fee plus an amount no higher than differential allowable by law. (Non-resident "surcharge" would be adjusted periodically to reflect changes in variables in whatever formula the Supreme Court ultimately rules may be used to calculate allowable additional charge to nonresidents.) [Sec.5]
Resident Adult Crewmember License	\$60	\$60 [Sec.2]
Non-resident Adult Crewmember License	\$125	\$60 <u>plus</u> up to amount of allowable differential. (So ADF&G could opt to leave fee at \$125 as long as allowable differential is more than \$65.) [Sec. 2]
Resident Child Crewmember License	\$5 (As of new provision passed in 2000)	\$5 [Sec.2]
Non-resident Child Crewmember License	\$5 (As of new provision passed in 1999)	\$5 <u>plus</u> up to allowable differential [Sec.2]
Resident "Poverty" Permit Fee	\$15 (For all permit fee classes)	50% of regular resident fee. (Thus, \$25 for permits for which regular fee is \$50; \$50 for permits in \$100 fee class; etc.) Note: Nearly 80% of the poverty fees paid in 2000 were for resident permits in the lowest fee class. Those would increase by only \$10 under proposed change. [Sec.5]
Non-resident Poverty Permit	\$45	Up to 50% of full nonresident fee (base fee plus differential) [Sec.5]