

HB

2006

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 206(2d RES)
(H) Publish Date: 2/13/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish & Game
Title Vessel Limited Entry for Commercial Fisheries BRU Comm Fish Entry Commission
Component Comm Fish Entry Commission
Sponsor House Resources
Requester House Resources Component No. 471

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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 ()						
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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--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact

Prepared by: Roger Kolden Phone 790-6950
Division: Commercial Fisheries Entry Commission Date/Time 2/11/02 9:34 AM
Approved by: Mary McDowell, Commissioner Date 02/11/2002
Agency: Commercial Fisheries Entry Commission

Alaska State Legislature

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House Resources Committee

House Bill 206 Sponsor Statement

"An Act relating to a vessel-based commercial fisheries limited entry system for the Bering Sea Korean hair crab fishery and for weathervane scallop fisheries, to management of offshore fisheries, and to the definition of 'person' for purposes of the commercial fisheries entry program; and providing for an effective date."

HB 206 establishes a vessel-based commercial fisheries limited entry program. The bill preserves the State's current limited entry program as the primary form of limitation, and authorizes the Commercial Fisheries Entry Commission (CFEC) to implement a vessel-based limitation in a fishery only under certain tightly defined conditions.

In its bill enacting the Hair Crab moratorium in 1996, the Legislature recognized the need to establish a vessel-based limitation program and directed CFEC and the Department of Law to draft and bring to the Legislature legislation to accomplish that. Such legislation was drafted but failed to gain passage during the 21st Session. HB 206 reintroduces enabling provisions for this important fisheries management tool.

Under the current limited entry statute, CFEC may only issue limited entry permits to gear operators in a fishery, not to vessels or vessel owners. This type of limited entry system, based on an "owner-operator" model, is appropriate for fisheries where typically vessels are small and fished by one person usually in nearshore waters. But other fisheries in Alaska, particularly some of those in the Gulf of Alaska and the Bering Sea, are characterized by larger vessels fishing in offshore waters. These vessels move from area to area and may be operated by successive skippers hired by vessel owners to keep the vessel fishing throughout a season. Current law may not be appropriate or workable for this kind of fishery; in fact, it could potentially increase rather than limit the units of gear and not achieve the resource conservation and economic viability purposes of the Limited Entry Act. Further, it would award ongoing fishing privileges to many who have worked essentially as hired crew, and not those who have invested in the fishery.

The bill establishes the framework for a vessel-based limitation system, much as existing law provides the framework for the operator-based program. Effective fishery management tools, such as those authorized in HB 206, will help ensure the State has the flexibility to effectively manage a wide range of fisheries and, in some fisheries, to gain or retain State management authority in the years ahead.

Introduced 3/21/2001
Prepared by Co-chairman Drew Scalzi

HB206 – Vessel- Based Commercial Fisheries Limitation Program

- Under the current limited entry statute, CFEC may only issue limited entry permits to *gear operators* in a fishery, not to vessels or vessel owners; this provision may not be appropriate for some of Gulf of Alaska and Bering Sea fisheries with large vessels
- Recognizing this, the Legislature in 1996 directed CFEC and the Department of Law to draft legislation to establish a vessel-based limitation program
- HB 206 will establish a *vessel-based* commercial fisheries limited entry program for the Bering Sea Korean Hair Crab and Weathervane Scallop fisheries
- Without this legislation, the Entry Commission does not have an appropriate limited entry program to use for these two fisheries. The legislation will protect these fisheries from a potential influx of new participants upon expiration of the moratoria
- Presently these fisheries have moratoriums set to expire in 2003 and 2004; we need the legislation now so that CFEC can have lead time to get the program in place
- Originally the bill's provisions were set forth for generic application; last April, while in the Resources Committee, the bill was amended to apply only to the Bering Sea Korean hair crab fishery and the weathervane scallop fishery
- Over the interim, CFEC discovered several places where discrepancies existed with the original language because the bill was written for generic authority
- The bill was heard again in Resources, then in Rules where a few "wordsmithing" changes were added
- Each time the bill came before the members of the Resources Committee, it received favorable votes, with all do passes and only one no rec
- It is important we pass this legislation to give CFEC the tools to institute a vessel-based limitation in these fisheries so that the state has the ability to provide for the sound management of the resource and the long-term health of these fisheries

BILL'S HISTORY

HB206: Vessel-Based Commercial Fisheries Limitation Program

Authorizes implementation of a vessel-based commercial fisheries limited entry program for the Bering Sea Korean Hair Crab and Weathervane Scallop fisheries. (Resources CS)

Why we need this legislation?

Under current statute, CFEC may only issue limited entry permits to gear operators, not to vessels or vessel owners, and only to individual human beings, not to partnerships, corporations, or other "entities." These requirements may not be appropriate for some fisheries, particularly some Gulf of Alaska and Bering Sea fisheries with large vessels operated by successive skippers hired by vessel owners.

Recognizing that, in 1996, the legislature directed CFEC and Dept. of Law to draft legislation to establish a vessel-based limitation program that could be used for fisheries in which limitation under the state's existing operator-based program would not be effective.

Legislatively-enacted moratoria in hair crab and scallop fisheries will expire soon. Passage of HB206 this session is essential to the state's ability to limit these fisheries effectively and avoid their return to open access.

What this legislation will accomplish:

The original HB206 would have established the framework for a vessel-based limitation program much as existing law provides a framework for the operator-based program. The vessel-based program would then have been a tool, an alternate method of limitation, available to CFEC to use for limiting fisheries that could not be effectively limited under the current operator-based system.

House Resources narrowed bill to allow use of vessel-based limitation only in the hair crab and scallop fisheries, which the committee recognized as those in immediate need of new program. Committee was not ready to provide generic authority for use of a vessel-based program in other fisheries.

Petersburg Vessel Owners Association

P.O. Box 232
Petersburg, Alaska 99833
Phone (907) 772-9323 Fax (907) 772-4495

March 8, 2002

Senator Torgerson
Chair
Senate Resources Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

RE: Support HB 206 Vessel Limited Entry System

Petersburg Vessel Owners Association is a group of commercial fishermen who participate in a variety of fisheries statewide. Some of our members participate in the Bering Sea Korean hair crab fishery that would be affected by this bill. The Bering Sea Korean hair crab fishery and the weathervane scallop fishery that are addressed in this bill are both large boat fisheries where the number of participants is restricted by moratorium. These moratoriums will soon expire. Therefore it is necessary to move quickly in establishing a limited entry system for these fisheries. The vessels that participate in these fisheries are large vessels with multiple owners. Therefore, if the entry commission were to offer an individual limited entry system, the number of permits issued would far exceed the current and historical number of participants.

Therefore the most reasonable option for these fisheries is a vessel based limited entry system. This bill will ensure that the entry commission has the necessary tools to limit these fisheries in a meaningful way. A system of vessel limited entry will allow the entry commission to issue a number of permits that corresponds to the current and historical participation in the fisheries. These stocks cannot support a level of fishing effort that far exceeds historical levels. Therefore it is necessary to institute vessel limited entry in these fisheries before the expiration of the moratorium.

We appreciate your consideration of these comments and hope you will support this bill. If we can assist you in any way, please feel free to contact us.

Respectfully,



Cora Crome
Director

Cc: Senator Taylor, Representative Scalzi

F/V ARCTIC STORM
CAPTAIN THOMAS J GILMARTIN JR
46677 LAKE ST.
KENAI, ALASKA 99611
907-398-1100

3/2/2002

Senator Drue Pearce,

Subj: HB 206 bad for the Alaskan Economy

Sir,

This HB 206 if enacted will consolidate the bulk of a 1,350,000 scallop Quota into the hands of basically four entities. At the present time those four entities are comprised of six vessels. The F/V Provider & F/V Pursuit is the first pair controlled by Mark & Thresa Kandyanis these folks are from Bellingham Washington. The second pair are the F/V Carolina Boy & F/V Carolina Girl controlled by Bill Wells who is from Virginia or a state near there, the fifth vessel is the F/V Ocean Hunter the guy owning this one are from Washington or Oregon and the last vessel the F/V Foreum Star owned by Jim Chase who hails from Kodiak.

The other three vessels are the F/V Kelkenny owned by Tom Hogan of Homer Alaska, Max & Scott Hulse of Eagle River Alaska and the F/V Arctic Storm, which is my vessel, own the F/V LaBreesa and I'm from Nikiski Alaska.

The last four vessels mentioned are the State resident boats and combined catch only 50,000 pounds of the scallop quota. The rest of the quota or 1,300,000 pounds are caught by the out of state vessels. Now not only do the out of state guys catch more of the quota the majority of their crews are from out of state and there pay checks go out of state with them.

State revenue is derived from a 3.3 % tax on scallops sold. Well the big boats averaged \$3.37 a pound for their 1,300,000 pounds or .11 cents per pound tax. My vessel had 10,000 pounds of scallops at an average price of 8.00 a pound or .26 cents a pound tax.

Now if you're looking for economic health and stability of commercial fishing in this state you would not get it from this HB 206. With four big entities in command of 1,300,000 pounds of our states scallop quota the state loses:

- 1.) 15 cents a pound tax revenue on 1,300,000 pounds or \$195,000 dollars in tax revenue.
- 2.) According to Mr. Scalzi the loss of forty vessels economic activity generated in Alaskan communities.
- 3.) The loss of 6 jobs per vessel that's 240 jobs lost to the Alaskan economy.

The 50 or so permits that Mr. Scalzi thinks would be created when the moratorium expires in 2004 should be allowed. That would be consistent with state law that keeps permits in fisherman's hands, it has always been that way. **Why take away what has worked so well for so long????**

This bill needs to be changed or a new one written that directs the CFEC to end the moratorium immediately and allow any and all persons to enter the scallop fishery open access.

As many fisheries are experiencing down turns its time to diversify and scallops is one way to go. **Remember 10,000 pounds of scallops is worth \$50,000 to 100,000 dollars.**

The legislature's original intent to limit the number of fishing effort targeting scallops is not necessary, as the federal government has already done so in federal waters. The state should take 50 % of the quota for a state waters fishery, limit all vessels in state waters to one 8-foot dredge and allow the limited quota to limit fishing effort. **Again all this will spur the small vessel economy.**

As far as applicable federal law goes it does not apply to scallops because **the federal government has already delegated full management authority to the state of Alaska.** Except access in federal waters. Its time to use that authority and create economic activity among the small vessel fleet here in Alaska. The state should also include these small vessels in the state processor exemption program by declaring them catcher sellers for any product delivered fresh on ice. This would reduce the mass of paperwork and bonding and make it much easier to get involved in the fishery.

So lets get with it gentleman what's worked so well for so long should continue.

NO to HB 206.

YES to jobs for Alaska's small vessel fleet

Sincerely,

Tom Gilmartin

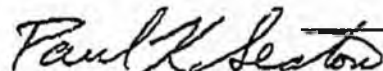
Senate Resources Committee

4-16-02

Reasons why HB 206 should be held or referred to Judiciary:

1. In the 3/20/02 Senate Resources hearing, legal was asked if this would be in violation of the understanding of voters when they approved the 1972 constitutional amendment to allow limited entry. You have not yet received a reply from the attorney. You should not pass this bill as it will just open the State to costs of a lawsuit the State attorneys may predict you will loose – especially an identified constitutional contradiction. At very least, a probable fiscal note for the legal costs should be attached.
2. The Magnuson/Stevens Fishery Conservation and Management act establishes in Section 303, page 61 that the Council can enact a Fishery Management Plan (FMP) and within the (b) Discretionary Provisions including (6) “establish a limited access system” Section 304(c)(1)(A) allows the Secretary of Commerce to prepare a FMP only “if—(A) the appropriate Council fails to develop...a fishery management plan”. However, **Section 304, page 66 forbids the Secretary from establishing a limited access system.** Thus creation of any limited entry plan for federal waters is exclusively and expressly reserved to the Federal Fisheries Management Councils. The State may regulate fishing vessels and fisheries outside the boundaries of the State [page 82] if “(i) there is no fishery management plan or other applicable Federal fishing regulations....” This is a similar authority to the Secretary’s to establish a FMP in the absence of action by the Council. **Since the Secretary’s authority under this identical provision is limited and exclusive of establishing any limited access system, so is the State’s ability to enact a limited access system - as that authority is expressly reserved to the Council.** Until the State Senate can get a contrary opinion from NOAA General Counsel negating the plain reading of the text of the Magnuson/Stevens Act, HB 206 should be held in Committee or referred to the Judiciary Committee. Also, a fiscal note should be attached for the federal court lawsuit costs.

[See attached 5 pages from the Magnuson/Stevens Act]



Testimony submitted by
Paul Seaton, Homer, AK.

Attachment
Magnuson/Stevens Act

16 U.S.C. 1853
M-S Act § 303

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the--

(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

(C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account--

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery and any affected fishing communities, and

(F) any other relevant considerations;

(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

16 U.S.C. 1853 note, 1854
M-S Act § 303 note, § 304

104-297, sec. 108(b), M-S Act § 303 note

IMPLEMENTATION.--Not later than 24 months after the date of enactment of this Act [P.L. 104-297], each Regional Fishery Management Council shall submit to the Secretary of Commerce amendments to each fishery management plan under its authority to comply with the amendments made in subsection (a) of this section [i.e., the P.L. 104-297 revisions to § 303(a)(1), (5), (7), and (9), and the addition of § 303(a)(10)-(14)].

104-297, sec. 108(i), M-S Act § 303 note

EXISTING QUOTA PLANS.--Nothing in this Act [P.L. 104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

SEC. 304. ACTION BY THE SECRETARY
104-297

16 U.S.C. 1854

(a) **REVIEW OF PLANS.**--

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall--

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall--

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify--

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

16 U.S.C. 1854
M-S Act § 304

(4) If the Secretary disapproves or partially approves a plan or amendment, the Council may submit a revised plan or amendment to the Secretary for review under this subsection.

(5) For purposes of this subsection and subsection (b), the term "immediately" means on or before the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, plan amendment, or proposed regulation that the Council characterizes as final.

104-297

(b) REVIEW OF REGULATIONS.--

(1) Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this Act and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and--

(A) if that determination is affirmative, the Secretary shall publish such regulations in the Federal Register, with such technical changes as may be necessary for clarity and an explanation of those changes, for a public comment period of 15 to 60 days; or

(B) if that determination is negative, the Secretary shall notify the Council in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, plan amendment, this Act, and other applicable law.

(2) Upon receiving a notification under paragraph (1)(B), the Council may revise the proposed regulations and submit them to the Secretary for reevaluation under paragraph (1).

(3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (1)(A). The Secretary shall consult with the Council before making any revisions to the proposed regulations, and must publish in the Federal Register an explanation of any differences between the proposed and final regulations.

97-453, 99-659, 104-297

(c) PREPARATION AND REVIEW OF SECRETARIAL PLANS.--

(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if--

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management;

(B) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment; or

(C) the Secretary is given authority to prepare such plan or amendment under this section.

16 U.S.C. 1854
M-S Act § 304

In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea. The Secretary shall also prepare such proposed regulations as he deems necessary or appropriate to carry out each plan or amendment prepared by him under this paragraph.

- (2) In preparing any plan or amendment under this subsection, the Secretary shall--
- (A) conduct public hearings, at appropriate times and locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan and any regulations implementing the plan; and
 - (B) consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.



(3) Notwithstanding paragraph (1) for a fishery under the authority of a Council, the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system, including any individual fishing quota program unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

- (4) Whenever the Secretary prepares a fishery management plan or plan amendment under this section, the Secretary shall immediately--
- (A) for a plan or amendment for a fishery under the authority of a Council, submit such plan or amendment to the appropriate Council for consideration and comment; and
 - (B) publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(5) Whenever a plan or amendment is submitted under paragraph (4)(A), the appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in paragraph (4)(B). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, information, or comments submitted under paragraph (4)(B), may adopt such plan or amendment.

(6) The Secretary may propose regulations in the Federal Register to implement any plan or amendment prepared by the Secretary. In the case of a plan or amendment to which paragraph (4)(A) applies, such regulations shall be submitted to the Council with such plan or amendment. The comment period on proposed regulations shall be 60 days, except that the Secretary may shorten the comment period on minor revisions to existing regulations.

SEC. 306. STATE JURISDICTION

16 U.S.C. 1856

97-453, 98-623

(a) IN GENERAL.--

(1) Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.

(2) For the purposes of this Act, except as provided in subsection (b), the jurisdiction and authority of a State shall extend

(A) to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party;

(B) with respect to the body of water commonly known as Nantucket Sound, to the pocket of water west of the seventieth meridian west of Greenwich; and

(C) to the waters of southeastern Alaska (for the purpose of regulating fishing for other than any species of crab) that are--

(i) north of the line representing the international boundary at Dixon Entrance and the westward extension of that line; east of 138 degrees west longitude; and not more than three nautical miles seaward from the coast, from the lines extending from headland to headland across all bays, inlets, straits, passes, sounds, and entrances, and from any island or group of islands, including the islands of the Alexander Archipelago (except Forrester Island); or

(ii) between the islands referred to in clause (i) (except Forrester Island) and the mainland.

104-297

(3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:

(A) The fishing vessel is registered under the law of that State, and (i) there is no fishery management plan or other applicable Federal fishing regulations for the fishery in which the vessel is operating; or (ii) the State's laws and regulations are consistent with the fishery management plan and applicable Federal fishing regulations for the fishery in which the vessel is operating.