

HB

478



UNITED FISHERMEN OF ALASKA

March 8, 2004

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Juneau, Alaska 99801-1172
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Representative Nancy Dahlstrom, Co-Chair
Representative Beverly Masek, Co-Chair
House Resource Committee
Alaska State Legislature
State Capitol (Mail Stop 3100)
Juneau, AK 99801-1182

Dear Madam Chair,

United Fishermen of Alaska supports HB 478. This bill is a housekeeping measure that will clarify the legislature's intent of allowing the Commercial Fisheries Entry Commission to be able to issue interim-use permits for any fishery, even in fisheries where entry is not limited.

United Fishermen of Alaska represents 33 Alaska Commercial fishing organizations and hundreds of individual fishermen and fishing related businesses, altogether representing over 10,000 Alaska fishermen. We support HB 478 and thank you for your consideration on this matter.

Sincerely,

Mark Vinsel
Executive Director

CC: Representative Peggy Wilson

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Druggers Association • Alaska Longline Fishermen's Association • Alaska Trollers Association • Armstrong Kota • At-sea Processors Association
Bristol Bay Reserve • Chignik Regional Aquaculture Association • Chignik Seiners Association • Concerned Area "M" Fishermen • Cordova District Fishermen United
Crab Rationalization and Buyback Group • Douglas Island Pink and Chum • Groundfish Forum • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association
Kodiak Seiners Association • North Pacific Fisheries Association • Northern Pacific Scallop Cooperative • Northern Southeast Regional Aquaculture Association
Old Harbor Fishermen's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association
Seafood Producers Cooperative • Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
Uni-her Boats • United Salmon Association • United Southeast Alaska Gillnetters • Valdez Fisheries Development Association • Western Gulf of Alaska Fishermen

Alaska State Legislature

Representative Peggy Wilson

House District 2

Putting Alaska's Families First

SPONSOR STATEMENT FOR CSHB 478-FSH

An Act relating to the issuance of commercial fishing interim-use permits.

CSHB 478-FSH is a housekeeping measure designed to affirm, and clarify, that the Commercial Fisheries Entry Commission (CFEC) has the authority to issue interim-use permits in each fishery that is not subject to a maximum number (limited entry). This clarification is consistent with the intent of the original statute. The clarification is necessary, however, because the Court of Appeals recently held that the CFEC does not have the authority to issue interim-use permits to fishermen who catch halibut or sablefish beyond the three-mile limit of state waters, and then bring those halibut or sablefish into state waters for delivery and sale.

Current statutes require that fishermen in those circumstances have a state permit, AS 16.05.675. The permit requirement promotes enforcement, promotes resource data collection, and facilitates revenue collection. However, three fishermen who lacked a permit recently prevailed in the Court of Appeals by arguing that the only permit available to them was an interim-use permit, and that the Commercial Fisheries Entry Commission lacks the authority to issue interim-use permits in fisheries that it cannot limit to a maximum number of participants. *State v. Dupier*, 74 P.2d 933 (Alaska App. 2003). The Court of Appeals decision is currently under review by the Alaska Supreme Court. Regardless of the outcome in this case, clarification of the statute is desirable.

CSHB 478-FSH amends the statute, so that it clearly authorizes the CFEC to issue interim-use permits in fisheries that have not been the subject of a maximum number (limited entry). This clarification is consistent with the original intent and purpose of the current statute, and it will more clearly authorize the issuance of permits in all Alaska fisheries despite the recent Court of Appeals decision.

The inclusion of a retroactive clause demonstrates the agreement of the Legislature that the changes put forward in this bill are consistent with the initial intent, and purpose, of the original statute. The changes contained within this bill are not intended to alter the purpose, or effect, of the statute. These changes are intended to clarify the statute, and affirm the practices of the CFEC relating to interim-use permit issuance, which have been on-going in good faith for 30 years.

CSHB 478 3/1/2004

Jan-May, Juneau: State Capitol • Juneau, AK 99801-1121 • ph: (907) 465-3824 • fax: (907) 465-3175
June-Dec, Wrangell: PO Box 109 • Wrangell, AK 99929 • ph: (907) 874-3088 • fax: (907) 874-3055
Rep.Peggy.Wilson@legis.state.ak.us • <http://www.akrepublicans.org/wilson/> • 1-800-686-3824

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 478(FSH)
 (H) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title An Act relating to the issuance of commercial fishing interim-use permits RDU Comm. Fish Entry Commission
 Component Commercial Fisheries Entry Commission
 Sponsor Rep. Wilson
 Requester Rep. Wilson Component No. 471

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Shirley Penrose, Administrative Officer Phone 907-790-6960
 Division Commercial Fisheries Entry Commission Date/Time 2/19/04 9:43 AM
 Approved by: Mary McDowell, Commissioner Date 2/19/2004
 Agency Commercial Fisheries Entry Commission

Subject: Re: HB 478

Date: Fri, 27 Feb 2004 17:24:44 -0900

From: "Jon Goltz" <Jon_Goltz@law.state.ak.us>

To: <Eric_Knudson@legis.state.ak.us>

CC: <bruce_twomley@cfec.state.ak.us>, <Cameron_Yourkowski@legis.state.ak.us>, <Frank_homan@po.cfec.state.ak.us>

Eric:

I have not yet completed my analysis due to other issues that required my attention today, but my research thus far appears to point to the following conclusions.

On the retroactivity issue:

(1) Applying the bill retroactively in the criminal case that is currently in the Supreme Court would raise an issue about the "ex post facto" prohibitions of the Alaska and the U.S. constitutions. Since this bill only clarifies when the CFEC shall issue a permit - not when a permit is required - it is not clear whether retroactive application would be an ex post facto law.

(2) The bill possibly could be applied retroactively in the civil cases that seek reimbursement for past fees paid, but there are some complications. AS 01.10.100 provides that the amendment of a law does not extinguish any liability accrued under that law, "unless the . . . amending act so provides expressly." Even then, there could be a potential due process issue, although in my initial judgment no due process violation would occur.

(3) Even if the law could not be applied retroactively in any of the current court cases, a retroactive date for the bill could express the legislature's view that the Court of Appeals misinterpreted the scope of the current statute. That might have some persuasive value for the Supreme Court.

I don't see a significant down side to making the bill retroactive, as long as the legislature understands that the courts might not allow it to be applied retroactively in all circumstances.

On the issue of landing fish from international waters, I don't see any changes to this bill that could help clarify that issue. That issue mainly pertains to other statutes that require a permit. The statute that is the subject of this bill does not require a permit, it just express when the CFEC shall issue a permit.

I'll work on these issues over the weekend and be prepared to provide further testimony on Monday.

>>> Eric Knudson <Eric_Knudson@Legis.state.ak.us> 2/27/2004 4:23:46 PM

>>>

Assistant Attorney General Goltz,

If you could also send a copy of your assessment and opinion, which were

requested of you by the Fisheries committee today to Cameron Yourkowski

I would appreciate it. Cameron Yourkowski's email is included in this email.

Thank you for you work on this issue,

Eric



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