

HB 188

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ALASKA LEGISLATURE

Representative Jonathan Kreiss-Tomkins

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Pelican · Petersburg · Point Baker · Port Alexander · Port Protection · Sitka · Tenakee Springs · Thorne Bay · Whale Pass

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Committees:
State Affairs, Chair
Fisheries
Judiciary



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State Capitol, Room 411
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Sitka, Alaska 99835 (May – Dec.)
201 Katlian Street, Ste. 103
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HB 188 — Regional Fisheries Trusts

Sponsor Statement

HB 188 improves Alaskans' opportunity to access Alaska fisheries and empowers Alaska communities to achieve greater economic self-sufficiency.

Alaska's commercial fisheries are a critical and sustainable source of employment, income, and cultural identity. A \$6 billion dollar industry employing over 30,000 people, fisheries have been the economic engine of Alaska's coastal communities for over a century. Commercial fishing uniquely allows self-sufficient people, businesses, and communities to flourish in places where other economic opportunity is scarce. Alaskans want — and in many places, need — access to sustainable, vibrant fisheries.

But state-issued limited entry permits which provide access to Alaska fisheries are leaving Alaska, particularly rural Alaska. The cost of running a fisheries business has climbed as fisheries have modernized and professionalized, increasing the price of entry for new and young fishermen. Rising financial barriers to entry have cost Alaska's fishing communities jobs, economic potential, and tax revenue.

Regional fisheries trusts, as envisioned by HB 188, empower Alaska's fishing communities with a tool to retain fishing permits and improve economic opportunity. Fisheries trusts can hold permits and lease them to Alaska fishermen for a limited period of time, offering a stepping stone between deckhanding and individual permit ownership. Just as you would rent an apartment before you buy a house, fisheries trusts offer people with skills and know-how an opportunity to get experience skippering a boat, make mistakes, and save some money before making the huge, potentially six-figure legal decision to buy a permit.

As with the Commercial Fishing Revolving Loan Fund, which has helped hundreds of Alaskans enter fisheries, regional fisheries trusts provide state residents a more accessible path to entering Alaska fisheries. Though not a silver bullet, trusts offer fishing communities a common-sense tool which allows responsibility, hard work, and expertise to be the measure of a fisherman's success — not their access to credit.

Similar to RSDAs, fisheries trusts are self-determining and opt-in. Two thirds of the municipalities in a region must affirmatively petition to establish a fisheries trust. Trusts are locally governed and designed with a limited scope — after a maximum of six years, a fisherman must individually purchase a permit to continue in the fishery. There is a firm cap on the number of permits a trust can acquire, to protect against distorting the permit market.

Partners behind this legislation, including this legislative office, have spent more than two years working on HB 188, building and rebuilding policy with a wide range of stakeholders, including fishermen, processors, academics, policymakers, lawyers and more. The concept was released publicly last year, for maximum transparency and input. There are still revisions to be made and work to be done.

If you have questions, comments, or concerns, we are here to answer them. Reid Magdanz in the office of Rep. Kreiss-Tomkins is staffing the legislation and available at 465.3306 or Reid.Magdanz@akleg.gov.

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Sectional Analysis, ver R | HB 188 — Regional Fisheries Trusts

Section 1.

The Alaska Legislature recognizes that access to commercial fishing opportunities for Alaska's coastal communities has dwindled, resulting in compounding economic distress for fishing communities, fishermen, and the people who depend on them. This section's legislative findings examine how the problem has grown in the forty years since Alaska's fisheries were limited and proposes a solution that would provide a new, tightly controlled path of entry to Alaska's commercial fisheries: regional fisheries trusts.

Section 2.

Conforming change to existing law. Legally distinguishes regional fisheries trusts from trust companies as defined in title 6, chapter 26.

Section 3.

Conforming change to existing law. A fisherman who leases a permit from a regional fisheries trust must follow existing requirements that permit holders be physically present to operate stationary fishing gear.

Section 4.

Conforming change. A fisherman who leases a permit from a regional fisheries trust may fish the commercial gear allowed by that permit.

Section 5.

Conforming change. If crewmembers do not hold permits, or lease permits from a regional fisheries trust, they must buy crew licenses to commercial fish.

Section 6.

Conforming change. You may buy a seven-day commercial fishing license if you do not hold a limited entry permit or lease a permit from a fisheries trust.

Section 7.

Conforming change. Clarifies that 16.05.480, "commercial fishing license; disclosure for child support purposes," applies to individuals leasing permits from a fisheries trust.

Section 8.

Conforming change. Someone who leases a permit through a fisheries trust follows the same laws as a person holding their own permit regarding legally landing and delivering fish.

Section 9.

Conforming change. Someone who leases a permit through a fisheries trust follows the same laws as a person holding their own permit regarding harvesting, transporting, and selling commercial fish.

Section 10.

If someone's commercial fishing license and/or privileges are in the process of being suspended by ADF&G (under conditions in 16.05.710), a fisheries trust cannot lease them a permit.

Section 11.

Conforming change. Allows fish buyers and processors to legally purchase fish from someone leasing a permit from a fisheries trust.

Section 12.

Conforming change. Fishermen who lease a permit from a fisheries trust follow the same participation rules for hatchery fishing as fishermen holding their own permits.

Section 13.

Gives the Alaska Commercial Fisheries Entry Commission (CFEC) the power to stop a regional fisheries trust from acquiring a permit if the trust is violating permit holding rules in AS 16.44.060.

Section 14.

Conforming change. A person leasing a permit from a regional fisheries trust has the same right to participate in commercial fishing activities as a person who holds their own permit.

Section 15.

Conforming change. A fisherman leasing a permit from a fisheries trust can fish in the region with the gear specified by that permit.

Section 16.

Conforming change. The requirement to have a permit at all times when commercial fishing applies equally to someone leasing a permit from a regional fisheries trust as it does to a person who holds their own permit.

Section 17.

A fisheries trust can lease a limited entry permit to qualified individual. This section continues to prohibit any other entity from leasing limited entry permits.

Section 18.

A fisherman who holds their own limited entry permit can transfer it to a fisheries trust in the event of their death. If the permit holder leaves instructions to transfer their permit to a trust, but the trust does not exist, the permit passes on as part of the permit holder's estate.

Section 19.

A person leasing a permit from a regional fisheries trust cannot will that permit to anyone in the event of their death. A lessee cannot relinquish a leased permit to CFEC. Clarifies that a person leasing a permit from a trust has the same use privileges and rights in a fishery as a person who holds their own permit.

Section 20.

Unlike a person who holds their own permit, someone who leases a permit from a regional fisheries trust cannot qualify for a reduced annual permit renewal fee if they fall within eligibility standards for the food stamp program.

Section 21.

The lease of a permit to an individual from a regional fisheries trust does not qualify as a transfer of the permit.

Section 22.

Conforming change. A person who holds their own permit can transfer that permit to a regional fisheries trust within the same time constraints (no sooner than 60 days, and no more than twelve months after the permit holder has given notice) as they can transfer permits to other individuals or the CFEC.

Section 23.

Conforming change. If the number of existing permits is below the optimum level for the fishery, provides the option for CFEC to issue additional limited entry permits to regional fisheries trusts under the same rules as for individuals.

Section 24.

Conforming change. Fishermen who lease permits from fisheries trusts will be assessed demerit points for fishing violations in the same way as fishermen who hold their own permits. Lessees can have their fishing privileges suspended.

Section 25.

Conforming change. Those who lease permits will be notified of demerits for violating commercial fishing laws in the same way as a person holding their own permit is notified.

Section 26.

Conforming change. For both lessees and people holding their own permits, demerits for commercial fishing law violations are additions (not substitutions) to any penalties imposed by the court system.

Section 27.

If CFEC levies demerit points against a fisherman leasing a permit from a regional fisheries trust, CFEC must notify the trust.

Section 28.

Laws on the suspension of commercial salmon fishing privileges apply equally to fishermen who lease permits from regional fisheries trusts as they do to fishermen holding their own permits. Additionally, if an individual's salmon fishing privileges are revoked, they cannot lease a salmon fishing permit from a regional fisheries trust.

Section 29.

Laws which allow CFEC to revoke, suspend, or transfer permits from fishermen who provide false information to benefit themselves apply equally to those who lease permits through regional fisheries trusts as they do to people holding their own permits. CFEC can require fisheries trusts to terminate leases with fishermen who provide or refuse to correct false information, and can revoke entry permits held by trusts which provide or refuse to correct false information.

Section 30.

In AS 16.43, regional fisheries trust fall under the definition of "entity."

Section 31.

Creates new chapter (AS 16.44), Regional Fisheries Trusts.

AS 16.44.10

A fisheries trust can be formed if $\frac{2}{3}$ of the municipalities in a defined fisheries trust region jointly inform the Department of Commerce, Community, and Economic Development (DCCED) of their consensus (without a $\frac{2}{3}$ consensus, no fisheries trust can be established). The municipalities must also provide DCCED draft bylaws and a business plan for the fisheries trust.

Each trust has a public purpose: to prevent economic distress among fishermen, to improve state residents' ability to participate in state fisheries, to empower communities to achieve economic self-sufficiency, and to promote conservation of Alaska's fisheries.

Each trust is an instrumentality of the state — administratively, a public corporation under DCCED, but with independent legal existence from the state, and governed by its own board (see 16.44.020).

DCCED will delineate each fisheries trust region in consultation with Alaska Department of Fish and Game (ADF&G). DCCED may annually audit each trust, and dissolve a trust if it is insolvent. If a regional trust is dissolved, the region may later establish a new one.

In order to test and vet the fisheries trust program, no more than three fisheries trust may be established until further action from the legislature. Fisheries trusts will be established on a first-come, first-served basis, except in the first year following the bill's effective date (see section 40).

AS 16.44.020 Addresses regional fisheries trust boards, membership meetings, and locations.

Each trust is governed by a board of directors: one resident from each municipality in the fisheries trust region sits on the board. Each director is appointed by the governor from a list of nominees provided by their municipality. Municipalities can choose to allow unincorporated communities to nominate directors — see AS 16.44.050(a)(2)).

Directors will serve staggered three-year terms, and can serve up to 12 years total. A quorum is a majority of members. Boards can elect an executive committee and hire staff. They can also share staff between trusts or with other specific regional entities such as nonprofit hatchery associations, village or regional Native corporations, Alaska regional development organizations (ARDORs), or other entities related to commercial fishing or regional services. Unless a trust shares administrative resources with another entity and needs to be in its physical proximity, trusts must be headquartered in the community in the region with the most permits as of January 1, 2017.

Board members cannot lease permits from the trust.

Section 16.44.030 Addresses administrative expenses, compensation, and fees due to DCCED.

Administrative expenses for the trusts must be minimal. Board members may be provided reasonable compensation. To ensure trusts are self-sustaining and do not impose costs on the state, the DCCED commissioner can charge fees to trusts to reimburse the department for costs that the trusts may incur.

Section 16.44.040 Clarifies that fisheries trusts are tax exempt from state, local governments, school districts, and other political subdivisions of the state. Trusts are not exempt from paying CFEC fees on permits they own. Fisherman who lease permits from trusts must pay the applicable fees, taxes, or assessments, such as the fisheries business, fisheries enhancement, and seafood development tax.

Section 16.44.050 Spells out powers of fishery trusts, including the power to adopt bylaws, expand board membership to include unincorporated municipalities in the region, borrow money for the acquisition of limited entry permits, hold, transfer, or receive permits for fisheries in their region, lease limited entry permits to qualified Alaskans, accept grants and donations, and use extra revenue on projects and programs which support commercial fishermen.

Fisheries trusts can lease permits to individuals through a competitive bid process, and must set and make public criteria for that bidding. The bid process can be designed so that it best meets the purposes of the trust. Trusts must set lease terms which maintain their financial solvency, and they must invest lease revenue in the purchase of additional entry permits to the greatest extent possible.

Section 16.44.055 Lease revenue earned by the trust can be used only to acquire permits, operate the trust, and support programs and projects that benefit commercial fisherman.

Section 16.44.060 Trusts can acquire permits only for fisheries within their region. Trusts must maintain a diverse portfolio of permits, proportional to the distribution of all permits for fisheries within their region. There is a hard cap on the number of permits a trust can hold: 2.5% of the permits in each fishery within their region. The Commercial Fisheries Entry Commission can stop transfers that violate proportional distribution or the permit holding cap.

Section 16.44.070 Gives trusts the power to set lease terms for permits. Leases cannot last longer than six years. Permits cannot be "subleased" by the lessee. Trusts may set up lease-to-own programs.

Section 16.44.80 Requires a fisherman who leases a permit from a trust be a resident of Alaska, defined as someone who makes their "true and permanent home" in Alaska, from which they have no intention of moving. If a fisherman already holds a limited entry permit, the fisherman cannot lease a permit in that fishery from a trust. Staff members of the trust (or staff of a regional organization which shares administrative capacity with the trust) cannot lease permits from the trust. The trust has the right to terminate the lease of anyone who no longer qualifies as a resident.

Section 16.44.099 Defines board, commission, commissioner, department, entry permit, fisheries trust, and fishery, as each word is used in the regional fisheries trust chapter, AS 16.44.

Section 32.

Employees of fisheries trusts are in the exempt service.

Section 33.

Clarifies that a "person holding a limited entry permit" does not include someone leasing a permit from a fisheries trust under the section on the salmon enhancement tax (AS 43.76.040).

Section 34.

Clarifies that a "person holding a limited entry permit" does not include someone leasing a permit from a fisheries trust under the section on the permit buyback assessment tax (AS 43.76.040).

Section 35.

Clarifies that a "person holding a limited entry permit" or "entry permit holder" does not include someone leasing a permit from a fisheries trust under the section on the seafood development tax (AS 43.76.350).

Section 36.

Adds the duties of overseeing fisheries trusts as laid out in the bill under AS 16.44 to the official duties of DCCED.

Section 37.

Allows CFEC and the commissioner of DCCED to immediately adopt regulations that might be necessary to establish and regulate fisheries trusts.

Section 38.

Requires the length of the terms of the first group of board directors for a fisheries trust to be determined by lot.

Section 39.

DCCED and ADF&G will create fisheries trust regions based on the boundaries of CFEC administrative areas and using CFEC's designations of communities local to given fisheries regions. Every community in the state shall be in a fisheries trust region.

Section 40.

Gives regions until January 1, 2019 to apply to DCCED to establish a fisheries trust. If three or fewer regions apply, all those regions may establish fisheries trusts after January 1, 2019. Additional regions may then establish fisheries trusts on a first-come, first-served basis until three have been established. If more than three regions apply before January 1, 2019, DCCED, in consultation with ADF&G, shall choose which regions may establish fisheries trusts based on the out-migration of fishing opportunity from the region since 1980 and the strength of the region's application. This section ensures regions do not rush the process of planning for a fisheries trust.

Section 41.

Provides an immediate effective date for section 37, allowing the adoption of necessary regulations.

Section 42.

Provides a January 1, 2018 effective date for the rest of the bill.

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Section 11.

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Section 12.

Conforming change. Amends 16.10.540, which allows groups of fishermen to implement a voluntary tax to help support hatcheries. The decision to tax, and the tax itself, applies to fishermen who lease permits from regional fisheries trusts the same way it applies to fishermen holding their own permits.

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Each trust is an instrumentality of the state — administratively, a public corporation under DCCED, but with independent legal existence from the state, and governed by its own board (see 16.44.020).

DCCED will delineate each fisheries trust region in consultation with Alaska Department of Fish and Game (ADF&G). DCCED may annually audit each trust, and dissolve a trust if it is insolvent. If a regional trust is dissolved, the region may later establish a new one.

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Provides an immediate effective date for section 37, allowing the adoption of necessary regulations.

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Provides a January 1, 2018 effective date for the rest of the bill.

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Summary of Changes, ver U — ver R | HB 188 — Regional Fisheries Trusts

Adds **Section 2** to legally distinguish regional fisheries trusts from trust companies as defined in title 6, chapter 26.

Deletes **Section 12**, which inadvertently allowed permit lessees to be part of an association that can levy fees to repay hatchery loans.

Amends **Section 31, proposed AS 16.44.010(a)**, to provide for a “limited authorization.” Only three fisheries trusts may be established in the state, in order for the program to be tested and vetted. Except for the first year after the bill’s effective date (see change to section 40 below), fisheries trusts are established on a first-come, first-served basis. Requires municipalities to provide Department of Commerce, Community, and Economic Development (DCCED) with draft bylaws and a business plan for a fisheries trust when the municipalities request authorization to establish the fisheries trust.

Adds **Section 40**, which provides a process for determining which regions will participate in the limited authorization. Gives regions until January 1, 2019 to apply to DCCED to establish a fisheries trust. If three or fewer regions apply, all those regions may establish fisheries trusts after January 1, 2019. Additional regions may then establish fisheries trusts on a first-come, first-served basis until three have been established. If more than three regions apply before January 1, 2019, DCCED, in consultation with the Department of Fish & Game, shall choose which regions may establish fisheries trusts based on the out-migration of fishing opportunity from the region since 1980 and the strength of the region’s application. This section ensures regions do not rush the process of planning for a fisheries trust.

30-LS0389\R
Bullard
4/18/17

CS FOR HOUSE BILL NO. 188()
IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE KREISS-TOMKINS

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to commercial fishing entry permits; establishing regional fisheries**
2 **trusts and fisheries trust regions; relating to commercial fishing entry permits held and**
3 **leased by a regional fisheries trust; relating to the duties of the Alaska Commercial**
4 **Fisheries Entry Commission and the Department of Commerce, Community, and**
5 **Economic Development; and providing for an effective date."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 **LEGISLATIVE FINDINGS.** The legislature finds that

10 (1) the state has an ownership and stewardship interest in the fish that
11 originate in state waters and return to spawn;

12 (2) art. VIII, sec. 15, of the Constitution of the State of Alaska, authorizes the
13 state to limit entry into a fishery for the purposes of resource conservation and preventing

1 economic distress among fishermen and those dependent upon them for a livelihood;

2 (3) to promote the conservation of fisheries and the economic health and
3 stability of commercial fishing in the state, the state began limiting entry into commercial
4 fisheries in 1975;

5 (4) since 1975, there has been a substantial and well-documented decline in
6 the number of limited entry permits held by residents of many Alaska communities;

7 (5) the decline in the number of limited entry permits represents lost jobs, lost
8 economic opportunity, and other economic distress among fishermen, their dependents, and
9 their communities;

10 (6) the state has a compelling interest in promoting the economic self-
11 sufficiency of its communities and ensuring their economic health and vitality;

12 (7) fishing is the most viable economic opportunity in numerous Alaska
13 communities;

14 (8) access to commercial fishing opportunities reduces economic distress and
15 contributes to economic self-sufficiency by providing jobs, income, a local tax base, and
16 greater access to subsistence and other fisheries;

17 (9) access to many commercial fisheries in the state requires significant
18 financial resources, posing a barrier to Alaskans desiring to participate in the state's
19 commercial fisheries;

20 (10) state-chartered regional fisheries trusts would empower communities to
21 prevent economic distress among fishermen, promote fisheries conservation, improve access
22 by Alaskans to fisheries, and realize greater economic self-sufficiency by providing a tightly
23 controlled, additional path of entry into the state's commercial fisheries.

24 * **Sec. 2.** AS 06.26.040(b) is amended to read:

25 (b) This section does not prohibit the use of the word "trust" by a regional
26 fisheries trust established under AS 16.44 or the words "trust" or "trust company"
27 in the name of a corporation that is in existence as of January 1, 2003, and that is not
28 subject to this chapter if the corporation was originally organized under the laws of
29 this state and has not, since the date of its original organization, amended or restated
30 its articles of incorporation to delete from its name the words "trust" or "trust
31 company."

1 * **Sec. 3.** AS 16.05.253(a) is amended to read:

2 (a) The Board of Fisheries may require **an individual** [A PERSON] who
3 holds a limited entry permit or an interim-use permit under AS 16.43 **or who leases a**
4 **limited entry permit under AS 16.44** to be physically present at a beach or riparian
5 fishing site during the operation of net gear or other stationary fishing gear at the site,
6 except when the permit holder **or lessee** is at or traveling to or from the location of

7 (1) a sale of fish caught in the gear; or

8 (2) other stationary gear of the permit holder **or lessee**.

9 * **Sec. 4.** AS 16.05.480(a) is amended to read:

10 (a) A person engaged in commercial fishing shall obtain a commercial fishing
11 license and shall retain the license in possession and readily available for inspection
12 during fishing operations. An entry permit or interim-use permit entitles the holder, **or**
13 **the lessee of the permit under AS 16.44,** to participate as a gear operator in the
14 fishery for which the permit is issued and to participate as a crewmember in any
15 fishery. A crewmember fishing license is not transferable and entitles the holder to
16 participate as a crewmember in any fishery.

17 * **Sec. 5.** AS 16.05.480(g) is amended to read:

18 (g) A resident engaged in commercial fishing who is 11 years of age or older
19 and who does not hold **or lease** an entry permit or an interim-use permit shall, except
20 as provided in (i) of this section, pay a fee of \$60 for an annual crewmember fishing
21 license. A resident engaged in commercial fishing who is less than 11 years of age and
22 who does not hold **or lease** an entry permit or an interim-use permit shall pay an
23 annual fee of \$5.

24 * **Sec. 6.** AS 16.05.480(i) is amended to read:

25 (i) Notwithstanding (g) and (h) of this section, a resident or nonresident
26 engaged in commercial fishing who does not hold **or lease** an entry permit or an
27 interim-use permit may obtain one seven-day crewmember fishing license under this
28 subsection annually. A person who obtains a seven-day license is not eligible for
29 another seven-day license in the same license year; however, if a person who obtains a
30 seven-day license pays the full fee for an annual crewmember fishing license under (g)
31 or (h) of this section during the same license year, the person is entitled to receive a

1 refund of the fee for the seven-day license. The department shall adopt regulations
2 establishing a refund procedure. During the period for which the seven-day license is
3 valid, a person who holds a seven-day license may not engage in fishing with a rod
4 and reel while present on a commercial fishing vessel. The fee for a seven-day license
5 is \$30.

6 * **Sec. 7.** AS 16.05.480(j) is amended to read:

7 (j) In this section, "commercial fishing license" includes an entry permit and
8 an interim-use permit issued under AS 16.43, an entry permit leased from a
9 regional fisheries trust under AS 16.44, and a crewmember fishing license.

10 * **Sec. 8.** AS 16.05.675(a) is amended to read:

11 (a) A person who does not hold or lease a limited entry permit or interim-use
12 permit issued under AS 16.43 or a fish transporter permit issued under AS 16.05.671
13 may not deliver or land fish in the state unless the person

14 (1) holds a valid federal permit to operate commercial fishing gear in
15 the fishery conservation zone; and

16 (2) has been issued a landing permit by the Alaska Commercial
17 Fisheries Entry Commission.

18 * **Sec. 9.** AS 16.05.680(a) is amended to read:

19 (a) It is unlawful for a person, or an agent or representative of the person,

20 (1) to employ, in the harvesting, transporting, or purchasing of fish, a
21 fisherman who neither is licensed under AS 16.05.480 nor is the holder or lessee of a
22 permit issued under AS 16.43;

23 (2) to purchase fish from a person who is not

24 (A) the holder or lessee of a limited entry, interim-use, or
25 landing permit issued under AS 16.43;

26 (B) a fish transporter who is selling the fish as the agent of the
27 holder or lessee of a limited entry, interim-use, or landing permit issued under
28 AS 16.43; or

29 (C) exempt under AS 16.05.660; or

30 (3) to purchase fish from an association other than one to which a
31 permit has been issued under AS 16.05.662.

1 * **Sec. 10.** AS 16.05.710 is amended by adding a new subsection to read:

2 (e) If proceedings to suspend commercial fishing privileges or licenses under
3 this section are pending against a person, a regional fisheries trust established under
4 AS 16.44.010 may not lease the person a permit.

5 * **Sec. 11.** AS 16.10.265(a) is amended to read:

6 (a) An individual may not, while acting as a fish processor or primary fish
7 buyer, or as an agent, director, officer, member, or employee of a fish processor, of a
8 primary fish buyer, or of a cooperative corporation organized under AS 10.15,
9 intentionally or knowingly make an original purchase of fish from a seller who does
10 not hold

11 (1) a landing permit [, AN ENTRY PERMIT,] or an interim-use
12 permit; [OR]

13 (2) **or lease an entry permit under AS 16.44; or**

14 (3) a fish transporter permit under AS 16.05.671.

15 * **Sec. 12.** AS 16.10.455(b) is amended to read:

16 (b) A hatchery permit holder may, by a majority vote of the membership of
17 the hatchery permit holder's board, elect to harvest surplus salmon produced at a
18 facility in a terminal harvest area established for that facility through the common
19 property fishery. At the request of the hatchery permit holder and if the commissioner
20 of fish and game determines that there are no allocative issues involved, and after
21 reasonable consultation with affected commercial fishermen and the organizations of
22 affected commercial fishermen, the commissioner may adopt regulations governing
23 the harvest of surplus salmon in a terminal harvest area when the hatchery permit
24 holder elects to harvest surplus salmon produced at a facility through a common
25 property fishery. The regulations must specify the terms, conditions, and rules under
26 which the common property fishery in the terminal harvest area shall be conducted,
27 including requirements for hold inspections and reporting of harvests and sales of
28 salmon taken in the terminal harvest area. Following adoption of regulations by the
29 department, each year before March 10, the hatchery permit holder's board, by a
30 majority vote of the board's membership, may determine whether the hatchery will
31 operate under the regulations adopted under this subsection during the current calendar

1 year, and shall notify the department if the hatchery intends to operate under the
2 regulations adopted under this subsection. The Board of Fisheries may adopt
3 regulations under AS 16.05.251 regarding a fisheries management plan governing
4 operations under this subsection in a terminal harvest area, including allocation plans.
5 Participation in the fishery must be open to all interim-use permit **holders**, [AND]
6 entry permit holders, **and lessees of entry permits under AS 16.44**, who hold **or**
7 **lease** permits to operate a type of gear that may be used in the fishing district in which
8 the terminal harvest area is located if that type of gear is authorized by regulation to be
9 used in the terminal harvest area. An interim-use permit holder or an entry permit
10 holder **or lessee** who takes salmon in a common property fishery in a terminal harvest
11 area may sell the salmon to any fish buyer or processor who is licensed to do business
12 in the state.

13 * **Sec. 13.** AS 16.43.100(a) is amended to read:

14 (a) To accomplish the purposes set out in AS 16.43.010, the commission shall

15 (1) regulate entry into the commercial fisheries for all fishery resources
16 in the state;

17 (2) establish priorities for the application of the provisions of this
18 chapter to the various commercial fisheries of the state;

19 (3) establish administrative areas suitable for regulating and
20 controlling entry into the commercial fisheries;

21 (4) establish, for all types of gear, the maximum number of entry
22 permits for each administrative area;

23 (5) designate, when necessary to accomplish the purposes of this
24 chapter, particular species for which separate interim-use permits or entry permits will
25 be issued;

26 (6) establish qualifications for the issuance of entry permits;

27 (7) issue entry permits to qualified applicants;

28 (8) issue interim-use permits as provided in AS 16.43.210, 16.43.220,
29 and 16.43.225;

30 (9) establish, for all types of gear, the optimum number of entry
31 permits for each administrative area;

1 (10) administer the buy-back program provided for in AS 16.43.310
2 and 16.43.320 to reduce the number of outstanding entry permits to the optimum
3 number of entry permits;

4 (11) provide for the transfer and reissuance of entry permits to
5 qualified transferees;

6 (12) provide for the transfer and reissuance of entry permits for
7 alternative types of legal gear, in a manner consistent with the purposes of this
8 chapter;

9 (13) establish and administer the collection of the annual fees provided
10 for in AS 16.43.160;

11 (14) administer the issuance of commercial fishing vessel licenses
12 under AS 16.05.490;

13 (15) issue educational entry permits to applicants who qualify under
14 the provisions of AS 16.43.340 - 16.43.390;

15 (16) establish reasonable user fees for services;

16 (17) issue landing permits under AS 16.05.675 and regulations adopted
17 under that section;

18 (18) establish and collect annual fees for the issuance of landing
19 permits that reasonably reflect the costs incurred in the administration and
20 enforcement of provisions of law related to landing permits;

21 (19) establish a moratorium on entry into commercial fisheries as
22 provided in AS 16.43.225;

23 (20) when requested by a regional development organization formed
24 under former AS 44.33.895, provide to the organization, without charge, public
25 information contained in the commission's data with respect to relevant fisheries,
26 including limited fisheries, fishery participants, and limited entry permit holders'
27 harvests and earnings; [AND]

28 (21) administer, when necessary to accomplish the purposes of this
29 chapter, a Bering Sea hair crab fishery vessel permit system under AS 16.43.451 -
30 16.43.521; and

31 (22) ensure that a regional fisheries trust's portfolio of entry

1 permits complies with AS 16.44.060 and block the transfer of an entry permit to a
2 regional fisheries trust if the acquisition of the entry permit by the regional
3 fisheries trust would violate AS 16.44.060.

4 * Sec. 14. AS 16.43.140 is amended to read:

5 **Sec. 16.43.140. Permit required.** (a) A person may not operate gear in the
6 commercial taking of fishery resources without holding a valid interim-use permit
7 or holding or leasing, under AS 16.44, a valid entry permit [OR A VALID
8 INTERIM-USE PERMIT] issued by the commission.

9 (b) A permit is not required of a crewmember or other person assisting in the
10 operation of a unit of gear engaged in the commercial taking of fishery resources as
11 long as the holder or lessee of the entry permit or the holder of the interim-use permit
12 for that particular unit of gear is at all times present and actively engaged in the
13 operation of the gear.

14 (c) An individual [A PERSON] may hold more than one interim-use or entry
15 permit issued or transferred under this chapter only for the following purposes:

16 (1) fishing more than one type of gear;

17 (2) fishing in more than one administrative area;

18 (3) harvesting particular species for which separate interim-use or
19 entry permits are issued;

20 (4) if authorized by regulations of the commission, fishing an entire
21 unit of gear in a fishery in which the commission has issued entry permits for less than
22 a unit of gear under AS 16.43.270(d); under this paragraph, an individual [A
23 PERSON] may not hold more than two entry permits for a fishery; however, the
24 individual [PERSON] may not

25 (A) fish more than one unit of gear in the fishery; or

26 (B) acquire a second entry permit for the fishery after the
27 individual [PERSON] has acquired an entry permit that authorizes the use of
28 an entire unit of gear in the fishery;

29 (5) consolidation of the fishing fleet for a salmon fishery; however, an
30 individual [A PERSON] may hold not more than two entry permits for a salmon
31 fishery under this paragraph, but the individual [PERSON] who holds two entry

1 permits for a salmon fishery may not engage in fishing under the second entry permit.

2 * **Sec. 15.** AS 16.43.150(a) is amended to read:

3 (a) Except as may be otherwise provided under AS 16.43.270(d), an entry
4 permit authorizes the permittee, **or an individual leasing the permit under**
5 **AS 16.44**, to operate a unit of gear within a specified fishery.

6 * **Sec. 16.** AS 16.43.150(b) is amended to read:

7 (b) The holder **or lessee** of an entry permit shall have the permit in possession
8 at all times when engaged in the operation of gear for which it was issued.

9 * **Sec. 17.** AS 16.43.150(g) is amended to read:

10 (g) Except as provided in AS 16.10.333 - 16.10.338, AS 44.81.215, 44.81.225,
11 and 44.81.231 - 44.81.250, an entry permit may not be

12 **(1) leased, except for the lease of a permit held by a regional**
13 **fisheries trust established under AS 16.44.010;**

14 **(2)** [(1)] pledged, mortgaged, [LEASED,] or encumbered in any way;

15 **(3)** [(2)] transferred with any retained right of repossession or
16 foreclosure, or on any condition requiring a subsequent transfer; or

17 **(4)** [(3)] attached, distrained, or sold on execution of judgment or
18 under any other process or order of any court, except as provided in AS 16.43.170(g)
19 and (h).

20 * **Sec. 18.** AS 16.43.150(h) is amended to read:

21 (h) Unless an entry permit holder has expressed a contrary intent in a will that
22 is probated, the commission shall, upon the death of the permit holder, transfer the
23 permanent permit by right of survivorship directly to the surviving spouse or, if no
24 spouse survives, to a natural person **or a regional fisheries trust established under**
25 **AS 16.44.010** designated by the permit holder on a form provided by the commission.
26 If no spouse survives and if the person **or regional fisheries trust** designated on the
27 form, if any, does not survive **or continue to exist**, the permit passes as part of the
28 permit holder's estate. A designation under this subsection must be acknowledged
29 before a person authorized to administer an oath under AS 09.63.010 or must be
30 witnessed by two persons who are qualified under AS 13.12.505 to witness the will of
31 the permit holder. Except as provided in AS 16.10.333 - 16.10.337, AS 44.81.215, and

1 44.81.231 - 44.81.250, the permit is exempt from the claims of creditors of the estate.

2 * **Sec. 19.** AS 16.43.150 is amended by adding new subsections to read:

3 (j) Subsections (h) and (i) of this section do not apply to a lessee of an entry
4 permit under AS 16.44.

5 (k) A lessee of an entry permit under AS 16.44 has the same use privilege or
6 right in a fishery that is available to an individual holding an entry permit or valid
7 interim-use permit under this chapter.

8 * **Sec. 20.** AS 16.43.160(d) is amended to read:

9 (d) The holder of a permit whose household income, assets, and financial
10 resources fall within the eligibility standards for the food stamp program under 7
11 U.S.C. 2011 - 2025, as amended, is subject to an annual base fee for the issuance or
12 renewal of an entry permit or an interim-use permit that is equal to 50 percent of the
13 annual base fee that the permit holder would otherwise pay under (c) of this section. In
14 addition to the reduced annual base fee under this subsection, a nonresident who
15 qualifies for a reduced fee under this subsection shall pay the annual nonresident
16 surcharge established under (c) of this section. **This subsection does not apply to a**
17 **lessee of an entry permit under AS 16.44.**

18 * **Sec. 21.** AS 16.43.170(a) is amended to read:

19 (a) Except as provided in AS 16.10.333 - 16.10.338 and [IN] AS 44.81.231 -
20 44.81.250, entry permits and interim-use permits are transferable only through the
21 commission as provided in this section and AS 16.43.180 and under regulations
22 adopted by the commission. **For purposes of this section, the lease of a permit held**
23 **by a regional fisheries trust under AS 16.44 is not a transfer of the permit.** An
24 involuntary transfer of an entry permit in a manner inconsistent with the statutes of
25 this state and the regulations of the commission is void.

26 * **Sec. 22.** AS 16.43.170(b) is amended to read:

27 (b) Except as provided in (e) of this section, the holder of an entry permit may
28 transfer the permit to another person, **to a regional fisheries trust under AS 16.44,** or
29 to the commission upon 60 **days'** [DAYS] notice of intent to transfer under
30 regulations adopted by the commission. **Not** [NO] sooner than 60 days nor later than
31 12 months from the date of notice to the commission, the holder of an entry permit

1 may transfer the permit. If the proposed transferee, other than the commission **or a**
2 **regional fisheries trust**, can demonstrate the present ability to participate actively in
3 the fishery, and the transfer does not violate any provision of this chapter or
4 regulations adopted under this chapter, and if a certificate for the permit under
5 AS 16.10.333(b)(1) - (2), 16.10.338, or AS 44.81.231(a) is not in effect, the
6 commission shall approve the transfer and reissue the entry permit to the transferee **if**
7 **[PROVIDED THAT]** neither party is prohibited by law from participating in the
8 transfer.

9 * **Sec. 23.** AS 16.43.330(a) is amended to read:

10 (a) When the number of outstanding entry permits for a fishery is less than the
11 optimum number established under AS 16.43.290, the commission shall issue new
12 entry permits to applicants who are presently able to engage actively in the fishery **or,**
13 **subject to AS 16.44.060(a), to regional fisheries trusts established under**
14 **AS 16.44.010** until the optimum number is reached.

15 * **Sec. 24.** AS 16.43.850 is amended to read:

16 **Sec. 16.43.850. Point system.** (a) For the purpose of identifying frequent
17 violators of commercial fishing laws in salmon fisheries, the commission shall adopt
18 regulations establishing a uniform system for the suspension of commercial salmon
19 fishing privileges by assigning demerit points for convictions for violations of
20 commercial fishing laws in salmon fisheries that are reported to the commission under
21 AS 16.43.880. The commission shall assess demerit points against **an individual who**
22 **holds an entry permit or interim-use permit or who leases an entry permit under**
23 **AS 16.44** [A PERMIT HOLDER] for each violation of commercial fishing laws in a
24 salmon fishery in accordance with (b) and (c) of this section. The commission shall
25 assess points against **an individual holding or leasing** a permit [HOLDER] for the
26 salmon fishery in which the violation of commercial fishing laws occurred.

27 (b) The commission shall assess demerit points against **an individual who**
28 **holds or leases** a permit [HOLDER] for a conviction of a violation of commercial
29 fishing laws in a salmon fishery under AS 16.05.722, 16.05.723, 16.05.831;
30 AS 16.10.055, 16.10.070 - 16.10.090, 16.10.100, 16.10.110, 16.10.120, 16.10.200 -
31 16.10.220, and 16.10.760 - 16.10.790 for the following violations in accordance with

1 this schedule:

- 2 (1) fishing in closed waters 6 points;
- 3 (2) fishing during closed season or period 6 points;
- 4 (3) fishing with more than the legal amount of gear 4 points;
- 5 (4) fishing with gear not allowed in fishery 6 points;
- 6 (5) fishing before expiration of transfer period 6 points;
- 7 (6) interfering with commercial fishing gear 4 points;
- 8 (7) fishing with more than the legal amount of
- 9 gear on vessel 4 points;
- 10 (8) improper operation of fishing gear 4 points;
- 11 (9) permit holder **or permit lessee** not present when required 4 points;
- 12 (10) fishing with underlength or overlength vessel 6 points;
- 13 (11) wanton waste of fishery resources 4 points.

14 (c) Notwithstanding (b) of this section, if **the** [A PERMIT HOLDER'S] first
 15 conviction of a violation of commercial fishing laws in a salmon fishery in a 36-month
 16 period **for an individual who holds or leases a permit** is a conviction under
 17 AS 16.05.722, the number of demerit points assessed against the permit holder **or the**
 18 **permit lessee** for the violation must be one-half of the points assessed for the violation
 19 under (b) of this section.

20 (d) The commission shall suspend **the** [A PERMIT HOLDER'S] commercial
 21 salmon fishing privileges **of a permit holder or lessee** for a salmon fishery for a
 22 period of

23 (1) one year if the permit holder **or lessee** accumulates 12 or more
 24 points during any consecutive 36-month period as a result of convictions for violations
 25 of commercial fishing laws in the salmon fishery;

26 (2) two years if the permit holder **or lessee** accumulates 16 or more
 27 points during any consecutive 36-month period as a result of convictions for violations
 28 of commercial fishing laws in the salmon fishery;

29 (3) three years if the permit holder **or lessee** accumulates 18 or more
 30 points during any consecutive 36-month period as a result of convictions for violations
 31 of commercial fishing laws in the salmon fishery.

1 * **Sec. 25.** AS 16.43.855(a) is amended to read:

2 (a) Notice of each assessment of points shall be given to the permit holder **or**
3 **lessee**. Notice shall also be given to the permit holder **or lessee** before the expiration
4 of a suspension of commercial salmon fishing privileges under AS 16.43.850(d) that
5 subsequent violations of commercial fishing laws in the salmon fishery may result in
6 further suspensions of the permit. The notice may be given by first class mail.

7 * **Sec. 26.** AS 16.43.855(c) is amended to read:

8 (c) The assessment of points against a permit holder **or lessee** by the
9 commission under AS 16.43.850 - 16.43.895 is in addition to, and not in substitution
10 for, other provisions of this title and is not a substitute for any penalty imposed by a
11 court.

12 * **Sec. 27.** AS 16.43.855 is amended by adding a new subsection to read:

13 (e) If the commission assesses points under (a) of this section against a lessee
14 of a permit, the commission shall give the regional fisheries trust that leased the permit
15 notice of the assessment of points.

16 * **Sec. 28.** AS 16.43.860 is amended to read:

17 **Sec. 16.43.860. Suspension.** (a) A permit holder **or lessee** whose commercial
18 salmon fishing privileges for a salmon fishery are suspended under AS 16.43.850 -
19 16.43.895 may not obtain an entry permit or interim-use permit for that salmon fishery
20 during the period of the suspension of the privileges. During the period for which the
21 **permit holder's or lessee's** [PERMIT HOLDER'S] privilege to obtain an entry permit
22 or interim-use permit for a salmon fishery is suspended under this section, the
23 commission may not issue a permit card to the permit holder **or lessee** for that fishery.

24 (b) A permit holder **or lessee** whose privilege of obtaining a commercial
25 fishing permit for a salmon fishery is suspended under AS 16.43.850 - 16.43.895 may
26 not

27 (1) engage in the salmon fishery under a crewmember license; [OR]

28 (2) **lease an entry permit for the salmon fishery under AS 16.44; or**

29 (3) lease or rent the **individual's** [PERMIT HOLDER'S] interest in a
30 boat to another person if the boat would be used in the salmon fishery for which the
31 permit holder's **or lessee's** fishing privileges are suspended.

1 (c) If, during the period for which the commission has suspended the [A
2 PERMIT HOLDER'S] commercial fishing privileges of a permit holder or lessee for
3 a salmon fishery [ARE SUSPENDED], the commission establishes a limited entry
4 system for the salmon fishery, the permit holder or lessee shall be eligible to obtain an
5 entry permit for that fishery to the extent that the permit holder or lessee qualifies for
6 the entry permit under regulations adopted by the commission. If the permit holder or
7 lessee qualifies for an entry permit for the fishery, the commission shall withhold
8 issuance of the entry permit until the period of the suspension imposed under
9 AS 16.43.850 - 16.43.895 has expired.

10 (d) The commission may not transfer a commercial fishing permit for a
11 salmon fishery under an emergency transfer under AS 16.43.180 if, at the time of the
12 application for the emergency transfer, the permit holder's commercial salmon fishing
13 privileges of the permit holder or lessee for the salmon fishery have been suspended.

14 * **Sec. 29.** AS 16.43.960(a) is amended to read:

15 (a) The commission may revoke, suspend, or transfer all entry or interim-use
16 permits, vessel entry permits, or vessel interim-use permits held by a person or entity
17 who knowingly provides or assists in providing false information, or fails to correct
18 false information provided to the commission for the purpose of obtaining a benefit for
19 self or another, including the issuance, renewal, duplication, [OR] transfer, or lease
20 under AS 16.44 of an entry or interim-use permit, vessel license, vessel entry permit,
21 or vessel interim-use permit. The commission may also require a regional fisheries
22 trust to terminate the lease of a permit to a person who knowingly provides or
23 assists in providing false information or fails to correct false information
24 provided to the commission for the purpose of obtaining a benefit for self or
25 another. The commission may suspend, as appropriate, that person's, [OR] entity's, or
26 lessee's eligibility to hold or lease an entry or interim-use permit, vessel entry permit,
27 or vessel interim-use permit for a period not to exceed three years, and may impose an
28 administrative fine of not more than \$5,000 on the person or entity whose officers,
29 employees, representatives, or agents knowingly provide or assist in providing false
30 information, or fail to correct false information provided, to the commission for the
31 purpose of obtaining a benefit.

1 * **Sec. 30.** AS 16.43.990(3) is amended to read:

2 (3) "entity" means a corporation, company, partnership, firm,
3 association, organization, joint venture, trust, society, **regional fisheries trust under**
4 **AS 16.44**, or other legal entity other than a natural person;

5 * **Sec. 31.** AS 16 is amended by adding a new chapter to read:

6 **Chapter 44. Regional Fisheries Trusts.**

7 **Sec. 16.44.010. Establishment and purpose of a regional fisheries trust.** (a)

8 The department may authorize a municipality or municipalities to establish a regional
9 fisheries trust if there is not already a fisheries trust established in that region and at
10 least two-thirds of the municipalities within the fisheries trust region, acting jointly,
11 apply to the department with a business plan and bylaws for the proposed fisheries
12 trust that comply with the requirements of this chapter. The department may not
13 authorize more than three regional fisheries trusts. If there are more applicants to form
14 regional fisheries trusts than available authorizations, the department shall authorize
15 eligible trusts in the order in which the applications were received.

16 (b) The purpose of a regional fisheries trust established under (a) of this
17 section is to

18 (1) prevent economic distress among fishermen and those persons
19 dependent upon them for a livelihood;

20 (2) improve state residents' ability to participate in state fisheries by
21 creating opportunities for those persons with limited alternative economic options and
22 sources of income;

23 (3) empower communities to achieve economic self-sufficiency; and

24 (4) promote resource conservation.

25 (c) The department, in consultation with the Department of Fish and Game,
26 shall establish fisheries trust regions. The department may modify or change the
27 boundaries of the regions for good reason.

28 (d) Each fisheries trust established under (a) of this section is a public
29 corporation and instrumentality of the state within the Department of Commerce,
30 Community, and Economic Development. The exercise by a fisheries trust of the
31 powers conferred under this chapter is considered to be for a public purpose. For

1 administrative purposes, the fisheries trusts are in the department, but each fisheries
2 trust has a separate and independent legal existence from the state and shall be
3 governed by a board established under AS 16.44.020.

4 (e) The department may conduct an annual audit of a fisheries trust established
5 under this section. The department may also conduct supplementary audits as it
6 considers necessary. The results of an audit under this subsection is a public record
7 under AS 40.25.110.

8 (f) The department may dissolve a fisheries trust if the fisheries trust becomes
9 insolvent. However, nothing in this subsection precludes municipalities in that region
10 from establishing another fisheries trust under (a) of this section.

11 **Sec. 16.44.020. Regional fisheries trust board; membership; meetings;**
12 **location.** (a) Each regional fisheries trust shall be governed by a board of directors,
13 composed of members appointed by the governor under this section.

14 (b) The governor shall appoint one individual from each municipality wholly
15 or partially located within the fisheries trust region established by the department
16 under AS 16.44.010(c) to serve as a member of a fisheries trust board. The governor
17 shall choose each member appointed under this subsection from a list of nominees
18 provided by each municipality.

19 (c) If, under AS 16.44.050(a)(2), the municipalities within the fisheries trust
20 region elect to include directors from each unincorporated community within the
21 fisheries trust region on the board of directors for the regional fisheries trust, the
22 governor shall appoint one individual from each unincorporated community within the
23 fisheries trust region. The governor shall choose each member from a list of nominees
24 provided by a single entity or village council in each unincorporated community
25 wholly or partially within the fisheries trust region. A regional fisheries trust board of
26 directors may also vote under AS 16.44.050(a)(2) to allow or prohibit the inclusion of
27 members from an unincorporated community wholly or partially within the fisheries
28 trust region.

29 (d) An individual appointed under (b) or (c) of this section must be a resident
30 of the municipality or unincorporated community from which the individual was
31 appointed. In each unincorporated community wholly or partially within the fisheries

1 trust region, a single entity or village council eligible to receive a community
2 assistance payment under AS 29.60.865 shall provide the list of nominees from which
3 the governor shall appoint an individual to serve as a member of a regional fisheries
4 trust board of directors.

5 (e) Except as provided under AS 16.44.050(a)(2), a member of a board of a
6 regional fisheries trust shall serve for a term of three years. A member shall hold
7 office for the term of the appointment and until a successor has been appointed and
8 qualified. A member is eligible for reappointment. A vacancy on a board occurring
9 other than by expiration of term shall be filled in the same manner as the original
10 appointment but for the unexpired term only. Terms must be staggered so that one-
11 third, or as close to one-third as practicable, of the terms expire each year. A member
12 may not serve more than 12 cumulative years on the board.

13 (f) A majority of the members of a board constitutes a quorum for the
14 transaction of business and the exercise of the powers and duties of the board except
15 for certain board actions relating to the board's membership under AS 16.44.050(a)(2).

16 (g) A member of a board may not lease an entry permit from the fisheries
17 trust.

18 (h) The members of a board shall annually elect from among themselves a
19 chair and vice-chair and other board officers as may be provided in the bylaws of the
20 fisheries trust. The members of the board may elect to create an executive governance
21 committee and provide that committee some of the board's powers under this chapter.

22 (i) The board of each fisheries trust may hire staff qualified to assist the board
23 in carrying out the provisions of this chapter. If staff is hired, staff compensation shall
24 be reasonable.

25 (j) A fisheries trust may share resources, including staff, with other fisheries
26 trusts established under this chapter if the sharing arrangement is approved by the
27 board of each participating fisheries trust. A fisheries trust may also share resources
28 and staff with a regional association qualified under AS 16.10.380(a), an Alaska
29 Native village or village regional corporation established under 43 U.S.C. 1606
30 (Alaska Native Claims Settlement Act), a regional development organization as
31 defined in AS 44.33.896, or another entity created for a purpose related to commercial

1 fishing or service in the fisheries trust region.

2 (k) Unless a fisheries trust is sharing resources with one or more other entities
3 under (j) of this section, a fisheries trust shall be administratively headquartered in the
4 community in its region with the greatest number of entry permits on January 1, 2017.

5 **Sec. 16.44.030. Administrative expenses, compensation, and fees due the**
6 **department.** (a) A member of a fisheries trust board may be provided reasonable
7 compensation. However, the compensation may not exceed the median rate of
8 compensation provided to the elected members of the municipal governments of the
9 three most populated municipalities within the fisheries trust region. For the purposes
10 of this section, "compensation" does not include reasonable per diem and travel
11 expenses for necessary fisheries trust business purposes.

12 (b) The administrative expenses of a fisheries trust must be reasonable and
13 minimized to enhance the ability of the fisheries trust to acquire entry permits and to
14 return maximum benefit to the persons and region served by the fisheries trust.

15 (c) The department may adopt regulations relating to the administrative
16 expenses of, and compensation provided by, a fisheries trust.

17 (d) The commissioner shall assess fisheries trust fees for the department's
18 actual expenses necessarily incurred by the department in connection with its duties
19 under this chapter relating to the fisheries trust.

20 **Sec. 16.44.040. Exemption from taxation.** (a) Except for fees levied under
21 AS 16.43.160, the real and personal property of a fisheries trust organized under this
22 chapter and its assets, income, and receipts are declared to be devoted to an essential
23 public and governmental function and purpose, and the property, assets, income,
24 receipts, and other interests of the fisheries trust are exempt from taxes and special
25 assessments of the state or a political subdivision of the state, including municipalities,
26 school districts, public utility districts, and other governmental units.

27 (b) Nothing in this section relieves a person leasing an entry permit from a
28 fisheries trust from applicable fees, taxes, or assessments.

29 **Sec. 16.44.050. Powers and duties of a regional fisheries trust.** (a) In
30 addition to all powers necessary to carry out the purposes of this chapter, a fisheries
31 trust may

1 (1) adopt, amend, and repeal bylaws for its organization, management
2 of its internal affairs, and the conduct of its business consistent with the provisions of
3 this chapter;

4 (2) if two-thirds of the full membership of the board appointed from
5 the municipalities in the region affirmatively vote under AS 16.44.020(c) to approve
6 the action, expand or reduce the membership of the fisheries trust board of directors by
7 allowing or prohibiting individuals from unincorporated communities in the region to
8 serve as directors;

9 (3) borrow funds;

10 (4) subject to the limitations of AS 16.43 and this chapter, hold,
11 transfer, or receive the transfer of an entry permit for a fishery within the fisheries
12 trust region;

13 (5) accept gifts or grants from a federal agency or an agency or
14 instrumentality of the state, a municipality, a private organization, or another source,
15 including the transfer of an entry permit for a regional fishery or a gift or grant for the
16 acquisition of an entry permit within a specific fishery located in the fisheries trust
17 region;

18 (6) subject to AS 16.44.070, lease entry permits to individuals
19 qualified under AS 16.44.080 on conditions that the board considers appropriate that
20 may include terms that allow a fisheries trust to transfer a leased permit to a lessee and
21 terminate a lease upon default of a lessee; and

22 (7) after a fisheries trust acquires the maximum number of entry
23 permits allowed under AS 16.44.060(a), use revenue and other funds to support
24 programs and projects that benefit commercial fishermen within the fisheries trust
25 region.

26 (b) In a manner consistent with AS 16.44.010(b), a fisheries trust shall

27 (1) lease entry permits by competitive bid to individuals qualified
28 under AS 16.44.080;

29 (2) establish criteria for leasing of entry permits acquired by the
30 fisheries trust that ensure the solvency and financial strength of the fisheries trust;

31 (3) lease entry permits only in accordance with criteria established by

1 the fisheries trust under (2) of this subsection;

2 (4) upon request of the commission under AS 16.43.960, terminate the
3 lease of a permit to an individual under this chapter; and

4 (5) make its criteria for leasing entry permits under (2) of this
5 subsection public, and provide copies to the department and to the Alaska Commercial
6 Fisheries Entry Commission.

7 (c) In leasing permits by competitive bid under (b)(1) of this section, and
8 subject to criteria adopted under (b)(2) of this section, a fisheries trust may preference
9 bids for the lease of entry permits under (b)(1) of this section in a manner consistent
10 with the purposes of a fisheries trust under AS 16.44.010(b).

11 **Sec. 16.44.055. Disposition of proceeds.** Leasing fees and other fisheries trust
12 revenue, subject to legislative appropriation, and less any fees due the department
13 under AS 16.44.030(d), shall be available to a fisheries trust's board of directors to be
14 used

15 (1) to pay for a fisheries trust's operations;

16 (2) to finance the acquisition of additional permits; and

17 (3) subject to AS 16.44.050(a), to support programs and projects that
18 benefit commercial fishermen within the fisheries trust region.

19 **Sec. 16.44.060. Acquisition and holding of entry permits.** (a) A fisheries
20 trust may not acquire an entry permit for a fishery that is not in the fisheries trust
21 region. A fisheries trust may not hold more than two and one-half percent of the entry
22 permits issued for a fishery in the fisheries trust region, rounded up to the nearest
23 whole number.

24 (b) Subject to (a) of this section, a fisheries trust shall hold a variety of types
25 of limited entry permits. To the extent reasonably possible, a fisheries trust shall hold
26 a number of limited entry permits of each type issued within its region, such that the
27 fisheries trust's portfolio of limited entry permits is proportionally representative of all
28 of the limited entry permits of each kind issued within the fisheries trust region.

29 (c) The commission shall ensure that a portfolio of entry permits held by a
30 fisheries trust complies with the requirements of this section. A fisheries trust may not
31 acquire an entry permit if the commission finds that the acquisition would violate the

1 requirements of this section.

2 (d) An entry permit held and leased by a fisheries trust is subject to
3 AS 16.43.150(g).

4 **Sec. 16.44.070. Lease terms for entry permits held by a regional fisheries**
5 **trust.** (a) Subject to (b) of this section, a fisheries trust shall establish lease terms for
6 entry permits held by the fisheries trust in a manner that is consistent with the purpose
7 provided by AS 16.44.010(b).

8 (b) A lease term for an entry permit held by a fisheries trust may not exceed
9 six years, and an individual may not lease an entry permit or permits for the same
10 fishery for a cumulative period of more than six years, regardless of whether the lease
11 years are consecutive.

12 (c) An entry permit held by a fisheries trust may not be subleased by the
13 lessee.

14 (d) A fisheries trust may not impose lease terms that limit the lessee's time,
15 place, manner, or method of fishing or sale of fish.

16 (e) Subject to (a) of this section and AS 16.43.170(a), a fisheries trust may
17 include terms in a lease that provide for the leased permit to be transferred to the
18 lessee at the end of the period for which the permit was leased.

19 **Sec. 16.44.080. Qualified lessees.** (a) A fisheries trust may only lease an entry
20 permit to an individual who is a resident of the state. An applicant for the lease of an
21 entry permit from a fisheries trust under this chapter shall maintain a domicile in the
22 state and may not be a resident of, or have received a benefit based on residency, in
23 another state or country.

24 (b) A fisheries trust may not lease a permit to

25 (1) an individual who already holds a limited entry or interim-use
26 permit for the same fishery as the leased permit; or

27 (2) staff of a fisheries trust employed under AS 16.44.020(i) or of
28 another entity that is shared with the fisheries trust under AS 16.44.020(j).

29 (c) When an individual no longer maintains a domicile in the state, the
30 individual is no longer eligible to lease an entry permit, and a fisheries trust shall
31 terminate a lease held by the individual.

1 (d) If proceedings are pending to suspend an individual's commercial fishing
2 privileges, the individual is not eligible to lease an entry permit under this chapter.

3 (e) In this section, "domicile" means the true and permanent home of an
4 individual from which the individual has no present intention of moving and to which
5 the individual intends to return whenever the individual is away.

6 **Sec. 16.44.099. Definitions.** In this chapter,

7 (1) "board" means the board of a regional fisheries trust;

8 (2) "commission" means the Alaska Commercial Fisheries Entry
9 Commission;

10 (3) "commissioner" means the commissioner of commerce community,
11 and economic development;

12 (4) "department" means the Department of Commerce, Community,
13 and Economic Development unless specifically provided otherwise;

14 (5) "entry permit" means a commercial fishing entry permit issued
15 under AS 16.43;

16 (6) "fisheries trust" means a regional fisheries trust established under
17 AS 16.44.010;

18 (7) "fishery" has the meaning given in AS 16.05.940.

19 * **Sec. 32.** AS 39.25.110(11) is amended to read:

20 (11) the officers and employees of the following boards, commissions,
21 and authorities:

22 (A) [REPEALED

23 (B)] Alaska Permanent Fund Corporation;

24 **(B)** [(C)] Alaska Industrial Development and Export Authority;

25 **(C)** [(D)] Alaska Commercial Fisheries Entry Commission;

26 **(D)** [(E)] Alaska Commission on Postsecondary Education;

27 **(E)** [(F)] Alaska Aerospace Corporation;

28 **(F)** [(G) REPEALED

29 (H)] Alaska Gasline Development Corporation and subsidiaries

30 of the Alaska Gasline Development Corporation;

31 **(G) a regional fisheries trust established under**

1 **AS 16.44.010;**

2 * **Sec. 33.** AS 43.76.040 is amended to read:

3 **Sec. 43.76.040. Definitions [DEFINITION].** In AS 43.76.001 - 43.76.040,
4 unless the context otherwise requires,

5 **(1) "buyer" means a person who acquires possession of salmon from**
6 **the person who caught the salmon regardless of whether there is an actual sale of the**
7 **salmon but excluding a transfer to a person engaged solely in interstate transportation**
8 **of goods for hire;**

9 **(2) "person holding a limited entry permit" or "entry permit**
10 **holder" means an individual who is listed in the records of the Alaska**
11 **Commercial Fisheries Entry Commission as the legal owner of an entry permit,**
12 **but does not include the lessee of an entry permit under AS 16.44.**

13 * **Sec. 34.** AS 43.76.320 is amended to read:

14 **Sec. 43.76.320. Definitions [DEFINITION].** In AS 43.76.300 - 43.76.320,

15 **(1) "buyer" means a person who acquires possession of fish from the**
16 **person who caught the fish regardless of whether there is an actual sale of the fish, but**
17 **does not include a person engaged solely in interstate transportation of goods for hire;**

18 **(2) "person holding a limited entry permit" means an individual**
19 **who is listed in the records of the Alaska Commercial Fisheries Entry**
20 **Commission as the legal owner of an entry permit, but does not include the lessee**
21 **of an entry permit under AS 16.44.**

22 * **Sec. 35.** AS 43.76.399 is amended by adding a new paragraph to read:

23 **(5) "person holding a limited entry permit" or "entry permit holder"**
24 **means an individual who is listed in the records of the Alaska Commercial Fisheries**
25 **Entry Commission as the legal owner of an entry permit, but does not include the**
26 **lessee of an entry permit under AS 16.44.**

27 * **Sec. 36.** AS 44.33.020(a) is amended by adding a new paragraph to read:

28 **(45) carry out its functions and duties under AS 16.44.**

29 * **Sec. 37.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 **TRANSITION: REGULATIONS.** The Alaska Commercial Fisheries Entry

1 Commission and the commissioner of commerce, community, and economic development
2 may immediately adopt regulations necessary to implement the provisions of this Act. The
3 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
4 effective date of the law implemented by the regulation.

5 * **Sec. 38.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 INITIAL DIRECTORS OF REGIONAL FISHERIES TRUSTS. Subject to
8 AS 16.44.020(e), added by sec. 31 of this Act, the term of office of each initial director of a
9 regional fisheries trust shall be determined by lot.

10 * **Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 INITIAL ESTABLISHMENT OF FISHERIES TRUST REGIONS. (a) The
13 Department of Commerce, Community, and Economic Development shall, in consultation
14 with the Department of Fish and Game, divide the land area of the state into separate fisheries
15 trust regions to serve as the initial fisheries trust regions under AS 16.44.010(c), added by sec.
16 31 of this Act, that the Department of Commerce, Community, and Economic Development
17 determines are socially, economically, and politically cohesive, using, to the extent
18 practicable,

19 (1) the boundaries of the commercial fishing administrative areas established
20 by the Alaska Commercial Fisheries Entry Commission under AS 16.43.200, as those
21 boundaries are described in regulation on the effective date of sec. 31 of this Act; and

22 (2) the designation of state communities as local or nonlocal to particular
23 fisheries made in the report by the Alaska Commercial Fisheries Entry Commission titled
24 "Changes in the Distribution of Alaska's Commercial Fisheries Entry Permits, 1975 - 2015."

25 (b) In establishing the initial fisheries trust regional boundaries under (a) of this
26 section, the Department of Commerce, Community, and Economic Development shall, to the
27 extent practicable,

28 (1) clearly delineate which communities are in each region; and

29 (2) ensure that a community is not split between regions.

30 * **Sec. 40.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 INITIAL ESTABLISHMENT AND AUTHORIZATION OF REGIONAL
2 FISHERIES TRUSTS. A fisheries trust may not be established before January 1, 2019.
3 However, after January 1, 2018, applications to establish a trust under AS 16.44.010(a), added
4 by sec. 31 of this Act, may be filed with the Department of Commerce, Community, and
5 Economic Development. Notwithstanding AS 16.44.010(a), added by sec. 31 of this Act, if,
6 after January 1, 2018, and before January 1, 2019, applicants from more than three fisheries
7 trust regions apply to the Department of Commerce, Community, and Economic Development
8 to establish fisheries trusts for the applicant's respective regions, the commissioner of
9 commerce, community, and economic development shall, in consultation with the
10 commissioner of fish and game, select three of the proposed fisheries trusts to be established
11 based on

12 (1) the degree to which the communities in a fisheries trust region where the
13 establishment of a fisheries trust is proposed have experienced a decline in the number of
14 commercial fishing entry permits issued under AS 16.43 per capita, based on population in
15 the fisheries trust region, since 1980; and

16 (2) the likelihood, as determined by the commissioner of commerce,
17 community, and economic development, on the basis of the submitted business plans and
18 bylaws for the proposed fisheries trusts, that a proposed fisheries trust will achieve the
19 purposes for establishing a fisheries trust under AS 16.44.010(b), added by sec. 31 of this Act.

20 * **Sec. 41.** Sections 37 and 39 of this Act take effect immediately under AS 01.10.070(c).

21 * **Sec. 42.** Except as provided by sec. 41 of this Act, this Act takes effect January 1, 2018.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 188
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB188-DCCED-DBS-04-07-17
Title: COMM. FISH. ENTRY PERMITS; LOANS;
TRUSTS
Sponsor: KREISS-TOMKINS
Requester: (H) Fisheries

Department: Department of Commerce, Community and
Economic Development
Appropriation: Banking and Securities
Allocation: Banking and Securities
OMB Component Number: 2808

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates					
			FY 2018	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Kevin Anselm, Director	Phone:	(907)269-4157
Division:	Banking and Securities	Date:	04/07/2017 10:00 AM
Approved By:	Catherine Reardon, Director	Date:	04/07/17
Agency:	Division of Administrative Services, DCCED		

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2017 LEGISLATIVE SESSION**

BILL NO. HB188

Analysis

HB 188 allows the establishment of regional fisheries trusts under AS 16.44.010.

"Trust companies" are defined in AS 06.26 and entities that operate as trusts are subject to the requirements of that statute.

The Division of Banking and Securities does not anticipate fiscal impact from this legislation.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 188
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB188-DCCED-DED-04-07-17
Title: COMM. FISH. ENTRY PERMITS; LOANS;
TRUSTS
Sponsor: KREISS-TOMKINS
Requester: (H) Fisheries

Department: Department of Commerce, Community and
Economic Development
Appropriation: Economic Development
Allocation: Economic Development
OMB Component Number: 2743

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates					
			FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES								
Personal Services	309.7		309.7	309.7	309.7	309.7	309.7	309.7
Travel	30.0		30.0	30.0	30.0	30.0	30.0	30.0
Services	90.0		45.0	45.0	45.0	45.0	45.0	45.0
Commodities	32.0		2.0	2.0	2.0	2.0	2.0	2.0
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	461.7	0.0	386.7	386.7	386.7	386.7	386.7	386.7

Fund Source (Operating Only)

1004 Gen Fund (UGF)	461.7							
1005 GF/Prgm (DGF)			386.7	386.7	386.7	386.7	386.7	386.7
Total	461.7	0.0	386.7	386.7	386.7	386.7	386.7	386.7

Positions

Full-time	3.0		3.0	3.0	3.0	3.0	3.0	3.0
Part-time								
Temporary								

Change in Revenues

1005 GF/Prgm (DGF)			386.7	386.7	386.7	386.7	386.7	386.7
Total	0.0	0.0	386.7	386.7	386.7	386.7	386.7	386.7

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 07/01/18

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Brittney Cioni-Haywood, Director	Phone:	(907)465-2625
Division:	Division of Economic Development	Date:	04/07/2017 12:30 PM
Approved By:	Catherine Reardon, Director	Date:	04/07/17
Agency:	Division of Administrative Services, DCCED		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. HB188

Analysis

HB188 creates Regional Fisheries Trusts (RFT) that will own, buy, sell, and lease Limited Entry Permits (permits) to people who are domiciled in Alaska. The intent of the bill is to give easier access to permits in coastal communities that historically had more permit holders.

The Division of Economic Development would be required to oversee the program, conduct annual audit of RFT's, and provide support to the program. Three positions would be required to establish and administer the program and audit and oversee the RFTs: one Program Coordinator; one Audit & Review Analyst; and one Administrative Assistant. The number of potential RFTs is unknown at this time, and additional division support may be required as RFTs are established.

HB188 requires the department assess fees equal to the actual expenses incurred by the department. In the first year no RFTs would exist to pay those fees, and so general funds are used for program operations. Fee revenue would replace general fund starting in the second year.

This program would require promulgation of complex regulations. The initial start of the program would require extensive data collection, statewide travel, and public meetings. Oversight, including attendance at RFT board meetings and audits, would require travel to the RFT locations which are unknown at this time.

Personal Services:

- Program Coordinator II (full-time, range 20)
- Audit & Review Analyst III (full-time, range 23)
- Administrative Assistant I (full-time, range 12)

Travel: 15 trips at \$2.0 each. These trips include quarterly travel for the Program Coordinator for oversight and board meeting attendance to an estimated 3 RFTs and one annual trip to each location for the Audit & Review Analyst to conduct the audit.

Services: \$25.0 in legal costs to establish regulations and \$20.0 in research for the development of the regulations will be required in the first year. \$15.0 in annual department-wide support costs per position.

Commodities: \$30.0 in the first year for computer, office furniture, and other one-time needs for the three new positions. \$2.0 annually for office supplies, postage and other miscellaneous items.

Regional Fisheries Trusts — One-Page Summary

Updated February 22, 2017

Goals

- **Empower communities** to be economically self-sufficient
- Strengthen **local investment** in sustainable commercial fisheries
- **Build the next generation of fishermen** by establishing a new tool, similar to the CF RLF, to improve access to Alaska fisheries

Overview

- As with the Dept. of Commerce's Commercial Fishing Revolving Loan Fund (CF RLF), regional fisheries trusts **provide an accessible path into commercial fisheries**
- Pilot program — at first, fisheries trusts likely to be tested in one to three regions
- Self-determination — regions who want a trust can establish one; those that do not can pass
 - **Strong local consensus needed** to establish a trust — $\frac{2}{3}$ of municipalities must agree
 - Regions will roughly follow CFEC administrative area lines
- Regional fisheries trusts can buy or be gifted limited entry permits to lease for a limited time to fishermen who want to make the transition from deckhand to owning a permit
- **Path to individual ownership** — after six years, fishermen must buy their own permits if they want to continue in the fishery
- Regional fisheries trusts can't tell fishermen how to fish or who to sell to

Governance

- **Accountable** to fishing communities
 - Board members of regional fisheries trusts recommended by cities and boroughs in each region, appointed by Governor
- Each municipality in the region has a board representative
 - Unincorporated communities may also be included on board
- Three-year terms; four-term limit

Other Key Points

- Regional fisheries trusts must be gifted permits or buy them on the open market. They can **hold only a small quantity: the total number is capped.**
- Regional fisheries trusts expected to partner with ARDORs, CDQs, nonprofit aquaculture associations, and other local fish organizations to help fishermen with business training, other skills, and equipment.

This working document prepared by Reid Magdanz
Office of Rep. Jonathan Kreiss-Tomkins
reid.magdanz@akleg.gov; 465-3306

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
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Juneau, Alaska 99801-1182
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MEMORANDUM

April 5, 2016

SUBJECT: Constitutional questions regarding CSHB 366()
(Work Order No. 29-LS0283L)

TO: Representative Jonathan Kreiss-Tomkins
Attn: Reid Magdanz

FROM: Alpheus Bullard 
Legislative Counsel

Mr. Magdanz asked me to address whether HB 366 (Work Order No. 29-LS0283L) raises certain constitutional issues. These constitutional provisions are: the "common use" clause of sec. 3, the "no exclusive right of fishery" clause of sec. 15, and the "uniform application" clause of sec. 17 of art. VIII of the Constitution of the State of Alaska and the United States Constitution's commerce and privileges and immunities clauses. Mr. Magdanz also asked that I address a specific concern as to whether allowing permit banks to lease entry permits, which individual permit holders may not do, raises an equal protection issue.

Article VIII, secs. 3, 15, and 17 of the Constitution of the State of Alaska

Article VIII of the Constitution of the State of Alaska addresses the natural resources of the state. The degree to which the bill would be found by a court to implicate the article's "common use" clause, "no exclusive right of fishery" clause, and "uniform application" clause will depend on whether a court finds that the leasing of entry permits by a state instrumentality limits who may access the state's fisheries resource.

The Alaska Supreme Court has held that these provisions are not implicated unless limits are placed on the admission to resource user groups. *Tongass Sport Fishing Ass'n v. State*, 866 P.2d 1314, 1318 (Alaska 1994); *McDowell v. State*, 785 P.2d 1, 8 & n.14 (Alaska 1989); and *Owsichek v. State, Guide Licensing & Control Bd.*, 763 P.2d 488, 492 (Alaska 1988).

While the existence of permit banks might reduce the financial costs of access to the state's fishery resource for some residents, the establishment of the banks would not *directly impair other persons' access to the resource. In my opinion, the establishment of permit banks, and an accompanying process through which state residents may lease entry permits from the banks, will not prevent any person from purchasing a permit or serve to grant any person an exclusive or special privilege to the resource.*

Common Use and No Exclusive Right of Fishery Clauses

The Alaska Constitution provides for equal access to fish and game resources.¹ However, the limited entry amendment to art. VIII, sec. 15 allows the state to limit entry into fisheries in order to achieve certain conservation and socio-economic goals.² There is no open access in a limited entry fishery. Only those individuals or vessels³ who obtain an entry permit are allowed to participate in a limited entry fishery. Accordingly, the Alaska Supreme Court has recognized that the concept of limited entry into commercial fisheries is inconsistent with the common use section of the Alaska Constitution. *State v. Ostrosky*, 667 P.2d 1184, 1189 (Alaska 1983).

While the court has acknowledged that any inconsistency with the common use section, equal protection clause, or other provision of the Alaska Constitution was cured by the 1972 limited entry amendment to art. VIII, sec. 15,⁴ it has also clarified that the limited entry amendment does not justify every possible limited entry scheme that fosters resource conservation and promotes economic security for fishermen. "[W]hatever system of limited entry is imposed must be one which, consistent with a feasible limited entry system, entails the least possible impingement on the common use reservation and on the no exclusive right of fishery clause." *Johns v. Commercial Fisheries Entry Comm'n.*, 758 P.2d 1256, 1266 (Alaska 1988) citing *Ostrosky*, 667 P.2d at 1191.

Because the bill does not limit access to the resource and is intended to *reduce* the financial barriers for state residents seeking to participate in the state's commercial

¹ Article VIII, sec. 3, Constitution of the State of Alaska.

² Article VIII, sec. 15, Constitution of the State of Alaska states:

No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. *This section does not restrict the power of the State to limit entry into any fishery* for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State. [Emphasis added.]

The adoption of the limited entry amendment, which added the second sentence to sec. 15, created an exception to the prohibition against exclusive rights or privileges of any fishery for purposes of limiting entry into fisheries.

³ There exists one vessel-based state limited entry fishery. The Bering Sea Hair Crab fishery is a vessel-based limited entry system (*see* AS 16.43.451 - 16.43.521).

⁴ *Id.* at 1189 - 90.

fisheries, perhaps decreasing the "impingement" of the existing limited entry system on the common use and no exclusive right of fishery clauses, it is unlikely that a court would find that the bill unconstitutionally implicates the "common use" or "no exclusive right of fishery" clauses.

Uniform Application Clause

In addition to fundamental equal protection afforded by art. I, sec. 1 of the Constitution of the State of Alaska, the Constitution of the State of Alaska also contains an additional equal protection provision, the uniform application section of art. VIII,⁵ that is applicable in the context of use and disposal of natural resources. Again, this provision is only implicated if limits are placed on the admission to resource user groups. *Tongass Sport Fishing Ass'n*, 866 P.2d at 1318; *McDowell v. State*, 785 P.2d 1, 8 & n.14 (Alaska 1989), and *Owsichek*, 763 P.2d at 492. Accordingly, if the bill is found to implicate the uniform application section, it will be because the bill allows only residents to lease permits, and this restriction is interpreted as a limit on nonresidents' access to the state's fishery resource.

The primary difference between the standard equal protection provision and the uniform application section is that the uniform application section may require more stringent review by the courts. *Gilbert v. Department of Fish and Game*, 803 P.2d 391, 396 (Alaska 1990). See also *McDowell*, 785 P.2d at 10; *Owsichek*, 763 P.2d at 498 n. 17. When a challenge is brought under the uniform application clause, the Alaska Supreme Court has summarized the procedure for analysis as follows:

To satisfy the uniform application clause of article VIII, [state laws and regulations, that relate to fish and game,] creating non-uniform classifications must (1) have a legitimate purpose. (2) The individual interest in equal access to fish and game resources is a "highly important interest running to each person within the state." (3) Accordingly, once a legitimate purpose has been established by the state, the weight of that interest must be "important" to countervail the important individual interest implicated. (4) The means used to further the important state purpose must be carefully drawn and designed for "the least possible infringement on article VIII's open access values."

Gilbert, 803 P.2d at 399 (footnotes and citations omitted).⁶ Accordingly, to survive a

⁵ Article VIII, sec. 17 of the Constitution of the State of Alaska provides:

the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

⁶ The Alaska Supreme Court has also stated:

challenge under the uniform application clause, the state's objectives (in establishing permit banks and leasing entry permits to residents) must be justified by an important state interest.⁷

The bill includes legislative findings that provide that the number of commercial fishing permits held by certain residents has declined, that this decline has led to economic distress, and that the state has a compelling interest in addressing this distress. Because the economic health of the state's communities is likely to be interpreted as an important state interest, and the bill's provisions are likely to be interpreted as addressing this interest, a court would likely find that the bill does not violate the uniform application clause.

Federal Commerce Clause

The bill's establishment of regional community permit banks and a process by which state residents may lease commercial fishing entry permits does not raise any issues under Art. I, Sec. 8, Cl. 3 of the U.S. Constitution (Commerce Clause). The Commerce Clause provides that Congress shall have power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." "Although the Clause speaks in terms of powers bestowed upon Congress, the [U.S. Supreme Court] long has recognized that it also limits the power of the States to erect barriers against interstate trade." *Lewis v. BT Investment Managers, Inc.*, 447 U.S. 27, 35, 64 (1980).

The limitation imposed by the Commerce Clause on state regulatory power is by no means absolute, and the states retain authority under their general police powers to regulate matters of legitimate local concern, even though interstate commerce may be affected. *Maine v. Taylor*, 477 U.S. 131, 138 (1986).

In determining whether a State has overstepped its role in regulating interstate commerce, [the U.S. Supreme Court] has distinguished between state statutes that burden interstate transactions only incidentally, and those that affirmatively discriminate against such transactions. While statutes in the first group violate the Commerce Clause only if the burden they impose on interstate trade are "clearly excessive in relation to the putative local benefits," *Pike v. Bruce Church, Inc.*, [397 U.S. 137, 142 (1970)], statutes in the second group are subject to more demanding scrutiny. The [U.S. Supreme Court] explained in *Hughes v. Oklahoma*, [441 U.S. 322, 336 (1979)], that once a state law is shown to discriminate

In reviewing legislation which burdens the equal access clauses of article VIII, the purpose of the burden must be at least important [and the] means used to accomplish the purpose must be designed for the least possible infringement on article VIII's open access values.

McDowell, 785 P.2d at 10.

⁷*Id.* at 10.

against interstate commerce "either on its face or in practical effect," the burden falls on the State to demonstrate both that the statute "serves a legitimate local purpose," and that this purpose could not be served as well by nondiscriminatory means.

Maine, 477 U.S. at 138. In deciding whether the Commerce Clause has been violated, a court must first determine whether the state action regulates even-handedly or imposes actual discrimination against interstate commerce. "Discrimination" in this context means "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Oregon Waste Systems Inc. v. Department of Environmental Quality*, 511 U.S. 93 (1994). Under this principle, a statute that facially discriminated against interstate commerce would be considered invalid, although it may be upheld under certain circumstances.

A court is unlikely to find that a process by which state residents may lease commercial fishing entry permits has an adverse effect on interstate commerce. The establishment of permit banks that lease a small percentage of entry permits⁸ will not impose greater costs on nonresident permit holders or limit their access to the state's fisheries resource. Leasing a small percentage of the available entry permits to state residents would not affect commerce between the states or serve to "burden" nonresidents who have, or seek to acquire, permits to participate in the state's fishing industry.

In *Carlson v. State*, 919 P.2d 1337 (Alaska 1996) (*Carlson II*) (*cert. denied*, 540 U.S. 963 (2003)), *rev'd in part on other grounds*, 270 P.3d 755, (Alaska 2012) and *State v. Dupier*, 118 P.3d 1039, 1053 (Alaska 2005), nonresident plaintiffs challenged the fee differentials charged by the State of Alaska's Commercial Fisheries Entry Commission to nonresident fishers for commercial fishing permits as, among other arguments, a violation of the Commerce Clause of the U.S. Constitution. The Alaska Supreme Court held that the higher fees paid by nonresidents for the permits did not implicate interstate commerce.⁹ The establishment of an entity that would lease some permits to certain state residents seems even less likely to be interpreted by a court as a possible imposition on interstate commerce than were the higher fees for entry permits charged nonresidents at issue in *Carlson II*.

The establishment of permit banks that lease a limited number of commercial fishing entry permits to state residents is a means of serving state interests that is unlike the higher fees charged nonresidents at issue in *Carlson II* and more like that portion of the state's existing Commercial Fishing Loan Act (AS 16.10.300 - 16.10.370). The Loan Act

⁸ Note that the Commerce Clause could be implicated if a large number of entry permits were reserved for leasing under the bill

⁹ The Court noted that the United States Supreme Court instead analyzes statutes based on residency under the Privileges and Immunities or Equal Protection Clauses of the United States Constitution. *Id.* at 1340 - 1341.

provides low interest loans to state residents to purchase commercial fishing entry permits, "to promote . . . the development of a predominantly resident fishery . . ." (AS 16.10.300) without impairing nonresidents access to the state's fisheries resources or imposing addition economic costs on nonresidents. The permit banks will provide a similar benefit to residents.

Privileges and Immunities Clause

Article IV, Sec. 2 of the Constitution of the United States provides that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." The Alaska Supreme Court has adopted a two-step privileges and immunities test:

First, the activity in question must be sufficiently basic to the livelihood of the nation . . . as to fall within the purview of the Privileges and Immunities Clause. . . .

Second, if the challenged restriction deprives nonresidents of a protected privilege, we will invalidate it only if we conclude that the restriction is not closely related to the advancement of a substantial state interest.

Carlson, 919 P.2d at 1341.

Permitting only state residents to lease entry permits from the regional community permit banks established by the bill is unlikely to violate the privileges and immunities clause. The opportunity to lease, instead of buy, a commercial fishing entry permit is probably not an activity that is "basic to the livelihood of the nation." The Privileges and Immunities Clause is not an absolute bar to discrimination. It only protects nonresident individuals against interference with their "fundamental rights."¹⁰ Given that the Supreme Court has held that every inquiry under the Privileges and Immunities Clause "must . . . be conducted with due regard for the principle that the States should have considerable leeway in analyzing local evils and in prescribing appropriate cures[,]"¹¹ a court is unlikely to find a program that provides for a small number of entry permits to be leased to state residents to assist residents and local economies interferes with nonresidents' fundamental rights.

Specific Equal Protection Concern

Mr. Magdanz asked that I address the argument that allowing permit banks to lease entry permits, when individual permit holders are not provided this same opportunity, may

¹⁰ "The privileges and immunities clause does not apply to corporations. . . ." *State Departments of Transp. & Labor v. Enserch Alaska Constr.*, *Dissenting Opinion of Rabinowitz and Compton*, Justices, 787 P.2d 624, 642 n.6 (Alaska 1989), *citing* L. Tribe, *American Constitutional Law* § 6-33 at 411 - 12, *quoting* *Robison v. Francis*, 713 P.2d 259, 264 n.5 (Alaska 1986).

¹¹ *Toomer v. Witsell*, 334 U.S. 385, 396 (1948).

violate these individuals' constitutional guarantees of equal protection.

The fundamental principle underlying the concept of equal protection is that similarly situated persons are to be treated equally. "The common question in addressing equal protection cases is whether two groups of people who are treated differently are similarly situated and thus entitled to equal treatment."¹² The Alaska Supreme Court has found that equal protection under art. I, Constitution of the State of Alaska, is not violated if the person challenging the law is not similarly situated with those included or excluded, as appropriate to the particular case, under the law at issue. See *Brandon v. Corrections Corporation of America*, 28 P.3d 269 (Alaska 2001), and *Rutter v. Alaska Board of Fisheries*, 963 P.2d 1007 (Alaska 1998).

The permit banks established by the bill would hold entry permits for the purpose of leasing the permits, and by leasing the permits to state residents, presumably assist them and their communities. In contrast, an individual who holds an entry permit likely holds that permit for purposes of accessing the state's fishery resource the permit banks perform a public service and use the proceeds to extend that service to others. Accordingly, it is unlikely that a court would find that permit banks and individual permit holders are similarly situated vis a vis the leasing of entry permits.

However, if a permit bank became a profit-making entity that benefited a select group it is possible that individual permit holders might be construed to be similarly situated. In this situation, the court would examine the importance of the individual permit holders' interests being affected, the importance of the state purposes asserted in establishing the permit bank leasing system, and the closeness of the "fit" between the bill's provisions and the achievement of the state's purpose. Individual permit holders' equal protection claims would be addressed by a state using a sliding scale.¹³ First, the court would determine the importance of the interest impaired by the bill's provisions. This first step in the analysis is critical -- it determines the level of scrutiny to be applied, and strength of the justification the state must provide.¹⁴ Then the court would look at the purposes served by the statute. Lastly, the court would look at how well the bill's means fits the purpose.

It is unlikely that a court would interpret the interest at stake here, the right to lease an entry permit, as a fundamental or important constitutional right, and therefore the right to lease would likely be subject to "minimum scrutiny." The court would likely find that

¹² *Anderson v. State*, 78 P.3d 710, 718 (Alaska 2003).

¹³ *Matanuska-Susitna Borough School v. State*, 931 P.2d 391, 396 (Alaska 1997).

¹⁴ See *id.*

an individual permit holder's interest in leasing the individual's permit is economic. Where the interest is economic, the Alaska Supreme Court applies minimum scrutiny:

Under the Alaska Constitution, the "legitimate reason test" is "the standard level of scrutiny . . . in equal protection cases," and we apply it to laws that do not employ classifications based on suspect factors or infringe on fundamental rights. Under this test, a law "will survive as long as a 'legitimate reason for the disparate treatment exists' and the law creating the classification 'bears a fair and substantial relationship to that reason.'"¹⁵

At the minimum level of scrutiny, the state needs only demonstrate only that the distinction between who may lease an entry permit rationally relates to a legitimate governmental interest. Accordingly, the state must only demonstrate that prohibiting individual permit holders from leasing the individuals' permits is reasonable, not arbitrary, and is based on grounds that bear a fair and substantial relationship to the purpose of the regulatory distinction. If treating individual permit holders differently from permit banks is found to be reasonable, even if the means to achieve the state's interest could be more closely tailored to fit that interest than the meaning the bill provides, a court will uphold the bill's provisions allowing a permit bank to lease an entry permit because such a provision must only bear a rational relationship to a legitimate state interest.

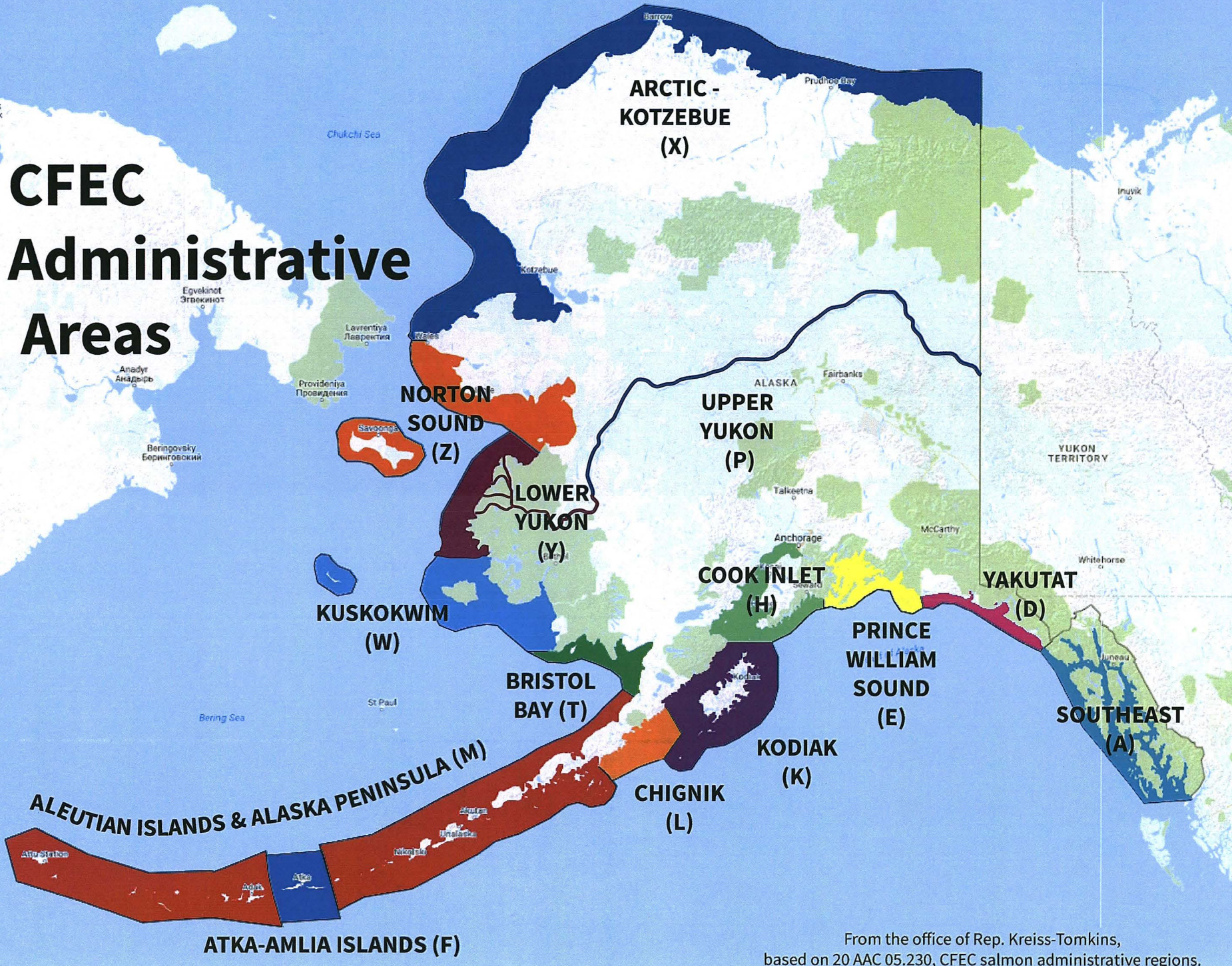
A court would likely find that establishing permit banks that may lease permits to persons who would otherwise not be able to access the state's commercial fishery resource bears a "fair and substantial" relationship to the state's legitimate purpose in assisting its residents and the economies of its communities and the bill's disparate treatment of permit banks as individuals who hold a permit would be upheld.

If you have further questions, please do not hesitate to contact me.

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¹⁵ *Griswold v. City of Homer*, 252 P.2d 1020 (Alaska 2011) (internal citations omitted).

CFEC Administrative Areas



From the office of Rep. Kreiss-Tomkins,
based on 20 AAC 05.230, CFEC salmon administrative regions.

HB 188:

Regional Fisheries Trusts

Office of Rep. Kreiss-Tomkins

Prepared by Reid Magdanz, Berett Wilber & Rep. JKT

**Fishermen don't just drive boats.
They drive Alaska's economy.**



**Fisheries trusts maximize Alaskans'
access to the economic opportunity commercial
fishing provides.**

Why should we care about fisheries trusts?

- Fisheries are the economic engine of coastal Alaska.
- Entering Alaska fisheries has become highly capital intensive.
 - Usually involves taking out large, often six-figure loans for permits and/or boats.
- It is well documented that access to commercial fisheries has decreased in much of Alaska (especially rural Alaska) since 1975.
- Alaskans (especially rural Alaskans) with limited access to capital are increasingly left on shore because of capital-related barriers to entry.
- Barriers to entry have had severe repercussions on rural coastal communities where there is little other economic opportunity outside commercial fishing.

Several tools have already improved access for Alaskans to Alaska's fisheries...

- 225 people applied for loans from the Commercial Fishing Revolving Loan Fund (CF RLF) last year alone.
- As of 2016, the Commercial Fishing Revolving Loan Fund had \$95.2 million lent out on over 1,700 loans.
- CF RLF has given approximately 8,473 people loans to invest in fishing businesses since the fund was created in 1972.
- Commercial Fisheries and Agriculture Bank also offers uniquely fishermen-oriented financing.

...and additional tools can help.



Regional fisheries trusts

would empower communities to:

- prevent economic distress among fishermen,
- promote fisheries conservation,
- improve Alaskans' access to fisheries,
- realize greater economic self-sufficiency by making entry into Alaska's commercial fisheries more accessible.

A black and white photograph of a forested coastline. The background is a dense forest of tall trees, likely evergreens, covering a hillside. In the foreground, a body of water reflects the sky. A small boat with a mast is visible on the water, positioned towards the left side of the frame. The text "What does a fisheries trust look like?" is overlaid in large, bold, white letters across the middle of the image.

What does a fisheries trust look like?

- Opt-in and self-determined: 2/3 of municipalities must petition to create a fisheries trust
- Community and regionally governed
- Lease permits on a short-term basis to qualified fishermen as “stepping stones”: no more than 6 years before they have to buy their own permit
- The number of permits a trust can acquire has a hard cap to prevent distortion to market

The background of the slide is a photograph of a vast, open body of water under a heavy, overcast sky. The water is dark and textured with small waves, and the horizon line is visible in the lower third of the image. The sky is filled with soft, grey clouds, creating a somber and atmospheric mood.

What's new about it?

Fisheries trusts improve access for Alaskans to Alaska's commercial fisheries.

Fisheries trusts empower communities and regions to become more economically self-sufficient.

What about constitutionality?

HB 188 has gone through two and a half years of extensive legal vetting, including opinions from...

- Alaska's Department of Law
- Private fisheries attorney Jim Brennan, of Brennan & Heideman (pro bono)
- Alaska Legislature's Legislative Legal

The bill has been crafted and re-crafted in response to their recommendations and concerns.



Limited Authorization in the new CS

- A new version of the bill will provide for limited authorization: no more than three regions can opt in to establish fisheries trusts, in order to vet the idea.
- After January 1, 2018, $\frac{2}{3}$ of the municipalities in any fisheries trust region can apply to DCCED to establish a trust.
- If more than three regions apply, the Commissioner of DCCED will work with ADF&G to pick the three best candidates, based on their business plans and ability to fulfill the legislative intent of fisheries trusts.

**It's been some time in
the making.**

**After two and a half
years, HB 188 is the
product of:**

- 1500+ hours of work,
 - 2500+ individual emails,
 - 150 - 200+ stakeholders,
 - one statewide summit,
 - 90+ pages of legal memos,
 - 16 bill drafts.
-

HB 188 was developed in consultation with...

ANCSA CEOs · Bristol Bay Economic Development Corporation · United Fishermen of Alaska · Alaska Federation of Natives · ADF&G · Norton Sound Economic Development Corporation · Alaska Marine Conservation Council · Central Bering Sea Fishermen's Association · Aleutian Pribilof Island Community Development Association · Central Bering Sea Fishermen's Association · Coastal Villages Region Fund · Yukon Delta Fisheries Development Association · Commercial Fisheries Entry Commission · Nature Conservancy · Seafood Producers Co-operative · Alaska SeaGrant · SalmonState · Alaska Center · Sealaska · Central Council Tlingit and Haida · Bristol Bay Native Corporation · Aleut Corp · Koniag, Inc · Alaska Young Fishermen's Network · Chugach Alaska Corporation · Alaska Trollers Association · Bristol Bay Fishermen's Association · Southeast Alaska Seiners Association · DCCED · Alaska Longline Fishermen's Association · Kodiak Rural Leadership Forum · & more.



(1)

Posted February 21, 2016 12:01 am

By LINDA BEHNKEN, EDWARD DAVIS, DUNCAN FIELDS and NORMAN VAN VACTOR (/linda-behnken-edward-davis-duncan-fields-and-norman-van-vactor)

FOR THE JUNEAU EMPIRE

My Turn: Banking on Alaska's fishing future

Comments 54 Share

Many people our age have written wills. Have you? It's a good idea, of course, because wills preserve family harmony while planning for ways our youth can prosper.

Many in the fishing industry feel the same. As fishing leaders gathered in Juneau this week for the United Fishermen of Alaska board meeting, Symphony of Seafood and other events, we have to look past our industry's near-term challenges and focus on our collective "will" to ensure Alaska's local fishing legacy lives on.

Local permit ownership – keeping the family assets in the family, if you're thinking in terms of a will – is essential to a thriving fleet and sustainable local economies.

We know our fleet is greying. The average age of fishing permit holders in Alaska is 50, a rise of 10 years since 1980. The number of Alaska residents under the age of 40 holding fishing permits has fallen to 17 percent in 2013. Aging trends are especially pronounced in rural fishing communities.

Commercial fishing is the lifeblood of dozens of Alaskan communities. Clearly, we need to think about passing our fishing industry on to the next generation of fishermen.

Vast numbers of fishing permits have left Alaska communities in recent years. Between 1975 and 2014, Alaska's rural fishing communities felt the net loss of more than 2,300 (limited entry) fishing permits (27.8 percent). Since the implementation of the halibut and

sablefish IFQ program in 1995, the number of fishermen in small Gulf of Alaska fishing communities holding quota in these fisheries has declined by 50 percent. In the Bristol Bay salmon fishery, local permit ownership declined by 50 percent between 1975 and 2014.

This isn't exactly the same as selling family treasures in a garage sale, but it does feel like our Alaskan "family" is losing out.

The average limited entry permit costs as much as an upscale home — and involves a lot more risk. Fish abundance and prices fluctuate annually. An engine breakdown before a critical opening can cost a new fisherman the opening, the season and the permit. Both upscale homes and permits are out of reach of many young or new fishermen. This means that new fishermen are unable to enter into commercial fisheries happening right outside their door.

Loss of fishing access degrades a community's economic opportunities, heritage, infrastructure and health. This leads to an inability to keep the value and economic benefit of Alaska's fish resources within Alaska communities, businesses and families.

Alaska must make a concerted effort to help preserve local right to fish. Some state legislators are proposing a fish permit bank that creates a way for communities to buy permits and lease them to new fishermen who otherwise could not afford them. It would offer several types of fishing permits that would be proportional and reflective of regional fisheries.

By owning permits and leasing them to entry-level local fishermen year-in and year-out, permit banks work to launch young and new fishermen, create resiliency in their strategies and help them become profitable for the long term.

Alaska needs to create strong local Alaskan fishing economies. To get there, Alaska needs diversified fishing businesses, a multi-age fleet demographic that includes new entrants and mentors, an ongoing commitment to resource stewardship, and a resilient community of fishermen working together.

This week's UFA meeting included 40 member groups from throughout Alaska and the Pacific Coast. Let's "write our will" and find ways to strengthen local fishing businesses, protect Alaska's fishing resources, and keep fishing as a way of life in Alaska by facilitating entry for younger fishermen.

Local fishing permit banks are one way our family legacy — our shared Alaskan fishing heritage and economy — can be passed on for generations to come.

• Linda Behnken of Sitka, Edward Davis of Hoonah, Duncan Fields of Kodiak and Norman Van Vactor of Dillingham are long-time leaders in the commercial fishing industry.



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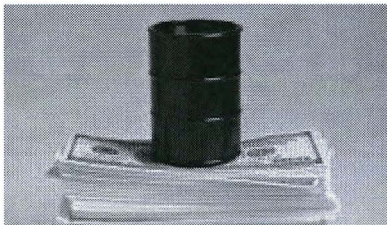
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(1)

Posted June 10, 2015 12:05 am

By NORMAN VAN VACTOR (/norman-van-vactor)

FOR THE JUNEAU EMPIRE

My Turn: Bring fishing permits home

Comments 26 Share

In coastal Alaska, the number of locally held commercial fishing permits is steeply declining. That sentence might not mean much at first glance. Fisheries policies are notoriously complex even for the most studious Alaskans. It can be difficult to tell what a crisis looks like or when the red button should be pushed.

In 1983, Angoon had 183 locally held fishing permits. Now, 30 years later, there are only 15. In Nome, 157 permits have become 89. In New Stuyahok, 144 permits have become 21. Larsen Bay's 47 permits have dwindled to 15. These are not isolated incidents; this is a trend that can be found in every region of the state.

And if the numbers aren't convincing, a hearing on permit loss in the Alaska House fisheries committee this spring made it abundantly clear: This is a red-button moment.

Each lost permit represents a small business shuttering its doors. The effects are devastating, especially in rural places where the opportunities to participate in the cash economy are few. The \$100,000 that one fishing permit can generate magnifies into thousands of dollars around the community.

As permits leave, the opposite happens. The revenue decline creates a negative feedback loop that depresses rural economies at a faster and faster rate.

These relationships show that locally-held permits and salmon resource fishing revenue are vital to the economic health of almost every coastal region in Alaska. But if permits are so important, how are we losing them?

Alaska's limited entry permit system randomly distributes permits among potential owners: This means permits are expensive, and an arms race of capital and credit continues to drive up the price. Add the cost of a competitive boat to the \$160,000 for a Bristol Bay drift permit, and you could easily owe \$500,000 before you ever touch a fish.

Unfortunately for Alaskans, many potential owners are people from the Lower 48, and lines of credit aren't as accessible in New Stuyahok as in Seattle or San Francisco. We get out-competed.

Older generations of fishermen are retiring, but young Alaskans can't afford to buy in. Coastal economics depress further, so owners leave and take permits with them. More permits are lost through foreclosures, forfeitures and revocations.

It paints a bleak picture for Alaskan communities. Some think turning the trend around is impossible — rural Alaska should accept it and move on. For others, this is a completely unacceptable response — “moving on” is resigning ourselves to the slow depletion of coastal Alaska.

Decline is not inevitable. Twenty-three years ago, only 2 percent of the Bering Sea's fishing resource was owned by residents; the rest was controlled by non-Alaskans. After the creation of six Alaskan Community Development Corporations, residents now own more than 35 percent of the resource, and that level is rising. By developing CDQ groups, we turned around our federally-managed fisheries. Why can't we do it with our state-managed fisheries?

The Bristol Bay Economic Development Corporation has been actively trying to stem the tide of permit loss for almost a decade. We estimate that Bristol Bay loses 15 permits a year. There were seven “saves” in 2014 — seven permits turned over to the hands of resident fishermen, the best year yet. But until that number is 15 or higher, Bristol Bay isn't even breaking even.

We need just two things to make it happen: We need to embrace new ideas and programs dedicated to keeping permits local, and we need legislators who will take advantage of opportunities to restore the economic engine of coastal Alaska.

Showing that permit loss is a systemic issue for coastal communities is the first step; getting them back into local hands is the next. Let's get a new generation of fishermen on the water.

Let's bring permits home.

- Norman Van Vactor is president of the Bristol Bay Economic Development Corporation and resides in Dillingham.



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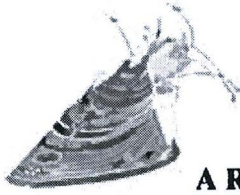
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SUN'AQ TRIBE OF KODIAK

Federally Recognized December, 2000

RESOLUTION #2016-05

A RESOLUTION SUPPORTING LEGISLATION IMPROVING ALASKANS' ACCESS TO ALASKA FISHERIES

WHEREAS, limited entry commercial fisheries are the economic backbone of all of Alaska's coastal communities, from Southeast to Southwest;

WHEREAS, the "graying of the fleet" — the increasing average age of Alaska's fishermen — is endangering the ability to pass on experience, knowledge, resources, culture, and value of fisheries to younger generations of Alaskans;

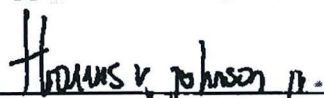
WHEREAS, the out-migration of Alaska fishing permits to nonresidents who do not live or invest in our coastal communities deprives those communities of economic activity;

WHEREAS, the lack of economic opportunity in Alaskan communities from the loss of local fishing permits contributes to extreme levels of unemployment, lack of local tax base, and high rates of alcohol and drug abuse and other social ills;

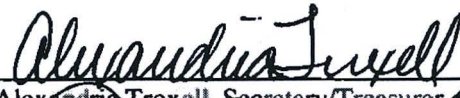
WHEREAS, the legislation to improve Alaskans' access to Alaska fisheries has been collaboratively worked on for the previous 14 months with stakeholders from across Alaska;

THEREFORE BE IT RESOLVED that _____ supports legislation improving Alaskans' access to Alaska fisheries to stem the loss of Alaska fishing permits from coastal communities, provide young Alaskans better means of economic opportunity, and reinvigorate the cultural and economic vitality of fishing communities across Alaska.

Approved and Adopted, this 22 day of February 2016



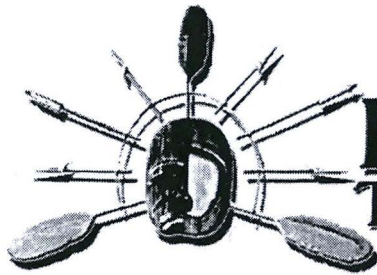
Thomas Johnson, Jr. Chairperson



Alexandria Troxell, Secretary/Treasurer



Attest



LARSEN BAY TRIBAL COUNCIL

PHONE (907) 847-2207
FAX (907) 847-2307

PO BOX 50
LARSEN BAY
ALASKA 99624

RESOLUTION #16-07

A RESOLUTION SUPPORTING LEGISLATION IMPROVING ALASKAN'S ACCESS TO ALASKA FISHERIES

WHEREAS, limited entry commercial fisheries are the economic backbone of all of Alaska's coastal communities, from Southeast to Southwest;

WHEREAS, the "graying of the fleet"-the increasing average age of Alaska's fishermen-is endangering the ability to pass on experience, knowledge, resources, culture, and value of fisheries to younger generations of Alaskans;

WHEREAS, the out-migration of Alaska fishing permits to nonresidents who do not live or invest in our coastal communities deprives those communities of economic activity;

WHEREAS, the lack of economic opportunity in Alaskan communities from the loss of local fishing permits contributes to extreme levels of unemployment, lack of local tax base, and high rates of alcohol and drug abuse and other social skills;

WHEREAS, the legislation to improve Alaskans' access to Alaska fisheries has been collaboratively worked on for the previous 14 months with stakeholders from across Alaska;

THEREFORE BE IT RESOLVED that the Larsen Bay Tribal Council supports legislation improving Alaskans' access to Alaska fisheries to stem the loss of Alaska fishing permits from coastal communities, provide young Alaskans better means of economic opportunity, and reinvigorate the cultural and economic vitality of fishing communities across Alaska.

CERTIFICATION:

This resolution was duly considered and adopted at a meeting of the Larsen Bay Tribal Council in Larsen Bay, Alaska on MARCH 3, 2016 at which a quorum of Council members were in attendance.

For 6
Present 0

Against 0
Absent 0

Abstain 0

RESOLUTION 2016-03
A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF PORT LIONS SUPPORTING LEGISLATION IMPROVING ALASKANS
ACCESS TO ALASKA'S FISHERIES

WHEREAS, the City of Port Lions is an incorporated second class City recognized by the State of Alaska; and

WHEREAS, the Port Lions City Council is the governing body of the City of Port Lions, and

WHEREAS, limited entry commercial fisheries are the economic backbone of all of Alaska's coastal communities, from Southeast to Southwest, and

WHEREAS, the "graying of the fleet" — the increasing average age of Alaska's fishermen, is endangering the ability to pass on experience, knowledge, resources, culture, and value of fisheries to younger generations of Alaskans, and


WHEREAS, the out-migration of Alaska fishing permits to nonresidents who do not live or invest in our coastal communities deprives those communities of economic activity, and

WHEREAS, the lack of economic opportunity in Alaskan communities from the loss of local fishing permits contributes to extreme levels of unemployment, lack of local tax base, and high rates of alcohol and drug abuse and other social ills, and


WHEREAS, the legislation to improve Alaskans' access to Alaska fisheries has been collaboratively worked on for the previous 14 months with stakeholders from across Alaska.

NOW THEREFORE BE IT RESOLVED that the City Council of Port Lions, Alaska supports legislation improving Alaskans' access to Alaska fisheries to stem the loss of Alaska fishing permits from coastal communities, to provide young Alaskans better means of economic opportunity, and to reinvigorate the cultural and economic vitality of fishing communities across Alaska.

Passed and Approved by a duly Constituted Quorum of the City Council of the City of Port Lions this 10 day of March, 2016



Mayor, City of Port Lions



Attest, City Clerk

LAW OFFICES
BRENNAN ■ HEIDEMAN
A PROFESSIONAL CORPORATION

FROM THE DESK OF:
JAMES T. BRENNAN
ATTORNEY AT LAW
jbrennan@law-alaska.com

April 11, 2017

Representative.Louise.Stutes@akleg.gov

Representative Louise Stutes
Chairperson, House Fisheries Committee

Re: HB 188; Act to Establish Regional Fisheries Trust

Dear Representative Stutes:


I am an Anchorage attorney and have been engaged in civil practice in Alaska since 1977. My varied practice has included fisheries law and constitutional law, and I have had substantial appellate experience, including numerous appearances in the Alaska Supreme Court.

I have reviewed HB 188 in detail, including its provisions concerning formation of regional fisheries trusts to hold commercial fishing entry permits and to authorize leases of such permits to persons engaged in various Alaska salmon fisheries and gear types. I have specifically reviewed these provisions for their compliance with various federal and state constitutional provisions which might be raised to challenge the fisheries trust system to be established by HB 188.

In my opinion, the provisions of HB 188 are consistent with both the federal and Alaska constitutions, and would withstand constitutional challenge.

If you have any questions concerning this, please do not hesitate to contact me.

Sincerely



James T. Brennan

JTB:tw
JTBGEN



Alaska Longline

FISHERMEN'S ASSOCIATION

Post Office Box 1229 / Sitka, Alaska 99835 907.747.3400 / FAX 907.747.3462

April 2, 2017

Dear Legislator,

The Alaska Longline Fishermen's Association (ALFA) SUPPORTS HB 188: An Act establishing community fishing trusts.

ALFA is a Sitka-based organization of independent fishermen committed to sustainable fisheries and thriving fishing communities. Our members support science-based fisheries management through collaborative research, advocacy and innovation. We work to safeguard ocean health and improve the economic viability of small boat fishing.

Commercial fishing is the economic driver of Alaska's communities; commercial fishing also provides residents of rural communities with access to important subsistence resources, supporting household economics and community culture. The dependence of communities on commercial fishing increases in the remote and isolated coastal areas stretching along the Gulf of Alaska and Bering Sea coasts.

Fishing permits and quota are leaving Alaska, especially leaving Alaska's rural coastal communities. Between 1975 and 2014, Alaska's rural communities experienced a net loss of over 2,300 limited entry permits. Federal quota has also become concentrated into fewer hands and migrated from rural communities. Because few alternative employment opportunities exist in these communities, losing access means losing livelihood and ultimately losing community.

Six billion dollars worth of fisheries resources are harvested off Alaska's coast each year. Non-residents have an important role in that harvest, but Alaska community residents depend on access to that valuable resource—and that access is increasingly out of reach.

The cost of access to some of Alaska's fisheries has doubled, quadrupled, and then doubled again since limited access programs were implemented. Young fishermen, especially fishermen from rural areas, lack the necessary capital and collateral to obtain loans. Even when funding is available, the risk new fishermen face is staggering.

Community fishing trusts are an essential part of addressing these issues. Fishing trusts anchor access in communities and provide an affordable entry level for new fishermen. As proposed in HB 188, community fishing trusts would obtain limited entry permits than lease these permits to resident fishermen for a limited amount of time. As a result, new fishermen would initially face only the cost of buying a boat and fishing gear, then tackle the cost of a permit after building equity in their boat, gaining experience, and weathering the first few fishing seasons. During the start-up time, fishing trusts can mentor young fishermen in sound fishing and business practices, further lowering the risks they face and supporting their eventual success. In short, fishing trusts anchor access in communities, lower entry costs and reduce risks faced by new fishermen. From ALFA's perspective, community fishing trusts are an essential step toward reversing the loss of fishery access.

ALFA has been actively working since 2009 to address the loss of fishery access through a risk sharing arrangement that supports intergenerational transfer of federal fisheries quota to residents of Alaska's communities. Although we are making steady progress, we recognize the erosion of access far outstrips our current capacity. A sea change is needed, and community fishing trusts are an essential part of that change. Important to ALFA is the concept behind this bill that establishes fishery trusts as an entry level opportunity designed to launch independent fishermen into permit ownership, rather than permanent lease arrangements. Our members would not be comfortable without that provision. We recognize some changes and improvements will be made to HB 188 as it moves through the process, but highlight that provision as important to our support.

In sum, ALFA members urge the Committee to recognize the economic, social and cultural importance of HB 188 to Alaska in general and Alaska's rural communities in particular. We urge you to support HB 188 and to work toward timely implementation.

Thank you for the opportunity to comment and for your commitment to Alaska's fisheries.

Sincerely,



Alaska Longline Fishermen's Association
834 Lincoln Street Room 23
Sitka, AK 99835
(907) 738-3615 (cell)
(907) 747-3400 (office)

www.alfafish.org

Bristol Bay Fishermen's Association

(formerly AIFMA)

P.O. Box 60131

Seattle, WA 98160

Phone/Fax (206) 542-3930



April 17, 2017

Representative Louise Stutes
Chair, House Fisheries Committee
State Capitol Room 406
Juneau AK, 99801

Via email to: Representative.Louise.Stutes@akleg.gov
and Reid.Harris@akleg.gov

Re: Comments on HB 188.

Dear Representative Stutes and Members of the House Fisheries Committee,

I am president of the Bristol Bay Fishermen's Association (BBFA). Our association, formerly known as the Alaska Independent Fishermen's Marketing Association, organized in Alaska in 1966, is incorporated under Alaska law as a fishermen's cooperative, and represents holders of limited entry permits for commercial salmon fishing in Bristol Bay. I am writing on their behalf regarding HB 188.

HB 188 is similar to HB 366 in the last legislature. For both policy and legal reasons, we opposed HB 366, and we oppose HB 188 now. We continue to recognize that such legislation has the understandable goal of trying to encourage residents of economically depressed areas of Alaska to lease or buy commercial fishing permits in those areas. However, HB 188 is bad policy and employs unlawful means of accomplishing its ends. I'll address policy matters and then legal matters, with the assistance of counsel.

A. Matters of Policy.

1. Public funds should not be used to subsidize acquisition of limited entry permits either by a regional fisheries trust or a person to whom the trust transfers the permit.

Under HB 188, regional fisheries trusts could use public funds obtained from federal, state and municipal governments under the proposed Sec. 16.05.050(a)(5) to purchase limited entry permits under the proposed amended AS 16.43.170(b), which would allow transfer of permits to regional fisheries trusts. Then, the proposed AS 16.05.050(a)(6) allows the trusts to lease the permits to residents of the area covered by the regional trust under terms that, according to the proposed statute, may include transfer of the permits to the lessee. In other words, government funds could be used to subsidize acquisition of permits in a discriminatory manner based on place of residency.

As a matter of policy, public funds should not subsidize acquisition of limited entry permits to harvest a common-use public resource, when the subsidy occurs in the context of discrimination based on local residency or economic status. The reason such subsidies are not good policy is that they have nothing whatsoever to do with the purposes of limited entry, which are to conserve the fishery resources and prevent economic distress among fishermen who would otherwise face an unregulated excess of permits competing for a finite resource.

2. HB 188 allows a regional fisheries trust to loan public funds to a person who acquires a subsidized permit, but does not require repayment of the loan.

The proposed Section 16.44.050 states the powers and duties of the regional fisheries trusts and these include "all powers necessary to carry out the purposes of [the trusts]." We should not forget that HB 188 began as HB 366 in the prior legislature, and that bill would have established regional fishery "banks". The trusts, like banks,

can loan funds under the above clause, including public funds acquired from government. Yet, nothing requires repayment to the trusts, let alone to government.

3. HB 188 allows a person who acquires a subsidized permit to sell the permit at the first opportunity to make a profit at public expense.

HB 188 is open to scamming of public funds. All a person needs to do is acquire a subsidized permit and sell it at the first opportunity for a profit. If the trust had acquired the permit with public funds, then the trust and the lessee/purchaser are simply scamming public funds. At this point you can see that HB 188, like HB 366 before it, remains poorly thought out.

Such schemes abuse government and donors and unjustly enrich unscrupulous applicants. That is poor public policy. Moreover, an applicant who buys from a permit bank could sell the permit to an out-of-state or out-of-region buyer, and doing so would then re-create the very same problem HB 188 is trying to solve. Therefore, HB 188 does not accomplish its goal and does not solve the problem it tries to solve.

4. HB 188 does not prevent unqualified persons from scamming public funds.

Nothing in HB 188 prevents a lessee from entering into side agreements with those not qualified to be lessees. For example, a lessee could have a side agreement with an unqualified person that specifies that the unqualified person lends funds to the lessee to purchase a subsidized permit from a trust, and that in return the lessee will repay the loan and pay to the unqualified person half the profits made upon a prompt sale by the lessee/purchaser. In other words, HB 188 does not prevent abuse of public funds in this manner.

5. Public funds should not be used for what banks and traditional lenders would not do.

The State of Alaska is foolishly wedded to the notion that public funds should be used for functions that banks and other lenders traditionally do. That notion has resulted in the legislature wasting vast amounts of public funds on mega-projects banks would not finance. This is no different, just on a smaller scale. If banks would not lend to a lessee, then government should not do so.

6. HB 188 fails to prevent the fishery trusts from colluding with processors to defeat the interests of fishermen in negotiating a fair price.

Nothing in HB 188 prevents the board of a trust from colluding with a particular processor (or processors) to lease permits to applicants who would agree to sell fish to that processor or those processors. Such collusion would allow processors to gain greater control of a fishery and to defeat the ability of fishermen to negotiate fair prices. Therefore, the bill is counter-productive to the goal of preventing economic distress among commercial fishers and creating economic benefits for them and local communities. It is also counterproductive to the Alaska statutes under which cooperatives, such as the Bristol Bay Fishermen's Association, are incorporated to assist fishermen in obtaining fair prices.

7. HB 188 lacks even the most standard conflict-of-interest provisions.

The proposed Sec. 16.44.020(g) prohibits a board member of a fishery trust from leasing a permit for the trust but does not even prohibit a family member of that board member from doing so. Ordinary conflict-of-interest standards reach board members, family members of board members, and business partners of board members. HB 188 invites corruption.

8. HB 188 needs to prevent trusts from supporting activities contrary to sound fisheries conservation.

Because the powers and duties of the trusts, in the proposed Section 16.44.050, include "all powers necessary to carry out the purposes of [the trusts]," these powers could include financing private fish hatcheries. For decades, fishery scientists around the country, including at ADF&G, have known that hatcheries can too often interfere with wild stocks and cause decreased productivity over time. Accordingly, in 1992 the legislature enacted AS 16.05.730 which establishes a priority for wild fish stocks over enhanced stocks by requiring sustained yield management of wild fish over hatchery fish. HB 188 should not allow an unbridled description of the powers and duties of the boards of the fisheries trusts, contrary to science and existing law.

9. HB 188 needs to conform to law governing trusts and perhaps banking.

HB 188 purports to establish a means to create “trusts”. However, that is a misnomer because they are not trusts in a legal sense. The beneficiaries are not ascertainable. HB 188 does not state a fiduciary duty running to any beneficiary. Because the beneficiaries cannot be ascertained, there is no legal right for anyone to sue the trusts for breach of a fiduciary duty.

Also, we should remember that HB 188 started out as HB 366 which purported to establish “banks,” and that HB 188 simply strikes substitutes trusts for banks. That does nothing to solve problems. Because HB 188 grants unlimited powers to the trusts, they could operate somewhat like banks by loaning money and investing. So, HB 188 needs to be reconsidered with respect to whether the unlimited powers raise issues with banking law.

B. Legal Issues.

1. HB 188 probably creates an unconstitutional special privilege of fishery.

Article VIII, Section 15, of the Alaska Constitution provides:

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

After we addressed this issue in our comments on HB 366, the office of Legislative Legal Services issues a memorandum which addresses this issue.¹ The memorandum, at p. 2, correctly states that *State v. Ostrosky*, 667 P.2d 1184 (Alaska 1983) and *Johns v. Commercial Fisheries Entry Commission*, 758 P.2d 1256, 1266 (Alaska 1988) stand for the proposition that the limited entry system must entail the “least possible infringement” on the common use clause (Art. VIII, § 3) and the no exclusive right of fishery clause (Art. VIII, § 15). However, the memorandum ignores the more recent case, *Vanek v. State*, 193 P.3d 283, 290 (Alaska 2008). It establishes that any impingement on the prohibition of exclusive rights or special privileges of fishery that “is not required by the purposes of limited entry” is not allowed. Those purposes are stated in Article VIII, § 15. They are “resource conservation,” “prevent[ion] [of] economic distress,” and the “efficient development of aquaculture.” *Id.* Therefore, any special privilege of fishery is unconstitutional if it is not required by those purposes.

The subsidized scheme of HB 188 creates a special privilege for some people to acquire or lease a subsidized limited entry permit. That limited entry permit is the “key” that unlocks the door to commercial fishing. On the face of HB 188, those who lease or acquire from a trust a subsidized permit clearly will have a “special privilege” of accessing and entering a commercial fishery at less cost than those who obtain permits on the conventional market.

Although the proposed Sec. 16.44.010 in HB 188 claims that the purposes of the regional fisheries trusts include “prevention of economic distress among fishermen and those dependent on them for a livelihood” and “resource conservation,” these claims are mere window-dressing. First, nothing in HB 188 promotes conservation, so that claim is manifestly false window-dressing. Second, AS 16.43.290 provides for the optimum number of entry permits for each fishery, and *Johns v. Commercial Fisheries Entry Commission*, 758 P.2d at 1266 unequivocally states that “[t]he optimum number provision of the Limited Entry Act is the mechanism by which limited entry is meant to be restricted to its constitutional purposes.” In other words, that number is what seeks to prevent economic distress among fishermen and help conserve the resources. Subsidized permits do not do so. Therefore, the claim that HB 188 does so is false window-dressing meant to cover-up that fact that it

¹ Legal Services, Div. of Legal and Res. Services, Legislative Affairs Agency, State of Alaska, Memo to Rep. Kreiss-Tomkins, from A. Bullard, re Constitutional Questions re CSHB 366 (Apr. 5, 2016), available at http://www.akleg.gov/basis/get_documents.asp?session=30&docid=16320.

is outside those purposes of Article VIII, sec. 15. Besides, HB 188 does not address fishermen. It addresses prospective, would-be fishermen.

Furthermore, the memorandum from legislative Legal Services asserts that HB 188 is intended to reduce financial barriers for state residents seeking to participate in the state's commercial fisheries, "perhaps 'decreasing the 'impingement' of the existing limited entry system.'" ² If it were true that HB 188 decreases impingement of the existing system, then the existing system would not be the "least possible infringement." That would mean that the existing system would be unconstitutional, which it is not, and that Article VIII, section 15 requires the system proposed by HB 188, which of course it does not.

Finally, an attorney, Mr. Brennan, submitted comments which claim HB 188 is constitutional but do not state why he reaches that conclusion and do not analyze Article VIII, sec. 15. His letter is unhelpful.

2. HB 188 violates the Equal Protection Clause of Section 1 of Article I of the Alaska Constitution by allowing some persons to benefit from the system but not others who are similarly situated.

Our comments on HB 366 raised the issue of whether it creates a method that allows some persons to benefit from the system but not others who are economically similarly situated, and therefore violates equal protection. Tellingly, the Legal Services memorandum does not address this issue. Instead, it addresses a different issue, i.e., whether allowing the trusts to lease permits but not others to do so violates equal protection.

Article I, Section 1, of the Alaska Constitution provides in part that "all persons are equal and entitled to equal rights, opportunities, and protection under the law." It requires analysis using a "sliding scale approach instead of the tiered approach of federal equal protection analysis." *State, by and through the Departments of Transportation and Labor v. Ensearch Alaska Construction, Inc.*, 787 P.2d 624, 631 (Alaska 1989). This sliding scale analysis "often provides greater protection to individual rights than does the U.S. Constitution." *Id.* The first task is to determine the importance of the individual interest impaired by the challenged enactment. *Id.* "[T]he right to engage in an economic endeavor within a particular industry is an 'important' right for state equal protection purposes." 787 P.2d at 632.

While the goal of HB 188 of trying to encourage residents of economically depressed areas to lease or buy permits is important, it conceals the "underlying objective of economically assisting one class over another," which the Court has held to be an "illegitimate" objective. 787 P.2d at 634. Therefore, HB 188 violates the equal protection clause of the Alaska Constitution by economically assisting one class of citizens over another.

Although proponents of HB 188 claim it is similar to the Commercial Fishing Revolving Loan Fund, that claim is false because the Fund does not assist one class over another, while HB 188 does.

CONCLUSION

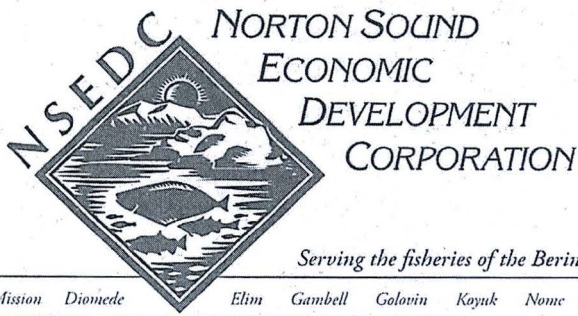
For these reasons, I encourage the House Fisheries Committee to hold, rather than advance, HB 188. Thank you for considering these comments. If given the opportunity, I would be pleased to testify.

Regards,



David Harsila
BBFA President

² Legal Services, Memorandum, *supra*, at pp. 2-3.



Serving the fisheries of the Bering Strait Region

Brevig Mission Diomede Elim Gambell Golovin Koyuk Nome Saint Michael Savoonga Shaktoolik Stebbins Teller Unalakleet Wales White Mountain

May 18, 2017

Representative Jonathan Kreiss-Tomkins
State Capitol, Room 411
Juneau, AK 99801
Representative.Jonathan.Kreiss-Tomkins@akleg.gov

RE: Support for HB 188

Dear Representative Kreiss-Tomkins,

I am pleased to provide this letter of support on behalf of the Norton Sound Economic Development Corporation (NSED) for your efforts to introduce and implement the Regional Fisheries Trust program through House Bill (HB) 188. Access to fishing opportunity is paramount to the economic and social success of coastal Alaska residents, and we appreciate the solution-based approach to addressing this growing problem that this bill provides.

NSED is the northernmost of the Community Development Quota (CDQ) organizations, representing 15 communities in the Norton Sound/Bering Strait region. A fundamental purpose of the program we're organized under is to ensure sustained participation in regional fisheries by residents of our communities. NSED has and continues to make significant investments with this focus, including construction and operation of multiple processing facilities and a tender vessel fleet to support resident fishermen. We also offer a robust loan program to provide opportunity for entry-level and seasoned fishermen alike.

The Regional Fisheries Trust program envisioned in HB 188 would complement NSED and other CDQ organizations' efforts in the western coastal communities of the Bering Sea, as well as fisheries-dependent communities in the Gulf of Alaska. Loss of fishery permits from adjacent communities is a concern that all of Alaska should share, and the Regional Fisheries Trust program shows significant promise to restoring opportunity to those who need it most. Rural coastal communities stand to benefit greatly from retention and restoration of access to fisheries, and we're happy to support your efforts.

Sincerely,

Janis Ivanoff
President & Chief Executive Officer

Dan Harrelson
Board Chairman

"NSED will participate in the Bering Sea fisheries to provide economic development through education, employment, training and financial assistance to our member communities."

**KODIAK ARCHIPELAGO RURAL REGIONAL LEADERSHIP FORUM
RESOLUTION 04-2017**

**A RESOLUTION SUPPORTING STATE OF ALASKA LEGISLATION IMPROVING
ALASKANS' ACCESS TO ALASKA FISHERIES**

WHEREAS, limited entry commercial fisheries are the economic backbone of Alaska's coastal communities, from Southeast to Southwest;

WHEREAS, Alaska communities, fishermen, and fishing families depend on commercial fisheries as a uniquely viable economic opportunity in regions where other economic opportunities are limited;

WHEREAS, out-migration of permits has hit rural Alaska communities hardest, leading to fewer jobs, lost economic activity, and interrupting the transmission of specialized skills and knowledge which emerging fishermen learn from established members of their fleet;

WHEREAS, prospective Alaska fishermen, especially from small communities, face significant barriers to entry and need additional options for accessing the credit and financing necessary to enter commercial fisheries;

WHEREAS, regional fisheries trusts as demonstrated in other regions have great potential to help Alaska fishing communities generate economic opportunity, invest in local commercial fisheries, and ensure continuity of fishing culture;

THEREFORE BE IT RESOLVED that the Kodiak Archipelago Rural Regional Leadership Forum strongly supports legislation, including HB 188, improving access to Alaska fisheries in order to stem the loss of Alaska fishing permits from coastal communities, help emerging fishermen access economic opportunity, and reinvigorate the cultural and economic vitality of fishing communities across Alaska.

PASSED AND ADOPTED by the 47 leaders from Akhiok, Kodiak, Larsen Bay, Old Harbor, Ouzinkie and Port Lions attending the Kodiak Archipelago Rural Regional Leadership Forum on April 27, 2017.

IN WITNESS THERETO:



Marty Shuravloff, Chairman



Aleutian Pribilof Island Community Development Association (APICDA)

302 Gold Street, Suite 202 | Juneau, Alaska 99801 | Phone: (907) 586-0161 | Fax: (907) 586-0165

717 K Street | Anchorage, Alaska 99501 | (907) 929-5273 | Fax: (907) 929-5275 | www.apicda.com

April 21, 2017

Representative Jonathan Kreiss-Tomkins
State Capitol, room 411
Juneau, AK 99801
Ph: 907-465-3732
Representative.Jonathan.Kreiss-Tomkins@akleg.gov

RE: Support for HB 188

The Aleutian Pribilof Island Community Development Association (APICDA) supports the introduction of HB 188. We believe that advancing this bill will help restore local participation in commercially important state water fisheries, provide important entry opportunities for new fishermen and increase revenue flow into Alaska communities.

APICDA is a Community Development Quota (CDQ) organization that works with six remote coastal communities to support long term economic sustainability through increasing direct participation and local investment in fisheries in the Bering Sea and Aleutian Islands. For over 25 years, we have worked in partnership with our communities to invest in shore-side processing plants, vessels, quota and permit purchases, local support infrastructure, workforce development and scholarship programs. These investments have resulted in meaningful employment and social programs in areas where very limited economic opportunities exist.

CDQ constituents are heavily invested in both state and federal water fisheries. Alaska's salmon fisheries provide the most-wide reaching and direct opportunities for participation in our sector's 65 communities. Some CDQ regions have witnessed significant ownership shifts in limited entry permits to out of state residents, increases in permit and lease costs and reductions in the number of permits available for sale. We believe that the formation of a fisheries trust could provide an important path, particularly for entry level and returning fishermen, by helping them gain access to sufficient experience and or the capital needed to purchase fishing privileges. We also believe that HB 188 sets appropriate limitations on permit acquisitions and eligibility requirements to minimize negative market impacts on existing and future permit holders.

The creation of fisheries trusts will result in meaningful benefits to Alaska's coastal communities and residents and we support moving this bill forward.

Sincerely,

Larry Cotter
Chief Executive Officer, APICDA

City Of Ouzinkie
RESOLUTION 2016-03

**A RESOLUTION SUPPORTING LEGISLATION IMPROVING ALASKANS'
ACCESS TO ALASKA FISHERIES**

WHEREAS, limited entry commercial fisheries are the economic backbone of all of Alaska's coastal communities, from Southeast to Southwest; and,

WHEREAS, the "graying of the fleet" – the increasing average age of Alaska's fishermen – is endangering the ability to pass on experience, knowledge, resources, culture, and value of fisheries to younger generations of Alaskans; and,

WHEREAS, the out-migration of Alaska fishing permits to nonresidents who do not live or invest in our coastal communities deprives those communities of economic activity; and,

WHEREAS, the lack of economic opportunity in Alaskan communities from the loss of local fishing permits contributes to extreme levels of unemployment, lack of local tax base, and high rates of alcohol and drug abuse and other social ills; and,

WHEREAS, the legislation to improve Alaskans' access to Alaska fisheries has been collaboratively worked on for the previous 14 months with stakeholders from across Alaska;

NOW THEREFORE BE IT RESOLVED; that the City of Ouzinkie supports legislation improving Alaskans' access to Alaska fisheries to stem the loss of Alaska fishing permits from coastal communities, provide young Alaskans better means of economic opportunity, and reinvigorate the cultural and economic vitality of fishing communities across Alaska.

PASSED and APPROVED by a duly constituted quorum of the Ouzinkie City Council this 24th day of February 2016.

SIGNED _____


Dan Clarion, Mayor

ATTEST _____


Linda Getz, Clerk Emeritus

Native Village of Ouzinkie

Ouzinkie Tribal Council

P.O. Box 130

Ouzinkie, Alaska 99644

Ph. 907-680-2259 Fax 907-680-2214

Resolution 2016-3

A RESOLUTION SUPPORTING LEGISLATION IMPROVING ALASKANS' ACCESS TO ALASKA FISHERIES

WHEREAS, limited entry commercial fisheries are the economic backbone of all of Alaska's coastal communities, from Southeast to Southwest;

WHEREAS, the "graying of the fleet" — the increasing average age of Alaska's fishermen — is endangering the ability to pass on experience, knowledge, resources, culture, and value of fisheries to younger generations of Alaskans;

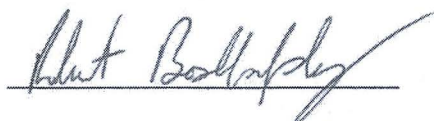
WHEREAS, the out-migration of Alaska fishing permits to nonresidents who do not live or invest in our coastal communities deprives those communities of economic activity;

WHEREAS, the lack of economic opportunity in Alaskan communities from the loss of local fishing permits contributes to extreme levels of unemployment, lack of local tax base, and high rates of alcohol and drug abuse and other social ills;

WHEREAS, the legislation to improve Alaskans' access to Alaska fisheries has been collaboratively worked on for the previous 14 months with stakeholders from across Alaska;

THEREFORE BE IT RESOLVED that the Native Village of Ouzinkie supports legislation, such as HB 366, improving Alaskans' access and supports legislation improving Alaskans' access to Alaska fisheries to stem the loss of Alaska fishing permits from coastal communities, provide young Alaskans better means of economic opportunity, and reinvigorate the cultural and economic vitality of fishing communities across Alaska.

Approved and adopted at a council meeting, a quorum being present, on February 29, 2016



Robert Boskofsky, Sr., President



Katherine Panamarioff, Secretary

January 28, 2016

To the Members of the Alaska Legislature:

We are young fishermen from across Alaska. As fishermen, we are rooted in, dedicated to and reliant on the health of our coastal communities and marine ecosystems. And they rely on us — to be good providers and marine stewards.

Our generation faces many challenges to building successful fishing businesses. Some of these we accept as the fishing way of life, but other challenges are new and daunting: higher-than-ever costs to enter our fisheries, increasingly restrictive financing options, stock declines — and the continued outmigration of permits and quota from Alaska communities. These issues have compounding consequences: the loss of our economic self-sufficiency, professional development, food security, and heritage.

As leaders and policy makers you have the opportunity to consider concrete options for improving and protecting community access to local fisheries. It is imperative that Alaska develop long-term tools for anchoring fishing access in communities and in Alaska, an essential piece of the state's economic stability and community well being. Permit banks are one option, and a strong and practical mechanism to revitalize fishing communities. As the future leaders of Alaskan fisheries, we urge you to consider this and other viable tools for ensuring a strong fishing future for Alaska's coastal communities.

Despite the challenges we face, we continue to build our businesses. Fishing is integral to our livelihood and to Alaska's well being. Please help us to ensure that the next generation of Alaskans has access to Alaska's fisheries.

Sincerely,

Name: Elsa Sebastian
Hometown: Sitka
Fishery: SE Power Troll

Name: Hannah Heimbuch
Hometown: Homer
Fishery: Cook Inlet Drift, Gulf Longline

Name: Thomas Emerson
Hometown: Juneau
Fishery: Power - Troll

Name: Alec Schramek
Hometown: Petersburg
Fishery: Power troll/Cucumber Dive

Name: Iris Nash
Hometown: Juneau AK
Fishery: Salmon Trolling

Name: Chris Nash
Hometown: Juneau AK
Fishery: Salmon Trolling

Name: Kristy Crump
Hometown: Valdez, AK
Fishery: PWS purse seining

Name: David Fleming
Hometown: Anchorage AK
Fishery: ~~PWS~~ setnet

Name: Alexander Smith
Hometown: Aleknagik Ave
Fishery: Bristol Bay

Name: Hunter Davis
Hometown: Juneau
Fishery: SE SEINE / CRAB

Name: Aaron Johnston
Hometown: Eagle River, AK
Fishery: Bristol Bay

Name: Jared Oien
Hometown: Ketchikan, AK
Fishery: Southeast Salmon

Name: Sean Hawk
Hometown: Ketchikan
Fishery: Troll / LL

Name: Billy Hayden
Hometown: Homer
Fishery: Direct markets

Name: Steve Johnson
Hometown: Sitka / Wrangell
Fishery: Tender

Name: Patrick Lane
Hometown: Homer
Fishery: Tender / longline

Name: Darren Platt
Hometown: Kodiak
Fishery: Salmon, Herring

Name: Hugh Fleming
Hometown: Petersburg
Fishery: S.E. Seine / BB Drift

Name: Tori Connor
Hometown: Petersburg
Fishery: S.E. PWS Seim - long line
SETROLL

Name: Melissa Nagamine
Hometown: Ketchikan
Fishery: SE Seine

Name: SOMMERS COLE
Hometown: JUNEAU, AK
Fishery: SE GILLNET

Name: Amanda Johnston
Hometown: Homer AK
Fishery: Bristol Bay

Name: Brant Widness
Hometown: Ketchikan, AK
Fishery: Troll / Dive

Name: Amy Schaub
Hometown: Homer
Fishery: SEINE / LONGLINE

Name: Margaret Borsch
Hometown: Homer
Fishery: gillnet and setnet Bristol Bay

Name: Jonah N. Yakunin
Hometown: Nikolaevsk, AK
Fishery: gillnet and Longline

Name: Bernina Venno
Hometown: Dillingham, AK
Fishery: Bristol Bay

Name: Gary Cline
Hometown: Dillingham, AK
Fishery: Bristol Bay Salmon

Name: Forest Sebastian
Hometown: PSG
Fishery: Troll

Name: Hayley Hoover
Hometown: Cordova AK
Fishery: DRIFT GILLNET

Name: Andrew Scudder
Hometown: Boise ID
Fishery: PWS seine

Name: Melanie Brown
Hometown: Juneau, AK
Fishery: Bristol Bay Sockeye

Name: Mickey Snow
Hometown: Grain Hills
Fishery: North Pacific Fishery

Name: Carina Nichols
Hometown: SITKA
Fishery: troll

Name: Darin Gilman
Hometown: Cordova, AK
Fishery: PWS

Name: SOPHIE NETHERCUT
Hometown: SITKA
Fishery: Salmon troll

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UNITED SOUTHEAST ALASKA GILLNETTERS

Box 2196, Petersburg AK 99833 * (253) 237-3099 * usag.alaska@gmail.com * akgillnet.org

April 15, 2017

Representative Louise Stutes
Chair, House Fisheries Committee
State Capitol Room 416
Juneau, AK 99801-1182
sent via email

Dear Chairwoman Stutes, Representative Kreiss-Tomkins (Sponsor) and Committee Members:

United Southeast Alaska Gillnetters (USAG) OPPOSES House Bill 188, "*Commercial Fishing Entry Permits; Loans; Trusts*".

House Bill 188 proposes to change the Limited Entry Act. Since 1975, limited entry has effectively restricted access to valuable state resources, ensuring regulated fisheries management. The Limited Entry Act and Commercial Fisheries Entry Commission (CFEC) successfully guide our world-renowned fisheries and should remain as is.

HB188 says Trusts '*will empower communities to prevent economic distress among fishermen*'. Individual fishermen leasing a Trust-owned permit could certainly have alleviated economic distress but we don't understand how that will transfer among fishermen or communities.

This Bill says Trusts '*will empower communities to promote fisheries conservation*'. We don't understand how Trusts would make this possible.

This Bill says Trusts '*will empower communities to realize greater economic self-sufficiency*'. The idea that this bill would bring economic self-sufficiency to communities is false. Adding a handful of regionally-leased limited entry permits will not stimulate a local economy; adding a few seasonal jobs will not have a measurable impact on a local economy. Harvested fish will likely be sold to processors located in other communities and the fishermen who lease these permits will probably buy their gear and maintenance necessities from established businesses in larger towns or "down south." Essentially, such Trusts will help and empower a few individual fishermen to establish themselves yet it misleading to state trusts will empower communities.

At times, this Bill uses the terms ‘communities’ and ‘trusts’ interchangeably. As written, it is designed for Trusts to be financially self-sufficient but a Trust is a sole entity and its state of self-sufficiency does not translate to another entity, such as a community.

Additionally, the Bill raises other financial questions such as how will these Trusts be funded? HB188’s Fiscal Note says the general fund will pay for a Trust’s first year but its second year will be funded by fees generated by the Trust. It seems like in order for a Trust to be financially self-sufficient they will need to charge fishermen some pretty hefty fees, which would have the reverse affect this bill desires, as the fishermen leasing permits cannot get ahead because of Trust fees. How much money is each Trust expected to spend/need each year? And how much in fees are Trusts expecting to generate for each permit?

Section 16.44.030 says, “*board members may be provided reasonable compensation*”. What constitutes ‘reasonable’? Fishermen leasing permits from Trusts will be paying for this and other costs.

Section 16.44.050 describes the powers of Trusts, sets some loose guidelines and leads to more questions. What might a ‘competitive bid process’ or ‘lease terms’ look like? This and other critical processes should be more developed with special care given to potential conflict of interest issues instead of leaving it up to a volunteer (or reasonably compensated) board. Include transparent measures throughout all processes. This Section also says Trusts can borrow money to buy permits. Where would this money come from and how would such buying processes work? “*Trusts must set lease terms which maintain their financial solvency, and they must invest lease revenue in the purchase of additional entry permits to the greatest extent possible*”. Again, fishermen leasing permits will be paying for this, which may challenge the fisherman’s financial solvency depending on the terms. Pressure to keep the Trust solvent could lead board members towards compromising behavior.

HB88 also states: “*the department may modify or change the boundaries of the regions for good reason.*” What is good reason and when can this change occur?

In the online documents tab of this Bill there are many supporting documents yet some of these are not specifically supporting this HB188, which is misleading. While there are similarities to last year’s HB366 of Community Permit Banks, of which some of these letters refer, HB188 is not HB366 and support for one doesn’t necessarily mean support for the other.

We want to see our industry thrive and perpetuate! Our members constantly work towards this by providing good jobs, teaching business and mechanical skills, transferring fishing knowledge, loaning money and more to those of the next generation that show adequate motivation and abilities.

United Southeast Alaska Gillnetters represents the interests of 473 salmon gillnet permit holders and their families. Our board members span Southeast Alaska and into Puget Sound. They are constantly talking to other gillnetters about current issues, including the concept of Regional Fisheries Trusts. These conversations are not generating positive reactions. We believe strongly that limited entry is working and shouldn't be changed. Young or new people wanting to get into fishing can easily find a crew job where they will learn how to fish and will earn money to eventually buy their own operation if they choose. Successful loan programs, including the state's, greatly support new and young fishermen.

Please do not advance HB188.

Thank you for your consideration,

A handwritten signature in cursive script that reads "Cynthia Wallesz".

Cynthia Wallesz
Executive Director

CC: Representative Kreiss-Tomkins

- - -

The mission of United Southeast Alaska Gillnetters is to protect, serve and enhance the gillnet fleet of southeast Alaska. We represent the interests of 473 salmon gillnet permit holders and their families.



Southeast Alaska Fishermen's Alliance

9369 North Douglas Highway

Juneau, AK 99801

Phone: 907-586-6652

Email: seafa@gci.net

Fax: 907-523-1168

Website: <http://www.seafa.org>

May 9, 2017

House Fisheries Committee
Representative Stutes, Chair
Alaska State Legislature
Juneau, AK 99811

RE: OPPOSE HB 188

Southeast Alaska Fishermen's Alliance (SEAFA) has followed the progression of this bill but had not formally commented to date but felt the need to after the May 5 letter to the House Fisheries Committee regarding Constitutional Considerations. While those are important considerations it does not deal with the issue that we are most concerned about. SEAFA fears that by allowing leasing of permits through a community fisheries trust will undermine the case law with IRS and permits will end up being considered property rights that are able to be attached and taken by the IRS. We have other concerns in addition to this major one.

Southeast Alaska Fishermen's Alliance is a membership based fishing association that represents our members involved in salmon, crab, shrimp and long line fisheries of Southeast Alaska as well as members participating in the Gulf of Alaska longline fisheries and Prince William Sound salmon fisheries.

Sincerely,

Kathy Hansen
Executive Director