

SCOMM

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Utermohle
3/8/99

CS FOR HOUSE BILL NO. 104(FSH)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HUDSON, Austerman

A BILL

FOR AN ACT ENTITLED

1 "An Act revising the procedures and authority of the Alaska Commercial Fisheries
2 Entry Commission, the Board of Fisheries, and the Department of Fish and Game
3 in regard to a moratorium on participants or vessels, or both, in certain fisheries;
4 and providing for an effective date."

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

6 * **Section 1.** AS 16.43.225(a) is repealed and reenacted to read:

7 (a) The commission may establish a moratorium on entry of new participants
8 or vessels, or both, into a fishery, if the commission finds that a moratorium is
9 necessary

10 (1) to promote the conservation and sustained yield management of the
11 state's fishery resource and the economic health and stability of commercial fishing in
12 the state; and

13 (2) for one or more of the following purposes:

14 (A) to allow time for the commission, in consultation with the

1 Department of Fish and Game and the Board of Fisheries, as appropriate, to
2 investigate and evaluate management alternatives, including establishment of
3 a maximum number of entry permits under AS 16.43.240;

4 (B) to allow the commission time to develop regulatory or
5 legislative proposals to address needs of the fishery that cannot be met under
6 existing statutes or regulations;

7 (C) to allow the Department of Fish and Game and the Board
8 of Fisheries to open a fishery or potential fishery that would otherwise remain
9 closed for protection against over harvest resulting from open access into the
10 fishery.

11 * Sec. 2. AS 16.43.225(c) is amended to read:

12 (c) The commission may establish a moratorium under this section for a
13 continuous period of up to four years. A moratorium established under this section
14 may be extended for no more than two additional years if necessary to serve a
15 purpose described under (a) of this section. After a moratorium on entry of new
16 participants or vessels into a fishery has expired, the fishery [THAT HAS BEEN
17 SUBJECT TO A MORATORIUM UNDER THIS SECTION] may not be subjected
18 to a subsequent moratorium on entry of either new participants or new vessels into
19 the fishery [UNDER THIS SECTION] unless five years have elapsed [SINCE THE
20 PREVIOUS MORATORIUM EXPIRED].

21 * Sec. 3. AS 16.43.225(d) is amended to read:

22 (d) While a moratorium is in effect, the commission shall investigate and
23 evaluate management alternatives, including establishment of [CONDUCT
24 INVESTIGATIONS TO DETERMINE WHETHER] a maximum number of entry
25 permits [SHOULD BE ESTABLISHED] under AS 16.43.240, by

26 (1) conducting research into conditions in the fishery;

27 (2) consulting with the Department of Fish and Game and the Board
28 of Fisheries; and

29 (3) consulting with participants in the fishery and other members of
30 the public.

31 * Sec. 4. AS 16.43.225(e) is repealed and reenacted to read:

(e) The commission shall establish, by regulation, the eligibility criteria for applicants for an interim-use permit, interim-use vessel permit, or both, for a fishery subject to a moratorium under this section. The eligibility criteria for an interim-use permit for a fishery that is subject to a moratorium for a purpose described under (a)(2)(A) or (B) of this section must address the minimum requirements for past or present participation and harvest in the fishery as of a qualification date described in AS 16.43.260(f)(1) or (2). When establishing the eligibility criteria for an interim-use permit for a fishery that is subject to a moratorium solely for the purpose described under (a)(2)(C) of this section, the commission may establish the criteria based upon

(1) the minimum requirements for past or present participation and harvest

(A) in the fishery as of the qualification date described in AS 16.43.260(f)(1) or (2); or

(B) in a similar or related fishery if the fishery for which the interim-use permit is being considered has either remained closed in years immediately before the qualification date or has never been open; or

(2) a combination of the minimum requirements for past or present participation in the fisheries described in (1)(A) and (B) of this subsection.

* Sec. 5. AS 16.43.225 is amended by adding new subsections to read:

(f) The commission may not issue an interim-use permit or an interim-use vessel permit for a fishery subject to a moratorium under this section unless the applicant satisfies the qualifications established under (e) of this section and establishes the present ability and intent to participate actively in the fishery.

(g) A permit issued under this section is a use privilege that may be modified or revoked by law without compensation.

(h) The commission may charge a fee for the privileges conveyed by an interim-use vessel permit issued under this section. The fee must reasonably reflect the rate of economic return for the relevant fishery, except that, by regulation, the commission may provide for a reduced fee for an applicant who has a family income falling within the federal poverty guidelines as adjusted by the commission to reflect appropriate cost-of-living differentials.

1 (i) Unless provided otherwise by a state statute or regulation, neither an
2 interim-use permit or an interim-use vessel permit issued under this section nor the use
3 of the permit or a permitted vessel in a fishery subject to a moratorium under this
4 section may be used to establish eligibility for a permit in the fishery after the
5 expiration of the moratorium.

6 (j) The commission may adopt regulations providing for the transfer of an
7 interim-use vessel permit to another vessel if the original permitted vessel is sunk,
8 destroyed, or damaged to the extent that the vessel is inoperable for the fishery for
9 which the permit is issued.

10 (k) As permitted by federal law and consistent with this chapter, the
11 commission may establish a moratorium on entry of new participants or vessels, or
12 both, into offshore fisheries adjacent to territorial waters of the state.

13 (l) In addition to the penalties imposed under AS 16.43.960, the commission
14 may also revoke, suspend, or transfer all interim-use vessel permits for violations under
15 AS 16.43.960(a).

16 (m) In addition to the penalties imposed under AS 16.43.970(a), upon a first
17 or second conviction under AS 16.43.970, the court may in its discretion order a
18 forfeiture of interim-use vessel permits and a loss of eligibility for future issuance of
19 interim-use vessel permits, or order a suspension for a period of not more than three
20 years of fishing rights under interim-use vessel permits held or to be held. Upon a
21 third conviction under AS 16.43.970, all interim-use vessel permits held are forfeited,
22 and the vessel for which the permits are issued loses eligibility for future issuance of
23 interim-use vessel permits for a period of three years.

24 (n) Notwithstanding AS 16.05.815 and AS 16.43.975, the commission may
25 release to the owner of a vessel information on the vessel's history of harvests in a
26 fishery that is necessary to apply for an interim-use vessel permit under this section.

27 (o) This section does not alter the requirement for an interim-use permit or
28 entry permit under AS 16.43.140 or a vessel license under AS 16.05.490 - 16.05.530.

29 (p) Nothing in this section limits the powers of the Board of Fisheries or the
30 Department of Fish and Game.

31 (q) The commission shall annually inform the Board of Fisheries and the

1 Department of Fish and Game of

2 (1) petitions received by the commission that request the commission
3 to adopt regulations establishing a moratorium on entry of new participants or vessels
4 into a fishery and the action taken by the commission in response to each petition;

5 (2) the fisheries that are currently subject to a moratorium on entry of
6 new participants or vessels;

7 (3) the status of investigations to determine whether a maximum
8 number of entry permits should be established for a fishery that is currently subject to
9 a moratorium on new entrants; and

10 (4) the fisheries that are currently subject to a moratorium on new
11 entrants for which the commission has determined that the level of participation in the
12 fishery requires that entry into the fishery be limited in order to achieve the purposes
13 of this chapter.

14 * Sec. 6. AS 16.43.260(f) is amended to read:

15 (f) When the commission establishes the maximum number of entry permits
16 under AS 16.43.240 for a fishery that is subject to a moratorium on entry of new
17 participants under AS 16.43.225, the commission shall determine which one of the
18 following three dates listed in (1) - (3) of this subsection shall be used to
19 determine the priority classification among applicants. Each [AN] applicant for
20 an entry permit for the fishery shall be assigned to a priority classification based on
21 [SOLELY UPON] the applicant's qualifications as of

22 (1) January 1 of the year during which the commission established
23 the moratorium;

24 (2) the date of the commission's order providing for public notice
25 of the proposed regulatory action to establish the moratorium; or

26 (3) the date of the commission's order providing for public notice
27 of the proposed regulatory action to establish the maximum number [THE
28 EFFECTIVE DATE OF THE STATUTE OR REGULATION ESTABLISHING THE
29 MORATORIUM].

30 * Sec. 7. AS 16.43.911 is amended by adding a new subsection to read:

31 (f) A moratorium on the entry of new vessels into a fishery described under

1 AS 16.43.901 or 16.43.906 may be extended for not more than two additional years
2 if necessary to serve a purpose for which the respective moratorium under
3 AS 16.43.901 or 16.43.906 was established. The extension of a moratorium under this
4 subsection supersedes a contrary provision of AS 16.43.901 or 16.43.906.

5 * Sec. 8. REPEAL OF AS 16.43.901. (a) Section 5, ch. 126, SLA 1996, as amended by
6 sec. 5 ch. 97, SLA 1997, is repealed.

7 (b) If before July 1, 2000, the Alaska Commercial Fisheries Entry Commission

8 (1) exercises its authority under AS 16.43.911(f), added by sec. 7 of this Act,
9 to extend a moratorium on entry of new vessels into a fishery described under AS 16.43.901,
10 then AS 16.43.901 is repealed on the earlier of

11 (A) the termination of the extended moratorium established by the
12 commission under AS 16.43.911(f), added by sec. 7 of this Act; or

13 (B) July 1, 2002; or

14 (2) does not exercise its authority under AS 16.43.911(f), added by sec. 7 of
15 this Act, to extend a moratorium on entry of new vessels into a fishery described under
16 AS 16.43.901, then AS 16.43.901 is repealed July 1, 2000.

17 * Sec. 9. REPEAL OF AS 16.43.906. (a) Section 6, ch. 97, SLA 1997, is repealed.

18 (b) If before July 1, 2001, the Alaska Commercial Fisheries Entry Commission

19 (1) exercises its authority under AS 16.43.911(f), added by sec. 7 of this Act,
20 to extend a moratorium on entry of new vessels into a fishery described under AS 16.43.906,
21 then AS 16.43.906 is repealed on the earlier of

22 (A) the termination of the extended moratorium established by the
23 commission under AS 16.43.911(f), added by sec. 7 of this Act; or

24 (B) July 1, 2003; or

25 (2) does not exercise its authority under AS 16.43.911(f), added by sec. 7 of
26 this Act, to extend a moratorium on entry of new vessels into a fishery described under
27 AS 16.43.906, then AS 16.43.906 is repealed July 1, 2001.

28 * Sec. 10. REPEAL OF AS 16.43.911. AS 16.43.911 is repealed on the later of the date
29 of repeal of AS 16.43.901 or the date of repeal of AS 16.43.906.

30 * Sec. 11. AS 16.05.050(a)(19), 16.05.251(g); and AS 16.43.225(b) are repealed.

31 * Sec. 12. This Act takes effect immediately under AS 01.10.070(c).



Alaska State Legislature

REPRESENTATIVE BILL HUDSON

State Capitol
Juneau, Alaska
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(907) 465-3744
Fax (907) 465-2273

COMMITTEES

CHAIR
Fisheries Committee
Utility Restructuring Committee

MEMBER
State Affairs Committee
Transportation Committee

Sponsor Statement

HB 104, Entry Moratorium on Participants and Vessels

HB 104 amends the existing moratorium law to provide for a streamlined and effective process to better manage Alaska's fisheries resources. The current moratorium statute has proven cumbersome and unworkable.

The current process involves multiple steps whereby a fisherman seeking a moratorium must first go to the Commissioner of Fish and Game, who, in turn, must seek authorization from the Board of Fisheries. If the Fish Board authorizes the Commissioner to go forward, the Commissioner may then petition the Commercial Fisheries Entry Commission (CFEC) to provide a moratorium. The CFEC is then authorized to go forward if it can make findings as required by statute. Unfortunately, the standards set forth in statute are difficult to understand and mutually inconsistent.

This cumbersome and confusing process prevents quick response in fisheries that are growing too rapidly to ensure effective management. As a result, both the resource and the economic livelihood of the participants could be jeopardized. In some situations, ADF&G's only recourse is to close the fishery or refuse to open a new fishery if effort cannot be controlled.

HB 104 allows petitioners to request a moratorium directly from the CFEC. A moratorium would be established if the CFEC found that it was necessary "to promote the conservation and sustained yield management of the resource and the economic health and stability of commercial fishing in the state." The purpose of a moratorium is to quickly put a lid on participation levels in order to buy time to develop better management tools.

HB 104 authorizes the CFEC to implement a moratorium on entry of new vessels into a fishery as well as participants. This new authority provides an additional management tool for fisheries when a number of different skippers are used on one vessel.

Representing
Alaska's Capitol City

Under the current statute, eligibility to participate during a moratorium is based solely on past participation. This requirement precludes the use of a moratorium in new fisheries or closed fisheries. HB 104 allows the CFEC to implement a moratorium on a new or closed fishery if a fishery could not be opened because the participation levels may be sufficiently large to cause a conservation concern. Eligibility for the moratorium would be based on other reasonable standards such as participation in similar fisheries.

Additionally, HB 104 allows the state to extend its moratorium authority to offshore fisheries adjacent to state waters when consistent with federal law.

Improving the moratorium law is consistent with our concern for developing and protecting jobs as well as streamlining government and resource protection.

Changes to the Current Moratorium Statute under HB 104

Title 16 - Fish and Game

Sec. 16.43.225. Moratorium on new entrants into certain fisheries.

(a) repealed & reenacted by Section 1 of HB 104	(a) Subject to (b) of this section, the commission may establish a moratorium on new entrants into a fishery (1) that has experienced recent increases in fishing effort that are beyond a low, sporadic level of effort; (2) that has achieved a level of harvest that may be approaching or exceeding the maximum sustainable level for the fishery; and (3) for which there is insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the fishery.
(b) repealed by Section 9 Of HB 104	(b) The commission may establish a moratorium on new entrants into a fishery described in (a) of this section if (1) the commissioner of fish and game, subject to AS 16.05.251 (g), petitions the commission under AS 44.62.220 to establish a moratorium on new entrants into the fishery; and (2) the commission finds that (A) the fishery has reached a level of participation that may threaten the conservation and the sustained yield management of the fishery resource and the economic health and stability of commercial fishing; and (B) the commission has insufficient information to conclude that the establishment of a maximum number of entry permits under AS 16.43.240 would further the purposes of this chapter
(c) amended by Section 2 Of HB 104	(c) The commission may establish a moratorium under this section for a continuous period of up to four years. A fishery that has been subject to a moratorium under this section may not be subjected to a subsequent moratorium under this section unless five years have elapsed since the previous moratorium expired.

Sec. 16.43.225. Moratorium on new entrants into certain fisheries. Continued...

(d) amended
by
Section 3
Of HB 104

(d) While a moratorium is in effect, the commission shall conduct investigations to determine whether a maximum number of entry permits should be established under AS 16.43.240 by

- (1) conducting research into conditions in the fishery;
- (2) consulting with the Department of Fish and Game and the Board of Fisheries; and
- (3) consulting with participants in the fishery.

(e)
Repealed &
Reenacted
by
Section 4
of HB 104

(e) The commission shall establish by regulation the qualifications for applicants for an interim-use permit for a fishery subject to a moratorium under this section. The qualifications must include the minimum requirements for past or present participation and harvest in the fishery. The commission may not issue an interim-use permit for a fishery subject to a moratorium under this section unless the applicant can satisfy the qualifications established under this subsection and establish the present ability and intent to participate actively in the fishery.

Section 5 of HB 104 adds
new subsections here.

Sec. 16.43.260. Application for initial issue of entry permits.

(a) The commission shall accept applications for entry permits only from applicants who have harvested fishery resources commercially while participating in the fishery as holders of gear licenses issued under former AS 16.05.536 - 16.05.670 or interim-use permits under AS 16.43.210(a) or 16.43.225 before the qualification date established in (d), (e), or (f) of this section. The commission may specify by regulation the calendar years of participation that will be considered for eligibility purposes.

(b) The commission shall establish the opening and closing dates, places and form of application for entry permits for each fishery. The commission may require the submission of specific verified evidence establishing the applicant's qualifications under the regulations adopted under AS 16.43.250 .

(c) When an applicant is unable to establish qualifications for an entry permit by submitting the specific verified evidence required in the application by the commission, the applicant may request and obtain an administrative adjudication of the application according to the procedures established in AS 16.43.110 (b). At the hearing the applicant may present alternative evidence of qualifications for an entry permit.

(d) Except as provided in (e) or (f) of this section, an applicant shall be assigned to a priority classification based solely upon the applicant's qualifications as of January 1, 1973.

(e) Except as provided in (f) of this section, when the commission establishes the maximum number of entry permits for a particular fishery under AS 16.43.240 after January 1, 1975, an applicant shall be assigned to a priority classification based solely upon the applicant's qualifications as of January 1 of the year during which the commission establishes the maximum number of entry permits for the fishery for which application is made.

(f) amended
by Section 6
of HB 104 to
change the
qualification
dates

(f) When the commission establishes the maximum number of entry permits under AS 16.43.240 for a fishery that is subject to a moratorium under AS 16.43.225, an applicant for an entry permit for the fishery shall be assigned to a priority classification based solely upon the applicant's qualifications as of the effective date of the statute or regulation establishing the moratorium.

Sec. 16.43.911. Applicability of other statutes.

(a) In addition to the penalties imposed under AS 16.43.960, the commission may also revoke, suspend, or transfer all vessel permits for violations under AS 16.43.960 (a).

(b) In addition to the penalties imposed under AS 16.43.970 (a), upon a first or second conviction under AS 16.43.970, the court may in its discretion order a forfeiture of vessel permits, as well as a loss of eligibility for future issuance of vessel permits, or order a suspension of fishing rights under vessel permits held or to be held for a period of not more than three years. Upon a third conviction under AS 16.43.970, all vessel permits held are forfeited, and the vessels for which the permits are issued lose eligibility for future issuance of vessel permits for a period of three years.

(c) Notwithstanding AS 16.05.815 and AS 16.43.975, the commission may release to the owner of a vessel information on the vessel's history of harvests in a fishery that is necessary to apply for a vessel permit under AS 16.43.901 - 16.43.906.

(d) AS 16.43.901 - 16.43.911 do not alter the requirement for an interim-use permit or entry permit under AS 16.43.140 or a vessel license under AS 16.05.490 - 16.05.530.

(e) Nothing in AS 16.43.901 - 16.43.911 limits the powers of the Board of Fisheries or the Alaska Department of Fish and Game.

Section 7 of HB 104 adds a section (f) defining "vessel permit"

TONY KNOWLEN
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

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July 3, 1996

The Honorable Drue Pearce
President of the Senate
716 W. 4th Avenue, Suite 500
Anchorage, AK 99501-2133

The Honorable Gail Phillips
Speaker of the House
716 W. 4th Avenue, Suite 620
Anchorage, AK 99501-2133

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JUL - 5 1996

GOVERNOR'S OFFICE
JUNEAU, ALASKA

Dear President Pearce and Speaker Phillips:

Today I am signing House Bill 547, establishing a four-year moratorium on entry into the Southeast Alaska dive fisheries, and House Bill 538, establishing a four-year moratorium for the Bering Sea Korean hair crab fishery and providing for a vessel permit limited entry system. While there are important pragmatic reasons to implement provisions of these bills, I am concerned about the legislation from a public policy and resource management standpoint.

Addressing management of specific fisheries through legislation is not the ideal approach. Alaska's fisheries management system has proven highly effective in maintaining healthy and sustainable resources because it is run by scientists, professional fisheries administrators, and boards and commissions, rather than through the legislative process.

However, over the last few years, situations in several developing fisheries have pointed out that the provisions in existing law regarding the imposition of a moratorium are cumbersome and ineffective. The lack of sufficient funding for the Department of Fish and Game to conduct needed biological research on new or developing fisheries aggravates this situation. Thus, in fisheries such as those addressed in HB 547 and HB 538, we find ourselves having to quickly impose a moratorium through legislation to prevent damage to a fragile resource or the economic health and stability of a dynamic fishery.

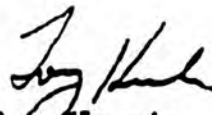
Given the current lack of workable alternative approaches, I recognize several compelling reasons for signing these bills. These include:

- Significant increases in numbers of participants, both recent and anticipated, and the lack of adequate information threaten the conservation of stocks and the stability of these fisheries.
- Severe budget constraints on the Department of Fish and Game prevent gathering of sufficient information and necessitate conservative management of these fisheries.
- A veto of these bills and return to open access could create a stampede into these fragile fisheries. A moratorium will allow a "time out" for proper evaluation to ensure a well managed fishery providing conservation of the resources and sustained economic opportunity for Alaskans in the future.
- The bills establish moratoriums of set duration, not permanent limitations. Nor do they require limited entry. The moratoriums will provide opportunity for public participation in the design of future management options for each of the fisheries, as well as cooperation between the Commercial Fisheries Entry Commission, the Department of Fish and Game, and the Board of Fisheries.

As these bills demonstrate, we need to develop new statutes that provide our professional fisheries managers with the means to easily establish a moratorium in a particular fishery when the need arises. Therefore, I am directing the Commercial Fisheries Entry Commission to work with the Department of Fish and Game to review existing statutes and to recommend changes to make the fishery moratorium provisions more workable and effective.

I will provide the legislature with the results of this review and look forward to working with its members on amending our statutes. The goal is to avoid the need for future emergency legislation for our developing fisheries as exhibited by these two bills.

Sincerely,



Tony Knowles
Governor

cc: Commissioner Frank Rue
Dept. of Fish and Game

Bruce Twomley, Chair,
Commercial Fisheries Entry Commission

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB104

Revision Date/Time (Note if correction) _____

Dept. Affected: _____

Fish and Game

Title

An Act revising the procedures and authority of the Alaska

BRU:

Commercial Fisheries (Limited) Entry Commission

Commercial Fisheries Entry Commission, the Board of Fisheries, and ...

Component:

Limited Entry Program Administration

Sponsor

Rep. Hudson

Requester

Rep. Hudson - House Fisheries Committee

COMPONENT SERIAL NO.

0471

Expenditures/Revenues

(Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES

CHANGE IN REVENUES ()

0.0 0.0 0.0 0.0 0.0 0.0

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: \$

0.0

POSITIONS

FULL-TIME

PART-TIME

TEMPORARY

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact

Prepared by Roger Kolden

Agency Commercial Fisheries (Limited) Entry Commission

Phone

790-6950

Date/Time

02/19/99

Approved by Commissioner Bruce Twomley

Agency Commercial Fisheries (Limited) Entry Commission

Date:

2/22/99

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