

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11311 SENATE RESOURCES

# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES  
OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

- 400 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400  
FAX: (907) 465-3886
- 550 WEST 7<sup>TH</sup> AVENUE, SUITE 1400  
ANCHORAGE, ALASKA 99501-3650  
PHONE: (907) 269-8431  
FAX: (907) 269-8918

February 24, 2004

The Honorable Scott Ogan, Chair  
Senate Resources Committee  
Alaska State Legislature  
Juneau, AK 99802

RE: SB 339, Mining Reclamation Bonding

Dear Senator Ogan:

I am writing to request a hearing next week for SB 339, a bill that relates to reclaiming bonding and financial assurance. This bill amends mining law at AS 27.19.

The bill makes three changes to existing law. First, it removes "lode mines," sometimes referred to as "hard-rock mines," from the current bonding "cap" of \$750 per acre for mine reclamation responsibilities; the cap remains in effect for placer mines. Second, it replaces the term "performance bond" with the term "financial assurance," and lists various ways to provide that assurance. Replacing this term provides mining companies and the state the flexibility to employ a variety of financial assurance vehicles. Last, it creates a mine reclamation trust fund, which allows the build-up of an adequate reclamation fund through payments made over time and through the earnings on that fund. I have enclosed a copy of the Governor's Transmittal letter for your information.

I appreciate your consideration in scheduling this bill. Please contact Janet Burleson Baxter at (907)465-4730 if have any questions. You may also contact Bob Loeffler, Director of the Division of Mining, Land and Water at (907)269-8600.

Sincerely,

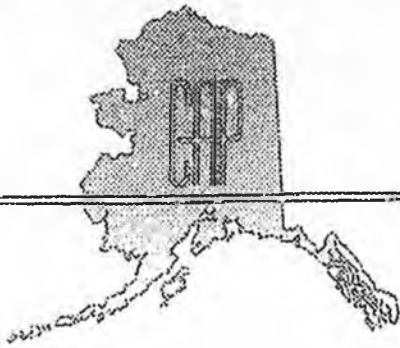


Thomas E. Irwin  
Commissioner

Enclosure

cc: Bob Loeffler, Director, ML&W  
Janet Burleson-Baxter, Special Assistant, DNR

*"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."*



## **Briefing Paper**

SB 339

Thank you for the opportunity to speak to this bill.

My name is Rich Heig. I am president of the Council of Alaska Producers, and also General Manager of Greens Creek Mining Company.

The Council of Alaska Producers is an organization that educates and promotes responsible development of natural resources in the State of Alaska. We are made up of the larger mining operations and potential operations of Alaska, all of which are also members of the Alaska Mining Association.

The Producers Council supports SB 339.

This bill will make several important changes to the requirements for bonding and financial assurance for mining operations.

This bill allows the state to recognize the higher reclamation requirements associated with hard rock mining operations as compared to placer operations. These mines recognize their responsibility for reclamation and closure. This bill supports what DNR and DEC have also been requiring for several years.

This bill also recognizes the need for companies to have several methods available to them for providing financial assurances for reclamation and closure requirements. The cost and availability of bonds or letters of credit are becoming more difficult. This bill allows for other means of financial assurance, including CD's, treasury accounts, corporate guarantees, or other methods.

The third part of the bill establishes a trust fund held by the state that can assist in long term closure and monitoring. This account, funded by mining companies, is another alternative to ensure long term closure and reclamation are accounted for.

The Producers Council supports passage of SB 339 and ask that it be passed out of Committee.

Rich Heig

**S B**

**3 4 7**

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 2/16/04

FURTHER:

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 3-8-04

Resources Committee considered      SENATE BILL NO. 347

**SB 347 GULF OF ALASKA GROUND FISH MORATORIUM**

"An Act relating to moratoria on entry of new participants or vessels into a commercial fishery; relating to the establishment of a moratorium on entry of new vessels into state groundfish fisheries in the Gulf of Alaska and adjacent state marine water; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 347 (RES)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

<b>Senate Bill:</b>	
<input type="checkbox"/>	Same Title
<input checked="" type="checkbox"/>	New Title
<b>House Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
F&G	3/5/04	✓			

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	No REC	AMEND
<i>Thomas H. Sawyer</i>	✓			
<i>Debra ...</i>			✓	
<i>Ben ...</i>	✓			
<i>[Signature]</i>	✓			
CHAIR: <i>[Signature]</i>				

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSSB347(RES)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): 3/5/04 5:00 PM Dept. Affected: Fish and Game  
Title: An Act relating to the moratoria on entry of new RDU Comm. Fish Entry Commission  
participants or vessels into commercial fishery Component: Commercial Fisheries Entry Commission  
Sponsor: Senator Ben Stevens  
Requester: Senator Ben Stevens by request Component No. 471

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	8.0	5.0	5.0	5.0	0.0	0.0
Contractual	32.8	3.0	3.0	3.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>40.8</b>	<b>8.0</b>	<b>8.0</b>	<b>8.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
-----------------------------	------------	------------	------------	------------	------------	------------

<b>CHANGE IN REVENUES ( )</b>	<b>136.0</b>	<b>136.0</b>	<b>136.0</b>	<b>136.0</b>	<b>0.0</b>	<b>0.0</b>
-------------------------------	--------------	--------------	--------------	--------------	------------	------------

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
1156 Receipt Supported Services	40.8	8.0	8.0	8.0	0.0	0.0
<b>TOTAL</b>	<b>40.8</b>	<b>8.0</b>	<b>8.0</b>	<b>8.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

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

**ANALYSIS:** (Attach a separate page if necessary)

Implementation of the groundfish moratorium established by SB347 will require modification to CFEC's licensing system. For the first year only, programmer contractual costs are estimated at \$28.8. Additional costs for new forms, postage, long distance charges, and records archive retrievals, travel for adjudicatory hearings, groundfish management and planning meetings and research and preparation of proposals required under 16.43.908(k) are estimated to be \$12.0 for the first year and \$8.0 yearly through FY2008.

Revenue projections assume that the number of annual moratorium vessel permit renewals will equal the average number of vessels that participated in 1998-2003.

Prepared by: Shirley Penrose, Administrative Officer  
Division: Commercial Fisheries Entry Commission  
Approved by: Mary McDowell, Commissioner  
Agency: Commercial Fisheries Entry Commission

Phone 907-790-6960  
Date/Time 3/5/04 5:00 PM  
Date 3/5/2004

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB0347A  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Fish and Game  
Title An Act relating to the moratoria on entry of new RDU Comm. Fish Entry Commission  
participants or vessels into commercial fishery Component Commercial Fisheries Entry  
Sponsor Senator Ben Stevens Commission  
Requester Senator Ben Stevens by request Component No. 471

## Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	8.0	5.0	5.0	5.0	0.0	0.0
Contractual	32.8	3.0	3.0	3.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>40.8</b>	<b>8.0</b>	<b>8.0</b>	<b>8.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ( )	244.5	244.5	244.5	244.5	0.0	0.0
------------------------	-------	-------	-------	-------	-----	-----

## FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
1156 Receipt Supported Services	40.8	8.0	8.0	8.0	0.0	0.0
<b>TOTAL</b>	<b>40.8</b>	<b>8.0</b>	<b>8.0</b>	<b>8.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

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

## POSITIONS

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

## ANALYSIS: (Attach a separate page if necessary)

Implementation of the groundfish moratorium established by SB347 will require modification to CFEC's licensing system. For the first year only, programmer contractual costs are estimated at \$28.8. Additional costs for new forms, postage, long distance charges, and records archive retrievals, travel for adjudicatory hearings, groundfish management and planning meetings and research and preparation of proposals required under 16.43.908(k) are estimated to be \$12.0 for the first year and \$8.0 yearly through FY2008.

Revenue projections assume that the number of annual moratorium vessel permit renewals will equal the average number of vessels that participated in 1998-2003.

Prepared by: Shirley Penrose, Administrative Officer Phone 907-790-6960  
Division Commercial Fisheries Entry Commission Date/Time 3/1/04 4:36 PM  
Approved by: Mary McDowell, Commissioner Date 3/1/2004  
Agency Commercial Fisheries Entry Commission

## Changes to CS for SB 347 – Version Q

Page 2, line 16 adds: “west of Cape Suckling”

*Reason: Eastern Gulf removed from bill.*

Page 2, line 21 adds: “west of Cape Suckling”

*Reason: Eastern Gulf removed from bill.*

Page 7, Section 9 deletes: “(1) Eastern Gulf of Alaska groundfish non-pelagic trawl fishery; (2) Eastern Gulf of Alaska groundfish pelagic trawl fishery; (3) Eastern Gulf of Alaska groundfish longline fishery; (4) Eastern Gulf of Alaska groundfish pot fishery;”

*Reason: Southeast does not have large numbers of aggregated groundfish. The industry in Southeast believes it is not necessary to impose a moratorium in this area.*

Page 9, lines 27-28, changes fee structure: “(1) \$500 for each pelagic trawl fishery or non-pelagic trawl fishery; (2) \$250 for each pot or longline fishery;”

*Reason: After a review of the rough estimates of earnings, these fees were found to be more reasonable.*

Page 9, lines 30-31, adds: “and the Board of Fisheries,”

*Reason: To ensure full cooperation between the Department of Fish, the Board of Fisheries, and the Commercial Fisheries Entry Commission in the development of appropriate alternatives for management of Gulf of Alaska groundfish fisheries.*

[NOTE: This section requires the submission of proposals to the legislature for legislation or constitutional amendments necessary to implement the recommendations of the commission. This will ensure adequate legislative review and approval.]

Page 10, lines 6-9, deleted: “northern Southeast Inside sablefish fishery, the Southern Southeast Inside sablefish fishery . . . or the demersal shelf rockfish fisheries.”

*Reason: These are Eastern Gulf fisheries and the Eastern Gulf has been removed from the bill.*

Page 10, (n), deletes: “(3) ‘Eastern Gulf of Alaska’ means the marine waters of the Eastern Gulf of Alaska groundfish fishery registration area, as defined by the Board of Fisheries;”

*Reason: The Eastern Gulf has been removed from the bill.*

Page 10, line 18, deletes: "north and west of Dixon Entrance"  
adds: "west of the latitude of Cape Suckling"

*Reason: The Eastern Gulf has been removed from the bill. This redefines the Eastern boundary.*



**SENATOR SCOTT OGAN**

23<sup>RD</sup> Alaska State Legislature

Senate District H Lazy Mountain \* Butte \* Chugiak \* Peters Creek \* Fairview Loop  
Knik-Goose Bay \* Big Lake \* Houston \* Willow \* Talkeetna \* Trapper Creek

State Capitol, Room 103, Juneau Alaska 99801 \* (907) 465-3878 \* 1 (800) 862-3878 \* Fax (907) 465-3265

Senator\_Scott\_Ogan@legis.state.ak.us

Http://www.akrepublicans.org/ogan

FACSIMILE TRANSMITTAL SHEET

TO: <u>Leg. Legal</u>	FROM: <u>Linda Hay - Sen Res.</u>
COMPANY:	DATE: <u>3-6-04</u>
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER: <u>1</u>
PHONE NUMBER:	RE: <u>CS SB 347</u>

URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

NOTES/COMMENTS:

please prepare a final for  
CS SB 347 (Res)  
23-LS1677 \ Q

This version was adopted by the  
Sen. Res. committee & moved out  
of committee 3/5/04

Thank you

23-LS1677Q  
Utermohle  
3/4/04

**CS FOR SENATE BILL NO. 347( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

Offered:  
Referred:

Sponsor(s): **SENATOR BEN STEVENS BY REQUEST**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to moratoria on entry of new participants or vessels into a commercial**  
2 **fishery; relating to vessel permits for, and the establishment of a moratorium on entry of**  
3 **new vessels into, state Gulf of Alaska groundfish fisheries; and providing for an effective**  
4 **date."**

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

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

8 **FINDINGS AND PURPOSE WITH REGARD TO A MORATORIUM ON ENTRY**  
9 **OF NEW VESSELS INTO STATE GULF OF ALASKA GROUND FISH FISHERIES. (a)**

10 The Alaska State Legislature finds that

11 (1) the goal of the state is to

12 (A) protect, maintain, and improve the fishery resources of the state,  
13 and manage the use and development of those fishery resources in the best interest of  
14 the economy and the well-being of the people of the state, consistent with the

1           sustained yield principle; and

2                   (B) promote the conservation and sustained yield management of  
3           Alaska fishery resources and the economic health and stability of commercial fishing  
4           in the state by regulating and controlling entry of participants and vessels into  
5           commercial fisheries in the public interest and without unjust discrimination;

6                   (2) the North Pacific Fishery Management Council has undertaken an analysis  
7           of the Gulf of Alaska groundfish fisheries in the United States exclusive economic zone off  
8           Alaska and has begun consideration of action that may result in significant reductions in the  
9           number of fishermen and vessels that may participate in those fisheries;

10                   (3) in order to adequately protect state groundfish fishery resources of the Gulf  
11           of Alaska and to protect those dependent upon the groundfish fisheries from economic  
12           distress, management measures must be considered that will mitigate effects from the  
13           pressures that will result from rationalization in the federal groundfish fisheries adjacent to  
14           state groundfish fisheries;

15                   (4) a timely, temporary moratorium on effort in the state-managed groundfish  
16           fisheries west of Cape Suckling will control growth during development of a long-term plan  
17           for the management of state Gulf of Alaska groundfish fisheries.

18                   (b) The purposes of the moratorium on entry of new vessels into the state Gulf of  
19           Alaska groundfish fisheries established by this Act are to

20                   (1) immediately impose a moratorium on entry of new vessels into the state  
21           Gulf of Alaska groundfish fisheries west of Cape Suckling to temporarily protect Alaska  
22           fisheries, fishermen, and those dependent on them for a livelihood from potential adverse  
23           consequences of action the North Pacific Fishery Management Council is expected to take to  
24           reduce participation in the Gulf of Alaska groundfish fisheries in the United States exclusive  
25           economic zone off Alaska, while avoiding unnecessary restrictions on entry to Alaska  
26           commercial fisheries;

27                   (2) require, during the state Gulf of Alaska groundfish fishery vessel  
28           moratorium in state water, study of whether permanent limitation on entry into these  
29           groundfish fisheries is necessary and, if so, whether statutory changes are necessary in order  
30           to implement an effective limited access program in those groundfish fisheries; and

31                   (3) provide time to pursue statutory or regulatory changes necessary to

1 provide for the long-term management of Alaska groundfish fisheries.

2 \* Sec. 2. AS 16.43.225(a) is repealed and reenacted to read:

3 (a) The commission may establish a moratorium on entry of new persons or  
4 vessels, or both, into a commercial fishery if the commission finds that the moratorium  
5 is necessary

6 (1) to promote the conservation and sustained yield management of the  
7 fishery resource and the economic health and stability of the commercial fishery; and

8 (2) either

9 (A) to allow time for the commission to develop regulatory or  
10 legislative proposals to address needs of the fishery that cannot be met under  
11 existing regulations or statutes; or

12 (B) to allow the Department of Fish and Game or the Board of  
13 Fisheries to open a commercial fishery that would otherwise remain closed to  
14 protect a fishery resource from overexploitation resulting from unrestricted  
15 access to the fishery.

16 \* Sec. 3. AS 16.43.225(b) is repealed and reenacted to read:

17 (b) The commission may establish a moratorium in one or more fisheries or  
18 for one or more fishery resources, gear types, or administrative areas within a fishery.

19 \* Sec. 4. AS 16.43.225(c) is amended to read:

20 (c) The commission may establish a moratorium under this section for a  
21 continuous period of up to four years. The commission may extend the period of a  
22 moratorium for a continuous period of not more than two years if necessary to  
23 achieve a purpose described under (a) of this section. A fishery that has been  
24 subject to a moratorium under this section may not be subjected to a subsequent  
25 moratorium under this section unless five years have elapsed since the previous  
26 moratorium expired.

27 \* Sec. 5. AS 16.43.225(d) is amended to read:

28 (d) While a moratorium is in effect, the commission shall study and evaluate  
29 alternatives for management of entry into the fishery under this chapter  
30 [CONDUCT INVESTIGATIONS TO DETERMINE WHETHER A MAXIMUM  
31 NUMBER OF ENTRY PERMITS SHOULD BE ESTABLISHED UNDER

1 AS 16.43.240] by

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

3 (2) consulting with the Department of Fish and Game and the Board of  
4 Fisheries; and

5 (3) consulting with participants in the fishery.

6 \* Sec. 6. AS 16.43.225(e) is amended to read:

7 (e) The commission shall establish by regulation a qualification date and  
8 eligibility criteria [THE QUALIFICATIONS] for applicants for an interim-use  
9 permit, vessel permit, or both for a fishery subject to a moratorium under this section.

10 The eligibility criteria for an interim-use permit or vessel permit for a fishery  
11 subject to a moratorium under this section [QUALIFICATIONS] must include the  
12 minimum requirements for past or present participation and harvest in the fishery as of  
13 the qualification date established by the commission. The commission shall issue

14 (1) an interim-use permit to a person who satisfies the eligibility  
15 criteria established under this subsection;

16 (2) a vessel permit to a person or entity who, as of the qualification  
17 date of application owns a vessel that satisfies the eligibility criteria established  
18 under this subsection for a vessel permit for the fishery [THE COMMISSION  
19 MAY NOT ISSUE AN INTERIM-USE PERMIT FOR A FISHERY SUBJECT TO A  
20 MORATORIUM UNDER THIS SECTION UNLESS THE APPLICANT CAN  
21 SATISFY THE QUALIFICATIONS ESTABLISHED UNDER THIS SUBSECTION  
22 AND ESTABLISH THE PRESENT ABILITY AND INTENT TO PARTICIPATE  
23 ACTIVELY IN THE FISHERY].

24 \* Sec. 7. AS 16.43.225 is amended by adding new subsections to read:

25 (f) If the commission establishes a moratorium under this section for a fishery  
26 that involves more than one fishery resource, type of gear, or administrative area, the  
27 commission may limit, as the commission determines appropriate, the species of  
28 fishery resource that may be harvested, the types of gear that may be used, and the  
29 areas where fishing may occur under an interim-use permit or a vessel permit issued  
30 for the fishery. The commission shall adopt criteria, as appropriate, for determining  
31 how

1 (1) restrictions on fishery resources, types of gear, and areas fished are  
2 established for individual interim-use permits and vessel permits; and

3 (2) eligibility to take a particular fishery resource, to use a particular  
4 type of gear, or to fish in a particular area is established.

5 (g) If the commission establishes a moratorium on entry of new vessels into a  
6 fishery, the commission may regulate the fishing capacity that a vessel may employ  
7 under the vessel permit issued for the vessel. The commission shall, as appropriate,  
8 adopt criteria for determining how restrictions on vessel fishing capacity are  
9 established for vessel permits. The criteria may be based on past participation in the  
10 fishery. The commission may define fishing capacity in terms of quantity of fishing  
11 gear, fishing vessel size, or other characteristics determined by the commission to  
12 affect the fishing capacity of vessels employed in the fishery.

13 (h) A vessel permit issued under this section

14 (1) constitutes a use privilege that may be modified or revoked by law  
15 without compensation;

16 (2) may not be

17 (A) transferred to another vessel, person, or entity, except as  
18 provided under (j) of this section;

19 (B) pledged, mortgaged, leased, or encumbered in any way;

20 (C) attached, distrained, or sold on execution of judgment or  
21 under any other process or order of any court;

22 (3) does not alter the requirement for an interim-use permit under  
23 AS 16.43.140 or a vessel license under AS 16.05.490 - 16.05.520.

24 (i) The commission shall establish fees for the issuance and annual renewal of  
25 vessel permits issued under this section. The annual fee for the vessel permit must  
26 reasonably reflect the rate of economic return for the fishery and may not exceed  
27 \$1,000.

28 (j) The commission may, in the regulations establishing a moratorium under  
29 this section, provide for

30 (1) the substitution of another vessel for the vessel that is identified on  
31 a vessel permit if the vessel for which the vessel permit was originally issued is sunk,

1 destroyed, or damaged to the extent that the vessel is unable to operate in the fishery  
2 for which the permit is issued;

3 (2) a vessel permit to be reissued to the new owner of a vessel that is  
4 identified on the vessel permit if the ownership of the vessel changes during the  
5 moratorium;

6 (3) the substitution of a shorter vessel for the vessel identified on a  
7 vessel permit if

8 (A) the Board of Fisheries has adopted a vessel size restriction  
9 that prohibits the use of the vessel identified on the vessel permit in the fishery  
10 for which the vessel permit was issued;

11 (B) the substitute vessel complies with the vessel size  
12 restrictions adopted by the Board of Fisheries for the fishery for which the  
13 vessel permit was issued; and

14 (C) the substitute vessel is owned by the person or entity that  
15 owned the vessel identified on the vessel permit.

16 (k) Unless otherwise provided by law or by a regulation adopted by the  
17 commission, the commission may not consider participation in a fishery by a person or  
18 vessel that occurs during the period of the moratorium in determining eligibility for  
19 fishing privileges under a subsequent limitation on entry or participation in the fishery.

20 (l) Unless the application of a provision of this chapter to an interim-use  
21 permit issued under this section conflicts with this section or the purpose of this  
22 section, an interim-use permit issued under this section is subject to all provisions of  
23 this chapter governing interim-use permits.

24 (m) Nothing in this section limits the powers of the Board of Fisheries or the  
25 Department of Fish and Game.

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

29 \* Sec. 8. AS 16.43.260(f) is amended to read:

30 (f) When the commission establishes the maximum number of entry permits  
31 under AS 16.43.240 for a fishery that is subject to a moratorium under AS 16.43.225,

1 the commission shall establish a qualification date to be used to determine the  
2 priority classification among applicants. Each [AN] applicant for an entry permit  
3 for the fishery shall be assigned to a priority classification based [SOLELY] upon the  
4 applicant's qualifications as of the qualification [EFFECTIVE] date established  
5 under this subsection [OF THE STATUTE OR REGULATION ESTABLISHING  
6 THE MORATORIUM].

7 \* Sec. 9. AS 16.43 is amended by adding a new section to read:

8 **Sec. 16.43.908. Vessel permits for Gulf of Alaska groundfish fisheries. (a)**

9 The commission shall issue annual vessel permits under this section for commercial  
10 fishing vessels used on or after January 1, 2005, in the state Gulf of Alaska groundfish  
11 fisheries. The commission shall issue vessel permits to a vessel upon application by  
12 the vessel owner. The commission shall issue a separate vessel permit for each  
13 fishery. The Gulf of Alaska groundfish fisheries are

- 14 (1) Prince William Sound groundfish non-pelagic trawl fishery;
- 15 (2) Prince William Sound groundfish pelagic trawl fishery;
- 16 (3) Prince William Sound groundfish longline fishery;
- 17 (4) Prince William Sound groundfish pot fishery;
- 18 (5) Cook Inlet groundfish non-pelagic trawl fishery;
- 19 (6) Cook Inlet groundfish pelagic trawl fishery;
- 20 (7) Cook Inlet groundfish longline fishery;
- 21 (8) Cook Inlet groundfish pot fishery;
- 22 (9) Kodiak groundfish non-pelagic trawl fishery;
- 23 (10) Kodiak groundfish pelagic trawl fishery;
- 24 (11) Kodiak groundfish longline fishery;
- 25 (12) Kodiak groundfish pot fishery;
- 26 (13) Chignik groundfish non-pelagic trawl fishery;
- 27 (14) Chignik groundfish pelagic trawl fishery;
- 28 (15) Chignik groundfish longline fishery;
- 29 (16) Chignik groundfish pot fishery;
- 30 (17) South Alaska Peninsula groundfish non-pelagic trawl fishery;
- 31 (18) South Alaska Peninsula groundfish pelagic trawl fishery;

1 (19) South Alaska Peninsula groundfish longline fishery;

2 (20) South Alaska Peninsula groundfish pot fishery.

3 (b) A vessel permit is a use privilege authorizing the vessel to engage in a  
4 specific groundfish fishery if that fishery is authorized by the Board of Fisheries. A  
5 vessel permit must describe the fishery resource, the type of gear, and the area for  
6 which the vessel permit is issued. The use privilege conveyed by a vessel permit may  
7 be modified or revoked by the legislature without compensation.

8 (c) Except as provided in (m) of this section, on or after January 1, 2005, a  
9 commercial fishing vessel may not use pelagic trawl, non-pelagic trawl, longline, or  
10 pot gear, as defined by the Board of Fisheries, to take groundfish in a state Gulf of  
11 Alaska groundfish fishery unless a vessel permit for that fishery has been issued for  
12 the vessel under this section. This subsection does not prohibit the use of a  
13 commercial fishing vessel to take groundfish using gear other than pelagic trawl, non-  
14 pelagic trawl, longline, or pot gear, if the taking and retention of the groundfish is  
15 permitted under regulations adopted by the Board of Fisheries.

16 (d) Notwithstanding AS 16.43.225, the commission may not issue a vessel  
17 permit under this section to a commercial fishing vessel for a Gulf of Alaska  
18 groundfish fishery for the period January 1, 2005, through December 31, 2008,  
19 inclusive, unless the vessel has, on or after January 1, 1998, and before the effective  
20 date of this Act, made a documented landing of groundfish in the area using the type  
21 of gear for which the permit is to be issued. The commission may by regulation  
22 extend the moratorium on entry of new vessels into the Gulf of Alaska groundfish  
23 fisheries established under this subsection for a maximum period of two years until  
24 January 1, 2011, if the commission finds that the extension of the moratorium is  
25 necessary to achieve the purposes of the moratorium.

26 (e) Participation of a person or a vessel in a Gulf of Alaska groundfish fishery  
27 during the moratorium established under (d) of this section may not be used to  
28 establish eligibility for a use privilege for a groundfish fishery that may be issued after  
29 the termination of the moratorium authorized under this section.

30 (f) Subsections (d) - (e) of this section may be superseded by regulations  
31 adopted by the commission under subsequent legislation enacted by the legislature

1 authorizing the regulations.

2 (g) If, during the moratorium established under (d) of this section, a  
3 commercial fishing vessel that qualifies for a vessel permit under this section or that is  
4 issued a vessel permit under this section is sunk, destroyed, or damaged, to the extent  
5 that the vessel is inoperable for a state Gulf of Alaska groundfish fishery, the  
6 commission may, upon the request of the owner of the vessel, reissue the vessel permit  
7 to another commercial fishing vessel with an overall length that does not exceed the  
8 overall length of the vessel that was sunk, destroyed, or damaged by more than ten  
9 percent.

10 (h) During the moratorium established under (d) of this section, the  
11 commission shall, upon request of the new owner of a vessel and submission of proof  
12 of ownership, reissue a vessel permit to the new owner of a vessel if the ownership of  
13 the vessel identified on the vessel permit is transferred.

14 (i) During the moratorium established under (d) of this section, a vessel permit  
15 may be transferred to a shorter vessel that is substituted for the vessel identified on a  
16 vessel permit if

17 (A) the Board of Fisheries has adopted a vessel size restriction  
18 that prohibits the use of the vessel identified on the vessel permit in the fishery  
19 for which the vessel permit was issued;

20 (B) the substitute vessel complies with the vessel size  
21 restrictions adopted by the Board of Fisheries for the fishery for which the  
22 vessel permit was issued; and

23 (C) the substitute vessel is owned by the person or entity that  
24 owned the vessel identified on the vessel permit.

25 (j) A vessel permit is valid for the calendar year that is inscribed on the vessel  
26 permit. The annual fee for a vessel permit is

27 (1) \$500 for each pelagic trawl fishery or non-pelagic trawl fishery;

28 (2) \$250 for each pot fishery or longline fishery;

29 (k) During the moratorium established under (d) of this section, the  
30 commission shall, in cooperation with the Department of Fish and Game and the  
31 Board of Fisheries, conduct investigations to determine appropriate alternatives for

1 management of entry into Gulf of Alaska groundfish fisheries in the state. The  
2 commission shall submit proposals to the legislature for legislation or constitutional  
3 amendments necessary to implement the recommendations of the commission.

4 (l) The commission may adopt regulations that the commission considers  
5 necessary to implement this section.

6 (m) Notwithstanding other provisions of this section, a vessel permit issued  
7 under this section is not required of a vessel while that vessel is participating in the  
8 Prince William Sound sablefish fishery or a halibut fishery managed under a federal  
9 individual fishery quota system.

10 (n) In this section,

11 (1) "Chignik" means the marine water of the Chignik groundfish  
12 fishery registration area, as defined by the Board of Fisheries;

13 (2) "Cook Inlet" means the marine water of the Cook Inlet groundfish  
14 fishery registration area, as defined by the Board of Fisheries;

15 (3) "groundfish" means a species of marine finfish other than halibut,  
16 osmerids, herring, or salmonids;

17 (4) "Gulf of Alaska" means the marine water of the state adjacent to  
18 the Gulf of Alaska that is west of the latitude of Cape Suckling to the westward extent  
19 of state water of the Aleutian Islands;

20 (5) "Gulf of Alaska groundfish fishery" means a fishery in which  
21 groundfish are taken in a specified administrative or registration area in the Gulf of  
22 Alaska using a specified type of fishing gear that is either pelagic trawl, non-pelagic  
23 trawl, pot, or longline gear;

24 (6) "Kodiak" means the marine water of the Kodiak groundfish fishery  
25 registration area, as defined by the Board of Fisheries;

26 (7) "landing" means the act of offloading for sale, or for transport to a  
27 buyer for later sale, or catching and processing of groundfish taken in a halibut or  
28 groundfish fishery in state water for sale as evidenced by a Department of Fish and  
29 Game fish ticket;

30 (8) "Prince William Sound" means the marine water of the Prince  
31 William Sound groundfish fishery registration area, as defined by the Board of

1 Fisheries;

2 (9) "South Alaska Peninsula" means the marine water of the South  
3 Alaska Peninsula groundfish fishery registration area, as defined by the Board of  
4 Fisheries.

5 \* Sec. 10. AS 16.43.911(c) is amended to read:

6 (c) Notwithstanding AS 16.05.815 and AS 16.43.975, the commission may  
7 release to the owner of a vessel information on the vessel's history of harvests in a  
8 fishery that is necessary to apply for a vessel permit under AS 16.43.901 - 16.43.908  
9 [AS 16.43.901 - 16.43.906].

10 \* Sec. 11. The uncodified law of the State of Alaska enacted in sec. 6, ch. 97, SLA 1997, as  
11 amended by sec. 6, ch. 30, SLA 2000, is amended to read:

12 Sec. 6. AS 16.43.906, added by sec. 3 of this Act, is [AND AS 16.43.911  
13 ARE] repealed July 1, 2004.

14 \* Sec. 12. AS 16.05.050(a)(19), 16.05.251(g), AS 16.43.227, and 16.43.228 are repealed.

15 \* Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to  
16 read:

17 CONTINGENT RETROSPECTIVITY. If this Act does not take effect before July 1,  
18 2004, secs. 10 - 11 of this Act are retrospective to June 30, 2004.

19 \* Sec. 14. This Act takes effect immediately under AS 01.10.070(c).

23-LS1677N  
Uternohle  
3/2/04

**CS FOR SENATE BILL NO. 347( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): SENATOR BEN STEVENS BY REQUEST**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to moratoria on entry of new participants or vessels into a commercial**  
2 **fishery; relating to vessel permits for, and the establishment of a moratorium on entry of**  
3 **new vessels into, state Gulf of Alaska groundfish fisheries; and providing for an effective**  
4 **date."**

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

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

8 **FINDINGS AND PURPOSE WITH REGARD TO A MORATORIUM ON ENTRY**  
9 **OF NEW VESSELS INTO STATE GULF OF ALASKA GROUND FISH FISHERIES. (a)**

10 The Alaska State Legislature finds that

11 (1) the goal of the state is to

12 (A) protect, maintain, and improve the fishery resources of the state,  
13 and manage the use and development of those fishery resources in the best interest of  
14 the economy and the well-being of the people of the state, consistent with the

1           sustained yield principle; and

2                   (B) promote the conservation and sustained yield management of  
3           Alaska fishery resources and the economic health and stability of commercial fishing  
4           in the state by regulating and controlling entry of participants and vessels into  
5           commercial fisheries in the public interest and without unjust discrimination;

6                   (2) the North Pacific Fishery Management Council has undertaken an analysis  
7           of the Gulf of Alaska groundfish fisheries in the United States exclusive economic zone off  
8           Alaska and has begun consideration of action that may result in significant reductions in the  
9           number of fishermen and vessels that may participate in those fisheries;

10                   (3) in order to adequately protect state groundfish fishery resources of the Gulf  
11           of Alaska and to protect those dependent upon the groundfish fisheries from economic  
12           distress, management measures must be considered that will mitigate effects from the  
13           pressures that will result from rationalization in the federal groundfish fisheries adjacent to  
14           state groundfish fisheries;

15                   (4) a timely, temporary moratorium on effort in the state-managed groundfish  
16           fisheries will control growth during development of a long term plan for the management of  
17           state Gulf of Alaska groundfish fisheries.

18                   (b) The purposes of the moratorium on entry of new vessels into the state Gulf of  
19           Alaska groundfish fisheries established by this Act are to

20                   (1) immediately impose a moratorium on entry of new vessels into the state  
21           Gulf of Alaska groundfish fisheries to temporarily protect Alaska fisheries, fishermen, and  
22           those dependent on them for a livelihood from potential adverse consequences of action the  
23           North Pacific Fishery Management Council is expected to take to reduce participation in the  
24           Gulf of Alaska groundfish fisheries in the United States exclusive economic zone off Alaska,  
25           while avoiding unnecessary restrictions on entry to Alaska commercial fisheries;

26                   (2) require, during the state Gulf of Alaska groundfish fishery vessel  
27           moratorium in state water, study of whether permanent limitation on entry into these  
28           groundfish fisheries is necessary and, if so, whether statutory changes are necessary in order  
29           to implement an effective limited access program in those groundfish fisheries; and

30                   (3) provide time to pursue statutory or regulatory changes necessary to  
31           provide for the long-term management of Alaska groundfish fisheries.

1 \* Sec. 2. AS 16.43.225(a) is repealed and reenacted to read:

2 (a) The commission may establish a moratorium on entry of new persons or  
3 vessels, or both, into a commercial fishery if the commission finds that the moratorium  
4 is necessary

5 (1) to promote the conservation and sustained yield management of the  
6 fishery resource and the economic health and stability of the commercial fishery; and

7 (2) either

8 (A) to allow time for the commission to develop regulatory or  
9 legislative proposals to address needs of the fishery that cannot be met under  
10 existing regulations or statutes; or

11 (B) to allow the Department of Fish and Game or the Board of  
12 Fisheries to open a commercial fishery that would otherwise remain closed to  
13 protect a fishery resource from overexploitation resulting from unrestricted  
14 access to the fishery.

15 \* Sec. 3. AS 16.43.225(b) is repealed and reenacted to read:

16 (b) The commission may establish a moratorium in one or more fisheries or  
17 for one or more fishery resources, gear types, or administrative areas within a fishery.

18 \* Sec. 4. AS 16.43.225(c) is amended to read:

19 (c) The commission may establish a moratorium under this section for a  
20 continuous period of up to four years. The commission may extend the period of a  
21 moratorium for a continuous period of not more than two years if necessary to  
22 achieve a purpose described under (a) of this section. A fishery that has been  
23 subject to a moratorium under this section may not be subjected to a subsequent  
24 moratorium under this section unless five years have elapsed since the previous  
25 moratorium expired.

26 \* Sec. 5. AS 16.43.225(d) is amended to read:

27 (d) While a moratorium is in effect, the commission shall study and evaluate  
28 alternatives for management of entry into the fishery under this chapter  
29 [CONDUCT INVESTIGATIONS TO DETERMINE WHETHER A MAXIMUM  
30 NUMBER OF ENTRY PERMITS SHOULD BE ESTABLISHED UNDER  
31 AS 16.43.240] by

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

5 \* Sec. 6. AS 16.43.225(e) is amended to read:

6 (e) The commission shall establish by regulation a qualification date and  
7 eligibility criteria [THE QUALIFICATIONS] for applicants for an interim-use  
8 permit, vessel permit, or both for a fishery subject to a moratorium under this section.  
9 The eligibility criteria for an interim-use permit or vessel permit for a fishery  
10 subject to a moratorium under this section [QUALIFICATIONS] must include the  
11 minimum requirements for past or present participation and harvest in the fishery as of  
12 the qualification date established by the commission. The commission shall issue  
13 (1) an interim-use permit to a person who satisfies the eligibility  
14 criteria established under this subsection;  
15 (2) a vessel permit to a person or entity who, as of the qualification  
16 date of application owns a vessel that satisfies the eligibility criteria established  
17 under this subsection for a vessel permit for the fishery [THE COMMISSION  
18 MAY NOT ISSUE AN INTERIM-USE PERMIT FOR A FISHERY SUBJECT TO A  
19 MORATORIUM UNDER THIS SECTION UNLESS THE APPLICANT CAN  
20 SATISFY THE QUALIFICATIONS ESTABLISHED UNDER THIS SUBSECTION  
21 AND ESTABLISH THE PRESENT ABILITY AND INTENT TO PARTICIPATE  
22 ACTIVELY IN THE FISHERY].

23 \* Sec. 7. AS 16.43.225 is amended by adding new subsections to read:

24 (f) If the commission establishes a moratorium under this section for a fishery  
25 that involves more than one fishery resource, type of gear, or administrative area, the  
26 commission may limit, as the commission determines appropriate, the species of  
27 fishery resource that may be harvested, the types of gear that may be used, and the  
28 areas where fishing may occur under an interim-use permit or a vessel permit issued  
29 for the fishery. The commission shall adopt criteria, as appropriate, for determining  
30 how  
31 (1) restrictions on fishery resources, types of gear, and areas fished are

1 established for individual interim-use permits and vessel permits; and

2 (2) eligibility to take a particular fishery resource, to use a particular  
3 type of gear, or to fish in a particular area is established.

4 (g) If the commission establishes a moratorium on entry of new vessels into a  
5 fishery, the commission may regulate the fishing capacity that a vessel may employ  
6 under the vessel permit issued for the vessel. The commission shall, as appropriate,  
7 adopt criteria for determining how restrictions on vessel fishing capacity are  
8 established for vessel permits. The criteria may be based on past participation in the  
9 fishery. The commission may define fishing capacity in terms of quantity of fishing  
10 gear, fishing vessel size, or other characteristics determined by the commission to  
11 affect the fishing capacity of vessels employed in the fishery.

12 (h) A vessel permit issued under this section

13 (1) constitutes a use privilege that may be modified or revoked by law  
14 without compensation;

15 (2) may not be

16 (A) transferred to another vessel, person, or entity, except as  
17 provided under (j) of this section;

18 (B) pledged, mortgaged, leased, or encumbered in any way;

19 (C) attached, distrained, or sold on execution of judgment or  
20 under any other process or order of any court;

21 (3) does not alter the requirement for an interim-use permit under  
22 AS 16.43.140 or a vessel license under AS 16.05.490 - 16.05.520.

23 (i) The commission shall establish fees for the issuance and annual renewal of  
24 vessel permits issued under this section. The annual fee for the vessel permit must  
25 reasonably reflect the rate of economic return for the fishery and may not exceed  
26 \$1,000.

27 (j) The commission may, in the regulations establishing a moratorium under  
28 this section, provide for

29 (1) the substitution of another vessel for the vessel that is identified on  
30 a vessel permit if the vessel for which the vessel permit was originally issued is sunk,  
31 destroyed, or damaged to the extent that the vessel is unable to operate in the fishery

1 for which the permit is issued;

2 (2) a vessel permit to be reissued to the new owner of a vessel that is  
3 identified on the vessel permit if the ownership of the vessel changes during the  
4 moratorium;

5 (3) the substitution of a shorter vessel for the vessel identified on a  
6 vessel permit if

7 (A) the Board of Fisheries has adopted a vessel size restriction  
8 that prohibits the use of the vessel identified on the vessel permit in the fishery  
9 for which the vessel permit was issued;

10 (B) the substitute vessel complies with the vessel size  
11 restrictions adopted by the Board of Fisheries for the fishery for which the  
12 vessel permit was issued; and

13 (C) the substitute vessel is owned by the person or entity that  
14 owned the vessel identified on the vessel permit.

15 (k) Unless otherwise provided by law or by a regulation adopted by the  
16 commission, the commission may not consider participation in a fishery by a person or  
17 vessel that occurs during the period of the moratorium in determining eligibility for  
18 fishing privileges under a subsequent limitation on entry or participation in the fishery.

19 (l) Unless the application of a provision of this chapter to an interim-use  
20 permit issued under this section conflicts with this section or the purpose of this  
21 section, an interim-use permit issued under this section is subject to all provisions of  
22 this chapter governing interim-use permits.

23 (m) Nothing in this section limits the powers of the Board of Fisheries or the  
24 Department of Fish and Game.

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

28 \* Sec. 8. AS 16.43.260(f) is amended to read:

29 (f) When the commission establishes the maximum number of entry permits  
30 under AS 16.43.240 for a fishery that is subject to a moratorium under AS 16.43.225,  
31 the commission shall establish a qualification date to be used to determine the

1 priority classification among applicants. Each [AN] applicant for an entry permit  
2 for the fishery shall be assigned to a priority classification based [SOLELY] upon the  
3 applicant's qualifications as of the qualification [EFFECTIVE] date established  
4 under this subsection [OF THE STATUTE OR REGULATION ESTABLISHING  
5 THE MORATORIUM].

6 \* Sec. 9. AS 16.43 is amended by adding a new section to read:

7 **Sec. 16.43.908. Vessel permits for Gulf of Alaska groundfish fisheries.** (a)

8 The commission shall issue annual vessel permits under this section for commercial  
9 fishing vessels used on or after January 1, 2005, in the state Gulf of Alaska groundfish  
10 fisheries. The commission shall issue vessel permits to a vessel upon application by  
11 the vessel owner. The commission shall issue separate vessel permits for each fishery.

12 The Gulf of Alaska groundfish fisheries are

- 13 (1) Eastern Gulf of Alaska groundfish non-pelagic trawl fishery;
- 14 (2) Eastern Gulf of Alaska groundfish pelagic trawl fishery;
- 15 (3) Eastern Gulf of Alaska groundfish longline fishery;
- 16 (4) Eastern Gulf of Alaska groundfish pot fishery;
- 17 (5) Prince William Sound groundfish non-pelagic trawl fishery;
- 18 (6) Prince William Sound groundfish pelagic trawl fishery;
- 19 (7) Prince William Sound groundfish longline fishery;
- 20 (8) Prince William Sound groundfish pot fishery;
- 21 (9) Cook Inlet groundfish non-pelagic trawl fishery;
- 22 (10) Cook Inlet groundfish pelagic trawl fishery;
- 23 (11) Cook Inlet groundfish longline fishery;
- 24 (12) Cook Inlet groundfish pot fishery;
- 25 (13) Kodiak groundfish non-pelagic trawl fishery;
- 26 (14) Kodiak groundfish pelagic trawl fishery;
- 27 (15) Kodiak groundfish longline fishery;
- 28 (16) Kodiak groundfish pot fishery;
- 29 (17) Chignik groundfish non-pelagic trawl fishery;
- 30 (18) Chignik groundfish pelagic trawl fishery;
- 31 (19) Chignik groundfish longline fishery;

- 1 (20) Chignik groundfish pot fishery;  
2 (21) South Alaska Peninsula groundfish non-pelagic trawl fishery;  
3 (22) South Alaska Peninsula groundfish pelagic trawl fishery;  
4 (23) South Alaska Peninsula groundfish longline fishery;  
5 (24) South Alaska Peninsula groundfish pot fishery.

6 (b) A vessel permit is a use privilege authorizing the vessel to engage in a  
7 specific groundfish fishery if that fishery is authorized by the Board of Fisheries. A  
8 vessel permit must describe the fishery resource, the type of gear, and the area for  
9 which the vessel permit is issued. The use privilege conveyed by a vessel permit may  
10 be modified or revoked by the legislature without compensation.

11 (c) Except as provided in (m) of this section, on or after January 1, 2005, a  
12 commercial fishing vessel may not use pelagic trawl, non-pelagic trawl, longline, or  
13 pot gear, as defined by the Board of Fisheries, to take groundfish in a state Gulf of  
14 Alaska groundfish fishery unless a vessel permit for that fishery has been issued for  
15 the vessel under this section. This subsection does not prohibit the use of a  
16 commercial fishing vessel to take groundfish using gear other than pelagic trawl, non-  
17 pelagic trawl, longline, or pot gear, if the taking and retention of the groundfish is  
18 permitted under regulations adopted by the Board of Fisheries.

19 (d) Notwithstanding AS 16.43.225, the commission may not issue a vessel  
20 permit under this section to a commercial fishing vessel for a Gulf of Alaska  
21 groundfish fishery for the period January 1, 2005, through December 31, 2008,  
22 inclusive, unless the vessel has, on or after January 1, 1998, and before the effective  
23 date of this Act, made a documented landing of groundfish in the area using the type  
24 of gear for which the permit is to be issued. The commission may by regulation  
25 extend the moratorium on entry of new vessels into the Gulf of Alaska groundfish  
26 fisheries established under this subsection for a maximum period of two years until  
27 January 1, 2011, if the commission finds that the extension of the moratorium is  
28 necessary to achieve the purposes of the moratorium.

29 (e) Participation of a person or a vessel in a Gulf of Alaska groundfish fishery  
30 during the moratorium established under (d) of this section may not be used to  
31 establish eligibility for a use privilege for a groundfish fishery that may be issued after

1 the termination of the moratorium authorized under this section.

2 (f) Subsections (d) - (e) of this section may be superseded by regulations  
3 adopted by the commission under subsequent legislation enacted by the legislature  
4 authorizing the regulations.

5 (g) If, during the moratorium established under (d) of this section, a  
6 commercial fishing vessel that qualifies for a vessel permit under this section or that is  
7 issued a vessel permit under this section is sunk, destroyed, or damaged, to the extent  
8 that the vessel is inoperable for a state Gulf of Alaska groundfish fishery, the  
9 commission may, upon the request of the owner of the vessel, reissue the vessel permit  
10 to another commercial fishing vessel with an overall length that does not exceed the  
11 overall length of the vessel that was sunk, destroyed, or damaged by more than ten  
12 percent.

13 (h) During the moratorium established under (d) of this section, the  
14 commission shall, upon request of the new owner of a vessel and submission of proof  
15 of ownership, reissue a vessel permit to the new owner of a vessel if the ownership of  
16 the vessel identified on the vessel permit is transferred.

17 (i) During the moratorium established under (d) of this section, a vessel permit  
18 may be transferred to a shorter vessel that is substituted for the vessel identified on a  
19 vessel permit if

20 (A) the Board of Fisheries has adopted a vessel size restriction  
21 that prohibits the use of the vessel identified on the vessel permit in the fishery  
22 for which the vessel permit was issued;

23 (B) the substitute vessel complies with the vessel size  
24 restrictions adopted by the Board of Fisheries for the fishery for which the  
25 vessel permit was issued; and

26 (C) the substitute vessel is owned by the person or entity that  
27 owned the vessel identified on the vessel permit.

28 (j) A vessel permit is valid for the calendar year that is inscribed on the vessel  
29 permit. The annual fee for a vessel permit is

30 (1) \$650 for a vessel used in a pelagic trawl or non-pelagic trawl  
31 fishery;

1 (2) \$450 for a vessel used in a longline fishery;

2 (3) \$250 for a vessel used in a pot fishery.

3 (k) During the moratorium established under (d) of this section, the  
4 commission shall, in cooperation with the Department of Fish and Game, conduct  
5 investigations to determine appropriate alternatives for management of entry into Gulf  
6 of Alaska groundfish fisheries in the state. The commission shall submit proposals to  
7 the legislature for legislation or constitutional amendments necessary to implement the  
8 recommendations of the commission.

9 (l) The commission may adopt regulations that the commission considers  
10 necessary to implement this section.

11 (m) Notwithstanding other provisions of this section, a vessel permit issued  
12 under this section is not required of a vessel while that vessel is participating in the  
13 Prince William Sound sablefish fishery, northern Southeast Inside sablefish fishery,  
14 the southern Southeast Inside sablefish fishery, a halibut fishery managed under a  
15 federal individual fishery quota system, or the directed demersal shelf rockfish  
16 fisheries.

17 (n) In this section,

18 (1) "Chignik" means the marine water of the Chignik groundfish  
19 fishery registration area, as defined by the Board of Fisheries;

20 (2) "Cook Inlet" means the marine water of the Cook Inlet groundfish  
21 fishery registration area, as defined by the Board of Fisheries;

22 (3) "Eastern Gulf of Alaska" means the marine water of the Eastern  
23 Gulf of Alaska groundfish fishery registration area, as defined by the Board of  
24 Fisheries;

25 (4) "groundfish" means a species of marine finfish other than halibut,  
26 osmerids, herring, or salmonids;

27 (5) "Gulf of Alaska" means the marine water of the state adjacent to  
28 the Gulf of Alaska that is north and west of Dixon Entrance to the westward extent of  
29 state water of the Aleutian Islands;

30 (6) "Gulf of Alaska groundfish fishery" means a fishery in which  
31 groundfish are taken in a specified administrative or registration area using a specified

1 type of fishing gear that is either pelagic trawl, non-pelagic trawl, pot, or longline  
2 gear;

3 (7) "Kodiak" means the marine water of the Kodiak groundfish fishery  
4 registration area, as defined by the Board of Fisheries;

5 (8) "landing" means the act of offloading for sale, or for transport to a  
6 buyer for later sale, or catching and processing of groundfish taken in a halibut or  
7 groundfish fishery in state water for sale as evidenced by a Department of Fish and  
8 Game fish ticket;

9 (9) "Prince William Sound" means the marine water of the Prince  
10 William Sound groundfish fishery registration area, as defined by the Board of  
11 Fisheries;

12 (10) "South Alaska Peninsula" means the marine water of the South  
13 Alaska Peninsula groundfish fishery registration area, as defined by the Board of  
14 Fisheries.

15 \* **Sec. 10.** AS 16.43.911(c) is amended to read:

16 (c) Notwithstanding AS 16.05.815 and AS 16.43.975, the commission may  
17 release to the owner of a vessel information on the vessel's history of harvests in a  
18 fishery that is necessary to apply for a vessel permit under AS 16.43.901 - 16.43.908  
19 [AS 16.43.901 - 16.43.906].

20 \* **Sec. 11.** The uncodified law of the State of Alaska enacted in sec. 6, ch. 97, SLA 1997, as  
21 amended by sec. 6, ch. 30, SLA 2000, is amended to read:

22 Sec. 6. AS 16.43.906, added by sec. 3 of this Act, is [AND AS 16.43.911  
23 ARE] repealed July 1, 2004.

24 \* **Sec. 12.** AS 16.05.050(a)(19), 16.05.251(g), AS 16.43.227, and 16.43.228 are repealed.

25 \* **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to  
26 read:

27 CONTINGENT RETROSPECTIVITY. If this Act does not take effect before July 1,  
28 2004, secs. 10 - 11 of this Act are retrospective to June 30, 2004.

29 \* **Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).

1 buyer for later sale, or catching and processing of groundfish taken in a groundfish  
2 fishery in state water for sale as evidenced by a Department of Fish and Game fish  
3 ticket;

4 (9) "Prince William Sound" means the marine water of the Prince  
5 William Sound groundfish fishery registration area, as defined by the Board of  
6 Fisheries;

7 (10) "South Alaska Peninsula" means the marine water of the South  
8 Alaska Peninsula groundfish fishery registration area, as defined by the Board of  
9 Fisheries.

10 \* Sec. 10. AS 16.43.911(c) is amended to read:

11 (c) Notwithstanding AS 16.05.815 and AS 16.43.975, the commission may  
12 release to the owner of a vessel information on the vessel's history of harvests in a  
13 fishery that is necessary to apply for a vessel permit under AS 16.43.901 - 16.43.908  
14 [AS 16.43.901 - 16.43.906].

15 \* Sec. 11. The uncodified law of the State of Alaska enacted in sec. 6, ch. 97, SLA 1997, as  
16 amended by sec. 6, ch. 30, SLA 2000, is amended to read:

17 Sec. 6. AS 16.43.906, added by sec. 3 of this Act, is [AND AS 16.43.911  
18 ARE] repealed July 1, 2004.

19 \* Sec. 12. AS 16.05.050(a)(19), 16.05.251(g), AS 16.43.227, and 16.43.228 are repealed.

20 \* Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to  
21 read:

22 CONTINGENT RETROSPECTIVITY. If this Act does not take effect before July 1,  
23 2004, secs. 10 - 11 of this Act are retrospective to June 30, 2004.

24 \* Sec. 14. This Act takes effect immediately under AS 01.10.070(c).

# Alaska State Legislature

SENATOR  
BEN STEVENS  
716 WEST 4<sup>TH</sup> AVENUE  
ANCHORAGE, AK  
99501-2133  
(907) 269-0200  
FAX (907) 269-0204



Session:  
STATE CAPITOL  
JUNEAU, AK  
99801-1182  
(907) 465-4993  
FAX (907) 465-3872

Senate District N

## Introduction to Information in Committee Packet on SB 347

Senate Bill 347 is a two-part bill. One part (Sections 2-8) amends the existing provisions in the limited entry statutes authorizing CFEC to administratively establish a temporary moratorium on entrants of new participants into a fishery.

The other part of the bill (Sections 1 and 9) statutorily establishes a moratorium in the Gulf of Alaska state waters groundfish fisheries.

The sectional goes through the bill in order. Please note that Sections 1 and 9 pertain specifically to the Gulf of Alaska groundfish moratoria. Sections 2 – 8 amend existing provisions in the limited entry statutes relating to the establishment of moratoriums.

Other information in this bill packet is divided into two sets. One explains the revisions to the current moratorium statute, and the other explains the portion of the bill establishing moratoria in the groundfish fisheries.

# Alaska State Legislature

SENATOR  
BEN STEVENS  
716 WEST 4<sup>TH</sup> AVENUE  
ANCHORAGE, AK  
99501-2133  
(907) 269-0200  
FAX (907) 269-0204



Session:  
STATE CAPITOL  
JUNEAU, AK  
99801-1182  
(907) 465-4993  
FAX (907) 465-3872

Senate District N

## SPONSOR STATEMENT

### Senate Bill 347

"An Act relating to moratoria on entry of new participants or vessels into a commercial fishery; relating to vessel permits for, and the establishment of a moratorium on entry of new vessels into, state Gulf of Alaska groundfish fisheries; and providing for an effective date."

Senate Bill 347 addresses two issues regarding fisheries moratoria. One section of the bill amends AS 16.43.225 to allow the statute to be utilized. Because of its current inadequacies, the law has never been used to place a moratorium on a fishery. All of the moratoria implemented to date have required special legislation. The second issue addressed in the bill is the immediate need to place a moratorium on the Gulf of Alaska groundfish fisheries.

Over the past 12 years, some members of the Gulf of Alaska (GOA) groundfish fishing industry have sought to rationalize the groundfish fishery. Participants want to create incentives that slow the competitive race for fish. The belief is that this will result in a more economically stable fishery that can better respond to changing economic and environmental concerns.

The North Pacific Fishery Management Council (NPFMC) has taken several steps toward rationalization over the past 12 years. The Council formed the first of three committees to address GOA rationalization in the groundfish fishery in 2000. The Council is developing several alternative approaches for new management policies to rationalize GOA groundfish fisheries resulting from four years of Council meetings and input from eight public hearings held throughout Alaska and Seattle during the summer and fall of 2002.

Rationalizing federal fisheries in the GOA could affect State of Alaska fishery management. In October 2003, the Board of Fisheries convened a committee of stakeholders with state, National Marine Fisheries Service, Board of Fisheries, Department of Law, and Council staff. It is called the GOA Groundfish Rationalization Task Force. Their mission is to pursue approaches to provide harvest opportunities under GOA rationalization in state waters that does not conflict with state law.

In February 2004, the Board of Fisheries voted 7-0: (1) to recommend pursuing legislative authority for a moratorium on all new entrants into the groundfish fisheries, excluding jig gear; (2) to recommend maintaining current state groundfish management, or alternatively, allocate a range of harvests for state management based on historic harvest patterns in state waters; and (3) direct the GOA Task Force to continue to explore ways to control harvests within state waters that meet the goals of GOA rationalization and restrictions under state law.

Senate Bill 347 will assist the Department of Fish and Game and the Commercial Fisheries Entry Commission in meeting the objectives outlined by the Board of Fisheries for the development of state water groundfish fisheries in the Gulf of Alaska.

# Alaska State Legislature

SENATOR  
BEN STEVENS  
716 WEST 4<sup>TH</sup> AVENUE  
ANCHORAGE, AK  
99501-2133  
(907) 269-0200  
FAX (907) 269-0204



Session:  
STATE CAPITOL  
JUNEAU, AK  
99801-1182  
(907) 465-4993  
FAX (907) 465-3872

## Senate District N

### Sectional Analysis CSSB347 (RES)

**“An Act relating to moratoria on entry of new participants or vessels into a commercial fishery; relating to vessel permits for, and the establishment of a moratorium on entry of new vessels into, state Gulf of Alaska groundfish fisheries; and providing for an effective date.”**

Section 1. Findings and Purpose for the establishment of a moratorium on entry of new vessels into state Gulf of Alaska groundfish fisheries. [Section 9 in the bill.]

#### Amending Existing CFEC Moratorium Provisions

Section 2. Sets forth purposes for which CFEC may establish a moratorium in a fishery.

Section 3. Establishes that a moratorium may be for one or more fisheries or one or more species, gear types, or areas.

Section 4. Existing law allows for establishment of a moratorium of up to four years. This section adds ability to administratively extend up to another two years if necessary to achieve the purposes of the moratorium.

Section 5. Current law directs CFEC, during moratorium, to analyze whether the fishery should be limited under the existing limited entry program. This section expands that assignment, directing CFEC to evaluate a broader array of post-moratorium options for managing entry into the fishery in order to seek the best possible long-term solution for the fishery.

Section 6. Makes clear that moratorium eligibility criteria are to include an entrance qualification date established by the commission.

Authorizes establishment of a moratorium on persons, vessels, or both, and criteria for qualifying for those permits. Current law only provides for a moratorium on entry of new persons. This section is adding ability to also suspend entry of additional vessels or of both vessels and persons.

*In some fisheries multiple hired skippers run the same vessels over the course of a year. A person-only moratorium could result in many more moratorium permits than a vessel-based moratorium, thus allowing substantial expansion of fleets during moratorium. Capping the number of vessels to avoid additional capitalization during moratorium could be a more effective tool in such fisheries.*

**(NOTE: This does NOT authorize a permanent vessel-based limitation following the moratorium. Such authority would require approval of subsequent legislation.)**

Section 7.

Adds new subsections providing more detailed direction to CFEC than is provided in existing statute about structure, implementation, and ongoing handling of moratorium and moratorium permits.

(f) If moratoria are established for a fishery that involves multiple species, gear types, or areas, the commission may limit by restrictions and eligibility those species, gear types, or areas that are authorized under a vessel interim-use or interim-use moratorium permit.

(g), (h), (i), and (j) pertain specifically to when a vessel-based moratorium is used. **(These provisions are consistent with general provisions in CFEC law, but because the general provisions pertain to "person-based" permits, they cannot be relied upon to cover vessel permits.)**

(g) Authorizes CFEC to attach capacity restrictions to interim-use vessel permits to prevent upgrading to larger vessels and resulting expansion of fishing power during moratorium.

(h) Makes clear that permits can be modified or revoked by legislative action without compensation, and that they are not "property," may not be transferred, leased, attached, encumbered, etc. A vessel interim-use permit does not alter the requirement for the operator of the vessel to hold a valid interim-use permit from CFEC or for the vessel to have a commercial fishing vessel license from CFEC.

(i) Directs CFEC to charge fees for initial issuance and annual renewal of moratorium vessel permits. Annual fees are to reflect rates of economic return (fees for more lucrative fisheries are higher than for less lucrative) and those fees may not exceed \$1000.

(j) Authorizes CFEC to provide for substitution of another vessel if the vessel is sunk, destroyed, or damaged beyond use and is unable to operate in the fishery for which the permit is issued.

(k) Participation in the fishery during the moratorium may not be used to establish eligibility for a use privilege issued after the moratorium unless otherwise provided by a subsequently adopted law or CFEC regulation.

*Intended to discourage "speculative" fishing effort during moratorium.*

(l) Makes general provisions of CFEC law pertaining to person-based interim-use permits apply to person-based moratorium permits, unless those general provisions conflict with the provisions of section 16.43.225.

(m) Makes explicit that nothing in this section limits the powers of the Board of Fisheries or the Department of Fish Game.

(n) Under cited current laws, fishing history is generally releasable only to the skipper under whose interim-use permit fish was landed, even if the vessel used was owned by someone else. In a person-based moratorium or limited entry program, the applicant would be the skipper. However, under a vessel-based program, the vessel owner needs to access the fishing history data about landings made from the subject vessel in order to establish eligibility of the vessel for a vessel permit. Therefore, this section provides vessel owners access to that information if necessary to apply for a vessel permit.

Section 8. If a fishery that was under moratorium is subsequently limited under the traditional limited entry program, CFEC is authorized to establish a qualification date for eligibility for a limited entry permit that may or may not include time during the moratorium.  
Depending on the attributes of the particular fishery and participation patterns, there may be compelling reasons for including or not including any or all of the moratorium time in the eligibility period for a subsequently enacted limitation.

### *Gulf of Alaska Moratorium*

Section 9. (a) This subsection adds a section to AS 16.43 directing the Commercial Fisheries Entry Commission (CFEC) to issue annual vessel permits for each individual fishery by management area and gear type beginning January 1, 2005. Vessel owners are required to apply for these permits.

*Vessels instead of persons were chosen for limitation so as to define a smaller pool of participants to achieve the goal of controlling growth during development of a Gulf groundfish rationalization program in state waters.*

*The jig fishery was exempted from the bill in order to provide for entry level access to Gulf groundfish fisheries.*

- (b) Specifies that a vessel use permit is a use privilege rather than a property right, and that the use privilege can be modified or revoked by the Legislature without compensation.
- (c) Stipulates that on and after January 1, 2005 (except as in (m)), a vessel may not take Gulf groundfish without a vessel permit as described in (a). This stipulation is limited to trawl, longline, and pot gear; it exempts any other gear that may be permitted under Board of Fisheries regulations.
- (d) This section describes the qualifying years for the moratorium. It requires that a documented landing of Gulf groundfish with specified gear in specific areas be made between 1/1/98 and the effective date of this bill for issuance of a vessel permit during the moratorium.

*The Board of Fisheries first authorized a state water Pacific cod fishery—the state’s primary groundfish fishery—in 1997, and it wasn’t until 1998 that state residents took full advantage of the new fisheries; hence, 1998 was selected as the first qualifying year in order to maximize the benefits to Alaska’s residents.*

- (e) Participation of a person or a vessel in a Gulf groundfish fishery during the period of the moratorium may not be used to establish eligibility for a use privilege issued after the period of the moratorium.

*This section is intended as a disincentive for an increased “race for fish” during the moratorium.*

- (f) CFEC regulations may supercede subsections (d) –(e) if enacted by subsequent legislation authorizing such regulations.

- (g) If a vessel qualifying for a vessel permit is sunk, destroyed, or sufficiently damaged, CFEC may reissue the permit to another vessel owned by the same party. In this situation, the overall length of the new vessel may not exceed the overall length of the replaced vessel by more than 10%.
- (h) If ownership of a vessel changes hands, CFEC may reissue the Vessel Permit to the new owner.
- (i) Provides for a possible future situation in which the Board of Fisheries may adopt a vessel size restriction. This subsection would allow transfer of a vessel permit to a shorter vessel that falls within the size restriction as long as the owner of the vessel permit owns it.
- (j) Establishes annual fees by calendar year for vessel permits based on gear type: \$650 for non-pelagic or pelagic trawl, \$450 for longline, and \$250 for pot.
- (k) Directs CFEC and ADF&G to analyze appropriate management alternatives in the Gulf groundfish fisheries and submit such proposals as may be developed to the Legislature as appropriate to implement the recommendations.
- (l) Authorizes CFEC to adopt regulations as necessary to implement the moratorium.
- (m) Exempts vessels from this section while participating in the described fisheries.
- (n) Provides definitions.

Sections 10-11. Voids the repeal of 16.43.911-- which is currently to take effect July 1, 2004 -- in order to retain the ability of vessel owners to obtain fishing history information that would otherwise not be available to them if access to that information is necessary to establish eligibility for a moratorium vessel permit.

Section 12. Repeals 16.05.050(a)(19) that under current moratorium law authorizes the Commissioner of the Department of Fish and Game, if authorized by the Board of Fisheries, to petition CFEC to establish a moratorium in a fishery. *(A step that would no longer be required for initiating a moratorium under SB 347.)*

Repeals 16.05.251(g) that authorizes the Board of Fisheries to approve or disapprove a request from the Commissioner of the Department of Fish and Game to petition CFEC to establish a fishery moratorium. *(A step that would no longer be required for initiating a moratorium under SB 347.)*

Repeals 16.43.227, which authorized a moratorium in the Southeast Alaska Dungeness crab fishery. *(This is "clean up" of existing law since that moratorium has expired.)*

Repeals 16.43.228, which established a moratorium in the Southeast Alaska dive fisheries. *(This is "clean up" of existing law since that moratorium has expired.)*

Section 13. Ensures that sections 10 and 11 will be effective even if this bill is not passed and signed into law in time to beat the July 1, 2004, repeal of 16.43.911 – thus, it would "reinstate" section 16.43.911 if its repeal has taken effect prior to the effective date of this bill.

Section 14. Establishes an immediate effective date.

# Alaska State Legislature

SENATOR  
BEN STEVENS  
716 WEST 4TH AVENUE  
ANCHORAGE, AK  
99501-2133  
(907) 269-0200  
FAX (907) 269-0204

Session:  
STATE CAPITOL  
JUNEAU, AK  
99801-1182  
(907) 465-4993  
FAX (907) 465-3872

Senate District X

## MEMORANDUM

TO: Senator Scott Ogan, Chair  
Senate Resources Committee

FROM: Senator Ben Stevens <sup>BS</sup>

DATE: February 17, 2004

RE: Senate Bill 347

---

I respectfully request the scheduling of Senate Bill 347 "An Act relating to moratoria on entry of new participants or vessels into a commercial fishery; relating to the establishment of a moratorium on entry of new vessels into state groundfish fisheries in the Gulf of Alaska and adjacent state marine water; and providing for an effective date," at your earliest possible convenience.

The need to amend the current fisheries moratorium law  
Sections 2-8 of SB 347

This legislation will advance the goals of developing and protecting Alaska jobs and streamlining government and resource management by providing a tool that can be utilized, where appropriate, to avoid the risk of:

- Harm to fishery resources
- Economic distress among fishermen
- Over-capitalization
- Closure of fisheries
- A stampede of speculators (permit seekers)
- Having to go directly to permanent limitation, perhaps prematurely, if it remains the only available option.

AS 16.43.225 is the section of the Limited Entry Act authorizing CFEC to establish a moratorium on new entrants into a fishery. A moratorium is intended to provide a temporary halt in growth of a fishery during which the state and the fishing industry have an opportunity to assess the situation and explore options before deciding on permanent action.

However, the criteria and process mandated under the current statute have been so unusable that all of the moratoria implemented to date have required special legislation. In fact, the steps currently required are so cumbersome that undertaking a moratorium under the current statute could be counter-productive and could actually generate the damaging rush into a fishery that a moratorium is intended to prevent. Amendments are needed to correct the flaws in this section of law and make it available as a useful tool for fisheries management.

As fishermen diversify into new species, new fisheries are developing and, in some cases, expanding quickly. If participation levels in a given fishery are growing too rapidly, but it is not clear that imposition of limited entry is appropriate or timely, it is important to have the ability to expeditiously establish a moratorium to contain growth while analysis is done to determine what is needed to ensure the health of the fishery for the longer term. This would include assessment of whether permanent limitation of the fishery is warranted, and if so, how a limitation should be structured to be most fair, best conserve the resource, and provide for the orderly development of the fishery.

Because the current moratorium statute is inadequate, several times in recent years fishermen have had to seek passage of special legislation to statutorily enact moratoria in specific fisheries. In such cases, the lack of a workable means of quickly, administratively implementing a moratorium could have disastrous results for the fishery.

To date, 67 of Alaska's fisheries have been placed under limited entry. Over 130 permitted fisheries remain open access. Many of these will be suited to remaining unlimited in the years to come. Others will be suited to limitation under the Limited Entry Act. Still others, particularly if they experience dramatic rapid growth, may be best served by a timely moratorium, protecting the fishery while long-term solutions are explored. The latter approach will only be a realistic and workable option if AS 16.43.225 is appropriately amended.

CS for SB 347(RES)

**Discussion Points on Legislative Moratorium for Gulf Groundfish Fisheries - (Section 9)**

**ADF&G**

**3/1/04**

- The State's groundfish fisheries are currently open access fisheries.
- The North Pacific Fisheries Management Council (NPFMC) has been seriously considering rationalization of the federal Gulf of Alaska groundfish fisheries for about five years. Final action on a plan is expected late in 2005.
- NPFMC's goals with rationalization are supportable; they are intended to create incentives that slow the competitive race for fish in ways that will create economic stability for the industry and fisheries-dependent communities, that improves safety, and that can better respond to changing economic, biologic, and environmental concerns.
- While the State supports these goals, the suite of options being considered could have significant impacts to the current state water and parallel fisheries inside three miles.
- During the federal fishery, the Board of Fisheries has traditionally opened the "parallel fisheries" between 0-3 miles to allow access to fish harvested against the federal Total Allowable Catch (TAC) by federally-qualified vessels inside of state waters.
- If the federal rationalization program allocates individual harvest privileges via individual fishing quotas, cooperatives or other measures that allocate shares, and if the State maintains status quo management in its fisheries, the pressure from federal participants in state waters will likely increase. If access to the state waters and parallel fisheries are not controlled there will be an intensified race for fish, decreased efficiencies, increased economic instability for industry and fisheries-dependent communities, and issues associated with localized stock depletion and bycatch.
- The Board of Fisheries has appointed a steering committee comprised of Board members and stakeholders to analyze options for management programs in the state water and parallel Gulf groundfish fisheries to advise ADF&G and CFEC. This group is working to identify and develop constitutionally-acceptable rationalization options for consideration.
- Attempts are being made to develop a state rationalization program that would complement and not confound—if possible—the rationalized federal groundfish fisheries.
- A moratorium on effort in the state water and parallel Gulf groundfish fisheries is necessary in order to control growth during the development of a rationalization program in these fisheries.
- We support CFEC's statutory authority to enact appropriate moratoria. However, given that actions are imminent that can so strongly impact the interests of the State's Gulf groundfish fisheries, a legislative moratorium for these fisheries is recommended at this time to halt growth while options can be explored before permanent actions are taken.

## Current Moratorium Statute

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

(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) 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) 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.

(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) 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.

**General Moratorium Law**  
**Comparing Main Provisions of under Current Law with**  
**Amended Provisions under CSSB 347(RES)**

Provision	Current Law	SB 347
<p>Steps and entities required to initiate process of establishing a moratorium</p>	<p><u>16.43.225(b)</u>            Commissioner of ADF&amp;G makes findings that a moratorium would meet criteria under 16.05.050(a)(19) and must request approval from Board of Fisheries to petition CFEC for moratorium.</p> <p>Board considers request and findings at its next regular or special meeting that follows receipt of the request and that allows time for 15 days' public notice of board's intention to consider the petition. (AS 16.05.251(g))</p> <p>If Board votes to approve Commissioner's request, Commissioner may then petition CFEC for moratorium.</p> <p>CFEC may then propose a moratorium if it finds a moratorium is warranted under criteria in 16.43.225</p>	<p><u>Bill section 2 -- 16.43.225(a)</u>            CFEC may propose moratorium if it finds a moratorium would meet criteria under 16.43.225 (<i>this would be done after consultation with ADF&amp;G</i>)</p>
<p>Purpose of moratorium/conditions under which moratorium may be established</p>	<p>Listed in current 16.43.225 (a) and 225(b), and 16.05.050(a)(19)</p>	<p><u>Bill section 2</u>            Listed in new 225 (a)</p>
<p>Entities for which a moratorium in new entrants may be established</p>	<p><u>225(e)</u>            Persons</p>	<p><u>Bill sections 2 &amp; 6</u>            Persons, vessels, or both (225 (a))  <i>(Moratorium on entry of additional vessels may be essential to controlling growth of fishery during moratorium.</i>  <u>Note:</u> <i>This does not provide authority for vessel-based permanent limitation)</i></p>

<p>Additional provisions/direction:</p>	<p>Current law silent on these issues, so authority and latitude is left unclear or dependent upon "general authorities" provisions of statutes.</p>	<p><u>Bill section 7</u>  <u>225 (b) (c) &amp; (f)</u>  For fisheries involving more than one resource, gear type or area, CFEC may spell out which of those are authorized under a given moratorium permit.  <i>(Critical tool to be able to deal effectively with complex fisheries with multiple species, gears, and areas involved).</i></p> <p><u>225(g)</u>  CFEC may adopt fishing capacity restrictions for moratorium permits <i>(to avoid significant expansion of fleet's fishing power during moratorium. Could be critical in fisheries with wide range of vessel sizes)</i></p> <p><u>225 (i)</u>  CFEC shall charge annual fees for moratorium permits that reasonably reflect economic return in the fishery <i>(CFEC general authorities do not contain vessel permit fee authority - need explicit authority for vessel moratoria.)</i></p> <p><u>225 (e)(2)</u>  If moratorium established on vessels, moratorium permits are issued to owner, (as of qualification date) of qualifying vessel.</p>
<p>Question of whether participation during moratorium may count toward any future use privilege</p>	<p><u>16.43.260(f)</u>  Participation during moratorium may not be counted.</p>	<p><u>Bill section 7 --225(k)</u>  Participation during moratorium may not be counted, unless otherwise provided by law or regulation.</p>

**GEAR PROPOSED TO BE INCLUDED IN THE GROUND FISH  
UNDER THE PROPOSED GULF OF ALASKA MORATORIA**

5 AAC 39.105 (d)(10) a trawl is a bag-shaped net towed through the water to capture fish or shellfish.

5 AAC 39.105 (d) (10) (C) a pelagic trawl is a trawl where the net, or the trawl doors or other trawl spreading device, do not operate in contact with the seabed and which does not have attached to it any protective device, such as chafing gear, rollers, or bobbins, that would make it suitable for fishing in contact with the seabed.

5 AAC 39.105 (d) (11) a pot is a portable structure designed and constructed to capture and retain fish and shellfish alive in the water.  
5 AAC 28.050 (e) a groundfish pot is a pot with individual tunnel eye openings with perimeters 36 inches or less.

5 AAC 39.105 (d) (13) a longline is a stationary buoyed or anchored line or a floating, free drifting lines with lures or baited hooks attached.

Other lawful gear will not be included under the moratoria.

Comparison of federal and state water groundfish areas.

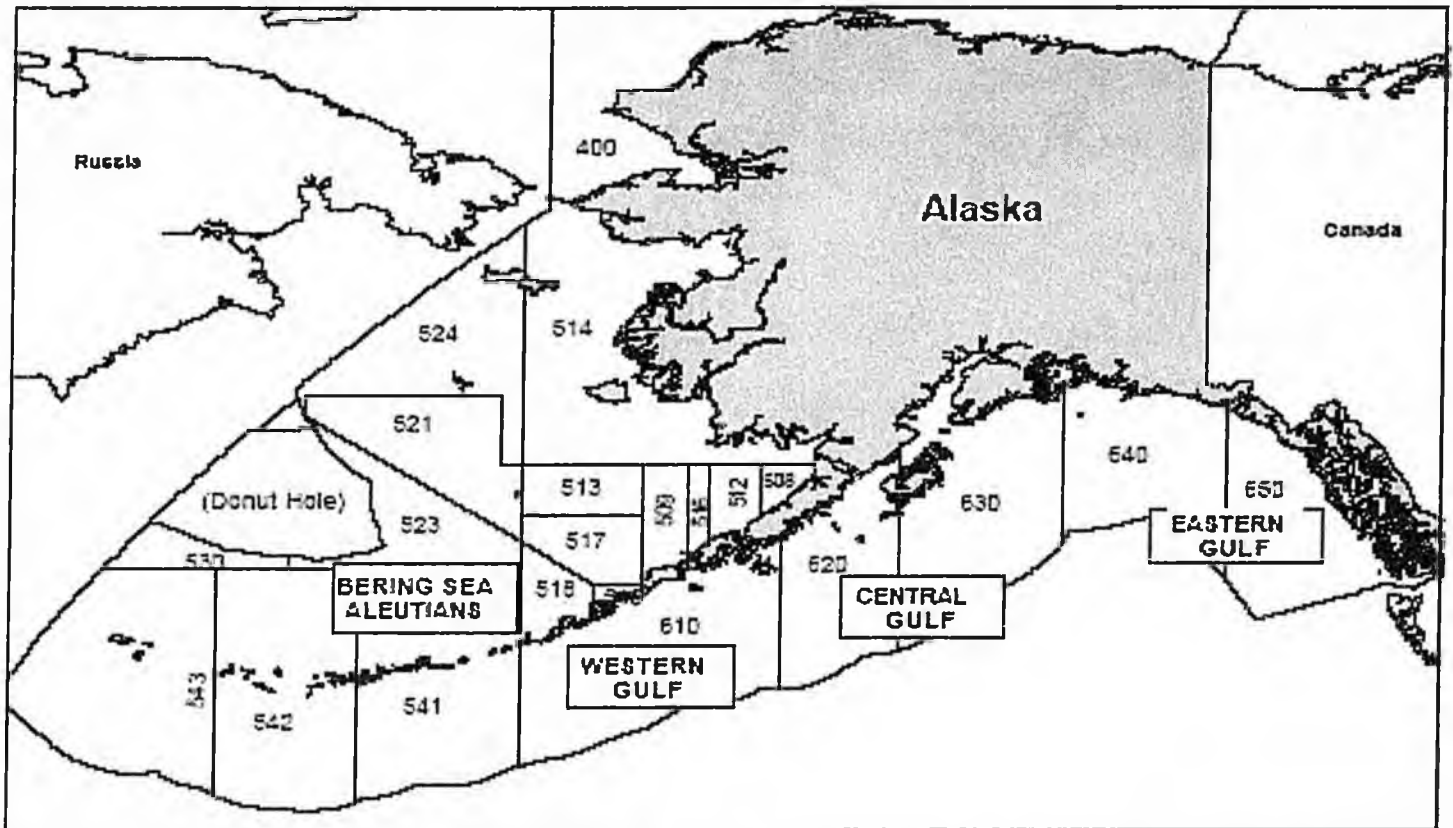


Figure 1. National Marine Fisheries Service statistical and reporting areas.

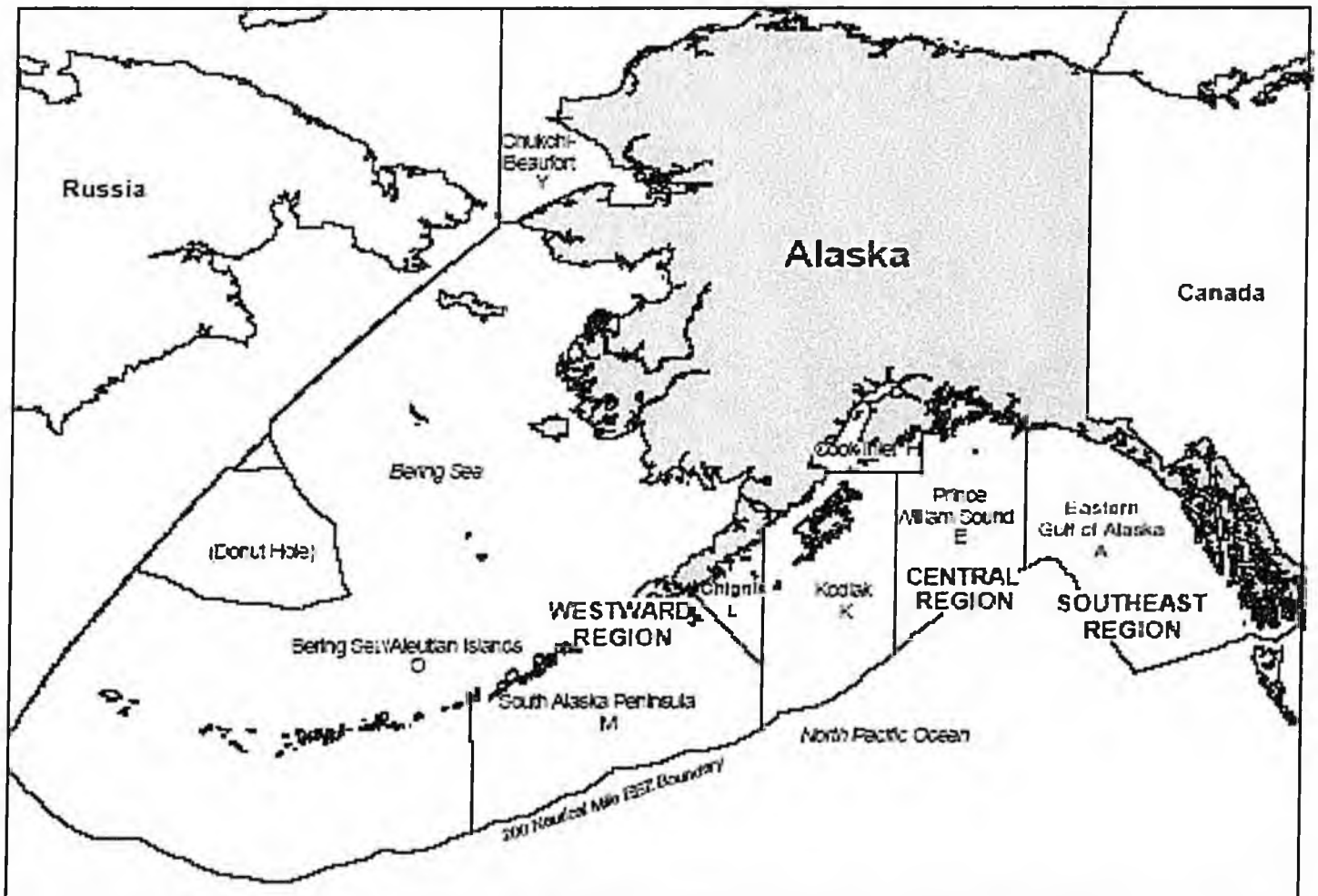


Figure 2. Alaska Department of Fish and Game groundfish registration areas and regions.

**Subject: moratorium permit**

**Date:** Mon, 1 Mar 2004 09:34:46 -0900

**From:** "David Polushkin" <davidp@mtaonline.net>

**To:** "Scott Ogan" <senator\_scott\_ogan@legis.state.ak.us>

Mr Scott Ogan,

When The Resource committee will be voting on the moritorium I would like to bring your attention to page 8 lines 30 to 31 and page 9 line 1.

The fee structure is not fair. For example the pot boats fee is \$250 some of those boats are in the 100 foot range.

The longline boats that fish in state waters are mostly 32 foot to 42 foot range and thier fee is \$450.

It is only fair if the fee is structured by boat size. For example 32 to 58 feet \$250, 58 to 70 feet \$450, 70 up \$650.

The smaller boats are all Alaska residents. There is less residents in the bigger boat catigory.

Sincerely Yours  
K-Bay Fishing Association Inc.  
President  
David Polushkin

**STATUTES REQUIRING ACTION BY BOARD OF FISHERIES & COMMISSIONER OF ADF&G TO REQUEST THAT CFEC ESTABLISH A FISHERY MORATORIUM**

**Sec. 16.05.050. Powers and duties of commissioner.**

(a) The commissioner has, but not by way of limitation, the following powers and duties: ....

(19) to petition the Alaska Commercial Fisheries Entry Commission, unless the Board of Fisheries disapproves the petition under AS 16.05.251(g), to establish a moratorium on new entrants into commercial fisheries

(A) that have experienced recent increases in fishing effort that are beyond a low, sporadic level of effort;

(B) that have achieved a level of harvest that may be approaching or exceeding the maximum sustainable level for the fishery; and

(C) for which there is insufficient biological and resource management information necessary to promote the conservation and sustained yield management of the fishery.

---

**Sec. 16.05.251. Regulations of the Board of Fisheries.....**

(g) The Board of Fisheries shall consider a request of the commissioner for approval of a petition to the Alaska Commercial Fisheries Entry Commission to establish a moratorium on new entrants into a commercial fishery under AS 16.43.225 at the board's next regular or special meeting that follows the receipt by the board of the request for approval of the petition and that allows time for the notice required under this subsection. The board may consider the request of the commissioner for approval of the petition only after 15 days' public notice of the board's intention to consider approval of the petition. The board shall consider whether the commissioner, in support of the request for approval of the petition, has adequately shown that the fishery meets requirements for a moratorium on new entrants under AS 16.05.050. The board by a majority vote of its members at the meeting when the petition must be considered shall approve or disapprove the petition.

Number of Unique Vessels - All Areas

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Halibut						2,774	3,247	3,777	3,925	3,642	4,206	4,409	3,452	3,393	3,450	2,057	1,962	1,925	1,601	1,613
Sablefish						371	606	868	888	768	822	887	1,123	915	1,139	517	503	504	449	433

Number of days in the fishery

Halibut Area 2C	10	7	5	5	3	4	3.5	3	4	3	2	2	5	3	3	245	245	245	245	245
Halibut Area 3A	20	13	11	7	5	5	4	3	4	4	3	2	4	2	3	245	245	245	245	245
Halibut Area 3B	20	16	18	10	6	7	5	3.5	4	4.25	2	2	4	2	3	245	245	245	245	245

Number of Unique Vessels - All Areas

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Halibut						2,774	3,247	3,777	3,925	3,642	4,206	4,409	3,452	3,393	3,450	2,057	1,962	1,925	1,601	1,613
Sablefish						371	606	868	888	768	822	887	1,123	915	1,139	517	503	504	449	433

Number of days in the fishery

Halibut Area 2C	10	7	5	5	3	4	3.5	3	4	3	2	2	5	3	3	245	245	245	245	245
Halibut Area 3A	20	13	11	7	5	5	4	3	4	4	3	2	4	2	3	245	245	245	245	245
Halibut Area 3B	20	16	18	10	6	7	5	3.5	4	4.25	2	2	4	2	3	245	245	245	245	245

Comparison of federal and state water groundfish areas.

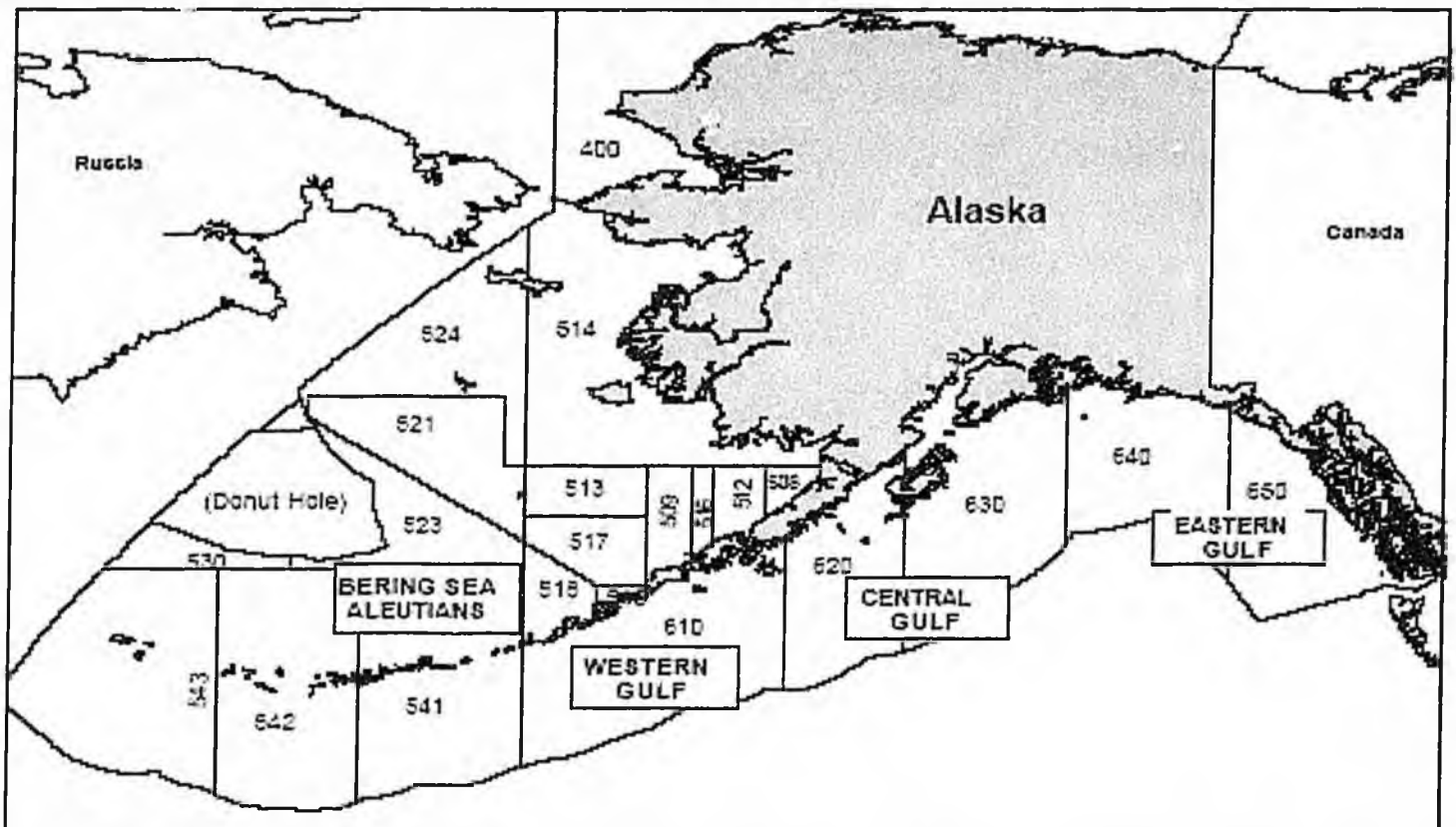


Figure 1. National Marine Fisheries Service statistical and reporting areas.

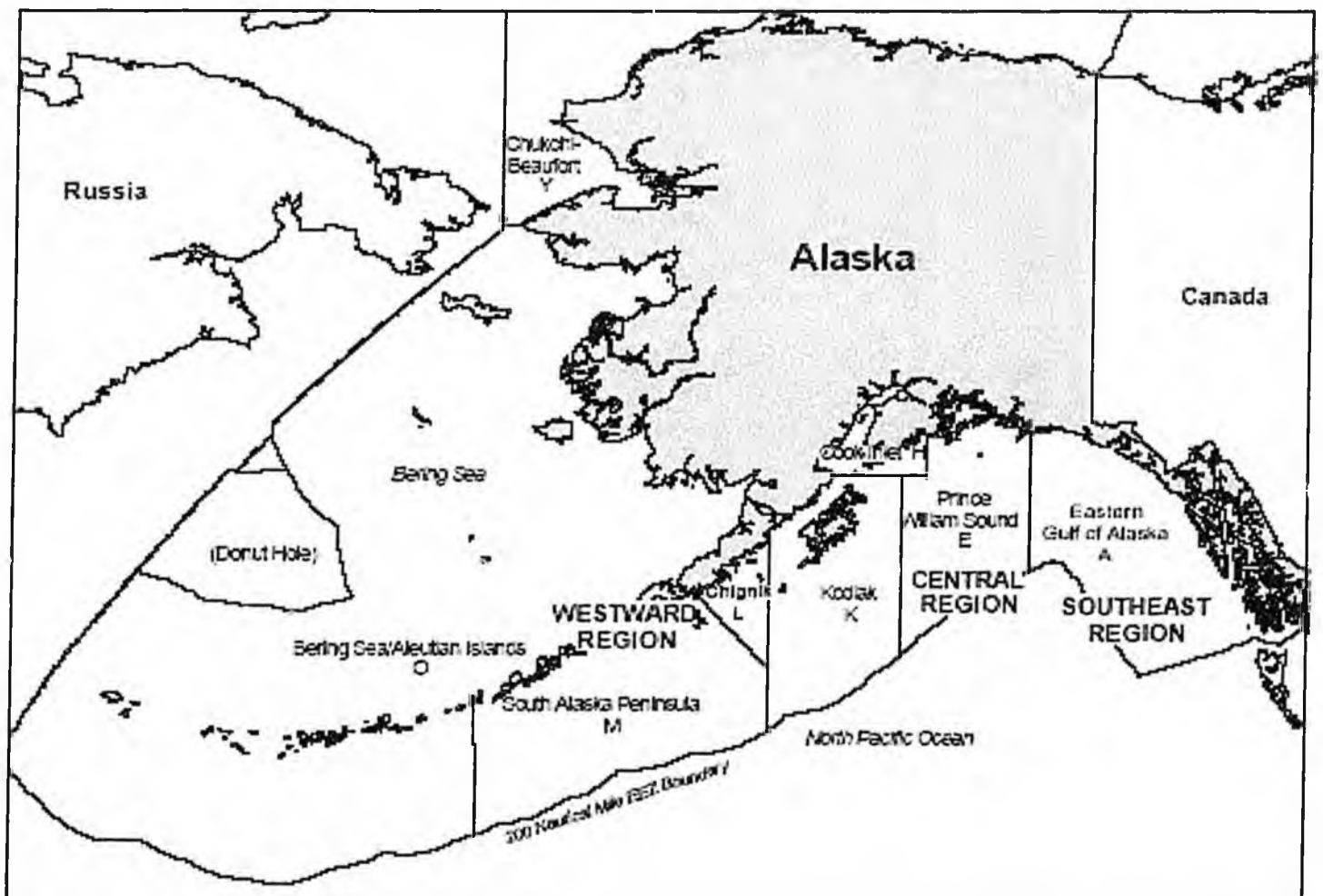


Figure 2. Alaska Department of Fish and Game groundfish registration areas and regions.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

# Petersburg Vessel Owners Association

PO Box 232

Petersburg, Alaska 99833

Phone: (907) 772-9323 Fax: (907) 772-4495

March 3, 2004

Senator Ogan, Chair  
Senate Resources Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801

Dear Senator Ogan and Committee Members,

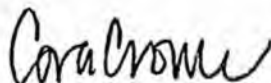
Thank you for the opportunity to provide comments as you consider SB 347. Petersburg Vessel Owners Association is a group of commercial fishermen who participate in the fisheries that would be affected by the moratorium under Section 9 of this bill. The specific concern that I would like to address today is the inclusion of Eastern Gulf of Alaska groundfish fisheries in this moratorium. The North Pacific Council decided early on in the discussion of Gulf of Alaska rationalization that the Eastern Gulf of Alaska would not be included in the program because the groundfish fisheries in our region are not in need of limitation or rationalization.

We do not have an excess of participants; we do not have derby-style fisheries, and we do not feel that rationalization in the rest of the gulf will result in problems in our area. For whatever reason, we do not, at this time, have large aggregations of pacific cod or the other groundfish species that would make directed fisheries on these species economically viable on a large scale. Therefore we don't foresee the eastern gulf being a viable alternative to those who might be displaced by a rationalization program in the rest of the gulf.

For this reason, we believe that this moratorium presents an unnecessary barrier to entry into these groundfish fisheries. If, at some future time, effort does expand in the eastern gulf and we find our fisheries in need of limitation, we should be able to avail ourselves of the CFEC moratorium process that is laid out in sections two through eight of this bill.

We can support this bill for the portion of the gulf that is subject to the federal rationalization program. However, we would ask you to consider removing fisheries one through four under section nine of this bill. Thank you for your consideration of these comments.

Sincerely,



Cora Crome  
Director

Erin Harrington  
1325 Mission Rd  
Kodiak, AK 99615

---

Senator Scott Ogan  
Senate Resources Committee  
State Capitol  
Juneau, AK 99801

March 5, 2004

Chairman Ogan and Committee Members:

Thank you for the opportunity to testify on SB 347 during your March 3 hearing. As a commercial fisherman, daughter of a cod fisherman, and domestic partner of a cod fisherman, as well as a graduate student in seafood marketing and economics, my livelihood and that of my family members may be greatly affected by the actions taken by the legislature on this matter.

I would like to clarify my earlier testimony regarding this bill. As you have discussed, the bill is in two sections. My concerns about the second section hinge on your treatment of the first.

Sections 2 through 8 of SB 347 create a mechanism whereby the Commercial Fisheries Entry Commission would have the authority to implement a moratorium on Gulf of Alaska groundfish fisheries. I support efforts to give the CFEC the authority to evaluate these fisheries and take appropriate future actions.

Section 9 of the bill would establish a legislative moratorium. I presently prefer the system outlined in sections 2 through 8 to a legislative moratorium, and believe that any process of limiting access to a fishery is best handled in the CFEC. However, if the legislature feels it necessary to opt for the Section 9 moratorium, I would encourage you to *consider the inclusion of jig gear* in such a bill. An influx of permit speculators into the jig fishery has already begun and would certainly continue without its inclusion in such a moratorium. But again, let me reaffirm my belief that putting authority for future moratoria in the hands of the CFEC is preferable to a legislative moratorium.

Lastly, I would like to strongly disagree with Alvin Burch and Joe Childers, who would like to see a moratorium linked to vessels rather than permit holders. As Oliver Holm correctly stated, absentee ownership should not be a goal in any state waters fishery.

Again, I would like to thank you for the opportunity to share my views with you on this matter.

Sincerely,

  
Erin Harrington  
(907) 486-8848

**S B**

**3 5 5**

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 355  
 (S) Publish Date: 2/27/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Environmental Conservation  
 Title "An Act relating to the protection of land and RDU Air & Water Quality  
water from waste disposal . . ." Component Water Quality  
 Sponsor Rules Committee by Request  
 Requester Governor Component No. 2062

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>6.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

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

**ANALYSIS:** (Attach a separate page if necessary)

Bill has no fiscal impact on the Department.

Prepared by: Lynn J. Tomich Kent  
 Division Air & Water Quality  
 Approved by: Kurt Fredriksson, Deputy Commissioner  
 Agency Department of Environmental Conservation

Phone 465-5312  
 Date/Time 2/18/04 2:41 PM  
 Date 2/18/2004

# STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION  
OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR  
410 Willoughby Ave., Ste 303  
Juneau, AK 99801-1795  
PHONE: (907) 465-5065  
FAX: (907) 465-5070  
<http://www.state.ak.us/dec/>

March 11, 2004

The Honorable Scott Ogan, Chairman  
Senate Resources Committee  
State Capitol, Room 103  
Juneau, Alaska 99801

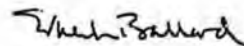
Dear Senator Ogan:

The Department of Environmental Conservation respectfully requests your consideration in scheduling a hearing for SB 355, an "Act relating to the protection of land and water from waste disposal; providing for the regulation of waste management; making conforming amendments; and providing for an effective date," in the Senate Resources Committee at your earliest convenience. The bill has had a previous hearing in the Senate Community and Regional Affairs Committee.

You may recall that we spoke last month about a bill that would direct the State to assume primacy for the federal wastewater discharge permitting (NPDES) program. We are not yet ready to proceed with NPDES assumption and SB 355 does not direct this agency to pursue primacy. The bill, however, retains many of the other important provisions we discussed. Its effect is to rationalize the statutory authority for the waste disposal permit program under AS 46.03.100, by reorganizing and supplementing the permitting tools available to the agency to protect Alaska's surface water and groundwater from pollution. SB 355 has a zero fiscal note. Attached is information which explains the bill in further detail.

Dan Easton, DEC's Water Division Director will provide you with any additional information you might require regarding this bill. Your staff can contact Mr. Easton at 465-5135, or Melanie Lesh, the department's legislative liaison, at 465-5290. As always, please contact me if I can be of assistance.

Sincerely,



Ernesta Ballard  
Commissioner

## Attachments

cc: The Honorable Senate Resources Committee Members  
Dan Easton, Director, Division of Water, DEC

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

SENATE BILL 355/HOUSE BILL 524

"RELATING TO THE PROTECTION OF LAND AND WATER FROM WASTE DISPOSAL"

Senate Bill 355 and House Bill 524 replace specific statutory references to "permits" with the broader term "authorization" and allows DEC to select from a range of tools to authorize waste disposal activities depending on risk. Tools include:

- I. **Individual permits.** This is the conventional permit issued to a specific facility for a particular disposal activity. Individual permits are used to authorize larger, more complex, larger volume, and higher risk activities.

**Examples** of facilities and operations likely authorized using **individual permits**:

- Major seafood processors
- Major municipal wastewater discharges
- Refinery discharges
- Ballast water treatment discharges
- Large (Class I and 2) landfills
- Oil and gas drilling waste disposal not covered by integrated waste mgt. permits
- Asbestos monofills

- II. **General permits.** General permits are used to authorize a number of similar activities in a geographic area. Persons that wish to be covered by the general permit notify DEC of their intent to operate in compliance with the permit. General permits are used to authorize lower risk activities.

**Examples** of facilities and operations likely authorized using **general permits**:

- Placer mines
- Log transfer facilities
- Stormwater discharges
- Remote camp sewage/solid waste disposal
- Oil and gas exploration and development
- Small seafood processors

- III. **Permits by rule.** The "permit by rule" tool is used to authorize low-risk activities by promulgating requirements in regulation.

**Examples** of facilities and operations likely authorized using **permits by rule**:

- Rural landfills
- Residential domestic wastewater systems that discharge to marine waters
- Coal bed methane exploration
- Non-jurisdictional wetland fill
- Construction dewatering
- Oil/water separators
- Small animal confinement operations
- Construction debris landfills
- Wood waste monofills

**IV. Plan approvals.** Sewerage systems and treatment works **that do not discharge** can be authorized by plan approval.

**Examples** of facilities and operations likely authorized by **plan approval**:

- Zero-discharge sewage treatment lagoons
- Zero-discharge temporary storage of oil and gas drilling waste
- Zero-discharge temporary storage of some coal bed methane projects

**V. Integrated waste management permits.** Complex facilities and operations requiring more than one DEC waste disposal authorization can be authorized using integrated waste management permits.

**Examples** of facilities and operations likely authorized by **integrated waste management permits**:

- Complex mining operations
- Major oil/gas development/production projects

DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
SENATE BILL 355

**"RELATING TO THE PROTECTION OF LAND AND WATER FROM WASTE DISPOSAL"**

Senate Bill 355 clarifies the statutory foundation for a rational water protection program. It is an integral piece of the Department of Environmental Conservation's (DEC) "Raindrops to Oceans" initiative to move the State of Alaska to a comprehensive and rational program for protecting Alaska's water as it flows through the hydrologic cycle, from raindrops to oceans.

**What the bill does:**

SB 355 replaces specific statutory references to "permits" with the broader term "authorization" and **allows DEC to select from a range of tools to authorize waste disposal activities depending on risk.** Tools include:

- **Individual permits.** This is the conventional permit issued to a specific facility for a particular disposal activity. Individual permits are used to authorize larger, more complex, larger volume, and higher risk activities.
- **General permits.** General permits are used to authorize a number of similar activities in a geographic area. Persons that wish to be covered by the general permit notify DEC of their intent to operate in compliance with the permit. General permits are used to authorize lower risk activities.
- **Permits by rule.** The "permit by rule" tool is used to authorize low-risk activities by promulgating requirements in regulation. Permits by rule are used for low-risk activities.
- **Plan approvals.** Sewerage systems and treatment works that do not discharge can be authorized by approving plans.
- **Provides for integrated waste management permits** for complex facilities requiring more than one DEC permit.

**Allows administrative extension of DEC permits.** SB 355 allows DEC to develop regulations under which the agency may extend expiring individual and general permits beyond their expiration date.

**Expands requirements for proof of financial responsibility** for harmful mining waste. Proof of financial responsibility authority is used to make sure that owners of large solid waste disposal facilities have set aside enough money to properly close the facilities. For mining activities, rather than requiring separate financial assurance, SB 355 allows DEC to accept financial assurance provided to a state or federal land management agency.

**Modifies the definition of "solid waste"** to make the term more specific and **adds a definition for "municipal solid waste"** to help distinguish municipal solid waste from industrial and other forms of solid waste. SB 355 also allows DEC to exempt small landfills that accept household hazardous waste from providing proof of financial responsibility.

SB 355

SENATE BILL NO. 355 BY THE SENATE RULES COMMITTEE  
BY REQUEST OF THE GOVERNOR, entitled:

"An Act relating to the protection of land and water from waste disposal; providing for the regulation of waste management; making conforming amendments; and providing for an effective date."

Dear President Therriault:

Under the authority of article III, section 18, of the Alaska Constitution, and in the interest of reducing duplication in and otherwise improving regulatory processes, I am transmitting a bill relating to regulation of waste management and disposal that would:

1. reorganize and supplement existing statutory authority to provide flexibility in the regulatory tools used to control the treatment and disposal of waste;
2. streamline certain aspects of the permitting process; and
3. provide explicit statutory authority for proof of financial responsibility for certain types of municipal solid waste and mining waste treatment and disposal facilities.

Under existing state law, the Department of Environmental Conservation (DEC) regulates a broad universe of waste and wastewater disposal activities. In addition to regulating discharges to surface waters, the DEC regulates discharges to groundwater and the disposal of solid and liquid wastes on land. The existing statutory authority for these regulatory programs is drawn from several sections of AS 46.03, some providing broad, general powers and others prescribing detailed requirements. These statutory authorities do not provide adequate regulatory tools for efficient regulation of waste treatment and disposal.

This bill would change the existing statutory authority for a waste disposal permit program (AS 46.03.100) by reorganizing and supplementing it. That reorganized section would preserve the essential requirement to obtain authorization before conducting an operation that results in waste disposal. The bill would allow for the needed authorization to take one of several forms, providing flexibility to use regulatory tools other than the individual and general permits contemplated by the current law, in addition to those permits. The bill would provide for stakeholder participation in that even the simplest of the regulatory tools would include notice and comment regulation adoption.

The changes proposed to existing AS 46.03.100 would address requirements for proof of financial responsibility for certain types of waste treatment or disposal facilities. Current law explicitly requires such proof only for permits to dispose of hazardous waste. This bill would refocus the requirement on solid waste disposal facilities that accept hazardous waste and on mine waste treatment and disposal facilities that use chemical processing or have acid generation potential. For mines that do not use chemical processing or produce

waste with acid generation potential, proof of financial responsibility would not be required as a condition for the waste treatment or disposal authorization, but this would not affect the separate reclamation-related financial responsibility requirements administered by the Department of Natural Resources. The bill would provide for DEC to accept proof of financial responsibility provided to the Department of Natural Resources or a federal land manager agency for mine reclamation instead of requiring duplicative bonding.

The bill would clarify that the proof of financial responsibility must cover managing and closing the facility to control or minimize the risk of release of unauthorized levels of pollutants to waters. The bill also would allow for the possibility that this financial responsibility requirement may need to be extended to some municipal solid waste disposal facilities.

The changes proposed to AS 46.03.100 would modify the requirement for a solid waste permit applicant to demonstrate consideration of all solid waste management options and consistency with the waste reduction practices and priorities of AS 46.06.021. As modified, those requirements would apply only to non-municipal solid waste disposal applicants.

The bill also would reorder the components of the waste disposal authorization provisions so that they flow from the prohibition against unauthorized waste disposal, to the basic regulatory tools available for authorizing the disposal, to provisions for plan reviews and integrated waste management permits, to the exemptions, and finally to specific requirements that must be met by certain categories of disposers.

This bill would amend some existing permit processing requirements related to application submittals, public notice and comment opportunities, the maximum term of permits, and the causes for termination or modification of an authorization.

This bill would add a definition for "municipal solid waste" and would amend the definition of "solid waste." It also would repeal the plan submittal, review, and approval provisions of AS 46.03.090 and 46.03.720(a) as superfluous in light of the changes proposed to AS 46.03.100 (which makes written plan approvals one of the tools available for authorizing activities covered by the repealed sections). It also would make conforming amendments in AS 16.05.782(e), AS 44.46.025(a), and 46.03.833(a), to reflect citation or terminology changes caused by other amendments and repealers in the bill.

I urge your prompt and favorable action on this measure.

Sincerely yours,

/s/

Frank H. Murkowski  
Governor

**SB 355 - Sectional Analysis**  
Relating to Protection of Land and Water from Waste Disposal

**Section 1.** Makes conforming changes to reflect AS 46.03.100's switch from "permit" as the only form of agency approval to the more flexible "prior authorization."

**Section 2.** Makes conforming changes to reflect retitling of AS 46.03.100 to "waste management and disposal authorizations" and repeal of AS 46.03.720(a).

**Section 3.** Modifies current "waste disposal permit" requirements to fit a "waste management and disposal authorization" regulatory approach.

1. Subsection (a) prohibits waste disposal and related sewer or treatment system construction activities without DEC authorization.

2. Subsection (b) describes five waste management and disposal authorization tools to be used and revises general permit standards.

3. Subsection (c) centralizes sewer or treatment system plan review and approval authority and provides for plan approval to serve in lieu of a permit under some circumstances.

4. Subsection (d) provides for use of integrated waste management and disposal authorizations.

5. Subsection (e) pulls together in one subsection the existing waste disposal permit exemptions.

6. Subsection (f) clarifies and amends proof of financial responsibility requirements for facilities that handle hazardous waste, mining waste from operations that use chemical processing or have the potential to generate acid, and some municipal solid waste disposal facilities.

7. Subsection (g) modifies the waste reduction practices and priorities demonstration so that it applies only to non-municipal solid waste disposal applicants.

**Section 4.** Amends permit application requirements and makes conforming changes.

**Section 5.** Changes newspaper publication requirements for waste management and disposal permits.

**Section 6.** Clarifies permit duration limit, provides for regulations on administrative continuance of expiring permits, and makes conforming language changes.

**Section 7.** Amends statutory provisions on termination and modification of waste disposal permits and makes conforming changes.

**Section 8.** Adds a savings clause to allow for termination and modification of permits or plan approvals for reasons other than those in Section 7.

**SB 355 - Sectional Analysis**  
Relating to Protection of Land and Water from Waste Disposal

Section 9. Makes conforming changes to reflect the reorganization of subsections in AS 46.03.100 and the terminology used for financial responsibility requirements.

Section 10. Redefines the term "solid waste."

Section 11. Adds definition for "municipal solid waste."

Section 12. Repeals AS 46.03.090 sewage and industrial waste or treatment plan submittal provision and AS 46.03.720(a) sewerage system or treatment works plan review and approval provisions.

Section 13. Instructs the Revisor of Statutes to make conforming changes to one section heading to reflect repeal of a subsection.

Section 14. Provides for an immediate effective date to allow work on regulations to implement the requirements of Sections 1-12 above to begin without delay.

# STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION  
OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR  
410 Willoughby Ave., Ste 303  
Juneau, AK 99801-1795  
PHONE: (907) 465-5065  
FAX: (907) 465-5070  
<http://www.state.ak.us/dec/>

March 16, 2004

The Honorable Kim Elton  
State Senate  
Alaska State Capitol, Room 115  
Juneau, Alaska 99801

Dear Senator Elton:

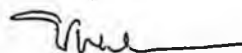
Please find below my answer to your question raised at the Senate Community & Regional Affairs Committee hearing held on March 10, 2004.

Changing the AS 46.03.110 waste management permit notice requirement from two publications in one newspaper to at least one publication in one newspaper is consistent with the level of newspaper notice required under the Administrative Procedure Act (APA) for regulations.

- The APA does not prescribe public notice requirements for permit actions, but it does for regulations. AS 44.62.100(a) requires publication of a notice of the proposed adoption, amendment or repeal of a regulation in a newspaper of general circulation or trade or industry publication. The public notice requirement can be satisfied in a number of ways, including through a combination of publication and broadcasting. Under the APA, the notice of the action on regulations also must be posted on the Alaska Online Public Notice System.
- The driving force behind the change in the minimum number of publications in Section 5 of SB 355 (page 6, lines 6-7) was a desire for regulatory flexibility. The ability to reduce costs by minimizing the number of required publications when appropriate was a consideration but not the main reason for the change.
- Instead of being stuck in the mold of ordering two newspaper publications for each and every waste management permit application, DEC wants to be able on a program-specific or authorization-specific basis to put together the combination of notices that is best calculated to reach the affected public, with the minimum being a single publication in the newspaper, coupled with other forms such as the on-line public notices and mailing/email distribution lists.

If you have any further questions, please let me know.

Sincerely,



Ernesta Ballard  
Commissioner

March 19, 2004

The Honorable Scott Ogan, Chair  
Senate Resources Committee  
State Capitol, Room 103  
Juneau, Alaska 99801



Coeur Alaska, Inc.  
3031 Clinton Dr., Suite 202  
Juneau, Alaska 99801  
Telephone 907.789.1591  
Facsimile 907.789.1503

Dear Senator Ogan:

This letter is written in support of SB 355 by Coeur Alaska, Inc. Coeur Alaska is a wholly-owned subsidiary of Coeur d'Alene Mines Corporation. Coeur owns and operates two major mines in the U.S. in Idaho and Nevada. Coeur is the largest primary silver producer in the U.S. We are currently working on permitting and feasibility studies to develop the Kensington Gold Mine north of Juneau. We hope to commence construction in summer 2004, and create over 300 construction and 200 operations jobs in Southeast Alaska. Alaska is one of the few states in the U. S. that currently provides a reasonable degree of predictability in their permitting process.

We have appreciated the willingness by ADEC to entertain our input on this very important legislation. We view it as the first step in the development of additional future legislation that will ultimately result in ADEC receiving NPDES primacy. This is very important to the mining industry, and future investments in the State of Alaska.

One important aspect of the bill is definitely the "permit by rule" provision, which would allow ADEC to authorize simple activities using this approach. By writing requirements into regulation in this manner, environmental objectives will be met and the process will be streamlined. This is good for the environment, allows for "site specific" treatments, and is good for responsible industries.

Also, we support the proof of financial assurance provision. The opportunity to coordinate this aspect for waste disposal facilities will help to mitigate costly and inefficient duplication of programs.

Finally, a program which will allow ADEC to administratively extend permits is again important to industry. This provision allows for thorough review by the agency, and permit coverage during renewal for the permittee. Permitting is often an onerous program. It is time critical; delays can ultimately result in "no project" decisions. The current Administration's proactive efforts to develop a consolidated process is to be commended.

Thank you for the opportunity to comment.

Best regards,

A handwritten signature in cursive script that reads "Robert T. Richins".

Robert T. "Rick" Richins  
Project Director



# RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

Founded 1975  
 Executive Director  
 Thaddeus J. Owens  
 2003-2004 Executive Committee  
 John Shively, President  
 Mark Manley, Sr. Vice President  
 Jack Williams, Vice President  
 Charles Greene, Secretary  
 Stephanie Madsen, Treasurer  
 Allen Bingham  
 Rhonda Boyles  
 Marilyn Crockett  
 Steve Denton  
 Paul S. Glavinovich  
 Teresa Imm  
 Charles W. Johnson  
 Paul Laird  
 Wendy Lindskoog  
 Thomas Maloney  
 Kirk McGee  
 Thomas Panamatorf  
 Rick Rogan  
 Sally Smith  
 Robert B. Stiles  
 Scott L. Thorson  
 John Whitehead  
 Directors  
 Irene A. Anderson  
 Sharon Anderson  
 John A. Barnes  
 Jack Bergeron  
 Patty Bielawski  
 G.E. Eric Britten  
 Frank M. Brown  
 Al Burch  
 Patrick Carver  
 Richard Cattanach  
 James L. Cloud  
 Stephen M. Connolly  
 Jeffrey J. Cook  
 Bert Cottle  
 Roben Cox  
 Paula Eastley  
 Lori Eussen  
 Jeffrey Y. Foley  
 Carol Fraser  
 John K. Mandelstam  
 Rick Harris  
 Joseph R. Honri  
 Dan Hisey  
 Anthony M. Izzo  
 Bob Jacko  
 Jim Jansen  
 David Jensen  
 Dianna M. Keller  
 Frank V. Kelly  
 Jim Lull  
 Thomas Lovas  
 David L. Matthews  
 William Harry McDonald  
 William McLaughlin  
 Ron McPheters  
 James Mery  
 John K. Norman  
 Jim Palmer  
 Lisa M. Parker  
 Gill Phillips  
 William E. Pierce  
 Debra Reinwand  
 Elizabeth Rensch  
 Dennis Roper  
 Roswell L. Schaeffer, Sr.  
 Thyra J. Shaub  
 Joseph Sprague  
 John L. Sturgeon  
 Jim Tarc  
 Rupert C. Tarr, Jr.  
 Nancy B. Usser  
 George P. Wuerch  
 Eric P. Yould  
 Scott Zimmerman  
 Honorary Directors  
 George R. Schmidt  
 Ex-Officio Members  
 Governor Frank W. Murkowski  
 Senator Lisa Murkowski  
 Senator Ted Stevens  
 Congressman Don Young

March 19, 2004

Senator Scott Ogan  
 Senate Resources Committee  
 Alaska State Legislature, State Capitol  
 Juneau, Alaska 99801-1182

Re: SB 355 — Waste Management/Disposal

Dear Senator Ogan:

On behalf of the Resource Development Council for Alaska, Inc. (RDC), I am writing in support of SB 355 — Waste Management/Disposal.

RDC is a private, membership-funded, non-profit trade association. The organization represents individuals and companies from Alaska's mining, timber, oil and gas, tourism and fishing industries. Also within our ranks are local communities, Native regional and village corporations, organized labor and industry support firms. Our mission is to help grow Alaska's economy through the responsible development of the state's natural resources.

SB 355 accomplishes several objectives of importance to both the Department of Environmental Conservation (DEC) and the regulated community. The bill greatly enhances DEC's management flexibility by defining several tools the department may use to authorize waste disposal. These tools include individual and general permits, authorizations-by-regulation, approval of plans of operation and integrated waste management and disposal authorizations.

This broad array of management options will allow the department to more efficiently and effectively regulate waste disposal throughout the state. In turn, the regulated community will benefit from an oversight

Page 2, RDC letter in support of SB 355

system that can be tailored to fit a variety of different operating and disposal scenarios. SB 355 allows DEC to replace a "one-size-fits-all" program with a more dynamic and practical plan.

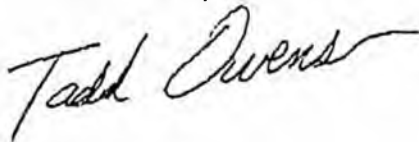
SB 355 also clarifies the financial responsibility requirements for disposal operators. The bill defines a range of options DEC may consider when evaluating an operator's proof of financial responsibility. Individual operators will benefit from the opportunity to meet the standard by choosing the assurance mechanism most appropriate to their unique set of circumstances.

Lastly, the bill provides for DEC to prescribe in regulations the circumstances under which an expiring permit may be administratively continued. Having the option to administratively extend a permit will be another valuable tool for the department and potential benefit to the regulated community. Due to DEC's limited resources, operations under an expired permit can occur through no fault of the operator. Such occurrences increase the risk of third-party litigation and threaten to drive up the costs of doing business for DEC and the regulated community. Defining an appropriate process for issuing administrative extensions addresses this important concern.

RDC appreciates the opportunity to comment on SB 355. Our membership strongly supports the legislation and we encourage you to hear the bill and move it forward. Thank you for your consideration and please feel free to contact me with any questions.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL  
for Alaska, Inc.



Tadd Owens  
Executive Director

cc: Commissioner Ernesta Ballard, DEC  
Dan Easton, Director, Division of Water, DEC

## Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207  
Anchorage, Alaska 99503-2035  
Phone: (907)272-1481 Fax: (907)279-8114  
Email: crockett@aoga.org  
*Marilyn Crockett, Deputy Director*

March 19, 2004

Senator Scott Ogan, Chair  
Senate Resources Committee  
Alaska State Legislature  
State Capitol, Room 103  
Juneau, Alaska 99801-1182

### SB355 – Waste Management and Disposal

Dear Senator Ogan:

The Alaska Oil and Gas Association (AOGA) is a private, nonprofit trade association whose 19 member companies account for the majority of oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska. We are submitting this letter for the Committee's consideration during its deliberations on SB355, "An Act relating to the protection of land and water from waste disposal; providing for the regulation of waste management; making conforming amendments; and providing for an effective date". AOGA strongly supports this legislation.

This legislation is an excellent example of the Alaska Department of Environmental Conservation continuing to pursue opportunities to streamline its processes, while at the same time ensuring that its assigned responsibility of protecting Alaska's environment is carried out. It gives DEC additional regulatory tools for waste management and disposal activities in Alaska by providing it with flexibility to authorize these activities through general permits for like activities, authorization by regulation, and approvals of management plans, in addition to the traditional vehicle of issuing individual permits.

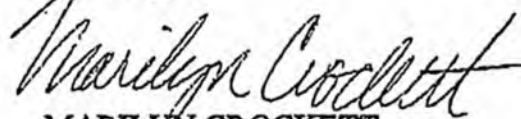
It also gives the Department the ability to administratively extend permits which are about to expire. This is an authority which has long been in place with other agencies, and in particular, the U.S. Environmental Protection Agency. The ability to administratively extend permits is important because it allows the Department to spend additional time on renewal of a particular permit if it feels it is necessary; it allows DEC the flexibility to prioritize limited permitting resources by extending those permits which are low risk and for which there are no changes needed, allowing it then to focus those limited resources on permits which may be more complicated and need additional attention; and finally, it satisfies the need of the permit holder to have a permit in place so that their operations can continue in the situations discussed above where a permit may expire through no fault of the permit holder.

March 19, 2004

Page 2

We encourage the Committee's prompt passage of SB355. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Marilyn Crockett". The signature is written in black ink and is positioned above the printed name.

MARILYN CROCKETT



## Briefing Paper

SB 355

Thank you for the opportunity to speak to this bill.

My name is Rich Heig. I am president of the Council of Alaska Producers, and also General Manager of Greens Creek Mining Company.

The Council of Alaska Producers is an organization that educates and promotes responsible development of natural resources in the State of Alaska. We are made up of the larger mining operations and potential operations of Alaska, all of which are also members of the Alaska Mining Association.

The Producers Council supports SB 355.

This bill will make several important changes to the requirements for management and disposal of mining wastes. These changes have been discussed within DEC and the mining industry for quite some time. This bill will streamline and supplement existing statutory authority in the treatment and disposal of wastes.

One of the changes of this bill is to allow DEC the authority to administratively extend permits. It is occasionally not possible for DEC to process a permit renewal before the current permit expires. However, the company involved must have the permit to legally operate. This change will give DEC the authority to extend a permit.

SB-355 will also allow DEC to use permit-by-rule for various simple authorizations. Under this approach, DEC will write into regulation a certain set of requirements and if these are followed, the public is authorized to do the activity. This makes sense for both industry and DEC. This procedure will allow industry to efficiently move forward, while still complying with DEC and environmental requirements. For DEC, they do not have to keep track of and process the paper for minor permits and yet DEC maintains authority to enforce the requirements.

The bill also allows for proof of financial assurance for waste disposal facilities. This function can be completed in conjunction with other state or federal agencies to prevent duplication of financial assurance.

The mining industry has been involved in the drafting of this legislation with the Department of Environmental Conservation.

The Producers Council supports passage of SB 355 and ask that it be passed out of Committee.

Rich Heig

SB

378

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 3/26/04

FURTHER: Finance

Date of 5-Day Notice: \_\_\_\_\_  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: 4-5-04

Resources Committee considered      SENATE BILL NO. 378

**SB 378 POLLUTION DISCHARGE & WASTE TRMT/DISPOSAL**

"An Act relating to regulation of the discharge of pollutants from timber-related activities under the National Pollutant Discharge Elimination System; relating to waste treatment and disposal permits; making conforming amendments; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

<b>Senate Bill:</b>	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>House Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
<del>DEC</del>	<del>3/9/04</del>	<del>✓</del>	<del>✓</del>	<del>✓</del>	<del>1</del>

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
DEC	3/9/04	✓			1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			✓	
<i>Joseph Debinis</i>	✓			
<i>Ben Stevens</i>	✓			
<i>[Signature]</i>	✓			
CHAIR: <i>Scott Ogden</i>			✓	

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SB 378  
 (S) Publish Date: 3/26/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Environmental Conservation  
 Title An Act relating to regulation of timber- related RDU Air & Water Quality  
discharges under NPDES Component Water Quality  
 Sponsor Rules Committee  
 Requester Governor Component No. 2062

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	67.0	67.0	67.0	67.0	67.0	67.0
Travel	21.0	21.0	7.0	7.0	7.0	7.0
Contractual	300.9	300.9	56.0	56.0	56.0	56.0
Supplies	3.0	3.0	1.0	1.0	1.0	1.0
Equipment	20.7	4.5	1.5	1.5	1.5	1.5
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>412.6</b>	<b>396.4</b>	<b>132.5</b>	<b>132.5</b>	<b>132.5</b>	<b>132.5</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
-----------------------------	------------	------------	------------	------------	------------	------------

<b>CHANGE IN REVENUES ( 1005 )</b>	<b>0.0</b>	<b>0.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>	<b>30.0</b>
------------------------------------	------------	------------	-------------	-------------	-------------	-------------

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	235.0	235.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	177.6	161.4	102.5	102.5	102.5	102.5
1005 GF/Program Receipts	0.0	0.0	30.0	30.0	30.0	30.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>412.6</b>	<b>396.4</b>	<b>132.5</b>	<b>132.5</b>	<b>132.5</b>	<b>132.5</b>

Estimate of any current year (FY2004) cost:

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

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

This bill directs the Department of Environmental Conservation to seek authority from the U.S. Environmental Protection Agency (EPA) to implement the federal National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program for timber-related activities. The Department projects a two-year (FY 2005 and FY 2006) effort to complete program development and transition work necessary to apply to EPA for NPDES primacy. With EPA approval, the Department would begin implementing the NPDES program for timber-related activities in FY 2007. The funds to support transition to primacy consist of General Funds and Federal Receipts. A total of \$470.0 in one-time federal grant funds are available to support program development work. The balance of the development and transition costs are General Funds. Upon implementing the program in FY 2007, the Department anticipates annual program receipts of \$30.0. (continued)

Prepared by: Lynn J. Tomich Kent  
 Division: Air & Water Quality  
 Approved by: Kurt Fredriksson, Deputy Commissioner  
 Agency: Department of Environmental Conservation

Phone (907) 465-5312  
 Date/Time 3/9/2004  
 Date 3/9/2004

FISCAL NOTE #1

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. SB 378

ANALYSIS CONTINUATION

The FY 2005-2006 funds will provide the following services:

**Personal Services** - one permanent position to develop permit process regulations, conduct the rulemaking process, develop written permitting procedures, standardized program forms, and the NPDES primacy application to EPA. Development of the Log Transfer Facility general permit will begin in FY 2006.

**Travel** - program and regulations development, primacy application, and NPDES permit writing and compliance training for new and existing staff.

**Contractual** - two long term non-permanent positions to assist in developing written permitting procedures, standardized program forms, and the NPDES primacy application to EPA; professional services assistance; RSA to Dept. of Law for legal assistance with regulations development; and position support costs.

**Supplies** - standard office supplies.

**Equipment** - office furniture and computers for staff. The FY 2006 budget eliminates the funding for office equipment, which is a one-time purchase.

The Department anticipates NPDES primacy approval from EPA beginning in FY 2007 for timber industry related permitting. The fiscal note for FY 2007 and beyond reflects the ongoing costs of implementing the program and provides the following:

**Personal Services** - one permanent position to develop individual permits, general permits, issue authorizations under general permits, review dive survey reports, conduct inspections and take enforcement actions if necessary.

**Travel** - staff permitting and facility inspections (one inspection of each operating facility during the 5-year life of the permit); ongoing technical training; and occasional program development meetings.

**Contractual** - public notices; staff training; professional services contracts for assistance with NPDES permitting and compliance-related issues; RSA to Dept. of Law for enforcement actions and program legal assistance; and position support costs.

**Supplies** - standard office supplies and water quality sampling supplies.

**Equipment** - ongoing office equipment and computer replacement costs, environmental monitoring equipment purchase or replacement, and other facility inspection equipment (such as personal safety gear and cameras).

**Projected impact on Alaska economy and local government**

- eliminates the current patchwork of federal and state permits for the timber industry.
- increased permit and compliance fees for owners/operators of facilities with timber-related wastewater discharges.

**Personal Services New Position Detail**

FN#1 SB 378

Department of Environmental Conservation  
Partial NPDES Primacy

Scenario: A Scenario for FY2005 Fiscal Notes (3605)  
Component: Water Quality (2062)  
RDU: Air and Water Quality (206)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#028	Environmental Spec III	FT	A	GP	Juneau	2A	18 B	12.0		47,316	0	0	19,712	67,028

Justification: Implementation - NPDES Primacy for timber related discharges.

Funding Detail:

1004	General Fund Receipts	100.00%	67,028
<b>Total Funding:</b>		<b>100.00%</b>	<b>67,028</b>

**Component Summary:**

Total New Positions: 1

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	67,028
<b>Total Funding:</b>	<b>100.00%</b>	<b>67,028</b>

Note: If a position is split, an asterisk (\*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (\*\*) will appear in this column.

# STATE OF ALASKA

**DEPT. OF ENVIRONMENTAL CONSERVATION**  
**OFFICE OF THE COMMISSIONER**

**FRANK H. MURKOWSKI, GOVERNOR**

410 Willoughby Ave., Ste 303

Juneau, AK 99801-1795

PHONE: (907) 465-5065

FAX: (907) 465-5070

<http://www.state.ak.us/dec/>

March 30, 2004

The Honorable Scott Ogan  
Chairman, House Resources Committee  
State Capitol, Room 103  
Juneau, Alaska 99801

Dear Senator Ogan:

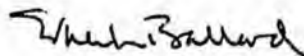
The Department of Environmental Conservation (DEC) respectfully requests your consideration in scheduling SB 378, an "Act relating to the protection of land and water from waste disposal; providing for the regulation of waste management; making conforming amendments; and providing for an effective date," before the Senate Resources Committee at your earliest convenience.

SB 378 instructs DEC to seek primacy for a portion of the federal National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program, namely the portion related to timber industry discharges. While DEC supports seeking state primacy for the entire NPDES program, partial primacy for timber-related discharges will provide an opportunity to test the concept in an industry sector where the state has significant expertise.

The fiscal note reflects a two-year effort to complete program development and to achieve U.S. Environmental Protection Agency approval. Annual costs for FY 2005 and FY 2006 are divided between federal grant funds of \$235.0 that are available for two years with the balance of \$177.6 in FY 2005 and \$161.4 in FY 2006 derived from general funds. With an approved program beginning in FY 2007, costs would be covered through a combination of general funds and permit fees.

Dan Easton, Water Division Director for the Department of Environmental Conservation will provide you with any additional information you might require regarding this bill. Your staff can contact Mr. Easton at 465-5135, or Melanie Lesh, the department's legislative liaison, at 465-5290. As always, please contact me if I can be of assistance.

Sincerely,



Ernesta Ballard  
Commissioner

## SB 378 -- Sectional Analysis

### Relating to Regulation of the Discharge of Pollutants From Timber-related Activities

**Section 1.** Provides findings and intent language to lay foundation for assumption of NPDES primacy for timber-related discharges as a single-sector, pilot-project.

**Section 2.** Adds the timber NPDES program to the list of programs for which DEC is given authority in AS 44.46.025(a) to adopt user fee regulations. By operation of existing law in the AS 37.10.058(2)(B) definition of "designated regulatory service," the permits issued under a timber NPDES program would fall into the category of services for which DEC is required to adopt fixed fee regulations and can use negotiated services agreements in the interim until such regulations have been adopted.

**Section 3.** Authorizes assumption of partial NPDES primacy limited to timber-related activities.

**Section 4.** Amends permit application requirement to eliminate conflict with NPDES requirement for submittal of application at least 180 days in advance of planned operation.

**Section 5.** Changes notice requirements to ensure that notice can be given of the availability of a draft permit, instead of requiring publication of notice at the application receipt stage, which may precede permit development by many months. Also changes requirement for two separate publications to a requirement for "at least one," to allow greater flexibility in structuring notice of availability of draft NPDES permits. Makes conforming amendments.

**Section 6.** Clarifies permit duration limit and adds explicit authority for regulations to provide for administrative continuance of expiring permits.

**Section 7.** Amends statutory provisions on termination and modification of waste disposal permits to fill gaps in legal authority needed to satisfy NPDES primacy requirements.

**Section 8.** Extends existing enhanced civil penalty authority to the timber NPDES program.  
(Required for primacy.)

**Section 9.** Extends criminal penalty provisions to the timber NPDES program (required for primacy) and makes conforming changes.

**Section 10.** Extends criminal fine provision authorizing payment of up to \$10,000 for each separate violation to violations of the regulations that would be adopted for the timber NPDES program.  
(Required for primacy.)

**Section 11.** Provides for an immediate effective date to allow work on timber NPDES regulations and other efforts to secure primacy to begin without delay.

March 23, 2004

The Honorable Gene Therriault  
President of the Senate  
Alaska State Legislature  
State Capitol, Room 111  
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill that would allow the State of Alaska to tailor part of its water discharge program to fit state concerns and environmental features. This bill would authorize the State of Alaska to administer National Pollutant Discharge Elimination System (NPDES) permits for the timber industry. Presently, NPDES permitting, compliance, and enforcement decisions are made pursuant to federal law designed to apply generically to all 50 states. The importance and value of assuming primacy is reflected by the fact that 45 other states have assumed primacy from the Environmental Protection Agency (EPA) for administering NPDES permits.

The Department of Environmental Conservation (DEC) has the capacity and experience to successfully implement primacy for the timber industry. DEC regulates a broad universe of technological and water-quality aspects for waste and wastewater disposal activities. These activities include regulation of timber industry discharges such as state certification of NPDES permits for log transfer facilities.

To accommodate NPDES primacy assumption, this bill would amend some existing permit requirements related to application submittals, public notice and comment opportunities, the maximum term of permits, and the causes for termination or modification of an authorization. These amendments would have the added benefit of streamlining and clarifying process requirements, to some extent, for all waste treatment or disposal authorizations.

The bill also includes legislative findings and intent language, to underscore the fact that assuming partial primacy for the NPDES program for a single industry sector might facilitate future assumption of a larger part or all of the NPDES program. A single-sector pilot-project-type program would allow