

CS FOR SENATE BILL NO. 90(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 4/30/19

Referred: Finance

Sponsor(s): SENATORS MICCICHE, Bishop

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the powers of the Alaska Commercial Fisheries Entry Commission;**
2 **relating to administrative areas for regulation of certain commercial set net entry**
3 **permits; establishing a buy-back program for certain set net entry permits; providing**
4 **for the termination of state set net tract leases under the buy-back program; closing**
5 **certain water to commercial fishing; and providing for an effective date."**

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

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

9 SHORT TITLE. This Act may be known as the East Side of Cook Inlet Set Net Fleet
10 Reduction Act.

11 *** Sec. 2.** The uncoded law of the State of Alaska is amended by adding a new section to
12 read:

13 LEGISLATIVE FINDINGS AND INTENT. (a) The Alaska State Legislature finds

1 that it is in the public interest to reduce the number of commercial set net fishers and decrease
 2 the pressure of commercial fishing on the east side of Cook Inlet, to create a more
 3 economically viable and sustainable set net fishery, and to allow more fish for in-river users.

4 (b) It is the intent of the legislature that the program established by this Act will not
 5 have an adverse effect on the state treasury.

6 * **Sec. 3.** AS 16.43.200(b) is amended to read:

7 (b) The commission may modify or change the boundaries of an
 8 administrative area or divide an existing administrative area into two or more
 9 separate administrative areas when necessary and consistent with the purposes of
 10 this chapter.

11 * **Sec. 4.** AS 16.43.200 is amended by adding new subsections to read:

12 (c) Notwithstanding (a) and (b) of this section, for the purposes of issuing
 13 entry permits and controlling entry into the commercial set net fishery on the east side
 14 of Cook Inlet, the commission shall establish the area administered on December 31,
 15 2019, identified by the Department of Fish and Game as of January 1, 2019, as
 16 statistical areas 244-21, 244-22, 244-31, 244-32, 244-41, and 244-42 of the Upper
 17 Subdistrict of the Cook Inlet Central District as a distinct administrative area separate
 18 from the Cook Inlet administrative area.

19 (d) An entry permit that entitled a person to set net commercially in the area
 20 that was administered on December 31, 2019, by the commission as the Cook Inlet
 21 administrative area does not entitle that person to set net commercially in the
 22 administrative area established under (c) of this section unless the commission
 23 reassigns the permit to that administrative area.

24 * **Sec. 5.** The uncoded law of the State of Alaska is amended by adding a new section to
 25 read:

26 TRANSITION: REASSIGNMENT OF CERTAIN COOK INLET AREA SET NET
 27 ENTRY PERMITS. (a) On January 1, 2020, an individual holding an entry permit that entitles
 28 the individual to commercially set net in the Cook Inlet administrative area may have the
 29 individual's entry permit renewed as an entry permit for the Cook Inlet set net administrative
 30 area under AS 16.43.150(c), consistent with the boundaries of that administrative area
 31 established under AS 16.43.200, as amended by secs. 3 and 4 of this Act, unless the individual

1 provides proof satisfactory to the Alaska Commercial Fisheries Entry Commission of the
 2 individual's participation in the fishery in the areas identified by the Department of Fish and
 3 Game as of January 1, 2019, as statistical areas 244-21, 244-22, 244-31, 244-32, 244-41, and
 4 244-42 of the Upper Subdistrict of the Cook Inlet Central District within the two years
 5 preceding December 31, 2019. Proof satisfactory of participation under this subsection may
 6 include a shore fisheries lease, an area registration, a buoy tag, or previous submission of
 7 fishing statistics for the area.

8 (b) An individual who provides proof satisfactory to the Alaska Commercial Fisheries
 9 Entry Commission of the individual's participation in the fishery in the areas identified by the
 10 Department of Fish and Game as of January 1, 2019, as statistical areas 244-21, 244-22, 244-
 11 31, 244-32, 244-41, and 244-42 of the Upper Subdistrict of the Cook Inlet Central District
 12 under (a) of this section shall be reassigned an entry permit on January 1, 2020, for the new
 13 administrative area established under AS 16.43.200(c), enacted by sec. 4 of this Act.

14 * **Sec. 6.** The uncoded law of the State of Alaska is amended by adding a new section to
 15 read:

16 **APPEAL OF COMMISSION DECISION NOT TO ASSIGN AN APPLICANT'S**
 17 **PERMIT TO NEW ADMINISTRATIVE AREA.** (a) An individual may appeal a decision by
 18 the Alaska Commercial Fisheries Entry Commission to renew the entry permit held by the
 19 individual that allows the individual to commercially fish in the Cook Inlet administrative
 20 area, as the area's boundaries are amended by AS 16.43.200(c), enacted by sec. 4 of this Act,
 21 instead of issuing the individual an entry permit for the administrative area established by
 22 AS 16.43.200(c), enacted by sec. 4 of this Act. An appeal under this section must be made to
 23 the superior court on or before March 1, 2020.

24 (b) The commission shall provide an individual who is appealing a decision of the
 25 commission under this section

26 (1) a provisional entry permit for the administrative area established by
 27 AS 16.43.200(c), enacted by sec. 4 of this Act; and

28 (2) if the individual's appeal has not been resolved at the time of the election
 29 held under sec. 7 of this Act, a provisional ballot for the election.

30 (c) If an individual's appeal has not been resolved at the time of the election held
 31 under sec. 7 of this Act, the individual may cast a provisional ballot that may be counted as a

1 vote in the election only if, on appeal, the court determines that the individual's entry permit
 2 must be reassigned to the administrative area established by AS 16.43.200(c), enacted by sec.
 3 4 of this Act.

4 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
 5 read:

6 **ELECTION FOR COMMERCIAL SET NET FISHING PERMIT BUY-BACK**
 7 **PROGRAM.** (a) On April 1, 2020, the commission, with the cooperation of the Department of
 8 Natural Resources, shall conduct an election among individuals qualified under (b) of this
 9 section on the question of whether to establish an entry permit buy-back program under sec. 8
 10 of this Act.

11 (b) An individual is eligible to vote in the election conducted under (a) of this section
 12 if the individual holds an entry permit, or provisional entry permit issued under sec. 6(b) of
 13 this Act, for set net fishing in the administrative area established under AS 16.43.200(c),
 14 enacted by sec. 4 of this Act.

15 (c) The commission shall conduct the election according to the following procedures:

16 (1) not less than 30 days before the date on which ballots must be postmarked
 17 to be counted in the election, the commission shall hold at least one public meeting to explain
 18 the buy-back program to eligible voters and other interested persons and to explain the
 19 registration and voting procedure to be used in the election; the commission shall provide
 20 notice of the meeting by

21 (A) mailing the notice to each eligible entry permit holder;

22 (B) posting the notice in at least three public places in the voting
 23 region; and

24 (C) publishing the notice in at least one newspaper of general
 25 circulation in the voting region at least once a week for two consecutive weeks before
 26 the meeting;

27 (2) the commission shall mail two ballots to each eligible entry permit holder;
 28 the commission shall mail the first ballot not more than 45 days before the date on which
 29 ballots must be postmarked to be counted in the election; the commission shall mail the
 30 second ballot not less than 15 days before the date on which ballots must be postmarked to be
 31 counted in the election; the commission shall adopt procedures to ensure that only one ballot

1 from each eligible entry permit holder is counted in the election;

2 (3) the ballot must

3 (A) ask whether the buy-back program established under sec. 8 of this
4 Act should be implemented;

5 (B) indicate the boundaries of the region in which the buy-back
6 program would apply;

7 (C) clarify the details of the buy-back program, including which set net
8 entry permit holders are eligible to participate and the entry permit buy-back price to
9 be offered by the commission under sec. 8 of this Act if the program is approved;

10 (D) provide the effective date for the initiation of the entry permit buy-
11 back program if the program is approved without reliance on provisional ballots and
12 how the program's effective date will be determined if approval of the program
13 depends on counting provisional ballots; and

14 (E) indicate the date on which ballots must be postmarked in order to
15 be counted;

16 (4) the ballots must be returned by mail and counted by the commission or a
17 person approved by the commission.

18 (d) If the commission determines that the procedural requirements of (c) of this
19 section have been satisfied, the commission shall certify the results of the election

20 (1) within 45 days after the date on which ballots must be postmarked; or

21 (2) only after a sufficient number of program applicants' appeals are resolved
22 under sec. 6 of this Act so that the commission may determine the outcome without counting
23 provisional ballots.

24 (e) In this section, "commission" means the Alaska Commercial Fisheries Entry
25 Commission established under AS 16.43.020.

26 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 **COMMERCIAL SHORE SET NET ENTRY PERMIT BUY-BACK PROGRAM.** (a)
29 In addition to the buy-back provisions under AS 16.43.310 and 16.43.320, an individual who
30 is qualified under this section may sell the individual's entry permit to the commission under
31 the conditions established in this section. Except as provided in sec. 7 of this Act, to

1 participate, an individual must

2 (1) hold a commercial fishing set net entry permit for the administrative area
3 established under AS 16.43.200(c), enacted by sec. 4 of this Act;

4 (2) provide a shore fisheries lease, an area registration, a buoy tag, a previous
5 submission of fishing statistics for the area, or other documentation proving, to the
6 commission's satisfaction, that the individual or an immediate family member of the
7 individual

8 (A) has held the entry permit that was reassigned from the Cook Inlet
9 to the administrative area established under AS 16.43.200(c) since January 1, 2016;
10 and

11 (B) actively participated in the fishery identified by the Department of
12 Fish and Game as of January 1, 2019, as statistical areas 244-21, 244-22, 244-31, 244-
13 32, 244-41, and 244-42 of the Upper Subdistrict of the Cook Inlet Central District
14 within the two years preceding December 31, 2018; and

15 (3) provide an affidavit to the commission containing an accurate description
16 of the specific site used to fish the entry permit; the description must include, if the site is

17 (A) leased under AS 38.05.082, the lease agreement;

18 (B) leased from a municipality, the geographic location and boundaries
19 of the leased tract; and

20 (C) on unleased public land, a site survey and other related information
21 that may be required by the commission; and

22 (4) apply to the commission within 30 days after the effective date of this
23 section.

24 (b) Participation in the buy-back program established under this section is voluntary.
25 An individual qualified under this section may apply electronically on a form provided by the
26 commission to have the individual's entry permit purchased under this section. The
27 commission shall provide each applicant with an electronic receipt evidencing the date and
28 time the individual's application was received. Subject to appropriation and to (c) of this
29 section, the commission shall buy back 200 unencumbered entry permits in the order in which
30 applicant names are drawn by a lottery. If an applicant whose permit has been selected for
31 purchase is disqualified from participation in the program under (c) of this section, elects not

1 to participate in the buy-back program, fails to sign the contract of sale within a period
 2 specified by the commission, or fails to provide all of the information required under (a) of
 3 this section, the commission shall, subject to (c) of this section, offer to buy back the entry
 4 permit of the applicant whose name was next selected in the lottery.

5 (c) If an applicant whose name is selected in the lottery under this section has a
 6 provisional entry permit provided under sec. 6(b) of this Act, the commission shall set aside
 7 the funds to buy back the permit but may not buy back the permit until a court finds, in a final
 8 judicial determination, that the permit must be reassigned by the commission to the
 9 administrative area established under AS 16.43.200(c), enacted by sec. 4 of this Act. If the
 10 court finds, in a final determination, that the commission's determination not to reassign an
 11 applicant's permit to the administrative area established by AS 16.43.200(c) was correct, the
 12 applicant is not qualified to participate in the buy-back program established by this section.

13 (d) The commission shall cancel an entry permit purchased under this section. The
 14 commission may not reissue a permit or issue another permit in the place of a cancelled
 15 permit.

16 (e) Subject to appropriation and (c) of this section, the commission shall

17 (1) buy back the entry permit of an applicant selected in the lottery under this
 18 section for \$260,000, less administrative costs; and

19 (2) provide each applicant whose entry permit is purchased by the commission
 20 under this section the option of accepting payment in three annual installments.

21 (f) When the commission purchases an entry permit under (b) of this section from an
 22 individual who fishes the individual's entry permit from a site

23 (1) leased under AS 38.05.082, the commission shall provide the Department
 24 of Natural Resources with notice of the sale, the seller's identity, and the description of the
 25 lease provided under (a)(3)(A) of this section;

26 (2) leased from a municipality or from other unleased public or private land,
 27 the commission shall provide the Department of Natural Resources and the Department of
 28 Fish and Game with notice of the sale, the seller's identity, and information concerning the
 29 leased tract provided by the individual under (a)(3)(B) of this section.

30 (g) Upon notice from the commission under (f) of this section, and notwithstanding
 31 AS 38.05.085, the Department of Natural Resources shall

(1) without penalty or charge, terminate all land leases held under AS 38.05.082 used to fish an entry permit purchased by the commission under (b) of this section; and

(2) provide the Department of Fish and Game with the geographic and legal boundaries of a tract for which a lease is cancelled under (1) of this subsection.

(h) Upon receiving from the Department of Natural Resources the information required under (g)(2) of this section, or from the commission the information required under (f)(2) of this section, the Department of Fish and Game shall, in accordance with AS 44.62 (Administrative Procedure Act), close to commercial fishing the water that could be commercially fished, under the authority of the repurchased set net entry permit, from the affected public land, municipal lease, or terminated state lease tract under the regulations of the Department of Fish and Game that were in effect at the time the set net entry permit was purchased by the commission.

(i) When the commission purchases an entry permit from an individual who fished the entry permit from land leased from a municipality, the commission shall notify the Department of Natural Resources and the municipality of the purchase and of the geographic boundaries of the water that will be closed to commercial salmon fishing under (h) of this section.

(j) The acquisition of an entry permit under this section is not subject to AS 36.30 (State Procurement Code).

(k) In this section,

(1) "commission" means the Alaska Commercial Fisheries Entry Commission established under AS 16.43.020;

(2) "immediate family member" means

(A) the spouse of an individual;

(B) another individual cohabiting with an individual in a conjugal relationship that is not a legal marriage;

(C) a child, including a stepchild and an adopted child, of an individual;

(D) a parent, sibling, grandparent, aunt, or uncle of an individual; and

(E) a parent or sibling of an individual's spouse.

1 * **Sec. 9.** The uncoded law of the State of Alaska is amended by adding a new section to
2 read:

3 REPORT TO LEGISLATURE. The Alaska Commercial Fisheries Entry Commission
4 shall provide a written report to the legislature on the status of the entry permit buy-back
5 program established under sec. 8 of this Act, including the number of permits purchased. The
6 commission shall deliver the report to the senate secretary and the chief clerk of the house of
7 representatives not later than January 15, 2026, and notify the legislature that the report is
8 available.

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

11 NOTIFICATION TO LIEUTENANT GOVERNOR AND REVISOR OF
12 STATUTES. On the date the Alaska Commercial Fisheries Entry Commission certifies the
13 outcome of the election under sec. 7 of this Act, the chair of the Alaska Commercial Fisheries
14 Entry Commission shall provide written notice to the lieutenant governor and revisor of
15 statutes of the outcome of the election.

16 * **Sec. 11.** Sections 1, 2, 8, and 9 of this Act are repealed June 30, 2026.

17 * **Sec. 12.** The uncoded law of the State of Alaska is amended by adding a new section to
18 read:

19 CONDITIONAL EFFECT. Sections 1, 2, 8, and 9 of this Act take effect only if the
20 chair of the Alaska Commercial Fisheries Entry Commission provides notice under sec. 10 of
21 this Act that the buy-back program established under sec. 8 of this Act was approved.

22 * **Sec. 13.** Section 4 of this Act takes effect January 1, 2020.

23 * **Sec. 14.** If secs. 1, 2, 8, and 9 of this Act take effect under sec. 12 of this Act, they take
24 effect 30 days after the date the chair of the Alaska Commercial Fisheries Entry Commission
25 provides notice under sec. 10 of this Act that the buy-back program established under sec. 8
26 of this Act was approved.

27 * **Sec. 15.** Except as provided in secs. 13 and 14 of this Act, this Act takes effect July 1,
28 2019.