



# LEGISLATIVE RESEARCH SERVICES

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## Research Brief

TO: Representative Louise Stutes  
FROM: Susan Haymes, Legislative Analyst  
DATE: February 2, 2015  
RE: Legislative History of the Commercial Fisheries Entry Commission  
*LRS Report 15.178*

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***You asked about the creation of the Commercial Fisheries Entry Commission. Specifically, you wished to know under what circumstances it was established.***

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In 1973, the Alaska Legislature enacted the Limited Entry Act (AS 16.43) creating the first comprehensive limited entry program in the country.<sup>1</sup> The purpose of the law was to promote “the conservation and sustained yield management of Alaska’s fishery resources and the economic health and stability of commercial fishing in Alaska by regulating and controlling entry into the commercial fisheries in the public interest and without unjust discrimination.” The Act created the Commercial Fisheries Entry Commission (CFEC) as a regulatory and quasi-judicial agency to implement and administer the program. The CFEC is headed by three commissioners who are appointed by the Governor and confirmed by the Legislature. Commission staff is organized into five sections: administration, adjudications, research and planning, licensing, and information technology.<sup>2</sup>

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### Early Attempts at Limited Entry

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At the time of statehood, Alaska’s salmon fisheries were largely controlled by lower 48 canning companies, many of which used fish traps to harvest the resource.<sup>3</sup> In the 1950s, for example, the six largest canning companies owned 40 percent of the canneries and processed 50 percent of the salmon harvest. Of the 434 fish traps licensed in 1948, only nine percent belonged to Alaska residents, while 56 percent were owned and operated by the eight largest companies.<sup>4</sup> In 1960, Governor William Egan in his message to the Joint Assembly of the First Alaska State Legislature noted:

On January 1 of this year, Alaska’s Department of Fish and Game was handed the depleted remnants of what was once a rich and prolific fishery. From a peak of three-quarters of a billion pounds in 1936, production dropped in 1959 to its lowest in 60 years.<sup>5</sup>

Alaska proceeded to ban fish traps and the Alaska Department of Fish and Game (ADF&G) implemented management measures to restore runs and to match harvest opportunities to the actual abundance of the returning salmon runs. A rebound in salmon runs and the removal of fish traps encouraged many new people to enter the fisheries during the 1960s. In an effort to restrict the number of participants, Alaska lawmakers passed laws in 1961 and 1968, both of which failed to

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<sup>1</sup> Ch 79 SLA 1973. The Alaska Supreme Court upheld the constitutionality of the Limited Entry Act in *State v. Ostrosky*, 667 P.2d 1184 (Alaska 1983), *appeal dismissed*, 467 U.S. 1201, 104 S. Ct. 2379, 81 L.Ed. 2d. 339 (1984).

<sup>2</sup> More information on CFEC is available at <http://www.cfec.state.ak.us/>.

<sup>3</sup> The lack of self-rule in salmon management and the influence of the canning companies on federal management were primary forces behind the statehood movement.

<sup>4</sup> John H. Clark, Andrew McGregor, Robert D. Mecum, Paul Krasnowski and Amy Carroll, “The Commercial Salmon Fishery in Alaska,” Reprinted from the Alaska Fisheries Research Bulletin, Vol. 12 No. 1, Summer 2006, <http://www.adfg.alaska.gov/static/home/library/PDFs/afrb/clarv12n1.pdf>.

<sup>5</sup> “The Commercial Salmon Fishery in Alaska,” p.3.

pass constitutional muster. The 1961 measure would have allowed the Board of Fisheries to restrict fishing within a management area to state residents, whenever it was determined that the expected salmon run was less than the optimum (ch 62, SLA 1961). The law was declared unconstitutional before any regulations could be implemented.<sup>6</sup> In the second attempt, lawmakers passed a statewide salmon net gear entry restriction program (ch 186, SLA 1968). The law required that anyone who wished to apply for a gear license needed to have previously fished in that area or fished as crew for at least three years within the given area. The courts again found the legislation unconstitutional, concluding that it created a closed class of participants.<sup>7</sup> The U.S. Supreme Court vacated that decision, but the issue was later litigated in state Superior Court. In 1971, an Alaska Superior Court held that the 1968 law violated Section 15 of Article VIII of the Alaska Constitution, which provides that “[n]o exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State.”<sup>8</sup>

By the early 1970s, salmon runs again declined to record low levels, driving home the difficulty of managing the salmon fisheries. Confronted with a serious economic crisis that threatened the livelihood of fishermen and the viability of the salmon fisheries, a constitutional means of limiting the number of participants became imperative. In 1971, the Alaska Legislature proposed a constitutional amendment to address the concerns identified by the courts by adding the following language to Article VIII, Section 15:

This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent on them for a livelihood and to promote the efficient development of aquaculture in the State.<sup>9</sup>

In 1972, Alaska voters overwhelmingly approved the amendment, paving the way for a limited entry program in Alaska.

### **Limited Entry Act of 1973**

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In his Affairs of State Address in 1973, Governor Egan cited the protection of Alaska’s salmon fisheries and the relief of economic distress among the state’s fishermen as one of the administration’s top priorities.<sup>10</sup> To that end, the Governor introduced a bill proposing a comprehensive limited entry program for Alaska’s salmon fisheries.<sup>11</sup> In the transmittal letter accompanying the legislation, the Governor stated the purpose of the program was to stabilize the number of participants at levels that would provide an adequate livelihood for those fishermen.<sup>12</sup> The Governor further noted the importance of eliminating part-time fishermen to allow for improved management of the resource and the establishment of a professional fishery.

The Governor proposed that the program be administered by a full-time regulatory commission. Trying to determine directly in statute which individuals would receive limited entry permits was “hopelessly inadequate, both legally and practically.” He further explained,

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<sup>6</sup> *Brown v. Anderson*, 202 F. Supp. 96, 103 (D. Alaska 1962). The court found the 1961 law violated the U.S. Constitution’s privileges and immunities and commerce clauses, as well as the Alaska’s constitution equal protection and due process clauses.

<sup>7</sup> *Bozanich v. Reetz*, 297 F.Supp. 300 (D. Alaska 1969), *vacated*, 397 U.S. 82, 90 S. Ct. 788, 25 L.Ed. 2d 68 (1970).

<sup>8</sup> *Bozanich v. Norenberg*, Civil Case No. 70-389 (Alaska Super., March 8, 1971). The 1968 law also violated Section 3 of Article VIII which states, “Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.”

<sup>9</sup> Senate Joint Resolution 10 (1971).

<sup>10</sup> *Alaska Senate Journal*, Eighth Legislature, First Session, January 10, 1973.

<sup>11</sup> The Governor’s bill was SB 39; the companion bill, HB 126, ultimately became the vehicle for the Limited Entry Act of 1973.

<sup>12</sup> *Alaska Senate Journal*, Eighth Legislature, First Session, January 11, 1973, pp. 27-50.

A full-time regulatory commission is the only way to apply general legislative standards to each area and type of gear with fairness to all areas.

The commission approach has the added advantage of being easier to defend legally. As long as the statutory purpose and standards are valid, the point of legal attack would be a particular regulation or application of a statutory standard by the commission.<sup>13</sup>

In its February 1973 report to the Legislature, the Governor's Study Group on Limited Entry concluded that given the variety in gear, species, fishing conditions, and local economies in Alaska's fisheries:

[W]e felt that the only way to treat all fishermen fairly is to create a full-time commission with a full-time staff that can study each area, and look carefully at conditions in the fishery and the needs of the people participating in it. . . . Only a full-time regulatory commission with staff support will have the time and the ability to look at each area of the state, evaluate the economic condition of the fishery, looking separately at each type of gear, and then adopt regulations setting definite requirements for entry permits which make the most sense for that area and type of gear.<sup>14</sup>

An important aspect of the legislation was to determine who would initially receive a limited entry permit.<sup>15</sup> Nonresidents had traditionally fished in several of Alaska's salmon fisheries. The Governor and the Legislature wanted to establish a program that would "protect and enhance the employment opportunities of resident fishermen, help maintain economies of small coastal communities, and at the same time not violate constitutional rights of nonresident fishermen." As a result, the proposed legislation tasked the commission, for each fishery, with developing a hardship ranking system based upon the two broad concepts of past participation and economic dependence on the fishery (AS 16.43.250). In short, the commission was to issue a restricted number of permits to individual applicants based on criteria such as how long they had fished, how hard it would be for them to find other work if excluded from the fishery, and how much they had invested in boats and gear. A full-time commission was viewed as the best means of implementing such a complicated regulatory program that would also need to fairly adjudicate claims raised by individual applicants during the limitation process. The Governor noted,

The bill's legislative standards of preference for entry permits will require findings of fact regarding an applicant's degree of economic dependence upon the fishery and his extent of past participation in the fishery. Such facts must be established fairly and sufficiently in order to avoid abuses of the system that would be unfair to all fishermen. Provisions concerning hearings and appeals will safeguard the rights of individual applicants for entry permits.<sup>16</sup>

The law also provided for permits to be transferred by sale or by gift to other individuals (AS 16.43.170). This mechanism avoids the problem of a closed class and allows permits to be passed along within families or sold without upsetting the amount of gear in each fishery. One of the duties of the commission is to oversee the transfer of limited entry permits.

Since its inception, the CFEC has limited entry to 68 fisheries, considered nearly 23,000 discrete applications, and annually issues over 29,000 fishing permits and vessel licenses, and reviews over 1,000 permanent transfer requests.

We hope this is helpful. If you have questions or need additional information, please let us know.

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<sup>13</sup> *Alaska Senate Journal*, 1973, p. 18.

<sup>14</sup> Governor's Study Group on Limited Entry, "A Limited Entry Program for Alaska's Fisheries," February 1973, p. 2. The report is available in the Legislative Reference Library.

<sup>15</sup> The Governor and other policymakers considered other limited entry approaches such as freezing the issuance of new licenses or issuing permits by lottery. These ideas were rejected for legal and practical reasons.

<sup>16</sup> *Alaska Senate Journal*, 1973, p. 18.