

S B 39

ECONOMIC AND ADMINISTRATIVE ASPECTS

OF SENATE BILL NO. 39

- Dr. George W. Rogers -

The purpose of this memorandum is to present the Special Senate Fisheries Committee with a very preliminary and tentative analysis of some of the more important economic and administrative implications of the most recent (March 22, 1972) version of the Committee Substitute for Senate Bill No. 39 regulating entry into Alaska commercial fisheries. The narrative analysis presents a general impression of the technical and administrative tasks which the Alaska Commercial Fisheries Entry Commission will deal with in implementing the provisions of this bill, and the statistical analysis and tables provide very general, guidelines for this Committee in evaluating the probable magnitude of the employment, income, and other measureable impacts.

At the outset the limitations of the report should be clearly understood. This is in no way a substitute for the sort of detailed studies and evaluations needed, but is a quick survey of only a selection of the most basic provisions utilizing readily available data or estimates. It represents the part-time effort of one person for approximately four and a half days (March 21 through 25). Time did not permit consideration of alternative approaches and data or consultation with others.

Even during this brief period the bill underwent continuous revision requiring basic changes in my interpretations. (The substitution of the word "optimum" for "maximum" is one obvious example.) For this reason any references to the bill in the text are identified in parentheses so the reader may check for further changes. In short, this is a preliminary reconnaissance and any statements or conclusions are subject to future revision based upon further consideration or action by the Committee in drafting the bill.

Not all aspects of the bill have been covered. The administrative and economic analysis is general and applies only to the general process of the Committee in establishing specifications for entry permits (definition of area, gear, species), determining the optimum number of permits to be issued in each fishery, classification of applicants for permits and estimating the financing and administration of the buy-back program. Time did not permit consideration of a number of important qualifying provisions in the bill, an exploration of economic implications of transferability, or a comparative evaluation of other bills and proposals.

Only two sources of data were drawn upon: the Governor's Study Group on Limited Entry, A Limited Entry Program for Alaska's Fisheries (referred to below as the Governor's study) and Institute of Social, Economic and Government Research, A Study

of the Socio-Economic Impact of Changes in the Harvesting Labor Force in the Alaska Salmon Fishery (December 1972) prepared for the National Marine Fisheries Service (referred to below as the ISEGR study). More recent statistical data is available, but would require several weeks of clerical work to extract, compile, and analyze and these two sources are considered to be recent enough (1970 and 1971) for present purposes. Where critical data was not available in these sources, proxy data was used (e.g. the use of actual harvest data for allowable harvest data) or estimates were made. An adequate data base would yield somewhat different results, but in my judgement (which could also be in error) the general conclusions arrived at would not differ significantly. The most the Committee should expect from this quick survey are "ballpark" estimates which are far from adequate for implementing any programs, but which are useful in defining the broad nature and probable magnitude of impacts from these programs and getting their implications into perspective.

Basis for Establishing Entry Permits -- Fisheries, Administrative Areas, Gear

The purposes to be served by the proposed Alaska Commercial Fisheries Entry Commission are promotion of the "economic welfare of fisheries of the state, the overall efficiency of the harvest, and the sustained yield management of the fishery resource" by means of "regulating and controlling entry into the commercial fisheries in the public interest and without unjust discrimination and without unreasonably and seriously curtailing economic opportunities." (Section 10)

The device to be used in promoting these purposes is an entry permit which is characterized as a "use privilege which may be modified or revoked by the legislature without compensation" and is to be treated as a form of "intangible personal property" by the holder (Sect. 230 (e)(f)).

After January 1, 1974, no person (including partnerships and corporations) may operate gear in the commercial taking of a fishery resource without an entry permit (or interim-use permit) issued by the Commission. Each permit represents a unit of gear (not a fisherman) and is limited to the use of a specific type of gear in a given fishery and administrative area (Sect. 180).

It is purposed that all commercial fisheries in the State are to

bs subject to this regulation, but for purposes of this analysis the species considered are limited to salmon. These fisheries not only appear to be the most seriously threatened and are the most important commercially, but the greatest amount of relevant data are available for them in the two studies referred to above. Time did not permit generation of additional data for consideration of other fisheries.

Administrative areas are to be established by the Commission which are suited to the regulatory purposes of the act and "reasonably compatible" with geographic areas used in the regulations of the Board of Fish and Game (Sect. 150). For present purposes, the regions established in the ISEGR study and used in Part 3 of the Governor's study are taken as the administrative areas (Figure 1). These are combinations of salmon net regulation areas and management areas into geographic areas which in the judgement of the investigators represented identifiable local economic areas. The Commission may establish a different set of areas, of course, but these do meet the requirements of the act in providing the framework for relating the resource management areas (reflecting the resource sustained yield concerns) to the larger socio-economic areas of first impact (reflecting the welfare and economic concerns).

Type and unit of gear are defined in regulations of the Board of Fish and Game (Sect. 340, (5), (8) (9), but this analysis will

FIGURE 1 -- STUDY REGIONS AND 1970 CENSUS DIVISIONS



be limited only to salmon purse seines, drift gill nets, set gill nets, power troll gear and hand troll gear. The numerical and catch importance of other gear (such as beach seines, traps and fish wheels) are such that they can be ignored for the present.

Some indication of the differences in the nature of the salmon fisheries in each area is given by the relative composition of the harvesting labor force by type of gear fished (Table 1) and of the area economies by the industrial composition of their total work force (Table 2).

TABLE 1
 RELATIVE SALMON FISHERMEN EMPLOYED BY ADMINISTRATIVE AREA
 OR TYPE OF GEAR, JULY 1970

Administrative Area	Purse Seine	Drift Gillnet	Set Gillnet	Troll	Other *
(Percentage of Total Fishermen)					
Southeastern	60.3	10.9	3.4	25.2	0.2
Prince William Sound	77.8	19.8	2.1	0.3	-
Cook Inlet	13.0	65.0	22.0	-	-
Southwest	84.5	4.2	10.8	-	0.5
Bristol Bay	-	71.2	28.8	-	-
Arctic-Yukon- Kuskokwim	-	36.4	62.7	-	0.9

* Beach seines, traps, fish wheels

Source: ISEGR Study, Volume 1, page 31

TABLE 2

INDUSTRIAL COMPOSITION OF ADMINISTRATIVE AREAS

TOTAL EMPLOYED WORKFORCE, CALENDAR YEAR 1970

Administrative Area	Commercial Fishing (All Species)	Other Commodity Producing Industries (a)	Government (b)	Distributive Industries (c)	Unclassified and Other (d)
(Percent of Total Employment (e))					
Southeastern	4.9	20.7	37.5	30.0	6.9
Prince William Sound	11.4	16.6	37.0	23.2	11.8
Cook Inlet	5.0	31.6	20.4	28.4	14.6
Southwestern	9.5	14.3	61.0	12.2	3.0
Bristol Bay	20.5	30.9	34.5	9.2	4.9
Arctic-Yukon-Kuskokwim	3.9	10.4	54.0	28.3	3.4

- a) Food processing (primarily fish), other manufacturing, mining, construction, agriculture
- b) Includes members of the armed forces
- c) Transportation, communications, utilities, trade, services, etc.
- d) Self-employed and non-paid family workers, other than fishing and agriculture
- e) Based on twelve-month averages for year

Source: ISEGR Study, Volume 1, page 28

Determining the Number of Entry Permits

The optimum number of entry permits for each type of gear within each fishery and administrative area are to be determined annually by the Commission in accordance with three standards reflecting the efficiency, economic welfare, and management purposes of the act (Sect. 160 and 170). The very recent substitution of the word "optimum" (i.e. best or most favorable) for "maximum" (i.e., the greatest number possible) in this section and elsewhere is a significant amendment. Because the three standards are related to different purposes, the number of units of gear calculated will differ, the "best" (not highest) result being the "optimum" to be used as a basis of issuing permits. The determination of "best" goes beyond simple arithmetic exercises to which this analysis is limited.

(1) The first standard is that the number of units of gear be sufficient to maintain a "financially healthy fishery" and "result in a reasonable average rate of economic return" to participating fishermen. "Fishery" is defined in terms of species, type of gear, and area (e.g., the Bristol Bay salmon drift gill net fishery). There is some ambiguity, however, as to the meaning of "participating fishermen." As used in the ISEGR Study and in parts of the Governor's study this would mean all persons engaged or employed

in the harvesting of fish (i.e., gear operators, crew members, net handlers, etc.) and in annual catch and production reports of the Department of Fish and Game it means all persons holding commercial fishing licenses. There is a suggestion in the third standard (Sect. 160 (a) (3)) that this meaning is intended, but the overwhelming impression elsewhere is that "participaing fishermen" is limited to the vessel or gear operator, or the holder of the gear entry permit. For the present analysis, the last meaning (gear or vessel operator) is accepted for the first two standards and the first meaning (all persons employed) for the third standard. It should be noted that the conclusions arrived at, however, would be significantly different if the broader definition were used in all standards.

"Financially healthy fishery" is defined as one in which the participating operators are financially able to maintain and improve their gear and vessels and are free from economic pressure to violate laws and regulations. The first element of this definition can be established by the Commission on the basis of surveys of participants (or a sample of participants) in each fishery to determine the actual cost of maintaining and replacing their vessels and gear

and their judgement as to how much more would be required to afford a margin to cover the risk of experimentation with new and possibly more efficient gear. The resistance to the temptation to violate law and regulation would be a function of the total economic well-being of the participants in the subject fishery. A basis for this can be provided by the Department of Revenue in the form of a compilation for each fishery of pertinent data extracted from state income tax filings made by all persons holding entry permits or gear licenses.

It is assumed that the reference to a "reasonable average rate of economic return" (emphasis added) means the adjustment up or down in the average actual net income received by all gear operators in each fishery required to equal a combination of a reasonable rate of return on investment in vessel and gear (as determined by the current commercial interest rate or similar measure) and a reasonable return for labor expended (as determined by current wage rates in comparable employments). The Commission will be exercising an element of subjective judgement in its determination of what is "reasonable", but once the appropriate interest and wage rates are selected the remaining calculation can be made from data compiled

to meet the other standards in this section.

It will require several months of intensive work by the Commission staff to generate the necessary data for the initial application of this standard to the determination of the optimum number of permits.

This brief analysis, therefore, makes no attempt to approximate this. The general observation can be made, however, that in almost any conceivable case, it would tend to reduce the number of entry permits below that arrived at by application of either of the remaining standards. In the absence of these further qualifications, the logical and final outcome of the exclusive application of this "financially healthy" standard would be the creation in each fishery of a relatively small elite group of well-equipped, efficient gear operators who consistently enjoyed good to excellent levels of income.

The economic return aspects of the standard strongly imply that the benefits of the economic efficiency aspects of the second standard are to be shared among the surviving fishermen and not be passed on as a cost reduction to the processors. This would justify the presence of this standard in the act.

(2) The second standard is that the number of units of gear be sufficient to "fully harvest the [five year] average allowable commercial take of the fishery resource in an orderly, efficient manner based upon sound management techniques." According to the definitions section of the act (Sect. 340 (1)), "allowable take" is determined by the regulations of the Board of Fish and Game and the emergency regulations of the Commissioner of the Department of Fish and Game. By definition it can be assumed that these regulations meet the requirement of "sound management techniques," unless it is intended that the Commission have a review and veto power, which is unlikely.

The Commission is left with responsibility for determining whether the number of units of gear is such as to provide the full average annual allowable harvest of the "fishery resource" in an "orderly, efficient manner." Provision is also made for the issuance of temporary entry permits to harvest peak runs exceeding the five-year average (Sect. 228). This interpretation is made on the assumption that "peak run" refers to the high run of a fishery cycle, not the seasonal peak of the annual run.

Several critical matters of definition are present here.

The allowable harvest is related not to the "fishery" (which is determined by the resource, gear, and area) but to the "fishery resource" (which is determined only by the resource and area and has nothing to do with the form in which the harvest is accomplished). It would appear from the present language of this subsection therefore, that the Commission has the power not only to limit numbers of units of gear but also to shift the harvest from less efficient types of gear to more efficient. It is possible in some areas, therefore, that the number of entry permits in one salmon fishery might be decreased while the number in another would be increased in the interest of increasing the overall efficiency in the harvest of the "fishery resource."

The Commission will have to establish its own definition and measures of "efficiency" in accordance with the nature of each fishery resource and available data. In their study of the Bristol Bay red salmon drift gill net fishery from 1934 to 1959, for example, Crutchfield and Pontecorvo (1969) defined efficiency in terms of catch per fathom of gear licensed and calculated the amount of unnecessary gear in each season by comparing the total number of fathoms actually licensed (their proxy for the amount used) each year with the number of fathoms required to harvest the same catch if the

fishery were operating at its optimum efficiency (in this case the average catch per fathom achieved in the 1942 and 1943 seasons). On the basis of statistics available in the ISEGR Study, the present analysis will define and measure efficiency for each fishery for the period 1966 to 1970 in terms of the average weekly number of vessels or units of gear fishing in the high month of the season and the total catch. The Commission would use a different time period in order to arrive at a better base for determining optimum efficiency (their period should be longer and more current than my data permits) and should use weekly or daily data in order to assure setting the optimum number at a level sufficient to harvest the seasonal peak of each run.

In making the approximate calculations in this analysis, time did not permit a compilation of all of the Board's regulations and the Commissioner's emergency regulations for each fishery resource over the last five years.

Instead the actual harvest for the five years 1966 to 1970 is taken as a proxy for this data. These figures will differ from those which the Commission may compile, of course, because different time periods and data are used. If there is indeed general overcapacity in all fisheries, however, it can be assumed that the actual

harvest is a reasonable approximation to the original allowable harvest as amended during the season by the Commissioner.

Table 3 summarizes the results of the analysis of the five-year period, 1966 to 1970, in terms of units of gear registered, fished, and the calculated number needed to accomplish the average annual harvest at the maximum level of efficiency (fish caught per unit of gear) achieved during the period. The difference between gear registered and gear fished is a general measure of non-participation. The difference between the number of different units of gear fished during the total season and the number active during the week of highest landings is one rough measure of the excess gear engaged in each season (i.e., theoretically it should have been possible to accomplish the same harvest with only the number of units required to harvest the peak run). The difference between the number of units fished during the year (the second column of the table) and the units needed at levels of maximum efficiency (the fourth column) is intended as an indication of excess gear in terms of numbers of units used and efficiency of their use. This is the calculation made by Crutchfield and Pontecorvo in measuring the dissipation of economic rent or potential economic

TABLE 3

Gear Registered, Fished and Needed, ~~Average~~ A Five Year Average Salmon Harvest By Fishery, 1966-1970

Fishery (Gear & Admin. Area)	Annual Average, 1966 - 1970			Units of Gear Needed at Maximum Efficiency
	Units of Gear Registered	Units of Gear Fished		
		During Year	During High Week	
<u>Southeastern</u>				
Purse Seine	440	407	368	228
Drift gill net	403	329	283	194
Set gill net	175	130	114	90
Troll	2,123	1,766	794	659
<u>Prince William Sound</u>				
Purse Seine	201	183	123	127 ^{La} 80
Drift gill net	493	400	364	287
Set gill net	30	13	11	11
Troll	17	5	3	2
<u>Cook Inlet</u>				
Purse Seine	78	71	39	31
Drift gill net	619	568	412	234
Set gill net	683	545	320	197
<u>Southern</u>				
Purse Seine	496	440	328	244
Drift gill net	123	112	88	73 57
Set gill net	309	190	144	109
<u>Bristol Bay</u>				
Drift gill net	1,811	n.a.	1,625	771
Set gill net	899	n.a.	529	336
<u>Arctic - Yukon - Kuskokwim</u>				
Drift gill net	572	518	379	302
Set gill net	664	580	358	226

n.a. = data not available.

^{La} 1969 not considered as possible error in data.

SOURCE: Appendix Tables 1 and 2. ISEBR study, Vol. 2, Appendix E.

yield in the Bristol Bay drift net fishery and has been used by other economists in demonstrating the degree of inefficiency present in any free entry fishery.

Although such exercises have been effective in making the general case for limiting entry, their use as a means of implementing such programs can be dangerous because their concept of "efficiency" is unrealistic in practice. Appendix Table 2 of this brief, for example, indicates the efficiency of purse seines in the Southeast area ranged from 63,600 fish per unit in 1966 to 15,900 in 1967 and in the Southwest area from 54,300 fish per unit in 1970 to 8,500 in 1967. Clearly what all of the theoretical models have overlooked is that efficiency is a function not only of the fishermen and gear engaged in the harvest, but the availability of fish (i.e., the year of the harvest in the long-run salmon cycle for each race), sea and weather and other factors beyond human control. The present bill does attempt to take this into account, however, by providing for issuance of additional temporary entry permits to harvest peak runs (Sect. 228) and annual Commission review (Sect. 170). Also when effective control of entry into fisheries is established, the Board and Commissioner will be able to depart from

past impositions of inefficiency upon harvesting as a means of conservation and maintain the maximum allowable commercial take with fewer units of gear.

(3) The third standard would set the optimum number of permits at a level "sufficient to avoid serious curtailment of economic opportunities available to all persons, resident or nonresident, considering other economic opportunities reasonably available to them." (Emphasis added). As already noted above, the application of this standard goes beyond the gear owner or operator (the holder of the entry permit) to include all persons employed in fishery harvesting. The Commission will have to determine for each fishery the total employment generated by commercial fish harvesting, the relative importance of this employment in the total economy (including non-fishing activities) of each administrative area, the general economic health and alternative employment situation in each area (trends in development, unemployment rates, etc.), relative re-employability of displaced worker (through training, relocation, etc.) and the role of fisheries employment in maintenance of different Alaskan life styles (subsistence living, homesteading, pleasure boatings, etc.).

The ISEGR Study was intended to provide a basis for

estimating the employment impact of gear limitations and its social and public program implications. The analytical discussion and extensive statistical data base provided in this study are recommended to this Committee as a reference source.

Table 4 summarizes a very limited selection of social and economic data for each of the administrative areas for the year 1970 to suggest the variation in economic opportunity conditions. The Commission will develop other and more current measures beyond these and will have to arrive at a basis for determining in each area the level at which a contemplated cut-back in units of operating gear will result in decrease in numbers of jobs sufficient to constitute "serious curtailment of economic opportunities." Clearly such determinations are beyond the scope of this analysis, but adjustment in the estimated optimum numbers has been made in the case of Bristol Bay and the Arctic-Yukon-Kuskokwim areas to assure continued participation of those resident fishermen who indicated that fishing was their sole or primary cash employment (source of data in ISEGR Study). These are the areas with the most limited alternative employment opportunities and the least mobile population and workforces in the state.

TABLE 4

SELECTED SOCIAL - ECONOMIC CHARACTERISTICS OF ADMINISTRATIVE
AREA POPULATION - 1970

	<u>Southeast</u>	<u>Prince William Sound</u>	<u>Cook Inlet</u>	<u>Southwest</u>	<u>Bristol Bay</u>	<u>Arctic- Yukon- Kuskokwim</u>
Median income, all families with income	\$13,601	\$12,167	\$12,766	\$10,253	\$ 7,284	\$ 5,398
Percent families with income less than 125% national poverty level (a)	10.0%	14.5%	10.0%	13.5%	39.0%	54.8%
Median years of school completed						
Males	12.3	12.2	12.3	12.3	9.7	6.0
Females	12.4	12.3	12.5	12.1	7.3	5.6
Weeks worked in 1969:						
Percentage males 16 years and over (b)						
50 - 52 weeks	52.2%	39.4%	50.0%	63.4%	39.1%	23.9%
27 - 49 weeks	22.7%	25.8%	24.5%	20.6%	15.7%	13.4%
26 weeks or less	16.3%	23.4%	16.6%	11.9%	37.2%	47.3%
Did Not Work	8.8%	11.3%	8.9%	4.1%	8.0%	15.4%
Fisheries employment as Percentage Total of Civilian Employment						
Annual Average	5.1%	11.7%	5.1%	17.7%	25.3%	4.4%
Month of July	13.7%	25.1%	20.3%	30.5%	40.4%	16.2%

(a) National poverty line for all families = \$3,388.

(b) Includes members of armed forces

Source: ISEGR Study, Volume 2, Appendix B

For purposes of this brief, hypothetical optimum numbers of entry permits have been calculated for each salmon fishery giving some consideration to each of the three standards in Section 160 of the bill. This was a modification of the calculated units of gear needed at maximum efficiency in Table 3. The first standard (achieving a financially healthy fishery) was reflected in adjusting the numbers in each fishery to bring the average dollar earnings per unit of gear to the highest level for each gear and the third standard (economic opportunity) was reflected in a contrary adjustment. Table 5 compares the actual number of units fished and the average earnings per unit for each fishery in 1971 with what the results would have been if these hypothetical optimum limits were in effect. Because the Arctic-Yukon-Kuskokwim fisheries are still in the early stages of development with some potential for further commercial harvest increases and because of the virtual absence in the area of any significant alternative economic opportunities for many of the residents, no reduction of numbers below those actually fishing was made. In the case of Bristol Bay the optimum was set considerably above the level optimizing "efficiency" because of a heavier weighting of the third standard. Other adjustments from the "efficiency" levels were minor.

One expected effect of the application of these hypothetical optimum to the 1971 harvest is demonstrated in Table 5. The result would have been a general increase in the average earnings

TABLE 5

AVERAGE EARNINGS PER UNIT SALMON GEAR, 1971

Actual and Optimum Number Fishing

<u>FISHERY (Gear and Administrative Area)</u>	<u>Number of Units Registered</u>	<u>Actual Number of Units Fished</u>	<u>Average Earnings per Unit Fished</u>	<u>Hypothetical Optimum Number of Units</u>	<u>Average Earnings per Unit</u>
<u>Southeastern</u>					
Purse Seine	358	306	\$23,564	230	\$ 31,350
Drift Gillnet	475	347	7,401	200	12,841
Set Gillnet	175	114	3,447	100	3,705
Troll	2,356	1,662	2,292	660	5,772
<u>Prince William Sound</u>					
Purse Seine	266	251	20,652	130	39,874
Drift Gillnet	14	-- No set net areas open in 1971 --			
Troll	41	7	2,466	2	8,630
<u>Cook Inlet</u>					
Purse Seine	81	49	8,582	35	12,015
Drift Gillnet	710	463	2,355	235	4,641
Set Gillnet	731	436	1,748	200	3,811
<u>Southwest</u>					
Purse Seine	583	534	15,880	250	33,919
Drift Gillnet	169	139	9,251	100	12,859
Set Gillnet	318	155	3,655	150	3,777
<u>Bristol Bay</u>					
Drift Gillnet	1,865	1,710	8,513	1,150	12,659
Set Gillnet	846	421	3,746	400	3,943
<u>Arctic - Yukon - Kuskokwim</u>					
Drift Gillnet	796	709	632	709	632
Set Gillnet	883	783	1,194	783	1,194

of the surviving units and some equalization of earnings for similar gear in different areas after making allowances for physical and technical gear differences. It should be immediately noted that this sort of calculation needs further analysis and interpretation in the light of the actual distribution of earnings among fishermen. The tables in the Governor's study showing the distribution of catch among units of gear in each fishery in 1971 clearly illustrates this. The southeastern salmon troll fishery catch of 7,091,000 pounds by 1,620 vessels fishing, for example, yields an average catch of 4,377,500 pounds per vessel. The distribution by numbers of vessels, however, indicates that 82.7% of all the vessels fishing made catches of less than the average for the total fishery. The elimination of 60% of the units fishing from the least productive units would make only 2.4% of the total catch or value available for redistribution among the surviving units.

The second obvious effect of the application of these hypothetical optimum would have been a substantial elimination of numbers of operators from most fisheries. How to select the individuals to be eliminated would be the Commission's most difficult task.

Issuance of Entry Permits -- The Elimination Task Magnitude

Following establishment of the optimum number of entry permits for each fishery, the Commission must deal with the task of selection of those to receive permits from among qualified applicants, that is persons who are presently able and intend to participate actively in the fishery (Sect. 340 (7)) and are not ineligible by reason of violations of the act, making false statements, or being convicted of violation of a state tax law or regulation (Sect. 320). Table 6 applies these initial qualifications to the 1971 gear data. It is assumed that the number of persons who would be qualified by virtue of ability and intention would equal those who actually fished during the year. The number of persons who would be disqualified by virtue of violation of fisheries and tax laws and regulation has been very crudely estimated by applying to the 1971 units fished the percentage of 1969 operators earning \$5,000 or more who apparently did not file state income tax statements. This is not much more than an informal guess.

These calculations undoubtedly overstate the number of units of gear which might be eliminated by reason of failing to qualify as applicants. Failure to participate in one season does not automatically disqualify an applicant, for example, and violation of tax laws requires that the person be convicted of such violation. They do indicate, however, that the number of

TABLE 6

ESTIMATED QUALIFIED APPLICANTS FOR ENTRY PERMITS, 1971

And Numbers to Be Selected for Elimination

FISHERY (Gear and Administrative Area	Units of Gear Regis- tered	Units Not Fishing	Units Violating tax laws, etc.	Estimated Quali- fied Appli- cants	Opti- mum No. of Per- mits	Number of Appli- cants to be eli- minated	Percent of Appli- cants to be eliminated	Percent of Reg. Gear to be eli- minated
<u>Southeastern</u>								
Purse seine	358	(52)	(60)	246	230	16	6.5	35.8
Drift Gillnet	475	(128)	(50)	297	200	97	32.7	57.9
Set Gillnet	175	(61)	(20)	94	100	-	-	42.9
Troll	2,356	(694)	(200)	1,462	660	802	54.9	72.0
<u>Prince William Sound</u>								
Purse Seine	266	(15)	(75)	176	130	46	26.1	51.1
Drift Gillnet	652	(101)	(100)	451	290	161	35.1	55.5
Set Gillnet	14	(14)	-	-	-	-	-	-
Troll	41	(34)	-	7	2	5	-	82.9
<u>Cook Inlet</u>								
Purse Seine	81	(32)	(10)	39	35	4	21.0	56.8
Drift Gillnet	710	(247)	(90)	373	235	138	37.0	66.9
Set Gillnet	731	(295)	(80)	356	200	156	43.8	72.6
<u>Southwest</u>								
Purse Seine	583	(49)	(100)	434	250	184	42.4	57.1
Drift Gillnet	169	(30)	(20)	119	100	19	16.0	40.8
Set Gillnet	318	(163)	(25)	130	150	-	-	52.8
<u>Bristol Bay</u>								
Drift Gillnet	1,865	(155)	(200)	1,510	1,150	360	25.8	38.3
Set Gillnet	846	(425)	(100)	321	400	-	-	52.7
<u>Arctic - Yukon - Kuskokwim</u>								
Drift Gillnet	796	(87)	(10)	700	709	-	-	10.9
Set Gillnet	883	(100)	(10)	773	783	-	-	11.3
TOTAL STATE	11,278	(2,682)	(1,150)	7,488	5,624	1,988*	26.5	50.1
PERCENT	100.0	(23.8)	(10.2)	66.4	49.9	17.6		

* Total not adjusted to deduct gear deficits in six fisheries

SOURCE: Governor's Study, pages 109 through 115

ISEGR Study, Volume 2, Appendix F

qualified applicants will be significantly influenced by the strictness of interpretation of the qualification provisions of the bill. In the 1971 exercise summarized in Table 6, the state-wide task of selecting applicants to be eliminated is 26.5% of the total estimated qualified applicants as compared with the need to eliminate 50% of holders of gear registration. The probable number of applicants who could successfully challenge the Commission's disqualifications suggest that the selection task would range from 30 percent to 50 percent of the finally qualified applicants in all fisheries. The range variation between fisheries, however, is considerably greater.

The selection from the qualified applicants is to be made on the basis of a classification of the applicants in each fishery into five categories of decreasing severity of hardship imposed by elimination (Sect. 200). This is to be done by the use of three sets of standards: (1) the extent to which the fishery constitutes an income source to the applicant and the extent of active participation, (2) the extent to which alternative livelihoods are realistically available to the applicant, presently or following re-training, and (3) the extent of the applicant's investment in vessels and gear. The standards will have to be especially designed for each fishery in terms of the "facts of life" in each, and each applicant will have to be treated individually in terms of his "facts of life" (his age, work experience, education, number of dependents, etc.). The process

can be stated as a matrix relating the five hardship severity categories to the three sets of classification standards, somewhat as follows (the third column under classification standards not presented below consist of five ranges of investment values relating to hardship categories):

CLASSIFICATION STANDARDS FOR
GEAR LICENSE HOLDERS

Hardship Severity Categories	Participation and Relative Importance of Fishing Income	Alternative Employment Availability
1. <u>Extreme</u> , continuation essential.	1. Consistent in this fishery. Primary source of income.	1. Little or none.
2. <u>Substantial</u> , continuation strongly needed.	2. Consistent in fishing (this fishery and others). Primary income source.	2. Available with relocation from area and training.
3. <u>Some</u> , continuation <u>desirable</u> but not strongly needed.	3. Regular, part-time. Substantial supplemental income source.	3. Available with training.
4. <u>Mild</u> , continuation mildly desirable, but not needed.	4. Irregular. Variable, minor income source.	4. Available with relocation.
5. <u>None</u> , continuation optional.	5. Little or none.	5. Immediately re-employable.

The ISEGR Study contains considerable data which could be used in an analysis of the estimated number of persons with these general economic and social characteristics, but time did not permit this and the result would be based upon group data rather

than individual data and could be misleading. It is sufficient to note the nature of the task and to indicate that some weighting will have to be devised for each of the three set of standards. In actual cases with real people, the scoring set will not necessarily be at the same level within each set.

Financing Aspects of the Limited Entry Program

The bill provides that an annual fee of \$50.00 shall be collected from every holder of an entry permit (including temporary and interim permits), except that an applicant with a net family income falling within the Federal Social Security Administration poverty guidelines may elect to receive an entry permit subject to a five-year prohibition on transfer at a maximum annual fee of \$5.00. The ISEGR Study of income received in 1969 by vessel operators from all sources of employment and income in Alaska indicates that the applicants falling within this special poverty provision could be significant. In the Bristol Bay fishery, for example, 47% of the resident vessel operators earned annual incomes in 1969 from all sources of less than \$3,000. Other members of the families of these fishing vessel operators undoubtedly earned other income bringing the family income levels up somewhat, but this does suggest that almost half those engaged in this fishery are below or close to the national poverty guidelines. Taking the 1970 census family income data for total population for each of the administrative areas as an indicator of the percentage of applicants who would be eligible for the reduced fee, the estimated revenue from fees collected on the basis of the 1971 calculations above, would be as follows:

Southeast area	1,100 permits @ \$50.00	\$ 55,000
	90 permits @ 5.00	450
Prince William		
Sound Area	378 permits @ 50.00	18,900
	44 permits @ 5.00	220
Cook Inlet Area	435 permits @ 50.00	21,750
	35 permits @ 5.00	175
Southwest Area	465 permits @ 50.00	23,250
	35 permits @ 5.00	175
Bristol Bay Area	1,090 permits @ 50.00	54,500
	460 permits @ 5.00	2,300
Arctic - Yukon -		
Kuskokwim area	792 permits @ 50.00	39,600
	700 permits @ 5.00	<u>3,500</u>
Total State Fee Collections		\$219,820

Within two years of the effective date of the act, the Commission is required to compensate any qualified applicant denied a permit for the "direct economic resulting from loss of value of the applicant's vessel and gear." This is to be based upon the fair

market value of the vessel and gear (Sect. 225). Under the 1971 calculations above, Table 7 indicates the number and type of gear to be eliminated in each fishery. The assignment of a dollar value to this figure is not possible at this time because of the great variation in actual value of gear which is a function of its type, condition, age, income-producing potential and a host of other factors. A 1968 survey of investment in gear and vessels in the Cook Inlet fishery gave the average values summarized in Table 7. The average value of set net sites (including gear) was given as \$15,998. Applied to the Cook Inlet fishery hypothetical limited entry program for 1971, these figures yield the following cost of compensation to eliminated gear:

	<u>Units Eliminated</u>	<u>Total Value</u>
Seines	4	\$ 39,072
Drift	138	1,815,390
Set	<u>156</u>	<u>2,495,688</u>
Total	298	\$4,350.150

It should be noted that this is the value which the fishermen interviewed gave and may not reflect what an objective appraiser would give as the "fair market value". Also these figures are now six years old and the boats included in the sample have been further depreciated in value or replaced by newer vessels.

Another pertinent scrap of information is the reported average

TABLE 7
 AVERAGE VALUE OF BOATS AND GEAR, COOK INLET
 SALMON FISHERY, 1968

<u>Type of Gear</u>	<u>Average Value of Boat</u>	<u>Average Value of Gear</u>	<u>Total Average Value</u>
Resident Drift Net	\$ 11,087	\$ 1,451	\$ 12,538
Non-Resident Drift Net	12,657	1,722	14,379
All Drift Net(a)	11,613	1,542	13,155
Seine - hand (b)	7,868	1,900	9,768
All gear	11,156	1,585	12,741

(a) Average boat 32.6 feet long, 156 horsepower, top speed 11.5 knots

(b) Average boat 28.7 feet long, 112 horsepower, top speed 9.0 knots

SOURCE: L. B. Flagg, "An Economic Survey of the Cook Inlet Salmon Fishery," Informational Leaflet 145, June 1970, Alaska Department of Fish and Game

1970 value of vessels in the British Columbia salmon fleet of \$14,967 (Department of Fisheries and Forestry, June 19, 1970). This is comparable to the Cook Inlet 1968 data after making allowances for general price inflation. Using these two bits of information it would appear that the value of the approximately two thousand units of gear to be eliminated under the hypothetical 1971 case used in this brief could be as high as thirty million dollars. Assuming that the Commission might recover half this amount through resale, the net cost of compensation to gear eliminated could be about fifteen million dollars, give or take a few million.

The economic feasibility of the Commission administering a compensation program of this magnitude can be gauged by reference to the seven percent tax proposed on gross value of catch to finance the buy-back program under the voluntary reduction provisions (Sect. 290,295). On the basis of the 1971 value of salmon catch to fishermen, this tax would have yielded approximately 3.6 million dollars. At this rate, it would take approximately four years to accumulate sufficient funds from a catch value tax to finance the initial reduction program.

APPENDIX TABLE 1.

Salmon Gear Registered and Fished 1966-1970

Fishery (Gear, Admin. Area)	1966	1967	1968	1969	1970	Five Year Avg.
<u>South eastern</u>						
Purse seine						
- Registered	447	428	498	405	422	440
- Fished during year	419	403	470	339	405	407
- Fished, high week	357	324	463	311	386	368
Drift gill net						
- Registered	302	370	527	395	420	403
- Fished during year	285	320	402	297	339	329
- Fished, high week	253	267	359	252	285	283
Set gill net						
- Registered	157	178	184	182	173	175
- Fished, during year	131	144	139	130	106	130
- Fished, high week	114	118	119	119	101	114
Troll						
- Registered, power	749	691	737	908	950	807
- Registered, hand	1,166	1,156	1,317	1,365	1,578	1,316
total	1,915	1,847	2,054	2,273	2,528	2,123
- Fished during year	1,769	1,598	1,772	1,795	1,895	1,766
- Fished, high week	764	663	919	836	787	794
<u>Prince William Sound</u>						
Purse seine						
- Registered	194	189	192	213	219	201
- Fished during year	181	164	175	193	204	183
- Fished, high week	117	108	124	123	145	123
Drift gill net						
- Registered	447	485	463	507	567	493
- Fished during year	348	394	389	406	462	400
- Fished, high week	340	390	346	358	386	364
Set gill net						
- Registered	47	11	12	42	38	30
- Fished during year	19	0	0	22	23	13
- Fished, high week	16	0	0	22	16	11
Troll						
- Registered	12	13	11	23	25	17
- Fished during year	5	5	3	3	8	5
- Fished, high week	1	5	3	3	1	3

APPENDIX TABLE I (Continued)

Salmon Gear Registered and Fished, 1966-1970

<u>Fishery</u>	<u>1966</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>Five Year Avg.</u>
<u>Cook Inlet</u>						
Purse Seine						
- Registered	77	58	91	75	89	78
- Fished during year	75	54	88	58	80	71
- Fished, high week	38	28	50	32	47	39
Drift gill net						
- Registered	504	536	611	687	757	619
- Fished during year	489	521	599	608	625	568
- Fished, high week	307	375	430	476	470	412
Set gill net						
- Registered	628	604	681	728	772	683
- Fished during year	616	491	632	462	522	545
- Fished, high week	351	290	353	288	218	320
<u>Southwest</u>						
Purse Seine						
- Registered	488	449	512	484	549	496
- Fished during year	472	299	459	443	528	440
- Fished, high week	385	198	319	372	366	328
Drift gill net						
- Registered	78	115	125	127	172	123
- Fished during year	61	110	110	122	158	112
- Fished, high week	37	77	103	103	122	88
Set gill net						
- Registered	291	275	307	318	356	309
- Fished during year	191	191	188	199	181	190
- Fished, high week	150	102	136	178	156	144
<u>Bristol Bay</u> (data not available for number fishing during year)						
Drift gill net						
- Registered	1,865	1,699	1,684	1,928	1,881	1,811
- Fished, high week	1,715	1,555	1,441	1,724	1,688	1,629
Set gill net						
- Registered	965	830	839	970	890	891
- Fished, high week	549	439	493	628	538	529

APPENDIX TABLE 1 (continued)

Salmon Gear Registered and Fished, 1966-1970

<u>Fishery</u>	<u>1966</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>Five Year Avg.</u>
<u>Arctic - Yukon - Kuskoquim</u>						
Drift gill net						
- Registered	383	488	598	693	700	572
- Fished during year	338	430	542	628	651	518
- Fished, high week	204	284	476	463	466	379
Set gill net						
- Registered	645	557	626	714	776	664
- Fished during year	575	492	550	670	613	580
- Fished, high week	278	348	385	393	386	358

SOURCE: Gear registered and fished during year = Governor's study, pp. 69-72.
 Gear fished during high week = SEGR study, Vol. 2, Appendix C, D.

APPENDIX TABLE 2

Efficiency of Salmon Gear, 1966-1970

Fishery (Gear and Administrative Area)	1966	1967	1968	1969	1970
	(Thousands of fish per unit of gear fished in high week)				
<u>Southeastern</u>					
Purse seine	63.6	15.9	59.0	16.4	31.5
Drift gill net	7.1	3.3	4.0	4.0	6.2
Set gill net	2.5 0.2	2.0	1.7	2.0	1.6
Troll	1.1	1.2	1.3	0.9	0.8
<u>Prince William Sound</u>					
Purse seine	26.9	26.7	26.3	42.7 ^{La}	20.9
Drift gill net	3.7	2.1	2.9	2.6	3.8
Set gill net	3.8	0	0	3.9	3.8
Troll	3.5	5.4	2.0	1.6	2.1
<u>Cook Inlet</u>					
Purse seine	13.1	16.2	13.3 5.4	8.4	17.3
Drift gill net	7.2	3.2	6.3	1.6	3.4
Set gill net	7.3	2.6	6.7 7.4	1.7	3.2
<u>Southern</u>					
Purse seine	33.9	8.5	45.3	45.8	54.3
Drift gill net	16.1	5.4	5.9	10.8	11.3
Set gill net	6.7	2.4	8.3	4.7	7.4
<u>Bristol Bay</u>					
Drift gill net	6.4	2.9	3.3	3.7	12.2
Set gill net	2.5	1.1	1.1	1.3	2.8
<u>Arctic - Yukon - Kuskokwim</u>					
Drift gill net	0.4	0.5	0.7	0.6	0.7
Set gill net	1.0	0.7	0.8	1.3	1.8

^{La} May be result of errors in data.

SOURCE: Appendix Table 1. Salmon catch from Governor's study, pp. 324-333.

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Sec. 16.43.010 PURPOSES AND FINDINGS OF FACT. (a) It is the purpose of this chapter to promote the conservation and the sustained [and improved] yield management of Alaska's fishery resource 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 and without unreasonably and seriously curtailing economic opportunities available to the people of this state and elsewhere.

(b) The legislature finds that commercial fishing for certain fishery resources has reached levels of participation, on both a statewide and an area basis, that have impaired or threaten to impair the economic welfare of the fisheries of the state, the overall efficiency of the harvest, and the sustained [and improved] yield management of the fishery resource.

Sec. 16.43.120 GENERAL POWERS. (a) The commission [shall have power to] may perform all duties imposed upon it and [to] carry out all functions given to it under this chapter. The commission [shall] may also [have the power to do] do all things necessary or appropriate to the exercise of [such] its basic power, whether or not specifically designated in this chapter.

(b) The commission [shall have the power to] shall adopt regulations, not inconsistent with law, necessary or appropriate in the exercise of its powers under (a) of this section.

Sec. 16.43.145 FISHERY RESOURCE DESIGNATION. The commission shall designate, in view of the purposes of this chapter and [of] the findings of fact in section 010 of this chapter, the specific fishery resources [to which sections .150 and following of this chapter shall be subject.] subject to this chapter. The commission may thereafter [and from time to time similarly] , as required, designate other fishery resources [to come under those sections of] that are subject to this chapter.

Sec. 16.43.160 DETERMINATION OF [DESIRED] MAXIMUM[; STANDARDS] NUMBER OF ENTRY PERMITS. The [desired] maximum number of entry permits[, one such maximum] for each type of gear within each administrative area, shall be established by the commission based upon the following standards:

(1) the number of units of gear sufficient to maintain a financially healthy fishery, that will result in a reasonable average rate of economic return to the fishermen participating in that fishery;[sufficient to maintain a financially healthy fishery;]

(2) the average number of units of gear necessary to fully harvest the allowable commercial take of the fishery resource during the four years prior to the effective date of this Act [all years in] in an orderly, efficient manner based upon sound management techniques; however, this level may be changed temporarily when, in the determination of the commission, peak runs necessitate the change;

(3) the number of entry permits sufficient to avoid serious curtailment of the economic opportunities available to all persons, [whether] resident [of this state or elsewhere] or nonresident, considering other economic opportunities reasonably available to them.

Sec. 16.43.170 [PROMULGATION;] ANNUAL REVIEW OF ENTRY PERMIT
MAXIMUMS. [(a) Each determination made by the commission pursuant
to section 160 of this chapter shall be immediately promulgated.]

[(b)] (a) Using the standards [of] established under
[section] sec. 160 of this chapter, the commission shall annually
review [the previous] its determination [and re-promulgate the
number so reviewed or as changed after such reconsideration, changing
only if long-term change portends or is perceived in the application
of any one or more of those standards.] and may change the
determination as appropriate.

Sec. 16.43.180 [PERMIT REQUIRED;] ELIGIBLE HOLDERS FOR PERMITS.

(a) After January 1, 1974 no person may operate gear engaged in the commercial taking of a fishery resource designated under section 145 of this chapter without a currently renewed entry permit, temporary or permanent, issued by the commission. A crewman or other person assisting the holder of [such] an entry permit in the operation of a unit of gear need not [himself] personally hold an entry permit.

(b) A person may hold more than one entry permit issued [pursuant to] under this chapter [only] for any one or more of the following purposes:

- (1) fishing more than one type of gear;
- (2) fishing in more than one administrative area;
- (3) fishing for species for which separate entry perm. are issued.

(c) A partnership may apply for and beneficially hold an entry permit, or more than one entry permit under [subsection (b) hereof] (b) of this section, if in a writing submitted to the commission and signed by all partners, one of the partners is designated as the principal operator. [Such person] The principal operator shall be considered the applicant for and the holder of the entry permit for all purposes of this chapter.

Sec. 16.43.180 (continued)

(d) A corporation may apply for and beneficially hold an entry permit, or more than one entry permit under [subsection] (b) [hereof] of this section, if there is one person who beneficially owns and is entitled to vote 50% or more of the voting stock of that corporation and if in a writing submitted to the commission and signed by and on behalf of the corporation by its president and secretary, that person is designated as the principal operator. [Such person shall be] The principal operator is considered the applicant for and the holder of the entry permit for all purposes of this chapter.

Sec. 16.43.190 INTERIM-USE PERMITS. Pending the initial issue of entry permits for a particular fishery [pursuant to] under section 220 of this chapter, the commission shall issue interim-use permits for that fishery to all qualified applicants who are presently able and who presently intend to participate actively [therein] in the fishery. The commission shall adopt regulations specifying the dates and places of application, the standards for determining the qualification of applicants [as herein specified] and their qualification upon [such] renewal, the renewal dates, the fees to be charged for [such] the application or for [such] the permit, the procedures to be followed in renewal [thereof] of the permit including the time, place and fees incident [thereto] to its renewal , and for any other purpose incident to the administration of the interim-use period for that fishery. [All such] Interim-use permits for [any particular] a specific fishery [shall] expire [upon] when replaced by initial issue of entry permits for that fishery under sec.[tion] 220 of this chapter, [except as may be] unless extended [pursuant to] under sec.[tion] 225(b) of this chapter.

Sec. 16.43.200 [ENTRY PERMITS;] STANDARDS FOR INITIAL ISSUE OF ENTRY PERMITS. (a) Following the establishment of the [desired] maximum number of entry permits for a particular fishery [pursuant to] under sec.[tion] 160 of this chapter, the commission shall adopt regulations for the selection from among qualified applicants who are presently able and who presently intend to participate actively in the fishery those who would suffer hardship [should] if they [be] are excluded from the fishery by the imposition of the limited entry system prescribed by this chapter, using the following standards:

(1) the extent to which this fishery constitutes an income source to the applicant, in decreasing order of importance as follows:

(A) consistent participation in this fishery as a gear license holder has provided the primary income source during all or substantially all of [the three years] at least two of three years immediately prior to January 1, 1973;

(B) consistent participation in this fishery as a gear license holder, together with participation in other fisheries, has constituted the primary income source during all or substantially all of [the three] at least two of three years immediately prior to January 1, 1973;

(C) participation in this fishery as a gear license holder has provided a substantial income supplement to income from sources other than fishing during all or substantially all of [the three] at least two of three years immediately prior to January 1, 1973;

16.43.200 (continued)

(D) irregular participation in this fishery as a gear license holder [over] during all or substantially all of [the three] at least two of three years immediately prior to January 1, 1973 has provided a variable minor income source;

(E) little or no participation in this fishery as a gear license holder;

(2) the extent to which alternative livelihoods are realistically available to the applicant, either presently or following a realistically available and reasonable course of training;

(3) the extent of the applicant's investment in vessel and gear.

(b) The regulations shall establish five categories of decreasing severity of hardship for grouping similarly situated applicants, based upon application of the foregoing standards, as follows:

- (1) extreme hardship making continuance [is] essential;
- (2) hardship making continuance [is] strongly needed;
- (3) some hardship making continuance [is] desirable but not strongly needed;
- (4) minor or slight hardship making continuance [is] mildly desirable but not needed;
- (5) no hardship.

(c) The commission may adopt regulations establishing sub-classifications of the priority classifications in (b) of this section when it considers it necessary [in] for the application of the standards stated in (a) of this section in order to produce

16.43.200 (continued)

groups of applicants similarly situated for each administrative area and each type of gear.

(d) The commission [may] shall adopt regulations for [obtaining information upon which to make a determination] determining whether [the] an applicant is presently able and presently intends to participate actively in the fishery.

Sec. 16.43.210 [ENTRY PERMITS;] PROCEDURE FOR APPLICATION FOR INITIAL ISSUE OF ENTRY PERMITS. (a) The commission shall establish the opening and closing dates, and the places and form of application for initial issue of entry permits for each type of gear and each administrative area. The commission may, as part of the application form, [or as attachments thereto,] require the submission of evidence relevant to the applicant's qualification and to the determination of the appropriate priority classification to which his application should be assigned under [the] regulations adopted [pursuant to] under sec.[tion] 200 of this chapter.

(b) The commission may require that [certain] a portion of the evidence [to be] submitted by the applicant be verified by him or by others. When an applicant is unable to submit any or all of the verified evidence required, he may request and obtain an administrative adjudication of his application according to the procedures established in sections 130- 140 of this chapter. At the hearing he may present alternative evidence of his qualifications or of hardship pertinent to the determination of the priority classification to which his application should be assigned.

Sec. 16.43.220 [ENTRY PERMITS;] INITIAL ISSUE OF ENTRY PERMITS.

(a) After the closing date for applications established by the commission under section 210 of this chapter, the commission shall assign the application of each qualified applicant to the appropriate priority classification as determined under section 200 of this chapter based upon the evidence established [pursuant to] under section 210 of this chapter and promptly notify each applicant by mail or posting at the applicant's place of application whether he has been found qualified and, if so, the priority classification to which his application has been assigned.

(b) The commission shall issue entry permits, for each administrative area and each type of gear, to all qualified applicants in the three highest [and next-highest] priority classifications, whether or not the total number of permits [so] issued exceeds the [desired] maximum number of entry permits established [pursuant to] under section 160 of this chapter for each administrative area and each type of gear. If for any administrative area and any type of gear the total number of permits [so] issued does not exceed the [desired] maximum number of entry permits established pursuant to section 160 of this chapter, the commission shall [also] issue entry permits to persons ^e successively in the next-lower priority classification or classifications until the total number of entry permits issued equals the [desired] maximum number established for the particular area and the particular type of gear.

16.43.220 (continued)

(c) If, within the lowest priority classification of qualified applicants to which [some] entry permits are to be issued, there are more applicants than there are entry permits to be issued, the allocation of entry permits within that priority classification shall be by lot.

(d) If, at the time entry permits are issued, some applicants are [still] in the process of appealing the finding of an administrative adjudication [pursuant to] under sec. 210 of this chapter, a sufficient number of entry permits shall be reserved out of the permits to be issued, to protect the rights of those applicants who are appealing, assuming all the appeals will be resolved in favor of the applicants. In the event that all appeals are not resolved in favor of the applicants, the remaining entry permits shall be allocated to the next most qualified applicants as[provided in (a), (b) and (c) of] appropriate under the procedure specified in this section.

Sec. 16.43.225 [DENIAL OF INITIAL ISSUE;] RIGHT TO COMPENSATION
[IN CERTAIN CASES] FOR DENIAL OF INITIAL ENTRY PERMIT ISSUE.

(a) If an entry permit is denied to a qualified applicant whose application is assigned to priority classification [(3)] (4) as established in section 200 (b) (3) of this chapter, [full and] reasonable compensation [must] shall be made to the applicant [based upon the economic value of an initial entry permit for the area and type of gear for which his application was denied, and including compensation for direct economic loss resulting from a drop in the marked value of the applicant's vessel and gear which is attributable to regulation under this chapter.] for direct economic loss resulting from loss of value for the applicant's vessel and gear.

(b) [Until full compensation is made by the commission, any applicant entitled to compensation under (a) of this section shall be permitted to continue fishing under an interim-use permit.] Compensation shall be made under (a) of this section within two years from the effective date of this Act.

Sec. 16.43.227 [ENTRY PERMITS;] SUBSEQUENT ISSUE OF ENTRY PERMITS.

(a) For [any] a given administrative area and type of gear, [therein] after initial issue of entry permits and for as long [thereafter] as the number of entry permits outstanding exceeds the [desired] maximum number in that administrative area and for that type of gear, the commission shall, upon each annual renewal of outstanding entry permits, also issue new entry permits to qualified applicants upon a ratio of one new entry permit for every [two] ten entry permits that have been retired or forfeited under sections 290 and 320 of this chapter since the last previous annual renewal date.

(b) If, at the time of annual renewal, the number of outstanding entry permits is fewer than the desired maximum number for the particular administrative area and type of gear, the commission shall issue new entry permits to qualified applicants [up to] until the desired maximum number is reached.

(c) New entry permits shall be issued first to those applicants who have submitted a notice of intended surrender under section 300 of this chapter. If there[be] are more [such] applicants who have submitted a notice of intended surrender than there are new permits to be issued, applicants shall be issued permits in order of their respective date of filing [such] the notice of intended surrender. If, after issuing permits to all applicants who have submitted [such] the notice, additional permits

16.43.227 (continued)

are to be issued to other applicants but there are more [such] applicants than there are new permits to be issued, the new permits shall be allocated among [such] those applicants [by lot.] in order of their respective application.

Sec. 16.43.229 [ENTRY PERMITS;] PRICE UPON NEW ISSUE OF ENTRY PERMITS. The applicant to whom a new entry permit is to be issued [pursuant to] under section 227 (c) of this chapter shall, [prior to the receipt of the] as a condition of receiving the permit, pay to the commission [for the use of the state] the fair market value of the permit as determined under section 310 of this chapter.

Sec. 16.43.230 TERMS AND CONDITIONS OF ENTRY PERMIT; ANNUAL RENEWAL. (a) Except as [hereinafter] provided in this subsection, the holder of a currently renewed entry permit must himself be at all time present and actively engaged in the operation of [a unit of] the gear for which the permit [was] is issued. The commission shall adopt regulations for alleviation of hardship caused by illness, incapacity, or death of a permit holder prior to or during a fishing season [whereby] so that another person may be issued a temporary entry permit to operate the gear for the remainder of the season, or in the case of illness or incapacity, for the duration [thereof] of the illness or incapacity if that [be] is shorter than the remainder of the season. [The commission may adopt regulations whereby in extraordinary circumstances the holder of a currently renewed entry permit may act as crewman or other assistant in the operation of gear by another permit holder in order to alleviate hardship upon that other permit holder.]

(b) To the extent that the commissioner of [the Department of] fish and game authorizes it in individual cases [pursuant to (15) of AS 16.05.250] under 16.05.050(11), the holder of an entry permit for any type of gear and for any administrative area may on an experimental basis engage in commercial taking from any fishery resource of the state.

(c) The holder of a currently renewed entry permit must have the permit in his possession at all time when engaged in [the] commercial fishing [taking from] for a fishery resource designated under section 120 of this chapter.

16.43.230 (continu.

(d) Each entry permit is issued for a term of one year and [confers upon the] entitles its holder to a right of renewal as long as he remains qualified. A permit holder may fail for one year to renew the entry permit but upon renewal the year [thereafter] after he shall pay all accrued fees.

(e) Failure to renew an entry permit for a period of two years from the date of last renewal shall result in a forfeiture except as waived by the commission for good cause [shown]. The commission may adopt regulations, consistent with the purpose of this chapter delineating the circumstances constituting [such] good cause and prescribing terms of renewal.

[(f) Transferability, both voluntary and involuntary, of entry permits is governed by the provisions of sections .250-.280 of this chapter. Surrender and retirement of entry permits is governed by section .290 of this chapter. Forfeiture of entry permits is governed by section .320 of this chapter.]

Sec. 16.43.240 ANNUAL FEE. There is an annual fee of \$50 for the issuance and annual renewal of entry permits [or temporary entry permits]. However, this may be reduced in the discretion of the commission, when the applicant has a net family income falling within the Federal Social Security Administration poverty guidelines for the year preceeding application. The commission may adopt regulations revising the amount of this annual fee to reflect the costs of administering this chapter [including those incurred under section 290 hereof]. Fees collected under this section shall be paid into the general fund.

Sec. 16.43.250 [ENTRY PERMITS;] TRANSFER OF ENTRY PERMITS.

Entry permits are transferable through and by the commission [pursuant] under sections 260, 270, and 280 of this chapter, and [except as so transferable are not capable of] unless transferred under sec. 260, 270 and 280 of this chapter, may not be voluntarily or involuntarily transferred by any other means [whatsoever], including, [without limitation] but not limited to:

- (1) sale of any kind, conditional or absolute;
- (2) pledge, mortgage, or other encumbrance of any kind;
- (3) lease, rental, or other transfer of rights of user or enjoyment, whether temporary or permanent;
- (4) gift of the entire interest or of any part, whether complete or into any form of co-ownership;
- (5) succession at or upon death, whether by will, intestacy, or otherwise;
- (6) attachment, distraint, execution, or seizure [pursuant to] under any other process of any kind of any court or other body.

[This provision of] Nothing in this section [shall not, however] prevents or [otherwise] restricts forfeiture [brought about by] as a result of the violation of [the] a provision[s] of this chapter [as elsewhere specified herein] or by violation of fish and game laws or regulations [pertaining to or issuing from the Department of Fish and Game] or by violation of any other state law or regulation.

Sec. 16.43.260 [ENTRY PERMITS;] ELIBIBLE TRANSFERORS OF ENTRY PERMITS. (a) The holder of [any] an entry permit whether currently renewed or not may apply for transfer [pursuant to] under section 280 of this chapter. [In addition, if at the time of the death of a permit holder he was eligible] If the holder of an entry permit dies and was eligible to transfer his permit at the time of his death, [and if application be made within one year of the death of such permit holder] his personal representative may [likewise] apply for a transfer, if application for the transfer is made within one year of the death of the permit holder. The personal representaive, unless qualified under sec. 270 of this chapter, may not transfer the permit to himself under this section. The commission may adopt regulations for the determination of [the] other persons entitled [as the holder's successor in interest] to apply as the holder's successor in interest, for [such] post-death transfers in [the stead of the personal representative if none has been appointed] cases where no personal representative has been appointed. [The term "transferor permit holder" as used in section 280 of this chapter includes all eligible transferors described in this section.]

Sec. 16.43.270 [ENTRY PERMITS;] ELIGIBLE TRANSFEREES FOR ENTRY PERMITS. [Any] A qualified person, including those persons specified in sec. 180(b), (c) and (d) of this chapter, who is presently able and who presently intends to engage actively in [the fishery] a fishery resource subject to this chapter is an eligible transferee.

Sec. 16.43.280 COST [THE TRANSFEREE; PAYMENT TO THE COMMISSION FOR THE BENEFIT OF THE STATE AND TO THE TRANSFEROR PERMIT HOLDER; ISSUANCE OF NEW PERMIT] AND PROCEDURES FOR TRANSFERS OF ENTRY PERMITS. (a) The transferee shall pay for [such transfer the] the entry permit transferred at fair market value, [thereof,] except that the transferor permit holder may, as a gift to the transferee, waive the payment of [any] a part or all of his share of the transfer price, as provided in [subsections] (b) and (c) [hereof] of this section. In all cases except those in which the transferor permit holder waives the payment of [any] a part or all of his share of the transfer price, the fair market value shall be [determined by and be] equal to the total amount paid to the commission incident to the transfer [pursuant to subsection (b) hereof.] under (b) of this section. In [any] a transfer in which the transferor permit holder waives the payment of [any] a part or all of his share of the transfer price the fair market value shall be [as] determined by the commission [pursuant to] under section 310 of this chapter.

(b) The total transfer price [in its entirety] shall be paid to the commission at the time of transfer. After deducting the share for the benefit of the state as determined in [subsection] (c) [hereof] of this section, the balance shall be paid to the transferor permit holder.

(c) In all transfers the share of the transferor permit holder shall be determined as [follows] specified in this subsection and the share for the benefit of the state, retained by

16.43.280 (continued)

the commission at the time of transfer, shall be the [balance] difference between the percentages specified in (1)-(2) of this subsection and 100 per cent.

- (1) For the transfer of an initial issue entry permit the share of the transferor permit holder is 100% of the fair market value if the transfer application is submitted within one year of the issue of the permit. If the transfer application is submitted during the next succeeding year, the share of the transferor permit holder is 90%. [if during the next, 80%; then] The share of the transferor permit holder continues to [continuing to] decline by 10% per year thereafter until reaching 10% of the fair market value at the beginning of the tenth year. [then continuing thereafter at] After that time, the share of the transferor permit holder is 10% of the fair market value;
- (2) for the transfer of all other entry permits the share of the transferor permit holder is 10% of the fair market value.

(d) After payment to the commission [pursuant to subsection (b) hereof] under (b) of this section, the commission shall issue an entry permit to the transferee. [Such entry permit shall, for all purposes of this chapter, be] After issuance to the transferee, the entry permit is considered to be a new entry permit.

16.43.280 (continued)

(e) The commission shall adopt regulations prescribing procedures to be followed in applying for and effectuating transfer [pursuant to] under this section.

(f) The term, "transferor permit holder", as used in sec. 280 of this chapter includes all transferors described in sec. 280 of this chapter.

Sec. 16.43.290 RETIREMENT OF ENTRY PERMITS. [PRICE PAID BY THE COMMISSION.] (a) The holder of an entry permit whether currently renewed or not may surrender the entry permit to the commission for retirement at any time. In addition, [if at the time of the death or a permit holder he was eligible to surrender his permit, and if surrendered within one year of the death of such permit holder, his] a deceased permit holder's personal representative may [likewise] surrender the permit for retirement if he surrenders it within one year of the death of the permit holder. The commission may adopt regulations for the determination of the person entitled, as the holder's successor in interest, to [effect such] make the post-death surrender [in the stead] instead of the personal representative if none has been appointed.

(b) Upon [such] the surrender [for] of an entry permit for retirement the commission shall pay [the surrenderor] the person who surrenders the permit that portion of its fair market value determined as follows:

(1) for the surrender of an initial issue entry permit and if during the first three years after issue: 100%; if surrendered during the next succeeding three years: 75%; if surrendered during the next succeeding three years: 50%; if surrendered thereafter: 25%;

(2) for the surrender of all other entry permits: 25%.

Sec. 16.43.300 INTERFISHERY CHANGE BY PERMIT HOLDERS. The holder of an entry permit whether currently renewed or not may, by submitting to the commission a notice of intended surrender and retirement of his permit [pursuant to] under section 290 of this chapter, become a preferred applicant for the issuance of a new entry permit with respect to any other fishery or fisheries he may designate in his notice. Such notice, unless renewed, [shall] ceases to be effective one year after its submission. Upon [or coincident with] the issue of a new entry permit [pursuant to such] under this application, the surrender and retirement of the applicant's former entry permit shall [be effectuated pursuant to] occur as prescribed under section 290 of this chapter.

16.43.310 [ENTRY PERMITS;] ESTABLISHMENT OF FAIR MARKET VALUE
OF ENTRY PERMITS. The commission shall adopt regulations for
determining the fair market value of entry permits for purposes
of sections 229, 280 and 290 of this chapter.

Sec. 16.43.320 PENALTIES. (a) A person who violates sec.[tion] 180 of this chapter or a regulation promulgated under this chapter, upon conviction, is guilty of a misdemeanor and [, upon conviction] is punishable by a fine of not more than \$5,000 for a first conviction; a fine of not more than \$10,000 for a second conviction; and, for a third conviction, a fine of not more than \$10,000 and, in addition, shall [suffer forfeiture of any and] forfeit all interim-use permits and entry permits held by him and [permanent loss of] shall permanently lose eligibility for an interim-use permit [and] or for an entry permit, either temporary or permanent.

(b) A person who knowingly makes a false statement as to a material fact in the application for an entry permit, or in the application for a temporary permit under sec.[tion] 230 of this chapter, or, either as a transferor or transferee, in the application for a transfer under sec.[tion] 280 of this chapter, or a person who assists another by knowingly making a false statement as to a material fact or in support of the other person's application for issuance or transfer of an entry permit, either temporary or permanent, upon conviction is guilty of a misdemeanor [and, upon conviction,] and shall [suffer forfeiture of any and] forfeit all interim-use permits and entry permits held by him, either temporary or permanent, and shall [permanent loss of] permanently lose eligibility for an interim-use permit and for an entry permit, either temporary or permanent.

Sec. 16.43.330 APPLICATIONS OF REGULATIONS OF BOARD OF FISH AND GAME. Nothing in this chapter limits the powers of the board of fish and game, including the power to determine legal types of gear, and the power to establish size limitations or other uniform restrictions applying to a certain type of gear. Holders of entry permits issued [pursuant to] under this chapter are subject to all [va, id] regulations adopted by the board of fish and game.

Sec. 16.43.340 DEFINITIONS. In this chapter

(1) "allowable commercial take" means the approximate size range of the anticipated commercial harvest of a species under sustained yield management implemented by regulations adopted by the Board of Fish and Game and emergency regulations adopted by the commissioner of fish and game;

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

(3) "financially healthy fishery" means [one] a fishery that returns to the fishermen [therein a] participating in it sufficient income so that: a) they are financially able to keep their vessels and gear in good and safe operation condition; b) they are financially able and encouraged to improve their vessels, gear, and techniques including, [under permission of the Department of Fish and Game if necessary] when permissible experimentation with new vessels, new gear, and new techniques; and c) they are sufficiently free of economic pressure that they can and will operate faithfully within [the letter and spirit of regulations and] laws [respecting] relating to the operation of the fishery.

(4) "fishery" means the fishery resource of a particular administrative area and the commercial taking of fish [therefrom by] from it with a particular type of gear.

(5) "gear" means the specific apparatus used in the commercial harvest of a species, [and includes by way of example] including but not limited to, purse seines, drift gill nets, set gill nets, and troll gear;

16.43.340 (continued)

(6) "priority classification" means the allocation of potential permit applicants into reasonable grouping of similarly situated applicants and the priority ranking of those groupings according to the extent to which they satisfy the statutory standards of preference;

(7) "qualified applicant" means that the person described is presently able and presently intends to participate actively in the fishery and is not ineligible under section 320 of this chapter;

(8) "type of gear" means a customary and identifiable classification of gear including those classifications for which separate regulations are adopted by the Board of Fish and Game and for which separate gear licenses are required by AS 16.05.550-16.15.630;

(9) "unit of gear" means the maximum amount of a specific type of gear which can be fished under a single gear license subject to [all valid] regulations established by the Board of Fish and Game defining the legal requirements for that type of gear;

(10) "vested interest" means a present or fixed interest or right of present or future enjoyment of something of value, the nature of which could considering secs. 010 - 290 of this chapter, reasonably be considered to conflict with the public interest.

* Sec. 2. AS 16.05.050 is amended by adding a new paragraph to to read:

(11) [authorizing any] authorize the holder of a currently [renewed] validated entry permit under chapter [16.43] 43 of this

16.43.340 (continued)

title to engage upon an experimental basis in commercial taking of a fishery resource with vessel, gear, and techniques not presently suitable for or qualifying for licensing under any of the licenses specified in this chapter [setting standards therein for the commissioner to follow in determining which entry permit holders are so to be authorized in pursuance of the objective to develop a better fishery, both biologically and economically; and limiting the issuance of such authorizations to such number and duration that there are no more than ___ entry permit holders so engaged in any one fishing season.] in conformity with standards established by the commission.

* Sec. 3. AS 16.05.250(14) is amended to read:

(14) establishment of the times and dates during which the issuance of fish and game licenses, permits, and registrations and the transfer of permits and registrations between registration areas, game management units or subunits, is allowed. However, this paragraph does not apply to permits issued or transferred under ch. 43 of this title.

* Sec. 4. This Act takes effect on the day after its passage and approval or on the day after it becomes law without approval.

File
Crank Enslay

UNIVERSITY OF WASHINGTON
SEATTLE, WASHINGTON 98105

March 9, 1973

School of Law
Condon Hall

Mr. Michael Whitehead
Staff Assistant to Sen. W. I. Palmer
Alaska State Legislature
Pouch "V"
Juneau, Alaska 99801

Dear Mike:

Since our conversation this morning I have been worrying the proposal to modify § .200 to include a reference to the applicant's cost of living as one measure of economic dependence upon the fishery. Contrary to my reaction this morning, I am coming to the conclusion that such inclusion would be quite risky.

My premise is that the only legitimate reason for having a preference for persons previously involved in a fishery is the avoidance of hardship upon them if, by the new system, they should be excluded. The present draft of section .200 lists three measures of that hardship, the economic dependency upon the fishery, the availability of alternate sources of income, and the investment in vessel and gear. These, I believe, are clearly pertinent.

But is there any difference in hardship between two fishermen applicants for each of whom the fishery constitutes the same percentage of his total income, e.g., each is wholly dependent thereon? If for example we look at the two of them and perceive that for one the cost of living is higher because of delivery costs of essential goods and services, as obtains generally in Alaska, does that mean it would be harder on him to be cut out of the fishery than it would for the other person? I am doubtful. Perhaps, however, for two otherwise comparable fishermen who derive only part of their income from the fishery, how hard it would be on each of them to be reduced to those other sources as his sole income would in fact vary depending on how much the remaining income would buy for him. (But, of course, he can move to a place where the cost of living is not so high, and thus the differential in hardship would at least be lessened.)

Even if we assume the accuracy of the observation that in the partial dependency situation the cost-of-living differential is related to hardship, we must recognize the enormous vulnerability that inheres in the stark result: to take the factor into account will surely favor Alaska residents.

It seems to me that the three factors now chosen are, broadly speaking, of a different sort from that suggested by the cost-of-living differential. That

Mr. Michael Whitehead
March 9, 1973
page two

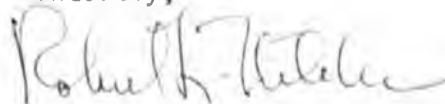
is, they measure directly and singly the existence of hardship; they apply equally well and logically to all applicants in their measure of hardship; and only in one factor, the availability of other livelihoods, do they measure something that is determined by widely variant factors as you move from one applicant to another.

If, different from what is proposed (and, indeed, as seems highly impracticable), we were to make a highly individualized inquiry, covering all facets of each applicant's life, family, etc., in ranking applicants in relative degrees of hardship, we might be justified in considering the cost-of-living differential as one of many detailed factors, even though it would be relevant in only some of the applicant-situations. But, to choose this one and only this one of these somewhat detailed additional possible factors would but support the charge upon which the proposal is most vulnerable -- that both its purpose and its operative effect are to prefer Alaska residents over non-residents.

Reasoning thus, I fear the proposal really brings us back to a point we left some days ago, when we considered and rejected the proposition that permits be issued preferentially to those for whom the fishery would, as in the past, furnish a minimum level of subsistence. As I said then, that proposition flies in the face of a tenet basic to many Supreme Court decisions -- that the people of the country as a whole are one economic unit, and no state may confine economic benefits to certain persons determined either geographically or, indeed, by any means not related to and wholly incidental to the accomplishment of some other objective. Only as a state may promote the overall welfare may it, as incident to that promotion, produce results that happen to benefit some persons, as, for example, the state may benefit those persons who pass the bar examination.

My recommendation is thus not to make the modification, for to do so surely would incur great risk.

Sincerely,



Robert L. Fletcher
Professor of Law

RLF:mc

UNIVERSITY OF WASHINGTON
SEATTLE, WASHINGTON 98195

*School of Law
Condon Hall*

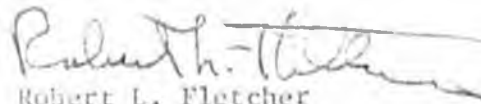
March 2, 1973

Mr. Michael Whitehead
Staff Assistant to Sen. W. I. Palmer
Alaska State Legislature
Pouch "V"
Juneau, Alaska 99801

Dear Mike:

On re-reading this morning I discovered two mistakes
(I'm sure there are more). I enclose two replacement
pages.

Sincerely,


Robert L. Fletcher
Professor of Law

RLF:mc

enclosure

.270 ENTRY PERMITS; ELIGIBLE TRANSFEREES

Any ^{qualified} person who is presently able and who presently intends to engage actively in the fishery is an eligible transferee, including one described in section .180, subsections (b), (c) and (d).

.280 (continued)

of the fair market value if the transfer application is submitted within one year of the issue of the permit; if during the next succeeding year, 90%; if during the next, 80%; then continuing to decline by 10% per year until reaching 10% of the fair market value at the beginning of the tenth year; then continuing thereafter at 10% of the fair market value;

(2) for transfer of all other entry permits, 10% of the fair market value.

(d) After payment to the commission pursuant to subsection (b) hereof, the commission shall issue an entry permit to the transferee. Such entry permit shall, for all purposes of this chapter, be considered a new entry permit.

(e) The commission shall adopt regulations prescribing procedures to be followed in applying for and effectuating transfer pursuant to this section.

130 ADMINISTRATIVE PRACTICES ^{and} HEARING
PROCEDURES

(a) The commission shall adopt regulations, consistent with due process of law, which govern practice and procedure and the conduct of all investigations, hearings and proceedings which it holds.

(b) Common law and statutory rules of evidence apply to investigations, hearings and proceedings before the commission, except when the commission determines that their application is not required in order to assure fair treatment of all parties and that the evidence is relevant and of the sort on which responsible persons are accustomed to rely in the conduct of serious matters.

(c) The commission, each commissioner or an employee authorized by the commission may administer oaths, certify to all official acts, and issue subpoenas and other process to compel the attendance of witnesses and the production of testimony, records, papers, accounts and documents in an inquiry, investigation, hearings, or proceeding before the commission in any part of the state. The commission may petition a court of this state to enforce its subpoenas or other process.

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Sec. 16.43.140. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a)
The administrative adjudication procedures of the Administrative Procedure Act (AS 44.62) do not apply to adjudicatory proceedings of the commission except that final administrative determinations by the commission are subject to judicial review as provided in AS 44.62.560 - 44.62.570.

(b) AS 44.62.10 - 44.62.320, 44.62.640 and 44.62.650 apply to regulations adopted by the commission.

Sec. 16.43.150. ADMINISTRATIVE AREAS. (a) The commission shall establish administrative areas suitable for regulating and controlling entry into the commercial fisheries. The commission shall make the administrative areas reasonably compatible with the geographic areas for which specific commercial fishing regulations are written and according to which the legality of types of gear is defined by the Board of Fish and Game.

(b) The commission may modify or change the boundaries of administrative areas when necessary and consistent with the purposes of this chapter.

DETERMINATION; can be made by... desired maximum entry permits, etc.

Sec. 16.43.020. ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION.

(a) There is established the Alaska Commercial Fisheries Entry Commission as a regulatory and quasi-judicial agency of the state. The commission consists of three members appointed by the governor and confirmed by the legislature in joint session.

(b) The governor shall designate one member of the commission as chairman of the commission. The member designated shall serve as chairman for a term of two years, and may be designated chairman for successive two-year terms.

Sec. 16.43.030. TERM OF OFFICE; VACANCY. (a) The members of the commission shall be appointed for terms of four years. Initial appointments shall be as follows: one member for two years, one member for three years, and one member for four years. The governor may remove a commissioner from office for cause including but not limited to incompetence, neglect of duty or misconduct in office. A commissioner, to be removed for cause, shall be given a copy of the charges against him and afforded an opportunity to be publicly heard in person or by counsel in his own defense upon not less than 10 days notice. If a commissioner is removed for cause, the governor shall file with the lieutenant governor a complete statement of all charges made against the commissioner and his findings based on the charges, together with a complete record of the proceedings.

(b) A vacancy on the commission shall be filled by appointment by the governor and the appointment shall be confirmed by the legislature in joint session. A member selected to fill a vacancy shall hold office for the balance of the full term for which his predecessor on the commission was appointed.

(c) A vacancy on the commission does not impair the authority of a quorum of commissioners to exercise all the powers and perform all the duties of the commission.

CSSB 39

"An Act relating to the regulation of entry into Alaska commercial fisheries and providing for an effective date."

COMMITTEE REPORT

JUDICIARY
FINANCE

7-21-72

HOUSE

Mr. Speaker:

Date March 1972

The Committee on FISHERIES has had HS 426

under consideration. A Majority of the members of the Committee

- recommends it DO PASS
- recommends it DO NOT PASS
- recommends it DO PASS WITH ATTACHED AMENDMENT(S)
- recommends it BE REPLACED WITH CS FOR _____ AND THAT
CS FOR _____ DO PASS
- "and" recommends it BE REFERRED TO THE _____
COMMITTEE
- reports it back WITHOUT RECOMMENDATION
- "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

*File
Hammond proposal*

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ELIGIBILITY FOR GEAR LICENSE. (a) A person who held a gear license for any two of the seven years prior to the effective date of this Act is eligible to purchase a gear license for any district. However, he may fish for only one species per district.

(b) After initial eligibility is established under (a) of this section, a person may renew his gear license for each year he pays the appropriate license fee. If the person fails to pay the required license fee before April 15 in any one year the person is prohibited from repurchasing a gear license at any time.

LOTTERY FROM LICENSE POOL. Five per cent of the number of licenses which are forfeited or otherwise released each year shall be available to new applicants for a drawing by lot, under regulations established by the department.

DETERMINATION OF OPTIMUM LEVELS OF GEAR. (a) The department shall determine the optimum levels of gear for each district and each type of gear based on the number of fish harvested over the four-year period immediately preceding the effective date of this Act.

(b) This level may be changed temporarily when, in the determination of the department, peak runs necessitate the change.

LICENSE FEE. For a permit holder who does not actively participate in commercial fishing under this chapter, the license fee is \$100 for a resident and \$300 for a nonresident. A permit holder who actively participates in commercial fishing under this chapter shall pay as a fee an amount equal to one per cent of the gross value of his catch during the last season actively fished.

NOTES

In 1973 anyone would be eligible to buy a license for any district and he may buy as many licenses as he desires. There would be no commission.

As long as the individual pays his license fee each year, then he would be eligible to fish or to purchase a license the next year. Actual fishing of the license would neither be required nor encouraged.

Retain a low license fee so that there would be no undue cost on a parent who wished to license his children for many years until they were able to involve themselves in the fishery. This would (1) keep license revenue up and (2) provide no pressure to actually fish the license in order to make up for the license cost.

When a license was not repurchased in any one year, then eligibility would be lost and the individual would not be able to purchase a license the following year or any future year.

Ten percent of the number of licenses lost in each year would be available to the public under a lottery system. In other words, in each year then if for each hundred licenses that were lost because of non-payment, then ten people would be able to enter the fishery, (From an applicant pool).

Board (and Department?) would estimate the optimum amount of gear for each area and each type of gear based on the number of fish harvested over the last four years.

After optimum level had been reached as indicated above, then the number of new entrants into the fishery each year would be equal to the number of licenses that had not been revalidated. Again, the licenses would be available to the general public, perhaps through an applicant pool, on a lottery basis.

Department would have the authority to issue an increased number of licenses on a temporary basis for peak year runs when necessary (shift from other areas?).

Licenses would be available for purchase any time of the year. However, if an individual expects to actually fish the license, then the license must be purchased prior to April 15th of any given year.

Consider \$100 resident fee, \$300 non-resident fee if an individual does not actively participate.

Information Points:

Senator Hammond is convinced that utilizing the sliding gear theory as they are in Bristol Bay this year and the Borough's taxing authority can quite effectively decrease the amount of gear over a short period of time to reach desired levels.

Question - If the Borough can accomplish their goal this way,
can the State also?

Question - If Bristol Bay Borough can work this out effectively,
can the Kenai Peninsula Borough also?

For an act entitled: 'An act relating to salmon gill net gear licenses.'

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

Section 1. LEGISLATIVE FINDINGS. (a) The legislature finds that uninhibited entry into certain Alaska salmon fishing areas or districts has resulted in massive accumulations of salmon fishing gear with attendant ever increasing difficulty and expense in providing for sound conservation and management of the resource.

(b) The legislature further finds that excessive entry requires increased expenditures by the state to provide for the health and welfare of those most dependent upon fishing for livelihood. Such increased expenditures diminish the amount of revenue which could be used for improved management and rehabilitation of the fisheries.

Section 2. LICENSES FROZEN. The Department of Revenue may not issue a greater number of salmon gill net gear licenses than the greatest number of such gear licenses issued during the previous year for a given fishing area, or district. Licenses shall be first issued upon application to those licensed for the given area or district the previous year. If by the registration date deadline there remain some unclaimed gear licenses, the Department of Revenue shall determine by drawing those new applicants who shall be issued one-half the number of licenses unclaimed. Fees accompanying applications shall not be refundable.

Section 3. SPECIAL SALMON GEAR LICENSE FEES. (a) Should the best available evidence indicate that the anticipated catch for a given salmon fishing area or district not be sufficient to provide incomes equal to or exceeding the national poverty level to each of as many fishermen as were registered in the given area during the previous year, the Board of Fish and Game, unless opposed by the local advisory board representing the given area or district, shall designate such as a Distressed Fishery.

(b) In areas or districts so designated a special salmon gear license fee shall be levied. This fee shall be in addition to the regular gear and license fees and shall be equal to one percent (1%) of the value of salmon sold by a resident fisherman and equal to three percent (3%) of the value of the salmon sold by non-resident fishermen except that this fee shall be refunded to fisherman, resident or non-resident, who can upon demand furnish satisfactory evidence to the Department of Revenue that at least seventy-five percent (75%) of their earned gross income during the previous year was derived from ~~salmon~~ fishing in the given area or that his gross income during the previous year was less than Five Thousand Dollars (\$5,000.00). A fee collected under this section is computed, filed, enforced and dispensed in the same manner as prescribed in the Raw Fish Tax law for salmon canneries. Such fees shall be withheld from the purchase price of salmon and remanded to the Department of Revenue by the purchaser.

Section 4. LEGISLATIVE INTENT. It is the intent of the legislature that an amount at least equal to the general fund revenues accumulating as a result of the above shall be appropriated for improved management and rehabilitation of the fisheries resources of the state.

SB

39

The Legislature of the State of Alaska
 FISCAL NOTE
 First Session - Eighth Legislature

I. REQUEST

Bill Identification: SB 39
 Title: Limited Entry
 Requested by: Senate Fisheries Committee Date: 2/15/73
 Return Date Requested: 3/15/73
 Agency: Department of Law Program: _____

II. FISCAL DETAIL

Budget Request Unit(s) Affected: \$400,000

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 73	FY 74	FY 75	FY 76	FY 77	FY 78
100 PERSONAL SERVICES	-0-	206.3				
200 TRAVEL	-0-	40.0				
300 CONTRACTUAL	-0-	88.7				
400 COMMODITIES	-0-	5.0				
500 EQUIPMENT	-0-	10.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
300 Cont. Services Dept of Law		50.0				
TOTAL		400.0				

B. FUNDING: (Thousands of dollars)

GENERAL FUND	-0-	400.0				
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	81 / 2	/	/	/	/
MAN MONTHS (P./T.)	/	96 / 2	/	/	/	/

III. ANALYSTS (See Fiscal Note Preparation Instructions, Section III)

Please see attached sheet.

IV. ATTACHMENTS

Attachment A: Organization and Staffing Chart

V. DATE: March 15, 1973 PREPARED BY: Allan B. Adasick

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislature Named)

A. Assumptions:

The cost of the limited entry program will be paid for from entry permit revenues, which will go into the general fund. Interim entry permits must be issued by January 1, 1974. The appropriation for the commission will be an advance against anticipated revenues to the general fund.

B. Program Summary:

The Alaska Commercial Fisheries Entry Commission is a new body that will implement a new and complex program limiting and stabilizing the amount of gear in the State's commercial fisheries. This program, accomplished through the issuance of entry permits, will benefit Alaska's fisheries resources and alleviate the economic distress of her fisherman. The \$50,000 appropriation to the Department of Law for contractual services would allow the Limited Entry Study Group to continue its work for another year. The governor's program deals only with the salmon fishery at the outset, and the study group would analyze the need to add other species to the limited entry program.

PERSONNEL SERVICES

<u>Permanent Employees</u>	Range	Salary
3 Commissioners	28-B (29,460)	88,380
1 Executive Director	24-A	23,628
1 Executive Secretary	14-A	11,316
1 Clerk Typist III	9-A	7,824
1 Research Analyst IV	21	21,150
1 Research Analyst II	16	13,104
	Sub-total	165,402
	Benefits - 20%	33,080
	Personnel Svc.	
	Sub-total	198,482

Temporary Employees

2 Temporary for 6 months		7,272
	Benefits - 7%	509
	Sub-total Temporary	7,781

TOTAL PERSONNEL SERVICES	206,263
TRAVEL	40,000

CONTRACTUAL SERVICES

Phone	8,000	
Postage	11,250	
Printing	6,000	
Moving Expenses	4,500	
Rent	12,000	
Rental Equipment	27,000	
Professional Services	20,000	
	Sub-total	88,750
Professional Services - Department of Law	50,000	

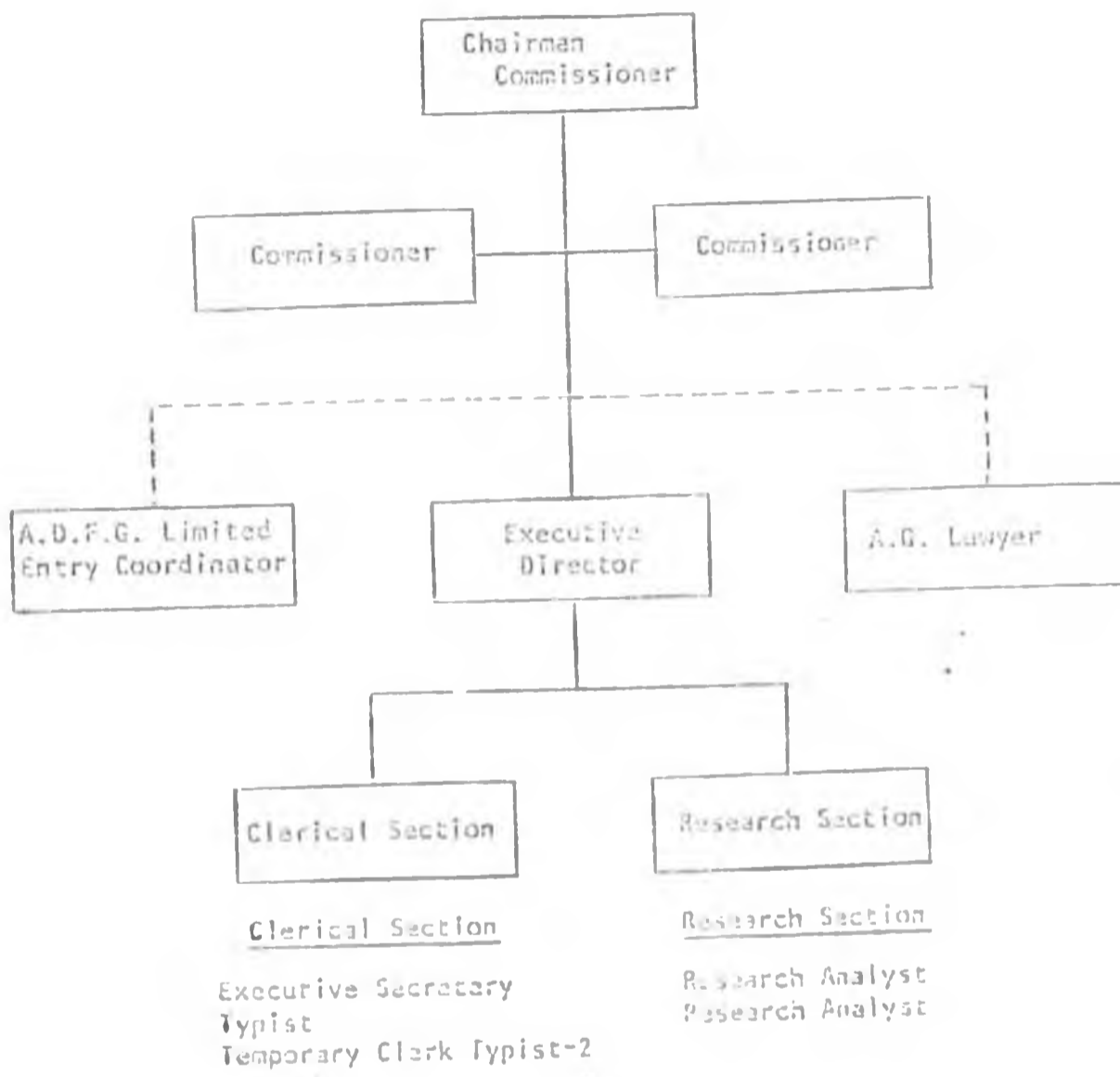
TOTAL CONTRACTUAL SERVICES	138,750
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Commodities	5,000
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Equipment	16,000
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TOTAL	400,013
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ATTACHMENT A: ORGANIZATION AND STAFFING CHART
SB 39



SB 39

TRANSFERABILITY - ONE ASPECT OF
WHAT ALL THE FUSS IS ABOUT.

Section 250. S. B. 39, the proposed limited entry program for Alaska's fisheries, holds the key to the identity and character of future participants in Alaska's fisheries. While the interests of Alaskan fishermen depend^{ent} on the fishery, who have been actively participating therein, are adequately protected in establishing the initial level of participation in our fishery, there are grave apprehensions concerning future participation as controlled through Section 250.

There are three transferability basis for determining participation in the State's fishery resources:

1. Luck.
2. Money
3. Participation and skill.

Free transferability as established in Section 250 adopts solely the monetary standard. In order to obtain entry into our fishery in the future, most fishermen will have to buy their way in. This standard presupposes a freely competitive marketing and financing system that exist, if at all, in very few locations in Alaska.

Free transferability based on a monetary standard will strike a severe blow to crew members and fishermen from economically depressed areas who depend upon processing interests for credit. It is these same processing interests who have a vested interest in seeing that a substantial number of non-resident "high-liners" receive permits at the expense of local fishermen who presently have inferior equipment, and who cannot obtain credit from governmental or other private financial institutions. While the Study Group on Limited

Entry has thoroughly documented and analyzed many aspects of the fishery, the credit financing system remains a largely unknown factor. Yet, it is this very information that should, indeed must, determine decisions on transferability.

While under the limited entry proposal a processor cannot own a permit, it is safe to assume that he will financially back those fishermen that he needs to maintain his superior bargaining edge. The problem of "industry control" and "vertical integration" when dealing with a transferability system based on monetary standards has been documented in recent works on limited entry.

Crutchfield and Pontecorvo (see attached article) point out that the limited entry proposals set forth for Puget Sound (free transferability of permits) might lead to integration by the processing interests. While they did find that a "hard core of independent fishermen" would still control a "marginal increment of each year's supply of fish" that "hard core" is very much diminished, or absent, in many areas of Alaska. Further, whereas the author's find vertical integration somewhat desirable, such a system may not be acceptable to the Alaskan fishermen on the beach.

Morehouse (Morehouse, T. A., Limited entry in the British Columbia salmon fisheries, in Alaskan Fisheries Policy, I.S.E.G.R., University of Alaska, 1972) found that the monetary standard in the Davis plan of vessel license and control would be disadvantageous to the poorer and smaller independent fishermen:

"The prospective winners under the Davis plan of vessel license control are the more prosperous fishermen owners, including companies, because access to fishery will depend upon the ability to pay for licenses and vessels, which are expected to increase in value. Staying in the fishery requires paying for a license or maintaining a place on a smaller number of boats,

and a license in a smaller number of places in the fishery. Thus, the losers will clearly include poorer fishermen and future fishermen.

* * *

Because some will win and others will lose, there is no single 'fishermen interest' in the fishery under the limited licensing scheme. However, to the extent that a smaller number of companies may acquire greater control of the fishery through consolidation and the use of their superior financial resources, there is a greater unity of interest among fishermen and their various organizations vis-a-vis the companies. (Ed., pp. 411 - 412)."

It is submitted that the present limited entry proposal will work a hardship similar to that described by Morehouse in those areas of the State characterized by present company domination through credit financing of not only vessels and gear, but food and clothing as well.

There is precedent for a non-transferable permit system. The Japanese coastal fishery which has a limited entry program has limitations on permit transfers:

"The rights fishery gives the operator exclusive right to carry out a particular body of water. This fishery right is granted by the Prefectural Government (almost always to a cooperative). The granted fishery right stipulates the type of fishery, the location, and the boundaries of the area included. It may also establish limitations on fishing seasons, etc.

The Prefectural Government prohibits the holder from leasing or mortgaging granted fishery rights. Also, transfer by the holder to other operators is strictly limited. (Herrington, W. C., Operation of the Japanese Fishery Management System, in Alaska Fishery Policy, I.S.E.G.R., University of Alaska, 1972, p. 22-423)."

Who should participate in Alaska's fisheries? Should it be those who are able to gain company financing? Should it be those who are the most skilled in the financing and credit system? Or, should it be those persons who are fishermen and who are willing

to invest their time and energy as fishermen?

We should consider not only those fishermen, and those areas, that presently competitive financially, but also those areas and fishermen dominated by financial institutions over which they have had little control. Further, we must not lock out of the future those individuals who are presently crew members, or subsistence fishermen, who cannot now, or in the foreseeable future, compete within the established credit-financing system.

Frank Flavin

SB 39 Transferability 1973 Don Calk
H. Resources



Alaska State Legislature
Senate

JUNEAU, ALASKA

SPECIAL COMMITTEE ON FISHERIES

As you are aware, one of the major problem areas of the Limited Entry legislation is that of transferability of entry permits. Attached are the various proposals under consideration by the Committee. It would be appreciated if you would, as objectively as possible, indicate what you feel are the favorable aspects and the drawbacks of each and which approach to transferability you favor. Please return your comments to room 105, Assembly Apts. at your earliest convenience. Thank you.

Common to all proposals under consideration are the following:

1. Transfer only to individuals with the present ability and intent to actively participate in the fishery.
2. The ability to transfer from one type of gear to another within an administrative area based on a transfer ratio to be established by the commission.
3. Emergency transfer provision in the event of the death, sickness, or injury of the permit holder.

Do you have any comments on the above?

Additional provisions which you feel are necessary regardless of the type of transferability:

Options which could be used in conjunction with any of the free or restricted transferability proposals:

1. Moratorium period
2. Substantial tax on entry permit sales as follows:
 - a. 75% tax on the fair market value of an entry permit when sold to the commission. The commission would be authorized to purchase permits only until the optimum number of gear units for each type of gear in each administrative area were reached.
 - b. 90% tax on the fair market value of an entry permit when sold to an individual.
3. State loan program to provide financial assistance to entry permit holders or purchasers in cases of hardship.

Do you have any comment on the options ?

PROPOSALS

I. Free transferability thru the commission.

A. Favorable aspects:

B. Undesirable aspects:

II. Restricted transferability thru the commission to an applicant pool by priority classification based on a reasonable balance of:

1. extent of past and present participation in the area fishery or in similar fisheries (experience factor).
2. training pertaining to commercial fishing.

A. Favorable aspects:

B. Undesirable aspects:

III. Restricted transferability thru the commission by lottery.

A. Favorable aspects:

B. Undesirable aspects:

IV. Restricted transferability thru the commission to an applicant pool by lottery with the same applicant pool criteria as proposal II.

A. Favorable aspects:

B. Undesirable aspects:

V. Non-transferability of permits (no value to an entry permit).
New entry emanates from the commission on the basis of
permits returned or forfeited

A. thru applicant pool.

Favorable aspects:

Undesirable aspects:

B. by lottery.

Favorable aspects:

Undesirable aspects:

C. thru applicant pool by lottery.

Favorable aspects:

Undesirable aspects:

VI. Is there another combination of the proposals, or a proposal and option which you favor ?

A. Favorable aspects:

B. Undesirable aspects:

Any additional comment:

File

TRANSFERABILITY

In dealing with this subject, we must work within the framework of the following legislative purpose:

"to promote 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."

In defining the objectives to be accomplished in transferability, the following constitutional guidelines must be met:

- 1) Legitimate legislative objectives
- 2) Rational means to effect the objectives
- 3) Classification of persons upon a basis reasonably conceivable as relating to the objectives.

There are three basic objectives which the committee should consider in exploring the alternatives.

- 1) Limit the initial entry level into the fishery in a fair and equitable manner. The method of transferability may effect the initial entry level.
- 2) Retain as much freedom of enterprise as possible.
- 3) Accomplish the objectives through voluntary action of the fisherman.

Assuming that unrestricted transferability will result in speculation and higher initial entry levels, a dichotomy exists in the first two objectives. To solve this, the speculative nature of permits could be limited by taxation or by control of transferability, or both. It should be noted that the ability to fish is neither a right nor a privilege but is in a grey area between, and therefore is susceptible to regulation according to Fletcher's legal analysis of salmon gear limitation.

It would seem that consideration should now be given to the collateral objectives.

- 1) Limit the cost to the second generation of fishermen for utilizing a common resource.
- 2) Limit the ability of financial power blocks to economically coerce the unsophisticated fisherman.
- 3) Allow transfer within the family unit.

LIMITED ENTRY

OBJECTIVES:

- (1) put a lid on
- (2) provide for increased economic efficiencies and returns
- (3) give Alaskans an equal or preferred opportunity
- (4) improve the position and outlook of the fishermen

PROBLEMS WITH A COMMISSION:

- (1) too much cutting authority
- (2) too much initial upheaval and hassles

PROBLEMS WITH FREE TRANSFERRABILITY:

- (1) state loses property right for a common resource
- (2) extreme financial hindrance for future fishermen
- (3) discourages natural attrition
- (4) encourages speculation
- (5) forces processor competition in financing permits
- (6) required paper capital creates economic waste

PROBLEMS WITH A LOTTERY:

- (1) gives participants no assurance of eventual entry
- (2) no assurance offspring may fish
- (3) with minimal or no experience requirements, encourages inefficient, and possibly dangerous, operators

PROBLEMS WITH APPRENTICESHIP POINT SYSTEM:

- (1) tends to create a closed class
- (2) rewards longevity at possible expense of ability
- (3) too narrow classifications possibly unjustifiable

PROBLEMS WITH COMPETITIVE OR SEALED BIDDING:

- (1) favors those with money
- (2) no assurance

POSSIBLE SOLUTIONS:

- (1) Our fisheries are so varied that no one solution would likely to be applicable for all areas equitably. Therefore we should consider combinations of the ingredients (luck, skill and money) in finding solutions tailor-made for each area and type of gear.
- (2) relieve commission of strong initial cutting authority, thereby removing many objections. Have simple initial requirement, like maybe those having actively fished a gear license one of the past two years. Gives many a chance to continue fishing.
- (3) require permits to revert back to the state, disallowing transferrability. Eliminates speculation, encourages inefficient operators to drop out rather than hang on. causes fishermen to fade away at a natural pace or rate.
- (4) Allow for a commission to issue new permits at a fluctuating percentage of those returned to the state. All new permits could be non-transferrable, but they could be issued under a combination of methods.
 - (a) one group could be issued on a point system, rewarding longevity, economic dependence--giving assurance to those actively waiting that some day a permit

- will be attainable.
 - (b) one group could be issued by lottery from a group of not so highly qualified applicants
 - (c) one group of NON-TRANSFERRABLE permits could be issued by competitive or sealed bidding among highly and/or moderately qualified applicants.
 - (d) one group of non-transferrable permits could be issued by competitive and/or sealed bidding among all applicants.
 - (e) the above system of issuance could be on a time-staggered basis.
 - (f) the percentage of mix among the above systems could be varied for different areas and types of gear.
- (5) Preferences of some type could be given to active permit-holders for issuance of permits for additional, complementary areas and types of gear. These could be issued on a short-term or long term basis by lottery, point system, and/or bidding. This would provide for more efficient use of the existing fleets, and would not lock a permit-holder to one area and/or type of gear forever.
 - (6) The commission could study the makeup and economic picture of the different areas and type of gear, in order to consider possible recommendations to the legislature for granting free or restricted transferrability of permits for specific type of gear and areas. This could be dangerous insofar as it might encourage some to continue to hang on in hopes of a future windfall.
 - (7) Emergency or temporary transfers could be allowed for limited situations where relief skippers are necessary, or death, illness, or extreme hardships make it desirable.
 - (8) A compensation program could be set up for a limited period of time for those suffering real financial losses from boat, gear or site purchases that would be adversely affected by limited entry. A further program could be set up for a limited length of time whereby the state could purchase boats, gear and sites from those wishing to retire from commercial fishing and who would otherwise have difficulty recouping their investments. Those fearful or unable to 'swim' in the natural competition ahead would have an out other than sinking.

This entire proposal is by no means without problems. It will not result in a drastic, immediate reduction of gear. It would not force out some whom many would like to see forced out. It would require the human hand of a commission, that could not be infallible, and is not without dangers, but would be required to operate with facts, figures and purposes that would be tested by the courts and could be changed by the legislature at any time. In fact, any part of the above proposal could be changed by the legislature, for we would be locked into nothing, and we would not be giving away a property right for a common resource. The proposal could definitely start a limited moratorium, it could set up a commission to rationally set up a system of regulations for new entry, and legislative review could be required. We would be getting the show sanely on the road.

Dave Herrmstein

TRANSFERABILITY OF PERMITS - A few thoughts

We appear to be between a rock and a hard spot on this issue. There are three basic interest groups to be served here: 1) adequately financed vessel owners, 2) low income and heavily indebted fishermen, 3) crew members and "second" sons.

The transferability problems are extremely complex and diverse- unfortunately complex and diverse problems do not usually admit to simple formulas and easy solutions. Legal and paper solutions, while necessary, do not always solve the real problem. Free transferability is one of these solutions. Basically drafting and constitutionality questions are legal problems that are susceptible to legal solutions - economic coercion and the economic viability of crew members and low income fishermen are practical problems that may not admit to the legal solutions that we have found to handle our drafting problems. Further, any hard line we take now from a legalistic standpoint may eventually preclude an option that affords a practical solution to the economic problems that have been a major concern before the committee.

While we cannot, and should not, serve every vested interest group, neither should we ignore or bypass serious problems affecting a substantial number of our fishermen. AMEN

With these points in mind I suggest the following lines of inquiry.

OVERALL OBJECTIVE: What are our basic objectives?

GIVEN: 1) finite resource 2) common resource 3) limited participation

I. What kind of right are we establishing?

1. Exclusive property right - ie. farm
2. Use permit - ie. grazing permit
3. Cert. of public convenience - (competitive break) public utility
4. Mere license

II. What type of qualifications should permittees have to harvest this common resource?

III. What kind of transfer should we allow?

1. free
2. partially restricted
3. none - except in the family

Frank
Flower

SUMMARY OF COMMENTS ON TRANSFERABILITY

Free Transferability thru the commission

1. Meets the committee objective of retaining as much freedom of enterprise as possible.
2. Will increase the speculative nature of permits and the costs of compensation and/or a buy-back program.
3. By granting a transferable privilege, the State will loose the ability to control who utilizes a common resource.
4. Will encourage a greater adherence to conservation considerations on the part of those utilizing the resource.
5. If the State has a vested interest in keeping as many permits as possible in resident hands, free transferability may result in the flow of permits to non-residents with a more rapid rate among low income groups.
6. Vests the ability to utilize a common resource in private hands placing a monetary qualification on those who wish entry to the fishery.
7. Passes the cost for the privilege to use a common resource on to the second generation of fishermen.

Moratorium period prior to free transferability

1. May allow for the unsophisticated and those most dependent on the fishery an opportunity to improve economic condition. Their ability to withstand economic pressures could be substantially improved by a State loan program and/or the involvement of the Native Regional Corporations.

Free Transferability thru the commission with a substantial tax on entry permits sales.

- A. 75% tax on the fair market value of an entry permit when sold to the commission. The commission would purchase permits in an area until the optimum gear levels were reached.
 - B. 90% tax on the sale of an entry permit to another individual.
1. Would decrease the speculative nature of the permits and the costs of compensation and/or a buy-back program.
 2. Does not pass the cost for utilizing a common resource on to the second generation of fishermen. The major portion of appreciation in value reverts to the State in the form of taxes.

3. Would encourage "under-the-table" schemes which would substantially increase the administrative policing required.
4. Offers an incentive to sell to the commission in over-gearred areas.
5. Could allow for transfer within the family unit at minimal costs.

Restricted Transferability thru the commission to an applicant pool

1. Would allow those who have been dependent on the fishery as non-gear operators an improved chance of entry.
2. Would allow for State control of individual utilizing a common resource.
3. Depending on qualifications, could create a closed class and if not, may favor non-residents.
4. Depending on the right-privilege dichotomy, could be considered discriminatory to those with no experience or training, but who wish to utilize a common resource.
5. Would increase an individuals ability to obtain financing (as opposed to lottery).

Restricted Transferability thru the commission by lottery

1. Would be unquestionably fair.
2. Would make financial planning very difficult for those in lottery.
3. Would not allow any advantage to those non-gear operators dependent on the fishery.

Restricted Transferability thru the commission only to family members, with forfeited permits issued by lottery or applicant pool.

1. Grants an individual the privilege to utilize a common resource on the basis of a family members use of the resource.

UNIVERSITY OF WASHINGTON
SEATTLE, WASHINGTON 98105

*School of Law
Condon Hall*

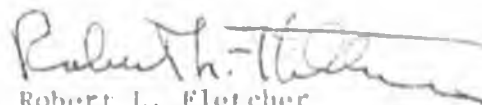
March 2, 1973

Mr. Michael Whitehead
Staff Assistant to Sen. W. I. Palmer
Alaska State Legislature
Pouch "V"
Juneau, Alaska 99801

Dear Mike:

On re-reading this morning I discovered two mistakes
(I'm sure there are more). I enclose two replacement
pages.

Sincerely,


Robert L. Fletcher
Professor of Law

RLF:mc

Enclosure

.270 ENTRY PERMITS; ELIGIBLE TRANSFEREES

Any ^{qualified} person who is presently able and who presently intends to engage actively in the fishery is an eligible transferee, including one described in section .180, subsections (b), (c) and (d).

.280 (continued)

of the fair market value if the transfer application is submitted within one year of the issue of the permit; if during the next succeeding year, 90%; if during the next, 80%; then continuing to decline by 10% per year until reaching 10% of the fair market value at the beginning of the tenth year; then continuing thereafter at 10% of the fair market value;

(2) for transfer of all other entry permits, 10% of the fair market value.

(d) After payment to the commission pursuant to subsection (b) hereof, the commission shall issue an entry permit to the transferee. Such entry permit shall, for all purposes of this chapter, be considered a new entry permit.

(e) The commission shall adopt regulations prescribing procedures to be followed in applying for and effectuating transfer pursuant to this section.

WORK DRAFT

Pg. 11, Sec. 16.43.250 Transfer of Entry Permits

(a) Following the issuance of entry permits under sec. 220 of this chapter, the commission shall adopt regulations setting forth the qualifications for applicants for permit transfers or any new entry. The regulations shall define reasonable priority classifications of similarly situated potential applicants based upon a reasonable balance of the following standards of preference:

- (1) Extent of past and present participation in the area fishery or in similar fisheries.
- (2) Approved training program pertaining to commercial fishing.
- (3) Ability and intent to participate actively in the fishery.

(b) Transfers under (a) of this section may be made only within the highest priority classification as determined by the commission.

(c) There is a ninety per cent tax payable to the commission under regulations established by it on the appreciated value of an entry permit when the permit is transferred by sale to another person. For the purposes of this subsection, appreciated value means the difference between the purchase price and the sale price at fair market value. When a transfer by sale is made to the commission, the tax required

to be paid under this section is seventy-five per cent of the appreciated value of an entry permit. However, the commission is authorized to purchase permits only until the time the optimum gear level is reached for a specific type of gear in a specific administrative area. The commission shall establish procedures for the collection and administration of the taxes imposed by this section.

(d) The holder of an entry permit may, at any time, place his permit with the commission in trust, under regulations established by the commission. Upon request, the entry permit shall be returned to the trustee providing all fees are paid by the holder and all other requirements of law under this chapter are met. No permit while held in trust by the commission may be sold, transferred, limited, canceled or otherwise restricted.

(e) When otherwise consistent with the purposes of this chapter, the commission may adopt regulations providing for the transfer and reissuance of entry permits within a given administrative area from one type of gear to another type of gear. The regulations shall reflect the relative differences in average efficiency of different types of gear and shall establish transfer ratios between types of gear which will maintain a stable level of fishing within that administrative area.

PROPOSALS

The following proposals attempt to deal with two problems:

1. economic coercion by financial power blocks
2. qualifications for permits - experience or money (or both)

The first proposal merely buys time to explain the Act to people who do not have a academic or cultural background to appreciate its impact and perhaps to economically assist areas of impacted poverty.

The second and third proposals deal with qualification standards that could assist crew members and "second" sons in having a fighting chance to get permits. The second proposal leaves broad discretion in the Commission and the third provides more legislative guidance. If, under the second proposal, an unconstitutional regulation were adopted, it could be changed without legislative involvement.

Both the second and third proposals have an "out" in case there is detrimental court action.

The fourth proposal is presented in concept as it essentially eliminates transfers entirely. There is much to be said against excessive windfall gains from a common and "public" resource.

16.43.30 TRANSFER OF ENTRY PERMITS

(b) Except for emergency transfers pursuant to Sec. _____ of this chapter there shall be a two-year moratorium on all entry permit transfers pursuant to this section.

16.43.30 TRANSFER OF ENTRY PERMITS

(a) The holder of an entry permit may apply to the Commission to transfer his permit to another person. The Commission may adopt regulations setting forth fair and reasonable qualifications for permit transferees pursuant to this section. [can add standards and options -- i.e., commercial sale, lottery, other controls]

(b) If after due consideration, including public hearings in each administrative area, the Commission determines that a system of qualifications pursuant to (a) of this section is not feasible, the Commission shall approve permit transfer applications if the proposed transferee can establish present ability and intent to participate actively in the fishery, and the proposed transfer is otherwise consistent with the purposes of this chapter.

(c) Except for emergency transfers pursuant to Sec. _____ of this chapter, there shall be a two-year moratorium on all entry permit transfers pursuant to this section. [can add reasons]

III

16.43.30 TRANSFER OF ENTRY PERMITS

(a) The holder of an entry permit may apply to the Commission to transfer his permit to another person. The Commission may adopt regulations setting fourth the qualifications for permit transferees. Any regulations pursuant to this section shall define reasonable priority classifications of similarly situated potential applicants based upon a fair and reasonable balance of all the following standards of preference:

- (1) Extent of past and present participation in the fishery,
- (2) Extent of past and present participation in similar fisheries,
- (3) Training pertaining to commercial fishing.

The Commission may restrict permit transfers to persons in the highest priority classification pursuant to this section.

(b) If after due consideration, including public hearings in each administrative area, the Commission determines that a system of qualification pursuant to (a) of this section is not feasible, the Commission shall approve permit transfer applications if the proposed transferee can establish present ability and intent to participate actively in the fishery, and the proposed transfer is otherwise consistent with the purposed of this chapter.

(c) Except for emergency transfers pursuant to Sec. _____ of this chapter there shall be a two-year moratorium on all entry permit transfers pursuant to this section. [can add ref.]

IV

1. No property rights
2. No transfers except in family (as by previous proposals)
3. Only entry emanates from Commission
4. Property right resides in State.

CSSB 39

PROPOSED COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 39: WORK DRAFT

Add new section: Buy-back provision

The commission shall adopt regulations to purchase either the entry permit or the entry permit and fishing gear of willing gear operators in each administrative area until such time as the optimum level of that type of gear in that administrative area is reached.

(a) The value of the property thus transferred shall be determined by the commission. The commission may establish whatever values are necessary to encourage transfer to the State.

(b) Entry permits thus transferred shall be invalidated and cannot be re-issued.

(c) Fishing gear thus transferred shall be sold by the commission at public auction. Purchase of fishing vessels by valid entry permit holders shall be limited to vessels of the same displacement as the entry permit holder is operating at that time. The commission shall allow for a 5% tolerance limit.

Add new section: Compensation

The commission shall adopt regulations to reasonably compensate those persons who have actively participated in the fishery but do not meet the qualifications set forth in Sec. 16.43.160(a).

The commissioner shall deduct any taxes due the State from this compensation.

Add new section: Assessment

CS5B 39

PROPOSED AMENDMENT TO SB 39 - To replace sections 16.43.227 and 16.43.250
Sec. 16.43.250 (ENTRY PERMITS); TRANSFER OF ENTRY PERMITS

Entry permits shall not be transferrable for a two (2) year period after their initial issuance pursuant to section 220 of this chapter. During that period of time the Commission shall evaluate the level of surrender of permits in each of the administrative area created under section 290 of this chapter.

(a) If the level of surrender during either year of the two (2) year period exceeds five (5) per cent of the total number of units of that type of gear in that administrative area, the commission shall issue new permits equalling fifty (50) per cent of the number of permits surrendered in that year on the following basis:

- (1) One half shall be issued upon a point system to be drafted by the commission with reference to the applicant's experience with the type of gear involved and his training in the fishery involved;
- (2) One half shall be issued by lot among all applicants with active applications before the commission having two or more years experience in the relevant fishery.

(b) An applicant receiving a permit pursuant to the above system shall pay the cost incurred by the commission in purchasing the permit reissued to the applicant. The applicant shall at his option pay:

- (1) The total cost of the permit paid at the time of issuance; or
- (2) Eleven (11) per cent of the cost of the permit at the time of issuance, followed by annual payments of at least eleven (11) per cent of the original cost until after a payment period of ten years a total of one hundred and ten (110) per cent of the original cost has been paid. Provided that, the recipient of the permit may at any time discharge remaining indebtedness by paying the total cost

Amendment to Sec. 16.43.250 (con't)

of the permit plus one percent of that cost for each year he has held that permit, with credit for all payments made.

(c) After the two (2) year period following initial issue authorize the the transfer of permits as follows:

(1) If there has been no significant decrease towards maximum desired levels in a given administrative area, no transfer of entry permits shall be allowed:

(2) If the commission determines that there has been a significant decrease towards maximum desired levels, the commission shall continue to accept surrender of entry permits pursuant to section 290 of this chapter and reissue fifty (50) per cent of those surrendered pursuant to subsections (a) and (b) above.

(3) The commission shall authorize the private transfer of permits in an amount not to exceed the number issued by the commission under subsection (c) (2) of this section, in each administrative area. Such transfers shall be authorized in order of application, upon application of both the proposed transferor and transferee.

(d) At any time the maximum desired number of permits for a particular administrative area is reached, licenses within that area shall become transferrable through and by the commission under sections 260, 270 and 280 of this chapter and unless transferred under sections 260, 270 and 280 of this chapter, may not be voluntarily or involuntarily transferred by any means whatsoever, including but not limited to:

(1) sale of any kind, conditional or absolute;

(2) pledge, mortgage, or other encumbrance of any kind;

(3) lease, rental, or other transfer of rights of use or or enjoyment, whether temporary or permanent;

(4) gift of the entire interest or or of any part, whether complete or into any form of co-ownership.

(5) succession at or upon death, whether by will, intestacy or otherwise.

Amendment to Sec. 16. 43.250 (con't)

(6) attachment, distraint, execution or seizure under any other process of a ny kind of any court or other body.

Nothing in this section prevents or otherwise restricts forfeiture as a result of the violation of a provision of this chapter or by violation of fish and game laws or regulations or by violation of any other state law or regulation or for failure to make payments on the permit under subsection (b)(2) of this section.

TO: SPECIAL SENATE FISHERIES COMMITTEE MEMBERS
ALL MEMBERS OF THE LEGISLATURE

FROM: Senator Palmer

DATE: February 16, 1973

SUBJECT: Objectives of a Transferability Clause

1. and To accomplish the original objectives of the bill and in effect put a lid on the present amount of gear in the fishery and gradually,
2. (Equal in Import) by voluntary attrition, reduce the amount of gear to an optimum level established by the commission in consultation with the Board of Fish and Game and the Commissioner of the Department of Fish and Game.

To accomplish the objective of having the transferability clause be legal.
3. To maintain the free enterprise system to the extent possible within the overall objectives of the legislation.
4. To achieve the objectives of the legislation by voluntary action of the fishermen to the extent possible and ensure that a minimum of involuntary action be forced upon the fishermen by the commission.

File

Amendment to SB 39 - Add on to Section 16.43.200 (d)

... Provided that the commission shall not disqualify any person from participation in the fishery who has a history of active participation in the fishery for which application is made solely because he does not at that time possess a unit of gear for the fishery in which the permit is applied for.

File

Sec. 16.43.220 INITIAL ISSUE OF ENTRY PERMITS.

...
...

(b) After Legislative determination of permit transferability pursuant to Sec. 250 of this chapter the commission shall issue entry permits

Sec. 16.43.250 TRANSFER OF ENTRY PERMITS. The commission shall study alternative methods of permit transferability and report its findings and recommendations to the Legislature prior to January 1, 1975.

Alternative transferability provisions considered shall include, but not be limited to: free transferability, transferability through an apprenticeship program, transferability based upon a point system, transferability through a lottery and any combination of the foregoing. The commission shall study the economic, and management impact of proposed transferability alternatives to include investigation of the credit and financing aspects of the fishing industry.

TRANSFERABILITY

In dealing with this subject, we must work within the framework of the following legislative purpose:

"to promote 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."

In defining the objectives to be accomplished in transferability, the following constitutional guidelines must be met:

- 1) Legitimate legislative objectives
- 2) Rational means to effect the objectives
- 3) Classification of persons upon a basis reasonably conceivable as relating to the objectives.

There are ~~three~~ basic objectives which the committee should consider in exploring the alternatives.

- 1) Limit the initial entry level into the fishery in a fair and equitable manner. The method of transferability may effect the initial entry level.
- 2) Retain as much freedom of enterprise as possible.
- 3) Accomplish the objectives through voluntary action of the fisherman.

Assuming that unrestricted transferability will result in speculation and higher initial entry levels, a dichotomy exists in the first two objectives. To solve this, the speculative nature of permits could be limited by taxation or by control of transferability, or both. It should be noted that the ability to fish is neither a right nor a privilege but is in a grey area between, and therefore is susceptible to regulation according to Fletcher's legal analysis of salmon gear limitation.

It would seem that consideration should now be given to the collateral objectives.

- 1) Limit the cost to the second generation of fishermen for utilizing a common resource.
- 2) Limit the ability of financial power blocks to economically coerce the unsophisticated fisherman.
- 3) Allow transfer within the family unit.

PROPOSALS

The following proposals attempt to deal with two problems:

1. economic coercion by financial power
blocks
2. qualifications for permits - experience
or money (or both)

The first proposal merely buys time to explain the Act to people who do not have a academic or cultural background to appreciate its impact and perhaps to economically assist areas of impacted poverty.

The second and third proposals deal with qualification standards that could assist crew members and "second" sons in having a fighting chance to get permits. The second proposal leaves broad discretion in the Commission and the third provides more legislative guidance. If, under the second proposal, an unconstitutional regulation were adopted, it could be changed without legislative involvement.

Both the second and third proposals have an "out" in case there is detrimental court action.

The fourth proposal is presented in concept as it essentially eliminates transfers entirely. There is much to be said against excessive windfall gains from a common and "public" resource.

16.43.30 TRANSFER OF ENTRY PERMITS

(b) Except for emergency transfers pursuant to Sec. _____ of this chapter there shall be a two-year moratorium on all entry permit transfers pursuant to this section.

16.43.30 TRANSFER OF ENTRY PERMITS

(a) The holder of an entry permit may apply to the Commission to transfer his permit to another person. The Commission may adopt regulations setting forth fair and reasonable qualifications for permit transferees pursuant to this section. [can add standards and options -- i.e., commercial sale, lottery, other controls]

(b) If after due consideration, including public hearings in each administrative area, the Commission determines that a system of qualifications pursuant to (a) of this section is not feasible, the Commission shall approve permit transfer applications if the proposed transferee can establish present ability and intent to participate actively in the fishery, and the proposed transfer is otherwise consistent with the purposes of this chapter.

(c) Except for emergency transfers pursuant to Sec. _____ of this chapter, there shall be a two-year moratorium on all entry permit transfers pursuant to this section. [can add reasons]

16.43.30 TRANSFER OF ENTRY PERMITS

(a) The holder of an entry permit may apply to the Commission to transfer his permit to another person. The Commission may adopt regulations setting fourth the qualifications for permit transferees. Any regulations pursuant to this section shall define reasonable priority classifications of similarly situated potential applicants based upon a fair and reasonable balance of all the following standards of preference:

- (1) Extent of past and present participation in the fishery,
- (2) Extent of past and present participation in similar fisheries,
- (3) Training pertaining to commercial fishing.

The Commission may restrict permit transfers to persons in the highest priority classification pursuant to this section.

(b) If after due consideration, including public hearings in each administrative area, the Commission determines that a system of qualification pursuant to (a) of this section is not feasible, the Commission shall approve permit transfer applications if the proposed transferee can establish present ability and intent to participate actively in the fishery, and the proposed transfer is otherwise consistent with the purposed of this chapter.

(c) Except for emergency transfers pursuant to Sec. _____ of this chapter there shall be a two-year moratorium on all entry permit transfers pursuant to this section. [can add reason]

IV

1. No property rights
2. No transfers except in family (as by previous proposals)
3. Only entry emanates from Commission
4. Property right resides in State.

CS 5B 39

PROPOSED COMMITTEE SUBSTITUTE

WORK DRAFT II

1. Add to 16.43.030 TERM OF OFFICE: VACANCY

Initial appointments shall be as follows: One member for two years, one member for three years, and one member for four years.

2. Alternatives: Add to 16.43.030 TERM OF OFFICE: VACANCY

(a) Board of Fish and Game, Removal of board members (16.04.280). The Governor may remove a board member for inefficiency, neglect of duty, or misconduct in office by delivering to him a written copy of the charges and giving him an opportunity to be heard in person or through counsel at a public hearing before the Governor or his designee upon at least 10 day's notice by registered mail. The member has the right to confrontation by and cross-examination of all witnesses against him. Upon removal, the Governor or his designee shall file a complete statement of all charges made against the member and the findings in the proper state office (SLA 1959).

(b) Alaska Public Utilities Commission, Removal of commissioners (42.05.035). The Governor may remove a

commissioner from office by and with the consent of a majority of the legislature (SLA 1970).

(c) Alaska Transportation Commission, Term of office; vacancy (42.07.021 (d)). The Governor may remove a commissioner from office for cause including but not limited to incompetence, neglect of duty or misconduct in office. A commissioner, to be removed for cause, shall be given a copy of the charges against him and afforded an opportunity to be publicly heard in person or by counsel in his own defense upon not less than 10 day's notice. If a commissioner is removed for cause, the Governor shall file with the Secretary of State a complete statement of all charges made against the commissioner and his findings based on the charges, together with a complete record of the proceedings (SLA 1969, am SLA 1970).

3. Add to 16.43.050 QUALIFICATIONS.

The commission shall consist of three members, with a board range of professional experience, none of whom have a vested or commercial interest in the harvest, production, or management of the commercial fishery resources.

4. Add to 16.43.060 LEGAL COUNSEL.

However, the commission may retain additional legal counsel as appropriate.

5. Add to 16.43.120 (a) GENERAL POWERS.

(9) designate, in view of the purposes and findings of fact in Sec. 010 of this chapter, specific fishery resources subject to the provisions of this chapter.

6. Add to 16.43.160 STANDARDS.

On the number of units of gear necessary to harvest peak runs in an orderly, efficient manner based on sound management techniques.

7. Add to 16.43.200 ENTRY PERMIT QUALIFICATIONS.

(a) The regulations shall define six priority classifications, with reasonable subclassifications, of similarly situated potential applicants based upon a reasonable balance of the two following standards of preference:

(1) Degree of economic dependence upon the fishery including but not limited to, considerations of: percentage of income derived from the fishery, alternative occupations held and additional sources of income available, (excluding public assistance income) character of alternative occupations, and investment in vessels, gear, equipment and property actively and primarily used in the fishery.

(2) Extent of past participation in the fishery to determine the length, degree, and character of participation in the fishery including subsistence activities.

(b) The commission shall classify applicants on a gear to gear basis within each administrative area and rank each applicant within one of the following six priority classifications based upon the character of the applicant's involvement in the fishery:

- (1) Career Fishermen - The fishery constitutes the primary subsistence and/or income source.
- (2) Career Fishermen - The fishery constitutes a necessary and substantial subsistence and/or income source.
- (3) Alternative Occupation - The fishery provides a substantial income supplement.
- (4) Alternative Occupation - The fishery provides a variable minor income.
- (5) Hobby or Sport-Commercial - The fishery provides an incidental income.
- (6) Mere License Holder - Essentially no income from or participation in the fishery.

8. Add to 16.43.220 ISSUANCE OF ENTRY PERMITS

(b) The commission shall issue entry permits, for each administrative area and each type of gear, first to all qualified applicants in the highest priority classification, and then to all qualified applicants in each descending priority classification, until the number of entry permits issued equals the maximum number of units of gear established

pursuant to Secs. 160 - 170 of this chapter for each administrative area and each type of gear. Except that no applicant falling within the first two priority classifications set out in Sec. 200 (b) shall be denied a permit and no applicant falling within the third priority classification shall be denied a permit unless there is a prior determination by the commission, the Commissioner of Fish and Game, and the Board of Fish and Game that biological and economic factors justify denial of permits in these classifications. No permit shall be issued an applicant unless he has the present ability and intent to participate actively in the fishery.

9. Add to 16.43.230 TERMS AND CONDITIONS OF ENTRY PERMIT.

(c) Two years from the date of last renewal shall result in a forfeiture of the entry permit except as waived by the commission for good cause shown and consistent with the purposes of this chapter.

10. Add to 16.43.250 - 260 ALTERNATIVE I.

16.43.250 TRANSFER OF ENTRY PERMITS.

(a) Entry permits are non-transferable except that the holder of an entry permit may apply to the commission to transfer his permit to a spouse or child if the proposed transferee can establish present ability and intent to participate actively in the fishery, and the proposed transfer is otherwise consistent with the purposes of this chapter, the commission shall approve

the transfer application and reissue the entry permit to the transferee.

(b) When otherwise consistent with the purposes of this chapter, the commission may adopt regulations providing for the transfer and reissuance of entry permits within a given administrative area from one type of gear to another type of gear. The regulations shall reflect the relative differences in average efficiency of different types of gear and shall establish transfer ratios between types of gear which will maintain a stable level of fishing within that administrative area.

16.43.260 NEW ENTRY.

Whenever additional entry permits become available for issuance, either due to an increase in the maximum number of units of gear pursuant to Sec. 170 of this chapter or the forfeiture of existing entry permits pursuant to Sec. 230 (c) of this chapter, the commission shall adopt regulations consistent with the purposes of this chapter, providing for the issuance of such permits.

16.43.250 - 260 ALTERNATIVE II.

16.43.250 TRANSFER OF ENTRY PERMITS.

- (a) Entry permits are non-transferable except that:
(1) The holder of an entry permit may apply to the

commission to transfer his permit to his spouse or children if the proposed transferee falls within the highest priority classification pursuant to Sec. 260 (a) of this chapter and the proposed transfer is otherwise consistent with the purposes of this chapter, the commission shall approve the transfer application and re-issue the entry permit to the transferee.

(b) When otherwise consistent with the purposes of this chapter, the commission may adopt regulations providing for the transfer and re-issuance of entry permit within a given administrative area from one type of gear to another type of gear. The regulations shall reflect the relative differences in average efficiency of different types of gear and shall establish transfer rations between types of gear which will maintain a stable level of fishing within that administrative area.

16.43.260 NEW ENTRY.

(a) Following the issuance of entry permits pursuant to Sec. 220 the commission shall adopt regulations setting forth the qualifications for applicants for permit transfers or any new entry. The regulations shall define reasonable priority classifications of similarly situated potential applicants based upon a reasonable balance of all the following standards of preference:

- (1) Extent of past and present participation in the fishery.
- (2) Training pertaining to commercial fishing.
- (3) Present ability and intent to participate actively in the fishery.

(b) Whenever additional entry permits become available for issuance, either due to an increase in the maximum number of units of gear pursuant to Sec. 170 of this chapter or the forfeiture of existing entry permits pursuant to Sec. 230 (c) of this chapter, these permits may be allocated within the highest priority classification by lottery.

16.43.250 - 260 ALTERNATIVE III

16.43.250 TRANSFER OF ENTRY PERMITS.

- (a) Entry permits are non-transferable except that
- (1) The holder of an entry permit may apply to the commission to transfer his permit to spouse or child if the proposed transferee can establish present ability and intent to participate actively in the fishery, and the proposed transfer is otherwise consistent with the purposes of this chapter, the commission shall approve the transfer application and re-issue the entry permit to the transferee.
 - (2) The holder of an entry permit may apply to the commission for the sale of his permit which may include

any reasonably associated vessel, skiff, gear, equipment, and property or lease rights pursuant to Sec. 260 of this chapter.

(b) When otherwise consistent with the purposes of this chapter, the commission may adopt regulations providing for the transfer and re-issuance of entry permits within a given administrative area from one type of gear to another type of gear. The regulations shall reflect the relative differences in average efficiency of different types of gear and shall establish transfer ratios between types of gear which will maintain a stable level of fishing within that administrative area.

16.43.260 APPLICANT POOL.

(a) Following the issuance of entry permits pursuant to Sec. 220 of this chapter the commission shall adopt regulations setting forth the qualifications for applicants for permit transfers or any new entry. The regulations shall define reasonable priority classifications of similarly situated potential applicants based upon a reasonable balance of all the following standards of preference:

(1) Extent of past and present participation in the fishery.

(2) Training pertaining to commercial fishing.

(b) Whenever additional entry permits become available for issuance, either due to an increase in the maximum number of units of gear pursuant to Sec. 170 of this chapter or the forfeiture of existing entry permits pursuant to Sec. 230 (c) of this chapter, these permits may be allocated within the highest priority classification by lottery.

(c) Whenever an additional entry permit becomes available through an application for transfer and sale pursuant to Sec. 250 (a) (2) the commission shall sell, pursuant to regulations adopted by the commission, the permit and any reasonably associated vessel, skiff, gear, equipment, and lease or property right to the highest bidder upon sealed bid among the highest priority classification of applicants. Except that no such sale shall be consummated unless the highest bid price exceeds the fair market value of the property offered for sale.

(d) The commission shall prescribe an appropriate fee for sales pursuant to (c) of this section. This fee shall be subtracted from sale proceeds which shall then be dispensed to the transferor.

11. Add to 16.43.280 PENALTIES.

(b) a person who makes a false statement as to a material fact in the application for an entry permit, or a person who assists another by making a false statement to a material fact

relating to the other persons entry permit is guilty of a misdemeanor, and upon conviction the entry permit shall be permanently forfeited to the commission.

12. Add Sec. 2 AS 16.05.250 (14) is amended to read:

(14) Establishment of the times and dates during which the issuance of fish and game licenses, permits, and registrations and the transfer of permits and registrations between registration areas, game management units or sub-units, is allowed. However, this paragraph does not apply to permits issued or transferred under Ch. 43 of this title.

SB 83 1977: materials available in LRL: 11/7/83

1. H. Resources 1977 ^{a)} tape #12, side 1
b) minutes 2/25/77
c) tape log 2/25/77
2. H. Judiciary tape ^{#33} 4/20/77, side 2
tape log for 4/20/77
3. S. Resources tape #1C, side 2.
tape #2, side 1

no committee bill files in LRL

this info. was compiled for John Aken.

J. Henry



JUNEAU ALASKA

House

HOUSE RESOURCES COMMITTEE

25 February 1977

MINUTES

The meeting was called to order at 1:25 p.m. Room 118 of the Capitol Building by Representative Alvin Osterb Chairman.

Members Present

Osterback, Chairman
Snider, Vice Chairman
Urion
Eliason
Akers
Miller

Absent

Smith
Malone
Bennet

HB 184 An act relating to the sale, purchase, or barter of sheefish.

Testimony: Rep. Leo Schaeffer, sponsor testified in favor of the bill, saying he wished to open sheefish up to Commercial Fishing. It is presently under the Sport Fishing Category.

Representatives Eliason and Schaeffer agreed that the word "subsistence" in HB 184 may be improperly used.

HB 184 was temporarily dropped so someone from Fish and Game could come to testify.

SB 83 An act relating to the transfer of commercial fisheries entry and interim permits.

Testimony: Roy Rickey, from the Limited Entry Commission testified that this bill was largely a housekeeping measure for regulations concerning the transfer of permits.

Rep. Eliason passed out copies of a Committee Substitute that he has been working on for SB 83.

Sections 2-6 would become sections 3-7 respectively.

Insert new paragraph on line 16 reading:

Sec. 2. AS 16.43.150 is amended by adding a new subsection to read:

(h) Upon the death of an entry permit holder, the permit belongs to the surviving spouse by right of survivorship unless a contrary intent is manifested. When no spouse survives, the rights of the decedent pass as part of his estate.

		TRAVEL ONLY \$69,000
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MINUTES 25 February 1977

Roy Rickey said that the Limited Entry Commission has no problem with this change, in fact it may make it easier for the Commissioner to answer transfer requests.

MOTION

Rep. Eliason moved and asked unanimous consent to adopt his amendment, incorporated in SB 83 as a House Committee Substitute for SB 83.

The vote taken by the Chairman was a unanimous "aye" vote.

Absent - Smith, Malone, Bennet.

The motion carried.

MOTION

Rep. Urion moved to pass the House Committee Substitute for SB 83 out of his committee as amended with a "do pass" recommendation.

A vote was taken:

All those in favor - unanimous "aye".

Absent - Smith, Malone, and Bennett.

The motion carried.

HB 250 An act relating to Fish and Game Advisory Committees.

Testimony: James W. Brooks, Commissioner has calculated the cost of HB 250 to be \$255,000 only, plus the cost of processing traveling costs. He said he favors the concept of HB 250, but would oppose it if it imposes an additional burden on the state's general fund.

Rep. Severson had calculated the cost at \$161,225.

The committee decided to cover just travel, not per diem, and change the number of trips per year from 5 to 4.

MOTION

Rep. Snider moved to make the following amendment and incorporate as a Committee Substitute for HB 250

Line 10 delete "and per diem as provided by law for boards and commissions"

Line 11 delete "each day going to and from and for each day in actual"

Line 14 delete "and per diem are" and insert "is" in its place. Replace "five" with "four"

TRAVEL ONLY \$69,000

IT TO 4 MTGS. PER YEAR

DATE	TAPE #12 LOCATION	BILL	WITNESSES, ACTION, ETC.
	410 2:00pm	HB 187 HB 250	James W. Brooks, Commissioner dept. of Fish & Game. has calculated cost associated with this bill - \$255,000 / YEAR cost does not include cost of processing travel documents \$2,315 ←
			favors HB 250 concept, but would oppose it if it imposes a more burden on State's general fund. It's a money problem
	510		BROOKS - VARIATION BETWEEN HIS FISCAL NOTE & SEVERSEN'S FISCAL NOTE. ELIASON - maybe only 1 trip. MILLER - SEVERSON - maybe just fund travel. Miller wants one of these proposals - SEVERSEN OR ELIASON.
			VARIOUS SUGGESTIONS: TRAVEL ONLY \$69,000
			CHANGE IT TO 4 MTGS. PER YEAR (BROOKS SAID THIS IS ENOUGH)

MALONE

DATE	TAPE #12 LOCATION	BILL	WITNESSES, ACTION, ETC.
	3 - 1:23pm	HB 184	REP. LEO SCHAEFFER shufish is now in sport fisheries. Wants to put it in commercial fisheries. ELIASON-SCHAEFFER "subsistence" wrong terminology in bill.
	139	SB 83	ROY RICKEY LIMITED ENTRY house keeping legislation stops people from leasing permits.
	305		ELIASON has been working on a committee substitute relating to if a permit holder dies, the permit can be transferred without going through probate. Roy Rickey said there's no problem with this change, in fact it may make it easier for the Commission to answer all transfer requests. Eliason moved and asked unanimous consent to adopt CSB 83. unanimous aye. Union moves to ...

whitford

1. ADD TO 16.43.030 TERM OF OFFICE; VACANCY
INITIAL APPOINTMENTS SHALL BE AS FOLLOWS: ONE MEMBER FOR TWO YEARS, ONE MEMBER FOR THREE YEARS, AND ONE MEMBER FOR FOUR YEARS.

Alternatives

2. ~~2.01.010~~: ADD TO 16.43.030 TERM OF OFFICE; VACANCY
 - a) BOARD OF FISHS & GAME, Removal of board members (16.05.280)
THE GOVERNOR MAY REMOVE A BOARD MEMBER FOR INEFFICIENCY, neglect of duty, or misconduct in office by delivering to him a written copy of the charges and giving him an opportunity to be heard in person or through counsel at a public hearing before the governor or his designee upon at least 10 day's notice by registered mail. The member has the right to confrontation by and cross-examination of all witnesses AGAINST him. Upon removal, the governor or his designee shall file a complete statement of all charges made against the member and the findings in the proper state office (SLA 1959)
 - b) ALASKA PUBLIC UTILITIES Commission, Removal of commissioners (42.05.035)
THE GOVERNOR MAY REMOVE A COMMISSIONER FROM OFFICE BY AND WITH THE CONSENT OF A MAJORITY OF THE LEGISLATURE (SLA 1970)
 - c) ALASKA TRANSPORTATION Commission, Term of office; VACANCY (42.07.021 (d))
THE GOVERNOR MAY REMOVE A COMMISSIONER FROM OFFICE FOR CAUSE INCLUDING BUT NOT LIMITED TO INCOMPETENCE, neglect of duty or misconduct in office. A commissioner, to be removed for cause, shall be given a copy of the charges against him and afforded an opportunity to be publicly heard in person or by counsel in his own defense upon not less than 10 days notice. If a commissioner is removed for cause, the governor shall file with the secretary of state a complete statement of all charges made against the commissioner and his findings based on the charges, together with a complete record of the proceedings (SLA 1969, AM SLA 1970)

3. ADD TO 16.43.050. QUALIFICATIONS.

THE COMMISSION SHALL CONSIST OF THREE MEMBERS, WITH A BROAD RANGE OF PROFESSIONAL EXPERIENCE, NONE OF WHOM HAVE A VESTED OR COMMERCIAL INTEREST IN THE HARVEST, PRODUCTION, OR MANAGEMENT OF THE COMMERCIAL FISHERY RESOURCES.

4. ADD TO 16.43.060. LEGAL COUNSEL.

HOWEVER, THE COMMISSION MAY RETAIN ADDITIONAL LEGAL COUNSEL AS APPROPRIATE.

5. ADD TO 16.43.120 (A). GENERAL POWERS.

(9) DESIGNATE, IN VIEW OF THE PURPOSES AND FINDINGS OF FACT IN SEC. 010 OF THIS CHAPTER, SPECIFIC FISHERY RESOURCES SUBJECT TO THE PROVISIONS OF THIS CHAPTER.

6. ADD TO 16.43.160. STANDARDS.

ON THE NUMBER OF UNITS OF GEAR NECESSARY TO HARVEST PEAK RUNS IN AN ORDERLY, EFFICIENT MANNER BASED ON SOUND MANAGEMENT TECHNIQUES. (PERMANENT TO SEC. 220(b))

conflict?

~~7. ADD TO 16.43.170 (A) (2). REVISIONS OF MAXIMUM NUMBER OF UNITS OF GEAR SEC. 160 OF THIS CHAPTER.~~

ADOPT Sec. 16.43.200 ENTRY PERMIT QUALIFICATIONS

~~(a) Following the establishment of the maximum number units of gear pursuant to sec. 160 of this chapter, the commission shall adopt regulations for entry permits for each administrative area and for each type of gear. The regulations shall define six priority classifications, with reasonable subclassifications, of similarly situated potential applicants based upon a reasonable balance of the two following standards of preference:~~

- (1) Degree of economic dependence upon the fishery including, but not limited to, considerations of: percentage of income derived from the fishery, alternative occupations held and additional sources of income available, character of alternative occupations, and investment in vessels, gear, equipment and property, ~~ACTIVELY AND PRIMARILY USED IN THE FISHERY.~~
- (2) Extent of past participation in the fishery to determine the length, degree, and character of participation in the fishery including subsistence activities.

(EXCLUDING PUBLIC ASSISTANCE INCOME)

(b) The commission shall classify applicants on a gear to gear basis within ~~each~~ administrative area and rank each applicant within one of the following six priority classifications based upon the character of the applicant's involvement in the fishery:

- (1) Career Fishermen-The fishery constitutes the primary subsistence and/or income source. ~~excluding public assistance income.~~
- (2) Career Fishermen-The fishery constitutes a necessary and substantial subsistence and/or income source.
- (3) Alternative Occupation-The fishery provides a substantial income supplement. VARIABLE
- (4) Alternative Occupation-The fishery provides a [^]minor ~~or~~ income.
- (5) Hobby or Sport-Commercial-The fishery provides an incidental income INCOME FROM OR
- (6) Worm License Holder-Essentially no [^]participation in the fishery.

3.
Add To Sec. 16.43.220 ISSUANCE OF ENTRY PERMITS

...
...
...

EACH

(b) The commission shall issue entry permits, for ~~an~~ administrative area and ~~each~~ type of gear, first to all qualified applicants in the highest priority classification, and then to all qualified applicants in each descending priority classification, until the number of entry permits issued equals the maximum number of units of gear established pursuant to secs. 160-170 of this chapter for ~~the~~ administrative area and ~~each~~ type of gear. Except that no applicant falling within the first two priority classifications set out in sec. 200 (b) shall be denied a permit and no applicant falling within the third priority classification shall be denied a permit unless there is a prior determination by the commission, the Commissioner of Fish and Game, and the Board of Fish and Game that biological and economic factors justify denial of permits in these classifications. No permit shall be issued an applicant unless he has the present ability and intent to participate actively in the fishery.

7.
Adopted Sec. 16.43.230. TERMS AND CONDITIONS OF ENTRY PERMIT

...
...
...

~~(c) Each entry permit is issued for an initial term of one year, and confers upon the permitted a permanent right of renewal. Failure to renew an entry permit annually does not result in the loss of the right to renew the permit upon payment of all accrued annual fees, except that failure to renew an entry permit for a period two years from the date of last renewal shall result in a forfeiture of the entry permit except as waived by the commission on an area basis, or in the case of an individual, for good cause shown AND CONSISTANT WITH THE PURPOSES OF THIS CHAPTER.~~

~~(d) The commission shall establish terms and conditions upon which entry permits may survive the death of the permittee.~~

~~(e) An entry permit may not be pledged or hypothecated and is not subject to attachment, distraint, or sale on execution of judgment.~~

Kathy: omit UNDERLINING phrase



AD. Add to Sec. 16.43.250-260 ALTERNATIVE I.

Sec. 16.43.250 TRANSFER OF ENTRY PERMITS.

(a) Entry permits are nontransferable except that the holder of an entry permit may apply to the commission to transfer his permit to a spouse or child if the proposed transferee can establish present ability and intent to participate actively in the fishery, and the proposed transfer is otherwise consistent with the purposes of this chapter, the commission shall approve the transfer application and reissue the entry permit to the transferee.

(b) When otherwise consistent with the purposes of this chapter, the commission may adopt regulations providing for the transfer and reissuance of entry permits within a given administrative area from one type of gear to another type of gear. The regulations shall ~~Reflect~~ the relative differences in average efficiency of different ~~types of~~ gear and shall establish transfer ratios between types of gear which will maintain a stable level of fishing within that administrative area.

Sec. 16.43.260. NEW ENTRY. Whenever additional entry permits become available for issuance, either due to an increase in the maximum number of units of gear pursuant to sec. 170 of this chapter or the forfeiture of existing entry permits pursuant to sec. 230 (c) of this chapter, the commission shall adopt regulations consistent with the purposes of this chapter, providing for the issuance of such permits.

Sec. 16.43.250-260. ALTERNATIVE II

Sec. 16.43.250. TRANSFER OF ENTRY PERMITS.

(a) Entry permits are nontransferable except that :

- (1) The holder of an entry permit may apply to the commission to transfer his permit to his spouse or children if the proposed transferee falls within the highest priority classification pursuant to sec. 200 (a) of this chapter and the proposed transfer is otherwise consistent with the purposes of this chapter, the commission shall approve the transfer application and re-issue the entry permit to the transferee. ~~[The holder of an entry permit may apply to the commission for the sale of his permit which may include any reasonably associated vessel, gear, equipment, and property or lease right pursuant to sec. 200 of this chapter.]~~

(b) When otherwise consistent with the purposes of this chapter, the commission may adopt regulations providing for the transfer and reissuance of entry permits within a given administrative area from one type of gear to another type of gear. The regulations shall reflect the relative differences in average efficiency of different types of gear and shall establish transfer ratios between types of gear which will maintain a stable level of fishing within that administrative area.

Sec. 16.43.260. NEW ENTRY.

(a) Following the issuance of entry permits pursuant to sec. 220 the commission shall adopt regulations setting forth the qualifications for applicants for permit transfers or any new entry. The regulations shall define reasonable priority classifications of similarly situated potential applicants based upon a reasonable balance of all the following standards of preference:

- (1) Extent of past and present participation in the fishery.
- (2) Training pertaining to commercial fishing.
- (3) Present ability and intent to participate actively in the fishery.

(b) Whenever additional entry permits become available for issuance, either due to an increase in the maximum number of units of gear pursuant to sec. 170 of this chapter or the forfeiture of existing entry permits pursuant to sec. 230 (c) of this chapter, these permits may be allocated within the highest priority classification by lottery.

Sec. 16.43.250-260 ALTERNATIVE III

Sec. 16.43.250. TRANSFER OF ENTRY PERMITS.

(a) Entry permits are non-transferable except that

- (1) The holder of an entry permit may apply to the commission to transfer his permit to spouse or child if the proposed transferee can establish present ability and intent to participate actively in the fishery, and the proposed transfer is otherwise consistent with the purposes of this chapter, the commission shall approve the transfer application and re-issue the entry permit to the transferee.
- (2) The holder of an entry permit may apply to the commission for the sale of his permit which may include any reasonably associated vessel, skiff, gear, equipment, and property or lease rights pursuant to sec. 260 of this chapter.

(b) When otherwise consistent with the purposes of this chapter, the commission may adopt regulations providing for the transfer and reissuance of entry permits within a given administrative area from one type of gear to another type of gear. The regulations shall reflect the relative differences in average efficiency of different types of gear and shall establish transfer ratios between types of gear which will maintain a stable level of fishing within that administrative area.

Sec. 16.43.260 APPLICANT POOL.

(a) Following the issuance of entry permits pursuant to sec. 220 of this chapter the commission shall adopt regulations setting forth the qualifications for applicants for permit transfers or any new entry. The regulations shall define reasonable priority classifications of similarly situated potential applicants based upon a reasonable balance of all the following standards of preference:

- (1) Extent of past and present participation in the fishery.
- (2) Training pertaining to commercial fishing.
- ~~(3) Present ability and intent to participate actively in the fishery.~~

(b) Whenever additional entry permits become available for issuance, either due to an increase in the maximum number of units of gear pursuant to sec. 170 of this chapter or the forfeiture of existing entry permits pursuant to sec. 230 (c) of this chapter, these permits may be allocated within the highest priority classification by lottery.

(c) Whenever an additional entry permit becomes available through an application for transfer and sale pursuant to sec. 250 (a) (2) the commission shall sell, pursuant to regulations adopted by the commission, the permit and any reasonably associated vessel, skiff, gear, equipment

and lease or property right to the highest bidder upon sealed bid among the highest priority classification of applicants. Except that no such sale shall be consummated unless the highest bid price exceeds the fair market value of the property offered for sale.

(d) The commission shall prescribe an appropriate fee for sales pursuant to (c) of this section. This fee shall be subtracted from sale proceeds which shall then be dispensed to the transferor.

11. ~~11.8~~ ADD TO 16.43.280. PENALTIES.

(b) A PERSON WHO MAKES A FALSE STATEMENT AS TO A MATERIAL FACT IN THE APPLICATION FOR AN ENTRY PERMIT, OR A PERSON WHO ASSISTS ANOTHER BY MAKING A FALSE STATEMENT TO A MATERIAL FACT RELATING TO THE OTHER PERSONS ENTRY PERMIT IS GUILTY OF A MISDEMEANOR, AND UPON CONVICTION THE ENTRY PERMIT SHALL BE PERMANENTLY FORFEITED TO THE COMMISSION. (F&G violations)

(c) Includes false statement on Emergency Transfers

12.

~~13.~~ ADD * SEC. 2. AS 16.05.250(14) IS AMENDED TO READ:

(14) ESTABLISHMENT OF THE TIMES AND DATES DURING WHICH THE ISSUANCE OF FISH AND GAME LICENSES, PERMITS AND REGISTRATIONS AND THE TRANSFER OF PERMITS AND REGISTRATIONS BETWEEN

REGISTRATION AREAS, GAME MANAGEMENT UNITS OR SUB-UNITS, IS ALLOWED. HOWEVER, THIS PARAGRAPH DOES NOT APPLY TO PERMITS ISSUED OR TRANSFERRED UNDER CH. 43 OF THIS TITLE.

STATE
OF ALASKA

MEMORANDUM

TO: Senator Palmer

DATE: 2/6

FROM: David Jackman

SUBJECT: S. B. 39

Here are some suggested alternatives
based on last night's discussion.

Add 6. - Suggested Alternative

(1) The number of units of gear that will result in a reasonable average rate of economic return to the fishermen participating in that fishery, considering time fished and necessary investments in vessels and gear.

(2) The number of units of gear necessary to fully harvest the allowable commercial take of the fishery resource during all years in an orderly, efficient manner based upon sound management techniques.

Add 7. - Suggested Alternative

Sec. 16.43.200. ENTRY PERMIT QUALIFICATIONS. (a)

Following the establishment of the maximum number of units of gear pursuant to sec. 160 of this chapter, the commission shall adopt regulations setting forth the qualifications for entry permits for each administrative area, and for each type of gear. The regulations shall establish specific qualifications for grouping similarly situated potential applicants into the following priority classifications:

(1) Career fishermen (single fishery participation) - Consistent participation in this fishery provides a primary or substantial income source.

(2) Career fishermen (multiple fishery participation) - Consistent participation in this fishery, together with participation in other fisheries, constitutes the primary income source.

(3) Alternative occupation fishermen - Participation in this fishery provides a substantial income supplement.

(4) Avocational fishermen - Irregular participation in the fishery provides a variable minor income source.

(5) Inactive fishermen - Licensed fishermen with no record of active participation in the fishery, or once active fishermen who have ceased participating in the fishery.

(b) The qualifications for grouping similarly situated potential applicants shall be based upon a reasonable balance of the two following standards of preference:

(1) Degree of economic dependence upon the fishery including, but not limited to, percentage of income derived from the fishery, reliance on alternative occupations, availability of alternative occupations, and investment in vessels and gear.

(2) Extent of past participation in the fishery including, but not limited to, the number of years participation in the fishery, and the consistency and character of participation during each year.

(c) The commission may adopt regulations establishing subclassifications of the priority classifications in (a) of this section when necessary and appropriate for a certain administrative area and type of gear, and consistent with the purposes of this chapter.

Add 8. - Suggested Alternative

Sec. 16.43.225. RIGHT TO COMPENSATION. (a) If an entry permit is not issued to an applicant who qualifies under priority classifications (1)(2) or (3) as established in sec. 200 of this chapter, full and reasonable compensation must be made based upon the economic value of an entry permit for the area and type of gear for which his application was denied, and including compensation for direct economic loss resulting from a drop in the market value of the applicant's vessel and gear which is attributable to regulation under this chapter.

(b) Until full compensation is made by the commissioner, any applicant eligible for compensation under (a) of this section shall be permitted to continue fishing under an interim entry permit.

Note: This just suggests a possible simplified approach to buy-back and compensation. It would require amending sec. 120 and sec. 190, and adding another section creating a compensation fund.

Basically it would allow everyone in priority classification (1), (2), or (3) to continue fishing on an interim entry permit until the legislature appropriated enough money to compensate them.

Add 10 - Suggested Alternative on Transfer of Permits

Although, I have not had time to draft language, I would suggest leaving permits transferable, but perhaps establish a five-year moratorium on any transfer or sale at the outset.

That would mean that except when necessary due to death or disability, the commission would process no transfers of permits (sales) for five years. This could be partially justified on administrative grounds because the commission will be too busy with its initial work during the first few years to administer transfers.

It would meet many of the objections raised last night by giving fishermen a few years to improve their economic situation and get used to the limited entry program before they would have the opportunity of selling out.

CSS B 39

Price [unclear]

[unclear]

[unclear]

[unclear]

1/2/10/11

SENATE ROLL CALL

19

ject

ective date

	Yea	Nay	Absent
ROVICH		✓	
FT			
H		✓	
IRIS		✓	
ISLEY			
IMAN			
TTULA			
IS		✓	
JAND		✓	
LER, K.			
LER, T.			
MER			
JAND			
SEN			
Y			
TTIC			
CKETT			
OMAS			
JNG			
EGLER		✓	

YEAS _____
 NAYS _____
 ABSENT _____
 EXCUSED _____

e _____ passed

e _____ did not pass

PROPOSALS

The following proposals attempt to deal with two problems:

1. economic coercion by financial power blocks
2. qualifications for permits - experience or money (or both)

The first proposal merely buys time to explain the Act to people who do not have an academic or cultural background to appreciate its impact and perhaps to economically assist areas of impacted poverty.

The second and third proposals deal with qualification standards that could assist crew members and "second" sons in having a fighting chance to get permits. The second proposal leaves broad discretion in the Commission and the third provides more legislative guidance. If, under the second proposal, an unconstitutional regulation were adopted, it could be changed without legislative involvement.

Both the second and third proposals have an "out" in case there is detrimental court action.

The fourth proposal is presented in concept as it essentially eliminates transfers entirely. There is much to be said against excessive windfall gain from a common and "public" resource.

16.43.30 TRANSFER OF ENTRY PERMITS

(b) Except for emergency transfers pursuant to Sec. _____ of this chapter there shall be a two-year moratorium on all entry permit transfers pursuant to this section.

II

16.43.30 TRANSFER OF ENTRY PERMITS

(a) The holder of an entry permit may apply to the Commission to transfer his permit to another person. The Commission may adopt regulations setting forth fair and reasonable qualifications for permit transferees pursuant to this section. [can add standards and options -- i.e., commercial sale, lottery, other controls]

(b) If after due consideration, including public hearings in each administrative area, the Commission determines that a system of qualifications pursuant to (a) of this section is not feasible, the Commission shall approve permit transfer applications if the proposed transferee can establish present ability and intent to participate actively in the fishery, and the proposed transfer is otherwise consistent with the purposes of this chapter.

(c) Except for emergency transfers pursuant to Sec. _____ of this chapter, there shall be a two-year moratorium on all entry permit transfers pursuant to this section. [can add reasons]

16.43.30 TRANSFER OF ENTRY PERMITS

(a) The holder of an entry permit may apply to the Commission to transfer his permit to another person. The Commission may adopt regulations setting fourth the qualifications for permit transferees. Any regulations pursuant to this section shall define reasonable priority classifications of similarly situated potential applicants based upon a fair and reasonable balance of all the following standards of preference:

- (1) Extent of past and present participation in the fishery,
- (2) Extent of past and present participation in similar fisheries,
- (3) Training pertaining to commercial fishing.

The Commission may restrict permit transfers to persons in the highest priority classification pursuant to this section.

(b) If after due consideration, including public hearings in each administrative area, the Commission determines that a system of qualification registered to (a) of this section is not feasible, the Commission shall approve permit transfer applications if the proposed transferee can establish present ability and intent to participate actively in the fishery, and the proposed transfer is otherwise consistent with the purposes of this chapter.

(c) Except for emergency transfers pursuant to
Sec. _____ of this chapter there shall be a two-year
moratorium on all entry permit transfers pursuant to this
section. [can add reason]

IV

1. No property rights
2. No transfers except in family (as by previous proposals)
3. Only entry emanates from Commission
4. Property right resides in State.

16.43.250 TRANSFER OF ENTRY PERMITS.

(a) Entry permits are non-transferable except that the holder of an entry permit may apply to the commission to transfer his permit to a spouse or child if the proposed transferee can establish present ability and intent to participate actively in the fishery, and the proposed transfer is otherwise consistent with the purposes of this chapter, the commission shall approve the transfer application and reissue the entry permit to the transferee.

(b) When otherwise consistent with the purposes of this chapter, the commission may adopt regulations providing for the transfer and reissuance of entry permits within a given administrative area from one type of gear to another type of gear. The regulations shall reflect the relative differences in average efficiency of different types of gear and shall establish transfer ratios between types of gear which will maintain a stable level of fishing within that administrative area.

16.43.260 NEW PERMITS.

Whenever additional entry permits become available for issuance, either due to an increase in the maximum number of units of gear pursuant to Sec. 170 of this chapter or the forfeiture of existing entry permits pursuant to Sec. 230 (c) of this chapter, the commission shall adopt regulations consistent with the purposes of this chapter, providing for the issuance of such permits.

16.43.250 - 260 ALTERNATIVE 11.

16.47.250 TRANSFER OF ENTRY PERMITS.

(a) Entry permits are non-transferable except that:

- (1) Extent of past and present participation in the fishery.
- (2) Training pertaining to commercial fishing.
- (3) Present ability and intent to participate actively in the fishery.

(b) Whenever additional entry permits become available for issuance, either due to an increase in the maximum number of units of gear pursuant to Sec. 170 of this chapter or the forfeiture of existing entry permits pursuant to Sec. 230 (c) of this chapter, these permits may be allocated within the highest priority classification by lottery.

16.43.250 - 260 ALTERNATIVE III

16.43.250 TRANSFER OF ENTRY PERMITS.

(a) Entry permits are non-transferable except that:

- (1) The holder of an entry permit may apply to the commission to transfer his permit to spouse or child if the proposed transferee can establish present ability and intent to participate actively in the fishery, and his record is free of infractions consistent with the provisions of this chapter, the commission shall approve the transferee application and re-issue the entry permit to the transferee.

- (2) The holder of an entry permit may apply to the commission for the sale of his permit which may include

any reasonably associated vessel, skiff, gear, equipment, and property or lease rights pursuant to Sec. 260 of this chapter.

(b) When otherwise consistent with the purposes of this chapter, the commission may adopt regulations providing for the transfer and re-issuance of entry permits within a given administrative area from one type of gear to another type of gear. The regulations shall reflect the relative differences in average efficiency of different types of gear and shall establish transfer ratios between types of gear which will maintain a stable level of fishing within the administrative area.

16.43.260 APPLICANT QUALIFICATION.

(a) Following the issuance of entry permits pursuant to Sec. 230 of this chapter the commission shall adopt regulations setting forth the qualifications for applicants for permit transfers or any permits. The regulations shall define appropriate criteria for determination of similarly situated applicants and shall be based upon a reasonable distance of all the following standards of measurement:

(1) School of fish catch and retention in the fishery.

(2) Productivity potential to commercial fishing.

(b) Whenever additional entry permits become available for issuance, either due to an increase in the maximum number of units of gear pursuant to Sec. 170 of this chapter or the forfeiture of existing entry permits pursuant to Sec. 230 (c) of this chapter, these permits may be allocated within the highest priority classification by lottery.

(c) Whenever an additional entry permit becomes available through an application for transfer and sale pursuant to Sec. 250 (a) (2) the commission shall sell, pursuant to regulations adopted by the commission, the permit and any reasonably associated vessel, skiff, gear, equipment, and lease or property right to the highest bidder upon sealed bid among the highest priority classification of applicants. Except that no such sale shall be consummated unless the highest bid price exceeds the fair market value of the property offered for sale.

(d) The commission shall prescribe an appropriate fee for the sale provided for in (c) of this section. This fee shall be subtracted from sale proceeds which shall then be dispersed to the Lender.

WORK DRAFT

Pg. 11, Sec. 16.43.250 Transfer of Entry Permits

- (a) Except as provided under sec. 260 of this chapter, an entry permit is not transferable from one person to another.
- (b) When otherwise consistent with the purposes of this chapter, the commission may adopt regulations providing for the transfer and reissuance of entry permits within a given administrative area from one type of gear to another type of gear. The regulations shall reflect the relative differences in average efficiency of different types of gear and shall establish transfer ratios between types of gear which will maintain a stable level of fishing within that administrative area.
- (c) Failure to actively participate in a fishery for which an entry permit is issued for a period of ___ consecutive years shall result in the forfeiture of an entry permit. Entry permits forfeited under this section shall not be reclaimed until the optimum gear level is reached for that type of gear in the administrative area for which the forfeited permit was issued. Entry permits shall then be issued pursuant to sec. 270 of this chapter.

Fig. 12, Add new section 16.43.270 New Entry

- (a) Whenever additional entry permits become available for issuance, pursuant to secs. 170, 230(c), or 250(b) of this chapter, the commission shall adopt regulations consistent with the purposes of this chapter providing for the issuance of such permits by lottery.

STATE OF ALASKA
 FISH & GAME LICENSING
 DEPT. OF REVENUE
 240 SO. FRANKLIN
 JUNEAU ALASKA 99801

State Comm

COMPARISON OF NUMBER OF COMMERCIAL, VESSEL AND GEAR LICENSES SOLD STATEWIDE
 JANUARY 1 - MARCH 2, 1972 ----- JANUARY 1 - MARCH 2, 1973

RECEIPT CODE	TYPE OF LICENSE	1972	1973	INCREASE OR DECREASE IN NUMBER SOLD	% OF INCREASE OR DECREASE
270	Vessels	642	1142	+ 500	+ 77.88
271	Trawl	185	485	+ 300	+163.93
272	Longline	36	141	+ 105	+291.66
273	Drift Gill	194	354	+ 160	+ 82.47
274	Set Gill	155	79	- 76	- 48.36
275	Beach Seine	2	2	-----	-----
276	Purse Seine	60	95	+ 35	+ 58.33
277	Beam Trawl	14	30	+ 16	+114.29
278	Otter Trawl	53	51	- 2	- 3.77
279	Shellfish Pots	185	288	+ 103	+ 55.68
280	Clam Digger	12	20	+ 8	+ 66.67
281	Res. Comfish	877	1727	+ 850	+ 96.92
282	Nonres. Comfish	165	299	+ 136	+ 83.44
283	Scallop Dredge	2	2	-----	-----
TOTALS		2576	4711	+2135	+ 82.88

REMARKS ON LIMITED ENTRY delivered by Senator Bob Palmer

In many areas of the state the excessive amount of commercial fishing gear currently makes the ~~most~~ effective biological management of Alaska's fisheries for maximum sustained yield ^{almost} impossible. Since the number of fish that can be safely ^{harvested} ~~taken commercially~~ is limited, the fishery cannot provide a livelihood for an unlimited number of people.

The Cook Inlet drift net fishery is only one of several examples of the management difficulties created by excess gear. Because of the volume of gear, only two 12-hour periods of fishing a week were permitted last year. ^{and scheduled this year.} Since salmon returning to a particular spawning area travel together, and the concentration of gear is so great, the danger of wiping out a particular run in its entirety is always present. A difference of only a few

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hours in the opening and closing times for a fishing period could destroy the results of years of good management and rehabilitation. Extremely large concentrations of gear are also posing very serious management problems in the Bristol Bay and Prince William Sound salmon fisheries and some of the State's shellfish fisheries. In other fisheries the problem is less severe; and some fisheries today face no problem, only the threat of a growing amount of gear.

The amount of gear fished in nearly all of the State s fisheries has been increasing yearly, and that trend shows no signs of slowing or reversing. The figures on the attached sheet show an increase of 82.88 percent in the total number of commercial, vessel and gear licenses sold statewide during January and February of this year over the same period last year. While the

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prospect of limited entry has undoubtedly exaggerated the growth rate by spurring speculators to buy licenses, the trend is still clear -- and so is the danger that it indicates for all of Alaska's fisheries, either now or in the future.

In addition to weakening effective fisheries management, this continuing growth in the number of units of gear makes fisheries rehabilitation programs futile in the long run. What good is it to increase the number of fish by fifty percent if, at the same time, the number of fishermen increase by seventy-five percent?

In addition to the problems of lessened management effectiveness and diminishing economic return to individual fishermen, the growth in gear poses another danger to Alaska's fisheries.

Page Four

Without sufficient money to diversify their fishing activities and improve their fishing methods, time is going to pass by the growing crowd of Alaskan fishermen. Their mere numbers and the resultant low income will force them into using obsolete, inefficient methods, even in new fisheries. Alaskan fishermen and Alaskan fish products will find themselves in a bottom position in competitive markets, futilely and ironically seeking more money to make a living from a catch that cost them more to get than fishermen elsewhere.

Limited entry will put a lid on the growth of gear in the State's fisheries, and where there is already too much gear, it will reduce the amount to a workable level. It will lead to better fisheries management and enhancement, improved economic

Page Five

returns, more effective development of all of the State's commercial fisheries, and a better competitive market position.

Merely putting a limit on the number of participants at any one time does not amount to giving individuals property rights to the fishery itself. The fisheries of this state will always remain the common property of the people, but their use must be regulated through limited entry if Alaska's fisheries are to be economically and biologically productive and continue to contribute to the overall well-being of this State

SUMMARY OF COMMENTS ON TRANSFERABILITY

Free Transferability thru the commission

1. Meets the committee objective of retaining as much freedom of enterprise as possible.
2. Will increase the speculative nature of permits and the costs of compensation and/or a buy-back program.
3. By granting a transferable privilege, the State will lose the ability to control who utilizes a common resource.
4. Will encourage a greater adherence to conservation considerations on the part of those utilizing the resource.
5. If the State has a vested interest in keeping as many permits as possible in resident hands, free transferability may result in the flow of permits to non-residents with a more rapid rate among low income groups.
6. Vests the ability to utilize a common resource in private hands placing a monetary qualification on those who wish entry to the fishery.
7. Passes the cost for the privilege to use a common resource on to the second generation of fishermen.

Quarantine period prior to free transferability

1. May allow for the unsophisticated and those most dependent on the fishery an opportunity to improve economic condition. Their ability to withstand economic pressures could be substantially improved by a State loan program and/or the involvement of the Native Regional Corporations.

Free Transferability thru the commission with a substantial tax on entry permits sales.

- A. 75% tax on the fair market value of an entry permit when sold to the commission. The commission would purchase permits in an area until the optimum gear levels were reached.
- B. 90% tax on the sale of an entry permit to another individual.
1. Would decrease the speculative nature of the permits and the cost of compensation and/or a buy-back program.
2. Does not pass the cost for utilizing a common resource on to the second generation of fishermen. The major portion of appreciation in value reverts to the State in the form of taxes.

3. Would encourage "under-the-table" schemes which would substantially increase the administrative policing required.
4. Offers an incentive to sell to the commission in over-gearred areas.
5. Could allow for transfer within the family unit at minimal costs.

Restricted Transferability thru the commission to an applicant pool

1. Would allow those who have been dependent on the fishery as non-gear operators an improved chance of entry.
2. Would allow for State control of individuals utilizing a common resource.
3. Depending on qualifications, could create a closed class and if not, may favor non-residents.
4. Depending on the right-privilege dichotomy, could be considered discriminatory to those with no experience or training, but who wish to utilize a common resource.
5. Would increase an individual's ability to obtain financing (as opposed to lottery).

Restricted Transferability thru the commission by lottery

1. Would be ineffectively unfair.
2. Would make financial planning very difficult for those in lottery.
3. Would not allow any advantage to those non-gear operators dependent on the fishery.

Restricted Transferability thru the commission only to family members, but restricted permits issued by lottery or applicant pool.

1. Would be ineffectively unfair in utilizing a common resource and would not allow family members to utilize the resource.

Justification of David Jackman, Office of the Attorney General,
for COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 39, a bill for
limited entry into the commercial fisheries of Alaska

As stated this proposed committee substitute has been the result of much work drawn primarily from the committee substitute that the Professor (Fletcher) put together and the inputs of the people attending those meetings. I think the structure of the bill can be most easily understood if you think of it in four parts, maybe there are five.

First article dealing with the creation of the commission. The second article dealing with the basic entry permit. Entry permits, what the terms and conditions of the entry permit are, how they can be transferred, so forth. The third article dealing with the initial issue of permits, starting with the present situation, how do we decide how we are going to go about putting a lid on things and getting the entry permits out initially to the people that have been fishing. The fourth article is really phase two of the program the reduction of the number of entry permits down to the optimum levels. It is working from where we are now in a lot of distressed fisherys down to a reasonable level of gear. The fifth article very frankly simply deals with general provisions, such as penalties, regulations, definitions.

I know you are in a time constraints but I will take time and kind of go through the details of how this will work.

The first article, as I say, deals with the commission. The commission would be a three-man commission, they would have a full-time commissioner and a quasi-judicial regulatory agency in the state. One member would be designated as chairman, the commissioners would serve staggered terms and could be removed only for cause shown including incompetency and I think the thinking there was that there would not be an automatic change in the makeup of this commission with a change of administration. The two members of the commission would constitute a quorum. Clearly the organization of the commission contemplates that it would have an adequate supporting staff. There will be the need for a very (fairly) sizeable clerical staff to handle just the mechanics, the bookkeeping of collecting fees, issuing permits, and all of that. The commission would rely on experts as they needed them. The attorney general would be legal counsel and as the chair has noted will doubt be in court defending this.

The powers and duties of the commission are enumerated in Article II. A general rundown will show all the things that will be accomplished in the act. Basically the provisions of the administrative procedures act will govern all regulations adopted by the commission and the adoption of regulations, notices, public hearings, pretty much conform with our apa. The commission would make its own standards in its quasi-judicial role for when it gets around to individuals giving individuals a hearing on their application. It may establish its own regulations and

proceedings for that purpose. It is our experience with other public commissions such as the public utilities commission, the transportation commission, have shown the APA procedures for adjudication to be cumbersome and unnecessary.

Article III which starts with laying out the basic entry permit system. Section 140 states the basic permit requirement that after January 1, 1974, no persons may operate gear in a fishery resource of the state without an entry permit or an interim use permit. The permit is not required of a crewman or others who assist in this fishing. It would just have to be issued, just applies, on a one to one correspondence with the units of gear. The bill goes on to explain that there are only three circumstances in which a person can hold more than one permit. Illustrate. Fishing in more than one administrative area we have established fisheries, those who actually have fished or want to fish, say Southeastern and Prince William Sound. The third situation would be harvesting a particular species for which separate interim gear was issued. Illustrated by example of Kodiak where one type of gear, shellfish, could be used for tanner crab, king crab, dunqeness crab, and the level of gear for each of those different fisheries might be very different so you would have to have different permits for king crab than for tanner crab.

Now Section 150 starting line 6 spells out the terms and conditions of entry permits. Basically it states that a permit to operate

a unit of gear within a specified administrative area must be in the possession of the holder fishing for a term of one year but is renewable annually. This is to make clear that as long as the person remains in good standing and pays the assessments, he has a right to renew. Important term and condition is that an entry permit constitutes a gear license which may be modified or revoked by the Legislature. This is to make it clear that the entry permits do not constitute property rights in the fishery. Or something that is subject to compensation. In a sense it is stating the obvious. It makes clear to people that in terms of the entire system the legislature can come back and make whatever future adjustments or admendments/are necessary. (modifications) Also stated in the entry permit shall not be pledged more than the holder is encumbered (?) or subject to right of repossession. The fees section underwent substantial discussion and provision because several of the committee members noted the problem of charging one set fee for all the different types of gear in the state. Illustrated. To correct those possible inequities the fee sections reads that the annual fee shall be no less than \$10 and no more than \$100 to reflect the differing economic rates/for of return different fisheries.

The bill permits those following the low social security administration/^{poverty}guidelines to in no case be subject to more than a five dollar maximum fee. Transfer of entry permits can be through the commission only. Permits can be transferred by making appli-

cation to the commission and only upon six months notice of intent to transfer. This was thought to be a protection, going through the commission and in full view of the commission. Basically the permits are freely transferable with one exception -- well two important exceptions -- the transferee, the person to whom the permit is going, must be a fisherman, one actively participating in the fishery. One class of applicants will receive permits subject to a temporary restriction on transfer. They can only transfer back to the commission. They cannot transfer to another commission. They will get market value just like everyone else but they can only transfer to the commission.

Article IV, the initial issuance of entry permits first establishes administrative areas which are compatible with the areas established by the Board of Fish and Game. Then introduced the interim use permit which does just what it says -- it is a permit which the commission will issue adopting the regulations, accepting the applications that it needs to make to issue the final entry permits. Interim use permit in some of the fisheries probably will be only for six months to a year. In some of the other fisheries if they need them longer than that, this will be the mechanism by which the commission can keep track of a fishery and put a lid on it.

There is one special restriction on the interim use permits. They can be issued to anyone who is actively ready to participate in the fishery. However, on the bottom of page nine Bristol Bay, Cook

Inlet, and Prince William Sound drift net fisheries are severely impaired, and even on an interim basis permits can only go to those who have at some time in the past fished in those fisheries. Even interim permits cannot be issued to fishermen that come in there for the first time this next year. There will be a one year restriction on that so that the Legislature can keep a tight control on that.

Terms and conditions of interim use permits. They are non-transferable. The commission can adopt regulations for the hardship transfer of interim use permits because of sickness or other unavoidable consequences that would keep a man out for a season. The next important provision is the designation of distressed fisheries. This is substantially from anything in the House Bill. Designation of distressed fisheries is those fisheries which are at or above the optimum level basically. Most of the salmon fisheries fall in that category and some of the shellfish. The only fisheries which would be excluded are fisheries which in the judgement of the commission can be allowed to grow which are still below the optimum level. For the distressed fisheries, the termination of the maximum number of entry permits. Basically for the distressed fisheries the maximum number of permits for additional issue will be the highest number of units of gear during any one of the four years immediately preceding January 1, 1973. For the other fisheries when the commission finds that that fishery has reached levels which require limitation on down the line, the commission shall establish the maximum level of gear for that fishery.

In terms of standards for initial issuance of entry permits, these are set forth as hardship standards to write (right?) the applicant's degree of hardship they would experience by exclusion from the fishery.

Regulations would define priority classifications based on two standards: the degree of economic dependence upon the fishery and extent of past participation in the fishery. At the same point in time that the commission is proposing those regulations which would set forth the qualifications, they will do this fishery by fishery, dealing with each area and each type of gear separately, the commission will designate those applicants who would suffer significant economic hardship by being excluded from the fishery. That designation is important because later on those people must receive permits. They are locked in. Another designation which the commission must make is the designation of those priority classification of those applicants who would suffer only minor economic hardship by exclusion from the fishery and it is only people who receive permits in that category who have the restricted transfer permit, in other words they can only transfer the permit to the commission. If they hold on to it or it goes back down to their family, there is no problem with that, then they can keep the permit. But if they want to sell it, they can only sell it to the commission.

The application procedures are pretty straight forward. Only

applicants who have at some time held gear licenses in the area can apply for permits. If the applicant is not satisfied with the commission's decision on his application, he can ask for and receive an administrative adjudication, his own separate hearing at which he can present alternative evidence. Another very important provision included in that section is that all classification, excuse me, all qualifications are determined as of a person's participation in the fishery prior to January 1, 1973. That means that someone who entered the fishery at the last minute this year can do so but he won't get any credit toward qualifying for an entry permit. The commission will look only at what he has done in prior years.

Initial issuance of entry permits -- The commission shall issue entry permits as designated in 250.b, first to all qualified applicants, or anyone who would suffer severe economic hardship, then all applicants in descending priority classifications, until they reach the maximum number of permits for that area. How far down that list of priority classifications depends very much upon the fishery -- where the fishery is a part-time fishery you are going to be well down into the list, to the, shall we say, casual participants. In other fisheries, such as Bristol Bay, the cut-off line might be somewhat higher. In any event, no one who suffers significant hardship or economic distress will be denied a permit. If the maximum number of cuts cuts right in the middle of a priority classification, then the decision of who gets permits within that classification is by lottery. The priority

becomes somewhat confusing but what it has attempted to do is to group people with similarly situated people in whatever grouping seemed appropriate in terms the nature of that fishery and not to pretend to draw a line between individuals where the commission would be up against a hopeless task if they attempted to differentiate between individuals who had qualifications that were virtually identical. They will be all put into one classification and treated equally.

If at the time permits are issued, some applicants are appealing the result through administrative adjudication, the permits are held out to protect on the assumption that they will see the hearing resolved in their favor. All the provisions of repeal of the administrative procedures act apply. The commission would let him to continue to fish on an interim basis and hold out an entry permit for him until the appeal is finally determined.

Palmer: WE are going to set a maximum first and that maximum shall be no less than the largest number of units of gear that had been fished in the previous four years in that fishery. It is also going to include those who would suffer a significant hardship if they were excluded and if that last number is greater than the first, then so be it. When you talk about cutting across a hardship category and lottery, you are saying that the first group, of significant hardship, those people are all being included, and if you still have room, you still have not gone up to your maximum

then you are going to drop on down to another level of minor hardship and start letting them in. So, if you don't have room for all of the hardship cases, that is where your line cuts through them. For the slots that are left before you hit the maximum number, all the minor hardship cases will have a chance to get in through the lottery.

Sy that 500 permits is the highest gear in the four years, suppose when the commission goes in and writes all of the applicants, suppose they find that 400 of them would know a significant hardship were they to be kept out and only 200 would know only minor hardship if they were left out. Ok, all 400 of those who would suffer significant hardship will be kept in. Instead of taking the first 100 of the remaining 200, they will all draw out of a lottery, thus having an equal chance at the remaining 100. Further illustration.

Jackman: A further illustration that Senator Palmer gave where you would have a maximum 500, and 400 would suffer significant hardship, they get the permits first. Then you have 100 permits left to issue and 200 applicants. The applicants might be divided into as many as two or three other priority classifications. Priority classification is sort of on the notion of a point system. So, you might not have a drawing of all the two hundred, but you would come down some through some of those and the line might cut across the second priority classification so you would have a

drawing, say, between sixty of the less hardship classifications, you would not necessarily be condemning all the people in classifications below significant hardship, since you can't really differentiate one from another, the only fair way to do it is by lottery. The commission could only rank the applicants as set out in the bill -- terms of economic dependency on the fishery and past participation in the fishery.

After all the entry permits are issued, you are on your way. The next phase of the program in Article V is the reduction of the optimum number of entry permits. To reduce the commission has to make a determination as to what the optimum level is. This is the second major feature that the commission has to make as a judgemental decision. They have to go into each fishery and determine the optimum number of permits on a balance of three standards.

Basically the first standard is the number of permits that is sufficient to support an economically healthy fishery and result in a reasonable return to the fisherman. The second standard is the number of permits capable of harvesting all the fish in an orderly manner consistent with sound fishing management techniques, from a conservation oriented standpoint. The third standard is the number of entry permits necessary to avoid serious economic hardship to those engaged in the fishery considering other economic opportunities available to them. That is an important factor in that the commission can balance the human needs and circumstances

in a given fishery in with the others so it doesn't become some sort of an overly mechanical computation, in the particular economy or fishery that you are dealing with. It can only be revised if there is a long term change in the biological change such as the Bristol Bay fishery. This would be if the Bristol Bay fishery were all of a sudden to built up to its 1930 level, twice or three times what the present runs are. That would be the kind of a change that would enable you to come back in and increase the number of units of gear that could fish. Second interest would be an interim change in market conditions. I suppose if the price of fish in ten years tripled, again fisheries would be that much more profitable and they could let more people in again. The restriction is long term change so they cannot come into each fishery and tinker with the levels every year. They are only to change them if an established change is warranted. The only way that the commission can reduce the optimum level of entry permits is through the buy-back provision, to make it clear that no one is ever to have an entry permit taken from him against his will. If a reduction is necessary, it can come only by buy-back provision which is taken up in the next session. Funds are established for each fishery for the purpose of reducing to the optimum within ten years. In some fisheries the reduction might be more rapid than that; in others it might take the full ten years. Assessments on the fishermen themselves would fund the buy-back funds. assessments would be based upon no more than seven percent of the gross value of the catch. That is very much an outer limit. In many

fisheries the assessment would be one or two or three years. Some one who doesn't fish that year would pay the average assessment for his area and again the assessments go back into the buy-back fund for that area. The buy-back program would be administered by the commission to provide for the purchase of entry permits and gear at fair market value until you get back to optimum level. There would be three circumstances where you would have new permits to issue. If you increased the optimum, as discussed before in terms of revising the optimum; if permits are forfeited back to the commission for non-payment of fees; or under the penalty section wherein you have more permits coming available; or if you put a lid on the fishery, one of these fisheries that is not troubled yet; and then when you get around to setting the optimum you can still allow for some growth and new permits to be issued.

Section 330 instructs the commission to issue those permits to fishermen who are ready to fish in that fishery according to any equitable method of issuance. In some situations a priority of application or lottery might be appropriate and in some instances competitive bid might be more appropriate. It would depend upon the number of applicants ratio to the number of permits. The general provisions Section 350 -- the jurisdiction of the board of Fish and Game is not affected. They will continue to be the ones to decide on the length of nets, net size, where you can fish what net. The commission and the board will clearly have to work together but the jurisdiction of the board is not affected.

The penalties section has three parts. The first part talks in terms of a violation of the chapter upon a third conviction for a violation of the chapter for regulation under the chapter such as not having a permit in possession while fishing. A person would forfeit all interim use permits and entry permits and lose eligibility for permits. The second part of the penalties has to do with fraudulent statements in applying for an entry permit or assisting another in making fraudulent statements in applying for an entry permit. Again, a person who is found guilty of that in addition to being guilty of a misdemeanor would forfeit any permits which he held and forfeit his eligibility for permits for a period of five years.

The last section deals with someone who violates a tax law. He would lose his permits and lose eligibility for five years.

Section 370 requires the commission to submit an annual report to the legislature and to include progress report on the reduction of gear down to the optimum level and recommendations for additional legislation relating to the fisheries.

Section 380 is definitions -- do not require much detail. Further technical amendments to toher part of Title XVI.

Just to comment briefly, the basic difference between this bill and the house bill is the fact that the HHouse bill would have

permitted an initial cut in three enumerated distress fisheries rather than letting people in at the present level and taking the highest for the last four years. The commission could have made an initial cut at Bristol Bay, Cook Inlet, and Prince William Sound of not more than twenty-five percent.

Palmer: Is there any doubt in your mind that this language

There is no doubt in my mind that the legislature can come back next year or another year and amend the legislation in any way that is necessary.

Relating to the handtrollers, that fishery would not be designated a distressed fishery and probably the lid would not be put on it even at the present level. The sport commercial fishermen may (must) be treated separately from the power troll fleet and that is spelled out in the definitions. Entry permits for hand troll gear will be separate from power troll gear. I think that takes care of the problem in southeast Alaska.

To summarize the bill does not affect the 1973 fishing season. The bill goes into effect January 1, 1974. Clearly the interim use provision would allow anyone who presently wants to fish to get an interim use permit except in 1973. In 1974 only persons who have before fished in those fisheries (Bristol Bay, Cook Inlet, Prince William Sound) can get a permit. In the other interim use

permit fisheries you are not going to cut anyone off until you get to the point of issuing entry permits, but the point to be remembered is that an interim permit does not count at all in 1974 in terms of eligibility for a permit eventually. The fishery is not closed arbitrarily -- the people who have already made investments in vessels and gear or who for some reason or another have to change areas are not told "no" until you actually get around to issuing permits.

(191) designation of severely threatened fisheries

Pending the determination of optimum numbers under Sec of this chapter and prior to the initial issue of entry permits under Sec of this chapter the commission shall designate as severely threatened those fisheries for which, in its judgment, the optimum number of entry permits to be set will likely be no higher than the average number of units of gear licensed for that fishery during the four years immediately prior to January 1, 1973.

(192) determination of maximum number of initial issue entry permits

(a) Except as may be increased under (b) of this section, the maximum number of initial issue entry permits for any fishery designated as severely threatened under Sec 191 of this chapter shall be the lesser of the following two numbers: (1) the average number of units of gear licensed for that fishery during the four years immediately prior to January 1, 1973; or (2) the number of persons in priority classifications "A" and "B" under Sec of this chapter.

(b) If for a particular fishery the first of the foregoing two numbers determines the maximum number of initial issue entry permits and if by use of that number any person within priority classification "A" of Sec of this chapter would be excluded from the fishery, that maximum number shall be increased to include all persons otherwise excluded who show that to exclude them would cause [substantial, significant, severe, great ?] hardship.

(c) The maximum number of initial issue entry permits for each fishery not designated as severely threatened under Sec 191 of this chapter shall be the average number of units of gear licensed for that fishery during the four years immediately prior to January 1, 1973. [Should this be set higher? e.g. 150% of this number? Should the commissioner be permitted to

designate fisheries for which no limit on initial entry permits
is needed?]

(194) application for initial issue of entry permits

[here, procedure only]

(195) Priority classification of eligible applicants for initial issue entry permits

(a) Each applicant for an initial issue entry permit must be presently able and presently intend to participate actively in the fishery for which he makes application.

(b) After the closing date for applications, the commissioner shall classify persons qualified under (a) of this Section who apply for an initial issue entry permit for any fishery designated as severely threatened under Sec 191 of this chapter into the following three priority classifications: (1) "A" those who would suffer hardship by exclusion from the fishery more severe than described for "B" below, ranking within this classification into similarly situated groups in decreasing order of hardship; (2) "B" those who would suffer only minor [or negligible?] hardship by exclusion from the fishery; and (3) "C" category all others.

(c) After the closing date for applications, the commission shall classify persons qualified under (a) of this section who apply for an initial issue entry permit for any fishery not designated as severely threatened under Sec 191 of this chapter into the following two priority classifications: (1) those who would suffer any hardship by exclusion from the fishery; and (2) all others.

(195) Continued

(d) In determining the existence and degree of hardship under (b) and (c) of this section the commission shall (1) include only those persons who [have held a gear license for that fishery] for _____ of the _____ years immediately prior to January 1, 1973; and (2) as to those persons so included, apply a reasonable balance of the following: [what to use?]

[(d) alternate: have commercially harvested under a gear license for that fishery]

(196) initial issuance of entry permits

[here use (b) (c) and (d) of .220 of DSJ Draft) pages 9 - 10
changing letter - designations to (a) (b) and (c) -- then add:

(d) Entrypermits issued to applicants within priority classification
"B" of Sec 195 (b) of this chapter shall be known as and labeled
"B - Class Permit" [and shall be subject to the restrictions upon
transfer of Sec of this chapter?]

CONSERVATION ARGUMENT

1. Alaska's salmon stocks are down to one third of historic levels.
2. Gear licenses have increased 78% in the last thirteen years.
3. Vessels have increased 58% during the same period.
4. Gear license purchases are up 82% over last year.
5. Bristol Bay faces 7 years of severely restricted fishing, to the point that each man is fishing only 25 fathoms of gear.
6. In Cook Inlet where fishermen were fishing 135 hours per week they now fish 24 hours.
7. There are health fisheries in the State such as Southeastern but it is highly likely that these fisheries will be flooded by boats leaving the unhealthy areas.

Limited entry is needed because without it our fleets will continue to proliferate. If these trends continue we could lose salmon as a commercial species. Continued increases in our fleets coupled with the downward spiral of the fish themselves could adversely affect the tourist industry as well as sports fish interest.