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CSSB 39 Limited Entry Special Fisheries Commission Hearing: Final March 30, 1973

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Senator Palmer While it doesn't say proposed committee substitute, that's what it is. If there are objections that the Resource Committee or (?) Committee wish to make, they will be made. Now I would like to bring us up to date on what's happening. We worked rather strenuously last week in trying to bring this thing to a head, and I think Friday night was it, we finally finished the last proposed substitute prior to this one. We thought we had a good bill. The House members who were particularly concerned came in and met with us on Saturday and went through it. We made allowances for their concerns and amended as they desired, so we had something that would pass both houses we possibly thought. It was then further considered by the attorney general's office and Mr. Jackman was quite concerned with some of the elements in it and since he was probably going to be on the floor defending it before a court, we did think it was important for him to be at least halfway in agreement with what we did. It looked at that point like we might run into so many problems that we finally decided the best thing to do was to try to have a preconference committee meeting prior to passage of the Senate. So at that time we called Professor Fletcher and he came up and we spent two more days, starting from scratch Professor Fletcher on one side of the table and Jackman and Adasiak on the other side outnumbering him and beating our heads on this thing until we could come up with something that did appear workable and do the job for those of us who were concerned there at that time. We did limit the number of people that were there because of the fact that we have so much to do and such a little time to do it in.

I think you are all aware of the problems when we have a room full of people each one trying to have his say and the tremendous burden that results. So this is the reason we didn't have an open meeting with all the public there at that time. However, we did have members of both houses at times and we had other members of the Senate who are not senators and were not members of the committee. I think at this time then the best thing to do since the _____ is to try let Dave Jackman summarize this for us. The important points first of all are the bill itself and then I think perhaps if the members of the committee have questions about how it would work, lets get those questions out so Dave or some of us can answer them. Perhaps after that if you're interested we'll let Dave compare this bill to the House version. Let's lead off that way. Dave.

Dave Jackman Thank you Mr. Chairman. As you stated this proposed committee substitute was the result of much work drawn primarily from the committee substitute and professor put together and the inputs of the people attending those meetings. I think the structure can be most easily understood if you think of it as four parts, or maybe there are five. First, the first article dealing with the creation of the commission, the second article dealing with the basic entry permit system, what entry permits are, what the terms and conditions of entry permits are, how they can be transferred, so forth. The third article dealing with the initial issue of permits, in other words, starting with the present situation, how do we decide where we're going, how we're 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. It addresses the reduction of the number of entry permits down to optimum levels. It is working from where we are now down to something like a reasonable level of gear, and the fifth article if I remember it correctly, simply deals with general provisions, penalties, regulations, definitions and so forth. I know you're under time constraints, but I'll take a few minutes to go through the details as to how the mechanism will work. The first article, as I say, deals with the creation of the commission. The commission would be a three member commission made up of full-time commissioners, be a quasi-judicial and regulatory agency of the State. One member would be designated as chairman, the commissioners would serve for staggered terms, be removable only for cause shown, including incompetence, neglect of duty and such as that. I think the sentiment there was so that there wouldn't be an automatic change in makeup of this commission with the change of administration. The two members of the commission would constitute a quorum and clearly the organization of the commission contemplates that it would have an adequate supporting staff. There would be a need for a fairly sizable clerical staff to handle just the bookkeeping mechanics of issuing, collecting fees, and all of that. In addition to that the commission would rely on experts as they needed. The attorney general would be legal counsel and as the chairman noted we would be the ones that no doubt are going to be in court trying to defend this program. The powers and duties of the commission are enumerated in article two. Its just a general rundown so that if somebody might want to make

reference can see all the things that are accomplished some other place in the act. I don't think its necessary to discuss them in and of themselves because they're all going to be covered as we work through . Basically the provisions of the administrative procedure act would apply to all regulations adopted by the commission and the adoption of regulations, public hearings, notice and publication, pretty much just conform with our———————— The commission would adopt its own standards for administrative adjudication. That again is in its quasi-judicial role when it gets around to looking at individuals and giving individual applicants hearing on their applications. It's directed to establish its own regulations and procedures for that purpose. The basic reason for that is experience with other commissions, such as the public utilities commission and transportation commission has shown the ABA procedures for adjudication to be cumbersome, more cumbersome than necessary. Now the article three which lays out the basic entry permit system begins at the bottom of page 5. Section 140 states that the basic permit requirement that after January 1, 1974 no persons may operate gear engaged in the commercial taking of fishery resources in the State without a valid entry permit or valid interim-use permit. It goes on to state that a permit is not required of a crewman to make it clear that the requirement that a person have an entry permit or comes under this system at all does not apply to crewmen or others who would assist in the operation of fishing gear. This applies to—would have to be issued in one-to-one correspondence with the number of units of gear. Sometimes that's vessels, sometimes not. It goes on to state that there are only three circumstances in which a

person can hold more than one permit, that would be to allow a person to fish more than one type of gear, say a purse seine drift gill net or shellfish gear and salmon gear. This is very much an established pattern in many of the fisheries of the State that people fish more than one type of fishery. Fishing in more than one administrative area where we have established fisheries people that actually want to fish or have fished in the past say Southeastern and Prince William Sound something like that. The third situation would be harvesting particular species for which separate interim-use or entry permits are issued. Now that's necessary to provide for situations like you might have in Kodiak where one type of gear shellfish pots is used to harvest tanner crab, king crab, dungeness crab and the level of gear for each of those different fisheries might be very different. So you have to have different permits for king crab than for tanner crab. Now Section 150 starting _____ page 6 spells out the terms and conditions of entry permits. Basically it states that permits operate a unit of gear within a specified administrative area, must be in the possession of the holder, issued for a term of one year, but is renewable annually. This is to make clear that once these things are issued, as long as a person remains in good standing, pays the fees and assessments, he has a right to renewal of a permit. An important term and condition which was added, it may have been in the last couple of drafts, the Senate version, I'm not sure Mr. Chairman, is that an entry permit constitutes a use privilege which may be modified or revoked by the legislature without compensation. This is to make it clear that the entry permits do not constitute

property rights in the fishery or something that is subject to fifth amendment compensation if the legislature wants to modify or restrict or even completely repeal the system. In a sense it's stating the obvious, the legislature's hands are never tied in terms of a system which it creates, but it's to make it clear to people that in terms of the entire system, the legislature could come back and make whatever necessary modifications it needs to in the future. Also stated the entry permit shall survive the death of the holder and that a permit may not be pledged, mortgaged or encumbered or subject to right of repossession or any of that. The fees section underwent substantial discussion and revision because several of the committee members noted the problem of charging one set fee for all the different types of gear in the State. Whereas a family of setnetters that might not make that much money in any given year, still have to pay t'. ;e or four $50 fees whereas the same fifty dollar fee would be all that an operator of crab pot who might gross $100,000 or more would be subject to. To correct that inequity, the fee section reads that annual fees will be no less than $10 and no more than $100 and shall reasonably reflect the different rates of economic return for different fisheries. In addition to that change the Senate bill permits those falling below federal social ecurity administation poverty guidelines to in no case be subject to more than a $5 maximum fee. Transfer of entry permits by and through the commission only. The permits can only be transferred by making applic tion to the commission and only upon a six months notice of intent to transfer, so that the transfer of permits is a deliberate and protected

by going through the commission and being done in full view of the commission. Basically the permits are freely transferable with one exception, one important exception, well, two important exceptions. They are freely transferable with the restriction that the transferee, the person the permit is going to, be a fisherman; they cannot be transferred to speculators or people that are not prepared to actively participate in the fishery. The other important exception will become clear when we discuss the mechanism later on in the bill. But one class of applicants will receive permits subject to a temporary restriction on transfer, which will say that as long as the gear is above optimum level, still up to where we are now in most of the fisheries, they can only transfer back to the commission, they cannot transfer to another fisherman. They will get fair market value just like everyone else but they can only transfer to the commission. Article four—the initial issuance of entry permits first establishes administrative areas which will have to be compatible with the areas established by the Board of Fish and Game. Then introduces the interim-use permit. The interim-use permit is just what it says; it's a permit which the commission will issue while it is making, adopting the regulations, accepting the applications, making the determinations that it needs to make to issue the final entry permits. The interim-use permit system probably in some of the fisheries will only be in effect for six months at most a year. Some of the other fisheries it may be in effect longer than that and be in the developing fisheries which are below optimum levels now, where there's no need to cut off gear, the interim-use permit system is the mechanism will keep track of

that fishery and put on a lid when it needs a lid put on it. But the interim-use system might remain in effect in those fisheries for a number of years depending on how they develop. There is one special restriction on the interim-use permit issuance. Generally they can be issued to anyone who is ready to actively participate in the fisheries, however there is a finding at the bottom of page 9 that in Bristol Bay, Cook Inlet, Prince William Sound drift net fisheries are severely impaired and as a result even on an interim-basis, permits can only go to individuals who have at some time in the past fished in those fisheries. They cannot be issued, even interim permits cannot be issued to fishermen who come in there for the first time this next year. There is a one year restriction on that so the legislature can keep a tight control on that exception. Now on page 10, Terms and Conditions of Interim-Use Permits basically they are non-transferable, they have to be in possession, the commission can adopt regulations for the hardship transfer of interim-use permits and temporary transfer due to sickness or for other unavoidable consequences that would keep a man out for all or part of a season. Then the next important provision is the designation of the stressed fisheries. Now this is substantially different from anything in the House bill. Distressed fisheries are those fisheries that are at or above the optimum level basically. Most of the salmon fisheries would fall in that category. Some of the shellfish fisheries. The only fisheries which would be excluded from that definition are fisheries which in the judgement of the commission can be allowed to grow which are still below the optimum level, there is no need to put a lid on them yet.

Going on to page 11, Determination of Maximum Number of Entry Permits. Basically for the distressed fisheries, the maximum number of permits for initial issue will be the highest number of units of gear fished in that fishery during any one of the four years immediately preceding January 1, 1973. Now for the other fisheries, the non-distressed fisheries, when the commission finds that that fishery has reached levels which require limitation on down the line, the commission shall establish the maximum number of entry permits for that fishery. Then in terms of standards for initial issue of entry permits, these are set forth as hardship standards to rank the applicants in degree of hardship which they would suffer by exclusion from the fishery. The regulations would define priority classifications based on two standards, degree of economic dependence upon the fishery and extent of past participation in the fishery. And at the same point in time, the commission is proposing those regulations which would set forth the qualifications, now they will do this fishery by fishery as in all the bills dealing with each area and each type of gear separately, that the commission will designate those applicants who would suffer significant economic hardship by exclusion from the fishery. Now that designation is important because later on those people must receive permits, they're locked in as much as in one of the earlier drafts the top three hardship categories were. Another designation which the commission must make is the designation of those priority classification of applicants who would suffer only minor

economic hardship by exclusion from the fishery and it is only people who receive permits in that category that have the restricted transfer applied to them, in other words, they can only transfer the permits to the commission until you get back down to optimum levels. Now if they hold on to it or if it goes on to their family there's no problem with that, they can keep the permit. But if they want to sell it to anybody, they can only sell it to the commission. The application procedures are pretty straightforward. 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 as his own separate hearing of his qualifications at which he can present alternative evidence. Another very important provision included in the section on line 21 of page 12 is that all qualifications are determined on a person's participation prior to January 1, 1973. What that means is that if someone comes into the fishery at the last minute this year can do so, but he won't get any credit toward qualifying for an entry permit by virtue of what he does in '73. The commission will look only at what he has done prior years.
Question--unidentified speaker 2 Dave, how does that prior to January 1, 1973 apply to Paragraph A on page 16?
Dave Jackman--To my recollection, Joe, correct me if I'm wrong, the typist dropped the January 1, 1973, this is on line 8 page 12. There should be an amendment there. You see that was in there and for some reason the typist missed it because applications can only be accepted if you're only going to let people qualify on

the basis of prior to January 1, 1973 then the applications should only be accepted from people who have held a gear license prior to January 1, 1973.

Joe--So if you change that period after 670 to a comma and add the words "prior to January 1, 1973" that will straigten it out. Line 8, page 12.

Dave--On page 13, initial issuance of entry permits, the commission shall issue entry permits first to all qualified applicants designated under 250B that is anyone who would suffer significant economic hardship, then to all applicants in descending priority classification until they reached the maximum number of permits for that area. How far down that list of priority classifications depends very much on the fisheries. In some areas where the fishery is a part-time fishery, you're going to be well down into the casual participants probably including all of them. In other fisheries, Bristol Bay, the cutoff line might be somewhat higher. But in any event no one who suffers significant economic distress can be denied a permit, so those people are locked in. If the maximum number cuts right through the middle of the priority classification, then the decision of who gets permits within that priority classification is by lottery. This priority classification becomes somewhat confusing, but what it is an attempt to do is group people, similarly situated people, into an _____ in the terms of the nature of that fishery and not to pretend that you can draw a line between individuals. You get to a certain point where the commission would be up against a hopeless task if they tried to differentiate 20 or 30 individuals who have

qualifications that were virtually identical, so they're all put into one priority classification and treated equally. Now, if at the time permits are issued some applicants are still appealing the result of an administrative adjudication, permits are held out to protect on the assumption that the appeal will be resolved in their favor. So a person cannot only appeal through the commission but they can appeal it through the courts all the provisions on appeal are ABA applied. If a person thinks he has been treated unfairly by the commission what the commission then would do let him continue to fish on an interim use permit and hold out an entry permit for him until the appeal is finally determined.

Senator Palmer--Let me see if I can get this straight in my own thinking and hopefully in others too. The regs have a maximum first and that maximum shall be no less than the largest number of units of gear that have been fished during the previous four years in that fishery. No less than that.

Dave--That's right.

Palmer--Chairman--It's also going to include all of those that would suffer a significant hardship if they were excluded, and if that last number is bigger than the first why so be it.

Dave--That's right.

Senator Palmer--Now when you're talking about putting across a hardship category and lottery, what your saying is, that after this first group for significant hardship those people are all going to be included. Now if you still have room for all of those and you still haven't gone up to your maximum you're gonna drop on down to another little minor hardship and start letting them in.

Dave--That's right.

Chairman--Now if you don't have room for all of the minor hardship cases, that's when your line cuts through them. Then you're going to stop and say instead of letting any of those in on a one-one-one basis, instead we're simply going to stop and all of those people will be treated the same, they'll be given a chance to draw out of a hat on a lottery basis for the slots that are left before you get to the maximum. Is that it?

Dave--That's right?

Female speaker--I'm a little confused. Just to use a figure, say 500 permits is the highest for the four years...

Palmer-You want me to go on from there?

Female speaker--yes.

Palmer-The highest year of the four there were 500 permits t' were fished or five hundred gear licenses that were fished. Suppose that the commission goes in and ranks all of the applicants and they find 400 of them where there will be a significant hardship if those people were kept out. Then they find another 200 where there would be only minor hardship if they were left out. All four hundred of those go in. The 200 instead of taking the first 100 of them. ..... Now let's take the same situation again, suppose again we have 500 left when we start ranking according to hardship, we find that we have six hundred people all of whom would suffer a significant hardship if they were excluded and other 200 who would suffer a minor hardship if they were excluded. So what we simply do is ignore the 500 and take all of the six hundred and put them in and none of the minors go in then.

Dave--One thing I'd like to ADD that, because I think there is still one point of confusion. In the example that Senator Palmer gave where you have a maximum set at 500, you have 400 people who would suffer significant hardship, they get permits first. You have 100 permits left to issue and 200 applicants. Now those 200 applicants might be divided into as many as 2 or 3 other priority classifications. Priority classification is sort of a notion of a point system if you want to in terms of how many years and what... Some of them would be minor, some negligible, some not at all. So you might not have a drawing of all the 200 but you might come down through one of those and a line would cut across the middle of the second one, so you have a drawing of say 60 who were in one of those priority classifications. So you aren't necessarily condemning all of the people below significant degree of hardship to a drawing but if you have to cut through a group of people that you can't really differentiate one from another, then the only fair way to do it at that point is by lottery. That's all it really says or allows the commission to do.

Unidentified speaker--The commission now determines minor classifications?

Chairman--They would determine them only as set out in terms of the standards of the bill ranking in terms of economic hardship and past participation

Unintelligible question and answer regarding fishing in 1973, Palmer's answer included words "that has nothing to do with what happens here."

Dave--Now at that point all the entry permits are issued and you're under way. This next phase of programming in Article 5 is reduction to optimum number of entry permits. Before it can reduce present level to optimum level the commission has to make a determination as to what the optimum level is. Now this is the second major kind of judgemental determination that the commission has to make. They're going into each fishery and determine the number of optimum number of permits on a balance of three standards which start on the bottom of page 13 and continue on the top of page 14. Basically the first standard is number of entry permit sufficient to more than economically help the fishery that will result in a reasonable return of the fisherman. The second standard is the number permits capable of harvesting all the fish during all the years in an orderly manner consistent with sound fishery management techniques. It's more of a conservation-oriented standard ——— a number that's reasonable in terms of conservation. And the third is the number of entry permits sufficient to avoid serious economic hardship to those currently engaged in the fishery. Considering other economic opportunities recently available to them. That is an important factor put in there so the commission can balance the human needs and the human circumstances in a given fishery in with the others so it doesn't become some sort of an overly mechanical computation. Look at the particular economy you're dealing with, the particular fishery you're dealing with. Once that optimum level is set, it can only be revised in two instances. Revisions in Section 300, if there is a long term change in the biological condition of the

fishery, such as if the Bristol Bay fishery were all of a sudden to be built up to its 1930's level, twice or three times what the present runs are, that would be the kind of change which would enable you to come back in and increase the number of units of gear that could fish. The second instance establish long term change in market conditions, that's I suppose if the price of fish over ten years tripled, again the fishery would be that much more profitable and you could send a lot more people in again, but the restriction is a long-term change, so the commission is not instructed to come back into each fishery and tinker with the levels every year. They are only to change them if an established change requires it. There is an additional restriction if the commission decreases the optimum number of entry permits. The only way they can reduce the level is through the buy-back provision; that's to make it clear that nobody is ever to have an entry permit taken from him against his will involuntarily. If reduction is necessary, can come only by the buy-back provision which is taken up in the next section. Buy-back funds are established (they start at the bottom of page 14) for each fishery for the purpose of reducing the entry permits to optimum within no more than 10 years. In some fisheries the reduction might be much more rapid than that, in others it might take a full ten years. Assessments on the fishermen themselves would fund the buy-back funds. The assessments would be based upon no more than 7% of the gross value of the total annual catch. Now that's very much an outside limit. In many fisheries the assessment would probably be 1 to 2 to 3 per cent.

Someone who doesn't fish that year would pay the average assessment for his average 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, vessels and gear at fair market value until you get back down to optimum level. I think that's pretty straightforward. There would be three circumstances in which you would have new permits to issue. Section 330 on the bottom of page 15. If you'd increase the optimum, as discussed before in terms of revising the optimum, if permits are forfeited back to the commission for non-payment of fees, then there's one other instance that slips my mind. Under the penalty section, you'd have more permits becoming available. Or if you put a lid on a fishery one of these fisheries that's not in trouble yet and then when you get around to setting the optimum you realize that you can still allow for some growth, then you might have new permits to issue. Section 330 instructs the commission to issue those permits to fishermen, people who are ready to fish in that fishery, according to any equitable method of issuance. Now in some situations priority of application or lottery might be appropriate, in other instances competitive bid might be more appropriate. It would depend very much on whether you had 2 permits and 500 applicants or whether you had 300 permits and 400 applicants. You know, that's going to vary from situation to situation. The general provisions, Section 350, the applications of the Board makes it clear that the jurisdiction of the Board of Fish and Game is not affected by this act. They continue to be the ones that decide on specific regulations on gear, length of nets, size and mesh size, where you can fish what net. The

commission and Board will clearly have to work together, both their basic jurisdiction is unaffected. The penalty section has three parts. The first part talks in terms of violation of the chapter. Upon third conviction of the violation of the chapter or regulation under the chapter, that would be like failure to have permit in possession while fishing, a person would forfeit all interim-use and entry permits and lose eligibility for permits. The second part of the penalties has to do with fraudulent statements in qualifying for an entry permit or assisting another in making a fraudulent statement on another's behalf in qualifying for a permit. Again a person who is found guilty of that in addition to being guilty of a misdemeanor would forfeit all and any permits which he held and would forfeit his eligibility for permits for a period of five years. The last section deals with someone who violates the tax laws in relation to fishing. He would lose his permits and lose eligibility for permits for five years.

Section 370 requires the commission to submit an annual report to the legislature to include a progress report on the reduction of gear at optimum levels, recommendations for additional legislation relating to the regulation of entry.

Section 380 are the definitions. I don't think they need to be covered in too much detail.

Section 2 and 3 merely make some technical amendments to other parts of Title 16.

Just to comment briefly, the most basic difference between this bill and the House bill is the fact that the House bill would have permitted an initial cut in the three enumerated distressed fisheries rather than letting people in at the present level, the highest of the last four years, the commission could have made an initial cut in Bristol Bay, Cook Inlet, and Prince William Sound not more than 25%, in other words that they issue at least up to 75%. I think that about covers it.

Chairman: Is there any doubt in your mind that this language in which we say that constitutes a use privilege can be modified or revoked without compensation, does give us all the authority we need to come back next year and make whatever changes need be made regardless of what they may be, whether it's transferral, whether it's the ownership of the thing, the so-called pot of gold at the end of the rainbow or regardless of what it is, that language does allow us to come back next year and there would be no vested or right that would be permanent and could not be changed?

Dave: That's correct, I have no doubt in my mind. Also, might point out that the terms and conditions, some of the other terms and conditions have been changed also. The word "right" I don't think appears at all. It authorizes a person to operate a unit of gear in a given area, you can renew it annually, but the legislature can do anything in terms of restricting transfer, in terms of abolishing the system, in terms of changing the ground rules without being subject to compensation. [SK]

Chairman: Can you explain how this would work as far as the trollers down here, the hand trollers, where there are so many involved and yet their take is very limited.

Jackman: Under this bill that fishery would not be designated, I doubt that that fishery would be designated a distressed fishery. Probably the lid would not be put on it at the present level because if they take such a small percentage of the fish and may not be indeed be above the optimum. In addition to that the sport commercial fishermen in the hand-troll fleet so called must be treated separately from the power-troll fleet. That is one thing I should have covered in the definitions. Type of gear, definition number 7 on page 18; The customary and identifiable classification of gear shall include A) those classifications for which separate regulations are adopted by the Board of Fish and Game and for which separate gear licenses are required. B) shall include distinct sub-classifications of gear such as power troll, and troll gear. That means that entry permits for hand troll gear will be separate from entry permits for power troll gear. I think that takes care of the problem in Southeast.

Chairman: Before you go to questions then, would you summarize one more time what will happen this year and next year as you see it. The free access year, interim-use next year, when final entry permits become available and so on.

Jackman: The bill does not affect the '73 fishing season. The permit requirement starts January 1, 1974. Clearly the interim-use permit provisions will allow anybody who presently wants to fish to get an interim-use permit except in three fisheries in 1974:

Those three fisheries are Bristol Bay, Cook Inlet and Prince William Sound drift net fisheries. And in those fisheries in '74, only someone who has fished there before can get a permit, someone who has fished prior to '73. In the other interim-use permit fisheries you're not going to cut anybody off until you get the point of issuing entry permits, but the point to be remembered is holding an interim-use permit in '74 does not count at all in terms of qualifying for an entry permit eventually. It's just so the fishery is not closed arbitrarily, so that people who have already made investments in vessels and gear or for one reason or another have to change areas or something like that aren't told no until you actually get around to issuing those entry permits.

Chairman: Realistically we have two years to modify this statute before the first of the permanent entry permits are issued in most cases.

Jackman: In most cases. It would be possible for the commission to issue permanent entry permits in some fisheries, again probably those most distressed fisheries like Bristol Bay in '74. I doubt that they would accomplish that if for any fishery for more than a few in '74. So again you have at least one year in most cases, two years to modify the act.

Female speaker: If someone had a small boat and they .... related to salmon gear.... this is after they get to the regular permits, could he sell that permit whose be .....

(Others involved in question, unintelligible)

Jackman: Permits are issued in terms of type of gear, purse seine in Kodiak, let's say now; you're talking about a very small

Several conversations

Jackman : It's like hand troll and power troll, the commission has the authority in this bill to deal with those separately if it makes good sense to do so. They can create sub-classifications of types of gear; but as Roy pointed out as a practical matter you can't press it too far because of the difficulty you have in drawing those lines. Hand troll and power troll is fairly easy.

Unidentified speaker: There's no worry about constitutionality?

Jackman: There's always worry, but I think this bill can be constitutionally defended.

Unidentified speaker: I notice we referred to income taxes in the penalty clause. Will they be considered in the issuance of permits? If people are deficit in their Alaska income tax.

Jackman: Yes, as was pointed out I think in the study, one of the most important types of evidence of economic dependence on the fishery is probably going to be income tax records. So in the regulations, in the mechanics of taking applications, a person who's come up here and not filed income tax for one reason or another, number one either isn't going to apply at all, or number two if he does apply and at that instance going to subject himself to the penalties of the law for avoiding income tax, and

I think that there will be a sizable number of those people excluded from the whole process on that basis.

Unidentified speaker: Dave, are you all satisfied that this is going to meet the conservation goal of the legislation sufficiently? It appears to move a little too slow in addressing that aspect.

Jackman: Well, I suppose all of us wish we could move a little bit faster to solve a problem that has become so serious, but I think this will clearly put a lid on things and turn things around and start from the right direction, and put a handle on it where there has never been a handle before, and I think it will have big consequences in terms of conservation of this resource.

Unidentified speaker: One thing more.....

When people die and what not, this can be passed on?

Jackman: That's right.

Unidentified speaker: So there is no... attrition in that regard?

Jackman: That's right.

Unidentified speaker: That aspect is not here.

Unidentified speaker: There is no attrition through death.

Recording ends.

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(Side 2 of tape)

UNIDENTIFIED SPEAKER: I was hoping that someone would explain the transferability form, and I can ask somebody after the meeting so that he doesn't have to repeat it (indisc.)

UNIDENTIFIED SPEAKER II: (Indisc.) related to Resources and he'll me available. He can explain it (indisc.--simultaneous speech).

UNIDENTIFIED SPEAKER III: Where's John Radar?

CHAIRMAN: He's not going to be here today.

UNIDENTIFIED SPEAKER III: How about Petrovich?

CHAIRMAN: Well, he's at a big conference, so I assume...

UNIDENTIFIED SPEAKER III: Okay, he won't be here either.

CHAIRMAN: Do we have the Resources here on the map? Any other questions of Committee members or of the Legislators? Okay, for those in the audience that want to ask questions at this point will do so. Phil.

PHIL DANIELS: I was just curious about the violations--it's on page seven (indisc.). ...income tax chapter having to do with income tax clause, and I was just curious about that. What type of violation would that be?

MR. JACKMAN: Well, it'd be a knowing failure to report income or--I'm not an income tax expert. I think it's a criminal, it's a felony violation. It's quite serious (indisc.--simultaneous speech).

MR. DANIELS: My worry was we wouldn't want to have (indisc.) violations (indisc.).

CHAIRMAN: Yeah. Well, I think that if that were the case, Phil, and correct me if I'm wrong, but the history of the courts has been where the violation--the penalty is so strenuous for a minor violation then the conviction simply doesn't come. Isn't that what happens so much of the time where we...?

MR. JACKMAN: Yes, although--and I think that it would work out fine, because as I understand it, that's the felony tax evasion section which is a pretty serious crime, but I think you're correct in asking the question, because this is

a pretty serious penalty and it shouldn't be imposed, like what you're thinking, for dropping (indisc.) on or something (indisc.).

MR. DANIELS: I had one other question.

CHAIRMAN: Go ahead.

MR. DANIELS: Is it likely that the money for the buy-back program, which is agreed is up to seven percent of a person's gross income, would be used for some kind of revolving loan fund or something of this type, or do you contemplate that money being used directly in a one-to-one ratio?

CHAIRMAN: No. We're saying that it's a revolving thing and that the assessments need not match the purchases of each day--each year, and they could go on, but they will continue until all that has been expended from the fund is repaid.

MR. DANIELS: Would it be, then, likely that before the assessments, as I have understood previous conversations, before the assessments are arrived at by the commission they would hold hearings in an area and ask the fishermen how fast they would like to get the out of that area, or--is this a likely way that it will go, or...?

MR. JACKMAN: I think that it is. There's a statutory limit of ten years, but in terms of arrangement in that, and in terms of how fast you want to get down...

CHAIRMAN: Well, wait a minute. That's for buying back, it's not for paying off. We said specifically that the assessments would continue--could continue after that ten years, and the earlier of that--didn't we leave this in there? Just a minute. Line, page one?

UNIDENTIFIED SPEAKER: (Indisc.) 15, line 12. It's still in there.

CHAIRMAN: Line 12. Assessments need not equal annual buy-back from expenditures within a particular fishery. It shall be continued until the buy-back fund for that fishery has been reimbursed, so even when your buy-back stops within ten years your assessments can go on until the whole thing's been paid back, which allows the fishermen to spread it out.

UNIDENTIFIED SPEAKER: Even more flexibility in terms of spreading out the... That's correct.

CHAIRMAN: Jim.

JIM: I had a legal question I wanted to ask Mr. Jackman pertaining to this evasion thing here. I--it's been banted around in various fisheries groups this thing about pie-in-the-sky type operations that we're going to eliminate a lot of Seattle or state fishermen who have not paid this Alaska income tax. Well, I myself, have already checked into where Federal District Court had ruled that a person residing out of the State of Alaska does not have to pay Alaska State income taxes upon fishing income derived thereof. Well, essentially, from a legal standpoint you would have to reverse this decision by the Federal Court before you could ever come down on them for not paying Alaska State income taxes, isn't that correct?

MR. JACKMAN: You're correct in your memory of that decision. I thought that income gained while fishing within Alaska waters was still subject to tax. Now is I'm incorrect on that, go back and read those decisions. In terms of off-shore, outside the three-mile limit, fishing up here in that sense, I'm sure you're a hundred percent correct. Fishing in territorial

waters of Alaska, I'd be very surprised if there was not still a requirement on paying income taxes on that.

JIM: What do they do, pay part (indisc.)?

MR. JACKMAN: That depends... You're right. That depends on tax law, but (indisc.) fishermen have evaded and they will know there's been a sizeable--there's been a lot of that in terms of just sheer evasion of paying taxes on fishing, fish caught in Alaska and fishing in Alaska, then they're not going to be...

JIM: You don't really know what this stipulation is, then, on just flat not paying Alaska State income tax because they say they don't have to pay it? There's a lot of Seattle based fishermen that do this.

MR. JACKMAN: I'm sure if I could see the article you're referring to because I'm just not up on that case. Do you know Roy?

MR. RICKEY: You know, in 19--two years ago Congressman Kelly got a bill through (indisc.) congress to bar withholding of the tax, but I'm certain it has to be paid.

CHAIRMAN: It's just withholding?

MR. RICKEY: Withholding the tax. It need not be subject...

CHAIRMAN: Let's make sure we check that out. Joe, do you know anything more on that?

JOE: No, I don't know (indisc.).

CHAIRMAN: Okay. Allen.

MR. ADASIAK: The director of the Audit Division in Revenue would be responsible for collecting taxes. He was very interested whether or not we had a provision like this in the bill, because he knows he can get a lot of money off of people

that would pay their taxes, and according to him, yes, they can collect on income earned from fishing for a living in territorial waters.

CHAIRMAN: Would you do this for me? Would you go back to him and get a statement in writing from him to answer Jim's question on this point? Okay. Alright, I believe you... Would you identify yourself first, please, for the tape.

ARCHIE LATHROP (sp.): I'm Archie Lathrop (sp).

CHAIRMAN: Archie? Okay.

MR. LATHROP: What consitutes (indisc.) putting a monetary value on (indisc.)

MR. JACKMAN: Property, in short, is what the State Legislature says it is, and here they've been quite clear in saying that this is a use privilege which can be modified in any way.

MR. LATHROP: Another question. (Indisc.) gear in each area, is it necessary for (indisc.) buy-back program. In other words, if I had a permit in Bristol Bay and I had not used it for two consecutive years, what (indisc.) money for something I haven't used?

MR. JACKMAN: Well, this goes a long way back, really, in terms of the work and drafting through the various bills that have been before the Legislature. I think you're correct. The Legislature could deny entry permits on almost any basis as long as the standards were fairly applied to everyone, and as long as they denied the permits fairly and squarely across the board, but the decision which was reached long ago was that initially it was wrong to deny permits to people that had some basic dependence instead of participation in the

fishery, and that rather than being that harsh and making an initial cut and just saying you guys are out, I think what the House, in terms of this bill, the Senate preferred a buy-back program which was just less disruptive to the individuals involved.

MR. LATHROP: I was wondering. (Indisc.) residents who do fish (indisc.) year after year, and the people in the lower forty-eight were (indisc.).

MR. JACKMAN: Well, I point out that the standards in this bill would do that (indisc.) thing. Instead of past participation it's going to result in placing a man in fisheries every year in a higher priority classification than a man who fishes only the high years. So the standards in this bill will accomplish that, and if for that very reason some people don't qualify at the outset, then you'll have accomplished what you suggest, to favor those people who've fished more consistently in the past.

CHAIRMAN: I think it can also be said that for those who do get entry permits, as long as they pay their fees they can keep their permit valid, or after two years--I guess we let them go two years without paying, the second year they're able to revalidate it. To require to fish it every year would really be working against the best interests of the residents in the fishery. It would be far better, I think, if they're once in, to allow them to go ahead and pay their fees, but not make them come in and fish on the poor years. That way for those residents who are there fishing, there simply is a larger pie, or the same pie to be divided up between a smaller number of people than if we force them to come and

fish every year to keep their permit intact. Are there other questions? Dave.

DAVE: I have two. The first one is, Senator Polland asked the question whether you could differentiate between permits for a small purse seine and a big purse seine boat, and if I understood the answer, why, it was really pertinent. I wondered if in this bill it allows the commission to differentiate permits between small crab boats and big ones, or fishing the same kind of gear. In other words, fishing a six-by-six or seven-by-seven crab pots and similar things which (indisc.). In other words, if we take the maximum number of (indisc.) previous years and say that becomes the optimum number, then small boats could become big boats and we could end up eventually, possibly, the optimum number being a very small handful of large boats, and--well, I just don't know...

MR. JACKMAN: Well, to begin with, I think my answer to Senator Polland was that the commission clearly has the authority to make those sub-classifications and distinctions between sub-units of types of gear as long as it can practically accomplish anything--as long as you can tell, you know, that's a different kind of crab boat from that. The difficulty comes if you're trying, as Lloyd pointed out, to make it--to draw a line between a type of gear, purse seine or whatever, you know, that isn't that different. In terms of the crab boats the commission has the flexibility to decide on what basis they want to define those units of gear and they do have the authority to distinguish--you know, to crank the vessel component into it, and make distinctions of that kind. That's

same kind of a distinction as the distinction between hand troll and power troll, because you've got, you know, completely different kinds of economic operations. The commission has that flexibility in the bill.

CHAIRMAN: And I think that's one of the reasons, too, that we left that third criteria in as far as setting optimum limits, so that the commission is not required to go strictly on the basis of efficiency and gear. The third criteria speaks to the point of maintaining a larger number of people in the fishery for the overall benefit of a larger number of people. In other words, we may find it highly desirable to keep a large number of part-time timers, small participants, in, and with that third criteria for setting optimum numbers that's what we've accomplished. Without that, you could carry it to an extreme of, if we're really for efficiency we wind up with only traps in the mouths of rivers, which is of course, an extreme, but with this third criteria, why, that's not possible.

UNIDENTIFIED SPEAKER: (Indisc.) unclassified. I don't fully understand the answers to it if the commission can't--did the commission--partly the commission does have the authority then to differentiate between a (indisc.) seiner and a (indisc.) fishing the same type of gear for the same gear permit. Is that right? It will have the power to say a permit may not be transferred from a (indisc.) to a seiner, is that--does the commission have the power to deny that type of rule?

MR. JACKMAN: They do.

DAVE: That as from a (indisc.) seiner to a 100 footer as far as a crab boat... Okay, my other question is in getting a permit for a fishery which hasn't reached the optimum level yet. Let's say, for instance, a (indisc.) fishery i· Kodiak. If a person buys a permit before it comes to the level, and maybe just fishes it one but then he doesn't fish it, the maximum--let's say the fishery could support 20 boats, but only 15 people were fishing, but 40 people have permits. Do you see what I mean, there's no requirement--is there any (indisc.) requiring that person to use that permit. Do you understand the problem? I'm not explaining it very well. If there is a problem I might go out and buy, (indisc.) permit and not use it just waiting for the day, whereas...

SENATOR RADAR: Could I respond to that? In terms of these developing fisheries, the commission--true, everybody's going to have to have an interim use permit. It'll be able to monitor not only who's fishing and how many people, but the rate of turnover, and in terms of setting the maximum, it might watch a fishery and watch the rate of turnover and say, well, we know that the optimum may be up around 40 somewhere, even though we only have 25 in this year, we know in the past in terms of turnover, we'd better put the lid on it now, or we're going to have to design somebody who's bidding the permit--the permanent permit, so it's got a lot of flexibility in terms of an emerging or new fishery, to monitor and actually put the lid n it before it gets into that kind of trouble so that it doesn't happen to take over some who, you know--

and on the other hand, it can deny a permit to someone who buys an interim use permit and doesn't fish it, because there's still the requirement of actually fishing in terms of qualifying, see? The mere paper licensing isn't going to count.

CHAIRMAN: Okay. This one and then that's the end of it. Alright, I'll let Don, too. He's hasn't had a chance to speak. Go ahead.

UNIDENTIFIED SPEAKER: (indisc.) open up in Bristol Bay, let's say bottomfishermen, other than salmon. There is no fisheries relating to the bottomfish in Bristol Bay right now. How would you allow fisher permits to come in and utilize right now (indisc.).

SENATOR RADAR: Alright, this is exactly the mechanism we've been talking about. As long as it's a legal type of gear in terms of what the Board of Fish and Game does, anybody that wants to can get an interim use permit and fish it, and there's even a special provision in this bill providing for experimental and issuing some interim use permits for experimental fisheries authorized by the commission, so there's absolutely no preclusion on that kind of thing taking place. As a matter of fact, it's encouraged because you know that if you come in and you develop it, and as an interim use permit holder have fished it, you know that it isn't going to be one of these boom and bust things. If you develop a good fishery it can be stabilized before it gets in trouble.

UNIDENTIFIED SPEAKER: In other words, (indisc.) commission (indisc.)

SENATOR RADAR: The people in this commission have no authority to preclude you from going out and starting--I mean, that's

entirely the Board's purview. They have to issue you an interim use permit if you, you know, if that's a legal type of gear and you have the proper permission from the department and the board.

CHAIRMAN: They have to issue the permit, then?

SENATOR RADAR: The only thing they can do, the only authority this board has is to stop things before they get out of hand and put a lid on a fishery when it begins to reach maximum or optimum levels, not to make any decisions that would retard the growth of the fishery.

CHAIRMAN: Doc.

DOC: I have a question for Tom. If a person prior to January 1, '73 has (indisc.) qualifications for putting in a top priority classification and the four permits were issued, the--for instance, his rich uncle died and he got a million dollars or so, or--anyway, the prime example is a school teacher. Would this (indisc.) before January 1, '73?

SENATOR RADAR: It would not. You've got to apply that equally. If you're going to say qualifications prior to '73, that's what you say.

CHAIRMAN: Okay. Are there any objections from the Fishery Committee members, then, in sending this bill out onto Resources, and then Resources is going to be meeting here as soon as we adjourn this, and we're 30 minutes late already, so--Resources does have a lot to do. I ask unanimous consent. Is there any objection. If not, so ordered, and in that case we'll adjourn the meeting and just let John take over here

and... Well, that's what I asked you to bring over. I've got the Committee's...

UNIDENTIFIED SPEAKER: No, I've got the...

CHAIRMAN: ... and we'll change chairs and go on with Resources.

(End of tape)