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II/6 Side 1

3/26-27/73

Senator John Rader

Senator Bob Palmer

Rader : You see, there's a great merit if you could issue these permits to the people that bought licenses this year. Start buying them back, assess the people that are keeping them, pay for the ones you're buying back and you do it on an open market. There's no bureaucratic definitions of hardship and what you think is hardship to me and what I think is hardship to you, and your value to a way of life, and as against somebody else's value to a way of life, you go on the open market and start buying them back. And then there will be some people end up with it but those people will pay for it as they go along by their assessments. Protect the people who are poor and who can't pay, and can't pay the assessments with this poverty thing that you got written in there, or some type of forgiveness of the assessment if they are below a certain poverty level. And start weeding out your fishery in that matter. And then there can't be a thing of fairness. There can't be any claim of discrimination. And there can't be any claim of you've taken away my God given rights. There can't be any claim of yes, but fishing is my life to me, although I am brand new to it, and just fresh out of New York and only done it one year and I've worked with somebody else as a crewman at that time, or something else, you know. Let them get in there and scramble for it and start buying them back. And the guys that want to sell and get out, get out, and presumably that is the least hardship. Cause they want out. When you first start into the program, it's going to be absolutely fair, because there will be the market value of these things. And the commission, with the amount of money that they have got from time to time, will get

in the market and buy them. And you just keep working it that way. You can't claim, nobody can claim, yeah but you cut me out or yeah, but the hardship was different in Bristol Bay than in Prince William Sound and that was a different hardship than it was in Southeastern. And Christ, in Southeastern, why they got everybody fishing whether they got a hardship or not. Here I am up here, gonna have to move up to Anchorage now and pump gas and I can't get a license.

Palmer : John, there is one thing wrong with that. That is that you can't sell it at this time. I think that it is pretty much the concensus that something does have to be done to put a lid on now. I agree with you that this may very well maybe the best solution, and the one that we will ultimately adopt. But I don't think that we can get it through this legislature at this time. The fishermen are violently opposed to it now, I think primarily because they don't understand it and they are locked into something else here.... now wait a minute. And I think it is something that we can go ahead and live the first year with what ever we come up with now and something fairly close to what we have got. We may want to come back and review the whole darn works and go to this simplified system that we can write in a page or two. But it is the practicality of the thing that I am talking about, the political reality now, getting something done. To start all over again, with that approach at this point, which the fishermen have already looked at and rejected, on the basis of as much as they understand of it now,

it is just not on the cards for getting it done this year.

Reader: You see there's a great merit if you could issue these permits to the people that bought licenses this year. Start buying

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II/6 Side 2

3/26-27/73

David Jackman

Professor Fletcher - University of Washington
Department of Law

Jay S. Hammond

Senator John Rader

Senator Bob Palmer

3/26-27/73

Jackman : Why do that? Why have 2 or 3 different kinds of permits floating around, I mean you know.

Hammond (?) : Cause you want to get a whole bunch out of the fishery in a hurry and not have a bunch of people hanging out, your big concern is of these guys that will flood in this year, right?

(?) : I think that you could just as well keep them out without....

Fletcher (?) : Let them in on a 2 year or 5 year basis...

:I think that you can just as defensibly keep them out entirely as you could by letting them in on a very short basis.

Hammond (?) : How? Well I mean taking the approach that he is taking, how could you do it? You say that you can't go back and lay out, I mean on the experience factor.

Fletcher : If you make the distinction between the types of licenses that are out in terms of the restrictions upon the person who holds them, transferability and so on, or the life of the license or something like that. Then those distinctions have to be measures of some legitimate concern that the State would have, and the only distinction that I can perceive between the person who comes in this

year to get any license and those who have been in in the past is, the very fact that we are talking about, is it's associated with the Grandfather clause and when you do that then you have got to have something which is a reasonable approximation of a legitimate concern about Grandfathers. Then you are right back where you were.

Rader (?) : That is true of zoning. Its just the difference is that they are just later, that's all. They just weren't there when the law changed.

Fletcher : It's a more restrictive, a more severe thing you're imposing upon these people than you would be upon the land owners.

Jackman : But if you get back to your hardship standards, rather than trying to tie down the same 5 classifications, to every fishery in the State, why not just put it a general one sentence provision in the bill, nobody with significant economic hardship shall be denied an entry permit anywhere and be done with it and then.... let it go to regulation and fight it with more flexible standards developed for each area. Cause you know that only about 3% of the fishery is that going to be relevant, because everybody is gonna get in who is suffering a significant degree of hardship.

Fletcher : By putting it in the negative, it is not affirmatively said who gets a permit.

Jackman : Up to the maximum level and if you have got any

people left over who claim a significant hardship, then you let them in too.

Fletcher : In other words, you would set a maximum.

Jackman : Present level.

Fletcher : That would be a number.

Jackman : That's a number.

Fletcher: : How would you determine who came within the number?

Jackman : You would rank them in priorities in terms of hardship standards and you'd issue entry permits to everybody up to that number.

Fletcher : That's what your House bill is now, isn't it?

Jackman : No, except there's one difference. If still there weren't enough permits left over and you still had a group of people that would suffer a significant hardship, in that particular fishery, then you would let them in. But in all the other fisheries, the only people that you are going to have left over at the tail end of list are the marginal participants; then you just stop because you'd issued permits up to the maximum level.

Fletcher : That's why I say it's defensible if you've arrived at your maximum number in some fairly rational fashion, that you

could make that a combination of both the nature of the fisheries, the particular fishery as to whether it needed the maximum... not whether but to some extent

Palmer : So you are suggesting that we take the numbers that we, that you had before, the maximum number, the average, or the peak, which was it, for the last 4 years, the highest number for the last 4 years, that is the maximum. But as we said later in our bill, you would say in this one, regardless of that, anyone with a significant degree of hardship, if they are cut out, they will be allowed in. That is what you are saying, David?

Jackman : That's right. You know, you can do it in a one liner. Leave the thing flexible so that in regulations you can set up your priority classifications. But in those fisheries where all of a sudden there is a big lump of people that would suffer significant economic hardship, if you only issue the maximum number of permits, then you let in that next priority classification of people who suffer hardship. But that way you don't have to classify in terms of significant hardship every single fishery because you're not going to even have that problem in a lot of the fisheries.

Palmer : Well that is essentially what we have done here, except that we have tried to determine, we have tried to define what we meant by significant in these 5 categories.

3/26-27
Jockman : Why do that? Why have 2 or 3 different kinds of permits floating around, I mean you know.

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You keep your classification on lines.

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Fletcher
But that is not an open market.

Call it an appraised value then, if that will help you out.

Tolson
John, my land isn't on the free market, is it?

1 and 2 can sell back and forth on a free market. If they go to the Commission they get an appraised value, fair market price.

Why don't we simplify it and just say you're going to buy permits at the price at which they're being traded and you'll enter that market and from time to time buy permits. What the hell difference does it make from the point of view of a citizen at a public resource that you're going to let one of them, that you're going to handle it differently? What difference does it make? If you're going to pay the same, its going to cost the same amount from the state?

The only situation in which it won't, and I agree with Senator Rader, that if, in fact, you're going to pay him fair market value you might as well everybody go on market place and buy them off the market place. What you're really doing is not paying fair market value. You're really saying, let's say there would be ten permit transactions of \$4,000 and the permit wanted to buy off three off the market. Now if the Commission came on the market with the ten private people that are trying to buy permits that would be 13 bidders, and the pressure of that demand might drive the price up to \$4,500 a permit. What the Commission

is going to do is say, we'll look at the ten market transactions which will keep the price down a little lower than that observe because there won't be as much demand. We're not going to come in and bid against other private people, which really, and then we'll turn around and pay to this special restricted class of transferors that peg price, which isn't as much as they could get on the free market if the Commission came out and bid with everybody else. They'd bid the price up.

You're complicating it to no avail. You are because you're requiring that those people sell back to the state and you're retiring licenses that way that you might not be able to retire otherwise. You're ensuring that they're going back to the state and you're getting them out of the market. If you allow free transferability then you have no assurance at all you're going to get . (indisc.)

Is it a constitutional problem if you provided that anybody with a permit could dispose of it however he saw fit, by Will or inheritance, or devise, and otherwise there was no free transferability that they had to sell to the Commission?

You mean the only thing that you would allow him to do would be to give it away inter vivos or by Will.

Just by Will, not inter vivos. You couldn't, the only thing you could do is let it go by Will. Otherwise he's got to sell to the Commission and they are the ones to determine how many are re-

issued and what. Is it constitutional?

I wouldn't want to exemplify (ph) them.

Economically it would be disaster.

Well, that wasn't the question.

Really discriminate.

You could probably think of some reasons why you wanted to do that, but I don't think they would bear up.

Well, the big reason is that you're giving away a public resource for free and it's going to build up to a value, it's going to increase each year, and presumably nobody is going to kill themselves to give a \$10,000 permit to somebody by Will, and so you take away the economic incentive.

But, you solve the political problem of the fisherman who wants to leave

I think I have to start back a little bit. I'm really not giving you people anything. I don't think I am. The only reason that I'm giving a person an initial entry permit at all is that it would otherwise be so hard on him if I didn't, so I'm really kind of keeping in the status quo as distinct from giving him the plum(ph). Now, having done this to him, then

I think the only measures that I could take to protect him in that situation are ones which tend to prevent my doing this for him on one day and taking it away the next, so I might say for a period of five years or so that in case he gets incapacitated or dies that this can be given to a member of his family or to whomever he may designate in his Will, or something like that, and otherwise restrict him in his (indisc.)

I would do that, I think, only for a limited period, a few years, and then expect him to have in a sense gotten himself out of the situation than simply having gotten this as a recompense or avoidance of hardship, now he's on the same basis as everybody else, so at that state would treat him as I did everybody else. Now, how I treated everyone I don't think matters a heck of a lot. I could make these permits ones that expired at the end of a person's lifetime or his physical capacity to engage in the fishery, or you could go the whole hog the other way and have a completely open transfer system, and I think either of those would stand up (indisc.)

But you don't think the other would?

I would find a difficult time justifying the distinction, except as I say some incident to some initial transitional stage in which I tried to protect the fact that I was compensating him for his hardship, because otherwise he'd be out in the cold. You see there's a great merit if you could issue these permits to the people who've bought licenses this year, start buying them

except the people that are keeping them, and pay for the ones you're buying back, you do it on an open market with no bureaucratic definitions of hardship and what you think is hardship to me and I think is hardship to you, and your value to a way of life against somebody else's value to a way of life. You're going to the open market to start buying them back, and there'll be some people end up with it but those people will have paid for it as they go along by their assessments. Protect the people who are poor and can't pay the assessments with this poverty thing that you've got written in there. Some type of a forgiveness of assessment if they're beyond, below, a certain poverty level. And start weeding out your fishery in that manner. There can't be any claim of unfairness, there can't be any claim of discrimination; there can't be any claim of you take away my God given rights; there can't be any claim that, yes, the fishing is my life to me although I'm brand new to it fresh out of New York and only done it one year, I worked with somebody else as a crewman at that time, or something else, you know. Let them get in there and scramble for it and start buying them back. And the guys that sell out and get out are going to get out, and presumably that's the least hardship cause they want out. As a fishery when you first start into the program it's going to be absolutely fair because there will be a market value of these things, and the Commission with the amount of money that they've got from time to time get into the market and buy them. And you just keep working it that way, and you can't claim, nobody can claim that, yeah, but you cut me out, yeah, but the hardship was different in Bristol Bay than it was in Prince William Sound,

and that was a different hardship than it was in Southeastern, and price (ph) in Southeastern, why they got everybody fishing whether they've got hardship or not. Here I'm up here going to have to move to Anchorage now and pump gas and I can't get a license.

John, there's one thing wrong with that.

What?

And that is that you can't sell them at this time, I think it's pretty much a consensus that something does have to be done to put a lid on now. I agree with you that this may very well be the best solution and the one we will ultimately adopt, but I don't think we can get it through this legislature at this time (indisc) the fishermen are violently opposed to it now, I think, primarily because they don't understand it and they are locked into something else here. And I think it is something that we can go ahead and live with for the first year, whatever we come up with now and something fairly close to what we're got. We may want to come back and review the whole darn works and go to this simplified system that we can write in a page or two, but it's the practicality of the thing that I'm talking about as far as the political reality now of getting something done. To start all over again with that approach at this point which the fishermen have already looked at and rejected on the basis of as much as they understand of it now, it's just not in the cards of getting it done this year.

Wait a second Bob. Did you say that the licenses were not to be transferable?

Well they would be immediately transferable.

That's what the fishermen endorsed. What's the price?

But you're talking about the, where it wasn't transferable at all.

No, no, no.

You're saying immediately transferable.

Well, start over again then with what you're saying.

Basically what Hammond came in with here with his first, as I understood his initial presentation. Issue licenses this year to everybody.

Oh, no.

The only difference is he's making them immediately transferable. That's the only difference.

No.

And issue license to anybody that wants it. It's immediately transferable. There will be no more issued, and the state starts buying them back in.

That's 22,000 licenses, John.

Well, who gives a hell, how much are they worth then? If they're worth \$5.00 a piece, you buy them back at \$5.00 a piece.

No, no, no.

Until you're down to where you have run out of them. And what people have the least hardship will leave the fishery.

John, but you will decimate the fisheries for the next two or three years when you have the chance to go to January 1/73, which is when this started. You know, they won't sell out. They'll wait. You'll have a great mass of licenses.

Just say, stop at the present level and then

Stop at the present level and then start buying them back. Use your assessment figure.

(indisc)

But how would you be willing to move it one year, in other words, don't take the present year, 74 or 73, but stop January 73.

Take last year, that will cut it down 60% or

You see it's 263% increase in (indisc) year, 200% increase in

O.K! Let's take it back to last year. I think it's so much easier to do it the other way, but if you want to go back to last year then lets do it that way.

Nobody has been hurt going to last year, John, because nobody has now fished that wasn't fishing last year because the season hasn't started, and so you're not really denying somebody something that he has already used by going to January 1 of this year.

Plus, if we issue all of those licenses to the few people who are already committed to boats and who can't get one from last year, I'll be able to buy one pretty cheap.

Yeah.

You see, they can hold it and stay in the fishery if they want to, alright.

But these people who come in and out of the fishery, casually do it, they are going to have to pay their assessments every year unless through the poverty situation which means they can't hold them and not use them too long, which is (indisc) to sell them then, and you don't have this terrible charge here of unfairness in your administrative what's hardship, you know, whose hurt, what's pain (ph).

Alright, go back and start again now in some lines you're proposing.

O.K., let's go back to last year. We'll say everybody who files before July 1 of this year, or lets say the next month of this year, who fished last year shall be issued a fishing license, a gear permit, for a particular fishery if they fished last year. I think we could work out a hardship hardship (ph) for the guy who was sick and fished in the fishery consistently and who might be, you know, one kind of a deal here that a guy didn't fish last year.

It isn't going to make much difference anyway because (indisc)
to be worth much.

Let's forget that.

O.K. You take last year, you say you have thirty days to apply and you're issued a permit. No more permits issued until it gets down to the optimum level in any fishery. The permits will be immediately transferable for \$1.00, \$5.00, \$500.00, whatever a guy can get out of them. We'll take and put up an initial appropriation from the state to start buying back permits at whatever the market value gets to be, and we'll use assessments of the remaining people who are in the fishery then to replenish the buyback fund, and you just keep buying them back, and you just keep assessing every year. If a guy doesn't pay his assessment he's out. He loses his permit. If he pays assessment he keep his permit. Those who are at a poverty level don't have to pay their assessment. Everybody else does. You can take it and hold it^{and}/speculate as long as you're willing to pay your

assessment. You don't have to use it. The guy who is coming up here who have an investment in the boat or want to go into the fishery for the first time, I don't care whether he's from Seattle or Bristol Bay or where he's from simply goes out there and buys a permit.

What is your basis, though, for limiting use in the first place? Still hardship?

There really isn't any, (indisc). You're just going to say the guy did it last year on grandfather basis, is what you're doing.

Well, I thought grandfather basis had to be based on hardship though.

Why? I think it's a reasonable test that we said that anybody that had one last year can have one now and they can sell it immediately. I don't think you even have (indisc.)

That's just exactly what we said earlier, only we were a little tighter. Two out of the last four. That's where we were a while back, remember.

Not necessarily the last four.

Two out of the last four is looser, not tighter.

Well, it requires more. He would have a fewer number.

Wait a minute Clem. I'd like to respond.

Well, I think the moment should go toward identifying the persons to get these permits as distinct from saying how many there shall be. You're right up against challenges that need to be protected and you have to justify the distinctions you make between them, and the only justifiable distinction I can make other than the capacity of a person to fish in terms of (indisc) I gather you're not insisting on anything other than just a present ability to fish. There has to be, I'd think, one based on ordinary grandfather clause type thinking, and that's one that gets it in my opinion down to hardship.

Well a grandfather clause for a zoning exception or something else is if it existed as of a certain date.

That's right, that is one definition of it.

It's sort of prima facie. That is, if you had a license last year to be denied one this year is hardship.

Yes.

And we're going to use that as a test of hardship. Anybody can fume about it that wants to, but that's the way we do zoning ordinances, that's whether or not your building conforms to a new zoning change or something. If its already built as of the date of the change you get to continue it.

I think the spelled out considerations the present drafts call for to measure this are more refined and more precisely tailored for measuring what you're measuring, but your measure is certainly a time honored one in terms of whose grandfathered in whatever the scheme may be.

There are going to be great groups of people who are absolutely convinced when this is over with that they were screwed by a political process unless you do it just about in some way that I'm talking about.

John, we all see it and understand it, but what is hardship when we can't define it ourselves.

Well, but look, suppose Dave had fished for five years up until last year. He decided the year wasn't good enough he wasn't going to fish. There's something else he's going to do, and suppose Joel came in last year for the first time, he just had some extra time and he had a vacation and wanted to do it, His hardship is greater than his.

To be real honest with you let me tell you what I think they should do, so that you don't have that problem when you really get back to what you did.

But we do have that problem .

Let me make the argument as to what you should do. You should give them to everyone this year that wants one, and they are going to pay the assessment. If you sell 50,000 of these and have assessed them at \$300 a piece or \$500 a piece, you're going to weed out most of them, you're going to get rid of the whole problem, and going next year you'll have a limited entry program that's functioning, working and legal, and it'll be reducing the gear entry. It may take you a couple of years to get it down, but you're going to have something that there cannot be any charge of gainsmanship or unfairness, or anything else in it.

This is exactly the proposal that I gave the fishermen a couple of weeks ago and which they violently rejected. My question to you would be then, Do you think it's realistic at this point of a Session to think that we could get such a thing through the Senate and the House and voted on the last ten days

I think we're closer to that than we are with this because this is so complicated.

It's not a great deal more complicated than what the House did, when the House passed it 35 to 4 last week.

I would object to that. I think it's considerably more complicated and I think, did you mean people that fished last year, that bought a licenses last year and fished it, or that just bought a license. Did you have the requirement of having fished it?

I don't know.

Because in a sense that's why I thought the highest of the last four years present levels standard is one people can understand, it's simple, it's direct. Sure, it's somewhat arbitrary, but it's like saying, we're going to take it starting last year and it's a different form, but it's still one that's immediate, direct people can understand, and then you say, you know, you can be as simple or as complex in terms of deciding who gets that may permits. If you want to just say who held it last year, or if you want to say those people that have fished at sometime and who are highest on the priority scale, at least it's still simple. You give them the permit then and then you have a buyback program, and that's essentially what the House bill did. Its just, you issue permits at that level and then you have a buyback program to get down to the optimum level and then you're done with it, and there's no more complexity.

This is what I was trying to get at before and didn't make it clear. There is one absolute clearcut distinction that nobody can say there's a hardship imposed on cutting them out of the fishery if you never had a gear license and fished it before. Now, if you modified what John's starting about to say that, hey, anybody that ever had a gear license and fished it before comes in under this procedure, why aren't you then relating (indisc.)

You really ought to resurrect--the only objection I'd had to that is I think the only way the program will add anything in the immediate future to a better situation is that if we don't

let it grow bigger before we make it grow smaller.

Now, and you're going to let in about twice as many people at the outset.

But there's presumption, your concern is what goes in the water, isn't it? This is the thing you have to be involved in a specific fishery (indisc). You could do this in Bristol Bay and not put one extra length of web in the water. But what about the trol (indisc.) tremendously fast erosion of effort through assessments, make them good high assessments, buyback, I think it would take her down so fast that you're going to be two or three years off before these qualifications actually apply and hit. I'm convinced that what this Commission is going to have to screen hearings, goes into the Courts and probably won't be applying them for two or three years when during that interim I think this other one might bring you down to that.

You say anybody that has never held a gear license and fished it and is presently able to participate in the fishery could get an entry permit.

It would be with free transferability along the lines John said.

I'd rather see, at least it's simple. I think it's still going

to be letting too many people in.

But, I say, I agree, it's simple enough to be much preferable to any complicated formula. I say that because if we have this poverty level the reason we were worried about assessments was because of the poverty level.

How many people are you going to be buying out that live in Seattle now and used to fish in Bristol Bay and would get in under that assessment.

Oh, hey, I suspect your assessments, if you put a \$100 assessment on there, I'll bet you the initial cost of these things for purchase and transfer, the market is going to be flooded with them. There isn't going to be any big price paid for these things. You've accomodated virtually everybody that wants to stay in the fishery.

I don't think so. I think that there really will be a significant speculative value to the things to hold on to them. If you're a guy that hasn't fished for five years and has no intention of re-entering but all of a sudden you can come in and get an entry permit and for paying \$50 a year plus an assessment of we'll say \$100, you can hold on to it. There are going to be a number of people that will hold on to it, speculate, because they know its something of real value.

Especially I think this is true when people see the changes that are being made in the fishery itself as far as rehabilitation impact efforts and so on. They are going to say, hey, this thing

may be much better in a few years than it is now.

And where's the attrition

That's why you want to put your assessment in such a position that the guy's going to think very carefully before he hangs onto that, paying, I'd like to see the assessment, frankly, \$500 a year, with a destitution clause. I realize that's unrealistic, but if you moved it up to, say, \$200 a year I'll bet you these guys would drop so fast. They die off, they'd refuse to pay their assessment, the thing comes down.

The guys in Seattle would be more easy to pay the assessment than the people in, have an easier time than the people in Bristol Bay. I'm really worried a distitution clause on the assessment because it's not a tax, and you can, you know, have a progressive tax, but if it's a tax it's a dedicated fund, and if this is an assessment I don't think you can create a forgiveness.

A license fee then.

You know, it's like a sewer assessment or something like that.

Can you give a destitution clause on sewer assessments?

What you meant is a license fee.

Well, I think that putting in the poverty clause is awfully important in this thing in our discussions.

The poverty clause is the only thing that would even work in that manner.

Why would it do that.

Well because it would relieve them of the (indisc)
but they may say, very well, we'll sell out (indisc)

No, no, we'll watch(ph) them getting out of the pulp (ph) business because of the fact that you can't jerk the man's boat out from under him and put another man on. They have no control, you see, by making it

What have you got?

The guy can be absolutely bankrupt. You can't take that license away. The canneries won't be buying.

(Indisc)

... ten years ago, handle that one of three ways, either not let the canneries hold any permits, they (indisc) let them hold permits directly (indisc)

I can't see, except in some cases how in the long run

may take years, cannery domination that couldn't be put in (indisc)
That's what you got an antitrust law.

(Indisc)

Right, but you could attack it that way.

Let's go back to this a minute. Again, if our only reason to be able to do this is hardship, grandfather him in in hardship, how do you indicate hardship? When you say anybody that's held it in the last ten years or anybody that's held it and fished it in the last five years. Suppose he quit fishing four years ago, he's gotten into another line of business. How do you say it's any hardship on him if he's denied a permit, and if this is a basis for letting people in in the first place, then what basis do we have under that system.

You've asked my question.

Well the only thing I would say is that you'd be making only one determination that somebody who has never fished and never held a gear license as a class is less harmed than the class of people made up of all the people who have fished at sometime or held gear licenses.

You know what you begin to look like is you haven't really measured hardship. Then you've lost any basis upon which to

close the class at all. I don't think you can close the class by giving it to all persons who have ever fished in the past if that's a gross mismeasure of what you're trying to do.

If you've got to close the class I'd agree with you 100% but the assumption from the beginning has been you are not going to close it, you're going to open it leaving them freely transferable.

Well close in a sense that these persons as initial entrants are the only initial entrants and they're the ones who are being given something of value. Now I say you're not giving it to them if in fact it's the equivalent of not taking away something from them. That you have to have it in terms of not taking away.

I like that. I mean that's why I've always wanted some sort of

This means to say that I don't think you should be as sweeping as to say, well anybody who fished in the past, or anything quite that broad. I think you have to come back to the idea that the function of picking out certain people to receive these permits in the first place, short of going to everybody who applies next year also, has to be a measure of some kind of the underlying idea of grandfather clause. And I don't want you to get away from that. I think that asks for trouble.

Like recognizing the appropriation of water in terms of the

past pattern of beneficial uses.

Yes, something of this sort and you better come somewhere near to measuring the very thing that you're supposed to be measuring.

(Indisc) to assume that nobody will transfer a permit for purposes of looking at the legal facts. Is this in the works.

Well, if that, I don't think so at all. I think that if you, you're going to have to show the Court the real world, and if the real world is going to be a world in which some permits are on the market and are transferring at a, you know, like in B.C. you can pick up a copy of the paper, in the back of the paper you would see six or eight boats with an A license, and that's the real world and you're not going to have a closed fishery and the Court's going to go with it, if in fact everybody that got a permit held on to it for 50 years. I think you've got to go in to the Court and say that's not what's going to happen. I don't think it is.

Well what kind of a value does that permit have down there. Does it have one in excess, we've gone through these so many times I forget. O.K., the value attaches to the boat, the permit attaches to the boat, what about the value of the permit per se.

It's impossible to tell because the permit is one with the boat. On the other hand you can look, you know you can buy a gillnetter down there with lots of equipment for 10/15,000 bucks, so, you know.

(Indisc)

Alright, you could go down to Washington you buy the boat itself without a license, so what's the comparison of the value.

I don't, I think.

That would be a measure of the value of the permit, wouldn't it

I think 3 to 5 thousand dollars, from looking at those adds over the last three months.

The permit you think would have 3 to 5 thousand dollars in value, something like that.

Something on that order.

And this is a fishery that's already gone from

7,000 to 5,000, so it's pretty well recovered, you know they's fishing 4 days a week. It's 50% to being at its peak value. I agree with you on the point that you're going to have to have something besides just ever having been in the fishery, but I'd say you don't have to pin it down to last year, John, because you have people in the fishery that rotate from species to species, and still keep major investments in this waiting for that cycle year to come back, and you cut out a cycle year what you've done is made a starvation year every fifth year.

How do we take care of that problem?

But, all you'd have to do is say has ever held a fishing license and still holds a major investment in the fishing industry, but then you have to be careful what you do about the guy who never owns anything, he always just fishes another boat for somebody else. You have some problem. Actually your's is the cleanest, John, if you can just solve this one other little question of how do you prove how much of an investment you have in the fishery.

You see if you don't do that this idea of buying out people's investment in the fishery and all the rest of it really gets into a (indisc)

If you could make a nice clean system, no let me start again. I've always thought of this in terms of what it is the Commission buys as being to buy the permit, nothing else. Now, cranked in the last couple of versions, maybe only the last one, there is a separate treatment of the actual gear both net, and I don't know what else, but the essential thing about is the permit. That's the thing that I think the State is interest in, and its only that the state ought to buy unless for some reason it's conscience gets to them and here they're going to buy the boat also. But in terms of making the system work it's the permit that you want to get out of the way. You couldn't retire that. Now if you concentrated on only the acquisition of those permits, then I think the only thing that you must be sure to do is to have a system that both looks at its inception as if it going to do this and, in fast, works toward it, and that's cut down those

those number of permits that are outstanding. And any way to do that is alright. I don't care whether you put the state under the oath of market and give it all kinds of money to start it out with as an initial bang with an assessment system to keep the fund replenished, I don't think it matters. But you must have the appearance of wanting to do it and you must do it. I don't think it matters how you do it just so its feasible.

when
Alright, let's take the case then/the state is in the open market bidding on all, all permits are going to have equal free market value then, and in every case the state could go in then and bid up until they've got every permit. O.K. What have we have done as far as closed class then, as allowing people in?

I don't think you've hurt it, if these people come in, unless you charged the Commission with the obligation to see to it that it (indisc) a successful bidder every time, or something like that.

Describe a factual situation where it occurs. They would buy all of them. They can't establish a market unless they have independent sales. You don't know what a market is, the definition of a market.

Alright, so we're back to where we were a while ago.

And what you said that if they were all freely (ph) transferable it would be alright. You thought if we went to apportion (ph) of them back to the Commission and made available 1 to 5 why it would be perhaps a little better.

Particularly if you go to a system that imposes restrictions upon permit holders to make outside transfers then I think you have to supplement that or make up for it by having the Commission issue new licenses, but without that it would fully freely transfer the system

I don't think you (indisc)

...open market that's available to you.

That's correct, but the only thing you must be sure to do that you haven't lost in the interim is both the planned for and in fact operation of the acquisition by the state to get those things down to the optimum.

O.K. now, this acquisition of the state, you raise an awfully good point there and I've thought about it. I never verbalized it, and then you mention it, and makes me, we better get into it. And that's what (indisc) in the difference between assessment and tax. Everybody was talking about assessments here, but I'm inclined to think that it should be a tax that's placed on the license that is calculated in the same manner as an assessment would be on the amount of fish that license caught

with poverty exemptions. If you make it a tax it's deductible to the big man who is catching a lot. As an assessment it's not. It's a business expense.

No, wait a second. The assessment's legal.

(Indisc)

Now wait a minute, you've got a tremendous fly in the ointment of either one of them, and I think it's a tremendous defect in your Bill unless you cover it in some other way/^{and} I'm not aware of what it is. But under that kind of a program what's to prevent me from simply, if I'm eligible, getting the darn thing, holding it with my \$50.00 fee each year and all the time these things are appreciating in value.

If I never fish that thing and the assessment is only a percentage of the catch.

No, no. I have, you may be averaged in the year in which you're holding it. It's in there alright.

O.K. Then I didn't see that.

You already pay cash for that.

Well, I think it has to be a minimum floor, so that you can force the guy, in other words if you're going to speculate/^{with}the permit it's going to cost you some money to do it.

It's in there, John, it's the average of

(indisc)

At least we can work that out. That's very easy to be worked out.

And have your (indisc) exemption and make the tax instead of an assessment.

What do you mean by the taxes instead / ^{of} assessment?

(indisc)

It would be levied by the state legislature or it will be collected through, like any other tax and it's a little bit like our revenue sharing we have now for raw fish, you know, we have a policy of appropriating out the raw fish receipts back to the community in which they originated. But it's not a dedicated tax because it isn't segregated into a fund that automatically does it, you know, and really what we'd the same way here.

What's the tax based on? Is it a flat tax, applies the same way to everybody?

It's a case tax.

It's the same thing as an assessment then, it's a percentage of your gross.

You're right. It would be the same thing as an assessment. It

would be no more onerous than an assessment except it would be a state tax.

So you're really changing only the name?

No, no, You're going to change a great deal more than that. You take a look in Chignik right now, which is at optimum. There would be no assessment in Chignik. There'll be a huge assessment in Bristol Bay. There'll be no assessment in a number of fisheries. Now, I would like your like your something that said, but that the minimum assessment shall not be under 5% for all fisheries and anything not necessary for the buyback will revert into the general fund because I think the fisheries should pay more taxes. But that's a different thing. If you're talking about assessment, the assessment will vary according to the fishery, and do you want to charge those same Chignik seiners to buyout a Copper River gillnet that has no impact on their fishery whatsoever? If you do, this is the route to go, but the thing is that if you want to make the impacted fishery pay out the impacted fishery

Well, let me ask you this. Why should a Chignik gillsetter feel any more reluctant about paying the tax , the (indisc) of general fund tax and have it go back into the fisheries of Southeastern or to buy out the boats in Bristol Bay than the Anchorage man does? I think he may object to it but I think the Anchorage man may object to it too by

What Anchorage man? What Anchorage man is going to be doing so?

Cook Inlet.

Well now, I'm saying, you're talking about a tax now on a hell of a resource that we're imposing, and we're going to use that money we say to go ahead unless the state starts buying these things back wherever it's needed. We rehabilitate the fishery wherever it's needed. We're going to raise the tax on the most valuable resource we've got in the state of the fisheries, and we're going to, as a matter of policy, declaration without a declared fund, reaping (indisc) avoid the constitutional problem here by a statement of policy that is intended, that the funds imposed by this tax the legislature shall appropriate into the reacquisition by the Commission in the free market of fishing permits wherever they're most needed, that's what you say.

What we're saying here is that in Cook Inlet if it costs X number of dollars to buy out the drift boats there that are necessary then we're going to assess a percentage of that each year against each of the remainder remaining boats in the driftnet fishery in Cook Inlet and continue that until whatever expenditures have been made by the state to buy those things out has been repaid. Now, the setnetter in Cook Inlet is a completely different creature and not going to be impacted in the same way that the rest of the drift fishermen are, and he's not going to be paying that same assessment. He's going to be paying a portion of the assessment each year whatever is necessary to buy out the set net

fishermen in Cook Inlet. And the same thing is true of set net fishermen in Bristol Bay, (indisc) set net fishermen, or driftnet fishermen in Bristol Bay. Each one is going to be buying out similar gear in its own administrative area.

Alright then, lets get back to Jackwin's problem here. Do you think the poverty thing will work on the assessment.

No, but I still think, I honestly don't because it is like an assessment for the benefit of the property owners of those other permits and if they retire a permit that value accrues, the fishery is more valuable, there is fewer slices of the pie, and it accrues directly to them just like a public improvement or something like that. So I don't think you can have a poverty exception in the assessments.

But I didn't balk on the proposition of the annual fee.

No.

I think that's fine. I think that's a different proposition. But when you're improving the value of the guy's permit I think he has to pay for it. I would be hard put to exempt him.

Why don't we shift then and make the, instead of the \$50 assessment why don't we make it a license fee, across the board, and then put the poverty thing on there and

Well, the only point I'm trying to make is that you're buyback

is really going to be a local option where you come into a given fishery and you sort of say, this is for the improvement of your fishery and we're going to assess this fishery alone to buy out permits in this fishery, and we're not going to tax the state at large or other fisheries to get you down to the optimum level, then, you know, the funds that you raise can't have such a mechanism built into it, your way of raising those funds.

Taxes, or the fee, I've got to problem in terms of a poverty exception for that, but taxes, there's no reason to invent a special tax, no know, fisheries are going to be subject, you know, these are subject to property tax, capital gains tax, the income of the fisherman goes up that's going to be taxed.

Can you have a sliding scale license fee, registration fee?

I don't think there would be any problem

Related to your catch? And if you did, could you put the poverty provision in that?

Yes, I think you could have as complicated a system to the \$50 fee as you wanted.

I mean, you're license fee shall be, not

Not permit, license

X dollars plus a percentage of your catch the previous year.

Well, the thing that

Where's your money coming from to buy out the other permits, though, out of some general fund to which this contributes.

That's where it's all going to go, to the general fund, anyhow. It would have to.

But your accounting is going to be indiscriminate, in other words the fellow in Southeast Alaska is going to pay to be buying out permits up in Bristol Bay?

Well, that was the thing. If you did it on the basis of a license registration fee in Bristol Bay area you would have maybe 1% of your catch appended to that license fee. In another area no percent, in another area 2%.

You're mixing severance tax with license fees, but you could say that the license

Let me hear from an attorney, alright?

I don't understand, what you want to do, you don't care where the buy back money comes from, that can be set within (ph) part, you want to put a differential hardship on people that live outside the area, you want to put or basis of catch on percentage

You would package your assessments as you have them now by area into a sliding scale license fee.

No, I don't think so.

You couldn't do that?

That would then go to buy back the permit?

It would go to the general fund and you just have an account in the general fund, course

You're doing indirectly what you cant do

O.K., then it's not an assessment. You just levy a tax on a sliding scale based on the percentage of the catch.

License fee.

O.K. You're doing that with your license fees now aren't you?

The \$50 fee the way it was drafted in the original bill wasn't intended to supplant the notion of buying fishing licenses or licensing different types of

I'm just putting it into one package that can be treated as a license fee with your destitution clause and everything on it It goes into the general fund to provide you enough money to buy back. It gets you the same amount of money.

I don't think you can do that. I don't think you can tax for buy back.

(Indisc.)

It does seem to me that you've got first a legislative question then, and that is, who's going to pay for it. Won't the state as a whole, the fishermen of Alaska as a whole or all salmon fishermen, or do you want the prices(ph) confined to the fishery.

Under what I'm proposing the individual fishermen pay precisely the same amount as they would under this other one, precisely the same. But he's doing it as a license fee, sliding scale license fee rather than an assessment on top of his license.

Two fishermen catching the same amount of fish but in different areas would pay a different license because different amounts of money were needed for the buy back program?

Presumably, yes, could be. In one area you'd assess them 1% because was adequate and in another area 7%.

You can't change it by calling it something different. It's basically an assessment to buy back permits. You can't discriminate on it. It it's basically a tax and it just all goes into the general fund and then you have a separately funded buy back program, then it's fine.

But you could set it evenly across the board. Everybody pays 3% across the board, and then we come out of another account with the buy back, so we don't relate it to the area buyer. Then we're back to Clem's

When we're done I have a real blitz with some of the non-salmon fisheries and some of the non-impacted fisheries. Now, I don't object to having a 3% severance tax, or a, you know, I think when we (indisc) we should have at least a 12% severance tax, but that's just a straight tax that should go into the general fund for any purpose, like any major industry would pay. I'd say you're going to have to keep your assessments fairly low and if you wanted to you could have, maybe make the license fee, in other words make the license fee revert back into the buy back so that to a certain percentage every fisherman is paying to the buy back, but you'd have your gillnet license in Bristol Bay to be \$300 because you need to buy, you know. But then you'd also have to have a \$100 license for a seiner and that goes into the buy back, you know.

I got another problem with buy back, and I think it's, to some people it's going to be darn important. You got a channel of here, take Cook Inlet. This is where it applies best as I know it. The fish are travelling north into the spawning grounds. Down here is the beginning. There's no fishing below that. O.K., take this first setnet fisherman down here. If he's paying assessment fees to buy out these people up here it has absolutely no impact whatsoever on his fishing.

It does have an impact.

How?

For the very simple reason that you must close the seasons to allow an escapement to go through the whole thing, and as you limit those numbers up there his season gets longer.

(Indisc)

That's not the problem. It's not closing it, it's a matter of opening, and he's being hurt by that very thing right now, because the season isn't being opened until they're already up there and in and they're already past him.

That's bum management. That has nothing to do with this.

The fish that he pays out money to buy these guys out up here will have nothing to do either with his fishing

It does have to do with the fact that it's being mismanaged by Fish and Game has nothing to do with it.

Well, he could make an awful good case. Anyway it's rather minor in the overall scheme, but then he could have some concern.

Let me ask you this, the buy back thing bothers me a lot because of what do you do when you want to make an adjustment between

a recreational fishery and a commercial fishery in some area,
where somebody has been buying back for ten years?

Keep going, I'm with you.

Well, I

To come up to the optimum you mean

No, there's no point in cutting out anybody now for a couple of years till you get around to setting an optimum. If you're not, you know, if you can let everybody in at your initial level.

As to some fisheries it should be apparent right off the bat that by using (indisc) 1, 2 to 3 categories you have not exceeded an optimum number.

Well there you're going to have to make a lot of intuitive judgments about what the optimum number is before you ever get around to setting it. Under the other mechanism you're going to say, we'll let in everybody we can up to the present level, everywhere and in every fishery until we even start worrying about them.

Isn't that a kind of rough approximation brought to them right then.

What?

By setting this maximum.

No.

When you set any ceiling you're saying that we're fairly sure that we don't want any more in.

That's correct in that sense. You don't know what the optimum is until you set it.

But you've already set a maximum.

But you never fish anybody out in yours.

Probably not in those except somebody what wants to start up now

I just know that one of the key features of this bill from the beginning is that we're going to treat the different fisheries differently and we're not going to try to put the same ruler up to the seiners that we put up to the hand trollers, and hopefully that's what you're trying to do with these categories, is put the same ruler of hardship, not to say we'll apply the same standards of hardship within each separate fishery, considering the unique conditions of that fishery, rather than take one ruler, statewide ruler and put it to all the fishermen in the state and say, what it will mean is that 98, 100% of the seiners will get in at the outset, 5% of the hand trollers, 25% of the setnetters, 60% of the drift gillnetters, and from the very beginning we've been trying to avoid gear fights and avoid any system where people will think that you're going to advantage the purse seiner, or the, you know, oen type of gear over another, and that's what that will wind up doing.

Can't see it, Dave.

We seem to have lost most of our constituency here.

What happened to everybody.

They'll be back shortly.

I don't know, Bob had something that was happening.

I doesn't say you can't.

Until, you said, the optimum low.

But that's completely disorderly because the optimum / ^{level} doesn't come, isn't something that you set until you have initial entries so you know where you are at the outset.

You're already going to have your interim entry taking place next year. You got two years in which to come up with your optimum level, with the optimum number. And if you can level (ph) all the existing interim use permits that are issued, yes (ph) as initial entry permits because taking all of them you still are not above optimum level, then you let them in.

That's the way it's supposed to work.

Alright, but there are too many fisheries in which you've got to let some 4s and 5s into initially to get your

I haven't done enough research on it.

Well you'd just have to find some source of cash money to work with and so you'd need to get some money coming in.

The best thing would be if they could figure out a way to finance their buy back and do it fairly quickly because then the benefits will start to accrue. And then they can finish paying it off.

Maybe you should work at 10 or 15 years which your constituency tolerated, maybe you should have the assessment start at a higher rate than the buy does for the first few years. Have the assessments come in right away but dont start purchasing for a year or so, a couple of years, three years, for a slower rate of purchase, until you build up a little bit of money.

Of course the ability to pay assessments increases as the buy back (indisc)

That's right, yeah.

As far as I'm concerned I don't think it makes a heck of a lot of difference as long as you in a sense mean what you say. If you're going to do it, why fine.

I don't think you could let the people in the area set the optimum level You got to set that and say you're going from here to here unless you can tailor it and make it flexible to fit them.

Well this is somewhat off the subject but could a Commission, empowered the way it is in these bills, use the assessment to amortize over a longer period of time an early lump sum loan or, in other words, if you could set it up so that an assessment of X amount per year would amortize a given amount of money over, say, 20 years, but get that money in the first five years to buy the boat (ph) out.

We had that in one version, the idea that these assessments could be put on

I think put your sewer assessment and pay it over ten years.

I think it would be possible.

The Commission would pay out assuming the legislature would give it money to work with. The Commission pay out, but the assessments to recoup might take them a little while to get in.

But the idea was that there wouldn't be any appropriation to start the buy back. That would only start as these assessments begin to come in.

You've got a dollar cash flow problem that you'd have to solve, and I don't know how you'd solve that one.

I think you've got to have some realism though in the sense of working toward the optimum.

Yes, you can't make it a 100 year proposition.

Well, that's perhaps true except, that's correct. In other words you're saying that you can't have the optimum set and then never attain it.

That's right, and I think you've got to have a realistic

(Indisc) that there's some flexibility.

Sure.

I like to think in terms of 5 years. Somebody else thinks in 10. You'd start to raise eyebrows if you get much above 10.

But in the fisheries, like in your crab fishery, maybe 20 years is a sufficient horizon, Bristol Bay driftnet maybe 5, you know, you can move as fast, you know, at different rates.

At the risk of running foul of John's problem I'd suggest formulas that had a differential at a curve ratio prescribed instead of going on a linear relationship. Start slowly but build up and about your 7th and 8th 10th years why, wham, you're going to be out there buying a lot, but give them a while before you really get (indisc) Kind of snowball.

I don't think this is going to hurt your property people if you have an assessment that was low enough because they're going to catch a little of something every year.

And if they fish at all they can't be charged above that percentage of their thresh.

That's right.

(Indisc)

Our bill say that that (indisc)

up to 7%, you may not be, in one place, that you may not be charged more than 7% of your catch, and we wrote this in for these little back bay gillnetters that maybe catch \$800 worth of fish a year, but it happens to be the only cash that they might have. Fine the assessment might be terrific, but they're fishing and it can't exceed 7% of their catch. Now if they sit it out the assessment might be \$300 or \$400.

You know, when we went out and discussed in public meetings this notion of buy back, the way we tended to explain it was it is a local program for this fishery. Now, you've got these choices, you can have a high assessment and quick buy back or low assessment and slow buy back and it's sort of up to you. The idea would be Commission would come out there and, you know, set whatever kind of a buy back program up they thought the consensus was, and it didn't scare people so much. They felt the buy back program would be tailored to their fishery and their circumstances.

What it's going to do is say, Mr. Andrews, it don't make any difference whether you're in the same fishery or in the assistant (ph) fishery, if you're not really dependent on this thing, or if you don't have a certain degree of hardship involved, we don't guarantee you in. Now, if you do have that amount of hardship, we do guarantee you in regardless.

You're only making it harder on the setnetters here than the other bill does, a lot harder, because most of those guys are going to be 4s and 5s.

How can there be any 5s when a 5 is only a paper license? How can a setnetter or anybody else

There are a lot of people come up for a vacation, but that's no hardship. It's a little privation.

(indisc) a paper license. He doesn't even actually fish it.

That isn't what it says. It says no hardship. That isn't concept of paper licensing, that's the concept of economic hardship. I'd say that a person that was vacationing, a hobby fisherman suffers no hardship if he's taken out of the fishery.

On what basis do you

Well, that's my point. I don't think you can make cross-fisheries

comparisons. That the only way you can convince people you're fair is when you say, we're not going to compare you with purse seiners, we're not going to compare you with somebody else, we're just going to look at you within your fishery and ask of all the setnetters in this area who is least dependent and who is more dependent. Not to say how dependent are you in relation to the purse seiners or in relation to the crab fishermen at Kodiak or something like that.

(Indisc.)

But most of those guys, you know at the outset the hand troll fleet and the setnet fleet where everybody acknowledges we're going to let everybody in, you know, ^{and} under any bill that's essentially what's going to happen, but those are the very fisheries that will have most of their people down in 4 and 5, and they're the ones who have been causing all the problems. In the purse seine fishery everybody's in No. 1, most of them, 100%. You see when you get back to this again, I get back to trying to be simple on the damn thing but you're going to let everybody in anyway, why not just say we're going to let everybody in and start out from there.

The only reason you wouldn't then is because of the drift net fishery, really. Because that's a fishery where you'd had, if you look over how many people that fished over the last ten years

it's about twice the number for the present level. The purse seine fishery has been stable, the setnet fishery is stable.

Let me pursue something here. The only reason I want to pursue it is, I don't want to pursue it too far because I don't want to take up all your time because of a hangup that I've got, but to me, it seems to me from the grace of the grandfather rights that the classification of those who fished in the previous year or two years or something like that, the grandfather clause being based on hardship and use, zoning ordinances or anything else, use or whoever did it, that that's prima facie of hardship when you change the law and you give them the exception to it. That's a duplication. And if we just use that simple test with the 100 statements, saying, having fished once in the last two years, having fished in the fifties (ph), you know, the last two years, one of the last two years, shall be prima facie evidence of hardship if you're deprived a fishing license. And then make out a special one for the guy that is, plus anybody else who can show that because of illness or service in the armed forces or something else was prevented during the last two years from fishing one of the last two years. And open it up and let them all in.

I have no quarrel with you as to principle in this operation. The only difference I begin to observe right off the bat between what you're doing here and what you're doing in a zoning control system, something of that nature, is that you're dealing with a limited resource as to which you're going to say only certain persons take part. It isn't that I can't buy a piece of land

in that neighborhood, it's just that if I do all I can do is put up a residence, I can't put any more apartment houses or whatever. This I think is a more severe governmental system being instituted. Severe in terms of the next people who might get into it. Now that --

Particularly in terms of our constitution provision of common use.

I didn't hear you, Joe.

I said, particularly in terms of our constitutional provision of common use in public resource. That is a little different.

Yes, now I think that's a difference of degree rather than in kind and all that tells me is that you must be leary and wary of the accusation that you really would like to keep this very valuable thing that you're now going to limit to certain people to a select few that have been selected on some illegitimate basis and the basis on which you can make that selection and avoid that accusation completely is one which is tailored factually (ph) to the idea that if you were to take this person out of it, say he can't take part in it there's a bill that imposes a hardship on him. Now, one way to go about this is either wait for the present draft that the Senate bill has which simply says hardship and try to measure it now. Let's concede all the difficulties and complaints that we have as to that. The question is are there some more detailed specifics, objective type measurements of the same thing. And I think the answer to that is, yes. And I think you can do it in a way that

in a way that's acceptable. You might end up with something that's a little more complex than what you've prescribed, but surely those who've taken part in the past, those who would have taken part in the past but for the fact that they were in the military service or that they've had a temporary illness or something of that sort (indisc.)

Write them all down and then maybe you have it. (indisc)

You haven't quite confined yourself to the precise measure of the exact thing which I think is the sole justification for having the grandfather clause, but you've come reasonably close to it and you've avoided by some other mechanisms, by some other attributes of your system, if you once get it going, that prevent the person inferring that you've really done just to favor this particular little group of friends of yours. If you can avoid that by having transferability aspects cranked into it, a real determined effort made to cut down on numbers and get to your optimum in a reasonable length of time, and so on, then surely. That's fine. I think (indisc.)

You haven't put any more hardship on those that are left in to buy out (indisc)

But you're going to pay for them anyway. You're going to pay for everybody that doesn't get in and everybody else you're going to let in. Your bill pays for them.

Not really.

It does. You're going to pay for denial, right to compensation,
denial of initial

May, may, may

(Indisc) you would pay would be
for the difference in value over equipment based a market,
your fishery and a market that's restricted now because you

And its still discretionary

(Indisc)

We're getting away from our problem here when we start buying
people's cabins and property rights and boats and things like
that because of these part-time fishermen, do we split (ph)
it out because it wasn't any hardship on them?

We've assumed the Commission may make the decision not to buy
them at all. We think that's something for the Commission, to
not buy

They can't adopt at their whim different standards of compensation

No, I don't think they would.

Let's say that they adopt the regulations that were sub
^{is}
categories of 4 and say this/the sum that they would buy out
(indisc)

Why not let them all in and then buy the permit back on the market?

Is there enough money to do it?

Well, if we've got enough money to do this we've got enough money to do that. It's the same thing.

Why is it the same thing?

Well, because if this is open ended so is that.

That's what the market is going to be.

When you let them all in I think that you've got to come back to the sort of things that we're using.

Right.

With some reasonable proximation of the hardship category.

But, there's nobody can complain about hardship here against hardship there, or something like that

I agree, because the (indisc) of free entry

The more objective your standards the less opportunity there is for creditors (ph).

What we have here basically, as you know, is whenever you have resource, whether its oil lease, a noncompetitive oil lease, or something else, when you have more than one guy that wants it, you put them all in the hat and everybody has an equal right at the start. In one way if you started out with this and you have your assessment and the guys have to pay for it every year if they don't use it. What the hell are they going to do holding those licenses, they're going to forfeit them. You're going to get them out. Let's assume 50,000 people took the god damn licenses and they're going to pay \$3, 4 \$500 a year into the buy back fund, something like that.

They're not going to do that (ph), the people who are using those licenses are the ones that end up with them.

Well, no, you're entirely wrong..

Well, I don't know either. There's going to be a substantial number I think that will continue to hold on to to them for two reasons, one, speculation, the value increases they figure that the buy back, the value is going to appreciate greater each year than whatever buy back there is is set (ph). It certainly won't increase that much but it's ^{to increase} going/something in addition to the buy back. Secondly there'd be the changes, the rehabilitation effort that are being made, fishing is going to be better, if I wait for two or three years I can get in and still be a good fisherman. And you're going to have more people in by quite a lot at the end of five year's time than you will at the the beginning. (ph).

The thing of it is Bob, I think that regardless of what's happened so far, I think that the reason you haven't had a single fishing license (ph) in the United States is because of this difficulty, and somehow we're saying that it's not going to exist here, and god damn, they are.

Now wait a minute, (indisc)

Are you sure nothing like this has ever happened before and, if so, where would it have happened

RADAR: Well, we don't know if (indisc.) has happened.

PALMER: Alright, and where do have certain circumstances that are much this much similar?

RADAR: The East Coast is fishing--they go up through the fishery there for a century coming and going, and in and out, and...

UNIDENT: Course you're dealing/^{usually}with more than one state.

PALMER: You're dealing with more than one state, and you're dealing-- you've never had fishing before on the verge of the improvement through rehabilitation...

HAMMOND: I can't agree with the word you mean, but what--but there's a group that John's talking about bringing oil in, what if again he's going to be the guy that came in this year, no transferability. What if you did that, and then you wouldn't have this business of a whole slug of new people hanging on to licenses, keeping your potential pool away up high. There'd be no reason to, you'd never...

FLETCHER: On the other hand, I think before you could go to something like that you would have to make some distinction. Well, maybe you could make the (indisc.) into the ones who came in this year compared to those who had been in in some prior year.

RADAR: You know, why do that? Why have two or three different kinds of permits floating around? I mean, you know, because you wanted to get a whole bunch out of the fishery in a hurry and not have a bunch of people hanging it out--your big concern is these guys that would be flooding in this year, right?

FLETCHER: Well, I think you could just as well keep them out (indisc. -- simultaneous speech)

FLETCHER: ...let them in a two-year or five-year basis.

RADAR: Is it alright, do you think?

FLECTCHER: I think you could just as defensively keep them out entirely as you could to let them in on a very short basis.

RADAR: How? Well, I mean, taking the approach that he's talking about, how could you do it? You say you can't go back and lay out a (indisc.) of experience, actually.

FLETCHER: Well, if you make a distinction between the types of licenses that are out in terms of what restrictions are upon the person who holds them, transferability and so on, or the life of the license or something like that, then those distinctions have to be measured of some legitimate concerns the State would have and the only distinction that I can perceive between the person who comes in this year to get a new license, and those who've been in in the past, that the very fact that we've talked about is that it's associated with the grandfather clause, and when you do that then you've got to have something that's a reasonable approximation of the legitimate concern about grandfathering, so you're right back to where you were.

RADAR: That's true of zoning. The only difference is that there just later, that's all. There's a point there that the law
(indisc.--simultaneous speech)

FLETCHER: ...more restrictive, you know. A more severe thing you're imposing upon the people than you are the landowner.

RADAR: Well, if you get back to your hardship standards, rather than trying to tie down the same five classifications to every fishery in the State, why not just put a general one sentence provision in the Bill, nobody with significant economic hardships shall be (indisc.) entry permit anyway, and be done with it, and then let it go into...

UNIDENTIFIED: Provide it by regulation.

RADAR: Then let it go to regulation and fight it with more flexible standards. Get on up through each area, cause you know only about in three percent of the fisheries is that even going to be relevant because everybody is going to get in with some degree of hardship.

FLETCHER: By putting it in the negative we've not affirmatively said who gets the permits.

RADAR: Up to the maximum level and then if you've got any people left over who have a significant hardship, you let them in, too.

FLETCHER: In other words, you would set a maximum, and we're talking about what part of the maximum would they get?

RADAR: Present level.

FLETCHER: That'll be a number.

RADAR: That's a number, yes.

FLETCHER: I would determine who came within the number?

RADAR: You can rank them in terms of priorities, in terms of hardships, but if you issue entry permits to everybody, you know, to that number...

FLETCHER: That's what you have to weight now, isn't it?

RADAR: No, because there's one difference. If you still had--there weren't enough permits left over that if you still had a group of people that (indisc.) significant economic hardship in that particular fishery, you'd let them in, but in all the other fisheries where the only people you're going to have left over at the tail end of the list is the marginal participants, then you just stop. Issue permits up to the maximum level.

FLETCHER: That's why I say, defensible if you arrived at your maximum number in some fairly rational fashion that you could make that a combination of both the nature of the fisheries--the particular fishery whether it needed the maximum--not whether, but to

what extent.

RADAR: Well, the maximum there, yeah, okay.

PALMER: So you're suggesting that maybe take the numbers you had before, maximum number, the average or the peak, which was it, for the last four years. The highest number the last four years, that's the maximum, but as we've said later in our bill you would say in this one, regardless of that, anyone with a significant degree of hardship if they're cut out, will be allowed in. That's what you're saying?

RADAR: That's right. You know, you can do it in a one liner. Leave the thing flexible so that in regulations you can set up your priority classifications, but in those fisheries where all of a sudden there's a big lump of people that would suffer significant and economic hardship if you only issued a maximum number of permits, then you let in that next priority classification to people who would suffer hardships. That way you don't have to classify in terms of significant economic hardship every single fishery, cause you're not even going to have that problem in a lot of the fisheries.

PALMER: Well, that's essentially what we've done here except that we have tried to determine, we've tried to define what was meant by significant in these prior categories...

RADAR: But you applied it to all the fisheries, and you wouldn't even need to apply it to the fisheries where by the time you go to the (indisc.)...

PALMER: ...same thing to a man here as it is down there. It would have to be called significant.

FLETCHER: But the practical difference in terms of operation is that he's going to have some fisheries under this system in which some persons are going to come in because they're less than

the maximum of the set, without any showing of hardship particularly at all.

RADAR: Right. Right. (Indisc.)

FLETCHER: I don't either, unless you've got this maximum set at figures that's not defensible, and I want to know how you're going to set it now.

RADAR: Maximum would--alright, let me be a little more detailed about that. We know that we've got--most of the salmon fisheries are either at or above the optimum level, so in order--but that's something we know intuitively before we get around to setting administratively the optimum level.

(indiscernible--simultaneous speech)

RADAR: Alright. That's right.

FLETCHER: You know if these people have been telling you that.

RADAR: In almost all the problem fisheries the minute the commission was established they would adopt a regulation under this bill, it's still the commission that sets the maximum level, but it says the maximum level shall be no less than the highest number of units of gear...

FLETCHER: It could be no more than, too, because I don't want you to get it so high that you're running afoul of the idea that you're protecting everybody who might have any relationship to this fishery.

RADAR: But there are a lot of fisheries that are experimental fisheries or developing fisheries. There's no reason to pin the Dungeness crab fishery in Southeastern (indisc.) and so the commission just wouldn't set the maximum level amount until it gets on down the line.

FLETCHER: You have to differentiate now between one fisheries in which you don't have any problem, and those who (indisc.) do.

RADAR: Well, you do that--the commission is given jurisdiction to act and in all priorities to attack the problem fisheries first and to do that using its own good sense. Now, it's going to set the maximum immediately for all the problem fisheries, where we're at or above where we should be, but why should it have to do anything with longlining for black cod. Any of these fisheries that's (indisc.) in the future require limited entry. If they don't, you know, if there's not a pressing need now. That's four or five years down the line, and they can let those grow and not even set a maximum level, and they'll monitor them and if they see them getting up to that point then they'll set a maximum level, come in, and adopt an optimum level formula and issue entry permits, but the only reason we said no less than is that, you know, for all those other fisheries that we can't handle. It's just a workload problem.

FLETCHER: It's so untenable to say--to make it perfectly clear that in those situations in which you do set a maximum that it's being set every rough (indisc.) of this hardship business, because I do believe that you're vulnerable if you let things to--there's got to be a limited entry fishery. Persons that in one fishery don't show any particular degree of hardships in another fishery have a big (indisc.) system that (indisc.).

RADAR: You're right. The only reason you can get hardship is if you have to cut somebody out. You don't even have to consider hardship if you're not going to deny a permit to some and issue it to others.

FLETCHER: Well, if you're not going to set maximums, then why are you-- I mean, if you're not going to have any hardship categorization at all, why are you setting that?

RADAR: Now, one thing is in the fisheries where you don't have to

exclude anybody, there isn't an issue or grandfather rights at all. You don't have to even--you don't even have to broach the the question of who is suffering hardship in that fishery if you're going to let everyone who wants in in, and if you're going to deal with the fisheries separately, all I'm saying is that you seem to imply that we have to use the hardship categories in every fishery regardless of whether they're above the maximum or above the optimum, or below it, you know. And I think you only need to use the hardship if you have to cut somebody out and let somebody else in.

FLETCHER: I see.

RADAR: And, so, this would enable you to use the hardship every place you had to exclude somebody, but then to just let it float and ride and not even get into it if you're below the level, and don't have to get into it.

FLETCHER: That's alright.

RADAR: Okay.

FLETCHER: All I'm doing is objecting to not less than. I think if you're going to have some fisheries in which they don't feel the need of a maximum, you'd better tell them the reason in which we're not going to set any figure, but if you're going to have a maximum figure, then I think it has to be tailored to what it is you're going to accomplish.

RADAR: Well, there would be a maximum figure that would at some time be adopted. I mean the idea that was idea that was developed in the House was that they wanted the jurisdiction of the commission to extend to all fisheries, even those that don't need limited entry now, so that they wouldn't need, in fact, additional legislation, so you would empower them to at sometime set a maximum, and that's the only reason for the no less than,

you know, like...

FLETCHER: As I say, it's a (indisc.) thing. I think I would simply differentiate so that--don't put it all in one sentence. I was getting somewhere close to this on the airplane.

PALMER: How would you then define significance?

RADAR: Well, you would just have to make an effort at defining it. I don't know. In other words, all you're trying to do there is to say, I think that it's alright to ask who is more harmed and less harmed, but statewide we want some affluent standard that if somebody is harmed more than this degree they aren't going to be kicked out, right?

PALMER: That's what we say in our bill?

RADAR: Yeah. So all you want is a minimum to be cranked in in those instances where somebody in that category would not, you know, would still be waiting in line when you issued the maximum number. Then you'd want to guarantee that he gets a permit. So I think try and make one definition of significant, or substantial economic--you know, I see that as just a way of--I don't like that necessarily, but it's a way of keeping it simple and accomplishing the same thing, I think.

FLETCHER: Dave, look at what I did here. This is scratch paper. I've got an (indisc.) called determination of the maximum number of the initial issuances, not an all time maximum, but (indisc.). Now, as dealing with your specifically listed areas, because of that (indisc.). I had the one in front of me that listed those, but I'll ignore that now, and then, as to what would be the first category would be distressed fishery. This would have called for an initial determination that the optimum number, when finally set will be smaller than some prescribed number. Okay, whatever it is. Your previous license holders measured

in some rational way. (Indisc.) But, anyway, as for those you'll come up with a maximum. Now all of the fisheries--maybe you're not worrying as to what the optimum is. On the other hand, I see (indisc.). I can say, well, I can use some factor like 150 percent of all those in Alaska, and the peak number in five years will limit the new entries to 150 percent of those, or something like that. In other words, don't--

RADAR: How are you breaking it out? Let's see what kind of a formula you come up with on that.

FLETCHER: Oh, I don't know. I (indisc.), but not too many. For example, 157. In other words, if in fact you do scare people out of one fishery and they all go to another, don't let yourself immediately get into a bind, (indisc.) yourself over there, and put a tap on this one, even though you haven't labeled the fishery as presently distressed.

RADAR: Why not leave it totally discretionary for the commission to (indisc.).

FLETCHER: But I just felt that you might like to leave it here.

RADAR: Yeah, that makes--in other words, what you're really making them do is make an initial finding that for certain fisheries the optimum number will be smaller than the present number.

FLETCHER: And if they--that's all they have to decide is that they have to tell you what the optimum number is, and if they know that then they can (indisc.) the maximum. Yeah, sure, I thought that, and then down below you could set your standards for the people who will fit within these last ones. You want to rank each fishery separately, I don't think you have to worry. You can have some trouble over here, but rank each one separately so long as you don't come up with a terribly indiscriminating, well, even (indisc.) fisheries so severely impressed that you

may have to cut out (indisc.) first.

PALMER: Do you think you could come up with a uniform, or a threshold, a minimum cutoff (indisc.)?

FLETCHER: Well, (indisc.) such an idea (indisc.) said, okay, so you've used this and you've filled the maximum but you've still got some people severely (indisc.--simultaneous speech) if you think that you're going to find that to be a real problem.

RADAR: In other words, rather than saying all ones, twos and threes get in, just say fours and five can be kicked out. That's what it amounts to.

FLETCHER: I--I don't...

(Laughter)

PALMER: (Indisc.) We got a long ways (indisc.)

(Laughter--indiscernible).

UNIDENTIFIED: To restate what you were saying, Dave, and not less there, what do you say (indisc.) districts where significant hardship can be experienced by unsuccessful candidates, the maximum number of units shall be no more than the highest of the previous five years.

JACKMAN: Yeah, you could do it that way... your allowed for the possibility of changing that number.

RADAR: That would leave--course, that would be better in a sense cause it would leave more discretion to the commission. They'd just be instructed to set the maximum level at which would in no case exclude anybody who has suffered significant economic hardship, whatever that is.

UNIDENTIFIED: Then those ones that ^{Professor Fletcher} ~~the question~~ was concerned about, that there not exceeded (indisc.).

RADAR: I still think you'd be on firmer grounds if you'd just set the maximum according to the finding that he has here, and then say

that what you really acknowledge that what you're doing is issuing entry permits above the maximum in those particular, you know...

PALMER: For a hardship.

RADAR: Yeah, when there's a special hardship then you issue permits above the maximum

FLETCHER: How far have we come toward (indisc.) stated by John that the open market is the only way to go?

PALMER: Well, how far are we to be (indisc.) that we have a substantial reduction in gear by that method and maintain our position constitutionally as well?

FLETCHER: Well, I think those two are substantially the same proposition. That is, I feel very strongly that your system must contain both visually to the reader and in practice an operative mechanism for getting down your optimum numbers within the recent time. And I don't really care how you do it, but I feel very strongly that you've got to have it, because you otherwise look as if you're doing the wrong thing.

PALMER: Well, you know, your suggestion that we just put in here is almost called eye washing. If you wanted to we could say the commission is hereby directed to reduce entry permits by the buy back so that they will reach the optimum level in five years.

RADAR: Put a time limit in, you mean?

FLETCHER: Well, the only practicality is, do you really mean it? Are you going to furnish the money for them to do it.

PALMER: Well, we could maintain our buy back fund as it's written, to apply to each district and each fishery within the district, and the assessment, and so on and so forth. We could say that the commission will enter into the market place and buy as it

sees necessary and return a portion of those as it sees necessary on a ratio so that--or on a formula, so that within ten years, why, we're down to where we want to go. I guess we could work that in just as we have before.

RADAR: I think it's pretty mandatory in this language that's been developed, and I would argue strongly against an arbitrary year standard. We say, when the optimum number of units of gear is less than the maximum number of units of gear, the commission shall establish and administer a buy back fund, and then we say for each buy back fund it shall adopt regulations and annual assessments, and that the commission shall adopt regulations providing for the purchase of entry permits, et cetera, until you reach the optimum level. It doesn't leave, you know, you can't all of a sudden decide not to, you know, abandon a buy back. You know, you've got to move to that optimum level.

FLETCHER: Well, they can adopt regulations that would be (indisc.) as it was against it.

RADAR: If they did that, but then you can only be attacking the regulations, and certainly, the law isn't weak if they actually move towards those.

FLETCHER: Well, the law would be stronger if we're told that it was to set a system that were calculated to reach optimum level within five years.

RADAR: But you can't do that in some areas. You know, you're going to have to be (indisc.).

FLETCHER: You can't just take some areas and say approximately.

RADAR: But why say approximately? Well, I just don't agree. I think that as long as you have to move to the optimum, that it's perfectly reasonable to take fifteen years of the (indisc.)

FLETCHER: It may well be. I'm not saying that I would be unhappy with

the fifteen years. I would be less happy with fifteen than with five, but it might indeed depend upon certain things. You know if you spell it out what factors they should take into account, that's alright, too. Okay, I think it would be better if you made a (indisc.).

RADAR: You say a reasonable standard would be different for each fishery.
(Indisc.)

FLETCHER: Yeah. Sure.

RADAR: You can still set an outside (ph.), I guess, and no periods less than (indisc.)

FLETCHER: Yes.

RADAR: But, you see, this is also enabling that guideline to allow-- it needs to be future buy back program.

FLETCHER: Yes, I...

RADAR: It might crop up 20 years in the future. What I...

FLETCHER: That's my second (indisc.) says that if after optimum is reached, any change in the optimum should produce an imbalance, the commission is authorized to direct and reinstitute the (indisc.) program. Sure, I think that ought to be there.

RADAR: But if they were in fact moving, you know, just constantly for the optimum level of gear. Do you really think (indisc.)

FLETCHER: It just depends on how soon somebody can get himself damaged and gets in and litigates, and how sympathetic the judge is going to be.

RADAR: But at least you'd have it...

FLETCHER: If I had the statute before me which just exuded good faith, why, I'd feel happier (indisc.), that's all, and if can find in it the type of description that tells the commission to go ahead and do this, you're stronger.

RADAR: Dave, what (indisc.) the time you say you can't do it in five

years. What time is it, ten years?

JACKMAN: All I'm suggesting, it seems to me that it ought to be a different period, depending on the fishery. Some fisheries would be slower, some faster, so if you wanted just one outside limit, then it's fine with me if you want to put it in there. The only thing where that doesn't fit, and when we were discussing that you have to put in a special new provision now when you want to crank up buy back 20 years in the future like when you have a new change in your optimum level, and that starts the buy back program up again. There are only a few situations in which that would occur. But it might occur, you know.

FLETCHER: Line number 275 says that you may reinstitute--no, I can't read it--at any time (indisc.) by lowering the optimum so that there then exists an excess number of permit holders. You take about one sentence which would direct them to start up the program again if they needed to.

JACKMAN: Well, I don't have any objection to putting a number of years in there, I just think--I don't see how it would make that much difference in the bill.

RADAR: Well, I agree 100 percent with the Professor if, in fact, the buy back program is a sham, and you're not moving toward optimum level. The court's likely to strike it down, but I don't, you know, I don't think it looks like a sham here if they do try to buy it, you know.

JACKMAN: (Indisc.) a few words (Indisc.) five years from now (indisc.) give them another three years.

RADAR: Well, do you think it would have to be that short, or do you think 10 years is better?

PALMER: Well, 10 years is what we used.

FLETCHER: I don't know that I remembered. I wrote five this morning, but I think any reasonable figure is alright.

RADAR: Actually, in wording it you could fit it in so that when the buy back program is reinstated the 10-year period would immediately--would automatically apply to that buy back program. See what I mean?

FLETCHER: I suppose in the reinstatement you'd have the same general (indisc.), so then you'd have another 10 years before (indisc.) whatever (indisc.) was in effect.

RADAR: Just have it saying so it wouldn't be 10 years of the Act, it would just be 10 years from institution of the buy back fund, that is, setting the optimum level of gear, or something like that.

FLETCHER: You've got to--I visualize that the commission ought to periodically, whether annually or not, but ought periodically to review these optimums that have been set.

(Indisc.--simultaneous speech)

FLETCHER: I don't care whether it's annual, but I want it to be (indisc.). Whether you could put in a substitute for it.

PALMER: (Indisc.) annual. We just said that they shall review, and we'll let them determine it.

FLETCHER: Yeah. That's alright, but I do believe that to be willing to settle for not less than every five years, or something like that.

JACKMAN: But the implication is that they have to make the changes (indisc.)

FLETCHER: No, no. Review. (Indisc.) That's alright. That's my idea. And my reason for doing this is that it's a bolstering thing. It's to reinforce the idea now of what you're trying to do.

PALMER: Our language says the determination, and the determination

was applied to the number of new entries that would be available--
be made available out of what they buy back, shall be made by
using a ratio which will result as nearly as possible in a
reduction of the number of entry permits to the optimum number
of entry permits for each type of gear in each of the (indisc.)
areas within 10 years after the initial issuance. The permit
number is set. They just come up with a formula themselves based
on how many they buy back, only a portion of those...

UNIDENTIFIED: Where are you now on this?

PALMER: Page 12. Course, this is the content that all number threes
have to sell back, which we've largely discarded. Do you feel
that--suppose we went ahead and said, alright, all those who
come in have the same transfer right and we gain our reduction
in numbers simply by the commission being in the market place
and bidding against dealers, buying out when it needs to buy
out--okay, do you think that of those that are bought out that
we should substantially strengthen our case by making a portion
of them back available to new entries? Is there any need to
do this at all?

FLETCHER: I think the only conflict you would have to think about
doing it, would be if the commission buying was so (indisc.)
that you were in effect cutting out a free market. I can't
imagine that the commission could be that active, unless you
get into the situation where nobody's willing to sell. John
predicts that's not going to be so. I don't know.

RADAR: There will always be people going broke, dying, changing hands,
wanting to quit, to make money.

PALMER: Now wait a minute. Are you considering the fact that what
the House has in its bill, and what we've retained in ours,
the 6-month waiting period?

RADAR: Well, I don't think that makes that much sense (ph).

(End of tape)