

HB

48

NOTIFICATION

BILL	LETTER/PHONE	INFORMED	HEARING DATE
HB 487	465-3500	Governor's Office	2/8/79
	465-4100	Fish and Game Dept. (to bring Council note)	2/8/79
	586-3456	Commercial Fisheries ^{John Garner} Entry Commission	2/8/79
	747-6850	Northern S.E. Regional Aquaculture Assoc. - Derek Poon, Pres.	2/8/79
	3/12	Northern S.E. Reg. Aquaculture Assoc. (SITKA)	3/13
	3/12	Southern S.E. Reg. Aquaculture Assoc. (Ketchikan)	3/13
	3/12	Sheldon Jackson Aquaculture Program (SITKA)	3/13
	3/12	Prince William Sound Aquaculture Assoc. (Cordova)	3/13
	3/12	Cook Inlet Aquaculture Assoc. (Soldotna)	3/13
	3/12	Commercial Fisheries Entry Commission	3/13
	3/12	Fish and Game Dept. - FRED	3/13
		Division - Bob Roy to testify	
	3/12	United Fishermen of Alaska	3/13

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIAL

1-24-79

Date: 2/10/79

Mr. Speaker:

The Committee on RESOURCES has had HR 48

"An Act relating to special harvest area entry permits; eff. date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

**MEMBERS SIGNING
DO PASS**

**MEMBERS HAVING
OTHER RECOMMENDATIONS:**

CHAIRMAN

14-15-46

January 15, 1979

Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a bill to authorize the issuance of special harvest area entry permits to private non-profit hatcheries. These permits would enable hatchery operators to harvest and sell surplus fish returning to their facilities, with conventional gear, but without ordinary limited-entry permits. This would be accomplished under restrictions and conditions established by the Board of Fisheries and the Department of Fish and Game. Inefficiency and waste would be eliminated by such harvesting. Like the educational-entry permits authorized by sec. 10, ch. 123 SLA 1978, special harvest area permits will bridge a small gap in the limited entry law.

Sincerely,

S/JSJH

Jay S. Hammond
Governor

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. Law Log 095 HOUSE BILL NO. 48
 Title See attached "Subject of Proposed Bill"
 Requested by Office of the Governor Date December 14, 1978

II. FISCAL DETAIL.
 Agency Affected Office of the Governor, Alaska Commercial Fisheries Entry Commission
 Program Category Affected HRMEC
 Budget Request Unit(s) Affected Alaska Commercial Fisheries Entry Commission

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
FULL TIME						
PART TIME						
TEMPORARY						

III ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This bill will not reduce revenue currently being collected for the General fund and the number of permits issued will be substantially the same as in past years.

DATE December 14, 1978 PREPARED BY Derrill L. Johnson Derrill L. Johnson
 AGENCY Office of Governor/Commercial Fisheries Entry
 PHONE 586-3356
 () of Legislative Finance
 () Budget and Management
 () Prime Sponsor (First Legislator Named)

ALASKA STATE LEGISLATURE

ELEVENTH Legislature **FIRST** Session

HOUSE BILL NO. 48
By THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

An Act relating to special
harvest area entry permits; and
providing for an effective date.

harvest area entry permits

Introduced in the House 1-24-1979

HISTORY IN THE HOUSE

1979
Jan. 24

Read first time and referred to Committee on Resources and Judiciary

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by Speaker
Sent to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19

Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reconsideration

PASS	Effective Date
Yeas	Yeas
Nays	Nays
Absent	Absent
Excused	Excused

Reported correctly engrossed
Signed by President
Returned to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19

Received from Senate

Concurred in Senate amendment thus adopting:
VOTE

Failed to concur in Senate amendment; asked Senate to recede
VOTE

Senate receded from amendment
VOTE

Senate failed to recede from amendment
VOTE

CC appointed by House

CC appointed by Senate

CC adopted by House
VOTE

CC adopted by Senate
VOTE

To enrolling
Reported correctly enrolled
Sent to Governor
by Governor

Filed with Lt. Governor

Chapter No



UNITED FISHERMEN OF ALASKA

MAILING ADDRESS & OFFICE
197 SOUTH FRANKLIN ST
JUNEAU ALASKA 99801

Representative Alvin Osterback
Chairman
House Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Osterback:

The United Fishermen of Alaska endorse House Bill 48. We certainly hope that your committee acts favorably on this legislation.

Sincerely,

Ms. Shari Gross
Executive Director



UNITED FISHERMEN OF ALASKA

MAILING ADDRESS & OFFICE
197 SOUTH FRANKLIN ST
JUNEAU ALASKA 99801

Representative Alvin Osterback
Chairman
House Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Osterback:

The United Fishermen of Alaska endorse House Bill 48. We certainly hope that your committee acts favorably on this legislation.

Sincerely,

Shari Gross

Ms. Shari Gross
Executive Director

(Derek Poon of)
Southern S.E. Regional
Aquaculture Assoc.

3/13 by
phone

Approves of HB48
with 3 points

- hatchery should have primary purpose of contributing to common property fisheries
- hatchery budgets should have review mechanism
- special harvest area should be available to common property harvest after brood stock and cost recovery

S. Southeast Reg. Aquaculture Assoc. takes same stand as UFA.

Department of Fish & Game

Proposed amendment to House Bill 48.

Sec. 16. 43. 420. AUTHORIZED GEAR. For the purposes of harvesting salmon; in the special harvest area, a special harvest area permit holder may employ any fishing gear designated as legal gear in the applicable special harvest area by the Board of Fisheries. The Board of Fisheries may designate any gear as legal gear in the special harvest area not withstanding any other prohibition in Title 16.

JA02 0005 13.55 JA01 0030 13.55 03/12/79

HB 48

TO REP. OSTERBACK, CHAIRMAN, HOUSE RESOURCES
COPY TO ALL COMMITTEE MEMBERS
FROM PEGGY, KETCHIKAN INFO OFFICE

THE FOLLOWING IS FROM MR. RON WENDTE, ADMINISTRATIVE COORDINATOR,
SOUTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION:

THE SOUTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION HAS REVIEWED
HOUSE BILL 48 DEALING WITH SPECIAL HARVEST AREA ENTRY PERMITS AND
URGES YOU TO PASS THIS BILL. THE ADOPTION OF HB. 48 IS IMPORTANT
FOR THE PLANNING OF S.S.R.A.A. AND IS ESSENTIAL FOR THE SUCCESS OF
NON-PROFIT HATCHERIES IN THE STATE OF ALASKA. SIGNED: RONALD W. WENDTE,
ADMINISTRATIVE COORDINATOR PEG/EOM

TELEGRAM

ALASKA COMMUNICATIONS, INC.

P. ONE: 586-6442

JU. LAU, ALASKA 99802

02344 NL TDA SITKA ALASKA :35 03-12 520P AST

1979 MAR 13 AM 4 47

HB 48

PMS HOUSE RESOURCES COMMITTEE

PGUCH V

JUN

SHELDON JACKSON COLLEGE HATCHERY STAFF SUPPORTS THE CONCEPT OF
HOUSE BILL 48 OF ESTABLISHING A SPECIAL HARVEST AREA ENTRY
PERMIT FOR HOLDERS OF PRIVATE NON-PROFIT HATCHERY PERMIT PROVIDED
THAT

(1) SAID ENTRY PERMIT ELIMINATES RATHER THAN ADDS TO THE NECESSITY
TO OBTAIN OTHER ENTRY, INTERIM-USE AND EDUCATIONAL PERMITS FOR THE
PURPOSE OF HATCHERY HARVEST AND

(2) IT DOES NOT ELIMINATE THE ALTERNATIVE OF CONTRACTING WITH
LIMITED ENTRY COMMERCIAL FISHERMEN TO HARVEST THE HATCHERIES FISH.
WE SUPPORT THIS CONCEPT ON THE BASIS OF LOGICAL COST EFFECTIVENESS
IN SALMON HATCHERY HARVESTING AND BROODSTOCK HANDLING WHICH BENEFITS
BOTH THE HATCHERY AND THE COMMON PROPERTY FISHERY.


MEL SEIFERT, DIRECTOR

SJC AQUA-CULTURE PROGRAM

Chapter 43. Regulation of Entry into Alaska Commercial Fisheries.

Article

- 1. Creation of the Alaska Commercial Fisheries Entry Commission (§§ 16.43.010 — 16.43.080)
- 2. Powers and Duties of the Commission (§§ 16.43.100 — 16.43.120)
- 3. Requirements for Entry Permits (§§ 16.43.140 — 16.43.182)
- 4. Initial Issuance of Entry Permits (§§ 16.43.200 — 16.43.270)
- 5. Reduction to Optimum Number of Entry Permits (§§ 16.43.290 — 16.43.330)
- 6. General Provisions (§§ 16.43.350 — 16.43.380)

See pages from Supplement


Legislative committee report. — For am S), see 1973 House Journal, p 503; 1973 report on ch. 79, SLA 1973 (SCS CSHB 126 Senate Journal Supplement No. 15

Article 1. Creation of the Alaska Commercial Fisheries Entry Commission.

Section	Section
10 Purpose and findings of fact	60 Compensation of members of the Alaska Commercial Fisheries Entry Commission
20 Alaska Commercial Fisheries Entry Commission	70 Legal counsel
30 Term of office, vacancy	80 Employment of personnel
40 Quorum	
50 Qualifications	

Sec. 16.43.010. Purpose and findings of fact. (a) It is the purpose of this chapter to promote the conservation and the sustained yield management of Alaska's fishery resource and the economic health and stability of commercial fishing in Alaska by regulating and controlling entry into the commercial fisheries in the public interest and without unjust discrimination.

(b) The legislature finds that commercial fishing for fishery resources has reached levels of participation, on both a statewide and an area basis, that have impaired or threaten to impair the economic welfare of the fisheries of the state, the overall efficiency of the harvest, and the sustained yield management of the fishery resource. (§ 1 ch 79 SLA 1973)

Applied in *Isakson v Rickey*, Sup Ct Op No 1267 (File No 2350), 550 P 2d 359 (1976)

Sec. 16.43.020. Alaska Commercial Fisheries Entry Commission. (a) There is established the Alaska Commercial Fisheries Entry Commission as a regulatory and quasi-judicial agency of the state. The commission consists of three members appointed by the governor and confirmed by the legislature in joint session.

... for a term of ~~two~~ years, and may be designated chairman for successive two-year terms. (§ 1 ch 79 SLA 1973)

Sec. 16.43.030. Term of office; vacancy. (a) The members of the commission shall be appointed for terms of four years. Initial appointments shall be as follows: one member for two years, one member for three years, and one member for four years. The governor may remove a commissioner from office for cause including but not limited to incompetence, neglect of duty, or misconduct in office. A commissioner, to be removed for cause, shall be given a copy of the charges against him and afforded an opportunity to be publicly heard in person or by counsel in his own defense upon not less than 30 days notice. If a commissioner is removed for cause, the governor shall file with the lieutenant governor a complete statement of all charges made against the commissioner and his findings based on the charges, together with a complete record of the proceedings.

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

(c) A vacancy on the commission does not impair the authority of a quorum of commissioners to exercise all the powers and perform all the duties of the commission. (§ 1 ch 79 SLA 1973)

Sec. 16.43.040. Quorum. Two members of the commission constitute a quorum for the transaction of business, for the performance of a duty or for the exercise of a power of the commission. (§ 1 ch 79 SLA 1973)

Sec. 16.43.050. Qualifications. The commission shall consist of three members with a broad range of professional experience, none of whom has a vested economic interest in an interim-use permit, entry permit, commercial fishing vessel or gear, or in any fishery resource processing or marketing business. (§ 1 ch 79 SLA 1973)

Sec. 16.43.060. Compensation of members of the Alaska Commercial Fisheries Entry Commission. Members of the commission are in the exempt service and shall receive an annual salary as established under AS 39.23. (§ 1 ch 79 SLA 1973; am § 5 ch 47 SLA 1974; am § 1 ch 148 SLA 1976; am § 2 ch 263 SLA 1976)

Effect of amendments. — The 1974 amendment voids this section.
The first 1976 amendment deleted "payable in equal monthly installments" from the end of the section.

The second 1976 amendment substituted "as established under AS 39.23" for "equal to that of a district court judge payable in equal monthly installments."

matters arising in the discharge of its duties and represent the commission in suits to which it is a party. However, the commission may retain additional legal counsel as appropriate. (§ 1 ch 79 SLA 1973)

Sec. 16.43.080. Employment of personnel. (a) The commission may employ those persons necessary to carry out the purposes of this chapter. Employees of the commission are in the exempt service under AS 39.25.110.

(b) In addition to its staff of regular employees, the commission may contract for and engage the services of consultants, experts and hearing officers as necessary. (§ 1 ch 79 SLA 1973)

Article 2. Powers and Duties of the Commission.

Section	Section
100. General powers	120 Application of Administrative Procedure Act
110. Regulations and hearing procedures	

Sec. 16.43.100. General powers. (a) To accomplish the purposes set out in § 10 of this chapter the commission shall:

- (1) regulate entry into the commercial fisheries for all fishery resources in the state;
- (2) establish priorities for the application of the provisions of this chapter to the various commercial fisheries of the state;
- (3) establish administrative areas suitable for regulating and controlling entry into the commercial fisheries;
- (4) establish, for all types of gear, the maximum number of entry permits for each administrative area;
- (5) designate, when necessary to accomplish the purposes of this chapter, particular species for which separate interim-use permits or entry permits will be issued;
- (6) establish qualifications for the issuance of entry permits;
- (7) issue entry permits to qualified applicants;
- (8) issue interim-use permits as provided in §§ 210 — 220 of this chapter;
- (9) establish, for all types of gear, the optimum number of entry permits for each administrative area;
- (10) administer the buy-back program provided for in §§ 310 — 320 of this chapter to reduce the number of outstanding entry permits to the optimum number of entry permits;
- (11) provide for the transfer and reissuance of entry permits to qualified transferees;
- (12) provide for the transfer and reissuance of entry permits for alternative types of legal gear, in a manner consistent with the purposes of this chapter;

of this chapter.

(b) The commission may do all things necessary to the exercise of its powers under this chapter, whether or not specifically designated in this chapter. (§ 1 ch 79 SLA 1973)

Editor's note. — Section 14, ch. 105, SLA 1977, effective January 1, 1978, added paragraph (14) to subsection (a). Paragraph (14) reads "(14) administer the issuance of commercial fishing vessel licenses under AS 16.06.490."

Sec. 16.43.110. Regulations and hearing procedures. (a) The commission may adopt regulations, consistent with law, necessary or proper in the exercise of its powers or for the performance of its duties under this chapter.

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

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

(d) The commission, each commissioner or an employee authorized by the commission may administer oaths, certify to all official acts, and issue subpoenas and other process to compel the attendance of witnesses and the production of testimony, records, papers, accounts and documents in an inquiry, investigation, hearing, or proceeding before the commission in any part of the state. The commission may petition a court to enforce its subpoenas or other process. (§ 1 ch 79 SLA 1973)

Sec. 16.43.120. Application of Administrative Procedure Act. (a) The administrative adjudication procedures of the Administrative Procedure Act (AS 44.62) do not apply to adjudicatory proceedings of the commission except that final administrative determinations by the commission are subject to judicial review as provided in AS 44.62.560 — 44.62.570.

(b) AS 44.62.010 — 44.62.320 and 44.62.640 apply to regulations adopted by the commission. (§ 1 ch 79 SLA 1973)

Article 3. Requirements for Entry Permits.

Section	Section
140 Permit required	170 Transfer of entry permits
150 Terms and conditions of entry permit, annual renewal	180 Emergency transfers
160 Fees	182 Entry permit deductible as business expense

Sec. 16.43.140. Permit required. (a) After January 1, 1974, no person may operate gear in the commercial taking of fishery resources without a valid entry permit or a valid interim-use permit issued by the commission.

(b) A permit is not required of a crewman or other person assisting in the operation of a unit of gear engaged in the commercial taking of fishery resources as long as the holder of the entry permit or the interim-use permit for that particular unit of gear is at all times present and actively engaged in the operation of the gear.

(c) A person may hold more than one interim-use or entry permit issued or transferred under this chapter only for the following purposes:

- (1) fishing more than one type of gear;
- (2) fishing in more than one administrative area;
- (3) harvesting particular species for which separate interim-use or entry permits are issued. (§ 1 ch 79 SLA 1973)

Applied in *Isakson v. Rickey*, Sup. Ct. Op. P. 1267 (File No. 2550), 550 P.2d 359 (1976)

Sec. 16.43.150. Terms and conditions of entry permit; annual renewal. (a) Each entry permit authorizes the permittee to operate a unit of gear within a specified administrative area.

(b) The holder of an entry permit shall have the permit in his possession at all times when engaged in the operation of gear for which it was issued.

(c) Each entry permit is issued for a term of one year and is renewable annually.

(d) Failure to renew an entry permit for a period of two years from the date of last renewal results in a forfeiture of the entry permit to the commission, except as waived by the commission for good cause.

(e) An entry permit constitutes a use privilege which may be modified or revoked by the legislature without compensation.

(f) An entry permit survives the death of the holder.

(g) An entry permit may not be:

- (1) pledged, mortgaged, leased, or encumbered in any way;
- (2) transferred with any retained right of repossession or foreclosure; or
- (3) attached, distrained, or sold on execution of judgment or under any other process or order of any court.

(h) Upon the death of an entry permit holder, the permanent permit shall be transferred by the commission directly to the surviving spouse by right of survivorship unless a contrary intent is manifested. When no spouse survives, the rights of the decedent pass as part of his estate. (§ 1 ch 79 SLA 1973; am §§ 1, 2 ch 73 SLA 1977)

Effect of amendment. — The 1977 amendment inserted "leased" in paragraph (1) of subsection (g) and added subsection (h)

Sec. 16.43.160. Fees. (a) The commission shall establish annual fees for the issuance and annual renewal of entry permits or interim-use permits to reflect the cost of administering this chapter. Fees collected under this section shall be paid into the general fund.

(b) Annual fees established under this section shall be no less than \$10 and no more than \$100 and shall reasonably reflect the different rates of economic return for different fisheries.

(c) The holder of an entry permit or interim-use permit who has a net family income falling within the Federal Social Security Administration poverty guidelines, adjusted by the commission to reflect appropriate cost-of-living differentials, is subject to a maximum annual fee of \$5. (§ 1 ch 79 SLA 1973)

Editor's note. — Section 15, ch 105, SLA 1977, effective January 1, 1978, amended this section to read as follows: (a) The commission shall establish annual fees for the issuance and annual renewal of entry permits or interim-use permits. Fees collected under this section shall be paid into the general fund, except for an amount equal to 60 per cent of the fee each permit holder would otherwise be obligated to pay for a crewmember license under § 480 of this chapter which shall be paid into the fishermen's fund under AS 23.35.060

(b) Annual fees established under this section shall be no less than \$10 and no more than \$750 and shall reasonably reflect the different rates of economic return for different fisheries

(c) The resident holder of an entry permit or interim-use permit who has a net family income falling within the Federal Community Services Administration poverty guidelines, adjusted by the commission to reflect appropriate cost-of-living differentials, is subject to a maximum annual fee of \$15

Sec. 16.43.170. Transfer of entry permits. (a) Entry permits and interim-use permits are transferable only through the commission as provided in this section and § 180 of this chapter and under regulations adopted by the commission.

(b) Except as provided in (c) of this section, the holder of an entry permit may transfer his permit to another person or to the commission upon 60 days notice of intent to transfer under regulations adopted by the commission. No sooner than 60 days nor later than 12 months from the date of notice to the commission, the holder of an entry permit may transfer his permit. If the proposed transferee, other than the commission, can establish present ability to participate actively in the fishery, the commission shall approve the transfer and reissue the entry permit to the transferee.

(c) If the number of outstanding entry permits for a fishery is greater than the optimum number of entry permits established under §§ 290 — 300 of this chapter, the holder of an entry permit who qualified for that entry permit in a priority classification designated under § 250(c) of this chapter may transfer his permit only to the commission. The transfer to the commission shall be made under the buy-back provisions of §§ 310 — 320 of this chapter.

(d) Repealed by § 9 ch 73 SLA 1977. (§ 1 ch 79 SLA 1973; am § 1 ch 126 SLA 1974; am §§ 3, 4, 9 ch 73 SLA 1977)

Effect of amendments. — The 1974 amendment, in subsection (b), substituted "60 days" for "six months" in the first and second sentences and "12 months" for "eighteen months" in the second sentence.

The 1977 amendment substituted "Entry permits and interim-use permits are" for "an entry permit is" at the beginning of subsection (a), deleted "and (d)" following "Except as provided in (c)" near the

beginning of the first sentence of subsection (b), and repealed subsection (d), which provided for a five-year prohibition on transfer of entry permit if an applicant eligible for such permit under AS 16.43.260 so elected.

Cited in Isakson v Riekey, Sup Ct Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

Sec. 16.43.180. Emergency transfers. (a) The commission shall adopt regulations providing for the temporary transfer of entry permits and interim-use permits to alleviate hardship caused by illness, disability, or death of a permit holder so that another person may operate the transferor's vessel and gear, or another vessel and other gear if the transferor's has been destroyed or seriously damaged, for the remainder of the season, or in the case of illness or disability, for the duration of the illness or disability if that is shorter than the remainder of the season. Interim-use permits are otherwise nontransferable.

(b) The commission shall adopt regulations providing for the temporary transfer of an entry permit upon the death of the permittee pending final disposition of the permit as a part of the permittee's estate. (§ 1 ch 79 SLA 1973; am § 5 ch 7; SLA 1977)

Effect of amendment. — The 1977 amendment substituted the language beginning "entry permits and interim-use permits" for "an entry permit when sickness, injury, or other unavoidable

hardship prevents the permittee from participating in the fishery" in the first sentence of subsection (a) and added the second sentence of that subsection

Sec. 16.43.182. Entry permit deductible as business expense. An entry permit purchased under this chapter is deductible as a business expense as provided in AS 43.20.031(h). (§ 6 ch 73 SLA 1977)

Article 4. Initial Issuance of Entry Permits.

Section	Section
200 Administrative areas	250 Standards for initial issue of entry permits
210 Interim-use permit, qualifications	260 Application for initial issue of entry permits
220 Terms and conditions of interim-use permits	270 Initial issuance of entry permits
230 Designation of distressed fisheries	
240 Determination of the maximum number of entry permits for initial issue	

Sec. 16.43.200. Administrative areas. (a) The commission shall establish administrative areas suitable for regulating and controlling

entry into the commercial fisheries. The commission shall make the administrative areas reasonably compatible with the geographic areas for which specific commercial fishing regulations are adopted by the Board of Fisheries.

(b) The commission may modify or change the boundaries of administrative areas when necessary and consistent with the purposes of this chapter. (§ 1 ch 79 SLA 1973; am § 30 ch 206 SLA 1975)

Effect of amendment. — The 1975 amendment substituted "Board of Fisheries" for "Board of Fish and Game" at the end of the second sentence of subsection (a).

Sec. 16.43.210. Interim-use permit; qualifications. (a) Pending the establishment of the maximum number of entry permits under § 240 of this chapter and the issuance of entry permits under § 270 of this chapter, the commission shall issue interim-use permits under regulations promulgated by the commission for each fishery, to all applicants who can establish their present ability to participate actively in the fishery for which they are making application, except as provided under (e) of this section.

(b) Before the issuance of the maximum number of entry permits for a given fishery, the commission may issue an interim-use permit to an applicant who may later become eligible for an entry permit under § 270 of this chapter.

(c) To the extent that the commissioner of fish and game authorizes it under AS 16.05.050(11), the commission may grant an interim-use permit to a person to engage in the commercial taking from a fishery on an experimental basis.

(d) The sustained yield management and economic health of the following fisheries is severely impaired as a result, among other factors, of too many units of gear participating in the commercial harvest:

- (1) Bristol Bay registration area — drift gillnet fishery;
- (2) Cook Inlet registration area — drift gillnet fishery;
- (3) Prince William Sound registration area — drift gillnet fishery.

(e) For a fishery specified under (d) of this section, an interim-use permit may be issued for 1974 only to an applicant who has harvested the fishery resource commercially while holding a gear license issued under AS 16.05.536 — 16.05.670, before January 1, 1973. (§ 1 ch 79 SLA 1973)

Editor's note. — Alaska Statutes 16.05.536 and 16.05.620, referred to in subsection (e), were repealed by § 12, ch 71, SLA 1972, and § 2, ch 159, SLA 1968, respectively Alaska Statutes 16.05.540 — 16.05.650 and 16.05.670, referred to in subsection (e), were repealed by § 19, ch 105, SLA 1977, effective January 1, 1978.

Sec. 16.43.220. Terms and conditions of interim-use permits. (a) The commission shall adopt regulations specifying the dates and places of application, the procedures to be followed in renewal of the

interim-use permit including the time, place of its renewal, and for any other purpose incident to the administration of interim-use permits for that fishery. An interim-use permit shall expire upon the final determination of the holder's eligibility for an entry permit.

(b) Repealed by § 9 ch 73 SLA 1977.

(c) The holder of an interim-use permit must have the permit in his possession at all times when engaged in the operation of the gear for which it was issued. (§ 1 ch 79 SLA 1973; am § 2 ch 126 SLA 1974; am § 9 ch 73 SLA 1977)

Effect of amendments. — The 1974 amendment, 1) subsection (b), deleted from the end of the first sentence provisions relating to causes of hardship and to the duration of a temporary transfer of an interim-use permit. The 1977 amendment repealed subsection (b), which read "The commission shall adopt regulations for the temporary transfer of interim-use permits to alleviate hardship. Interim-use permits are otherwise nontransferable."

Sec. 16.43.230. Designation of distressed fisheries. Pending the determination of maximum numbers of entry permits under § 240 of this chapter and before the initial issue of entry permits under § 270 of this chapter, the commission shall designate as distressed fisheries those for which it estimates that the optimum number of entry permits will be less than the highest number of units of gear fished in that fishery during any one of the four years immediately preceding January 1, 1973. (§ 1 ch 79 SLA 1973)

Sec. 16.43.240. Determination of the maximum number of entry permits for initial issue. (a) Except as provided in § 270(a) of this chapter, the maximum number of entry permits for a distressed fishery designated under § 230 of this chapter shall be the highest number of units of gear fished in that fishery during any one of the four years immediately preceding January 1, 1973.

(b) When the commission finds that a fishery not designated as a distressed fishery under § 230 of this chapter has reached levels of participation which require the limitation of entry in order to achieve the purposes of this chapter, the commission shall establish the maximum number of entry permits for that fishery. (§ 1 ch 79 SLA 1973)

Sec. 16.43.250. Standards for initial issue of entry permits. (a) Following the establishment of the maximum number of units of gear for a particular fishery under § 240 of this chapter, the commission shall adopt regulations establishing qualifications for ranking applicants for entry permits according to the degree of hardship which they would suffer by exclusion from the fishery. The regulations shall define priority classifications of similarly situated applicants based upon a reasonable balance of the following hardship standards:

- (1) degree of economic dependence upon the fishery, including but not limited to percentage of income derived from the fishery, reliance on

alternative occupations, availability of alternative occupations, investment in vessels and gear;

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

(b) The commission shall designate in the regulations those priority classifications of applicants who would suffer significant economic hardship by exclusion from the fishery.

(c) The commission shall designate in the regulations those priority classifications of applicants who would suffer only minor economic hardship by exclusion from the fishery. (§ 1 ch 79 SLA 1973)

Determinative factor in allocation of initial permits. — The legislative history rather clearly demonstrates that from the outset the framers of this legislation intended "hardship" to be the

determinative factor in the allocation of the initial free limited entry permits. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

Sec. 16.43.260. Application for initial issue of entry permits. (a) The commission shall accept applications for entry permits only from applicants who have harvested fishery resources commercially while participating in the fishery as holders of gear licenses issued under AS 16.05.530 — 16.05.670 before the qualification date established in (d) or (e) of this section.

(b) The commission shall establish the opening and closing dates, places and form of application for entry permits for each fishery. The commission may require the submission of specific verified evidence establishing the applicant's qualifications under the regulations adopted under § 250 of this chapter.

(c) When an applicant is unable to establish his qualifications for an entry permit by submitting the specific verified evidence required in the application by the commission, he may request and obtain an administrative adjudication of his application according to the procedures established in § 110(b) of this chapter. At the hearing he may present alternative evidence of his qualifications for an entry permit.

(d) Except as provided in (c) of this section, an applicant shall be assigned to a priority classification based solely upon his qualifications as of January 1, 1973.

(e) When the commission establishes the maximum number of entry permits for a particular fishery under § 240 of this chapter after January 1, 1973, an applicant shall be assigned to a priority classification based solely upon his qualifications as of January 1 of the year during which the commission establishes the maximum number of entry permits for the fishery for which application is made. (§ 1 ch 79 SLA 1973; am § 3 ch 126 SLA 1974)

Editor's note. — Alaska Statutes 16.05.530 and 16.05.620, referred to above, were repealed by § 12, ch. 71, SLA 1972, and § 2, ch. 159, SLA 1968, respectively.

Alaska Statutes 16.05.540 through 16.05.650 and 16.05.670, referred to above, were repealed by § 19, ch. 105, SLA 1977, effective January 1, 1978.

Effect of amendment. — The 1974 amendment substituted "the qualification date established in (c) or (e) of this section" for "January 1, 1973" at the end of subsection (a).

Subsection (a) is unconstitutional. — Subsection (a), which limits applications for entry permits to persons holding gear licenses prior to January 1, 1973, violates the equal protection rights, guaranteed by the state and federal constitutions, of commercial fishermen who obtained gear licenses after January 1, 1973. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

Holding a gear license before January 1, 1973, does not bear a fair and substantial relation to the purpose of the legislation, which is the segregation of hardship and nonhardship cases. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

Because persons are automatically excluded from the class eligible to apply for permits, in spite of active participation and economic dependence upon the fishery, the January 1, 1973 classification is under-inclusive with respect to persons allowed to apply for permits. Because persons who have long since retired and have no economic dependence upon the

fishery as of the cutoff date are allowed to apply for entry permits, the classification is overbroad with respect to those allowed to apply. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

Purpose of provision in subsection (a) limiting applications. — In essence, the purpose of the provision in subsection (a) limiting applications for entry permits to those holding gear licenses prior to January 1, 1973, was to segregate hardship and nonhardship cases at the application phase of the permit issuance process. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

Subsection (a) was not intended to modify the allocation policy of the legislation, but rather was adopted to further that policy by simplifying the ranking process. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

When the act is viewed as a whole, it becomes apparent that the contested provision in subsection (a) was inserted because it was assumed that those persons who obtained gear licenses after January 1, 1973, would be unable to demonstrate the requisite hardship for an entry permit. Hence, for the sake of administrative convenience, it was decided that they need not even submit applications to the commission. *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

Sec. 16.43.270. Initial issuance of entry permits. (a) The commission shall issue entry permits, for each fishery, first to all qualified applicants in the priority classifications designated under § 250(b) of this chapter and then to qualified applicants in order of descending priority classification, until the number of entry permits issued equals the maximum number of entry permits established under §§ 230 — 240 of this chapter for each fishery, except that no person within a priority classification specified under § 250(b) of this chapter may be denied an entry permit.

(b) If, within the lowest priority classification of qualified applicants to which some entry permits may be issued, there are more applicants than there are entry permits to be issued, then the allocation of entry permits within that priority classification shall be by lottery.

(c) If, at the time entry permits are issued, some applicants are still appealing the findings of an administrative adjudication under § 260 of this chapter, a sufficient number of permits shall be reserved out of the permits to be issued to protect the rights of those applicants, assuming all the appeals will be resolved in favor of the applicants. In the event that all appeals are not resolved in favor of the applicants, the remaining

entry permits shall be allocated to the next most qualified applicants as provided in (a) and (b) of this section. (§ 1 ch 79 SLA 1973)

Article 5. Reduction to Optimum Number of Entry Permits.

Section	Section
290. Optimum number of entry permits	320. Administration of the buy-back program
300. Revisions of optimum number of entry permits	330. Issuance of new entry permits
310. Establishment of buy-back funds	

Sec. 16.43.290. Optimum number of entry permits. Following the issuance of entry permits under § 270 of this chapter, the commission shall establish the optimum number of entry permits for each fishery based upon a reasonable balance of the following general standards:

(1) the number of entry permits sufficient to maintain an economically healthy fishery that will result in a reasonable average rate of economic return to the fishermen participating in that fishery, considering time fished and necessary investments in vessels and gear;

(2) the number of entry permits necessary to harvest the allowable commercial take of the fishery resource during all years in an orderly, efficient manner, and consistent with sound fishery management techniques;

(3) the number of entry permits sufficient to avoid serious economic hardship to those currently engaged in the fishery, considering other economic opportunities reasonably available to them. (§ 1 ch 79 SLA 1973)

Sec. 16.43.300. Revisions of optimum number of entry permits. (a) The commission may increase or decrease the optimum number of entry permits for a fishery when one or more of the following conditions makes a change desirable considering the purposes of this chapter:

(1) an established long-term change in the biological condition of the fishery has occurred which substantially alters the optimum number of entry permits permissible applying the standards set out in § 290 of this chapter;

(2) an established long-term change in market conditions has occurred, directly affecting the fishery, which substantially alters the optimum number of entry permits permissible under the standards set out in § 290 of this chapter.

(b) If the commission decreases the optimum number of entry permits for a fishery, the number of entry permits may be reduced only under the voluntary buy-back provisions set out in §§ 310 — 320 of this chapter. (§ 1 ch 79 SLA 1973)

Sec. 16.43.310. Establishment of buy-back funds. (a) When the optimum number of entry permits is less than the number of entry

permits outstanding in a fishery, the commission shall establish and administer a buy-back fund for that fishery for the purpose of reducing the number of entry permits to the optimum number within no more than 10 years, at a rate to be established by the commission.

(b) For each buy-back fund, the commission shall adopt regulations establishing annual assessments on holders of entry permits of not more than seven per cent of the gross value of the total annual catch attributable to a holder's entry permit, except that the holder of a permit who has made no commercial landings in a given year will be assessed the average assessed all other holders of the same type of permit in that year. Assessments will be paid into the specific buy-back fund for which they are collected.

(c) Assessments need not equal annual buy-back fund expenditures within a particular fishery but shall be continued until the buy-back fund for that fishery has been reimbursed. (§ 1 ch 79 SLA 1973)

Sec. 16.43.320. Administration of the buy-back program. (a) The commission shall adopt regulations providing for the purchase of entry permits, vessels, and gear at fair market value with money accumulated in the buy-back fund for each fishery. The buy-back program for a fishery shall terminate when the number of entry permits is reduced to the optimum and the buy-back fund has been reimbursed.

(b) When entry permits subject to the restrictions in § 250(c) of this chapter and the vessels and gear related to those permits are offered for sale to the commission, the commission shall purchase the permits and related vessels and gear at fair market value, if sufficient funds are available in the appropriate buy-back fund. (§ 1 ch 79 SLA 1973)

Sec. 16.43.330. Issuance of new entry permits. (a) When the number of outstanding entry permits for a fishery is less than the optimum number established under § 290 of this chapter, the commission shall issue new entry permits to applicants who are presently able to engage actively in the fishery until the optimum number is reached.

(b) The commission shall determine equitable methods of issuance, as appropriate, under (a) of this section that assure the receipt of fair market value for the permits issued. (§ 1 ch 79 SLA 1973)

Article 6. General Provisions.

Section	Section
350. Applications of regulations of Board of Fisheries	370. Recommendations to the legislature
360. Penalties	380. Definitions

Sec. 16.43.350. Applications of regulations of Board of Fisheries. Nothing in this chapter limits the powers of the Board of Fisheries, including the power to determine legal types of gear and the power to establish size limitations or other uniform restrictions applying to a

certain type of gear. Holders of interim-use permits or entry permits issued under this chapter are subject to all regulations adopted by the Board of Fisheries. (§ 1 ch 79 SLA 1973; am § 31 ch 206 SLA 1975)

Effect of amendment. — The 1975 Fisheries" for "Board of Fish and Game" amendment substituted "Board of in the first and second sentences.

Sec. 16.43.360. Penalties. (a) A person who violates a provision of this chapter or a regulation promulgated under this chapter, upon conviction, is guilty of a misdemeanor and is punishable by a fine of not more than \$5,000 for a first conviction; a fine of not more than \$10,000 for a second conviction; and, for a third conviction, a fine of not more than \$10,000 as well as forfeiture of all interim-use permits and entry permits held by him and permanent loss of eligibility for interim-use permits or for entry permits.

(b) A person who makes a false statement of a material fact in the application for an interim-use permit or an entry permit or in the application for a transfer under §§ 170 — 180 of this chapter, or a person who assists another by making a false statement of a material fact in support of the other person's application for issuance of an interim-use permit or an entry permit or transfer of an entry permit, upon conviction, is guilty of a misdemeanor and shall forfeit all interim-use permits and entry permits held by him and shall lose eligibility for interim-use permits and for entry permits for a period of five years.

(c) If a permit holder is convicted of a violation of AS 43.20.335 and the violation relates to income derived from commercial fishing under this title, he shall forfeit all interim-use permits and entry permits held by him and shall lose eligibility for interim-use permits and for entry permits for a period of five years.

(d) If a permit holder is charged by the state with violating a provision of this chapter or a regulation adopted under this chapter, he may not transfer, under § 170 of this chapter, any interim-use or entry permit he may hold, until after the final adjudication or dismissal of the charges. (§ 1 ch 79 SLA 1973; am § 7 ch 73 SLA 1977)

Effect of amendment. — The 1977 amendment added subsection (d)

Sec. 16.43.370. Recommendations to the legislature. (a) The commission shall submit an annual report to the legislature. The report shall include but not be limited to the following:

- (1) a progress report on the reduction of entry permits to optimum levels;
- (2) recommendations for additional legislation relating to the regulation of entry into Alaska commercial fisheries.

(b) The commission shall study alternative methods of permit transferability and report its findings and recommendations to the legislature before January 15, 1975. (§ 1 ch 79 SLA 1973)

Sec. 16.43.380. Definitions. In this chapter

(1) "commission" means the Alaska Commercial Fisheries Entry Commission;

(2) "economically healthy fishery" means a fishery that yields a sufficient rate of economic return to the fishermen participating in it to provide for, among other things, the following:

(A) maintenance of vessels and gear in satisfactory and safe operating condition; and

(B) ability and opportunity to improve vessels, gear and fishing techniques, including, when permissible, experimentation with new vessels, new gear, and new techniques;

(3) "fishery" means the commercial taking of a specific fishery resource in a specific administrative area with a specific type of gear;

(4) "gear" means the specific apparatus used in the commercial harvest of a species, including but not limited to purse seines, drift gill nets, set gill nets, and troll gear;

(5) "person" means a natural person and does not include a corporation, company, partnership, firm, association, organization, business trust, or society;

(6) "present ability to actively participate" means the person applying for a permit is physically able to harvest fish in the fishery and has reasonable access to commercial fishing gear of the type utilized in that fishery;

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

(8) "type of gear" means a customary and identifiable classification of gear and shall include:

(A) those classifications for which separate regulations are adopted by the Board of Fisheries and for which separate gear licenses are required by AS 16.05.550 — 16.05.630; and

(B) distinct subclassifications of gear such as "power" troll gear and "hand" troll gear;

(9) "unit of gear" means the maximum amount of a specific type of gear which can be fished under a single gear license subject to regulations established by the Board of Fisheries defining the legal requirements for that type of gear. (§ 1 ch 79 SLA 1973; am §§ 32, 33 ch 206 SLA 1975)

Effect of amendment. — The 1975 amendment substituted "Board of Fisheries" for "Board of Fish and Game" in paragraphs (8)(A) and (9)

Editor's note — Alaska Statutes 16.05.550 — 16.05.630, referred to in paragraph (8)(A), were repealed by § 19, ch 105, SLA 1977, effective January 1,

Chapter 43. Regulation of Entry into Alaska Commercial Fisheries.

Article

4A. Educational Entry Permits (§§ 16.43.275 — 16.43.285)

Article 2. Powers and Duties of the Commission.

Section

100. General powers

Sec. 16.43.100. General powers. (a) To accomplish the purposes set out in § 10 of this chapter the commission shall:

- (1) regulate entry into the commercial fisheries for all fishery resources in the state;
- (2) establish priorities for the application of the provisions of this chapter to the various commercial fisheries of the state;
- (3) establish administrative areas suitable for regulating and controlling entry into the commercial fisheries;
- (4) establish, for all types of gear, the maximum number of entry permits for each administrative area;
- (5) designate, when necessary to accomplish the purposes of this chapter, particular species for which separate interim-use permits or entry permits will be issued;
- (6) establish qualifications for the issuance of entry permits;
- (7) issue entry permits to qualified applicants;
- (8) issue interim-use permits as provided in §§ 210 -- 220 of this chapter;
- (9) establish, for all types of gear, the optimum number of entry permits for each administrative area;
- (10) administer the buy-back program provided for in §§ 310 — 320 of this chapter to reduce the number of outstanding entry permits to the optimum number of entry permits;
- (11) provide for the transfer and reissuance of entry permits to qualified transferees;
- (12) provide for the transfer and reissuance of entry permits for alternative types of legal gear, in a manner consistent with the purposes of this chapter;
- (13) administer the collection of the annual fees provided for in § 160 of this chapter;
- (14) administer the issuance of commercial fishing vessel licenses under AS 16.05.490;
- (15) issue educational entry permits to applicants who qualify under the provisions of §§ 275 — 285 of this chapter.

(b) The commission may do all things necessary to the exercise of its powers under this chapter, whether or not specifically designated in this

chapter. (§ 1 ch 79 SLA 1973; § 14 ch 105 SLA 1977; am § 3 ch 123 SLA 1978)

Effect of amendments. — The 1977 amendment, effective January 1, 1978, added paragraph (14) to subsection (a). The 1978 amendment, effective July 9, 1978, added paragraph (15) to subsection (a).

Article 3. Requirements for Entry Permits.

Section

150. Terms and conditions of entry permit; annual renewal
160. Fees

Section

170. Transfer of entry permits
180. Emergency transfers

Sec. 16.43.150. Terms and conditions of entry permit; annual renewal.

(g) Except as provided in AS 16.10.333 — 16.10.337, an entry permit may not be:

- (1) pledged, mortgaged, leased, or encumbered in any way;
 - (2) transferred with any retained right of repossession or foreclosure;
- or
- (3) attached, distrained, or sold on execution of judgment or under any other process or order of any court.

(am § 6 ch 83 SLA 1978)

Effect of amendment.

The 1978 amendment, effective July 1, 1978, added "Except as provided in AS 16.10.333 — 16.10.337" to the beginning of subsection (g).

As the rest of the section was not affected by the amendment, it is not set out.

Sec. 16.43.160. Fees. (a) The commission shall establish annual fees for the issuance and annual renewal of entry permits or interim-use permits. The amount paid by a permit holder under the provisions of AS 16.05.480 shall be credited by the commission toward payment of the fee charged under this section. No more than one credit may be obtained annually by a person.

(b) Annual fees established under this section shall be no less than \$10 and no more than \$750 and shall reasonably reflect the different rates of economic return for different fisheries.

(c) The resident holder of an entry permit or interim-use permit who has a net family income falling within the Federal Community Services Administration poverty guidelines, adjusted by the commission to reflect appropriate cost-of-living differentials, is subject to a maximum annual fee of \$15. (§ 1 ch 79 SLA 1973; am § 15 ch 105 SLA 1977; am § 4 ch 123 SLA 1978)

Effect of amendments. — The 1977 amendment, effective January 1, 1978, deleted "to reflect the cost of administering this chapter" from the end of the first sentence of subsection (a), added the exception to the end of the second sentence.

of subsection (a), substituted "\$750" for "\$100" in subsection (b), inserted "resident" preceding "holder of an entry permit" in subsection (c), and substituted "Federal Community Services Administration for "Federal Social Security

Administration" and "\$15" for "\$5" in subsection (c).

The 1978 amendment, effective July 9, 1978, and retroactive to January 1, 1978, in subsection (a), rewrote the second sentence and added the third sentence.

Sec. 16.43.170. Transfer of entry permits. (a) Except as provided in AS 16.10.333 — 16.10.337, entry permits and interim-use permits are transferable only through the commission as provided in this section and § 180 of this chapter and under regulations adopted by the commission. (am § 7 ch 83 SLA 1978)

Effect of amendment.

The 1978 amendment, effective July 1, 1978, added "Except as provided in AS 16.10.333 — 16.10.337" to the beginning of subsection (a).

As the rest of the section was not affected by the amendment, it is not set out.

Sec. 16.43.180. Emergency transfers. (a) The commission shall adopt regulations providing for the temporary emergency transfer of entry permits and interim-use permits when illness, disability, death, required military or government service, or other unavoidable hardship prevents the permit holder from participating in the fishery. To alleviate hardship pending a final determination of the permit holder's eligibility for an entry permit, the commission shall adopt regulations providing for the temporary emergency transfer of an interim-use permit issued under § 210(b) of this chapter.

(b) The commission shall adopt regulations providing for the temporary transfer of an entry permit upon the death of the permittee pending final disposition of the permit as a part of the permittee's estate. (§ 1 ch 79 SLA 1973; am § 5 ch 73 SLA 1977; am § 5 ch 123 SLA 1978)

Effect of amendment.

The 1978 amendment re-wrote subsection (a).

Article 14A. Educational Entry Permits.

Section	Section
275. Educational entry permits	281. Accounting of harvest
277. Term and conditions of educational entry permit	283. Adoption of regulations
279. Disposition of fish	285. Definition

Effective date of article. — Section 14, ch 123, SLA 1978, makes this article effective July 9, 1978, in accordance with AS 01.10.070(c).

Sec. 16.43.275. Educational entry permits. (a) In addition to entry permits and interim-use permits, the commission may issue educational entry permits to public, private or denominational educational institutions accredited by the Department of Education or accredited institutions, career or vocation programs approved by the Alaska Commission on Postsecondary Education, or full-time nonprofit residential child care facilities licensed by the Department of Health and Social Services, division of social services, if

(1) the program is offered to students at the junior high school level or above;

(2) the issuance of a educational entry permit is reasonably necessary to the instruction of students under courses offered by the applicant for the educational entry permit;

(3) the program is offered by an institution which is located in the state and has been in operation for at least two years; and

(4) the institution offering the program is not a correspondence institution.

(b) An educational entry permit may only be used in a program conducted by the recipient of the permit for the purpose of training students in the methods of commercial fishing.

(c) The commission may issue educational entry permits notwithstanding the establishment of maximum or optimum numbers under §§ 240 and 290 of this chapter. (§ 10 ch 123 SLA 1978)

Sec. 16.43.277. Term and conditions of educational entry permit.

(a) Educational entry permits may be applied for on an annual basis and shall be issued for a term of one year. The permits are non-transferable.

(b) A recipient may be issued an educational entry permit for each fishery in the administrative area the commission determines to be appropriate, considering the nature of the educational program and the location of the educational or vocational institution. The recipient of an educational entry permit may not be issued educational entry permits in more than one administrative area except as issued by the commission in its discretion upon good cause shown.

(c) An educational entry permit issued under § 275 of this chapter may be used by an agent or employee authorized by the recipient of the educational entry permit.

(d) Annual fees for educational entry permits shall be as specified by commission regulation under the authority of § 160 of this chapter (§ 10 ch 123 SLA 1978)

Sec. 16.43.279. Disposition of fish. Fish caught under the authority of an educational entry permit are the property of the recipient of the permit. The recipient may sell the fish and use the proceeds to pay for the costs of the training program. Revenues generated from the sale of fish harvested under an educational entry permit shall be paid to the

general fund to the extent the revenues exceed costs of the training program. (§ 10 ch 123 SLA 1978)

Sec. 16.43.281. Accounting of harvest. The recipient of an educational entry permit shall report to the commission costs and earnings, amount of harvest, and other information the commission requires to monitor training programs of recipients of educational entry permits. (§ 10 ch 123 SLA 1978)

Sec. 16.43.283. Adoption of regulations. (a) Use privileges granted under §§ 275 — 285 of this chapter are subject to the regulations of the Board of Fisheries which may adopt regulations exclusively applicable to the use of educational entry permits.

(b) The commission shall publish regulations relating to the issuance of educational entry permits, establishing eligibility criteria for recipients of the permits, and such other matters as are reasonably necessary to implement §§ 275 — 285 of this chapter. (§ 10 ch 123 SLA 1978)

Sec. 16.43.285. Definition. For the purposes of §§ 275 — 285 of this chapter, the term "recipient" means the entity to which an educational entry permit is issued. (§ 10 ch 123 SLA 1978)

Article 6. General Provisions.

Section
355. Commission revocation of entry permits
360. Penalties

Sec. 16.43.355. Commission revocation of entry permits. (a) The commission may revoke an entry permit if a person knowingly supplies, assists in supplying, or fails to correct false information provided to the commission for the purpose of

- (1) permit application; or
- (2) permit transfer.

(b) Before revocation, the commission shall serve the permit holder personally or by certified or registered mail with a notice to show cause why the proposed action should not take place. The notice to show cause must

(1) be supported by an affidavit which may be made on information or belief setting out the facts which are the basis of the proposed action;

(2) provide for at least 30 days notice of the place, date, and time of the hearing where the permit holder may present evidence in opposition to the proposed action; unless waived in writing by the permit holder, the hearing place shall be held within the judicial district in which the permit holder resides if the permit holder resides in the state; the hearing place shall be at the discretion of the commission for those permit holders residing outside the state;

- (3) specify the statutes or regulations violated;
- (4) state with particularity the action proposed to be taken;
- (5) indicate to the permit holder that his ability to permanently transfer the permit which is the subject of the revocation proceedings has been suspended as of the date of the notice and will continue to be suspended until the exhaustion of all administrative and judicial remedies; and

(6) provide other information the commission considers proper.

(c) A permit subject to revocation proceedings under this section may not be transferred after the date of the notice in (b) of this section pending exhaustion of all administrative and judicial remedies arising from action taken under this section.

(d) The revocation hearing shall be conducted before a quorum of commissioners and shall be presided over by a hearing officer appointed by the commission who shall rule on the presentation of evidence and other procedural matters. Within a reasonable time after the conclusion of the hearing, the hearing officer shall submit to the attending commissioners a proposed decision based on the record of the hearing and containing findings of fact, conclusions of law, and recommended action. The attending commissioners shall then review the hearing officer's proposed decision and adopt or amend or reject the contents of the proposed decision in the written decision of the commission. A copy of the commission decision shall be mailed to each party or his attorney by certified or registered mail.

(e) The failure of a permit holder properly served under (b) of this section to appear at the hearing is not grounds for setting aside any commission action taken. However, the commission may in its discretion order a continuance or second hearing.

(f) The effective date of the commission decision under this section is the date of the notice to show cause first served upon the permit holder under (b) of this section.

(g) The provisions of this section do not apply to the permit of a person who is a bona fide purchaser.

(h) Judicial review of commission determinations under this section is in accordance with AS 44.62.560 — 44.62.570; however, if a hearing de novo is granted under AS 44.62.570(d), the hearing may, in the discretion of the court, be had with a jury sitting if application for the jury hearing is filed with the court no later than 10 days after service of the notice of appeal. (§ 6 ch 123 SLA 1978)

Effective date. — Section 14, ch 123, SLA 1978, makes this section effective July 9, 1978, in accordance with AS 01.10.070(c).

Sec. 16.43.360. Penalties. (a) A person who violates or assists in the violation of a provision of this chapter or a regulation promulgated under this chapter is, upon conviction, guilty of a misdemeanor and is

punishable by a fine of not more than \$5,000 for a first conviction, and a fine of not more than \$10,000 for a second or third conviction. Upon a third conviction, the person shall forfeit all interim-use and entry permits held by him and loses eligibility for future issuance or transfer of interim-use or entry permits for a period of three years. Upon a first or second conviction under this section, the court may in its discretion order a forfeiture of interim-use or entry permits held by him as well as a loss of eligibility for future issuance or transfer of interim-use or entry permits or order a suspension of fishing rights under interim use or entry permits held or to be held by him for a period of not more than three years.

(b) A person who knowingly makes a false statement of fact in the application for or renewal of an interim-use permit or an entry permit or vessel license application or renewal or in the application for a transfer under §§ 170 — 180 of this chapter, or a person who assists another by knowingly making a false statement of fact in support of the other person's application for issuance or renewal of an interim-use permit or an entry permit or vessel license is guilty of a misdemeanor and shall forfeit all interim-use permits and entry permits held by him and shall lose eligibility for interim-use permits and for entry permits for a period of three years and is punishable by a fine of not more than \$5,000.

(e) Notwithstanding any other provision of this section, no interim-use or entry permit may be transferred while under suspension, without the consent of the commission.

(Amended by 7 — 9 ch 123 SLA 1978)

Effect of amendment.

The 1978 amendment, effective July 9, 1978, in the first sentence of subsection (a), inserted "or assists in the violation of," "is" preceding "upon conviction," and "or third," substituted "and" for a semicolon following "for a first conviction" and deleted the language providing a penalty for a third conviction from the end of that sentence. The amendment also added the second and third sentences of subsection (a), and in subsection (b), inserted "knowingly" near the beginning and near the middle, "or renewal of" near the

beginning, "or vessel license application or renewal" near the beginning, and "or renewal" near the middle, deleted "a material" preceding "fact" near the beginning and near the middle, and substituted "vessel license" for "transfer of an entry permit, upon conviction" near the middle and "three years and is punishable by a fine of not more than \$5,000" for "five years" at the end. Moreover, the amendment added subsection (e).

As the rest of the section was not affected by the amendment, it is not set out.

TELEGRAM

ALASKA COMMUNICATIONS INC.

JULY 1975

HB48

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THE PRINCE WILLIAM SOUND AQUACULTURE CORPORATION WISHES TO EXPRESS ITS FULL SUPPORT FOR HB48.

AS THE REGIONAL ASSOCIATION OF OUR AREA WE REPRESENT AS A MAJORITY ON OUR BOARD OF DIRECTORS OVER 500 COMMERCIAL FISHERMEN ORGANIZED UNDER THE CORDOVA AQUATIC MARKETING ASSOCIATION, AS WELL AS INDEPENDENT, COMMERCIAL, SPORT AND SUBSISTENCE FISHERMEN. OUR EFFORTS SINCE 1975 ARE DIRECTED TOWARD ACHIEVING COST-EFFECTIVE CONSTRUCTION AND OPERATION OF HATCHERIES TO SUPPLEMENT WILD SALMON STOCK FOR THE BENEFIT OF ALL FISHERMEN IN THE COMMON PROPERTY FISHERY. TO ACHIEVE A SELF SUSTAINING HATCHERY SYSTEM, WHICH WILL NOT BE A CONTINUOUS BURDEN ON THE ALASKAN TAXPAYER, EFFICIENT OPERATION OF PRIVATE NONPROFIT HATCHERIES IS ESSENTIAL.

THE NUMBER OF FISH NEEDED FOR SALE BY THE HATCHERY OPERATOR TO COVER COST OF OPERATIONS IS DIRECTLY RELATED TO THE COST OF OPERATING A HATCHERY. HB48 GIVES THE HATCHERY OPERATOR THE CHOICE OF WHO CAN HARVEST SURPLUSES IN THE MOST EFFECT MANNER- CHARTER FISHERMEN ARE IN MOST CASES NOT AVAILABLE DURING FISHING SEASONS FOR SPECIFIC LOW VOLUME HATCHERY SURPLUS HARVEST.

ALL NON PRIVATE PROFIT HATCHERIES, WHETHER REGIONAL ASSOCIATIONS OR SO CALLED NON-ASSOCIATED HATCHERIES, OPERATE UNDER THE SAME STATUTES AND REGULATIONS, NAMELY TO CONTRIBUTE TO THE COMMON PROPERTY FISHERIES. ALTHOUGH ALL NEEDED MECHANISMS OF ECONOMIC CONTRJL AND MONITORING ARE NOT YET IN PLACE, EXISTING STATUTES REGULATIONS AND POLICIES MANDATE COMPLIANCE.

WE FEEL CONFIDENT WITH THE FISHERMEN OF PRINCE WILLIAM SOUND AND THE UNITED FISHERMEN OF ALASKA THAT PASSAGE OF HB48 IS AN IMPORTANT AND NEEDED STEP TOWARD ACCOMPLISHING OUR GOALS.

ARMIN KOERNIG PRES PRINCE WILLIAM SOUND

AQUACULTURE CORPORATION

Northern Southeast Regional
Aquaculture Association, Inc.

HB48

P.O. BOX 786 SITKA, ALASKA 99835
(907) 747-6850

RM. 205, OLD CITY HALL BLDG.

107.4

2 April 1979

The Honorable Alvin Osterback
Co-Chairman, House Resource Committee
Alaska House of Representatives
Pouch V
Juneau, AK 99811

Dear Mr. Osterback:

Per my promise to your committee during my February 8 testimony on HB 48, this is to provide the NSRAA position taken during their March 21-22 meeting.

Our Directors appreciated your willingness to hold HB 48 pending their input. Unfortunately, time constraints imposed by Senator Tillion's sixty-day rule necessitated a second hearing prior to March 21. It was also unfortunate that unanswered questions raised at the second hearing caused tabling of the bill. I must apologize to you and your committee for my absence at the second hearing; as it turned out, regional association testimonies would have been helpful.

While we understand why HB 48 was tabled, it's unresolved status will cause significant economic hardship to Prince William Sound Aquaculture Corporation (PWSAC) which is expecting to harvest its hatchery returns this year with a special harvest area entry permit. If after review of our input you support our position, we would appreciate your legislative assistance to make possible an efficient Prince William Sound harvest this year.

Our input takes the following format:

Position on HB 48
Legislative and Policy Ambiguities
HB 48 and Fish Traps

Position on HB 48

In my February 8 testimony, I emphasized that social controversies associated with the special permits may be resolved by providing opportunities to air the issues. In our March 21 discussion on HB 48 a number of concerns were raised and discussed in lively sessions.

After thorough explanation of the intent of HB 48, fishermen voted to support the bill.

Legislative and Policy Ambiguities

The debate over HB 48 was caused by a fundamental apprehension over whether hatchery programs will serve the best interests of common property fishermen. This apprehension was founded basically on two areas of ambiguity: primary purpose of hatcheries and hatchery budget review.

Primary Purpose of hatcheries

Fishermen agree that hatcheries are needed to rebuild depressed salmon stocks, but they are not sure if successful hatchery programs will actually provide more fish to their fisheries. Under current interpretations of the law, hatcheries can serve such primary purposes as self-employment and research without showing a good probability of contributing fish to common property fisheries. To protect fishermen interests, NSRAA directors feel that all hatcheries, whether private or public, should have the primary purpose of contributing to the common property fishery.

Hatchery Budget Review

Private nonprofit hatcheries pay their own way by harvesting fish to recover "reasonable" costs of operation. "Reasonable" costs as defined in AS 16.10.450 are currently interpreted by the Alaska Department of Revenue and the federal Internal Revenue Service. Our Directors are concerned that these agencies lack the knowledge to evaluate budget items and that abuses are likely unless budget reviews are conducted by a knowledgeable group of individuals. In lieu of an established and acceptable budget review process, fishermen question whether abuses of the nonprofit status can be adequately controlled, and if not, whether our private nonprofit law is a de facto private profit law.

HB 48 and Fish Traps

Concerns that HB 48 might allow fish traps apparently contributed to your committee's action in tabling HB 48 at the March 13 hearing. This concern is shared by NSRAA directors. Accordingly, inquiries have been made with a number of legal sources. Our conclusion on this issue is as follows:


The language of HB 48, as it stands, contains no legislative intent to legalize fish traps. Prohibition on fish traps in Alaska dated from 1959 when the people of Alaska ratified ordinance number 3 per terms of Alaska constitution Article 15, section 24. Unless and until this clear prohibition against fish traps is repealed, fish traps for commercial purposes will remain illegal in Alaska. HB 48 contains no language which would constitute a clear expression of legislative intent to allow fish traps.

2 April 1979

Our supportive position on HB 48 was based, in part, on the understanding that fish traps will not be allowed.

We hope our Association's position on HB 48 was adequately communicated. If you have any questions, please let me know. We intend to work with you and your committee to clarify ambiguities cited above and to develop a salmon restoration program designed for the needs of common property fishermen.

Sincerely,


Derek Poon, Ph.D.
General Manager

DP/vf

cc: House Resource Committee
NSRAA Directors
Prince William Sound Aquaculture Corporation
Southern Southeast Regional Aquaculture Association
Cook Inlet Aquaculture Association
United Fishermen of Alaska
Office of the Governor
Commissioner, Alaska Department of Fish and Game
Alaska Board of Fisheries
Commissioner, Commercial Fisheries Entry Commission
Attorney General's Office
House Speaker, Terry Gardiner