

S

B

4

9

SENATE AMENDMENT

By Senate Judiciary Committee

To: Senate Secretary SENATE BILL No. 49

To: _____ HOUSE BILL No. _____

PAGE: 1 LINE: 10

Delete the word "four" and reinsert the word "two".

To page 1, line 16, add the word "specific" between the words "a" and "fishery"

SENATE AMENDMENT

BY Senate Judiciary

To: Senate Secretary SENATE BILL No. 49

To: _____ HOUSE BILL No. _____

PAGE: 1

LINE: 19

* Sec. 2 - AS 16.43.150 is amended by adding a new sub-section to read:

(i) An entry permit shall be forfeited to the Commission upon failure of the permit holder to verify to the Commission active participation in the fishery each season, according to regulations adopted by the Commission.

Renumber Remaining Sections.



LIMITED ENTRY

A necessary evil?

Prepared for the Legislative Council
Sen. George Hohmann, chairman
January 1981

by Rodger Painter
Fish and Fish

The state legislature's 1973 vote limiting the number of fishermen allowed to harvest Alaska's huge salmon runs prompted predictable howls of outrage.

The salmon fisheries always had been open to anyone willing to invest a lot of sweat and brave some of the toughest seas in the world. It seemed a God-given right to be able to go fishing to cover the winter's grubstake.

No one was surprised by the opposition from those locked out of the fisheries by limited entry. Also expected were objections from staunch opponents of government intervention in the free enterprise system.

Recent debate is laden with irony, however, as the most vocal critics have been the very people the system was designed to protect--rural Alaskans who rely heavily on the commercial salmon fisheries. And, the dramatic biological recovery of the salmon runs and economic turnaround of the industry appear to be responsible for most recent criticism of limited entry.

Considering the massive amount of flak directed at the fishing restrictions, many observers were taken aback when these very squeaky wheels got no grease during the legislature's re-examination of limited entry in 1979-80.

What lawmakers found is widespread, though quiet, support of limited entry. Fisheries managers, for instance, prefer the



steady effort and smaller numbers of limited fisheries to the boom-and-bust history of the salmon industry. Then there are the 8,100 permit holders, whose attitudes may have been expressed best by a former director of the commission administering the state program:

"The people who received entry permits and believe limited entry is necessary tend to remain quiet about it and do not crow about the system for fear of offending a neighbor or friend."

With courts recently upholding the program against major legal challenges, it appears limited entry is here to stay. Far less clear is whether the program will remain intact under growing sentiment for change.

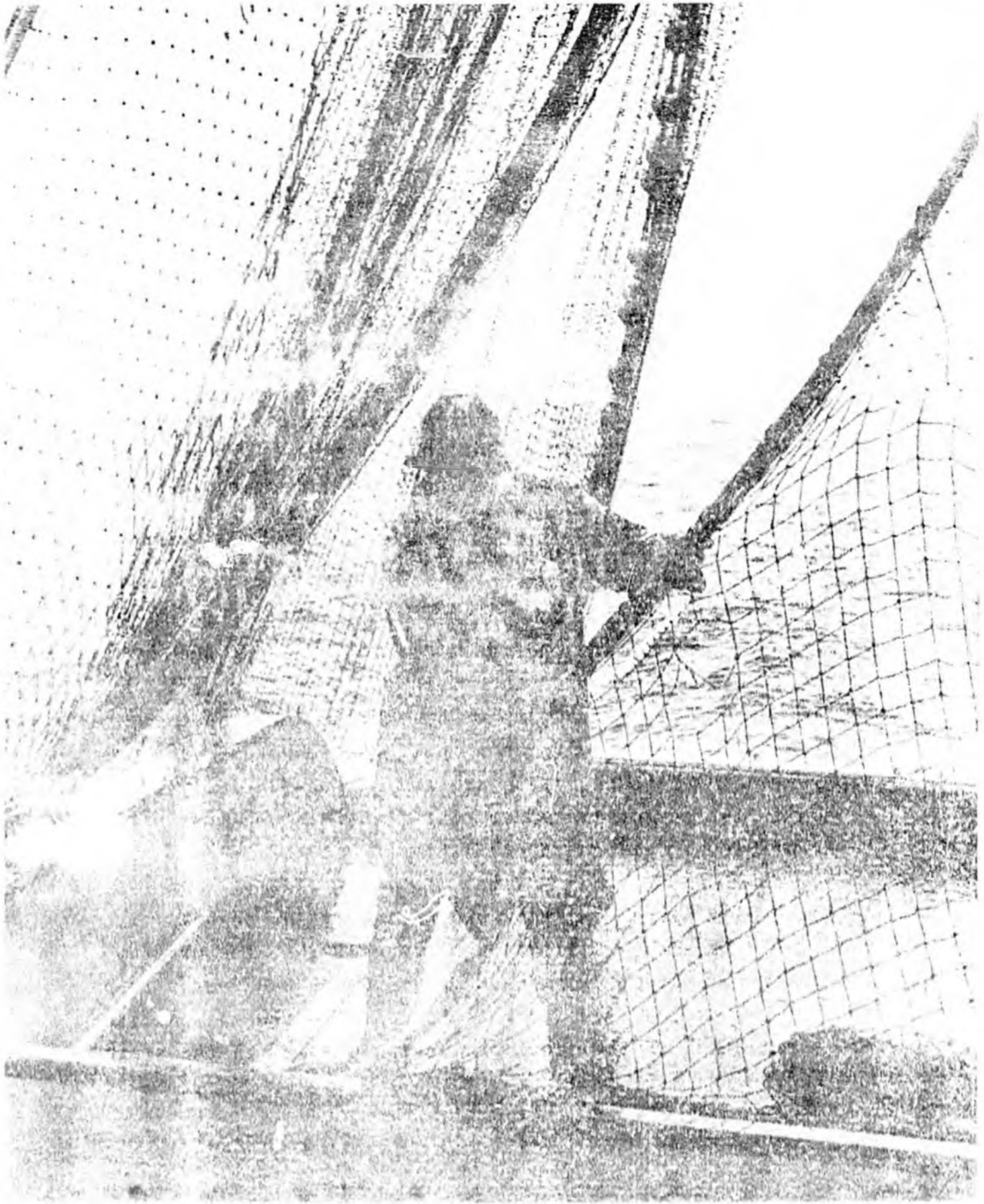
Many of the harshest critics of limited entry oppose doing away with the system entirely, but want to give the program a major overhaul. Even the most ardent supporters agree that at least some fine tuning is in order.

But as the legislature discovered, tinkering with limited entry is not easy. Alaska's limited entry program is a highly complicated system of fisheries management based on interwoven social and political considerations, as well as economics and biology. It's difficult to make large changes without risking chaos in one of the state's most important industries.

This pamphlet shows the evolution of the present system of limited entry and points out some of the problems looming on the horizon.



history



ROOTS: Moonlighters and the company store

When Governor William A. Egan proposed in early 1973 to limit entry into the state's commercial salmon fisheries, Alaska's salmon resources were recovering nicely from the rape-and-run management of Territorial days. But the economic lot of those most dependent on the fisheries was not following a similar course.

"Even with substantially improved biological management since Statehood, the salmon fisheries are not as healthy as they can be because a steadily increasing number of fishermen are participating in the harvest," Egan said in his letter to the legislature. "These new entrants into the fishery have driven the profitability of fishing down to marginal levels for those professional fishermen who must depend upon fishing for a major share of their livelihood."

"The character of these new entrants varies. In Bristol Bay it may be the school teacher from Anchorage or the Boeing worker from Seattle; in Southeastern the sport-commercial troller with a well-paid government job; in Cook Inlet the vacationing set-netter from the Lower-48. However, in almost every area these moonlighters are adding substantially to the economic distress of the vocational fishermen who must derive their primary livelihood from fishing."

Although Egan never specified who he was trying to help, it was clear throughout his 300-page proposal that the program was meant to protect Alaskans. The Governor had reason to be careful, as two earlier attempts to restrict the salmon fisheries ran afoul of the equal protection clauses in the state and federal constitutions.



State officials long had been interested in trying to boost the incomes of resident commercial fishermen by restricting non-Alaskans. The now-infamous loathing of Outsiders by Alaskans was particularly strong in the Seattle-dominated commercial fisheries before Alaska became flushed with oil riches.

Consider this statistic offered to lawmakers during the debate over limited entry: in 1970 non-residents had 40 percent of the salmon fishing income with an average gross share of \$15,169, compared to \$7,283 for each Alaska-based gear operator.

By 1973 the courts made it clear that any system discriminating against non-residents would be slapped down. The emphasis was shifted to pressuring the growing number of part-time fishermen and trying to at least preserve the foothold in the fisheries Alaskans had gained with the abolition of company-owned fish traps and the manpower-short years of World War II.

Supporters argued limited entry would protect Alaskans to the best extent allowed under law by favoring long-time fishermen and rural residents through a complex point system.

Another major goal of lawmakers in limiting the fisheries had been lost in the current debate: to unchain fishermen from the Company Store. In the days before Big Oil, the canned salmon industry was the dominant economic and political force in Alaska.

A 1939 government study reported that of the 2,810 Western Alaska commercial fishermen 96.7 percent were 'cannery fishermen,' considered company employees; only 94 fishermen were independents.



Alan Adasiak, former chairman of the Alaska Commercial Fisheries Entry Commission, explained in a 1978 paper the control canneries had over the lives of individual fishermen:

"If, for example, a man had made himself unpopular during price negotiations, he might find himself without a vessel or a market for his fish that following year. The ability to 'import' non-resident fishermen was also used in connection with price negotiations. And there was control through the classic arrangement of the 'company store,' which made easy credit available, and employed payment-on-demand notes.

"In 1973, when the Alaskan legislature was considering the current limited entry law, there was a general belief that salmon processors still maintained a significant hold over individual fishermen, both through credit and financing arrangements and through the untrammled power to decide whether a fisherman would fish for a particular company. The decision to issue permits to individuals was made primarily because people believed that it would strengthen the individual fisherman's bargaining power vis-a-vis fish buyers and processors. With only a fixed number of permits to go around, and with the requirement that a unit of gear may be operated only by a permit holder, the need that the processor had for the individual fisherman was increased."

The debate over limited entry split many fishing communities and caused still-open rifts in the ranks of fishermen. Supporters far outnumbered opponents, however, as attested by the formation of the state's largest fishermen's organization -- The United Fishermen of Alaska -- around the issue of limited entry.

When an initiative to repeal the limited entry act was placed



on the 1976 statewide ballot, the UFA raised \$170,000 to wage a campaign to keep the restrictions. Endorsements supporting the program were gathered from the state Boards of Fisheries and Game, Alaska Federation of Natives, Rural Alaska Community Action Program and the Alaska Chapter of the American Fisheries Society.

The initiative was defeated by a resounding vote of 75,125 to 44,304.

The margin of victory can be partially attributed to the extremely depressed condition of the salmon fisheries at the time of the election. Observers speculate a similar vote in the 1980s would be too close to call.



the legal story



THE LEGAL STORY: The constitution and the right to fish

It was no small coincidence that the state Attorney General spearheaded the group putting together Egan's limited entry proposal. The first step in the process, in fact, was to place a proposed constitutional amendment for limited entry: "No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State."

The amendment, which gained strong voter support, added: "This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture."

There have been few quarrels over the issues of resource conservation and aquaculture; the battle lines over limited entry always have been drawn around the right to fish. And, despite the care taken in constructing a legally defensible program, limited entry from its beginning has been under constant attack in the courts over who is eligible to harvest the valuable salmon resource.

The Commercial Fisheries Entry Commission, created to oversee the program, was given quasi-judicial powers to hear administrative appeals of decisions on individual applications for a permit. Of the hundreds of appeals filed, scores resulted in lawsuits, creating a huge backlog of contested permits and throwing the entire program into limbo.

The state lost the first major legal challenge to limited entry and that decision became the basis for many following lawsuits. In Isakson vs. Rickey, a group of fishermen who

first held gear licenses in 1973 and 1974 went to court over a provision in the law restricting permit eligibility to those who held gear licenses before January 1, 1973.

The Alaska Supreme Court eventually agreed with the fishermen and a new application period was ordered. The ruling, however, had much broader impact than the awarding of a few more permits to the later-coming fishermen.

In early 1979, a Superior Court judge used the Isakson decision to strike down a requirement that applicants for permits must have held a gear license. State officials said the ruling would have the effect of invalidating limited entry.

But after a year of deliberation, the Supreme Court backtracked and "superseded" the Isakson language. The gear license requirement does have a "rational connection" to the "legitimate purpose" of the limited entry act, the court said.

"Admittedly, individual cases will arise in which those barred may be able to show extreme hardship," the court said. "The legislature in its wisdom could conceivably have better provided for such instances. But equal protection, even under Alaska's stricter standard, does not demand perfection in classification."

There still were more than 100 court cases pending against the Alaska Commercial Fisheries Entry Commission in late 1980.



ACCESSIBILITY: Rural residents and \$130,000 permits

The most emotionally charged debate over restricting access to Alaska's fisheries centers on the skyrocketing cost of entry permits.

Perhaps the most crucial, fundamental decision lawmakers made in 1973 was to treat permits essentially as property. This was done primarily to allow fishing rights to be transferred within families and communities, give fishermen the mobility to change fisheries, and avoid constitutional problems caused by creating a special closed class of fishermen.

No restrictions were put on the market price of permits as it was assumed there would be natural limitations to what someone would pay. In his proposal to the legislature, Governor Egan speculated:

"New people will be able to get into a fishery for whatever the fair market price of permits happens to be. Naturally, this will vary. The quality and size of fish runs, and other things, may cause more people to want to get out, or in, at a particular time. There is likely to be a limit, however, to how high the price of a permit will go since the bill requires that only the holder can fish it.

"One person may not hold a permit and have another person at his net site or in a boat working it for him as his agent. This means that the person buying a permit will have to work it, and he will have to expect to make enough money commercial fishing to cover the cost of the permit, as well as his other expenses and profits. Otherwise, it would not make sense for him to buy in. Consequently, there will be some practical limits on the price of entry permits."

Obviously unforeseen in this analysis was the dramatic rise in fish prices and biological recovery of Alaska's salmon fisheries during the late 1970s. As predicted, the price of permits has risen with the profitability of the particular fishery. Consider, for instance, that Bristol Bay drift gillnet permits shot up from a mere \$2,000 in 1976 to as high as \$130,000 prior to the 1980 season.

Understandably, these trends have created great concern among officials from rural areas over the ability of future generations to buy their way into the fisheries. Many Native leaders fear the high prices are bringing an exodus of permits from villages heavily dependent upon fishing.

The validity of those fears is open to debate. The Commercial Fisheries Entry Commission says statistics don't show any significant trends of permits flowing out of rural areas. With the exception of a single Southeast village troubled with an unusual set of circumstances, records show the distribution of permits in rural areas has been remarkably stable.

A study of the same statistics by a University of Alaska researcher in 1979, however, concluded there is some cause for concern. While Alaska residents in general have actually gained a handful of permits since they originally were doled out, the analysis by Dr. Steve Langdon showed rural residents have lost a significant number.

Residents of rural Alaska communities lost 145 permits, while urban Alaskans gained 170. Significantly, Alaskans who live in rural communities near the fishing grounds lost 3.5 percent of their initial holding of 3,897 licenses.

Langdon concluded that the "outflow of permits that has occurred and that potentially can occur must be regarded as



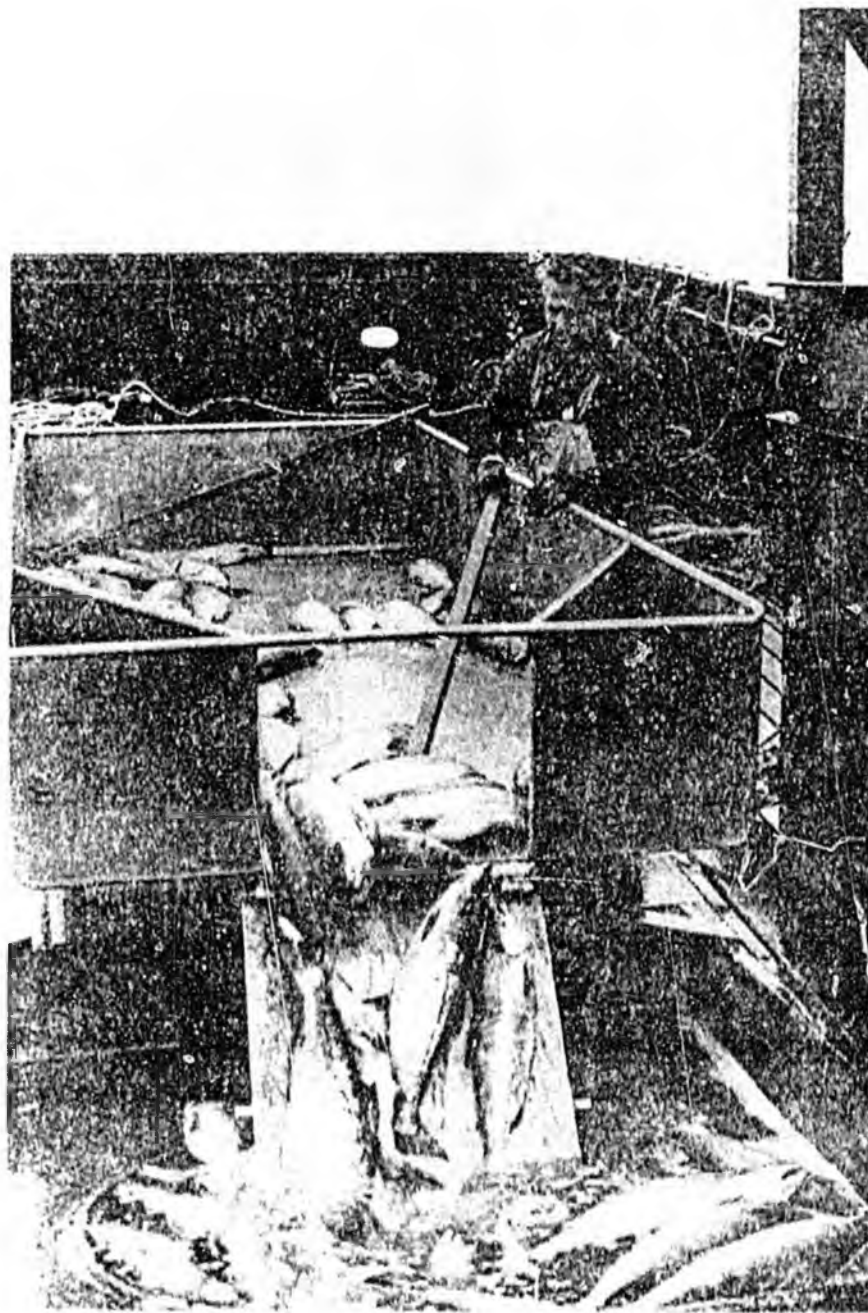
a significant threat to the rural Alaska economic base and the well-being of rural Alaskans."

The high cost of permits alarmed not only rural officials, though, as opposition to limited entry in urban and non-fishing areas seemed to grow in direct proportion to the cost of getting into the fisheries. When the legislature created the Limited Entry Study Group in 1979 the price of permits was the primary motivating force.

The question of how to deal with \$130,000 permits presented a tough dilemma to the legislative committee. Every alternative to freely transferable permits investigated by the study group was fraught with legal, financial, administrative or political problems.

In the end, the committee backed away from supporting any major changes in the program, concluding that the medicine was worse than the ailment. The only recommendation of the committee culminated in the 1980 creation of a special loan program designed to help rural residents enter the fisheries. (This so-called "targeted loan program" is described in a later section.)

problems



OTHER PROBLEMS: Efficiency, spinoffs and a ponderous process

When studying Alaska's system of limiting entry into the fisheries, one can reach radically different conclusions about its relative merits and evils. If there is one thing all sides can agree upon, it is that the 1973 act has spawned a tremendously complex system.

The goal of lawmakers creating the system was clear enough, as demonstrated in the straight-forward approach of the first attempt at limited entry in 1962:

"Whenever the Board (of Fish and Game) determines that the year run of salmon in any one registration area will be substantially less than the optimum run, and that under anticipated fishing conditions Alaska residents licensed by the area or district will not catch sufficient fish to sustain them for the year, the Board may, with the consent of the local advisory board or boards, promulgate regulations temporarily closing the area or district to fishing by all non-residents of Alaska."

Before the law was ever used a federal judge declared it unconstitutional.

To get by the constitutional barriers, a program was built around economic and social considerations with a keen eye for protecting residents as much as law would allow. The result is an extremely complicated system that defies easy explanation.

Consider these factors:

-- The "optimum" number of permits issued in a fishery is to be sufficient to provide a "reasonable rate of economic return to the fishermen participating in that fishery," and

the allowable catch "in an orderly, efficient manner and consistent with sound fishery management techniques," and "avoid serious economic hardship to those currently engaged in the fishery, considering the other economic opportunities available to them."

Permits then are handed out to applicants ranked by their past participation in the particular fishery and their degree of economic dependence, such as their percentage of income derived from fishing, reliance on alternative occupations, and availability of alternative occupations and investments.

The complex requirements involve careful crafting of regulations and point systems, and extensive public hearings and application periods. The process takes anywhere from one to three years before permits are issued.

Administrative review of appeals of point allocations throw contested permits into limbo for months or even years. Some appealed permit applications for fisheries limited in 1975 still were pending in 1980.

-- The initial number of permits issued in the limited fisheries was equal to the largest number of units of gear fishing in any of the four years preceding 1973. Those maximum permit numbers later were to be whittled down to "optimum" figures through a buy-back program under which the state would buy boats, gear and permits at going market rates.

Work on setting optimum numbers was delayed by the more pressing needs of issuing permits, then stalled for years by lack of funding for economists to study long-range trends in the fisheries. The buy-back program eventually was suspended indefinitely. By 1980 the optimum numbers of permits

still hadn't been issued for the 19 salmon fisheries originally brought under limited entry.

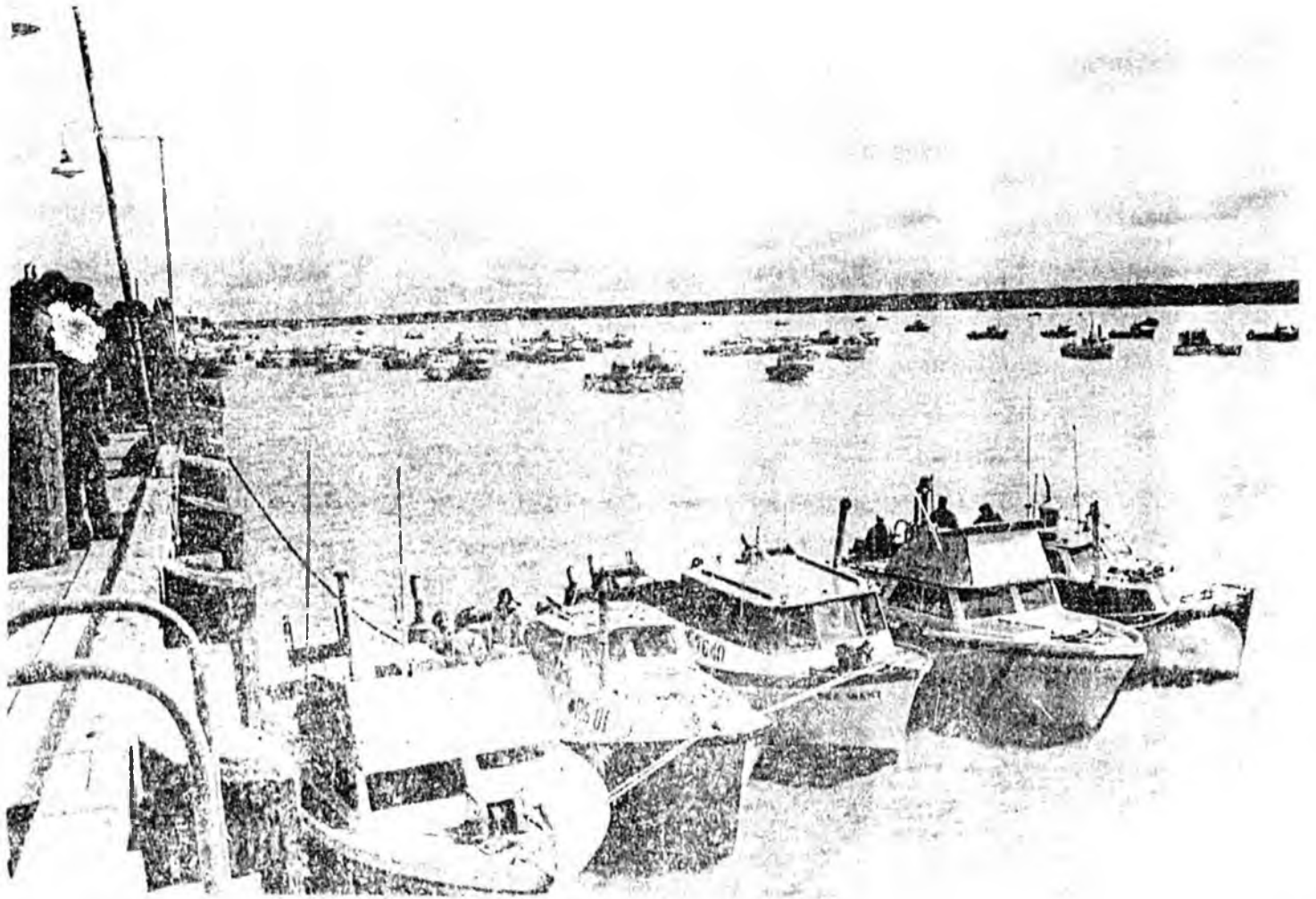
-- Whenever there is even a distant possibility of a developing fishery being brought under limited entry, it seems to create a flurry of activity by fishermen trying to put themselves in the position of earning a permit, should they eventually be issued. This phenomenon, in turn, creates pressure to impose the restrictions from fishermen nervously eyeing new competitors on the fishing grounds.

The high cost of permits also has served to increase fishing pressure in the limited fisheries, as fishermen who have to pay \$130,000 for a permit can scarcely afford to sit out poor seasons just because income is marginal. Loan payments won't wait for a better salmon run.

If limited entry has met any of the original goals of its creators it has been the evolution of the salmon fisheries into "professional" fisheries. With the lid on numbers fishermen have poured increased earnings into building expensive, highly efficient fleets of fishing vessels. Long-time fishermen say competition in the limited fisheries is much fiercer than it has ever been.



conclusion



CONCLUSION: A necessary evil?

In considering whether limited entry has worked, it is important to strip the equation of the cumbersome clothing of right or wrong. Does it violate the spirit of the free enterprise system? Did it create an exclusive rich man's club? Is it an unconstitutional allocation of natural resources belonging to all citizens of the state?

Emotions run so strongly on these issues that it is essential to narrow the question to how well the program has met its original goals. To this end, the answer can be a conditional "yes".

Statistics show limited entry has been remarkably successful in stabilizing the balance of fishing effort between Alaskans and non-residents. The only identifiable shift has been the loss of permits by rural Alaskans to urban residents.

Trends before limited entry were toward non-resident gains in the salmon fisheries, but when original permits were handed out Alaskans controlled a few more units of gear than they had before 1973. Since then, residents have gained another handful of permits.

Showing the exact degree of success limited entry has had in accomplishing another major goal of lawmakers in 1977 -- increasing the power of fishermen in dealing with processors -- is impossible. The lot of individual fishermen has increased dramatically since the early 1970s, but it's unclear how much of that was caused by limiting the number of fishermen.

Unquestionably, limited entry has given fishermen a powerful tool in negotiating fish prices, since the system has given permit holders the exclusive right to harvest Alaska's valuable

salmon resources. Processors can no longer simply hire another skipper willing to fish for lower prices.

A case in point is price negotiations in Bristol Bay where fish prices were increased by nearly 50 percent in 1979 after a virtual shutdown of the fisheries by boycotting fishermen. Although fish prices tumbled the next season following collapse of major Japanese markets, fishermen held out during the peak of the largest salmon run in history. About 21 million harvestable sockeye salmon passed by the fishing grounds because of the long price dispute.

By restricting the number of people allowed to fish salmon, lawmakers also hoped to increase the incomes of individual fishermen. While average gross incomes of gear operators have risen dramatically since 1977, the improved economic outlook mostly is due to spectacularly increased fish prices. There can be little doubt, though, that the allowable harvest would be split among a much larger group of fishermen if the salmon fisheries were open to all interested.

When all is said and done, the essential question regarding limited entry probably is:

"What's the alternative?"

Perhaps there wasn't justification to limit entry to Alaska's salmon fisheries. Maybe a better method of protecting residents could have been devised. But it's too late to debate those issues; the important point now is what would happen if the system were abolished.

With the current high level of interest in Alaska's salmon fisheries, the lifting of limited entry would invite a gear rush rivaling the Klondike gold rush. Examples of the interest in the state's fisheries are easy to find, as a glance at the

crowded halibut, crab, cod and open herring fisheries will show. Particularly troublesome is the large fleet of Washington State vessels squeezed out by the "Boldt decision" which allocated half the natural and hatchery salmon runs of that area to treaty Indian tribes.

Despite development of other fisheries and the emergence of the oil industry, salmon continues to be the economic mainstay of most of the communities spread out along Alaska's 34,000-mile coastline. Hundreds of millions of dollars have been invested on the assumption limited entry is here to stay. Abolition of the system would disrupt the economies of much of rural Alaska.

Although the cost of buying a permit adds a big barrier to entering the salmon fisheries for rural Alaskans, state loan programs can give an edge to residents. The programs will cover 90 percent of the market value of permits, and the recent "targeted loans" designed to help rural residents may carry 100 percent of the cost. Permits can be used as collateral only under state loan programs.

The threat of a gear stampede trampling long-time fishermen is responsible for the continuing support of limited entry by many harsh critics. Notably absent from the legislature's 1979-80 evaluation of limited entry was the possibility of removing the restrictions altogether.

Since limited entry is widely seen as an evil made necessary by the lack of alternatives, continuing support of the program by lawmakers appears likely. Equally likely are continuing opposition from a host of critics and pressure to substantially modify the present system.

FINANCING: The state and CFAB

When it comes to finding financing for limited entry permits, Alaska residents have a decided advantage. Under state law, permits can be owned only by individuals. Banks cannot take possession of permits in the event a borrower defaults on a loan. Thus, permits may not be used as collateral, except under the state loan program which is open only to five-year residents. The Alaska Commercial Fishing and Agriculture Bank (CFAB) also is able to hold permits as collateral since the state initially funded the bank and remains a major stockholder. CFAB uses the same requirements as the state for permit loans.

Through the state's Commercial Fishing and Revolving Loan Fund, applications for permit loans are made directly to the Division of Business Loans in the Department of Commerce and Economic Development.

Permit loans require five years state residency immediately preceding the date of application, with one year of commercial fishing experience during that time. The interest rate is 9.5 percent, and the maximum loan term is fifteen years.

The state can lend up to 90 percent of the average resale value or the actual cost of the permit, whichever is less, when the permit itself is used as collateral. The Entry Commission computes this average resale value quarterly, based upon what prices were paid for permits during the preceding quarter. It is important to keep this in mind, as the amount of money you can get varies as permit prices go up or, more rarely, down.

The newly-created Fishermen's Revolving Mortgage and Note Fund, targeted to assist fishermen in rural areas of the state

who are not eligible for regular commercial fishing loans, also may be used for the purchase of limited entry permits.

Under this program, the state will buy mortgages and notes from banks or other financial institutions. The interest rate is 10.5 percent.

The state may buy a mortgage or note for up to 100 percent of the appraised value of the collateral if the loan is for the purchase of an entry permit and if the borrower has at least three years experience as a commercial fisherman under the direction of a permit holder in the fishery for which he is buying the permit.

To be eligible for this program, an applicant must have five years state residency immediately preceding the date of application, but he does not necessarily need to have had commercial fishing experience as long as the lender finds that he is reasonably likely to succeed as a fisherman and be able to repay the loan.

For further information on loans for limited entry permits, contact one of the regional offices of the Division of Business Loans, Department of Commerce and Economic Development:

Juneau	Pouch D Juneau, Alaska 99811 465-2510
Anchorage	201 East Ninth, Suite 103 Anchorage, Alaska 99501 274-6693
Fairbanks	675 Seventh Avenue, Station A Fairbanks, Alaska 99701 452-8182

or



Alaska Commercial Fishing and Agriculture Bank
Gary Anderson, President
P. O. Box 4-2070
2550 Denali Street, Suite 1201
Anchorage, Alaska 99509
278-4553

CFAB also has offices in Homer, Kodiak, Cordova, and Seattle.



MISCELLANEOUS: A checklist

Attempting to deal long distance with the many and complex limited entry regulations is a constant source of frustration to fishermen and the Entry Commission alike. Misunderstandings are often a cause of delay, which can be critical and costly when the fish are going by the fishing grounds.

The following checklist offers important points to keep in mind about limited entry and is offered to help keep the level of red tape frustration at a minimum:

- The permit holder must have his card in his possession and must be present while his gear is being fished;
- A permit cannot be lent to anyone, not even a relative;
- A permit holder and crew must be able to produce identification at the request of an enforcement officer;
- Emergency transfers are to be used in cases of unavoidable hardship; they are not for leasing a permit. Send an emergency transfer form to the Commission, including documentation and your permit card;
- There is a 60-day waiting period between the time an intent to transfer form is filed with the Commission and the permit can actually be transferred;
- Once a permit is transferred permanently, it's gone. The Commission strongly recommends using an escrow agent to hold the money (contact your local Legal Services Agent);
- If a permit holder dies, the spouse or heir should contact the local superior court clerk for instructions on having an administrator of the estate appointed; and contact the Commission;
- Permit holders should allow at least three weeks for processing renewals, and more if they live in an area where mail is slow;
- Decisions of the Commission are subject to review, and an applicant may request a hearing;
- When in doubt, contact the Commission.



The Fishermen's News

C-3 Building, Room 110 • Fishermen's Terminal • Seattle, WA 98119 • (206) 282-7545

February 19, 1981

State of Alaska
Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

RECEIVED

FEB 23 1981


Dear Sirs,

I am writing to request notification of any hearings concerning the State of Alaska Commercial Fisheries Entry Commission.

Specific issues include Senate bills 49 and 51, relating to entry permit renewals and revokation action. The Commission's investigation into false residency claims on permit applications is another specific issue.

If possible, I would like the minutes of any public hearings, and would, if necessary, pay reproduction costs.

Thank you



Andrew Mangan

WORKING DRAFT

IN THE LEGISLATURE OF THE STATE OF ALASKA

12th LEGISLATURE - FIRST SESSION

A BILL

For an Act Entitled: "An Act Relating to Limited Entry Permits."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Sec. 1. - AS 16.43.150 is amended by adding a new sub-section to read:

(i) An entry permit shall be forfeited to the Commission upon failure of the permit holder to verify to the Commission active participation in the fishery each season, according to regulations adopted by the Commission.

rt 49

January 12, 1981

President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making several changes in the Limited Entry Act. The first section of the bill would increase from two to four the number of years that a permit-holder may fail to renew his entry permit before it is revoked by the commission, and makes it clear that all fees for years during which the permit was not renewed must be paid before the permit may be renewed. The two-year forfeiture under existing law works a substantial hardship on residents of the rural areas of the state. The commission has spent considerable time and effort to contact permittees who are in danger of forfeiting their entry permits. The section also would make it clear that a person is not required to renew his entry permit in a year in which there is an administrative closure for an entire season.

The Limited Entry Act provides that if the commission has some permits to issue to a priority classification, but not enough for all applicants in that classification, the entry permits will be issued by lottery. Section 2 of the bill would provide that the commission may issue entry permits to all applicants in the classification if the maximum number of permits established for the fishery would be exceeded by a very few permits. For example, if there were 100 entry permits available to issue, and there are 102 applicants in the classification, 102 permits would be issued. Section 3 of the bill would make it a ground for revocation to supply false information to obtain an interim-use entry permit and to supply false information in a request for renewal of an entry permit. Existing law applies only to entry permits, and applications for entry permits.

Sections 4 and 5 of the bill would protect a lending institution which holds an entry permit as security for a commercial fishing loan if the permit is revoked for any

reason specified in AS 16.43.355 or forfeited under AS
16.43.360.

Sincerely,

S/SSH

Jay S. Hammond
Governor



Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Senator Bennett
Senator Hohman
Senator Parr
Senator Ray

FROM: Senator Rodey

DATE: May 19, 1981

SUBJECT: SB 49 "An Act relating to limited entry to commercial fisheries; and providing for an effective date."

Please find attached a letter and draft language relating to SB 49, and the committee's interest in a "use it or lose it" limitation.

Mr. Simon raises some interesting points that I feel the committee should consider before adopting the proposed amendment.

PMR/ods
Attachment

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

COMMERCIAL FISHERIES ENTRY COMMISSION

POUCH KB
JUNEAU, ALASKA 99811

May 19, 1981

The Honorable Pat Rodey
Chairman, Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey:

Please find attached, draft language requested by your Committee amending AS 16.43. to provide a "use it or lose it" limitation on entry permits. Before the Committee decides whether to propose this limitation, the Commission suggests that serious attention be given to several considerations. The first and most important consideration is whether the requested amendment comports with the purpose of the Limited Entry Act.

As stated in AS 16.43.010(a) the limited entry legislation was enacted to promote resource conservation and economic health of Alaska's commercial fisheries. By mandating permit holders' participation, competition among fishermen for a given resource and impact upon that resource will be increased. This increased effort could result in lower economic returns to commercial fishermen and additional pressures on fishery stocks that are, in some instances, already at low levels. Two examples of this potential effect may be found in the statewide power troll and the Cook Inlet salmon fisheries.

In 1979 (the most recent year for which complete landing data is available from the Alaska Department of Fish and Game) 814 out of a possible 979 statewide power troll permits actually participated in the fishery. If the 165 non-participating fishermen had been forced to fish because of a "use it or lose it" statute, the economics and stock levels of the fishery would be more depressed than they are at present.

In 1979 Cook Inlet net fisheries, i.e., purse seine, drift gill net and set gill net, 1,277 permits were fished out of a total of 1,432 permits available. An additional 155 units of gear could drastically impact fish runs that are currently the subject of considerable contention by subsistence, commercial and sports fishermen.

A mandatory-use requirement on entry permits may also punish diversified fishermen, rural fishermen and holders of permits who voluntarily choose not to participate because of poor run predictions or other economic considerations. Fishermen who hold permits for more than

one salmon fishery are not always able to fish every permit in a given season. Those who hold salmon net permits in different administrative areas must designate before the season the area in which they intend to fish. 05 AAC 39.115 and 20 AAC 05.940. They are, therefore, precluded by regulation from fishing all their permits in one season and would, if the proposal were adopted, lose the permits they did not fish through no intentional disuse. In these cases, the proposal would actually defeat one of the stated legislative intentions of the original Limited Entry Act that professional fishermen be allowed to acquire more than one permit in order to have options available each season.

The proposed amendment could hurt rural fishermen who want to take advantage of high paying jobs whenever they are available and yet maintain their permits in order that they may fish in other years or eventually pass them on to their children. If a permit holder in the Upper Yukon net fishery, where the 1979 average gross earnings per permit were \$7,477, worked on the pipeline for a year rather than fish he could, under the proposed amendment, lose his permit. In essence, he would be punished for seeking to better his financial situation. Also, the amendment might encourage permit transfers away from villages.

The amendment could force people to fish in years when it is not profitable because of poor run predictions, low prices or better short-term opportunities elsewhere. The proposal ignores the fact that some fishermen minimize loss potential in certain years by simply not fishing. The proposal could force them to incur a financial loss to preserve their permit.

Implementation of the proposed amendment may require additional appropriations to properly address the effects of increased participation and to determine which permits are to be forfeited because they were not fished. In the years 1977 to 1979 the average statewide participation level in limited salmon fisheries was 82.9% of the available permits. The amendment would increase the participation level, thereby altering management policies and requiring additional enforcement efforts.

An administrative framework would have to be established to evaluate catch data, match the data to permits and determine which permits are to be forfeited. Procedural due process in the form of administrative hearings and judicial appeals would have to be afforded to non-participating permit holders prior to forfeiture. The actual forfeiture of a permit would probably not occur until a considerable period of time after the season in question.

May 19, 1981

Fish ticket landing data is not available to the Commission in useable form until at least a year after the particular fishing season. The Commission would, therefore, not begin to establish who did not participate in a given season until the following year. After a non-participant was identified he would have to be notified of the proposed action and given an opportunity through an administrative hearing to contest the proposed action. The case would then be adjudicated by the three Commissioners. If the adjudication were adverse to the permit holder's interest, he would have the right to a judicial appeal according to AS 44.62.560-44.62.570. The permit could not be forfeited until all administrative and judicial remedies had been exhausted.

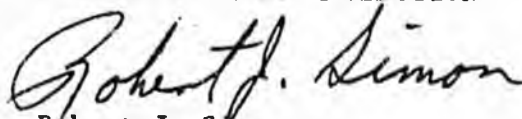
The potential impact upon current Commission workload is very significant. If the Commission were to review and act upon over 17% of the permits available (in 1979 that would have amounted to 1,857 of the 10,335 total salmon entry permits) considerable strain could be placed upon existing capabilities.*

Before the proposal is acted upon, it is suggested that the Committee consider the purpose to be served by the amendment. A "use it or lose it" clause in the Limited Entry Act may discourage voluntary non-participation in a fishery based upon consideration for the state of the resource and work unintended hardships upon fishermen.

Should further information be required of the Commission, please contact us at your earliest convenience.

* The Commission is currently working under an adjudication caseload of approximately 600 cases, some of which were begun in 1975.

By Direction of the
COMMERCIAL FISHERIES ENTRY COMMISSION



Robert J. Simon
Chairman

RJS:nlg

WORKING DRAFT

IN THE LEGISLATURE OF THE STATE OF ALASKA

12th LEGISLATURE - FIRST SESSION

A BILL

For an Act Entitled: "An Act Relating to Limited Entry Permits."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Sec. 1. - AS 16.43.150 is amended by adding a new sub-section to read:

(1) An entry permit shall be forfeited to the Commission upon failure of the permit holder to verify to the Commission active participation in the fishery each season, according to regulations adopted by the Commission.

PATRICK RODEY
ANCHORAGE

601 W. 5TH AVE. SUITE 820
ANCHORAGE, ALASKA 99501

Alaska State Senate
JUNEAU, ALASKA 99811

DURING SESSION

POUCH V
JUNEAU, ALASKA 99811

February 18, 1981

Pamela L. Finley, Esq.
Robertson, Monagle, Eastaugh &
Bradley
Attorneys at Law
P. O. Box 1211
Juneau, Alaska 99802

Re: Senate Bill 49


Dear Ms. Finley:

Thank you for your letter regarding S.B. 49.

I certainly agree that permit holders should not be placed in jeopardy of losing their livelihood for "checking the wrong box," but I am as equally concerned that limited entry permits not be awarded based on false information.

The Bill is currently in Senate Resources, and I hope you will make your views known to Senator Fahrenkamp, the Committee Chair.

Sincerely,



Patrick M. Rodey

PMR/ods

OF COUNSEL
M E MOAGLE

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

I E ROBERTSON (1885-1981)
F O EASTAUGH
J B BRADLEY
WILLIAM G RUDDY
L B JACOBSON
MICHAEL T THOMAS
JAMES F CLARK
PAUL M HOFFMAN
J P TANGEN
DEBORAH A HOLBROOK
D ELIZABETH CUADRA
HAROLD E. SNOW, JR
PAMELA L FINLEY

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW
POST OFFICE BOX 1211
JUNEAU, ALASKA 99802

ROBERT B BAKER
LEROY J BARKER
L G BERRY
C R RICH
WM. RONALD HULEN
CARL W. WINNER

ANCHORAGE OFFICE

601 WEST FIFTH, SUITE 510
ALASKA MUTUAL BANK BLDG
POST OFFICE BOX 670
ANCHORAGE, ALASKA 99510
PHONE (907) 277-6693
CABLE ROMEA
TELEX 090-26-486

JUNEAU OFFICE

200 NBA BUILDING
POST OFFICE BOX 1211
JUNEAU, ALASKA 99802
PHONE (907) 586-3340
CABLE ROMEA
TELEX 099-42-376

January 28, 1981

RESOLVED

~~JAN 28 1981~~
JAN 29 1981

The Honorable Patrick Rodey
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 49

Dear Senator Rodey:

I am writing in regard to Section 3 of the referenced bill which would allow the Limited Entry Commission to 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, among other things, a permit renewal.

From my own practice, it appears that a majority of the revocation proceedings and investigations involve questions of residency. I know of at least one case where the Commission has used a claim of residency on a permit renewal as a basis for issuing a show cause order under AS 16.43.355, even though the statute at that time did not authorize the Commission's doing so. I urge the Legislature to consider the matter carefully before giving the Commission the authority it seeks, especially in light of the legislative history of AS 16.43.355 which indicates that at least one legislator, while generally supporting the Act, indicated that a person should not lose a permit (now valued at up to \$100,000 in some cases) for "checking the wrong box."

The renewal forms before 1980 had no definition of residency except a definition which was made for the purpose of determining whether the applicant was within federal poverty levels. The 1980 renewal forms did contain a definition of resident, which required a person claiming residency not to be registered to vote in another state and

The Honorable Patrick Rodey
January 28, 1981
Page Two

to have "maintained a permanent place of personal abode within the state" during the previous 12 months. Even this definition, while better than none, may be confusing to a person who has a permanent residence in Alaska but spends substantial time Outside fishing, travelling, outfitting his or her vessel or even taking a temporary job. It may also be confusing to the fisherman who lives on his boat and travels from place to place throughout the year, but also considers Alaska to be his home and is registered to vote here. The real problem in short is that "residency" is a rather slippery legal concept to begin with and becomes even slipperier when applied to people who travel in the off-season and are not, in general, particularly adept at dealing with bureaucracies.

Furthermore, what is at stake here is not simply a person's right to earn his or her livelihood. Even if the Commission does not ultimately revoke a permit, a person issued a show cause order has to hire an attorney, and cannot transfer the permit during the pendency of the hearing, which can be up to one year or more. (It is my understanding that the Commission has recently issued a directive that the hearing officer make a recommended decision within 45 days after the record closes; however, the time between the issuance of the show cause order and the closing of the record can be quite extensive in factually complex cases.) Furthermore, fishermen who are being investigated by the Commission, but who have not been issued show cause orders may be justifiably reluctant to make a contract to transfer their permits for fear that the Commission will issue a show cause order when the transfer is requested and the permit holder will not be able to fulfill his contract.

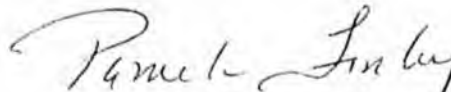
Given the difficulties a fisherman may have in deciding whether or not he or she is a "resident" and the consequences of a revocation, or even a hearing, or even an investigation, I would hope that the Legislature would not make information provided on a permit renewal form grounds for revoking an entry permit. It is certainly reasonable to require a person who doesn't pay a non-resident fee when he or she should, to pay back the amount plus a substantial amount to cover administrative costs. Forfeiture of a permit, however, is a serious penalty.

The Honorable Patrick Rodey
January 28, 1981
Page Three

If information provided on permit renewal forms is to be used as a basis for revoking a permit, it should be made very clear in the statute that no information given on a renewal form before the effective date of the amendment can be used as a basis for revoking a permit. Such an explicit statement by the Legislature should avoid any litigation concerning this issue, and will protect those people who filled out renewal forms when there was no definition of "residency" provided to them. The amendment should also require "resident" to be defined in such a way that the most unsophisticated person will be able to understand it. It could, for instance, require a person to be a registered voter in no other State at the time of renewal and physical presence within the State or State waters for a definite number of months within the year preceding application for renewal, if such a requirement would be constitutional. If the Commission is to revoke permits based on inaccurate claims of residency, the applicant should at least be given a very clear definition of "resident" and fair warning of the consequences of false information.

Thank you for your time.

Sincerely,



Pamela Finley

PLF:sd



UNITED FISHERMEN OF ALASKA

MAILING ADDRESS & OFFICE
197 SOUTH FRANKLIN ST
JUNEAU, ALASKA 99801
907 586-2820

Rodger Painter
Executive Director

May 21, 1981

Honorable Pat Rodey
Chairman, Senate Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Senator Rodey:

The United Fishermen of Alaska, which represents 17 local fishermen's groups and another 1,200 individual commercial fishermen, is strongly opposed to the suggested amendment to SB 49 adding a "use it or lose it" provision to limited entry permits.

An annual mandatory use requirement for entry permits is by no means a new concept, as it has been kicking around since the system was first proposed. The May 19, 1981 letter from the Commercial Fisheries Entry Commission provides solid logic for the past rejection of the proposal.

What must be kept firmly in mind when looking at limited entry is that the system was fashioned to provide the best protection possible under law for resident commercial fishermen. As a special joint legislative committee discovered when considering a wide range of potential changes to limited entry between the 1979 and 1980 legislative sessions, even relatively minor changes to the program would create ripple effects that can upset the economies of coastal communities dependent upon the crucial salmon fisheries.

The UFA believes that a "use it or lose it" requirement on limited entry permits would severely affect the earning power of local fishermen, particularly during fishing seasons with low projected salmon harvests when non-resident permit holders would be inclined to stay in the "lower 48." The 1980 Copper River drift gillnet fishery for king salmon provides a classic example.

Non-residents hold 141, or 27 percent, of the total 532 Prince William Sound drift gillnet salmon permits. Because of poor preseason forecasts for the early 1980 king salmon fishery in the Copper River by the Alaska Department of Fish and Game, however, only 200 permit holders showed up on the fishing grounds. Resident fishermen accounted for about 90 percent of the gillnet fleet, which harvest an estimated 10,000 king salmon, according to the president of the local fishermen's group.

If the proposed "use it or lose it" clause had been in effect in 1980,

it is likely that all 532 permit holders would have shown up for the fishery. The predominantly local fleet would have seen its share of the harvest reduced from marginal levels of 50 fish per vessel to the sure-fire loser of 19 king salmon per permit, if all qualified fishermen had been required to participate.

The trend of higher local participation in poor seasons holds true statewide. A mandatory use provision would result in a lower return to resident fishermen, consequently, reduce the benefits of commercial fisheries to local economies.

If intent of Senate Judiciary Committee members favoring the "use it or lose it" provision is to create better fishing opportunities for Alaskans, a better approach would be to bolster the state's loan program for limited entry permits. The most constitutionally sound method of giving residents an advantage in the salmon fisheries is through providing easily accessible, 100 percent financing to long time Alaskans for entry permits.

The UFA and other commercial fishermen respectfully request committee members to carefully consider the full ramifications of the "use it or lose it" provision. Upon close scrutiny, we are convinced that the committee can come to only one conclusion: rejection of the proposed amendment.

Sincerely,


Rodger Painter

RP/1a

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. No. 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)

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. No. 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)

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. No. 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)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

COMMERCIAL FISHERIES ENTRY COMMISSION

POUCH KB
JUNEAU, ALASKA 99811

May 19, 1981

The Honorable Pat Rodey
Chairman, Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey:

Please find attached, draft language requested by your Committee amending AS 16.43. to provide a "use it or lose it" limitation on entry permits. Before the Committee decides whether to propose this limitation, the Commission suggests that serious attention be given to several considerations. The first and most important consideration is whether the requested amendment comports with the purpose of the Limited Entry Act.

As stated in AS 16.43.010(a) the limited entry legislation was enacted to promote resource conservation and economic health of Alaska's commercial fisheries. By mandating permit holders' participation, competition among fishermen for a given resource and impact upon that resource will be increased. This increased effort could result in lower economic returns to commercial fishermen and additional pressures on fishery stocks that are, in some instances, already at low levels. Two examples of this potential effect may be found in the statewide power troll and the Cook Inlet salmon fisheries.

In 1979 (the most recent year for which complete landing data is available from the Alaska Department of Fish and Game) 814 out of a possible 979 statewide power troll permits actually participated in the fishery. If the 165 non-participating fishermen had been forced to fish because of a "use it or lose it" statute, the economics and stock levels of the fishery would be more depressed than they are at present.

In 1979 Cook Inlet net fisheries, i.e., purse seine, drift gill net and set gill net, 1,277 permits were fished out of a total of 1,432 permits available. An additional 155 units of gear could drastically impact fish runs that are currently the subject of considerable contention by subsistence, commercial and sports fishermen.

A mandatory-use requirement on entry permits may also punish diversified fishermen, rural fishermen and holders of permits who voluntarily choose not to participate because of poor run predictions or other economic considerations. Fishermen who hold permits for more than

one salmon fishery are not always able to fish every permit in a given season. Those who hold salmon net permits in different administrative areas must designate before the season the area in which they intend to fish. 05 AAC 39.115 and 20 AAC 05.940. They are, therefore, precluded by regulation from fishing all their permits in one season and would, if the proposal were adopted, lose the permits they did not fish through no intentional disuse. In these cases, the proposal would actually defeat one of the stated legislative intentions of the original Limited Entry Act that professional fishermen be allowed to acquire more than one permit in order to have options available each season.

The proposed amendment could hurt rural fishermen who want to take advantage of high paying jobs whenever they are available and yet maintain their permits in order that they may fish in other years or eventually pass them on to their children. If a permit holder in the Upper Yukon net fishery, where the 1979 average gross earnings per permit were \$7,477, worked on the pipeline for a year rather than fish he could, under the proposed amendment, lose his permit. In essence, he would be punished for seeking to better his financial situation. Also, the amendment might encourage permit transfers away from villages.

The amendment could force people to fish in years when it is not profitable because of poor run predictions, low prices or better short-term opportunities elsewhere. The proposal ignores the fact that some fishermen minimize loss potential in certain years by simply not fishing. The proposal could force them to incur a financial loss to preserve their permit.

Implementation of the proposed amendment may require additional appropriations to properly address the effects of increased participation and to determine which permits are to be forfeited because they were not fished. In the years 1977 to 1979 the average statewide participation level in limited salmon fisheries was 82.9% of the available permits. The amendment would increase the participation level, thereby altering management policies and requiring additional enforcement efforts.

An administrative framework would have to be established to evaluate catch data, match the data to permits and determine which permits are to be forfeited. Procedural due process in the form of administrative hearings and judicial appeals would have to be afforded to non-participating permit holders prior to forfeiture. The actual forfeiture of a permit would probably not occur until a considerable period of time after the season in question.

May 19, 1981

Fish ticket landing data is not available to the Commission in useable form until at least a year after the particular fishing season. The Commission would, therefore, not begin to establish who did not participate in a given season until the following year. After a non-participant was identified he would have to be notified of the proposed action and given an opportunity through an administrative hearing to contest the proposed action. The case would then be adjudicated by the three Commissioners. If the adjudication were adverse to the permit holder's interest, he would have the right to a judicial appeal according to AS 44.62.560-44.62.570. The permit could not be forfeited until all administrative and judicial remedies had been exhausted.

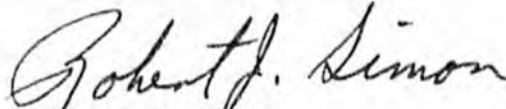
The potential impact upon current Commission workload is very significant. If the Commission were to review and act upon over 17% of the permits available (in 1979 that would have amounted to 1,857 of the 10,335 total salmon entry permits) considerable strain could be placed upon existing capabilities.*

Before the proposal is acted upon, it is suggested that the Committee consider the purpose to be served by the amendment. A "use it or lose it" clause in the Limited Entry Act may discourage voluntary non-participation in a fishery based upon consideration for the state of the resource and work unintended hardships upon fishermen.

Should further information be required of the Commission, please contact us at your earliest convenience.

* The Commission is currently working under an adjudication caseload of approximately 600 cases, some of which were begun in 1975.

By Direction of the
COMMERCIAL FISHERIES ENTRY COMMISSION


Robert J. Simon
Chairman

RJS:nlg

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.