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COMMITTEE REPORT
SENATE

1/13/81

FURTHER: Judiciary

Date: _____

Mr. President:

The Committee on RESOURCES has had SB 49
relating to limited entry to commercial fisheries

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

- do pass *with individual RECS.* do not pass
- do pass with attached amendments(s)
- replace with CS _____ 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

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MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Handwritten Signature] (No Rec)

[Handwritten Signature]

CHAIRMAN

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

April 20, 1981
3:00 p.m.

Beltz Room
211 - Capitol

MEMBERS PRESENT

Senator Fahrenkamp
Senator Mulcahy
Senator Fischer
Senator Sturgulewski
Senator Gilman
Senator Eliason

HEARING:

- CSHB 237 An Act amending the Alaska Agricultural Loan Act.
- SB 49 An Act relating to limited entry to commercial fisheries.
- SB 397 An Act establishing a Fishery Industrial Technology Center as part of the University of Alaska
- CSSSSB 111 An Act relating to fishing, hunting and trapping license fees and fishing permits.

Senator Mulcahy, stated that SB 49 is an administration bill that was requested by the Limited Entry Commission. The Commission has asked that the time period in which a permit has to be used prior to the Commission initiating revocation proceedings be increased from 2 to 4 years.

Senator Mulcahy put forth the motion to move SB 49 with individual recommendations.

Senator Mulcahy, stated that SB 397 is the result of the recommendation by the University of Alaska. The University has been examining technological aspects of the fishing industry.

Senator Mulcahy put forth the motion to move SB 397 with individual recommendations.

SENATE RESOURCES COMMITTEE

April 20, 1981

Page: 2

The motion was made to hold CSHB 237 and CSSSSB 111 until the Committee's April 22, 1981 meeting.

The Committee adjourned at 3:30 p.m.



Alaska State Legislature

Senate

RESOURCES SUBCOMMITTEE ON FISHERIES

JUNEAU, ALASKA

April 15, 1981

TO: Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee

FROM: Senate Resources Subcommittee on Fisheries

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

The subcommittee has taken testimony and reports SB 49 back to the committee as a whole with the following recommendations.

Members	Recommendation
Senator Mulcahy	<i>Do Pass</i>
Senator Eliason	<i>Do Pass</i>
Senator Gilman	<i>No Rec</i>



Alaska State Legislature

Senate

RESOURCES SUBCOMMITTEE ON FISHERIES

JUNEAU, ALASKA

April 15, 1981

Senate Resources Subcommittee on Fisheries meeting

The meeting was called to order by Chairman Mulcahy at 3:03 PM. All members of the committee were present.

First on the agenda was SB 49 "An Act relating to Limited Entry".

Commissioner John Williams, of the Commercial Fisheries Entry Commission, testified on SB 49. Commissioner Williams explained the bill to the committee.

SB 49 was moved with individual recommendations.

Next on the agenda was SB 397 "An Act creating a Fishery Industrial Center".

Don Rosenberg, Director of the Office of Fisheries and Alaska Sea Grant for the University of Alaska, testifies on SB 397. Mr. Rosenberg explained the bill, and the method in which the program would be set up.

SB 397 was moved with individual recommendations.

Next on the agenda was SSSB 111 "An Act relating to fishing hunting, trapping license fees".

Senator Eliason briefly explained SSSB 111.

Louis Bandirola, Deputy Director of the Division of Sport Fish of the Department of Fish and Game, testifies on SSSB 111.

SSSB 111 was moved with individual recommendations.

The meeting was adjourned by Chairman Mulcahy at 4:05 PM.



Alaska State Legislature

Senate

JUNEAU, ALASKA

RESOURCES SUBCOMMITTEE ON FISHERIES

Sectional Analysis of SB 49

Sec. 1: This section changes the period of time before an entry permit is forfeited because of failure to pay renewal fees from two years to four years. It also prohibits renewal of a permit until all fees are paid for previous years. It establishes that an administrative closure of a fishery for an entire year will waive the renewal requirement for that year.

Sec. 2: This section will change the method of allotting permits in the lowest priority classification. Under the present method, if there are too many people in the lowest priority for them all to be issued permits, a lottery must be held to determine who gets the permits. Under this bill, as long as the number of people extra is small-not over 10 people or 5% of the total number of permits-these few extra permits would be issued.

Sec. 3: This section clarifies the law concerning administrative revocation of permits. It applies present law concerning revocation to interim-use permits, and also to renewing permits.

Sec. 4 and 5: These sections will protect the state, under the Commercial Fishing Loan Act, and CFAB from losing if a permit that is being used for collateral is revoked by the commission or by the court. Under these sections, the permit can be reassigned in the same manner as if the loan was defaulted on.

Sec. 6: This section repeals the law that allows a permit to be revoked for an income tax violation involving income received from commercial fishing.

Sec. 7: This section gives an effective date of immediately.

The permit classification for SB 49 will work like this: If 100 permits are to be issued, and there are 80 people in the highest priority, these people will be issued permits. Now there are 20 permits left. If however, there are more than 20 people in the next classification, under present law, there would have to be a lottery. Under the proposed bill, as long as there is not over 5% or 10 people, whichever is greater, these few extra permits would be issued.

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)

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Effect of amendments. — The 1977 amendment added paragraph (14) to subsection (a). The 1978 amendment added paragraph (15) to subsection (a).

Article 3. Requirements for Entry Permits.

Section	Section
15. Terms and conditions of entry permit; annual renewal	170. Transfer of entry permits
16. Fees	160. Emergency transfers

Sec. 16.43.140. Permit required.

Quoted in Commercial Fisheries Entry Comm'n v. Apokedak, Sup. Ct. Op. No. 2011 (File No. 4464), 606 P.2d 1255 (1980).

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

(g) Except as provided in AS 16.10.333 — 16.10.337 and in AS 44.81.230 — 44.81.250, 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; am § 1 ch 51 SLA 1980)

Effect of amendments. — The 1978 amendment, added "Except as provided in AS 16.10.333 — 16.10.337" to the beginning of subsection (g). The 1980 amendment, effective June 1, 1980, inserted "and in AS 44.81.230 — 44.81.250" following "AS 16.10.333 — 16.10.337" in subsection (g). As the rest of the section was not affected by the amendments, 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)

Alaska Statutes 16.05.340 through 16.05.650 and 16.05.670, referred to above, were repealed by § 19, ch. 25, SLA 1977, effective January 1, 1973.

Effect of amendment. — The 1974 amendment substituted "the qualification date established in (d) 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

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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

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(b) A special harvest area entry permit may only be issued for the applicable area designated by the Department of Fish and Game as a special harvest area.

(c) The annual fee for a special harvest area entry permit shall be specified by commission regulation under the authority of AS 16.43.160. (§ 2 ch 64 SLA 1979)

Sec. 16.43.339. Disposition of fish. Fish caught under the authority of a special harvest area entry permit are the property of the permit holder. The permit holder may sell the fish if the proceeds are used in the manner described in AS 16.10.450. (§ 2 ch 64 SLA 1979)

Sec. 16.43.341. Authorized gear. For the purposes of harvesting salmon, a special harvest area entry permit holder may employ any fishing gear designated as legal gear in the applicable special harvest area by the Board of Fisheries. (§ 2 ch 64 SLA 1979)

Sec. 16.43.343. Adoption of regulations. (a) Use privileges granted under AS 16.43.335 — 16.43.341 are subject to the regulations of the Board of Fisheries.

(b) The commission, after consultation with the Department of Fish and Game, shall adopt regulations which are reasonably necessary to implement AS 16.43.335 — 16.43.341. (§ 2 ch 64 SLA 1979)

Article 6. General Provisions.

Section

355. Commission revocation of entry permits

360. Penalties

see 3 amendments

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

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(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).

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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

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.~~ *New section is in Supplements*

(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.~~ *is supplements*

(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).

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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.

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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).

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 AS 16.43.170 — 16.43.180, 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.
(am §§ 7 — 9 ch 123 SLA 1978)

Effect of amendment.

The 1978 amendment, 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.

Sec. 16.43.380. Definitions.

Applied in *Yunker v. Alaska Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 1892 (File No. 145), 598 P.2d 917 (1979).

Cited in *State, Com. Fisheries Entry Comm'n v. Templeton*, Sup. Ct. Op. No. 1593 (File No. 40-2), 598 P.2d 77 (1979).

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incurred under (c) of this section. A loan under AS 16.10.370 may use up to 49 per cent of the proceeds of any outstanding loans of the borrower, if the outstanding loans are for the purposes described in AS 16.10.310. A loan is considered to be a loan to the borrower if the borrower is an individual or an organization of which the borrower is an officer or is, directly or indirectly, the beneficial owner of any class of equity securities; or is, directly or indirectly, the beneficial owner of 10 per cent or more of the equity securities of the borrower; or in which the borrower has a substantial interest in which the borrower serves as trustee or in

AS 16.10.310(a)(1)(A) may jointly obtain the construction of a fishing vessel or the purchase of a fishing vessel. Loans granted under this section shall be secured by a first priority lien and appropriate security in the amount specified in (a)(1) of this section. The interest rate on loans granted under this section shall not exceed nine and one-half per cent; and the amount of the appraised value of the collateral used to secure the loan shall not exceed 90 per cent of the appraised value of the collateral used to secure the loan.

AS 16.10.310(a)(1)(A), the department may not issue an entry permit for handtroll fisheries if the applicant is an individual or an organization of which the applicant is an officer or is, directly or indirectly, the beneficial owner of any class of equity securities; or is, directly or indirectly, the beneficial owner of 10 per cent or more of the equity securities of the borrower; or in which the borrower has a substantial interest in which the borrower serves as trustee or in

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loans granted under this subsection shall bear interest at a rate not to exceed eight per cent if the commissioner determines that an increase in the interest rate is necessary for the security of the loan" from the end of paragraph (4) of subsection (c) of Sections 3, 5, and 7 of ch. 72, retroactive to July 1, 1978, added the language beginning "except that a loan granted

under AS 16.10.333" to the end of paragraph (5) of subsection (a), rewrote the first sentence of subsection (d), added the present second sentence of subsection (d), and added subsections (f) and (g).

Editor's note. — Section 71, ch. 106, SLA 1980, effective June 21, 1980,

provides that after July 1, 1981, "no further loans may be made under AS 16.10.310 and 16.10.320(a) except for loans authorized under AS 16.10.333 pursuant to AS 16.10.310 and 16.10.320(a)."

Sec. 16.10.330. Sale or transfer of mortgages, bonds and notes.

Repealed by § 14 ch 122 SLA 1980, effective July 1, 1980.

Editor's note. — The repealed section was derived from § 1, ch. 134, SLA 1972; § 4, ch. 54, SLA 1973; § 1, ch. 177, SLA 1976; § 8, ch. 72, SLA 1979.

Sec. 16.10.333. Loans for purchase of Alaska limited entry permits. (a) Loans under AS 16.10.320(a) may be made to an individual commercial fisherman for the purchase of a limited entry permit upon certification by the commissioner that the fisherman is a person who qualifies as a transferee for the permit under AS 16.43 and the regulations adopted by the commissioner.

(b) Upon approval by the commissioner, the permit to be purchased may be pledged as security for a loan under (a) of this section, if

(1) the certificate for the pledged permit lists the commissioner as the legal owner of the permit;

(2) the certificate for the pledged permit lists the debtor as the equitable owner of the permit;

(3) all annual permit cards issued under the pledged permit list the name of the debtor;

(4) all obligations and responsibilities of a permit owner are assumed by the debtor;

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit, and their obligation is limited to satisfaction of the note and payment of costs directly incurred by the department in administering the loan.

(c) The commissioner is not liable for any act or omission resulting from permit ownership nor will that act or omission affect his title to the permit or his rights under it.

(d) Upon satisfaction of the note by the debtor, the commissioner shall certify to the commission that the note has been satisfied.

(e) Upon certification, as provided in (d) of this section, the commissioner shall amend the permit certificate to list the debtor as the legal owner.

(f) In determining whether an individual commercial fisherman is reasonably likely to be able to repay a loan made under this section, the commissioner shall consider the individual commercial fisherman's income from commercial fishing and from all other sources. (§ 4 ch 83 SLA 1978; am § 1 ch 106 SLA 1980)

Effect of amendment. — The 1980 amendment, effective June 21, 1980, added subsection (f).

Sec. 16.10.335. Default and foreclosure. (a) If the debtor defaults upon a note for which a limited entry permit has been pledged as security under AS 16.10.333 or under AS 16.10.338, the commissioner shall provide the debtor, by registered or certified mail sent to his known address on file with the commissioner, with a notice of default which includes

- (1) a description of the security given for the note including the number assigned to the pledged permit by the commission;
- (2) the date upon which the default occurred;
- (3) the amount of arrearages as of the date of the notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;
- (4) a statement that the debtor may, within 15 days of the postmark date of the notice, request a hearing at which he may submit evidence showing he has not defaulted;
- (5) a statement that the note may be reinstated if brought current within 60 days from the postmark date of the notice;
- (6) a statement that the note may be paid in full less unearned interest within 90 days from the postmark date of the notice;
- (7) the place where reinstatement or payment in full may be made; and
- (8) a notice in at least 10-point bold type stating: "IMPORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

(b) Upon the debtor's failure to reinstate or satisfy the note within the time specified in (a) of this section, his interest in the permit is terminated by operation of law without further notice. Any entry permit cards issued to him under the permit shall be cancelled immediately upon receipt by the commissioner of a certificate of termination containing a copy of the notice required by (a) of this section issued by the commissioner. (§ 4 ch 83 SLA 1978; am § 9 ch 72 SLA 1979)

Effect of amendment. — The 1979 amendment, retroactive to July 1, 1978, inserted "or under AS 16.10.336" in the introductory language of subsection (a)

and substituted "his interest in the permit" for "his equitable interest" in the first sentence of subsection (b).

Sec. 16.10.337. Deficiencies and transfer of entry permits after foreclosure. (a) Upon a foreclosure on an entry permit as provided in AS 16.10.335, the commissioner shall offer the commission a right of first refusal if the permit is subject to a buy-back program under AS

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16.43.290 — 16.43.330 at a price equal to the amount outstanding on the note plus any costs the department directly incurred in administering the loan.

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 — 16.43.330, the department shall promptly notify the debtor of this fact. The debtor has 30 days from the postmark date of the notice to nominate a person qualified to assume the note. The person nominated must qualify under the requirements of AS 16.10.333(a). If qualified, he may assume all rights and liabilities of the original debtor.

(c) If the debtor is unable to nominate a qualified person to assume the note under (b) of this section, the permit must be made available to a qualified person, chosen as provided in this section, who must assume the note subject to all rights and liabilities of the original debtor. The commission shall provide the commissioner with a list of persons chosen by lottery who qualify as transferees of entry permits under AS 16.43 and regulations adopted by the commission and who have met the residency and commercial fishing participation requirements of AS 16.10.310(a). The commissioner then shall determine, in order of presentation, any remaining qualifications. The commissioner shall allow the first applicant meeting all qualifications to assume the note.

(d) Nothing in this section affects the right of the commissioner to institute legal action for a deficiency resulting from a default on a note given under AS 16.10.333. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees. (§ 4 ch 83 SLA 1978)

~~Sec. 16.10.338. Entry permits as collateral. Alaska limited entry permits may be used as security for loans under AS 16.10.310(a). The provisions of AS 16.10.335 and 16.10.337 apply to Alaska limited entry permits pledged as security for loans in accordance with this section. (§ 10 ch 72 SLA 1979)~~

~~Sec. 16.10.330. Regulations. The commission, with the approval of the department, shall adopt regulations to implement AS 16.10.333 — 16.10.337. (§ 4 ch 83 SLA 1978)~~

~~Sec. 16.10.342. Special account established. (a) There is established as a special account within the commercial fishing revolving loan fund the foreclosure expense account.~~

~~(b) The commissioner may credit the foreclosure expense account with money earned as a result of an increased interest rate on a commercial fishing loan granted under AS 16.10.320(c).~~

~~(c) The commissioner may expend money credited to the foreclosure expense account when necessary to protect the state's security interest in collateral on loans granted under AS 16.10.300 — 16.10.370 or to~~

before January 1, 1955, under ch. 115 SLA 1949, as amended before March 28, 1955. (§ 4 ch 115 SLA 1949; am § 1 ch 188 SLA 1955)

Sec. 43.20.320. Arrangement and classification. No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of a particular section or provision or portion of this chapter, nor may the descriptive matter or headings relating to part, section, subsection or paragraph be given legal effect. (§ 2 ch 115 SLA 1949)

Sec. 43.20.330. Penalties.

Repealed by § 3 ch 169 SLA 1972.

Editor's note. — The repealed section derived from § 18, ch. 115, SLA 1949; § 1, ch. 110, SLA 1955; § 1, ch. 139, SLA 1962.

Sec. 43.20.335. Penalties. (a) A person who wilfully attempts to evade the tax imposed by this chapter is, in addition to other penalties provided by this chapter, guilty of a felony and, upon conviction, shall be fined not more than \$5,000, or imprisoned for not more than five years, or both.

(b) A person required under this chapter to collect, account for, and pay over the tax imposed by this chapter who wilfully fails to collect or truthfully account for and pay over the tax is, in addition to other penalties provided by this chapter, guilty of a felony and, upon conviction, shall be fined not more than \$10,000, or imprisoned for not more than five years, or both.

(c) A person required under this chapter to pay a tax, make a return, keep records, or supply information, who wilfully fails to pay the tax or estimated tax, make the return, keep the records, or supply the information, is, in addition to other penalties provided by this chapter, guilty of a misdemeanor and, upon conviction, shall be fined not more than \$5,000, or imprisoned for not more than one year, or both.

(d) A person who wilfully makes and subscribes a return, statement, or other document required under this chapter which contains or is verified by a written declaration that it is made under the penalties of perjury which he does not believe to be true and correct as to every material matter is, in addition to other penalties provided by this chapter, guilty of a felony and, upon conviction, shall be fined not more than \$5,000, or imprisoned for not more than three years, or by both.

(e) A person who wilfully and knowingly aids or assists in, or procures, or counsels the preparation or presentation in connection with any matter arising under this chapter of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter is guilty of a felony whether or not the falsity or fraud is with the knowledge or consent of the person required to present the return,

affidavit, claim, or document, and, upon conviction, shall be fined not more than \$5,000, or imprisoned for not more than three years, or both.

(f) A person who wilfully delivers or discloses to the commissioner or the department under this chapter any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter shall be fined not more than \$1,000, or imprisoned for not more than one year, or both.

(g) A person required to collect or truthfully account for a tax imposed by this chapter who wilfully fails to collect the tax or to truthfully account for and pay over the tax, or wilfully attempts in any manner to evade the tax or the payment of it is, in addition to other penalties provided by law, liable to a civil penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over. This penalty is in place of the tax not otherwise paid to the state. The civil penalty shall be paid upon demand by the commissioner or his designee, and shall be assessed and collected in the same manner as taxes are assessed and collected under this chapter. Any reference in (a) — (f) of this section to "tax" imposed refers also to the civil penalty provided under this subsection.

(h) In this section "person" includes, but is not limited to, an officer or employee of a corporation or a member or employee of a partnership, who as officer, employee, or member is under a duty to perform the act in respect to which the violation occurs.

(i) A person required to supply information to his employer under § 170 of this chapter who wilfully supplies false information, or who wilfully fails to supply information under that section which would require an increase in the tax to be withheld under that section, is, in addition to other penalties specified in this chapter, guilty of a misdemeanor and upon conviction, is punishable by a fine of not more than \$5,000, or imprisonment for not more than one year, or by both.

(j) The penalties and liabilities provided in (g) of this section shall be paid upon notice and demand by the commissioner of revenue or his deputy or agent and shall be assessed and collected in the same manner as taxes. A reference to "tax" imposed also refers to the penalties and liabilities provided by this section. (§ 1 ch 169 SLA 1972; am § 48 ch 127 SLA 1974; am §§ 1, 2 ch 41 SLA 1975; am § 11 ch 70 SLA 1975)

Effect of amendments. — The 1974 amendment deleted "together with the costs of prosecution" from the end of subsections (a) — (e).

The first 1975 amendment added the third and fourth sentences of subsection (g) and added subsection (i).

The second 1975 amendment, effective May 20, 1975 added subsection (j).

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 517 am S), see 1974 House Journal, p. 657.

Am. Jur. 2d reference. — 71 Am. Jur. 2d, State and Local Taxation, §§ 696, 697.

Sec. 43.20.340. Definitions. In this chapter

(1) "bank" means a financial institution including a national banking association;

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the terms of its bylaws and subject to the provisions of AS 10.15.005 — 10.15.600. (§ 3 ch 159 SLA 1978)

Sec. 44.81.230. Loans for purchase of Alaska limited entry permits. (a) A loan under AS 44.81.210(20) for the purchase of a limited entry permit may be made only upon certification by the commission that the fisherman is a person who qualifies as a transferee for the permit under AS 16.43 and the regulations adopted by the commission.

(b) Upon approval by the bank, the permit to be purchased may be pledged as security for a loan under (a) of this section, if

(1) the certificate for the pledged permit lists the bank as the legal owner of the permit;

(2) the certificate for the pledged permit lists the debtor as the equitable owner of the permit;

(3) all annual permit cards issued under the pledged permit list the name of the debtor;

(4) all obligations and responsibilities of a permit owner are assumed by the debtor;

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit and their obligation is limited to satisfaction of the note and payment of costs directly incurred by the bank in administering the loan.

(c) Upon satisfaction of the note by the debtor, the bank shall certify to the commission that the note has been satisfied.

(d) Upon certification as provided in (c) of this section, the commission shall amend the permit certificate to list the debtor as the legal owner. (§ 5 ch 53 SLA 1979; am §§ 11—13 ch 51 SLA 1980)

Effect of amendment. — The 1980 amendment substituted "commission" for "Alaska Commercial Fisheries Entry Commission (AS 16.43.020)" in subsection (a), deleted "the executive director of" following "permit lists" in paragraph (1) of subsection (b), and substituted "bank" for "executive director" in subsection (c).

Sec. 44.81.240. Default and foreclosure of loans for limited entry permits. (a) If the debtor defaults upon a note for which a limited entry permit has been pledged as security under AS 44.81.230, the bank shall provide the debtor, by registered or certified mail sent to his last known address on file with the bank, with a notice of default which includes

(1) a description of the security given for the note including the number assigned to the pledged permit by the commission;

(2) the date upon which the default occurred;

(3) the amount of arrearages as of the date of the notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;

(4) a statement that the debtor may, within 15 days of the postmark date of the notice, request a hearing at which he may submit evidence showing he has not defaulted;

(5) a statement that the note may be reinstated if brought current within 60 days from the postmark date of the notice;

(6) a statement that the note may be paid in full less unearned interest within 90 days from the postmark date of the notice;

(7) the place where reinstatement or payment in full may be made; and

(8) a notice in at least 10-point bold type stating: "IMPORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

(b) Upon the debtor's failure to reinstate or satisfy the note within the time specified in (a) of this section, his equitable interest is terminated by operation of law without further notice. Any entry permit cards issued to him under the permit shall be cancelled immediately upon receipt by the commission of a certificate of termination containing a copy of the notice required by (a) of this section issued by the bank. (§ 5 ch 53 SLA 1979; am § 14 ch 51 SLA 1980)

Effect of amendment. — The 1980 amendment deleted "the executive director of" preceding "the bank" near the middle of the introductory paragraph of subsection (a) and near the end of subsection (b), and substituted "commission" for "Alaska Commercial Fisheries Entry Commission" at the end of paragraph (1) in subsection (a).

Sec. 44.81.250. Deficiencies and transfer of entry permits after foreclosure. (a) Upon a foreclosure on an entry permit as provided in AS 44.81.240, the bank shall offer the commission a right of first refusal if the permit is subject to a buy-back program under AS 16.43.290 — 16.43.330 at a price equal to the amount outstanding on the note plus any costs the bank directly incurred in administering the loan.

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 — 16.43.330, the bank shall promptly notify the debtor of this fact. The debtor has 30 days from the postmark date of the notice to nominate a person qualified to assume the note. The person nominated must qualify under the requirements of AS 44.81.230(a). If qualified, he may assume all rights and liabilities of the original debtor.

(c) If the debtor is unable to nominate a qualified person to assume the note under (b) of this section, the permit must be made available to a qualified person, chosen as provided in this section, who shall assume the note subject to all rights and liabilities of the original debtor. The commission shall provide the bank with a list of persons chosen by lottery who qualify as transferees of entry permits under AS

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16.43 and regulations adopted by the commission and who have met the residency and commercial fishing participation requirements of AS 44.81.210(20). The bank shall then determine, in order of presentation, any remaining qualifications. The bank shall allow the first applicant meeting all qualifications to assume the note.

(d) Nothing in this section affects the right of the bank to institute legal action for a deficiency resulting from a default on a note given under AS 44.81.230. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees. (§ 5 ch 53 SLA 1979; am §§ 15—17 ch 51 SLA 1980)

Effect of amendment. — The 1980 amendment, in subsection (a), deleted "the executive director of" preceding "the bank" near the beginning of the subsection and substituted "commission" for "Alaska Commercial Fisheries Entry Commission" near the beginning of the subsection. The amendment also substituted "commission" for "Alaska Commercial Fisheries Entry

Commission" in the second sentence in subsection (c), deleted "executive director of the" preceding "bank shall" in the third sentence in subsection (c), substituted "bank" for "executive director" in the last sentence in subsection (c), and deleted "the executive director of" preceding "the bank" near the beginning of subsection (d).

Sec. 44.81.350. Definitions. In this chapter

- (1) "bank" means the Alaska Commercial Fishing and Agriculture Bank;
- (2) "commission" means the Alaska Commercial Fisheries Entry Commission (AS 16.43.020);
- (3) "member of the bank" includes a holder of a share of membership stock of the bank or a patron of the bank with retained patronage earnings of \$2,500 or more to his credit;
- (4) "supplier" means a person whose main source of income is from providing goods or services that are directly related to commercial fishing or agriculture to individuals, corporations, partnerships or joint ventures engaged in commercial fishing or agriculture. (§ 18 ch 51 SLA 1980)

Chapter 82. Alaska Gas Pipeline Financing Authority.

Section	Section
10. Creation of authority	110. Legislative approval
20. Membership	115. Nomination of a member of the board
30. Officers and quorum	120. Trust indentures and trust agreements
40. Compensation	130. Nonliability on bonds
50. Staff	140. Pledge of the state
60. Legal counsel	150. Exemption from taxation
70. Purpose of authority	160. Bonds legal investments for fiduciaries
80. General powers	170. Regulations
90. Bonds of the authority	180. Annual audit
100. Submission of financial and Alaska impact plan	

TO: Senator Bob Mulcahy

DATE : February 9, 1981

FROM: Robert J. Simon *Robert J. Simon*
Chairman
Commercial Fisheries Entry
Commission

SUBJECT: SB 49--Relating to Limited
Entry

You have asked that we comment on the above referenced bill which was introduced at the request of the Governor. The bill, if enacted, would provide for six technical changes in the Limited Entry law. The changes are discussed below:

*Sec. 1: The section changes the automatic forfeiture provisions of the Act for failure to pay the renewal fees from two to four years, and adds clarifying language which specifies when fees are not payable or are reimbursable.

Presently, a fisherman unknowingly forfeits his entry permit simply by not paying the renewal fees for two years. Each year the Commission allocates considerable resources to advertising in papers and mailing hundreds of certified letters in an attempt to inform permit holders of the impending loss of their permit. The primary group of fishermen affected by the workings of this section are residents of rural Alaska. The two year forfeiture provision has no overriding policy implications which would be affected by this requested change. Substituting four years for the present language should, we feel, eliminate nearly all of the unintended permit forfeiture. We expect each fisherman (or his estate if he should die) will be in touch with the Commission at least once in each four year period and will thereby become aware of any fee arrearages.

The added language provides statutory clarification of what delinquent fees are due and payable if permits are renewed in years after fees were initially due. It would also specify circumstances (e.g., closure for an entire season) which would waive the renewal requirement.

*Sec. 2: The present law (which this would amend) specifies procedures that the Commission is to use when the number of permits left to issue in a fishery undergoing limitation is smaller than the number of similarly situated applicants who are next in line for issuance. The present procedure is to utilize a lottery. The amendment would continue that practice, except in two instances: (1) if the resultant overissuance from giving everyone at the next point level a permit is less than

five percent of the maximum number established for that fishery; or (2) if the resultant overissuance would not be greater than ten permits. The language specifies that the greater of either of these possible exceptions would be used.

*Sec. 3: The section would amend the portion of the Limited Entry Act that provides for administrative revocation of permits. Present language is unclear as to the scope of this power. The amendment would clearly apply the provisions of the present law to instances involving both entry and interim-use permits and to permit renewals as well as permit applications.

*Secs. 4 and 5: The amendments requested in these two sections would protect the interests of lenders who hold permits as collateral in the event that such a collateralized permit were revoked either by the Commission or a Court. Presently, should a permit be revoked either by the Commission under AS 16.43.355 or by a Court under AS 16.43.360, it is retired forever and not reissued. Present law does not provide any means to reissue a revoked permit without the Commission first formally determining that the number of outstanding permits for that fishery is less than optimum.

Current law provides for the State of Alaska and the Commercial Fishing and Agriculture Bank to use permits as collateral. The amendment would allow the Commission in conjunction with the aforementioned lenders to reassign the interests in a mortgaged permit if one should be revoked.

*Sec. 6: The section would repeal AS 16.43.360(c), which provides for the revocation of an entry permit if the holder is convicted of an income tax law violation involving income derived from commercial fishing. Since the State's personal income tax has now been repealed, that provision is no longer operable.

We hope you find these brief comments to be of assistance. Please do not hesitate to ask if we may be of further assistance.

JAN 29 1981

OF COUNSEL
M. E. MONAGLE

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW
POST OFFICE BOX 1211
JUNEAU, ALASKA 99802

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

ANCHORAGE OFFICE

601 WEST FIFTH, SUITE 510
ALASKA MUTUAL BANK BLDG.
POST OFFICE BOX 679
ANCHORAGE, ALASKA 99510
PHONE (907) 277-6693
CABLE ROMEA
TELEX 090-26-486

January 28, 1981

JUNEAU OFFICE

200 NBA BUILDING
POST OFFICE BOX 1211
JUNEAU, ALASKA 99802
PHONE (907) 686-3340
CABLE ROMEA
TELEX 099-46-376

The Honorable Bettye Fahrenkamp
Chairman, Senate Resources Committee
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 49

Dear Senator Fahrenkamp:

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

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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.

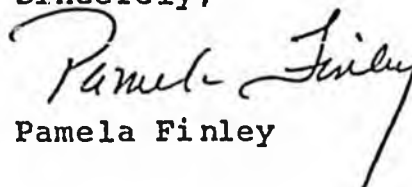
Given the difficulties a fisherman may have in deciding whether or not he or she is a "resident" and the consequences of a revocation, or even a hearing, or even an investigation, I would hope that the Legislature would not make information provided on a permit renewal form grounds for revoking an entry 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.

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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,

A handwritten signature in cursive script that reads "Pamela Finley". The signature is written in dark ink and is positioned above the typed name.

Pamela Finley

PLF:sd

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