

SCOMM

#48:5

FISH

COMMITTEE SUBSTITUTE HB 227

Sec. 1. AS 16.10 is amended by adding new sections to read:

Sec. 16.10.285. NOTICE OF BONDED AND LICENSED OPERATORS.

(a) The Department of Labor shall provide to each primary fish buyer and fish processor, that has met licensing and bonding requirements, a certificate of bonding to be posted at each location operated by the primary fish buyer or fish processor. The certification of bonding shall specify the amount of the bond and that the primary fish buyer or fish processor has complied with the security bond requirements of AS 16.10.290 - 16.10.296.

(b) The primary fish buyer or fish processor shall post a copy of the business or fisheries business license along with a copy of the certificate of bonding at each location operated by the fish processor or primary fish buyer.

Sec. 16.10.286. INSPECTION OF LICENSES. Enforcement officers of the division of fish and wildlife protection shall regularly inspect fish processors and primary fish buyers for possession of proper licenses and compliance to AS 16.10.285.

Sec. 2. AS 16.10.290(b) is amended to read:

See attached

(b) ~~The amount of the bond shall be \$20,000, except for a fish processor or primary fish buyer whose principals, with at least 10% ownership, has had a final judgement against them required to satisfy a claim filed against the bonds, cash deposits, or other security filed under this section, during any of the three years preceeding the year for which the bond is due; the amount of the bond shall be the amount of the final judgment or \$100,000, whichever is less, [\$10,000]. In lieu of the surety bond the fish processor or primary fish buyer may file with the commissioner a cash deposit or other negotiable security acceptable to the commissioner in the amount specified for the bond. If no claim is asserted under this section within two years from the date the bond, cash deposit or other security is filed, the term of the bond, cash deposit or other security shall be two years; if a claim has been asserted within two years, the term of the bond, cash deposit or other security shall be for five years.~~

Sec. 3. AS 16.10.290 (c) is amended to read:

(c) A person applying for a license as a fish processor or primary fish buyer who has less than the amount of the bond [\$10,000] in lienable

property in the state, with proof of the property satisfactorily made to the commissioner, shall file with the application a bond or other security as specified in this section. Δ [NO] bond is not required if the fish processor or primary fish buyer has more than the amount of the bond [\$10,000] in lienable property as specified in this subsection. An appraiser from the area of the state in which the lienable property is located may be used to determine the value of the property for purposes of this subsection.

* Sec. 2. AS 16.10.290(b) is amended to read:

(b) The amount of the bond shall be ^{10,000} ~~\$20,000~~, except that the amount of the bond shall be \$100,000 if (1) the fish processor or primary fish buyer, during any of the three years immediately preceding the year for which the bond is due, has been required as a result of a final judgment to satisfy a claim filed during those years against the bonds, cash deposits, or other security filed under this section; or (2) a principal with at least 10 percent ownership interest of the fish processor or primary fish buyer was a principal with at least a 10 percent ownership interest of another fish processor or primary fish buyer during any year, of the three years immediately preceding the year for which the bond is due, in which a claim filed against the bonds, cash deposits, or other security filed under this section that has resulted in a final judgment that required that other fish processor or primary fish buyer to satisfy the claim <\$10,000>.

In lieu of the surety bond the fish processor or primary fish buyer may file with the commissioner a cash deposit or other negotiable security acceptable to the commissioner in the amount specified for the bond. If no claim is asserted under this section within two years from the date the bond, cash deposit or other security is filed, the term of the bond, cash deposit or other security shall be two years; if a claim has been asserted within two years, the term of the bond, cash deposit or other security shall be for five years.

(c) A person applying for a license as a fish processor or primary fish buyer who has less than \$10,000 in lienable property in the state, with proof of the property satisfactorily made to the commissioner, shall file with the application a bond or other security as specified in this section. No bond is required if

STATE OF ALASKA

MEMBER
FINANCE COMMITTEE
SPECIAL COMMITTEE ON FISHERIES



POUCH V.
JUNEAU, ALASKA 99811
(907) 465-4737
PO BOX 1065
BETHEL, ALASKA 99559
(907) 543-2922

REPRESENTATIVE JOHNE BINKLEY

March 29, 1985

MEMORANDUM

To: House Special Committee on Fisheries

From: Representative Johne Binkley

A handwritten signature in dark ink, appearing to read "Johne Binkley", followed by a period.

RE: HB 227 "An Act relating to fish processors and primary fish buyers."

As I mentioned in my memorandum of March 6, 1985, I introduced this bill to attempt to provide some protection to fishermen and persons furnishing labor to a primary fish buyer or fish processor. 42 fishermen and 20 employees in Quinhagak are owed an estimated \$21,000, and about 16 fishermen in Elim are owed \$11,000.

An appropriate bond rate should be applied that would protect these and other people as much as possible. Today I would like to receive testimony about these types of problems and hear suggestions on applicable bond rates, and then, discuss possible committee substitutes to the bill. I would like to offer the following to include in a committee substitute:

Suggested Committee Substitute Changes to HB 227:

Section 1. Require ADF&G to provide to each primary fish buyer and processor, that has met licensing and bonding requirements, a notice (similar to business licenses provided by the Department of Revenue), to be posted at each location. The notice shall specify that the primary fish buyer or fish processor has complied with the security bond requirements of AS 16.10.290 - 16.10.296 and has been issued a valid Alaska Business License or Fisheries Business License by the Department of Revenue.

I would also like to require the ADF&G to post notice of this notice requirement in the spring of each year in a newspaper of general circulation that serves each area of the state, and to offices of local governments and village councils and to fishermen's associations. Another alternative to the above could be to have the ADF&G issue cards similar to the limited entry permits cards that would indicate that the requirements have been met.

Section 2. Replace the first sentence with the following: The amount of the bond shall be \$20,000 for fish processors and primary fish buyers who, for the last three years immediately preceeding the date on which the bond is filed, have been licensed under AS 16.10.290 (d) and have not been required to pay a claim under this section. The amount of the bond for other fish processors and primary fish buyers shall be \$100,000. The remainder of Sec.2. shall remain the same.

Section 3. This section would be changed to reflect the changes noted above. The local appraiser requirement would stay the same.

A sliding fee scale based upon prior year tax information or on projected purchases was explored. However, the general consensus was that this type of system would create more problems than it would solve. Having the bond rate fluctuate from year to year could encourage unrealistic projections or be complicated by late payments such as bonuses. A rate based upon speculated amounts of purchases would be complicated by various problems encountered during each fishing season. Buyers and processors could simply be operating at levels much different than that speculated for the bond rate.

Specifying separate rates for non-resident floating fish processors creates constitutional problems. The same applies for excluding those who have outstanding liens filed against them. Involving fishermen in the enforcement process would be better addressed by local communities and fishermen's associations who determine themselves who they wish to do business with. Catcher-processors such as some small mom and pop type operations can receive a bond waiver as long as they are not in the business of buying fish. Excluding those buyers and processors who do business with cash would not work. The buyer or processor could simply decide not to operate with cash at anytime during the season, get their fish and disappear without paying the fishermen.

Overall, the general consensus was that the two tier rate as presented above was acceptable. However, this still does not take into consideration those small operations who are starting out and have not yet established credibility in the industry. I am prepared to discuss alternatives to address this.

MAR 25 1985

March 20, 1985

Representative John Binkley
Pouch V
Juneau, AK 99811

Dear John:

Thank you for the opportunity to respond to this issue.

First of all, I find fault in the proposal that the surety bond be necessary for each location. For example, last year we leased a facility in Togiak where we purchased and dressed out the fish. The expense necessary to fly product elsewhere for freezing and packaging, encourages me to defend against yet another expense. Does it mean our Bethel operation would have to add a bond to buy at Goodnews or Platinum? What if we buy at both places and fly from both, is that one or two locations?

Any attempt to have the bond amount fluctuate from year to year, might encourage unrealistic projections or be complicated by late paying methods of reward to fishermen, such as "bonuses".

I favor the plan proposed to recognize processors that have demonstrated reliability over the years, and some incentive be present for them to continue business in Alaska. The suggested amount of \$20,000. is acceptable and appreciated.

I would guess that enforcement would be easy in some fisheries and very difficult in others. It would be necessary for their presence most of a season since buyers might move in at any time during the course of a season.

I'm hopeful this letter is timely in reaching you.

Sincerely,
Tom Hyland
General Manager



KEMP-PAULUCCI SEAFOODS, INC. 4832 W. SUPERIOR STREET DULUTH MINN. 218-624-0062
PO BOX 6506 55806

REP. JOHN G. (JACK) FULLER

DISTRICT 23

ALAKANUK
BREVIG MISION
CHEVAK
DIOMEDE
ELIM
EMMONAK
GAMBELL
GOLOVIN
HOOPER BAY
KOTLIK
KOYUK
NOME

SAVOONGA
SCAMMON BAY
SHAKTOOLIK
SHELDON'S POINT
SHISHMAREF
STEBBINS
ST. MICHAEL
TELLER
UNALAKLEET
WALEB
WHITE MOUNTAIN



CHAIRMAN
BUSINESS COUNCIL
LEGISLATIVE COUNCIL
ADMINISTRATIVE REGULATION
REVIEW COMMITTEE

MEMBER
POLICY COMMITTEE
SPECIAL COMMITTEE ON LOANS
RULES COMMITTEE
COMMITTEE ON COMMITTEES

April 11, 1985 Alaska House of Representatives

Loren H. Lounsbury
Commissioner
Department of Commerce and Economic Development
Pouch D
Juneau, Alaska 99811

Dear Commissioner Lounsbury:

The Administrative Regulation Review Committee has reviewed the proposed regulations for the commercial fishing loan program. We understand other reviewers plan to make extensive comments on the proposal, so we will confine our comments to the question of eligibility.

In 3 AAC 80.035 it is proposed that an applicant's commercial fishing experience must have been derived in varying amounts from a "limited entry fishery." In other words a fisherman who has fished in the halibut fishery, or the sablefish fishery, or the crab fishery, as examples, would not be eligible for a loan to purchase a southeast gillnet entry permit, or any other permit. In reviewing the statute and the attorney general's opinions on the question we find no statutory basis for this limitation, with the exception of loans made under AS 16.10.310(a) (1) (B). To quote the Attorney General's opinion of August 18, 1983:

One of the more common reasons for seeking a vessel or gear loan is to expand a current operation by entering a new fishery. This could not be readily accomplished under the narrow definition of fishery, thus defeating the purpose of the act. Therefore, we conclude that fishery, as used in both AS 16.10.300 and AS 16.10.310(a) (1) (A) and (C), means statewide fishery.

In this same opinion the Attorney General reviewed a report prepared by the Division of Business Loans which states in part:

Eligibility: Loans are available to individual fisherman who have been Alaskan residents for five years prior to the loan, and have had a crewmember or commercial fishing license for any one of the previous five years, and have participated actively in fishing.....

In reviewing this report the Attorney General concludes:

In considering this program, therefore, the committee was aware of the division's past and current practice of interpreting "in the fishery" to mean fishing anywhere in the state. Since the committee chose not to alter this language while making other significant statutory changes, it evidently accepted the division's interpretation.

Loren H. Lounsbury

April 11, 1985
page 2

The Committee lauds the department's efforts to rationalize the state's loan program regulations; however, care must be taken not to alter the Legislature's intent in passing the underlying statute. We hope you will give our comments careful consideration prior to adopting the regulations in their final form.

Sincerely,

Jack Fuller
Chairman

cc: Paul Arnoldt, Director
Division of Investments

Fisheries Committee letter/2-2-2

Bush's opinion states, in part, that:

"Thus, without any indications to the contrary in the legislative history, we can presume that the legislature intended 'fishery' to mean the fishing industry throughout the state."

The Fisheries Committee respectfully requests the department to revise this proposed regulation to provide for eligibility for any Alaskan with active participation in Alaska's commercial fisheries.

Sincerely,

Representative Peter Goll, Chairman

_____	_____
_____	_____
_____	_____



STATE OF ALASKA
HOUSE OF REPRESENTATIVES

April 11, 1985

Loren H. Lounsbury, Commissioner
Department of Commerce and Economic Development
Pouch D
Juneau, AK 99811

Dear Commissioner Lounsbury:

I am very concerned about the proposed regulations for the commercial fishing loan program (Chapter 80). While I laud the department's efforts to update and codify your loan practices, some of the new proposed language and requirements are troublesome.

My biggest concern with the proposed regulations has been addressed in detail under a letter from the House Special Committee on Fisheries. I very strongly believe that the restriction only to applicants with experience in limited entry fisheries is a major departure from legislative intent. The loan program was intended to benefit the entire fishing community, not only those fortunate to have participated in the limited fisheries.

A general issue I'd like to briefly address is the level of comprehension required to understand the regulations. I believe that many fishermen will have difficulty in understanding these regulations. Indeed, many applicants will probably have to have the Division of Business loans interpret the regulations for them or retain an attorney to explain the loan requirements.

The department could better serve the public and save staff time by simplifying the language of the regulations.

Another more general concern I have with the regulations are the open-ended requirements spread throughout the 10-page document. For instance:

3 AAC 80.010. (a) (6) a business and credit history including complete copies of income tax returns for the preceding three years or for other years as may be requested by the department to document eligibility;

Goll/April 11, 1985/2-2-2

3 AAC 80.010. (a) (10) any other information as the department may require.

These open-ended requirements should be tightened. Despite the department's fine intentions to help loan applicants, I object to regulatory language that leaves open the possibility of potential misinterpretation.

Here's a rundown of my concerns with specific provisions of the proposed regulations:

3 AAC 80.010. (a) (4) copies of the purchase agreement or vendors' cost estimates and down-payment receipt;

COMMENT: This kind of documentation can be difficult to produce before an applicant has actually applied and has some idea of his or her ability to qualify for state financing.

3 AAC 80.010. (a) (7) a financial statement consisting of a current balance sheet, a profit and loss statement and a statement of projected income and expenses for the following year's operating plan;

COMMENT: Commercial fishing is a very unpredictable business. It is impossible to predict with any degree of accuracy how many fish are going to be available for harvest or what the price per pound will be during the coming season.

3 AAC 80.020. (g) A material misstatement or omission of fact made by an applicant constitutes grounds for denial of a loan request.

COMMENT: This provision should say a "deliberate omission" of fact is grounds for denial, rather than allowing dismissal based on an oversight.

3 AAC 80.035. (d) An applicant for a loan under AS 16.10.310 (a) (1) (b) (i) must establish that either:

(1) commercial fishing represents the largest single employer in the area that the applicant resides; or

(2) the applicant does not have training sufficient to qualify for other employment opportunities in the area.

COMMENT: I find the requirement in (1) of this section to be particularly problematic. I don't see how an individual is going to be able to establish that commercial fishing is the

largest single employer in his or her area of residence. This task has proven difficult for researchers to establish on a statewide basis; an individual on a local level could never comply.

3 AAC 80.050. (b) Acceptable collateral may include a mortgage or other security instrument in real property, buildings, machinery and equipment, fixtures, limited entry permits or commercial fishing vessels with gear and appurtenances.

COMMENT: This provision could be improved by adding the following underlined phrase: "Acceptable collateral may include, but is not limited to, a mortgage..." This language would clarify that other collateral than the items specifically listed is acceptable.

3 AAC 80.050. (d) Loans for the purchase of limited entry permits will be made only if the permit is placed in the name of the applicant and the permit is offered as security for the loan.

COMMENT: I find this regulation to be particularly troublesome as I fail to understand why the permit has to be offered as collateral if other acceptable assets are made available to secure the loan. We want to department to have sufficient collateral to ensure the safety of the loans; there is no reason to restrict collateral to limited entry permits.

3 AAC 80.055. (c) (2) lease out a commercial fishing vessel or limited entry permit; or

COMMENT: Why shouldn't fishermen be able to lease out their vessels when they're not fishing? Shouldn't the department be interested in the additional income that could be generated from leasing an idle vessel? This is an unnecessary restriction of a fisherman's ability to run his or her fishing operation on sound business practices.

3 AAC 80.055. (h) A loan for the purchase of a vessel for use in a limited entry fishery will not be approved unless the applicant holds a limited entry permit for that fishery.

COMMENT: This provision restricts the ability of fishing partnerships to utilize the loan program. Partnerships where one fisherman owns the limited entry permit and the other owns the vessel and gear are relatively common. These arrangements are valid and should be recognized by the state loan program.

Goll/April 11, 1985/4-4-4

3 AAC 80.070. SUPERVISION OF LOANS. As a condition of a loan and while there is an outstanding loan balance, the department may require a borrower to furnish annual financial statements consisting of a balance sheet, profit-and-loss statement, sources and application of all funds received and a schedule of change of owner's equity...

COMMENT: While I recognize the validity of such a requirement when a loan appears to be in trouble, it should not be imposed on an annual basis otherwise. I suggest that these requirements be restricted to cases where the department has particular concerns about the viability of a loan.

3 AAC 80.075. COSTS. All expenses incurred by the department in closing a loan, including the processing of the loan application, shall be paid by the applicant. These expenses include the cost of credit reports, title reports and insurance, recording fees, appraisals, surveys, out-of-state travel and other direct costs.

COMMENT: The concept of recouping some administrative overhead from loan recipients is sound, but I'm concerned about the extent to which the department wants to apply this principle. For instance, I question whether loan recipients should have to pay for out-of-state travel by department personnel. I suspect there may be a tendency to travel out-of-state more frequently if the cost is being covered by a loan recipient rather than coming directly from the department's travel budget.

I appreciate the department's response to my request for an extension of the comment period on the proposed loan regulations. I look forward to your response to my comments.

Sincerely,



Peter Goll



Official Business

Alaska State Legislature

House of Representatives

Special Committee on Fisheries

Pouch V
Juneau, Alaska 99811

Phone:
(907) 465-4924

April 11, 1985

Loren H. Lounsbury, Commissioner
Department of Commerce and Economic Development
Pouch D
Juneau, AK 99811

Dear Commissioner Lounsbury:

The House Special Committee on Fisheries has significant concerns regarding the department's proposed regulations for the commercial fishing loan programs.

In reviewing the proposed loan regulations, the committee is particularly concerned about the language contained in the section dealing with eligibility [3 AAC 80.035]. The criteria in this section appears to restrict the loan programs to fishermen with experience in limited entry fisheries.

The problem with the limitation is that it would exclude many fishermen that the loan program is designed to help. The new language would, for instance, preclude longline and crab fishermen from obtaining state financing for limited entry permits in the salmon fisheries. Both of these fisheries are facing serious problems and many of the fishermen involved find themselves in the position of having to seek alternative fisheries to continue to make a living from fishing.

The committee believes that experience gained from participation in the state's many non-limited fisheries should qualify a fisherman for state financing. Why should a fisherman with three years experience as a salmon gillnetter be more qualified to purchase a troll permit than an Alaskan with 20 years of longlining experience?

A review of the applicable statutes [AS 16.10.310 (a) (1) (A) and AS 16.10.310 (a) (1) (C)] and two attorney general opinions on the issue reveal no justification for the new language. Indeed, an opinion on the question of eligibility for commercial fishing loans by assistant attorney general Jeffrey Bush dated August 18, 1983 appears to support our conclusion.

Fisheries Committee letter/2-2-2

Bush's opinion states, in part, that:

"Thus, without any indications to the contrary in the legislative history, we can presume that the legislature intended 'fishery' to mean the fishing industry throughout the state."

The Fisheries Committee respectfully requests the department to revise this proposed regulation to provide for eligibility for any Alaskan with active participation in Alaska's commercial fisheries.

Sincerely,

Representative Peter Goll, Chairman

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commission, in its discretion, prescribes. (Eff. 1/1/72, Reg. 40)

Authority: AS 42.07.121
AS 42.10.010
AS 42.10.070

AS 42.10.080
AS 42.10.110

PART 7. DIVISION OF BUSINESS LOANS

Chapter

- 80. Commercial Fishing Loans
(3 AAC 80.010-3 AAC 80.100)
- 84. Tourist Industry Loans
(3 AAC 84.010-3 AAC 84.080)
- 85. Bulk Fuel Loans
(3 AAC 87.010-3 AAC 87.090)
- 86. Small Business Loans
(3 AAC 86.010-3 AAC 86.070)
- 87. Mining Loans
(3 AAC 87.010-3 AAC 87.050)
- 88. Assessment on Sale of Salmon
(3 AAC 88.010-3 AAC 88.900)
- 89. Fisheries Enhancement Tax
Appropriations
(3 AAC 89.010-3 AAC 89.130)

CHAPTER 80. COMMERCIAL FISHING LOANS

Section

- 10. Applications for loans
- 20. Loan eligibility and borrower qualifications
- 30. Amount, interest rates and maturity of loans
- 40. Terms of loan
- 50. Supervision of loans
- 60. Approval of loans
- 70. Loan committee
- 80. Execution of instruments
- 90. Disbursement of loan funds
- 100. Definition of terms

3 AAC 80.010. APPLICATIONS FOR LOANS.

(a) Commercial fishing loan applications shall be submitted on an appropriate form prescribed by the commissioner and be accompanied by

(1) a letter of intent stating the amount requested, a description of how the proposed loan funds will be used, and the plan of repayment of the loan including the setting up of reserves, if any;

(2) a personal resume including three personal references;

(3) a business history of the applicant which shall include complete copies of state income tax returns for the preceding three years;

(4) proof that the applicant had a crew-member licens~~e~~, or commercial fishing licens~~e~~ or permit for any one of the past five years and actively participated in the fishery that year;

(5) proof that the applicant has been a state resident for the last five years;

(6) current financial statements consisting of a balance sheet and profit-and-loss statement;

(7) a schedule of acceptable collateral, which should include collateral now owned and other collateral which is to be acquired with the loan proceeds, stating date of acquisition, cost, location, market value and existing liens;

(8) repealed 5/16/81;

(9) a current marine survey if a vessel is used for collateral including pictures of the vessel;

(10) a standard financial statement showing the projected income and expenses for the following year.

(b) Exhibits, whenever applicable, must accompany the application to show the

(1) potential growth of the business;

(2) potential employment;

(3) potential increase in income;

(4) potential decreases in operating expenses; and

(5) repealed 5/16/81

(c) Applications shall be submitted to any division of the business loans office. (Eff. 9/26/76, Reg. 59; am 5/16/81, Reg. 78)

Authority: AS 16.10.310

3 AAC 80.020. LOAN ELIGIBILITY AND BORROWER QUALIFICATIONS. (a) In addition to the requirements of AS 16.10.300-16.10.370 as amended, a loan will not be made unless

(1) the borrower can provide acceptable collateral and an acceptable repayment schedule;

(2) the purpose of the loan is to repair or improve existing vessels or gear, purchase additional gear, construct and purchase vessels, purchase fishing gear or entry permits. Loans to purchase entry permits will receive higher priority when loan funds are limited; and

(3) the borrower has extended to the com-

missioner or his representative the right to conduct a marine survey of a vessel or vessel construction project which is described by the borrower in an application or supporting documents.

(b) No more than 49 percent of the loan proceeds may be used to refinance long-term debt originally obtained for the purposes described in AS 16.10.310. Interim or construction financing is not considered long-term debt if the term is 12 months or less and the note was executed within the 12 months before receipt of the application.

(c) A loan will not be made if the proposed use of funds

(1) is of a speculative nature; or

(2) is intended to purchase a commercial fishing vessel, gear or permit that will not be put to use in the commercial fishing industry in the near future;

(3) allows a borrower to lease out a commercial fishing vessel. (Eff. 9/26/76, Reg. 59; am 5/16/81, Reg. 78)

Authority: AS 16.10.310
AS 16.10.320
AS 16.10.339

3 AAC 80.030. AMOUNT, INTEREST RATES AND MATURITY OF LOANS. A loan will not exceed \$500,000, bear interest at a rate in excess of 9.5 percent a year if not in default, or mature later than 15 years from the date of the loan. (Eff. 9/26/76, Reg. 59; am 5/16/81, Reg. 78)

Authority: AS 16.10.310
AS 16.10.320

3 AAC 80.040. TERMS OF LOAN. (a) The term of a loan will be fixed in relation to the needs of the borrower and the collateral available to secure repayment of the loan.

(b) All expenses incurred by the department in closing a loan or processing a loan application shall be paid by the applicant, including but not limited to: the cost of credit reports, title reports and insurance, recording fees, appraisals, surveys, out-of-state travel and other direct

costs. (Eff. 9/26/76, Reg. 59; am 5/16/81, Reg. 78)

Authority: AS 16.10.310

3 AAC 80.050. SUPERVISION OF LOANS.

As a condition of any loan and so long as there is an outstanding loan balance the department may require that a borrower furnish annual financial statements consisting of a balance sheet, profit-and-loss statement, sources and application of all funds received and a schedule of change of owner's equity. A borrower shall also submit to an audit or audits to determine whether the provisions of the loan have been complied with, and that a borrower permit periodic inspection of any collateral securing repayment of the loan. If a vessel is used as collateral, a current marine survey must be supplied to the division at the borrower's expense upon request by the division. (Eff. 9/26/76, Reg. 59; am 5/16/81, Reg. 78)

Authority: AS 16.10.310

3 AAC 80.060. APPROVAL OF LOANS. A

loan will not be granted without the approval of a majority of the loan committee established under sec. 70 of this chapter. (Eff. 9/26/76, Reg. 59)

Authority: AS 16.10.310

3 AAC 80.070. LOAN COMMITTEE. (a) Loan committees will consist of three persons who the commissioner designates from the department.

(b) The chairman of a loan committee is the commissioner or his designee.

(c) Repealed 5/16/81.

(d) Repealed 5/16/81.
(Eff. 9/26/76, Reg. 59; am 5/16/81, Reg. 78)

Authority: AS 16.10.310

3 AAC 80.080. EXECUTION OF INSTRUMENTS.

If a loan is approved by the loan committee, the borrower shall execute the promissory notes, chattel mortgages, security agreements, financing statements, preferred mortgages, assignments, affidavits, insurance pay orders and other instruments as the department may in its discretion require. (Eff. 9/26/76, Reg. 59)

Authority: AS 16.10.310

3 AAC 80.090. DISBURSEMENT OF LOAN FUNDS.

Loan funds will not be disbursed to the borrower until

(1) a security interest in the collateral has been perfected except that in the case of a mortgage on a documented vessel this requirement shall be satisfied by the establishment of the mortgage as a preferred mortgage pursuant to the provisions of the Ship Mortgage Act, 1920 (46 USC §§ 911 - 9840);

(2) the commissioner or his authorized representative is satisfied that the borrower has complied with the marine insurance requirements contained in any instrument signed by the borrower; and

(3) all other provisions of the loan documents and this chapter have been complied with by the borrower. (Eff. 9/26/76, Reg. 59; am 5/16/81, Reg. 78)

Authority: AS 16.10.310

AS 16.10.320

3 AAC 80.100. DEFINITION OF TERMS.

Unless the context requires otherwise, in this chapter and in the forms and instructions of the commissioner

(1) "acceptable collateral" means adequate security approved by the commissioner to secure repayment of a loan in the event of default and includes, but is not limited to, a mortgage or other security instrument on real property, buildings, machinery and equipment, fixtures, or commercial fishing vessels together with gear and appurtenances; a vessel that can be documented must be documented to be acceptable collateral;

(2) "borrower" means the commercial fisherman, partnership, corporation or association using the loan;

(3) "commercial fisherman" means a person engaged in commercial fishing;

(4) "commercial fishing" means the taking, planting or cultivating of fish, shellfish, crabs or other fishery resources with the intent of disposing of those resources for profit, by sale, barter, trade, or in commercial channels;

(5) "commissioner" means the commissioner of commerce and economic development;

(6) "current" means a date not exceeding three months before the date an application is received by the department;

(7) "department" means Department of Commerce and Economic Development;

(8) "division" means the division of business loans of the Department of Commerce and Economic Development;

(9) "documented vessel" means a vessel permanently or temporarily registered or enrolled or licensed under the laws of the United States;

(10) "person" means an individual and does not mean an association, partnership or corporation; and

(11) "resident" means a corporation, partnership or limited partnership 100 percent of which is owned by a resident commercial fisherman or an individual who, except for brief intervals, periods of military service, or attendance at an educational or training institution, has resided in the state for five years; "residence" is determined by where the individual

(A) is registered to vote;

(B) maintains his permanent place of abode;

(C) files his tax returns;

(D) registers or licenses his personal property, including but not limited to cars, boats, trucks and trailers;

(E) is licensed to drive; and

(F) maintains bank accounts, savings accounts, lines of credit and other financial relationships. (Eff. 9/27/66, Reg. 59; am 5/16/81, Reg. 78)

Authority: AS 16.10.310

CHAPTER 84. TOURIST INDUSTRY LOANS

Section

- 10. Applications for loans
- 20. Loan eligibility and borrower qualifications
- 30. Terms of loans
- 40. Participation loans
- 50. Supervision of loans
- 60. Loan committee
- 70. Approval of loans
- 80. Definitions

3 AAC 84.010. APPLICATIONS FOR LOANS.

(a) Tourist industry loan applications shall be submitted on the appropriate form prescribed by the commissioner and be accompanied by

(1) a letter of intent stating the amount requested, a description of how the proposed loan funds will be used, and the plan of repayment of the loan including the setting up of reserves, if any;

(2) a business history of the applicant which shall include balance sheets and profit-and-loss statements for the preceding three fiscal years whenever applicable;

(3) a business history of the persons owning 10 percent or more of the business;

(4) current financial statements consisting of a balance sheet and profit-and-loss statement for each of the persons specified under (a)(2) and (a)(3) of this section; if the amount to be borrowed is \$100,000 or more, an independent certified public accountant must prepare and certify to the accuracy of the applicant's current financial statements;

(5) pro forma financial statements as of one full year after project completion which shall consist of

Proposed

Register , 1985

COMMERCE

3 AAC 80.010

CHAPTER 80
COMMERCIAL FISHING LOANS

Section

- 010. Application Process
- 015. Examination
- 020. Loan Committee
- 030. Residency Requirements
- 035. Eligibility
- 040. Financial and Credit Record
- 045. Ability to Repay
- 050. Collateral
- 055. Lending Practices
- 065. Disbursement of Loan Funds
- 070. Supervision of Loans
- 075. Costs
- 080. Assumptions
- 085. Reconsideration
- 090. Confidentiality of Loan Information
- 900. Definition of Terms

DRAFT

3 AAC 80.010. APPLICATION PROCESS. (a) To apply for a loan for the purchase of a limited entry permit, gear, or vessel, an applicant must file with the department

(1) a completed application for a commercial fishing loan on a form provided by the department;

(2) a completed residency questionnaire on a form provided by the department;

(3) a letter of intent stating the amount requested, the intended use of the proposed loan funds, and a proposed plan for repayment;

(4) copies of the purchase agreement or vendors' cost estimates and down-payment receipt;

(5) a commercial fishing resume identifying all permits and licenses held by the applicant, summarizing the applicant's experience as a commercial fisherman in Alaska, and identifying the actual number of days fished for each year;

(6) a business and credit history including complete copies of income tax returns for the preceding three years or for other years as may be requested by the department to document eligibility;

(7) a financial statement consisting of a current balance sheet, a profit and loss statement and a statement of projected income and expenses for the following year's operating plan;

(8) a schedule of acceptable collateral, including collateral now owned and other collateral to be acquired with the loan proceeds, stating date of acquisition, cost, location, market value and existing liens;

(9) if a vessel is used for collateral, a current marine survey acceptable to the department including pictures of the vessel; and

(10) any other information as the department may require.

(b) If a vessel is offered as collateral for a loan, the department or its designee shall be permitted to inspect the vessel or vessel construction project prior to making the loan. (Eff. / / , Reg.)

Authority: AS 16.10.310
AS 16.10.339

3 AAC 80.015. EXAMINATION. (a) Upon receipt of the materials described in 3 AAC 80.010, a loan request will be processed and evaluated by a loan examiner. The loan examiner will evaluate the applicant's eligibility, financial and credit history, operating plan and ability to repay, and proposed collateral.

(b) On the basis of the evaluation, the loan examiner will recommend proposed action on the loan request to the appropriate loan committee. However, the recommendation of a loan examiner is not binding on a loan committee. (Eff. / / , Reg.)

Authority: AS 16.10.310
AS 16.10.339

3 AAC 80.020. LOAN COMMITTEE. (a) A loan committee consists of one or more persons appointed by the commissioner from the department to act on a loan request.

(b) A loan committee may approve, deny, or modify and approve a loan request, or table a loan request subject to obtaining additional information.

(c) A loan committee may impose reasonable conditions on the approval of a loan, including the following requirements:

(1) additional collateral be pledged to secure the loan;

(2) additional guarantors be provided; and

(3) subordination of prior lien holder's rights to the interests of the State.

(d) A loan committee will evaluate an applicant's eligibility for a loan, financial and credit record, and capacity for repayment and operating plans, and the adequacy of collateral offered to secure the loan. A loan committee may also consider the recommendations of the loan examiner assigned to process the loan application, and any other relevant information.

(e) A loan committee may fix the term of a loan and the repayment schedule to meet the needs of the borrower and the collateral available to secure repayment of the loan.

(f) If a loan request is denied or significantly modified by a loan committee, the loan committee will provide the applicant with a statement of the reasons for the action and the information relied on.

(g) A material misstatement or omission of fact made by an applicant constitutes grounds for denial of a loan request. (Eff. / / , Reg.)

Authority: AS 16.10.310
AS 16.10.339

3 AAC 80.030. RESIDENCY REQUIREMENTS. (a) In determining if an applicant fulfills the two year residency requirements under AS 16.10.310, the loan committee may consider the following factors:

- (1) where the applicant is registered to vote;
- (2) where the applicant maintains a permanent place of abode;
- (3) where the applicant files tax returns, and the address that is listed on the returns;
- (4) where the applicant registers or licenses personal property, including but not limited to cars, boats, trucks and trailers;
- (5) where the applicant is licensed to drive; and
- (6) where the applicant maintains bank accounts, savings accounts, lines of credit and other financial relationships.

(b) Periods of absence from the state will not negate establishment of residency unless, during the absence, the individual establishes or claims residency in another state or performs other acts inconsistent with residency in Alaska.

(c) If two or more individuals apply jointly or as a partnership or corporation, all parties to the application must establish residency. (Eff. / / , Reg.)

Authority: AS 16.10.310
AS 16.10.339

3 AAC 80.035. ELIGIBILITY. (a) In determining whether an applicant has "actively participated in the fishery" under AS 16.10.310(a)(1)(A) or 16.10.310(a)(1)(C), the department may consider any or all of the following factors for each of the years claimed by the applicant:

- (1) the gross income earned by the applicant

while engaged in commercial fishing in limited entry fisheries; and

(2) the time an applicant commercially fished during openings of limited entry fisheries.

(b) For purposes of eligibility, an applicant must establish one of the following circumstances for each year claimed:

(1) that 30 percent or more of the applicant's total gross income has been derived from commercial fishing in limited entry fisheries;

(2) that 10 percent or more of the applicant's total gross income has been derived from commercial fishing in limited entry fisheries and the applicant engaged in commercial fishing in these fisheries for twenty-five or more days; or

(3) that 10 percent or more of the applicant's total gross income has been derived from commercial fishing in limited entry fisheries and the applicant engaged in commercial fishing in a particular limited entry fishery for 80 percent or more of the total number of days that the particular fishery was open for commercial fishing. For purposes of this paragraph, "particular limited entry fishery" refers to gear type and fishing area.

(c) The department may rely on the following documents to verify that an applicant has actively participated in the fishery:

(1) tax returns;

(2) verified affidavits from the applicant and others certifying the applicant's experience;

(3) fishing and gear licenses;

(4) commercial fish tickets;

(5) wage receipts; and

(6) cannery statements.

(d) An applicant for a loan under AS 16.10.310(a)(1)(B)(i) must establish that either:

(1) commercial fishing represents the largest single employer in the area that the applicant resides; or

(2) the applicant does not have training sufficient to qualify for other employment opportunities in the area.

(e) An applicant for a loan under AS 16.10.310(a)(1)(B)(ii) must establish that he fulfills all requirements of this clause. In this clause, "economically

dependent on commercial fishing for a livelihood" means that a majority of the applicant's gross income during the previous two years was derived from commercial fishing.

Authority: AS 16.10.310
AS 16.10.339

3 AAC 80.040. FINANCIAL AND CREDIT RECORD. (a) The department will, in its discretion, consider the following factors in assessing an applicant's financial and credit record:

- (1) existing and prior debts;
- (2) credit reports obtained from creditors and private credit reporting services;
- (3) prior loan history with the department;
- (4) timeliness in making payments on loans and other debts;
- (5) prior bankruptcies;
- (6) existence of tax liens, unpaid judgments, and prior foreclosures; and
- (7) the applicant's financial and credit reputation in the community.

(b) Information establishing unacceptable credit will be more heavily weighed by the department if it has occurred in recent years. (Eff. / / , Reg.)

Authority: AS 16.10.310
AS 16.10.339

3 AAC 80.045. ABILITY TO REPAY. (a) The department may consider the following factors in evaluating an applicant's ability to repay a proposed loan:

- (1) income history, including present income;
- (2) prospects for future income;
- (3) assets and their liquidity;
- (4) liabilities;
- (5) reasonableness of projected profit and loss statement; and
- (6) other business experience.

(b) The department may compare revenue projections contained in an applicant's profit and loss statement with information it may acquire through its own efforts or from the Department of Fish and Game, the Commercial Fisheries Entry Commission or the Alaska Commercial Fishing and Agri-

culture Bank on the success of other fishermen in similar circumstances to determine the reasonableness of the applicant's projections. (Eff. / / , Reg.)

Authority: AS 16.10.310
AS 16.10.339

3 AAC 80.050. COLLATERAL. (a) A loan must be secured by collateral acceptable to the department to ensure repayment of the loan in the event of default.

(b) Acceptable collateral may include a mortgage or other security instrument in real property, buildings, machinery and equipment, fixtures, limited entry permits or commercial fishing vessels with gear and appurtenances.

(c) To be considered acceptable collateral, personal property must be capable of being specifically identified. A vessel that can be documented must be documented to be acceptable collateral.

(d) Loans for the purchase of limited entry permits will be made only if the permit is placed in the name of the applicant and the permit is offered as security for the loan. (Eff. / / , Reg.)

Authority: AS 16.10.310
AS 16.10.320
AS 16.10.339

3 AAC 80.055. LENDING PRACTICES. (a) If loan funds are limited, applications for loans to purchase entry permits will receive priority over applications for the purchase of vessels and gear.

(b) Applications for loans to purchase entry permits, gear and vessels under AS 16.10.310 (a)(1)(B) and for gear and vessels under AS 16.10.310(a)(1)(C) will be approved only if alternative sources of financing are not available to the applicant. An applicant for a loan under AS 16.10.310(a)(1)(B) will not be considered ineligible for a loan because the applicant can provide a guarantor for the loan.

(c) A loan will not be approved if it would allow an applicant to:

(1) speculate in the acquisition and sale of limited entry permits, vessels, or gear;

(2) lease out a commercial fishing vessel or limited entry permit; or

(3) purchase a commercial fishing vessel, gear or limited entry permit that will not be put to use in the fishing season immediately following the date of the application.

(d) A loan will not be approved for refinancing long term debt. Interim or construction financing is not con-

sidered long term debt if the term is 12 months or less and the promissory note or the original agreement was executed less than 12 months before receipt of the application by the department.

(e) In determining the maximum loan amount that may be approved for the purchase of a limited entry permit, the department will rely on the value established by the Alaska Commercial Fisheries Entry Commission or other appropriate sources as determined by the department.

(f) A loan for the purchase of a limited entry permit will not be approved if an applicant holds another permit currently financed by the state and active participation in the two limited entry fisheries would be mutually exclusive.

(g) A loan for the purchase of a limited entry permit under AS 16.10.310(a)(1)(A) will not be approved if the applicant has pending an application for a loan under AS 16.10.310(a)(1)(B).

(h) A loan for the purchase of a vessel for use in a limited entry fishery will not be approved unless the applicant holds a limited entry permit for that fishery.
(Eff. / / , Reg.)

Authority: AS 16.10.310
AS 16.10.320
AS 16.10.325
AS 16.10.339

3 AAC 80.065. DISBURSEMENT OF LOAN FUNDS. Loan funds will be disbursed when

(1) a security interest in the collateral on behalf of the State has been perfected, except that in the case of a mortgage on a documented vessel this requirement shall be satisfied by the establishment of the mortgage as a preferred mortgage pursuant to the provisions of the Ship Mortgage Act of 1920, (46 USC §§911-984);

(2) the borrower has complied with the marine insurance requirements contained in an instrument signed by the borrower;

(3) all requirements of the loan committee have been met; and

(4) the borrower has complied with all other provisions of the loan documents and this chapter.
(Eff. / / , Reg.)

Authority: AS 16.10.310
AS 16.10.320

3 AAC 80.070. SUPERVISION OF LOANS. As a condition of a loan and while there is an outstanding loan balance, the department may require a borrower to furnish annual financial statements consisting of a balance sheet, profit-and-loss

statement, sources and application of all funds received and a schedule of change of owner's equity. The department may also require an audit or audits to determine whether the borrower has complied with the provisions of the loan and conduct periodic inspection of collateral securing repayment of the loan. If a vessel is used as collateral, a current marine survey must be supplied to the department at the borrower's expense upon request by the department.
(Eff. / / , Reg.)

Authority: AS 16.10.310

3 AAC 80.075. COSTS. All expenses incurred by the department in closing a loan, including the processing of the loan application, shall be paid by the applicant. These expenses include the cost of credit reports, title reports and insurance, recording fees, appraisals, surveys, out-of-state travel and other direct costs. (Eff. / / , Reg.)

Authority: AS 16.10.310

3 AAC 80.080. ASSUMPTIONS. (a) Requests for permission to assume obligations and benefits of loans granted under AS 16.10.300-16.10.370 will be processed in the same manner as a loan request.

(b) A loan committee may permit an assumption if the individual seeking to assume the loan would be eligible for a new loan of the type that is sought to be assumed, the applicant is a good financial risk, and the security of the state's investment is preserved.

(c) Eligibility standards currently in effect, rather than standards in effect at the time the original loan was made, will govern assumptions. (Eff. / / , Reg.)

Authority: AS 16.10.310

3 AAC 80.085. RECONSIDERATION. (a) If a loan request is denied or significantly modified by a loan committee, an applicant may file a written request for reconsideration with the department. The request must be filed within 30 days of receipt of the initial decision of the loan committee.

(b) The loan committee will reconsider a request only upon a showing by the applicant that

(1) there has been a substantial change in the circumstances; or

(2) additional relevant information can be provided to the loan committee that was not initially available. (Eff. / / , Reg.)

Authority: AS 16.10.310
AS 16.10.339

3 AAC 80.090. CONFIDENTIALITY OF LOAN INFORMATION.

(a) The following information is not confidential and is available for public inspection upon request:

(1) a document which is already a public record including deeds of trust, financing statements, limited entry permits, warranty deeds, bills of sale, marine mortgages, liens, vehicle titles and vessel documentation;

(2) general information regarding loans, including the amount of a particular loan, loan terms, personal guarantees, and disbursement and repayment schedules;

(3) documents regarding foreclosure and default proceedings.

(b) The following information is confidential and is not subject to public disclosure:

(1) personal and financial information, including income tax returns, financial statements, business income statements, pro forma profit and loss statements, credit information obtained directly from banks and other creditors, reports obtained from consumer reporting agencies, cannery statements, and commercial fishing pink slips (fish tickets);

(2) loan committee memoranda and minutes containing information relating to credit worthiness of an applicant; and

(3) payment history on a loan, unless the loan is in default.

(c) Information not described in (a) and (b) of this section may be subject to public disclosure. Requests for disclosure must be made and will be determined in accordance with 6 AAC 095. On receipt of a request for disclosure, the department will notify the loan applicant and other persons with a privacy interest in the request, to permit them to present reasons why the requested information should not be disclosed. (Eff. / / , Reg.)

Authority: AS 09.25.110
AS 09.25.120
AS 16.10.310
Art. 1, Sec. 22
Alaska Const.

3 AAC 80.900. DEFINITION OF TERMS. Unless the context requires otherwise in this chapter

(1) "applicant" means the individual, partnership, corporation or association applying for a loan;

(2) "commercial fishing" means the actual catching of fish, shellfish, crabs or other fishery resources with the intent of disposing of those resources for profit by sale in commercial channels. For purposes of

this definition, "actual catching" means having gear in the water with the intent to catch fish;

(3) "commissioner" means the Commissioner of the Department of Commerce and Economic Development;

(4) "debtor" means an individual commercial fisherman who initially contracts for a loan, assumes a loan, or guarantees or co-signs a loan under AS 16.10.330 - AS 16.10.337.

(5) "default" means a violation of any terms of the loan document, or the failure to make the necessary payment within fifteen (15) days of when it is due, or the failure to maintain the insurance required by the Department of Commerce and Economic Development.

(6) "department" means the Department of Commerce and Economic Development;

(7) "documented vessel" means a vessel permanently or temporarily registered, or enrolled or licensed under the laws of the United States;

(8) "extension package" means such forms as the department may require in order to make a decision on an extension request. (Eff. / / , Reg.)

(9) "limited entry fishery" or "limited entry fisheries" means those fisheries requiring that a participant hold a permanent entry permit;

(10) "residency" means, in the case of an individual, physical presence in Alaska with the intent to remain indefinitely and make a home in the state. (Eff. / / , Reg.)

Authority: AS 16.10.310
AS 16.10.335
AS 16.10.339

Editor's Note: Former 3 AAC 80.0103 AAC 80.100 were repealed by the Department of Commerce and Economic Development on / /84, Register , and the substance of the regulation was reorganized and renumbered. The numbering and the organization of the material in 3 AAC 80.010 - 3 AAC 80.100 bears no resemblance to the numbering and organization of that material before / /84. Therefore, the history notes for 3 AAC 80.010 - 3 AAC 80.900 do not reflect the history of those sections before / /84.

MEMORANDUM

State of Alaska

TO: Paul B. Arnoldt, Director
Division of Investments
Department of Commerce &
Economic Development

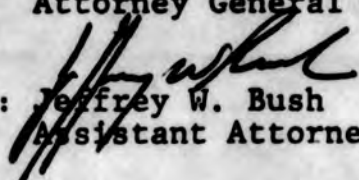
DATE: August 18, 1983

FILE NO: 366-672-83

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Eligibility for
commercial fishing
loans

By:  Jeffrey W. Bush
Assistant Attorney General

This memorandum supplements our Memorandum of Advice dated July 20, 1983, regarding eligibility requirements for commercial fishing loans. In that memorandum, we concluded that "fishery", as used in AS 16.10.310(a)(1)(A), means a specific fishery, such as Southeast Salmon Gillnet, rather than the overall statewide fishing industry.

It appears we may have answered your original question too narrowly. The phrase "fishery" appears in several sections of the Commercial Fishing Loan Act (AS 16.10.300 - .370). Upon examining its use in other sections and, in addition, reviewing the legislative history of those sections, we now conclude that "fishery" as used in AS 16.10.300 - .370 means the fishing industry in general, except where specifically defined otherwise.

The term "fishery" is used in at least four places in AS 16.10.300 - .370. AS 16.10.300 sets forth the legislative purpose of the act as follows:

It is the policy of the state, under §§ 300-370 of this chapter, to promote the rehabilitation of the state's fisheries, the development of a predominantly resident fishery, and the continued maintenance of commercial fishing gear and vessels throughout the state by means of long-term low interest loans. [Emphasis added]

The phrase "actively participated in the fishery" is used both in AS 16.10.310(a)(1)(A) and (C). Finally, AS 16.10.320(h), applicable to loans for entry permits made under AS 16.10.310(a)(1)(B), requires three years experience as a commercial fisherman "in the fishery", and then defines "in the fishery" to mean "in the same fishery" in which the borrower has actively

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Division of Investments
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DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT
DIVISION OF INVESTMENTS

participated. [Emphasis added.]

Statutes must be construed together in order to produce a harmonious whole. 2A Sutherland, Statutory Construction, §§ 46.05 et seq. (4th Ed. 1973). It is clear that fishery, as used in section .300, means fishing statewide, not a specific fishery. The purpose of the act is also clearly stated -- the development of the fishing industry in the state. Were "fishery" in AS 16.10.310(a)(1)(A) defined to mean a specific fishery, as we concluded in our July 20 memorandum, and the same definition applied to "fishery" in subparagraph (C), this intent would not be fulfilled. For example, subparagraph (A), relating to loans for the purchase of entry permits, provides as one possible prerequisite for a loan that the applicant have owned a permit and fished in the fishery for the requisite period of time. If fishery is defined narrowly, not only would it be more difficult to obtain a permit in order to change from one fishery to another, but this would lead to the somewhat absurd result of having ownership of a permit in a specific fishery a prerequisite for getting a loan to purchase a permit in the same fishery. Likewise, under subparagraph (C), a person would be unable to obtain a loan for upgrading a vessel or purchasing new gear unless he had actively participated in the specific fishery in which the vessel or gear would be used. One of the more common reasons for seeking a vessel or gear loan is to expand a current operation by entering into a new fishery. This could not be readily accomplished under the narrow definition of fishery, thus defeating the purpose of the act. Therefore, we conclude that fishery, as used in both AS 16.10.300 and AS 16.10.310.(a)(1)(A) and (C), means statewide fishery.

This view is supported by examining the other section where fishery appears, AS 16.10.320(h). This section relates to certain loans made under subparagraph (B) of section .310(a)(1). Here, fishery is specifically defined to mean the same fishery in which the loan applicant participated. The fact that the legislature defined the word in this one subsection to mean a specific fishery leads to the conclusion that where it appears elsewhere it has a general meaning. Otherwise, it would not have been necessary to specifically define it for purposes of this subsection.

Our conclusion is also supported by examining the legislative history of these statutes. The phrase "actively participated in the fishery" as used in .310(a)(1)(A) and (C) was inserted in the statute in 1978 by ch. 83, SLA 1978. In reviewing the legislative history of this amendment, we have learned that this clause was added in response to a request by the division of business loans for clarification of the residency requirements in

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Page 3

section .310. 1/ As recommended to the committee, however, the phrase to be inserted was "held a commercial fishing license and actually fished in Alaska." Legislative staffers, when directed to insert this provision, apparently redrafted it in its present form. The committee's intent, however, is clear from the transcripts of the hearings (January 26, 1978 and February 2, 1978). The members wanted only to be sure that the loan applicant fished in Alaska for the requisite period before being eligible for a loan. Thus, without any indications to the contrary in the legislative history, we can presume that the legislature intended "fishery" to mean the fishing industry throughout the state. Again, this interpretation is consistent with the express purpose set forth in AS 16.10.300.

Further support for this view is provided by the 1982 amendments, which substantially revised this act along with numerous other loan programs. Ch. 113, SLA 1982. In considering this legislation, the House Special Committee for Loans was presented with a draft discussion paper by the division of business loans outlining the procedures involved in the various loan programs. Regarding commercial fishing loans, this report stated:

Eligibility: Loans are available to individual fishermen who have been Alaskan residents for five years prior to the loan, and have had a crewmember or commercial fishing license for any one of the previous five years, and have participated actively in fishing.... [Emphasis added.]

In considering this program, therefore, the committee was aware of the division's past and current practice of interpreting "in the fishery" to mean fishing anywhere in the state. Since the committee chose not to alter this language while making other significant statutory changes, it evidently accepted the division's interpretation.

Based on this history, we believe it is reasonable for the division to continue to interpret "fishery" as used in AS 16.10.300 - .370 to mean statewide fishery, except where it is specifically defined otherwise. Thus our conclusion in the July

1/ This amendment initially appeared in 1978 House Bill 573 in The House Resources Committee. The provisions of HB 573 were thereafter incorporated by the House Finance Committee into SB 184, and the latter bill was the one finally adopted into law.

Paul B. Arnoldt, Director
Division of Investments
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20 memorandum on the definition of fishery is modified.

We reiterate our recommendation that the division should define "fishery" by regulation, in order to provide proper notice to all loan applicants. The division may also wish to seek legislative change during the next session so that the matter is clarified. We hope this answers your questions in regard to the interpretation of "fishery".

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DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT
DIVISION OF INVESTMENTS

(14.4) 109-4

MEMORANDUM

State of Alaska

TO: Paul B. Arnoldt, Director
Division of Investments
Department of Commerce &
Economic Development

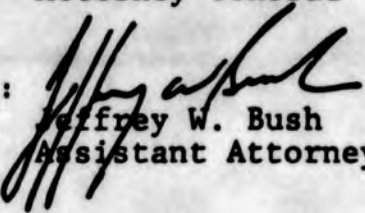
DATE: July 20, 1983

FILE NO: 366-672-83

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Eligibility for
Commercial Fishing
Loans

By: 
Jeffrey W. Bush
Assistant Attorney General

You have asked our advice on a number of issues related to AS 16.10, regarding eligibility requirements for the State Commercial Fishing Loan program. You ask for our interpretation of AS 16.10.310 and AS 16.10.320, as applied to loans to partnerships, and our interpretation of various terms used in AS 16.10.310(a)(1)(A).

We conclude that the \$100,000.00 loan limitation set forth in AS 16.10.320(d) for corporations, partnerships and joint ventures applies as a general rule, but where the specific requirements of AS 16.10.320(e) are met, and the loan is for the construction or purchase of a vessel, the higher limitations of that section should apply. Although a corporation is a single legal entity subject to the limitations of AS 16.10.320(d), if two or more individual commercial fishermen form a partnership or joint venture and each qualifies individually under AS 16.10.320(e), they are eligible for the higher loan limits.

In addition, the division's present interpretation of the word "year" as "fishing season" is a reasonable interpretation of AS 16.10.310(a)(1)(A). We strongly urge, however, the adoption of regulations defining "year". Regarding the interpretation of "in the fishery" in AS 16.10.310(a)(1)(A), review of related statutes as well as common understanding requires a conclusion that "fishery" refers to a specific designated fishery, such as Southeast Salmon Gillnet, rather than the fishing industry statewide.

DISCUSSION

AS 16.10.320(d) limits the total value of loans that may be made to a borrower under the Commercial Fishing Loan Act (AS 16.10.300-.370). Loans to corporations, partnerships and

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joint ventures under AS 16.10.310(a)(1)(C) are limited to \$100,000.00, and a loan to an associate of the borrower is considered to be a loan to the borrower. An associate of the borrower is defined to include "a corporation or other organization of which the borrower is an officer, director or partner...."

AS 16.10.320(e) provides that if two or more individual commercial fishermen apply for a loan and each satisfies the requirements of AS 16.10.310(a)(1)(B), and the loan is for the construction or purchase of a vessel, the loan limit is \$100,000.00 times the number of qualified commercial fishermen applying for the loan.

These two subsections appear to be inconsistent. Under a literal interpretation, if two or more commercial fishermen call themselves a partnership, they would be subject to the \$100,000.00 limitation of AS 16.10.320(d), but if they apply as individual commercial fishermen, they would be subject to the higher limits of AS 16.10.320(e). Although a corporation is by law a separate legal entity, a partnership or joint venture is generally construed as merely a group of individuals. The division's current practice of treating partnerships the same as a group of individuals is correct.

To fulfill the intent of both subsections, the \$100,000.00 limit of (d) should apply as a general rule except in those cases where the requisites of subsection (e) are met where the loan is for the construction or purchase of a fishing vessel.

You also ask about the proper interpretations of the word "year" and the phrase "in the fishery" in AS 16.10.310.(a)-(1)(A).

AS 16.10.310(a)(1)(A), as recently amended, provides that the division may make loans to:

...individual commercial fishermen who have been state residents for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 - 16.10.370 and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for the year immediately preceding the date of application and any other two of the past five years, and who actively participated in the fishery during those periods, for the purchase of entry permits....

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The term "year" is not defined, and absent other evidence of legislative intent, the general rule would be to apply its common or ordinary meaning. Since a year is generally meant to mean twelve months, under this approach a commercial fisherman would not be able to obtain a loan unless that person had either a crewmember or commercial license or permit for twelve months preceding application. Because permits are often distributed in the spring, just prior to the fishing season, while loan requests are generally made during the winter months when fishermen have time to work on their boats, to give the term "year" a literal interpretation effectively prevents a fisherman from obtaining and using loan proceeds for two fishing seasons, rather than just one year. Thus, an administrative interpretation of the term year to mean fishing season is more reasonable and conforms to legislative intent. However, because this interpretation differs from the literal wording of the statute, we recommend adoption of regulations defining year to mean fishing season.

Regarding interpretation of "in the fishery" in AS 16.10.310(a)(1)(A), we believe fishery must be interpreted to mean the specific fishery as that term is used among commercial fishermen in Alaska. First, this conforms with the normal and generally accepted interpretation of the word. Second, had the legislature intended to mean the overall statewide fishing industry, it could have substituted "as commercial fishermen in the state" or similar language for "in the fishery", but it chose not to do so. Third, "fishery" is defined in AS 16.43.380(3) as:

. . . the commercial taking of a specific fishery resource in a specific administrative area with a specific type of gear; however the commission may designate a fishery to include more than one specific administrative area, gear type, or fishery resource.

We believe this definition should be followed. We therefore recommend the division adopt the definition of fishery as set forth in AS 16.43.380(3) when applying AS 16.10.310(a)(1)(A). This definition however, should also be adopted by regulation.

We hope this answers your questions concerning the commercial fishing statutes.

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