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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

Handwritten initials and number: "Sheff 83"

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the Limited Entry Act. This bill clarifies some provisions of the Act, updates others, specifies a variety of civil penalties for providing false information in applications for permits, and responds to recent court decisions interpreting the Act. Almost all of the bill's provisions were introduced last session in SB 422, but that bill was still in committee when the legislature adjourned.

Section 1 of the bill, which amends AS 16.43.150(g) to provide that the transfer of an entry permit may not be conditioned on a subsequent transfer of the permit, clarifies that it is the intent of the legislature to prohibit such transfers. The amendment is in response to the superior court decision in Gilliland v. State, No. 1JU-81-838, which held that such a transfer was permissible because it is not expressly prohibited by the statute.

Section 2 of the bill clarifies that the legislature intends entry permits to be exempt from the claims of creditors of the estate of a deceased permit holder. This is in response to the Alaska Supreme Court's decision in Timperly v. Jeffries, wherein an evenly divided court affirmed a superior court holding that the permit is subject to creditors' claims once the permit becomes a part of the decedent's estate.

Section 3 of the bill merely deletes reference to a federal agency that no longer exists, and eliminates the ambiguous term "net" from the phrase "net family income."

Section 4 of the bill authorizes the Commercial Fisheries Entry Commission to collect interest on fee arrearages. An application submitted to the commission is not

considered complete until the appropriate fee is paid. Accordingly, in almost all circumstances there is no need for the commission to be able to charge interest. The only exception occurs when an applicant is issued a permit as a resident and is later determined to be a nonresident. The applicant must then pay the difference between the fee charged residents and nonresidents. The commission believes that it would be appropriate if the applicant were also required to pay interest on this difference.

Section 5 of the bill amends AS 16.43.220(a) to clarify that an interim-use permit expires upon the commission's final determination that an applicant is not entitled to an entry permit. Without this clarification, the statute could be interpreted by the courts as requiring the commission to continue issuing interim-use permits to an applicant until he or she has exhausted all available judicial remedies, including an appeal to the Alaska or even the United States Supreme Court. The commission believes that once it has reached its final determination that an applicant is not entitled to an entry permit, and the applicant chooses to appeal that determination, the issue of whether or not the applicant should receive an interim-use permit should be left to the discretion of the court, rather than being required by the Limited Entry Act. It has consistently interpreted AS 16.43.220 in this fashion.

If the alternative interpretation were adopted, and the commission were required to issue interim-use permits to an applicant until he or she has exhausted all judicial remedies, this could motivate applicants to file even the most frivolous appeals because of the value of the interim-use permit. The issue of the proper interpretation of AS 16.43.220 is presently before the Alaska Supreme Court, but it is not known how soon a decision will be rendered. This amendment could provide the clarification that the court may need, or cure the harm that could be caused if the court misinterprets the statute.

Section 6 of the bill clarifies that the commission has some discretion in what criteria it uses to determine the hardship that an applicant would suffer if excluded from a fishery. This is in direct response to the recent Alaska Supreme Court decision in Rutter v. State, 668 P.2d 1343 (Alaska 1983), in which the court held that the commission lacks such discretion. The commission does not intend to use these amendments to avoid implementing Rutter; the amendment would only ratify and protect point systems used in other limited fisheries that were not challenged in Rutter.

Section 7 of the bill merely authorizes the commission to issue to an educational institution one entry permit that will be valid for all of the gear types that the institution operates. Currently, it is necessary to issue a separate permit for each of the gear types.

Section 8 of the bill sets out various amendments to AS 16.43.960, relating to the civil penalties that may be imposed for knowingly providing false information to the commission for the purpose of obtaining a permit. The section clarifies that the commission may suspend or transfer to another person, as well as revoke, permits obtained by fraud. The section also clarifies that the commission may take such action against any or all of the permits held by the person who attempts to defraud the commission, and not just the permit for which false information was knowingly supplied. Next, the section clarifies that knowingly supplying false information for the purpose of obtaining a duplicate permit is also grounds for revocation, suspension, or transfer of the permit. Section 8 also deletes unnecessary procedural detail that duplicates the provisions set out in AS 16.43.110(b). The section further authorizes the commission to impose an administrative fine of not more than \$5,000 on a person or entity that knowingly supplies false information. This parallels the criminal fine that may be imposed under AS 16.43.970(b).

Expanding the types of penalties that the commission can impose under AS 16.43.970 is desirable in view of the limited resources of the district attorneys' offices to prosecute violations under AS 16.43.970. The heavy workload of the district attorneys' offices precludes their giving the same priority to relatively minor offenses, for which there are also civil penalties, that they do to the prosecution of more serious crimes. Expanding the types of penalties that the commission may impose will enhance the commission's ability to effectively deter and rectify fraud committed to obtain permits. It does this by enabling the commission to tailor penalties to fit particular offenses.

Finally, sec. 8 of the bill clarifies that the commission can take action against a permit for any fraud occurring after January 1, 1973. This issue was recently addressed by the superior court in Kjarstad v. State, No. 1JU-81-1484 Civ. (Nov. 4, 1983). The superior court held that the revocation of a permit for fraud occurring before the enactment of AS 16.43.960 is permissible because the commission has always had the inherent power

to revoke a permit for fraud. The court indicated that AS 16.43.960 "merely codified this existing authority and provided a standard procedure for its exercise."

Section 9 of the bill amends AS 16.43.970(b) to state that knowingly making a false statement of any kind to the commission to obtain a benefit constitutes the crime of unsworn falsification, as set out in AS 11.56.210. Correspondingly, this section deletes the provision in AS 16.43.970(b) making it a separate crime to provide false information to the commission. Finally, this section clarifies that it is also a violation of AS 11.56.210 to knowingly make a false statement of any kind to the commission for the purpose of obtaining a duplicate permit. The other revisions to AS 16.43.970(b) merely simplify the language used; the deletion of the reference to a \$5,000 fine merely has the effect of relying on the relevant provisions of the Criminal Code (AS 11), thus helping to assure consistency.

Section 10 of the bill authorizes the commission to provide that certain information submitted by applicants is not subject to public disclosure. This is a matter of special importance to the commission because it must have honest responses and disclosures from applicants, who need the assurance of limited confidentiality. The commission is presumably authorized to make this information confidential under the right to privacy recognized in art. I, sec. 22, of the Alaska Constitution. Explicit statutory authority, however, would remove any uncertainty as to the matter.

Sincerely,



Bill Sheffield
Governor

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA. 99811
(907) 485-4907

Senate Committee on Resources

MEMORANDUM

February 1, 1985

TO: All Members
Senate Resources Committee

FROM: Senate Resources Committee Staff *MSK*

RE: SB 83 "An Act amending the Limited Entry Act"

SB 83 contains a series of technical amendments to the Limited Entry Act. The Governor's transmittal letter which is in the packet contains a detailed sectional analysis. The attached fiscal note indicates zero cost to the state and a potential increased revenue of approximately 17.9 thousand dollars the first year and approximately \$1,700 a year after that. The increased revenue would result from interest payments to the state on fees where a permit was issued to an applicant as a resident and the applicant was later determined to be a nonresident (Section 4 of the bill).

The attached memo from Bruce Twomley, Chairman of the Limited Entry Commission, explains the legislative history of the proposed amendments contained in this bill. A copy of the letter of legislative intent that is referred to in that memo is attached. A letter with the same wording has been prepared for for the Resources Committee if such a letter is desired.

Mr. Twomley will be at the committee meeting to testify on the bill. Margo Knuth, of the AG's office will also be at the meeting. Ms. Knuth drafted the bill and has been involved with the court decisions referred to in the Governor's transmittal letter. Fish and Game has also been notified of this meeting as has United Fishermen Alaska and Richard Lauber, lobbyist for Alaska Seafood Processors Association.

MEMORANDUM

State of Alaska

TO: McKie Campbell
Legislative Aide for
Senator Arliss Sturgulewski
M/S 3100

DATE: February 1, 1985

FILE NO:

TELEPHONE NO:

FROM: Bruce Twonley
Chairman
M/S 0302

SUBJECT: SB 83, "An Act Amending the
Limited Entry Act"

As we discussed, last year a Bill before the legislature titled originally HB 376 was adopted as ch 145 SLA 1984. A Bill (SB 422) nearly identical to SB 83 (which is now before you) was also introduced, and in the Fisheries Subcommittee of the Senate Resources Committee, SB 422 was rolled into HB 376. The combined Bill was passed onto the Senate floor by the Resources Committee, but before it could be put to a vote, the House adjourned. Because concurrence by the House on the SB 422 portions of the Bill was at that point impossible, SB 422 was extracted from HB 376 before the latter was adopted.

SB 83 is nearly identical to the former SB 422. Two new sections have been added: Section 2 (claims of creditors against decedent's estates) and Section 5 (interim-use permits).

Last year, a statement of legislative intent was drafted with respect to what is now Section 6 of SB 83 (formerly Section 15 of SCS CSHB 376). Attached is a copy of that statement of legislative intent for your reference.

BT:dan
Attachment
cc: Chris Kelly
M/S 0302



Official Business

Alaska State Legislature

Senate

COMMITTEE ON RESOURCES
LETTER OF INTENT
FOR
SCS CSHB 376 (RESOURCES)

Pouch V
State Capitol
Juneau, Alaska 99811

The amendment to AS 16.43.250(a) in section 15 of Senate Committee Substitute for Committee Substitute for House Bill 376, is in response to the Alaska Supreme Court decision in Rutter vs. Commercial Fisheries Entry Commission, Opinion Number 2712, August 26, 1983. In that decision the Supreme Court invalidated a portion of the hand troll point system for failure to comply with the specific terms of the statute. However, the amendment is not intended to circumvent or change in any way the result of the Rutter decision. The Commercial Fisheries Entry Commission should implement (and we understand the Commission to be in the process of implementing) the Rutter decision through the adoption of supplemental point regulations in the handtroll fishery.

It is the intent of the legislature to protect other limited fisheries from similar court challenges, and thus preserve the status quo in those fisheries. The legislature recognizes that patterns of participation and extent of economic dependence vary from fishery to fishery and affirms that, in developing point systems for limited fisheries, the Commission may exercise some discretion in how to measure past participation and economic dependence. The effect of enacting this legislation would be to ratify and protect point systems already in place in the AYK salmon fisheries and the limited herring fisheries.

Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA, 99811
(907) 485-4907

Senate Committee on Resources

March 6, 1985

COMMITTEE ON RESOURCES
LETTER OF INTENT
FOR
Committee Substitute for SB 83 (Resources)

The amendment to AS 16.43.250(a) in section 5 of CS for Senate Bill 83 (Resources) is in response to the Alaska Supreme Court decision in Rutter vs. Commercial Fisheries Entry Commission, Opinion Number 2712, August 26, 1983. In that decision, the Supreme Court invalidated a portion of the hand troll point system for failure to comply with the specific terms of the statute. However, the amendment is not intended to circumvent or change in any way the result of the Rutter decision. The Commercial Fisheries Entry Commission is implementing and has adopted, pursuant to the Rutter decision, supplemental point regulations in the hand troll fishery.

It was the intent of the legislature that the Commission should be able to disregard one or more particular hardship standards when ranking applicants if the standards were unreasonable in light of the particular fishery. This amendment clarifies that intent. The legislature recognizes that patterns of participation and extent of economic dependence vary from fishery to fishery and intended that, in developing point systems for limited fisheries, the Commission should exercise some discretion in how to measure past participation and economic dependence.

The effect of enacting this legislation would be to ratify and protect reasonable point systems already in place in the AYK salmon fisheries and the limited herring fisheries which did not include percentage of income derived from the fishery, reliance on alternative occupations and/or consistency of participation during a given year.

Senator Arliss Sturgulewski
Chairman, Senate Resources Committee



UNITED FISHERMEN OF ALASKA

SB 83
Resumes out
Loren

319 Seward Street, Suite #10
Juneau, Alaska 99801-1188
(907) 586-2826

Cass M. Parsons
Executive Director

UNITED FISHERMEN OF ALASKA

RESOLUTION 85-8

WHEREAS the efficient administration of AS 16.43 et seq. (The "Limited Entry Act") is vital to the functioning of the Alaskan fishing industry; and

WHEREAS occasional adjustments to the provisions of the Act, in order to conform the law to the realities faced by the Commercial Fisheries Entry Commission are, from time to time, appropriate and entirely in order; and

WHEREAS Governor Sheffield has introduced legislation which would amend the Limited Entry Act in a number of minor ways which the Commission believes will improve the administration of and help to preserve the Limited Entry Program; and

WHEREAS the proposed legislation is embodied in Senate Bill 83, currently before the Alaska Legislature; and

WHEREAS the proposed legislation will support the interests of those who rely on the Limited Entry Program.

NOW THEREFORE BE IT RESOLVED the Board of Directors of the United Fishermen of Alaska does hereby urge the Alaska Legislature. to give prompt and favorable consideration to SB 83.

Cass M. Parsons
UFA Executive Director

Robert M. Blake
President

2/19/85
Date

2/19/85
Date

Sections
5+10
Also please check
wording in Sect. 7
Thanks,
Mc/116

Hein
3/5/85 ✓✓

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 CS FOR SENATE BILL NO. 83 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act amending the Limited Entry Act; and providing
7 for an effective date."

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

9 * Section 1. AS 16.43.150(g) is amended to read:

10 (g) Except as provided in AS 16.10.333 - 16.10.337, AS 44.81.-
11 210, and in AS 44.81.230 - 44.81.250, an entry permit may not be[:]

12 (1) pledged, mortgaged, leased, or encumbered in any way;

13 (2) transferred with any retained right of repossession or
14 foreclosure, or on any condition requiring a subsequent transfer; or

15 (3) attached, distrained, or sold on execution of judgment
16 or under any other process or order of any court.

17 * Sec. 2. AS 16.43.150(h) is amended to read:

18 (h) Upon the death of an entry permit holder, the permanent
19 permit shall be transferred by the commission directly to the surviv-
20 ing spouse by right of survivorship unless the deceased holder has
21 expressed a contrary intent in a will that is probated. When no
22 spouse survives, the rights of the decedent pass as part of the dece-
23 dent's estate. Except as provided in AS 16.10.333 - 16.10.337,
24 AS 44.81.210, and 44.81.230 - 44.81.250, the permit is exempt from the
25 claims of creditors of the estate.

26 * Sec. 3. AS 16.43.160(c) is amended to read:

27 (c) The resident holder of an entry permit or interim-use permit
28 who has a [NET] family income falling within the federal [FEDERAL COM-
29 MINITY SERVICES ADMINISTRATION]

1 commission to reflect appropriate cost-of-living differentials, is
2 subject to a maximum annual fee of \$15.

3 * Sec. 4. AS 16.43.160 is amended by adding a new subsection to read:

4 (d) The commission may charge interest at a rate not to exceed
5 the legal rate of interest established in AS 45.45.010 on fees more
6 than 60 days overdue.

7 * Sec. 5. AS 16.43.250(a) is amended to read:

8 (a) Following the establishment of the maximum number of units
9 of gear for a particular fishery under AS 16.43.240, the commission
10 shall adopt regulations establishing qualifications for ranking ap-
11 plicants for entry permits according to the degree of hardship which
12 they would suffer by exclusion from the fishery. The regulations
13 shall define priority classifications of similarly situated applicants
14 based upon a reasonable balance of the following hardship standards:

15 (1) degree of economic dependence upon the fishery, includ-
16 ing, when reasonable for the fishery, the [BUT NOT LIMITED TO] per-
17 centage of income derived from the fishery, reliance on alternative
18 occupations, availability of alternative occupations, investment in
19 vessels and gear;

20 (2) extent of past participation in the fishery, including,
21 when reasonable for the fishery, [BUT NOT LIMITED TO] the number of
22 years of participation in the fishery [,] and the consistency of
23 participation during each year.

24 * Sec. 6. AS 16.43.351(b) is amended to read:

25 (b) A recipient may be issued an educational entry permit valid
26 for designated fisheries [EACH FISHERY] in the administrative area the
27 commission determines to be appropriate, considering the nature of the
28 educational program and the location of the educational or vocational
29

1 issued an educational entry permit [PERMITS] in more than one adminis-
2 trative area except as issued by the commission in its discretion upon
3 good cause shown.

4 * Sec. 7. AS 16.43 is amended by adding a new section to read:

5 Sec. 16.43.955. HEARINGS IN PROXIMITY TO BOARD OF FISHERIES
6 MEETINGS. When practicable, a commission hearing that deals with the
7 subject of limiting entry to a fishery shall be held on the same dates
8 on which, and in the same building or in a building adjacent to the
9 building in which, a Board of Fisheries meeting is being held.

10 * Sec. 8. AS 16.43.960 is amended to read:

11 Sec. 16.43.960. COMMISSION REVOCATION OR SUSPENSION OF [ENTRY]
12 PERMITS. (a) The commission may revoke, suspend, or transfer all
13 [AN] entry [PERMIT] or interim-use permits held by [PERMIT IF] a
14 person who knowingly provides or [SUPPLIES,] assists in providing
15 false information [SUPPLYING], or fails to correct false information
16 provided, to the commission for the purpose of obtaining a benefit for
17 self or another, including the issuance, renewal, duplication, or
18 transfer of an entry or interim-use permit or vessel license. The
19 commission may suspend that person's eligibility to hold an entry or
20 interim-use permit for a period not to exceed three years, and may
21 impose an administrative fine of not more than \$5,000 on the person.
22 The commission may also impose an administrative fine of not more than
23 \$5,000 on an entity whose officers, employees, representatives, or
24 agents knowingly provide or assist in providing false information, or
25 fail to correct false information provided, to the commission for the
26 purpose of obtaining a benefit

27 [(1) PERMIT APPLICATION;

28 (2) PERMIT TRANSFER; OR
29

1 (b) The [BEFORE REVOCATION, THE] commission shall serve the
2 respondent [PERMIT HOLDER] personally or by certified or registered
3 mail with a notice to show cause why the proposed action should not
4 take place. The notice to show cause must

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

8 (2) provide for at least 30 days' notice of the place,
9 date, and time of the hearing where the respondent [PERMIT HOLDER] may
10 present evidence in opposition to the proposed action; unless waived
11 in writing by the respondent [PERMIT HOLDER], the hearing [PLACE]
12 shall be held within the judicial district in which the respondent
13 [PERMIT HOLDER] resides if the respondent [PERMIT HOLDER] resides in
14 the state; the hearing place shall be at the discretion of the commis-
15 sion for those respondents [PERMIT HOLDERS] residing outside the
16 state;

17 (3) specify the statutes or regulations violated;

18 (4) state with particularity the action proposed to be
19 taken;

20 (5) indicate to [THAT] the respondent [PERMIT HOLDER'S]
21 that the respondent's ability to permanently transfer the permits
22 [PERMIT] which are [IS] the subject of the show cause [REVOCATION]
23 proceedings has been suspended as of the date of the notice and will
24 continue to be suspended until the exhaustion of all administrative
25 and judicial remedies; and

26 (6) provide other information the commission considers
27 proper.

28 (c) A permit subject to show cause [REVOCATION] proceedings
29

1 in (b) of this section pending exhaustion of all administrative and
2 judicial remedies arising from action taken under this section.

3 (d) The show cause [REVOCATION] hearing shall be conducted
4 before a quorum of commissioners and shall be presided over by a
5 hearing officer appointed by the commission who shall rule on the
6 presentation of evidence and other procedural matters. Hearings shall
7 be conducted in accordance with regulations adopted under AS 16.43.-

8 110(b) [WITHIN A REASONABLE TIME AFTER THE CONCLUSION OF THE HEARING,
9 THE HEARING OFFICER SHALL SUBMIT TO THE ATTENDING COMMISSIONERS A
10 PROPOSED DECISION BASED ON THE RECORD OF THE HEARING AND CONTAINING
11 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ACTION. THE
12 ATTENDING COMMISSIONERS SHALL THEN REVIEW THE HEARING OFFICER'S PRO-
13 POSED DECISION AND ADOPT OR AMEND OR REJECT THE CONTENTS OF THE PRO-
14 POSED DECISION IN THE WRITTEN DECISION OF THE COMMISSION. A COPY OF
15 THE COMMISSION DECISION SHALL BE MAILED TO EACH PARTY OR THE PARTY'S
16 ATTORNEY BY CERTIFIED OR REGISTERED MAIL].

17 (e) The failure of a respondent [PERMIT HOLDER] properly served
18 under (b) of this section to appear at the hearing is not grounds for
19 setting aside any commission action taken. However, the commission
20 may in its discretion order a continuance or second hearing.

21 (f) [THE EFFECTIVE DATE OF THE COMMISSION DECISION UNDER THIS
22 SECTION IS THE DATE OF THE NOTICE TO SHOW CAUSE FIRST SERVED UPON THE
23 PERMIT HOLDER UNDER (b) OF THIS SECTION.

24 (g)] The provisions of this section [DO NOT] apply to conduct
25 occurring after January 1, 1973, but do not affect a [THE] permit held
26 by [OF] a person who is a bona fide purchaser. Failure to correct
27 false information is a continuing offense.

28 (g) [(h)] Judicial review of commission determinations under

1 if a hearing de novo is granted under AS 44.62.570(d), the hearing
2 may, in the discretion of the court, be had with a jury sitting if
3 application for the jury hearing is filed with the court no later than
4 10 days after service of the notice of appeal.

5 (h) [(i)] An entry permit revoked by the commission under this
6 section that is pledged [TAKEN] as security for a loan under AS 16.-
7 10.333 or AS 44.81.230 shall be reassigned or sold as provided in
8 AS 16.10.337 or AS 44.81.250.

9 * Sec. 9. AS 16.43.970(b) is amended to read:

10 (b) A person who knowingly makes a false statement to the com-
11 mission for the purpose of obtaining a benefit, including the issu-
12 ance, renewal, duplication, or transfer of an entry or interim-use
13 permit or vessel license [OF FACT IN THE APPLICATION FOR OR RENEWAL OF
14 AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR VESSEL LICENSE APPLICATION
15 OR RENEWAL OR IN THE APPLICATION FOR A TRANSFER UNDER AS 16.43.170 OR
16 16.43.180], or a person who assists another by knowingly making a
17 false statement to the commission for the purpose of obtaining a bene-
18 fit for another, [OF FACT IN SUPPORT OF THE OTHER PERSON'S APPLICATION
19 FOR ISSUANCE OR RENEWAL OF AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR
20 VESSEL LICENSE] is guilty of the crime of unsworn falsification as set
21 out in AS 11.56.210. Upon conviction, the person [A MISDEMEANOR AND]
22 (1) shall forfeit to the commission all interim-use permits and entry
23 permits [HELD BY THE PERSON MAKING THE FALSE STATEMENT] and (2) loses
24 [SHALL LOSE] eligibility for interim-use permits and for entry permits
25 for a period of three years [AND IS PUNISHABLE BY A FINE OF NOT MORE
26 THAN \$5,000].

27 * Sec. 10. AS 16.43 is amended by adding a new section to read:

28 Sec. 16.43.975. PUBLIC DISCLOSURE. Documents submitted to the
29

1 finances and information supplied by individuals for research pur-
2 poses, produced in response to requests by the commission, are not
3 subject to public disclosure.

4 * Sec. 11. This Act takes effect immediately in accordance with AS 01.-
5 10.070(c).

Levy/Hein
3/4/85V

CHANGES FROM THE ORIGINAL
BILL CONSIST OF PARTS 2, 3, 6 + 7

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 83 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

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14 foreclosure, or on any condition requiring a subsequent transfer; or

15 (3) attached, distrained, or sold on execution of judgment
16 or under any other process or order of any court.

17 * Sec. 2. AS 16.43.150(h) is amended to read:

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20 ing spouse by right of survivorship unless the deceased holder has
21 expressed a contrary intent in a will that is probated. When no
22 spouse survives, the rights of the decedent pass as part of the dece-
23 dent's estate. Except as provided in AS 16.10.333 - 16.10.337,
24 AS 44.81.210, and 44.81.230 - 44.81.250, the permit is exempt from the
25 claims of creditors of the estate.

26 * Sec. 3. AS 16.43.160(c) is amended to read:

27 (c) The resident holder of an entry permit or interim-use permit
28 who has a [NFT] family income falling within the federal [FEDERAL COM-
29 MUNITY SERVICES ADMINISTRATION] poverty guidelines, adjusted by the

1 commission to reflect appropriate cost-of-living differentials. is
2 subject to a maximum annual fee of \$15.

3 * Sec. 4. AS 16.43.160 is amended by adding a new subsection to read:

4 (d) The commission may charge interest at a rate not to exceed
5 the legal rate of interest established in AS 45.45.010 on fees more
6 than 60 days overdue.

7 ~~Original Section 5 dealing with in-steam use permits has been deleted~~

8 * Sec. 5. AS 16.43.250(a) is amended to read:

9 (a) Following the establishment of the maximum number of units
10 of gear for a particular fishery under AS 16.43.240, the commission
11 shall adopt regulations establishing qualifications for ranking ap-
12 plicants for entry permits according to the degree of hardship which
13 they would suffer by exclusion from the fishery. The regulations
14 shall define priority classifications of similarly situated applicants
15 based upon a reasonable balance of the following hardship standards:

16 (1) degree of economic dependence upon the fishery, which
17 may include [INCLUDING] but is not limited to percentage of income
18 derived from the fishery, reliance on alternative occupations, avail-
19 ability of alternative occupations, investment in vessels and gear;

20 (2) extent of past participation in the fishery, which may
21 include [INCLUDING] but is not limited to the number of years of
22 participation in the fishery, and the consistency of participation
23 during each year.

24 * Sec. 6. AS 16.43.351(b) is amended to read:

25 (b) A recipient may be issued an educational entry permit valid
26 for designated fisheries [EACH FISHERY] in the administrative area the
27 commission determines to be appropriate, considering the nature of the
28 educational program and the location of the educational or vocational
29 institution. The recipient of an educational entry permit may not be
issued an educational entry permit [PERMITS] in more than one

1 administrative area except as issued by the commission in its discre-
2 tion upon good cause shown.

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4 Sec. 16.43.955. HEARINGS IN CONJUNCTION WITH THE BOARD OF
5 *New Section 7 inserted* FISHERIES. When practicable, a commission hearing that deals with the subject of
6 limiting entry to a fishery shall be held on the same dates and at the same
7 location as meetings of the Board of Fisheries.

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14 provided, to the commission for the purpose of obtaining a benefit for
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17 commission may suspend that person's eligibility to hold an entry or
18 interim-use permit for a period not to exceed three years, and may
19 impose an administrative fine of not more than \$5,000 on the person.
20 The commission may also impose an administrative fine of not more than
21 \$5,000 on an entity whose officers, employees, representatives, or
22 agents knowingly provide or assist in providing false information, or
23 fail to correct false information provided, to the commission for the
24 purpose of obtaining a benefit

25 [(1) PERMIT APPLICATION;

26 (2) PERMIT TRANSFER; OR

27 (3) PERMIT RENEWAL].

28 (b) The [BEFORE REVOCATION, THE] commission shall serve the
29 respondent [PERMIT HOLDER] personally or by certified or registered

1 mail with a notice to show cause why the proposed action should not
2 take place. The notice to show cause must

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

6 (2) provide for at least 30 days' notice of the place,
7 date, and time of the hearing where the respondent [PERMIT HOLDER] may
8 present evidence in opposition to the proposed action; unless waived
9 in writing by the respondent [PERMIT HOLDER], the hearing [PLACE]
10 shall be held within the judicial district in which the respondent
11 [PERMIT HOLDER] resides if the respondent [PERMIT HOLDER] resides in
12 the state; the hearing place shall be at the discretion of the commis-
13 sion for those respondents [PERMIT HOLDERS] residing outside the
14 state;

15 (3) specify the statutes or regulations violated;

16 (4) state with particularity the action proposed to be
17 taken;

18 (5) indicate to [THAT] the respondent [PERMIT HOLDER'S]
19 that the respondent's ability to permanently transfer the permits
20 [PERMIT] which are [IS] the subject of the show cause [REVOCATION]
21 proceedings has been suspended as of the date of the notice and will
22 continue to be suspended until the exhaustion of all administrative
23 and judicial remedies; and

24 (6) provide other information the commission considers
25 proper.

26 (c) A permit subject to show cause [REVOCATION] proceedings
27 under this section may not be transferred after the date of the notice
28 in (b) of this section pending exhaustion of all administrative and
29 judicial remedies arising from action taken under this section.

1 (d) The show cause [REVOCATION] hearing shall be conducted
2 before a quorum of commissioners and shall be presided over by a
3 hearing officer appointed by the commission who shall rule on the
4 presentation of evidence and other procedural matters. Hearings shall
5 be conducted in accordance with regulations adopted under AS 16.43.-
6 110(b) [WITHIN A REASONABLE TIME AFTER THE CONCLUSION OF THE HEARING,
7 THE HEARING OFFICER SHALL SUBMIT TO THE ATTENDING COMMISSIONERS A
8 PROPOSED DECISION BASED ON THE RECORD OF THE HEARING AND CONTAINING
9 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ACTION. THE
10 ATTENDING COMMISSIONERS SHALL THEN REVIEW THE HEARING OFFICER'S PRO-
11 POSED DECISION AND ADOPT OR AMEND OR REJECT THE CONTENTS OF THE PRO-
12 POSED DECISION IN THE WRITTEN DECISION OF THE COMMISSION. A COPY OF
13 THE COMMISSION DECISION SHALL BE MAILED TO EACH PARTY OR THE PARTY'S
14 ATTORNEY BY CERTIFIED OR REGISTERED MAIL].

15 (e) The failure of a respondent [PERMIT HOLDER] properly served
16 under (b) of this section to appear at the hearing is not grounds for
17 setting aside any commission action taken. However, the commission
18 may in its discretion order a continuance or second hearing.

19 (f) [THE EFFECTIVE DATE OF THE COMMISSION DECISION UNDER THIS
20 SECTION IS THE DATE OF THE NOTICE TO SHOW CAUSE FIRST SERVED UPON THE
21 PERMIT HOLDER UNDER (b) OF THIS SECTION.

22 (g)] The provisions of this section [DO NOT] apply to conduct
23 occurring after January 1, 1973, but do not affect a [THE] permit held
24 by [OF] a person who is a bona fide purchaser. Failure to correct
25 false information is a continuing offense.

26 (g) [(h)] Judicial review of commission determinations under
27 this section is in accordance with AS 44.62.560 - 44.62.570; however,
28 if a hearing de novo is granted under AS 44.62.570(d), the hearing
29 may, in the discretion of the court, be had with a jury sitting if

1 application for the jury hearing is filed with the court no later than
2 10 days after service of the notice of appeal.

3 (h) [(i)] An entry permit revoked by the commission under this
4 section that is pledged [TAKEN] as security for a loan under AS 16.-
5 10.333 or AS 44.81.230 shall be reassigned or sold as provided in
6 AS 16.10.337 or AS 44.81.250.

7 * Sec. 9. AS 16.43.970(b) is amended to read:

8 (b) A person who knowingly makes a false statement to the com-
9 mission for the purpose of obtaining a benefit, including the issu-
10 ance, renewal, duplication, or transfer of an entry or interim-use
11 permit or vessel license [OF FACT IN THE APPLICATION FOR OR RENEWAL OF
12 AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR VESSEL LICENSE APPLICATION
13 OR RENEWAL OR IN THE APPLICATION FOR A TRANSFER UNDER AS 16.43.170 OR
14 16.43.180], or a person who assists another by knowingly making a
15 false statement to the commission for the purpose of obtaining a bene-
16 fit for another. [OF FACT IN SUPPORT OF THE OTHER PERSON'S APPLICATION
17 FOR ISSUANCE OR RENEWAL OF AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR
18 VESSEL LICENSE] is guilty of the crime of unsworn falsification as set
19 out in AS 11.56.210. Upon conviction, the person [A MISDEMEANOR AND]
20 (1) shall forfeit to the commission all interim-use permits and entry
21 permits [HELD BY THE PERSON MAKING THE FALSE STATEMENT] and (2) loses
22 [SHALL LOSE] eligibility for interim-use permits and for entry permits
23 for a period of three years [AND IS PUNISHABLE BY A FINE OF NOT MORE
24 THAN \$5,000].

25 * Sec. 10. AS 16.43 is amended by adding a new section to read:

26 Sec. 16.43.975. PUBLIC DISCLOSURE. The commission shall provide
27 by regulation that documents submitted to the commission containing
28 information relating to an individual's personal finances and informa-
29 tion supplied by individuals for research purposes, produced in

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response to requests by the commission, are not subject to public disclosure.

* Sec. 11. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Immediate effective date added

SB 83

SENATE BILL NO. 83 by the Rules Committee by request of the Governor, entitled:

"An Act amending the Limited Entry Act."

was read the first time and referred to the Resources Committee, the Judiciary Committee and the Finance Committee.

Fiscal note is zero. Analysis by Christine Kelly, Licensing Admn., Commercial Fisheries Entry Commission: "The only section of the bill which would have fiscal impact is section 3, allowing the Commission to charge interest on fee arrearages.

In 1979, the Commission began screening its permit holder data base for potential cases of residency fraud. These efforts are estimated to have yielded 513 actionable cases of residency fraud as of 1984, for which approximately \$189,000 has been assessed. Past experience indicates that the Commission can expect to collect \$113,600 of the total amount outstanding, as some of the permit holders will prevail on their claims and have their records cleared and others will drop out of the fisheries making it unlikely their arrearages will ever be collected. On the average, arrearages are collected 20 months after being assessed due to lengthy due process and adjudicatory proceedings.

Calculated at the legal rate of interest (10.5%) for 18 months (the legislation provides a 60-day grace period) interest on outstanding arrearages which will be collected is estimated at \$17,900. In each subsequent year, the Commission expects to discover about 50 actionable cases of residency fraud among new entrants to the fisheries, for which \$11,100 in arrearages would be collected. Interest on this amount would be \$1,700 annually. Although the legislation would allow the Commission to charge interest on other types of arrearages (such as bad checks) this interest is estimated to be less than \$100 annually."

Governor's transmittal letter dated January 22:

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the Limited Entry Act. This bill clarifies some provisions of the Act, updates others, specifies a variety of civil penalties for providing false information in applications for permits, and responds to recent court decisions interpreting the Act. Almost all of the bill's provisions were introduced last session in SB 422, but that bill was still in committee when the legislature adjourned.

~~Handwritten signature and scribbles at the bottom of the page.~~

SB 82 cont'd

Section 13 of the bill clarifies that the commissioner of commerce and economic development may authorize department employees to arrest or issue citations to persons who violate the DOTPF vehicle size, weight, and load limits, the provisions of an overweight or oversize vehicle permit, or department regulations. It also specifies procedures and rules governing those citations. This eliminates an ambiguity and possible loophole left after the 1982 transfer of enforcement authority to the department.

Section 26 of the bill amends AS 45.75.380 to increase the current maximum fine for all weights and measures offenses from \$200 (or five cents a pound for overweight vehicle offenses) to a \$300 fine (plus five cents a pound for overweight vehicle offenses). By making these offenses subject to the violation penalty set out in AS 12.55.035(b)(5), they are like AS 28.40.050(c)'s "infractions," and the possibility of imprisonment would be dropped, as would the increase in penalties for subsequent convictions. This change conforms to the new Criminal Code (AS 11) and the Code of Criminal Procedure (AS 12) and will provide a more effective deterrent to weights and measures violations. Severe penalties and certainty of conviction are two deterrents to unlawful conduct. It is felt that there is a greater probability of conviction under the "infraction" approach and that it would be the more effective deterrent to the various weights and measures offenses -- both statutory and regulatory. Also, under AS 45.75.130(g) (in sec. 13 of the bill), failure to respond to a citation for one of these violations would be a class B misdemeanor; cf. AS 12.25.230.

Most of the bill, including secs. 1 -- 3 and 5 -- 26, clarifies a confusing approach taken by the 1961 legislature which passed the Weights and Measures Act. For reasons which are not now clear, and which, to the extent that we can guess what they were, no longer apply, AS 47.75.030 states that the commissioner of commerce and economic development is the director of weights and measures, and throughout the chapter many references are made to the director. To avoid confusion with the director of the division of measurement standards, who is currently assigned to administer the Act, this bill changes all of those references to the director to be references to the commissioner.

The bill also makes "housekeeping" amendments to clean up outdated language and to correct several citations.

All of these changes in the Weights and Measures Act will increase the effectiveness and efficiency of implementation of the Act, especially the overweight and oversize vehicle program.

Sincerely,

Bill Sheffield
Governor

SB 83 cont'd

Section 1 of the bill, which amends AS 16.43.150(g) to provide that the transfer of an entry permit may not be conditioned on a subsequent transfer of the permit, clarifies that it is the intent of the legislature to prohibit such transfers. The amendment is in response to the superior court decision in Gilliland v. State, No. 1JU-81-838, which held that such a transfer was permissible because it is not expressly prohibited by the statute.

Section 2 of the bill clarifies that the legislature intends entry permits to be exempt from the claims of creditors of the estate of a deceased permit holder. This is in response to the Alaska Supreme Court's decision in Timperly v. Jeffries, wherein an evenly divided court affirmed a superior court holding that the permit is subject to creditors' claims once the permit becomes a part of the decedent's estate.

Section 3 of the bill merely deletes reference to a federal agency that no longer exists, and eliminates the ambiguous term "net" from the phrase "net family income."

Section 4 of the bill authorizes the Commercial Fisheries Entry Commission to collect interest on fee arrearages. An application submitted to the commission is not considered complete until the appropriate fee is paid. Accordingly, in almost all circumstances there is no need for the commission to be able to charge interest. The only exception occurs when an applicant is issued a permit as a resident and is later determined to be a nonresident. The applicant must then pay the difference between the fee charged residents and nonresidents. The commission believes that it would be appropriate if the applicant were also required to pay interest on this difference.

Section 5 of the bill amends AS 16.43.220(a) to clarify that an interim-use permit expires upon the commission's final determination that an applicant is not entitled to an entry permit. Without this clarification, the statute could be interpreted by the courts as requiring the commission to continue issuing interim-use permits to an applicant until he or she has exhausted all available judicial remedies, including an appeal to the Alaska or even the United States Supreme Court. The commission believes that once it has reached its final determination that an applicant is not entitled to an entry permit, and the applicant chooses to appeal that determination, the issue of whether or not the applicant should receive an interim-use permit should be left to the discretion of the court, rather than being required by the limited Entry Act. It has consistently interpreted AS 16.43.220 in this fashion.

If the alternative interpretation were adopted, and the commission were required to issue interim-use permits to an applicant until he or she has exhausted all judicial remedies,

SB 83 cont'd

this could motivate applicants to file even the most frivolous appeals because of the value of the interim-use permit. The issue of the proper interpretation of AS 16.43.220 is presently before the Alaska Supreme Court, but it is not known how soon a decision will be rendered. This amendment could provide the clarification that the court may need, or cure the harm that could be caused if the court misinterprets the statute.

Section 6 of the bill clarifies that the commission has some discretion in what criteria it uses to determine the hardship that an applicant would suffer if excluded from a fishery. This is in direct response to the recent Alaska Supreme Court decision in Rutter v. State, 668 P.2d 1343 (Alaska 1983), in which the court held that the commission lacks such discretion. The commission does not intend to use these amendments to avoid implementing Rutter; the amendment would only ratify and protect point systems used in other limited fisheries that were not challenged in Rutter.

Section 7 of the bill merely authorizes the commission to issue to an educational institution one entry permit that will be valid for all of the gear types that the institution operates. Currently, it is necessary to issue a separate permit for each of the gear types.

Section 8 of the bill sets out various amendments to AS 16.43.960, relating to the civil penalties that may be imposed for knowingly providing false information to the commission for the purpose of obtaining a permit. The section clarifies that the commission may suspend or transfer to another person, as well as revoke, permits obtained by fraud. The section also clarifies that the commission may take such action against any or all of the permits held by the person who attempts to defraud the commission, and not just the permit for which false information was knowingly supplied. Next, the section clarifies that knowingly supplying false information for the purpose of obtaining a duplicate permit is also grounds for revocation, suspension, or transfer of the permit. Section 8 also deletes unnecessary procedural detail that duplicates the provisions set out in AS 16.43.110(b). The section further authorizes the commission to impose an administrative fine of not more than \$5,000 on a person or entity that knowingly supplies false information. This parallels the criminal fine that may be imposed under AS 16.43.-970(b).

Expanding the types of penalties that the commission can impose under AS 16.43.970 is desirable in view of the limited resources of the district attorneys' offices to prosecute violations under AS 16.43.970. The heavy workload of the district attorneys' offices precludes their giving the same priority to relatively minor offenses, for which there are also civil penalties, that they do to the prosecution of more serious crimes. Expanding the types of penalties that the commission may impose will enhance the commission's ability to effectively deter and rectify fraud committed to obtain permits. It does this by enabling the commission to tailor penalties to fit particular offenses.

SB 83 cont'd

Finally, sec. 8 of the bill clarifies that the commission can take action against a permit for any fraud occurring after January 1, 1973. This issue was recently addressed by the superior court in Kjarstad v. State, No. 1JU-81-1484 Civ. (Nov. 4, 1983). The superior court held that the revocation of a permit for fraud occurring before the enactment of AS 16.43.960 is permissible because the commission has always had the inherent power to revoke a permit for fraud. The court indicated that AS 16.43.960 "merely codified this existing authority and provided a standard procedure for its exercise."

Section 9 of the bill amends AS 16.43.970(b) to state that knowingly making a false statement of any kind to the commission to obtain a benefit constitutes the crime of unsworn falsification, as set out in AS 11.56.210. Correspondingly, this section deletes the provision in AS 16.43.970(b) making it a separate crime to provide false information to the commission. Finally, this section clarifies that it is also a violation of AS 11.56.210 to knowingly make a false statement of any kind to the commission for the purpose of obtaining a duplicate permit. The other revisions to AS 16.43.970(b) merely simplify the language used; the deletion of the reference to a \$5,000 fine merely has the effect of relying on the relevant provisions of the Criminal Code (AS 11), thus helping to assure consistency.

Section 10 of the bill authorizes the commission to provide that certain information submitted by applicants is not subject to public disclosure. This is a matter of special importance to the commission because it must have honest responses and disclosures from applicants, who need the assurance of limited confidentiality. The commission is presumably authorized to make this information confidential under the right to privacy recognized in art. I, sec. 22, of the Alaska Constitution. Explicit statutory authority, however, would remove any uncertainty as to the matter.

Sincerely,

Bill Sheffield
Governor

SB 84

SENATE BILL NO. 84 by the Rules Committee by request of the Governor, entitled:

"An Act relating to motor vehicle laws."

was read the first time and referred to the State Affairs Committee, the Judiciary Committee and the Finance Committee.

SB 84 cont'd

Fiscal note is zero.

Governor's transmittal letter dated January 22:

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which makes many badly needed amendments to the motor vehicle laws contained in AS 28. These amendments address a variety of issues. The bill alters existing statutes to more accurately reflect the current practices of the division of motor vehicles (DMV) in the Department of Public Safety, to allow DMV to adopt more efficient procedures, and to address some inadvertent omissions in current law.

Section 1 of the bill amends AS 28.05.091 to make it clear that a peace officer may impound a motor vehicle if the vehicle's identification number has been altered or removed. Law enforcement officers often must impound such vehicles in order to investigate whether the vehicle has been stolen, but the language of the current impoundment statute does not clearly authorize a seizure of this sort. Under the proposed language, the owner of an impounded vehicle would not be required to pay any costs associated with impoundment or storage of the vehicle. The owner of an impounded vehicle would be entitled to request a hearing to contest the impoundment. See also AS 28.05.131.

Section 2 of the bill amends a general provision regarding DMV administrative hearings to make it clear that a hearing officer may take appropriate action against a person's vehicle title or registration as well as against the person's driver's license. This amendment would bring the language of AS 28.05.141(c) into conformity with AS 28.05.131(a), with current administrative practices, and with common sense interpretation.

Section 3 of the bill amends AS 28.05.141(d), which deals with a motorist's right to appeal from an administrative hearing officer's decision. The new language would allow a motorist to appeal a hearing officer's decision to the district court, and specifies the scope of appellate review. Existing law allows a hearing de novo -- a complete new hearing on the same issues which were decided at the administrative hearing. In many cases, this makes the entire administrative hearing process superfluous. A motorist dissatisfied with a hearing officer's decision will commonly request a de novo hearing in district court, and DMV personnel and their witnesses are forced to present the entire case over again. This is not an efficient use of either administrative or judicial resources. The new language is modelled upon the provisions adopted by the legislature in 1983 regarding the appeal rights granted to a person whose driver's license has been administratively revoked because he drove while intoxicated or refused to take a breath test. See AS 28.15.166(m) and (n).

• Douglas Pope

Lawyer

Juneau Law Office

526 Main St., 99801

(907) 586-4151

March 4, 1985

Hon. Arliss Sturgulewski
Chair
Senate Resources Committee
State of Alaska
State Capitol Building
Juneau, Alaska 99801

Re: SB 83
An Act amending the Limited Entry Act

Dear Senator Sturgulewski:

The purpose of this letter is to provide written comment on sections 5 and 6 of the above-referenced bill. I submit these comments as an interested citizen, although my point of reference is from that of an attorney occasionally representing fishermen appealing or challenging decisions of the Commercial Fisheries Entry Commission. My concern is directed at what I view is a clear attempt in this bill to disrupt an existing balance governing judicial review of the Commission's actions.

Section 5

This section proposes that a fisherman or woman shall lose his or her right to fish upon an adjudication by the Commission, rather than a reviewing court, that the applicant does not qualify for a limited entry permit. This proposal most certainly resulted from litigation last year over the validity of a CFEC regulation that attempted to achieve a similar result. In Kalmakoff v. State of Alaska, CFEC, Supreme Court No. 7767, Kalmakoff appealed a decision of the CFEC denying his permit application to the Supreme Court. The regulation in question, 20 AAC 05.550(j), provided that a permit applicant's interim use permit would expire upon appeal of a CFEC adjudication from the Superior Court to the Supreme Court. The Supreme Court stayed the effect of the regulation on May 29, 1984, pending its decision on the question of whether 20 AAC 05.550(j) was inconsistent with that section of the Limited Entry Act (AS 16.43.220(a)) which this bill now proposes to change. The same result occurred in several other cases.

At the time Kalmakoff requested the stay the CFEC argued that "[T]he commission does not believe that Kalmakoff has either a strong legal or factual basis for his claim of entitlement to a limited entry permit." Appellee's Response to Emergency Motion for Stay Pending Appeal, dated May 24, 1984, p. 3.

On January 11, 1985, the Supreme Court reversed the Superior Court and the commission on part of Kalmakoff's appeal of the permit eligibility application. Opinion No. 2900. The

Supreme Court's decision disagreed with the CFEC and the Superior Court on questions of fact and law.

The point of all this is that if the proposal in Sec. 5 of this bill were law currently, Artemie Kalmakoff would have been denied one fishing season while the Supreme Court considered his case, in which he eventually prevailed. The amendment in Sec. 5 is an attempt to provide for administrative termination of fishing right in advance of a final adjudication in the judicial branch on the merits of the permit application.


Section 6

This section also is the result of decisions by the Supreme Court which have overturned actions of the CFEC. On one occasions, the Supreme Court has ruled that the CFEC adopted regulations contrary to AS 16.43.250(a) insofar as those regulations did not consider all of the criteria included in that sub section. In adopting the regulations limiting entry into the hand troll fishery, the commission declined to consider any of the criteria in AS 16.43.250(a)(1) other than the "availability of alternative occupations." This action was overturned in Rutter v. State, 668 P. 2d 1343(Alaska 1983) because it ignored the express provisions of the statute. More recently, in Deubelbeiss v. CFEC, 689 P. 2d 487(Alaska 1984), the Supreme Court concluded that the CFEC method for determining the availability of alternative occupations violated the equal protection clause.

In my view, the commission should make a convincing policy argument before the legislature interferes with the scope of judicial oversight. However, as with Sec. 5, a question of basic fairness arises. Even if the CFEC has a convincing policy argument that it should not be subject to judicial review on the question of which criteria to consider when adopting regulations for the ranking of hardship, is it fair to grant the CFEC power to change the rules applicable to those persons whose permit applications have not yet been adjudicated?

Thank you for the opportunity to present this written statement. I am available to answer any questions that you or the committee may have.

Sincerely,


Douglas Pope



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

06 24 83
#

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the Limited Entry Act. This bill clarifies some provisions of the Act, updates others, specifies a variety of civil penalties for providing false information in applications for permits, and responds to recent court decisions interpreting the Act. Almost all of the bill's provisions were introduced last session in SB 422, but that bill was still in committee when the legislature adjourned.

~~Section 1~~ of the bill, which amends AS 16.43.150(g) to provide that the ~~transfer of an entry permit may not be conditioned on a subsequent transfer of the permit, clarifies~~ that it is the ~~intent of the legislature~~ to prohibit such transfers. The amendment is in response to the superior court decision in Gilliland v. State, No. 1JU-81-838, which held that such a transfer was permissible because it is not expressly prohibited by the statute.

~~Section 2~~ of the bill ~~clarifies~~ that the legislature ~~intends entry permits to be exempt from the claims of creditors of the estate of a deceased permit holder.~~ This is in response to the Alaska Supreme Court's decision in Timperly v. Jeffries, wherein an evenly divided court affirmed a superior court holding that the permit is subject to creditors' claims once the permit becomes a part of the decedent's estate.

~~Section 3~~ of the bill merely ~~deletes reference to a federal agency that no longer exists, and eliminates the ambiguous term "net" from the phrase "net family income."~~

~~Section 4~~ of the bill ~~authorizes~~ the Commercial Fisheries Entry Commission to collect interest on fee arrearages. An application submitted to the commission is not

considered complete until the appropriate fee is paid. Accordingly, in almost all circumstances there is no need for the commission to be able to change interest. The only exception occurs when an applicant is issued a permit as a resident and is later determined to be a nonresident. The applicant must then pay the difference between the fee charged residents and nonresidents. The commission believes that it would be appropriate if the applicant were also required to pay interest on this difference.

Section 5 of the bill amends AS 16.43.220(a) to clarify that an interim-use permit expires upon the commission's final determination that an applicant is not entitled to an entry permit. Without this clarification, the statute could be interpreted by the courts as requiring the commission to continue issuing interim-use permits to an applicant until he or she has exhausted all available judicial remedies, including an appeal to the Alaska or even the United States Supreme Court. The commission believes that once it has reached its final determination that an applicant is not entitled to an entry permit, and the applicant chooses to appeal that determination, the issue of whether or not the applicant should receive an interim-use permit should be left to the discretion of the court, rather than being required by the Limited Entry Act. It has consistently interpreted AS 16.43.220 in this fashion.

If the alternative interpretation were adopted, and the commission were required to issue interim-use permits to an applicant until he or she has exhausted all judicial remedies, this could motivate applicants to file even the most frivolous appeals because of the value of the interim-use permit. The issue of the proper interpretation of AS 16.43.220 is presently before the Alaska Supreme Court, but it is not known how soon a decision will be rendered. This amendment could provide the clarification that the court may need, or cure the harm that could be caused if the court misinterprets the statute.

Section 6 of the bill clarifies that the commission has some discretion in what criteria it uses to determine the hardship that an applicant would suffer if excluded from a fishery. This is in direct response to the recent Alaska Supreme Court decision in Rutter v. State, 668 P.2d 1343 (Alaska 1983), in which the court held that the commission lacks such discretion. The commission does not intend to use these amendments to avoid implementing Rutter; the amendment would only ratify and protect point systems used in other limited fisheries that were not challenged in Rutter.

idea for questions

would this reopen permit decisions

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~~Section 7~~ of the bill merely authorizes the commission to issue to an educational institution one entry permit that will be valid for all of the gear types that the institution operates. ~~Currently, it is necessary to issue a separate permit for each of the gear types.~~

Section 7 - added.

~~Section 8~~ of the bill sets out various amendments to AS 16.43.960, relating to the civil penalties that may be imposed for knowingly providing false information to the commission for the purpose of obtaining a permit. The ~~section clarifies~~ that the commission may suspend or transfer to another person, as well as revoke, permits obtained by fraud. The section also clarifies that the commission may take such action against any or all of the permits held by the person who attempts to defraud the commission, and not just the permit for which false information was knowingly supplied. Next, the section clarifies that knowingly supplying false information for the purpose of obtaining a duplicate permit is also grounds for revocation, suspension, or transfer of the permit. Section 8 also ~~deletes unnecessary procedural detail~~ that duplicates the provisions set out in AS 16.43.110(b). The section further ~~authorizes~~ the commission to impose an administrative fine of not more than \$5,000 on a person or entity that knowingly supplies false information. This ~~parallels~~ the criminal fine that may be imposed under AS 16.43.970(b).

~~Expanding the types of penalties that the commission can impose under AS 16.43.970 is desirable in view of the limited resources of the district attorneys' offices to prosecute violations under AS 16.43.970.~~ The heavy workload of the district attorneys' offices precludes their giving the same priority to relatively minor offenses, for which there are also civil penalties, that they do to the prosecution of more serious crimes. ~~Expanding the types of penalties that the commission may impose will enhance the commission's ability to effectively deter and rectify fraud committed to obtain permits. It does this by enabling the commission to tailor penalties to fit particular offenses.~~

Finally, sec. 8 of the bill clarifies that the commission can take action against a permit for any fraud occurring after January 1, 1973. This issue was recently addressed by the superior court in Kjarstad v. State, No. 1JU-81-1484 Civ. (Nov. 4, 1983). The superior court held that the revocation of a permit for fraud occurring before the enactment of AS 16.43.960 is permissible because the commission has always had the inherent power

to revoke a permit for fraud. The court indicated that AS 16.43.960 "merely codified this existing authority and provided a standard procedure for its exercise."

Section 10 of the bill amends AS 16.43.970(b) to state that knowingly making a false statement of any kind to the commission to obtain a benefit constitutes the crime of unsworn falsification, as set out in AS 11.56.210. Correspondingly, this section deletes the provision in AS 16.43.970(b) making it a separate crime to provide false information to the commission. Finally, this section clarifies that it is also a violation of AS 11.56.210 to knowingly make a false statement of any kind to the commission for the purpose of obtaining a duplicate permit. The other revisions to AS 16.43.970(b) merely simplify the language used; the deletion of the reference to a \$5,000 fine merely has the effect of relying on the relevant provisions of the Criminal Code (AS 11), thus helping to assure consistency.

Section 11 of the bill authorizes the commission to provide that certain information submitted by applicants is not subject to public disclosure. This is a matter of special importance to the commission because it must have honest responses and disclosures from applicants, who need the assurance of limited confidentiality. The commission is presumably authorized to make this information confidential under the right to privacy recognized in article I, section 22 of the Alaska Constitution. Explicit statutory authority, however, would remove any uncertainty as to the matter.

Sincerely,



Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 1/10/85

REQUEST

Bill/Resolution No.: SB 83
 Title: "An Act amending the Limited Entry Act"
 Sponsor: Governor
 Requestor: Sponsor
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Dept. of Fish & Game
 Program Category Affected: Natural Resource Management
 BRU, Program or Subprogram(s) Affected: Commercial Fisheries Entry Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	17.9	1.7	1.7	1.7	1.7

Handwritten note: see fiscal impact that...
Signature: [Signature]

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

The only section of the bill which would have fiscal impact is section 3, allowing the Commission to charge interest on fee arrearages.

(Analysis on attached page)

Prepared By: Christine Kelly, Licensing Admn. Phone: 465-4081
 Division: Commercial Fisheries Entry Commission Date: 1/10/85
 Approved by Commissioner: [Signature] Date: 1-10-85
 Agency: C.F.E.C.

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL ANALYSIS FOR SEC. 3 - "An Act Amending the Limited Entry Act"

In 1979, the Commission began screening its permit holder data base for potential cases of residency fraud. These efforts are estimated to have yielded 513 actionable cases of residency fraud as of 1984, for which approximately \$189,300 has been assessed. Past experience indicates that the Commission can expect to collect \$113,600 of the total amount outstanding, as some of the permit holders will prevail on their claims and have their records cleared and others will drop out of the fisheries making it unlikely their arrearages will ever be collected. On the average, arrearages are collected 20 months after being assessed due to lengthy due process and adjudicatory proceedings.

Calculated at the legal rate of interest (10.5%) for 18 months (the legislation provides a 60-day grace period) interest on outstanding arrearages which will be collected is estimated at \$17,900. In each subsequent year, the Commission expects to discover about 50 actionable cases of residency fraud among new entrants to the fisheries, for which \$11,100 in arrearages would be collected. Interest on this amount would be \$1,700 annually. Although the legislation would allow the Commission to charge interest on other types of arrearages (such as bad checks) this interest is estimated to be less than \$100 annually.

March 1, 1985

OVERVIEW OF COMMERCIAL FISHERIES ENTRY COMMISSION (CFEC)
FOR SENATE RESOURCES COMMITTEE

- I. Background: The problem of unlimited access
 - A. History ✓
 - B. Response by the State of Alaska ✓
 - C. Alaska Fisheries Under Limitation ✓

- II. Effects of Limitation in Alaska
 - A. Controversy ✓
 - B. The Boldt Decision ✓
 - C. 1976 Initiative ✓
 - D. Recovery ✓
 - E. The Courts ✓
 - F. The Nature of the Limited Entry Permit
 - a. Like a property right: transferable ✓
 - b. Purposes of transferability ✓
 - c. The Ostrosky case ✓
 - G. Alaska Residents ✓
 - H. Access to Fisheries By Young Persons ✓
 - I. Transfers of Entry Permits By Alaska Natives ✓

33 under limitation

21-state has prevailed

- III. Commercial Fisheries Entry Commission: Three statutory functions
 - A. Adjudication ✓
 - B. Licensing ✓
 - C. Economic Information About Alaska's Fisheries
 - D. Interdependent/Synergistic

*administrative law judge
16,970 app.*

231 cases.

IV. SB 83

*1984 84
reduced
21*

<u>Fishery</u>	<u>Qual. Period</u>	<u>Application Period</u>	<u>Evid. Deadline</u>	<u>Issuance Levels</u>	
				<u>Trans.</u>	<u>Non-Trans.</u>
S01A	Orig.19: 1960-1972 Isakson: 1973-1974	12/19/74-05/18/75 01/15/77-09/30/77	07/01/78 09/01/78	20 pts.	--
S03A	"	"		20 pts.	--
S15B	"	"		19 pts.	--
S04D	"	"		16 pts.	--
S01E	"	"		17 pts.	--
S03E	"	"		18 pts.	--
S04E	"	"		6 pts.	0-5
S01H	"	"		17 pts.	--
S03H	"	"		16 pts.	--
S04H	"	"		6 pts.	--
S01K	"	"		20 pts.	--
S02K	"	"		6 pts.	0-5
S04K	"	"		15 pts.	--
S01L	"	"		20 pts.	--
S01M	"	"		20 pts.	--
S03M	"	"		17 pts.	--
S04M	"	"		14 pts.	--
S03T	"	"		17 pts.	--
S04T	"	"		6 pts.	0-5

FISHERIES UNDER LIMITATION

<u>Fishery</u>	<u>Qual. Period</u>	<u>Application Period</u>	<u>Evid. Deadline</u>	<u>Issuance Levels</u>	
				<u>Trans.</u>	<u>Non-Trans.</u>
G01A	1960-1976	02/25/77-06/25/7	05/01/78	6 pts.	--
G01E	"	"	"	6 pts.	--
G01H	"	"	"	6 pts.	--
G01K	1960-1980	10/15/82-06/30/83	--	41 pts.	--
G34A	1960-1977	03/15/78-08/15/78	12/31/78	10 pts.	--
G34E	1960-1978	02/15/81-10/15/81	--	3 pts.	--
G34K	1960-1980	10/15/82-06/30/83	--	32 pts.	--
S04P	1960-1975	03/10/76-08/10/76	09/01/78	6 pts.	--
S04W	"	"	"	7 pts.	--
S04X	"	"	"	6 pts.	--
S04Y	"	"	"	10 pts.	--
S04Z	"	"	"	9 pts.	--
S08P	"	"	"	7 pts.	--
S05B	1960-1979	03/01/81-10/31/81	--	71 pts.	17

FISHERIES UNDER LIMITATION

<u>Fishery</u>	<u>Gear Types</u>	<u>Area</u>
S - Salmon	01 - Purse Seine	A - Southeastern
G - Herring	02 - Beach Seine	B - Statewide
	03 - Drift Gill Net	D - Yakutat
	04 - Set Gill Net	E - Prince William Sound
	05 - Hand Troll	H - Cook Inlet
	03 - Fishwheel	K - Kodiak
	15 - Power Troll	L - Chignik
	34 - Herring Gill Net	M - Peninsula Aleutians
		P - Upper Yukon
		T - Bristol Bay
		W - Kuskokwim
		X - Kotzebue
		Y - Lower Yukon
		Z - Norton Sound

In areas P, W, X, Y, Z

04 - Combination of
Drift and Set
Gill Net

Each code is indicated by
Fishery Gear Code Area

Example: S 03 T
 Salmon Drift Bristol
 Gill Net Bay

MAJOR EVENTS OF 1976

Election Summary

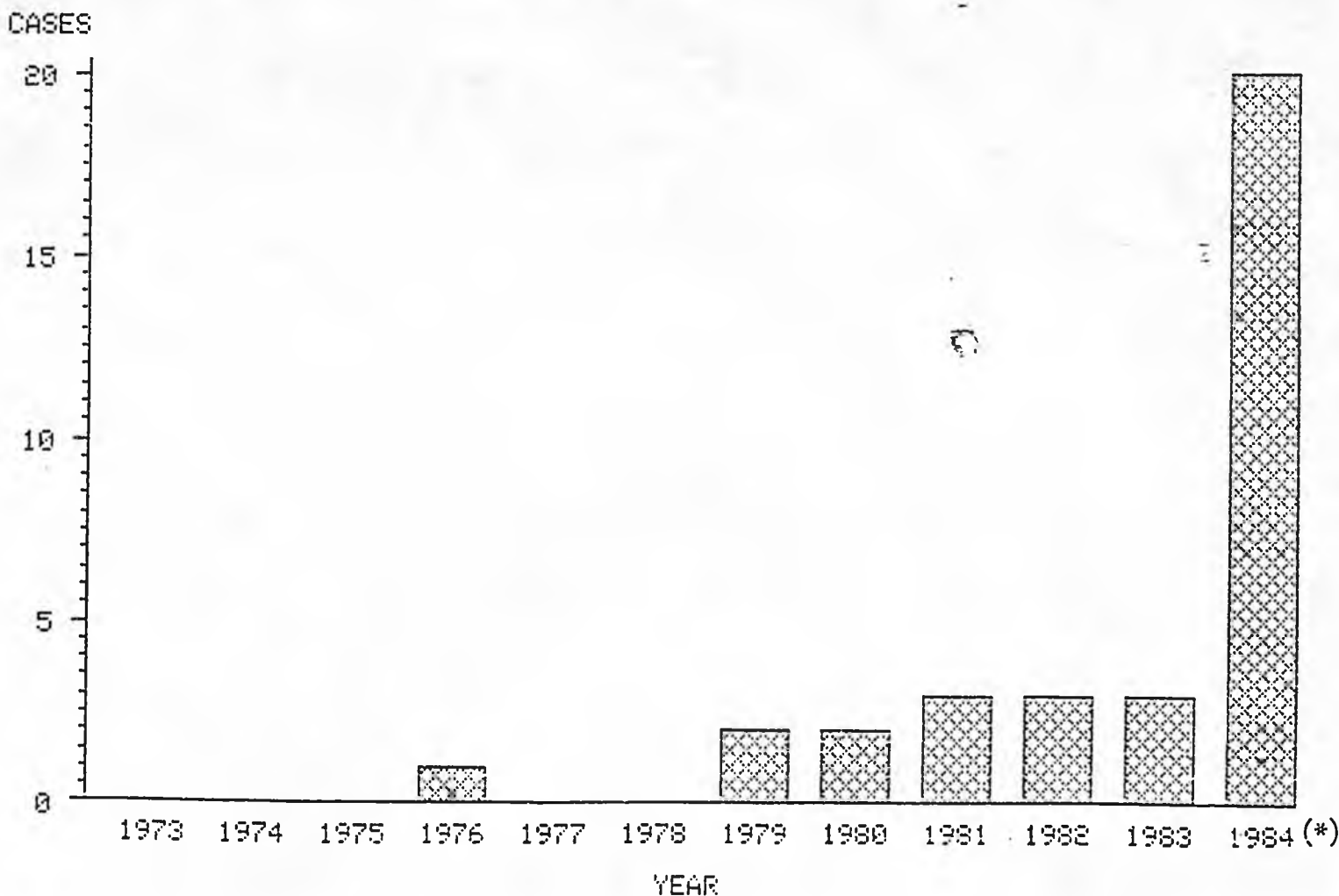
The most significant event affecting limited entry in 1976 was the November General Election. The initiative to repeal limited entry into Alaska's commercial fisheries was soundly defeated by a margin of nearly two to one. The limited entry issue, Ballot Proposition Number 5, became one of the most controversial Alaskan issues in the election and received more total votes than any other ballot or bonding proposition, even more official votes than the capital site selection measure.

Nearly 62% of the registered voters cast ballots in the election, and of those 93.4% voted either for or against the limited entry proposition. A vote "For" the proposition would have repealed the limited entry statute; a vote "Against" the proposition would have retained the law. A summary of the official election returns by district is given on the following page.

BALLOT PROPOSITION NUMBER 5
 INITIATIVE TO REPEAL LIMITED ENTRY
 VOTES BY ELECTION DISTRICT

District Number	"For"	"Against"	District Name
1	1499	3622	Ketchikan-Prince of Wales
2	1041	1534	Wrangell-Petersburg
3	1268	1727	Sitka
4	2420	6350	Juneau-Lynn Canal
5	1408	2135	Cordova-Valdez-Seward
6	1725	2905	Palmer
7	2537	4567	Anchorage Northwest
8	3142	5840	Anchorage Northeast
9	1590	2858	Anchorage Spenard
10	3623	6077	Anchorage East
11	3740	6758	Anchorage South
12	3359	5843	Anchorage West
13	2155	4474	Kenai-Cook Inlet
14	1335	983	Kodiak
15	659	626	Aleutian Chain
16	681	1312	Bristol Bay
17	1044	1233	Bethel
18	871	865	Wade Hampton
19	1501	1900	Yukon-Tanana
20	6510	11615	Fairbanks
21	1133	770	Barrow-Kobuk
22	1063	1131	Nome
TOTAL	44304	75125	

ALASKA SUPREME COURT CASES
AFFECTING THE
COMMERCIAL FISHERIES ENTRY COMMISSION
(1973 - 1984)



(*) JULY 19, 1983 - ALASKA SUPREME COURT DECIDED OSTROSKY.

MAY 21, 1984 - U.S. SUPREME COURT DECIDED OSTROSKY.

Alaska Supreme Court Cases Affecting
Practices of the Commercial Fisheries Entry Commission (CFEC)

February 11, 1985

1. Isakson v. Rickey, 550 P.2d 359 (5/21/76)
2. State, CFEC v. Templeton, 508 P.2d 77 (8/31/79)
3. Yunker v. AK CFEC, 598 P.2d 917 (8/3/79)
4. CFEC v. Apokedak, 606 P.2d 1255 (2/5/80)
5. CFEC v. Eide, 608 P.2d 769 (4/4/80)
6. Estate of Smith v. State, 635 P.2d 465 (10/23/81)
7. Estate of Miner v. CFEC, 635 P.2d 827 (11/6/81)
8. Vik v. CFEC, State, 636 P.2d 597 (11/6/81)
9. Rose v. CFEC, 647 P.2d 154 (6/11/82)
10. Jones v. CFEC, 649 P.2d 247 (8/13/82)
11. Anderson v. State, CFEC, 654 P.2d 1320 (11/12/82)
12. State v. Ostrosky, 667 P.2d 1184 (7/19/83)
[U.S. Supreme Court May 21, 1984]
13. Rutter v. State, 668 P.2d 1343 (8/26/83)
14. Timperley v. Jeffries, No. 2765 (12/16/83)
15. Spagnola v. State, CFEC, M.O.J. No. 153 (2/1/84)
16. Forquer v. State, CFEC, 677 P.2d 1236 (2/10/84)
17. Ostman v. State, CFEC, 678 P.2d 1323 (3/2/84)
18. White v. AK CFEC, 678 P.2d 1319(3/2/84)
19. CFEC v. Apokedak, 680 P.2d 486 (3/2/84)
20. Nash v. State, CFEC, 679 P.2d 477 (3/23/84)
21. Wickersham v. State, CFEC, 680 P.2d 1135 (3/30/84)
22. Noden v. CFEC, 680 P.2d 493 (3/30/84)
23. Pete v. CFEC, M.O.J. No. 159 (4/4/84)

24. Wik v. Wik, 681 P.2d 336 (4/24/84)
25. Anderson v. State, CFEC, M.O.J. No. 166 (5/16/84)
26. CFEC, State v. Byayuk, 684 P.2d 114 (5/25/84)
27. Bavilla v. State, CFEC, M.O.J. No. 170 (5/25/84)
28. Lucido v. State, M.O.J. No. 171 (5/25/84)
29. Roehl v. AK CFEC, 684 P.2d 130 (7/6/84)
30. Cashen v. State, CFEC, 686 P.2d 1219 (8/24/84)
31. Moore v. State, CFEC, 688 P.2d 582 (9/14/84)
32. Gursli v. State, M.O.J. No. 182 (9/19/84)
33. Brown v. Baker, No. 2872 (9/21/84)
34. Deubelbeiss v. CFEC, 689 P.2d 487 (10/12/84)
35. Kalmakoff v. State, CFEC, No. 2900 (1/11/85)

TUNDRA The Drum

AK COMMERCIAL FISHERIES ENTRY
J AKREP
POUCH KB
JUREAU

AK 99811

VOLUME XIII NUMBER 44

Thursday Evening January 31, 1985

Delta mayors urged to hold fishing permits

by Mary Lenz

Perry Eaton's message to Delta mayors is to hold onto limited entry fishing permits.

Eaton, president of the Community Development Corporation, was keynote speaker at the opening of the Yukon-Kuskokwim Delta Mayor's Conference in Bethel Wednesday.

The conference got off to a slow start, possibly due to travel difficulties from Tues-

day night's high winds and rainy weather. Only a handful of mayors showed up early Wednesday, and opening speeches were delayed.

Eaton told reporters he wanted to emphasize the importance of looking at limited entry fishing permits as a community resource, not an independent possession.

"If you lose a fish permit

Please turn to page 4

Page 4 TUNDRA DRUMS January 31, 1985

MAYORS from page one

you've lost employment, you've lost revenue and you've lost a consumer," Eaton said, explaining that loss of a fish permit means area stores have lost a customer.

"Every village should know who has a permit, and it should be a moral obligation to keep those permits in the village," Eaton said.

"They cost nothing in the beginning, but they are impossible to replace."

Eaton also said he believes tourism is one of the main ways to boost the Delta economy.

"The Delta is a fabulous place in its own right. The problem is it's never been developed," Eaton said. He said development of tourism

or sports fishing to bring in outside dollars means tradeoffs with the subsistence lifestyle.

He said if local residents need "hard green" cash, they have to decide whether to travel out to get them elsewhere, or develop local resources to bring the dollars here.

"The Delta should look for new dollars, and the most obvious and logical place is in

tourism," Eaton said.

He said while many "arm-chair anthropologists" would love to tour a village, villagers have to decide whether they want tourists of that nature trooping through town.

"Development means change," Eaton said. He said the question is "are they willing to change" to bring money to the area.

Introduced: 1/22/85
Referred: Resources, Judiciary
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 *Committee Substitute for* SENATE BILL NO. 83 (*Resources*)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act amending the Limited Entry Act."

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

8 * Section 1. AS 16.43.150(g) is amended to read:

9 (g) Except as provided in AS 16.10.333 -- 16.10.337, AS 44.81.-
10 210, and in AS 44.81.230 -- 44.81.250, an entry permit may not be[:]

11 (1) pledged, mortgaged, leased, or encumbered in any way;

12 (2) transferred with any retained right of repossession or
13 foreclosure, or on any condition requiring a subsequent transfer; or

14 (3) attached, distrained, or sold on execution of judgment
15 or under any other process or order of any court.

16 * Sec. 2. AS 16.43.150(h) is amended to read:

17 (h) Upon the death of an entry permit holder, the permanent
18 permit shall be transferred by the commission directly to the surviv-
19 ing spouse by right of survivorship unless the deceased holder has
20 expressed a contrary intent in a will that is probated. When no
21 spouse survives, the rights of the decedent pass as part of the dece-
22 dent's estate. Except as provided in AS 16.10.333 -- 16.10.337,
23 AS 44.81.210, and AS 44.81.230 -- 44.81.250, the permit is exempt from
24 the claims of creditors of the estate.

25 * Sec. 3. AS 16.43.160(c) is amended to read:

26 (c) The resident holder of an entry permit or interim-use permit
27 who has a [NET] family income falling within the federal [FEDERAL COM-
28 MUNITY SERVICES ADMINISTRATION] poverty guidelines, adjusted by the
29 commission to reflect appropriate cost-of-living differentials, is

1 subject to a maximum annual fee of \$15.

2 * Sec. 4. AS 16.43.160 is amended by adding a new subsection to read:

3 (d) The commission may charge interest at a rate not to exceed
4 the legal rate of interest established in AS 45.45.010 on fees more
5 than 60 days overdue.

6 * Sec. 5. AS 16.43.220(a) is amended to read:

7 (a) The ~~commission~~ shall adopt regulations specifying the dates
8 and places of application, the procedures to be followed in renewal of
9 the interim-use permit including the time, place of its renewal, and
10 for any other purpose incident to the administration of interim-use
11 permits for that fishery. An interim-use permit shall expire upon the
12 commission's final determination of the holder's eligibility for an
13 entry permit.

14 * Sec. ~~65~~ AS 16.43.250(a) is amended to read:

15 (a) Following the establishment of the maximum number of units
16 of gear for a particular fishery under AS 16.43.240, the commission
17 shall adopt regulations establishing qualifications for ranking ap-
18 plicants for entry permits according to the degree of hardship which
19 they would suffer by exclusion from the fishery. The regulations
20 shall define priority classifications of similarly situated applicants
21 based upon a reasonable balance of the following hardship standards:

22 (1) degree of economic dependence upon the fishery, which
23 may include [INCLUDING] but is not limited to percentage of income
24 derived from the fishery, reliance on alternative occupations, avail-
25 ability of alternative occupations, investment in vessels and gear;

26 (2) extent of past participation in the fishery, which may
27 include [INCLUDING] but is not limited to the number of years of
28 participation in the fishery, and the consistency of participation
29 during each year.

1 * Sec. ⁶ AS 16.43.351(b) is amended to read:

2 (b) A recipient may be issued an educational entry permit valid
3 for designated fisheries [EACH FISHERY] in the administrative area the
4 commission determines to be appropriate, considering the nature of the
5 educational program and the location of the educational or vocational
6 institution. The recipient of an educational entry permit may not be
7 issued an educational entry permit [PERMITS] in more than one adminis-
trative area except as issued by the commission in its discretion upon
good cause shown.

10 * Sec. 8. AS 16.43.960 is amended to read:

11 Sec. 16.43.960. COMMISSION REVOCATION OR SUSPENSION OF [ENTRY]
12 PERMITS. (a) The commission may revoke, suspend, or transfer all
13 [AN] entry [PERMIT] or interim-use permits held by [PERMIT IF] a
14 person who knowingly provides or [SUPPLIES,] assists in providing
15 false information [SUPPLYING], or fails to correct false information
16 provided, to the commission for the purpose of obtaining a benefit for
17 himself or another, including the issuance, renewal, duplication, or
18 transfer of an entry or interim-use permit or vessel license. The
19 commission may suspend that person's eligibility to hold an entry or
20 interim-use permit for a period not to exceed three years, and may
21 impose an administrative fine of not more than \$5,000 on the person.
22 The commission may also impose an administrative fine of not more than
23 \$5,000 on an entity whose officers, employees, representatives, or
24 agents knowingly provide or assist in providing false information, or
25 fail to correct false information provided, to the commission for the
26 purpose of obtaining a benefit

- 27 [(1) PERMIT APPLICATION;
28 (2) PERMIT TRANSFER; OR
29 (3) PERMIT RENEWAL].

INSERT Sect 87

16.43.955

1 hearing de novo is granted under AS 44.62.570(d), the hearing may, in
2 the discretion of the court, be had with a jury sitting if application
3 for the jury hearing is filed with the court no later than 10 days
4 after service of the notice of appeal.

5 (i) An entry permit revoked by the commission under this section
6 that is pledged [TAKEN] as security for a loan under AS 16.10.333 or
7 AS 44.81.230 shall be reassigned or sold as provided in AS 16.10.337
8 or AS 44.81.250.

9 * Sec. 9. AS 16.43.970(b) is amended to read:

10 (b) A person who knowingly makes a false statement to the com-
11 mission for the purpose of obtaining a benefit, including the issu-
12 ance, renewal, duplication, or transfer of an entry or interim-use
13 permit or vessel license [OF FACT IN THE APPLICATION FOR OR RENEWAL OF
14 AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR VESSEL LICENSE APPLICATION
15 OR RENEWAL OR IN THE APPLICATION FOR A TRANSFER UNDER AS 16.43.170 OR
16 16.43.180], or a person who assists another by knowingly making a
17 false statement to the commission for the purpose of obtaining a bene-
18 fit for another. [OF FACT IN SUPPORT OF THE OTHER PERSON'S APPLICATION
19 FOR ISSUANCE OR RENEWAL OF AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR
20 VESSEL LICENSE] is guilty of the crime of unsworn falsification as set
21 out in AS 11.56.210. Upon conviction, the person [A MISDEMEANOR AND]
22 (1) shall forfeit to the commission all interim-use permits and entry
23 permits [HELD BY THE PERSON MAKING THE FALSE STATEMENT] and (2) loses
24 [SHALL LOSE] eligibility for interim-use permits and for entry permits
25 for a period of three years [AND IS PUNISHABLE BY A FINE OF NOT MORE
26 THAN \$5,000].

27 * Sec. 10. AS 16.43 is amended by adding a new section to read:

28 Sec. 16.43.975. PUBLIC DISCLOSURE. The commission ^{shall} ~~may~~ provide
29 by regulation that documents submitted to the commission containing

1 information relating to an individual's personal finances and informa-
2 tion supplied by individuals for research purposes, produced in re-
3 sponse to requests by the commission, are not subject to public dis-
4 closure.

Section 11 - Immediate effective date

1 IN THE SENATE

BY ZHAROFF

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to certain hearings of the Commer-
7 cial Fisheries Entry Commission."

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

9 * Section 7. AS 16.43 is amended by adding a new section to read:
10 Sec. 16.43.955. JOINT HEARINGS WITH THE BOARD OF FISHERIES. ^{When practicable} ✓
11 commission hearing that deals with the subject of limiting entry to a
12 fishery must be held jointly with the Board of Fisheries.
13

14
15 *Insert as new section 7*
16
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24
25
26
27

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 27, 1985

The Honorable Arliss Sturgulewski
Chairperson
Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: CSSB 83(Res)

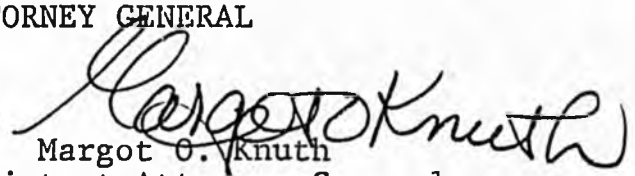
Dear Senator Sturgulewski:

Enclosed please find a proposed Committee Substitute for SB 83, "An Act amending the Limited Entry Act." CSSB 83 would delete former Section 5, which amended AS 16.43.220(a) to clarify when an interim-use permit expires. The CFEC is very interested in the passage of this bill, and understands that the committee does not believe that further clarification of AS 16.-43.220(a), relating to the expiration of interim-use permits, is necessary. Accordingly, this Committee Substitute, which in all other respects is identical to SB 83, is offered.

Very truly yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Margot O. Knuth

Assistant Attorney General

MOK:d1m

Enclosure

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 83(Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act amending the Limited Entry Act."

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

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9 (g) Except as provided in AS 16.10.333 -- 16.10.337, AS 44.81.-
10 210, and in AS 44.81.230 -- 44.81.250, an entry permit may not be[:]

11 (1) pledged, mortgaged, leased, or encumbered in any way;

12 (2) transferred with any retained right of repossession or
13 foreclosure, or on any condition requiring a subsequent transfer; or

14 (3) attached, distrained, or sold on execution of judgment
15 or under any other process or order of any court.

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17 (h) Upon the death of an entry permit holder, the permanent
18 permit shall be transferred by the commission directly to the surviv-
19 ing spouse by right of survivorship unless the deceased holder has
20 expressed a contrary intent in a will that is probated. When no
21 spouse survives, the rights of the decedent pass as part of the dece-
22 dent's estate. Except as provided in AS 16.10.333 -- 16.10.337,
23 AS 44.81.210, and AS 44.81.230 -- 44.81.250, the permit is exempt from
24 the claims of creditors of the estate.

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27 who has a [NET] family income falling within the federal [FEDERAL COM-
28 MUNITY SERVICES ADMINISTRATION] poverty guidelines, adjusted by the
29 commission to reflect appropriate cost-of-living differentials, is

1 subject to a maximum annual fee of \$15.

2 * Sec. 4. AS 16.43.160 is amended by adding a new subsection to read:

3 (d) The commission may charge interest at a rate not to exceed
4 the legal rate of interest established in AS 45.45.010 on fees more
5 than 60 days overdue.

6 * Sec. 5. AS 16.43.250(a) is amended to read:

7 (a) Following the establishment of the maximum number of units
8 of gear for a particular fishery under AS 16.43.240, the commission
9 shall adopt regulations establishing qualifications for ranking ap-
10 plicants for entry permits according to the degree of hardship which
11 they would suffer by exclusion from the fishery. The regulations
12 shall define priority classifications of similarly situated applicants
13 based upon a reasonable balance of the following hardship standards:

14 (1) degree of economic dependence upon the fishery, which
15 may include [INCLUDING] but is not limited to percentage of income
16 derived from the fishery, reliance on alternative occupations, avail-
17 ability of alternative occupations, investment in vessels and gear;

18 (2) extent of past participation in the fishery, which may
19 include [INCLUDING] but is not limited to the number of years of
20 participation in the fishery, and the consistency of participation
21 during each year.

22 * Sec. 6. AS 16.43.351(b) is amended to read:

23 (b) A recipient may be issued an educational entry permit valid
24 for designated fisheries [EACH FISHERY] in the administrative area the
25 commission determines to be appropriate, considering the nature of the
26 educational program and the location of the educational or vocational
27 institution. The recipient of an educational entry permit may not be
28 issued an educational entry permit [PERMITS] in more than one adminis-
29 trative area except as issued by the commission in its discretion upon

1 good cause shown.

2 * Sec. 7. AS 16.43.960 is amended to read:

3 Sec. 16.43.960. COMMISSION REVOCATION OR SUSPENSION OF [ENTRY]
4 PERMITS. (a) The commission may revoke, suspend, or transfer all
5 [AN] entry [PERMIT] or interim-use permits held by [PERMIT IF] a
6 person who knowingly provides or [SUPPLIES,] assists in providing
7 false information [SUPPLYING], or fails to correct false information
8 provided, to the commission for the purpose of obtaining a benefit for
9 himself or another, including the issuance, renewal, duplication, or
10 transfer of an entry or interim-use permit or vessel license. The
11 commission may suspend that person's eligibility to hold an entry or
12 interim-use permit for a period not to exceed three years, and may
13 impose an administrative fine of not more than \$5,000 on the person.
14 The commission may also impose an administrative fine of not more than
15 \$5,000 on an entity whose officers, employees, representatives, or
16 agents knowingly provide or assist in providing false information, or
17 fail to correct false information provided, to the commission for the
18 purpose of obtaining a benefit

19 [(1) PERMIT APPLICATION;

20 (2) PERMIT TRANSFER; OR

21 (3) PERMIT RENEWAL].

22 (b) The [BEFORE REVOCATION, THE] commission shall serve the
23 respondent [PERMIT HOLDER] personally or by certified or registered
24 mail with a notice to show cause why the proposed action should not
25 take place. The notice to show cause must

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

29 (2) provide for at least 30 days' notice of the place,

1 date, and time of the hearing where the respondent [PERMIT HOLDER] may
2 present evidence in opposition to the proposed action; unless waived
3 in writing by the respondent [PERMIT HOLDER], the hearing [PLACE]
4 shall be held within the judicial district in which the respondent
5 [PERMIT HOLDER] resides if the respondent [PERMIT HOLDER] resides in
6 the state; the hearing place shall be at the discretion of the commis-
7 sion for those respondents [PERMIT HOLDERS] residing outside the
8 state;

9 (3) specify the statutes or regulations violated;

10 (4) state with particularity the action proposed to be
11 taken;

12 (5) indicate to [THAT] the respondent [PERMIT HOLDER'S]
13 that the respondent's ability to permanently transfer the permits
14 [PERMIT] which are [IS] the subject of the show cause [REVOCA-
15 TION] proceedings has been suspended as of the date of the notice and will
16 continue to be suspended until the exhaustion of all administrative
17 and judicial remedies; and

18 (6) provide other information the commission considers
19 proper.

20 (c) A permit subject to show cause [REVOCA-
21 TION] proceedings under this section may not be transferred after the date of the notice
22 in (b) of this section pending exhaustion of all administrative and
23 judicial remedies arising from action taken under this section.

24 (d) The show cause [REVOCA-
25 TION] hearing shall be conducted
26 before a quorum of commissioners and shall be presided over by a
27 hearing officer appointed by the commission who shall rule on the
28 presentation of evidence and other procedural matters. Hearings shall
29 be conducted in accordance with regulations adopted under AS 16.43.-
110(b). [WITHIN A REASONABLE TIME AFTER THE CONCLUSION OF THE

1 HEARING, THE HEARING OFFICER SHALL SUBMIT TO THE ATTENDING COMMISSION-
2 ERS A PROPOSED DECISION BASED ON THE RECORD OF THE HEARING AND CON-
3 TAINING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ACTION.
4 THE ATTENDING COMMISSIONERS SHALL THEN REVIEW THE HEARING OFFICER'S
5 PROPOSED DECISION AND ADOPT OR AMEND OR REJECT THE CONTENTS OF THE
6 PROPOSED DECISION IN THE WRITTEN DECISION OF THE COMMISSION. A COPY
7 OF THE COMMISSION DECISION SHALL BE MAILED TO EACH PARTY OR THE PAR-
8 TY'S ATTORNEY BY CERTIFIED OR REGISTERED MAIL.]

9 (e) The failure of a respondent [PERMIT HOLDER] properly served
10 under (b) of this section to appear at the hearing is not grounds for
11 setting aside any commission action taken. However, the commission
12 may in its discretion order a continuance or second hearing.

13 (f) [THE EFFECTIVE DATE OF THE COMMISSION DECISION UNDER THIS
14 SECTION IS THE DATE OF THE NOTICE TO SHOW CAUSE FIRST SERVED UPON THE
15 PERMIT HOLDER UNDER (b) OF THIS SECTION.]

16 (g) The provisions of this section [DO NOT] apply to conduct
17 occurring after January 1, 1973, but do not affect a [THE] permit held
18 by [OF] a person who is a bona fide purchaser. Failure to correct
19 false information is a continuing offense.

20 (h) Judicial review of commission determinations under this
21 section is in accordance with AS 44.62.560 -- 44.62.570; however, if a
22 hearing de novo is granted under AS 44.62.570(d), the hearing may, in
23 the discretion of the court, be had with a jury sitting if application
24 for the jury hearing is filed with the court no later than 10 days
25 after service of the notice of appeal.

26 (i) An entry permit revoked by the commission under this section
27 that is pledged [TAKEN] as security for a loan under AS 16.10.333 or
28 AS 44.81.230 shall be reassigned or sold as provided in AS 16.10.337
29 or AS 44.81.250.

1 * Sec. 8. AS 16.43.970(b) is amended to read:

2 (b) A person who knowingly makes a false statement to the com-
3 mission for the purpose of obtaining a benefit, including the issu-
4 ance, renewal, duplication, or transfer of an entry or interim-use
5 permit or vessel license [OF FACT IN THE APPLICATION FOR OR RENEWAL OF
6 AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR VESSEL LICENSE APPLICATION
7 OR RENEWAL OR IN THE APPLICATION FOR A TRANSFER UNDER AS 16.43.170 OR
8 16.43.180], or a person who assists another by knowingly making a
9 false statement to the commission for the purpose of obtaining a bene-
10 fit for another, [OF FACT IN SUPPORT OF THE OTHER PERSON'S APPLICATION
11 FOR ISSUANCE OR RENEWAL OF AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR
12 VESSEL LICENSE] is guilty of the crime of unsworn falsification as set
13 out in AS 11.56.210. Upon conviction, the person [A MISDEMEANOR AND]
14 (1) shall forfeit to the commission all interim-use permits and entry
15 permits [HELD BY THE PERSON MAKING THE FALSE STATEMENT] and (2) loses
16 [SHALL LOSE] eligibility for interim-use permits and for entry permits
17 for a period of three years [AND IS PUNISHABLE BY A FINE OF NOT MORE
18 THAN \$5,000].

19 * Sec. 9. AS 16.43 is amended by adding a new section to read:

20 Sec. 16.43.975. PUBLIC DISCLOSURE. The commission may provide
21 by regulation that documents submitted to the commission containing
22 information relating to an individual's personal finances and informa-
23 tion supplied by individuals for research purposes, produced in re-
24 sponse to requests by the commission, are not subject to public dis-
25 closure.

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

SENATE RESOURCES COMMITTEE

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"

2/1/85, 1:35 pm

3/4/85, 1:35 pm

3/6/85, 1:40 pm