

HB

316

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to the leasing of limited entry permits by the elderly."
Sponsor: Herrmann
Requestor: House Resources

Agency Affected: Public Safety
BRU: Fish & Wildlife Protection
Components: Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

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	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated.

Prepared by: Captain Conrad G. Seibel Phone: 269-5509
Division: Fish & Wildlife Protection Date: 2/5/88
Approved by Commissioner: Paul Hartzel, Dep. Comm. Date: 2-11-88
Agency: Department of Public Safety

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

City of Manokotak

Mayor's Office

Representative Adelheid Herrmann
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

March 4, 1986

Dear Rep. A. Herrmann;

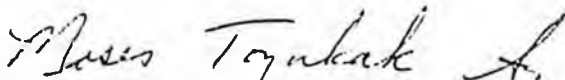
The City Council of Manokotak are in support of the following House Bills:

- HB- 568 pertaining to the Production Plant on Herring
- HB- 645 Prevailing wages in each community
- HB- 579 Commercial Fishing & Agriculture Bank Financing
- HB- 648 An act relating to the leasing of Limited Entry Permits
- HB- 569 Construction of Herring reduction plants in Togiak, Goodnews Bay, Hooper Bay & Unalakleet.
- HB- 64 Relating to Higher Education in the Bristol Bay Region.
- HB- 65 Relating to Foreign Marketing of Alaska Pink Salmon Products.

Thank you again for the opportunity to have meet with us when Moses John, Sr. and I were down there, and one more I thank you for having a chance to go around Juneau with your truck.

All the Capital Projects that we sent to you were estimated money wise so if there needs to be a change in some please let us know. Thank you.

Sincerely,



Moses Toyukak, Sr.
Mayor

Oil and Gas Topics of Interest

Discussion topics for the Senate Oil and Gas Committee. Prepared February 1988 by the Division of Oil and Gas.

Leasing Schedule--New Sales. This year the department added four sales to the state's five-year oil and gas leasing program (1988 to 1992). The four new sales are North Slope Sale 66A (exempt), Cook Inlet Sale 67A (exempt), White Hills Sale 61 and Beaufort Sea Sale 68. The state's 1988 leasing schedule is shown below.

Sale Number	Sale Name	Proposed Date
54	Kuparuk Uplands	January 1988*
55	Demarcation Point	June 1988
66A	North Slope Exempt	June 1988
52	Beaufort Sea	January 1989
56	Alaska Peninsula	June 1989
67A	Cook Inlet Exempt	June 1989
59	Cook Inlet	January 1990
57	North Slope Foothills	June 1990
64	Kavik	January 1991
65	Beaufort Sea	June 1991
61	White Hills	January 1992
68	Beaufort Sea	June 1992

*Sale 54 was held January 26, 1988--see discussion below.

North Slope Sale 66A will be the state's first sale to take advantage of AS 38.05.035(e)(7), which was passed by the legislature last year. The statute allows the department to hold an exempt acreage sale without writing a best interest finding if one has been issued previously for the area within 36 months of the sale date.

The proposed Sale 66A acreage is located within an area known as the "Kuparuk Uplands," and includes acreage previously leased, but subsequently relinquished, from sales 45A, 47 and 48. The department received a number of industry requests for an exempt acreage sale in this area. The sale area includes approximately 219,913 acres of land.

Cook Inlet Sale 67A will include eligible lands in the Cook Inlet region that have been specifically nominated by industry. The actual lands that will be offered in the sale have not yet been identified by the department. Eligible lands in the lower Susitna Valley, on the Kenai Peninsula and submerged lands in Cook Inlet may be offered.

Proposed Lease Sale 61 was previously scheduled for September 1990. The sale area consists of approximately 875,000 acres located immediately south of acreage offered in sales 47, 48 and 54. The Trans-Alaska Pipeline System lies to the east of the sale area and to the west is the Colville River.

Proposed Sale 68 consists of approximately 393,000 acres of state-owned tide and submerged lands offshore of the NPRA, including some submerged lands whose ownership is currently disputed. The sale is centered around Barrow, extending from Tangent Point in the east to near Nulavik in the west. Beaufort Sea lands offered previously in sales 50, 52, and 55 may also be offered for lease in the sale.

The state's current leasing schedule provides for two to three sales each year. It is a more modest schedule than leasing programs proposed during the early 80's, when at least three sales, and as many as five sales, were offered each year. The department believes the current schedule provides an optimum number and mix of sales. It is composed of sale acreage near areas of known oil production, primarily on the North Slope and in Cook Inlet. That acreage has the greatest likelihood for holding future oil and gas discoveries. The schedule will allow industry to devote its tight exploration budgets to areas of state land having the best oil and gas potential.

Kuparuk Uplands Sale 54. Sale 54 was held January 26, 1988. It included 89 tracts, or approximately 421,808 acres, lying between the Colville River and the area of Kuparuk Uplands Sale 48. It also included acreage in the Colville River delta.

The sale utilized cash bonus bidding with a fixed 12.5% royalty, and included a 15% Exploration Incentive Credit (EIC). The sale earned \$4.6 million, or an average bid of \$13.83 per acre. Eleven bidding groups submitted 164 bids on 72 tracts.

Lessees will earn EIC's at a rate of \$300 per foot drilled for the first exploratory well per tract, provided that credits do not exceed 15% of the total exploratory well costs. The credits must be earned and used within five years of the effective date of the lease.

Camden Bay Sale 50 Litigation. The department currently is involved in litigation concerning Camden Bay Sale 50, held June 30, 1987. The lawsuit was brought by the Trustees for Alaska, Northern Alaska Environmental Center, National Parks and Conservation Society, Wilderness Society and Sierra Club.

Briefs were filed in Superior Court late last year. The judge assigned to the case is Judge John Bosshard, III. To date, the court has not set a date for oral argument. The department, however, anticipates resolution of the suit within the next few months.

Demarcation Point Sale 55. Sale 55 is the next sale on the state's leasing schedule. The sale is located offshore of the Arctic National Wildlife Refuge (ANWR) between the Hulahula River (west of Kaktovik) and the Canadian border. The department anticipates that industry interest in the sale will be high. The preliminary finding for the sale was issued February 4, 1988. Following public and agency review of the preliminary finding, the final finding and decision of the director will be issued on April 25, 1988.

As with Sale 50, the department expects that a decision to proceed with Sale 55 will be controversial. Debate will center on the sale's effect on ANWR and the importance of the sale area for bowhead whales and subsistence hunting.

The division currently is conducting its pre-sale evaluation in order to select an appropriate bidding method for the sale. The division's evaluation of the sale area will be aided greatly by data from two exploratory wells drilled nearby on adjacent lands and new computer equipment recently purchased to process seismic data.

The two exploratory wells that have been drilled near the Sale 55 area are Tenaco's Aurora well and the KIC well in ANWR. In November 1987, Tenneco, in partnership with 10 other companies, began drilling its Aurora prospect just beyond the three-mile limit, about 22 miles northeast of Kaktovik. Because of an agreement with the Department of the Interior, the division has access to the information from this well as it is being drilled. The KIC well, which is located about 14 miles southeast of Kaktovik, was drilled by the Arctic Slope Regional Corporation in association with Chevron, Standard Alaska Production Company and BP Alaska. The confidentiality period for the KIC well is scheduled to end April 24, 1988. At that time, the division will have access to the well data. The data from both wells are important because they provide the only available direct information about the subsurface of the sale 55 area and adjacent lands.

With the purchase of the new computer equipment, the division now has the capability of digitally reprocessing seismic data in order to improve its quality. The equipment will allow the division to conduct a more in-depth analysis of available data, and should greatly improve the pre-sale evaluation for this and all other future sales.

Leasing & Development in ANWR. A number of bills have been introduced in Congress concerning oil and gas development on the ANWR coastal plain. H.R. 39 (Rep. Udall) and S. 1804 (Roth, Bradley and Chafee) would prohibit oil and gas leasing on the coastal plain by including it in the national wilderness system. On the other side, S. 1217 and H.R. 1082 (respectively, the Murkowski-Stevens and Young bills), would open ANWR to oil and gas leasing. H.R. 3601, sponsored by Congressman Jones (N. Carolina), is an "exploration-only" bill--allowing only four exploratory wells to be drilled on the coastal plain, the results of which would be evaluated before determining whether or not to proceed with leasing. A bill recently introduced by Senator Johnston (Louisiana) authorizes a competitive oil and gas leasing program in ANWR, but provides Alaska with only 50% of the resulting revenues. A possible amendment to that bill, by senators Wirth, Evans and Bumpers, calls for a two to three year moratorium on leasing, until a comprehensive study can be conducted to provide Congress with adequate energy policy information. Another House bill expected to be introduced by Congressman Anderson (California) calls for leasing, but also reduces the state's share of the revenue from 90% to 50%.

Division personnel have testified before U.S. Congressional committees and Alaska legislative committees in support of opening ANWR to further exploration and development. These committees include the U.S. House Subcommittee on Water and Power Resources, the U.S. Senate Committee on Energy

and Natural Resources, and the Alaska Senate and House Resources Committees and the Joint Oil and Gas Committee. Personnel have also given presentations to various professional and civic organizations, including the Resource Development Council (RDC), the Free Committee of the Anchorage Women's Auxiliary, and the Public Lands Committee of the Interstate Oil Compact Commission (IOCC).

The division also is providing information to interested individuals and organizations to explain the state's position on the ANWR land exchanges.

Beaufort Sea Lease Boundary. The jurisdictional boundary dispute between the state and federal governments (United States v. Alaska, No. 84 Original in the United States Supreme Court) continues to be a problem when planning lease sales in the Beaufort Sea; nor is there any indication how long it will be before the dispute is resolved. The suit has been pending for eight years. Moreover, the parties have now waited more than one year for the Court's Special Master to issue his recommended decision in the case. Beyond the Special Master's recommendation, the Supreme Court's briefing, argument and decision process must occur before a final judgment is rendered.

Eventually, a judicially decreed state/federal boundary in the Beaufort Sea will result from resolution of United States v. Alaska. In the interim, the division is attempting to negotiate an agreement with the federal government that would fix existing state/federal leasing boundaries in the Beaufort Sea. These efforts were initiated in 1986, and discussions continued throughout 1987. The division would like to avoid the costs and legal uncertainty associated with adjusting existing lease boundaries after the state/federal boundary is fixed by judicial decree. Accordingly, we believe the state/federal jurisdictional boundary should be established using the same geographic data used to determine any previously agreed-on state/federal leasing boundary; or, at a minimum, the leasing boundary should be fixed for the life of the oil and gas lease.

Lacking a decreed state/federal boundary, the state and federal governments must negotiate an agreement under Section 7 of the Outer Continental Shelf (OCS) Act to lease the disputed lands. Section 7 agreements have been successfully negotiated for OCS sales 71 and 87. However, no agreement could be reached for Sale 50. As a result, the state pulled back its seaward leasing boundary to a conservative position to avoid the possibility of an injunction to delay the sale. Currently, discussion is occurring between the Minerals Management Service (MMS) and the division for a Section 7 agreement for OCS Sale 97. However, given the extremely late invitation by MMS to enter into a Section 7 agreement for Sale 97, it is unlikely that our differences can be worked out in time to sign an acceptable agreement prior to the final notice of sale, which is due in March 1988.

Use of Explosives in the Marine Environment. The use of explosives for seismic operations in the marine environment was prohibited by the state in 1975. In 1985, the division published a report stating that the limited use of explosives is necessary if reasonable quality seismic data are to be obtained from areas where non-explosive energy sources are ineffective. The department concluded, however, that insufficient information was available

concerning the effects of explosives on juvenile salmon to warrant a change in state policy at that time. The division's report recommended that a test be conducted to determine the effects of explosives on juvenile salmon.

In 1986, the Alaska Oil and Gas Association (AOGA) conducted a study to test the effects of linear explosive detonations on juvenile fish, especially salmonoids. The results of the AOGA study were published in October 1987 and concluded that the best estimate of the lethal range for juvenile salmon from a linear explosive is 150 meters. The study recommends that more information about the seasonal distribution of fish be gained in Alaskan waters where linear explosives are needed to acquire seismic data.

The division is presently reviewing the study, and will request comments and recommendations from the departments of Fish & Game and Environmental Conservation. Following the study's review, the division will recommend to the cabinet whether or not to pursue a change in state policy. If a decision is made to pursue a change in state policy, the division will hold public meetings in affected communities to explain its recommendation and to solicit comments on the subject.

Royalty Oil Export. Last year, the department successfully concluded a one year contract to sell for export 97% of the state's daily royalty oil production (3,600 barrels per day) from the fields on the west side of Cook Inlet. Those fields are Granite Point, MacArthur River, North Trading Bay and Trading Bay fields. Delivery began in July of 1987 to Chinese Petroleum Corporation of Taiwan, which agreed to pay a premium of \$1.83 per barrel above what the state would have received had it left the oil in-value. The department issued a solicitation for offers in January 1988 for another one year contract, which will follow the expiration of the Chinese Petroleum Corporation contract. The proposal calls for a new contract to be signed by June 1988, with a date for first delivery scheduled for December 1988.

Free Trade with Canada. There is broad agreement between the governments of Canada and the United States to assure the freest possible bilateral trade in energy, including nondiscriminatory access for the United States to Canadian energy supplies and secure market access for Canadian energy exports to the United States. The federal government has agreed to allow exports of Alaskan oil to Canada, up to 50 thousand barrels per day on an annual average basis, subject to a condition that such oil be transported from Alaska on U.S. flag ships. Given the restrictions on state government (such as the six month notice provision under the terms of the lease to the producers), it is improbable that state royalty oil will be part of this export at least in the near term.

AOGA Stipulation Study. In response to a request by AOGA, the state's resource agencies, in conjunction with the Division of Governmental Coordination, are preparing a letter explaining the state's rationale behind various stipulations attached to oil and gas development projects. The letter is presently in draft form. Once finalized, the letter will represent the consensus of the resource agencies concerning the need for the state's lease

stipulations. The letter also will invite AOGA, if it disagrees with the state's rationale, to conduct a stipulation cost/benefit analysis for the state's further consideration.

Oil and Gas Incentives Analysis. The division recently concluded a review of ways to stimulate petroleum activity in the state. In addition to reviewing the state's taxing and leasing policies as well as incentives currently available in Alaska, the division reviewed legislative and administrative incentive programs enacted by the other petroleum producing states and Canadian provinces to provide exploratory and development-related assistance to the oil industry.

As most "lower 48" oil producing states have a limited land base, the majority of states that enacted incentive programs utilized severance tax relief as the primary means to stimulate petroleum activity. In addition, because most of the production in these states comes from stripper wells (ie. wells that produce less than 10 barrels of oil per day (bopd)), the states generally adopted programs designed to postpone the abandonment of this production and ultimate loss of oil reserves.

Canadian provinces have adopted a variety of incentive programs, ranging from outright credit or cash grant programs to royalty/tax holidays and price sensitive sliding scale tax formulas to stimulate economic activity. Currently, the royalty/tax rates in Canadian provinces vary from 10% to 44% depending on the type of oil.

In comparison with the other oil producing states and provinces, Alaska is already providing numerous incentives for exploration and development. In the wake of declining world oil prices, the state has offered some of the lowest minimum bid and per acre rental terms available for competitive leases issued anywhere in the United States. In addition, most of the state's leases are encumbered with only the statutory minimum one-eighth royalty share of oil for the state. The state also has offered Exploration Incentive Credits (EIC's) [AS 38.05.180(i)] in state oil and gas lease sales, most recently in Sale 54, to share some of the risks associated with drilling exploratory wells. Since 1982, the state has granted credits amounting to almost \$36.6 million.

In the past, the state also had a discovery royalty provision which reduced, for a period of ten years beyond the date of discovery, the state's royalty to 5% from production allocated to a lease where the discovery involved a new geological structure (see Laws of Alaska, 1959, Chapter 169, page 243). The discovery royalty program was an incentive to encourage oil companies to come to Alaska, then a newly formed, cash-poor state. It generated significant drilling activity in Cook Inlet and thus accelerated oil and gas exploration and development of state lands. The discovery oil provision was repealed in 1969, but remains in effect for some state leases issued before 1969. To date, ten wells have been certified as discovery wells, and two applications are pending certification.

Finally, under AS 38.05.180(j), the state may allow for a reduction of royalty to compensate for increasing cost in the later stages of production decline. The reduction, however, cannot be granted until two years of initial production from a field has occurred. The lessee also must clearly show that

the revenue from all hydrocarbons produced from a field is insufficient to provide a reasonable rate of return with respect to the lessee's investment in the field.

NGL Settlements. A controversy has developed between the state and North Slope producers of the Prudhoe Bay, Lisburne and Kuparuk fields concerning the processing fee deducted from the reported value of sales gas and natural gas liquids (NGL's) produced from those fields. The controversy centers on what processing fee, if any, is deductible from the producer's royalty payments.

Three gas facilities are currently operating on the North Slope. These facilities, and particulars, are as follows:

- a. Prudhoe Bay facility: December 1986 startup; December 1987 production was 54,048 BPD NGL's.
- b. Lisburne Reservoir facility: June 1987 startup; December 1987 production was 2,206 BPD NGL's.
- c. Kuparuk Reservoir facility: April 1985 startup; December 1987 production was 3,625 BPD NGL's.

All three facilities also produce "dry" natural gas for unit use and marketing. The NGL's and some natural gas are being sold, and royalties are being reported to the state. The Prudhoe Bay gas facility also produces fluids (e.g., ethane and propane) used in enhanced oil recovery operations in the field.

North Slope producers have submitted pricing proposals to the state for the NGLs and sales gas processed by these facilities. The pricing proposals would be used to determine a "lease plant split" processing allowance for each operator. The proposed processing allowances suggested by these producers are:

- a. Sadlerochit facility:
 - ARCO: \$0.30/MCF (Sales Gas)
\$4.39/bbl (NGLs)
 - Exxon: \$0.45/MCF (Sales Gas)
\$2.54/bbl (NGLs)
 - Standard: \$0.75/MCF (Sales Gas)
\$7.34/bbl (NGLs)
- b. Lisburne facility:
 - ARCO: \$0.32/MCF (Sales Gas)
\$19.21/bbl (NGLs)
 - Exxon: \$0.47/MCF (Sales Gas)
\$19.99/bbl (NGLs)
- c. Kuparuk River facility:
 - ARCO: \$0.24/MCF (Sales Gas)
\$7.79/bbl (NGLs)

The processing allowance, if accepted by the state, would be deducted on a per barrel basis from the royalties paid to the state by each producer. In the case of the Lisburne facility, however, the proposed processing allowance is greater than the reported selling price of crude oil at Pump Station #1. Consequently, the difference between the proposed processing allowance and the crude oil price would then be deducted from the total royalties owed the state from all production.

The state has issued a formal notice of its disagreement with the processing allowances proposed for the Prudhoe Bay and Lisburne facilities. The state's position concerning the Kuparuk River facility currently is being drafted. For the Prudhoe Bay facility, the state has proposed a deduction of \$0.31/bbl if the liquids are to be reported as NGL's. Alternatively, the state proposed a deduction of \$0.67/bbl if the liquids are to be reported as oil. The \$0.67/bbl figure represents the agreed to Prudhoe Bay oil field cost allowance. At Lisburne, the state has proposed a deduction of \$0.67/bbl, the standard oil field cost allowance in the Prudhoe Bay Unit.

Thus far, ARCO and Exxon have rejected the state's counter proposals. As both sides appear firm in their respective positions, resolution of the processing allowance proposals appears headed for litigation.

Niakuk and Endicott Discovery Royalty Certification Applications. On May 22, 1987, Standard Alaska Production Company filed an application for certification of its Sag Delta No. 4 well as a discovery in the Endicott reservoir. For administrative reasons, the application was processed in conjunction with a similar request for Standard's Niakuk No. 5 well, which was submitted on August 27, 1987. The affected leases were issued on January 24, 1967 at Competitive Oil and Gas Lease Sale 18, and consequently would qualify for discovery royalty under the statutes.

If approved, the royalty rate for production from each lease would be reduced from 12 1/2 percent to 5 percent for a 10-year period beginning from the date of each respective discovery. The reduced royalty period for the Endicott discovery lease (Sag Delta No. 4 well) would be from April 1, 1978 through March 31, 1988. Because production from this lease began in October 1987, the royalty reduction for the Endicott discovery lease would only be effective for about 6 months. The Niakuk reduced royalty period would be from May 1, 1985 through April 30, 1995. Although no oil has yet been produced from the Niakuk reservoir, a portion of the oil production from the Lisburne unit has been allocated to the Niakuk discovery lease.

FISCAL NOTE

REQUEST:

Revision Date: 2/10/88
Title: "An Act relating to the leasing of limited entry permits by the elderly"
Sponsor: Herrman, Hudson & Hoffman
Requestor: Herrman

Agency Affected: Department of Fish & Game
BRU: Commercial Fisheries Entry Commission (CFEC)
Components: Program Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	25.9 *	25.9 *	25.9 *	25.9 *	25.9 *
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT		6.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		31.9	25.9	25.9	25.9	25.9

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		31.9	25.9	25.9	25.9	25.9
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME		1	1	1	1	1
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

* An additional seasonal position would be required if the agency is to maintain current service levels, funded from General Fund program receipts.

See attached analysis.

Prepared by: Christine Kelly, Licensing Administrator
Division: Commercial Fisheries Entry Commission

Phone: 465-4081
Date: 2/10/88

Approved by Commissioner: [Signature]
Agency: CFEC

Date: 2/10/88

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Assuming that the mechanism for implementing permit lease arrangements by the elderly would be the existing emergency transfer or a similar process, this legislation has the potential to significantly increase the number of transfer requests received annually. In recent years, approximately 400 emergency transfers from all age groups have been approved annually. At the end of 1986, there were 1,131 holders of transferable limited entry permits in the "over 60" age bracket, with another 1,725 in the 51-60 bracket. The number of emergency transfer requests received annually could double or even triple as it seems likely that the majority of "over 60" permit holders would opt to have someone else do the fishing.

If permit leasing by others than the "over 60" age group remains prohibited, all transfer requests will continue to require thorough review to verify the permit holder's age and the relationship between the transferor and transferee.

The \$25.9 denoted in the personal services line item would fund a seasonal transfer technician position. This position should enable the commission to maintain timely processing of transfer requests in spite of the anticipated increase in numbers. Without the new position, processing time for all permanent and emergency transfers, (approximately 1,700 per year,) would likely be increased to one to two weeks as the commission currently has just one full-time position that reviews and processes all permanent and emergency transfers. The equipment line item of \$6.0 would purchase the additional PC needed to access the licensing system and provide word processing capabilities.

Position Title Transfer Technician		No. of Positions 1	Range/Step 12A	Barg. Unit Exempt
Time Status Perm/Seasonal	Staff Months Nine	Location Juneau		Election District
Type of Expenditure		Justification		
1	2	3		
Salary	18.8	<p>This would be a newly created position intended to provide technical assistance and support under direction of the Transfer Officer. All transfer requests must be reviewed to ensure that the applicants and/or terms of the transaction meet criteria established by statute and regulation, and that there are no violations of the "anti-leasing" provisions of the statute. The new position would be needed in order for the commission to maintain a timely response to transfer requests, the number of which could double or triple if permit holders over age 60 were allowed to lease their permits.</p> <p>On a seasonal basis, the Transfer Technician would assist with review of transfer requests, correspondence, telephone inquiries from fishermen, entry of transfer data on the computer system, and preparation of permit certificates, cards, etc.. Funding of the additional position would also enhance the commission's capability to shift staff from the Juneau headquarters to provide in-season licensing and transfer services at ADF&G field offices such as Dillingham and King Salmon.</p>		
Benefits	7.1			
Premium Pay				
Other				
Total Personal Services	25.9			
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost	25.9			
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004			
GF Program Receipts	1005			
Other				

**Request For
New Position**

Agency Department of Fish and Game
 BRU Commercial Fisheries Entry
 Component Commission (CFEC)
Program Administration

Page 1 of 1
 Revised Date 2/10/83

FY 89



**SOUTHWEST ALASKA
MUNICIPAL CONFERENCE**

Box 89 • Unalaska • Alaska 99685

RESOLUTION 88-07

A RESOLUTION OF THE SOUTHWEST ALASKA MUNICIPAL CONFERENCE
(SWAMC) SUPPORTING HOUSE BILL NO. 316.

WHEREAS, the ownership of limited entry permits by rural Alaskans residing in the areas for which their permits were issued has been decreasing at an alarming rate because the highest prices for permits are frequently offered by urban Alaskans residing in other areas of the State and by nonresidents; and

WHEREAS, more than 50 percent of the decrease in permit ownership by local rural Alaskans since the inception of the limited entry program has occurred in the Bristol Bay area; and

WHEREAS, change of permit ownership from Alaska residents to non-Alaskans is contrary to the best interests of the State; and

WHEREAS, the high cost of buying a limited entry permit prevents young Alaskans with low incomes from entering commercial fisheries as gear operators; and

WHEREAS, allowing limited entry permit holders who are 50 years of age or older to lease their permits to younger family members will enable many young Alaskans with low incomes to participate in commercial fishing as gear operators, thus giving them the opportunity to acquire the skills needed to qualify for, and the capital needed to afford, the purchase of a limited entry permit.

NOW, THEREFORE, BE IT RESOLVED by the Southwest Alaska Municipal Conference that Sec. 2AS 16.43.150 (g) is amended to read: (g) except as provided in AL 16.10.333 -16.10337, AS 16.43.180, AS 44.81.210 and 44.81.230 - 44.81.250, and entry permit may not be 1) pledged, mortgaged, leased or encumbered in any way; 2) transferred with any retained right of repossession or foreclosure, or on any condition requiring a subsequent transfer; or 3) attached, distrained, or sold on execution of judgement or under any other process or order of any court. Sec. 3. AS 16.43.180 is amended by adding a new subsection to read: (c) the commission shall adopt regulations allowing a limited entry permit

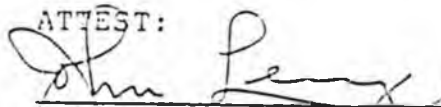
swamc resolution 38-07

holder who is 60 years of age or older to transfer the permit to lease to a child or grandchild of the permit holder or to a spouse of the child or grandchild.

PASSED AND ADOPTED THIS 17th DAY OF JANUARY, 1988



JEROME SELBY, President

ATTEST:


John Levy, Executive Director

ALASKA FEDERATION OF NATIVES, INC.
1987 ANNUAL CONVENTION

RESOLUTION NO. 87-68

TITLE: IN SUPPORT OF HOUSE BILL NO. 316

WHEREAS, the ownership of limited entry permits by rural Alaskans residing in the areas for which their permits were issued has been decreasing at an alarming rate because the highest prices for permits are frequently offered by urban Alaskans residing in other areas of the state and by non-residents; and

WHEREAS, more than 50 percent of the decrease in permit ownership by local rural Alaskans since the inception of the limited entry program has occurred in the Bristol Bay area; and

WHEREAS, change of permit ownership from Alaska residents to non-Alaskans is contrary to the best interests of the state; and

WHEREAS, the high cost of buying a limited entry permit prevents young Alaskans with low incomes from entering commercial fisheries as gear operators; and

WHEREAS, allowing limited entry permit holders who are 60 years of age or older to lease their permits to younger family members will enable many young Alaskans with low incomes to participate in commercial fishing as gear operators, thus giving them the opportunity to acquire the skills needed to qualify for, and the capital needed to afford, the purchase of a limited entry permit.

NOW THEREFORE BE IT RESOLVED by the delegates of the 1987 annual convention of the Alaska Federation of Natives, Inc. that Sec. 2 AS 16.43.150(g) is amended to read: (g) except as provided in AS 16.10.333 - 16.10.337, AS 16.43.180, AS 44.81.210 and 44.81.230 - 44.81.250, an entry permit may not be 1) pledged, mortgaged, leased or encumbered in any way; 2) transferred with any retained right of repossession or foreclosure, or on any condition requiring a subsequent transfer; or 3) attached, distrained, or sold on execution of judgment or under any other process or order of any court. Sec. 3. AS 16.43.180 is amended by adding a new subsection to read: (c) the Commission shall adopt regulations allowing a limited entry permit holder who is 60 years of age or older to transfer the permit by lease to a child or grandchild of the permit holder or to a spouse of the child or grandchild; and

NAKNEK SETNETTERS' ASSOCIATION

A Non-Profit Corporation

PO BOX 128

NAKNEK, ALASKA 99633

Representative Adelheid Herrman
Pouch V
Room C 108
Juneau, Alaska 99811
(907) 465-4942

Dear Adelheid:

January 15, 1987

Since our last conversation concerning matters in the Bristol Bay fishery I have polled members of our Association concerning the introduction of a new law to allow aged Bristol Bay Limited Entry Permit Holders to lease their permits. Currently, the NSA has nearly 60 members of which 38 are set net permit holders the other are crew. Nearly ninety percent of our members are Alaskan residents and seventy-five percent are Bristol Bay residents and a majority of those members are native folk.

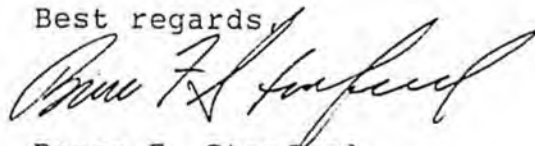
The concept that senior fishermen (those over 60) would be allowed to lease their permits was an extremely attractive one and met with approval of every member I spoke with. I noted some of the positive externalities passed on to me were:

- (1) By leasing permits senior fishermen would have an opportunity at obtaining a steady income for maintenance and support every season. This would lessen their need to seek public assistance from state entities.
- (2) One member explained that one of her friends who had to "cash out"-the permit left the family and the village and the money was squandered away in less than a year.
- (3) An option to lease would enable the permit to stay within the family unit. Quite often there may be only one permit per family unit and a junior member of the family cannot afford to pay cash for the permit.
- (4) Another positive effect of a leasing program would be that senior fishermen would not suffer significant federal tax consequences when they are able to lease rather than "cash out."
- (5) Finally, it would appear that to allow permits to be leased by the aged would fulfill a rational government purpose without frustrating the intent of the limited entry program. Also, another plus in such a law would be that more permits would be kept in Alaska resident hands and more importantly in your constituents' possession. This is good for local businesses in the Bay because locals spend their money in the villages rather than the non-Alaskan

owners of limited entry permits who leave nothing but a vacuum.

I hope this letter has been informative. If you have any other further questions do not hesitate to contact me or other members of the Association.

Best regards,

A handwritten signature in cursive script, appearing to read "Bruce F. Stanford".

Bruce F. Stanford

President of Naknek Setnetters Assoc.
733 W. 4th Ave., Suite 730
Anchorage, Alaska 99501
(907) 248-1304

P.S. Our members are very keen on getting an ice machine for this next fishing season and would be willing to pay a reasonable price for the ice.

Adelheid - for your information - Paula Cullenberg
(Wrote up for the Bay Times ! BBNA info)

Twenty six salmon limited entry permits have left the ownership of Bristol Bay residents in the last year according to a new report by the Commercial Fisheries Entry Commission. Fifteen setnet and twenty driftnet permits are no longer owned in the region. In fact, 272 drift and setnet permits have left the local Bristol Bay region in the last eleven years.

Bristol Bay is clearly the fishery with the highest loss of permits to the region - over 40% of all permits leaving rural Alaska have come from this region. Since the inception of Alaska's Limited Entry system in 1975, 29% of transferable setnet permits and 17% of driftnet permits have moved out of Bristol Bay. Statewide, rural Alaskans holding permits in their local fisheries have lost nearly 700 permits since 1975. The majority of those permits have stayed in Alaska, although over 100 are now owned by residents of other states. City dwellers in Alaska have gained ownership of almost 300 more permits than were initially allotted to them in 1975.

A third of the transfers of Bristol Bay drift permits are to immediate family members; over half are to buyers that are not friends or family. Setnet permits are usually sold to friends or relatives. More and more permits are being sold to people with whom the seller has had no previous relationship.

Most drift and setnet permits are financed by the owner. The State loan program finances less than a third of the permit sales in Bristol Bay. CFAB has financed only one permit sale in the last six years. Two Bristol Bay drift permits were foreclosed on in 1986.

Seventeen local permit holders left the region, but remained permit holders.



ISER RESEARCH SUMMARY

Institute of Social and Economic Research, University of Alaska

November 1984, R.S. No. 23

Natives in Alaska's Commercial Fisheries

How well are Native fishermen faring in Alaska's strongly competitive commercial fisheries? Are they being helped or hindered by government policies? Thomas A. Morehouse, a political scientist with the University's Institute of Social and Economic Research, explored these questions in a recent paper and found that several state and federal policies have generally helped Natives keep their historic place in Alaska fisheries. He also found, however, that Natives and others are worried because in recent years several hundred Native fishermen have sold their permits for Alaska's limited entry fisheries to non-Natives.

Background

While Natives make up only about 15 percent of Alaska's population, they are a majority in many small coastal and river communities where commercial fishing offers one of the few opportunities to make a living. Commercial fishing also leaves Natives time to pursue subsistence hunting and fishing.

Most Native fishermen live in Western Alaska, although they take part in almost all of the state's commercial fisheries. The western fisheries—primarily salmon and herring—cover a thousand-mile swath from the Aleutian Islands north to Kotzebue Sound. The richest of these are the salmon fisheries at Bristol Bay and southwest of the bay along the Alaska peninsula.

Institutions and Policies Affecting Natives

Limited Entry. In 1973 the Alaska Legislature voted to restrict the number of gear operators in the state's salmon fisheries. Later, most of Alaska's herring fisheries were also put under limited entry. Limited entry permits were awarded to fishermen under a point system that emphasized economic dependence on and past participation in the fisheries. Through 1983, the state had issued 12,500 gear operator permits for the salmon and herring fisheries. Of these, 10,980 are freely transferable; they can be sold, traded, or given away.

Alaska Natives initially received about 4,900, or 45 percent, of the transferable limited entry permits (see Table 1). Other Alaskans received about 33 percent of the permits, with the remaining 22 percent going to nonresidents with histories of fishing in state waters.

The limited entry program guaranteed Natives and others a place in the fisheries and protected them from intense competition in the mid- and late-1970s when increased runs and prices made the salmon fisheries very profitable. Many Native and other fishermen have made good incomes over the past decade, although incomes of Native fishermen—who tend to have smaller boats and less efficient gear—have generally lagged behind those of other fishermen.

However, the program has also hurt the Native community. Permits have become so expensive that most young Natives cannot afford them, and some Native fishermen have sold their valuable permits to non-Natives. As a result, the Native share of permits, initially 45 percent, had declined to 39 percent by 1983 (Table 1). At the same time, non-Native Alaskans had increased their share from 33 to 40 percent, while the nonresident share dropped slightly.

Nearly 40 percent of the roughly 700 Native permits sold (or transferred) to non-Natives through 1983 were for Bristol Bay alone. This amounts to a

Table 1. Limited Entry Permits^a Held by Alaska Natives and Others, Initial Issuance^b and 1983

	Initial Issue		1983		Change	
	Nos.	Percent	Nos.	Percent	Nos.	Percent
Alaska Natives	4,928	45%	4,226	39%	-702	-14%
Bristol Bay	1,244	49	980	38	-264	-21
Other Alaskans	3,633	33	4,374	40	+741	+20
Bristol Bay	440	17	636	25	+196	+45
Non-Residents ^c	2,419	22	2,353	21	-66	-3
Bristol Bay	571	34	944	37	+373	+8

^aIncludes only transferable permits; there are also about 1,535 non-transferable permits. Total permits initially issued vary from 1983 figures in some instances because: (1) some permits have been revoked by the Commercial Fisheries Entry Commission; (2) some permits are now held by the Alaska Department of Commerce as a result of loan foreclosures; (3) some additional permits were issued as a result of court decisions.

^bThe first limited entry permits were issued in 1975, with more issued over the years as additional fisheries came under limited entry.

^cThese figures include permits held by Natives living outside Alaska; 133 permits were initially issued to non-resident Natives. By 1983, non-resident Natives held 94 permits.

SOURCE: Commercial Fisheries Entry Commission

110 On...
4.5.10

transfer to non-Natives of 21 percent of the Natives' original entry permits for Bristol Bay (Table 1). Bristol Bay permits are among the most valuable in Alaska. Table 2 shows recent increases in permit prices in Bristol Bay and several other Alaska fisheries.

Table 2. Average Limited Entry Permit Prices, Selected Fisheries, 1978 and 1983

Fishery	1978	1983
S.E. Hand Troll	*	\$4,948
Kotzebue Gill Net	\$5,814	13,083
Cook Inlet Set Net	9,823	18,340
S.E. Purse Seine	30,929	38,534
Cook Inlet Drift Net	36,825	69,919
Bristol Bay Drift Net	21,638	98,923
PWS Purse Seine	24,272	143,186
Ak. Penin./Aleutian Drift Net	15,000	157,000
Ak. Penin./Aleutian Purse Seine	39,627	195,000

*The hand troll fishery was not limited in 1978.

SOURCE: Commercial Fisheries Entry Commission.

While all permit prices have increased statewide in the last 5 years, they have multiplied in the most valuable fisheries. For example, purse seine permits for the Alaska Peninsula/Aleutian Salmon fishery increased from an average of \$40,000 in 1978 to \$195,000 in 1983; and drift net permits for Bristol Bay increased from an average of \$21,000 in 1978 to almost \$100,000 in 1983.

The high cost of getting into the fisheries and the erosion in the number of Native-owned permits are particularly threatening to Native communities where nonfishing jobs are scarce.*

State and Federal Regulations. The federal Fishery Conservation and Management Act of 1976, which extended U.S. jurisdiction to 200 miles offshore and restricted foreign catch in U.S. waters, enhanced Native entry into various Bering Sea fisheries. This extended jurisdiction has also been at

*For further information on Native participation, including loss of entry permits, see Steve J. Langdon, Department of Anthropology, University of Alaska, Anchorage, "Commercial Fisheries in Western Alaska: Implications of and for State Fisheries Policy," paper prepared for Western Regional Science Association Meeting, Monterey, California, February 22-25, 1984.

least partly responsible for the recent surge in Alaska's western herring fishery. The International Pacific Halibut Commission in 1984 also established a regulation that protected Aleut halibut fishermen on the Pribilof Islands from outside competition. The commission required non-Pribilof fishermen to travel more than 250 miles to Dutch Harbor in the Aleutians to fish in their catches after each day's opening; non-local fishermen could not take enough halibut around the Pribilofs in a day to make the long trip back to Dutch Harbor worthwhile.

Several state area and gear regulations also benefit Native and other rural fishermen. Bristol Bay fishing boats can be no longer than 32 feet, a restriction that favors local Native fishermen who generally have small boats. Seiners are prohibited from taking herring north of Cape Newenham (on the western boundary of Bristol Bay), a regulation that favors local fishermen in the northern areas who generally have small skiffs equipped with gill nets. The state Board of Fisheries, at the request of western Native fishermen, also has designated the Cape Romanzof and Norton Sound herring fisheries as "exclusive area" fisheries, which means that anyone who elects to fish in these areas cannot fish in any other herring fishery. Non-local fishermen favor the more profitable Bristol Bay herring fisheries to the south, and in recent years, Cape Romanzof fishermen have garnered essentially 100 percent of the local herring catch.

Native Corporations and Others. Some Native regional and village corporations formed under the Alaska Native Claims Settlement Act have involved themselves in buying and marketing catches of rural fishermen. Native fishermen themselves have organized a number of production and marketing organizations. Additional help is available under several state loan and other programs, as well as from the Community Enterprise Development Corporation, a private nonprofit organization.

Conclusion

Commercial fishing is one of the very few occupations that has clear potential for successfully integrating cash economy and subsistence culture activities. On balance, traditions, regulations, organizations, and local initiative appear to be working in support of Native participation in Alaska's commercial fisheries, but losses of limited entry permits from Native villages is a continuing cause for concern.

This Research Summary is based on "Native Participation in Alaska's Commercial Fisheries," 18 pp., by Thomas A. Morehouse, presented at the Conference on Native Self-Reliance, Vancouver, British Columbia, August 20, 1984. Copies of the paper are available for the cost of reproduction 10 cents per page, from ISER, 707 A St., Suite 206, Anchorage, AK, 278-4621.

RESEARCH SUMMARY (No. 23)
Institute of Social and Economic Research
Lee Gorsuch, Director
707 "A" Street, Suite 206
Anchorage, Alaska 99501

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Boags-Way Company

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VIA KING SALMON, AK 99613

June 7, 1985

Hi!

Received the enclosed Proposed changes in Regulations by the Limited Entry Commission on June 4th. The letter was postmarked 5-15-85. They are allowing just 30 days apparently from the time the proposed changes were written, not when mailed.

I believe the consideration of these proposed changes is ill timed as they are being published at a time most fishermen are busy fishing or getting ready to fish. At this time no one has any time to give the proposed changes any thought let alone time to write letters.

On June 5 I was in King Salmon so called Jean Findley and she turned me over to Phil Smith. I had a very stimulation conversation with him!

Our concern is over #4. It sounds great on the surface but the ammendment to 20 AAC 05.741 (i) actually limits a person with a continuing disability even if he or she is 65 or older, to only being able to transfer their permit for 2 years because they would have had to have fished the permit 3 of the past 5 years. If they had said x number of years from the first emergency transfer that would have been fine.

I believe the Supreme Court ruled that an illness, injury, or disability could last more than one year when considering points for a permit.

According to Phil Smith this would apply to setnetters as well as drifters. Therefore according to Phil, it would make null and void the regulation that a setnet permit holder need only be in the area to supervise the operation of the setnet and need not actually fish it personally. I would hate to see this happen because it would create a hardship on many elderly setnet operators who depend on that income for part of their living.

It would also force one to sell his or her drift permit after two years if they developed any kind of degenerative condition, which is not uncommon for a person 65 years of age or older. Should they be forced to sell their permit and go on welfare after they had lived up the proceeds of the sale? Or should they be allowed to emergency transfer their permit to a younger person so long as a doctor certified each year it would be unwise for them to fish, and use the money to supplement their social security?

We talked around the subject of emergency transfer and leasing or renting permits. One argument Phil gave me concerning a fisherman with a continuing disability against emergency transferring for more than two years was that the Commission did not wish to set up a mechanism whereby one could continue the emergency transfer of a permit year after year provided they had a letter from a doctor stating it was unwise or impossible for one to fish their permit.

Phil said, you know people are living a long time these days and LEC didn't want anyone to have control over another person's life.

My answer to that is - three men on the Limited Entry Commission, only two are needed to say yea or nay over whether a fisherman could obtain a permit. If it goes to court only one man, the judge has control of that person's ability to make a living or not via fishing. Whp is controlling people's lives. The Federal Government and the State are the biggest offenders.

Actually no fisherman who has fished for a period of time and who becomes permanently disabled, or injured, or ^{an} degenerative disease, regardless of age should be denied the right to continue in the fishery via an emergency transfer or rent his permit for some income, thereby ^{live} in dignity.

I do believe these proposals should be delayed until fall and we can have more input from those involved.

I am so busy right now so don't have time to go into this further but would certainly appreciate it if you could call the Commission and ask for a delay in their adopting these proposals.

I hope I have made sense. I am writing this off the top of my head.

Best regards,

Randy Briggs
Randy Briggs

RECEIVED 114

January 15, 1983

Representative Adelheid Herrmann
Pouch V
Juneau, Alaska 99811

Re: Transfers for older fishermen

Dear Ad,

Enclosed is a possible suggestion for revising HB 648. I believe this maintains your intent but broadens the scope of the legislation so perhaps we can obtain support from other quarters, ie. AARP among others. Also it might be possible to gain other house sponsors for the bill as it should appeal to more legislators.

I am writing to Fred to see if he could start a similiar bill in the Senate with several sponsors. This might be a way to get our foot in the door for other changes in the limited entry law later.

I'm also writing to Rep. Alyce Hanley as her son is one of the young men who has a boat but can't afford the cost of a permit. Good bypartisan support should be very helpful also.

It is obvious the Commission has no intention of making any changes, after the proposals they came out with in 1985 were shot down. For update on that, I am enclosing a copy of a letter I wrote to you at that time as it contains some pertinent parts.

As you remember, at the meeting in Dillingham the fall of 1985, I believe, Phil Smith promised you they would do something on the subject and now they come out with a letter to tighten up the regs which will cause a number of fishermen greater hardships.

When only one emergency transfer is allowed per incident, an elderly fisherman is forced to give away or sell his permit. Currently, as you

know, Ad, once a permit is transferred, the permit holder has no legal right to protect his interest should the transferee mortgage to the state this permit or in fact, at a later date refuse to pay the agreed upon sale price. There are a number of horror stories in the Bay. Frank Hill told me about Gus Jenson, I think it was, who transferred his permit to his son who mortgaged it and lost it. His father is now out of a permit, and no money as his son had promised.

Thus, as the law now stands, a permit holder who wishes to sell must receive full payment before the permit is turned over or he might not ever be paid. This effectively eliminates young Alaskan fishermen with limited financial resources from entering the fishery. Many young people could lease or buy on a lease purchase agreement over a number of years when they could never come up with the full purchase price or even a healthy down payment. The original permit holder would be assured an income over a number of years and thereby able to supplement his or her social security income.

In other words, this proposed legislation if passed could serve a two fold purpose.

1. to afford an opportunity for younger fishermen to get into the fishery.
2. provide for a supplemental income for a retired fisherman.

I believe the letter which the Limited Entry Commission just sent out is grounds for reintroducing your bill or some version of it.

I hope to be in Juneau early in February for a couple of days. I will let you know when I can make it.

Best regards,

Randy Brugge

BILL

For an Act Entitled "An Act allowing elder fishermen to transfer or
lease their limited entry permits."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

*Section 1 FINDINGS. The legislature finds that

(1) Limited Entry Law made provision for emergency transfers of permits held by minors or estates for extended periods of time, but failed to address emergency transfers for the fisherman 60 years of age or older who have developed age related physical disabilities.

(2) young Alaskan fishermen with limited finances need to be able to enter the fishery as gear operators but cannot now afford the high cost of permits.

(3) the state loan program established to assist Alaskan residents in acquiring limited entry permits has failed to fill the need of younger fishermen.

(4) there is no established retirement system for fishermen at this time.

(5) allowing limited entry permit holders and interim use permit holders who are 60 years of age or older to lease their permit will enable many young Alaskans with limited finances to participate in commercial fishing as gear operators, thus enabling a younger fisherman to accumulate funds to purchase a limited entry permit.

* Section 2 AS 16.43.150 (g) amended to read:

(g) Except as provided in AS 16.10.333, 16.10.337, AS 16.43.180 and in AS 44.81.230 - 44.81.250, an entry permit may not be:

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

*Section 3. AS 16.43.180 is amended by adding new subsections to read:

(c) The Commission shall adopt regulations allowing a limited entry permit holder who is 60 years of age and who has actively participated in a fishery for 5 years or more, to lease the permit on a yearly basis or sell to a younger fisherman on a lease purchase basis.

(d) To alleviate hardship, the Commission shall adopt regulations allowing an interim use permit holder, pending a final determination of the permit holder's eligibility for an entry permit, to emergency transfer interim use permit issued under AS 16.43.210 (b).

(e) The Commission may develop temporary projects for selected fisheries to experiment with allowing limited entry permit holders other than those 60 years of age or older to transfer permits by lease to other persons.

MEMORANDUM

State of Alaska

TO: The Honorable Adelheid Herrmann DATE: February 11, 1988
Chairman, House Resources Committee
M/S 3100 FILE NO.:

THRU: TELEPHONE NO.:

FROM: ~~Commercial Fisheries Entry Commission~~ SUBJECT: HB No. 316 "An Act
Bruce Twomley, Chairman relating to the
Rich Listowski, Commissioner leasing of limited
Phil Smith, Commissioner entry permits by
M/S 0302 the elderly"

For the following stated reasons, the Entry Commission unanimously recommends that HB 316 be withdrawn.

1. Potential Harm to Western Alaskans and Other Permit Holders.

At this moment, the Internal Revenue Service (IRS) is suing the Commercial Fisheries Entry Commission (CFEC) and the State of Alaska in Federal District Court asking the court to declare that Alaska limited entry permits are property subject to IRS seizure and forced sale. The Entry Commission and the State are resisting the IRS based on the Alaska legislature's declaration in A.S. 16.43.150(e) that Alaska limited entry permits are not property:

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

Nonetheless, the IRS argues that entry permits have the attributes of property because, among other things, they can be bought and sold and they can be pledged as collateral to obtain State loans. Although the IRS has taken its case to Federal District Court, the issue as to whether Alaska limited entry permits constitute property will be decided under State law.

Therefore, at this time, any further actions by the legislature which would give entry permits more of the attributes of property (for example, the power to lease) would tend to undermine the State's arguments against the IRS.

The Entry Commission is particularly sensitive to this issue in Western Alaska, where many fishermen may be vulnerable to IRS enforcement, where entry permits may often be their most liquid asset, and where (according to members of the UFA Board) the IRS has recently undertaken extensive investigations in Dillingham.

2. The Alaska Legislature's Prohibition Against Leasing.

The Entry Commission has a duty to enforce the legislature's prohibition against the leasing of an entry permit. A.S. 16.43.150(g). If leasing is authorized for certain groups of

people, it will tend to undermine the policy against leasing of entry permits and to make the Commission's enforcement of the prohibition more difficult. As the Alaska Attorney General has pointed out in her correspondence of February 19, 1986, and February 7, 1985 (copies attached), it will also raise legal issues. We would suggest a more thorough review by the Attorney General before the prohibition against leasing is modified by HB 316 or any other proposed legislation.

3. The Policy Against Leasing of Entry Permits.

The policy of the Limited Entry Act is that one who holds an entry permit ought to fish the permit (as opposed, for example, to treating it as an investment vehicle); and a fisherman should be able to fish and transfer his entry permit free of control by another person. This policy remains important to some people today, for at least the following reasons.

- (a) If certain permit holders were authorized to avoid the demands of actively fishing and to receive rents from another's use of their entry permits, we would anticipate a very unfavorable reaction.
- (b) If those permits not now fished were leased, we would anticipate an increase in fishing effort.
- (c) If potential sellers of entry permits were to lease their permits instead, there could well be a reduction in the number of entry permits available for sale and a consequent effect upon permit prices.

We would suggest that a thorough review of the policy and the prohibition against leasing be undertaken before the prohibition is modified by HB 316 or any other legislation.

As a general matter, we would add that we cannot verify some of the factual claims set forth in the findings which support this piece of proposed legislation. We would be happy to brief you on these points.

Additionally, we recognize the difficulty faced by low income, rural individuals in obtaining costly limited entry permits. We believe that there are currently some promising developments which may help address this problem.

1. As you know, the President of the Commercial Fishing and Agriculture Bank, Mr. Edward E. Crane, has developed a proposal which may encourage more local sales and more sales within families of entry permits.
2. You are also aware that the Entry Commission on a number of occasions agreed to consider a regulation to partially address the problem.

3. The Entry Commission is authorized by statute to grant temporary emergency transfers to disabled permit holders. The Entry Commission has some discretion in this area, and those who wish to know where they stand for the coming season could be applying for emergency transfers right now.
4. The settlement of the Wassillie case will place a number of limited entry permits in the hands of local, rural individuals.
5. In Cordova, cooperation between the school district, the municipality, and various fishermen's groups has resulted in a "commercial fisheries apprenticeship program," designed to help provide young people gain fishing experience and ways to enter the fisheries.
6. In response to requests from Bristol Bay area school districts, the Entry Commission has modified its regulation governing educational permits to aid the districts' programs which provide practical fisheries instruction to students.
7. In Dillingham, the University extension service is attempting to provide a clearing house in an effort to bring local buyers of permits together with sellers of entry permits.

For the above-stated reasons, we urge you to pursue avenues other than the passage of HB 316 at this time.

BT:dan
Attachment

BILL SHEFFIELD, GOVERNOR

REPLY TO

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 19, 1986

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

RECEIVED

FEB 21 1986

The Honorable Adelheid Herrmann
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

ENTRANCE

Re: House Bill No. 652 relating to the
licensing of limited entry permit
brokers and House Bill 648 relating
to the leasing of limited entry per-
mits

Dear Representative Herrmann:

I have been provided with a copy of House Bill No. 652, relating to the licensing of limited entry permit brokers, which was introduced in the legislature this week. I would like to take advantage of this early opportunity to comment on a couple of aspects of this bill. First, I note that proposed AS 16.43.-540 authorizes the commission to suspend or revoke the license of a limited entry permit broker who either "made a false promise likely to influence, persuade, or induce," (AS 16.43.-540(a)(1)(A)(ii)), or who "made a false promise" (AS 16.43.-540(a)(1)(A)(iii)). It is not clear why these should be separate bases for revoking or suspending a permit.

Also, AS 16.43.540(a)(2) specifies that "the commission shall ... prosecute, through the Department of Law, violations of" these statutes. Proposed AS 16.43.575(c) makes it a Class A misdemeanor for a person to violate a provision of that section or of proposed AS 16.43.500. These provisions raise special issues that must be discussed with our Criminal Division. It is possible that these proposed statutes would create "new" crimes when the conduct is already covered in our Criminal Code; also, these statutes may impose a lesser criminal penalty than would be appropriate under existing criminal statutes. These are potentially very significant problems. I am sending a copy of the bill to Gayle Horetski of our Criminal Division for her consideration. I am encourage you to discuss these matters with her.

The Honorable Adelheid Herrmann
Re: HB 652 and HB 643

February 19, 1986
Page 2

On a separate matter, I have also had the opportunity to review House Bill No. 648, relating to the leasing of limited entry permits. This bill sets forth several legislative findings, two of which presume that permits are "migrating" to non-residents. As I indicated to you in a letter last February 7, 1985, (copy attached), all of the information before the CPEC indicates that this is not true. I believe that it would be quite worthwhile to revise these findings so that they are both accurate and tailored to the substantive provisions of the bill. (This bill permits nonresidents to lease their permits on equal footing with residents and, accordingly, it is not apparent why factual findings relating to resident and nonresident permits are relevant). Also, the same equal protection issue that I identified in my letter of last year is equally raised by this bill.

If you have any questions or comments, please feel free to contact me.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By: ¹⁵¹
Margot O. Knuth
Assistant Attorney General

MOK:dlm
Attachment
cc w/HB 652: Gayle Horetski
Assistant Attorney General
Department of Law

February 7, 1985

Honorable Adelheid Herrmann
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Proposed bill permitting aged
residents to lease entry permits
to family members

Dear Representative Herrmann:

Thank you for your letter of January 30, 1985, which provided us with the opportunity to review the bill you wish to introduce that would allow certain people to lease their commercial fishing entry permits. The bill is motivated by your concern that younger people should be provided with more of an opportunity to get into commercial fishing, despite their lack of financial resources and limited fishing experience. The proposed legislation would allow residents over the age of 60 to lease their entry permits to family members.

Unfortunately, time does not permit an exhaustive analysis of the subject. There are, however, some significant issues that warrant careful consideration. The most important is the provision restricting the "benefits" of this legislation to Alaska residents.

Section 1 of this bill states four findings that are meant to justify restricting the right to lease a permit to Alaska residents. The first finding, upon which the discrimination is ultimately based, is that "ownership of limited entry permits by Alaska residents has been decreasing at an alarming rate because the highest prices are frequently offered by nonresidents, contrary to the best interests of the state."

This finding is contradicted by CFEC Report No. 34-10, "Changes in the Distribution of Permit Ownership in Alaska's Limited Fisheries: 1975-1983," issued in November 1984 ("Report"). The report indicates that the percentage of permits owned by Alaskans has declined by less than one percent and the percentage of permits owned by

nonresidents has increased by only one-half of one percent. Report at vi. Furthermore, in 1983 the trend reversed, and permits "migrated" from nonresidents to residents. Id. Thus, the best evidence that I am aware of on the subject contradicts the findings set forth in section 1 of this proposed legislation that ownership of limited entry permits has been decreasing at an alarming rate because the permits are migrating to nonresidents.

The inaccuracy of the stated findings meant to support the discrimination against nonresidents would probably be found by the Alaska Supreme Court to be a fatal flaw in the legislation if it were challenged under the equal protection clause. A similar issue arose in Gilvan v. Martin, 662 P.2d 120 (Alaska 1983). In that case, the Kenai Peninsula Borough enacted an ordinance permitting residents of the borough to participate in lotteries to purchase parcels of land. When enacting the ordinance, the borough specifically stated that the purpose of the land lottery was to sell certain parcels of lands to adjoining property owners "so as to resolve existing controversies regarding access and title." It was determined that 56% of the privately owned parcels of property located within the borough were owned by nonresidents. Accordingly, residents and nonresidents both would want to buy borough land adjoining their property, so as to resolve existing controversies regarding access and title, but they were not treated equally by the law. The Alaska Supreme Court concluded that there was no substantial relationship between the avowed purpose of the ordinance and what the ordinance would in fact accomplish.

In defense of the ordinance, the borough suggested alternative reasons for the discrimination against nonresidents. The Alaska Supreme Court indicated that these reasons "might have been worthy of consideration" if they had been stated in the ordinance. Nonetheless, the court refused to examine these other possible findings that would have supported the ordinance. The court concluded that findings had been stated, and only those findings should be examined. The court then held that the ordinance was a "display of arbitrary power," rather than "an exercise of judgment." It found the classification to be unreasonable and not resting upon "some ground of difference having a fair and substantial relation to the [avowed] object of the legislation, so that all persons similarly circumstanced [are] treated alike." 662 P.2d at 126-27.

Under these circumstances, we believe that the Alaska Supreme Court probably would find unconstitutional the discrimination practiced against nonresidents in this proposed legislation unless you were somehow able to refute the conclusions of the CFEC study on permit migration. The court has indicated that the standard it will apply when determining whether legislation discriminating against nonresidents violates the equal protection clauses of the United States and Alaska Constitutions is, at a minimum, that which it announced in Isakson v. Rickey, 550 P.2d 359 (Alaska 1976): "[T]he classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." There may be permissible reasons for discriminating against nonresidents in the leasing of permits, but I am ignorant as to what they would be.

The other issue raised by this proposed legislation is whether singling out leases by permit holders who are 60 years of age or older to family members constitutes a denial of equal protection to other permit holders who would like to lease their permits or to permit holders over 60 years of age who would like to lease their permits to non-family members. The Alaska Supreme Court has recognized that the state need not "strike at all evils at the same time or in the same way." Gilman v. Martin, 662 P.2d at 126. Underinclusive classifications will be found to violate the equal protection clause, however, when the classification is "clearly wrong, [and] a display of arbitrary power, [rather than] an exercise of judgment." Id. at 126. It is not likely that the Alaska Supreme Court would find the classification established in this proposed legislation to be "clearly wrong." Nonetheless, it does raise an equal protection issue and we cannot provide total assurance as to its constitutionality.

Commercial fishermen are a particularly litigious group. Our experience has been that if there is an issue upon which suit could be brought, regardless of its probable merits, someone will file the suit. Furthermore, the Alaska Supreme Court has issued some very surprising (adverse) decisions in the area of limited entry law. Accordingly, if only some permit holders are allowed to lease their permits, there would be more than a remote possibility of someone who was not allowed to lease his or her permit bringing suit against the state. It could be, as a policy matter, that there are reasons to reconsider entirely

Mon. Adelheid Herrmann
House of Representatives

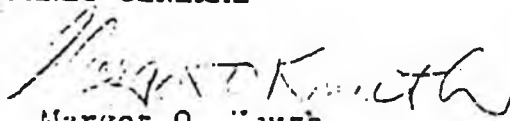
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the prohibition against leasing set forth in the original
Limited Entry Act.

If you have any further questions or comments,
please feel free to contact me.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Margot O. Kauth
Assistant Attorney General

NOK:dla

Attachment

bcc w/o attachment: Bruce Twonley
Chairman, CFEC