

HB

201

HOUSE COMMITTEE REPORT

(9)
Date Referred: March 3, 1989 FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3-29-89

The RESOURCES Committee considered: HB 201

HOUSE BILL NO. 201 [TRANSFER ENTRY PERMITS/PENDING CHARGES]
"An Act relating to additional penalties for violation of commercial fishing laws and for theft of commercial fishing gear."

- RECOMMENDATIONS:
- be replaced with CS HB 201 (259) the same title
 - have attached amendment(s) a new title
 - do pass
 - do not pass
 - no recommendation
 - individual recommendations
 - additional referral to the _____ Committee

- ADOPTS: _____ letter of intent
- ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Date/Dept)
- fiscal impact _____ fiscal note(s) _____
 - zero fiscal note _____ zero fiscal note(s) _____
 - zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

Cip Davis

Scott Newman

Mike Brown

Richard Staley

Scott Sharp

Mike

Greg

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend

Cip Davis

Chairman's signature

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 31, 1989

FURTHER REFERRALS:

Date of Committee Action: _____

The JUDICIARY Committee considered:

HB 201

HOUSE BILL NO. 201

[TRANSFER ENTRY PERMITS PENDING CHARGES]

"An Act relating to additional penalties for violation of commercial fishing laws and for theft of commercial fishing gear."

RECOMMENDATIONS:

- be replaced with CSHB 201 (JUD) the same title
 a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) 3/13/89 CFEC
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

Mike Davis M. DAVIS

John Elders

Mark Pennington

Mike Jones

Cliff Davidson

Signature	Do Not Pass	No Rec	Amend
<u>Mike Miller</u>		<input checked="" type="checkbox"/>	
<u>Terry Martin</u>		<input checked="" type="checkbox"/>	

Ray Shumaker Peter Jones
CO- Chairman's Signature

MEMORANDUM

State of Alaska

Department of Law

TO Bruce Twomley, Chairman
Rich Listowski, Commissioner
Phil Smith, Commissioner
Commercial Fisheries Entry
Commission
Department of Fish and Game

DATE February 7, 1989
FILE NO 663-89-0233
TEL NO 465-3600
SUBJECT Can permit transfers be
suspended pending prosecution?

GTK

FROM G. Thomas Koester
Assistant Attorney General

FILED 10 1989

You asked whether the Commercial Fisheries Entry Commission ("the commission") has the authority to suspend the transferability of a permit pending criminal prosecution of the permit holder for a fish and game violation. The short answer is that the commission probably does not have such authority. In that event, you then asked whether the same end might be reached through some other procedure, such as requiring a permit holder, as a condition of release pending prosecution for a fish and game violation, to agree not to transfer a permit. The courts' liberal interpretation of their authority to impose conditions on the release of defendants pending trial suggests that the courts could require a defendant not to transfer a permit while the criminal proceeding is pending.

As a general matter, limited entry permits are freely transferable. If a permit holder follows the procedures set out in AS 16.43.170(b) and the commission's administrative regulations, and if the proposed transferee can demonstrate the present ability to participate actively in the fishery and the transfer agreement does not violate any provision of AS 16.43 or the commission's regulations, "the commission shall approve the transfer and reissue the entry permit to the transferee." *Id.* (in part). Under AS 16.043.170(b), then, the commission is under a mandatory statutory obligation to transfer the permit if the requisite procedures are followed and the required showing of ability to participate actively in the fishery is made.

There are specific statutory exceptions to this otherwise mandatory statutory obligation to transfer a permit. AS 16.05.710(a) provides that, upon conviction of a misdemeanor for violating AS 16.05.440 -- 16.05.690 or a federal or state commercial fishing statute or regulation, the court may suspend the permit holder's limited entry permit. AS 16.05.710(c) provides: "During the period for which a limited entry permit is

Bruce Twomley, Chairman, CFEC
Rich Listowski, Commissioner, CFEC
Phil Smith, Commissioner, CFEC
Our File No. 663-89-0233

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suspended under (a) of this section a permit card may not be issued and the permit may not be transferred or sold." Nothing in either AS 16.05.170 or 16.05.710, however, prohibits transfer of a permit prior to conviction.

Under AS 16.43.960(a), the commission has the authority to revoke, suspend, or transfer all of a person's entry or interim-use permits if the person knowingly provides or assists in providing false information or fails to correct false information provided to the commission for the purpose of obtaining a benefit. Under AS 16.43.960(c), a permit subject to commission proceedings to revoke, suspend, or transfer it may not be transferred until all administrative and judicial proceedings have been concluded. Nothing in AS 16.43.960, however, prohibits transfer of a permit pending a criminal prosecution.

Under AS 16.43.970(d), a permit holder charged by the state with a violation of AS 16.43 or a regulation adopted under it may not transfer the permit until after the final adjudication or dismissal of the charges. Nothing in that statute, however, prohibits transfer of a permit pending the outcome of criminal proceedings relating to the laws regulating commercial fishing.

Finally, AS 16.43.970(e) provides that a permit under suspension may not be transferred without the consent of the commission, but does not apply that requirement to a transfer request made by a permit holder who is the subject of a pending criminal prosecution for violating a law relating to commercial fishing.

In brief, there is no express exception to the otherwise mandatory statutory obligation to transfer the permit pending a criminal prosecution of the permit holder for a violation of AS 16.05.440 -- 16.05.690 or a federal or state commercial fishing statute or regulation. In the absence of explicit statutory authority to suspend the transferability of a permit pending such a prosecution, we believe the commission remains under the mandatory statutory obligation to transfer the permit if the requisite procedures have been followed.

We have discovered no cases directly addressing this question. 1/ In State Bd. of Medical Examiners v. Weiner, 172

1/ Judge Carpeneti apparently reached the same conclusion we
(Footnote cont.)

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Phil Smith, Commissioner, CFEC
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A.2d 661 (N.J. Super. Ct. App. Div. 1961), however, the State Board of Medical Examiners attempted to suspend temporarily a physician's license to practice medicine pending a criminal prosecution for manslaughter after 15 of his patients died. Under New Jersey law, the board had the authority to suspend a license to practice medicine for, inter alia, a "crime involving moral turpitude." Assuming that manslaughter was a crime involving moral turpitude, the court held that the board did not have the authority to suspend the license pending resolution of the criminal proceeding.

In reaching this conclusion, the court noted that the board might well have implied authority to suspend the license temporarily pending formal administrative proceedings before the board to suspend the license. The court refused, however, to find that such implied authority necessarily extended to a situation involving a criminal prosecution in court. The court reached this conclusion through a rigid statutory analysis, finding that the legislature intended the board's authority to suspend the license to be contingent on conviction of a crime of moral turpitude, but not upon an accusation (i.e., an indictment) standing alone.

If an Alaska court were to apply the same strict statutory analysis here, the commission would not have the legal authority to suspend a limited entry permit temporarily pending the outcome of a criminal prosecution. Under AS 16.05.710(a), the court has the authority to suspend a permit following conviction; under AS 16.05.710(c), the transferability of a permit is statutorily suspended only during the period of suspension ordered by the court.

It is not entirely clear that all Alaska courts would apply such a strict analysis, and there certainly are good public policy reasons why a court would not do so. Judge Carpeneti apparently did in the Stanbaugh case, however, and there can be

(Footnote cont.)

have reached when he entered a temporary restraining order prohibiting the commission from refusing to process a transfer request solely on the ground that there was a pending criminal prosecution of the permit holder on a fishing violation charge. Stambaugh v. Commercial Fisheries Entry Comm., 1 JU-88-1839 Civ. (Alaska Super., Nov. 18, 1988). Judge Carpeneti did not, however, include any legal analysis in his order, and one cannot determine the reasoning underlying it.

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no argument that the commission's express statutory authority to suspend the transfer of permits temporarily appears limited to that appearing in AS 16.43.960(c) and 16.43.970(d) and (e). Under the express language of those statutes, the commission's authority to suspend transfers is triggered only by (1) the initiation of administrative proceedings before the commission relating to the revocation, suspension, or transfer of entry permits as a result of a person providing false information to the commission or a charge that the permit holder violated a provision of AS 16.43; or (2) a suspension of the permit.

While the commission does not have the express statutory authority to suspend a limited entry permit temporarily pending the outcome of a criminal prosecution in court, the same result might be reached through judicial imposition of conditions on the release of the permit holder pending the outcome of the criminal prosecution. AS 12.30.020(a) provides that a person charged with an offense shall

be ordered released pending trial on the person's personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the offense is an unclassified felony or class A felony or unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required, or will pose a danger to other persons and the community.

The offenses giving rise to judicial authority to suspend an entry permit are misdemeanors, so a person charged with one of those offenses would appear to be entitled to be released on his or her own recognizance or upon execution of an unsecured appearance bond unless the judicial officer finds either that release of the person will not assure his or her appearance or will pose a danger to other persons in the community.

The courts, however, appear to construe liberally their authority to impose additional conditions on the release of criminal defendants. Under AS 12.30.020(b)(6), in ordering a defendant to be released pending trial, the court may "impose any . . . condition considered reasonably necessary to assure the defendant's appearance as required and the safety of other persons and the community." An order imposing a condition of release is subject to appellate review under AS 12.30.030(b). The standard on review is whether the court abused its discretion.

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The Supreme Court considered the issue of appropriate conditions of bail in Martin v. State, 517 P.2d 1389, 1398 (1974), and concluded that "trial judges have wide latitude in imposing suitable conditions for prehearing release, other than the denial of bail." The issue of bail conditions was also discussed in Gilbert v. State, 540 P.2d 485, 486 (1975):

Although he may not deny bail to an accused, prior to conviction, the trial judge can consider danger to the community as a factor in assessing the amount of bail or fixing the terms of a conditional release. He is in a far better position than an appellate court to assess the evidence and to determine, in the first instance, what alternatives are available, and the amount of bail that should be required.

Courts in Alaska impose a wide variety of bail conditions, and tailor the conditions to the facts of a particular case. For example, a court in an embezzlement case may order a defendant not to transfer funds or sell property while the case is pending. In a case where forfeiture of a motor vehicle is a possible penalty for driving while intoxicated, a court may order a defendant to give the title to the motor vehicle alleged to have been involved in the offense to the court and not to transfer title to the vehicle while the case is pending. 2/

Under AS 16.05.710, a possible penalty for a first or second violation of AS 16.05.440 -- 16.05.690 or a federal or state commercial fishing statute or regulation is suspension of a commercial fishing license or limited entry permit. Suspension is a mandatory penalty for a third or subsequent conviction of the above-listed offenses, or for any violation of AS 11.46.120 -- 11.46.130 in which the property is commercial fishing gear. After a limited entry permit is suspended under AS 16.05.710, a permit may not be transferred or sold.

It would be possible for a person to avoid the penalty provisions of the statute relating to permit suspension by transferring the permit prior to conviction. In this context, we believe a court has the authority to suspend transferability of a limited entry permit as a condition of bail pending trial.

2/ Forms of notice of forfeiture, acknowledgment of conditions, and order for this type of bail condition are attached.

Bruce Twomley, Chairman, CFEC
Rich Listowski, Commissioner, CFEC
Phil Smith, Commissioner, CFEC
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We realize that the foregoing conclusions leave open the possibility that the transfer of a limited entry permit pending a criminal prosecution may preclude the sentencing judge, following conviction, from imposing one of the penalties authorized by the legislature -- i.e., suspension of the convicted defendant's permit under AS 16.05.710(a) -- if a suspension on transfer is not ordered as a condition of bail. At the same time, there is no express statutory basis for administratively suspending the transferability of a permit pending a criminal prosecution, although the legislature has authorized suspension of transferability during the pendency of administrative proceedings (AS 16.43.960(c)), following the charging of a violation of AS 16.43 (AS 16.43.970(d)), during any period of suspension under AS 16.05.710(a) following conviction (see AS 16.05.710(c)), or, without the consent of the commission, during any other period of suspension. (See AS 16.43.970(e)). Moreover, the court can guard against such a possibility by suspending transfer of the permit as a condition of release pending trial.

To the extent that our advice with respect to administrative suspensions of transfer by the commission conflicts with the intent of the legislature, the legislature is free to make appropriate statutory amendments. If you believe such amendments would be desirable, we suggest that you make such a recommendation to the legislature pursuant to your authority in AS 16.43.980(a).

We hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

GTK:d1m
Attachments [3]

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 JOHN DOE)
)
 Defendant.)
)
 _____)
 Case No. 1JU-S89-0000

NOTICE OF INTENT TO FORFEIT MOTOR VEHICLE

The State of Alaska notifies the court and the defendant in the above-captioned case that upon the defendant's conviction for the crime of driving while intoxicated as charged in this case, the State will move, pursuant to AS 28.35.036, to forfeit the motor vehicle used by the defendant in the commission of this crime.

Year, Make and Model of Vehicle:

Vehicle License No.:

Vehicle Identification No. (V.I.N.):

DATED at Juneau, Alaska December 30, 1988.

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: _____
Laurie H. Otto
Assistant Attorney General

NOTICE OF INTENT TO FORFEIT

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 JOHN DOE)
)
 Defendant.)
)
 _____)
 Case No. 1JU-S89-0000

ACKNOWLEDGEMENT OF CONDITIONS OF RELEASE

I hereby acknowledge that, as a condition of my release on bail pending trial on the criminal charges in this case, the court has ordered that I may not drive or operate a motor vehicle. I acknowledge that the court has ordered me to give the court within 48 hours the title to the motor vehicle alleged to have been involved in the commission of the offense with which I am charged. I acknowledge that the court has ordered me not to sell or attempt to sell or transfer title to this vehicle while the above-captioned case is pending.

Year, Make and Model of Vehicle:

Vehicle License No.:

Registered Owner(s) of Vehicle:

Vehicle Identification No. (V.I.N.):

I understand that if I willfully fail to appear in court as ordered, or if I drive or operate a motor vehicle while this

case is pending, the court will order that the vehicle listed above be permanently forfeited to the state and that the title will be turned over to the state.

SIGNED, at Juneau, Alaska this _____ day of _____, 19____.

Defendant

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 JOHN DOE)
)
 Defendant.)
)
 _____)
 Case No. 1JU-S89-0000

ORDER OF CONDITIONS OF RELEASE

This matter having come before the court on the State's Notice of Intent to Forfeit Motor Vehicle, and the court being fully advised of the relevant facts,

IT IS ORDERED that, as a condition of his release on bail pending trial on the criminal charges in this case, the defendant shall comply with the following restrictions:

1. Defendant may not drive or operate a motor vehicle.
2. Defendant must turn in to the court no later than _____, 19____ the title to the motor vehicle alleged to have been involved in the commission of the offense with which he is charged.
3. Defendant shall not sell or attempt to sell or transfer title to the vehicle described below while the above-captioned case is pending.

Year, Make and Model of Vehicle:

ORDER

Vehicle License No.:

Registered Owner(s) of Vehicle:

Vehicle Identification No. (V.I.N.):

DATED at Juneau, Alaska this _____ day of _____,
19____.

DISTRICT COURT JUDGE

ORDER



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

15 April 1989

Representative Peter Goll
Representative Max F. Gruenberg, Jr.
Co - Chair, House Judiciary Committee
Room 122
Capitol Building
Juneau, AK. 99811

RE: Sectional Analysis of Proposed Judiciary Committee
Substitute for CSHB 201 (Res).

Greetings Gentlemen:

Upon advise from members of House Resources Committee, I have had staff meet with members of the fishing industry user groups and legal counsel and prepare revisions to CSHB 201 (Res), passed by that committee March 31, 1989. The attached draft incorporates these changes. I would encourage your discussion and input in realizing a bill that satisfies concerns you may have on the issue. Thank you.

*SEC 1. AS 16.05.710(a) has been rewritten to include only misdemeanor or felony convictions, this precludes the unwarranted suspension of a fishing permit for minor regulation violations, concerns raised by Resource committee members and user group representatives. Instead of limiting to merely misdemeanor convictions, it was suggested by the Department of Law that felonies be included, in the event that one may have had very serious fishing violations in the past, although, it is recognized that most violations are misdemeanor by nature.

Also, we have included a "forgiveness" provision, similar to the drunk driving forgiveness clause, that allows for behavior modification improvements. If a permit holder does not have a fishing violation, as described in the bill, within a ten year period, his/her prior conviction will be forgiven and not included toward incremental accumulation. If however, the violation is within the ten year clock, each incremental conviction will bring the permit holder closer to the possible three year suspension of one or more fishing privileges or licenses. This revision was suggested by members of the Resource committee and user group representatives.

*SEC. 2. AS 16.05.710(b) has been revised to read: "one or more" instead of "any or all." This was an improvement in language as suggested by the Department of Law. In addition, after discussion with the Department of Law, we increased the scope of past violations to include convictions from other jurisdictions. As a result, a new entrant into the State of Alaska fisheries cannot merely dismiss his/her past fishing convictions by beginning anew here. Convictions for fishing theft violations continue to run with the person, even if these prior violations occurred in another jurisdiction. In addition, please note, the ten year forgiveness clause does not apply to theft violations. It was our understanding, from testimony before the Resources and representatives from the industry user groups, that no sympathy ought to be forwarded for such devious transgressions. We agree.

*SEC. 3. AS 16.05.710(c) is amended to prevent transfers of limited entry permits while prosecution for fishing violations, in which that permit may be suspended, are pending, without approval by the judge in which the prosecution is pending. This is the original and most significant intent of the proposed bill. In passing suspension language last year, the Legislature inadvertently overlooked the possibility that a permit holder could transfer his/her permit prior to actual suspension, thereby thwarting the efforts of public safety and the Legislature itself, in achieving compliance with existing laws. An actual court decision against the State exposed this oversight and HB201 was crafted to close the loophole. Please find in your packet, necessary support documents to support our contention.

*SEC. 4. AS 16.05.710(d) is basically definitions of terms or phrases used throughout the proposed text. Efforts were made to diminish ambiguities and utilize systematic terminology throughout.

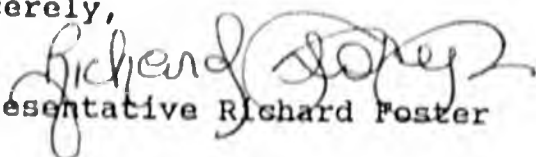
*SEC. 5. AS 16.43.170(f) is an addition to update limited entry transfer provisions so as to include the effects of AS 16.05.710(c).

*SEC. 6. This is the effective date clause and as such stipulates that cases from the date of passage and forward are effected by the bill.

If you have questions, please speak with myself or John Walsh, legislative staff in my office. Mr. David Ingram, Hearing Officer for the Commercial Fisheries Entry Commission, has informed Mr. Walsh that he will be out of town on April 17, but if requested, would be available at a later time if the committee so desires.

Your time and effort on this proposed legislation is greatly appreciated. Thank you.

Sincerely,


Representative Richard Foster

Encl.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Additional penalties for violation of Comm. Fishing Laws
 Sponsor: Roster, Jacko, Goll, Menard
 Requestor: House Resources Committee

Agency Affected: Dept. of Fish and Game
 BRU: Commercial Fisheries (Limited) Entry Commission
 Components: Program Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

Prepared by: David A. Ingram Phone: 586-3456
 Division: Commercial Fisheries (Limited) Entry Commission Date: 3-13-89
 Approved by Commissioner: *[Signature]* Date: 3-13-89
 Agency: Commercial Fisheries (Limited) Entry Comm.

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



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

16861 9 1 89
MAR 15 1989

DEPARTMENT Fish and Game	DIVISION Commercial Fisheries	BILL NUMBER HB 201	SPONSOR Representative Foster
SHORT TITLE OF BILL Transfer Entry Permit Pending Charges			
DEPARTMENT POSITION Neutral			
PREPARED BY Robert C. Clasby	DATE 3/6/89	COMMISSIONER'S SIGNATURE <i>Robert C. Clasby</i>	DATE 3-13-89

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Commercial Fisheries Entry Commission Public Safety	CONSTITUENT GROUP(S) AFFECTED BY BILL Commercial Fishermen
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT
Unknown. SB 164 contains statutory amendments similar to the subject bill.

ANALYSIS OF BILL PROGRAM EFFECTS
Passage of this bill should have no direct affects on the division's programs.

AMENDMENTS PROPOSED
None

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Transfer Entry Permit Pending
Charges
Sponsor: Representative Foster
Requestor: _____

Agency Affected: Fish and Game
BRU: Commercial Fisheries
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Robert C. Clasby
Division: Commercial Fisheries
Approved by Commissioner: Gene W. Ellensworth
Agency: Fish and Game

Phone: 465-4210
Date: 3/6/89
Date: 3-13-89

Distribution (by preparer):

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

MAR 17 1989

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST
SUITE 400
FAIRBANKS, ALASKA 99701-4679

March 20, 1989

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE (907) 465-3600

The Honorable Richard Foster
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Re: HB 201

Dear Representative Foster:

You asked for a legal review of a proposed sponsor substitute for House Bill ("HB") 201, relating to "additional penalties for violation of commercial fishing laws and for theft of commercial fishing gear."

We have reviewed the proposed sponsor substitute, and conclude that it presents no legal problems.

We also have looked at Senate Bill ("SB") 164, relating to "additional penalties for violation of commercial fishing laws and forfeiture of limited entry permits and to transfer limited entry permits to avoid forfeiture." We have some technical drafting concerns with that measure, which we have transmitted to the chair of the Senate Resources Committee (copy enclosed), but believe it presents no constitutional or other insurmountable legal problems. We note, however, that it does go substantially farther in terms of imposing significantly greater penalties for commercial fishing violations than either HB 201 or the proposed sponsor substitute. As a consequence, it may be more controversial in terms of obtaining ultimate passage.

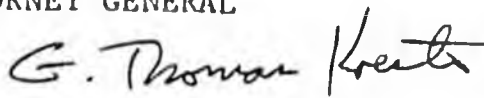
The Honorable Richard Foster

March 20, 1989
Page 2

We hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

GTK:d1m
Enc.

cc w/o enc.: Representative Davidson
Representative Menard
House Resources Committee

Senator Fahrenkamp
Chairman of the Senate Resources Committee

Senator Zharoff

Bob Evans
Assistant Chief of Staff
Legislative Liaison
Office of the Governor

Bruce Twomley, Chairman
Commercial Fisheries Entry Commission

MEMORANDUM

STATE OF ALASKA

TO: House Resources Committee

DATE: March 28, 1989

FILE NO:

TELEPHONE NO:

FROM: David A. Ingram *DAI*
Managing Hearing Officer
Commercial Fisheries
Entry Commission
M/S 0302
Tel. 465-4081

SUBJECT: CS for House Bill
201/Penalties for
Fishing Violations

Herewith is a section by section analysis of the effect of Committee Substitute for House Bill 201, an act relating to additional penalties for violation of commercial fishing laws and for theft of commercial fishing gear.

Section 1

This section eliminates potentially confusing language in the act; broadens the court's abilities to suspend a violator's fishing privileges; and adopts language that is consistent with language used elsewhere in the act.

Section 2

This section makes it clear that a person's commercial fishing licenses as well as fishing privileges may be suspended if he steals another's fishing gear.

Section 3

This is the most critical part of the bill. It provides that a person who is facing potential suspension of his commercial fishing permits under AS 16.05.710(a) or (b) may not permanently transfer away his permits unless the trial court allows him to do so and further provides that if such a transfer is completed without the court's permission, it is void.

Section 4

This section provides definitions of "commercial fishing law" and "commercial fishing privileges," which are missing from the act as it now exists and also gives better definitions for the other terms defined.

MEMORANDUM**STATE OF ALASKA**

TO: House Resources Committee

DATE: March 28, 1989

FILE NO:

FROM: David A. Ingram *DAI*
Managing Hearing Officer
Commercial Fisheries
Entry Commission
M/S 0302
Tel. 465-4081

TELEPHONE NO:

SUBJECT: CS for House Bill
201/Penalties for
Fishing Violations

Herewith is a section by section analysis of the effect of Committee Substitute for House Bill 201, an act relating to additional penalties for violation of commercial fishing laws and for theft of commercial fishing gear.

Section 1

This section eliminates potentially confusing language in the act; broadens the court's abilities to suspend a violator's fishing privileges; and adopts language that is consistent with language used elsewhere in the act.

Section 2

This section makes it clear that a person's commercial fishing licenses as well as fishing privileges may be suspended if he steals another's fishing gear.

Section 3

This is the most critical part of the bill. It provides that a person who is facing potential suspension of his commercial fishing permits under AS 16.05.710(a) or (b) may not permanently transfer away his permits unless the trial court allows him to do so and further provides that if such a transfer is completed without the court's permission, it is void.

Section 4

This section provides definitions of "commercial fishing law" and "commercial fishing privileges," which are missing from the act as it now exists and also gives better definitions for the other terms defined.

BRISTOL BAY DRIFTNETTERS' ASSOCIATION

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April 18, 1989

RECEIVED APR 18 1989

Representative Max Gruenberg, Co-Chair
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Gruenberg:

Please allow us to call you attention to Section 1 of CSHB201, which is presently before House Judiciary.

We have had the opportunity to review a draft revision of this bill which has been submitted for the consideration of the Committee by Representative Foster.

Our concerns with CSHB201 relate only to Section 1 and these are adequately addressed by Representative Foster's draft. We are please to support it and urge its passage.

Our support is based upon this version's 1) exclusion of strict liability convictions from those which contribute to mandatory suspension of an individual's fishing privileges, and 2) its provision for a ten-year phase out period for accumulated convictions.

To better explain our position, I am attaching a copy of the text of an article on this matter which will appear this week in our Newsletter, which will be mailed to all Bristol Bay Drift Permit holders.

The 1988 revision of this section somehow took place without widespread exposure to most members of the fishing industry. We do not believe that most fishermen are aware at this time of what is contained in Sec. 16.05.710 as it now stands.

This opportunity for input on behalf of the Bristol Bay Driftnetter's Association is greatly appreciated. We thank you for your consideration.

Sincerely,



Dean Paddock
Executive Director

will be personally accompanied while hunting by a person who is qualified under the terms of (a) of this section. A person who falsifies the required affidavit is guilty of perjury under AS 11.56.200.

(c) [Repealed, § 27 ch 71 SLA 1986.]

(d) A nonresident who violates (a) of this section, or who fails to furnish an affidavit under (b) or (c) of this section, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$5,000, or by both.

(e) An applicant for a nonresident big game tag for the taking of moose or caribou shall first furnish to the state, on a form provided by the state, an affidavit showing where the applicant will be hunting and what guiding, transportation, or other big game hunting services the applicant will be employing. A person who falsifies an affidavit under this subsection is guilty of perjury under AS 11.56.200. (§ 1 ch 36 SLA 1967; am §§ 39, 40 ch 59 SLA 1982; am § 1 ch 74 SLA 1982; am § 1 ch 111 SLA 1984; am §§ 24, 25, 27 ch 71 SLA 1986; am §§ 9, 10 ch 160 SLA 1988)

Effect of amendments. — The 1988 amendment, effective June 17, 1988, inserted "or (e)" in subsection (d) and added subsection (e).

Article 4. Licensing of Commercial Fishing Crewmembers and Vessels.

Section 710. Suspension of commercial license and entry permit	Section 723. Misdemeanor commercial fishing penalties
720. [Repealed]	
722. Strict liability commercial fishing penalties	

Sec. 16.05.710. Suspension of commercial license and entry permit. (a) A person convicted of a misdemeanor for violating AS 16.05.440 — 16.05.690 or a federal or state commercial fishing statute or regulation is, in addition to other penalties provided by law, subject to the following penalties:

(1) upon a first or second conviction the court may suspend, for a period of not more than one year,

(A) the person's commercial fishing license and the right to obtain a limited entry permit; or

(B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license; and

(2) upon a third or subsequent conviction the court shall suspend, for a period of not more than three years,

(A) the person's commercial fishing license and the right to obtain a limited entry permit; or

(B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license.

(b) Upon a first conviction of a person for a violation of AS 11.46.120 — 11.46.130 in which the property is commercial fishing gear as defined in AS 16.43.990, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for one year. Upon a second or subsequent conviction, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for two years.

(c) During the period for which a limited entry permit is suspended under (a) of this section a permit card may not be issued and the permit may not be transferred or sold.

(d) In this section

(1) "commercial fishing license" includes a crew member license;

(2) "limited entry permit" includes an interim use permit. (§ 11 art III ch 94 SLA 1959; am § 1 ch 112 SLA 1961; am § 1 ch 75 SLA 1966; am § 3 ch 73 SLA 1986; am §§ 1, 2 ch 46 SLA 1988)

Effect of amendments. — The 1988 amendment, effective May 25, 1988, repealed and reenacted subsection (a), which formerly related to the same subject matter, and added subsections (c) and (d). SLA 1988, which amended this section, provides: "Notwithstanding the provisions of this Act, in a case pending on May 25, 1988 involving a commercial fishing violation that occurred before May 25, 1988, the court shall apply the law that was in effect on the date the violation occurred."

Editor's notes. — Section 6 of ch. 46,

Sec. 16.05.720. Penalties. [Repealed, § 5 ch 46 SLA 1988.]

Sec. 16.05.722. Strict liability commercial fishing penalties. (a) A person who without any culpable mental state violates AS 16.05.440 — 16.05.690, or a regulation of the Board of Fisheries or the department governing commercial fishing, is guilty of a violation and upon conviction is punishable by a fine of not more than

(1) \$3,000 for a first conviction; and

(2) \$6,000 for a second or subsequent conviction.

(b) In addition, the court shall order forfeiture of any fish, or its fair market value, taken or retained as a result of the commission of the violation. For purposes of this subsection, it is a rebuttable presumption that all fish found on board a fishing vessel used in or in aid of a violation, or found at the fishing site, were taken or retained in violation of AS 16.05.440 — 16.05.690 or a commercial fisheries regulation of the Board of Fisheries or the department. It is the defendant's burden to show by a preponderance of the evidence that fish on board or at the site were lawfully taken and retained.

(c) A person charged with a violation under this section is entitled to a trial by court but not by jury, and is not entitled to representation at public expense. (§ 3 ch 46 SLA 1988)

Effective dates. — Section 7, ch. 40, S.L.A. 1988, makes this section effective May 25, 1988, in accordance with AS 01.10.070(c).

Editor's notes. — Section 6 of ch. 40, S.L.A. 1988, which enacted this section, pro-

vides "Notwithstanding the provisions of this Act, in a case pending on May 25, 1988 involving a commercial fishing violation that occurred before May 25, 1988, the court shall apply the law that was in effect on the date the violation occurred."

Sec. 16.05.723. Misdemeanor commercial fishing penalties.

(a) A person who negligently violates AS 16.05.440 — 16.05.690, or a regulation of the board of fisheries or the department governing commercial fishing, is guilty of a misdemeanor and in addition to punishment under other provisions in this title, including AS 16.05.195 and 16.05.710, is punishable upon conviction by a fine of not more than \$15,000 or by imprisonment for not more than one year, or by both. In addition, the court shall order forfeiture of any fish, or its fair market value, taken or retained as a result of the commission of the violation, and the court may forfeit any vessel and any fishing gear, including any net, pot, tackle, or other device designed or employed to take fish commercially, that was used in or in aid of the violation. Any fish, or its fair market value, forfeited under this subsection may not also be forfeited under AS 16.05.195. For purposes of this subsection, it is a rebuttable presumption that all fish found on board a fishing vessel used in or in aid of a violation, or found at the fishing site, were taken or retained in violation of AS 16.05.440 — 16.05.690 or a commercial fisheries regulation of the board of fisheries or the department, and it is the defendant's burden to show by a preponderance of the evidence that fish on board or at the site were lawfully taken and retained.

(b) If a person is convicted under this section of one of the following offenses, then, in addition to the penalties imposed under (a) of this section, the court may impose a fine equal to the gross value of the fish found on board or at the fishing site at the time of the violation:

- (1) commercial fishing in closed waters;
- (2) commercial fishing during a closed period or season;
- (3) commercial fishing with unlawful gear, including a net, pot, tackle, or other device designed or employed to take fish commercially; or
- (4) commercial fishing without a limited entry permit holder on board if the holder is required by law or regulation to be present.

(c) Upon a third misdemeanor conviction within a period of 10 years for an offense listed in (b) of this section or any combination of offenses listed in (b) of this section, the court shall impose, in addition to any penalties imposed under (a) of this section, a fine equal to three times the gross value of the fish found on board or at the fishing site at the time of the offense, or a fine equal to \$10,000, whichever is greater. (§ 3 ch. 46 S.L.A. 1988)

Effective dates. — Section 7, ch. 40, S.L.A. 1988, makes this section effective May 25, 1988, in accordance with AS 01.10.070(c).

Editor's notes. — Section 6 of ch. 40, S.L.A. 1988, which enacted this section, pro-

vides "Notwithstanding the provisions of this Act, in a case pending on May 25, 1988 involving a commercial fishing violation that occurred before May 25, 1988, the court shall apply the law that was in effect on the date the violation occurred."

Article — Miscellaneous Provisions.

Section	Section
786. Duty of big game transporters to report violations	815. Confidential nature of custom reports and records
787. Registration of big game hunting base camps, cabins, and lodges	

Sec. 16.05.786. Duty of big game transporters to report violations. (a) A person who transports a big game hunter to or from the field for compensation, or with the intent or an agreement to receive compensation, shall promptly report to the Department of Public Safety, division of fish and wildlife protection, and in no event later than 30 days, a violation of a state fish, game, or guiding statute or regulation that the person reasonably believes was committed by a client or employee of the person.

(b) A person who violates this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$2,000 or by imprisonment for not more than one year, or by both. (§ 11 ch. 160 S.L.A. 1988)

Effective dates. — Section 16 ch. 160, June 17, 1988, in accordance with AS S.L.A. 1988, makes this section effective 01.10.070(c)

Sec. 16.05.787. Registration of big game hunting base camps, cabins, and lodges. (a) [Effective until June 30, 1989] A person who is not licensed as a guide under AS 08.54 may accompany or be present with a hunter at a base camp, cabin, or permanent lodge in connection with a big game hunt and for compensation only if the person has not been convicted of violating a game law or regulation during the preceding five years and has furnished an affidavit to the Department of Public Safety, division of fish and wildlife protection, at least two weeks in advance. A person who is not licensed as a guide may not register more than two base camps. The affidavit must be signed by the person and must provide the following information:

- (1) the specific location of the camp, cabin, or lodge;
- (2) the number of big game hunters in each party that will use the camp, cabin, or lodge; and
- (3) the kinds or species of big game that will be hunted.

(b) [Effective until June 30, 1989] A person who furnishes an affidavit under (a) of this section shall notify the Department of Public Safety of the amount and kinds or species of big game taken by each

Quoted in *Anderson v. State, Comm. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2598 (File No. 8107), 654 P.2d 1120 (1982).

Cited in *Winklerham v. State, Comm. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2807 (File No. 8780), 690 P.2d 1118 (1984).

Article 2. Entry Permit System.

Section

149. Permit required.

150. Terms and conditions of entry permit, annual renewal.

Section

149. Fees.

150. Transfer of entry permits.

160. Emergency transfers.

Sec. 16-43-140. Permit required. (a) After January 1, 1974, a person may not operate gear in the commercial taking of fishery resources without a valid entry permit or a valid interim use permit, issued by the commission.

(b) A permit is not required of a crewmember or other person assisting in the operation of a unit of gear engaged in the commercial taking of fishery resources as long as the holder of the entry permit or the interim use permit for that particular unit of gear is at all times present and actively engaged in the operation of the gear.

(c) A person may hold more than one interim use or entry permit issued or transferred under this chapter only for the following purposes:

- (1) fishing more than one type of gear;
- (2) fishing in more than one administrative area;
- (3) harvesting particular species for which separate interim use or entry permits are issued. (1 ch 79 SLA 1973)

Cross references. — For penalties for violation of subsection (a) of this section, see AS 16-43-97(g) and (h).

NOTES TO DECISIONS

Constitutionality. — The entry restrictions of the Limited Entry Act violate neither § 1, art. VIII, nor § 1, art. I, of the state constitution. *State v. Ostrowski*, Sup. Ct. Op. No. 2702 (File Nos. 6330, 6373), 687 P.2d 1184 (1984), appeal dismissed, 467 P.2d 1201, 104 S. Ct. 2479, 81 L. Ed. 2d 339 (1984).

Inheritability of permits. — Except in the limited circumstance of AS 16-43-150(h), limited entry permits are to be treated as ordinary personal property for inheritance purposes. *Wilk v. Wilk*, Sup. Ct. Op. No. 2822 (File No. 7765), 681 P.2d 336 (1984).

Applied in *Isakson v. Rickey*, Sup. Ct.

Op. No. 1267 (File No. 2550), 651 P.2d 359 (1978).

Quoted in *Commercial Fisheries Entry Comm'n v. Apokedah*, Sup. Ct. Op. No. 2011 (File No. 4064), 706 P.2d 1255 (1984); *Smiley v. State*, Sup. Ct. Op. No. 3140 (File No. 6406), 728 P.2d 227 (1986).

Stated in *Ross v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2515 (File No. 5361), 647 P.2d 154 (1982); *Nielsen v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2808 (File No. 6495), 690 P.2d 493 (1984).

Cited in *Estate of Smith v. State*, Sup. Ct. Op. No. 2428 (File No. 5314), 635 P.2d 465 (1981).

Sec. 16-43-150. Terms and conditions of entry permit; annual renewal. (a) Each entry permit authorizes the permittee to operate a unit of gear within a specified fishery.

(b) The holder of an entry permit shall have the permit in possession at all times when engaged in the operation of gear for which it was issued.

(c) Each entry permit is issued for a term of one year and is renewable annually.

(d) Failure to renew an entry permit for a period of two years from the year of last renewal results in a forfeiture of the entry permit to the commission, except as waived by the commission for good cause. An entry permit may not be renewed until the fees for each preceding year during which the entry permit was not renewed are paid. However, failure to renew an entry permit in a year in which there is an administrative closure for the entire season for a specific fishery is good cause not to renew the entry permit. The commission shall waive the payment of fees for that year.

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

(f) Except for permits which are not transferable under AS 16-43-170(c) or (e), an entry permit survives the death of the holder.

(g) Except as provided in AS 16-10-331 — 16-10-337, 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.

(h) Upon the death of an entry permit holder, the permanent permit shall be transferred by the commission directly to the surviving spouse by right of survivorship unless the deceased holder has expressed a contrary intent in a will that is probated. When no spouse survives, the rights of the decedent pass as part of the decedent's estate. Except as provided in AS 16-10-333 — 16-10-337, AS 44-81-210, and 44-81-230 — 44-81-250, the permit is exempt from the claims of creditors of the estate. (1 ch 79 SLA 1973; am §§ 1, 2 ch 73 SLA 1977; am § 6 ch 83 SLA 1978; am § 1 ch 51 SLA 1980, am § 2 ch 47 SLA 1981; am §§ 7 — 9 ch 145 SLA 1984; am § 6 ch 21 SLA 1985; am §§ 1, 2 ch 22 SLA 1985)

Effect of amendments. — The 1984 amendment substituted "fishery" for "administrative area" in subsection (a), added "Except for permits which are not transferable under AS 16-43-170(c) or (e)" to the beginning of subsection (f), substituted the language beginning "the deceased holder" for a "contrary intent to

manifested" at the end of the first sentence of subsection (h), and substituted "the decedent's estate" for "his estate" in the second sentence of subsection (h).

The first 1985 amendment in subsection (g) inserted ", AS 44-81-210(a)(2)", and deleted "in AS" preceding "44-81-230". The second 1985 amendment, in subsec-

tion (g) inserted "AS 44.81.210" in the introductory language and added "or on any condition requiring a subsequent transfer" at the end of paragraph (2) and added the last sentence of subsection (h).

Opinions of attorney general. — A

NOTES TO DECISIONS

Constitutionality. — The equal protection clause of § 1, art. I, of the state constitution is not violated by the permit transfer provisions of the Limited Entry Act. *State v. Ostrouky*, Sup. Ct. Op. No. 2702 (File Nos. 6336, 6337, 667 P.2d 1184 (1983)), appeal dismissed, 467 U.S. 1201, 104 S. Ct. 2370, 81 L. Ed. 2d 339 (1984).

Free transferability of entry permits violates neither § 3, art. VIII nor § 15, art. VIII of the state constitution. *State v. Ostrouky*, Sup. Ct. Op. No. 2702 (File Nos. 6336, 6337, 667 P.2d 1184 (1983)), appeal dismissed, 467 U.S. 1201, 104 S. Ct. 2370, 81 L. Ed. 2d 339 (1984).

Purpose of subsection (g). — Subsection (g) of this section resulted from a legislative aim to avoid subjecting fishermen to "economic coercion" as a result of holding a valuable license to participate in the fishery; its effect is to allow fishermen to take advantage of the value of their permits if they no longer wish to participate in the fishery, but to prevent the forced loss of livelihood that would result from court-ordered sales of permits. *Brown v. Baker*, Sup. Ct. Op. No. 2872 (File No. 7428), 688 P.2d 943 (1984).

Security interest in entry permit illegal. — Encumbrance or reservation of a security interest in a limited entry fishing permit is illegal under subsection (g) of

limited entry fishing permit does not have the status of a property right such that otherwise constitutional legislative changes to the nature of a limited entry permit would require the payment of compensation. August 6, 1979 Op. Atty. Gen.

this section. *Brown v. Baker*, Sup. Ct. Op. No. 2872 (File No. 7428), 688 P.2d 943 (1984).

Enforcement of past due child support. — Expressions of legislative intent in combination with the clear provisions of the 1982 Exemptions Act are persuasive that the legislature meant what it said in permitting a parent with past due child support claims to execute against an otherwise exempt limited entry permit. *Anderson v. Anderson*, Sup. Ct. Op. No. 3172 (File No. 81720), P.2d (1987).

Transfer of decedent's permit. — A bequest of "all personal property" supplies the contrary intent necessary to exempt a limited entry permit from the apportion "by right of survivorship" inheritance scheme of subsection (h) of this section. *Wik v. Wik*, Sup. Ct. Op. No. 2822 (File No. 7765), 681 P.2d 336 (1984).

A deceased permit holder's "contrary intention" under subsection (h) of this section is to be discerned through the application of Title 13 will provisions, including will construction statutes. *Wik v. Wik*, Sup. Ct. Op. No. 2822 (File No. 7765), 681 P.2d 336 (1984).

Stated in *Wik v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2431 (File Nos. 4588, 4629), 636 P.2d 897 (1981).

Sec. 16.43.160. Fees. (a) The commission shall establish annual fees for the issuance and annual renewal of entry permits or interim-use permits. The amount paid by a permit holder under the provisions of AS 16.05.480 shall be credited by the commission toward payment of the fee charged under this section. No more than one credit may be obtained annually by a person.

(b) Annual fees established under this section shall be no less than \$10 and no more than \$750 and shall reasonably reflect the different rates of economic return for different fisheries. The amount of an annual fee for a nonresident shall be three times the amount of the annual fee for a resident.

(c) The resident holder of an entry permit or interim-use permit who has a family income falling within the federal poverty guidelines,

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

(d) The commission may charge interest at a rate not to exceed the legal rate of interest established in AS 45.45.010 on fees more than 60 days overdue. (§ 1 ch 79 SLA 1973; am § 15 ch 105 SLA 1977; am § 4 ch 123 SLA 1978; am § 2 ch 70 SLA 1982; am §§ 3, 4 ch 22 SLA 1985)

Effect of amendments. — The 1985 amendment to subsection (c) deleted "net" preceding "family income" and substituted "federal" for "Federal Community Services Administration" and added subsection (d).

Sec. 16.43.170. Transfer of entry permits. (a) Except as provided in AS 16.10.333 — 16.10.338 and in AS 44.81.230 — 44.81.250, entry permits and interim-use permits are transferable only through the commission as provided in this section and AS 16.43.180 and under regulations adopted by the commission.

(b) Except as provided in (c) and (e) of this section, the holder of an entry permit may transfer the permit to another person or to the commission upon 60 days notice of intent to transfer under regulations adopted by the commission. No sooner than 60 days nor later than 12 months from the date of notice to the commission, the holder of an entry permit may transfer the permit. If the proposed transferee, other than the commission, can demonstrate the present ability to participate actively in the fishery and the transfer agreement does not violate any provision of AS 16.43 or regulations adopted thereunder, the commission shall approve the transfer and reissue the entry permit to the transferee provided that neither party is prohibited by law from participating in the transfer.

(c) If the number of outstanding entry permits for a fishery is greater than the optimum number of entry permits established under AS 16.43.290 — 16.43.300, the holder of an entry permit who qualified for that entry permit in a priority classification designated under AS 16.43.250(c) may transfer the permit only to the commission. The transfer to the commission shall be made under the buy-back provisions of AS 16.43.310 — 16.43.320.

(d) [Repealed, § 9 ch 73 SLA 1977.]

(e) Before the determination, under AS 16.43.290 and 16.43.300, of the optimum number of entry permits for a fishery, the holder of an entry permit who qualified for that entry permit in a priority classification designated under AS 16.43.250(c) may not transfer that permit unless the commission estimates that the optimum number for that fishery will be equal to or greater than the number of outstanding entry permits and interim-use permits. (§ 1 ch 79 SLA 1973; am § 1 ch 126 SLA 1974; am §§ 3, 4, 9 ch 73 SLA 1977; am § 7 ch 83 SLA 1978; am § 13 ch 72 SLA 1979; am § 2 ch 51 SLA 1980; am §§ 3, 4 ch 47 SLA 1981; am § 10 ch 145 SLA 1984)

Effect of amendments. — The 1984 amendment, in subsection (b), reworded the first and second sentences to remove personal pronouns, substituted "demonstrate the present ability" for "establish present ability" and inserted "and the

transfer agreement does not violate any provisions of AS 16.43 or regulations adopted thereunder" in the last sentence, and added the language beginning "provided that neither party is prohibited" at the end of the subsection.

NOTES TO DECISIONS

Constitutionality. — The equal protection clause of § 1, art. I, of the state constitution is not violated by the permit transfer provisions of the Limited Entry Act. *State v. Ostrosky*, Sup. Ct. Op. No. 2702 (File Nos. 6339, 6373), 667 P.2d 1184 (1983), appeal dismissed, 467 U.S. 1201, 104 S. Ct. 2379, 81 L. Ed. 2d 339 (1984).

Free transferability of entry permits violates neither § 3, art. VIII nor § 15, art.

VIII of the state constitution. *State v. Ostrosky*, Sup. Ct. Op. No. 2702 (File Nos. 6339, 6373), 667 P.2d 1184 (1983), appeal dismissed, 467 U.S. 1201, 104 S. Ct. 2379, 81 L. Ed. 2d 339 (1984).

Cited in *Isakson v. Riekey*, Sup. Ct. Op. No. 1267 (File No. 2559), 560 P.2d 359 (1976), *Hutter v. State*, Sup. Ct. Op. No. 2712 (File No. 6146), 668 P.2d 1343 (1983).

Sec. 16.43.180. Emergency transfers. (a) The commission shall adopt regulations providing for the temporary emergency transfer of entry permits and interim-use permits when illness, disability, death, required military or government service, or other unavoidable hardship prevents the permit holder from participating in the fishery. To alleviate hardship pending a final determination of the permit holder's eligibility for an entry permit, the commission shall adopt regulations providing for the temporary emergency transfer of an interim-use permit issued under AS 16.43.210(b).

(b) The commission shall adopt regulations providing for the temporary transfer of an entry permit upon the death of the permittee pending final disposition of the permit as a part of the permittee's estate. (§ 1 ch 79 SLA 1973; am § 5 ch 73 SLA 1977; am § 5 ch 123 SLA 1978)

NOTES TO DECISIONS

Quoted in *Wik v. Wik*, Sup. Ct. Op. No. 2822 (File No. 7765), 681 P.2d 336 (1984)

Sec. 16.43.182. Entry permit deductible as business expense. [Repealed, § 36 ch 14 SLA 1987.]

Article 3. Initial Issuance of Entry Permits.

Section	Section
200. Administrative areas	number of entry permits for initial issue
210. Interim-use permit, qualifications	
220. Terms and conditions of interim use permits	250. Standards for initial issue of entry permits
230. Designation of distressed fisheries	260. Application for initial issue of entry permits
240. Determination of the maximum	

Section
270. Initial issuance of entry permits

Sec. 16.43.200. Administrative areas. (a) The commission shall establish administrative areas suitable for regulating and controlling entry into the commercial fisheries. The commission shall make the administrative areas reasonably compatible with the geographic areas for which specific commercial fishing regulations are adopted by the Board of Fisheries.

(b) The commission may modify or change the boundaries of administrative areas when necessary and consistent with the purposes of this chapter. (§ 1 ch 79 SLA 1973; am § 30 ch 206 SLA 1975)

Sec. 16.43.210. Interim-use permit; qualifications. (a) Pending the establishment of the maximum number of entry permits under AS 16.43.240 and the issuance of entry permits under AS 16.43.270, the commission shall issue interim-use permits under regulations adopted by the commission for each fishery, to all applicants who can establish their present ability to participate actively in the fishery for which they are making application, except as provided under (c) of this section.

(b) Before the issuance of the maximum number of entry permits for a given fishery, the commission may issue an interim-use permit to an applicant who may later become eligible for an entry permit under AS 16.43.270.

(c) To the extent that the commissioner of fish and game authorizes it under AS 16.05.050(10), the commission may grant an interim-use permit to a person to engage in the commercial taking from a fishery on an experimental basis.

(d) The sustained yield management and economic health of the following fisheries is severely impaired as a result, among other factors, of too many units of gear participating in the commercial harvest:

- (1) Bristol Bay registration area — drift gillnet fishery;
- (2) Cook Inlet registration area — drift gillnet fishery;
- (3) Prince William Sound registration area — drift gillnet fishery.

(e) [Repealed, § 69 ch 6 SLA 1984.] (§ 1 ch 79 SLA 1973; am § 69 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment repealed former subsection (d), relating to 1974 interim use permits

NOTES TO DECISIONS

Commission's discretion in issuing permits is limited. — The Commercial Fisheries Entry Commission does not have the authority to issue interim-use permits whenever it believes, after balancing the various interests involved, that such an issuance would be equitable; the commission's discretion is limited to that which is outlined in AS 16.43.210 and 16.43.220. *Kalmakoff v. State, Com. Fisheries Entry Comm'n, Sup. Ct. Op. No. 2921 (File No. 7767), 697 P.2d 650 (1985).*

Once interim-use permit is issued pursuant to AS 16.43.210, that permit, if properly renewed, remains valid until a final determination is made. *Kalmakoff v.*

State, Com. Fisheries Entry Comm'n, Sup. Ct. Op. No. 2921 (File No. 7767), 697 P.2d 650 (1985).

Regulation held inconsistent with this section. — A Commercial Fisheries Entry Commission regulation providing that an applicant for an entry permit who is unsuccessful in superior court will not be issued an interim-use permit on further appeal was held inconsistent with this section. *Kalmakoff v. State, Com. Fisheries Entry Comm'n, Sup. Ct. Op. No. 2921 (File No. 7767), 697 P.2d 650 (1985).*

Cited in *Rose v. Commercial Fisheries Entry Comm'n, Sup. Ct. Op. No. 2515 (File No. 5361), 647 P.2d 151 (1982).*

Sec. 16.43.220. Terms and conditions of interim-use permits.

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

(b) [Repealed, § 9 ch 73 SLA 1977.]

(c) The holder of an interim-use permit must have the permit in possession at all times when engaged in the operation of the gear for which it was issued. (§ 1 ch 79 SLA 1973; am § 2 ch 126 SLA 1974; am § 9 ch 73 SLA 1977)

NOTES TO DECISIONS

Commission's discretion in issuing permits is limited. — The Commercial Fisheries Entry Commission does not have the authority to issue interim-use permits whenever it believes, after balancing the various interests involved, that such an issuance would be equitable; the commission's discretion is limited to that which is outlined in AS 16.43.210 and 16.43.220. *Kalmakoff v. State, Com. Fisheries Entry Comm'n, Sup. Ct. Op. No. 2921 (File No. 7767), 697 P.2d 650 (1985).*

Once interim-use permit is issued pursuant to AS 16.43.210, that permit, if properly renewed, remains valid until a final determination is made. *Kalmakoff v. State, Com. Fisheries Entry Comm'n, Sup. Ct. Op. No. 2921 (File No. 7767), 697 P.2d 650 (1985).*

"Final determination." — The "final determination" language of this section

and "appeals resolved" language of AS 16.43.270(c) should be congruent, as interim-use permits are issued under AS 16.43.210(b) expressly for the benefit of applicants under AS 16.43.270; the language of this section clearly refers to resolution by the Supreme Court of Alaska, an interpretation that is consistent with and supported by AS 16.43.270(c). *Kalmakoff v. State, Com. Fisheries Entry Comm'n, Sup. Ct. Op. No. 2921 (File No. 7767), 697 P.2d 650 (1985).*

A "final determination" within the meaning of this section refers to the determination of the final authority, which is the Supreme Court of Alaska. *Kalmakoff v. State, Com. Fisheries Entry Comm'n, Sup. Ct. Op. No. 2921 (File No. 7767), 697 P.2d 650 (1985).*

Regulation held inconsistent with this section. — A Commercial Fisheries

Entry Commission regulation providing that an applicant for an entry permit who is unsuccessful in superior court will not be issued an interim-use permit on fur-

ther appeal was held inconsistent with this section. *Kalmakoff v. State, Com. Fisheries Entry Comm'n, Sup. Ct. Op. No. 2921 (File No. 7767), 697 P.2d 650 (1985).*

Sec. 16.43.230. Designation of distressed fisheries. Pending the determination of maximum numbers of entry permits under AS 16.43.240 and before the initial issue of entry permits under AS 16.43.270, the commission shall designate as distressed fisheries those for which it estimates that the optimum number of entry permits will be less than the highest number of units of gear fished in that fishery during any one of the four years immediately preceding January 1, 1973. (§ 1 ch 79 SLA 1973)

Sec. 16.43.240. Determination of the maximum number of entry permits for initial issue. (a) Except as provided in AS 16.43.270(a), the maximum number of entry permits for a distressed fishery designated under AS 16.43.230 shall be the highest number of units of gear fished in that fishery during any one of the four years immediately preceding January 1, 1973.

(b) When the commission finds that a fishery not designated as a distressed fishery under AS 16.43.230 has reached levels of participation which require the limitation of entry in order to achieve the purposes of this chapter, the commission shall establish the maximum number of entry permits for that fishery. (§ 1 ch 79 SLA 1973)

NOTES TO DECISIONS

Legislative intent. — The legislature intended the number of permits initially issued to reflect actual use. *Rutter v. State, Sup. Ct. Op. No. 2712 (File No. 6146), 658 P.2d 1343 (1983).*

Setting the maximum number of salmon hand troll permits at 2,150 was reasonable and in accord with the letter and spirit of the Limited Entry Act. *Rutter v. State, Sup. Ct. Op. No. 2712 (File No. 6146), 658 P.2d 1343 (1983).*

Applied in *Commercial Fisheries Entry Comm'n v. Apokedak, Sup. Ct. Op.*

No. 2011 (File No. 4464), 606 P.2d 1255 (1980).

Quoted in *Noden v. Commercial Fisheries Entry Comm'n, Sup. Ct. Op. No. 2808 (File No. 6495), 650 P.2d 493 (1984); Kalmakoff v. State, Com. Fisheries Entry Comm'n, Sup. Ct. Op. No. 2921 (File No. 7767), 697 P.2d 650 (1985).*

Stated in *Vik v. Commercial Fisheries Entry Comm'n, Sup. Ct. Op. No. 2431 (File Nos. 4588, 4629), 636 P.2d 597 (1981); Rose v. Commercial Fisheries Entry Comm'n, Sup. Ct. Op. No. 2515 (File No. 5361), 647 P.2d 151 (1982).*

Sec. 16.43.250. Standards for initial issue of entry permits. (a) Following the establishment of the maximum number of units of gear for a particular fishery under AS 16.43.240, the commission shall adopt regulations establishing qualifications for ranking applicants for entry permits according to the degree of hardship which they would suffer by exclusion from the fishery. The regulations shall de-

fine priority classifications of similarly situated applicants based upon a reasonable balance of the following hardship standards:

(1) degree of economic dependence upon the fishery, including, when reasonable for the fishery, the percentage of income derived from the fishery, reliance on alternative occupation, availability of alternative occupations, investment in vessels and gear,

(2) extent of past participation in the fishery, including, when reasonable for the fishery, the number of years of participation in the fishery and the consistency of participation during each year.

(b) The commission shall designate in the regulations those priority classifications of applicants who would suffer significant economic hardship by exclusion from the fishery.

(c) The commission shall designate in the regulations those priority classifications of applicants who would suffer only minor economic hardship by exclusion from the fishery.

(d) If an individual eligible to apply under AS 16-43-260(a) has applied during application periods established under AS 16-43-260(b) for two or more entry permits under AS 16-43-260(d) or (e) for the same specific fishery resource and the same specific type of gear in different administrative areas, but has failed to qualify for an entry permit for that type of fishery resource and gear, the individual's cumulative qualifications may be credited to the fishery for which the individual is most qualified. The commission shall issue an entry permit to the individual for the fishery if the individual's cumulative qualifications result in placing the individual in a category designated in (b) of this section. The qualifications credited to a fishery under this subsection may not be considered for the purpose of ranking the applicant under (a) — (c) of this section for any other fishery. The commission may not revoke any permit previously issued notwithstanding the issuance of permits in excess of the maximum number established under AS 16-43-230 — 16-43-240 as a result of this subsection. In this subsection, "fishery" includes all salmon fisheries of the state for which a maximum number of entry permits has been established by the commission under AS 16-43-240(b).

(e) If the cumulative qualifications of an individual under (d) of this section include points granted by the commission under (a) of this section for more than one fishery and the number of points required to place an applicant in the priority classification under (b) of this section is not the same for each of the fisheries, the commission shall obtain a quotient for the individual by dividing the number of points the individual has been granted for each fishery by the number of points needed to place an applicant in a priority classification under (b) of this section for that fishery. If the sum of the quotients obtained under this subsection equals or exceeds 1.00, the individual is entitled to a permit under (d) of this section. (S 1 ch 79 SLA 1973; am § 1 ch 64 SLA 1979; am § 1 ch 137 SLA 1980; am § 5 ch 47 SLA 1981; am § 5 ch 22 SLA 1985)

Revisor's notes. — The last sentence of (d) and subsection (e) were enacted as (d) and (b), respectively. Reorganized in 1980.

Effect of amendments. — The 1985 amendment to subsection (a) substituted "when reasonable for the fishery, the" for "but not limited to" in paragraph (1) and

substituted "when reasonable for the fishery" for "but not limited to" in paragraph (2) and made other minor changes.

Legislative history reports. — For legislative letter of intent relating to the 1985 amendment to (a) of this section, see 1985 Senate Journal, p. 483.

NOTES TO DECISIONS

Constitutionality of classifications.

A classification based on whether individuals were gear license holders was constitutional, and did not violate equal protection. *Nash v. State, Com. Fisheries Entry Comm'n, Sup. Ct. Op. No. 2802* (File No. 3016), 639 P.2d 477 (1984).

Regulations must be read so as to be consistent with AS 16-43-010. — *18-11-380, State, Com. Fisheries Entry Comm'n v. Templeton, Sup. Ct. Op. No. 1083* (File No. 4042), 698 P.2d 77 (1979).

Regulatory point scheme held constitutional.

The point scheme under regulations promulgated by the commission to regulate entry into the commercial fisheries based on a "hardship" standard of economic dependence is reasonable and not arbitrary, as it provides for consideration of all the factors which the legislature thought relevant to economic dependence, and bears a fair and substantial relation to the object of the act: an applicant with a higher income dependence percentage has a greater degree of dependence on the fishery for income, and would therefore tend to suffer greater hardship by exclusion than would an applicant with a lower income dependence percentage, who has a greater reliance on alternative occupations and is less dependent on the fishery. If income from alternative occupations is invested into the fishery, the applicant receives recognition of that investment by being awarded points for ownership of vessels and gear. It cannot reasonably be argued that the percentage of income derived from the fishery is substantially unrelated to the hardship an applicant would suffer by exclusion from the fishery. The regulations are not facially unconstitutional. *Yunker v. Alaska Com. Fisheries Entry Comm'n, Sup. Ct. Op. No. 1892* (File No. 4145), 598 P.2d 917 (1979).

Constitutionality of administrative regulations. — Within the scheme of the point system used for issuing limited entry permits, the Commercial Fisheries Entry Commission's administrative regu-

lation specifying the number of points awarded for availability of alternative occupations based solely on the total population and the proportion of rural population in the census district or county of an applicant's domicile (20 AAC 05.630(b)(4)) violates equal protection rights guaranteed by Alaska Const., art. I, § 1. *Hendelberg v. Commercial Fisheries Entry Comm'n, Sup. Ct. Op. No. 2801* (File No. 6494), 689 P.2d 447 (1984).

Regulations held invalid. — Regulations which omit three of the four statutorily mandated criteria of economic dependence are invalid as they relate to the assessment of economic dependence. *Rutter v. State, Sup. Ct. Op. No. 2712* (File No. 6146), 668 P.2d 1143 (1983).

Determinative factor in allocation of initial permits. — The legislative history rather clearly demonstrates that from the outset the framers of the legislation intended "hardship" to be the determinative factor in the allocation of the initial limited entry permits. *Isakson v. Hickey, Sup. Ct. Op. No. 1267* (File No. 2560), 650 P.2d 359 (1976).

Defining economic dependence standards in terms of gear license ownership. — The statutory grants of authority in this section give the Commercial Fisheries Entry Commission the power to define one of the statutory economic dependence standards in subsection (a)(1) in terms of gear license ownership. *Kalnakov v. State, Sup. Ct. Op. No. 2800* (File No. 7767), 693 P.2d 844 (1985).

Standards discriminating against married partners were applied in awarding permits. — The Commercial Fisheries Entry Commission applied improper standards that unjustly discriminated against married partners, particularly married women, in awarding income dependence points in the determination of entitlement to limited entry permits. Traditional partnership factors, even handsomely applied are to be used for determining partnerships between spouses. *Chicklock v. State, Com. Fisheries Entry*

Common Sup. Ct. Op. No. 2018 (File No. S-222), 698 P.2d 669 (1984).

Proof of investment of more money into fishery than income derived from other employment was not allowed as a basis for disproving reliance on the other employment for purposes of receiving points based upon "income dependence percentage" as defined by 20 AAC 05.60002; *Yunker v. Alaska Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 1892 (File No. 4145), 598 P.2d 917 (1979).

"Applied for" as used in subsection (d) of this section must be read in conjunction with the rest of the Limited Entry Act to mean "apply for" permits within the eligibility requirements of AS 16.43.200(a); *Nash v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2802 (File No. 7016), 679 P.2d 477 (1984).

Tendering fish does not constitute "harvesting". — Owning a fish tender and crowing on it does not constitute "harvesting" as defined in the regulation which awards points for each year in which the applicant "harvested the fishery," 20 AAC 05.610; *Enquist v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2784 (File Nos. 5849, 5910, 5944), 677 P.2d 1216 (1984).

Commission's definition of past participation. — While the commission's definition of past participation as harvest of the fishery resource commercially coincides with the legislative view that harvest be measured according to the actual taking of fish in the past, even if the "including but not limited to" language of subsection (a) of this section allows the commission to expand upon the concept of participation, it does not require it to do so, and the commission was not required to give participation points for years in

which an applicant did not fish; *Yunker v. Alaska Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 1892 (File No. 4145), 598 P.2d 917 (1979).

Retroactive applicability of Templeton v. State, Com. Fisheries Entry Comm'n v. Templeton, 598 P.2d 77 (Alaska 1979), should be applied retroactively to persons who applied for limited entry permits, and whose names are therefore in the commercial fisheries entry commission's records, and who have shown that they failed to submit valid applications when they were eligible to do so because of the commission's erroneous partnership policy. See notes under AS 16.43.010; *Cashen v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2803 (File No. 5866), 686 P.2d 1219 (1984).

Applied in Commercial Fisheries Entry Comm'n v. Apokedak, Sup. Ct. Op. No. 2011 (File No. 4464), 680 P.2d 1255 (1984); *Rose v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2615 (File No. 5361), 647 P.2d 154 (1982).

Quoted in Yik v. Commercial Fisheries Entry Comm'n, Sup. Ct. Op. No. 2431 (File Nos. 4508, 4629), 616 P.2d 597 (1981); *Jones v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2647 (File No. 5904), 649 P.2d 247 (1982); *Commercial Fisheries Entry Comm'n v. Apokedak*, Sup. Ct. Op. No. 2794 (File No. 6766), 680 P.2d 480 (1984).

Stated in Otman v. State, Com. Fisheries Entry Comm'n, Sup. Ct. Op. No. 2792 (File No. 6159), 678 P.2d 1323 (1984); *White v. Alaska Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2793 (File No. 6296), 678 P.2d 1319 (1984); *Nash v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2808 (File No. 6495), 680 P.2d 491 (1984).

Sec. 16.43.260. Application for initial issue of entry permits.

(a) The commission shall accept applications for entry permits only from applicants who have harvested fishery resources commercially while participating in the fishery as holders of gear licenses issued under AS 16.05.536 — 16.05.670 and interim-use permits under AS 16.43.210(a) before the qualification date established in (d) or (e) of this section. The commission may specify by regulation the calendar years of participation that will be considered for eligibility purposes.

(b) The commission shall establish the opening and closing dates, places and form of application for entry permits for each fishery. The commission may require the submission of specific verified evidence

establishing the applicant's qualifications under the regulations adopted under AS 16.43.250.

(c) When an applicant is unable to establish qualifications for an entry permit by submitting the specific verified evidence required in the application by the commission, the applicant may request and obtain an administrative adjudication of the application according to the procedures established in AS 16.43.110(b). At the hearing the applicant may present alternative evidence of qualifications for an entry permit.

(d) Except as provided in (e) of this section, an applicant shall be assigned to a priority classification based solely upon the applicant's qualifications as of January 1, 1973.

(e) When the commission establishes the maximum number of entry permits for a particular fishery under AS 16.43.240 after January 1, 1975, an applicant shall be assigned to a priority classification based solely upon the applicant's qualifications as of January 1 of the year during which the commission establishes the maximum number of entry permits for the fishery for which application is made. (1) ch 79 SLA 1973; am § 3 ch 126 SLA 1974; am § 6 ch 47 SLA 1981; am § 11 ch 145 SLA 1984)

Effect of amendments. — The 1984 amendment added the second sentence of subsection (a).

NOTICE TO DECISIONS

Constitutionality of section. — The entry restrictions of the Limited Entry Act violate neither § 3, art. VIII, nor § 1, art. I of the state constitution; *State v. Ostrosky*, Sup. Ct. Op. No. 2762 (File Nos. 6336, 6373), 667 P.2d 1153 (1983), appeal dismissed, 467 U.S. 1201, 104 S. Ct. 2379, 81 L. Ed. 2d 339 (1984).

Constitutionality of former subsection (a). — Subsection (a), which limits applications for entry permits to persons holding gear licenses prior to January 1, 1973, violates the equal protection rights, guaranteed by the state and federal constitutions, of commercial fishermen who obtained gear licenses after January 1, 1973; *Inakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 650 P.2d 359 (1978), decided under pre-1974 version of subsection (a).

The gear license requirement contained in subsection (a) does not violate the equal protection clause of the state or federal constitutions since it bears a fair and substantial relationship to, and is rationally related to, the purpose of preventing unjust discrimination in the allo-

cation of entry permits; *Commercial Fisheries Entry Comm'n v. Apokedak*, Sup. Ct. Op. No. 2011 (File No. 4464), 680 P.2d 1255 (1984).

The requirement that applicants for entry permits be past gear licensees bears a fair and substantial relationship to the purpose of preventing unjust discrimination in allocating entry permits; *Commercial Fisheries Entry Comm'n v. Apokedak*, Sup. Ct. Op. No. 2794 (File No. 6766), 680 P.2d 477 (1984).

A classification based on whether individuals were gear license holders was constitutional, and did not violate equal protection; *Nash v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2802 (File No. 7016), 679 P.2d 477 (1984).

Effect of Inakson v. Rickey. — *Inakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 650 P.2d 359 (1976), did not invalidate the gear license requirement contained in subsection (a) of this section; *Commercial Fisheries Entry Comm'n v. Apokedak*, Sup. Ct. Op. No. 2794 (File No. 6766), 680 P.2d 477 (1984).

Application period does not violate

equal protection. — Action, subsequent to *Inakson v. Riekey*, Sup. Ct. Op. No. 1267 (File No. 2550, 550 P.2d 359 (1976)), of the Commercial Fisheries Entry Commission in promulgating 20 AAC 05.5106 setting up a new application period for entry permits under subsection (b) but restricting applications in this period to only those who had fished with gear licenses for the first time during 1973 or 1974 did not deny equal protection of the law to those applicants who had fished with gear licenses for the first time between 1960 and 1972 by requiring them to have filed under the original application period and not allowing them to file under the new application period. *Vik v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2431 (File Nos. 4598, 4629, 636 P.2d 597 (1984)).

Property interest. — An applicant for a limited fishery entry permit has a property interest under this section and the regulatory scheme implementing it that is entitled to due process protection. *Estate of Miner v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2431 (File No. 5399, 635 P.2d 827 (1984)).

Notice to gear license holders of necessity to apply for limited entry permits is sufficient as to those who received yellow cards, were on the fisherman's history file and received commission mailings, and where there was extensive media coverage, however, notice was constitutionally defective as violative of due process as to *Inakson* applicants who received the application itself, but whose names were dropped from the fisherman's history file and did not receive subsequent commission mailings. *Wickersham v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2807 (File No. 5799, 680 P.2d 1135 (1984)).

Notice sufficient. — "Yellow card" used by the Commercial Fisheries Entry Commission (CFEC) to notify gear license holders of necessity of applying for limited entry permits under this section when considered in conjunction with the other methods used by the CFEC and with the widespread coverage which the limited entry program got from the news media was sufficient to satisfy due process notice requirements. *Estate of Miner v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2432 (File No. 5399, 635 P.2d 827 (1984)).

Deadline requirement does not violate equal protection. — The deadline requirement for permits under the Lim-

ited Entry Act does not violate the equal protection provision of the Alaska or federal constitutions. *Wickersham v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2807 (File No. 5799, 680 P.2d 1135 (1984)).

Neither due process nor equal protection, under the federal or Alaska constitutions, requires an exception to the filing deadline in subsection (b) for applicants who can demonstrate that they failed to timely file because of insanity. *Estate of Miner v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2432 (File No. 5399, 635 P.2d 827 (1984)).

"Holders of gear licenses" — The term "holders of gear licenses" refers only to individual named licensees, not such individuals and their partners. *Commercial Fisheries Entry Comm'n v. Apokedak*, (File No. 6760), 680 P.2d 480 (1984).

The term "holders of gear licenses" can only be reasonably construed to refer to individual named licensees. *Nash v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2802 (File No. 7016, 679 P.2d 477 (1984)).

Applicant did not satisfy the threshold eligibility requirements of this statute by harvesting fishery resources commercially while participating in the fishery as the holder of a gear license where he merely operated under his father's license while his father was ill and failed to effect a valid transfer of his father's license pursuant to former AS 16.05.670. *Grennett v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 3160 (File No. 81091), 735 P.2d 118 (1987).

Tendering fish does not constitute "harvesting" — Owning a fish tender and crewing on it does not constitute "harvesting" as defined in the regulation which awards points for each year in which the applicant "harvested the fishery." 20 AAC 05.610. *Forquer v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2784 (File Nos. 5849, 5930, 5931), 677 P.2d 1236 (1984).

Hearing provision comports with due process. — The provision for a hearing at the classification stage sufficiently comports with the requirements of due process. *Nolen v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2808 (File No. 6495), 680 P.2d 493 (1984).

Opportunity to submit additional evidence. — When the commission opens the evidence period to extend to applicants a new opportunity to submit addi-

tional evidence, it is required to conform to the mandate of this section and its hearing requirement. *Forquer v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2784 (File Nos. 5849, 5930, 5931), 677 P.2d 1236 (1984).

Hearing not required. — If an application under this section is rejected because it is outside valid time limits and this lateness is apparent on the face of the application and is not contested by the applicant, then there would be no substantial and material issue which could be resolved at a hearing, and thus no need to hold a hearing at all. *Estate of Miner v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2432 (File No. 5399), 635 P.2d 827 (1984).

Nature of statutory scheme. — The statutory scheme for acquiring a limited fishery entry permit as applied to prior holders of gear licenses is more accurately characterized as a revocation than as an application process. *Estate of Miner v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2432 (File No. 5399), 635 P.2d 827 (1984).

Subsection (b) is severable from that portion of subsection (a) found invalid in Inakson v. Riekey. Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976); *Vik v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2431 (File Nos. 4598, 4629), 636 P.2d 597 (1984).

Subsection (b) did not fall along with that portion of subsection (a) found invalid in *Inakson v. Riekey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359

(1976); *Vik v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2431 (File Nos. 4598, 4629), 636 P.2d 597 (1984).

Retrospective applicability of Templeton. — *State, Com. Fisheries Entry Comm'n v. Templeton*, 598 P.2d 77 (Alaska 1979) should be applied retroactively to persons who applied for limited entry permits, and whose names are therefore in the commercial fisheries entry commission's records, and who have shown that they failed to submit valid applications when they were eligible to do so because of the commission's erroneous partnership policy. *Cashen v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2863 (File No. 5966), 680 P.2d 1219 (1984). (Editor's note. — See also notes under AS 16.43.010.)

Applied in *Simpler v. State*, Sup. Ct. Op. No. 3140 (File No. 6409), 728 P.2d 227 (1986).

Quoted in *White v. Alaska Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2793 (File No. 6298), 678 P.2d 1319 (1984); *Kalmakoff v. State*, Sup. Ct. Op. No. 2900 (File No. 7767), 693 P.2d 844 (1985).

Stated in *Rose v. Commercial Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2515 (File No. 5361), 647 P.2d 151 (1982); *Ostman v. State, Com. Fisheries Entry Comm'n*, Sup. Ct. Op. No. 2792 (File No. 6199), 678 P.2d 1323 (1984).

Cited in *Estate of Smith v. State*, Sup. Ct. Op. No. 2428 (File No. 5314), 635 P.2d 465 (1981).

Sec. 16.43.270. Initial issuance of entry permits. (a) The commission shall issue entry permits, for each fishery, first to all qualified applicants in the priority classifications designated under AS 16.43.250(b) and then to qualified applicants in order of descending priority classification, until the number of entry permits issued equals the maximum number of entry permits established under AS 16.43.230 and 16.43.240 for each fishery, except that a person within a priority classification specified under AS 16.43.250(b) may not be denied an entry permit.

(b) If, within the lowest priority classification of qualified applicants to which some entry permits may be issued, there are more applicants than there are entry permits to be issued, then the allocation of entry permits within that priority classification shall be by lottery. However, the commission shall issue entry permits to all qualified applicants in that priority classification if the total number of permits issued for the fishery does not exceed the maximum number

Cross references. — For additional penalty provisions related to unlawful purchase of fish, see AS 16.05.680.

Effect of amendments. — The 1984 amendment substituted "who, in violation

of AS 16.43, does not hold a landing permit" for "who does not hold" in subsection (a) and deleted "issued or transferred to the seller in accordance with AS 16.43" at the end of that subsection.

Sec. 16.10.267. Possession of permit and identification by seller. (a) When a fisherman sells fish, the fisherman shall possess

(1) a landing permit, entry permit or interim-use permit issued or transferred to the fisherman under AS 16.43, or other document authorized by regulation to be used in place of an entry permit or interim-use permit; and

(2) an identification card that has been issued to the fisherman by a state or federal agency and that bears a photograph of the fisherman.

(b) If requested by the purchaser of the fish or by a peace officer, the fisherman shall present for inspection the identification card, entry permit, interim-use permit, or other document required to be in the fisherman's possession under (a) of this section.

(c) Examples of a suitable identification card required under (a)(2) of this section are a motor vehicle operator's license issued under AS 28.15.111 and an identification card issued under AS 18.65.310.

(d) A person who violates this section is, upon conviction, guilty of a class B misdemeanor and may be sentenced to a definite term of imprisonment of not more than 90 days. In addition

(1) upon a first conviction for a violation of this section, the court may sentence the convicted person to pay a fine of not more than \$5,000 and may order the loss of commercial fishing privileges for a period of not more than three years from the date of conviction;

(2) upon a second conviction for a violation of this section, the court may sentence the convicted person to pay a fine of not more than \$10,000 and may order the loss of commercial fishing privileges for a period of not more than three years from the date of conviction;

(3) upon a third or subsequent conviction for a violation of this section, the court

(A) may sentence the convicted person to pay a fine of not more than \$10,000; and

(B) shall order that the convicted person lose commercial fishing privileges for a period of three years from the date of conviction. (§ 2 ch 94 SLA 1982; am § 4 ch 145 SLA 1984)

Effect of amendments. — The 1984 amendment substituted "a landing per-

mit, entry permit" for "an entry permit" at the beginning of paragraph (a).

Sec. 16.10.268. Notice of liability. (a) The commissioner of labor shall print posters that contain notice of the requirements of AS 16.10.265. The commissioner shall distribute the posters to fish processors, primary fish buyers, and cooperative corporations organized under AS 10.15 for the purpose of buying fish.

(b) A fish processor, primary fish buyer, or cooperative corporation organized under AS 10.15 for the purpose of buying fish shall display in a prominent place on its business premises posters provided by the commissioner of labor under (a) of this section. (§ 2 ch 94 SLA 1982)

Sec. 16.10.270. Purchase of fish by the pound. (a) A fish processor or primary fish buyer shall purchase raw fish by the pound. The poundage of the fish to be purchased shall be determined by weighing the fish unless both the buyer and seller agree in writing upon a sample weighing technique which will fairly determine the average weight of the fish purchased.

(b) A person who violates this section is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$5,000, or by both. (§ 1 ch 49 SLA 1965; am § 1 ch 34 SLA 1969; am § 1 ch 102 SLA 1977)

NOTES TO DECISIONS

Cited in *Liberati v. Bristol Bay Borough*, Sup. Ct. Op. No. 1735 (File No. 3365), 584 P.2d 1115 (1978).

Sec. 16.10.275. Regulations. The commissioner may adopt regulations to carry out the provisions of AS 16.10.270 — 16.10.296. (§ 1 ch 18 SLA 1981)

Sec. 16.10.280. Price disputes between fishermen and fish processors. In an area where a price dispute exists between at least one-third of the registered commercial fishermen for that area, as estimated by the Department of Fish and Game on the basis of information available to the department, and fish processors on the price to be paid for salmon, and no agreement has been reached up to 120 days before the opening of the salmon fishing season in that area, a representative from the Department of Labor shall intervene as mediator of the dispute upon request of either party. (§ 1 ch 242 SLA 1970; am § 1 ch 59 SLA 1980; am § 27 ch 132 SLA 1984)

Revisor's notes. — Enacted as AS 16.10.290. Renumbered in 1970. Amendment substituted "estimated" for "certified" and inserted "on the basis of information available to the department."

Effect of amendments. — The 1984

Collateral references. — ⁵Entrapment with respect to violation of fishing laws, 75 ALRS 709

Sec. 16.10.230. Exemptions. AS 16.10.180 — 16.10.220 do not apply to

- (1) [Repealed, § 29 ch 132 SLA 1984]
- (2) the use of nets for fishing for or taking salmon for the purposes of scientific investigation authorized by state law; and
- (3) existing laws and regulations prohibiting the taking of salmon by means of nets on the high seas. (§ 6 ch 121 SLA 1960; § 29 ch 132 SLA 1984)

Article 5. Transportation of Fish and Shellfish.

Section 240 Transportation of King, Dungeness or Tanner crab	Section 250 Penalty
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Sec. 16.10.240. Transportation of King, Dungeness or Tanner crab. A person may not take out of, ship, transport, or send from this state any live King crab, species *Paralithodes camtschatica*, live Dungeness crab, species *Cancer magister*, or live Tanner crab, species *Chionoecetes bairdi*, except that all of these species may be shipped live via air freight after pre-packaging. (§ 1 ch 33 SLA 1962; am § 9 ch 5 SLA 1966; am § 1 ch 14 SLA 1969)

Collateral references. — 35 Am. Jur. 2d, Fish & Game, § 49

Sec. 16.10.250. Penalty. A person, association, or corporation violating AS 16.10.240 or contributing to or cooperating in the violation of AS 16.10.240 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$5,000, or by imprisonment for not more than one year, or by both. Each unlawful removal of live crab is a separate offense. Vessels and equipment used in or in aid of a violation of AS 16.10.240 may be seized and disposed of as provided in AS 16.05.190. Conviction under AS 16.10.240 is grounds for suspension of a fishing license or permit by the department. (§ 2 ch 33 SLA 1962)

Article 6. Purchase of Fish.

Section 265 Purchase of fish from permit holders	Section 275 Regulations
267 Possession of permit and identification by seller	280 Price disputes between fishermen and fish processors
268 Notice of liability	290 Security for collection of wages and payment for raw fish
270 Purchase of fish by the pound	

Section 291 Exemption from bonding requirements	Section 294 Suspension and revocation of license
292 Filing evidence of compliance	295 Penalty
293 Exemptions from bonding requirement	296 Definitions

Sec. 16.10.265. Purchase of fish from permit holders. (a) It is unlawful for an individual while acting as a fish processor or primary fish buyer, or as an agent, director, officer, member, or employee of a fish processor, of a primary fish buyer, or of a cooperative corporation organized under AS 10.15 to intentionally or knowingly make an original purchase of fish from a seller who, in violation of AS 16.43, does not hold a landing permit, an entry permit or an interim use permit.

(b) An individual who violates (a) of this section is

- (1) upon a first conviction, guilty of a class B misdemeanor and shall be sentenced to a fine of not less than \$1,000 nor more than \$5,000, and may be sentenced to a definite term of imprisonment of not more than 90 days;

- (2) upon a second conviction, guilty of a class A misdemeanor and shall be sentenced to a fine of not less than \$5,000 nor more than \$10,000, and may be sentenced to a definite term of imprisonment of not more than one year;

- (3) upon a third or subsequent conviction, guilty of a class A misdemeanor and shall be sentenced to a fine of not less than \$10,000 nor more than \$25,000, and may be sentenced to a definite term of imprisonment of not more than one year.

(c) The commissioner of revenue shall impose upon a fish processor, primary fish buyer, or cooperative corporation organized under AS 10.15, a civil fine equal to the value of fish purchased in violation of this section by

- (1) the fish processor or primary fish buyer if the fish processor or primary fish buyer is not a corporation; or

- (2) a director, officer, or employee in a policy-making position of the fish processor, of the primary fish buyer, or of the cooperative corporation. Value is based on the average price paid to fishermen at the time of the violation.

(d) The commissioner of revenue may suspend or revoke a business license issued under AS 43.70.020 or a license to engage in the business of processing or buying raw fish if the licensee or an officer, director or employee in a policy-making position of the licensee has been convicted of three offenses under this section. Proceedings to suspend or revoke a license are governed by the Administrative Procedure Act (AS 44.62).

(e) An organization may not be criminally prosecuted under (a) of this section.

(f) In this section, "individual" means a natural person. (§ 2 ch 94 SLA 1982; am § 3 ch 145 SLA 1984)

of entry permits established under AS 16-43-240 for that fishery by more than five percent or 40 permits, whichever is greater.

(c) If, at the time entry permits are issued, some applicants are still appealing the findings of an administrative adjudication under AS 16-43-260, a sufficient number of permits shall be reserved out of the permits to be issued to protect the rights of those applicants, assuming all the appeals will be resolved in favor of the applicants. In the event that all appeals are not resolved in favor of the applicants, the remaining entry permits shall be allocated to the next most qualified applicants as provided in (a) and (b) of this section. (1 L ch 79 SLA 1973, am § 7 ch 47 SLA 1981)

NOTES TO DECISIONS

"Person" referred to in subsection (a). — The person referred to in the last clause of subsection (a) must be a qualified applicant referred to in the remainder of the section. *Wickersham v. State, Com Fisheries Entry Comm'n, Sup Ct Op No 2907 (File No 5780), 680 P 2d 1135 (1984)*

"Appeals resolved." — The final determination language of AS 16-43-220 and "appeals resolved" language of subsection (c) should be congruent, as interim use permits are issued under AS 16-43-210(b) expressly for the benefit of applicants under this section, the language of AS 16-43-220 clearly refers to resolution by the supreme court of Alaska, an interpretation that is consistent with and supported by subsection (c) *Kalmakoff v. State, Com Fisheries Entry Comm'n, Sup Ct Op No 2921 (File No 3767), 697 P 2d 650 (1985)*

Sees 16-43-275 — 16-43-285. [Renumbered as AS 16-43-340 — 16-43-390]

Article 4. Reduction to Optimum Number of Entry Permits.

Section
290 Optimum number of entry permits
300 Revisions of optimum number of entry permits
310 Establishment of buy-back funds

Section
320 Administration of the buy-back program
330 Issuance of new entry permits

Sec. 16-43-290. Optimum number of entry permits. Following the issuance of entry permits under AS 16-43-270, the commission shall establish the optimum number of entry permits for each fishery based upon a reasonable balance of the following general standards:

(1) the number of entry permits sufficient to maintain an economically healthy fishery that will result in a reasonable average rate of economic return to the fishermen participating in that fishery, considering time fished and necessary investments in vessels and gear;

(2) the number of entry permits necessary to harvest the allowable commercial take of the fishery resource during all years in an orderly, efficient manner, and consistent with sound fishery management techniques;

(3) the number of entry permits sufficient to avoid serious economic hardship to those currently engaged in the fishery, considering other economic opportunities reasonably available to them. (1 L ch 79 SLA 1973)

NOTES TO DECISIONS

Stated in *Vik v. Commercial Fisheries Entry Comm'n, Sup Ct Op No 2431 (File No 4588, 4629), 636 P 2d 597 (1981)*. Cited in *Rose v. Commercial Fisheries Entry Comm'n, Sup Ct Op No 2515 (File No 5361), 647 P 2d 154 (1982)*

Sec. 16-43-300. Revisions of optimum number of entry permits. (a) The commission may increase or decrease the optimum number of entry permits for a fishery when one or more of the following conditions makes a change desirable considering the purposes of this chapter:

(1) an established long-term change in the biological condition of the fishery has occurred which substantially alters the optimum number of entry permits permissible applying the standards set out in AS 16-43-290;

(2) an established long-term change in market conditions has occurred, directly affecting the fishery, which substantially alters the optimum number of entry permits permissible under the standards set out in AS 16-43-290.

(b) If the commission decreases the optimum number of entry permits for a fishery, the number of entry permits may be reduced only under the voluntary buy-back provisions set out in AS 16-43-310 and 16-43-320. (1 L ch 79 SLA 1973)

NOTES TO DECISIONS

Cited in *Rose v. Commercial Fisheries Entry Comm'n, Sup Ct Op No 2515 (File No 5361), 647 P 2d 154 (1982)*

HELD OVER FROM THE PREVIOUS HEARING. REPORTED BY THE
SPONSORED BY REPRESENTATIVE FOSTER, THERE WAS A PROPOSED AMENDMENT
BEFORE THE COMMITTEE, AND ASKED FOR TESTIMONY.

JOHN WALSH, LEGISLATIVE AIDE TO REPRESENTATIVE FOSTER,
DISCUSSED HB 201. HE SAID THERE WAS A ZERO FISCAL NOTE, IT
WAS SUPPORTED BY PUBLIC SAFETY AND THE DIVISION OF
COMMERCIAL FISHERIES, AND THAT THERE WAS A COMPANION BILL
IN THE SENATE, SB 164. HE EXPLAINED THAT HB 201 CORRECTS A
HOLE IN THE STATUTES DEALING WITH SUSPENSION OF A FISHING
PERMIT NOT BEING DEFENSIBLE IN COURT. HB 201 PREVENTS
TRANSFER OF A PERMIT BEFORE SENTENCING BY CLEARING UP AN
OVERSIGHT IN STATUTE. HE NOTED THAT SOME OBJECTIONS HAD
BEEN RECEIVED REGARDING THE REWORDING IN SUBSECTION (A).

REPRESENTATIVE DAVIS ASKED HIM TO CLARIFY LANGUAGE ON PAGE
2, SUBSECTION (C), AND ASKED WHETHER A PERSON COULD GET A
PERMIT IF A TRIAL WAS PENDING. MR. WALSH SAID THAT LINES 7
- 8, PAGE 2, DEALS WITH THE RIGHT TO GET A NEW PERMIT FOR
ANOTHER FISHING AREA OR ENGAGE IN RELATED ACTIVITY DURING
THE TIME A PERMIT IS SUSPENDED. IT MEANS THAT A PERSON
CAN'T GO OFF AND FISH IN ANOTHER REGION WITH A NEW PERMIT.
HE ADDED THAT THERE ARE PROVISIONS FOR EMERGENCY TRANSFER.

REPRESENTATIVE DAVIS ASKED WHEN THE SUSPENSION OF TRANSFER
RIGHTS WOULD BE IN EFFECT. MR. WALSH EXPLAINED HOW THE
PROCESS WOULD WORK, STATING THAT THE PERMIT COULD NOT BE
TRANSFERRED UNTIL AFTER SENTENCING, UNLESS APPROVED BY THE
JUDGE.

DAVE INGRAM, MANAGING HEARING OFFICER, COMMERCIAL FISHERIES
ENTRY COMMISSION, TESTIFIED NEXT. HE HAD WORKED CLOSELY ON
HB 201 AND SB 164 AND GAVE SOME HISTORY OF THE LEGISLATION.
HE EXPLAINED THAT A NEW AMENDMENT TO AS 16.05.710 WENT INTO
EFFECT LAST JULY THAT ALLOWED A COURT TO SUSPEND A PERSON'S
FISHING PERMIT BASED ON FISHING VIOLATIONS, AS OPPOSED TO
VIOLATION OF THE LIMITED ENTRY ACT. SOON AFTER, A COURT
CASE CHALLENGED THE TRANSFERABILITY OF A FISHING PERMIT
WHILE AN INDIVIDUAL AWAITED SENTENCING FOR A FOURTH
VIOLATION. HE EXPLAINED THAT THE COURT HAS DISCRETION TO
SUSPEND ON THE FIRST OR SECOND VIOLATION, BUT ON THE THIRD
VIOLATION THEY MUST SUSPEND. THE DEPARTMENT TRIED TO
SUSPEND TRANSFER OF THE PERMIT, BUT THE COURT SAID THE
STATUTES DID NOT AUTHORIZE THAT. HB 201 ALLOWS THIS
AUTHORIZATION. MR. INGRAM EXPLAINED THAT PERSONS CAN STILL
FISH UNTIL SENTENCING, BUT THEY CANNOT TRANSFER THEIR
PERMIT, EXCEPT FOR AN EMERGENCY TRANSFER. HE POINTED OUT
THAT OTHER TECHNICAL PROBLEMS WERE CLEARED UP AS WELL, SUCH
AS DEFINITIONS OF CERTAIN TERMS FOR CLARIFICATION. HE
ADDED THAT THE BILL LEAVES TO THE DISCRETION OF THE COURT
TO DECIDE ON SUSPENSION OF A PERMIT.

REPRESENTATIVE NAVARRE BROUGHT UP PAGE 1, LINE 17, NOTING
THE LANGUAGE, "THE COURT SHALL...SUSPEND ALL." HE POINTED
OUT THAT PRESENT STATUTES ALLOW COURTS THE DISCRETION TO
SUSPEND ONE OR ALL PERMITS, ADDING THAT THE LANGUAGE MAY
HAVE A SIGNIFICANT IMPACT.

MR. INGRAM COMMENTED THAT HIS AGENCY WAS NEUTRAL ON THE
ISSUE OF SEVERITY. HE SUGGESTED THAT THE LANGUAGE, "ANY OR
ALL," WOULD GIVE MORE DISCRETION TO THE COURT.

HOUSE
RESOURCE
COMMITTEE
MINUTES
HB 201

3-31-89

THAT DISCRETION. HE INDICATED INTEREST IN AMENDING THE LANGUAGE AND MAKING A NOTE OF IT TO THE JUDICIARY COMMITTEE, THE NEXT REFERRAL FOR HB 201.

REPRESENTATIVE MENARD MOVED THAT THE COMMITTEE ADOPT THE PROPOSED CS. THERE BEING NO OBJECTION, IT WAS SO MOVED.

REPRESENTATIVE NAVARRE MOVED TO AMEND PAGE 1, LINES 17, 24 AND 27, BY INSERTING, "ANY OR" AFTER "SUSPEND." THERE WAS NO OBJECTION, AND IT WAS SO MOVED.

DEAN PADDOCK, OF THE BRISTOL BAY BREECHERS ASSOCIATION, ADDRESSED THE COMMITTEE. HE WAS SUPPORTIVE OF SECTION 2, AND HAD A LITTLE CONCERN FOR SECTION 3, CALLING IT THE "POOR LOSERS" SECTION, AND WAS PARTICULARLY CONCERNED WITH SECTION 1 OF HB 201. HE REASONED THAT EXISTING STATUTES ARE STRONG ENOUGH, AND SUSPECTED THAT THE SECTION IS A SUBSTITUTE FOR AN INADEQUATE ENFORCEMENT BUDGET. HE STATED THAT VIOLATIONS INCLUDE NOT ONLY MISDEMEANORS, BUT ALSO ISSUES OF STRICT LIABILITY, AND HE WAS CONCERNED THAT IT ENROACHES ON BASIC RIGHTS. HE BELIEVED IT ALSO TREATED FISHING DIFFERENT THAN OTHER INDUSTRIES AND THAT CITIZENS FOR VIOLATIONS ARE ENFORCED ARBITRARILY AND CAPRICIOUSLY.

CHAIRMAN DAVIDSON COMMENTED THAT A PERSON WITH THREE VIOLATIONS MAY NEED TO LEARN A STRICT LESSON.

REPRESENTATIVE DAVIS NOTED THAT STIFFER LAWS WERE RECENTLY PASSED TO ADDRESS ILLEGAL COMMERCIAL FISHING, BUT HAVE NOT MADE A BIG IMPACT. HE SUGGESTED THAT SECTION 1 MIGHT GET THE ATTENTION OF LAW BREAKERS SINCE LAWS ON THE BOOKS DON'T SEEM TO BE ENOUGH OF A DETERRENT.

(TAPE HRC 89-173, SIDE 2, 5000)

REPRESENTATIVE NAVARRE DISCUSSED THE FINANCIAL DISINCENTIVES USED AS A TOOL FOR ENFORCEMENT IN LAST YEAR'S LEGISLATION. HE POINTED OUT THAT THE PENALTY PROVISIONS WERE MADE PROSPECTIVE, SO THAT THE NUMBER OF VIOLATIONS WOULD ADD UP FROM THE TIME THE LAW WAS ENACTED.

MR. PADDOCK STATED THAT HIS CONCERN HAD BEEN SOMEWHAT ALLEVIATED BY REPRESENTATIVE NAVARRE'S AGREEMENT, BUT SUGGESTED THAT THE THREE CONVICTIONS BE LISTED TO MISDEMEANOR VIOLATIONS.

REPRESENTATIVE NAVARRE SAID HE STILL HAD SOME CONCERN WITH THE LANGUAGE IN HIS AGREEMENT AND HOW IT WOULD BE LEGALLY INTERPRETED.

MR. PADDOCK COMMENTED THAT HE WAS CONCERNED WITH THE REMOVAL OF JUDICIAL DISCRETION IN SECTION 1 AND URGED THAT STRICT LIABILITY CONVICTIONS NOT BE INCLUDED.

MR. PADDOCK COMMENTED THAT HE WAS CONCERNED WITH THE REMOVAL OF JUDICIAL DISCRETION IN SECTION 3 AND URGED THAT STRICT LIABILITY CONVICTIONS NOT BE INCLUDED.

REPRESENTATIVE GAVARRE DISCUSSED VIOLATIONS THAT WOULD FALL WITHIN THE CATEGORY, SUCH AS FISHING OVER THE LINE. MR. PADDOCK ADDED THAT IT WOULD ALSO INCLUDE SUCH THINGS AS NOT MARKING A BUOY, NOT TURNING IN A BLUE CARD, ET CETERA.

REPRESENTATIVE MENARD ASKED IF CONSIDERATION IS GIVEN TO TIME LIMITS FOR VIOLATIONS.

CHAIRMAN DAVIDSON COMMENTED ON THE PROBLEM WITH FISH THIEVES AND THE NECESSITY TO GIVE THE AGENCY TOOLS TO MAKE PEOPLE THINK ABOUT VIOLATIONS BEFORE THEY DO THEM. HE FELT THE JUDICIAL SYSTEM WAS APPROPRIATE TO ESTABLISH GUILT OR INNOCENCE AND HE WAS SATISFIED WITH THE CHECKS AND BALANCES.

REPRESENTATIVE DAVIS STATED THAT VIOLATIONS WOULD INCLUDE NOT ONLY STEALING FISH BUT ALSO THINGS SUCH AS NOT HAVING LIGHTED BUOYS, MISSING SIGNS, ET CETERA.

REPRESENTATIVE FOSTER STATED THAT THE LEGISLATION DOESN'T CHANGE CURRENT STATUTE REGARDING THIS ISSUE AND THAT HE WOULD WORK WITH MR. PADDOCK ON HIS CONCERNS.

REPRESENTATIVE DAVIS SUPPORTED THE CONCEPT OF THE BILL.

REPRESENTATIVE MENARD MOVED TO REPORT OUT OF COMMITTEE CSHB 201(RES) WITH INDIVIDUAL RECOMMENDATIONS. THERE BEING NO OBJECTION, IT WAS SO MOVED.

CSHB 201(RES) WAS REPORTED OUT OF COMMITTEE WITH A ZERO FISCAL NOTE, AND PROVIDED A DO PASS RECOMMENDATION. CHAIRMAN DAVIDSON BROUGHT SB 83 BEFORE THE COMMITTEE AND ASKED FOR TESTIMONY.

MIKE BARKER, DEPUTY COMMISSIONER OF THE DEPARTMENT OF

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 ROSS GLEN STAMBAUGH,)
4 Plaintiff,)
5 v.)
6 COMMERCIAL FISHERIES ENTRY)
7 COMMISSION, STATE OF ALASKA,)
8 Defendant.)
9

FILED IN THE TRIAL COURTS
STATE OF ALASKA - 1ST DISTRICT

NOV 18 1988

By _____ P.G. COURT

No. 1JU-88-1839 Civil

10 PRELIMINARY INJUNCTION

11 Plaintiff has moved for issuance of a temporary
12 restraining order. After notice, both sides were heard. The
13 CFEC, through counsel, has opposed the motion.

14 The court has considered the brief of plaintiff, the
15 evidence, and the arguments of counsel. The court finds that
16 the requirements for preliminary injunctive relief have been
17 fulfilled: AS 16.05.710 allows no other conclusion.

18 It is hereby ordered that the CFEC is enjoined from
19 suspending approval of the license transfer application
20 regarding Limited Entry no. S03T 55709U solely on the basis of
21 the proposed Transferor's pending criminal charges.

22 The CFEC is hereby ordered to process the application
23 in accordance with AS 16.43.170(b) and 20 AAC 05.1700 et seq.,
24 without regard to the possible consequences of the criminal
25 action.

This is not a mandatory injunction, and does not

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compel transfer of the permit in question. It merely restrains suspension of transfer proceedings because criminal charges are pending against the transferor. Therefore, for example, if the CFEC moves under AS 16.43.960, it clearly has the authority to suspend the permit holder's ability to transfer the permit upon issuance of a show cause order. AS 16.43.960(b)(3). There may also be other bases for such an action, not addressed here. This court rules only that the CFEC may not suspend transfer because a charge is pending against the transferor. AS 16.05.710.

No bond is required.

IT IS SO ORDERED.

Done at Juneau, Alaska this 18th day of November, 1988.

Walter L. Carpenetti

WALTER L. CARPENETTI
Superior Court Judge

CERTIFICATION

The undersigned certifies that on the 18th day of November, 1988, a true copy of this document was served on the following attorneys:
STEVEN MARKS; GARY AMENDOLA

BY *[Signature]*

Attachment #2
(2 of 2)

will be personally accompanied while hunting by a person who is qualified under the terms of (a) of this section. A person who falsifies the required affidavit is guilty of perjury under AS 11.56.200.

(c) *(Repealed, § 27 ch 71 S.L.A. 1986.)*

(d) A nonresident who violates (a) of this section, or who fails to furnish an affidavit under (b) or (c) of this section, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$5,000, or by both.

(e) An applicant for a nonresident big game tag for the taking of moose or caribou shall first furnish to the state, on a form provided by the state, an affidavit showing where the applicant will be hunting and what guiding, transportation, or other big game hunting services the applicant will be employing. A person who falsifies an affidavit under this subsection is guilty of perjury under AS 11.56.200. (§ 1 ch 86 S.L.A. 1967, am § 39, 40 ch 59 S.L.A. 1982, am § 1 ch 74 S.L.A. 1982, am § 1 ch 111 S.L.A. 1984, am §§ 24, 25, 27 ch 71 S.L.A. 1986, am §§ 9, 10 ch 160 S.L.A. 1988)

Effect of amendments. — The 1988 amendment, effective June 17, 1988, inserted "or (e)" in subsection (d) and added subsection (e).

Article 4. Licensing of Commercial Fishing Crewmembers and Vessels.

<p>Section 710 Suspension of commercial license and entry permit 720 <i>(Repealed)</i> 722 Strict liability commercial fishing penalties</p>	<p>Section 723 Misdemeanor commercial fishing penalties</p>
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Sec. 16.05.710. Suspension of commercial license and entry permit. (a) A person convicted of a misdemeanor for violating AS 16.05.440 — 16.05.690 or a federal or state commercial fishing statute or regulation is, in addition to other penalties provided by law, subject to the following penalties:

(1) upon a first or second conviction the court may suspend, for a period of not more than one year,

(A) the person's commercial fishing license and the right to obtain a limited entry permit; or

(B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license;

(2) upon a third or subsequent conviction the court shall suspend, for a period of not more than three years,

(A) the person's commercial fishing license and the right to obtain a limited entry permit; or

(B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license.

(b) Upon a first conviction of a person for a violation of AS 11.46.120 — 11.46.130 in which the property is commercial fishing gear as defined in AS 16.41.990, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for one year. Upon a second or subsequent conviction, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for two years.

(c) During the period for which a limited entry permit is suspended under (a) of this section a permit card may not be issued, and the permit may not be transferred or sold.

(d) In this section:

(1) "commercial fishing license" includes a crew member license;

(2) "limited entry permit" includes an interim use permit. (§ 11 art III ch 94 S.L.A. 1959, am § 1 ch 112 S.L.A. 1961, am § 1 ch 75 S.L.A. 1966, am § 3 ch 73 S.L.A. 1986, am §§ 1, 2 ch 46 S.L.A. 1988)

Effect of amendments. — The 1988 amendment, effective May 25, 1988, repealed and reenacted subsection (a), which formerly related to the same subject matter, and added subsections (b) and (d). S.L.A. 1988, which amended this section, provides: "Notwithstanding the provisions of this Act, in a case pending on May 25, 1988 involving a commercial fishing violation that occurred before May 25, 1988, the court shall apply the law that was in effect on the date the violation occurred."

Editor's notes. — Section 6 of ch. 46,

Sec. 16.05.720. Penalties. (Repealed, § 5 ch 46 S.L.A. 1988.)

Sec. 16.05.722. Strict liability commercial fishing penalties. (a) A person who without any culpable mental state violates AS 16.05.440 — 16.05.690, or a regulation of the Board of Fisheries or the department governing commercial fishing, is guilty of a violation and upon conviction is punishable by a fine of not more than

(1) \$3,000 for a first conviction; and

(2) \$6,000 for a second or subsequent conviction.

(b) In addition, the court shall order forfeiture of any fish, or its fair market value, taken or retained as a result of the commission of the violation. For purposes of this subsection, it is a rebuttable presumption that all fish found on board a fishing vessel used in or in aid of a violation, or found at the fishing site, were taken or retained in violation of AS 16.05.440 — 16.05.690 or a commercial fisheries regulation of the Board of Fisheries or the department. It is the defendant's burden to show by a preponderance of the evidence that fish on board or at the site were lawfully taken and retained.

(c) A person charged with a violation under this section is entitled to a trial by court but not by jury, and is not entitled to representation at public expense. (§ 3 ch 46 S.L.A. 1988)

WHAT YOU DIDN'T KNOW CAN HURT YOU!

A battle that BBDA has been waging in Juneau this session is one of which most fisherman may be unaware. We are speaking here of the changes in the fishery penalty statutes (Sec.16.05. 710 (a)) which passed the legislature last year after your Executive Director departed Juneau for the Togiak herring grounds. We are puzzled that no other fishing groups were following it

We were aware that the severity of the fines had been substantially boosted last year. It was not until we became involved in closely reviewing a new piece of legislation which would add further restrictions elsewhere and re-word paragraph (a) of the aforementioned section, however, that we became personally aware of the Draconian nature of the existing statute.

Specifically, we were distressed to find that a person can have his ability to participate in any or all fisheries suspended for a year after one or two convictions, and that after three convictions the court SHALL revoke the persons ability to obtain a licence or permit for a period of not more than three years.

What really shook us up was the realization that the convictions referred to in the present statute include not only misdemeanors but also strict liability violations,....minor violations for which a defendant is not entitled to trial by jury. These are called "traffic ticket" citations, in spite of the fact that direct fines may range up to \$6,000, and gear may be confiscated, in addition to whatever catch may be aboard.

BBDA has always strongly supported a strict adherence to all statutes and regulations. We have supported increased appropriation for enforcement. We have no truck with intentional violators. By our questioning the appropriateness of the present statute, we intend no departure from this basic position.

It has been our experience, however, through long association with the process in Bristol Bay, that the great majority of cases made and "brought to justice" somehow seem to include all too few of those described by former Board of Fish Chairman Jim Beaton as "the heavy hitters".

We believe that the present statute will eventually impact far more average fishermen than it will those who make flaunting the law a regular habit. Also the absence of any provision to phase out existing violations means that the present "three strikes and yer out" applies to an entire lifetime.

We are further concerned that the existing statute imposes an essentially criminal sanction (suspension of the ability to

exercise ones livelihood) for violations where the "culpable mental state" may be wholly absent, and is thus a clear violation of Article 1, Section 7 of the Alaska Constitution. Further, it is our understanding that the law precludes criminal penalties where the right to a jury trial and an unqualified right to counsel has been denied.

Of course, by creating a blanket approach where strict liability convictions may be mixed with misdemeanors, we may have seen the birth of a new breed of critter which can offer a lot of employment to the legal profession in the future.

We have no legal expertise but we can use every available means of making our discomfort with the existing statute widely known, and we have done so.

We have gone into detail in explaining our rationale in this matter because we know that there are some members who have never had an unfortunate experience with Fish and Wildlife Protection or the Courts and who believe that the honest fisherman has nothing to fear. (We, the editor, have never had a ticket and yet we sincerely wish we could agree.) We don't think, however that it is fair to saddle the entire state with a regulation whose impetus admittedly originates in the desire to curb the unique Bristol Bay "line game".

Our arguments seem to have struck a responsive note with Rep. Richard Foster (D-Nome), freshman legislator and bush pilot. Though this bill (House Bill 201) was passed out of the House Resources Committee with little modification and now goes to the Judiciary Committee, Rep. Foster has submitted a draft change for consideration which we believe is reasonable. His new wording requires that violations leading to suspension be misdemeanors and that the three violations occur within a ten-year period.

This wording is much to be preferred, we believe, over that of Senator Fred Zharoff's S.B. 164, which asks mandatory FORFEITURE of ALL permits and suspension of ALL commercial fishing privileges for a period of up to three years. We spoke in opposition to this provision of SB 164 when it was before Senate Resources.

Should you agree that this is a matter for concern, please send a message to your Representative or Senator.

Original sponsors: Foster, Jacko,
Goll, et al.

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 201 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to additional penalties for viola-
7 tion of commercial fishing laws and for theft of
8 commercial fishing gear."

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

10 * Section 1. AS 16.05.710(a) is repealed and reenacted to read:

11 (a) Upon a person's first or second misdemeanor or felony con-
12 viction within a 10-year period for violating a commercial fishing law
13 of this state or another jurisdiction, the court may, in addition to
14 other penalties imposed by law, suspend one or more of the person's
15 commercial fishing privileges and licenses for a period of not more
16 than one year. Upon the person's third or subsequent misdemeanor or
17 felony conviction within a 10-year period for violating a commercial
18 fishing law of this state or another jurisdiction, the court shall, in
19 addition to other penalties imposed by law, suspend one or more of the
20 person's commercial fishing privileges and licenses for a period of
21 not more than three years.

22 * Sec. 2. AS 16.05.710(b) is amended to read:

23 (b) Upon a first conviction of a person for a violation of
24 AS 11.46.120 - 11.46.130 in which the property is commercial fishing
25 gear as defined in AS 16.43.990, the court shall, in addition to the
26 penalty imposed by law, suspend one or more [ORDER A SUSPENSION] of
27 the person's commercial fishing privileges and licenses for one year.
28 Upon a second or subsequent conviction for a violation of AS 11.46.-
29 120 11.46.130 or a similar law of another jurisdiction in which the

1 property is commercial fishing gear as defined in AS 16.43.990, the
2 court shall, in addition to the penalty imposed by law, suspend one or
3 more [ORDER A SUSPENSION] of the person's commercial fishing privi-
4 leges and licenses for two years.

5 * Sec. 3. AS 16.05.710(c) is amended to read:

6 (c) If proceedings in which commercial fishing privileges or
7 licenses may be suspended under this section are pending against a
8 limited entry permit holder, the permit holder's limited entry permit
9 may not be permanently transferred, unless allowed by order of the
10 court in which the proceedings are pending, and a permanent transfer
11 of the permit, unless allowed by order of the court, is void. During
12 the period for which a limited entry permit or the permit holder's
13 right to obtain a limited entry permit or to engage in an activity for
14 which a limited entry permit is required is suspended under [(a) OF]
15 this section, a permit card may not be issued to the permit holder and
16 the permit holder's permit may not be transferred or sold.

17 * Sec. 4. AS 16.05.710(d) is repealed and reenacted to read:

18 (d) In this section

19 (1) "commercial fishing license" means a limited entry
20 permit or a crew member license;

21 (2) "commercial fishing privilege" means the privilege of
22 participating in an activity for which a commercial fishing license is
23 required and the privilege of obtaining a commercial fishing license;

24 (3) "commercial fishing law" means a statute or regulation
25 that regulates the conduct of a person engaged in commercial fishing
26 activities by establishing requirements relating to fishing licenses
27 and permits; catch records and reports; size, nature, or use of fish-
28 ing vessels, sites, and gear; time, place, or manner of taking fishery
29 resources; possession, transportation, sale, barter, or waste of

1 fishery resources; or other aspects of commercial fishing;

2 (4) "limited entry permit" means an entry permit or an
3 interim use permit issued under AS 16.43.

4 * Sec. 5. AS 16.43.170 is amended by adding a new subsection to read:

5 (f) The permanent transfer of an entry permit is void if pro-
6 ceedings in which commercial fishing privileges and licenses may be
7 suspended under AS 16.05.710 are pending against the permit holder at
8 the time of transfer unless the transfer of the entry permit is al-
9 lowed by order of the court in which the proceedings are pending.

10 * Sec. 6. The provisions of this Act are applicable to cases involving
11 a commercial fishing violation or theft of commercial fishing gear that
12 occurs on or after the effective date of this Act.