

SCOMM

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FISCAL NOTE

BILL NO. HB 134STATE OF ALASKA
1993 LEGISLATIVE SESSIONRevision Date: 02/12/93Department Affected: CFECTitle: Temporary Transfer ofBRU: Commercial Fisheries Entry CommissionCommercial Fisheries Entry PermitsComponent: Limited Entry Program Admin.Sponsor: Representative MosesRequestor: House Spec Comm on Fisheries
EXPENDITURES/REVENUES:COMPONENT SERIAL NO.
(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	25.6	25.6	51.2	51.2	76.8	76.8
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	26.6	25.6	51.2	51.2	76.8	76.8

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	25.6	25.6	51.2	51.2	76.8	76.8
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	25.6	25.6	51.2	51.2	76.8	76.8

POSITIONS:

FULL-TIME						
PART-TIME	1	1	2	2	3	3
TEMPORARY						

Estimate of current year (FY93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.) The agency estimates a potential 59% increase in emergency transfers in first year, increasing to 154% in five years. Three additional transfer technicians will be required by the fifth year to maintain an adequate level of service. See attached detail.

Prepared By: Chris KellyPhone: 789-6160Division: Commercial Fisheries (Limited) Entry CommissionDate: 2-13-93Approved by Commissioner: Richard F. Lutsch

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Position Title Transfer Technician			No. of Positions 1	Range / Step 16A	Barg. Unit X
Time Status S	Staff Months 6		Location Juneau	Election District 4	
TYPE OF EXPENDITURE		AMOUNT	Justification Based upon 1991 data, the Entry Commission estimates that this legislation would result in a 59% increase in emergency transfers during the first year, increasing to 154% in five years. This impact on the transfer workload would be slightly offset by a decrease in permanent transfer requests. However, because approximately 83% of annual emergency transfers occur during four months (April through July), and because prompt review is essential to prevent loss of fishing time, additional staff would be required in order to maintain an acceptable level of service. The Commission currently has just one position (Transfer Officer) budgeted to handle approximately 1850 permit transfers annually, (both permanent and emergency) as well as related activities, (such as preparing certifications of eligibility for the loan programs). Due to the seasonal nature of the workload, it is necessary to have three additional licensing staff members assist with transfers even though the Transfer Officer works many uncompensated hours of overtime each week. This means that many other licensing functions, (such as responding to general inquiries and requests for data, processing refund requests, filing applications, etc.) get put on the back burner until there is time to deal with them.		
Salary	18.2				
Benefits	7.3				
Premium Pay					
Other					
Total Personal Services	25.6	25.6			
Travel					
Contract					
Commodities					
Equipment					
Other					
Total Cost		25.6			
FUNDING SOURCE FOR TOTAL COST					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	25.6			
I. A. Receipts	1007				
CIP Receipts	1061				
Other					

Request For New Position

AGENCY DEPARTMENT OF FISH AND GAME
 BRU Commercial Fisheries Entry
 COMPONENT (Limited) Commission
Limited Entry Program Administration

FY 94

Page 1 of 2
 Revised Date: 2/12/93

To accomodate the increased transfer workload resulting from this legislation, three seasonal transfer technicians will need to be brought on board by the fifth year; (one in the first year, a second in the third year and a third in the fifth year). The seasonal transfer technicians will work only during the peak months of transfer activity, reviewing emergency transfer requests, asking for additional documentation as needed, making determinations of approval or denial and, when appropriate, coordinating with local ADF&G and FWP office staff to authorize transferees to commence fishing.

Emergency transfer requests are typically received during or immediately before the fishing season and usually require correspondence and/or telephone conversations with applicants and their doctors (or others who can corroborate the facts). Prompt and efficient processing of emergency transfer requests is critical as lost fishing time due to delays can have significant financial consequences for the fishermen involved. Notices of denial and subsequent hearings must be expedited to minimize loss of fishing time for the applicants. During the April - June time period, staff often have to stay after hours to enter transfers on the computer and do correspondence because they are busy on the phone during regular office hours.

The legislation as currently drafted will not only increase the number of transfer requests, it will also increase the amount of time required for the review process. The requirement that permit holders have participated in the fishery during the past 10 years, (rather than just having held the permit,) means the commission will have to check fish ticket records to verify participation. Fish tickets often are not readily accessible until a year or two after the season and they will have to be obtained by contacting the Dept. of Fish and Game.

As of April 1992, there were 1,006 limited entry permits held by fishermen 65 and older. Disregarding those who hold nontransferable permits and those who have already been emergency transferring permits, there is a potential for approximately 749 new emergency transfer requests in the first year. By the fifth year, an additional 869 fishermen will be age 65 or older, bringing the potential number of emergency transfer requests to 2,149. Since the legislation does not provide for a time limit or an incentive to permanently transfer the permit, holders will presumably continue to emergency transfer permits year after year. Therefore, the number of annual emergency transfers will continue to grow indefinitely and the pool of permits available for purchase by prospective new entrants to the fisheries will shrink. Even after the death of the permit holder, the permit may continue to be emergency transferred for several years, due to the time required to probate and settle the estate, before it may be permanently transferred to another party.

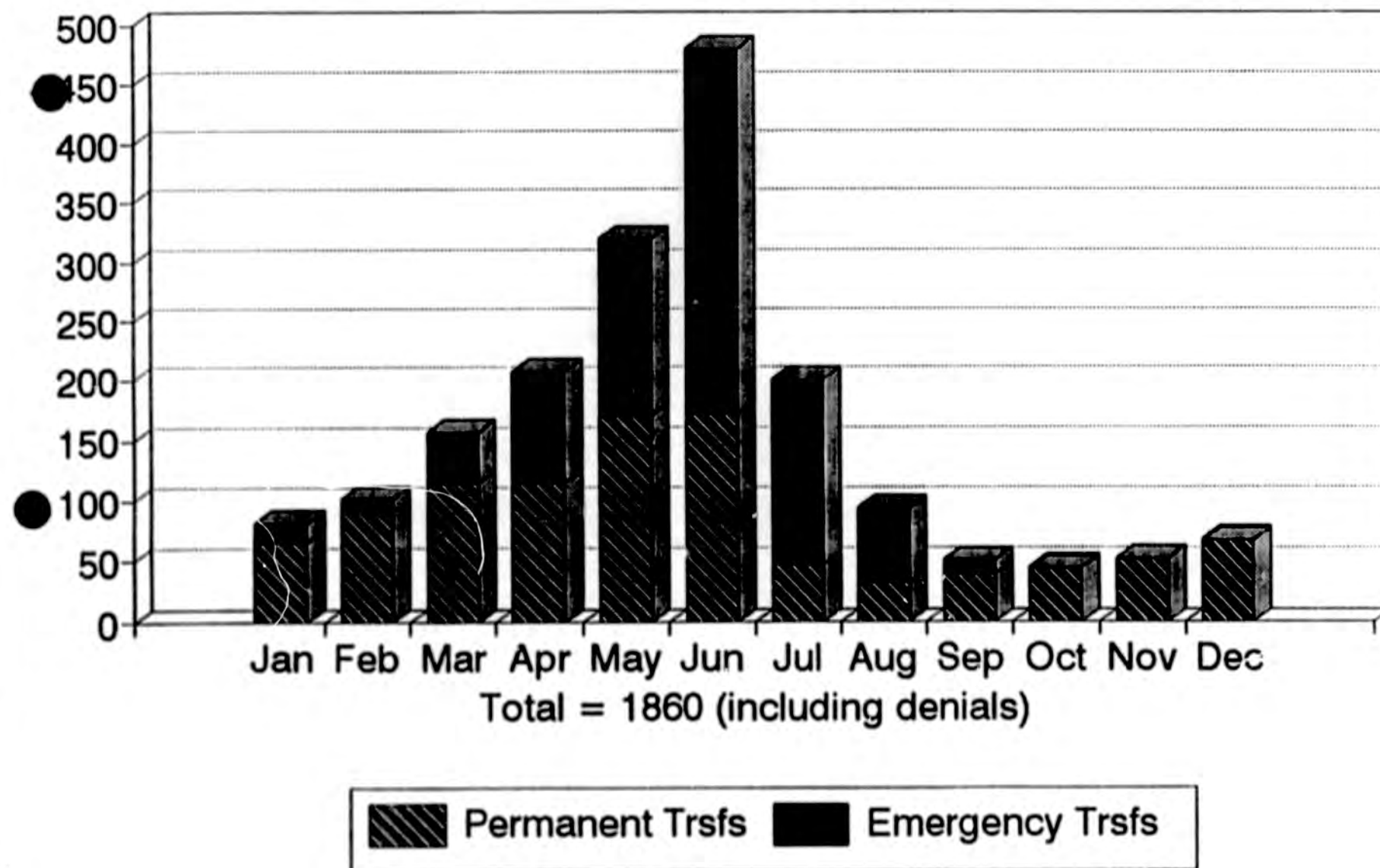
LEP's held by persons >= 65		1006
(less those already trsf'd)		<u>-159</u>
		847
(less nontransferable permits)		<u>-98</u>
Potential new emer trsf requests		749
Add emer trsf's for under 65 group	+	<u>598</u>
Estimated total in first year		1347
By fifth year:		
Add'l permit holders in 65+ group	+	<u>869</u>
		216
(less those already trsf'd)		<u>- 67</u>
Estimated total in fifth year		2149

Assumptions:

- 1) The majority of permits held by persons 65 and older have been held for at least ten years.
- 2) The total number of nontransferable permits held by persons in the 65+ age group (or who will be entering it in future years) has not been verified so they are not deducted from these figures. However, current regulations do allow for these permits to be emergency transferred under certain circumstances.
- 3) The number of permit holders aged 65 and older will continue to increase as there is no incentive to permanently transfer permits to younger fishermen if they can be leased indefinitely.

Monthly Permit Transfer Activity

1992



HB 134

Temporary transfers of limited entry permits

HB 134 was introduced at the request of one of my constituents from the village of Ugashik, in Bristol Bay. Current law prohibits leasing of a limited entry permit unless it involves a documented emergency transfer. The transfer is only good for one year, although it can be renewed on an annual basis with justification. HB 134 would allow permanent limited entry permit holders 65 years of age and older who suffer from illness or disability, the right to lease their permit without going through the annual renewal process. This right would last until the permit holder dies or transfers the permit.

Many commercial fishermen who are now 65 or older, still aren't ready to permanently sell or transfer their permits. However, they also are often not able to keep up with the physical demands of commercial fishing on a full-time basis. HB 134 would set up a system which would have two potential benefits:

- allow the transfer of permits to younger individuals who haven't been able to participate in commercial fishing as gear operators; and
- allow senior commercial fishermen the opportunity to plan an orderly transition from active commercial fishing to retirement.

COMMERCIAL FISHERIES ENTRY COMMISSION

POSITION PAPER

Bill No. HB 134

Sponsor: Representative Moses

Division:

Bill Title: Temporary Transfer of Commercial Fisheries Entry Permits

Background/Legislative Intent:

HB 134 will allow only permanent limited entry permit holders 65 years of age and older the right to lease a permit year-to-year without supervision from the CFEC for reasons of illness or disability. AS 16.43 presently prohibits leasing of a permit unless it involves a documented emergency transfer. Permit holders under the existing system must justify a renewal of an emergency transfer each year. However under HB 134, once a permit holder 65 or older receives a medical transfer the holder can freely lease the permit to another person for whatever the market will pay without interference from the agency until the holder dies or transfers the permit. HB 134 would create an incentive to not sell a permit when the holder retires from the fishery.

HB 134 may impair the Commission's ability to fully monitor and enforce the strong anti-leasing provision contained in AS 16.43. The Legislature at the time of passage of the limited entry law in 1973 intended that holders of permits should actively fish those permits and that there should not be absentee ownership of permits.

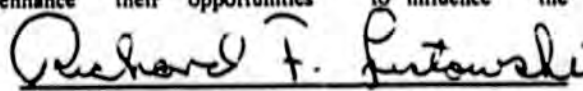
Analysis of Bill/Program Effects:

A likely impact of HB 134 will be the increase in the cost of permits as the supply of permits available for transfer decreases while the demand for permits rises or remains constant. Instead of providing opportunity for younger and inexperienced individuals, as some suggest, it is likely that retired permit holders will seek to lease their permits to the highest bidder and most experienced fisher. If an increase in permit prices were to result from a decrease in supply, there may well be fewer opportunities for young rural people to enter a local fishery.

Leasing of permits will create an absentee landlord class of permit holders. In 5 years, approximately 13% of the total permits issued could fall under the leasing provision. Such a development would make it harder to defend the limited entry program and the fishing industry in legal disputes and resource allocation controversies with other industry or user groups.

Out-of-state permit brokers are already heavily involved in permit transfers and emergency transfers. This bill will enhance their opportunities to influence the transfer of entry permits.

Commissioner's Signature


Rich Listowski, Commissioner

Date 2-12-93

TO: The Honorable Carl Moses, Chair
House Special Committee on
Fisheries

DATE: February 16, 1993

FAX NO: 789-6170

FROM: COMMERCIAL FISHERIES *RL*
ENTRY COMMISSION
Rich Listowski, Commissioner

TELEPHONE NO: 789-6160

SUBJECT: HB 134

HB 134 will allow only permanent permit holders 65 years of age and older the right to lease a permit year-to-year without supervision from the CFEC for reasons of illness or disability. The bill may have the following impacts on the commercial fisheries:

1. Increase in the cost of permits as the supply of permits decreases while the demand for permits rises or remains constant.
2. Increase in the amount of gear being fished as retired elderly permit holders lease their permits to the highest bidder.
3. Marginal permit holders over 65 years of age presently engaged in the fishery will be encouraged to retire and lease their permits to younger and more aggressive fishers thereby increasing effort.
4. Inflation of permit prices caused by leasing will add to the already high cost of permits and further prevent young rural people from entering a local fishery.
5. Leasing of permits will create an absentee landlord class of permit holders. In 5 years, approximately 13% of the total permits issued could fall under the leasing provision. This could become a public relations problem when the fishing industry becomes involved in legal disputes or resources allocation controversies with other industry or user groups.
6. Seattle permit brokers will benefit from a relaxation of anti-leasing provisions now in the statute as they expand their businesses from brokering of permit transfers to include brokering of leased permits. They will be able to obtain a list of names and addresses from the Commission of permit holders over 65 years of age.
7. HB 134 may violate the equal protection clause in the State Constitution.
8. Legislative intent at the passage of limited entry law intended for the permit holder to be an active participant in the fishery. The limited entry program was never calculated when passed into law in 1973 to become a social program or a retirement plan by its supporters in the administration, the Legislature, or the commercial fishing industry.

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 4, 1993

SUBJECT: Temporary transfers of limited entry permits
(Work Order No. 8-LS0588\A)

TO: Representative Carl Moses

FROM: George Utermohle *GU*
Legislative Counsel

Enclosed is the bill that you requested relating to the temporary transfer of entry permits by certain fishermen.

The bill is potentially subject to challenge on the ground that it violates the equal protection rights of fishermen who are not eligible to take advantage of the temporary transfer provisions in the bill.

Under the equal protection clauses of the state and federal constitutions the state may discriminate between similarly situated individuals, provided that the state is not creating inherently suspect classifications (such as classifications based on race or religion) or impinging on fundamental rights (such as the right to vote), if the state has a sufficiently rational basis for the discrimination and is pursuing a legitimate governmental goal. Under the state equal protection clause, a statute is evaluated on a sliding scale under which the goal of the legislation and the importance of the individual rights affected are considered. State v. Anthony, 810 P.2d 155 (Alaska 1991). As the importance of the individual rights affected increase, then the burden increases on the state to show that the state's goal justifies the intrusion on the individual's interests in equal treatment and that the state's goal is rationally related to the means chosen to achieve the goal. *Id.* at 157.

The individual fisherman's interest in being able to transfer an entry permit from year-to-year would probably be accorded a relatively low level of protection under the state and federal equal protection clauses, because only the fisherman's economic interests are implicated. See, State v. Ostrosky, 667 P.2d 1184, 1193 (Alaska 1983). In a case, such as this, where relatively minor individual interests are affected, the state need only show that it is pursuing a legitimate state goal and that there is a rational relationship between the goals and the means chosen to achieve the goal.

Representative Carl Moses
February 4, 1993
Page 2

Anthony, 810 P.2d at 158. In most instances, this is a relatively easy burden for the state to overcome, if the bill were to be challenged.

More important than the equal protection clauses of the state and federal constitutions is the uniform application section of article VIII of the state constitution. The uniform application section requires that the state treat similarly situated individuals the same in regard to the use and disposal of state resources, including fish and game. The standard of review applied by the Alaska courts under the uniform application section is more stringent than that which is applied in most cases under the equal protection clauses of the state and federal constitutions, so the burden on the state is more difficult to overcome. Gilbert v. State, Department of Fish and Game, 803 P.2d 391 (Alaska 1991). An alternative strategy for escaping an adverse ruling under the uniform application section is to convince the court that the individuals eligible to transfer their permits under this bill are meaningfully different from other entry permit holders and thus not similarly situated. Gilbert, 803 P.2d at 398-99.

In order to bolster the bill against potential equal protection challenges under the state and federal equal protection clauses and the state uniform application section, the legislature should develop a record describing the goals of the bill and establishing that it is reasonable to achieve those goals by allowing only those permit holders who are at least 65 years old, have 10 years of participation in the fishery, and are unable to participate in the fishery for medical reasons to transfer their entry permits from year-to-year. It will also be helpful if the legislature can document in the record that the individuals eligible to transfer their permits under the bill are different from other limited entry permit holders.

If I may be of further assistance, please advise.

GU:lmb
93-024.lmb

Enclosure

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
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Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 19, 1993

SUBJECT: Draft CSHB 134(FSH)
TO: Representative Carl Moses
ATTN: Molly McCammon
FROM: George Utermohle *GU*
Legislative Counsel

Enclosed is the draft CSHB 134(FSH) that you requested. This version of the bill limits the potential recipients of a year to year transfer of a limited entry permit to those persons who are members of the immediate family of the permit holder. "Immediate family" is defined to mean a parent, grandparent, spouse, child, grandchild, brother, or sister of the permit holder. A nonseverability section (sec. 3) has also been added to the bill.

The changes made to HB 134 by this committee substitute heighten concerns regarding the possible unconstitutionality of AS 16.43.180(c) as added by sec. 2 of the bill. By limiting the transfer of permits under the bill to those persons who are members of the immediate family of the permit holder, the bill raises the issue of whether the limitation on transferability violates the equal protection rights of those who do not have immediate family members who are permit holders.

More important than the state and federal equal protection issues raised by the bill is the fact that the bill limits access to the commercial fishing user group. Limitations on entry into fish and game user groups are subject to heightened scrutiny under the open (equal) access provisions of the Alaska Constitution: common use section, no exclusive right of fishery section, and the uniform application section.^{1/} Taken

^{1/} Article VIII, section 3 of the Alaska Constitution states:

Common Use. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

(continued...)

together, the open access sections are intended to permit the broadest possible public access to and use of fish and game. Owsichek v. State, 763 P.2d 488, 492 (Alaska 1988). The open access sections prohibit exclusive grants or special privileges for use of fish and game. McDowell v. State, 785 P.2d 1, 6 (Alaska 1989); Owsichek, 763 P.2d at 493.

It would be best, if the legislature could establish that members of the immediate family of a permit holder who is at least 65 years old, has participated in the fishery for 10 years, and is not able to participate in the fishery for medical reasons are meaningfully different from those persons who are not related to such a permit holder. If the legislature could establish such facts then there would be no violation of state or federal equal protection clauses or the uniform application section because those constitutional provisions protect only those person who are similarly situated. However, it seems unlikely that the legislature could establish that such facts exists, so the legislature must anticipate that the bill may be challenged on equal protection and uniform application grounds.

Under the uniform application section of the Alaska Constitution, judicial review of a statute restricting open access to a fish and game user group by establishing a non-uniform classification of people eligible to enter the user group is similar to the analysis used to examine equal protection issues under the state and federal constitutions. The statute must have a legitimate public purpose. The public purpose underlying the statute must be at least an important public purpose to overcome the important interest of individuals in open access to state fish and game resources. The means chosen to further the important public purpose must be carefully designed for the least possible infringement on the open access values of the constitution. Gilbert v. State, Department of Fish and Game, 803 P.2d 391, 399 (Alaska 1990).

In order to overcome the obstacles posed by the uniform application section, it is necessary for the legislature to establish that there is an important reason behind the

U/(...continued)

Article VIII, section 15 of the Alaska Constitution states:

No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Article VIII, section 17 of the Alaska Constitution states:

Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Representative Carl Moses
March 19, 1993
Page 3

restriction on the year to year transfer of entry permits to persons who are not members of the permit holder's immediate family. Also, the legislature must establish that the limitation on the transfer of entry permits is the least restrictive mechanism available to the legislature to achieve its important public purpose. It is important that the legislature clearly establish these facts in the legislative history of HB 134 in order to bolster the bill against challenge.

Provided that HB 134 can survive a challenge under the uniform application section, the equal protection provisions of the state and federal constitutions would not pose a significant threat to the bill because judicial review under the equal protection provisions of the uniform application section is more rigorous than corresponding review under the state equal protection clause and the federal equal protection clause.

If I may be of further assistance, please advise.

GU:gc:pl
93-241.glc

Enclosure

8-LS0588E ✓
Utermohle
3/19/93

CS FOR HOUSE BILL NO. 134(FSH)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MOSES

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to temporary transfers of commercial fisheries entry permits."

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

3 * Section 1. FINDINGS. The legislature finds that

4 (1) current law relating to the emergency transfers of limited entry permits
5 does not adequately address the concerns of commercial fishermen who are 65 years of age
6 or older and suffer from age-related physical disabilities;

7 (2) commercial fishermen 65 years of age or older who, because of medical
8 problems, can no longer participate in physically demanding commercial fisheries should not
9 be forced to sell their permits, but instead should be allowed to transfer their permits to
10 members of their family and to plan for themselves an orderly transition from active
11 commercial fishing to retirement;

12 (3) commercial fishermen 65 years of age or older, who suffer from physical
13 disabilities, should be allowed to participate in the fisheries in a less strenuous manner,
14 thereby imparting the knowledge gained from many years of experience to members of their

1 family;

2 (4) 65 years of age is the established age of retirement in our society and the
3 qualifying age for a large number of programs for senior citizens;

4 (5) commercial fishermen do not have an established retirement system;

5 (6) allowing limited entry permit holders who are 65 years of age or older to
6 transfer a permit from year-to-year will enable many young members of the permit holder's
7 family with low incomes to participate in commercial fishing as gear operators and give them
8 the opportunity to acquire the capital necessary to purchase their own limited entry permits;

9 (7) allowing all limited entry permit holders to transfer a permit from year-to-
10 year without restrictions on who may receive the permit would result in speculation in
11 fisheries entry permits by individuals who purchase permits with the intention of living off
12 the income generated by other individuals who actually operate the permits; such a practice
13 would be disruptive to the commercial fishing industry and should not be allowed;

14 (8) commercial fishermen who have participated in a specific fishery for 10
15 years or more are bona fide commercial fishermen who have invested considerable time and
16 money in the commercial fishing industry and who have demonstrated their commitment to
17 commercial fishing as a livelihood and a profession.

18 * Sec. 2. AS 16.43.180 is amended by adding a new subsection to read:

19 (c) The commission shall adopt regulations providing for the temporary
20 transfer from year-to-year of an entry permit to a member of the permit holder's
21 immediate family if the permit holder is at least 65 years of age, has participated in
22 the fishery for which the permit is issued for at least 10 years, and is unable to
23 participate in the fishery for medical reasons. In this subsection, "immediate family"
24 means the permit holder's parent, grandparent, spouse, child, grandchild, or sibling.

25 * Sec. 3. PROVISIONS NOT SEVERABLE. Notwithstanding AS 01.10.030, the
26 provisions of AS 16.43.180(c), added by sec. 2 of this Act, are not severable.

FAX COVER SHEET

Mon Mar 22 1993 12:42 am

To: r
Fax #: 1-907-465-3445

From: Randy Briggs
Fax #: 1-803-846-0043
Voice #: same

Fax: 4 pages and a cover page.

Dear Rep. Moses,

I received the fax of March 20 from Molly. Thank you so much.

I am concerned about limiting transfers to family members because some fishermen may wish to make a transfer who do not have a relative to whom the transfer could be made.

What do you think about restricting the transfers to a licensed commercial fisherman who had been in the fishery for ____ number of years, whether as a crewman, gear operator, or former interim permit holder. This might well be a family member but not specifically restricted to family. It could be a fisherman who is not able to handle his or her finances, perhaps lost their permit to IRS but is a darn good fisherman anyway. Since the permit would remain in the original permit holders name finances should present no problem.

This would not bring any new fishermen into the fishery, experience would be required so only those fishermen who had participated in the fishery in some capacity for several years, previous to the transfer would be eligible.

Also I was wondering what you would think about adding another subsection (d) to Sec. 2 AS 16.43.180 to cover those permit holders who at any age suffered a disabling accident or illness. The Limited Entry Commission on a case by case basis, could develop regulations to allow that permit to be transferred as long as the disability lasted.

Well, that about does it for now.

Best regards,

Randy Briggs

Sec. 1 FINDINGS

1. Current law relating to the emergency transfers of limited entry permits does not adequately address the concerns of commercial fishermen who are 65 years of age or older and suffer from age-related physical disabilities.
2. Commercial fishermen 65 years of age or older, who because of medical problems, can no longer participate in physically demanding commercial fisheries should not be forced to sell their permits, but instead should be allowed to transfer their permits to another commercially licensed fisherman who has had previous experience fishing in that fishery.
3. Commercial fishermen 65 years of age or older, who suffer from physical disabilities, should be allowed to participate in the fisheries in a less strenuous manner, thereby imparting the knowledge gained from many years of experience to a fisherman of less experience.
4. 65 years of age is the established age of retirement in our society and the qualifying age for a large number of programs for senior citizens.
5. Commercial fishermen do not have an established retirement system.
6. Allowing limited entry permit holders who are 65 years of age or older to transfer a permit from year-to-year will enable many younger fishermen with low incomes to participate in commercial fishing as gear operators and give them the opportunity to acquire the capital necessary to purchase their own limited entry permits.
7. Commercial fishermen who have participated in a specific fishery for 10 years or more are bone fide commercial fishermen who have invested considerable time and money in the commercial fishing industry and who have demonstrated their commitment to commercial fishing as a livelihood and a profession.
8. Allowing limited entry permits to be transferred to a crewman or fisherman with ____ years participation in that fishery would eliminate speculation in purchasing permits for an investment.

Sec 2. AS 16.43.100 is amended by adding a new subsection to read:

(c) The commission shall adopt regulations providing for the temporary transfer from year to year of an entry permit to a younger commercial fisherman with experience in the fishery if the permit holder is at least 65 years of age and has participated in the fishery for which the permit was issued for at least 10 years but unable to participate in the fishery for medical reasons. In this situation an "experienced" fisherman is one who has participated as a licensed crewman for at least five years.

(d) A commercial fisherman who has participated as a gear holder for ten or more years who at any age suffers a disabling accident or illness may be allowed, on a case by case basis, to transfer their for as long as the disability lasts.

MEMORANDUM

State of Alaska

TO: Robert J. Simon, Chairman
Burke Riley, Commissioner
John Williams, Commissioner
Commercial Fisheries Entry
Commission
Dept. of Fish & Game

DATE: October 15, 1980

FILE NO: J-66-162-80

TELEPHONE NO: 465-3655

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Annual Emergency transfer
of permit.

By: Deborah Vogt *DV*
Assistant Attorney General

You have asked whether AS 16.43.180 allows a permit holder to annually transfer a permit in the event of a debilitating illness or similar circumstance which permanently precludes the permit-holder's participation in the fishery. That is, may a permanently disabled permit holder transfer his permit each year under the emergency transfer provisions, but retain ownership of the permit? Our answer is no.

AS 16.43.180(a) provides, in part:

The commission shall adopt regulations providing for the temporary emergency transfer of entry permits and interim use permits when illness, disability, death, required military service, or other unavoidable hardship prevents the permit holder from participating in the fishery.

emphasis added.

20 AAC 05.740 sets out the requirements for emergency transfers. That regulation states that the commission will grant an emergency transfer under certain specific conditions:

- (1) if the proposed transferee is not a permit holder in the fishery,
- (2) if the transferee is presently able to participate in the fishery, and
- (3) if it is established that illness, disability, death, required military service, or other unavoidable hardship prevents the transferor from participating in the fishery.

RECEIVED
OCT 16 1980

COMMERCIAL FISHERIES
ENTRY COMMISSION

Robert J. Simon, Chairman
Burke Riley, Commissioner
John Williams, Commissioner
Re: J-66-162-80

October 15, 1980
Page 2

On its face, this regulation appears to mandate the transfer when the above conditions are met, and an argument can be made that the annual transfer of a permit is not precluded under the regulation. However, the regulation must be read together with the legislation which provides authority for the regulation; that is, the regulation cannot be interpreted to exceed the authority granted to the commission by the legislature. See AS 44.62.020-030. Here, the regulation is authorized by AS 16.43.180(a). That statute authorizes temporary, emergency transfers.

Neither the statute nor the regulations define "emergency". Black's Law Dictionary defines "emergency" as

a sudden unexpected happening; an unforeseen occurrence or condition; . . . a sudden or unexpected occasion for action; exigency; pressing necessity.

Black's Law Dictionary 615 (4th ed. rev. 1968). The definition is substantially similar in numerous cases cited in 14 Words and Phrases 434-438 (1952). Thus, the statute authorizes transfers only pursuant to "sudden unexpected happenings" or "unforeseen occurrences" or the like. */

The situation which you have described, where a permit holder is permanently precluded from participating in the fishery and annually transfers his permit, does not appear to meet the definition of "emergency" and thus a transfer under those circumstances would not be authorized by AS 16.43.180(a). Of course, the events causing the disability may give rise to a proper emergency transfer in the year in which the disability arose, but if the disability is permanent, a second transfer the next season would not be authorized.

This conclusion is supported by other provisions in the Limited Entry Act which make it clear that the legislature intended that permits be owned by natural persons who can fish them. AS 16.43.170(b) provides that transfers will be approved if the transferee "can establish present ability to participate actively in the fishery." AS 16.43.210 similarly

*/ While "required military service might not be "unexpected" or "unforeseen" and therefore might not fit the definition of "emergency," transfers have been specifically authorized for those circumstances.

Robert J. Simon, Chairman
Burke Riley, Commissioner
John Williams, Commissioner
Re: J-66-162-80

October 15, 1980
Page 3

premises the issuance of interim-use permits on the same finding. "Present ability to actively participate" means being "physically able to harvest fish in the fishery". AS 16.43.380(6). Thus, it can be concluded that the legislature intended the emergency transfer provision to be used only when a permit-holder's disability was temporary; that is, when the permit-holder would at some future time again be physically able to harvest fish in the fishery. The legislature clearly did not intend, in AS 16.43.180(a), to create a means by which persons who are not physically able to fish can retain their permits indefinitely and transfer them each year ad infinitum.

DV:dlm

MEMORANDUM

State of Alaska

TO: Jon Tillinghast
Assistant Attorney General

DATE: April 28, 1980

FILE NO:

TELEPHONE NO:

FROM: Robert J. Simon
Chairman
Commercial Fisheries Entry
Commission

SUBJECT: Requests for Opinion

The Commission requests the opinion of the Department of Law on the two following questions:

(1) Does AS 16.43.180 allow a permit holder to annually transfer a permit in the event that he/she contracts a debilitating illness (or similar circumstance) that for all intents and purposes precludes their participation in the fishery?

(2) In the event that only two Commissioners are voting on a recommended decision, what options are available to the Commission for breaking ties?

Your attention to these questions is greatly appreciated.

RJS/JW/dw

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

WALTER J. HICKEL, GOVERNOR

8800 GLACIER HWY, #109
JUNEAU, AK 99801
(907) 789-6150 Licensing Calls
(907) 789-6160 Other Business
(907) 789-6170 FAX

March 31, 1993

The Honorable Carl Moses
Alaska State Representative
Room 204, State Capitol
Juneau, AK 99801-1182

Re: HB 134

Dear Representative Moses:

Earlier, you asked the Entry Commission what it could do under existing law and regulations to try to help constituents who would benefit from the enactment of HB 134. We believe there are some very good opportunities presently available, which we would like to emphasize in this letter.

We have had a series of discussions with Governor Jay Hammond about this issue. Attached is a copy of a letter we wrote to him and to interested Legislators last spring.

We advised Governor Hammond that we had been able to help a number of people based on a case from the Bristol Bay area. There was a grandfather who held a permit which he was no longer capable of fishing. He wanted to permanently transfer the permit to this grandson. However, the grandson had not yet reached an age where the grandfather could reasonably transfer the permit to him. The grandfather wanted to be able to obtain emergency transfers of his permit until his grandson reached a suitable age to hold and fish the permit. Because the transfer of a permit to a member of one's family is an intended purpose of the Limited Entry Act, we were pleased to find an exception to the one-year requirement for the grandfather. We have ruled the same way on a number of similar cases. Governor Hammond stated to us that this commission practice would help people he was concerned about and would obviate the need for legislation on this subject.

When we last talked to Mrs. Randy Briggs about this issue, she told us she was concerned about providing security for permanent transfers between, for example, a father and a son. We point out that the proposed legislation would not authorize permits to be security for their permanent transfer. However, we helped CFAB obtain legislation which does expand the opportunity for entry permits to serve as collateral for such a sale. Ed Crane, President of CFAB, refers to their program as the "unlimited entry" program,

March 31, 1993

and he could best give you the details. In short, there is an opportunity for a father (for example) to participate with CFAB in a loan to his son for the purchase price of the permit. If the son proves not to be responsible, both the father and CFAB retain the permit as security for repayment of the loan.

We worked for these two opportunities under existing law and regulations, and we are happy to help constituents take advantage of them. For example, Rich and Bruce will be attending the BBNA Fisheries Conference in Dillingham near the end of April, when these existing opportunities could be reemphasized.

Sincerely,

COMMERCIAL FISHERIES ENTRY COMMISSION

Bruce Twomley, Chairman
Rich Listowski, Commissioner
Frank Homan, Commissioner

by: 

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

WALTER J. HICKEL, GOVERNOR

8800 GLACIER HIGHWAY, #109
JUNEAU, ALASKA 99801
(907) 789-6150 Licensing Calls
(907) 789-6160 Other CFEC Calls
(907) 789-6170 FAX

May 1, 1992

The Honorable Jay Hammond
Lake Clark Lodge
Port Alsworth, AK 99653

Dear Governor Hammond:

You recall that, when we met earlier this year, you were concerned about older limited entry permit holders who suffered disabilities which prevented them from fishing. Some of them wanted to obtain medical emergency transfers for more than one year in a row. They did not want to be forced into an untimely and improvident permanent transfer of their entry permits. As you know, under our statute the general rule is that an individual can be granted a medical emergency transfer for only one season for a given medical condition, unless extraordinary circumstances can be found in subsequent years.

We advised you that we had been able to help a number of such people based on a case from the Bristol Bay area. There was a grandfather who held a permit which he was no longer capable of fishing. He wanted to permanently transfer the permit to his grandson. However, the grandson had not yet reached an age where the grandfather could reasonably transfer the permit to him. The grandfather wanted to be able to obtain emergency transfers of his permit until his grandson reached a suitable age to hold and fish the permit. Because the transfer of a permit to a member of one's family is an intended purpose of the Limited Entry Act, we were pleased to find an exception to the one-year requirement for the grandfather. We have ruled the same way on a number of similar cases.

You indicated that this commission practice would help people you were concerned about and would obviate the need for legislation on this subject. You indicated, however, that the commission's practice was not sufficiently known to people who might benefit, and you asked the commission to make this information more widely available. We agreed to do so.

I wanted you to know that we have begun to make good on that commitment. I was given 45 minutes on the agenda of the Bristol Bay Native Association's Bristol Bay Fisheries Conference this spring in Dillingham. A principal part of my presentation consisted of explaining our practice. I urged those in attendance to take the information back to their villages for the benefit of individuals in this situation. (I also made some

The Honorable Jay Hammond

-2-

May 1, 1992

other practical suggestions to help people get and keep limited entry permits in local communities, which I would be happy to discuss with you in detail, when we next have a chance to talk.)

In any event, I wanted you to know that we had begun to spread the information about how, under the existing program, the commission could help older individuals prevented from fishing their permits. We are sharing this letter with a number of interested legislators for the same purpose.

Cordially,

COMMERCIAL FISHERIES ENTRY COMMISSION

Bruce Twornley, Chairman
Rich Listowski, Commissioner
Frank Homan, Commissioner

by: 

cc: Bristol Bay Native Association
The Honorable Fred Zharoff
The Honorable Dick Eliason
The Honorable Lloyd Jones
The Honorable Lyman Hoffman
The Honorable Sam Cotten
The Honorable Cliff Davidson
The Honorable George Jacko

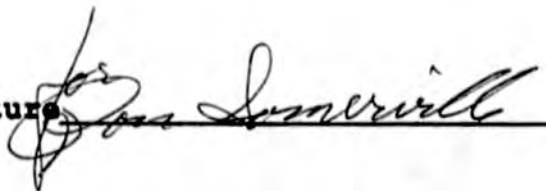
**DEPARTMENT OF FISH AND GAME
POSITION PAPER**

Bill No: House Bill 134
Sponsor: Representative Moses
Division: Division of Commercial Fisheries
Bill Title: "An act relating to temporary transfers of commercial fisheries entry permits."
Department Position: Neutral

This legislation would allow the holders of limited entry permits who were 65 years or older and suffer from age-related physical disabilities to conduct temporary transfers of their permits.

This legislation would have no fiscal impact on the Department of Fish and Game. The department has no position for or against this legislation.

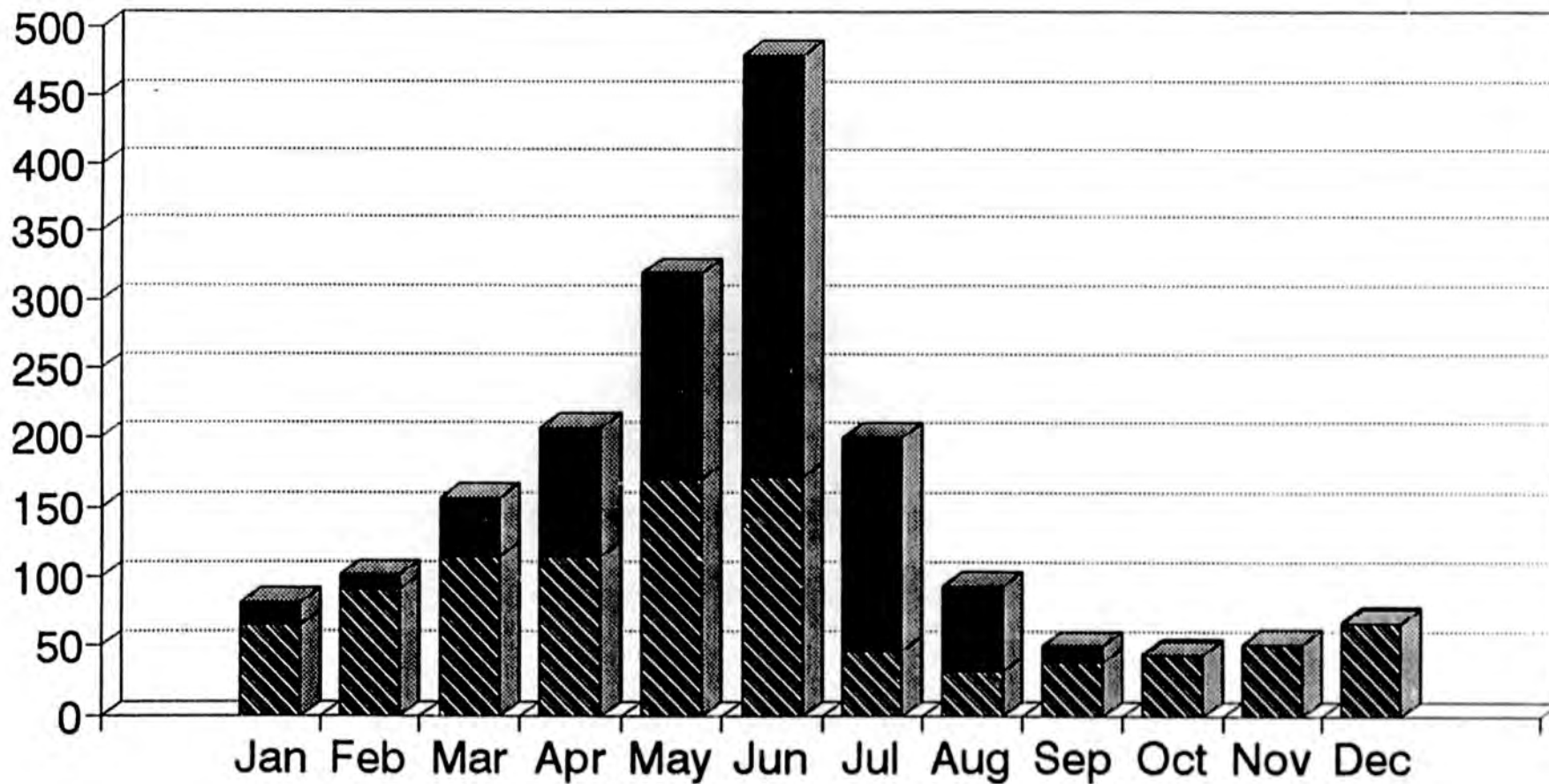
Commissioner's Signature

A handwritten signature in dark ink, appearing to read "Don Summerville", written over a horizontal line.

Date:

2/16/93

Monthly Permit Transfer Activity 1992



Total = 1860 (including denials)

 Permanent Trsfs  Emergency Trsfs

April 12, 1993

Representative Moses
Alaska State Legislature
P.O. Box V
Juneau, Ak. 99811

Alma Angasan
P.O. Box 532
King Salmon, AK 99613

APR 29 1993

Dear Representative Moses,

I am writing in reference to House Bill No. 134 that you have introduced. I feel that this is a good bill but it doesn't address all of the concerns that I have. I am glad that someone is trying to look out after our elders. But I have some reservations about limiting it to age class of 65 years old.

I have been setnet fishing since 1963 at the age of 13. I have provided for myself and my son with what I made setnetting for 30 years. However, setnetting has taken its toll on my body. I have arthritis in my joints: fingers, hips, and a bad back from bending over to pick fish and carry my nets through the mud. I've fished my whole life. Fishing is my livelihood. However, since my body isn't what it used to be I find myself in a very upsetting predicament. I was told that I can only medical transfer it once. My only alternative is to sell it or not utilize it. I won't sell it; I want to pass it down to my grandchildren if I should be fortunate to have some. Why can't I medically transfer it? I've put in my time; I am an original permit holder. I don't see any problem with a medical transfer year after year or until the problem that the person has is healed or recovered from. The permit holder will retain the permit, make a few dollars from it and it gives a person who it's transferred to experience, whether or not this is something that they want to invest in.

I don't believe in taking handouts. As I said before, what's wrong with getting a medical transfer year after year or until the medical problem is resolved? I am a native, I live in a community where the economics aren't there, I don't believe in welfare. State people say don't sell your permit but it's people like me who are being forced to do so. Feel free to contact me at 246-7483. I would be more than willing to answer any questions that you might have. I can be reached at 246-7483 or FAX # 246-3449. Thank you for your consideration in this matter; anything you can do on my behalf and others like me would be greatly appreciated.

Sincerely yours,



Alma J. Angasan

cc: Limited Entry Fisheries Commissioner Richard Litzowsky
Senator George Jacko

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 4, 1993

SUBJECT: Temporary transfers of limited entry permits
(Work Order No. 8-LS0588(A))

TO: Representative Carl Moses

FROM: George Utermohle *GU*
Legislative Counsel

Enclosed is the bill that you requested relating to the temporary transfer of entry permits by certain fishermen.

The bill is potentially subject to challenge on the ground that it violates the equal protection rights of fishermen who are not eligible to take advantage of the temporary transfer provisions in the bill.

Under the equal protection clauses of the state and federal constitutions the state may discriminate between similarly situated individuals, provided that the state is not creating inherently suspect classifications (such as classifications based on race or religion) or impinging on fundamental rights (such as the right to vote), if the state has a sufficiently rational basis for the discrimination and is pursuing a legitimate governmental goal. Under the state equal protection clause, a statute is evaluated on a sliding scale under which the goal of the legislation and the importance of the individual rights affected are considered. State v. Anthony, 810 P.2d 155 (Alaska 1991). As the importance of the individual rights affected increase, then the burden increases on the state to show that the state's goal justifies the intrusion on the individual's interests in equal treatment and that the state's goal is rationally related to the means chosen to achieve the goal. *Id.* at 157.

The individual fisherman's interest in being able to transfer an entry permit from year-to-year would probably be accorded a relatively low level of protection under the state and federal equal protection clauses, because only the fisherman's economic interests are implicated. See, State v. Ostrosky, 667 P.2d 1184, 1193 (Alaska 1983). In a case, such as this, where relatively minor individual interests are affected, the state need only show that it is pursuing a legitimate state goal and that there is a rational relationship between the goals and the means chosen to achieve the goal.

Representative Carl Moses
February 4, 1993
Page 2

Anthony, 810 P.2d at 158. In most instances, this is a relatively easy burden for the state to overcome, if the bill were to be challenged.

More important than the equal protection clauses of the state and federal constitutions is the uniform application section of article VIII of the state constitution. The uniform application section requires that the state treat similarly situated individuals the same in regard to the use and disposal of state resources, including fish and game. The standard of review applied by the Alaska courts under the uniform application section is more stringent than that which is applied in most cases under the equal protection clauses of the state and federal constitutions, so the burden on the state is more difficult to overcome. Gilbert v. State, Department of Fish and Game, 803 P.2d 391 (Alaska 1991). An alternative strategy for escaping an adverse ruling under the uniform application section is to convince the court that the individuals eligible to transfer their permits under this bill are meaningfully different from other entry permit holders and thus not similarly situated. Gilbert, 803 P.2d at 398-99.

In order to bolster the bill against potential equal protection challenges under the state and federal equal protection clauses and the state uniform application section, the legislature should develop a record describing the goals of the bill and establishing that it is reasonable to achieve those goals by allowing only those permit holders who are at least 65 years old, have 10 years of participation in the fishery, and are unable to participate in the fishery for medical reasons to transfer their entry permits from year-to-year. It will also be helpful if the legislature can document in the record that the individuals eligible to transfer their permits under the bill are different from other limited entry permit holders.

If I may be of further assistance, please advise.

GU:lmb
93-024.lmb

Enclosure

TO: Hon. Bill Hudson
House of Representatives
State of Alaska
M/S: 3100

DATE: May 6, 1992

FAX NO: 789-6170

TELEPHONE NO: 789-6160

ATTN: Landa B. Holtan

SUBJECT: CSSB 423

FROM: Commercial Fisheries
Entry Commission R.F.L.
Rich Listowski, Commissioner
M/S: 0302

CSSB 423 will allow only permanent permit holders 65 years of age and older the right to lease a permit year-to-year without supervision from the CFEC for reasons of illness or disability. The bill may have the following impacts on the commercial fisheries:

1. Increase in the cost of permits as the supply of permits decreases while the demand for permits rises or remains constant.
2. Increase in the amount of gear being fished as retired elderly permit holders lease their permits to the highest bidder.
3. Marginal permit holders over 65 years of age presently engaged in the fishery will be encouraged to retire and lease their permits to younger and more aggressive fishers thereby increasing effort.
4. Inflation of permit prices caused by leasing will add to the already high cost of permits and further prevent young rural people from entering a local fishery.
5. Leasing of permits will create a absentee landlord class of permit holders. In 5 years, approximately 13% of the total permits issued could fall under the leasing provision. This could become a public relations problem when the fishing industry becomes involved in legal disputes or resource allocation controversies with other industry or user groups.
6. Seattle permit brokers will benefit from a relaxation of anti-leasing provisions now in the statute as they expand their businesses from brokering of permit transfers to include brokering of leased permits. They will be able to obtain a list of names and addresses from the Commission of permit holders over 65 years of age.
7. CSSB 423 may violate the equal protection clause in the State Constitution. The Attorney General Office has not rendered an opinion on the constitutionality of this leasing proposal.
8. Legislative intent at the passage of limited entry law intended for the permit holder to be an active participant in the fishery. The limited entry program was never calculated when passed into law in 1973 to become a social program or a retirement plan by its supporters in the administration, the Legislature, or the commercial fishing industry.

8-LS0582A

Utermohle

2/4/93

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR ZHAROFF

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to temporary transfers of commercial fisheries entry permits;
2 and providing for an effective date."

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

4 * Section 1. FINDINGS. The legislature finds that

5 (1) current law relating to the emergency transfers of limited entry permits
6 does not adequately address the concerns of commercial fishermen who are 65 years of age
7 or older and suffer from illness or disability;

8 (2) commercial fishermen 65 years of age or older who, because of illness or
9 disability, can no longer participate in physically demanding commercial fisheries should not
10 be forced to sell their permits, but instead should be allowed to transfer them to younger
11 individuals and to plan for themselves an orderly transition from active commercial fishing
12 to retirement;

13 (3) commercial fishermen 65 years of age or older, who suffer from illness or
14 disability, should be allowed to participate in the fisheries in a less strenuous manner, thereby

1 imparting the knowledge gained from many years of experience to younger fishermen;

2 (4) 65 years of age is the established age of retirement in our society and the
3 qualifying age for a large number of programs for senior citizens;

4 (5) commercial fishermen do not have an established retirement system;

5 (6) allowing limited entry permit holders who are 65 years of age or older to
6 transfer a permit from year-to-year will enable many young Alaskans with low incomes to
7 participate in commercial fishing as gear operators and give them the opportunity to acquire
8 the capital necessary to purchase their own limited entry permits;

9 (7) allowing all limited entry permit holders to transfer a permit from year-to-
10 year would result in speculation in fisheries entry permits by individuals who purchase permits
11 with the intention of living off the income generated by other individuals who actually operate
12 the permits; such a practice would be disruptive to the commercial fishing industry and should
13 not be allowed;

14 (8) commercial fishermen who have participated in commercial fisheries for
15 10 years or more are bona fide commercial fishermen who have invested considerable time
16 and money in the commercial fishing industry and who have demonstrated their commitment
17 to commercial fishing as a livelihood and a profession.

18 * Sec. 2. AS 16.43.180 is amended by adding a new subsection to read:

19 (c) The commission shall adopt regulations providing for the temporary
20 transfer from year-to-year of an entry permit if the permit holder is at least 65 years
21 of age, has held an [interim use or entry permit] for at least 10 years, and is unable to
22 participate in the fishery due to illness or disability.

23 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

HB 134 Script
Temporary transfers of limited entry permits

Read sponsor statement.

Indicate what members will find in their packets:

- copy of bill
- fiscal note and position paper from Commercial Fisheries Entry Commission.
- legal advice concerning the bill from Legislative Legal Services (their concerns appear to be met in this version of the bill).

(You also have a letter from Ed Crane to you concerning the bill, but it is not in the members' packets, unless you want it to be distributed.)

To testify: I have not been able to contact Randy Briggs - she's traveling outside the state.

Commercial Fisheries Entry Commission is here to testify -
Rich Listowski

I'm not sure what you want to do with the bill - hold it for more work and possible amendment? pass it out?

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 19, 1993

SUBJECT: Draft CSHB 134(FSH)
TO: Representative Carl Moses
ATTN: Molly McCammon
FROM: George Utermohle *GU*
Legislative Counsel

Enclosed is the draft CSHB 134(FSH) that you requested. This version of the bill limits the potential recipients of a year to year transfer of a limited entry permit to those persons who are members of the immediate family of the permit holder. "Immediate family" is defined to mean a parent, grandparent, spouse, child, grandchild, brother, or sister of the permit holder. A nonreversionability section (sec. 3) has also been added to the bill.

The changes made to HB 134 by this committee substitute heighten concerns regarding the possible unconstitutionality of AS 16.43.180(c) as added by sec. 2 of the bill. By limiting the transfer of permits under the bill to those persons who are members of the immediate family of the permit holder, the bill raises the issue of whether the limitation on transferability violates the equal protection rights of those who do not have immediate family members who are permit holders.

More important than the state and federal equal protection issues raised by the bill is the fact that the bill limits access to the commercial fishing user group. Limitations on entry into fish and game user groups are subject to heightened scrutiny under the open (equal) access provisions of the Alaska Constitution: common use section, no exclusive right of fishery section, and the uniform application section.^{1/} Taken

^{1/} Article VIII, section 3 of the Alaska Constitution states:

Common Use. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

(continued...)

together, the open access sections are intended to permit the broadest possible public access to and use of fish and game. Owsichuk v. State, 763 P.2d 488, 492 (Alaska 1988). The open access sections prohibit exclusive grants or special privileges for use of fish and game. McDowell v. State, 785 P.2d 1, 6 (Alaska 1989); Owsichuk, 763 P.2d at 493.

It would be best, if the legislature could establish that members of the immediate family of a permit holder who is at least 65 years old, has participated in the fishery for 10 years, and is not able to participate in the fishery for medical reasons are meaningfully different from those persons who are not related to such a permit holder. If the legislature could establish such facts then there would be no violation of state or federal equal protection clauses or the uniform application section because those constitutional provisions protect only those person who are similarly situated. However, it seems unlikely that the legislature could establish that such facts exists, so the legislature must anticipate that the bill may be challenged on equal protection and uniform application grounds.

Under the uniform application section of the Alaska Constitution, judicial review of a statute restricting open access to a fish and game user group by establishing a non-uniform classification of people eligible to enter the user group is similar to the analysis used to examine equal protection issues under the state and federal constitutions. The statute must have a legitimate public purpose. The public purpose underlying the statute must be at least an important public purpose to overcome the important interest of individuals in open access to state fish and game resources. The means chosen to further the important public purpose must be carefully designed for the least possible infringement on the open access values of the constitution. Gilbert v. State, Department of Fish and Game, 803 P.2d 391, 399 (Alaska 1990).

In order to overcome the obstacles posed by the uniform application section, it is necessary for the legislature to establish that there is an important reason behind the

U(...continued)

Article VIII, section 15 of the Alaska Constitution states:

No Exclusive Right of Fishery. No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Article VIII, section 17 of the Alaska Constitution states:

Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Representative Carl Moses
March 19, 1993
Page 3

restriction on the year to year transfer of entry permits to persons who are not members of the permit holder's immediate family. Also, the legislature must establish that the limitation on the transfer of entry permits is the least restrictive mechanism available to the legislature to achieve its important public purpose. It is important that the legislature clearly establish these facts in the legislative history of HB 134 in order to bolster the bill against challenge.

Provided that HB 134 can survive a challenge under the uniform application section, the equal protection provisions of the state and federal constitutions would not pose a significant threat to the bill because judicial review under the equal protection provisions of the uniform application section is more rigorous than corresponding review under the state equal protection clause and the federal equal protection clause.

If I may be of further assistance, please advise.

GU:gc:pl
93-241.glc

Enclosure