

Confirm.

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Alaska State Legislature

Senate

Office of the Secretary

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3701
FAX: 465-2832

February 10, 1993

MEMORANDUM

TO: Senator Miller, Chair
Resources Committee

FROM: Nancy Quinto *NQ*
Secretary of the Senate

SUBJECT: Governor's Confirmations

Pursuant to AS 39.05.080, President Halford has referred the following names for legislative confirmation to your committee for a hearing, recommendation and report:

Big Game Commercial Services Board

Glenn W. Fredericks - Anchorage

Appointed 10/28/92 Expires 06/30/96

Paul E. Johnson - Elfin Cove

Appointed 08/29/89 Reappointed 07/13/92 Expires 06/30/96

Alaska Commercial Fisheries Entry Commission

Bruce C. Twomley - Juneau

Appointed 10/06/82 Reappointed 08/18/88, 07/21/92

Expires 07/01/96

Board of Fisheries

Larry Edfelt - Juneau

Appointed 07/23/91 Reappointed 01/31/93 Expires 01/31/96

John Hanson - Alakanuk

Appointed 02/08/89 Reappointed 07/13/92 Expires 01/31/95

Dick Jacobsen - Sand Point

Appointed 01/31/93 Expires 01/31/96

Deborah A. Lyons - Petersburg

Appointed 01/31/90 Reappointed 01/31/93 Expires 11/96

MEMORANDUM

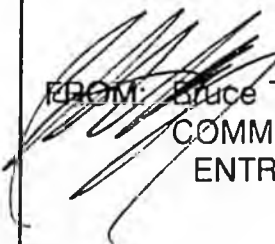
STATE OF ALASKA

TO: The Honorable Mike Miller
Chairman, Senate Resources
Committee and Members of
the Senate Resources Committee

DATE: March 3, 1993

FAX NO: 789-6170

TELEPHONE NO: 789-6160

 FROM: Bruce Twomley, Chairman
COMMERCIAL FISHERIES
ENTRY COMMISSION

SUBJECT: Overview of Alaska's
Limited Entry Program

In view of the Senate Resources Committee's scheduling of a confirmation hearing for me this coming Friday, I thought that it might be helpful to provide a short overview of Alaska's limited entry program.

For your reference, attached is a copy of my paper, License Limitation in Alaskan Salmon Fisheries (October 27, 1992). The Center for Marine Conservation and World Wildlife Fund requested that I write this paper for their publication last fall. The paper provides a brief history and an overview of our program highlighting a number of its aspects (both favorable and unfavorable).

I hope that this information may be of some value to the Senate Resources Committee.

Attachment

License Limitation in Alaskan Salmon Fisheries

Bruce Twonley, Chairman

Alaska Commercial Fisheries Entry Commission

October 27, 1992

Background

Beginning in the 1930's and continuing into the early 1970's, Alaska's salmon harvests experienced an overall decline.¹ Despite this decline, the number of participants continued to increase creating more demands upon the salmon resource. By 1972, a perception that traditional management measures (e.g., closures, gear and vessel restrictions) were no longer sufficient to maintain salmon stocks led the voters to approve a State constitutional amendment authorizing the limitation of entry into Alaska's commercial fisheries.

In 1973, the Alaska Legislature enacted the Limited Entry Act which established a three-member commission authorized to limit entry into commercial fisheries when doing so would promote the conservation and sustained yield management of those fisheries and the economic health and stability of commercial fishing.² By 1975, the commission had limited the primary 19 salmon fisheries (for reference, a "fishery" consists of a place, type of gear, and fishery resource). Today, some 46 Alaskan fisheries are under limitation. The number of limited entry permits issued to fishers in those fisheries is greater than 13,000.

Salmon fishers helped design Alaska's license limitation program to address Alaska's salmon fleet, where captains of vessels, who have been required to hold gear licenses, have been, for the most part, the sole owners and operators of their vessels. This fact resulted in a close correlation between the number of gear licenses fished and the number of units of gear. Additionally, the Alaska Board of Fisheries has consistently imposed limits upon vessel size and the amount of gear that can be fished from a vessel. Coupled with these additional controls, limiting the number of units of gear helps limit fishing power.

Another relevant feature of Alaska's salmon fisheries is the fact that they are not managed by quota. For the most part, salmon are caught when they return to spawn and die in their rivers of origin. The problem for managers of these fisheries is to ensure that a sufficient number of fish escape up the river to reproduce and sustain the resource, while avoiding the damage that can result if too many fish escape. In what can sometimes be a very short period, the fleet has an opportunity to catch all remaining fish not needed for escapement.

The primary purpose of Alaska's limitation program is to establish a form of moratorium which does more than simply block new entrants. For each limited fishery, a qualification date is established. The highest number of units of gear in the fishery in any one of the four years prior to the qualification date becomes the maximum number of permits to be issued. Over time prior to the qualification date, large numbers of fishers have come and gone from the fishery. Therefore, the number of individual applicants for

permanent entry permits who participated prior to the qualification date is invariably much greater than the maximum number. The Commission's responsibility is to gradually reduce the number of entry permits to the maximum number through an elaborate grandfathering system.

The Entry Commission ranks each applicant against all other applicants according to the hardship the applicant would suffer if he or she failed to receive an entry permit upon initial issuance (permits are transferable once they are issued). To determine this ranking, the extent of an applicant's past participation in and economic dependence upon the fishery are evaluated. The commission issues permanent entry permits to the applicants with the highest ranking and continues to issue permits moving down through the ranked applicants until the maximum number of permits is issued. Nonetheless, the commission can exceed the maximum number in order to issue permanent entry permits to those individuals who would otherwise suffer "significant economic hardship."³

Processing and adjudicating applications for permanent entry permits is expensive and consumes extended periods of time. Each application requires detailed fact finding. Following the initial denial of an application, a hearing officer must conduct an evidentiary hearing on behalf of a denied applicant who can demonstrate a genuine issue. Following a final administrative review by the commissioners, an applicant can go to state court to challenge the decision by the commission. Applicants are often represented by attorneys and by law can continue to participate in a limited fishery as long as they can keep a pending application alive before the commission or a court.

Once issued, a permanent entry permit represents a quasi-property right. While permits are transferable for value and inheritable, they are subject to a number of restrictions. They can be transferred only to a living individual who can demonstrate his or her present ability to participate actively in the fishery. They may not be transferred to a corporation or a partnership. To avoid intemperate transfers, a permit holder may permanently transfer a permit only after 60-day's notice during which period the holder can rescind any agreement to transfer. Additionally, a permit may not be leased, pledged as security for a debt (with the exception of two State-authorized loan programs), nor may a permit be executed upon to satisfy a judgment (with some recent exceptions). The Alaska Legislature declared entry permits to be use privileges subject to cancellation or modification by the state without compensation.⁴

Controversy over transfer of entry permits

The relatively free transferability of entry permits has remained controversial. On the positive side, the Alaska Legislature intended an entry permit to give its holder a stake in the fishery in the hope of providing an incentive to conserve the resource, to obey the laws in aid of conservation, and to promote investment in aquaculture to rebuild salmon stocks. With respect to aquaculture, fishermen in some limited salmon fisheries have elected to tax themselves in order to develop non-profit hatcheries. Through free transferability, the Legislature also intended to avoid hardship to an individual disabled from the fishery and to fishing families intending to maintain their access to a fishery. Finally, for the sake of simplicity and economy, the Legislature intended to leave

redistribution of entry permits to the market place in order to avoid involving the state in some system of reissuance of entry permits.

While the Limited Entry Act is neutral with respect to residency, overall transferability has tended to serve residents of the state of Alaska. Approximately 77.9% of Alaska's limited entry permits are held by Alaskan residents. As of year-end 1991, Alaskans held 10,189 of the 13,072 permanent entry permits issued. More than one-half (5,584) of the Alaskans holding entry permits are rural residents living in areas where other sources of cash income are very limited.

Depending on the perceived value of a fishery, the current costs of entry permits range from several thousand to several hundred thousand dollars. The Commission's current estimate of the overall value of permanent entry permits issued is about \$1.2 billion. As a specific example, the commission's current estimated market value of a Bristol Bay salmon drift gill net entry permit is \$202,000. Such a high market value is a mixed blessing. On one hand, it reflects recovery of an Alaskan salmon fishery as shown by the high value that individual permit buyers now place on that fishery. On the other hand, the high price presents a substantial obstacle to a local individual seeking to enter the fishery as a captain for the first time. For those individuals who borrow funds to purchase an entry permit, retiring that debt may be an incentive to fish that much harder.

Additionally on the negative side, transferability may not be serving all Alaskans. In some rural areas of the state, more permits have departed from the area by transfer

than have been received by transfer. This net rural drain of entry permits in areas where economic alternatives to commercial fishing are very limited is a very serious concern. Furthermore, as the result of court decisions, child support claimants and the Internal Revenue Service may now seize and force the sale of entry permits to collect their obligations. To date, no permit has been transferred as the result of these newfound creditors' rights, so the effect of these legal developments is not yet known.

Program effects in light of issues raised by WWF and CMC.

In their workshops, the World Wildlife Fund and the Center for Marine Conservation have posed two questions: (1) Is limited access an appropriate and effective way to manage a fishery? and, if so, (2) what form of limited access works best in a given fishery? In the case of Alaska's license limitation system, within its limited objectives, the system has been effective. However, beyond fisheries which bear close resemblance to the Alaskan salmon fisheries for which the program was designed, its effectiveness would be limited.

The primary objective of Alaska's license limitation system was to limit the growth in the numbers of participants in its salmon fisheries. Prior to limitation, the number of participants continued to grow despite the decline of salmon harvests. Having observed more and more participants crowd into a declining fishery, one can imagine the drawing power of Alaska's current record salmon harvests upon potential new participants. Not only have Alaska's salmon fisheries generally become more attractive, but there have

been other likely sources of pressure. The construction of the Alaska pipeline during the 1970's drew a large work force into Alaska. Upon completion of the pipeline, displaced former pipeline workers could well have sought to enter Alaska's salmon fisheries. Additionally, the troubles that have befallen west coast salmon fisheries over the last two decades could well have spawned additional interest by disappointed west coast salmon fishers in Alaska's salmon fisheries. Alaska's system of limitation was barely in place when the Boldt decision came down in 1974.⁵ Among other things, the Boldt decision required that a substantial portion of the salmon harvests in the northwestern United States be reserved for certain Native American tribes. That decision dislocated large numbers of northwest salmon fishermen, who would likely have looked to Alaska to offset their losses. In short, had Alaska's license limitation system not stood as a bulwark, these various pressures likely would have caused growth in the numbers of participants in its fisheries and even greater pressure upon the resource.

Alaska's limited entry system does more than simply limit the number of participants because it does not operate by itself. The State Board of Fisheries has consistently provided gear and vessel restrictions applicable to commercial salmon fishermen. These restrictions, when coupled with license limitation, result in a limitation of overall fishing capacity and further allow fishery managers to calculate with some assurance the amount of fishing power to be managed.

While there is currently an issue as to whether commercial fishermen pay sufficient revenues back to the State of Alaska, Alaska's license limitation system has won general

acceptance and has twice been supported by the voters. As stated, the electorate passed a constitutional amendment forming the basis for limited entry in 1972. Subsequently, in 1976, the voters defeated a referendum to abolish limited entry in Alaska by a margin of almost two to one. As a further indication that support is not limited to those fishers holding entry permits, a frustrated fisherman with a longstanding pending application for a permit declared to this author: "even if I don't get my entry permit, I do want the system to survive."

Although it can be said that Alaska's license limitation program has been largely effective as thus far applied, its effectiveness becomes questionable with respect to fisheries which depart from the Alaska salmon fishery model.

An example can be taken from the Alaska Southeast roe herring purse seine fishery, which is subject to limitation resulting to date in 51 units of gear. Absent the limitation on the number of fishing operations, this fishery likely would not have occurred in many years. Nonetheless, this relatively small fleet has been so efficient and powerful that, during some seasons fishery managers would not have risked an opening for as little as one-half hour, for fear of exceeding the quota and damaging the stocks. Although license limitation failed to facilitate a traditional fishery under these circumstances, it may have contributed to a practical solution. In at least one instance where the fishery would not have otherwise opened, permit holders gathered in the same room and agreed to fish cooperatively by delegating a small number of their members to catch the limited quota and to share profits with the fleet.

A further example of limited effectiveness of license limitation can be taken from the Southeast Alaska dungeness crab fishery. For the most part, the fishery consists of a small boat fleet fishing fewer than 100 pots each. The only in-season gear limit placed upon the fishery by the Board of Fish is a limit of 300 pots per vessel. License limitation applied to this fishery could limit the number of fishing operations, but might have little effect upon the growth of fishing effort or capacity. Each entry permit holder could move to a larger vessel and fish up to 300 pots thereby substantially increasing pressure upon this fishery despite license limitation.

Another reason for the effectiveness of the Alaska license limitation program is that, in the salmon fisheries, the number of licenses bears a direct relationship to the number of units of gear and the individual interests to be protected. As mentioned, the license holders tended to be the sole owners (or lessees) and sole operators of their vessels.⁶ An example of a fishery which departs substantially from this model is the Alaska scallop fishery. A few relatively large vessels participate in this fishery throughout the year. In part because of the length of this fishery, owners of vessels may rely on alternating relief skippers. In some cases, owners may not personally operate their vessels at all. Alaska's license limitation system, if applied to this fishery, would fail to accommodate the interest of a non-operating vessel owner. The system could also grant entry permits to a series of relief skippers currently operating the same vessel. Subsequently, each of those skippers would be entitled to operate his or her separate vessel. In such a fishery, the application of Alaska's system would entail a risk of multiplying the number of fishing operations following license limitation.⁷

In short, license limitation alone will not limit fishing capacity. It can do so only when coupled with other limits upon fishing power. Alaska's license limitation system, while reasonably effective in its salmon fisheries, may be ineffective with respect to fisheries which depart from the Alaska salmon fishery model.

FOOTNOTES

¹Young (1983). Fishing by Permit: Restricted Common Property in Practice. p. 125 in Vol. 13, No. 2, Ocean Development and International Law Journal. Crane, Roussak & Co. Inc.

²Alaska Statute (hereinafter AS) 16.43.010.

³AS 16.43.270(a).

⁴AS 16.43.150.

⁵United States v. Washington, 384 F. Supp. 312 (1974).

⁶In fact, there were some unlicensed partners, whose interests have been very difficult to accommodate within the system without undermining its purposes. See, for example, State, CFEC v. Templeton, 598 P.2d 77 (Alaska 1979); CFEC v. Apokedak, 606 P.2d 1255 (Alaska 1980); CFEC v. Apokedak, 680 P.2d 486 (Alaska 1984); CFEC v. Russo, 833 P.2d 7 (Alaska 1992)

⁷In contrast, a form of limitation which restricted vessel licenses might be effective. Authority to limit the number of vessel licenses is not a feature of Alaska's Limited Entry Act which is directed to limiting the number of gear operators or captains.

RESUME

of

Bruce Twomley
P.O. Box 020972
Juneau, Alaska 99802-0972

Work Phone: 586-9577
Home Phone: 586-3251

Height: 5'11"
Weight: 158
Marital Status: Married to Sara Minton

WORK EXPERIENCE: Chairman, Alaska Commercial Fisheries Entry Commission (CFEC). 1983 to present.
Commissioner, CFEC. 1982 to present.
Member, Governor's Fisheries Cabinet. 1983 to present.
Attorney, Alaska Legal Services. 1973 - 1982.
VISTA Volunteer. 1972 - 1973.
Legal Research for San Francisco Neighborhood Legal Assistance Foundation (as a law student).
Indigent Adult Criminal Appeals (as a law student).
Legal research for Professor Roscoe T. Steffen and private attorneys (as a law student).

LAW SCHOOL: National Judicial College, University of Nevada, Administrative Law: Fair Hearing. 1983.
Hastings College of Law, San Francisco, California. 1967 - 1970. Graduated with J.D. in upper 15% of the class.

EDUCATION: Northwestern University, Evanston, Illinois. 1963-1967. Graduated with A.B. in upper quarter of the class.
Elgin High School, Elgin, Illinois. 1960-1963

BAR MEMBERSHIPS: Alaska State Bar
California State Bar
United States District Court for the District of Alaska
United States Court of Appeals for the Ninth Circuit

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HONORS:

- Alaska Legal Services Distinguished Service Award.
1983
- Martindale-Hubbell highest (a v) lawyer rating.
1983
- Subject of Notice in Vol. XX of the Dictionary of
International Biography. 1986
- Elected to Senior Men's Honorary, Northwestern
(Deru)
- Elected to Junior Men's Honorary, Northwestern
(Norleggama)
- Illinois State Scholarship Winner
- Elected Most Outstanding Male Graduate (Marie K.
Ekvall Award), Elgin High School (student body:
2000)

MAJOR LITIGATION
AND PRESENTATIONS:

Co-Counsel for plaintiff class of 2667 Alaska
Native secondary school age children in Tobeluk v.
Lind (known as the Molly Hootch case), 589 P.2d 873
(Ak. Sup. Ct. 1979), which by consent decree
established the entitlement of Alaska Native
children in 126 villages throughout the state to
attend secondary school in their home villages and
further required the state to expend more than
\$158-million for the construction of local secondary
facilities. (Worked directly with more than 40
Alaska Native villages.)

Wilson v. Watt, 703 F.2d 395 (9th Cir. 1983).

Fairbanks Correctional Center Inmates v. Williamson,
600 P.2d 743 (Ak. Sup. Ct. 1979).

Ferdinand v. City of Fairbanks, 599 P.2d 122 (Ak
Sup. Ct. 1979)

Horton v. Horton, 519 P.2d 1131 (Ak. Sup. Ct. 1974)

Attorney for plaintiff class of Alaska Native women
and minor children in Finessand v. Kleppe, No.
A75-42 Civ. (U.S. District Court Alaska), which by
consent decree abolished a discriminatory
eligibility standard for Bureau of Indian Affairs
General Assistance.

Represented more than 100 Alaska Native Allotment applicants before the Department of Interior.

Amicus Curiae in cooperation with the Office for Civil Rights in The Matter of Alaska State Department of Education and Twenty-One Regional Educational Attendance Area School Districts S-134, a proceeding before the Department of Health, Education and Welfare, to enforce Title VI of the 1964 Civil Rights Act on behalf of Alaska Native school children against the State of Alaska and the regional school districts of the unorganized borough.

Attorney for the Akiak Indian Reorganization Act Council and parents of school children in Akiak v. Lind, No. 4BR 8-39 Civ., a suit against state officials seeking a declaratory judgment as to the status of an Indian Self-Determination Act Contract School.

"Local Control and Quality Education Under the Hootch Consent Decree," Alaska Native Education Association. Juneau, April 1978.

"Legal and Policy Bases for the Hootch Consent Decree," Statewide Meeting of Alaska Corrections Officials. Anchorage, November 1978.

"Alaska Native Control of Local Village Secondary School Programs," Lawyers Clinic on Parental Liberty in Education, Washington, D.C. December 1978.

"Parental Involvement, Local Control, and Quality of Education," Alaska Native Education Association. Anchorage, 1981.

"The IRS and Alaska Limited Entry Permits," University of Alaska Commercial Fishing Business Seminar, Federal Tax Impact on Commercial Fishermen. Anchorage, 1987.

"Current Issues Affecting Limited Entry," United Fishermen of Alaska. Juneau, 1988.

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ACTIVITIES: Reading, Skiing, Hiking, Camping, Kayaking,
 Traveling
 International Law Club, Hastings
 Kappa Sigma Fraternity, Northwestern
 President, Interfraternity Council, Northwestern
 President, Student Council, E.H.S.

References will be furnished upon request.