

SB

42

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB 42

Revision Date: 1/30/95 Dept. Affected: Fish and Game
 Title: Relating to limited entry permits BRU: Commercial Fisheries (Limited) Entry Commission
 Component: Limited Entry Program Administration
 Sponsor: Sen. Taylor
 Requester: Sen. Taylor COMPONENT SERIAL NO. 0471

(Thousands of Dollars)

Expenditures/Revenues	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

(Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (PY95) cost: \$ 0.0

POSITIONS

POSITION TYPE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Roger Kolden Phone: 789-6160
 Agency: Commercial Fisheries (Limited) Entry Commission Date: 1/30/95

Approved by Commissioner: Frank Homan Date: 1/30/95
 Agency: Commercial Fisheries (Limited) Entry Commission

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 3/18/96

FURTHER:

Date of 5-Day Notice: 2-2-95
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3-27-96

The Resources Committee considered SPONSOR SUBSTITUTE FOR SB 42

Allowing a person to hold more than one entry permit for certain fisheries and amending the definition of 'unit of gear' for purposes of the commercial fisheries limited entry program.

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>John L. Taylor</i>	<input checked="" type="checkbox"/>	<i>John Hoffm</i> <i>Beaulac</i>	<input checked="" type="checkbox"/>		
CHAIR:		CHAIR: <i>Steven D. Lewis</i>	<input checked="" type="checkbox"/>		

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>CFLEC</i>	<i>3/2/96</i>	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Southeast Dungeness Crab Pot Fishery - Tiered Pot System

Table 1 - MODIFIED OPTION 2		
Minimum Cumulative Pounds (1988 thru 1991) Needed for TIER A	Minimum Cumulative Pounds (1988 thru 1991) Needed for TIER B	Minimum Cumulative Pounds (1988 thru 1991) Needed for TIER C
75,000 pounds	35,000 pounds	10,000 pounds

Table 2 - MODIFIED OPTION 2	
TIER LEVEL*	ESTIMATED NUMBER OF PERSONS
A (300 pots)	51 persons
B (225 pots)	45 persons
C (150 pots)	93 persons
D (75 pots)	119 persons
Total Persons	308 persons
ESTIMATED MAXIMUM POTENTIAL POTS	48,300 pots

All 500 pots
 30000 lbs +
 30000 lbs = 60000 lbs
 60000 lbs / 1.25 = 48000 lbs

*Tier levels are based on a percentage of the current Board of Fisheries gear limit of 300 pots. If the gear limit is changed in the future, the maximum pots allowed in each tier level will change proportionally.

Commercial Fisheries Entry Commission
 8800 Glacier Highway, #109
 Juneau, AK 99801
 Phone: (907) 789-6160 Fax: (907) 789-6170
 October 9, 1995

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SSSB42

Revision Date: 3/18/96 Dept. Affected: Fish and Game
 Title: An act allowing a person to hold more than one entry permit for certain fisheries and amending the definition of 'unit of gear' BRU: Commercial Fisheries (Limited) Entry Commission
 Component: Limited Entry Program Administration
 Sponsor: Senator Taylor
 Requester: Senate Resources Committee COMPONENT SERIAL NO. 0471

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						


FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact.

Prepared By: Roger Kolden Phone: 789 6160
 Agency: Commercial Fisheries (Limited) Entry Commission Date: 3/22/96
 Approved by Commissioner: Frank Horgan 
 Agency: Commercial Fisheries (Limited) Entry Commission Date: 3/22/96

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3/27/96

MEMBERS OF SENATE RESOURCES:

I'D LIKE TO COMMENT ON SB 42. THE STACKING AMENDMENT RUNS CONTRARY TO THE ORIGINAL IDEA OF THE STACKING PROVISION WHICH ALLOWED FOR PARTICIPATION IN THE FISHERY BASED ON PREVIOUS EFFORT WHILE ALLOWING FOR ENTRY LEVEL OPPORTUNITYS FOR OUR INSTATE FISHERMEN.

THE STACKING AMENDMENT ALSO WILL PROMOTE A MUCH FASTER GROWTH OF THE OVERALL NUMBER OF POTS FISHING WHILE DECREASING THE ACTUAL PARTICIPANTS. THE BOARD OF FISH HAS ALSO VOIKED CONCERNS ABOUT THE 18,000 POTENTIAL POTS AND THE CONSERVATION PROBLEMS WHICH THIS WOULD PRESENT. THE STACKING PROVISION CAN ONLY FACILITATE THIS

I URGE YOU TO OPPOSE THIS AMENDMENT TO SB42.

THANK YOU BILL FLOR,

Alaska State Legislature

Chairman,
Judiciary Committee

Vice Chairman,
Transportation Committee

Member,
Resources Committee
Western Legislative Forestry Task Force



State Capitol
Juneau, Alaska 99801-1182
907-465-3873
Fax 907-465-3922

352 Front Street
Ketchikan, Alaska 99901
907-225-8088
Fax 907-225-0713

Senator Robin L. Taylor

Memorandum

To: Senator Loren Leman, Chairman
Senate Resources Committee

From: Senator Robin Taylor *RLT*

Date: March 21, 1996

Subject: SSSB 42, stacking and unstacking of dungeness limited entry permits

I have introduced a sponsor substitute to SB 42. I would appreciate a resources committee hearing at your earliest convenience.

Last session House Bill 107, the counterpart to Senate Bill 42, was passed to ensure that the Southeast Alaska Dungeness crab fishery would not open to entry to a flood of new entrants. This law was a new method to limit a fishery.

Prior to the passage of HB 107 in the Senate, a consensus was reached among the people involved in this fishery. Fisherman who were adamant that limited entry be instituted in the traditional fashion agreed to a tiered system, if it had the stacking/unstacking provision.

That provision, which this sponsor substitute represents, was the factor that convinced the majority of those involved in the fishery to support the tiered legislation. Unfortunately, due to the imminent adjournment of this session, there was not enough time to change the title on the House Bill to accomplish the stacking/unstacking compromise. Consequently, the bill was passed without that provision. It was thought that it would be better to attain limited entry in some form than to open the fishery to new entrants.

Sponsor substitute for Senate Bill 42 would allow the original compromise worked out by the involved parties to go forward. The Commercial Fisheries Entry Commission has stated that the provision is acceptable, but that it is needed this year prior to fully implementing the regulations on this fishery. CFEC has no objection to this measure.

Alaska State Legislature

Chairman,
Judiciary Committee

Vice Chairman,
Transportation Committee

Member,
Resources Committee
Western Legislative Forestry Task Force



Senator Robin L. Taylor

State Capitol
Juneau, Alaska 99801-1182
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352 Front Street
Ketchikan, Alaska 99901
Phone: (907) 225-8088
Fax: (907) 225-0713

Sponsor Statement for SSSB 42

Stacking and unstacking of dungeness limited entry permits

In the First Session of the Nineteenth Alaska Legislature House Bill 107, the counterpart to Senate Bill 42 was passed to ensure that the Southeast Alaska Dungeness crab fishery would not open to entry by a flood of new entrants. This passed legislation represented a new method to limit a fishery.

Prior to the passage of HB 107 in the Senate, a consensus was reached among the people involved in this fishery. Fisherman who were adamant that limited entry be instituted in the traditional fashion agreed to a tiered system, if it had the stacking unstacking provision. That provision, which this sponsor substitute represents, was the factor that convinced the majority of those involved in the fishery to support the tiered legislation.

Unfortunately, due to the imminent adjournment of the first session, there was not enough time to change the title on the House Bill to accomplish the stacking unstacking provision. Consequently, the bill was passed without that compromise provision. It was thought that it would be better to attain limited entry than to reopen the fishery to new entrants.

Sponsor substitute for Senate Bill 42 would allow the original compromise worked out by the involved parties to go forward. CFEC has stated that the provision is acceptable and has voiced no objection.

Feb. 29, 1996

Southeast Alaska Dungeness Crab
Petition for Stacking Provision

We, the undersigned fishermen, would urge the legislature to add a stacking provision to the Southeast Alaska dungeness crab fishery. We were disappointed last year when, H.B. 107 was passed in the last days of the 1995 session, without a stacking provision in it, as the bill was originally written. As it now stands, many fishermen with a history in the dungeness fishery will be cut back in the number of pots they can use after 1996; as a result of the limited entry program due to start in 1997.

If the C.F.E.C. finds it necessary to limit the number of pots in the fishery; then an equal percentage of pots should be removed from all entrants equally. Example: A 300 pot permit would lose 30 pots and a 75 pot permit would lose 7 pot; on a 10% cut. Decisions to reduce pots fishing, should have nothing to do with the buying of selling of permits as has been proposed.

Within a stacking provision, if an individual is given 150 pots initially and buys two more 75 pot permits to reach the maximum of 300 pots; then conversely, they should be able to break them down as purchased for disposal or be able to sell them as one unit to another fisherman as the permit holder sees fit.

Name (Print)	Signature	Address
<u>JEREMY C. JENSEN</u>	<u>Jeremy C. Jensen</u>	<u>PO Box 681 Psg. 1</u>
<u>MARK JENSEN</u>	<u>mark</u>	<u>Box 457 Psg AK</u> 992-4635
<u>JOHN E. JENSEN</u>	<u>John E. Jensen</u>	<u>Box 681 Psg. AK</u>
<u>Charles Christensen</u>	<u>Charles Christensen</u>	<u>"15 Hammar Street</u> <u>Box 824 Psg AK</u>
<u>KEN WILSON</u>	<u>Ken Wilson</u>	<u>Box 918 Psg. 1</u>
<u>Luke Whitethorn</u>	<u>Luke Whitethorn</u>	<u>Box 74 P56 A1</u>
<u>Jeff Erickson</u>	<u>Jeff Erickson</u>	<u>Box 53 P56 A1</u>
<u>Jay Thomassen</u>	<u>Jay Thomassen</u>	<u>1444 Commodore Dr</u> Anchorage
<u>Colin Mortens</u>	<u>Colin Mortens</u>	<u>Box 623 P56 AK</u>

Name (print)	Signature	Address
Hunt Lars	Hunt Lars	P.O. Box 418 P.S.K.
DAVE SOMERVILLE	Dave Somerville	Box 163 Bg. AK 9
TROY CURTISS	Troy E. Curtiss	P.O. Box 1532 AK 9
DARRYL P. OLSON	Darryl P. Olson	Box 1304 P56
Diane Olson	Diane Olson	Box 34575 - Juneau
CARL E. ANDERSON	Carl E. Anderson	Box 1011 P.S.C.
Dan H Schweitzer	Dan H. Schweitzer	Box 1667 P.S.G.
RALPH CHARLSSON	Ralph E. Charlsson	Box 2015 P.S.G. 2
MARTIN L. OLSEN	Martin L. Olsen	Box 433 P.S.G. AK
JOHN EIDE	John Eide	Box 101 Bg. C
TED LEWIS	Ted Lewis	Box 1408 P.S.G. AK
GEORGE DODDINGTON	George Doddington	Box 214 P.S.G. AK
Terry J. Harbeck	Terry J. Harbeck	P.O. Box 486 P.S.G. 1
CARL E. CROME	CARL E. CROME	Box 466 P.S.G. 1
GARDON SCOTT OLSEN	Gardon Scott Olson	Box 433 P.S.G. AK
Dennis K. Rogers	Dennis K. Rogers	Box 542 P.S.G. AK
STEVE DAVIS	Steve Davis	Box 1554 Bg. AK

Name (print)	Signature	Address
RODERICK Mccay	Mccay	Box 141 PSG, IA
The
Bobbie A. Anderson	Bobbie A. Anderson	Box 1672 Psg
Kurt Kvernvik	Kurt Kvernvik	Box 1081 Psg
Robert Baldwin	Robert Baldwin	Box 1757 Psg
George Wood	George Wood	Box 402 AK
Marc Martensen	MARC MARTINSEN	Box 331 Psg
STEVE RUTLER	Steve Rutler	Box 107 Psg
Paul S. Canik	Paul S. Canik	Box 1653 Psg
Rick D. Versteeg	Rick D. Versteeg	Box 63 Psg
Bill Johnston	Bill Johnston	Box 134 Psg
Kenneth Olson	Kenneth Olson	Box 1557 Psg
Ralph ...	Ralph ...	Box 292 Psg
Thomas W. ...	Thomas W. ...	PO. BOX 1457 F
THOMAS O. DRENNAN	Thomas O. Drennan	Box 823 Psg
David E. ...	David E. ...	Box 574 Psg
Cheryl J. Crawford	Cheryl J. Crawford	Box 464 Psg

Name (prin')

Signature

Address

Edward H. Crawford

Edward H. Crawford

Box 464 Petersburg At

Daniel Crane

[Signature]

Box 1243 Petersburg

Feb. 29, 1996

Southeast Alaska Dungeness Crab
Petition for Stacking Provision

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Name (Print)	Signature	Address
STEVE THOMASSEN SR.	<i>Steve Thomassen Sr.</i>	Box 742 WRANGELL AK
STEVE THOMASSEN JR.	<i>Steve Thomassen Jr.</i>	Box 468 WRANGELL AK
Darwin Paul	<i>Darwin Jay Paul</i>	Box 601 WRANGELL
Wayne Kaer	<i>Wayne Kaer</i>	Box 954 WRANGELL AK
Mark Cummings	<i>Mark Cummings</i>	Box 1251
David Powell	<i>David Powell</i>	Box 984
Randy Easterly	<i>Randy Easterly</i>	Box 1521
BRUCE WARD	<i>Bruce Ward</i>	Box 1501, Wrangell
Alan N Reeves	<i>Alan N Reeves</i>	Box 741 Wrangell

Feb. 29, 1996

Southeast Alaska Dungeness Crab
Petition for Stacking Provision

We, the undersigned fishermen, would urge the legislature to add a stacking provision to the Southeast Alaska dungeness crab fishery. We were disappointed last year when, H.B. 107 was passed in the last days of the 1995 session, without a stacking provision in it, as the bill was originally written. As it now stands, many fishermen with a history in the dungeness fishery will be cut back in the number of pots they can use after 1996; as a result of the limited entry program due to start in 1997.

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Name (Print)	Signature	Address
<u>ROD HAYES</u>	<u>[Signature]</u>	<u>Box 226 Wry, AK</u>
<u>MIKE BURGESS</u>	<u>[Signature]</u>	<u>Box 217 Wry, AK</u>
<u>RICHARD KARP</u>	<u>[Signature]</u>	<u>Box 1102 Wry</u>
<u>[Signature]</u>	<u>[Signature]</u>	<u>Box 2159</u>
<u>FRANK L. WARFEL</u>	<u>[Signature]</u>	<u>P.O. Box 517 WENIGELL, AK 99829</u>
<u>[Signature]</u>	<u>[Signature]</u>	<u>P.O. Box 522 WRY AK</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

From the TelePort of: Randa's

Date: Monday, March 25, 1996

Number of Pages: 4

To: Robln Taylor, Senator

Fax Number: 907 465-3922

Memo: To: Senate Resources Committee members

March 25, 1996

Senator Leman, Chairman
Senate Resources Committee

RE: HJR59

Dear Senator Leman:

This issue regarding the National Pollutant Discharge Elimination System (NPDES) permit is important to the health of Cook Inlet and HJR59 conveys an attitude of disregard for this wonderful resource. We have not ever undertaken a comprehensive effort to determine the impacts of the 30 years of oil industry activities, yet the inconclusive data is touted as justification for this resolution

Minuscule efforts which we have undertaken have not shown significant impact, but they do show toxicity in the sediments nearby to the industry. Effort is underway to address this but funding is difficult to obtain.

I fear that the concept of mixing zones (killing zones) is one which the impact will ultimately be demonstrated by a pervasive system-wide decline in benthic productivity (imperative to a healthy food chain). A sediment profile gathered by a comprehensive scientific approach will at least let us understand more about the chronic impacts of the oil industry.

Cook Inlet is not a cesspool of pollution, but the use of the mixing zone as a method for disposing of industry effluent is undeniably a step in that direction. These mixing zones allow effluent discharge of 5000 times the water quality standard established by ADEC.

I am concerned about this resolution and the message which it conveys. I am including a letter I sent to the House Resources Committee which outlines my concerns. I would ask that you read it. And not pass HJR59.

Sincerely yours,

Dennis H. Randa, President
Alaska Council of Trout Unlimited

ps: This is not a demand for Zero Discharge, just a request for a reasonable approach to a serious issue.

March 5, 1996

Representative Joe Green
Alaska House of Representatives

Dear Representative Green:

Recent dialog with the House Resources Committee which you co-chair has me deeply concerned over the politics of resource management here in the Cook Inlet area, where I reside and earn my living.

I recently spoke about the National Pollutant Discharge Elimination System (NPDES) issue at the HJR59 hearing in Kenai. My primary concern is that there appears to be no ground for compromise; leaving permit changes to be an all or none situation, left only to generate animosity and angst for future.

Compromise is essential here because we are not just talking about the jobs that the oil industry offers but also potentially for harming the resource which sustains other industries now and in the future (after all of the extractable oil has been removed).

The fact that the oil industry spokesman (woman) was given to mislead the committee (when she said that there was no evidence of harm to the Cook Inlet environment), demonstrates to me the resolve of the industry to not yield at all from their position of all or none (never give an inch?).

The fact is, the oil industry has shown a disregard for the environment of Cook Inlet area for most of its existence here in this area. I am not saying this lightly. The disposal of industrial waste products has not been a high priority until industry realized the cost of cleaning up those wastes. Efforts to evaluate the oil industry's contribution to pollution in the Cook Inlet estuary has been essentially nonexistent. Attempts to accomplish this task have been thwarted by the industry's refusal to fund the Cook Inlet Region Citizen Advisory Council's Environmental Monitoring Committee's efforts (as mandated by the Oil Pollution Act of 1990; intended to increase the public's confidence in the cleanliness of the industry's operations).

The cavalier manner in which the industry addressed their responsibility to the previous NPDES permit (filling out of the DMRs) resulted in those thousands of violations you felt it was "inflammatory" for me to mention during my testimony at the Kenai public hearing. You may feel it is inflammatory to refer to the thousands of violations, but the fact remains

that the industry failed to seriously address their responsibility. Does that mean they do now or especially that they did so then (in-so-far as their responsibility to the environment).

During my testimony, I also referred to the mixing zones as "Dead Zones", which you also objected to as an inflammatory statement. A mixing zone is an area in which the introduction of effluents in excess of those levels which have been found to be lethal to life is allowed. Undiluted effluent discharged into these mixing zones vary but are as high as 5000 times greater than the state standard for allowable discharge. Mixing zones are accurately described as "Kill Zone", or "Dead Zone".

The NPDES permit which the industry is fighting so vigorously against is an important document in this effort to increase the public's confidence that the Inlet's health is being treated appropriately by the industry. The handful of samples which comprise the data base for evaluating the impacts are simply not enough for any serious evaluation. The industry's complacency coupled with their opposition to any alteration of the NPDES permit is just not acceptable.

Where is the spirit of co-operation which the industry would have the public believe they (the industry) possess? Where is the room for compromise? Surely the status quo considering the information which we do have regarding the health of the Cook Inlet merits a reasonable approach to analysis of the discharges.

Finally, just what is the Legislature's goal of taking up the NPDES issue? It would appear to me that if the goal is to represent the people's interest, assuming that you thought that the EPA was not doing so in this process, then you should consider increasing funding to ADEC and having them act as principal permitting agency. It is within the purview of the State of Alaska to do so.

Sincerely yours in conservation,

Dennis H. Randa, President
Alaska Council of Trout Unlimited

Senator Loren Leman

2/6/95

I am enclosing a tiered
pot system and changing of
bill 42 line 22 that permits
could be transfered and added
to maximize permits to a
300 pot limit per vessel.

Thank you

KEN MADSEN

P.O. 918

PSE, AK 99833

FISHERMEN

PETERSBURG FISHERIES

division of
ICICLE SEAFOODS, INC.
P.O. BOX 1147
PETERSBURG, ALASKA 99833
907 - 772-4294
FAX 907 - 772-4472



February 9, 1995

Senate Resource Committee
Senator Loren Leman
Senator Robin Taylor
Senator Drue Pearce
Senator Steve Frank
Senator Rick Halford
Senator Lyman Hoffman
Senator Georgianna Lincoln

Dear Senate Resource Committee:

Thank you for the opportunity to address my concerns about the proposed Dungeness Crab Fishery "tiered" system brought by the Crab Coalition. I believe the monitoring of the fishery should move in a less intrusive manner, that allows for competition in the fishery equitable to the investments of both large and small operators.

I would suggest two ways to start: First, shorten the season if the stocks are in jeopardy. Secondly, have a 200 pot limit. It has been my experience, having been a dungeness fisherman, that fishing with less than 100 pots does not allow for sufficient catches to enable one to make expenses let alone increase the size of your fishing operation.

Thank you for your time & consideration.

Sincerely,

John G. Baird
S.E. Fleet Manager

cc: CFEC
House Fisheries Committee

Sec. 16.43.940. Exempted activities. This chapter does not apply to activities authorized by a permit issued under AS 16.40.100 or 16.40.120. (§ 11 ch 145 SLA 1988)

Revisor's notes. -- Enacted as AS 16.43.140(d). Renumbered in 1988.

Effective dates. -- Section 22, ch 145, SLA 1988, makes this section effective June 9, 1988, in accordance with AS 01.10.070(c).

Sec. 16.43.950. Applications of regulations of Board of Fisheries. Nothing in this chapter limits the powers of the Board of Fisheries, including the power to determine legal types of gear and the power to establish size limitations or other uniform restrictions applying to a certain type of gear. Holders of interim-use permits or entry permits issued under this chapter are subject to all regulations adopted by the Board of Fisheries. (§ 1 ch 79 SLA 1973; am § 31 ch 206 SLA 1975)

Revisor's notes. -- Formerly AS 16.43.350. Renumbered in 1983.

Sec. 16.43.955. Hearings in proximity to board of fisheries meetings. When practicable, a commission hearing that deals with the subject of limiting entry to a fishery shall be held on the same dates on which, and in the same building or in a building adjacent to the building in which, a Board of Fisheries meeting is being held. (§ 7 ch 22 SLA 1985)

Sec. 16.43.960. Commission revocation or suspension of permits. (a) The commission may revoke, suspend, or transfer all entry or interim-use permits held by a person who 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 for self or another, including the issuance, renewal, duplication, or transfer of an entry or interim-use permit or vessel license. The commission may suspend that person's eligibility to hold an entry or interim-use permit for a period not to exceed three years, and may impose an administrative fine of not more than \$5,000 on the

AK COPY
Senator Loren Leman
SB 42 & HB 107
Senate Resources Committee

This report was requested in Senate Resources Committee during hearings on SB 42: Restricted Limited Entry Permits.

HB 107 is a similar bill and has been referred to Senate Resources Committee.

Please file this report with SB 42 and HB 107 committee files.

Delivered 3/14

MEMORANDUM

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

TO: The Honorable Loren Lemam
Alaska State Senator
Chair
Senate Resources Committee

DATE: March 2, 1995

FAX NO: 799-6170

TELEPHONE NO: 789-6160

SUBJECT: Limited Entry Permit
Transfer Options

FROM:  Frank Homan, Commissioner
Commercial Fisheries
Entry Commission

At the Senate Resource's Committee meeting on Monday February 6th, the committee indicated that they wanted to review the issue of transferability of entry permits when considering SB 42. This memorandum outlines some of the transfer alternatives which have been suggested in the past and briefly discusses the potential tradeoffs associated with such alternatives. We also have enclosed some previous reports and studies on the issue.

The issue of how to reallocate entry permits has been considered by the legislature several times. In each case, the legislature decided that using the market to reallocate permits is the best alternative given the pitfalls associated with other suggested approaches. The legislature considered a number of alternatives when the limited entry act (AS 16.43) was written, and finally settled upon free transferability. Some of these issues considered by the legislature are discussed in Governor Egan's transmittal letter of the original draft bill to the legislature (enclosed).

When the limited entry bill was passed the legislature included a provision (AS 16.43.980 (b)) directing the Commercial Fisheries Entry Commission (CFEC) to study other methods for reallocating entry permits and report to the Legislature. CFEC's report to the legislature in 1975 (enclosed) examined several reallocation alternatives and again reached the conclusion that free transferability was the best option given the legislature's objectives and the drawbacks associated with other approaches.

In 1979 and 1980 the legislature funded a number of studies to determine what was happening under limited entry and the impacts of free transferability. These reports

included an appendix which again examined alternatives to free transferability. Again, given the problems associated with the other alternatives, the legislature kept the free transferability provision in the statute.

Among the virtues of free transferability cited when the limited entry law was enacted was that free transferability appeared to be easier to defend legally relative to other reallocation options. Free transferability does not create a closed class and free transferability does not discriminate among residents and non-residents. Indeed, free transferability has withstood substantial legal scrutiny.

In 1983, the Alaska Supreme Court ruled on a challenge to the constitutionality of the Limited Entry Act in general and the free transferability provision in particular in State of Alaska v. Ostrosky, 667 P.2d 1184 (1983). The Alaska Supreme Court upheld the constitutionality of the Act and of free transferability and also affirmed the legislative objectives in adopting the transferability option. The decision was subsequently allowed to stand by the United States Supreme Court when it dismissed the Ostrosky appeal in Ostrosky v. State, 104 S. Ct. 2379 (1984), rehearing denied 104 S. Ct. 3572 (1984).

The amendment to Alaska's constitution allowing for limited entry in commercial fisheries and Alaska's limited entry statute (AS 16.43) both have similar purposes and objectives. Both point to limited entry as an important tool to help provide for resource conservation and sustained yield management of the fishery resources of Alaska, as well as promoting a safe and orderly fishery. Where applied, the program has

¹Article VIII, Section 15 of Alaska's constitution, reads as follows:

No Exclusive Right Of Fishery

No exclusive right or special right 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.

The purpose of the Limited Entry Act can be found in AS 16.43.010 (a) which reads as follows:

Purpose and findings of fact.

(a) It is the purpose of the chapter to promote the conservation and sustained yield management of Alaska's fishery resource and the economic health and stability of commercial fishing in Alaska by regulating and controlling entry

served these purposes and has helped preserve the benefits of fishery development and enhancement for Alaskans.

"To prevent economic distress among fishermen and those dependent upon them for a livelihood" is one of the purposes stated in the constitutional amendment allowing for limited entry. The initial allocation method chosen by the legislature "grandfathers" fishermen who are most dependent upon the fishery at the time of limited entry. This initial allocation method is consistent with the constitutional amendment allowing for limited entry. Free transferability also serves this constitutional purpose.

Free transferability allows a parent in a fishing family to transfer a permit to a child, a permit holder to transfer his/her permit to another family member, permits to be inherited upon the death of a permit holder, persons to enter and exit fisheries at times opportune to them, and obviates the need for an expensive time consuming bureaucratic process to reallocate permits. All other transfer options appear to be lacking with respect to such criteria.²

Under free transferability, the percentage of limited entry permits held by Alaska residents has remained relatively constant since initial issuance. All other transfer options would likely have to impose some restrictions to make sure that Alaska-held permits tend to be reallocated to Alaska residents. All other transfer options which impose such constraints would likely not survive legal scrutiny.

For these reasons, the commission feels that careful deliberation should be given when considering these types of changes to the limited entry program. Free transferability appears to have served both the constitutional purposes of limited entry and the legislature's objectives as expressed in AS 16.43. Moreover, problems exist with other suggested reallocation approaches and it is unclear that the other approaches

into the commercial fisheries in the public interest and without unjust discrimination.

²See Changes In The Distribution of Alaska's Commercial Fisheries Entry Permits 1975-1993 (CFEC 94-8N). Over the 1980-1993 time period, approximately 60% of all permanent limited entry permit transfers (8,659 out of 14,442) were between immediate family members, other relatives, friends, or business partners. Approximately 71.6% of all permanent permit transfers from persons residing in rural areas that are local to limited fisheries went to relatives, friends, or business partners.

would better serve the purposes and objectives that have been put forward in the constitution and the law.

The attached pages of this memorandum briefly outline some of the more popular alternatives which have been proposed in the past for permit reallocations. Some potential advantages and disadvantages of each method are also noted.

The enclosed material provides a more detailed analysis of the various methods of transfer that have been reviewed in past studies.

Enclosures:

- 1) Governor Egan Transmittal Letter
- 2) 1975 Report to Legislature
- 3) Analysis of Legislative Options 1980
- 4) State v. Ostrosky 1984

cc: Members of Senate Resources Committee

ALTERNATIVE METHODS OF REALLOCATING ENTRY PERMITS

- I. Lottery
- II. Apprenticeship
- III. Auction

I. Allocate By Lottery

This method has often been suggested as an alternative to free transferability. Permits would be returned to the commission when a permit holder retires from the fishery or dies. The commission would reallocate the permit by lottery.

Advantages:

- a. A lottery might be a relatively inexpensive reallocation method, unless there needs to be a complicated process to determine who is eligible to participate in the lottery.
- b. Permits could be retired by the commission and not reallocated if there is too much gear in the fishery.
- c. Participation rates of permit holders in fisheries may fall as permit holders would be likely to hang on to their permits even if they were not using them.

Disadvantages:

- a. A major question is who should be eligible for the lottery. Any attempt to discriminate openly among residents and non-residents could make such a provision unconstitutional. Attempts to

discriminate may also require a costly process to determine who is eligible to be in the lottery pool.

- b. If everyone can enter the lottery, the State may wind up reallocating permits to non-residents over time. The number of non-residents and the potential number of non-resident fishermen could greatly exceed the potential number of resident fishermen. If eligibility for the lottery cannot be legally restricted, selection probabilities under a lottery might tend to reallocate permits to non-residents over time.
- c. A process like this is not conducive to business planning and the creation of a professional fishery where persons can opt to enter and exit a fishery at times opportune to them. Entry would depend upon a random draw.
- d. Permit "turnover rates" would likely be lower than under free transferability, as a permit holder would have little incentive to give up the permit. Other changes in the law might need to be made to force persons to turn in their permits (such as, higher annual renewal fees and/or "use it or lose it" provisions).
- e. It might be difficult for young persons to plan to get into a fishery of their choice. Currently, under free transferability, approximately 10% all of limited entry permits are permanently transferred each year. Under free transferability, the average age of permit holders has not risen substantially since the program began. Each year, younger new entrants tend to offset the annual age increases of those continuing to hold their permits.
- f. Fathers could not pass their permits on to their sons or other members of their family. In some cases this might thwart the legislative and constitutional limited entry objective of "preventing economic distress among fishermen and those dependent upon them for a livelihood."

II. Allocation To Apprentices

An apprenticeship program for a limited fishery is one way that some have suggested to reallocate permits. Permits could be allocated to qualified persons on a "first-come, first-served basis" or an apprenticeship qualification period could be used to restrict those who would be eligible for a lottery.

The commission could maintain a list of qualified apprentices for a fishery or group of fisheries. The list could be used to reallocate a permit that comes available or used as a pool of names for a lottery once a permit becomes available. Many of the same advantages and disadvantages of a lottery listed above also apply to this method.

Advantages:

- a. If an apprenticeship program could withstand legal scrutiny, this method might allow the State to target permits to its residents. However, it is somewhat doubtful that an apprenticeship program could be designed that would be constitutional (see below). This type of exercise would also require more bureaucratic involvement in record-keeping and determining eligibility for a direct permit allocation or for a lottery list to be used for a permit drawing. It might also require bureaucratic involvement to determine who can become an apprentice and who skippers can hire (see below).
- b. Again, permits could be retired by the commission and not reallocated if there is too much gear in the fishery.
- c. Participation rates of permit holders in fisheries may fall as permit holders would be likely to continue to hold their permits

even if they were not using them, since the permits would have no resale value.

Disadvantages:

- a. Any attempt to re-allocate to apprentices would require an effort to determine who is qualified and who is not. The more complicated the eligibility criteria become the more costly the process would be to administer.
- b. It is somewhat doubtful that an apprenticeship program could be designed that would favor residents over non-residents. A 1968 attempt at limited entry under a similar scheme was declared unconstitutional. The court decisions suggest that there could be constitutional problems under both the Alaska and U.S. constitutions if current fishermen indirectly control (by who they hire) who can become an apprentice. It is unclear how the State could set up an apprenticeship program that would be workable and would overcome these problems.
- c. If anyone is allowed to become an apprentice, or be placed upon the state's list of apprentices, the State may wind up reallocating permits to non-residents over time. The number of non-residents and the potential number of non-resident fishermen could exceed the potential number of resident fishermen. If eligibility to be an apprentice cannot be legally restricted, there may be more non-resident than resident apprentices. If so, this might cause selection probabilities to favor reallocations to non-residents over time.
- d. A process like this is not conducive to business planning and the creation of a professional fishery where persons can opt to enter and exit a fishery at times opportune to them. Entry and exit would depend upon a random draw in a lottery, or waiting until your name

comes up for a permit.

- e. Permit "turnover rates" would likely be lower than under free transferability, as a permit holder would have little incentive to give up the permit.
- f. It might be difficult for young persons to plan to get into a fishery of their choice. Currently, under free transferability, approximately 10% all of limited entry permits are permanently transferred each year. Under free transferability, the average age of permit holders has not risen substantially since the program began. Each year, younger new entrants tend to offset the annual age increases of those continuing to hold their permits.
- g. Fathers could not pass their permits on to their sons or other members of their family. In some cases this might thwart the legislative and constitutional limited entry objective of "preventing economic distress among fishermen and those dependent upon them for a livelihood."

III. Auctions

This method has been suggested as an efficient reallocation method and a method which would capture a greater percentage of the economic benefits of limited entry for all the citizens of Alaska.

The legislature chose to use a "grandfathering system" rather than auctions for initial allocations. Under an auction system there was no guarantee on who would get the permits. The grandfathering system was consistent with the constitutional purpose of limited entry "to prevent economic distress among fishermen and those dependent upon them for a livelihood." The grandfathering system was also consistent with the

purpose of the limited entry statute noted above.

Advantages:

- a. An auction would be a relatively inexpensive reallocation method, unless there was a complicated process to determine who is eligible to bid on permits at the auction.
- b. The people of Alaska would capture a greater portion of the benefits of limited entry, by capturing the value of each limited entry permit that is sold by auction.
- c. Permits could be retired by the commission and not sold if there is too much gear in the fishery.
- d. Participation rates of permit holders in fisheries may fall as permit holders would be likely to hang on to their permits even if they were not using them.

Disadvantages:

- a. A major question is who would be eligible to bid for permits in the auction. Any attempt to discriminate openly among residents and non-residents could make such a provision unconstitutional. Attempts to discriminate may also require a costly process to determine who is eligible to bid for permits in an auction.
- b. If everyone is allowed to bid for permits in an auction, it is possible that the State could wind up reallocating permits to non-residents over time. The number of non-residents and the potential number of non-resident fishermen could exceed the potential number of resident fishermen. If non-resident fishermen tend to have greater wealth or better access to financing, it is possible that reallocations by auction will result in more permits going to non-

resident fishermen. As noted above, the percentage of permits held by resident and non-residents has remained relatively stable under free transferability.

- c. Permit "turnover rates" would likely be lower than under free transferability, as a permit holder would have little incentive to give up the permit.
- d. It might be difficult for young persons to plan to get into a fishery of their choice. Currently, under free transferability, approximately 10% all of limited entry permits are permanently transferred each year. Under free transferability, the average age of permit holders has not risen substantially since the program began. Each year, younger new entrants tend to offset the annual age increases of those continuing to hold their permits.
- e. Fathers could not pass their permits on to their sons or other members of their family. In some cases this might thwart the legislative and constitutional limited entry objective of "preventing economic distress among fishermen and those dependent upon them for a livelihood."

WILLIAM A. EGAN
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 10, 1973

The Honorable Terry Miller
President of the Senate
Alaska State Legislature
Juneau, Alaska

Dear Mr. President:

Pursuant to the Uniform Rules of the Legislature, I am transmitting a bill to regulate entry into Alaska Commercial Fisheries.

The limited entry study that I requested and the Legislature established last summer has more work yet ahead of it, but sufficient research has been completed to recommend a sound basic regulatory program, and to apply that program to the species that need it most -- salmon.

Alaska's salmon resources cannot produce a livelihood for an unlimited number of fishermen, nor can they be successfully managed for maximum sustained yield if utilized by an unlimited number of fishermen. The only alternative to the continuing loss of a healthy professional fishery is the stabilization of entry into the fishery at reasonable levels.

The makeup and traditions of the salmon fishery vary greatly from area to area, but two basic generalizations apply to the whole state:

- 1) Excessive numbers of fishermen participating in the harvest of salmon have reached acute proportions in almost every area.
- 2) Without entry limitation the commercial salmon fishery will be taken over increasingly by moonlighters, sport-commercial, and part-time hobby fishermen.

Most past efforts to limit entry have failed because they were stop-gap efforts designed to postpone the problem by creating special licensing preferences, or to offer a

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solution applicable to the special problems of only one area. The results were unconstitutional programs that did not satisfy the unique conditions of different fisheries.

Our basic objective has been to develop a constitutional and practical program which can be applied flexibly with fairness to the varied needs and special problems of each fishing area throughout the State, while at the same time offering a permanent solution benefiting the entire State. I believe that this bill does so.

Its overall objective is to stabilize the number of commercial fishermen within each salmon fishing area at a level commensurate with the ability of the resource to provide an adequate livelihood for the fishermen. Its long-range goal is an economically and biologically healthy professional fishery.

The Initial Scope of a Limited Entry Program

Early in the study the decision was made to focus attention on the Alaska salmon fisheries, rather than to deal immediately with the problem of open access in all Alaska fisheries. This was done for several reasons, although it is acknowledged that other important Alaska fisheries, such as king crab and shrimp, are already suffering from too much fishing effort and may require their own limited entry programs in the near future.

It is the State's salmon fisheries that are the main focus of public attention. In terms of income and employment they rank far above any other fishery. Because of their complexity and the growth of fishing pressure on them, the salmon fisheries present the most urgent need for limited entry regulation. Because salmon fishing practices vary greatly from area to area, a limited entry program for salmon will require a fairly general and flexible statewide regulatory framework. Such a broad-based approach will be capable of encompassing other species later when the need arises.

The Problem of Growing Fishing Pressure

Even with substantially improved biological management since Statehood, the salmon fisheries are not as healthy as they can be because a steadily increasing number of fishermen are participating in the harvest. These new

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entrants into the fishery have driven the profitability of fishing down to marginal levels for those professional fishermen who must depend upon fishing for a major share of their livelihood.

A disturbing aspect of this general trend is that a substantial number of these new entrants can afford to participate at marginal economic levels because they rely upon other employment for the major source of their livelihood. The character of these new entrants varies. In Bristol Bay it may be the school teacher from Anchorage or the Boeing worker from Seattle; in Southeastern the sport-commercial troller with a well-paid government job; in Cook Inlet, the vacationing set-netter from the lower 48. However, in almost every area these moonlighters are adding substantially to the economic distress of the vocational fishermen who must derive their primary livelihood from fishing.

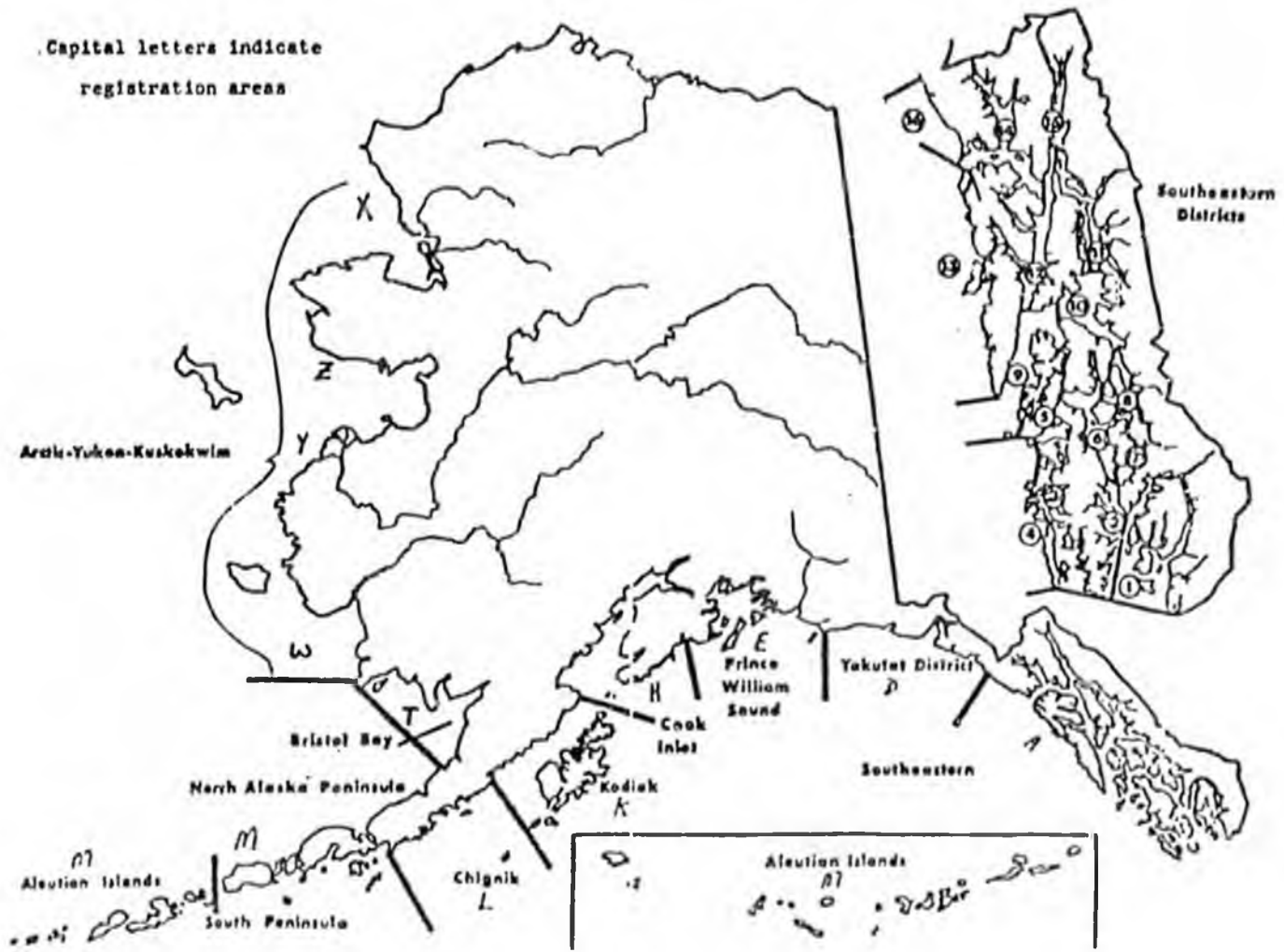
The main problem with these part-time, avocational fishermen is not their multiple employment. It is that they can afford to participate in the fishery even when it is not profitable, with the effect that average incomes for all fishermen are driven to submarginal levels. If this open entry pattern is allowed to continue, it will mean the eventual economic destruction of Alaska's professional fisheries.

A Brief Survey of the Commercial Salmon Fishery

Alaska's salmon fisheries are divided into geographic regions for management purposes, as the accompanying map shows. The salmon net fisheries (purse seine vessels, drift gill net vessels, and set gill nets), are further tied to registration areas. Every fisherman desiring to fish salmon net gear must register to fish in only one registration area in any given year. The troll fishery is limited almost exclusively to southeastern Alaska, and takes primarily king and silver salmon for the fresh and frozen fish markets.

From the dual perspective of adequate economic return to the fishermen and adequate ability to fully harvest the resource, there are presently too many units of gear in almost every salmon management area in the State. As an indication of where we stand today, the Department of Fish

FIGURE I. Alaska Salmon Management Areas



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and Game has prepared the following table which compares the numbers of units of gear registered in each area with the optimum numbers required to fully harvest the resource. These are rough estimates based on only one factor, but they fairly reflect the general magnitude of the problem. Only net gear is included in these tables; troll gear has not yet been similarly analyzed. If existing levels of gear are substantially above the optimum levels necessary for an economically healthy fishery, as this table indicates, then merely halting any further increase in gear levels will not achieve the basic objectives of a limited entry program -- a moratorium alone will not work.

ALASKA SALMON NET GEAR REGISTRATION
CURRENT AND OPTIMUM LEVELS

	UNITS REGISTERED IN 1970			UNITS REGISTERED IN 1971			OPTIMUM UNITS REQUIRED		
	Purse Seine	Drift Gillnets	Set Gillnets	Purse Seine	Drift Gillnets	Set Gillnets	Purse Seine	Drift Gillnets	Set Gillnets
SOUTHEASTERN	422	420	21	358	475	7	300	250	10
YAKUTAT	-	-	173	-	-	175	-	-	100
PRINCE WILLIAM SOUND	221	556	39	266	652	14	150	250	15
COOK INLET	98	761	769	98	710	731	75	300	475
KODIAK	401	-	226	343	-	152	100	-	50
CHIGNIK	69	-	-	73	-	-	40	-	-
PENINSULA- ALEUTIAN	118	172	130	141	166	130	95	65	50
BRISTOL BAY	-	1911	924	-	1888	859	-	1025	345
RUSKOVIN	-	444	76	-	401	71	-	175	50
ADTIEBUE	-	-	82	-	-	81	-	-	10
TURCH	-	254	490	-	295	571	-	125	110
MORTON SOUND	-	-	128	-	-	150	-	-	130

There are also a growing number of instances where too much concentrated fishing pressure makes sound management of the fishery impossible. This happens in the following way. The salmon net fisheries typically occur near the mouths of the spawning streams where salmon concentrate just prior to their spawning runs upstream. In such situations, allowing for adequate escapement is critical. If excessive amounts of gear are concentrated in the fishing areas, a mistake of only a few hours in the length of a fishing period could make the optimum escapement needed

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for an entire run of fish unobtainable and perhaps even wipe out the run. With too much gear in the fishery, fisheries managers have no margin for error in setting their field regulations. This has sometimes resulted in total closures where a manageable harvest by a reasonable number of vessels would otherwise have been acceptable.

Recent figures on license growth and catch data give a general picture of the excessive amount of gear and its distribution throughout the State. An analysis of average annual gross earnings per vessel by registration area and gear type for two recent years gives an approximate idea of income to fishermen. This and other statistical information is still being developed and refined by the limited entry study group.

There are three kinds of license issued for the salmon fishery: First, every person who intends to fish commercially must obtain a personal commercial fishing license; even crewmen must obtain these. Second, all vessels must be licensed by their operators. Third, a gear license must be purchased for every type of gear to be fished (e.g., drift net, purse seine, troll set net, long line, shellfish pots, trawl, etc.)

The following table shows the increase in all types of licenses used in the salmon fishery from 1961-1971:

	<u>1961</u>	<u>1971</u>
Commercial (personal)	15,697	20,564
Vessel	7,926	10,710
Drift Net	3,022	4,779
Set Net	2,064	3,062
Purse Seine	1,182	1,323
Troll	1,497	2,353

Here is a resident, non-resident breakout on commercial licenses:

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	<u>total</u>	<u>resident</u>	<u>non-resident</u>
1961	15,697	10,106	5,591
1971	20,564	14,276	6,388

It is worth noting that the percentage increase in resident licenses is greater than that for non-resident.

Here is a summary breakdown of catch and gear registration information by management area for the last four years. These tables include a resident, non-resident breakout for each type of gear and also show the percentage of the total salmon catch for each area which was taken by each type of gear.

<u>Southeastern</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch* (millions of fish)	30.2	6.9	14.7	12.9
purse seines (total units registered)	498	407	422	358
- resident	241	223	216	192
- non-resident	257	184	206	166
- Percentage of total catch	90%	74%	83%	81%
drift gill nets (units registered)	527	395	420	475
- resident	286	251	266	320
- non-resident	241	134	154	155
- Percentage of total catch	5%	15%	12%	12%
troll gear registered**	2,103	2,303	2,567	2,353
- Percentage of catch***	4%	10%	4%	6%

*A majority of salmon caught in southeastern are pink salmon which fluctuate widely on a two year cycle.

**These troll figures are totals statewide and include the nominal troll fishery in Yakutat and Price William Sound.

***The value of troll catch is much higher than this figure would indicate. In 1971, value to fishermen of troll caught fish was \$5.8 million, value to fishermen of all other fish was only \$25.6 million.

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<u>Yakutat</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (million of fish)	.22	.26	.17	.26
set gill nets (units registered)	184	182	173	175
- Percentage of total catch	85%	88%	90%	96%
troll (units Regis- tered)	?	?	?	?
- Percentage of total catch	15%	12%	10%	4%

<u>Prince William Sound*</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	3.8	6.3	4.5	8.9
purse seines (units registered)	182	217	221	270
- resident	?	170	178	211
- non-resident	?	47	43	59
- %age of total catch	74%	84%	67%	87%
drift gill nets (units registered)	423	510	556	654
- resident	?	384	420	481
- non-resident	?	126	136	173
- %age of total catch	25%	15%	32%	11%

*There is a negligible troll and set net fishery.

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<u>Cook Inlet</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	5.7	1.5	3.4	1.7
purse seines (units registered)	92	80	99	84
- resident	?	76	95	81
- non-resident	?	4	4	3
- %age of total catch	12%	18%	24%	32%
drift gill nets (units registered)	575	695	761	706
- resident	?	483	537	515
- non-resident	?	212	224	191
- %age of total catch	47%	50%	46%	44%
set gill nets (units registered)	655	736	769	729
- resident	?	683	704	686
- non-resident	?	53	65	43
- %age of total catch	41	32%	30%	24%
<u>Kodiak*</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	10.3	13.7	13.9	6.4
purse seines (units registered)	326	319	365	385
- resident	?	225	253	277
- non-resident	?	94	112	108
- %age of total catch	90%	95%	92%	92%
set gill nets (units registered)	192	202	226	193
- resident	?	152	166	142
- non-resident	?	50	60	51
- %age of total catch	8%	5%	7%	7%

*There is a negligible beach seine fishery.

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<u>Chignik</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	2.4	2.2	3.1	2.0
purse seines (units registered)	62	70	69	76
- resident	?	57	57	62
- non-resident	?	13	12	14
- %age of total catch	100%	100%	100%	100%

<u>Alaska Peninsula Aleutians*</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	3.6	3.2	5.5	4.0
purse seines (units registered)	107	112	118	143
- residents	?	105	102	126
- non-residents	?	7	16	17
- %age of total	76%	60%	71%	66%
drift gill nets (units registered)	123	136	172	169
- residents	?	102	105	116
- non-residents	?	34	67	53
- %age of total catch	17%	35%	25%	30%

set gill nets (units registered)	<u>120</u>	<u>134</u>	<u>133</u>	<u>132</u>
- residents	?	124	108	117
- non-residents	?	10	22	15
- %age of total catch	7%	4%	4%	4%

*There is a negligible beach seine fishery.

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<u>Bristol Bay</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	5.3	7.2	22.1	10.4
drift gill nets (units registered)	1,684	1,751	1,913	1,938
- residents	973	1,005	1,083	1,073
- non-residents	711	746	830	865
- %age of total catch	90%	88%	93%	90%
set gill nets (units registered)	839	924	924	891
- residents	722	759	765	745
- non-residents	117	165	159	146
- %age of total catch	10%	12%	7%	10%
 <u>Arctic-Yukon-Kuskokwim*</u>	 <u>1968</u>	 <u>1969</u>	 <u>1970</u>	 <u>1971</u>
total salmon catch (millions of fish)	.6	.8	1.0	.9
drift gill nets (units registered)	572	702	708	810
- residents	?	699	706	797
- non-residents	?	3	2	13
- %age of total catch	54%	34%	30%	29%
set gill nets (units registered)	598	727	783	902
- residents	?	721	781	889
- non-residents	?	6	2	13
- %age of total catch	45%	65%	69%	70%

*There is a negligible commercial take from fishwheels.

The following table gives some indication of the magnitude of depressed fishermen incomes in different areas of the State. This table shows average gross earnings per boat for two recent years. These figures represent gross earnings before expenses and must provide income for the entire crew required to operate a certain type of gear.

VALUE TO FISHERMEN OF 1970 SALMON CATCH
BY REGISTRATION AREA AND GEAR

SOUTHEASTERN	VALUE (a)	VESSELS FISHING (b)	AVERAGE EARNING PER VESSEL
Trap	\$ 70,842	4	\$17,713
Purse Seine	7,706,868	405	19,029
Drift Gillnet	2,526,472	336	7,519
Set Gillnet	19,844	10	1,984
Troll	4,465,162	1,894	2,358
TOTAL	\$14,789,186	2,649	\$5,583
(c) Using 1971 percentages where 50% of the Trollers caught only 4% of the total pounds of troll fish in Yakutat and S.E. This adjustment would also increase the S.E. total, average earnings per vessel to about \$9,000.			
	\$4,381,786	961	\$4,562
YAKUTAT			
Set Gillnet	\$ 250,074	(d) 143	\$1,749
Troll	108,019	27	4,000
TOTAL	\$358,093	170	\$2,107
PRINCE WILLIAM S.			
Purse Seine	\$2,106,223	(e) 221	\$9,530
Drift Gillnet	2,298,957	(e) 556	5,393
Set Gillnet	68,498	(e) 32	1,751
Troll	18,871	10	1,158
TOTAL	\$4,592,549	826	\$5,572
COOK INLET			
Purse Seine	\$ 523,460	(e) 99	\$5,352
Drift Gillnet	1,764,314	637	2,769
Set Gillnet	1,175,444	522	2,254
Troll	2,174	7	168
TOTAL	\$3,465,392	1265	\$2,744
KODIAK			
Purse Seine	\$7,104,563	(e) 365	\$19,470
Beach Seine	74,420	13	5,725
Set Gillnet	573,275	147	3,901
TOTAL	\$7,752,258	525	\$14,774
CHIGNIK			
Purse Seine	\$3,228,956	(e) 69	\$46,727
TOTAL	\$3,228,956	69	\$46,727
PENINSULA-ALEUTIANS			
Purse Seine	\$2,707,351	(e) 110	\$22,300
Drift Gillnet	2,526,979	(e) 172	9,878
Set Gillnet	258,270	(e) 120	2,151
TOTAL	\$5,492,600	402	\$13,667
BRISTOL BAY			
Drift Gillnet	\$25,225,894	(e) 1,311	\$13,107
Set Gillnet	1,802,593	224	8,051
TOTAL	\$27,028,487	2,037	\$13,267
ARCTIC-TURKCH-KUSKOKWIM			
Drift Gillnet	\$ 497,556	672	\$ 741
Set Gillnet	556,234	783	814
Fish Wheel	1,430	2	715
TOTAL	\$1,055,220	1,457	\$ 729

FOOTNOTES

- (a) The value figures generally omit bonuses paid to skipper after pack is sold. However, Prince William Sound and Chignik values include bonuses.
 (b) Vessels or traps or set net sites.
 (c) Estimated
 (d) Units of gear licensed. Number of units actually fished according to ADP&D records appears too high, so licensing figures were used. In the case of Bristol Bay and Aleutians-Peninsula, the units fished were not yet available from fish ticket printouts. In other words we do not yet have a truly reliable count of the number of vessels fishing each type of gear in each area.
 (e) Total average earning per vessel column is the number of vessels fishing divided into the value column.

VALUE TO FISHERMEN OF 1971 SALMON CATCH
BY REGISTRATION AREA AND GEAR

<u>SOUTHEASTERN</u>	<u>VALUE (a)</u>	<u>VESSELS FISHING (b)</u>	<u>AVERAGE EARNING PER VESSEL</u>
Purse Seine	\$7,210,450	306	\$23,568
Drift Gillnet	2,566,286	347	7,401
Set Gillnet	8,560		951
Troll	3,737,581	1,640	2,279
TOTAL	\$13,524,877	2,302	\$5,875
Sport-Commercial Fishery removed from totals. Includes Southeastern and Yakutat catches and vessels. In 1971, 50% of the trollers caught only 4% of the total pounds of troll fish. This adjustment also increases the Southeastern total, average earnings per vessel, to about \$9000			
	\$3,656,878	831	\$4,401
<u>YAKUTAT</u>			
Set Gillnet	\$ 361,900	131	\$ 2,762
Troll	71,667	22	3,258
TOTAL	\$ 433,567	153	\$ 2,834
<u>PRINCE WILLIAM S.</u>			
Purse Seine	\$5,183,683	251	\$20,652
Drift Gillnet	2,233,711	551	4,054
Troll	7,249	7	1,066
TOTAL	\$7,424,653	809	\$9,190
<u>COOK INLET</u>			
Purse Seine	\$ 420,313	49	\$ 8,582
Drift Gillnet	1,090,545	463	2,355
Set Gillnet	762,142	439	1,736
Troll	11,518	*	1,150
TOTAL	\$2,277,802	955	\$2,385
<u>KODIAK</u>			
Purse Seine	\$4,654,488	417	\$11,162
Hand Purse Seine	47,943	16	2,996
Set Gillnet	170,240	132	1,256
TOTAL	\$5,092,671	565	\$9,014
<u>CHISNIK</u>			
Purse Seine	\$2,169,205	77	\$28,171
TOTAL	\$2,169,205	77	\$28,171
<u>PENINSULA-ALUTIAN</u>			
Purse Seine	\$1,656,176	125	\$13,249
Drift Gillnet	1,295,918	141	\$9,140
Set Gillnet	176,145	52	3,391
TOTAL	\$3,128,239	318	\$9,836
<u>BRISTOL BAY</u>			
Drift Gillnet	\$10,557,610	(a)1,938	\$ 7,512
Set Gillnet	1,577,210	618	2,537
TOTAL	\$12,134,820	2,556	\$ 5,111
<u>ARCTIC-YUKON-KUSKOWIM</u>			
Drift Gillnet	\$ 487,874	709	\$ 632
Set Gillnet	935,053	790	1,200
Pish wheels	8,594	12	306
TOTAL	\$1,431,521	1,511	\$ 910

FOOTNOTES:

- (a) Same as 1970 table.
- (b) Same as 1970 table.
- (c) Units of gear licensed. The number of units of gear actually fished, according to AD760 records appears too high, as licensing figures are used.

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Our conclusions from this and other data are that the State's salmon fisheries have too much gear, resulting in depressed and sometimes sub-marginal income for professional fishermen and in impositions on sound management practices. In addition, this and other data suggest strongly that a limited entry program aimed primarily at eliminating "moonlighters" and other part-time fishermen from the salmon fisheries can result in a level of fishing pressure that allows improved management and the development of a professional fishery. Such a program, properly established and implemented, will also work constitutionally to reduce the number of outside participants in the fishery.

Legal and Constitutional Constraints

Neither the State nor the Federal Constitution prohibits a state statutory program regulating access to the commercial fishery, so long as the regulatory classifications established to permit some people to fish and to exclude others are reasonably related to a valid legislative purpose and are fairly applied. The recently adopted amendment to Article VIII, Section 17 of the Alaska Constitution, clearly establishes as a valid legislative purpose the regulation of entry to "prevent economic distress among fishermen."

The Alaska Constitution does not confer on its citizens a constitutional right to fish commercially for salmon. Article VIII, Section 3 reserves the "fish, wildlife and waters" to the people for "common use", but this in no way prohibits legislative regulation of that use. Limiting entry to the salmon fishery is no different in principle than the State's regulation through a permit system of the private appropriation of State waters.

The Federal Constitution will not permit a regulatory program which discriminates unreasonably against non-residents. Particular attention must be paid to the constraint imposed by the commerce clause of the Federal Constitution, under which a legally sound limited entry program cannot unreasonably burden or discriminate against interstate commerce. Any regulatory program which disqualifies non-residents from the fishery solely because they are non-residents, merely to secure an economic advantage for residents, will almost certainly fail in

the courts, as will any clear discrimination in favor of local (intrastate) economic interests at the expense of outside (interstate) economic interests.

The interpretation of the commerce clause in a given situation is primarily a matter of degree and of sufficient justification, in which the courts will be guided by the notion of reasonableness. The prevention of economic distress among fishermen is almost certainly a valid legislative purpose in this situation, and if the same standards for qualification, (for example, degree of dependence on the fishery or past participation in the fishery) are applied equally to resident and non-resident alike, they stand an excellent chance of being upheld in the courts, even though in some instances they may fall more harshly on the non-resident.

The courts will also look unfavorably upon any regulatory system which creates a completely closed class of fishermen. Some new entry must be permitted. Therefore, I am proposing the administratively controlled transfer or sale of entry rights, which will permit new entry while allowing fishing effort to be held at constant levels.

Other Limited Entry Proposals

Before discussing the reasoning that underlies this bill, it may be useful to outline some of the other types of limited entry proposals that concerned Alaskans have been considering. The State's limited entry study group has examined these and other ideas, and it has concluded that most of these approaches bear some of the marks of unsuccessful past efforts in that they seek an immediate solution for just one area rather than a permanent solution for the entire State. In addition, most of these proposals contain serious constitutional defects.

Here are the basic elements of one type of proposal:

- 1) Freeze the issuance of new gear licenses.
- 2) Establish optimum amounts of gear for each area necessary to harvest all species (salmon, king crab, halibut, etc.)
- 3) Allow everyone who ever owned a gear license in under the freeze.

4) Rely on attrition of license holders to eventually reach optimum levels.

5) When optimum levels are reached, make gear license a property right with a 12% royalty to the State.

6) Levy a buy-back assessment on gear licenses to encourage attrition.

There are some sound concepts in this proposal, but also some basic practical and legal defects. Any license freeze will probably be struck down in the courts because the effect is to create a completely closed class of fishermen for a substantial period of time. Letting anyone who had ever held a gear license in at the outset while excluding all new entry is probably constitutionally unacceptable, and also will considerably worsen the very problem it is designed to solve. Creating "grandfather rights" for paper registrants who have never actually fished and for those who have already dropped out of the fishery or are no longer dependent upon it, would greatly inflate participation in the already seriously overcrowded fishery. It would have the effect of penalizing the professional fishermen at the outset. Finally, the notion of a royalty is defective since the State does not own its salmon resource in the same way that it owns its oil or timber.

Another type of proposal is for a sliding scale gear quota in Bristol Bay. By its nature it is aimed at solving the problem for one area only, and in all likelihood, the solution would only be partial and temporary. Here are its basic features:

1) The Fish and Game Board would establish a total gear quota for the area in terms of total fathoms of net required to adequately and safely harvest the resource.

2) Following the close of area registration for a given year, the Board would apportion

- 3) Local families would be specially benefitted by a provision that gear registrants may jointly operate their individual quotas of gear.

This proposal would improve fisherman incomes only if low net length quotas for a given year discouraged outsiders from coming to Bristol Bay. This is an uncertain assumption for two reasons. First, many of the outsiders are moonlighters who might continue to fish Bristol Bay even without the prospect of high income in a given year. Second, if everyone was operating with the same handicap, the number of fish caught and the efficiency of the fishing effort may not be that well controlled by merely varying the length of the nets. The result may still be too many participants in the fishery. While solutions such as this are of questionable long-term value for Bristol Bay and would be unworkable on a Statewide basis, they are not inconsistent with this bill's goals for the fishery and they may provide a degree of short-term relief for the serious problem of over-fishing in the Bay.

Another limited entry proposal for Bristol Bay contains the following basic provisions:

- 1) A permanent gear license freeze for Bristol Bay at the level of the previous year.
- 2) If fishermen's incomes are anticipated to be below the national poverty level for a given year, the Fish and Game Board shall designate such an area a "distressed fishery."
- 3) In a "distressed fishery" special gear license fees would be levied on the basis of 10% of the value of the salmon sold by a resident, and 30% of the value of the salmon sold by a non-resident.
- 4) A fisherman who derived more than 75% of his gross income from fishing during the previous year, or who had a gross income of less than \$5,000 during the previous year, would be exempted from the special fees.

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This proposal has the constitutional liabilities of any license freeze as discussed above. Furthermore, a freeze at the present level would not offer much of a practical solution for Bristol Bay, because that area, particularly, suffers presently from a great excess of gear. The proposed license fees almost certainly would be held by the courts to discriminate unconstitutionally against interstate commerce.

One final type of proposal which has been discussed recently would create a gear licensing preference for watershed or registration area residents. Even though such a preference would not discriminate directly against non-residents of the State, the overall effect would be the total exclusion of non-residents of the State from the fishery. Such a regulation would have virtually no chance of survival in the courts. Furthermore, such a proposal would not really solve the limited entry problem. There might soon be too many fishermen drawn solely from residents of the watershed or area, particularly in areas like Cook Inlet and Southeastern. Even more important, this approach does not address the problem of the moonlighters and part-time fishermen who threaten the future of the professional fishery.

I am heartened by the strong spirit of good faith and concern that has prompted various Alaskans to bend their efforts toward thinking of limited entry programs for our State's fisheries. My motive in noting shortcomings in some of these proposals is simply to indicate pitfalls that must be avoided in developing a legally sound, workable limited entry program for all the fisheries of our State. To do so, we must work together, and these proposals for limited entry indicate that Alaskans are in important agreement on the basic objectives.

Proposal for Limited Entry Program

The bill I am submitting today embodies my recommendation for a limited entry program. The reasoning behind the basic features of it is as follows:

The bill establishes a regulatory and quasi-judicial commission which would administer an entry permit system for the State's salmon fisheries. The basic problem of

too much gear varies widely in its dimensions and particulars from area to area. Trying to decide directly in the language of a statute which particular individuals will be permitted to fish, and which individuals will be excluded, is hopelessly inadequate, both legally and practically. A full-time regulatory commission is the only way to apply general legislative standards to each area and type of gear with fairness to all areas.

The commission approach has the added advantage of being easier to defend legally. As long as the statutory purpose and standards are valid, the point of legal attack would be a particular regulation or application of a statutory standard by the commission. Such specific points are far easier to defend and a loss on a particular commission action would not jeopardize the validity of the basic regulatory program, even though it may initially require minor readjustments in regulatory strategy.

The bill's legislative standards of preference for entry permits will require findings of fact regarding an applicant's degree of economic dependence upon the fishery and his extent of past participation in the fishery. Such facts must be established fairly and sufficiently in order to avoid abuses of the system that would be unfair to all fishermen. Provisions concerning hearings and appeals will safeguard the rights of individual applicants for entry permits.

The commission approach also has the advantage of permitting the Legislature to add other species such as king crab or shrimp to the entry limitation program when the need is shown.

The commission will be made up of a fisheries management specialist, a lawyer, a commercial fisherman, plus the staff for necessary research and for the implementation of the program as it applies to salmon. Because of the complexity of the fishery and the potential economic impacts of various decisions, I feel this would require an initial appropriation of approximately \$400,000. Provision has been made for the work of the commission to be self-supporting, through the assessment of permit fees, once the permit system is functioning. After limited entry programs are established in the State's principal fisheries, some of the permit revenue would then go to the general fund.

This bill does not require a license freeze or license moratorium. Such a feature would be on extremely weak legal grounds and there is no practical necessity for it. The commission is charged with issuing a limited number of entry permits according to preferences among applicants based primarily upon past participation and economic dependence. No new entrant would be able to put himself in a more preferred position than a presently established fisherman under such standards. Therefore, pending the issuance of permanent entry permits the commission is authorized to issue interim entry permits to any bona fide applicant. Such interim permits will confer no special claim on a permanent entry permit; they will not amount to a "grandfather right." For this reason, the rush of speculative applicants wanting to be "grandfathered in" should be avoided. The standard that applicants be ready, willing and able to fish will also help to quell any rush of applicants, and it will eliminate the holders of "paper licenses."

There are several reasons for not implementing an entry permit program through the existing licensing system. To begin with, the commercial fishing license system serves all species, not just salmon. Certain types of gear licenses are peculiar to salmon, but using gear licenses as a basis for entry limitation would mean breaking part of the licensing system away from the whole, and would be cumbersome to administer. Furthermore, licensing is an annual event for revenue purposes, and the legal assumptions underlying a license differ substantially from the entry permit, which carries with it the permanent right of renewal.

The desire to protect any "grandfather rights" which might be subsequently conferred by the Legislature has made a bad situation worse in many areas by encouraging some people to fish who might otherwise sit a season out or fish for different species during low run years. The entry permit program will alleviate this particular problem. It does not require a permit holder to fish every year in order to maintain his right to fish, although after five years of abstention his permit would revert to the commission. The result will be a benefit to those actually fishing during low run years.

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The bill also allows a fisherman to hold more than one entry permit so that he may fish different types of gear and different species. However, it imposes a practical limit on the holding of multiple permits since a fisherman may fish only one legal unit of gear at any given time, and he may not delegate his right to fish a unit of gear to another person.

One last feature of the bill which requires explanation is the transferability of entry permits. Initially, entry permits to a given fishery will not "cost" anything other than the permit fee, but since the number of permits will be limited, they will acquire a value. Transferability allows entry permits to be bought and sold on the market, but it will not permit a speculative market to develop. An entry permit will confer upon the holder a personal right to operate a unit of gear in the salmon fishery. Individuals may sell and transfer permits, but a permit would have no real value to one not using it to fish. Transferability will allow some individuals to change location or fish more types of gear by acquiring more than one permit. This feature is aimed at encouraging a flexible growth and professionalization of the fishery and will have more application as additional species come under the jurisdiction of the commission. A permit-holder cannot hire an agent to fish his permit, therefore the processors cannot control the fishery through such a permit system and monopoly tendencies by processors or fishermen are avoided. Transferability will also allow permits to be passed on within a family, and can be used to allow a fisherman to sell out of one area and move into another without upsetting the total amount of gear in each area.

The bill calls for a January 1, 1974 deadline by which the commission must issue interim entry permits. Since these are available to anyone ready, willing and able to fish, this step in the permit procedure should cause no significant disturbance to the 1974 commercial fishing season. It simply allows the commission to establish a system for issuing permits, and it eliminates "paper license" holders prior to the 1974 fishing season. The commission's principal work for some time will be to gather and analyze the data necessary for establishing regulations to determine priority categories for the

reissuance of permanent entry permits. After that it must receive applications, and gather and evaluate evidence of qualifications before actually issuing permanent entry permits. Recognizing the size and complexity of the salmon fishery, it is my optimistic hope that, at the soonest, the commission may be able to make final decisions regarding the issuance of permanent entry permits for at least some areas in early 1975.

Effect Upon the Fishermen and the Processing Industry

The proposal presented here would result in the exclusion over a few years time of some resident and non-resident fishermen presently fishing in some areas of the State. The individuals excluded would be those least dependent upon the fishery for their livelihood, and those with the shortest history of participation in the fishery, as determined by the commission. The commission's task would be complex and difficult, but the only alternative is the economic destitution of a much larger number of fishermen. The burden of exclusion should fall mostly upon the part-time fishermen with alternative primary sources of livelihood.

Another class of fishermen who would probably fail to qualify for entry permits are those who have not paid State income tax during recent years. Income tax records will be a prime source of evidence for use in the commission's determination of an applicant's qualifications. Tax records should accurately reflect one measure of economic dependence, and verify active participation in the fishery. Preliminary research indicates that in 1969 almost 30% of those individuals holding vessel operators licenses for that year either failed to file a tax return at all (more than 20%) or failed to report any income (profit and loss statement) from fishing. It seems reasonable to expect that individuals in present violation of State tax laws will either fail to make application for an entry permit, or if applying will have great difficulty in qualifying for one.

A statewide entry limitation program for the salmon fishery will also have a noticeable impact upon the salmon processing industry. The primary reason for this is that the bargaining position of fishermen, both individually and collectively, will be greatly improved in the long run. However, there is no reason why this

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limited entry program should disrupt the established patterns for the 1973 and 1974 fishing seasons. Canneries will continue to stake individual fishermen in return for their share of the catch. Once permanent entry permits are issued, though, the processors will be limited to those fishermen holding permits, plus their crews, and since an entry permit can only be held by a fisherman, it cannot fall under the legal control of a processing company or its agents.

Report to the Legislature

The limited entry study group is now preparing a comprehensive report to be presented to the Legislature in the next few weeks on the results of its work so far. The group will also continue over the next six months to develop and refine the proposals and analysis discussed here, building on the sound concepts already established. One example of work underway is an extensive survey of the present and potential involvement of Alaska natives in the commercial salmon fishery. This study will take until late spring to complete and is important to any sound evaluation of the human impacts of limited entry.

In addition to the establishment of the commission, I recommend continuing the work of this limited entry study group beyond fiscal 1973. The work regarding salmon which has been started should be completed; there is much basic information that has never been collected and organized regarding this fishery that would be extremely important for the implementation of any limited entry program. There is also a longer-range need to study the desirability of limited entry in other Alaskan fisheries, such as king crab and shrimp, where a pattern of excessive participation has developed.

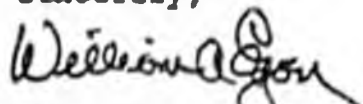
To summarize, this bill provides a means for regulating entry into Alaska's commercial fisheries. While it has been designed to have broad applicability, it is directed initially at limiting entry into the State's salmon fisheries because the need for effective action there is greatest. Implementation of the bill will allow better management of the fisheries, and it will allow the opportunity for growth, diversification and modernization of

WILLIAM A. EGAN
GOVERNOR

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the fishing fleet. Most important, it will improve the lot of the fisherman, allowing him stable livelihood from commercial fishing.

Sincerely,



William A. Egan
Governor

Report to the Legislature on Entry Permit Transfers

Commercial Fisheries Entry Commission



January 15, 1975

REPORT TO THE LEGISLATURE ON ENTRY PERMIT TRANSFERS

COMMERCIAL FISHERIES ENTRY COMMISSION

ROY A. RICKEY
ACTING CHAIRMAN

CHARLES J. STOVALL
COMMISSIONER

HAROLD 7. HANSEN
COMMISSIONER



JANUARY 15, 1975

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SUMMARY OF TRANSFERABILITY ALTERNATIVES

						Legal Problems
						Administratively Cumbersome
				x		Not Flexible - Difficult to Switch from Fishery to Fishery
				x		Discourages Transfers
				x		Difficult for Tradition to be Passed in Family
Free Transfer				x	x	Expensive for New Entrants
Auction						
Apprenticeship	x	x	x	x		
Lottery			x	x		
Commission Control	x	x	x			
Next Most Eligible Class	x	x	x	x	x	
Moratorium	x		x		x	

THE PRESENT SYSTEM - FREE TRANSFER

Initial Issuance and Transfers

The Alaska Limited Entry program limits the number of entry permits that may be issued in a particular fishery. A fishery is defined by fishery resource, gear type and geographical area and closely parallels those area and gear combinations now used by the Alaska Department of Fish and Game for management purposes. For those fisheries having limited entry in 1975, the initial issuance of permits will be to those applicants who, prior to January 1, 1973, would suffer the greatest hardship if they could not continue commercial fishing in a particular fishery. Two standards are used to rank prospective applicants: (1) economic dependence and (2) past participation in the fishery.

Once issued to the original recipient, entry permits are freely transferable like personal property and may be bought, sold, traded or given away. However, an entry permit constitutes a use privilege which may be modified or revoked by the Legislature without compensation at any time. Upon the death of a permit holder a permit becomes part of the estate of the deceased.

During, or as a result of transfers, a permit may not be (1) pledged, mortgaged or encumbered in any way, (2) transferred with any retained right of repossession or foreclosure, or (3) attached, distrained, or sold on execution of judgment or under any other process or order of a court. These safeguards have been placed in the legislation to prevent companies or other individuals from gaining control of permits by indirect financial arrangements.

Temporary transfers of permits are allowed if sickness, injury or other unavoidable hardship prevents a permit holder from fishing, provided the individual to whom he wishes to transfer his permit can demonstrate his present ability to participate in the fishery. If the holder of an entry permit dies, the authorized representative of the deceased may apply for an emergency transfer of the permit pending its final disposition. In either case an emergency transfer will be effective only for the remainder of the year in which the transfer took place unless further restricted by the original holder. In the case of a permit holder's death, the emergency transfer can be renewed annually until the final disposition of the permit.

Role of the Commission

The commission must approve all transfers. A fisherman is required to give the commission 60 days notice of his intent to transfer a permit during which period he can reconsider the proposed transfer. The commission will, with the fisherman's consent add his name to a list of permits available for transfer. This will insure the greatest opportunity for a person who wants to acquire a permit as well as the broadest market for a person who wants to transfer a permit.

Speculation in permits is discouraged in three ways. One, an individual can hold only one permit for each fishery and therefore will not be able to "corner" the market for a certain fishery. Two, the potential transferee must establish his present ability to participate actively in the fishery, which includes having access to gear of a type used in the fishery. Three, the carrying costs of the permit, i.e., renewal fees, property taxes where applicable and buy-back assessments, if any, must be paid.

Permits may also be transferred to the commission. In certain fisheries where gear reductions are necessary, the Commercial Fisheries Entry Commission may purchase permits, vessels and gear at fair market value under a buy-back fund maintained through annual assessments of fishermen in the fishery. Proceeds from the re-sale of any vessels and gear purchased under the program will be paid into the fund.

Other transfers to the commission include forfeitures of permits. This may occur if a permit holder fails to pay the annual renewal fee, including buy-back assessments where appropriate, for two years and cannot demonstrate good cause for not doing so.

An applicant who applies for an entry permit when initially issued or a person to whom a permit is being transferred who makes a false statement of material fact will also, upon conviction, forfeit all entry permits held by him and lose eligibility for entry permits for five years.

The holder of an entry permit will be subject to permanent forfeiture of all entry permits or interim-use permits plus loss of eligibility to apply for other entry or interim-use permits upon the third conviction of a violation of the limited entry law.

Other Restrictions or Regulations Pertaining to the Transfer of Entry Permits.

Applicants who are initially issued an entry permit may request that their permit not be transferred for a five year period following its initial issuance. This provision is intended to allow a fisherman to protect himself if he feels he might sell his permit in a moment of weakness or in a short-sighted effort to extricate himself from debt.

In certain circumstances an individual may transfer his permit only to the Commission. This occurs when an individual receives a permit under the "minor economic hardship" provision of the statute and there is a buy-back program in the fishery. The legislation states that the Commission shall purchase such permits (including vessels and gear) at fair market value. Once a buy-back program is terminated, permits issued under the minor economic hardship classification become freely transferable. Few, if any, permits are expected to be issued under this provision, however.

If there is a long term improvement in the market conditions or the available stocks in a fishery, the commission is empowered to issue additional permits. The means of issuance would depend on such considerations as the over-all condition of the fishery and the number of permits to be issued.

Advantages of Free Transferability

Free transferability has a number of important benefits:

1. Legally it guarantees that a closed class of individuals is not created. Any program which controls access is likely to run into serious legal problems if for any reason, either in law or actual practice, the program creates a closed class of individuals that has no reasonable relation to the legitimate objectives of the program. Since permits can be bought and sold, or otherwise transferred, new fishermen can get into a fishery through free transfer and the creation of a closed class of individuals is avoided.

2. The immediate benefits of an entry permit program with free transferability pass onto the fishermen. Since the fisherman gains from the transfer of permits, fishermen are more likely to transfer permits. A fisherman who purchases a permit may also recover his principal at the time he sells his permit.

3. Free transferability insures that there will be a minimum of government interference. Supply and demand will determine when permits are transferred and to whom they are issued.

4. It insures that the fishermen can operate in a businesslike manner. Decisions can be made to invest or divest in certain fisheries rapidly, based on sound economic considerations rather than on criteria set forth by government.

Disadvantages.

1. Permit Price

In some fisheries the permit price may reach levels that are undesirably high. It is likely that the permit price will be closely related to the earnings in the fishery, and can be expected to fluctuate from year to year depending on earnings. In British Columbia for example, as earnings rose, the license price closely followed through 1973 and sharply declined in 1974. Policies that act to depress average earnings in a fishery such as decisions to either increase the number of permits in a particular fishery or to levy a tax or fee on permits are likely to lower average earnings and therefore permit price.

A buy-back program in a particular fishery may act to drive up the price of permits to the extent that it increases the demand for permits in a particular fishery, and to the extent that average earnings will be increased when gear levels are reduced. If permit prices become excessive the commission may buy very few permits at that time.

One difficulty that may be encountered as a result of high permit prices is that funds cannot be raised by fishermen to purchase permits because the permit itself cannot be used for collateral. A more ready capital market would exist if the permit could be mortgaged, but balanced against this is the concern that the permit could be indirectly controlled through such financial arrangements. Also it should be observed that many institutions are presently unwilling to extend credit to fishermen because of poor financial performance. A high permit price would be indicative of financial success, which could result in better credit opportunities.

Another arrangement that may prove successful to improve credit facilities is the full implementation of a state loan program that will give resident Alaskans the opportunity to borrow money to purchase permits, vessels and gear. As the legislation is now written, the Commercial

Fisheries Loan Act authorizes a revolving fund not to exceed one million dollars for the ". . . purchase of entry permits and gear and the construction and purchase of vessels." A loan may run for a period of 15 years at interest rates not to exceed 7%.

2. Effect on Resident and Native Fishermen.

General licensing trends show a strong tendency towards an increasingly resident fishery. For example, between 1960 and 1970 the sale of commercial licenses increased by 7,243. Over two-thirds of this increase was by resident fishermen. There is no reason why this trend should not continue, and in fact it is likely to accelerate as new residents come to Alaska. Southeastern Alaska may possibly show some increase from Washington fishermen as a result of a recent court decision to place severe restrictions on the harvest of salmon by non-Indian fishermen in the State of Washington, however, it is also possible that many of these individuals may become Alaska residents.

In the British Columbia limited entry program some undesirable effects have resulted from native fishermen selling vessel licenses to non-natives. At the beginning of the British Columbia program in 1968, approximately 15% of the vessels were fished by natives. This has been reduced to about 8% at present. To counteract the trend, the Canadian government began a program to assist Indians purchase vessel licenses. Unfortunately as the government assisted in the purchase of vessel licenses to Indian fishermen, other native fishermen continued to sell licenses to non-natives. An additional problem has been caused because the program increased the value of licenses by increasing their demand. The combined effect on license price of the buy-back and Indian Assistance programs was an important consideration in halting the buy-back program.

The British Columbia experience can be prevented in Alaska. First, there are fundamental differences in the way the two programs operate. In the Canadian limited entry program a "license" is issued to the vessel rather than the fisherman and there is no breakdown into specific fisheries. To enter a salmon fishery in Canada one must purchase vessel tonnage rather than a permit for a specific fishery. For example, an individual who desires to build a purse seine vessel can accumulate tonnage by purchasing and retiring any vessel licensed to fish salmon, whether it is a troller, gill netter or seiner. The effect is to make everyone compete in the same license market.

In Alaska a permit (only roughly comparable to the B.C. license) is issued to the individual fisherman, rather than to the vessel. An entry permit can only be issued for one specific fishery.

Second, various Alaskan native regional corporations have indicated an interest in becoming involved with commercial fishing. It is likely that they have already given at least preliminary consideration to the use of corporate funds to assist their members in purchasing permits. One such possible mechanism, for example, is the establishment of a revolving loan fund providing long-term, low interest loans similar to those allowed under the Commercial Fisheries Loan Act.

3. Increases in Fishing Effort.

Any system of limited entry may result in each unit of gear becoming a more intensive and efficient operating unit.

It is likely, for example, that inefficient operators who are initially issued permits will be under pressure to sell their permits to operators who believe they can fish with better success. Where an individual may have been using a skiff, the tendency will be to replace it with a larger more efficient vessel with a greater ability to catch fish. When earnings increase fishermen will be tempted to "over-invest" after a particularly good season. This has been the experience in British Columbia where the number of vessels fishing has declined by over a thousand but actual fishing power has increased.

Since the Alaska program requires that entry permits be issued to one specific fishery as defined by area, gear type and fishery resource, any problem of increased fishing effort would remain confined to specific fisheries. If a problem develops, there are two possible solutions:

(1) A buy-back program could continue to reduce the level of gear. The difficulty with this approach is that the permit value may continue to increase, making it more difficult to enter the fishery.

(2) Direct controls could be placed on "inputs of capital" so that individuals could be forced to replace vessels of equal fishing power in some manner. For example, a ton for ton replacement as used in British Columbia. It has been found through commission research that vessel length alone is not a key determinant of fishing power and it is doubtful if tonnage is either, judging from the British Columbia experience. Perhaps some combination of several

factors such as length, tonnage and horsepower may be an effective solution. Any system to control inputs of capital, however, would require extensive revision of the statute, since permits are not presently tied to vessels in any way. The effect of tying permits to fishing power would be to create many sub-categories of permits within a fishery and would have serious implications for the transferability of permits.

Actual techniques and the extent to which they are used must, of course, depend upon the needs and problems of particular fisheries. Other ideas regulating fishing effort may suggest themselves from the facts of a situation, if effort increase trends arise.

It is important to remember that potential problems of an increase in effort must be recognized not only in connection with Alaska's present system of limited entry but with any other system that allows a fisherman to upgrade his gear.

ALTERNATIVE SYSTEMS OF TRANSFER

The commission has examined alternative systems that could possibly be employed to transfer entry permits and their benefits and drawbacks are discussed. In all these systems it is assumed that the starting point for the initial issuance of permits would take place under the present system, that is the entry permit would be issued to those applicants who would suffer the most hardship if they were denied a permit. It is recognized that not all possible systems have been discussed, or all options or variations that could be employed by each. Nevertheless, the broad areas where problems could be anticipated are significant enough that the final details do not necessarily need to be known.

AUCTION OF PERMITS

There are various options that could be employed in this type of system, but the fundamental characteristic would be that as permits were no longer used by individual fishermen to whom initially issued, they would revert back to the Commission. Permits would not be transferable from one individual to another. As the Commission accumulated permits they would periodically be auctioned and re-issued with revenues derived from the sale of permits accruing to the State treasury.

Advantages

The largest single benefit would be that revenues derived from the sale of permits would accrue to the state rather than individual fishermen. Revenues could be used to rehabilitate salmon runs, provide increased enforcement capability and better fisheries management information.

In the future permits would simply be issued to fishermen with the highest bid and thus a closed class of individuals would not be created.

The system also has the additional advantage that permits would not have to be re-issued by the Commission if there were a need to reduce gear levels in certain fisheries, thus saving the cost and administrative complexity of a buy-back program.

Disadvantages

The fact that fishermen would not receive the benefit from the sale of permits is also the system's most serious drawback. An individual would not receive his invested principal back at the time of final sale which would undoubtedly discourage transfers to the commission. Once an individual received a permit, either through initial issuance or auction he would be likely to hold the permit as long as possible. This means that the system would not have the flexibility or speed of free transferability and would tend to restrict the number of transfers. If permits were issued with no express time limit on their use, as the present entry permit is, it is very likely that the commission would be forced to adopt stringent regulations requiring that permits only marginally used or else not used would have to revert back to the commission after a certain period had elapsed. In contrast, free transferability makes it in the fisherman's own self interest to sell a permit if he is not actually using it.

There is very likely to be resistance from fishermen to a program that makes it impossible for them to recover their investment in permits. This would also make it more difficult to find sources of funds, although it is also possible that the permit price itself would be less.

Auctioned permits would always go to the high bidder whatever his source of capital. For a large number of fishermen fishing is a tradition that is passed from father to son. An auction system would disrupt this pattern since a parent could not give his permit to his children. It is likely, for example, that with a system of free transferability many permits will be kept in a fishing family even after the original permit holder dies or retires.

APPRENTICESHIP SYSTEM

In this type of system unused permits would revert back to the commission in the same manner as in the auction system. The commission would then re-issue permits to those applicants who had successfully completed a period of apprenticeship.

Advantages

This type of system would be the ultimate form of preventing speculation in permits and would also insure that a professionalized or trained group of people were in the fisheries. This system would provide the opportunity for individuals who did not have the money necessary to purchase a permit to still be able to enter the fisheries. It appears

that this system would institutionalize the natural progression from crewman to skipper since an entry permit would be the final reward for the successful completion of a course of professional training.

Disadvantages

This approach has very serious legal problems since it is doubtful that an approach could be devised whereby fishermen already in the fisheries could be prevented from selecting the individuals who would be apprentices. This would in essence create a closed group of fishermen that would bear no legitimate relationship to the goals or limited entry. In February 1969 a three judge Federal panel ruled that an apprenticeship scheme to control entry to Alaska's fisheries that was enacted by the State legislature in 1968 violated the Fourteenth Amendment of the U.S. Constitution. The court accepted an earlier argument written by Circuit Judge Walter Ely that stated:

"Under the scheme, entry into the salmon fishing industry is controlled not by the state but by local fishermen in each area. . . whose own benefit would ordinarily not be served by assisting potential competition to qualify."

There are other difficulties with such a system. There is no guarantee that the number of licenses being retired will equal the qualified number of new participants attempting to acquire permits. The Commission would be under strong pressure to increase the number of available permits should there not be enough, despite the fact that it might not be biologically or economically wise to do so.

Such a system is almost totally inflexible. How, for example, could an individual switch from one fishery to another? If he were required to serve another apprenticeship it would be clear that the system's only purpose was to exclude applicants. If fishermen from one fishery were allowed to trade with fishermen from another area this would prevent permits from ever returning to the commission except in unproductive fisheries. Many prospective entrants would have to first serve an apprenticeship in a non-productive fishery before they could trade-up to a more productive fishery. The trade would invariably involve money since it would not be in an individual's interest to trade down to a less productive fishery. One would still have to "purchase" a permit.

Finally, the program would be administratively cumbersome since the commission would have to continually verify and inspect the records of prospective entrants who claimed to have completed an apprenticeship.

LOTTERY

In this system unused permits would again revert back to the Commission in the same manner as described in the auction system. Periodically, as the commission accumulated permits, a lottery would be held and permits would be re-issued to those applicants who were drawn in the lottery.

Advantages

Permits could be issued for a minimal charge so it would not be necessary for a fisherman to save the amount of money necessary to purchase a permit.

The system would appear to be legal since in the future every individual who desired a permit would have an equal chance of receiving one. This system has also been used in allocating the harvest of certain big game species in a number of western states including Alaska.

Disadvantages

While it would cost little money to acquire a permit, the system makes it impossible for a vocational fisherman to guess his chances of receiving a permit and make sound business decisions. This system would be the most disrupting of traditional kinship arrangements in the fisheries since there could be no guarantee that fishing families would draw permits in the lottery. It is also likely that applicants without any serious intent to fish would enter the lottery just to see if they could win, unless the commission adopted complex rules specifying the conditions and criteria one would have to meet in order to be considered in the draw.

The system again provides for no simple way for a fisherman to switch from fishery to fishery unless trades are allowed. As discussed, this would negate the benefits of the system since many fishermen would still be forced, once again, to buy permits in the more productive fisheries and only permits in the less productive fisheries would be turned back to the commission. As a counter measure, if permits were issued for a specified time period - for example five years - it would be impossible for a fisherman to make any rational decision to invest in a vessel or gear during the time he had the permit since he would have no assurance that he would receive another.

COMMISSION CONTROL OF TRANSFERS

This system could embody many different actions such as controlling resident to non-resident transfers or permit price.

Advantages

Such a system could respond quickly and positively when certain remedial actions appeared necessary.

Disadvantages

Such actions can easily lead to excessive government interference making it difficult and cumbersome for fishermen to make sound business decisions. The commission would have to be very careful not to create a closed class of permit holders. Attempts to manipulate permit prices by fiat would almost certainly be unsuccessful since either transfers would cease, a "black market" would be created, or both.

TRANSFER TO "NEXT MOST ELIGIBLE" CLASS

In this system, again, unused permits would be returned to the commission. The commission would then re-issue permits to those applicants who were denied permits when they were originally issued. Permits would be issued first to those applicants in the highest priority classification that did not receive permits and so on down descending classifications until all permits were issued. Once all original applicants had received permits the system would be changed to allow some other system of transfer.

Advantages

This system would insure that all eligible applicants who originally applied for a permit would eventually receive one at a minimal cost.

Disadvantages

This system has serious legal problems since new entrants, unless they were originally eligible to apply, could not gain access to the fisheries. This would create a closed class.

Applicants who are denied permits when initially issued may wait many years before they are eventually issued a permit even though they may be willing and able to purchase a permit immediately under a system of free transferability. The system is disruptive of kinship arrangements since a father cannot pass his permit on to his son.

The system is administratively cumbersome and expensive since it would require the commission to keep track of thousands of applicants for many years after permits were issued.

MORATORIUM

Under the present method of issuing permits this system would be used in lieu of a buy-back program. A variation of this system could be used in initial issuance, but the advantages and disadvantages are the same.

In those fisheries where gear reductions are necessary, unused permits would revert back to the commission. No permits would be transferable until the optimum number was reached. At that time another system of transferability would be used.

Advantages

The commission could reduce the amount of gear to optimum levels at no cost to other fishermen in the fisheries.

Disadvantages

This system would create a closed class of individuals for the duration of the moratorium and therefore face legal difficulties.

There is no method for a permit to be transferred within a family so kinship arrangements would be disrupted.

Fishermen would be unwilling to transfer their permits to the commission, hoping to "wait out" the moratorium. The commission would therefore be forced to draft stringent regulations requiring that unused permits be transferred to the commission. The slowness of a moratorium would create difficulties for fisheries managers in those fisheries with excessive amounts of gear.

SUMMARY AND RECOMMENDATIONS

Table 1 on page iii summarizes the pros and cons of the seven systems discussed: free transferability, auction, apprenticeship, lottery, Commission control, transfers to "next most eligible class", and a moratorium.

Each system is considered under six different criteria: its legality, ease of administration, flexibility, if transfers would be discouraged, if traditional social patterns would be disrupted, and cost of entry. Those systems with legal problems should not be attempted. Other systems besides free transferability pose serious enough problems that their effectiveness is very questionable. The chief disadvantage of free transferability is the high cost of entry, however, there are steps that can be taken to reduce excessive permit prices.

The Commission feels that free transferability is the best and most workable method of handling entry permit transfers. Enough legislative authority and safeguards appear to exist to carry out an effective program of transfers that will be fair to present and future fishermen.

SOCIOECONOMIC ANALYSIS FOR FISHERY
AREAS AND CENSUS DIVISION

January 21, 1980

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COMMERCIAL FISHERIES
ENTRY COMMISSION

Prepared for the
Limited Entry Study Committee

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APPENDIX A

AN ANALYSIS OF THE LEGISLATIVE OPTIONS UNDER
CONSIDERATION BY THE LIMITED ENTRY STUDY GROUP

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APPENDIX A

AN ANALYSIS OF THE LEGISLATIVE OPTIONS UNDER
CONSIDERATION BY THE LIMITED ENTRY STUDY GROUP

Prepared by: Jack Kreinheder
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SUMMARIES:

I. CAPITAL GAINS TAX OPTION

The Capital Gains Tax is intended to provide access to limited entry permits for individuals who are unable to afford a permit at today's high open market prices. This would be accomplished by setting a statutory ceiling on permit prices and taxing any sale price above that level at 100 percent.

ADVANTAGES: Permits would still be freely transferable. Permit holders could select the transferee and no interference with intra-family transfers would occur. Fishermen could still change from one fishery to another without difficulty. Depending on the magnitude of the tax, permit holders who bought their permits would be able to recoup at least part of the purchase price of their permit. State compensation could provide for complete recovery of the purchase price. Administrative costs would be higher than under the present system, but lower than those associated with an apprenticeship program.

DISADVANTAGES: Reduction of permit prices would have a dampening effect on the transfer of permits, since less incentive would exist for a permit holder to sell his permit. Although permits would be more affordable fewer would be available for purchase, so that access to permits would not necessarily be improved. In order to prevent a black market in entry permits, a strict system of auditing and enforcement would be required, with its associated costs. The determination of statutory permit prices would be complex and subject to controversy. Fishermen who have purchased entry permits could lose much of their permit investment unless compensation were provided by the state, but such compensation could total many millions of dollars.

II. LOAN PROGRAM OPTION

The primary purposes of the proposed changes to the current Commercial Fishing Loan Program are to give preference for such loans to applicants with substantial financial need and dependence on fishing, to provide for hardship in loan repayments, and to encourage the purchase of permits by providing grants for a portion of the loan amount.

ADVANTAGES: This option has the fewest legal and administrative problems and would probably be the most acceptable to present permit holders.

The loan program appears to offer the only constitutional means of openly favoring Alaska residents over non-residents, since non-residents can be completely excluded from the program without causing legal problems. It may be possible to further increase resident participation in the limited fisheries by providing preferential loan terms for the purchase of non-resident permits.

DISADVANTAGES: It is unclear whether this option would accomplish its objectives without more specific legislative guidelines for the administration of loans. The majority of fishing loans to low-income persons have been for vessel upgrading rather than for entry into the fisheries. Specific criteria may have to be enacted if such entry is to be given priority in the loan program. Easier access to loan money could bid up permit prices even further if price controls are not enacted. Giving priority to the purchase of entry permits may discourage diversification into bottomfish and other developing fisheries.

III. APPRENTICESHIP OPTION

The purposes of this option are fully explained in the apprenticeship proposal.

ADVANTAGES: An apprenticeship system would provide fishermen who have limited financial resources with an opportunity to obtain an entry permit at no cost. Access to permits would be based on fishing experience, or dependence, or hardship criteria rather than on the open market bidding process. The system would ensure that a trained and qualified group of persons would be entering the limited fisheries. The system would allow for a natural progression from crewman to skipper.

DISADVANTAGES: There appear to be a number of unresolved legal questions concerning the proposed apprenticeship system. As currently worded, permit holders still have control over entrants to the fisheries, because experience as a crew member is a requisite for admission to the apprenticeship program. Such control was ruled unconstitutional in 1969 by a Federal court. However, the separate apprenticeship supplement may circumvent this problem by basing future admission to the apprenticeship program on dependence or hardship criteria, instead of solely on experience.

No provision has been made for permit holders to switch from one fishery to another without completing another period of apprenticeship, thus locking permit holders into one fishery. An apprenticeship system would be expensive to administer because a continual stream of applicants, which would be much larger than the number of initial applicants for permits under the present program, would have to be evaluated by the Commission. Current permit holders would either lose their purchase investment when they leave the fisheries, or expensive state compensation would be necessary to obtain permits for the system. And finally, most fishermen would probably object to the requirement of taking on a complete stranger in a situation where mutual trust and responsibility are important, not only for business reasons, but for personal safety as well.

IV. AMORTIZATION OPTION

The apparent purposes of the amortization option are to place a time limit on the entry permit and to allow permit holders to recover their investment in either vessel and gear (option A), or in the entry permit (option B), in the event that the apprenticeship option or other transferability system is enacted. The purpose behind the time limit is unclear, since the permit holder would be able to renew his permit indefinitely. A simple use requirement would seem to be more effective. Little justification can be seen for the amortization of vessel and gear, since the individual retains possession of these under any of the proposed transferability options. It is also questionable whether original issues should be allowed to amortize the fair market value of their permits, since they received them for only an administrative fee. In addition, the amortization proposal for entry permits does not seem to be the most equitable method of compensating those permit holders who did buy their permits for their purchase investment.

Rather than allowing a fixed 10 percent write-off each year, it may be more desirable to relate the amount of amortization to the net return on the permit investment at the time the permit reverts to the state, which would be when the permit is no longer fished. Under this type of system, those permit holders whose net fishing earnings during the time of permit ownership equaled or exceeded the purchase price of the permit, plus a "reasonable" return on the investment in permit, vessel, and gear (10-15 percent per year), would be considered to have received "their money's worth" and no amortization would be allowed.

On the other hand, permit holders who had not recovered their permit investment, plus a reasonable return, would be allowed to amortize the difference between this value and the purchase price of their permit, not to exceed the purchase price. A more specific definition of amortization is also needed, so that it is clear whether the former permit holders would qualify for a tax credit, or just a tax deduction from gross income. This requires a policy decision on the degree of compensation to be given to current permit holders. The cost to the state of the amortization option would depend on this decision, and on the earnings of permit holders, the length of permit ownership, and the purchase prices of permits reverting to the state. Amortization would be less expensive than straight compensation for the permit purchase price, because consideration is given to the earnings derived from the permit during the duration of permit ownership. An amortization system would also be more equitable than compensating permit holders for a set percentage of the purchase price, even though the cost to the state may be the same, because the system takes account of each individual's economic situation.

The purpose of the proposed participation or "use it or lose it" requirement is to ensure that entry permits would revert to the state when they are no longer used by the holder. It should be noted that this requirement could be enacted independently of any of the transferability options, but that the effect would be somewhat different. If the participation requirement were enacted without any restriction on permit transferability, it is probable that very few permits would revert to the State, since

fishermen who no longer used their permits would be much better off to sell them. However, speculation would be prevented and more permits would be available for purchase.

If permits were made non-transferable, unused permits would have to be returned to the state, but most fishermen would probably stop renewing their permits anyway when they no longer fished, and permits are already revoked under current law when not renewed for two consecutive years. The effectiveness of the participation requirement is therefore uncertain, but the cost of administration would be low, and the law would ensure that permits were held only by active fishermen.

DISCUSSION:

A more detailed analysis of the limited entry legislative options summarized above is provided in the following pages. The comments focus primarily on the economic, social, and administrative implications of the various options and, for the sake of brevity, only the more important problems and impacts are discussed.

I. CAPITAL GAINS TAX OPTION

The four most important areas of concern regarding this option are the effect of such a tax on the rate of permit transfers, the compensation question, the setting of permit prices, and enforceability. With regard to the establishment of statutorily fixed permit prices, it would seem desirable to have the permit price in each fishery bear some relationship to the potential economic value of using that permit. For example, a Kodiak purse seine permit should clearly have a higher value than a Kodiak set gill net permit, since a much larger income can be realized in the purse seine fishery.

The problem lies in determining the potential economic value of each fishery and type of permit. The great variability in the yearly salmon runs and in the vessels used in each fishery makes it quite difficult to calculate an average permit value on this basis. It may therefore be necessary to use a less precise, but more workable method of setting permit prices.

One such method would be to use the average permit prices in each fishery over the past year, two years, or several years, and reduce this value by a given amount to arrive at a set of "reasonable" statutory permit prices. The obvious catch in this approach is in the definition of a reasonable permit price. A fisherman who has just spent \$80,000 for a permit would tend to favor a statutory price close to that amount, while a fisherman who was issued a permit for only the application fee might support a lower, or even zero price. Similarly, current permit holders would have an incentive to favor higher permit prices, whereas crew members or others trying to obtain a permit would want permit prices as low as possible. So, a "reasonable" permit price could run from zero to \$80,000 or more, depending on who is defining the term.

An additional factor which must be considered is the compensation question. The legal implications of reducing or eliminating the value

of entry permits are still not completely clear, but there seems to be a general feeling among the Committee members that from an equity or fairness standpoint, compensation for permit expenditures should at least be considered. I am under the further impression that most Committee members feel that if a compensation program were to be adopted, the program should reimburse permit holders for the amount each holder paid for his permit(s), or a percentage of that value, rather than for the amount which could have been received for the permit on the open market. The apparent consensus is that the state has no obligation, legal or ethical, to compensate those permit holders who were originally issued their permits for free, even though a higher value could have been received for the permits if the value were not reduced by legislative action.

The compensation issue is closely related to the capital gains tax option, as well as to any option which would limit transferability of entry permits. Decisions about compensation would have a major impact on the setting of permit prices under the capital gains tax option, and vice versa. The fundamental purpose behind this option, as I understand it, is to allow easier access to entry permits for those fishermen who would like to run their own boats but are unable to afford a permit at today's prices. At first glance, it might appear that this purpose would best be served by the setting of permit prices at very low levels, so that almost anyone with enough initiative could afford an entry permit.

But although such a plan may make permits more affordable, it would also reduce the number of permits available for sale unless complete compensation were provided. One of the most basic principles of economics is that of supply and demand relationships, and the implication of this principle for this case is that if permit prices are statutorily reduced, fewer permits will be offered for sale, other things being equal. Considering the extreme case, if the legislature declared that permits could not be sold at all but must be transferred for free, the number of permits transferred would be much lower than current levels. Since no economic gain could be realized from permit transfers, permit holders would have no incentive to pass on their permit, even if they were no longer fishing. A "use it or lose it" requirement could free up some permits, but the number would be small in relation to the demand for permits.

It should be mentioned that permit transfers would not cease entirely if the value of the permit were eliminated. Based on the Entry Commission's permit transfer survey, it is estimated that 25 to 33 percent of transfers to date have not involved money in the transaction, and an additional percentage have been substantially below market value. The majority of these transfers were probably to relatives or close crew members and would continue with reduced or eliminated permit values, but such transfers would not increase access to entry permits in comparison to the present situation.

If entry permit values were statutorily reduced, rather than eliminated, the drop in permit transfers would be less severe, with the decrease in

transfers expected to correspond roughly to the degree by which values were reduced. If permit prices are lowered by only 10% of their open market value, the impact of this action on the number of transfers would be fairly minor, but the improvement in access to permits by low-income fishermen would also be small. Unless a compensation program is implemented, there will always be this trade-off between permits available for transfer and permit affordability.

The effects of a compensation plan in conjunction with the capital gains tax option are fairly predictable, and depend primarily on the extent of compensation offered and the amount by which permit prices are reduced. If compensation is limited to the amount paid for a particular permit, there is still likely to be a marked decrease in permit transfers associated with a major statutory reduction in permit prices. Those original permit issues who might sell their permits in coming years would have less incentive to do so if permit prices were limited by statute, since they paid nothing for their permits and would not be eligible for compensation under such a plan. Those most likely to sell their permits would be fishermen who purchased permits just before the legislation limiting prices was enacted, because they could receive nearly full value for their permits.

It is possible that a compensation program could increase the number of permits for sale in some fisheries above that of an open market situation. This could occur if a series of poor harvests and/or low fish prices reduced the profitability of a particular fishery. In this situation, permit prices would probably drop, but if permit holders were entitled to recover their purchase price, they could avoid the loss caused by lower prices and more permits would be for sale than if an open market existed.

Except for the situation just discussed, it is uncertain whether a capital gains tax system will actually improve access to entry permits, even if compensation is provided. Although permits may be more affordable, the possible reduction in permit transfers could outweigh the benefit of lower permit prices. The only compensation plan that would appear likely to maintain current transfer rates would be one which duplicated the open market situation; permit holders would have to be compensated for the difference between the statutory price and the fair market value of their permit. This is an expensive proposition, even if no further inflation in permit values occurs. I have calculated the total average market value of all permanent entry permits (including herring) to be over \$360 million as of June, 1979.* This is a conservative estimate and the total value has probably increased by now. Given the magnitude of this total value, it is doubtful that the legislature would adopt a fair market value compensation plan.

A compensation program which reimbursed permit holders for the difference between the amount paid for a permit and the statutory price, or some fraction of that difference, would be much less expensive but could still run into many millions of dollars, and would still have the dampening effect on permit transfers discussed above. I have estimated the total value expended for entry permits since 1975 (not including multiple purchases of the same permit) to be approximately \$38 million.*

*Based on the Commercial Fisheries Entry Commission Permit Transfer Survey.

Thus if permits were completely devalued and a decision were made to reimburse permit holders for the purchase price of their permits, a state expenditure in the neighborhood of \$40 million would be required. If permit prices were fixed at 50 percent of their 1979 averages, roughly \$15 million would be necessary to make up the difference between the purchase prices and the statutorily set permit values. The alternative amortization approach discussed later would reduce the compensation cost significantly, but at least several million dollars could be required to compensate permit holders for a 50 percent price reduction. The Interim Committee must consider whether this funding could be more effective in achieving its goals if used for one of the other options, such as the loan program. The question which was raised about the resident/non-resident effects of the capital gains tax option is a very salient one, but it will be discussed below in the section on the loan program option.

The section on implementation options for the capital gains tax seems fairly complete, with the exception of a method for verifying the value of vessels, gear, or other equipment included in the permit sale. It may be desirable to add a section requiring that current certified appraisals or surveys be required of vessels, gear, etc., which are combined with the permit in the transaction. Such appraisals should also be required of any in-kind compensation which is used to purchase the permit.

Permit holders will have an obvious incentive to circumvent any price control system. The proposal, if strictly enforced, appears to be workable (though I still question its cost effectiveness), but I have little experience in the price control area. Considering the high values at stake here, the Committee may want to hire an economist and/or lawyer familiar with price control methodology to draft the enabling legislation if this option is pursued.

In reading through Commission files, I came across a transcript of a discussion with Dr. James Crutchfield of the University of Washington, one of the leading economists in the fisheries area and also a former price control economist. Dr. Crutchfield was adamantly opposed in the transcript to any method of controlling entry permit prices. He did not go into much detail about the reasoning behind his view, but his comments indicate that there may be more severe problems regarding enforceability than are readily apparent. He stated that he "could think of a dozen ways to avoid (price controls) without even trying." Crutchfield suggested higher landing taxes and/or permit fees as better ways to keep permit prices to reasonable levels. Fisherman resistance would be the principal problem with Crutchfield's suggestion.

II. LOAN PROGRAM OPTION

The proposed changes to the Commercial Fishing Loan Program appear to be one of the more feasible and effective options under consideration. It has been asked whether statutorily set permit prices would make permits more available to Alaska residents than non-residents. It is possible that some advantage would be given to Alaskans by fixed prices, but the loan program appears to give Alaskans a much greater advantage, since non-residents can legally be excluded from eligibility for state

loans. Statutorily reduced permit prices would put entry permits within the reach of more Alaskans, but would also do the same for lower-income non-residents, and it is therefore unlikely that Alaska residents would be given greater access to entry permits than non-residents.

Of all the options under consideration, expansion of the loan program is likely to encounter the least resistance from present entry permit holders. The program offers the potential for low-income fishermen to obtain permits, without affecting the ability of permit holders to transfer their permits as they wish and to recover their purchase price. The state appears to have considerable legal freedom in the structure of its loan programs, thus allowing the modification of the current fishing loan program to meet specific needs.

However, it appears that the present loan program has not met the needs of low income fishermen desiring to purchase entry permits. Preliminary research has indicated that 75 percent of the commercial fishing loans have been to individuals with a net worth of over \$100,000. Although a sizable number of loans have been made to rural and lower-income fishermen, almost all of these loans have been for the purpose of upgrading vessels, rather than the purchase of entry permits. The proposed loan option provides that "priority shall be given to those applicants who demonstrate substantial financial need, and who substantially depend upon fishing as a source of livelihood." This wording may not be strong enough. If the Committee resolves that more emphasis should be given in the loan program to the acquisition of entry permits, as opposed to vessel improvement, specific legislative standards to this effect may be required.

One possible addition to the loan program option would be a section providing that fishermen acquiring entry permits previously held by non-residents would receive more favorable terms on their loans. This could be accomplished through lower interest rates, partial grants, or other provisions. The obvious intent of such a policy would be to increase resident participation in the limited fisheries. The additional cost to the state of preferential loan terms for the purchase of non-resident permits can be justified because the benefits to the state and its residents are substantially greater than the benefits resulting from the purchase of resident permits.

The acquisition of a non-resident permit by an Alaskan fisherman means that a larger percentage of the income generated by the use of that permit is likely to be spent in Alaska, thus providing more income for other Alaskans (this is known as the multiplier effect). In addition, the crew members are more likely to be Alaska residents, further adding to the benefits derived from the use of an entry permit by an Alaskan fisherman.

The probable effect of the preferential loan terms on the market for entry permits would be that non-residents would have an added incentive to sell their permits to Alaskans, since those resident fishermen qualifying for loans could afford to pay more for a non-resident permit than a resident one because of the better loan terms. The resident permit holders, on the other hand, should have less incentive to sell their permits, because fishermen obtaining loans would rather purchase a non-

resident permit and would pay less for a permit from an Alaska resident. The market for entry permits is complex and there are other factors at work, but in general, these are the results that could be expected from the implementation of preferential loan terms for purchasing non-resident entry permits. It should be noted that the preceding discussion would not apply if permit prices were also statutorily fixed, since fishermen would not be allowed to pay more for one permit than another (within the same fishery). However, if it were constitutional, legislation could be enacted which would provide a supplementary payment to non-residents selling their permits to Alaskans. These supplementary payments would have the same effect, and would take the place of the preferential loan terms.

The loan program is not, it should be stressed, an easy answer to the current problems of the limited entry program. The high cost of entry permits would require substantial expenditures by the state if the loan program is to be the primary vehicle for improving access to entry permits. As a case in point, an estimated 109 permits were purchased in the Bristol Bay drift gill net fishery during the first nine months of this year. Financing of these permit purchases through the Commercial Fishing Loan Program would require an estimated \$5.9 million in this one fishery alone.*

It is true that funds expended for the loan program are eventually returned to the state, with interest, but the low interest rates on fishing loans represent a major opportunity cost to the state, because the state foregoes the much higher return that could be realized from alternative investments in bonds, etc.

An additional problem is that extensive use of state loans for permit purchases could contribute to further inflation in permit prices if price controls are not enacted. Loan recipients would be able to pay more for permits than if they had not received state financing, and this would have a tendency to push permit prices higher. The extent of this impact would depend primarily on the number of loans issued and the degree to which the loan terms increased the purchasing power of resident permit buyers. Further increases in permit prices would reduce the effectiveness of the loan program by making permits less affordable, so this possible impact should be given careful consideration.

The effect of the proposed loan program option on the development of bottomfish, herring, and other fisheries must also be assessed. While it may be desirable to encourage resident entry into the limited fisheries, an emphasis on this aspect of the loan program could discourage diversification into developing and non-limited fisheries. The limited salmon and herring fisheries are, for the most part, a fully exploited resource, in contrast to other fishery resources which are just beginning to be commercially harvested in Alaska. A careful balance must therefore be struck between the use of loan funds for the purchase of entry permits and the use of funds for developing fisheries.

III. APPRENTICESHIP OPTION

The basic idea behind an apprenticeship system is an attractive one: Entry permits would be issued to those individuals who had demonstrated

*Based on the CFEC Permit Transfer Survey.

their competence in and commitment to fishing by serving as a crew member on a vessel for a given number of years. This system would continue the natural progression from crewman to skipper that generally characterized the fishing industry prior to limited entry. An apprenticeship program would also ensure that persons obtaining entry permits were experienced fishermen and were able to use those permits in an efficient and safe manner.

Although the idea is a sound one, legal, economic, and administrative complications make it difficult to transform the idea into a workable apprenticeship program. The first stumbling block is a 1969 Federal court decision which overturned an apprenticeship program enacted by the Alaska legislature in 1968. The basis of the decision was that the program allowed fishermen to choose the apprentices involved, and that this act violated the Fourteenth Amendment of the U.S. Constitution. The decision stated in part: "Under the scheme, entry into the salmon fishing industry is controlled not by the state but by local fishermen in each area...whose own benefit would ordinarily not be served by assisting potential competition to qualify."

The first requirement of any apprenticeship program is therefore that the state, and not the fishermen, must determine the participants in the program. This requirement creates a substantial administrative burden, but also creates a more serious problem within the fishing industry by disrupting the conventional hiring practices employed in the fisheries. The idea of having to accept a complete stranger of unknown ability for a crewman is not likely to go over well with the majority of permit holders, particularly those that usually employ family members as crew.

In addition, the 1969 court decision gives the impression that it may be unconstitutional to use fishing experience in any standards of qualification for an apprenticeship program. The legal problems involved have not been sufficiently clarified, but it appears that using crewman experience as a prerequisite for admission to the program would create the same situation addressed in the 1969 decision, just one step removed. In other words, the fishermen would not be choosing the apprentices, but would still be choosing individuals who in the future would qualify for the program on the basis of their previous experience as a crew member. To avoid this legal problem, a separate set of eligibility requirements have been developed to supplement the apprenticeship option. Under this plan, crewmember experience accrued prior to the enactment of the program would still be used as a determinant of apprenticeship eligibility, but the experience requirements would be supplemented with economic hardship criteria that did not rely on fishing experience. It appears that this modification would circumvent the constitutional difficulties discussed above, but not without altering the future distribution of entry permits and the corresponding equity of the apprenticeship program.

The alternative economic hardship and dependence criteria which have been developed are intended to provide a means by which greater consideration can be given to hardship on the community level, rather than just the individual level. This issue is explored in detail in Dr. Rogers' paper. It is important to note that the alternative hardship criteria are intended to supplement, not replace, the criteria by which

individual hardship and dependence are evaluated. Fishing involvement, in terms of both participation and fishing income, was the major factor used in the ranking of applicants during the initial issuance of entry permits. While it may be desirable to supplement criteria based on fishing involvement with more broadly based criteria which consider the community situation, it is questionable whether such criteria alone would result in the most equitable distribution of entry permits under an apprenticeship program or any other system of permit transfer. The resolution of the legal issues surrounding the use of crewman experience as a basis for apprenticeship eligibility is therefore one of the most important tasks remaining if the apprenticeship option is to be pursued.

There are a number of other problems with the apprenticeship option. One of these is that the number of new entrants to the limited fisheries under an apprenticeship system would probably be much lower than current levels unless complete compensation for the fair market value of permits were provided to permit holders who returned their permits to the state. This issue is explored more thoroughly in the discussion of the capital gains tax option, but the basic difficulty is that without the profit incentive for transferring a permit, far fewer permits will be returned to the state than are presently transferred to other individuals. Thus, the state may be forced to buy permits if sufficient permits are to be available for the apprenticeship program.

A second problem is that it would be impossible for permit holders to switch to another limited fishery without serving another period of apprenticeship. And if a provision were drafted which would allow trades between permit holders, only permits from low income fisheries would ever return to the state, since fishermen holding permits for high value fisheries who wished to leave fishing would find many persons wanting to trade a permit of lesser value. An incentive would be created for the development of a black market in permit trades.

An apprenticeship program would also eliminate intra-family transfers unless some sort of "qualified transferee" list is created, from which permit holders are free to choose when they desire to transfer their permit. Over 25 percent of permit transfers to date have been estimated to be between family members, so substantial weight should be given to the continuance of this pattern in any alternative system of permit transfer.

Besides the possible compensation costs discussed earlier, an apprenticeship program would have considerable administrative costs. The number of applicants and potential qualifiers would be many times larger than the number of applicants during the issuance of the original entry permits, for there are many more crewmen than there were gear license holders during the original eligibility period. In addition, the application process for an apprenticeship program would not be a one-time affair, but would continue indefinitely into the future as more persons qualified and more permits became available. The Commercial Fisheries Entry Commission or other administering agency would require a significant permanent increase in staff and funding.

IV. AMORTIZATION OPTION

The amortization option is apparently intended to establish a time

limit on entry permits. It would also provide an alternative method of compensation for current permit holders in the event that an apprenticeship program or other system of transferability is enacted and permit holders can no longer sell their permits. However, in its present form the purposes of the option are too vague and it does not appear to be the best answer to the compensation problem. After the discussion of the amortization option as drafted, a different amortization approach which may be a more effective method of compensation will be presented for consideration.

The logic behind option A is difficult to follow. This option would allow the amortization of vessels and gear at 10 percent per year, after which the entry permit would revert to the state, unless renewed by the original permit holder, who would have to demonstrate consistent use of the permit. In the first place, it is unclear why permit holders should be compensated, through amortization, for vessels and gear, since the individual would retain possession of these under any option and is free to sell them at any price and to any individual he chooses. Perhaps it is thought that because a permit holder could no longer sell his boat and permit together under this option, his boat and gear would be of lesser value without a permit included. But in both 1978 and 1979, only an estimated 13 percent* of permit transfers included vessels and/or gear in the transaction, so the cessation of combined transfers should not cause significant hardship.

With regard to the time limit inherent in both option A and B, it would seem that a simple participation or use requirement would be more effective. Since the permit holder is given the right to renew his permit at the end of the amortization period, the time limit is really superfluous. The only time when permits would revert to the state would be when permits were no longer used, regardless of the time limit. Dropping the time limit and substituting the use requirement would result in permits reverting to the state as soon as they were no longer fished, rather than at the end of the time limit.

Option B is a more reasonable approach to the compensation question than option A, because it addresses the value of the permit, which is the item being devalued, rather than the vessel and gear. However, it is questionable whether permit holders who were originally issued their permits by the state should be allowed to amortize the fair market value of their permits, since they received them for only an administrative fee. Compensation of this type would appear to be a windfall gain and difficult to justify. One argument for such compensation is that some permit holders are counting on the value of their permits as a retirement nest egg. If this is a major problem, some type of special exception should be made for these persons, instead of giving compensation to all of the original issuees regardless of financial standing.

Neither of the amortization options presented appear to be the most equitable and cost effective method of compensating those permit holders who did buy their permits for their purchase investment. Both of the proposed options would establish a fixed 10 percent per year amortization schedule, so that the amount of amortization would depend solely on the

*Based on the CFEC Permit Transfer Survey.

purchase price of the vessel and gear (option A), or of the permit (option B).. Such a system takes no account of the length of time which a permit has been held or of the earnings derived from the use of the permit. Instead of allowing a fixed 10 percent write-off each year, it would be more desirable to relate the amortization schedule to the net return on the permit investment at the time when the permit is no longer fished and reverts to the state.

Incorporating the return which a permit holder has realized on his investment into the amortization option would provide a more equitable system of compensation, because consideration would be given to each fisherman's individual economic position, rather than relying on an arbitrary formula or schedule. Under this type of system, those permit holders whose net fishing earnings during the time of permit ownership equalled or exceeded the purchase price of the permit, plus a "reasonable" return on the investment in permit, vessel, and gear (10-15 percent per year), would be allowed no amortization or other compensation, since they had received "their money's worth" from the use of the entry permit.

On the other hand, permit holders who had not recovered their permit investment, plus a reasonable return, would be allowed to amortize the difference between this value and the purchase price of their permit, with the amortization amount not to exceed the permit purchase price. For example, take the case of a fisherman who had bought a permit for \$50,000, a boat and gear for another \$50,000, and fished for three years. If a "reasonable" rate of return were determined to be 10 percent, then a reasonable net fishing income for the example fisherman for the three years would be \$80,000 (permit price of \$50,000 + return on investment of \$30,000 ($\$100,000 \times 10\% \times 3 \text{ years}$)).

Therefore, if the fisherman made \$80,000 or more during the three years he fished his permit, he would receive no compensation when his permit reverted to the state. A net fishing income of less than \$80,000 would make the fisherman eligible to amortize the difference between his income and \$80,000, not to exceed \$50,000. If his earnings were \$50,000, the fisherman could amortize \$30,000 over a specified period of time.

Three major problems can be foreseen with this alternative approach to compensation. The first is that it is necessary to determine a "reasonable" rate of return. This determination would take into account current market rates of interest, the high degree of risk in fishing, and historical earnings in the limited fisheries. Although difficult, this obstacle does not appear to be insurmountable.

The second problem is that a permit holder is not just an investor, but is also the skipper of the fishing operation. It is therefore necessary to account for the portion of the permit holders' income which is earned from skippering the vessel, apart from the return on his investment. I am not familiar enough with fishermen's bookkeeping practices to know just how this would be done, but it should be feasible.

The third need is to define the meaning of amortization more precisely, so that it is clear whether the former permit holders would qualify for a tax credit, or just a tax deduction from gross income. This requires a policy decision on the degree of compensation to be given to current

permit holders, since a tax credit would entitle the former permit holders to save the entire amount of amortization, while a tax deduction would only save them a fraction of the amortization amount. The cost to the state for a tax credit would of course be much greater, but it would still be less than compensating fishermen for the entire purchase price of their permits.

STATE of Alaska, Appellant,

v.

Lori L. OSTROSKY, Julianne Ostrosky
and Harold C. Ostrosky, Appellees.

Lori OSTROSKY and Julianne Ostrosky,
Cross-Appellants,

v.

STATE of Alaska, Cross-Appellee.

No. 6336, 6373.

Supreme Court of Alaska.

July 19, 1983.

Proceeding was instituted on petition for postconviction relief following conviction of petitioners for illegal possession of commercially caught fish and for illegal commercial fishing. The Superior Court, Third Judicial District, Anchorage, Victor D. Carlson, J., granted relief to the petitioners and the appeal by the State was certified as appropriate for transfer. The Supreme Court, Matthews, J., held that: (1) entry restrictions set forth in the Limited Entry Act do not violate the provisions of the Alaska Constitution reserving naturally occurring fish to the people for common use and guaranteeing all persons equal rights and opportunities, and (2) the transferability provisions under which entry permits can be sold or inherited do not violate the provisions of the Constitution prohibiting exclusive rights or special privileges of fishery, preserving naturally occurring fish to the people for common use, and guaranteeing all persons equal rights and opportunities.

Reversed.

Rabinowitz, J., dissented and filed opinion.

1. Fish \Rightarrow 12

Amendatory provision of the Alaska Constitution, that the prohibition against creation of exclusive right or special privilege of fishing does not restrict the power of the state to limit entry into any fishery for purpose of resource conservation, oper-

ates to grant the state the power to impose a limited entry system in any fishery notwithstanding any provisions of the Alaska Constitution otherwise prohibiting such a system. AS 16.43.010-16.43.380; Const. Art. 8, §§ 3, 15.

2. Fish \Rightarrow 9

Entry restrictions set forth in the Limited Entry Act, restricting anyone from becoming a primary operator of commercial fishing gear without an entry permit, are not violative of the provision of the Alaska Constitution reserving fish in their natural state to the people for common use. AS 16.43.010-16.43.380; Const. Art. 8, §§ 3, 15.

3. Constitutional Law \Rightarrow 236

Fish \Rightarrow 9

Entry restrictions of the Limited Entry Act, restricting anyone from becoming a primary operator of commercial fishing gear without an entry permit, are not violative of the provision of the Alaska Constitution guaranteeing all persons equal rights and opportunities. Const. Art. 1, § 1.

4. Fish \Rightarrow 9

Transferability provisions of the Limited Entry Act, permitting transfer of entry permit to another person upon 60 days' notice by holder of intent to transfer or transfer of permit to surviving spouse upon death of holder, are not violative of provisions of Alaska Constitution prohibiting exclusive rights or special privileges of fishery and preserving naturally occurring fish to the people for common use. AS 16.43.150(h), 16.43.170(b); Const. Art. 8, §§ 3, 15.

5. Constitutional Law \Rightarrow 213.1(2)

Where suspect classifications or fundamental rights are involved, differential treatment will be upheld only when the purpose of the enactment furthers a compelling state interest and the enactment itself is necessary to the achievement of that interest, where classifications are based on gender or illegitimacy, the purpose of the enactment must be important and the means used to accomplish that purpose must be fairly and substantially related to its enactment. In cases not involving sus-

pect classification, fundamental rights on gender or illegitimacy must be important which is not the case. The means used must be fairly and substantially related to its enactment. U.S.A. v.

6. Constitution

The application of the Equal Protection Clause of the United States Constitution to the Alaska Constitution is not required. The Alaska Constitution is not a part of the United States Constitution.

7. Constitution

The Alaska Constitution is not a part of the United States Constitution. The Alaska Constitution is a separate and independent document.

8. Constitution

The Alaska Constitution is not a part of the United States Constitution. The Alaska Constitution is a separate and independent document.

9. Constitution

The Alaska Constitution is not a part of the United States Constitution. The Alaska Constitution is a separate and independent document.

power to impose any fishery notations of the Alaska prohibiting such a 6.43.380; Const.

forth in the Limited Entry Act, anyone from becoming a holder of commercial fishery entry permits, are not violative of the Alaska Constitution in their natural common use. AS Art. 8, §§ 3, 15.

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The Limited Entry Act, from becoming a holder of commercial fishing permits, are not violative of the Alaska Constitution in their natural common use. AS Art. 1, § 1.

visions of the Limited Entry Act, upon 60 days' notice to transfer or assign spouse upon violation of provisions prohibiting exclusive privileges of fishery occurring fish to common use. AS 16.43.150(h), 16.43.170(b), Const. Art. 1, § 1; U.S.C.A. Const. Amend. 14.

213.1(2)

visions or fundamental rights, or classifications based on gender or illegitimacy, differential treatment must be based on governmental interest which is legitimate and the enactment must be rationally related to its achievement. U.S.C.A. Const. Amend. 14.

pect classifications, the infringement of fundamental rights, or classifications based on gender or illegitimacy, differential treatment must be based on governmental interest which is legitimate and the enactment must be rationally related to its achievement. U.S.C.A. Const. Amend. 14.

6. Constitutional Law ⇒ 213.1(2)

The applicable standard of review for a given case in determining constitutionality of an enactment is to be determined under the *Erickson* sliding scale by the importance of the individual rights asserted and by the degree of suspicion with which the court views the resulting classification scheme. U.S.C.A. Const. Amend. 14.

7. Constitutional Law ⇒ 213.1(2)

As a minimum, legislation must be based on a legitimate public purpose, and classifications contained therein must be reasonable, not arbitrary, and rest upon some ground of difference having a fair and substantial relation to the object of the legislation. U.S.C.A. Const. Amend. 14.

8. Constitutional Law ⇒ 236

Fish ⇒ 9

Interest asserted by petitioners, redistribution of fishery entry permits based on a system free of statutory classifications, was not in an elevated position on the *Erickson* sliding scale and, as such, was an interest as to which the rational basis test was to be applied in determining constitutionality of the transferability provisions of the Limited Entry Act. AS 16.43.150(h), 16.43.170(b), Const. Art. 1, § 1; U.S.C.A. Const. Amend. 14.

9. Constitutional Law ⇒ 236

Fish ⇒ 9

Transferability provisions of the Limited Entry Act, permitting transfer of fishery entry permit to another person upon 60 days notice of intent by permit holder or a transfer to surviving spouse upon death of holder, advance causes of conservation, aquacultural and adherence to fish and game laws and, as such, are not violative of equal protection. AS 16.43.150(h), 16.43.

170(b); Const. Art. 1, § 1; U.S.C.A. Const. Amends. 5, 14.

John B. Gaguine, Asst. Atty. Gen., Jonathan K. Tillinghast, Asst. Atty. Gen., Wilson L. Condon, Atty. Gen., Juneau, for appellant/cross-appellee.

Frederick Paul, Paul, Johnson, Paul & Riley, Seattle, Wash., for Harold C. Ostrosky.

Robert H. Wagstaff, Wagstaff, Middleton & Pope, Anchorage, for Lori and Julianne Ostrosky.

Before BURKE, C.J., and RABINOWITZ, MATTHEWS and COMPTON, JJ.

OPINION

MATTHEWS, Justice.

The issues presented in this case are:

1) whether the entry restrictions of the Limited Entry Act, AS 16.43.010-380, violate the following provisions of the Alaska Constitution:

(a) article VIII, section 3, which reserves naturally occurring fish to the people for common use;

(b) article I, section 1, which guarantees all persons equal rights and opportunities;

2) whether the transferability provisions of the Limited Entry Act, under which entry permits can be sold or inherited. AS 16.43.150(h), and .170, violate

(a) article VIII, section 15 of the Alaska Constitution, prohibiting exclusive rights or special privileges of fishery;

(b) article VIII, section 3 of the Alaska Constitution, preserving naturally occurring fish to the people for common use;

(c) article I, section 1 of the Alaska Constitution, guaranteeing all persons equal rights and opportunities;

(d) the equal protection clause of the fourteenth amendment to the United States Constitution.

The superior court answered the questions designated above as 2(a) and (c) in the

affirmative. We answer all of them in the negative, and reverse.

I. FACTS

When Harold Ostrosky and his two daughters, Lori and Julianne, operated salmon drift net gear in Bristol Bay without entry permits they were cited for illegal possession of commercially caught fish,¹ and illegal commercial fishing.²

The three went to trial and were convicted. Mr. Ostrosky was fined \$10,000, with \$9,000 suspended, and Lori and Julianne were each fined \$5,000, with \$4,500 suspended. In addition, the boat on which they were fishing, the Lori K.O., was or-

dered forfeited to the state, with the forfeiture suspended for two years.

Lori and Julianne filed an application for post-conviction relief, claiming their convictions were invalid because the provisions of the Limited Entry Act regarding transfer of entry permits violated state and federal constitutional requirements. Mr. Ostrosky joined in this position. The superior court held that the transferability provisions of the Limited Entry Act violate article VIII, section 15 of the Alaska Constitution, prohibiting exclusive rights of fishery, and article I, section 1 of the Alaska Constitution, guaranteeing all persons equal rights and opportunities.³ The court granted post-conviction relief to the Ostroskys.

1. 20 AAC 05 110 provides

PERMIT REQUIRED TO POSSESS FISH OR SHELLFISH. (a) It is unlawful for any person to possess, within water subject to the jurisdiction of the state, any fish or shellfish, taken for a commercial purpose, aboard a fishing vessel commonly used for taking that species of fish or shellfish unless the person has in his possession a valid interim-use or entry permit card allowing him to take the fish or shellfish in his possession with the gear with which the vessel is equipped unless waived by the commission for good cause.

(b) As used in this section, a "commercial purpose" includes any sale, purchase, trade, gift, or any portion of a commercial transaction.

2. 20 AAC 05 100 provides

PERMIT REQUIRED TO OPERATE GEAR. (a) It is unlawful for any person to operate gear, within water subject to the jurisdiction of the state, for the commercial taking of any fishery resource without a valid interim-use or entry permit card issued by the commission authorizing that person to operate that type of gear in that fishery unless waived by the commission for good cause. To be valid, an interim-use permit or entry permit card issued by the commission must be signed in the space provided by the person named as the card holder [sic]

3. The court's decision relating to these issues states as follows:

The defendants' state constitutional challenge involves two related arguments: first, that the Act's inheritance and transfer provisions create in permit holders an "exclusive right of fishery" in violation of Art. VIII, sec. 15, and second, that these provisions create a wealth and familial classification in violation of the Art. I, sec. 1 guarantee of equal treatment

Article VIII, sec. 15, as amended in 1972, provides:

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.

The Act was passed under the authority of this constitutional provision. The obvious tension between the ban on "exclusive rights or privilege of fishery" on the one hand and the grant of power to "limit entry into any fishery" to prevent economic distress among fishermen and those dependent upon them for a livelihood . . . on the other hand is reflected in the Act which has as its purpose limitation of entry without "unjust discrimination." AS 16.43.010(a). The elaborate ranking system for the award of initial free permits, AS 16.43.200-270, 20 AAC 05-600-670, represents the legislative accommodation of this tension. This initial allocation system has been held to be constitutional. [*Commercial Fisheries Entry Commission v. Apokevak*, 606 P.2d 1255, 1261-68.]

An analysis of the Act in terms of Art. VIII, sec. 15 is not necessary, however, since the issue is subsumed in the equal protection analysis. Art. VIII, sec. 15 gives specific expression of the facts which go into the equal protection analysis. In *State v. Erickson*, 574 P.2d 1 (Alaska 1978) the court adopted the single equal protection test.

Initially, we must look to the purpose of the statute, viewing the legislation as a whole, and the circumstances surrounding it. It must be determined that this purpose is legitimate, that it falls within the police pow-

Note 3—Continued

er of the state. Examining the means used to accomplish the legislative objective and the reasons advanced therefor, the court must then determine whether the means chosen substantially further the goals of the enactment. Finally, the state interest in the chosen means must be balanced against the nature of the constitutional right involved. 574 P.2d at 12.

Article VIII, sec. 15 is the declaration by the people that the purpose of limiting entry into the fisheries is within the police power of the state, provided no exclusive right of fishery is created. The real question presented is whether the means by which the state limits entry bears a fair and substantial relation to the Act's purposes.

The nature of the right involved has been addressed by the court in *Apokedak* as an important right to engage in economic endeavor, which in some cases may involve the right to employment in the industry. 606 P.2d 1255 at 1266 (footnote omitted).

The purposes of the Act identified by the Supreme Court in *Apokedak* are: (1) enhancing the economic benefit to fishermen since too many involved in the industry prevented those relying on fishing for a livelihood from securing adequate remuneration, (2) conserving the fishery; (3) avoiding unjust discrimination in the allocation of a limited number of entry permits, and (4) administrative convenience. 606 P.2d at 1255. Does allocation of entry permits by the market and inheritance bear a fair and substantial relation to these legislative purposes?

The particular means of allocating permits is irrelevant to conservation of the fishery. That purpose is accomplished by controlling the catch. The allocation system is, therefore, irrelevant to achievement of this purpose.

The inheritance and transferability provisions of the Act clearly serve the purpose of promoting administrative convenience. Allowing the market and rules of descent and distribution to allocate permits avoids the necessity of a case by case ransing which was required for the initial award of permits. However, the purpose of promoting administrative convenience cannot alone outweigh the important right impinged by the statutory classification. 606 P.2d at 1266, footnote 45.

Allocation of permits by the market does not serve the purpose of avoiding unjust discrimination among those seeking permits. On the contrary, this system of allocation results in an unjust discrimination. Assuming a willing seller, the availability of permits is based solely on ability to pay. As noted by Justice Diamond in his concurring opinion in *Apokedak*:

This situation has the effect of creating another classification: on the one hand, the person with abundant financial resources, and on the other, a person of considerably

more modest means. It seems to me that the Act is having the effect of favoring the well-to-do over the poor. In my opinion, this discrimination is basically unfair or unjust, and does not conform to the principle in article I, section 1 of our Constitution which requires equality of treatment of persons in the state. 606 P.2d at 1266-69.

In the initial ranking an applicant was awarded points by demonstrating the economic hardship which would result from exclusion from the fishery. AS 16.43.250. As the system now operates, wealth is the sole determinative factor. The provisions to avoid unjust discrimination in the initial award of permits have been stood on their head. Clearly, the market allocation of permits bears no relation, substantial or otherwise, to the just allocation of permits.

The state analogizes the market allocation of permits to the sale of alcoholic beverage licenses and subsequent sales of homestead lands. I find neither analogy compelling. Of principal importance is the fact that the people enjoy access to the state's fisheries which does not pertain in the case of alcohol. See Art. VIII, secs. 3 and 15, Constitution of Alaska. Since the "right" to hold a liquor license does not occupy a privileged constitutional position, the equal protection analysis is quite different. In regard to land sales, it is true that there are some superficial similarities, since subsequent allocations are by the market and inheritance. The analogy breaks down, however, because of two important differences. First, land, as property, has some intrinsic worth, and the allocation process bears a direct relation to this intrinsic value. The limited entry permit is a license, not property, AS 16.43.150, and has no intrinsic value. The market for limited entry permits is an entirely artificial creation of the allocation process. Second, the law regarding ownership and transfer of land is the product of historical conditions antedating the creation of the United States of America. The Constitutions of the United States and Alaska recognize this historical legacy and have been interpreted with reference to it. The Act is of recent vintage and the legislature explicitly avoided endowing the permit with the attributes of a property right. AS 16.43.150(e).

It may be argued that the allocation of permits by the market is necessary to allow the permit holder to recoup his investment in vessels and gear. However, market allocation bears only a tenuous relation to this purpose. First, the market price of the permit is dependent on the type of permit and the location of the fishery, and is not directly dependent on the vessel and gear owned by the transferee. Second, investment in vessels and gear is, or should be, a factor in the permit holder's decision to leave the fishery. The capital investment can be amortized over

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The state appealed to the court of appeals which certified the appeal as appropriate for transfer to this court pursuant to AS 22.05.015(b) and Alaska R.App.P. 408(b). We accepted the certificate.

II. CONSTITUTIONALITY OF ENTRY RESTRICTIONS

Although the superior court struck down the Limited Entry Act on the grounds that its transferability provisions violate the Alaska Constitution, the Ostroskys have offered additional grounds for holding the Act unconstitutional. We consider these because a judgment may be affirmed on grounds different from those relied on by the trial court. *Moore v. State*, 553 P.2d 8, 21 (Alaska 1976); *Ransom v. Haner*, 362 P.2d 282, 285 (Alaska 1961).

We will first consider Harold Ostrosky's contentions concerning the validity of the entry restrictions of the Act. Those restrictions, in general, provide that no one can be the primary operator of commercial fishing gear without an entry permit. There are only a limited number of entry permits for each particular fishery. Following the implementation of the Act in 1973, entry permits were issued to those who had previously held gear licenses on a grandfather rights basis subject to detailed statutory and regulatory guidelines. See generally *Commercial Fisheries Entry Commission v.*

Apokedak, 606 P.2d 1255 (Alaska 1980). Commercial fishermen who had been crew members but not gear license holders were not eligible to receive entry permits in the initial allocation. AS 16.43.260(a). Under the Act, crew members need not have an entry permit as long as the holder of the entry permit is present when gear is operated. AS 16.43.140(b).

A. Article VIII, Section 3.

Article VIII, section 3 of the Alaska Constitution provides:

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

Until it was amended in 1972, article VIII, section 15 provided:

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State.

In 1972 an additional sentence was added to section 15:

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.

Harold Ostrosky argues (a) that section 3 of article VIII prohibits entry limitations

Note 3—Continued

the life of the permit, the length of which is dependent on the holder. Provision for emergency transfer of the permit mitigate any harshness due to illness or death of the holder.

The Act has as a purpose prevention of economic distress among fishermen and their dependents. A sizable capital investment is required to engage in commercial fishing. This investment was recognized in the initial ranking of applicants for free entry permits. AS 16.43.250(a)(1). See *Younger v. Alaska Commercial Fisheries Entry Commission*, 500 P.2d 917 (Alaska 1979). Vessels and gear unaccompanied by a permit to operate them are of relatively little value. The state limitation on entry to the fishery, also limited the market for vessels and gear. The Act recognizes the tie between permits and capital in AS 16.43.170(c) and AS 16.43.310-320. Under the buy back programs both the permits and vessels and gear are purchased by the state.

Applying the [State v.] *Enckson* [574 P.2d 1 (Alaska 1978)] test and considering the goal to be obtained, protection of the investment, and the means selected, allocation by the market, and in light of the important right impinged, I find the Act does not bear a fair and substantial relation to the statutory purposes. I further find that the inheritance and transferability provisions of the Act have the effect of causing, rather than avoiding, unjust discrimination among those seeking permits. I find the Act unconstitutional under Art. I, sec. 1 of the Alaska Constitution, and hold that the defendants cannot be penalized for failure to possess the required permits, therefore necessitating a reversal of their convictions.

Ostrosky v. State, No. 3 AN-80-7632 Criminal (Alaska Super., August 14, 1981) (footnote omitted)

and (b) that the prohibition of section 3 has not been affected by the 1972 amendment to section 15. The first part of this argument is supported by judicial authority. In *Bozanich v. Reetz*, 297 F.Supp. 300, 306 (D.Alaska 1969), a three judge federal court held that a precursor of the present limited entry system, chapter 186, SLA 1968, was unconstitutional under both section 3 and section 15 of article VIII. This decision was vacated by the United States Supreme Court on abstention grounds, *Reetz v. Bozanich*, 397 U.S. 82, 90 S.Ct. 788, 25 L.Ed.2d 68 (1970). The parties then litigated the same question in state superior court, which held that section 3 and section 15 of article VIII, as well as section 1 of article I, prohibit limited entry.⁴

Like the courts in the *Bozanich* cases, we have difficulty squaring the section 3 reservation of fish to the people for common use with a system which grants an exclusive right to fish to a select few who may continue to exercise that right season after season. We accept, therefore, at least for the purposes of this case, the proposition that limited entry is inconsistent with the command of article VIII, section 3.

We proceed to an examination of the second part of Harold Ostrosky's argument, namely that the amendment to article VIII, section 15 did not eliminate the prohibition on limited entry implicit in article VIII, section 3. This argument is textually correct, for the language of the amendment only refers to section 15. However, the conclusion is inescapable that the purpose of the amendment was to authorize, so far as the state constitution is concerned, a limited entry system. No other purpose seems reasonably possible.

Our conclusion is supported by the history of the 1972 amendment. As introduced by the Governor and as passed by the Senate, the language of the proposed amendment was stated in the affirmative: "The state may restrict entry to any fishery."⁵ As so written, there would be no question

but that limited entry would be constitutional as a matter of state constitutional law, despite any contrary provisions of the state constitution. The House Resources Committee changed the language to its present negative form. The Committee report explaining this action makes it clear, however, that the Committee did not intend to constrict in any way the sweep of the amendment. Thus, the report states with approval the purpose of the amendment: to "give the state the power to restrict entry into a fishery for certain public purposes." The report continues:

In his testimony to the committee the Attorney General, Mr. Havelock, suggested that an amendment of this nature is essential if Alaska is to ever have an economically healthy fishing industry. For more than a decade fisheries economists have been calling for such an institutional change, and over the past few years the fishermen themselves have come to recognize that this amendment, though no panacea, is an essential first step to revitalization of the fishing industry in Alaska.

After so endorsing limited entry the report proceeded to explain the Committee's substituted language:

After carefully studying the new language proposed in the Senate Resolution, your committee has adopted a substitute which alters the wording of the amendment in three small but significant ways.

Only the first change concerns the change from a positive to a negative form of expression. The report continues:

In the case of *Reetz v. Bozanich*, the U.S. Supreme Court held that a statute limiting entry into a fishery creates an exclusive right of fishery. As a consequence, the meaning of the new language, which the Senate proposes to add as a second sentence in Section 15, is not as clear as it could be. In order to eliminate any confusion or ambiguity we have altered this

4. *Bozanich v. Normberg*, No. 70-389 Civil (Alaska Super. Ct. Div. Juneau, March 9, 1971) per Judge Carlson.

5. 1971 Senate Joint Resolution No. 10.

new language to show that the state's power to limit entry is a specific exception to the "exclusive right" prohibition.

2 House Journal 760-61 (1971).

Thus, the purpose of the House Committee in altering the affirmative language of the Senate Joint Resolution to the negative form which found its way into the amendment was to clarify perceived ambiguities, not to restrict the meaning of the Senate Joint Resolution.

[1.2] We conclude that the purpose of the amendment to article VIII, section 15 was to grant the state the power to impose a limited entry system in any fishery, notwithstanding any state constitutional provisions otherwise prohibiting such a system. Therefore, Harold Ostrosky's argument that the entry provisions of the Act violate article VIII, section 3 of the Alaska Constitution must fail.

B. Article I, Section 1.

[3] Article I, section 1 of the Alaska Constitution states the principle that "all persons are equal and entitled to equal rights, opportunities, and protection under the law . . ." Harold Ostrosky's argument that the entry restrictions of the Act violate this clause is similar to his argument relating to article VIII, section 3. He argues that the superior court in the second *Bozanic* case held that the 1968 precursor to t^he

6. Harold Ostrosky raises two other points. (1) He argues that even if a limited entry program is constitutionally permissible, the current act does not further the purposes expressed in the amendment to article VIII, section 15 and is therefore invalid. However, the role of the judiciary is not to invalidate acts of the legislature because in retrospect the acts have arguably failed to achieve the purposes for which they were enacted. Rather, our role is to examine whether the legislature could reasonably have expected that the Limited Entry Act would advance the purposes of article VIII, section 15. See *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464, 101 S.Ct. 715, 723, 66 L.Ed.2d 639, 648-49, reh'g denied, 450 U.S. 1027, 101 S.Ct. 1735, 68 L.Ed.2d 322 (1981); *Vance v. Bradley*, 440 U.S. 93, 111-12, 99 S.Ct. 329, 949, 59 L.Ed.2d 171, 184-85 (1979). No argument has been made that this

present Act violated article I, section 1, that this conclusion was correct, and that article I, section 1 was not amended by implication by the 1972 amendment to article VIII, section 15. For the reasons we have expressed above with respect to the argument concerning article VIII, section 3, this argument is rejected. The authority to impose some limited entry system became in 1972 a part of Alaska's constitution. The amendment granting that authority cannot, in turn, be challenged as unconstitutional under preexisting clauses in the same document.⁶

III. CONSTITUTIONALITY OF TRANSFERABILITY PROVISIONS

AS 16.43.170(b) provides in pertinent part:

[T]he holder of an entry permit may transfer his permit to another person or to the [Commercial Fisheries Entry 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 his permit. If the proposed transferee, other than the commission, can establish present ability to participate actively in the fishery, the commission shall approve the transfer

test is not satisfied, nor do we believe that any such argument would be reasonable. As we stated in *Commercial Fisheries Entry Comm'n v. Apokinak*, 606 P.2d 1255, 1263 (Alaska 1980):

The overall economic and conservation goals of the Act [which are the same as the constitutional goals] are met by limiting the numbers of permits.

(2) He argues that the Limited Entry Act is a burden on interstate commerce in violation of the commerce clause of the United States Constitution. The argument is so cursory that it is incomprehensible to us. Accordingly, we do not consider it. See *State v. O'Neil Investigations, Inc.*, 609 P.2d 520, 528 (Alaska 1980); *Lewis v. State*, 408 P.2d 689, 691 n. 2 (Alaska 1970); *Anderson v. State*, 420 P.2d 327, 330 nn. 4-5 (Alaska 1966).

and reissue the entry permit to the transferee.⁷

AS 16.43.150(h) provides:

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 a contrary intent is manifested. When no spouse survives, the rights of the decedent pass as part of his estate.

Lori and Julianne Ostrosky do not attack the entry restriction aspect of limited entry. Instead, they contend the above transferability provisions are unconstitutional. Their argument is that these provisions exclude those who do not have sufficient assets to purchase an entry permit and who have not inherited one. This, they contend, amounts to an unconstitutional classification based on wealth and lineage. They also argue that the transferability provisions themselves create an exclusive right or special privilege of fishery barred by the first sentence of article VIII, section 15 and by the common use clause, article VIII, section 3. They suggest that a transfer system meeting the requirements of the constitution would be one in which a permit would revert to the state when the permit holder dies or is no longer using it. Reissuance could be accomplished either under a type of apprenticeship system, emphasizing past participation in commercial fishing as a crewmember, or a lottery, or a combination of both. For convenience we will refer to the existing system as "free transferability" and to the type of system proposed by Lori and Julianne Ostrosky as a "reversion-reissuance" system.

A. Article VIII, Sections 3 and 15—The Least Exclusive Alternative Contention

One interesting argument made by Lori and Julianne Ostrosky is based on the tension between article VIII, section 3 and the

first sentence of article VIII section 15 on the one hand, and the amendment to section 15 on the other. This argument concedes that some limited entry system is constitutionally permissible because of the amendment. However, since the common use clause of section 3 and the no exclusive right of fishery clause of section 15 remain in the constitution, the premise of the argument is that whatever system of limited entry is imposed must be one which, consistent with a feasible limited entry system, entails the least possible impingement on the common use reservation and on the no exclusive right of fishery clause. The argument concludes that free transferability does not entail the least possible impingement on the anti-exclusionist values which these provisions reflect.

Since "[i]t is a well accepted principle of judicial construction that, whenever reasonably possible, every provision of the Constitution should be given meaning and effect, and related provisions should be harmonized," *Park v. State*, 528 P.2d 785, 786-87 (Alaska 1974), the premise of this argument is logical. However, the conclusion that free transferability is more exclusive than a reversion-reissuance system has not been demonstrated.

[4] Given a finite number of permits for each of the several fisheries subject to the Act, it is not evident that free transferability constitutes a greater impingement on the nonexclusive, common use goals of article VIII than a system of reversion and reissuance. In a system of free transferability there will be those who are unable to afford a permit.⁸ However, in a reversion and reissuance system where reissuance is by lottery there will be those who are excluded by chance. Similarly, if reissuance is based

7. The present ability requirement is not a stringent one. It requires only that "the person is physically able to harvest fish in the fishery and has reasonable access to commercial fishing gear of the type utilized in that fishery." 20 AAC 05.770(15).

8. For the last quarter of 1981 the average price for a permit was approximately \$50,000. For some fisheries average prices were much high-

er, ranging upwards to \$100,000. Commercial Fisheries Entry Comm'n. 1981 Quarterly Permit Price Information (1982). Permits are, however, often transferred. In each of the years 1980 and 1981 about 1,000, or 10% of the existing permits, were transferred, primarily by sale. Commercial Fisheries Entry Comm'n. Commercial Fisheries Entry Permit Transfers, 1980 and 1981 (1982).

on an apprenticeship system there will be those who are excluded because, while they may be fit enough to fish, they are not hired by existing permit holders as crew members because stronger and younger help is available, or for other reasons. Exclusion from participation as a gear license holder in a fishery is not more violative of the common use or the no exclusive right of fishery clauses because it is based on one's financial rather than physical standing, or on the laws of chance.⁹ We thus reject the Ostrofskys' contentions that free transferability violates article VIII, sections 3 and 15.

B. Equal Protection.

[5] Three standards of review are commonly utilized in cases involving the equal protection clause of the fourteenth amendment to the United States Constitution. First, where suspect classifications (i.e., those based on race, national origin, or alienage) or fundamental rights (e.g., voting, litigating, or the exercise of intimate personal choices)¹⁰ are involved, differential treatment will be upheld only when the purpose of the enactment furthers a "compelling state interest" and the enactment itself is "necessary" to the achievement of that interest. This is often called the strict scrutiny standard.¹¹ Second, where classifications are based on gender or illegitimacy, the purpose of the enactment must be "im-

portant," and the means used to accomplish that purpose must be "fairly and substantially" related to its accomplishment. *Craig v. Boren*, 429 U.S. 190, 197-98, 97 S.Ct. 451, 456-57, 50 L.Ed.2d 397, 407 (1976), *reh'g denied*, 429 U.S. 1124, 97 S.Ct. 1161, 51 L.Ed.2d 574 (1977); see also *Lalli v. Lalli*, 439 U.S. 259, 265, 99 S.Ct. 518, 523, 58 L.Ed.2d 503, 509 (1978). This is regarded as an intermediate level of review. Third, in cases not involving suspect classifications, the infringement of fundamental rights, or classifications based on gender or illegitimacy, differential treatment must be based on a governmental interest which is "legitimate," and the enactment must be "rationally" related to its achievement.¹² In our discussion of federal equal protection we have called this the rational basis test. *Isakson v. Rickey*, 550 F.2d 359, 362 (Alaska 1976).

[6] The approach we have taken under the state equal protection clause is somewhat different. In contrast to the rigid tiers of federal equal protection analysis, we have postulated a single sliding scale of review ranging from relaxed scrutiny to strict scrutiny. The applicable standard of review for a given case is to be determined by the importance of the individual rights asserted and by the degree of suspicion with which we view the resulting classifica-

9. The system of termination of permits after a specified term of years during which the holder "may be expected to recoup his investment in gear and vessel and realize a reasonable return," suggested by the dissent entails permit reissuance, probably on the basis of a lottery. The reissuance aspect of such a system, if based on a lottery, would be subject to the comments which we have made above. Likewise, if reissuance were based on a type of apprenticeship system, our comments above would also be applicable. Additionally, such a system would be of questionable feasibility. For most fishermen commercial fishing is a career choice. It would work an obvious hardship on a gear license holder whose permit expired after, for example, ten years, to then force him out of his chosen career. This would be similar to restricting a license to practice law or medicine to a limited period after which the practitioner would have to make way for others and embark upon a second career. Fur-

ther, the system suggested by the dissent would tend to lock a fisherman into owning only one vessel during his fishing career. It would be difficult for a fisherman having only three or four years left on his license to finance the acquisition of a new vessel. Moreover, the fixed termination aspect of such a system would tend to foster exploitation, rather than conservation, of the fisheries.

10. L. Tribe, *American Constitutional Law* § 187 (1978).

11. See, e.g., *Kramer v. Union Free School Dist. No. 15*, 395 U.S. 671, 626-27, 89 S.Ct. 1846, 1849, 23 L.Ed.2d 383, 389 (1969).

12. *Harris v. McRae*, 448 U.S. 297, 324, 100 S.Ct. 2671, 2692, 65 L.Ed.2d 784, 809, *reh'g denied*, 444 U.S. 917, 101 S.Ct. 38, 65 L.Ed.2d 1180 (1980).

tion scheme.¹³ As legislation burdens more fundamental rights, such as rights to speak and travel freely, it is subjected to more rigorous scrutiny at a more elevated position on our sliding scale. Likewise, laws which embody classification schemes that are more constitutionally suspect, such as laws discriminating against racial or ethnic minorities, are more strictly scrutinized. This approach was first announced in *State v. Erickson*, 574 P.2d 1, 11-12 (Alaska 1978), where we stated:

In applying the Alaska Constitution, however, there is no reason why we cannot use a single test. Such a test will be flexible and dependent upon the importance of the rights involved. Based on the nature of the right, a greater or lesser burden will be placed on the state to show that the classification has a fair and substantial relation to a legitimate governmental objective. Where fundamental rights or suspect categories are involved, the results of this test will be essentially the same as requiring a "compelling state interest"; but, by avoiding outright categorization of fundamental and nonfundamental rights, a more flexible, less result-oriented analysis may be made.

(Footnote omitted).

[7] Having selected a standard of review on the *Erickson* sliding scale, we then apply it to the challenged legislation. This is done by scrutinizing the importance of the governmental interests which it is as-

serted that the legislation is designed to serve and the closeness of the means-to-ends fit between the legislation and those interests. As the level of scrutiny selected is higher on the *Erickson* scale, we require that the asserted governmental interests be relatively more compelling and that the legislation's means-to-ends fit be correspondingly closer. On the other hand, if relaxed scrutiny is indicated, less important governmental objectives will suffice and a greater degree of over/or underinclusiveness in the means-to-ends fit will be tolerated.¹⁴ Compare *Vogler v. Miller*, 660 P.2d 1192 (Alaska 1983) with *Rose v. Commercial Fisheries Entry Commission*, 647 P.2d 154 (Alaska 1982). As a minimum, we require that the legislation be based on a legitimate public purpose and that the classification "be reasonable, not arbitrary, and . . . rest upon some ground of difference having a fair and substantial relation to the object of the legislation . . ." *Isakson v. Rickey*, 550 P.2d at 362 (quoting *State v. Wylie*, 516 P.2d 142, 145 (Alaska 1973)).

The individual interest asserted in Ostroskys' challenge to the transferability provisions of the Act is not of a high order. The interest is that of obtaining the right to fish as a gear license holder by lottery or apprenticeship rather than by purchase or inheritance. The system advocated by the Ostroskys would exclude on the basis of one's ability to be hired as a crewman, a matter on which age and strength are often determinative factors, or on the basis of

13. The flexible scale we use resembles the "spectrum of standards" of which Justices Marshall and White have written with respect to federal equal protection. *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 98-99, 93 S.Ct. 1278, 1329-30, 38 L.Ed.2d 16, 81 (Marshall, J., dissenting), reh'g denied, 411 U.S. 959, 93 S.Ct. 1919, 38 L.Ed.2d 418 (1973); *Wandell v. Kline*, 412 U.S. 441, 454-59, 93 S.Ct. 2230, 2239-40, 37 L.Ed.2d 63, 75 (1973) (White, J., concurring). As Justice White has put it "[i]t must now be obvious, or has been all along, that, as the Court's assessment of the weight and value of the individual interest escalates, the less likely it is that mere administrative convenience and avoidance of hearings or investigations will be sufficient to justify what otherwise would appear to be irrational discriminations." *Id.*

14. Other language in *Erickson* suggests that a balancing of the individual rights asserted against the state's objective is to take place as a process separate from the identification and application of the appropriate standard of review. *Id.* at 12. Such a process is neither useful nor necessary because the selection of the standard of review on the sliding scale reflects an assessment of the importance of the individual rights and the standard when selected posits the degree of importance which the government objective must have and the required closeness of fit between the means used to achieve that objective and its achievement. Thus, balancing is inherent in the process of selection and application of the standard of review and is not itself a separate step.

pure chance, while the present system excludes those who are unable to afford a permit and those who do not inherit one.

While the current system may thus discriminate on the basis of wealth, it does so only in the manner that any price does. As Professor Tribe has observed: "Judicial intervention to redress poverty on the basis of equal protection is therefore in constant danger of becoming either wholesale or unprincipled. . . ." ¹⁵ This may be the reason why cases striking down fees for government supplied services or privileges as discriminating against the poor have been limited to instances where fundamental rights such as access to the courts,¹⁶ and ballots¹⁷ have been burdened.

[8] An entry permit is a government license having value issued to a limited number of people. As such it resembles a liquor license, or a permit to operate a trucking firm over a given route, or a utility franchise, or a broadcast license. While these privileges are both purchasable and inheritable, the fact that the poor cannot buy them is wealth discrimination only in the general sense that all prices discriminate in a society where wealth is distributed unequally. Further, the fact that the poor seldom inherit such privileges is lineage discrimination only in the sense that laws permitting inheritance of anything of value are discriminatory. Since the wealth and lineage classifications presented here are not different from those which pervade our system of private property, we do not place the interest asserted by the Ostroskys—redistribution of entry permits based on a system free of these classifications—in an elevated position on the *Erickson* sliding scale. It follows, of course, that the rational basis test is the appropriate standard for this federal constitutional claim.

The state argues that free transferability serves the following objectives:

15. L. Tribe, *American Constitutional Law* § 16-42 (1978).

16. *Griffin v. Flanore*, 351 U.S. 12, 78 S.Ct. 543, 100 L.Ed. 891 (1956).

—By making permits inheritable and transferable among family members, the Act ensures that a fishing family will be able to continue to fish if the permit holder dies or is disabled, thus protecting the family's source of income and its investment in vessel and gear. This prevents economic distress among fishermen and those dependent upon them for a livelihood.

—By making it possible for a person who has fished one permit to purchase a different one, the Act allows fishermen to move to more profitable gear types (from hand troll to purse seine, for instance) and to fish a different area when their usual area has bad runs. This prevents economic distress among fishermen, and retains the traditional mobility. . . .

—By making permits salable, the Act creates a market for them. Price depends largely on the state of the fishery. . . . Thus, in order to keep the fisheries healthy, fishermen will obey conservation laws, assist in the apprehension of violators of those laws, and willingly contribute to aquaculture programs.

—By giving permit holders an incentive—money—to transfer their permits, the Act prevents the creation of a closed class of fishermen. . . . [T]he number of transfers to date has been very large.

—By making the acquisition of a permit certain by payment of the purchase price, the Act allows fishermen to plan where they will fish, what type of gear they will use and what investments in vessel and gear they can prudently make.

—By not setting up any complex eligibility formulas for new entrants, the Act makes the transfer system readily understandable to those it will affect.

—By not requiring the Commission to get involved in transfers to an extent beyond the simple processing of transfer applications and the certification that the proposed transferee has the present ability

17. *Bullock v. Carter*, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972).

to fish, the Act eases the Commission's administrative burden, and allows it to focus its attention on other necessary duties, such as the setting of optimum numbers for limited fisheries and the decision whether presently open fisheries should be limited.

Free transferability, in other words, is meant to prevent hardship when a permit holder dies or becomes disabled; allow gear license holders to move from one fishery or type of gear to another; advance the causes of conservation, aquaculture, and adherence to fish and game laws by giving gear license holders a stake in the resource; increase the number of permits that are transferred; and ease administrative burdens on the state.

The opinion of the superior court, and the arguments of the Ostroskys, focus not on the foregoing purposes but on those identified in *Commercial Fisheries Entry Commission v. Apokedak*, 606 P.2d 1255, 1265 (Alaska 1980), namely, (1) enhancing the economic benefit to fishermen; (2) conserving the fishery; (3) avoiding unjust discrimination in the allocation of a limited number of entry permits; and (4) administrative convenience. While the objectives identified by the state are by no means unrelated to those expressed in *Apokedak*, the latter should be understood to be the overall objectives of a limited entry system.

Once the decision to institute a limited entry system is made, the question of how entry permits are to be transferred necessarily must be answered. The purposes of the transfer method will not necessarily be identical to the general purposes of limited entry. As we noted in *Apokedak*, 606 P.2d at 1264 & n. 39:

Seldom, if ever, will a statutory scheme, especially one as complicated as the Limited Entry Act, have a single monolithic purpose. The legislature usually acts with a variety of purposes in mind and each of these purposes deserves judicial recognition.²⁹

²⁹ This is not to say that the judiciary is required to hypothesize or invent purposes, something Jackson's intensified scrutiny test

specifically rejects. Close examination of the statutory scheme will usually yield several concrete legislative purposes having a substantial basis in reality, even if these purposes are not specifically identified in a statutory purpose clause.

[9] Each of the objectives identified by the state as purposes of free transferability was discussed in the extensive legislative hearings preceding passage of the Act. Thus, they may not be regarded as after the fact hypotheses. Further, the objectives are legitimate and they are fairly and substantially furthered by free transferability. We hold, therefore, that the equal protection clause of the state constitution is not violated by the transfer provisions of the Act.

The same analysis is applicable, and yields the same conclusion as to federal equal protection.

The judgment of the superior court is REVERSED.

RABINOWITZ, Justice, dissenting.

I.

I agree with the majority's suggestion that the conflict in constitutional provisions in this case is properly resolved by allowing the legislature to adopt a system of limited entry, but only through the means which are least restrictive upon other rights guaranteed in the constitution. Beyond the statement of this principle, however, I cannot agree with the application given the less restrictive alternative test to the "free transferability" system implemented by AS 16.43.170(h) and 16.43.150(h).

Free transferability impairs rights guaranteed by three separate clauses of the Alaska Constitution. The "common use" clause in Article VIII, section 3 provides:

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

The first sentence of Article VIII, section 15 states:

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State.

Finally, Article I, section 1 provides that "all persons are equal and entitled to equal rights, opportunities, and protection under the law."¹

In the absence of legislation pursuant to the second sentence of Article VIII, section 15,² the "resource" of the gear fisheries is reserved to the people for common use. The common use clause necessarily contemplates that resources will remain in the public domain, and will not be ceded to private ownership. Since the right of common use is guaranteed expressly by the constitution, it must be viewed as a highly important interest running to each person within the state.³

The enabling language of Article VIII, section 15 makes some inroads upon the application of the common use clause to the gear fisheries. Any system of limited entry, no matter how it is effectuated, will at any one time exclude a portion of the population from the resource. This observation, however, does not warrant the further conclusion that the common use clause is rendered a nullity with respect to entry legislation. In my view, Article VIII, section 3 still mandates that limited entry be achieved through the least possible "privatization" of the common resource.

Examined in these terms, free transferability makes the Limited Entry Act the most restrictive scheme possible under the common use clause. The ability to use and derive value from the gear fishery resource is dependent upon possession of a gear license, and these licenses are designed to operate as private property. The initial "grantees" enjoy the ability to sell, assign,

or pass on to their heirs their share of the gear fishery resource. Most importantly, the holder's right to the license never expires; the holder's heirs may hold it forever. Alternatively, they may sell it and realize a return based upon its value as an asset held in perpetuity. Under the free transferability system, none of the value of the resource is retained or ever returns to the state and the people.

In addition, I conclude that AS 16.43.170(b) and 16.43.150(h) create an "exclusive" right or "special privilege" within the meaning of Article VIII, section 15. Initial grantees were presented with a windfall at the expense of all other persons in the state. Public rights were extinguished in order to create exclusive private interests of sometimes enormous value. Under the equal protection clause, the populace was divided into two categories: those who would receive this great boon from the state, and those who would forever lose their share in the resource unless they someday "bought it back" through the purchase of a gear license.

Given the infringements upon the constitutional interests which I have described, free transferability would still be permissible under Article VIII, section 15 if it were necessary to a feasible system of limited entry. I believe, however, that the Ostroskys have presented a substantially less restrictive alternative that furthers all of the purposes which underlie free transferability.

The Ostroskys' principal objection to free transferability is that licenses never expire.

1. See also the "natural resources equal protection clause" in Article VIII, section 17.

2. Article VIII section 15 provides in relevant part:

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.

As noted by the majority, without this enabling language the entire limited entry statute would likely be unconstitutional.

3. I would hold that the state bears a high burden of showing the substantiality of its interests throughout our equal protection examination. Thus, I specifically disagree with the majority's conclusion that "[t]he individual interest asserted in appellants' challenge to the transferability provisions of the Act is not of a high order." In addition to the common use clause, see *Commercial Fisheries Entry Comm'n v. Apokedak*, 606 P.2d 1258, 1268 (Alaska 1980) ("important right to engage in economic endeavor"). See also *Hilbers v. Municipality of Anchorage*, 611 P.2d 31, 40 (Alaska 1980).

One alternative they suggest is that licenses should be issued only for a term of years, reverting to the state for redistribution upon expiration. In this way, the state would recapture control of the resource periodically and reassign it to the legislatively-determined appropriate recipients. Thus, the common resource would not be transferred forever to a discrete private class. The state and the people would have the recurring ability to allocate use rights.⁴

Under the proposed alternative, the length of the license term would be a matter for the discretion of the legislature, within constitutional limits. Article VIII, section 15 authorizes the state to create a limited entry scheme designed "to prevent economic distress among fishermen and those dependent upon them for a livelihood." This authorizes the state to define licenses in a way that makes it economically practical for license holders to fish. Given this authorization, the constitution recognizes that licenses may be granted for a sufficiently long period that the holder may be expected to recoup his investment in gear and vessel, and realize a reasonable return. Any license which goes beyond the level of reasonable economic attractiveness, and does so at the expense of the constitutional rights of others, is prohibited.

Similarly, the method of redistribution following expiration is also a matter of legislative choice, to be exercised within constitutional bounds. One proposal made by the Ostroskys is that reissuance should be made by lottery. This would prevent any danger of the licenses remaining in the

hands of a closed class. Any plan which effectively guaranteed renewal would be subject to the same criticisms leveled at the current free transferability plan.

The Ostroskys' suggestion does not actually require any change in the existing transferability scheme. Licenses may still be sold and inherited. The crucial difference is in the nature of the thing transferred. Licenses would resemble a lease interest in the resource as opposed to an outright ownership interest. They would still have value—possibly considerable value—and that value would be privately held. The distinguishing feature of free transferability with expiration is that something of the people's common use rights are still held by the state. Privatization of the common use interest is not effected to a degree well beyond what is necessary to implement an economically feasible limited entry system.

Because the Ostroskys have proposed an alternative for a feasible entry system which is less restrictive of the public's rights in the gear fishery resource, I would hold that the present statute is invalid under Alaska's Constitution.⁵

II.

I further disagree with the majority's discussion of the state's interest in the goals furthered by AS 16.43.170(b) and 16.43.150(h). The court's opinion appears to dismiss the importance of the overall objectives of the limited entry statute to the equal protection scrutiny of transferability

prudent investment by making the acquisition of a permit certain by the payment of the purchase price. It does not unduly complicate the transfer scheme. It retains the feature of limited involvement in transfers on the part of the CFEC. The commission's burden is increased only in that it must periodically reissue the licenses. In my opinion, free transferability plus expiration advances all of the above state goals equally as well as does the existing scheme of free transferability minus expiration.

3. Alternatively, I would order supplemental briefing in the case to allow the state to address the alternative of free transferability plus expiration.

4. The Ostroskys' "free transferability plus expiration" alternative serves all of the purposes advanced in support of the existing scheme. The alternative "prevents economic distress among fishermen and those dependent upon them" by protecting the family's source of income during the life of the permit even if the original holder dies or is disabled. It retains the "traditional mobility" of fishermen by allowing for the sale of limited-term permits. It encourages conservation of the fisheries by license-holders, who still have a direct economic stake in the health of their fishery. It discourages the creation of a closed class of fishermen by making this impossible; transfers of permits are still encouraged by the possibility of sale for money. It allows for planning and

provisions. It is true that specific sections within a complex statute will be designed to serve narrow purposes subsidiary to the statute's larger goals. It is also true that these narrow purposes may properly be asserted by the state in attempting to meet its burden under the state equal protection clause. The legitimacy of these subsidiary purposes, however, is seriously undermined if they are found to conflict with the greater goals of the statutory scheme as a whole.

Under AS 1643.010, the legislature has declared that "[i]t is the purpose of this chapter to promote the conservation and the sustained yield management of Alaska's fishery resource and the economic health and stability of commercial fishing in Alaska by regulating and controlling entry into the commercial fisheries in the public interest and without unjust discrimination." This statement of legislative intent does more than provide that one goal of the Limited Entry Act is to comport with the constitution. Decisions of this court have made it clear that the statute's policy of avoiding unjust discrimination extends further than to classifications forbidden by the constitution. *Commercial Fisheries Entry Commission v. Apokedak*, 606 P.2d 1255, 1268 (Alaska 1980).

In evaluating the strength of the state's interest in the goals behind the system of free transferability, it is incumbent upon this court to weigh the Ostroskys' argument that the legislatively-created "free market" for gear licenses discriminates on the basis of wealth.⁶ I would hold that the broad statutory anti-discrimination purpose of the Limited Entry Act militates against any system of transferability which makes gear licenses available only to the extremely wealthy. Certainly the state's interest in the current transferability provisions is diminished by the provisions' tendency to create such a classification.

6. I am also in disagreement with the court's observations that the Limited Entry Act discriminates on the basis of wealth only in the manner that any price does and I further disagree that liquor licenses and utility franchises furnish appropriate analogues. These assump-

David GLOVER and Dale Fett,
Appellants.

v.

Hubert SAGER & Hubert Sager, Jr.,
d/b/a Sager Trucking, Appellees.

No. 6659.

Supreme Court of Alaska.

July 22, 1983.

Action was brought for breach of employment contract. The Superior Court, Third Judicial District, Brian C. Shortell, J., granted defendants' motion for involuntary dismissal with prejudice at the conclusion of plaintiffs' case-in-chief, and plaintiffs appealed. The Supreme Court, Rabinowitz, J., held that: (1) breach of contract under ordinary principles of contract law and theory of promissory estoppel was established, and (2) trial court did not abuse its discretion by failing to impose sufficient sanctions for defendants' failure to make relevant documents available for discovery.

Reversed and Remanded.

1. Trial \Rightarrow 165

In considering motion for involuntary dismissal at close of plaintiff's case-in-chief in action tried by court without jury, trial court is required to view plaintiff's evidence in its most favorable light. Rules Civ. Proc., Rule 41(b).

2. Estoppel \Rightarrow 85

Promise which promisor should reasonably expect to induce action or forbearance on part of promisee or third person and which does induce such action or forbear-

ance overlooks the constitutional status of the right allocated by the Limited Entry Act and the fact that here the relevant "free market" is one which was created legislatively and one which perpetuates and aggravates economic disparities.

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3. Estoppel

Evidence re
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based on se
of employ
question of
promissory
estoppel

4. Master

Evidence
30 days for
truck can
of trucks
whether to
to make
to

5. Master

Evidence
defendant
contract of
offer to
of master
truck can
to make
to

6. Contract

Evidence
truck can
to make
to

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
DIVISION OF PUBLIC SERVICES

PETERSBURG LEGISLATIVE INFORMATION OFFICE

PHONE: 772-3741 FAX: 772-3779

FAX TRANSMISSION

465-2832

TO:

FAX #: DATE:

MESSAGE:

Sen Resources

Senator Loren

1 page + summary to
follow from Troy Curtis
Psg

CHAIRPERSON, SENATOR LOREN LEMAN

I Am for A limited entry of some kind. I don't agree with the tiered pot system. IF anything I would like to see a pot limit.

The tiered system will be fine for the larger boats but smaller boats will be hurt. Just because a boat is small and doesn't fish as many pots doesn't mean it is a small part of his income. many times it is just the opposite it could be the main source were as a bigger boat could have a number of other sources of income

THANK YOU

TROY CURTISS

P.O. Box 1532
Petersburg AK

99833

FAX TRANSMISSION

Date: 2/6/95

TO: Sen Reschler FAX #: 465-2832

MESSAGE:

2 page testimony to follow — to given on Feb 7 or during SB 42 Teleconference

THANK YOU, CHAIRMAN LEMAN

WE URGE YOU TO SUPPORT THIS LEGISLATION.

SINCE 1984 WE'VE BEEN TRYING TO ACHIEVE SOME PROTECTION FOR THE CRAB RESOURCE THROUGH LIMITED ACCESS TO THE COMMERCIAL USERS.

BECAUSE OF THE NATURE OF THE FISHERY WHICH USES MULTIPLE UNITS OF GEAR AND CAN BE FISHED VERY PASSIVELY, A TRADITIONAL LIMITED ENTRY (OF THE TYPE DEVELOPED FOR SALMON & HERRING IN 1974) PRESENTS MANY PROBLEMS

FOR
INSTANCE

A PERSON CAN FISH VERY MINIMALLY BY USING VERY FEW POTS AND PARTICIPATE WITH LITTLE ACTIVITY, THEY CAN SOAK WHILE ANOTHER JOB IS PURSUED - SO, WHEN CFEC CONSIDERS LIMITED ENTRY THEY MUST ALSO

INCLUDE THESE PEOPLE AS WELL (I BELIEVE THIS WAS STIPULATED IN COURT CASE *JOHN'S VS STATE OF AK*) THEREFORE THE POTENTIAL FOR THE ACTUAL # OF POTS IN THE WATER APPRECIATES SIGNIFICANTLY ~~THE~~ THE RESOURCE SUFFERS ~~CONSIDERABLY~~ AND THE MANAGERS HAVE NO REAL WAY OF KNOWING THE ACTUAL EFFORT FISHING.

SO FINALLY, IN 1991, THE LEGISLATURE PASSED A BILL IMPOSING A MORATORIUM ON NEW ENTRANTS INTO THE DUNGENESS FISHERY SO THAT WE COULD STUDY VARIOUS POSSIBILITIES FOR CONSERVING THE RESOURCE. SB #2 IS A DIRECT CONTINUATION OF THIS PROCESS.

- IN SEPT 94 CFEC HELD HEARINGS THROUGHOUT S.E., AND THE CRAB INDUSTRY WAS UNITED IN TRYING TO DEVELOPE A INCLUSIVE TIERED ACCESS SYSTEM WHERE FISHERMAN WOULD BE GIVEN PERMITS TIED TO GEAR

LEVELS CONSISTENT WITH THEIR PART
PARTICIPATION. THIS IS IMMINENTLY
FAIR BECAUSE ALL PARTICIPANTS
ARE INCLUDED BUT IT ALSO GIVES
THE MANAGERS SOLID CONTROL OVER
THE TOTAL NUMBER OF POTS ACTUALLY
FISHING.

Bill Flor

PRESIDENT

S. E. DUNGENESS CRAB ASSOC

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
DIVISION OF PUBLIC SERVICES

PETERSBURG LEGISLATIVE INFORMATION OFFICE

PHONE: 772-3741

FAX: 772-3779

FAX TRANSMISSION

TO: Sen Res. 465-2832
FAX #: DATE:

MESSAGE: An Chairman Loren Lemmon
2 Page Testimony to Follow
Prior to the Hearing

Re: S.B. 42
2-6-95 teleconference

To Senator Loren Leman
about Senate Bill 42

I am against limiting entry into the
Dungeness crab fishery. I feel it is unnecessary
and that the people trying to push this through
are in effect attempting to deny other people
the same opportunities they received. There are
very few fisheries left a person can participate
in without having to invest in a permit. It
has become almost impossible for a person to
buy a boat and make a living fishing without
some major financial backing. I would like
to be able to supplement what fishing I've
been able to afford to do with dungeness fishing.
I feel anyone should be able to make a living
at fishing by participating in any fishery he
wants to try to make a go of.

I believe this fishery would conserve itself
due to size limits, and I believe most
legal crab get caught, and it would be a
shame for a limited amount of people to
shut the door for those looking for the same
opportunities they had received.

I also feel most people who participate in
this fishery are involved with numerous other
businesses and will not endure any more financial

hardship and probably less than those of
us who would lose the option to become
involved in this fishery.

Thank you,

Chris Ceris

Chris Ceris

Box 145

Petersburg, Ak 99833

(907) 772 4602

342

February 7, 1995

FEB 7 1995

Senate Resource Committee
Senator Loren Leman, Chariman
Senator Robin Taylor
Senator Drue Pearce
Senator Lyman Hoffman
Senator Georgianna Lincoln
Senator Rick Halford
Senator Steve Frank

Dear Senators;

I would like to say a few things about the Southeast Dungeness Crab Fishery and the proposed tiered system. I am a member of a dungeness crab fishing family.

The "Crab Coalition" was formed several years ago by a few local fishermen who had originally entered the dungeness fishery because there were no other unlimited fisheries for them to get into. They learned very quickly that the dungeness fishery was wide open with very few people knowing how lucrative it was. They have made a lot of money over the last 10 or so years with dungeness and thus have all been able to buy into other fisheries that are limited entry fisheries. They formed the "Coalition" because they simply do not want to share their wealth with their neighbors and friends who got into the fishery a few years after them.

If there is a dungeness crab stock problem then shouldn't ADFG shorten the dungeness season?

If there really are too many pots in the water shouldn't we lower the pot limit for everybody?

I believe the "Crab Coalition" got their heads together and agreed on the tiered system which would "look" as if it is being fair to the other fishermen but which in fact would eliminate many of those others as competition for dungeness crab.

I view dungeness pots and corresponding incomes as follows:

300 pots - A very good income
200 pots - A reasonable living
100 pots - Unable to make expenses

The "Coalition" would like you to believe that fishermen who qualify for 100 pots or less would be able to buy into being able

to fish more. I do not believe that anybody fishing a 100 or less pots will be able to make expenses let alone be able to buy into being able to fish more. 100 pots or less would probably eliminate those fishermen from the fishery. The "Coalition" is not interested in the "stocks", they are simply interested in eliminating their competition. If they are successful at this tiered system it will adversely affect many Southeast commercial fishermen and their families.

Please be very careful when deciding the fate of the Southeast Dungeness Fishery. The "Coalition" has made very, very good money with this fishery and are speaking very loudly to control this fishery for themselves alone. There is no reason that this fishery shouldn't be able to support equal effort from everybody who has been involved. If this means lowering pot limit slightly or shortening the season so be it. If we need limited entry then please consider equal treatment for all those fishermen who invested time and money in the fishery from the moratorium year back.

Thank you for your time and consideration.

Sincerely,



Vicki Curtiss

**STATE OF ALASKA
THE LEGISLATURE**

LEGISLATIVE AFFAIRS AGENCY
DIVISION OF PUBLIC SERVICES

PETERSBURG LEGISLATIVE INFORMATION OFFICE

PHONE: 772-3741 FAX: 772-3779

F A X T R A N S M I S S I O N

Date Feb.8,1995

To: Senate Resource Committee

Fax: #907-465-3810

**Message: One page Letter to follow, written
testimony for 2/10/95 House Resources Committee
meeting, and 2/8/95 House fisheries Committee
meeting**

RE: HB 107 / SB 42

**From Thomas O. Drennan
Petersburg Fisherman
P.O. Box 823
Petersburg, Ak. 99833**

TO: SENATOR TAYLOR
 REPRESENTATIVE GRUSSENDORF
 SENATE RESOURCE COMMITTEE
 HOUSE FISHERIES COMMITTEE

RE: SENATE BILL 42
 HOUSE BILL 107

1-8-95

DEAR LEGISLATORS,

I OPPOSE THE TIER SYSTEM FOR DUNGENES CRAB. I FEEL THAT ENFORCEMENT WOULD BE NEXT TO IMPOSSIBLE DUE TO VARIOUS AMOUNTS OF POTS. THE ADFG POT REGISTRATION IS A LOCAL JOKE. I WAS LAUGHED AT BY OTHER CRABBERS WHEN I TOLD THEM I ONLY HAD REGISTERED 60 POTS IN 1988 WHEN I FIRST STARTED. THEY SAID I SHOULD HAVE CLAIMED 300 POTS LIKE EVERYONE ELSE.

I SUPPORT TRADITIONAL LIMITED ENTRY. IF THERE ARE TOO MANY POTS LET THE CFEC / ADFG REDUCE THE LIMIT TO 200 OR EVEN 150 POTS PER BOAT.

THE TIER SYSTEM IS NOT DESIGNED TO SAVE THE FISHERY. IT IS DESIGNED TO SAVE THE INCOME OF THE ELETE "300" POT CLB. LET EVERYONE CONTRIBUTE IN REDUCING POT EFFORT. PLEASE DON'T LET THE GREED OF A FEW RUIN THIS FISHERY FOR THE SMALL INDEPENDENT FISHERMAN.

THOMAS O. DRENNAN
 BOX 823 PETERSBURG, AK 99877

THANK YOU
 Thomas O. Drennan

**STATE OF ALASKA
THE LEGISLATURE**

LEGISLATIVE AFFAIRS AGENCY
DIVISION OF PUBLIC SERVICES

PETERSBURG LEGISLATIVE INFORMATION OFFICE

PHONE: 772-3741 FAX: 772-3779

FAX TRANSMISSION

To: Senate Resources Committee

Fax: #907-465-3810

Date: 3-20-95

Message: 2 pages to follow

March 20, 1995

Senate Resource Committee

Regards to: HB 107;SB 42

A fishing permit in the State of Alaska, constitutes a privilege to fish. One person should not be more privileged than another, just because of his level of fishing during a selected couple years.

The privilege should create an equal opportunity for all those participating, and future participants.

House Bill 107 and Senate Bill 42 is addressed to allow a select group of fishermen to participate at maximum historic levels of the past, while saddling the remaining group of those participating in the same fishery with the burden of resource conservation through reduced levels of effort and competition.

The State, when constructing a new type of limited entry program, should avoid repeating the malady and inequity created by the Federal IFQ program for longline fisheries, which benefitted and tremendously rewarded so few, and left the majority of others with very little or nothing.

This legislation, in regards to the S.E. Dungeness Crab Fishery, might not be necessary through the use of existing management tools. The current Limited Entry Program could be used, and action by the Board of Fish and Game, reducing the maximum allowable pots fished per permit, would contain the level of effort, protect the resource, and maintain a viable and equitable fishery.

Another option that addresses the needs of the S.E. Dungeness Crab Fishery would require amending the current bills or adopting new ones to conform to the "Fractional Licensing Limited Entry Proposal", as outlined in the attached CFEC document.

Thank you,

Dennis K. Rogers
P.O. Box 542
Petersburg, Ak 99833

Alternative Limited Entry Programs Suggested By Fishermen

2. Fractional Licensing Limited Entry Proposal

Fractional licensing ideas have recently been discussed in the economics literature and in NPFMC documents. Again, there could be many different versions of such a proposal.

Under a version of a fractional licensing proposal described to CFEC, the commission would initially issue permits for the same number of pots. For example, the commission might decide that everyone who receives a limited entry permit would receive a permit that would allow them to fish up to 150 pots.

This proposal would also allow for "stacking" of permits. For example, if a person with a 150 pot permit wanted to fish 300 pots, the person would have to purchase another permit and then have the commission combine them into a single permit for 300 pots. The "stacking provision" in this fractional licensing proposal could lead to a reduction in the number of operations after limited entry through voluntary contracting among fishermen.

Again, any Board of Fisheries regulations on the maximum number of pots which could be utilized also would need to be followed. This proposal would also require substantial changes to the limited entry law.

Pros:

- Might better control the growth in fishing capacity after limited entry than would the current LE program. To the extent the program is enforceable, the number of pots fished would not increase after initial allocation.
- Would provide a natural market mechanism for fleet reductions.

Cons:

- Would need changes in the limited entry law to allow for program
- Pot limits per permit may be difficult to enforce
- Some persons would initially be forced to take a reduction in the number of pots which they could fish.

Alaska State Legislature

Chairman
Judiciary Committee

Vice Chairman
Transportation Committee

Member
Resources Committee
Western Legislative Districts Task Force



State Capitol
Juneau, Alaska 99801 4182
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Fax: 907-465-3922

162 Front Street
Ketchikan, Alaska 99801
907-225-6095
Fax: 907-225-0713

Senator Robin L. Taylor

Sponsor Statement

Senate Bill 42

Relating to restrictions attached to certain commercial fisheries limited entry permits

This legislation would allow the Commercial Fisheries Entry Commission to implement a permit system for the Southeast Alaska Dungeness crab fishery.

The amount of effort already concentrated in this region has required some new methods for limiting the fishery. Unfortunately, this effort has induced a requirement for a tiered system of permits -- there are simply too many dungeness crab pots in the water.

This legislation would allow the CFEC to implement a tiered level of permits. One that has been suggested calls for three permits levels; one-hundred, two-hundred and three-hundred pot gear cards. Qualifications for would be based upon historic gear use.

The Southeast Alaska Dungeness fishery moratorium expires in 1996. Consequently, it is important that this legislation be passed this session so that it can be implemented in a timely fashion to avoid additional effort on this fishery.

MEMORANDUM

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

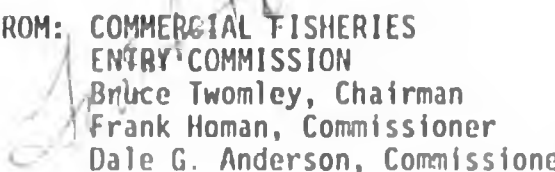
TO: Senator Loren Leman, Chair
Senate Resources Committee

DATE: February 3, 1995

FAX NO: 789-6170

TELEPHONE NO: 789-6160

SUBJECT: Position Statement for
SB 42


FROM: COMMERCIAL FISHERIES
ENTRY COMMISSION
Bruce Twomley, Chairman
Frank Homan, Commissioner
Dale G. Anderson, Commissioner

CFEC POSITION STATEMENT

CFEC supports Senate Bill Number 42. Under Alaska's current limited entry program, CFEC can limit the number of persons (permit holders) in a fishery but does not have the explicit authority to limit the fishing capacity of similarly situated classes of entry permit holders within a fishery. The legislation is forward oriented and only applies to fisheries limited in the future after completion of the public hearing process. It will have no impact on established limited fisheries. This legislation does not alter or limit the powers of the Board of Fisheries to impose additional restrictions of fishing capacity. SB 42 would provide CFEC with improved resource conservation tools.

The impetus for this legislation was generated by the Southeast Alaska Dungeness crab fishers after public hearings and research during the current moratorium. The need for immediate action is in the impending expiration of the CFEC moratorium on new entrants into the fishery. By law (AS 16.43.227), this moratorium will expire on January 2, 1996. A majority of participants at the public hearings favored a limited entry program for this fishery. If CFEC does not move to limit the fishery before January 2, 1996 it will return to open access.

Background

The current limited entry program has proven effective in limiting the growth in fishing capacity and effort when administered in salmon and herring fisheries when utilization is already maximized. However, the existing program thwarts the Commission's efforts to achieve effective resource conservation goals in Alaska's fisheries that employ a broad spectrum of vessel size and quantity of gear. Simply limiting the number of participants will fail to contain growth in fishing capacity and effort.

In such fisheries, smaller more part-time operations would tend to sell out to larger more full-time operations after limited entry. For example, this is true of the Southeast Alaska Dungeness crab fishery where many small boat participants currently fish a small number of pots on a part-time basis. This is also true in many of the state's other crab fisheries and state managed groundfish fisheries. By setting the fishing capacity of entry permits roughly at pre-limitation levels, entry limitation would do a better job of resource conservation by controlling the growth of excessive fishing capacity and effort.

This legislation would also help preserve the diverse nature of the fleet in such fisheries and help ensure that some of the entry permits in limited fisheries will be available and more affordable to smaller part-time and entry level operations.

Many of Alaska's valuable fisheries that coastal communities depend on may soon be facing an influx of new fishermen because of recent limitation programs and closures in other jurisdictions. In some of these fisheries, access restrictions may be needed in the near future to help conserve stocks and preserve the benefits of development for Alaska. This legislation would allow limitation programs better designed to fit the diverse nature of Alaska's fisheries.

SOUTHEAST DUNGENESS CRAB ASSOCIATION
P.O. Box 262
Petersburg, Alaska 99833
907-772-9248



December 21, 1994

Commercial Fisheries Entry Commission

Dear Mr. Twomley and staff:

Enclosed is a copy of our letter requesting Rep. Grussendorf and Senator Taylor to introduce and support a tiered pot system bill. As we talked this fall we are counting upon you to draft a bill which will include the major ideas discussed in your hearings and embrace a sufficient simplicity so as to increase our chances of passage.

Our financial status this time around is such that we won't be able to hire a lobbyist to track the bill, therefore we are also counting heavily upon your help in this area.

We are optimistic about this effort but hope you realize that if it fails a traditional limited access, even if it requires serious pot reductions, must be imposed before the moratorium expires as this fishery will never be able to withstand the certain flood of new participants.

Looking forward to hearing from you!

Sincerely,

A handwritten signature in cursive script that reads "Bill Flor".

Bill Flor, SEDCA

Background

SOUTHEAST DUNGENESS CRAB ASSOCIATION
P.O. BOX 262
PETERSBURG, ALASKA 99833
907-772-9248
December 22, 1994

DEC 27 1994
SERIES
ED

Dear Representative Grussendorf:

It's been almost four years since we passed the moratorium legislation which placed our S.E. Dungeness fishery in it's current moratorium status. This will expire Jan. 2, 1996.

At the request of the S.E. crab fleet the Commercial Fisheries Entry Commission held hearings this fall to try and work out a solution for a more permanent limited access scheme. Four main ideas were discussed: traditional limited entry, IFQ, tiered pot system, and fractional licensing. CFEC is reluctant to impose a traditional limited entry because of a possible increase in effort. (We currently fish a 300 pot limit but average 150 pots, hence the possibility to double the gear in the water.)

The other three ideas discussed required some type of legislative work. Both IFQ and fractional licensing were seen as too contentious and complicated with little possibility of success.

The tiered pot system was embraced by CFEC and the fleet both for it's fairness and possibility of achievement. Simply stated it places a crabber within a gear strata (i.e. 300/200/100) depending upon past effort. The fairness of this idea lies in that no one is excluded. There are many variations but our hope is that a sufficiently simple bill can be worked out that could achieve passage.

We have contacted CFEC to draft a proposed tiered system bill which we hope you would introduce and support.

Timing is critical. Our moratorium expires after this year and without further protection the S.E. Dungeness fishery will be in serious trouble (Ca., Or., and Wa. limited their dungeness fisheries this year.) We're counting on you to continue your support and looking forward to working with you.

Sincerely,

Bill Flor, SEDCA

c.c. Senator Robin Taylor,
C.F.E.C.

03/27/96

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

15:41:47

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:PSG

TCN:60608 SCHEDULED FOR:03/27/96 15:30 TO 17:00

FOR:PSG

PUBLIC HEARING

SENATE RESOURCES

LOCATION: BRANGELL LTC

SB 42

MR. STEVE

THOMASSEN

TESTIFY

SB 42

MR. OTTO

FLORSCHUTZ

TESTIFY

03/27/96

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

16:16:57

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:PSG

TCN:60608

SCHEDULED FOR:03/27/96 15:30 TO 17:00

FOR:PSG

PUBLIC HEARING

SENATE RESOURCES

LOCATION: PETZERSBURG

SB 42

MR.

MARK

JENSEN

TESTIFY

SB 42

MR.

JOHN

JENSEN

TESTIFY

SB 42

MR.

BOB

GRANIE

TESTIFY

SB 42

MR.

BOCKY

LITTLETON

TESTIFY