

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86 / 285

585 SCOM17: JOINT INTERIM COMM. ON LIMITED ENTRY 1979

UNRESOLVED QUESTIONS ON
POLICY AND COMPLIANCE ISSUES

During our tests of the implementation of the limited entry program the following items were questioned as possibly not being within the legislative intent of the Commercial Fisheries Entry Commission's (CFEC) statute AS 16.43. Some questions were raised because of the differing legal opinions or unresolved court cases. Other items are presented because policies established by the CFEC to implement the statutes were questioned by us as to whether they are within the intent of the law. We make no recommendations concerning these policy issues because they are legal issues, and they will require Executive, Legislative or Judicial consideration.

- I. There are presently 80 court cases on limited entry pending. Some of the cases, should the courts find for the plaintiffs, could substantially alter the CFEC program. It was generally acknowledged by the attorneys involved that the high number of cases were a direct result of the soaring prices of permits on the open market. The possible effects of the court decisions on CFEC are wide ranging.
- II. The formula used by CFEC to rank applicants based upon the "percentage of income derived from the fishery" compared to "non-fishing income" required by AS 16.43.250(a)(1) is questioned. The CFEC in 20 AAC 05.660(3) in calculating "non-fishery income" excludes interest, rental income, and most other income except wages and net business income when comparing "non-fishing income" to "income derived from the fishery".

In part, an opinion requested from Legislative Affairs, Division of Legal Services states:

"The regulations in question do not promote the specific purpose of section 250(a)(1) even though they utilize the specific factors enumerated in section 250(a)(1). Under these regulations, a person with ten thousand (or one hundred thousand or a million) dollars in annual income from rental property and one thousand dollars in annual income from fishing would stand on an equal footing with a person who has only the one thousand dollars in annual income from fishing. It would be difficult at best to convince a court that these people are equally economically dependent upon the fishery and, thus, as measured by the economic dependence standard,

would suffer equal hardship being denied an entry permit. This is not to pick out rental income as particularly prone to criticism; the exclusion of any income under the economic dependence standard tends to undercut the purpose of this paragraph. The legislation does not define income; the commission was left to define this term. However, I believe the CFEC's definition is contrary to the intent of section 250(a) (1)."

III. The CFEC's method of ranking a person on the basis of the availability of alternative occupations as required by AS 16.43.250(a)(1) is questioned. The CFEC ranked applicants for alternative occupations based upon their residence in 1972 without regard to their present residence in 1975 or whether or not their employment background indicated alternative employment skills. Applicants whose place of residence had a population of under 10,000 received 4 points of the maximum 20 required to receive a permit and an applicant whose place of residence had a population over 25,000 received -0- points. Secondly, the CFEC used two standards to determine an applicant's place of residence in 1972 in ranking applicants for alternative occupations. Persons holding a gear license between 1969-1972 could, upon request, receive an application on which some points were pre-printed by CFEC. Pre-printed points were granted for the lack of alternative occupations based upon the applicant's address on his 1972 commercial license. This rating was given by the CFEC and required no evidence on the part of the applicant that the address on the commercial fishing license was in fact his place of residence. It is our understanding that it was common practice for many fishermen to use the address of fish processors rather than their actual residence when purchasing commercial fishing licenses. However, persons applying without a pre-printed application from CFEC were required to provide substantially more evidence to establish their residences at December 31, 1972.

IV. We examined CFEC's performance in analyzing and rating applications for entry permits, and we questioned some policies and practices which may have allowed unqualified applicants to receive permits.

A. CFEC granted up to 10 points for income dependence or 50% of the maximum 20 points required for an applicant to be eligible for

a permit. To test for income dependence CFEC asked for copies of an applicant's 1971 and 1972 Alaska income tax returns on file with the Department of Revenue. In some cases CFEC granted income dependence, simply because no income tax return was on file, without seeking additional corroborating evidence. This allowed copies of income tax returns or other documentation of a questionable nature to be used. For example a child four years old, at the time of qualifying, was given credit for income dependence because he had not filed an Alaska tax return and because an affidavit from his father stated he had fished for six weeks in each qualifying year.

- B. The CFEC in some cases allowed a single affidavit from a family member to qualify an individual for a permit without additional corroborating evidence.
- C. A former Commissioner of the CFEC granted permits to individuals based upon his personal knowledge of those individuals. The Commission has since reviewed and revoked some of these permits.
- D. To qualify an individual for a permit, CFEC required substantially less evidence from salmon fishermen from the Artic Yukon Kuskokwim (AYK) fisheries than from other salmon fisheries which have been limited. In addition some subsistence fisherman have legally engaged in commercial fishing as non-gear license holders but could not apply because of CFEC's regulations. The use of inconsistent criteria between similar fisheries or fisherman may result in additional court challenges of CFEC's actions.
- V. CFEC's regulations allowed credit for income dependence in 1971 and 1972 only if the applicant held a gear license for either year. AS 16.43.250(a)(1) does not require a person to have a gear license to be included in the measurement of income dependence. CFEC's regulations prevented persons who held gear licenses in prior years but who crewed in 1971 and 1972 from receiving credit for income derived from the fishery. We question this method of rating because legislative intent appeared to require a balance between past participation and income dependence for the fishery regardless of licensing status.
- VI. AS 16.43.260(a) stipulates that applications be accepted only from a gear license holder. However,

the Alaska Supreme Court held .260(a) to be unconstitutional. It is unclear whether the Supreme Court intended that the requirement that a person be a gear license holder was unconstitutional or not. The CFEC held that it was not unconstitutional and only considered additional applications from gear license holders for 1973 and 1974. Persons who had missed the original filing date were not considered.

The issue of whether a person needed to have a gear license to apply for a permit is again before the Alaska Supreme Court. The lower court has held that a gear license is not required.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Commercial Fisheries Entry Commission (CFEC) and the Department of Fish and Game (F&G) should communicate and cooperate more closely with one another.

CFEC is primarily concerned with maintaining a healthy and viable fishing industry, while F&G's primary emphasis is on the protection of fishery resources. Although there are inherent conflicts in these two goals, the State's combined interests would be better served if CFEC and F&G communicated and cooperated more closely. This is illustrated by the following examples:

- A. There needs to be a better interaction of limited entry permit and fish ticket data. For example, CFEC processes vessel licenses data which is utilized by F&G. Because of inadequate communication between the two agencies, certain data that is relevant to fisheries management which had previously been included on vessel renewal forms was omitted in 1979. As a result F&G has had to contact fishermen and have them fill out a form supplying this information. Had the agencies been more aware of each other's needs and capabilities, this duplication of effort would not have occurred.
- B. CFEC and F&G need to pool their resources to help enforce limited entry laws (also see Recommendation No. 4). F&G works closely with fishermen and canneries, and is responsible for the collection and processing of fish tickets. While F&G uses this data primarily for biological and management statistics, the data could also be utilized for enforcement purposes. CFEC has the data processing capability to develop fishing histories for individual permits, and to develop computer software that will edit any irregularities. CFEC's data processing resources should be coordinated with F&G's fish ticket data, so F&G personnel who deal with fish tickets could have the tools and training to recognize potential violations.
- C. The function of registering commercial vessels was transferred from F&G to CFEC. CFEC found many errors in the historical vessel information transferred to them. In their attempt to correct these problems they themselves made many errors in the corrections and issuance of vessel registration

numbers. Because this information is very important to biologists comparing historical fish catch and fishing effort, the errors have caused an increased administrative burden on both F&G and on Fish and Wildlife Protection (F&WP).

The major roles and responsibilities of CFEC and F&G are distinct, and the organizational separation of the two agencies helps them to counter-balance one another. However, unless the agencies cooperate more closely in their use of data and manpower resources, consideration should be given to integrating CFEC into F&G's organization.

Recommendation No. 2

Organizational and procedural changes would enable CFEC to better administer limited entry laws and provide service to the public.

The CFEC's efficiency and effectiveness could be improved by the implementation of certain organizational and procedural changes. Some of the changes that should be considered are discussed below:

- A. CFEC should be more accessible to the public. We found CFEC's staff to be courteous and cooperative in their dealings with the public. However, public access is limited by the CFEC's office hours and location.

Staffing should be staggered so that information and application desks remain open during lunch and early evening hours. Saturday hours should be considered during peak renewal seasons. In addition, CFEC should have regional offices to provide fishermen with information and assistance. Only a minority of persons needing the services of CFEC live in the Juneau area, so most others must seek information or conduct business by long distance telephone and mail. This results in inefficiencies and expense to both fishermen and CFEC. For example, fishermen who apply for permits in unlimited fisheries may be faced with the choice of sitting out the season for three to four weeks, fishing illegally until their applications are processed, or arranging for an agent to pick up their permits in Juneau. In such cases there should be a mechanism whereby permits can be purchased locally. In addition, CFEC's work is more difficult and less timely when inaccurate or incomplete application forms are received.

B. Renewals of permits and vessel licenses could be staggered. The current procedure is to send out all notices for renewals in November, and fishermen are required to renew before they begin fishing. This allows crab fishermen little time before the season opens. Most other fisheries begin in late spring and as a result most renewals are submitted at that time. The resulting need for overtime and temporary employees represents an inefficient use of State resources, and the likelihood of processing errors increases. We recommend that renewals be staggered to better meet the time frames of different fisheries and to distribute workload throughout the year. Furthermore, penalties should be charged for late renewals.

C. The work distribution and classification of several staff positions should be reviewed. For example, the job duties of the Accounting Clerk I and the Document Processing Clerk II in the permit section are more complex than those of the Document Processing Clerk III. We also noted that time-consuming but routine phone calls about renewals, fees, etc., are handled by the permit section coordinator. Calls of this type could be handled by a designated clerical or administrative assistant position, with more complex requests for information referred to the section head or an Information Officer.

The Executive Director position should also be reviewed. This position was created at a time when CFEC needed someone to organize and establish administrative policies and procedures for the actual day to day operations. At that time, Commissioners were concentrating on broader policy issues and adjudications. However, the more routine administrative duties performed by the Executive Director could now be delegated to an Administrative Assistant and section heads, with more complex administrative matters performed by the three Commissioners. We therefore recommend this position be eliminated.

D. In addition, an Information Officer should be appointed to organize and coordinate information relating to limited entry. Currently, information organization and dissemination is fragmented and addressed on a part-time basis only. A full-time Information Officer would help to eliminate the misunderstanding and confusion regarding limited entry laws and CFEC's policies through closer communication with fishermen, related State agencies and other interested persons. For example, field

biologists and enforcement personnel should be provided with informational materials and compact copies of statutes and regulations. If similar materials were also developed and made available to the general public, there would be a better understanding of CFEC's roles and responsibilities in administering limited entry laws.

Recommendation No. 3

CFEC should establish an effective method of monitoring the economic health of the fisheries.

Presently CFEC has a Research Section with funding for two economists and three research analysts. The economists' primary function is to provide research of the economic conditions existing in the fisheries, and report their findings to the Commission. To date this function has not been effectively implemented, for the following reasons:

- A. Economic studies of most fisheries have not been made, and as a result CFEC can not begin establishing the optimum number of entry permits for these fisheries.
- B. CFEC has not established an effective system to monitor the economic health of fisheries, and therefore can not effectively participate in the economic management and stability of the commercial fisheries.
- C. Significant economic changes have occurred in the fisheries, both salmon and shell fish, and CFEC presently does not have the flexibility to monitor the economic health of these fisheries.
- D. Although CFEC has funding for two economists it has not effectively used these positions to monitor the fisheries. One economist position was left vacant for 18 man-months and the other economist only spent an estimated 40% of his time on economic research. Economic studies which have been performed have been specialized and not of sufficient scope to provide the economic trends of the fisheries.

CFEC needs economic information studies, in addition to internal data gathered on the fisheries, to effectively participate in the management of the commercial fisheries resource. We recommend CFEC consider using private consultants to conduct this economic research because the need for economic studies and analysis fluctuates. It cannot be adequately responded to by a fixed number of economists because it is unlikely the available man-days of research

will match the CFEC's need for economic studies. The use of private contractors would provide CFEC more flexibility in obtaining expertise and in matching costs to production.

The implementation of this recommendation may not result in the termination of any State employees because the two economist positions are presently vacant.

Recommendation No. 4

It is essential for efficient fishery resources management that there be more coordination and cooperation between the Department of Fish and Game, Division of Commercial Fisheries, Commercial Fisheries Entry Commission, and the Department of Public Safety, Division of Fish and Wildlife Protection.

To assess the effect of limited entry on the fisheries, we reviewed files and historical data at the Department of Fish and Game (F&G), Commercial Fisheries Entry Commission (CFEC), and the Department of Public Safety, Fish and Wildlife Protection (F&WP) offices. In addition, we talked to personnel at each agency as well as fishermen, cannery personnel, and other interested parties.

During our review we noted that the following problems existed in 1977 and 1978:

- A. Fish processors turned in fish tickets indicating that fish were caught and sold by 16 fishermen who did not have a permit card, and by 38 fishermen who were using prior years permit cards during 1977. We could not make a similar review of 1978 fish ticket data because F&G had not processed all 1978 fish tickets at the time of our review. However, we did find the problems still existed in 1978.
- B. Fishermen without their own permits were using other persons' permits to sell fish. This occurred because of leasing and loaning of permits. The extent of this problem is not known because many fish tickets are not signed, or are signed by crewmembers or fish buyers. Discussions indicated that the practice of leasing and loaning of permits is common.
- C. Handwritten fish tickets had a higher rate of data error than imprinted fish tickets. Fish tickets were frequently handwritten, increasing the possibility that the fish buyer could have bought fish from a fisherman who did not own a permit card.

- D. Historical methods of fishing by family units or communities is still occurring through community use of permits. Again, the extent of this problem is not known due to the condition of fish ticket data.
- E. F&WP is not able to adequately patrol the commercial fisheries. F&WP has approximately 90 officers for protection of all the fish and game resources of Alaska. They do add temporaries for assistance in enforcement of the commercial fisheries during the summer months, but because of the large geographical fishing areas, they are not able to patrol the entire fishery.
- F. Data available from fish tickets has not been effectively used to monitor violations. We were able to detect possible violations through a computer match and evaluation of permit and fish ticket data for 1977. At the present time, this capability is not regularly used by the State. In addition, fish tickets are not processed in a timely manner. We could not make a systematic review of 1978 data, because the 1978 fish tickets had not been processed by May of 1979.
- G. We have been told that some biologists from F&G have refused to enforce the fishing laws and regulations of the State. Many biologists believe it is their duty to enforce these laws but are hesitant to do so because they do not feel they have the necessary knowledge. F&G and the Department of Public Safety have been providing a week-long training course for biologists. We found that both the biologists and the protection officers were very enthusiastic about the program and would like to see it continued. We believe this is a good start toward consistent enforcement, but that more emphasis needs to be placed on enforcement by F&G. Inconsistent enforcement creates confusion and resentment from the public.
- H. There is an economic incentive for fishermen to violate commercial fisheries laws because penalties are usually minimal, and some violators have been allowed to keep illegally caught fish. The average fine for a commercial fishing violation in 1977 was less than \$300. In addition, we were informed of two cases where the fishermen were found guilty of fishing without an entry permit, but the value of the catch from the illegal operation, which amounted to thousands of dollars, was returned to the fishermen even though statutes require forfeiture of illegally caught fish.

Based upon our evaluation of the commercial fisheries it is apparent that many fish processors and buyers are not concerned with the licensure of the fishermen from whom purchases are made. Conversations with biologists and protection officers confirm our observations. It therefore is not possible to expect licensure to be an effective primary control over unauthorized persons selling fish until increased enforcement of entry permits use is established.

To provide more effective administrative and enforcement controls, we make the following recommendations:

- A. CFEC should laminate a photograph of the permit holder to his permit, in a manner similar to the Alaska drivers license. We realize that there would be a logistics problem in outlying areas; however, we believe the added control provided by photos outweighs the problems.

The photo would provide ready identification of the permit holder, not only by enforcement personnel and biologists, but by the fish buyers as well. A buyer is less apt to purchase fish if he knows the individual is not the valid permit holder. The photo on the permit has been recommended by protection officers, biologists, and members of the Board of Fisheries. However, CFEC has not as yet taken this step.

- B. Additional seasonal employees should be added to F&WP. Most of the increased manpower could be used to monitor fish buyers by placing these employees on the tenders and docks to assure that purchases are made only from authorized permit holders. This recommendation and the lamination of a photo to the permit would be a very effective deterrent to illegal use of permits. However, increased enforcement effort of this type is not desirable without the increase in staff because it would reduce enforcement in other areas, such as resource conservation.
- C. Regulation 5 AAC 39.130(b)(9) should be enforced. This regulation requires the fish buyer to use the valid permit card of the gear operator to mechanically imprint the permit number and related data onto the fish ticket. Strict enforcement of this regulation would reduce the chance of a non-permit holder being able to sell his fish and would also improve the data error rate of fish tickets by reducing the number of handwritten fish tickets. Legal action should be taken against fish buyers who purchase fish without the fisherman having evidence of a permit.

- D. Fish tickets should be processed in a more timely manner. Timely processing of fish ticket data would make information available for biological reports (the last annual report processed was dated 1975) and resource protection, and would help satisfy a need for public information on the resource.

Fish ticket information could also be useful as an enforcement tool. This will require the cooperation of F&G and CFEC to develop timely and accurate information. Presently, F&G receives, processes, and edits the fish ticket data; however, CFEC maintains records on permits and vessels. Through coordination with the CFEC, potential violations could be identified and investigated by either F&G or CFEC, depending on whether it is a violation of CFEC laws or F&G laws (F&WP can access fish ticket data only through a court order).

- E. The field biologists of F&G need to take an active role in enforcement of the commercial fisheries laws. As indicated in the recommendation above, biologists have ready access to information concerning possible violations, and therefore are in a good position to follow up on them. While the Department has made an effort to make enforcement a part of the duties of the professional staff, it should be further emphasized.
- F. Legislative consideration should be given to amending AS 16.05.710 which states in part "Upon a third conviction, the court may, ..., forfeit the commercial fishing license for a period not to exceed three years". Amendments would be as follows "the court shall, ..., forfeit the commercial fishing license for a period not to exceed three years". This would require a forfeiture of the permit for a third conviction of a commercial fisheries violation.

Recommendation No. 5

Adequate internal control and security procedures should be established and implemented for processing and physical control of permit cards and confidential records.

- A. A segregation of duties is needed in the handling of fees received by mail before transmittal to the permit section for processing. Presently, fees are received, attached to the application and submitted to the permit section by the mail clerk.

This could be improved by having the mail clerk list checks and count cash prior to transmittal to the permit section. This count could then be checked against the transmittal listings after the fees are processed in the permit section for transfer to the State treasury.

- B. Most permit cards are purchased by CFEC pre-punched from a private contractor, with new issues and transfers punched in-house on blank stock kept on hand.

CFEC needs to improve the physical control over handling of permits and permit stock. We observed the following problems:

1. Permit cards with the permit number and name of owner already imprinted are maintained in unlocked cabinets.
2. Permit cards and blank stock can be accessed by all CFEC staff. We found many of the staff held blank stock in their desks as samples.
3. Although the machine used to punch permit cards in-house is locked in a room, it could be accessed by all CFEC's staff.

In addition, we found that the necessary equipment needed to forge permits is readily available on the open market. There is no reason to believe illegal entry permits will not be available for a price when similar documents can be purchased on the black market: e.g., Alaska hire cards, driver licenses, credit cards.

Although we found no evidence of any wrong doing, the high value of permits requires that all reasonable efforts be made to control physical stock and to establish procedures to ensure that only persons making the permits have access to the punch machine and blank stock. Samples needed by the staff should be voided prior to issuance.

- C. During our review we recommended that access to confidential information on file with CFEC needed to be limited to authorized persons. CFEC has assured us steps are being taken to implement this recommendation.

- D. Instances of card errors have occurred under the present processing system and could be improved by final verification of the punched card to a source other than the one used for punching the card. Also, the amount of purchased card stock should be reconciled to the number of cards punched, issued and on hand.

Presently CFEC is considering the purchase of a more sophisticated card punching machine which would eliminate the need for several processing controls including the following:

1. The machine would immediately proofread punched cards, eliminating punching errors.
2. Cards would be punched when they are renewed which would eliminate prepunched card stocks and allow for current ADF&G numbers to be punched.
3. The permit cards would not be subject to mail damage, loss or delays in transit from the contractor, because cards would be punched in-house.

Prior to purchase, we recommend a cost study be made by CFEC to determine if the machine's purchase would be cost effective.

Recommendation No. 6

The CFEC should establish regulations which require a person to show ability to actively participate in the fishery before receiving a permit as required by AS 16.43.170(b).

Leasing and loaning of entry permits is a relatively common practice, although prohibited by AS 16.43.150(e).

CFEC policies allow leasing and holding permits for investment by circumventing AS 16.43.150(1) and AS 16.43.170(b) in the following ways:

1. The application and transfer requirements allow permits to be issued and transferred to children who are physically unable to fish.
2. Leasing is evidenced by permit holders having a history of permits permanently transferred before the fishing season but then permanently transferred back to them after the season. Such transfers are not questioned by CFEC.

3. Leasing is also evidenced by a history of emergency transfers every season. Such transfers are not questioned by CFEC.
4. Permits available for lease are frequently advertised in newspapers. CFEC has not attempted to discover who is leasing permits.

The fact that leasing of one's permit is contrary to statute is not commonly known. We became aware of one case where a person had permanently transferred his permit for one dollar. He had entered an agreement with the understanding that his permit would revert back to him at the end of the season, but because leasing is not legal, the transfer resulted in a sale of his permit for one dollar, rather than the lease he had intended.

We believe CFEC could limit leasing in the following ways:

- A. Effort on the part of CFEC is needed to inform fishermen about the limited entry statutes and procedures, including leasing (see Recommendation No. 2).
- B. The CFEC should investigate multiple emergency transfers, frequent transfers to and from holders, and offers to lease advertised in newspapers.
- C. CFEC should establish criteria which would require a purchaser of a permit to demonstrate his ability and intent to fish. Holding of permits by investors or other non-fishermen encourages leasing.

Recommendation No. 7

The CFEC should establish a standard format for reporting statistical data on commercial fisheries information to the Executive and Legislative branches, and to the public.

The CFEC has provided some historical and current information on the commercial fisheries in its annual reports. However, it does not have a standard format for presenting statistical data, and the type and quantity of data has varied from year to year. The following types of data already gathered by CFEC could be provided in its annual report on a consistent basis.

- A. Commercial fisheries catch by administrative area and by fishery.
- B. Average earnings of vessels and permit holders by fishery.

- C. The percentage of entry permit holders fishing and number of interim permits issued for unlimited fisheries.
- D. The number of vessels registered in each administrative area.

In addition, we believe information on the limited entry permits should be gathered and presented. Information on the number of permits, transfers, and residency is already maintained. However, we recommend the following information be gathered to allow monitoring of the entry permits by administrative area.

- A. The number of permits owned by and transfers between resident Alaskans and non-residents.
- B. The number of permits owned by and transfers between ethnic groups, residents and non-residents.
- C. The number of permits by community and changes of residency or transfer of permits to other communities.

Information on the characteristics of owners of entry permits is not readily available but the information is needed - especially in communities where commercial fishing is a major occupation.

Recommendation No. 8

For future limited fisheries, the CFEC should determine and establish a reserve of permits sufficient to cover the rights of those applicants appealing their denial of a permit as designated in AS 16.43.270(c) in such a way that the total permits issued do not exceed the maximum numbers designated.

It is the intent of AS 16.43.270(a) that the CFEC determine the maximum number of permits to be issued and not exceed this maximum unless qualified applicants are within a significant hardship priority classification to receive a permit. Furthermore, it is the intent of AS 16.43.270(c) that the CFEC establish a reserve of permits to protect the rights of applicants appealing their cases, while at the same time ensuring that the maximum not be exceeded.

We have found the CFEC to have insufficient documentation to support that it did in fact establish a sufficient reserve of permits for applicants in adjudication. The CFEC has issued permits over the maximum in 27 of the 29 limited fisheries. Only 7 of the 27 fisheries over the maximum issued fall within a significant hardship priority classification. Presently there are approximately 683 permits issued over the maximum in the limited fisheries (see Table

A). The Isakson supreme court case in 1976 which allowed for an additional group of fishermen to apply for a permit may account for some of the over-issued permits. However, there were only an estimated 200 Isakson permits issued in comparison to the total over-issued.

Recommendation No. 9

Fish processors and buyers should not be provided with copies of permit cards.

The CFEC provided fish processors and fish buyers copies of fishermen's permits upon request prior to 1978. The issuance of such cards greatly weakened control over entry into the commercial fishery by fishermen who did not have permits. Although extra cards were made in 1978, they were not sent out. We recommend that the policy of not providing copies of permit cards to fish processors and buyers be continued.

Recommendation No. 10

CFEC should not withhold entry permit cards from fishermen who have paid their fees and have a right to use their cards.

CFEC does not issue permit cards to fishermen holding permits in more than one administrative area, although they do require payment of all related fees. This administrative policy was established in conjunction with a regulation by the Board of Fisheries requiring a salmon fisherman to fish his vessel only in one administrative area (see Recommendation No. 11).

However, AS 16.43.140 allows a person to actively engage in fishing if he holds an entry permit or interim-use permit, and AS 16.43.140 specifically allows a fisherman to hold more than one permit for fishing in more than one administrative area.

We believe CFEC and the Board of Fisheries have exceeded the authority granted to them by statute. If CFEC desires to reduce the number of permits in use it has the power to establish a buy back program under AS 16.43.300.

Recommendation No. 11

The Board of Fisheries should avoid establishing regulations and policies for which the major purpose is to allocate fisheries resources between different commercial fisheries.

The Board of Fisheries is empowered to establish regulations and administrative policies necessary for conservation and development of the fishery. However, the Board has taken

actions to allocate the fishery resources for administrative areas to specific types of commercial gear. We believe this economic allocation to be in conflict with the powers granted the Commercial Fisheries Entry Commission (CFEC), because the CFEC is charged with management of the economic health of the fisheries. We consider the following examples to fall under an economic allocation of the fishery resources rather than a conservation of the resources.

- A. 5 AAC 33.330 discriminates between power troll and hand troll fishing gear, by restricting hand troll gear to in-side waters in Southeast Alaska. The Board's stated intent is to limit the hand trollers to 20% of the salmon catch.
- B. 5 AAC 39.120(c)(1) prevents a salmon fisherman from using his vessel in more than one administrative area. This regulation is questionable as a means of conservation, and is directly opposite to the CFEC statute AS 16.43.140(c) which allows a person to hold more than one entry permit so that he may fish in more than one administrative area. Restricting the use of a permit holder's vessel prevents him from fishing or requires him to own more than one vessel which does not concur with the CFEC statute AS 16.43.380(2).
- C. 5 AAC 06.341 prohibits the use of a salmon net fishing vessel over 32 feet in length. However, AS 16.05.835 allows the use of a salmon seine vessel up to 50 feet. The Board's regulation is in conflict with .835 and it should be repealed.
- D. Administrative directives have been established by the Board to regional biologists directing them to manage the resources in a manner that allocates a percentage of the available resources to specific gear types on administrative areas. Such directives should be reviewed, and unless a conservation benefit is derived such directives should be repealed.
- E. 5 AAC 48.090 prohibits the use of commercially registered salmon troll vessels from being used for sport fishing. The Board's expressed purpose of this regulation is to reduce the number of hand trollers in Southeast Alaska. The reduction in hand trollers is a conservation measure, and the impact of the hand trollers on the Coho salmon has been significant. However, the limiting of hand trollers should be done by CFEC.

As a result of these observations we obtained the following legal opinion from Legislative Affairs, Division of Legal Services.

"The purpose of the Board of Fisheries is to regulate fishing in Alaska for "the conservation and development of the fishery resources of the state" (AS 16.05.221). To accomplish its purpose, the board may adopt regulations establishing open and closed seasons and areas for the taking of fish (AS 16.05.251(2), setting quotas and bag limits on the taking of fish (AS 16.05.251(3), establishing the means and methods employed in the pursuit, capture and transport of fish (AS 16.05.251(4)), and providing for other means of controlling fishing in the state. Nowhere in the list of permissible regulations is any mention made of establishing preferences for the use of certain types of gear over other types of gear on the basis of economic return.

The purpose of the Alaska Commercial Fisheries Entry Commission is "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". To accomplish its purpose, the commission may reduce the number of entry permits in a particular fishery through the use of a buy-back program.

The division of authority is clear. The purpose of the board is to regulate fishing from the conservation and development (biological) perspective; the purpose of the entry commission is to regulate fishing from the economic perspective. There obviously will be grey areas as a result of the close connection between the biological and the economic health of a fishery; however, no regulation of the Board of Fisheries is supportable solely on economic bases. If there is some biological evidence that handtrollers are a greater menace to a particular fish population than power trollers, then the Board of Fisheries may take action to decrease the hand trolling season or bag limit or fishing area for that population. Whether handtrolling presents a menace to the economic well being of power trollers is a question beyond the authority of the board to consider."

We believe that there is a need for a working relationship between the Board and CFEC. However, the economic management of the resources should be controlled by CFEC to prevent conflicting policies and direction, as required by statutes.

AUDITOR'S COMMENTS

As part of our analysis of CFEC we talked to individuals who believed that CFEC's regulations had unfairly prevented them from receiving a permit, while persons with similar circumstances did receive permits. We examined such cases and found that CFEC had acted consistently based on data available to them. However, we did observe the following conditions which we believe have created some of the dissatisfaction with the limited entry permit process.

- A. Fishermen did not fully understand the evidence needed to qualify. For example, one individual had jointly sold fish with another fisherman, but could not provide evidence in the form of fish tickets that he had sold fish. He did not realize that an affidavit from the other fisherman stating that the fish had been jointly sold would have qualified him for points.
- B. Fishermen who were denied a permit and then hired an attorney or permit agent to act on their behalf were much more likely to receive permits than fishermen who did not. We believe many of the individuals whose files we reviewed could have obtained a permit had they hired an agent to represent them.
- C. During 1971 and 1972 many fishermen took advantage of training or employment on the Alaska Pipeline. Because 1971 and 1972 were weighted very heavily in determining eligibility for a permit, these individuals either did not apply or could not qualify for a permit.
- D. Permit values have soared in the past 5 years (see Table B of supplemental information). In some fisheries the value of the permits are in excess of the value of the vessels. This has prevented some Alaskans from obtaining entry permits, while an increasing number of persons from outside Alaska are buying permits. This is an inherent problem in the free transfer of permits because Alaska's population generally is younger and therefore has less savings and leverage available to use to purchase a permit. The commercial fishing loan program may help, eventually, but to date it has not.
- E. Fishermen who fished as operators of vessels but for some reason did not have a gear license did not realize that CFEC granted constructive gear license credit for individuals who could demonstrate that they in fact operated as gear license holders.

CFEC in all cases reviewed and notified applicants why their applications were denied and what additional information was needed. CFEC also took reasonable actions to encourage people to apply for permits for which they might be eligible.

Should the Executive and Legislative branches make the decision to reopen the application period we suggest the following:

- A. That an advocate be established to represent and assist applicants obtain permits from CFEC. There is an inherent conflict of interest if CFEC both judges an applicant's eligibility and also assists him in gathering evidence of eligibility. Presently an applicant can pay thousands of dollars to a private agent in an attempt to obtain a permit.
- B. That training classes be held in communities where large numbers of fishermen live to assist in the filing of applications and to explain evidence requirements.
- C. That CFEC on a priority basis have economic studies made of the fisheries to allow the establishment of the optimum number of permit holders in each fishery, and then seek legislative funding to begin a buy-back program where issued permits exceed the optimum number.

Supplemental Information

COMMERCIAL FISHERIES ENTRY COMMISSION
TABLE OF ENTRY PERMITS
 As of May 21, 1979

TABLE A

<u>Limited Fisheries</u>	<u>Maximum Number Allowed Per Regulations</u>	<u>Actual Permits Issued (Interim & Permanent) (see Note 2)</u>
Salmon		
Southeastern Alaska (A)		
purse seine fishery	395	413
drift gillnet fishery	453	479
Yakutat (D)		
set gillnet fishery	150	166
Prince William Sound (E)		
purse seine fishery	238	266
drift gillnet fishery	511	543
set gillnet fishery	32	29
Cook Inlet (H)		
purse seine fishery	68	81
drift gillnet fishery	545	585
set gillnet fishery	686	745
Kodiak (K)		
purse seine fishery	355	383
beach seine fishery	31	34
set gillnet fishery	183	183
Chignik (L)		
purse seine fishery	80	96
Alaska Peninsula-Aleutian Islands (M)		
purse seine fishery	111	123
drift gillnet fishery	155	160
set gillnet fishery	77	111
Bristol Bay (T)		
drift gillnet fishery	1,669	1,770
set gillnet fishery	803	909
Statewide (B)		
power troll fishery	895	970
Kuskokwim (W)		
gillnet fishery	810	792

<u>Limited Fisheries (Cont'd.)</u>	<u>Maximum Number Allowed Per Regulations</u>	<u>Actual Permits Issued (Interim & Permanent)</u>
Kotzebue (X) gillnet fishery	214	185
Lower Yukon (Y) gillnet fishery	627	699
Upper Yukon (P) gillnet fishery	99	58
fishwhell fishery	126	135
Norton Sound (Z) gillnet fishery	195	190
Herring Fisheries		
Specific Southeastern Alaska (A) purse seine fishery	35	49
Specific Prince William Sound (E) purse seine fishery	55	103
Cook Inlet (H) purse seine fishery	68	77
Southeastern Alaska (A) gillnet fishery	110	125
Total Limited Fisheries	<u>9,776</u>	<u>10,459</u>

<u>Unlimited Fisheries</u>	<u>Actual Permits Issued (Interim Only)</u>
Salmon - Hand troll	2,560
Halibut	2,700
Black Cod	185
Dungeness Crab	269
Freshwater Fish	20
Herring	
Southeast	5
Southeast winter purse seine	29
Prince William Sound	55

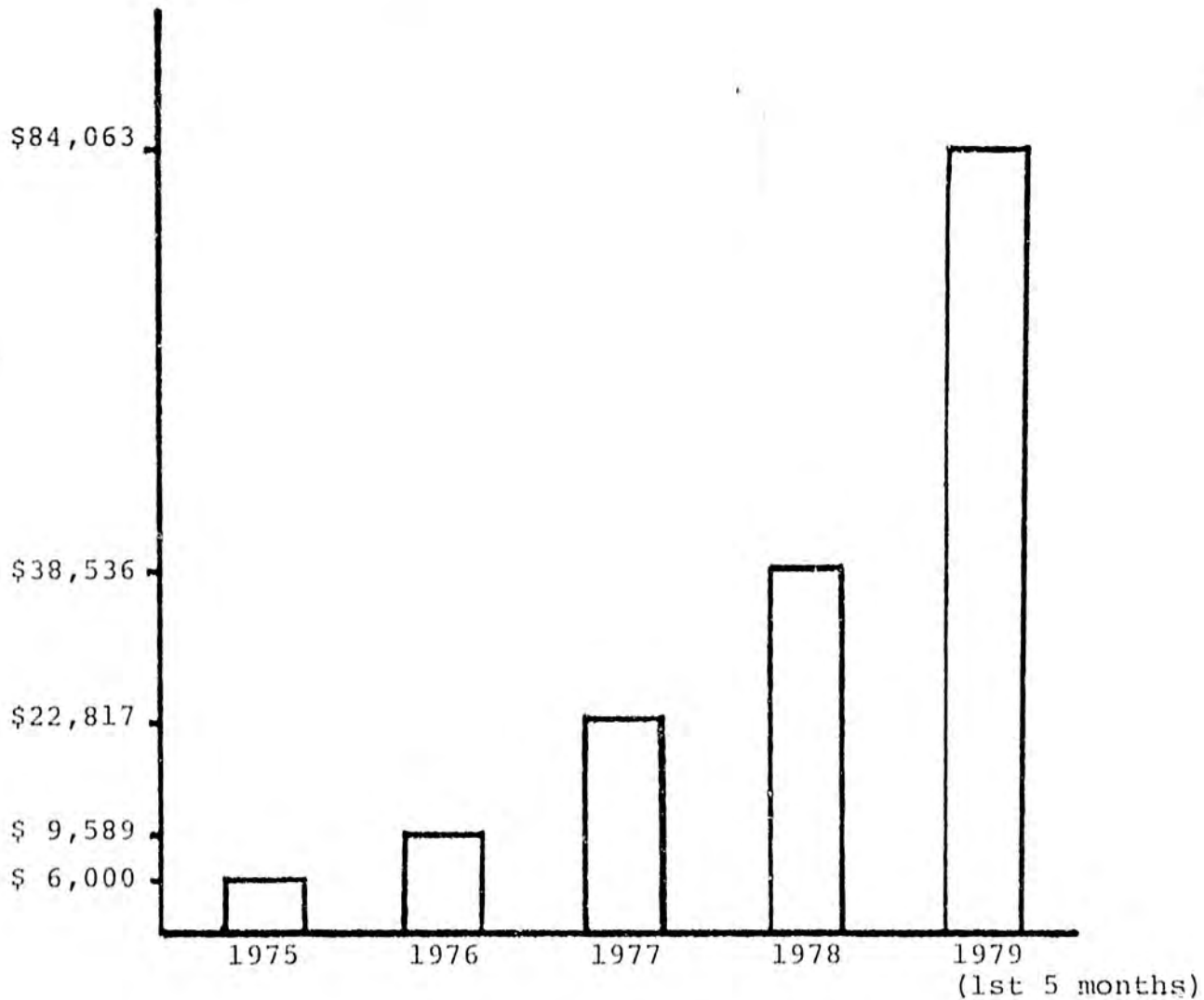
<u>Unlimited Fisheries (Cont'd.)</u>	<u>Actual Permits Issued (Interim Only)</u>
Prince William Sound winter	8
Cook Inlet	329
Westward	2,354
King Crab	
Southeastern-Yakutat	45
Prince William Sound	54
Cook Inlet	134
Kodiak	269
Peninsula	55
Dutch Harbor	82
Bering Sea	232
Adak	68
Western Aleutians	94
Herring Spawna	998
Bottom Fish	460
Shrimp	440
Razor Clams	206
Tanner Crab	913
Other (Abalone, Octopus, Smelt, etc.)	90
<u>Total Unlimited Fisheries</u>	<u>12,654</u>

Note 1

There are presently 683 permits issued in excess of the maximum allowed by regulation for the limited fisheries.

COMPOSITE AVERAGE PERMIT PRICE
FOR SALMON FISHERIES BY YEAR

TABLE B



This graph shows the trend in permit values. The actual advertised price for a permit varies by fishery. For example, the low advertised price for a 1979 permit was \$20,000 for a Cook Inlet set gillnet permit. The high price was \$210,000 for a Chignik purse seine permit.

COMMERCIAL FISHERIES ENTRY COMMISSION
REVENUES COMPARED WITH EXPENDITURES
For the Fiscal Years Ended June 30, 1974 - 1978
(UNAUDITED)¹

TABLE C

<u>Fiscal Year</u>	<u>Expenditures</u>	<u>Year End Encumbrance</u>	<u>Actual Revenue</u>	<u>Expenses Exceeded Revenue-Over/Under</u>
1974	\$ 454,512	\$111,838	\$ 636,370	\$ 70,020
1975	775,827	90,517	483,431	(382,913)
1976	783,594	128,871	718,738	(193,727)
1977	<u>729,158</u>	<u>71,712</u>	<u>740,758</u>	<u>(60,112)</u>
4 year totals	<u>\$2,743,091</u>	<u>\$402,938</u>	<u>\$2,579,297</u>	<u>\$(565,732)</u>
1978 ²	<u>\$1,083,392</u>	<u>\$ 79,160</u>	<u>\$2,131,690</u>	<u>\$ 969,138</u>

Note 1

This revenue/expenditure comparison was prepared from the State of Alaska's Annual Report. The records were not audited by us and accordingly we do not express an opinion on the Commercial Fisheries Entry Commission Revenues Compared with Expenditures.

Note 2

1978 is set apart from the previous operating years because as of January 1, 1978, AS 16.43.160 was amended. Prior to amendment, fees were to be collected to reflect the cost of administering the program. For 1975, 1976, and 1977 fees did not cover the cost of the program as per AS 16.43.160(a).

MEMORANDUM

State of Alaska

RECEIVED

TO: Gerald Wilkerson
Legislative Auditor

DATE: June 29, 1979

JUN 29 1979

FILE NO:

TELEPHONE NO:

LEGISLATIVE
AUDIT

FROM: Robert J. Simon
John D. Williams
Commercial Fisheries
Entry Commission

SUBJECT: Response to Preliminary
Audit

General Comments

The comments following this section and attachments are addressed to the recommendations and comments made in the audit report, dated May 15, 1979. Our response is organized in the same fashion as the audit report. It will be necessary to refer to the audit when reading our comments.

The Commission feels that much of the content of this audit could have been easily deleted if the audit staff had conducted the interviews they claim to have had with the Commissioners. For example:

- (1) Recommendations 1 and 4 both specifically mention coordination of CFEC with other fishery-related agencies (ADF&G and Fish and Wildlife Protection). Upon contacting these other agencies, we found very few of the stated problems actually exist. The audit accurately identified one instance when a communication failure occurred. With the exception of the laminated photograph recommendation in No. 4, nothing else in that recommendation relates to CFEC. We believe, and have confirmed with Fish and Wildlife Protection, that when asked, the Commission has supplied requested assistance. Further interaction between the two agencies is hindered by State confidentiality statutes which preclude Fish and Wildlife Protection access to fish ticket data. The comment in No. 1(C) regarding "increased administrative burden" is, to the best of our ability to determine, totally unfounded.

The Commission staff and staff of both Fish and Wildlife Protection and ADF&G interact to a great degree, including tasks undertaken by one agency for the benefit of another.

We also wish to note that Commission practice described in Recommendation No. 10 is directly in response to easing the enforcement burden of Fish and Wildlife Protection, although we are criticized for such cooperation.

- (2) Recommendations 6 and 9 relate to matters which have been previously completed by CFEC. Proposed regulations prepared in 1978 suggest regulatory implementation of a Commission policy in determining the ability to actively participate. Recommendation No. 9 suggests we stop doing something that we stopped doing after 1977. Other instances of recommended practices already in existence or in the process of implementation are found in Nos. 3(A), 5(D), 6(B) and (C), and 8.
- (3) Those portions of Recommendations 2 and 3 which accurately reflect Commission failings are, we feel, primarily due to monetary shortages, although that was not identified by the audit.
- (4) Recommendation 11 relates in a minor way to CFEC. The single reference to CFEC directs us to undertake management activities which are improper and ineffective.

Further Comments

We note that the audit does not address the Commission's adjudicatory process, a major part of the Commission's responsibility. (The Commission responsibilities are permit and vessel licensing, permit transfers, application classification, research and monitoring, regulatory implementation, and adjudication). While we feel that the Commission has adequately (perhaps more than adequately) protected the due process rights of applicants, we are internally critical of still having approximately 550 applications before the Commission which have not been finalized. The effect of this uncertainty ranges far beyond these 550 fishermen, and also effects numerous other fishermen who have been finally classified but still do not know if their point level will eventually qualify them for permits. While permit holders are relatively confident to make investments to upgrade their fishing operations, interim-use permit holders are in limbo as to whether next year they will be able to legally operate their own gear. Objective suggestions on ways to effectively deal with this problem would have been welcomed. The audit report, however, ignored the entire adjudicatory phase of Commission duties.

The Commission takes great pains to notify denied applicants of their rights under Court Rule 45 to appeal decisions of the Commission to Superior Court. Recent court decisions waiving the 30-day appeal period of Rule 45 could establish a severely detrimental precedent by allowing "stale" cases to be revived. This potential for a burgeoning caseload was not addressed by the audit.

The application process is always susceptible to false statements made in support of the various point claims. Attempts by the Commission to have prosecutorial actions instituted in those cases where evidence clearly suggests falsified statements have to date been thwarted. If some prosecution could be achieved, the likelihood of future false claims would be diminished. The audit does not mention this problem.

June 29, 1979

Fish and Wildlife Protection is statutorily denied access to fish ticket data. Although statutory amendments have been suggested to the legislature, no action has been taken. To more effectively assist this enforcement agency, both CFEC and ADF&G need to share their data with Fish and Wildlife Protection. The audit did not suggest this

The Commission is unable to properly house valuable State fishing records due to lack of available storage area and equipment budget. Protection of the integrity of these documents was not mentioned in the audit.

UNRESOLVED QUESTIONS

- I. There are now more than 150 cases against CFEC pending in various courts.
- II. We refer you to pages 20-23 of "Data Collection and Analysis Necessary to Limit Entry in Alaska's Salmon Fisheries", August, 1975; a copy of which is included.
- III. AS 16.43.260(d) requires that applicants for the initial fisheries subject to limitation be classified "solely upon his qualification as of January 1, 1973." When domicile questions have arisen, the evidentiary process involves inspecting residency evidence both before and after that date to aid in determining actual domicile as of that specific date. Further, the legislature directed the Commission to consider availability of alternative occupations, not hireability of the applicant (AS 16.43.250(a)(1)).

The comments relating to preprinted points for residency are inaccurate. Each applicant was required to verify the information preprinted on the application. The Commission has issued show cause orders for some applicants who did sign and thus verify alternative occupation (residency) points when in fact evidence exists contrary to the residency initially verified. The Commission can revoke such permits if the show cause procedure verifies that false claims were made.

- IV. A. Legislative Audit questions the policy of granting income dependence points simply because no income tax return was on file. This is not the Commission's policy. Initially, an applicant must demonstrate participation as a gear license holder in 1971 and/or 1972 to be eligible for income dependence points for those fisheries which came under entry limitation in 1975. If the Commission is unable to locate relevant income tax returns from the appropriate government agency, the applicant is requested to submit an affidavit detailing the amounts and sources of any non-fishing income for the years in question. In some cases it is true that minors still in school have been found to have no non-fishing income on the basis of an affidavit from a parent.

B. In no case has a single affidavit from a family member allowed an individual to qualify for a permit without additional corroborating evidence. At an absolute minimum an applicant would initially need to demonstrate proper licensing before the question of his eligibility to apply could be addressed. Secondly he must assert participation that, in cases such as family set net operations, can only be verified by other family members under whose name the applicant's catch may have been delivered. Finally, the applicant is required to certify the truth of all claims made by signing his application.

C. The Commission does review applications on an on-going basis. Revocation proceedings are initiated where it has been determined that administrative error resulted in permit issuance. We must wonder if the audit statement is attempting to infer that the auditors are aware of further permits that should be revoked. If such is the case, the Commission has not been made aware of the particular cases.

D. The point system used in 1976 for the program of entry limitation in the Arctic-Yukon-Kuskokwim salmon fisheries was substantially different from the point system used for the nineteen salmon fisheries which came under entry limitation in 1975. The substantial differences in the points systems and these fisheries in general resulted in correspondingly different types of evidence that were requested to support point claims. However, the burden of proof, (by a preponderance of the evidence), is a consistent standard applied to all fisheries under limitation. In no case was a fisherman engaged in legal commercial fishing denied the opportunity to apply. We must wonder if the auditors are aware of State policy which describes subsistence fishing to include small scale cash sales, while commercial fishing is always accomplished with benefit of proper licensing or fishwheel registration.

- V. The Commission's decision in 1974 to award income dependence points only to persons who held gear licenses in the year for which the points were claimed relates directly to the hardship ranking upon which the law is based. Since a person's opportunity to continue to earn income working as a crewman is unaffected by the implementation of limited entry, it was determined that any income earned as a crewman should not be considered in determining eligibility. This is fully in keeping with the constitutional rationale of Alaska's limited entry program, as stated by the Alaska Supreme Court: "The legislative history rather clearly demonstrates that from the outset the framers of this legislation intended "hardship" to be the determinative factor in the allocation of initial free limited entry permits" (Isakson v. Rickey Sup. Ct. Op. No. 1267; 550 P.2d 359 (1976)).

AS 16.43. directs that a balance be struck between past participation and economic dependence. Economic dependence can be recognized for income dependence, availability of alternative occupations, and investment in vessel and gear. Except for the former, economic dependence points can be awarded regardless of the holding of a gear license. Awarding income dependence points to crewman would allow multiple awards for the same unit of gear, (which would result in issuing multiple permits for a single unit of gear -- a permit for the captain and each crewman assisting in operation of the gear), would undo four years of Commission work, and clearly run counter to legislative intent.

With recent increases in the market value of entry permits, dissatisfied unsuccessful permit applicants will attempt to overthrow any portion of the Commission's regulations which will further their self interest. Each such attack must be weighed against the integrity of the Commission's efforts to implement a dramatic social change in Alaska's fisheries policy. We stand behind our regulatory structure and feel that it demonstrates a reasonable balance between past participation and economic dependence.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

- A. We presume that the comments relate to district/subdistrict registration of vessels. As the attached memos indicate, severe problems occurred at the time the Commission attempted to implement district/subdistrict vessel registration when we assumed vessel licensing responsibilities. Such information is needed only in the Bristol Bay and AYK salmon fisheries, and is required by ADF&G regulation. The Commission realizes the needs of these area management biologists and has discussed with them better methods to fulfill their needs via utilization of permit licensing (which is better suited than vessel licensing to achieve this end). It is clear that a "breakdown in communication" occurred between the ADF&G field offices, central office and ourselves. We have scheduled a meeting with ADF&G personnel to further discuss suggested solutions. Please refer to attachment 1 for further clarification of our efforts to solve this problem.
- B. The Entry Commission is not an enforcement agency. However, we do possess EDP data which identifies licensed vessels and fishermen. Fish ticket data collected by ADF&G is also available both from the Commission and the data processing section of ADF&G. However, fish ticket data are not now (nor are they intended to be by ADF&G) processed until after the fishing season. Retrospective comparisons of fish ticket data and licensing records are a useable tool which could be of value to Fish and Wildlife Protection, except for the statutory provisions and court decisions which preclude their access to such data.

Commercial Fisheries Entry Commission currently makes available to ADF&G Fish and Wildlife Protection field officers bi-weekly updated microfiche cards which include the following:

1. alphabetical list of all permits issued;
2. list of permits by fishery;
3. list of permits by serial number;
4. list of vessels by ADF&G number, including set net site numbers;
5. list of vessels by vessel name;
6. list of vessels by owner name.

We have discussed with ADF&G the suggestion of training fish ticket editors to "recognize potential violations." Their feeling is that such an effort is more than can reasonably be accomplished by the editors in light of the work that they presently must handle.

- C. The Commission does not accept the "increased administrative burden" observation as an accurate statement of a problem. We are aware of one documented complaint, but in general, there are fewer errors since licensing has been centralized. Conversations with several field personnel in ADF&G have indicated that their administrative burden has been lightened by centralized vessel licensing.

We would also note that an almost identical recommendation for combining ADF&G and CFEC has been made in another report for ostensibly the same reason, and we are compelled to again make the observation that consideration has not been given to the reason for originating data, the different uses to which they are put, and the different statutory responsibilities of the data-using agencies.

Recommendation No. 2

- A. Due to the increased licensing responsibilities and workload, reduced budget, and essentially the same size staff that the Commission had five years ago, it has become necessary to cut back some of the services that had been provided in the past. This last year the license renewal section was not open during the lunch hour and overtime was reduced by a directive from the Commissioners. Throughout this year the telephone has been manned from 7:30 a.m. to 4:30 p.m. Monday through Friday. The recommendation of expanded service to evenings and Saturdays is not being considered with the present budget constraints (nor is the suggestion consistent with the audit observation that a "minority of persons needing the services of CFEC live in the Juneau area"). It should be noted that fishermen do have ample time to license prior to the coming season as the Commission starts licensing the first of December of the year before the new licenses are needed.

The Commission has repeatedly admonished the fishing public to renew or obtain permits for those fisheries they plan to enter at least three weeks in advance. One Commissioner supervised the operation of an ADF&G field office providing licensing for commercial fishing for thirteen years. Complaints that originated from last minute licensing requests regularly occurred then as now.

The Commission has not had nor sought budgetary support for field offices in contacts with legislators or the administration. Until electronic communications improve to maintain permit and vessel number control (an on-line system) it is doubtful that field offices would be cost effective.

- B. Staggering renewal and application issuance would not, in our view, serve any useful purpose. Preprinted vessel and permit renewal forms are mailed out on a first-priority basis to those persons who held permits in the various crab fisheries, the winter herring fisheries in Southeastern Alaska and Prince William Sound, and the troll fishery. Plastic card orders and renewal requests for these fisheries are processed first to assure timely renewal.

The permit issuing section does not accumulate a backlog of applications until mid-March. Until that time a same-day or one-day turnaround is accomplished for all applications. Our experience relative to complaints from crab fishermen have, in each instance, resulted from a failure to apply in a timely manner. In this regard, our first news release on new permit availability embodies an admonishment to allow three weeks because of mail time.

When application backlogs do occur, they are the result of the concurrent availability of several resource types in the spring. This seasonality results in a high renewal and application rate in both limited and unlimited fisheries. Prioritizing and staggering issuance cannot relieve this problem and we do not agree that a saving can be effected by attempting it. In order to avoid the use of temporaries or overtime, either delays greater than those currently being encountered would result, or the permanent staff would have to be substantially increased. For the record, our highest priority FY 1980 budget increase item was the addition of two positions to the permit issuance section. We believe that the purpose for having temporary or seasonal positions is the relief of heavy workload periods such as we experience each spring and early summer, which is unrelated to those fisheries requiring renewal at the beginning of the calendar year.

Of the 23,799 permits issued in 1978, 2,550 or approximately 11% pertained to the state's shellfish fisheries. These applications are spread out over most of the calendar year, and attempting to stagger their issuance would be far too costly for any perceived benefits.

The information we receive on vessel license renewal application forms often contains multi-fishery information that is not binding on the applicant. Trying to establish a priority system for issuing them would be expensive and cumbersome. We believe that no benefits would accrue to either the State or the public.

- C. The first paragraph suggests a number of changes with which we agree. We will implement many of these suggestions.

The Commission has planned a reorganization that will eliminate the Executive Director position and will divide the responsibilities into three sections: (1) Administration; (2) Applications and Hearings; (3) Planning and Research. This reorganization will not eliminate any personnel but will streamline the organization allowing more time for development and follow-through within each section. It should be noted that the Commissioners have a current workload involving hearings and adjudications, anticipated action with respect to some unlimited fisheries, and amendments in the act to create a new legal base for cooperating with the North Pacific Fisheries Management Council which will more than occupy the Commissioners' attention. This, coupled with the numerous court actions and decisions, coordination with legislative study groups and proposed legislative changes, indicates that the Commissioners have little time to devote to daily departmental administration. In the longrun, the Commission has suggested a plan to combine with ADF&G, when limited entry becomes a routine monitoring agency administering buy-back programs and providing a licensing function.

- D. The Commission is aware of the need for an information officer. Due to the growth of the fishing effort in the non-limited fisheries, the workload in licensing had increased faster than our budget has grown and priorities for personal service monies have been directed to license processing. It is simply not feasible to create a new position as an information officer and eliminate a position needed to relieve the daily workload of licensing. The FY 81 budget request will reflect the recommendation for an information officer.

The Commission has already developed compact copies of statutes and standard copies of regulations that are available to anyone upon request. As our new regulations are promulgated our regulation booklet will be reduced to "a compact size". Additionally, a synopsis has been developed describing the development of limited entry from conception to present and this has been available for several months. To complete the information process, the Commission has completed the first planning phase of a Statewide educational plan on limited entry. (See attachment number 2). We are presently cooperating with the Bristol Bay Native Association to produce a film on limited entry which was funded by the Alaska Humanities Forum. Prior to any changes in regulations and before the entry limitation of any fishery, public meetings and hearings are held in the local area affected. This process has been in effect since the inception of limited entry and is currently used.

Recommendation No. 3

The summary introduction to the audit states that the Commission has emphasized the licensing function at the expense of managing the "economic health" of Alaska's fisheries. As we will demonstrate with the following, this is true to a degree (assuming that the management of "economic health" of Alaska's fisheries is an accurate statement of Commission responsibility), but is exaggerated in the audit. CFEC's licensing function is a yearly, on-going effort which essentially must be accomplished with speed to satisfy the needs of the fishing industry and with accuracy to maintain the integrity of the fisheries data base. With the increase in the scope of CFEC's licensing function and the increases in numbers of licenses issued in the face of actual cutbacks in funds and licensing personnel, the Commission has "discounted" that function which has the least immediate impact to supplement the immediate needs. Hence, the degree of economic monitoring which should be accomplished by the Commission has suffered, but not to the degree as suggested by the audit document. Priorities were established with a full and complete understanding of the impact on all Commission duties.

- A. Optimum numbers have been addressed with on-going economic studies. Methodology has been developed and tested to determine both economic and biological optimum numbers. (See attachment number 3). For the very reasons stated in "C" below plus the development of private and public aquaculture projects, final determination of optimum numbers is not appropriate at this time. Considering the lucrative world price being realized for Alaska's fisheries products and the especially strong runs realized of late in many of the major Alaskan salmon fisheries, the immediate necessity of initiating a buy-back program is not warranted. Two further considerations weigh on this matter: (1) AS 16.43.310 requires that once optimum numbers are determined for a fishery, the buy-back program must be completed within 10 years; and (2) the continued legal attack on the Alaska limited entry program has not yet fully tested the legal foundation of the program, which suggests that further complication of the issue with the implementation of a buy-back program, especially in the absence of a very specific economic or biological need is unwise.
- B. CFEC's efforts to retrospectively and prospectively create accurate fisheries data bases is no mean feat. This should not be understated. We fully admit that more sophisticated and in-depth economic testing should be completed. This effort presently suffers from underfunding.
- C. We have commented on the statements repeated here but first made earlier in this recommendation.

- D. The suggestion to utilize private consultants to monitor economic conditions of Alaskan fisheries is a sound recommendation and will likely be utilized by the Commission. However, the use of consulting economists will not affect the need for continued staff data management and development.

A review of personnel records does not substantiate the statement made that the Commission has left vacant for eighteen months an economist position. Our records show that we have realized a four-month vacancy of a position at range 19 and an eleven-month vacancy of a position at range 16.

Recommendation No. 4

In response to the observations made in "A" through "D", we are attaching a copy of the proposed regulations which are presently before the public for comment. We refer you to sections .115, .170, and .731 (See attachment 4).

- A. A laminated photograph requirement would impose a travel cost hardship upon permit holders in remote villages. It is not possible for the Commission to establish licensing offices to provide the identification recommended to all permit holders. Department of Public Safety cannot provide this service to drivers with a budget several times that of the Commercial Fisheries Entry Commission's.

Air taxi fares and charter rates are often higher between villages in Alaska than air fares are between major cities, e.g., charters between Kodiak and Cold Bay are more than four times the regular round-trip fare from Juneau to Seattle. We could be in the rather embarrassing position of requiring people who are eligible for poverty fees to expend relatively large amounts of money to be photographed for their permit.

The Commission discussed the merits of this system with the Department of Public Safety. They were quick to point out the high cost involved with this system, plus the lack of availability of equipment in large areas of the State.

We refer you again to sec. 115 of our proposed regulations which we have proposed at the request of Fish and Wildlife Protection as a reasonable alternative.

The remainder of the suggestions in this section do not apply to the Commission. The portion of recommendation (D) directed to the Commission could be accomplished with minimal effort on request.

Recommendation No. 5

- A. From a pure accounting viewpoint the recommendation indicated in 5(A) makes sense, but beyond that it creates a situation in which processing of the application is almost impossible. There is a need that dictates the processing of applications and receipts by our current method. At the time of receipt, all applications are date stamped and the monies attached. This procedure is vital to the renewal process as the monies are needed to verify that the amount submitted equals the required amount necessary to bring the permit up to date (since permits need only be renewed each two years if they are inactive) and to assure that sufficient funds were included to cover all permit requests associated with the payment. Additionally, when poverty fees are indicated, the permit card application must be marked "OK to process poverty fee", as it then is used for further verification of income tax data. The overall verification process of the money versus the actual permit or permits requested is very time consuming and the individual that processes the mail does not have time to perform this function. In addition, applications that are marked for interim-use permit in limited fisheries must have monies attached and must be forwarded together to the appropriate hearing officer for eligibility verification prior to processing.

If permit applications are not completed properly and key pieces of information are missing, both the permit card and the monies must be returned to the applicant. If monies were separated at an earlier date, it would be impossible to issue a proper refund, and the Commission would be held responsible for setting up a tickler file system for each incomplete application while awaiting the receipt of additional information requested by the Commission. At present, the individual receiving the mail for the Commission is totally occupied with her duties which include answering the Commission's telephone, receiving, date stamping and attaching fees to the permit application or vessel license renewal cards, sorting and delivering mail to Commission staff and preparing all outgoing mail. In addition, this position is required to do most of the Xeroxing and out-of-office errands for the Commission. The security of the monies is safe-guarded by a separation of duties by the permit/vessel licensing clerks, verification clerks, and the accounting clerk who reconciles the monies against permit and vessel license stubs and prepares the transmittal of receipts to the State Treasury.

- B. The Commission is undergoing a physical reorganization and rearrangement of offices to ensure security of records, cards and card stocks. (1) The permit cards that are preprinted will be housed in a separate room that is accessible only to the Commission staff and will be the responsibility of the Administrative Assistant I and document processor clerks responsible for the issuance of the permits. The cabinets within which the

cards are housed will be modified in the near future to accommodate a locking arrangement. (2) Permit card stock will be stored under lock and key and issued to the embossing machine operators in units of 200. When a new supply of blank card stock is needed the operator will have to turn in the original permit card application stub and any voided cards equal to the total issuance level of 200. Only the embossing machine operators will be issued blank card stock. All other Commission staff will only have voided card samples beginning July 1, 1979. (3) Due to a space problem, the two embossing machines must share space in our only storeroom. Sometimes it is necessary for various staff members to obtain records and supplies from this area. As an added measure of security the room will be kept locked at all times when an operator is not on duty in the room and the door will be marked "Authorized Personnel Only".

- C. The Commission has ordered and will be receiving seven locking, five-drawer lateral file cabinets (this required an RP from Contractual to Equipment). With the addition of this file space all files should be secured under lock and key. Additionally, work stations are being rearranged and a wall has been erected to provide security of records from the public and to provide the application assistance staff with a private office located away from the records and filing area. All offices that have confidential records will be locked when not occupied by staff. Special signs indicating "Authorized Personnel Only" are to be placed in all areas not open to the general public. The data processing room has secured one entrance adjacent to that portion of the room containing confidential records. The other entrance will have a notice placed above the doorway indicating "Authorized Personnel Only".
- D. Presently, permit card verification after embossing is first done by the operator of the embossing machine and then a second individual to verify against the applicant's permit application. There is no other original document against which the embossed plastic permit card may be proofed. Reconciliation of all card stock referenced in this recommendation is being implemented as per response to B(3).

Recommendation No. 6

An amendment to the Alaska limited entry act in 1977 added "lease" to AS 16.43.150(g)(1) as an illegal use of an entry permit. Since that time, the Commission has determined that it does not have the tools with which to challenge a number of means that are used to circumvent the anti-leasing provision. Hence, we have proposed a regulation that additional powers be assumed by the Commission to overcome blatant violations. We refer you to sec. 731 of the proposed regulations.

1. Proposed regulations 20 AAC 05.400(b) and 730(d) provide that persons of less than a stated age must overcome the presumption that they are not able to actively participate in the fishery, as required by AS 16.43.170(b) and 210(a) before an interim-use permit can be issued to them or a permanent permit can be transferred to them. This was previously implemented by a policy statement.

2. CFEC presently has no basis upon which to challenge such practices. The "Request for Transfer" form which must be utilized to transfer an entry permit requires the transferor and transferee to swear that the transfer is not pursuant to a lease or a retained right of repossession and that the permit is not pledged, mortgaged, or encumbered in any way. Proposed regulation 20 AAC 05.731 addresses this problem (attachment 4).

3. CFEC requires full documentation each time an emergency transfer is requested. The Commission must be convinced that the emergency transfer is pursuant to an unavoidable hardship which prevents the permit holder from fishing. Either notarized affidavits or a physician's statement is on file in each instance that an emergency transfer is approved. The Commission has determined that emergency transfers can properly involve a payment to the permit holder by the transferee. Otherwise, no rationale exists for allowing emergency transfers to prevent a hardship on the permit holder.

4. CFEC is not the enforcement arm of Alaska's fisheries laws. However, in many instances we have pursued such ads to determine the source.

- A. We have previously discussed our efforts for developing educational programs.
- B. We have previously responded to this comment. All Commission transfer forms require sworn statements that the transfer is not pursuant to an illegal activity.
- C. The permanent transfer form used by the Commission requires a sworn statement by the transferee that he/she has access to a vessel and gear.

Recommendation No. 7

On February 13, 1979 Governor Hammond issued a memorandum to all State agencies outlining future requirements for annual reports. His purpose was to reduce the number and size of these reports to save money and time. CFEC's report will now appear as part of the consolidated report presented by the Office of the Governor. The Governor has asked that our report simply outline major accomplishments and failures and identify what other information is available to the public through the Commission.

Observations

- A., B. Catch and gross earnings information is a product of the fish ticket file which is generated by ADF&G. The file is shared by CFEC, but primary responsibility lies with ADF&G. They already produce a public information document called Catch and Production Statistical Leaflet. Since we use ADF&G's file we could only duplicate their efforts by publishing our own tables.
- C. Since the fish ticket information is not available by the time CFEC must file an annual report it is not possible to compile statistics on the percentage of permit holders who participated in commercial fishing during the past season. We do have this information available for prior years and provide it to anyone who requests it. The number of interim-use permits issued for unlimited fisheries can be reported in a timely manner and was in the 1978 annual report.
- D. The number of vessels registered in each administrative area is available only for the salmon net fisheries since this is the only case where such information is required. Area registration is required in exclusive registration areas for some types of fishing, but this is done by ADF&G just prior to an opening and is not computerized. The "Catch and Production Leaflet" published by ADF&G shows the number of vessels that participated in each fishery, and so provides more comprehensive information than the salmon net registration.

Recommendations

- A. Records are kept and published on the distribution of permits and the transfers between residents and nonresidents. Such a table has appeared in every annual report put out by CFEC.
- B & C. In 1972 the Governor's Study Group on Limited Entry requested and received a computer tape from BIA of native Alaskans who were enrolled for the Native Land Claims Settlement Act. The social security numbers from this tape were run against the social security numbers on the commercial license file so CFEC could find out how many commercial fishermen were native. However, many native Indian and Eskimo Alaskans do not have social security numbers, so the counts were considered inaccurate. ^{1/} After the Settlement Act, BIA informed CFEC that all future projects of this nature would have to be done through the 13 regional corporations. The Commission determined at that time that many of the corporations were not receptive to the idea of turning over such information and since permits could not be awarded or denied on the basis of ethnic background, the project was dropped. We realize that there is a great deal of concern on the part of many native corporations related to the transfer

of permits from natives to people outside of the villages; however, there is no constitutionally acceptable tool the Commission can use to stop these transfers. CFEC feels that our only avenue of action is in assisting the native corporations and village councils in developing an awareness among the people of how valuable the permits are as a village resource. We are currently providing materials to the Bristol Bay Native Association so they can develop such an educational program for their members. We do not feel that gathering and publishing information on the ethnic backgrounds of permit holders will serve any constructive end. Since we cannot inquire about familial relationships or ask racial questions without offending someone or being sued, we feel that our best efforts can be made by providing the native groups with listings of permit holders and transfer transactions so that they can assess and act on the trends they discover.

It may be possible to amend the current regulation so that the regional corporations or village councils could find out who plans to transfer a permit. Currently such information is confidential. If all intents to transfer became public information, the corporations might be able to counsel potential transferors and encourage them to transfer to someone in the village. This change in the regulation should be considered very carefully, however, since it could present problems for villagers from so much increased outside pressure to sell that their right to privacy may be jeopardized, and the intended benefits of removing the confidentiality provision thwarted because of higher offers received by the permit holder from persons outside the community.

Recommendation No. 8

AS 16.43.270 directs the Commission to issue entry permits, for each fishery, first to all qualified applicants "in the priority classifications designated under § 250(b) of this chapter and then to qualified applicants in order of descending priority classification, until the number of entry permits issued equals the maximum number of entry permits established under §§ 230-240 of this chapter for each fishery, except that no person within a priority classification specified under § 250(b) of this chapter may be denied an entry permit." In addition, the Commission was instructed that "if, at the time entry permits are issued, some applicants are still appealing the findings of an administrative adjudication under § 260 of this chapter, a sufficient number of permits shall be reserved out of the permits to be issued to protect the rights of those applicants, assuming all the appeals will be resolved in favor of the applicants." In calculating point levels of entry permit issuance for each fishery, the Commission did reserve permits for those applicants in the adjudicatory process before issuing any entry permits below the point level designating significant economic hardship.

The audit suggests from what they refer to as Table B (meaning Table A) that the Commission did not establish a reserve of entry permits sufficient to cover the rights of those applicants appealing their denial of a permit in such a way that the entry permits issued did not exceed the designated maximum number. As primary evidence of this conclusion, the audit points to 683 total permits for the fisheries under entry limitation that have been issued in excess of the maximum numbers total. They discount the new applications which the Commission was required to evaluate under the Isakson decision because of an estimated result of only 200 entry permits being issued to "Isakson" applicants. The Commission is unable to agree with Legislative Audit's conclusions in this matter. These numbers used by Legislative Audit in Table A are inaccurate and misleading.

The maximum number figures utilized in Table A fail to include corrections which have been made as a result of information obtained through the application process to individual maximum numbers as follows:

<u>Fishery</u>	<u>Table A Maximum Number</u>	<u>Actual Maximum Number</u>	<u>Difference</u>
Prince William Sound purse seine	238	258	+20
Kodiak			
purse seine	355	368	+13
beach seine	31	27	- 4
Peninsula-Aleutians			
set gill net	77	110	+33
Power gurdy troll	895	950	+55
Lower Yukon gill net	627	671	+44
Upper Yukon gill net	99	63	-36
TOTAL:			+125

These corrections increase the total maximum number by 125 entry permits from 9,776 to 9,901. These maximum number corrections were repeatedly brought to the attention of the Legislative Audit staff.

The "total permits issued" figure in Table A of 10,459 includes 397 interim-use permits. Maximum number designations govern entry permit issuance and bear no relation to temporary permits issued

pending final action on an individual case, except as the issuance on some fisheries is based on the mathematical possibility of eventually getting a permit. Actual permanent entry permits issued total 10,062. By subtracting the total maximum number of 9,901 from this figure of 10,062 we obtain a total of 161 entry permits apparently issued in excess of the designated maximum numbers. From this figure we must exclude 119 entry permits that were issued in excess of the maximum number because the applicants in question were able to demonstrate that a significant level of economic hardship would have resulted by exclusion from the fishery as follows:

Fishery	Significant Hardship Level	Entry Permit Issuance Level	Entry Permits Issued in Excess of Maximum
Southeastern purse seine	20 points	20 points	17
drift net	20 points	20 points	10
Kodiak purse seine	20 points	20 points	6
Chignik purse seine	20 points	20 points	10
Peninsula-Aleutians purse seine	20 points	20 points	6
Lower Yukon gill net	10 points	10 points	26
Southeastern Herring purse seine	6 points	6 points	7
Prince William Sound Herring purse seine	6 points	6 points	<u>37</u>
TOTAL:			119

This further reduces the number of permits issued in excess of the maximum number by 119 from 161 to 42 entry permits.

Legislative Audit's conservative estimate of 200 additional entry permits that the Commission was required to issue as a result of the Isakson decision would more than explain an overage in the magnitude of 42 entry permits. However, Commission records indicate that 817 entry permits for the salmon fisheries have been issued since the Isakson application period opened in January of 1977. The Commission believes that 50% of this figure or 408 entry permits would be a conservative estimate of the number of permits issued to Isakson applicants.

Recommendation No. 9

This practice was attempted by the Commission in 1976 and 1977. After these two years, the practice was determined to present greater detriments than benefits and was discontinued. Since this system has not been in effect for two years, the recommendation is superfluous.

Recommendation No. 10

AS 16.43.350 specifically states that nothing in AS 16.43 limits the power of the Board of Fisheries. 5 AAC 39.115 directs persons who hold salmon permits for more than one administrative area to declare which area they intend to fish.

The Board of Fisheries regulations and the regulations of CFEC in this regard fulfill the legal requirement placed on these agencies to provide for area election. This was recognized at least as long ago as 1959 when it was stated by the Attorney General that "area licensing regulations have relation to the subject of fish conservation in that they are designed to enable the Department of Fish and Game to control the extent of fishing in various areas of Alaska, and thereby to meet the mandate of Art. VIII, § 4, of the Alaska Constitution to maintain fish resources on the sustained yield principle" (1959 Op.Att'y. Gen., No. 28).

The Commission withholds the issuance of a permit card in those situations when its use would be illegal under regulations promulgated by the Board of Fisheries. Our action seems to demonstrate a degree of cooperation both with ADF&G and Fish and Wildlife Protection.

Recommendation No. 11

Since the content of this recommendation seems directed at the Board of Fisheries, we will comment only on those remarks which indicate that the Commission is charged with economic management. We find this comment to be at best naive. When the powers of the Commission are considered in light of the Board of Fisheries powers for time/area closures and gear and vessel efficiency limitations, we fail to see how any attempt by the Commission to economically allocate stocks between gear classes via use of its optimum number and buy-back powers would be in any way meaningful. The Commission must use its powers to control effort via entry limitation in concert with sound fisheries management policies, economic return to invested capital and labor, and social decisions as articulated by the Board of Fisheries.

1/ See, "A Limited Entry Program for Alaska's Fisheries", Governor's Study Group on Limited Entry, February 1973, a copy of which is submitted herewith.

AUDITOR'S COMMENTS

- A. Legislative Audit has observed that some fishermen did not fully understand the evidence needed to qualify for points.

The generalized nature of such an observation makes it difficult to agree or disagree. Regardless of the situation or complexity of the material at hand, there will always be some individual who fails to understand the most well-meant instructions. Every effort was made by the Commission to disseminate information on evidence requirements by providing an instruction booklet to each applicant, providing assistance in the field, contracting with outside organizations to provide assistance, sending out news releases around the State and carrying on direct correspondence with those applicants having problems with obtaining the proper evidence to support their application.

The instruction booklet provided to each applicant specifically addresses the example given. In the situation where catch was delivered under another fisherman's name, the instruction booklet on page 7 advises "if your fish were sold under another gear license holder's ADF&G or set net number, submit an affidavit from that individual."

- B. This statement is incorrect on its face. Since the large portion of permits were issued without need of the adjudicatory process, no attorneys were necessary for those applicants to obtain permits. For those applicants who did (and still do) make use of the adjudicatory process, clearly those who most vigorously pursued their claims stood the best chance of eventually proving up enough points to qualify for a permit. Many "vigorously" pursued their applications without the use of an attorney. The Commission is constantly reminded that many eligible applicants, including many who would have easily qualified for a permit, did not even pursue their claim to the degree necessary to timely file an application during the appropriate period. We therefore don't find it too surprising that many applicants do not of their own volition adequately or timely pursue additional evidence to prove up claimed points.
- C. The Commission has researched the employment history and the effective startup of the pipeline project with the Department of Labor. It is that department's opinion that there was no significant employment training push until early in 1974. Additionally, records indicate that approximately 3,000 workers were employed by May of 1974 and much fewer than that in preceding years. The main development and employment peak was in September of 1975 at around 27,000 employees. While the auditor's comment is inaccurate on its face, it is true that many residents

of interior and western Alaska worked on the pipeline in 1974 and 1975, which were high point years for the AYK fisheries. Regardless, the Commission must assume that those people made a free economic choice to abandon fishing and pursue this one-time only employment bonanza.

- D. It is undeniably true that permit values have risen in most fisheries (all but AYK). The Commission is unaware of the origin of the permit values in Table B and feel that the 1979 figure is drastically inaccurate. Still, the issue seems to be that young Alaskans are having difficulty obtaining financial backing to obtain permits. We dispute the statement that the commercial loan program has not helped anyone to date. In FY 79, the Division of Business Loans issued 33 loans to people for the purchase of permits. In FY 79 the loans could only be funded up to 75% of appraised value. In the 1979 session, the legislature has authorized funding up to 90%. The limitation of this approach seems to be in the amount of the total appropriation

With regard to the comment about increasing numbers of permits moving in to non-resident hands, we wonder if the auditors reviewed Commission transfer records, which historically track movements of permits between non-residents and residents. The following table charts permit flow for 1975-1978.

YEAR	Nonresident to Nonresident	Nonresident to Resident	Resident to Nonresident	Resident to Resident	Total Gain or Loss to Resident
1975	171	80	25	311	+55
1976	230	68	64	414	+ 4
1977	234	85	92	694	- 7
1978	225	96	106	856	-10

The greatest number of transfers are still occurring in the nonresident to nonresident and resident to resident classes. Some of the residential shifting is due to relocation of former residents or members of a resident's family who might be residing out of state.

If fishing is to continue to be a way of life for many rural Alaskans, new fisheries must be developed. Salmon is the traditional resource, but it is not the only one. New fisheries are developing all over the state, i.e., the ring net king crab fishery in Norton Sound and herring fisheries in the Bering Sea. There are agencies like Sea Grant with specific funding for training and exploration and young Alaskans should be encouraged at every step to explore these horizons.

- E. At the time the Commission began the adjudicatory proceedings, they were not aware that such a practice would be deemed necessary. However, this practice has not and will not be used by the Commission to establish eligibility to apply (AS 16.43.260(a)). Eligible applicants who requested a hearing before the Commission had equal opportunity to describe their fishing history, and thus had equal opportunity to make any claims for points based upon actual fishing experiences.

Auditor's Comments on a New Application Period

- A. It has been suggested that, should the Executive and Legislative branches decide to reopen the application period, an advocate be established to represent and assist applicants in obtaining entry permits from CFEC on the grounds that there is an inherent conflict of interest if CFEC both judges an applicant's eligibility and also assists him in gathering evidence of eligibility.

The practice of CFEC has been to refer applications upon receipt to the application processing section where the application and supporting evidence is analyzed and compared with state licensing and landing records. If sufficient points are not verified to justify issuance of a permanent entry permit, information requests are made of and defects are pointed out to the applicant. After the applicant is given a reasonable period of time to respond, either a permanent entry permit is issued (if sufficient points are then verified) or a classification notice is mailed to the applicant (classifying the application at the verifiable point level and advising the applicant of the right to request an administrative hearing and setting the deadline for making such a hearing request).

Those applicants who do not request or are not granted a hearing but continue to submit evidence within the time allowed by regulation continue to have their evidence analyzed by the staff in the application processing section. Those persons who request and are granted a hearing submit their evidence to a hearing officer for analysis and recommended decision and continue through the adjudication process, which results in a vote and final decision by a quorum of the Commissioners of CFEC.

In order to better insulate the decision-maker from being affected by his acts of gathering favorable or adverse evidence regarding applications, CFEC has instituted a policy whereby hearing officers will make the decisions regarding evidence evaluation in non-hearing situations based upon evidence gathered by the staff of the processing section (from state records and other sources) and evidence submitted by the applicant. In hearing situations, the hearing officers will make the recommended decision based upon evidence accumu-

lated as much as possible by persons other than themselves. In this respect, the goal is to remove the hearing officer from being involved in the accumulation of evidence, whether favorable or unfavorable, as much as possible and make the hearing officer's role similar to that of an administrative law judge.

Bias may arise in two different ways: (1) the person who helps accumulate evidence in support of an application may become emotionally biased toward favorable action on that application to the detriment of the fishery and the people of the State of Alaska; and (2) the person who gathers evidence adverse to an application may become emotionally biased against favorable action on the application to the detriment of the applicant. Bias of both types are to be avoided. Present practice of the CFEC processing staff and the hearing officers is to disqualify themselves from ruling on an application if they feel they have developed a bias one way or another through their dealings with a particular application. This is an inherent problem in all governmental agencies and judicial systems as well, and while it cannot be entirely avoided, efforts are being made to insulate CFEC hearing officers as much as possible from building a case for or against applicants.

Regarding the specific proposal to create an advocate position, it is noted that there is currently no licensing agency in the State of Alaska that employs an advocate who represents applicants before that agency for the purpose of helping them obtain a license. The creation of such a position would possibly have far-reaching effects on other licensing agencies as well. Moreover, it is highly unlikely that one such advocate would suffice if the application periods for all fisheries were reopened since a single advocate's caseload would be so burdensome as to preclude effective representation. If such a job description were created, it would have to be staffed by no fewer than 2 such advocates in order to achieve meaningful representation.

While the recommendation does not specify that the advocate be within the organizational structure of CFEC, if that indeed is the proposal, it would seem inconsistent with the stated reason for creating the position. An advocate gathers evidence and presents a case in a manner most favorable to his client. If the CFEC were required to provide an advocate, then eligibility adjudication and evidence gathering would still be conducted by the same agency.

An advocate with the agency would be more open to a charge of conflict of interest than current agency procedures, simply by being employed by the adjudicating agency.

The statement that an applicant may pay thousands of dollars to a private agent in applying for a permit is irrelevant to the stated reason for the recommendation and ignores an individual's constitutional right to the representation of his choice. The fee paid to a representative is also a matter of choice and agreed upon before representation is undertaken. While some private agents may charge unconscionable fees for their services, an applicant is not bound to contract for those services but may employ a less expensive agent. The CFEC is in no way responsible for any fee schedules private agents utilize.

- B. The Commission agrees with Legislative Audit's suggestion that should an entry permit application period for the salmon fisheries be reopened, training classes be held on a regional basis to assist fishermen in applying and understanding evidence requirements. The Commission has taken similar but more comprehensive action on its own initiative in each of the previously conducted filing periods for the salmon fisheries. The Commission's activities have included:

- Public hearings
- Regional training and informational meetings
- Regional direct assistance by the Commission
- Outside contracting with regional organizations to provide direct assistance
- Newspaper, radio and television advertising
- News releases
- Direct mailings

While regional training programs would be effective, a full program of application assistance modeled after earlier Commission efforts would better serve fishermen.

- C. We have commented on this remark previously.

Attachments

STATE
of ALASKA

MEMORANDUM

TO: [Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

THROUGH: Richard A. Smith
State Internal Auditor
Department of Administration

FROM: Ronald O. Skoog, Commissioner
Department of Fish and Game

DATE: June 25, 1979

FILE NO:

TELEPHONE NO:

SUBJECT:

RECEIVED

JUN 28 1979

LEGISLATIVE
AUDIT

This is in regard to your letter of June 6, 1979 requesting a written response to the Preliminary Audit report on:

"A Performance Review of the Office of the Governor, Commercial Fisheries Entry Commission, (and related aspects of) the Department of Fish and Game and the Department of Public Safety, May 15, 1979."

The Department of Fish and Game is grateful for the opportunity to reply to your Division's Audit. Your report raised several significant points. For example, the separation between the CFEC and the Department of Fish and Game has indeed created difficulties. In the future we intend to cooperate more closely with CFEC to reduce these problems. The audit's comments regarding the role of the Board of Fisheries were of special importance to the Department. The Board is the primary regulatory agency for both the conservation and development of Alaska's multifarious multi-million dollar fishery resource. In responding to Recommendation No. 11, we have considered carefully each of the audit's five points as well as the brief legal analysis which supported those points. It is important to the legitimacy of the auditing process that an agency's response be included in the final report, and we are particularly grateful for your assurance to us that this will occur.

For ease of reference I have addressed each specific recommendation directed toward the Department of Fish and Game and the Board of Fisheries rather than comment on the more general report conclusions.

Recommendation No. 1

The Commercial Fisheries Entry Commission (CFEC) and the Department of Fish and Game (F&G) should communicate and cooperate more closely with one another.

The Department agrees with this recommendation and will immediately strive to improve communication between the administrative staffs of the Division of Commercial Fisheries and the Commercial Fisheries Entry Commission. The Department intends to accomplish this objective by scheduling regular meetings with CFEC to discuss current operational problems and issues. From a data processing standpoint the Department relationship with CFEC is significantly better than it has been for the past several years. Department and CFEC staff regularly communicate with each other, share information and processing of data requests. The following specific comments are provided in response to the examples listed in Recommendation No. 1;

- A. This problem developed as a direct result of recent changes of Division of Commercial Fisheries administrative staff responsible for coordination between the two agencies. We are presently evaluating the options available on district and subdistrict preregistration and will be implementing a new procedure to resolve the current problem.
- B. The maintenance level funding constraints under which the Department is now operating do not allow for the increased effort needed to research fish ticket data for possible violations, except for those that are readily apparent on the ticket. Our first priority and primary effort associated with fish tickets must be directed toward the accurate compilation of harvest data to insure sound biological management of the resources. We agree that increased effort is desirable, however the recommendation is pointless without a corresponding recommendation that additional funding be provided to data processing operations.
- C. The Department questions whether the errors in vessel registration currently present a significant problem to fisheries managers. Admittedly errors exist, although it should be emphasized that the situation is far better now than before.

Recommendation No. 2

Organizational and procedural changes would enable CFEC to better administer limited entry laws and provide service to the public.

The Department agrees with this recommendation and supports future efforts to improve CFEC's accessibility to the public.

- A. Maintaining adequate contact with Alaska's rural areas is certainly a difficult undertaking for any service organization. The Department expends a considerable amount of its resources in pursuit of good communication with the public. It should be recognized that CFEC may be limited in their ability to extend operations to the field without additional resources.

- B. No comment.
- C. No comment.
- D. No comment.

Recommendation No. 3

CFEC should establish an effective method of monitoring the economic health of the fisheries.

The Department agrees with this recommendation. Studies to evaluate the economic condition of fisheries are mandated by the limited entry legislation. The Department stands ready to provide information and assistance in establishing suitable entry permit levels for Alaska's fisheries. Past experience has taught us that effective resource management is often dependent upon stable and predictable effort levels in our intensive fisheries. Clearly the long term health of Alaska's fish resources requires continued efforts on this subject.

There may be some merit to the auditor's recommendation that consultants might be effectively used to conduct some economic research for the Commission. However, this does not hold for all economic research and the use of consultants should be very selective with regards to the projects chosen for contract. Further, we believe it absolutely necessary for the Commission to maintain at least one staff economist.

Recommendation No. 4

It is essential for efficient fishery resources management that there be more coordination and cooperation between the Department of Fish and Game, Division of Commercial Fisheries, Commercial Fisheries Entry Commission, and the Department of Public Safety, Division of Fish and Wildlife Protection.

- A. The Department agrees that some type of positive identification should be required. The best method would be a photo on the permit. This would present problems for rural residents. An alternative would be a State I.D. or driver's license. There may be an additional problem in that a permit card with laminated photo may be too thick to fit into the imprinting machine.
- B. The Department supports the recommendation that the seasonal employees of Fish and Wildlife Protection be increased. The increased manpower should reduce the number of violations related to illegal use of permit cards.
- C. The Department has instructed the staff to enforce 5 AAC 39.130(b)(9). There had been some question on enforcement of the regulation in cases where the buyer was unable to purchase an imprinter. An opinion was obtained from the Department of Law on this matter which instructed the Department to enforce the regulation and let the district attorney or the court determine if the violator had made an attempt to obtain an imprinting machine. Handwritten tickets may continue to be a problem with small volume buyers such as restaurants, specialty fish retailers, and small cash buyers in rural areas, especially those that transport the fish by

small aircraft. The cost of the imprinters is now about \$200 and some small operators have been reluctant to purchase the machine.

- D. The Department agrees that more timely processing of fish ticket information is desirable, however the present maintenance level budget severely restricts improvement efforts. Presently personnel assigned to the fish ticket system are frequently interrupted by special data requests from court orders, the Legislature, and the Administration. If the budget were increased, additional personnel could be hired to increase the rate at which the information is processed. The increased manpower would also allow review of the information for possible violations.
- E. The Department is continuing to require all field staff biologists to take the Sitka law enforcement training course. Again, because of budget limitations we have had to reduce the number participating to those most involved in the day-to-day management of the fisheries. To offset this reduction we are going to institute short courses in law enforcement in Anchorage and Kodiak that will provide a minimal level of training to biologists not able to attend the Sitka course.
- F. The Department supports this recommendation. Some courts have been much too lenient in imposing fines and forfeitures for fishing violations. In some cases the fines have been less than the profit to the fisherman realized from the violation. The Department of Law is also working on this matter.

Recommendation No. 5

Adequate internal control and security procedures should be established and implemented for processing and physical control of permit cards and confidential records.

No comment.

Recommendation No. 6

The CFEC should establish regulations which require a person to show ability to actively participate in the fishery before receiving a permit as required by AS 16.43.170(b).

No comment.

Recommendation No. 7

The CFEC should establish a standard format for reporting statistical data on commercial fisheries information to the Executive and Legislative branches, and to the public.

- A. The Department currently provides catch data by fishery and administrative areas in its annual report. This information can easily be provided to CFEC for inclusion into their annual report.

B. No comment.

C. No comment.

D. No comment.

Recommendation No. 8

For future limited fisheries, the CFEC should determine and establish a reserve of permits sufficient to cover the rights of those applicants appealing their denial of a permit as designated in AS 16.43.270(c) in such a way that the total permits issued do not exceed the maximum numbers designated.

The Department agrees with this recommendation and supports any administrative procedure that will provide for subsequent late permits without increasing the total number above the established maximum. Issuance of permits above the maximum is self defeating and should be avoided.

Recommendation No. 9

Fish processors and buyers should not be provided with copies of permit cards.

No comment.

Recommendation No. 10

CFEC should not withhold entry permit cards from fishermen who have paid their fees and have a right to use their cards.

Regulations adopted by the Board of Fisheries do prevent a person from fishing for salmon in more than one registration area per year even if the person holds permits for more than one area. The prohibition, found in 5 AAC 39.115 and 39.120, was in effect prior to limited entry and used to reduce effort in the salmon fisheries. The implementing legislation that established limited entry also set the ceiling for the number of entry permits. AS 16.43.240(a) states that the maximum number of entry permits shall be "the highest number of units of gear fished in that fishery during any one of the four years immediately preceding January 1, 1973." The Legislature implies in AS 16.43.010 that this number of units of gear is already at a level that threatens the economic and biological stability of the fishery. The Alaska Supreme Court opinion in Isakson v. Rickey required the Commercial Fisheries Entry Commission to accept entry permit applications from those persons who had not previously been allowed to submit them. The result was, according to Table A of the Preliminary Audit report, that the number of permits exceeds the maximum by some six percent.

AS 16.43.290 requires CFEC to establish the optimum number of permits for limited entry fisheries. The guidelines for establishing those numbers are based on economic and biological criteria. The CFEC is presently trying to determine the optimum number of permits, but has been hindered by the recent fluctuations in salmon returns, particularly in the Bristol Bay and

Cook Inlet areas. The Board of Fisheries has decided to retain the prohibition against fishing more than one salmon registration area per year until such time as the number of units of gear in the salmon net fisheries has been reduced to an optimum number. During the past six years there have been only four public proposals to delete the single area requirement. The user groups were evenly divided on the issue and the Board rejected the proposals.

A buy-back program that allows a fisherman to retain only single area permits may not be in his best interest. It would lock him into that fishery, whereas under existing regulations he has the flexibility of deciding what area he wants to fish for that year.

Recommendation No. 11

The Board of Fisheries should avoid establishing regulations and policies for which the major purpose is to allocate fisheries resources between different commercial fisheries.

In Recommendation No. 11 the Division of Legislative Audit suggests that the Board of Fisheries should avoid establishing regulations and policies for which the major purpose is to allocate fisheries resources between different commercial fisheries. An opinion from the Division of Legal Services, Legislative Affairs, goes even further. It suggests that the Board's authority is confined to biological development and conservation issues. The purpose of this reply is to dissent from the Division of Legislative Audit's formal recommendation and to refute the legal conclusion upon which it rests.

The organic statutes for the Board of Fisheries (AS 16.05.221,.251) state that the Board is established for two purposes: "the conservation and development of the fishery resources of the state." To accomplish those purposes, the Board is granted the power to make regulations (AS 16.05.251). At least twice annually, the Board of Fisheries goes through extensive public hearings in order to promulgate the regulations it considers advisable to effectuate the purposes for which the Legislature created the Board (AS 44.62.010 et. seq.). The powers which the Legislature granted to the Board of Fisheries are far-reaching (AS 16.05.251). A comprehensive and detailed review of those powers is beyond the scope of this response.

The Board of Fisheries is the primary regulatory agency for the conservation and development of the State's fishery resources. The Commissioner, Alaska Department of Fish and Game, also enjoys certain regulatory powers (AS 16.05.010, .020(2),(3), 16.05.050,.060,.270) but his role is generally that of the chief executive officer of the Department of Fish and Game. The Board of Fisheries may properly be seen as the regulatory arm of the Executive Branch for fishery resources.

In their exercise of rule-making authority, the Board of Fisheries is obligated to follow applicable Alaska Statutes and the Alaska Constitution. The statutes most germane to the role of the Board have been mentioned above. The discussion which follows will concern itself exclusively with the mandates of the Alaska Constitution.

The State of Alaska has advanced and comprehensive provisions for the management of its natural resources (Alaska Constitution, Article VIII). Our constitution places the Alaska Legislature under an affirmative obligation to provide for the utilization, development, and conservation of the State's fishery resources (Alaska Constitution, Article VIII, Section 2). These activities are to be undertaken for the maximum benefit of the people (Id.). Fish and all other replenishable resources belonging to the State must be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses (Alaska Constitution, Article VIII, Section 4).

As the primary regulatory agency for the conservation and development of Alaska's fishery resources, the Board of Fisheries must follow the aforementioned mandates of the Alaska Constitution. In so doing, it may utilize only those powers delegated by the Alaska Legislature. All regulations of the Board which govern the use of those fishery resources must apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the regulation (Alaska Constitution, Article VIII, Section 17).

It should be clear from the above discussion that the Board of Fisheries' responsibilities extend beyond "mere" conservation or preservation of the resources. The Board's responsibilities include "development" of the fishery resources. By implication the Board is also charged with oversight of the "utilization" of fisheries resources. In so doing, the Board must consider what will inure to the maximum benefit of the people (Alaska Constitution, Article VIII, Section 2). This constitutionally mandated consideration supplements management of the resources on the basis of the sustained yield principle.

It should be clear to even the most ingenuous observer that many actions taken for the purpose of conservation will have economic effects, i.e., they will affect the development or utilization of fisheries resources. A specific example may serve to illustrate this interrelation.

5 AAC 06.341 limits the size of vessels that may engage in salmon net fishing in Bristol Bay to a maximum of 32 feet. The Board of Fisheries has authority to enact such regulations as a means of affecting the methods and means employed in the pursuit, capture, and transport of fish (AS 16.05.251(a)(4)). A 32 foot vessel has a limited capacity for catching and carrying fish. Limiting the size of the vessel effectively limits the effort present in the fishery, just as time and area closures serve to limit fishing effort. From another perspective, this regulation serves development purposes. For example, if larger vessels were allowed to participate in the fishery, those vessels would be capable of fishing more efficiently. Consequently, periods during which fishing is allowed would very probably have to be shortened to avoid overfishing. Shorter periods would act to the detriment of those fishermen without the financial or technical ability to improve their harvest efficiency, and the development of the fishery would thereby definitely be affected.

Other examples abound of how conservation decisions produce diverse social and economic consequences. It would be the height of naivete to suggest that the Board could promulgate regulations for conservation purposes that did not have correlative economic effects. Whenever a fish, crab, etc., is either taken or not taken as a result of Board action, this results in an economic effect on a commercial fisherman, sport fisherman, or subsistence fisherman. The Legislature, by their tacit acquiescence over a 20 year period, may be deemed to approve of the Board of Fisheries' practice of considering factors other than conservation. Since statehood it has been accepted by the general public and the Legislature that an impartial body of citizen-experts, viz., the Board of Fisheries, is entrusted with making the decisions connected with who utilizes the rich and finite fishery resources of Alaska. The Board has exercised these powers diligently and judiciously for 20 years. No revocation of the Board's authority has issued from the Legislature, and no superior forum has yet been created to replace this role of the Board.

The Legislature has delegated specific authority to the Board of Fisheries to act as a forum in which social and economic decisions are made. Subsistence regulations are a prime example of such a delegation of authority. Alaska recognizes subsistence use of fisheries resources to be a priority use (Sec. 1, Ch. 151, SLA 1978). The Board of Fisheries is specifically directed to adopt regulations to assure the subsistence use of fisheries resources (AS 16.05.251 (b)). In doing so, some of the factors which the Board is to consider include: (1) customary and direct dependence on the resource as the mainstay of one's livelihood; (2) local residency; (3) availability of alternative resources (Id.).

There is more than sufficient harvest capability for many of the commercial fisheries in the State today. A multiplicity of gear types exist to harvest those resources. In making regulatory decisions, the Board of Fisheries must perforce allocate the limited harvestable portion of the resource between different commercial fisheries as well as subsistence and sport fisheries.

The question of allocation between totally different user groups also needs to be considered. If the Board cannot allocate between commercial users of the fisheries, how can the Board guide the Department in allocation of resource surpluses between commercial, recreational, and subsistence users. There is no entry commission for these other groups.

Each individual regulatory case presents a unique array of conservation, social, and economic facts. The discretion of the Board of Fisheries to decide the relative weight which it will accord the facts and testimony it receives during the hearing process has not yet been dictated by the Legislature. The judiciary has not yet circumscribed the Board's discretion in this regard, either. In fact, the Board would expose itself to charges of acting in an arbitrary or capricious manner if it failed to consider conservation, social, and economic consequences of its actions.

The foregoing discussion demonstrates the existence of the Board of Fisheries' authority to consider conservation, social, economic, and other factors in making regulations it deems advisable for the conservation and development of Alaska's fishery resources. The legal foundation for the Board to allocate among different user groups and different gear types is clear. For the reasons discussed above, the Department and the Board of Fisheries must disagree with Recommendation No. 11 of the Division of Legislative Audit report. The effective approval of the Legislature, Alaska Statutes, and the Alaska Constitution require the Board to consider more than "mere" conservation implications of regulatory decisions, and do not limit the relative weight to be accorded the other factors the Board must consider.

In response to the specific examples listed under Recommendation No. 11 the following is provided for information and clarification.

- A. 5 AAC 33.330 is not a discriminatory regulation. Historically the hand troll fleet has not fished the outside waters because of the small size of the vessels. The Board adopted 5 AAC 33.330 to prevent the entrance of a new gear type, large hand troll vessels, into a fishery that had reached a level of participation that required limited entry: the outside waters power troll fishery. The 20% allocation to the hand troll fleet is well above their historical percentage of the total troll fisheries landings for both inside and outside waters.
- B. This matter has been covered at length under our response to Recommendation No. 10.
- C. This example is not correct. 5 AAC 06.341 only limits vessels used in the Bristol Bay salmon fishery to 32 feet, not all salmon net vessels statewide. The regulation only affects salmon drift gill net vessels, not seine vessels, as that is the only legal boat type salmon gear for the bay. AS 16.05.835 and 5 AAC 39.160 limit the size of salmon seine vessels statewide. There is no conflict between statute and regulation.

The Board of Fisheries has been conducting a public opinion poll on the Bristol Bay 32 foot length regulation and the indications are that the majority of resident Bristol Bay fishermen want the regulation to continue.

- D. The administrative directives mentioned in this example are the management plans adopted by the Board. These plans are reviewed on an ongoing basis and repealed, amended, or readopted as the situation in the fishery changes. An example of this is the 1979 Cape Igvak management plan that allocates to the Cape Igvak-False Pass area a percentage of the Chignik-bound salmon transiting that area. The Board decided to allow this interception type fishery to occur because there had been a fishery in the area in the past. Not to do so would have resulted in an economic dislocation of the local fishermen. The Board did limit the interception catch by tying the quota to the number of fish returning to Chignik Lake, the spawning area for that stock. Use of this type of management plan allows the Board to conserve the salmon stocks while still maintaining the economic stability of the fishery. The statutes do not allow the Commercial Fisheries Entry Commission the same degree of flexibility, as they can only manage the economic aspects of the fishery by limiting the entry into a particular fishery.

- E. The reason for adoption of 48.090 was to enforce the six day closures on trolling and to solve a long term enforcement problem of sport caught salmon being sold by hand troll permit card holders, not to limit hand troll effort. Hand and power troll effort were reduced equally by the weekly periods. The direct limitation of any gear type should be by the Commercial Fisheries Entry Commission, but time delays in implementation of limited entry require the Board to manage effort by season and area closures.

STATE
of ALASKA

MEMORANDUM

JUN 18 1979

TO: William R. Nix
Commissioner
Department of Public Safety
Juneau

DATE: June 15, 1979

FILE NO:

TELEPHONE NO:

FROM: Col. Fred M. Woldstad
Director
Division of Fish and Wildlife
Anchorage

SUBJECT: Legislative Audit on
Commercial Fisheries
Entry Commission

RECEIVED
JUN 26 1979
LEGISLATIVE
AUDIT

A review of the Legislative Audit has been completed by Captain Frank Sharp and myself and I shall provide our combined comments for your consideration. Briefly stated, we are not in conflict with any of the findings of the auditor, but have some difference of opinion with the recommendations and conclusions of several specific recommendations.

Recommendation No. 1 suggests a pooling of resources between the Commercial Fisheries Entry Commission (CPEC) and the Department of Fish and Game (F&G) to help enforce limited entry laws from data obtained through the collection and processing of fish tickets. The recommendation for the data to be used for enforcement purposes will require some changes in the present legislative thinking and direction.

House CS for CS for Senate Bill no. 51 (Judiciary) am I presently in the Eleventh Legislature is the result of considerable testimony and discussion all over the confidential nature of fishery records. It is anticipated that further discussion will occur before the Bill reaches the desk of the Governor. Access of these fish tickets by Fish and Wildlife Protection Officers has been one major cause for debate, and use of fish tickets for enforcement purposes is not an area where the industry will compromise.

Recommendation #4 speaks towards improved coordination and cooperation between agencies with suggestions for more efficient administrative and enforcement controls. We heartily support the recommendations, particularly the use of a photographed identity entry permit card which we have been promoting for over two years. Those recommendations which we feel most emphatic towards are: no duplicate processor cards should be printed; pre-stamped fish ticket books should be unlawful; handwritten entry permit numbers on fish tickets must be minimized; and, photograph on the permit card is a necessity.

Additional seasonal employees are certainly a welcome recommendation; however, not in the quantity and for the sole purpose of providing a monitor on all tenders and at fish buying locations. Temporary employees require more than just salary such as: travel for placement throughout the State; fuel for outboard motors; food for field camps and funds to house and feed personnel on fish tenders; plus funds for equipment. Temporary employees require training and servicing during the season, yet a modest increase of personnel, working in teams in a random manner, could monitor fish buyers to the degree that compliance could be assured.

June 15, 1979

Certainly apprehension is only a portion of the total judicial and law enforcement system. Court support is necessary to achieve meaningful penalties to discourage violations. The recommendation that the courts be required by statute to forfeit the commercial fishing license for a period not to exceed three years upon a third conviction of a commercial fisheries violation is not supported by this Division. This language was once in effect and has been repealed to read "may" rather than "shall". Compulsory penalties have not achieved the desired results in wildlife enforcement, and flexibility is desirable for the court's benefit.

As previously stated, we do concur with the findings of the auditor and feel the remaining recommendations require no specific comment rather than we recognize difficulties other agencies may encounter implementing the recommendations. The findings are accurate in identifying problems, and corrections will benefit our overall efforts.

FMW:rcp

Attachment

Original sponsor: Rules/Governor

Offered: 4/29/79
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 51 (Judiciary) am H

(re-engrossed)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the confidential nature of certain
7 reports.

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

9 * Section 1. AS 16.05.815 is repealed and re-enacted to read:

10 Sec. 16.05.815. CONFIDENTIAL NATURE OF CERTAIN RECORDS. Reports
11 required by regulations of the department which disclose information
12 relating to a person's income or which include information indicating
13 the specific location where fish have been taken by a person are confi-
14 dential and may not be released, except that a report may be released to
15 (1) the individual operator whose fishing activity is the subject of the
16 report; (2) the National Marine Fisheries Service as required for pre-
17 paration and implementation of North Pacific Fisheries Management
18 Council fishery management plans within the fisheries conservation zone;
19 and (3) the legislative auditor, the Department of Revenue and the
20 Commercial Fisheries Entry Commission to assist them in carrying out
21 their statutory responsibilities. Reports which do not identify
22 individual fishermen, buyers, or processors or the specific locations
23 where fish have been taken are public information. Confidential reports
24 held by the department, or received from the department by the agencies
25 and organizations mentioned in this section, may not be communicated
26 or distributed in the form or individual records to any other agency,
27 organization, or individual unless required by a court order signed by
28 a superior court judge.

29 * Sec. 2. AS 43.05.230 is amended by adding a new subsection to read:

-1-

HCS CSSB 51(Judiciary) am H
(re-engrossed)

(g) Information which is received or developed by the department in administering the provisions of the oil and gas corporate income tax (AS 43.21) or the oil and gas properties production tax (AS 43.55) and which relates to production costs charged or chargeable against an interest of the state under AS 38.05.180 in oil and gas production or which relates to the price or value of such oil or gas which the state is taking in value and for which the state has not given notice of taking in kind, may be made available to the Department of Natural Resources only for purposes of oil and gas accounting supervision. The information thus made available to the Department of Natural Resources shall be held confidentially by that department the same as it is so held by the Department of Revenue, except that it may be used in connection with official investigation proceedings relating to oil and gas royalty accounting and supervision by the Department of Natural Resources, whether judicial or administrative, and except also that either department may release or publish information that is otherwise available from non-confidential sources.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 5, 1979

RECEIVED

JUL 5 1979

LEGISLATIVE
AUDIT

Mr. Gerald Wilkerson
Legislative Auditor
Pouch W
Juneau, Alaska 99811

Dear Sir:

The Governor's Office appreciates the opportunity to comment on the recent legislative audit done on the Commercial Fisheries Entry Commission and also appreciates your patience in awaiting our reply. As we discussed on the telephone, key advisors to the Governor and the Governor himself have been on leave and/or travel status for several weeks and it would be inappropriate to complete our response without their input. Therefore, I would request a brief extension for our reply pending their return.

As the Administrative Assistant to the Governor, it has been my function to act as the "quasi-commission" for the approximately fifteen operating agencies in the Governor's Office primarily for administrative purposes. At this point, I feel reasonably competent to comment generally on only one portion of your audit report. Recommendation number 1 concluded that:

...the CFEC and ADF&G should communicate and cooperate more closely with one another.

The audit further reported, "However, unless the agencies cooperate more closely in their use of data and manpower resources, consideration should be given to integrating CFEC into F&G's organization." This recommendation is comparable to at least two other management reports done by the Executive Branch in 1977 and the other in 1976 (the Governor's Management and Efficiency Review). Furthermore, it is in keeping with the general theme of the Governor to maintain a minimum number of operating agencies within the Office of the Governor. It is this office's intention to again seek appropriate action to move several of the operating agencies and/or functions to the major operating departments.

Mr. Gerald Wilkerson

-2-

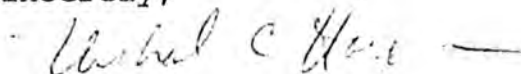
July 5, 1979

One additional comment that deserves mention is that the Entry Commission was established as a quasi independent commission. With that designation, the Governor's Office has viewed its responsibility after, of course, nominating the commissioners for approval by the Legislature, to be solely as an administrative and support arm. Major policy direction and all other activities exclusive of the administrative support activity are the responsibility of the commission.

Again, I would reiterate my request to allow further staff review prior to completing a more substantive response especially in light of the importance of the issues.

Thank you for your patience.

Sincerely,



Michael C. Harper
Administrative Assistant
to the Governor



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

RECEIVED

JUL 20 1979

LEGISLATIVE
AUDIT

July 20, 1979

Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
Finance Division
Pouch WF - State Capitol
Juneau, AK 99811

Re: CFEC Audit

Dear Mr. Wilkerson:

On June 7, the Division of Legislative Audit transmitted to the executive branch its preliminary performance review of the Commercial Fisheries Entry Commission. Since that time, representatives of my office and the commission, as well as the departments of Fish and Game, Public Safety, Administration and Law, have conducted an intensive review of the report's findings and recommendations, including discussions with division personnel.

The intensity of the review given the report by my administration is the product both of the obvious importance of successful implementation of this vital regulatory program, and the quality of the report itself. Seldom has an audit of an Alaska administrative agency reached this report's level of detail. This is true despite certain factual errors -- highlighted in the commission's June 29 response -- which are simply unavoidable in an analysis of this magnitude. In reviewing the report, and in discussions with division staff, broad areas of agreement on improving the limited entry program were found. Of perhaps greatest significance, the report opened what I am confident will be a productive dialogue between my administration and the legislature on improving this critical program.

No legislative initiative promises more for the future economic vitality of our state than the Limited Entry Act. Its administration deserves the attention it has received in the report. I share the views of the division, stressed in

July 20, 1979

meetings with my staff, that the commission has done its job well. Certainly, in the initial years of operation, its job has not been an easy one. With a total staff of 24 - including but two hearing officers -- the commission has reviewed approximately 15,000 individual permit applications, and held hundreds of adjudicatory hearings. The resources of the commission have been further taxed by the transfer to it, in 1978, of vessel licensing responsibilities -- a function formerly handled by 51 individuals, but for which the commission received no permanent increase in staff. Particularly in light of the enormous demands placed upon the commission's resources, the fairness and dispatch with which it has executed its entry permit licensing function deserves the commendations they have received.

Most importantly, the commission has met its initial goal of limiting gear operation intensity in our distressed fisheries to maximum historical levels. In only two limited and legally unavoidable circumstance has the commission been required to exceed these numbers -- (1) when mandated by the Limited Entry Act itself in order to accommodate all previously-licensed gear operators who would suffer significant hardship by being denied a gear license under the Act; and (2) in order to comply with our Supreme Court's ruling in Isakson v. Rickey. As the response to the preliminary report by the commission indicates, had the current and more accurate "maximum number" figures been made available to the division at an earlier date, this would have been more clearly reflected in the report itself. Had the division interviewed the commissioners during preparation of the report, this information could have been provided.

Because of the commission's necessary initial emphasis on licensing, the report properly notes the desirability of increasing the commission's gathering and analysis of economic data on Alaska's fisheries. The commission has recognized the integral role of economics in the program -- both in the establishment of its point system and in analyzing various fisheries for possible placement under limited entry. Its economist has already developed a methodology for determining optimum gear levels for the Prince William Sound drift gillnet fishery, and the commission is currently surveying other fisheries to determine whether that methodology is transferable to those fisheries. The division is quite correct, however, in identifying the need for increased effort in this phase of the commission's functions.

July 20, 1979

The report is also quite correct in another of its major recommendations -- making systematic use of fish ticket data for enforcement purposes. Currently, however, access to fish tickets is statutorily denied to the Department of Public Safety -- the agency charged with enforcement of fisheries laws. AS 16.05.815. The report's observations in this regard serve to vividly underscore the irrationality of current law in this regard.

The report's discussion of enforcement matters is but one example of the report's central theme -- the need to ensure the greatest possible degree of coordination between the functions of the commission and those of the departments of Fish and Game and Public Safety. By necessity, of course, the staff of the commission and the Department of Fish and Game are in daily communication, and the commission relies heavily on the expertise and advice of that department. For example, the commission relied extensively on the department in the development of its optimum gear level methodology for the Prince William Sound drift gillnet fishery. The prominence given the desirability of heightened coordination in the report, however, convinces me of the need for top-level review of this matter. Accordingly, I have instructed the commission and the commissioner of the department, to immediately and comprehensively reappraise their practices and procedures in this regard in light of the division's report.

There are, of course, areas of disagreement. For example, the report suggests an expansion of the commission's jurisdiction into areas of regulation traditionally controlled by the Board of Fisheries, such as resource allocation for various gear types. The Department of Law advises me that such a jurisdictional realignment would require a statutory change, and I see nothing in the performance of the Board of Fisheries which would warrant such a change.

I also believe that the section of the report dealing with "unresolved questions on policy" needs to be put in perspective. As the division has assured my staff, this section does not represent the views of the division. Rather, the reader should discern these "unresolved questions" were provided, in the main, by private attorneys representing unsuccessful permit applicants, and in essence are simply legal theories upon which they are attempting to overturn commission action in particular cases.

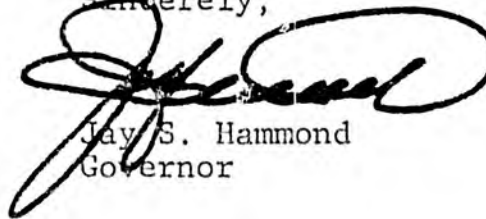
Mr. Gerald L. Wilkerson

-4-

July 20, 1979

The vital importance of the limited entry program demands detailed and exacting analysis and evaluation. It has received that in the division's report. I trust the report will be only the beginning of an ongoing joint monitoring of the program by the legislature and the administration. The executive branch remains committed to providing whatever resources it can to realize our joint goal -- a stable, effective and fair limited entry program for Alaska's distressed fisheries.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jay S. Hammond", is written over the typed name and title.

Jay S. Hammond
Governor

THE LEGISLATURE

FINANCE DIVISION
POUCH WF—STATE CAPITOL

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

July 3, 1979

Members of the
Legislative Budget and Audit Committee:

We have reviewed the agencies responses to our Performance Audit Report of the Commercial Fisheries Entry Commission and related aspects of the Departments of Fish and Game and Public Safety. We have provided additional information or clarification to our report in order of the agencies responses and in order of our report recommendations.

Commercial Fisheries Entry Commission's (CFEC) Response

CFEC's response of 25 pages has been included in this report. We have deleted 487 pages of attachments due to the bulk involved. The following attachments can be obtained from the State Library or the Division of Legislative Audit.

Attachment I	Internal memos on vessel licensing to F&WP and F&G.
Attachment II	Educational Program Proposals by CFEC staff.
Attachment III	"Optimum Numbers", a report by CFEC June 15, 1979.
Attachment IV	Proposed Regulations.

Data Collection and Analysis Necessary to Limit Entry in Alaska's Salmon Fisheries, August 11, 1975.

A Limited Entry Program for Alaska's Fisheries by Governor's Study Group, February 1973.

Our review of CFEC's response and attachments provided no information which leads us to revise our report. Accordingly we reaffirm the recommendations and findings discussed in our report. We have however, provided additional information or clarification of our report to some points addressed in CFEC's response.

General Comments

We concur that improved contact through interviews and discussions with the commissioners was needed. However, the

commissioners were unavailable to enter into such discussions, or to respond to most written communications concerning the audit. We did inform the commissioners of all significant audit findings, as well as discussing all audit findings with agency personnel.

UNRESOLVED QUESTIONS ON
POLICY AND COMPLIANCE ISSUES

- I. There are 132 pending court cases against CFEC as of July 2, 1979 according to the Attorney General's office. The growing number of court cases increases the possibility of court decisions substantially altering the CFEC program.
- II. We reaffirm our questioning of CFEC's formula to rank applicants based upon the "percentage of income derived from the fishery" compared to "non-fishing income" required by AS 16.43.250(a)(1). The legal opinion from Legislative Affairs, Division of Legal Services provides the basis for questioning the formula.
- III. CFEC's contention that applicants were required to verify preprinted points is not valid. It is true CFEC has found many problems with residency claims and is taking action against those found to be in violation. However, this does not change the fact that CFEC did require substantially more proof of residency from persons without preprinted points, than from those with preprinted points.
- IV.
 - A. We found cases of adult applicants as well as minors, who were not old enough to be in school, granted income dependence points because no tax return was filed and an affidavit from a family member was submitted with their applications stating the applicant had fished.
 - B. We concur that all individuals who qualified for a permit based upon a single affidavit held gear licenses. However, we did not consider the holding of a gear license to be corroborating evidence that an individual participated in the fishery and had income from that fishery.
 - C. CFEC, after becoming aware of a commissioner awarding permits based on his personal knowledge, did search for these questionable applications. However, we found three cases that were not reviewed which demonstrates there could be others.
 - D. CFEC's statement "In no case was a fisherman engaged in legal commercial fishing denied

the opportunity to apply" (for the Artic-Yukon-Kuskokwim fisheries), is only valid if CFEC's contention that only State issued gear licenses constitutes legal commercial fishing. Based on our conversation with knowledgeable persons we believe that a State issued gear license may not be the only form of commercial fishing for the following reasons:

- a. There was no need for a small scale commercial fisherman to obtain a State gear license because sales of fish were allowed under subsistence fishing.
- b. The commercial fisheries were not well developed in the in-land waters. Therefore, gear licenses were mainly held by persons near the coast.
- c. F&WP personnel informed us that the Artic-Yukon-Kuskokwim areas have always been problem areas in that the fishermen frequently do not obtain State licenses to hunt or fish. Because of the possible discriminatory effects of Limited Entry we questioned whether the courts would uphold the gear license requirement.

- V. One of the standards for determining hardship as designated by AS 16.43.250 states "(1) degree of economic dependence upon the fishery, including but not limited to percentage of income derived from the fishery..." AS 16.43.250 does not correlate income derived from a fishery with the holding of a gear license as a requirement for this standard. We questioned CFEC's requirement that a person hold a gear license in 1971 or 1972 to obtain income dependence points because there does not appear to be a correlation between this requirement and the "hardship" suffered by being excluded from the fishery. Because all qualified applicants were required to hold gear licenses, we believed economic dependence should have been an independent standard.

Recommendation No. 1

- B. Regarding CFEC's statement "the Entry Commission is not an enforcement agency", AS 16.43.010 states its purpose is "...management of Alaska's fishery resource..." accomplished by "...regulating and controlling entry into the commercial fisheries..." (emphasis added). In addition AS 16.43.100(13)(b) states "The commission may do all things necessary to the exercise of its powers

under this chapter, whether or not specifically designated in this chapter". We therefore believe CFEC has all the authority they need to enforce their statutes and regulations.

- C. We were informed by F&WP officers and F&G managers in Kodiak, Kenai, Bristol Bay and Cordova that CFEC had created many errors in vessel licensing which had caused an increased administrative burden and enforcement problem for these individuals.

Recommendation No. 2

One of the means to increase service to the public without additional costs is outlined in Senate Concurrent Resolution No. 3 (Flex Time). We recommend CFEC consider this resolution.

Whether CFEC should admonish the public or work on ways to improve service to the public is a point of philosophical disagreement. We reaffirm our recommendations for improving services to the public.

Recommendation No. 3

AS 16.43.010 defines the purpose of CFEC as "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". AS 16.43.380(2) further states: "economically healthy fishery" means a fishery that yields a sufficient rate of economic return to the fishermen participating in it to provide for, among other things, the following:

- (A) maintenance of vessels and gear in satisfactory and safe operating conditions; and
- (B) ability and opportunity to improve vessels, gear and fishing techniques, including, when permissible, experimentation with new vessels, new gear, and new techniques".

CFEC's response demonstrates their desire not to be involved with the economic health of the fisheries, but to increase their licensing function. Based upon the above statutes, we have held CFEC accountable for developing an effective system to monitor the economic health of the fisheries to enable them to participate in the management of this resource.

On the vacancy of the economist's position we did not mean that CFEC had lapsed personal services money, only that they had allowed the economist's positions to remain vacant while they directed this money into other areas.

Recommendation No. 4

Our recommendation stressed the need for coordination and cooperation between the agencies. CFEC's dissertation on the photograph pertains only to a small number of fishermen who would have difficulty providing a photograph to be laminated to their permit. We believe CFEC could create regulations which could accomodate this minority. However, we believe CFEC missed the significance of the recommendation for increased coordination between the departments to promote the economic health and stability of the commercial fisheries. Uncontrolled use of the commercial fisheries by unlicensed fishermen threatens and impairs Alaska's fishery resource.

Recommendation No. 6

Internal documents by CFEC do not ensure transfer and issuance of permits to qualified applicants as designed by AS 16.43.100(7) and (11) unless they establish provable standards to show an applicant's ability to actively participate before a permit is transferred.

Recommendation No. 8

Our table is based on maximum numbers designated in 20 AAC 05.320 and actual permits issued by CFEC at the time the table was prepared. We concur the estimated 200 Isakson permits is not verifiable, but was the best estimate CFEC could provide when we requested this information. Statistics or auditable records on the establishment of a reserve as required by AS 16.43.270(c) were not maintained by CFEC.

Recommendations No. 10 and No. 11

We do not agree with CFEC's contention that CFEC's statutes are superseded by the Board of Fisheries regulations. Instead CFEC has an obligation under AS 16.43.110(13)(b) to take such action necessary to implement their statutory requirements.

Auditor's Comments:

- D. We did not use CFEC transfer records because they were compiled on a 57% voluntary response questionnaire. We believe such a response may not have been representative of actual transfer. Because CFEC has not gathered pertinent transfer data from permit holders we could not verify the validity of transfer information. In addition, CFEC has found many inaccurate claims of residency which further reduces the accuracy of CFEC transfer information.
- E. We found three cases where CFEC used the practice of establishing eligibility to apply based on the applicant being a "constructive" gear license holder.

Department of Fish and Game's Response

Recommendation No. 10

It is our opinion that a Board of Fisheries' regulation does not take precedent over a statute. If the Board of Fisheries believes that control over the number of permits a person may own or fish is necessary for the conservation and development of the fishery then they should seek increased statutory authority. However, until such a change is made in the law we reaffirm our recommendation that permit cards be issued to all fishermen who have paid for the right to use their permits, and that they be allowed to participate equally with other permit holders.

Recommendation No. 11

Whether there is "effective approval of the Legislature, Alaska Statutes and the Alaska Constitution" for the Board of Fisheries to allocate fisheries resources for reasons other than conservation is a policy issue which can only be addressed by the Executive, Legislative and Judicial branches. We reaffirm our recommendation that the Board not allocate fisheries resources between different commercial fisheries. In our opinion there is an inherent conflict of interest for the Board of Fisheries to continue to allocate resources between different commercial fisheries, unless such allocations primarily result in a conservation of the resources rather than an economic allocation of the resources.

- A. We would note that the U. S. Department of Commerce also believed that restricting Handtrollers to inside waters posed discrimination problems.

Department of Public Safety's Response

Recommendation No. 4

Our intention in recommending legislative consideration be given to require mandatory forfeiture of a permit, not to exceed three years upon a third conviction, was aimed at making repeated violations of the commercial fishing laws unprofitable. However, we concur that increased compliance gained from compulsory penalties should be weighted against the loss of flexibility for the courts.

Office of the Governor

Recommendation No. 11

Based on the advice of Legislative Affairs Agency, Division of Legal Services, we disagree with the Department of Law's

position that the Board of Fisheries has the authority to allocate fishery resources for various gear types for other than conservation purposes.

We are of the opinion that present statutes prohibit the Board of Fisheries from making resource allocations for purely economic reasons. The Board should stop making these allocations unless specifically authorized to do so by the Legislature.



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

May 30, 1979

SUMMARY OF: A Performance Review of the Office of the Governor, Commercial Fisheries Entry Commission, (and related aspects of) The Department of Fish and Game and The Department of Public Safety, May 15, 1979.

Policy Issues

This report contains policy issues raised as a result of our evaluation of the Commercial Fisheries Entry Commission's (CFEC) performance. The final policy decisions affecting these issues are not within the scope of this review but require executive, legislative, or judicial consideration.

Report Conclusions

The stated purpose of CFEC is "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 into the commercial fisheries in the public interest and without unjust discrimination".

We found that CFEC has placed its major emphasis on the licensing function rather than on the management of the economic health and stability of commercial fishing in Alaska. This is illustrated by the CFEC's endorsement of economic policies established by the Board of Fisheries. We believe CFEC should become more involved with the economic management of the commercial fisheries and accordingly have made the following recommendations.

CFEC should coordinate its duties with those of the Department of Fish and Game. This would provide a reduction in the duplication of efforts between the two agencies, and would increase cooperation between conservation management and economic management of the resource.

The CFEC should consider organizational and procedural changes which would improve service to the public. We found that CFEC needs to be more accessible to the public. This could be accomplished by staggering staff working hours and operating field offices in cooperation with F&G: we have recommended that an information officer position be added to

CONFIDENTIAL

provide coordination of information needs and to provide increased contact with the public. We have also recommended that the position of the executive director be eliminated.

CFEC needs to develop economic data on the fisheries to allow it to effectively manage the commercial fisheries. We recommend economic studies of the fisheries be made by CFEC.

The CFEC, Department of Fish and Game (F&G), and Public Safety, Fish and Wildlife Protection (F&WP) need to increase the coordination and cooperation between their agencies to provide increased control over access to the commercial fisheries. We found a number of significant enforcement problems. We do not, however, believe increased enforcement is the only answer. By working together many of the problems discussed could be corrected without a significant increase in operating costs.

The CFEC should establish adequate internal controls to ensure proper segregation of duties and physical control over the blank permit stock and permits waiting to be mailed.

The CFEC should establish regulations which require a person to show ability to participate in the fishery prior to purchasing a permit. Leasing and loaning of permits is a relatively common practice. CFEC has not taken action to prevent this practice.

The CFEC should establish a standard reporting format in its annual reports for statistical data which allows historical comparison of the economic health of the commercial fisheries.

The Board of Fisheries should refrain from establishing economic policy, and from allocating resources between commercial fishing gear type or administrative areas for economic purposes. The Board of Fisheries is responsible for regulating the resource for conservation purposes, and the CFEC is responsible for ensuring the economic health of the commercial fishery.

We have recommended legislative consideration of a statute, change requiring the mandatory revocation of an individuals permit if that individual is convicted of three violations of F&G laws. Presently, there is an economic incentive to violate the law because of the leniency of fines and judgments.