

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86 / 2

880 SCOMM31 : SPECIAL COMM. FISHERIES (LIMITED ENTRY) 1973

Hitch Why shouldn't they?

Fachman Well, *Hitch* I don't understand, if you're making hardship out of both it wouldn't matter what the fellow who fished

Fachman Well, what I'm suggesting is you can compare relative hardship within the driftnet fishery or within the set net fishery and say these fellows fish in the same fishery, they face most of the same economic problems and they fish the same fishery, so you can say some of them will be harmed more and some of them would be harmed less, but you can't compare hardship in that fishery to hardship in the purse seine fishery.

? They all are being (indesc.)

Hitch That's precisely what we're purporting to do. You may come up with variations from fishery to fishery as to how many people or portions of the total people had taken part that fall within a particular category of hardship. In some particular fishery you might have 100% of them falling in No. 1 category, in others you may have very few there, most of them farther down the line, but you have set up standards that are independent of the fishery. You're talking about the individual's economic dependence. I could compare people who were engaged in wholly dissimilar occupations in terms of economic dependence upon their occupation.

Fachman O.K. Then I'd say that there's this difference, just to sum up our discussion. In this creates hardship standards which are

independent of the particular fishery, whereas the design in the other approach is only to compare likes with likes, to say who is harmed more and who is harmed less within the given fishery, not to set up some sort of overall.

Wick

Well it seems to me that that gets into problems because the excuse, the reason, that it's permissible for a state to say, well you get a permit and you don't incident to the imposition of the new system is that we are being humane and saying to the one fellow who gets the permit, that as to you it would be a terrible hardship on you not to get it. This other guy over here, it isn't any hardship on him at all. So we'd give it to him on the basis of hardship.

Johnson

Well, it's a hardship to everybody who doesn't get a permit. The only way you can justify it is that you have a legitimate state purpose to reduce or stabilize the level of gear, and I think if that falls then you can't justify parceling out the right to fish on some other basis.

Wick

Maybe we're disagreeing on fundamentals. I don't have any question at all but that the state is wholly justified in having the system of limited entry. I persuaded myself of that ten years ago and really don't have any concern about it anymore. The only problem seems to ~~be~~ that we face has to do with the institution of the system to get it underway, and its with respect to that we're getting into all kinds of problems. And as a premise here I start with the proposition that reasonable steps taken to grandfather

people into it are tolerable and unreasonable ones are not. And our only function now is this latter one, to decide what it is that's reasonable by way of sort of moving from the past to the new system, and it's upon that it seems to me that the only significantly measurable factor is this idea of hardship. I don't know any other factor that you could legitimately take into account that would differentiate among people except that you might insist upon a skill for operators or something like that which would not be instant transition any more than it be to the long run operation.

Fullman
I follow you, and I agree, but what would happen if in fact when you implemated these five categories in some fisheries by letting in all of the top three you work above the present level, and other fisheries will run below the present level, so what I'm suggesting is, you would making the initial decision as to who gets in based not on the legislative ^{purpose} ~~process~~ of stabilizing gear at some particular level, either through not letting an increase or a decrease but on the idea that some people have the right to be in the fishery and others don't have the right.

Wick
By legislative grace its permissible to be exercising (indesc.)

Fullman
Well, I agree with you, maybe both would work, maybe either system would work but what has made me nervous is seems like if the state gets into the business of on down the line deciding that only a red neaded Irishman have the right to fish, I mean

whenever they start deciding that some classes of people fish and not others it's heading toward trouble.

Hicklin
I can agree

Johnson
And the more that they can focus on their objective of stabizing the level of gear, you know, getting off the classification of people as soon as possible.

Hicklin
O.K. But then you see, first of all to repeat, the only reason I think it's tolerable at all to let presently fishing people in is to ^{alleviate} ~~leave the~~ hardship ~~item~~. I don't see any other justification for it.

Johnson
Well the justification is in preventing economic waste and promoting sustained yield management.

Hicklin
No, no, no, I'm saying in determining who gets in.

Johnson
Who would be harmed the less and who would be harmed more.

Johnson
That's right.

Hicklin
No. On the bald proposition that you can say that we're not going to have any more than so many fishermen, as I say, I've passed that one a long time ago. I think they're all on good grounds on that, and our only problems I think are the who of

it, and if you don't want to grandfather anybody in I'd go home happy.

Johnson
The fellow that worries me is the guy that is in category 4 and fairly high up on the list in one fishery, and he gets cut out whereas in another fishery just because the, you know, just because the level was different. ^{You're gonna} ~~You don't~~ let in people in 4 and 5 and create a viable right. So, ^{that's} ~~although~~ it might not be as valuable if its the kind of a fishery that will stand some more fishermen, maybe it isn't all that remunerative ~~it's~~ the reason it hasn't had any more fishermen in it.

Palm
But now wait, there's a difference. We have guaranteed 1, 2 and 3 in everywhere. We haven't guaranteed that 4 and 5 would get in. Whether they get in or not is a function of the amount of gear in the water.

Johnson
Well, it seems to me like the better guarantee would say among whoever gets in the people that are most dependent get in first and so on down they continue, but to lock in 3 categories seems more arbitrary than the other system. That's all I'm saying. I don't think either of them, I don't think we disagree basically. It seems more arbitrary, ^{because} ~~as~~ in some cases you're going to let in more than that, yet you want to

Wheeler
I don't. On the proposition that a particular fishery is more overfished than another one, it seems to me that's one of your givens, you have to work with that. Another given that you're

working with is the proposition that you're going to alleviate hardship. Now those won't not necessarily coincide at all.

Wibb But if you're going to take both of them as factors that you must adapt to and provide some legislative solution to get to where you want to be, O.K, all that'll mean is that in that fishery that's heavily overfished and as to which as it turns out there may be an awful lot of people solely dependent upon your're going to have to put up with the fact that you got a lot of people going into it as initial entrants. The only thing that you've got to follow it up with, I think, is a fairly severe, rigorous scheduled reduction system to cut down that number, and then that shows that you really meant you said, that you're after an optimum number of fishermen rather than passing around the livelihoods.

John Yet in the very fisheries that are most destitute under this system would be the fisheries where you'd let the most people in at the outside ~~at~~ and that buy back program would be the most expensive and onerous on the people that remain in the fishery.

Wibb It would not as expensive in the sense that the gear or that the value of the permit which you are going to ~~re~~^{ac}quire^(ph) may not be worth much as much.

John And that there are a lot more of them.

on the state's part to let more people fish next year than fished last year. So and then the problem becomes, how do you decide of all the people that have fished in the last number of years who gets to fish next year and who gets kept out.

Heflin
I think I could defend either system and I think you've essentially got a legislative judgment really to choose where you want this to hit among all the people of the state (ph). I think to take a heavily overfished area where we'll assume probably, I guess the facts are the proportion of the persons who fish in it are probably the ones highly dependent upon that fishery, and to take that kind of a fishery if you set this number in such a way that you, as one draft had it, the one I got in the mail as contrasted to the ones before me now, where you'd said in respect to three particular areas, Bristol Bay and I forget where else you said, that it shall be not less than 75% of a certain figure, implying that you might come up with a number less than the maximum otherwise would be. You may very well cut across right about in the middle of category 2 of our hardship category, something like that, and what you'd have to tell those people in that category, in that geographic area, those participants in the fishery, that it's just tough, that the other demands on the state were so strong that we had to do this to you. I think I could defend the state doing that, whether I would vote for it as a legislator or not.

Palm
Do you agree that either one then is defensible very largely.

Page Signed

over there, if you let 1600 fishermen in and anybody who had fished in the past could apply, and your thinking of, you know, now you've got what, about 2,000 or 1,900 in terms of drift gill net.

Hammond

Well they had 1800 actually last year. 2,700 registered, but I suspect among that overage up to 2,700 there are numbers of persons that are just as qualified as persons who actually participated last year. I don't think you're going to cut out many in the truly hardship cases, but you are going to cut out in number 3 where I think a number of people that, most of the people in the villages are, you know, Dillingham and Naknek are not really when you get right down to it, hardship cases. One of the major reasons is it would be awfully hard to demonstrate whether or not you made that \$2 or \$3 or \$400 in the last few years contributed substantially to your wellbeing. It's been so small that it hasn't done so in the last few years. That's one of the problems. So they've all had to hustle around and try to do something else, and many of them, particularly in Naknek are doing something else, and a lot of those guys are going to be left on the beach if you cut (indesc.) down a little way.

Johnson

If you cover hardship categories like this you're going to have apply them equally to the guy in Anchorage or the guy in Seattle (ph) who only gets 2 or 3 hundred dollars. So, you know, that's with the broader more flexible standards I thought at the outset you'd be able to cut in favor of those Natives more, cause even though

Hekler The individual unit won't be so much more. It won't be as much I suspect.)

Hekler But I don't see any other way than to approach that and take that as part of your given problem there. You do have too many people in these fisheries. The ones that are heavily fished are also the ones where you've probably got ^{heavy} economic dependence. You've got to do something with these people. You can let them in as I think you probably are going to let them in initially, then I think you have to combine with that a fairly tough system for getting them out. You don't have to get them out the first year, but there has to be, ~~as~~ I would prefer to see a schedule attrition rate, somehow that building (ph) up. We came up with a formula basis this last time, something like that, I don't know if we have to have that particular one but some sort of an ongoing, constantly rechecked system that would combine some sort of either first refusal or required if transfer at all transfer to the state, something of that sort cranked into it to get them out of that situation that you unfortunately inherited as part of your given facts now.

Salmon Let me ask. I have difficulty with the comparison of reasonableness here. It seems to me that given a ~~fisherman~~ ^{fishery} if you could draw these five categories, and maybe we haven't defined closely enough between 3 and 4 that doesn't mean that we can't, so that you do have a fairly definite distinction between those down here who were less and those up here who were more, dependent more, more hardship if these are left out than these. And you say,

alright recognizing that we'll let all of these people in regardless of how many there may be. We're doing this in the first place because of hardship. That's the only real basis that we can use to decide, so everybody that's in these top three categories or this top one, call it what you will, a certain amount of hardship at least, they are in. It seems to me that if you compare that with a system that sets up an arbitrary number over here, and I think its got to be arbitrary even through you say its the highest of the last four years, its an arbitrary number and it's going to hit not down in here but it's going to hit up in here, so how do we say that those that are left out down here, will the one guy that's next to ^{him} ~~him~~ ^{in line} when that arbitrary figure has been reached. How do we say our information is good enough that this number, 1,005 or whatever it is, is so accurate that we can't let you in. How do we know, how do we prove that that 1,005 is so accurate that we can't let 1,006 in, even though you're so very close to him in hardship still you're next in line and therefore you're out.

Johnson
The only magic in the 1,005 is the decision cannot let the problem get worse before it gets better and the whole concept of moratorium which is what the legislature is really trying to do is stop any further increase and then in those fisheries where it's necessary figure out a way to turn around and work back toward an optimum. It's just where we are now is the only magic in it. There isn't any constitutional obligation

Palmer

If not then that's what we

Jackson

^{in broad}
~~You'd go on~~ terms. I think there is another consideration, that is workability. If you did a commission at least at the outset, figures to work with, maximum numbers defined in the bill. They'll be under less pressure than if they're trying to fit somebody into category 3 and out of category 4, which unless the categories would be considerable reworked would keep them under the gun all the time. In other words, I don't think you'll get many arguments from people within a given fishery that, yes, he is more dependent than I or I am less dependent than he is.

Palmer

Why couldn't you give exactly ~~that~~ argument

Jackson

Well, I think people will accept the notion of ranking in priority classifications and then if you only have so many permits to issue the people at the top ought to get them first and then down. But if you're thinking of locking in X number of priority classifications, then everybody over there is going to say I belong in that one.

Palmer

What the pressure is going to be, you say, well hey I'm really more dependent than he is if we've got to be put in this list and they're going to chop off one, one, one, one, one. There is going to be immense pressure I would say to be up in this category that doesn't, within your 200 or 2,000 or whatever it

is.

Rader
I would agree that maybe this wording should be reworked so that the distinctions are greater, but if that were done I'd think you'd have a much better position. Jay what

Hammond
Well the only thing is I don't think you're that far apart. In Dave's language of yesterday you accommodate not only 1,005, you accommodate 1,006 because you said no less than. So you can actually go above this ~~figure~~ ^{fixed figure}. The only thing he is saying you can't go below, so you draw your distinctions more clearly cut. Let's throw it all in that pot and whatever it comes out as, if its

Jackson
Now, that's a possibility. In other words, in the last priority classification rather than doing it by lottery you say in the last priority classification everybody gets in even though that drives it above somewhat.

Hammond
You could, you could.

That would be your language. You could do that. The way ~~it was~~ ^{written} I'd ~~threatened~~ (ph) yesterday.

Jackson
Of course the design was that the Commission would look at the fisheries, and those fisheries that/are in trouble, the maximum level is going to be the highest of the last four years, and the no less than is to allow the fisheries that aren't in trouble to

go unattended and continue to grow, you know the Dungeness fishery.

Hammond

The inherent of no less than is the possibility of more than.

Frederick

That's right.

Hammond

So you haven't fixed

That's right. That's good

*Wester
Hick*

That was one of the points I'd made a special point of, it was the phraseology of no less than. It seemed that we had some openendness there that wasn't particularly desirable. Somehow you had, and that puts ^{the feeling} ~~feeling~~ in there in some way or another.

Would we be able to work out a little different way to come to the same result if you could be assured that this maximum number was fairly carefully related to or at least above the number that would be comprised if you totted up everybody within the first three categories of our hardship list, Would that be feasible?

Take his illustration that the maximum number of gear licenses that you (indesc.) in any of the immediately preceding four years. If you took that number and went all around through all your administrative areas and all the different fisheries

they only made 2 or 3 hundred dollars I imagine that's a much greater percentage of their income.

Hammond If they actually made it, it's right. (ph)

Fishman And the fact that they live in that area, they don't have the alternatives. They're stuck there so to speak.

Hammond What I'm fearful of in this accomplishing perfunction (ph) is the fact that (indesc.) making a vast *population cut* (indesc) would simply take essentially a lot of gear that's going in the water and reapportion in such a manner as to offend this category 3. Most of the people in my hometown of Naknek are not above category 3. There are very few with the exception of *the women and* (indesc.) kids. Almost all are working somewhere else. Good jobs I agree, and they would be more likely out of category 3 than *fishermen* guys from Seattle, except the pro fishermen. Most of those companies would show them probably in a higher category

Fishman Well this is why standards like this scare me because the fisheries are totally different. In that fishery almost everybody is a part-timer. Everybody works something else. Not any full time fishermen out there in that fishery, whereas another fishery like the crab fisheries in Kodiak, very professional fisheries, you're looking at a completely different set fishermen, so you can compare who is more or less dependent within that one fishery, but trying to develop a set of classifications that can be applied to the Kodiak king crab fishery and to the Bristol Bay

set net fishery

(ph)

Palmer
Palmer
First/it's going to be that within your Kodiak king crab fishery you're going to have more of a total number being up in 1 and 2 and in Bristol Bay you're going to have much more of the total, Cook Inlet you're going to have much more of the total down in 3. But in any case you have included in all of them.

Palmer
Of course you're still, even under either system. Let's say that you wound up in Bristol Bay with everybody in 3, 4 and 5, which you could wind up with. You're still going to have to make a cut somewhere down there in the middle of number 4.

Palmer
If there's only negligible hardship then you can make that and justifiably. This is our (indesc.)

Palmer
Well, I don't disagree with that in either system, but what Jay is suggesting is you're not going to have very many people out there locked in.

Palmer
Well, sure you are. You're going to have all of 3. You're not going to have many of 4 down there. 4 is a negligible hardship.

Hammond
No, the most of them will fall in 3, except the true Native who will fall 1 and higher. Except again, how do you relate this, the guys in the village make 2 or 3 hundred dollars and \$2,000 welfare. You see, what's his relationship from the hardship point of view.

Hitch

I've got that noted in the margin to bring up for discussion.

We didn't define what we meant by income. Do you want to define it in terms excluding Government assistance of various sorts.

Palm

Probably should.

Hitch

That would be my impression as to how to go about it.

Hammond

"Yosh"

Jackson

Well, you ask what constitutional objections I have and the real constitutional objection that I have, and I agree with the Professor, you could sure make a good effort to defend either system, but if the regulations, if the hardship categories are essentially spelled out in the regulations so that they are developed looking only at a single fishery and at the conditions in that fishery they're going to be tuned and developed in terms of the situation in that fishery whether it's the Cook Inlet setnet fishery or the king crab fishery in Kodiak, or whatever and are going to make more sense in terms of that fishery. If the hardship categories are defined through the whole state and all the fisheries of the state I think they're much less workable when applied to the individual fisheries.

Palm

But you've got to define appearance (ph) it seems to me, hardship as it relates to an individual, not to a fishery, and that's where I can't see why *there's any difference* (indesc.) regardless.

Hitch

Well, it seems to me what Dave has cranked in here he has used

a different label on it, is that he's affecting his treatment of people on a hardship scale by considerations of biology and economics with respect to the health of the fishery in an abstract sense, that is, some fisheries need more drastic treatment than others, and I would wholly agree with that and there are going to be wide variations.

Jackman

What I'm saying is lets do it in the regulations in terms of getting to the specifics, you know, in terms of spelling out exactly what does hardship mean in this fishery. I think that got to be done at the level of the *regulation* (indesc.)

Wickham

When you say what it means in a particular fishery aren't you saying that, well, even though looking at two different people in two different fisheries we might say that each person is going to suffer hardship in the same amount. The circumstances of this fishery over here are such that we really don't want this guy to fish, whereas over here we're willing to tolerate him.

Jackman

That's exactly right.

Wickham

Then, what led you to that differentiation though was not hardship as to the person by but the nature of the biology in the economics of that fishery.

Jackman

That's right.

fishman O.K. that's ~~the first thing~~ a fair statement.

Hebster And if that is what we're trying to do here then I say you can defend it if you can defend it politically to differentiate people because it does seem to me that the fisherman who fishes in a heavy overfished fishery where the economic health of the thing as a whole is terrible and you have to do something about it you can afford to be harsher over there if you want to. And I would defend you in being able to do that. And I think you just have to make up your minds to whether you want to or not, because you could decide that involves example. In the draft before the one that's now here he'd said that certain ones were going to have 75%, or not less than 75%, and that it was going to be something less than all of those that might otherwise have gotten in because of the terribly depressed area, distressed nature I think was the way he phrased it And that would be a tolerable system. There's nothing as far as I can see that constitutionally is terribly threatening about it, even though you have on my scale of hardship differentiated between the fellow who's excluded there and the fellow who's not excluded from a fishery that isn't in distress. It just that he happened to be in the wrong fishery.

SCOMM

#31:20

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Check #20 (dup)

II/6 Side 1

3/26-27/73

Senator John Rader

Senator Bob Palmer

Rader : You see, there's a great merit if you could issue these permits to the people that bought licenses this year. Start buying them back, assess the people that are keeping them, pay for the ones you're buying back and you do it on an open market. There's no bureaucratic definitions of hardship and what you think is hardship to me and what I think is hardship to you, and your value to a way of life, and as against somebody else's value to a way of life, you go on the open Market and start buying them back. And then there will be some people end up with it but those people will pay for it as they go along by their assessments. Protect the people who are poor and who can't pay, and can't pay the assessments with this poverty thing that you got written in there, or some type of forgiveness of the assessment if they are below a certain poverty level. And start weeding out your fishery in that matter. And then there can't be a thing of fairness. There can't be any claim of discrimination. And there can't be any claim of you've taken away my God given rights. There can't be any claim of yes, but fishing is my life to me, although I am brand new to it, and just fresh out of New York and only done it one year and I've worked with somebody else as a crewman at that time, or something else, you know. Let them get in there and scramble for it and start buying them back. And the guys that want to sell and get out, get out, and presumably that is the least hardship. Cause they want out. When you first start into the program, it's going to be absolutely fair, because there will be the market value of these things. And the commission, with the amount of money that they have got from time to time, will get

in the market and buy them. And you just keep working it that way. You can't claim, nobody can claim, yeah but you cut me out or yeah, but the hardship was different in Bristol Bay than in Prince William Sound and that was a different hardship than it was in Southeastern. And Christ, in Southeastern, why they got everybody fishing whether they got a hardship or not. Here I am up here, gonna have to move up to Anchorage now and pump gas and I can't get a license.

Palmer : John, there is one thing wrong with that. That is that you can't sell it at this time. I think that it is pretty much the concensus that something does have to be done to put a lid on now. I agree with you that this may very well maybe the best solution, and the one that we will ultimately adopt. But I don't think that we can get it through this legislature at this time. The fishermen are violently opposed to it now, I think primarily because they don't understand it and they are locked into something else here.... now wait a minute. And I think it is something that we can go ahead and live the first year with what ever we come up with now and something fairly close to what we have got. We may want to come back and review the whole darn works and go to this simplified system that we can write in a page or two. But it is the practicality of the thing that I am talking about, the political reality now, getting something done. To start all over again, with that approach at this point, which the fishermen have already looked at and rejected, on the basis of as much as they understand of it now,

it is just not on the cards for getting it done this year.

Reader: You see there's a great merit if you only issued these permits to the people that bought licenses this year. Start buying

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II/6 Side 2

3/26-27/73

David Jackman

Professor Fletcher - University of Washington
Department of Law

Jay S. Hammond

Senator John Rader

Senator Bob Palmer

3/26-27/73

Jackman : Why do that? Why have 2 or 3 different kinds of permits floating around, I mean you know.

Hammond (?) : Cause you want to get a whole bunch out of the fishery in a hurry and not have a bunch of people hanging out, your big concern is of these guys that will flood in this year, right?

(?) : I think that you could just as well keep them out without....

Fletcher (?) : Let them in on a 2 year or 5 year basis...

:I think that you can just as defensibly keep them out entirely as you could by letting them in on a very short basis.

Hammond (?) : How? Well I mean taking the approach that he is taking, how could you do it? You say that you can't go back and lay out, I mean on the experience factor.

Fletcher : If you make the distinction between the types of licenses that are out in terms of the restrictions upon the person who holds them, transferability and so on, or the life of the license or something like that. Then those distinctions have to be measures of some legitimate concern that the State would have, and the only distinction that I can perceive between the person who comes in this

year to get any license and those who have been in in the past is, the very fact that we are talking about, is it's associated with the Grandfather clause and when you do that then you have got to have something which is a reasonable approximation of a legitimate concern about Grandfathers. Then you are right back where you were.

Rader (?) : That is true of zoning. Its just the difference is that they are just later, that's all. They just weren't there when the law changed.

Fletcher : It's a more restrictive, a more severe thing you're imposing upon these people than you would be upon the land owners.

Jackman : But if you get back to your hardship standards, rather than trying to tie down the same 5 classifications, to every fishery in the State, why not just put it a general one sentence provision in the bill, nobody with significant economic hardship shall be denied an entry permit anywhere and be done with it and then.... let it go to regulation and fight it with more flexible standards developed for each area. Cause you know that only about 3% of the fishery is that going to be relevant, because everybody is gonna get in who is suffering a significant degree of hardship.

Fletcher : By putting it in the negative, it is not affirmatively said who gets a permit.

Jackman : Up to the maximum level and if you have got any

people left over who claim a significant hardship, then you let them in too.

Fletcher : In other words, you would set a maximum.

Jackman : Present level.

Fletcher : That would be a number.

Jackman : That's a number.

Fletcher: : How would you determine who came within the number?

Jackman : You would rank them in priorities in terms of hardship standards and you'd issue entry permits to everybody up to that number.

Fletcher : That's what your House bill is now, isn't it?

Jackman : No, except there's one difference. If still there weren't enough permits left over and you still had a group of people that would suffer a significant hardship, in that particular fishery, then you would let them in. But in all the other fisheries, the only people that you are going to have left over at the tail end of list are the marginal participants; then you just stop because you'd issued permits up to the maximum level.

Fletcher : That's why I say it's defensible if you've arrived at your maximum number in some fairly rational fashion, that you

could make that a combination of both the nature of the fisheries, the particular fishery as to whether it needed the maximum... not whether but to some extent

Palmer : So you are suggesting that we take the numbers that we, that you had before, the maximum number, the average, or the peak, which was it, for the last 4 years, the highest number for the last 4 years, that is the maximum. But as we said later in our bill, you would say in this one, regardless of that, anyone with a significant degree of hardship, if they are cut out, they will be allowed in. That is what you are saying, David?

Jackman : That's right. You know, you can do it in a one liner. Leave the thing flexible so that in regulations you can set up your priority classifications. But in those fisheries where all of a sudden there is a big lump of people that would suffer significant economic hardship, if you only issue the maximum number of permits, then you let in that next priority classification of people who suffer hardship. But that way you don't have to classify in terms of significant hardship every single fishery because you're not going to even have that problem in a lot of the fisheries.

Palmer : Well that is essentially what we have done here, except that we have tried to determine, we have tried to define what we meant by significant in these 5 categories.

3/26-27
Jackman : Why do that? Why have 2 or 3 different kinds of permits floating around, I mean you know.

Hammord? : Cause you want to get a whole bunch out of the fishery in a hurry and not have a bunch of people hanging out, your big concern is of these guys that will flood in this year, right?

? Fletcher : I think that you could just as well keep them out without....

Fletcher? : Let them in on a 5 or 10 year basis...

I think that you can just as defensibly keep them out entirely as you could by letting them in on a very short basis.

Hammord? : How? Well I mean taking the approach that he is taking, how could you do it? You say that you can't go back and lay out, I mean on the experience factor.

Fletcher : If you make the distinction between the types of licenses that are out in terms of the restrictions upon the person who holds them, transferability and so on, or the ^{life of the} license or something like that. Then those distinctions have to be measures of some legitimate concern that the State would have, and the only distinction that I can perceive between the person who comes in this year to get ~~them~~ any license and those who have been in in the past is, the very fact that we are talking about, is ^{it's} associated with the Grandfather clause and ^{in the} if you do that then you have got to have something which is a reasonable approximation of a legitimate concern about Grandfathers. Then you are f~~ight~~ back where you were.

Paper 2 : That is true of zoning. Its just the difference is that they are just later, that's all. ^{the just wasn't} ~~You were right~~ there when the law changed.

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nature of the fisheries, the particular fishery ~~and~~ whether it needed the maximum... not whether but to some extent

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You keep your classification going lines.

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Palmer : Well that is essentially what we have done here, except that we have tried to determine, we have tried to define what we meant by significant. in these categories.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

Fletcher
But that is not an open market.

Call it an appraised value then, if that will help you out.

Tolson
John, my land isn't on the free market, is it?

1 and 2 can sell back and forth on a free market. If they go to the Commission they get an appraised value, fair market price.

Why don't we simplify it and just say you're going to buy permits at the price at which they're being traded and you'll enter that market and from time to time buy permits. What the hell difference does it make from the point of view of a citizen at a public resource that you're going to let one of them, that you're going to handle it differently? What difference does it make? If you're going to pay the same, it's going to cost the same amount from the state?

The only situation in which it won't, and I agree with Senator Rader, that if, in fact, you're going to pay him fair market value you might as well everybody go on market place and buy them off the market place. What you're really doing is not paying fair market value. You're really saying, let's say there would be ten permit transactions of \$4,000 and the permit wanted to buy off three off the market. Now if the Commission came on the market with the ten private people that are trying to buy permits that would be 13 bidders, and the pressure of that demand might drive the price up to \$4,500 a permit. What the Commission

is going to do is say, we'll look at the ten market transactions which will keep the price down a little lower than that observe because there won't be as much demand. We're not going to come in and bid against other private people, which really, and then we'll turn around and pay to this special restricted class of transferors that peg price, which isn't as much as they could get on the free market if the Commission came out and bid with everybody else. They'd bid the price up.

You're complicating it to no avail. You are because you're requiring that those people sell back to the state and you're retiring licenses that way that you might not be able to retire otherwise. You're ensuring that they're going back to the state and you're getting them out of the market. If you allow free transferability then you have no assurance at all you're going to get . (indisc.)

Is it a constitutional problem if you provided that anybody with a permit could dispose of it however he saw fit, by Will or inheritance, or devise, and otherwise there was no free transferability that they had to sell to the Commission?

You mean the only thing that you would allow him to do would be to give it away inter vivos or by Will.

Just by Will, not inter vivos. You couldn't, the only thing you could do is let it go by Will. Otherwise he's got to sell to the Commission and they are the ones to determine how many are re-

issued and what. Is it constitutional?

I wouldn't want to exemplify (ph) them.

Economically it would be disaster.

Well, that wasn't the question.

Really discriminate.

You could probably think of some reasons why you wanted to do that, but I don't think they would bear up.

Well, the big reason is that you're giving away a public resource for free and it's going to build up to a value, it's going to increase each year, and presumably nobody is going to kill themselves to give a \$10,000 permit to somebody by Will, and so you take away the economic incentive.

But, you solve the political problem of the fisherman who wants to leave

I think I have to start back a little bit. I'm really not giving you people anything. I don't think I am. The only reason that I'm giving a person an initial entry permit at all is that it would otherwise be so hard on him if I didn't, so I'm really kind of keeping in the status quo as distinct from giving him the plum(ph). Now, having done this to him, then

I think the only measures that I could take to protect him in that situation are ones which tend to prevent my doing this for him on one day and taking it away the next, so I might say for a period of five years or so that in case he gets incapacitated or dies that this can be given to a member of his family or to whomever he may designate in his Will, or something like that, and otherwise restrict him in his (indisc.)

I would do that, I think, only for a limited period, a few years, and then expect him to have in a sense gotten himself out of the situation than simply having gotten this as a recompense or avoidance of hardship, now he's on the same basis as everybody else, so at that state would treat him as I did everybody else. Now, how I treated everyone I don't think matters a heck of a lot. I could make these permits ones that expired at the end of a person's lifetime or his physical capacity to engage in the fishery, or you could go the whole hog the other way and have a completely open transfer system, and I think either of those would stand up (indisc.)

But you don't think the other would?

I would find a difficult time justifying the distinction, except as I say some incident to some initial transitional stage in which I tried to protect the fact that I was compensating him for his hardship, because otherwise he'd be out in the cold. You see there's a great merit if you could issue these permits to the people who've bought licenses this year, start buying them

except the people that are keeping them, and pay for the ones you're buying back, you do it on an open market with no bureaucratic definitions of hardship and what you think is hardship to me and I think is hardship to you, and your value to a way of life against somebody else's value to a way of life. You're going to the open market to start buying them back, and there'll be some people end up with it but those people will have paid for it as they go along by their assessments. Protect the people who are poor and can't pay the assessments with this poverty thing that you've got written in there. Some type of a forgiveness of assessment if they're beyond, below, a certain poverty level. And start weeding out your fishery in that manner. There can't be any claim of unfairness, there can't be any claim of discrimination; there can't be any claim of you take away my God given rights; there can't be any claim that, yes, the fishing is my life to me although I'm brand new to it fresh out of New York and only done it one year, I worked with somebody else as a crewman at that time, or something else, you know. Let them get in there and scramble for it and start buying them back. And the guys that sell out and get out are going to get out, and presumably that's the least hardship cause they want out. As a fishery when you first start into the program it's going to be absolutely fair because there will be a market value of these things, and the Commission with the amount of money that they've got from time to time get into the market and buy them. And you just keep working it that way, and you can't claim, nobody can claim that, yeah, but you cut me out, yeah, but the hardship was different in Bristol Bay than it was in Prince William Sound,

and that was a different hardship than it was in Southeastern, and price (ph) in Southeastern, why they got everybody fishing whether they've got hardship or not. Here I'm up here going to have to move to Anchorage now and pump gas and I can't get a license.

John, there's one thing wrong with that.

What?

And that is that you can't sell them at this time, I think it's pretty much a consensus that something does have to be done to put a lid on now. I agree with you that this may very well be the best solution and the one we will ultimately adopt, but I don't think we can get it through this legislature at this time (indisc) the fishermen are violently opposed to it now, I think, primarily because they don't understand it and they are locked into something else here. And I think it is something that we can go ahead and live with for the first year, whatever we come up with now and something fairly close to what we've got. We may want to come back and review the whole darn works and go to this simplified system that we can write in a page or two, but it's the practicality of the thing that I'm talking about as far as the political reality now of getting something done. To start all over again with that approach at this point which the fishermen have already looked at and rejected on the basis of as much as they understand of it now, it's just not in the cards of getting it done this year.

Wait a second Bob. Did you say that the licenses were not to be transferable?

Well they would be immediately transferable.

That's what the fishermen endorsed. What's the price?

But you're talking about the, where it wasn't transferable at all.

No, no, no.

You're saying immediately transferable.

Well, start over again then with what you're saying.

Basically what Hammond came in with here with his first, as I understood his initial presentation. Issue licenses this year to everybody.

Oh, no.

The only difference is he's making them immediately transferable. That's the only difference.

No.

And issue license to anybody that wants it. It's immediately transferable. There will be no more issued, and the state starts buying them back in.

That's 22,000 licenses, John.

Well, who gives a hell, how much are they worth then? If they're worth \$5.00 a piece, you buy them back at \$5.00 a piece.

No, no, no.

Until you're down to where you have run out of them. And what people have the least hardship will leave the fishery.

John, but you will decimate the fisheries for the next two or three years when you have the chance to go to January 1/73, which is when this started. You know, they won't sell out. They'll wait. You'll have a great mass of licenses.

Just say, stop at the present level and then

Stop at the present level and then start buying them back. Use your assessment figure.

(indisc)

But how would you be willing to move it one year, in other words, don't take the present year, 74 or 73, but stop January 73.

Take last year, that will cut it down 60% or

You see it's 263% increase in (indisc) year, 200% increase in

O.K! Let's take it back to last year. I think it's so much easier to do it the other way, but if you want to go back to last year then lets do it that way.

Nobody has been hurt going to last year, John, because nobody has now fished that wasn't fishing last year because the season hasn't started, and so you're not really denying somebody something that he has already used by going to January 1 of this year.

Plus, if we issue all of those licenses to the few people who are already committed to boats and who can't get one from last year, I'll be able to buy one pretty cheap.

Yeah.

You see, they can hold it and stay in the fishery if they want to, alright.

But these people who come in and out of the fishery, casually do it, they are going to have to pay their assessments every year unless through the poverty situation which means they can't hold them and not use them too long, which is (indisc) to sell them then, and you don't have this terrible charge here of unfairness in your administrative what's hardship, you know, whose hurt, what's pain (ph).

Alright, go back and start again now in some lines you're proposing.

O.K., let's go back to last year. We'll say everybody who files before July 1 of this year, or lets say the next month of this year, who fished last year shall be issued a fishing license, a gear permit, for a particular fishery if they fished last year. I think we could work out a hardship hardship (ph) for the guy who was sick and fished in the fishery consistently and who might be, you know, one kind of a deal here that a guy didn't fish last year.

It isn't going to make much difference anyway because (indisc)
to be worth much.

Let's forget that.

O.K. You take last year, you say you have thirty days to apply and you're issued a permit. No more permits issued until it gets down to the optimum level in any fishery. The permits will be immediately transferable for \$1.00, \$5.00, \$500.00, whatever a guy can get out of them. We'll take and put up an initial appropriation from the state to start buying back permits at whatever the market value gets to be, and we'll use assessments of the remaining people who are in the fishery then to replenish the buyback fund, and you just keep buying them back, and you just keep assessing every year. If a guy doesn't pay his assessment he's out. He loses his permit. If he pays assessment he keep his permit. Those who are at a poverty level don't have to pay their assessment. Everybody else does. You can take it and hold it/speculate as long as you're willing to pay your

assessment. You don't have to use it. The guy who is coming up here who have an investment in the boat or want to go into the fishery for the first time, I don't care whether he's from Seattle or Bristol Bay or where he's from simply goes out there and buys a permit.

What is your basis, though, for limiting use in the first place? Still hardship?

There really isn't any, (indisc). You're just going to say the guy did it last year on grandfather basis, is what you're doing.

Well, I thought grandfather basis had to be based on hardship though.

Why? I think it's a reasonable test that we said that anybody that had one last year can have one now and they can sell it immediately. I don't think you even have (indisc.)

That's just exactly what we said earlier, only we were a little tighter. Two out of the last four. That's where we were a while back, remember.

Not necessarily the last four.

Two out of the last four is looser, not tighter.

Well, it requires more. He would have a fewer number.

Wait a minute Clem. I'd like to respond.

Well, I think the moment should go toward identifying the persons to get these permits as distinct from saying how many there shall be. You're right up against challenges that need to be protected and you have to justify the distinctions you make between them, and the only justifiable distinction I can make other than the capacity of a person to fish in terms of (indisc) I gather you're not insisting on anything other than just a present ability to fish. There has to be, I'd think, one based on ordinary grandfather clause type thinking, and that's one that gets it in my opinion down to hardship.

Well a grandfather clause for a zoning exception or something else is if it existed as of a certain date.

That's right, that is one definition of it.

It's sort of prima facie. That is, if you had a license last year to be denied one this year is hardship.

Yes.

And we're going to use that as a test of hardship. Anybody can fume about it that wants to, but that's the way we do zoning ordinances, that's whether or not your building conforms to a new zoning change or something. If its already built as of the date of the change you get to continue it.

I think the spelled out considerations the present drafts call for to measure this are more refined and more precisely tailored for measuring what you're measuring, but your measure is certainly a time honored one in terms of whose grandfathered in whatever the scheme may be.

There are going to be great groups of people who are absolutely convinced when this is over with that they were screwed by a political process unless you do it just about in some way that I'm talking about.

John, we all see it and understand it, but what is hardship when we can't define it ourselves.

Well, but look, suppose Dave had fished for five years up until last year. He decided the year wasn't good enough he wasn't going to fish. There's something else he's going to do, and suppose Joel came in last year for the first time, he just had some extra time and he had a vacation and wanted to do it, His hardship is greater than his.

To be real honest with you let me tell you what I think they should do, so that you don't have that problem when you really get back to what you did.

But we do have that problem .

Let me make the argument as to what you should do. You should give them to everyone this year that wants one, and they are going to pay the assessment. If you sell 50,000 of these and have assessed them at \$300 a piece or \$500 a piece, you're going to weed out most of them, you're going to get rid of the whole problem, and going next year you'll have a limited entry program that's functioning, working and legal, and it'll be reducing the gear entry. It may take you a couple of years to get it down, but you're going to have something that there cannot be any charge of gainsmanship or unfairness, or anything else in it.

This is exactly the proposal that I gave the fishermen a couple of weeks ago and which they violently rejected. My question to you would be then, Do you think it's realistic at this point of a Session to think that we could get such a thing through the Senate and the House and voted on the last ten days

I think we're closer to that than we are with this because this is so complicated.

It's not a great deal more complicated than what the House did, when the House passed it 35 to 4 last week.

I would object to that. I think it's considerably more complicated and I think, did you mean people that fished last year, that bought a licenses last year and fished it, or that just bought a license. Did you have the requirement of having fished it?

I don't know.

Because in a sense that's why I thought the highest of the last four years present levels standard is one people can understand, it's simple, it's direct. Sure, it's somewhat arbitrary, but it's like saying, we're going to take it starting last year and it's a different form, but it's still one that's immediate, direct people can understand, and then you say, you know, you can be as simple or as complex in terms of deciding who gets that may permits. If you want to just say who held it last year, or if you want to say those people that have fished at sometime and who are highest on the priority scale, at least it's still simple. You give them the permit then and then you have a buyback program, and that's essentially what the House bill did. Its just, you issue permits at that level and then you have a buyback program to get down to the optimum level and then you're done with it, and there's no more complexity.

This is what I was trying to get at before and didn't make it clear. There is one absolute clearcut distinction that nobody can say there's a hardship imposed on cutting them out of the fishery if you never had a gear license and fished it before. Now, if you modified what John's starting about to say that, hey, anybody that ever had a gear license and fished it before comes in under this procedure, why aren't you then re-ating (indisc.)

You really ought to resurrect--the only objection I'd had to that is I think the only way the program will add anything in the immediate future to a better situation is that if we don't

let it grow bigger before we make it grow smaller.

Now, and you're going to let in about twice as many people at the outset.

But there's presumption, your concern is what goes in the water, isn't it? This is the thing you have to be involved in a specific fishery (indisc). You could do this in Bristol Bay and not put one extra length of web in the water. But what about the trol (indisc.) tremendously fast erosion of effort through assessments, make them good high assessments, buyback, I think it would take her down so fast that you're going to be two or three years off before these qualifications actually apply and hit. I'm convinced that what this Commission is going to have to screen hearings, goes into the Courts and probably won't be applying them for two or three years when during that interim I think this other one might bring you down to that.

You say anybody that has never held a gear license and fished it and is presently able to participate in the fishery could get an entry permit.

It would be with free transferability along the lines John said.

I'd rather see, at least it's simple. I think it's still going

to be letting too many people in.

But, I say, I agree, it's simple enough to be much preferable to any complicated formula. I say that because if we have this poverty level the reason we were worried about assessments was because of the poverty level.

How many people are you going to be buying out that live in Seattle now and used to fish in Bristol Bay and would get in under that assessment.

Oh, hey, I suspect your assessments, if you put a \$100 assessment on there, I'll bet you the initial cost of these things for purchase and transfer, the market is going to be flooded with them. There isn't going to be any big price paid for these things. You've accomodated virtually everybody that wants to stay in the fishery.

I don't think so. I think that there really will be a significant speculative value to the things to hold on to them. If you're a guy that hasn't fished for five years and has no intention of re-entering but all of a sudden you can come in and get an entry permit and for paying \$50 a year plus an assessment of we'll say \$100, you can hold on to it. There are going to be a number of people that will hold on to it, speculate, because they know its something of real value.

Especially I think this is true when people see the changes that are being made in the fishery itself as far as rehabilitation impact efforts and so on. They are going to say, hey, this thing

may be much better in a few years than it is now.

And where's the attrition

That's why you want to put your assessment in such a position that the guy's going to think very carefully before he hangs onto that, paying, I'd like to see the assessment, frankly, \$500 a year, with a destitution clause. I realize that's unrealistic, but if you moved it up to, say, \$200 a year I'll bet you these guys would drop so fast. They die off, they'd refuse to pay their assessment, the thing comes down.

The guys in Seattle would be more easy to pay the assessment than the people in, have an easier time than the people in Bristol Bay. I'm really worried a distitution clause on the assessment because it's not a tax, and you can, you know, have a progressive tax, but if it's a tax it's a dedicated fund, and if this is an assessment I don't think you can create a forgiveness.

A license fee then.

You know, it's like a sewer assessment or something like that.

Can you give a destitution clause on sewer assessments?

What you meant is a license fee.

Well, I think that putting in the poverty clause is awfully important in this thing in our discussions.

The poverty clause is the only thing that would even work in that manner.

Why would it do that.

Well because it would relieve them of the (indisc)
but they may say, very well, we'll sell out (indisc)

No, no, we'll watch(ph) them getting out of the pulp (ph) business because of the fact that you can't jerk the man's boat out from under him and put another man on. They have no control, you see, by making it

What have you got?

The guy can be absolutely bankrupt. You can't take that license away. The canneries won't be buying.

(Indisc)

... ten years ago, handle that one of three ways, either not let the canneries hold any permits, they (indisc) let them hold permits directly (indisc)

I can't see, except in some cases how in the long run

may take years, cannery domination that couldn't be put in (indisc)
That's what you got an antitrust law.

(Indisc)

Right, but you could attack it that way.

Let's go back to this a minute. Again, if our only reason to be able to do this is hardship, grandfather him in in hardship, how do you indicate hardship? When you say anybody that's held it in the last ten years or anybody that's held it and fished it in the last five years. Suppose he quit fishing four years ago, he's gotten into another line of business. How do you say it's any hardship on him if he's denied a permit, and if this is a basis for letting people in in the first place, then what basis do we have under that system.

You've asked my question.

Well the only thing I would say is that you'd be making only one determination that somebody who has never fished and never held a gear license as a class is less harmed than the class of people made up of all the people who have fished at sometime or held gear licenses.

You know what you begin to look like is you haven't really measured hardship. Then you've lost any basis upon which to

close the class at all. I don't think you can close the class by giving it to all persons who have ever fished in the past if that's a gross mismeasure of what you're trying to do.

If you've got to close the class I'd agree with you 100% but the assumption from the beginning has been you are not going to close it, you're going to open it leaving them freely transferable.

Well close in a sense that these persons as initial entrants are the only initial entrants and they're the ones who are being given something of value. Now I say you're not giving it to them if in fact it's the equivalent of not taking away something from them. That you have to have it in terms of not taking away.

I like that. I mean that's why I've always wanted some sort of

This means to say that I don't think you should be as sweeping as to say, well anybody who fished in the past, or anything quite that broad. I think you have to come back to the idea that the function of picking out certain people to receive these permits in the first place, short of going to everybody who applies next year also, has to be a measure of some kind of the underlying idea of grandfather clause. And I don't want you to get away from that. I think that asks for trouble.

Like recognizing the appropriation of water in terms of the

past pattern of beneficial uses.

Yes, something of this sort and you better come somewhere near to measuring the very thing that you're supposed to be measuring.

(Indisc) to assume that nobody will transfer a permit for purposes of looking at the legal facts. Is this in the works.

Well, if that, I don't think so at all. I think that if you, you're going to have to show the Court the real world, and if the real world is going to be a world in which some permits are on the market and are transferring at a, you know, like in B.C. you can pick up a copy of the paper, in the back of the paper you would see six or eight boats with an A license, and that's the real world and you're not going to have a closed fishery and the Court's going to go with it, if in fact everybody that got a permit held on to it for 50 years. I think you've got to go in to the Court and say that's not what's going to happen. I don't think it is.

Well what kind of a value does that permit have down there. Does it have one in excess, we've gone through these so many times I forget. O.K., the value attaches to the boat, the permit attaches to the boat, what about the value of the permit per se.

It's impossible to tell because the permit is one with the boat. On the other hand you can look, you know you can buy a gillnetter down there with lots of equipment for 10/15,000 bucks, so, you know.
(Indisc)

Alright, you could go down to Washington you buy the boat itself without a license, so what's the comparison of the value.

I don't, I think.

That would be a measure of the value of the permit, wouldn't it

I think 3 to 5 thousand dollars, from looking at those adds over the last three months.

The permit you think would have 3 to 5 thousand dollars in value, something like that.

Something on that order.

And this is a fishery that's already gone from

7,000 to 5,000, so it's pretty well recovered, you know they's fishing 4 days a week. It's 50% to being at its peak value. I agree with you on the point that you're going to have to have something besides just ever having been in the fishery, but I'd say you don't have to pin it down to last year, John, because you have people in the fishery that rotate from species to species, and still keep major investments in this waiting for that cycle year to come back, and you cut out a cycle year what you've done is made a starvation year every fifth year.

How do we take care of that problem?

But, all you'd have to do is say has ever held a fishing license and still holds a major investment in the fishing industry, but then you have to be careful what you do about the guy who never owns anything, he always just fishes another boat for somebody else. You have some problem. Actually your's is the cleanest, John, if you can just solve this one other little question of how do you prove how much of an investment you have in the fishery.

You see if you don't do that this idea of buying out people's investment in the fishery and all the rest of it really gets into a (indisc)

If you could make a nice clean system, no let me start again. I've always thought of this in terms of what it is the Commission buys as being to buy the permit, nothing else. Now, cranked in the last couple of versions, maybe only the last one, there is a separate treatment of the actual gear both net, and I don't know what else, but the essential thing about is the permit. That's the thing that I think the State is interest in, and its only that the state ought to buy unless for some reason it's conscience gets to them and here they're going to buy the boat also. But in terms of making the system work it's the permit that you want to get out of the way. You couldn't retire that. Now if you concentrated on only the acquisition of those permits, then I think the only thing that you must be sure to do is to have a system that both looks at its inception as if it going to do this and, in fast, works toward it, and that's cut down those

those number of permits that are outstanding. And any way to do that is alright. I don't care whether you put the state under the oath of market and give it all kinds of money to start it out with as an initial bang with an assessment system to keep the fund replenished, I don't think it matters. But you must have the appearance of wanting to do it and you must do it. I don't think it matters how you do it just so its feasible.

when
Alright, let's take the case then/the state is in the open market bidding on all, all permits are going to have equal free market value then, and in every case the state could go in then and bid up until they've got every permit. O.K. What have we have done as far as closed class then, as allowing people in?

I don't think you've hurt it, if these people come in, unless you charged the Commission with the obligation to see to it that it (indisc) a successful bidder every time, or something like that.

Describe a factual situation where it occurs. They would buy all of them. They can't establish a market unless they have independent sales. You don't know what a market is, the definition of a market.

Alright, so we're back to where we were a while ago.

And what you said that if they were all freely (ph) transferable it would be alright. You thought if we went to apportion (ph) of them back to the Commission and made available 1 to 5 why it would be perhaps a little better.

Particularly if you go to a system that imposes restrictions upon permit holders to make outside transfers then I think you have to supplement that or make up for it by having the Commission issue new licenses, but without that it would fully freely transfer the system

I don't think you (indisc)

...open market that's available to you.

That's correct, but the only thing you must be sure to do that you haven't lost in the interim is both the planned for and in fact operation of the acquisition by the state to get those things down to the optimum.

O.K. now, this acquisition of the state, you raise an awfully good point there and I've thought about it. I never verbalized it, and then you mention it, and makes me, we better get into it. And that's what (indisc) in the difference between assessment and tax. Everybody was talking about assessments here, but I'm inclined to think that it should be a tax that's placed on the license that is calculated in the same manner as an assessment would be on the amount of fish that license caught

with poverty exemptions. If you make it a tax it's deductible to the big man who is catching a lot. As an assessment it's not. It's a business expense.

No, wait a second. The assessment's legal.

(Indisc)

Now wait a minute, you've got a tremendous fly in the ointment of either one of them, and I think it's a tremendous defect in your Bill unless you cover it in some other way/ ^{and} I'm not aware of what it is. But under that kind of a program what's to prevent me from simply, if I'm eligible, getting the darn thing, holding it with my \$50.00 fee each year and all the time these things are appreciating in value.

If I never fish that thing and the assessment is only a percentage of the catch.

No, no. I have, you may beaveraged in the year in which you're holding it. It's in there alright.

O.K. Then I didn't see that.

You already pay cash for that.

Well, I think it has to be a minimum floor, so that you can force the guy, in other words if you're going to speculate/ ^{with} the permit it's going to cost you some money to do it.

It's in there, John, it's the average of

(indisc)

At least we can work that out. That's very easy to be worked out.

And have your (indisc) exemption and make the tax instead of an assessment.

What do you mean by the taxes instead / ^{of} assessment?

(indisc)

It would be levied by the state legislature or it will be collected through, like any other tax and it's a little bit like our revenue sharing we have now for raw fish, you know, we have a policy of appropriating out the raw fish receipts back to the community in which they originated. But it's not a dedicated tax because it isn't segregated into a fund that automatically does it, you know, and really what we'd the same way here.

What's the tax based on? Is it a flat tax, applies the same way to everybody?

It's a case tax.

It's the same thing as an assessment then, it's a percentage of your gross.

You're right. It would be the same thing as an assessment. It

would be no more onerous than an assessment except it would be a state tax.

So you're really changing only the name?

No, no, You're going to change a great deal more than that. You take a look in Chignik right now, which is at optimum. There would be no assessment in Chignik. There'll be a huge assessment in Bristol Bay. There'll be no assessment in a number of fisheries. Now, I would like your like your something that said, but that the minimum assessment shall not be under 5% for all fisheries and anything not necessary for the buyback will revert into the general fund because I think the fisheries should pay more taxes. But that's a different thing. If you're talking about assessment, the assessment will vary according to the fishery, and do you want to charge those same Chignik seiners to buyout a Copper River gillnet that has no impact on their fishery whatsoever? If you do, this is the route to go, but the thing is that if you want to make the impacted fishery pay out the impacted fishery

Well, let me ask you this. Why should a Chignik gillsetter feel any more reluctant about paying the tax , the (indisc) of general fund tax and have it go back into the fisheries of Southeastern or to buy out the boats in Bristol Bay than the Anchorage man does? I think he may object to it but I think the Anchorage man may object to it too by

What Anchorage man? What Anchorage man is going to be doing so?

Cook Inlet.

Well now, I'm saying, you're talking about a tax now on a hell of a resource that we're imposing, and we're going to use that money we say to go ahead unless the state starts buying these things back wherever it's needed. We rehabilitate the fishery wherever it's needed. We're going to raise the tax on the most valuable resource we've got in the state of the fisheries, and we're going to, as a matter of policy, declaration without a declared fund, reaping (indisc) avoid the constitutional problem here by a statement of policy that is intended, that the funds imposed by this tax the legislature shall appropriate into the reacquisition by the Commission in the free market of fishing permits wherever they're most needed, that's what you say.

What we're saying here is that in Cook Inlet if it costs X number of dollars to buy out the drift boats there that are necessary then we're going to assess a percentage of that each year against each of the remainder remaining boats in the driftnet fishery in Cook Inlet and continue that until whatever expenditures have been made by the state to buy those things out has been repaid. Now, the setnetter in Cook Inlet is a completely different creature and not going to be impacted in the same way that the rest of the drift fishermen are, and he's not going to be paying that same assessment. He's going to be paying a portion of the assessment each year whatever is necessary to buy out the set net

fishermen in Cook Inlet. And the same thing is true of set net fishermen in Bristol Bay, (indisc) set net fishermen, or driftnet fishermen in Bristol Bay. Each one is going to be buying out similar gear in its own administrative area.

Alright then, lets get back to Jackwin's problem here. Do you think the poverty thing will work on the assessment.

No, but I still think, I honestly don't because it is like an assessment for the benefit of the property owners of those other permits and if they retire a permit that value accrues, the fishery is more valuable, there is fewer slices of the pie, and it accrues directly to them just like a public improvement or something like that. So I don't think you can have a poverty exception in the assessments.

But I didn't balk on the proposition of the annual fee.

No.

I think that's fine. I think that's a different proposition. But when you're improving the value of the guy's permit I think he has to pay for it. I would be hard put to exempt him.

Why don't we shift then and make the, instead of the \$50 assessment why don't we make it a license fee, across the board, and then put the poverty thing on there and

Well, the only point I'm trying to make is that you're buyback

is really going to be a local option where you come into a given fishery and you sort of say, this is for the improvement of your fishery and we're going to assess this fishery alone to buy out permits in this fishery, and we're not going to tax the state at large or other fisheries to get you down to the optimum level, then, you know, the funds that you raise can't have such a mechanism built into it, your way of raising those funds.

Taxes, or the fee, I've got to problem in terms of a poverty exception for that, but taxes, there's no reason to invent a special tax, no know, fisheries are going to be subject, you know, these are subject to property tax, capital gains tax, the income of the fisherman goes up that's going to be taxed.

Can you have a sliding scale license fee, registration fee?

I don't think there would be any problem

Related to your catch? And if you did, could you put the poverty provision in that?

Yes, I think you could have as complicated a system to the \$50 fee as you wanted.

I mean, you're license fee shall be, not

Not permit, license

X dollars plus a percentage of your catch the previous year.

Well, the thing that

Where's your money coming from to buy out the other permits, though, out of some general fund to which this contributes.

That's where it's all going to go, to the general fund, anyhow. It would have to.

But your accounting is going to be indiscriminate, in other words the fellow in Southeast Alaska is going to pay to be buying out permits up in Bristol Bay?

Well, that was the thing. If you did it on the basis of a license registration fee in Bristol Bay area you would have maybe 1% of your catch appended to that license fee. In another area no percent, in another area 2%.

You're mixing severance tax with license fees, but you could say that the license

Let me hear from an attorney, alright?

I don't understand, what you want to do, you don't care where the buy back money comes from, that can be set within (ph) part, you want to put a differential hardship on people that live outside the area, you want to put or basis of catch on percentage

You would package your assessments as you have them now by area into a sliding scale license fee.

No, I don't think so.

You couldn't do that?

That would then go to buy back the permit?

It would go to the general fund and you just have an account in the general fund, course

You're doing indirectly what you cant do

O.K., then it's not an assessment. You just levy a tax on a sliding scale based on the percentage of the catch.

License fee.

O.K. You're doing that with your license fees now aren't you?

The \$50 fee the way it was drafted in the original bill wasn't intended to supplant the notion of buying fishing licenses or licensing different types of

I'm just putting it into one package that can be treated as a license fee with your destitution clause and everything on it It goes into the general fund to provide you enough money to buy back. It gets you the same amount of money.

I don't think you can do that. I don't think you can tax for buy back.

(Indisc.)

It does seem to me that you've got first a legislative question then, and that is, who's going to pay for it. Won't the state as a whole, the fishermen of Alaska as a whole or all salmon fishermen, or do you want the prices(ph) confined to the fishery.

Under what I'm proposing the individual fishermen pay precisely the same amount as they would under this other one, precisely the same. But he's doing it as a license fee, sliding scale license fee rather than an assessment on top of his license.

Two fishermen catching the same amount of fish but in different areas would pay a different license because different amounts of money were needed for the buy back program?

Presumably, yes, could be. In one area you'd assess them 1% because was adequate and in another area 7%.

You can't change it by calling it something different. It's basically an assessment to buy back permits. You can't discriminate on it. It it's basically a tax and it just all goes into the general fund and then you have a separately funded buy back program, then it's fine.

But you could set it evenly across the board. Everybody pays 3% across the board, and then we come out of another account with the buy back, so we don't relate it to the area buyer. Then we're back to Clem's

When we're done I have a real blitz with some of the non-salmon fisheries and some of the non-impacted fisheries. Now, I don't object to having a 3% severance tax, or a, you know, I think when we (indisc) we should have at least a 12% severance tax, but that's just a straight tax that should go into the general fund for any purpose, like any major industry would pay. I'd say you're going to have to keep your assessments fairly low and if you wanted to you could have, maybe make the license fee, in other words make the license fee revert back into the buy back so that to a certain percentage every fisherman is paying to the buy back, but you'd have your gillnet license in Bristol Bay to be \$300 because you need to buy, you know. But then you'd also have to have a \$100 license for a seiner and that goes into the buy back, you know.

I got another problem with buy back, and I think it's, to some people it's going to be darn important. You got a channel of here, take Cook Inlet. This is where it applies best as I know it. The fish are travelling north into the spawning grounds. Down here is the beginning. There's no fishing below that. O.K., take this first setnet fisherman down here. If he's paying assessment fees to buy out these people up here it has absolutely no impact whatsoever on his fishing.

It does have an impact.

How?

For the very simple reason that you must close the seasons to allow an escapement to go through the whole thing, and as you limit those numbers up there his season gets longer.

(Indisc)

That's not the problem. It's not closing it, it's a matter of opening, and he's being hurt by that very thing right now, because the season isn't being opened until they're already up there and in and they're already past him.

That's bum management. That has nothing to do with this.

The fish that he pays out money to buy these guys out up here will have nothing to do either with his fishing

It does have to do with the fact that it's being mismanaged by Fish and Game has nothing to do with it.

Well, he could make an awful good case. Anyway it's rather minor in the overall scheme, but then he could have some concern.

Let me ask you this, the buy back thing bothers me a lot because of what do you do when you want to make an adjustment between

a recreational fishery and a commercial fishery in some area,
where somebody has been buying back for ten years?

Keep going, I'm with you.

Well, I

To come up to the optimum you mean

No, there's no point in cutting out anybody now for a couple of years till you get around to setting an optimum. If you're not, you know, if you can let everybody in at your initial level.

As to some fisheries it should be apparent right off the bat that by using (indisc) 1, 2 to 3 categories you have not exceeded an optimum number.

Well there you're going to have to make a lot of intuitive judgments about what the optimum number is before you ever get around to setting it. Under the other mechanism you're going to say, we'll let in everybody we can up to the present level, everywhere and in every fishery until we even start worrying about them.

Isn't that a kind of rough approximation brought to them right then.

What?

By setting this maximum.

No.

When you set any ceiling you're saying that we're fairly sure that we don't want any more in.

That's correct in that sense. You don't know what the optimum is until you set it.

But you've already set a maximum.

But you never fish anybody out in yours.

Probably not in those except somebody what wants to start up now

I just know that one of the key features of this bill from the beginning is that we're going to treat the different fisheries differently and we're not going to try to put the same ruler up to the seiners that we put up to the hand trollers, and hopefully that's what you're trying to do with these categories, is put the same ruler of hardship, not to say we'll apply the same standards of hardship within each separate fishery, considering the unique conditions of that fishery, rather than take one ruler, statewide ruler and put it to all the fishermen in the state and say, what it will mean is that 98, 100% of the seiners will get in at the outset, 5% of the hand trollers, 25% of the setnetters, 60% of the drift gillnetters, and from the very beginning we've been trying to avoid gear fights and avoid any system where people will think that you're going to advantage the purse seiner, or the, you know, oen type of gear over another, and that's what that will wind up doing.

Can't see it, Dave.

We seem to have lost most of our constituency here.

What happened to everybody.

They'll be back shortly.

I don't know, Bob had something that was happening.

I doesn't say you can't.

Until, you said, the optimum low.

But that's completely disorderly because the optimum / ^{level} doesn't come, isn't something that you set until you have initial entries so you know where you are at the outset.

You're already going to have your interim entry taking place next year. You got two years in which to come up with your optimum level, with the optimum number. And if you can level (ph) all the existing interim use permits that are issued, yes (ph) as initial entry permits because taking all of them you still are not above optimum level, then you let them in.

That's the way it's supposed to work.

Alright, but there are too many fisheries in which you've got to let some 4s and 5s into initially to get your

I haven't done enough research on it.

Well you'd just have to find some source of cash money to work with and so you'd need to get some money coming in.

The best thing would be if they could figure out a way to finance their buy back and do it fairly quickly because then the benefits will start to accrue. And then they can finish paying it off.

Maybe you should work at 10 or 15 years which your constituency tolerated, maybe you should have the assessment start at a higher rate than the buy does for the first few years. Have the assessments come in right away but don't start purchasing for a year or so, a couple of years, three years, for a slower rate of purchase, until you build up a little bit of money.

Of course the ability to pay assessments increases as the buy back (indisc)

That's right, yeah.

As far as I'm concerned I don't think it makes a heck of a lot of difference as long as you in a sense mean what you say. If you're going to do it, why fine.

I don't think you could let the people in the area set the optimum level. You got to set that and say you're going from here to here unless you can tailor it and make it flexible to fit them.

Well this is somewhat off the subject but could a Commission, empowered the way it is in these bills, use the assessment to amortize over a longer period of time an early lump sum loan or, in other words, if you could set it up so that an assessment of X amount per year would amortize a given amount of money over, say, 20 years, but get that money in the first five years to buy the boat (ph) out.

We had that in one version, the idea that these assessments could be put on

I think put your sewer assessment and pay it over ten years.

I think it would be possible.

The Commission would pay out assuming the legislature would give it money to work with. The Commission pay out, but the assessments to recoup might take them a little while to get in.

But the idea was that there wouldn't be any appropriation to start the buy back. That would only start as these assessments begin to come in.

You've got a dollar cash flow problem that you'd have to solve, and I don't know how you'd solve that one.

I think you've got to have some realism though in the sense of working toward the optimum.

Yes, you can't make it a 100 year proposition.

Well, that's perhaps true except, that's correct. In other words you're saying that you can't have the optimum set and then never attain it.

That's right, and I think you've got to have a realistic

(Indisc) that there's some flexibility.

Sure.

I like to think in terms of 5 years. Somebody else thinks in 10. You'd start to raise eyebrows if you get much above 10.

But in the fisheries, like in your crab fishery, maybe 20 years is a sufficient horizon, Bristol Bay driftnet maybe 5, you know, you can move as fast, you know, at different rates.

At the risk of running foul of John's problem I'd suggest formulas that had a differential at a curve ratio prescribed instead of going on a linear relationship. Start slowly but build up and about your 7th and 8th 10th years why, wham, you're going to be out there buying a lot, but give them a while before you really get (indisc) Kind of snowball.

I don't think this is going to hurt your property people if you
an
have/assessment that was low enough because they're going to
catch a little of something every year.

And if they fish at all they can't be charged above that percentage of their thresh.

That's right.

(Indisc)

Our bill say that that (indisc)

up to 7%, you may not be, in one place, that you may not be charged more than 7% of your catch, and we wrote this in for these little back bay gillnetters that maybe catch \$800 worth of fish a year, but it happens to be the only cash that they might have. Fine the assessment might be terrific, but they're fishing and it can't exceed 7% of their catch. Now if they sit it out the assessment might be \$300 or \$400.

You know, when we went out and discussed in public meetings this notion of buy back, the way we tended to explain it was it is a local program for this fishery. Now, you've got these choices, you can have a high assessment and quick buy back or low assessment and slow buy back and it's sort of up to you. The idea would be Commission would come out there and, you know, set whatever kind of a buy back program up they thought the consensus was, and it didn't scare people so much. They felt the buy back program would be tailored to their fishery and their circumstances.

What it's going to do is say, Mr. Andrews, it don't make any difference whether you're in the same fishery or in the assistant (ph) fishery, if you're not really dependent on this thing, or if you don't have a certain degree of hardship involved, we don't guarantee you in. Now, if you do have that amount of hardship, we do guarantee you in regardless.

You're only making it harder on the setnetters here than the other bill does, a lot harder, because most of those guys are going to be 4s and 5s.

How can there be any 5s when a 5 is only a paper license? How can a setnetter or anybody else

There are a lot of people come up for a vacation, but that's no hardship. It's a little privation.

(indisc) a paper license. He doesn't even actually fish it.

That isn't what it says. It says no hardship. That isn't concept of paper licensing, that's the concept of economic hardship. I'd say that a person that was vacationing, a hobby fisherman suffers no hardship if he's taken out of the fishery.

On what basis do you

Well, that's my point. I don't think you can make cross-fisheries

comparisons. That the only way you can convince people you're fair is when you say, we're not going to compare you with purse seiners, we're not going to compare you with somebody else, we're just going to look at you within your fishery and ask of all the set-netters in this area who is least dependent and who is more dependent. Not to say how dependent are you in relation to the purse seiners or in relation to the crab fishermen at Kodiak or something like that.

(Indisc.)

But most of those guys, you know at the outset the hand troll fleet and the setnet fleet where everybody acknowledges we're going to let everybody in, you know, ^{and} under any bill that's essentially what's going to happen, but those are the very fisheries that will have most of their people down in 4 and 5, and they're the ones who have been causing all the problems. In the purse seine fishery everybody's in No. 1, most of them, 100%. You see when you get back to this again, I get back to trying to be simple on the damn thing but you're going to let everybody in anyway, why not just say we're going to let everybody in and start out from there.

The only reason you wouldn't then is because of the drift net fishery, really. Because that's a fishery where you'd had, if you look over how many people that fished over the last ten years

it's about twice the number for the present level. The purse seine fishery has been stable, the setnet fishery is stable.

Let me pursue something here. The only reason I want to pursue it is, I don't want to pursue it too far because I don't want to take up all your time because of a hangup that I've got, but to me, it seems to me from the grace of the grandfather rights that the classification of those who fished in the previous year or two years or something like that, the grandfather clause being based on hardship and use, zoning ordinances or anything else, use or whoever did it, that that's prima facie of hardship when you change the law and you give them the exception to it. That's a duplication. And if we just use that simple test with the 100 statements, saying, having fished once in the last two years, having fished in the fifties (ph), you know, the last two years, one of the last two years, shall be prima facie evidence of hardship if you're deprived a fishing license. And then make out a special one for the guy that is, plus anybody else who can show that because of illness or service in the armed forces or something else was prevented during the last two years from fishing one of the last two years. And open it up and let them all in.

I have no quarrel with you as to principle in this operation. The only difference I begin to observe right off the bat between what you're doing here and what you're doing in a zoning control system, something of that nature, is that you're dealing with a limited resource as to which you're going to say only certain persons take part. It isn't that I can't buy a piece of land