

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672
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in that neighborhood, it's just that if I do all I can do is put up a residence, I can't put any more apartment houses or whatever. This I think is a more severe governmental system being instituted. Severe in terms of the next people who might get into it. Now that --

Particularly in terms of our constitution provision of common use.

I didn't hear you, Joe.

I said, particularly in terms of our constitutional provision of common use in public resource. That is a little different.

Yes, now I think that's a difference of degree rather than in kind and all that tells me is that you must be leary and wary of the accusation that you really would like to keep this very valuable thing that you're now going to limit to certain people to a select few that have been selected on some illegitimate basis and the basis on which you can make that selection and avoid that accusation completely is one which is tailored factually (ph) to the idea that if you were to take this person out of it, say he can't take part in it there's a bill that imposes a hardship on him. Now, one way to go about this is either wait for the present draft that the Senate bill has which simply says hardship and try to measure it now. Let's concede all the difficulties and complaints that we have as to that. The question is are there some more detailed specifics, objective type measurements of the same thing. And I think the answer to that is, yes. And I think you can do it in a way that

in a way that's acceptable. You might end up with something that's a little more complex than what you've prescribed, but surely those who've taken part in the past, those who would have taken part in the past but for the fact that they were in the military service or that they've had a temporary illness or something of that sort (indisc.)

Write them all down and then maybe you have it. (indisc)

You haven't quite confined yourself to the precise measure of the exact thing which I think is the sole justification for having the grandfather clause, but you've come reasonably close to it and you've avoided by some other mechanisms, by some other attributes of your system, if you once get it going, that prevent the person inferring that you've really done just to favor this particular little group of friends of yours. If you can avoid that by having transferability aspects cranked into it, a real determined effort made to cut down on numbers and get to your optimum in a reasonable length of time, and so on, then surely. That's fine. I think (indisc.)

You haven't put any more hardship on those that are left in to buy out (indisc)

But you're going to pay for them anyway. You're going to pay for everybody that doesn't get in and everybody else you're going to let in. Your bill pays for them.

Not really.

It does. You're going to pay for denial, right to compensation,
denial of initial

May, may, may

(Indisc) you would pay would be
for the difference in value over equipment based a market,
your fishery and a market that's restricted now because you

And its still discretionary

(Indisc)

We're getting away from our problem here when we start buying people's cabins and property rights and boats and things like that because of these part-time fishermen, do we split (ph) it out because it wasn't any hardship on them?

We've assumed the Commission may make the decision not to buy them at all. We think that's something for the Commission, to not buy

They can't adopt at their whim different standards of compensation

No, I don't think they would.

Let's say that they adopt the regulations that were sub
categories of 4 and say this/the sum that they would buy out
(indisc)

Why not let them all in and then buy the permit back on the market?

Is there enough money to do it?

Well, if we've got enough money to do this we've got enough money to do that. It's the same thing.

Why is it the same thing?

Well, because if this is open ended so is that.

That's what the market is going to be.

When you let them all in I think that you've got to come back to the sort of things that we're using.

Right.

With some reasonable proximation of the hardship category.

But, there's nobody can complain about hardship here against hardship there, or something like that

I agree, because the (indisc) of free entry

The more objective your standards the less opportunity there is for creditors (ph).

What we have here basically, as you know, is whenever you have resource, whether its oil lease, a noncompetitive oil lease, or something else, when you have more than one guy that wants it, you put them all in the hat and everybody has an equal right at the start. In one way if you started out with this and you have your assessment and the guys have to pay for it every year if they don't use it. What the hell are they going to do holding those licenses, they're going to forfeit them. You're going to get them out. Let's assume 50,000 people took the god damn licenses and they're going to pay \$3, 4 \$500 a year into the buy back fund, something like that.

They're not going to do that (ph), the people who are using those licenses are the ones that end up with them.

Well, no, you're entirely wrong..

Well, I don't know either. There's going to be a substantial number I think that will continue to hold on to to them for two reasons, one, speculation, the value increases they figure that the buy back, the value is going to appreciate greater each year than whatever buy back there is is set (ph). It certainly won't increase that much but it's ^{to increase} going/something in addition to the buy back. Secondly there'd be the changes, the rehabilitation effort that are being made, fishing is going to be better, if I wait for two or three years I can get in and still be a good fisherman. And you're going to have more people in by quite a lot at the end of five year's time than you will at the the beginning. (ph).

The thing of it is Bob, I think that regardless of what's happened so far, I think that the reason you haven't had a single fishing license (ph) in the United States is because of this difficulty, and somehow we're saying that it's not going to exist here, and god damn, they are.

Now wait a minute, (indisc)

Are you sure nothing like this has ever happened before and, if so, where would it have happened

RADAR: Well, we don't know if (indisc.) has happened.

PALMER: Alright, and where do have certain circumstances that are much this much similar?

RADAR: The East Coast is fishing--they go up through the fishery there for a century coming and going, and in and out, and...

UNIDENT: Course you're dealing/^{usually}with more than one state.

PALMER: You're dealing with more than one state, and you're dealing-- you've never had fishing before on the verge of the improvement through rehabilitation...

HAMMOND: I can't agree with the word you mean, but what--but there's a group that John's talking about bringing oil in, what if again he's going to be the guy that came in this year, no transferability. What if you did that, and then you wouldn't have this business of a whole slug of new people hanging on to licenses, keeping your potential pool away up high. There'd be no reason to, you'd never...

FLETCHER: On the other hand, I think before you could go to something like that you would have to make some distinction. Well, maybe you could make the (indisc.) into the ones who came in this year compared to those who had been in in some prior year.

RADAR: You know, why do that? Why have two or three different kinds of permits floating around? I mean, you know, because you wanted to get a whole bunch out of the fishery in a hurry and not have a bunch of people hanging it out--your big concern is these guys that would be flooding in this year, right?

FLETCHER: Well, I think you could just as well keep them out (indisc. -- simultaneous speech)

FLETCHER: ...let them in a two-year or five-year basis.

RADAR: Is it alright, do you think?

FLECTCHER: I think you could just as defensively keep them out entirely as you could to let them in on a very short basis.

RADAR: How? Well, I mean, taking the approach that he's talking about, how could you do it? You say you can't go back and lay out a (indisc.) of experience, actually.

FLETCHER: Well, if you make a distinction between the types of licenses that are out in terms of what restrictions are 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 measured of some legitimate concerns the State would have and the only distinction that I can perceive between the person who comes in this year to get a new license, and those who've been in in the past, that the very fact that we've talked about is that it's associated with the grandfather clause, and when you do that then you've got to have something that's a reasonable approximation of the legitimate concern about grandfathering, so you're right back to where you were.

RADAR: That's true of zoning. The only difference is that there just later, that's all. There's a point there that the law (indisc.--simultaneous speech)

FLETCHER: ...more restrictive, you know. A more severe thing you're imposing upon the people than you are the landowner.

RADAR: Well, if you get back to your hardship standards, rather than trying to tie down the same five classifications to every fishery in the State, why not just put a general one sentence provision in the Bill, nobody with significant economic hardships shall be (indisc.) entry permit anyway, and be done with it, and then let it go into...

UNIDENTIFIED: Provide it by regulation.

RADAR: Then let it go to regulation and fight it with more flexible standards. Get on up through each area, cause you know only about in three percent of the fisheries is that even going to be relevant because everybody is going to get in with some degree of hardship.

FLETCHER: By putting it in the negative we've not affirmatively said who gets the permits.

RADAR: Up to the maximum level and then if you've got any people left over who have a significant hardship, you let them in, too.

FLETCHER: In other words, you would set a maximum, and we're talking about what part of the maximum would they get?

RADAR: Present level.

FLETCHER: That'll be a number.

RADAR: That's a number, yes.

FLETCHER: I would determine who came within the number?

RADAR: You can rank them in terms of priorities, in terms of hardships, but if you issue entry permits to everybody, you know, to that number...

FLETCHER: That's what you have to weight now, isn't it?

RADAR: No, because there's one difference. If you still had--there weren't enough permits left over that if you still had a group of people that (indisc.) significant economic hardship in that particular fishery, you'd let them in, but in all the other fisheries where the only people you're going to have left over at the tail end of the list is the marginal participants, then you just stop. Issue permits up to the maximum level.

FLETCHER: That's why I say, defensible if you 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 whether it needed the maximum--not whether, but to

what extent.

RADAR: Well, the maximum there, yeah, okay.

PALMER: So you're suggesting that maybe take the numbers you had before, maximum number, the average or the peak, which was it, for the last four years. The highest number the last four years, that's the maximum, but as we've said later in our bill you would say in this one, regardless of that, anyone with a significant degree of hardship if they're cut out, will be allowed in. That's what you're saying?

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

PALMER: Well, that's essentially what we've done here except that we have tried to determine, we've tried to define what was meant by significant in these prior categories...

RADAR: But you applied it to all the fisheries, and you wouldn't even need to apply it to the fisheries where by the time you go to the (indisc.)...

PALMER: ...same thing to a man here as it is down there. It would have to be called significant.

FLETCHER: But the practical difference in terms of operation is that he's going to have some fisheries under this system in which some persons are going to come in because they're less than

the maximum of the set, without any showing of hardship particularly at all.

RADAR: Right. Right. (Indisc.)

FLETCHER: I don't either, unless you've got this maximum set at figures that's not defensible, and I want to know how you're going to set it now.

RADAR: Maximum would--alright, let me be a little more detailed about that. We know that we've got--most of the salmon fisheries are either at or above the optimum level, so in order--but that's something we know intuitively before we get around to setting administratively the optimum level.

(indiscernible--simultaneous speech)

RADAR: Alright. That's right.

FLETCHER: You know if these people have been telling you that.

RADAR: In almost all the problem fisheries the minute the commission was established they would adopt a regulation under this bill, it's still the commission that sets the maximum level, but it says the maximum level shall be no less than the highest number of units of gear...

FLETCHER: It could be no more than, too, because I don't want you to get it so high that you're running afoul of the idea that you're protecting everybody who might have any relationship to this fishery.

RADAR: But there are a lot of fisheries that are experimental fisheries or developing fisheries. There's no reason to pin the Dungeness crab fishery in Southeastern (indisc.) and so the commission just wouldn't set the maximum level amount until it gets on down the line.

FLETCHER: You have to differentiate now between one fisheries in which you don't have any problem, and those who (indisc.) do.

RADAR: Well, you do that--the commission is given jurisdiction to act and in all priorities to attack the problem fisheries first and to do that using its own good sense. Now, it's going to set the maximum immediately for all the problem fisheries, where we're at or above where we should be, but why should it have to do anything with longlining for black cod. Any of these fisheries that's (indisc.) in the future require limited entry. If they don't, you know, if there's not a pressing need now. That's four or five years down the line, and they can let those grow and not even set a maximum level, and they'll monitor them and if they see them getting up to that point then they'll set a maximum level, come in, and adopt an optimum level formula and issue entry permits, but the only reason we said no less than is that, you know, for all those other fisheries that we can't handle. It's just a workload problem.

FLETCHER: It's so untenable to say--to make it perfectly clear that in those situations in which you do set a maximum that it's being set every rough (indisc.) of this hardship business, because I do believe that you're vulnerable if you let things to--there's got to be a limited entry fishery. Persons that in one fishery don't show any particular degree of hardships in another fishery have a big (indisc.) system that (indisc.).

RADAR: You're right. The only reason you can get hardship is if you have to cut somebody out. You don't even have to consider hardship if you're not going to deny a permit to some and issue it to others.

FLETCHER: Well, if you're not going to set maximums, then why are you-- I mean, if you're not going to have any hardship categorization at all, why are you setting that?

RADAR: Now, one thing is in the fisheries where you don't have to

exclude anybody, there isn't an issue or grandfather rights at all. You don't have to even--you don't even have to broach the the question of who is suffering hardship in that fishery if you're going to let everyone who wants in in, and if you're going to deal with the fisheries separately, all I'm saying is that you seem to imply that we have to use the hardship categories in every fishery regardless of whether they're above the maximum or above the optimum, or below it, you know. And I think you only need to use the hardship if you have to cut somebody out and let somebody else in.

FLETCHER: I see.

RADAR: And, so, this would enable you to use the hardship every place you had to exclude somebody, but then to just let it float and ride and not even get into it if you're below the level, and don't have to get into it.

FLETCHER: That's alright.

RADAR: Okay.

FLETCHER: All I'm doing is objecting to not less than. I think if you're going to have some fisheries in which they don't feel the need of a maximum, you'd better tell them the reason in which we're not going to set any figure, but if you're going to have a maximum figure, then I think it has to be tailored to what it is you're going to accomplish.

RADAR: Well, there would be a maximum figure that would at some time be adopted. I mean the idea that was idea that was developed in the House was that they wanted the jurisdiction of the commission to extend to all fisheries, even those that don't need limited entry now, so that they wouldn't need, in fact, additional legislation, so you would empower them to at sometime set a maximum, and that's the only reason for the no less than,

you know, like...

FLETCHER: As I say, it's a (indisc.) thing. I think I would simply differentiate so that--don't put it all in one sentence. I was getting somewhere close to this on the airplane.

PALMER: How would you then define significance?

RADAR: Well, you would just have to make an effort at defining it. I don't know. In other words, all you're trying to do there is to say, I think that it's alright to ask who is more harmed and less harmed, but statewide we want some affluent standard that if somebody is harmed more than this degree they aren't going to be kicked out, right?

PALMER: That's what we say in our bill?

RADAR: Yeah. So all you want is a minimum to be cranked in in those instances where somebody in that category would not, you know, would still be waiting in line when you issued the maximum number. Then you'd want to guarantee that he gets a permit. So I think try and make one definition of significant, or substantial economic--you know, I see that as just a way of--I don't like that necessarily, but it's a way of keeping it simple and accomplishing the same thing, I think.

FLETCHER: Dave, look at what I did here. This is scratch paper. I've got an (indisc.) called determination of the maximum number of the initial issuances, not an all time maximum, but (indisc.). Now, as dealing with your specifically listed areas, because of that (indisc.). I had the one in front of me that listed those, but I'll ignore that now, and then, as to what would be the first category would be distressed fishery. This would have called for an initial determination that the optimum number, when finally set will be smaller than some prescribed number. Okay, whatever it is. Your previous license holders measured

in some rational way. (Indisc.) But, anyway, as for those you'll come up with a maximum. Now all of the fisheries--maybe you're not worrying as to what the optimum is. On the other hand, I see (indisc.). I can say, well, I can use some factor like 150 percent of all those in Alaska, and the peak number in five years will limit the new entries to 150 percent of those, or something like that. In other words, don't--

RADAR: How are you breaking it out? Let's see what kind of a formula you come up with on that.

FLETCHER: Oh, I don't know. I (indisc.), but not too many. For example, 157. In other words, if in fact you do scare people out of one fishery and they all go to another, don't let yourself immediately get into a bind, (indisc.) yourself over there, and put a tap on this one, even though you haven't labeled the fishery as presently distressed.

RADAR: Why not leave it totally discretionary for the commission to (indisc.).

FLETCHER: But I just felt that you might like to leave it here.

RADAR: Yeah, that makes--in other words, what you're really making them do is make an initial finding that for certain fisheries the optimum number will be smaller than the present number.

FLETCHER: And if they--that's all they have to decide is that they have to tell you what the optimum number is, and if they know that then they can (indisc.) the maximum. Yeah, sure, I thought that, and then down below you could set your standards for the people who will fit within these last ones. You want to rank each fishery separately, I don't think you have to worry. You can have some trouble over here, but rank each one separately so long as you don't come up with a terribly indiscriminating, well, even (indisc.) fisheries so severely impressed that you

may have to cut out (indisc.) first.

PALMER: Do you think you could come up with a uniform, or a threshold, a minimum cutoff (indisc.)?

FLETCHER: Well, (indisc.) such an idea (indisc.) said, okay, so you've used this and you've filled the maximum but you've still got some people severely (indisc.--simultaneous speech) if you think that you're going to find that to be a real problem.

RADAR: In other words, rather than saying all ones, twos and threes get in, just say fours and five can be kicked out. That's what it amounts to.

FLETCHER: I--I don't...

(Laughter)

PALMER: (Indisc.) We got a long ways (indisc.)

(Laughter--indiscernible).

UNIDENTIFIED: To restate what you were saying, Dave, and not less there, what do you say (indisc.) districts where significant hardship can be experienced by unsuccessful candidates, the maximum number of units shall be no more than the highest of the previous five years.

JACKMAN: Yeah, you could do it that way... your allowed for the possibility of changing that number.

RADAR: That would leave--course, that would be better in a sense cause it would leave more discretion to the commission. They'd just be instructed to set the maximum level at which would in no case exclude anybody who has suffered significant economic hardship, whatever that is.

UNIDENTIFIED: Then those ones that ^{Professor Fletcher} ~~the question~~ was concerned about, that there not exceeded (indisc.).

RADAR: I still think you'd be on firmer grounds if you'd just set the maximum according to the finding that he has here, and then say

that what you really acknowledge that what you're doing is
issuing entry permits above the maximum in those particular,
you know...

PALMER: For a hardship.

RADAR: Yeah, when there's a special hardship then you issue permits above
the maximum

FLETCHER: How far have we come toward (indisc.) stated by John that
the open market is the only way to go?

PALMER: Well, how far are we to be (indisc.) that we have a substantial
reduction in gear by that method and maintain our position
constitutionally as well?

FLETCHER: Well, I think those two are substantially the same proposition.
That is, I feel very strongly that your system must contain both
visually to the reader and in practice an operative mechanism
for getting down your optimum numbers within the recent time.
And I don't really care how you do it, but I feel very strongly
that you've got to have it, because you otherwise look as if
you're doing the wrong thing.

PALMER: Well, you know, your suggestion that we just put in here is
almost called eye washing. If you wanted to we could say the
commission is hereby directed to reduce entry permits by the
buy back so that they will reach the optimum level in five
years.

RADAR: Put a time limit in, you mean?

FLETCHER: Well, the only practicality is, do you really mean it? Are
you going to furnish the money for them to do it.

PALMER: Well, we could maintain our buy back fund as it's written, to
apply to each district and each fishery within the district,
and the assessment, and so on and so forth. We could say that
the commission will enter into the market place and buy as it

sees necessary and return a portion of those as it sees necessary on a ratio so that--or on a formula, so that within ten years, why, we're down to where we want to go. I guess we could work that in just as we have before.

RADAR: I think it's pretty mandatory in this language that's been developed, and I would argue strongly against an arbitrary year standard. We say, when the optimum number of units of gear is less than the maximum number of units of gear, the commission shall establish and administer a buy back fund, and then we say for each buy back fund it shall adopt regulations and annual assessments, and that the commission shall adopt regulations providing for the purchase of entry permits, et cetera, until you reach the optimum level. It doesn't leave, you know, you can't all of a sudden decide not to, you know, abandon a buy back. You know, you've got to move to that optimum level.

FLETCHER: Well, they can adopt regulations that would be (indisc.) as it was against it.

RADAR: If they did that, but then you can only be attacking the regulations, and certainly, the law isn't weak if they actually move towards those.

FLETCHER: Well, the law would be stronger if we're told that it was to set a system that were calculated to reach optimum level within five years.

RADAR: But you can't do that in some areas. You know, you're going to have to be (indisc.).

FLETCHER: You can't just take some areas and say approximately.

RADAR: But why say approximately? Well, I just don't agree. I think that as long as you have to move to the optimum, that it's perfectly reasonable to take fifteen years of the (indisc.)

FLETCHER: It may well be. I'm not saying that I would be unhappy with

the fifteen years. I would be less happy with fifteen than with five, but it might indeed depend upon certain things. You know if you spell it out what factors they should take into account, that's alright, too. Okay, I think it would be better if you made a (indisc.).

RADAR: You say a reasonable standard would be different for each fishery.
(Indisc.)

FLETCHER: Yeah. Sure.

RADAR: You can still set an outside (ph.), I guess, and no periods less than (indisc.)

FLETCHER: Yes.

RADAR: But, you see, this is also enabling that guideline to allow-- it needs to be future buy back program.

FLETCHER: Yes, I...

RADAR: It might crop up 20 years in the future. What I...

FLETCHER: That's my second (indisc.) says that if after optimum is reached, any change in the optimum should produce an imbalance, the commission is authorized to direct and reinstitute the (indisc.) program. Sure, I think that ought to be there.

RADAR: But if they were in fact moving, you know, just constantly for the optimum level of gear. Do you really think (indisc.)

FLETCHER: It just depends on how soon somebody can get himself damaged and gets in and litigates, and how sympathetic the judge is going to be.

RADAR: But at least you'd have it...

FLETCHER: If I had the statute before me which just exuded good faith, why, I'd feel happier (indisc.), that's all, and if can find in it the type of description that tells the commission to go ahead and do this, you're stronger.

RADAR: Dave, what (indisc.) the time you say you can't do it in five

years. What time is it, ten years?

JACKMAN: All I'm suggesting, it seems to me that it ought to be a different period, depending on the fishery. Some fisheries would be slower, some faster, so if you wanted just one outside limit, then it's fine with me if you want to put it in there. The only thing where that doesn't fit, and when we were discussing that you have to put in a special new provision now when you want to crank up buy back 20 years in the future like when you have a new change in your optimum level, and that starts the buy back program up again. There are only a few situations in which that would occur. But it might occur, you know.

FLETCHER: Line number 275 says that you may reinstitute--no, I can't read it--at any time (indisc.) by lowering the optimum so that there then exists an excess number of permit holders. You take about one sentence which would direct them to start up the program again if they needed to.

JACKMAN: Well, I don't have any objection to putting a number of years in there, I just think--I don't see how it would make that much difference in the bill.

RADAR: Well, I agree 100 percent with the Professor if, in fact, the buy back program is a sham, and you're not moving toward optimum level. The court's likely to strike it down, but I don't, you know, I don't think it looks like a sham here if they do try to buy it, you know.

JACKMAN: (Indisc.) a few words (Indisc.) five years from now (indisc.) give them another three years.

RADAR: Well, do you think it would have to be that short, or do you think 10 years is better?

PALMER: Well, 10 years is what we used.

FLETCHER: I don't know that I remembered. I wrote five this morning, but I think any reasonable figure is alright.

RADAR: Actually, in wording it you could fit it in so that when the buy back program is reinstituted the 10-year period would immediately--would automatically apply to that buy back program. See what I mean?

FLETCHER: I suppose in the reinstitution you'd have the same general (indisc.), so then you'd have another 10 years before (indisc.) whatever (indisc.) was in effect.

RADAR: Just have it saying so it wouldn't be 10 years of the Act, it would just be 10 years from institution of the buy back fund, that is, setting the optimum level of gear, or something like that.

FLETCHER: You've got to--I visualize that the commission ought to periodically, whether annually or not, but ought periodically to review these optimums that have been set.

(Indisc.--simultaneous speech)

FLETCHER: I don't care whether it's annual, but I want it to be (indisc.). Whether you could put in a substitute for it.

PALMER: (Indisc.) annual. We just said that they shall review, and we'll let them determine it.

FLETCHER: Yeah. That's alright, but I do believe that to be willing to settle for not less than every five years, or something like that.

JACKMAN: But the implication is that they have to make the changes (indisc.)

FLETCHER: No, no. Review. (Indisc.) That's alright. That's my idea. And my reason for doing this is that it's a bolstering thing. It's to reinforce the idea now of what you're trying to do.

PALMER: Our language says the determination, and the determination

was applied to the number of new entries that would be available--
be made available out of what they buy back, shall be made by
using a ratio which will result as nearly as possible in a
reduction of the number of entry permits to the optimum number
of entry permits for each type of gear in each of the (indisc.)
areas within 10 years after the initial issuance. The permit
number is set. They just come up with a formula themselves based
on how many they buy back, only a portion of those...

UNIDENTIFIED: Where are you now on this?

PALMER: Page 12. Course, this is the content ^{part} that all number threes
have to sell back, which we've largely discarded. Do you feel
that--suppose we went ahead and said, alright, all those who
come in have the same transfer right and we gain our reduction
in numbers simply by the commission being in the market place
and bidding against dealers, buying out when it needs to buy
out--okay, do you think that of those that are buyed out that
we should substantially strengthen our case by making a portion
of them back available to new entries? Is there any need to
do this at all?

FLETCHER: I think the only conflict you would have to think about
doing it, would be if the commission buying was so (indisc.)
that you were in effect cutting out a free market. I can't
imagine that the commission could be that active, unless you
get into the situation where nobody's willing to sell. John
predicts that's not going to be so. I don't know.

RADAR: There will always be people going broke, dying, changing hands,
wanting to quit, to make money.

PALMER: Now wait a minute. Are you considering the fact that what
the House has in its bill, and what we've retained in ours,
the 6-month waiting period?

RADAR: Well, I don't think that makes that much sense (ph).

(End of tape)

SCOMM

#31:21

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more on tape

to sell them in a bar some Saturday night, be short of money. This gives him time to think it over, receive some counsel and advice, etc. On the other hand, if you sold to the Commission, you sell this without being taken place in a bar, I'm not sure whether the 6 months applied for a sale to the Commission.

It did, every sale requires application to the Commission. There isn't any sale that can take place in a bar.

This distinguishes between who had to be the transferee. (indisc.)

The Commission on the one hand and

I don't think that's right. There just the same argument. Say they want to transfer it in mid winter and they want some, I mean, that was the argument. The guy gets in tight straits in the winter and he's going to sell out. I don't think the policy in that was to keep him from selling to anybody. It doesn't make any difference whether its the Commission or somebody else. It's the same evil. The evil was to give him six months to change his mind. 'Cause you could have a guy who on the spur of the moment decide he'd sell to the Commission and he'd be out, you know, he would have made the same mistake.

But, you still require him, even if you eliminated that six months, still require Commission approval.

You still require application to the Commission and Commission

approval of the transfer

What would be the standard for withholding approval, set some more standards. You just can't say Commission approval.

No, it say, shall approve if the transferee is a fisherman.

I mean if it's going to a fisherman.

He has to be euqally qualified, ready and able to fish.

Well, that's a very minimal standard. Just so it's not going to some speculator in Denver or something like that, you know.

Well, it can be a speculator in Denver who's ready and willing to fish.

Sure, it's virtually.

But he has to be ready and abole.

He has to be alive. He can't be dead.

Yes, it's just to keep, it's just really to keep them in there monitoring the transfer so you know who the permits are going to.

Well, as you say, I think it's in a sense to head off the by persons who simply want to hold licenses. It's

one way to nip it in the bud rather than to forfeit for noneuse.

I take it that the Commission can have a form that says for the transferee to sign here, and one of the questions is, are you ready and able to fish. Yes. Do you own a boat. Yes. Or, no I'm going to buy one, but I will have one by next March.

I've got friends.

Yes.

That's enough. I mean there was never a design to make him own a boat.

No, no, I understand, but the Commission, I dare say is going to want to know. They're going to ask some questions that will help them decide. Is this guy able or not.

The biggest use would be if the legislature wants a report on what's happening when you transfer a permit so it's a point at which you can collect information as to where permits and going and what's happening to them.

Well, I think there's another advantage too that we can build in with a single sentence. And that was when the Commission approves the transfer that it issues a new card (ph) that it doesn't endorse this one over to the next guy because you've got a new entry holder now.

Incidentally, has anyone read George Rogers' analysis.

Which analysis page or so (ph).

(indisc)

He just started it.

(Indisc.)

On my desk there's another 20 pages or so.

One of the points that he makes too as far as I've gone is that in one place we say that the permit is a privilege that may be revoked and in another we say it's a personal right.

Intangible personal property?

Yes, right. And he's indicating that those are rather conflicting.

Well, I thought David had a good idea there. Put all of those in the same sentence and then it would be perfectly apparent that you're getting a rather limited nature of a property interest. If you want to call it property you can, but you have to realize it's very vulnerable.

Well, they are one right after the other, it's d and e

Yes that's right.

You still want to call it intangible personal property.

I think you're purpose in doing that was to suspend property taxation on it, wasn't that so. Wasn't that your idea.

My idea is we're going to be able to wipe these things out without paying compensation. If it's personal property we can't do that.

Sure you can. All you're doing is saying that it's just like a grazing permit on federal lands. It sells with the ranch, it does everything like property but if the sovereign ever wants to take it away he doesn't have to pay a nickel for it.

.
Can you tax him for it. (ph)

Sure.

(indisc.)

Maybe you should say what you mean. That is, to say these permits shall (indisc) personal property taxation. Period. And capital gains taxation. That's what you really mean. Isn't that what you're after.

Actually the wording was in there and Donna Sprague recommended taking it out because she thought it was a little, just, we'll it could go either way. We had, purpose of property and capital gains taxation, and then we said, no, that ought really to be property and income taxation because capital gains is just a subset of income taxation. And then we said, forget it, why don't we

taxation. But, if

I don't think it makes any difference.

I think you get probably over this hurdle of this kind of vested property right problem and compensation and so on if you specify what you want. And if all you want is to be able to tax it, then I'd say that.

Yes, but we want to go a lot further than that. We may want to throw the whole system out here in the next session of legislature on the basis that it's screwed up, and we don't want to call this a personal property right.

No, no. I don't mean to that.

If we do that we're going to have to compensate for it.

You say, shall be treated as. You don't say, is intangible personal (indisc).

(indisc) I don't think you can even say, shall be treated as. Why don't you simply say that the holder of the permit shall, the entry permit shall be subject to personal property taxation.

What are we doing this for? Who's assessing property taxation on the permits?

The local boroughs.

They're not doing it on bank accounts. I went into this one time when I was city attorney. I don't think there's a borough or a city in the state that's assessing property tax on intangibles, are they?

I'm not, I don't know. I thought you had to pay taxes on leases

(Indisc)

How about your capital gains?

I got into the thing because I thought, a lot of people were making the point that this is some sort of a windfall, some sort of a property value that's being created and the state doesn't get anything from it, and it seems entirely consistent with creating a valuable right that, say if you buy it at 4,000 and sell it at 10,000, you pay capital gains on it. And if it's going to trade in the marketplace as property it ought to be subject to taxation. And if that's a way to

(Indisc) like this you begin to make it property rights.

I think you can have it both ways, don't you? If the (indisc.)

(Indisc)

Particularly if you're not taking away something that's already in existence.

Well, but we're going to confer rights to fish.

But it's a highly limited one.

Do you tax liquor licenses?

It's the property right that we're conferring. We're going to pay for it if we take it away.

It's not a property right, it's a use permit.

Well don't call it personal property.

It should be treated as intangible personal property. Now intangible personal property, if you take, if the government takes my intangible personal property they got to pay me for it.

That's right, but its.

Well then let's don't call this intangible personal property.

It's the legal consequences that flow from it, not what you call it that counts. I think you can have something that can be modified by the legislature and not compensated for and at the same time have something that you can tax as long as you let

it stay in existence.

Maybe you ought not to put it down. If you're personal property taxing people are not going to be taxing intangibles anyway, maybe you ought not to put it on that basis, if you don't want that, but I do think that you can tax the realization of gain on sales from it.

I think that income tax laws would automatically have it (ph). You don't have to (Indisc)

Alright.

O.K. Leave that out.

Let's black out, the personal property, shall be treated as personal property.

Incidentally, George brings up two or three points here. I don't know whether we want to go through those or not.

If they're legal, yes, if they're not, no.

Well, one, it's a matter of the language, and I don't know enough about the language to know

Which version is he addressing this to?

I don't know which one he has.

To the one that we said (indisc) last weekend.

Well, he has this problem of who are participating fishermen. In one instance, he says, you apparently mean gear operators, crew members, net handlers. In the other instance he says that you apparently mean vessel gear operator or the holder of a gear entry permit. And, as he says, the first two standards, I mean the first definition which is everybody involved, gear operators, crew members, net handlers, and then the third standard you apparently mean the last one, which is not crewmen or crew members but only the vessel or gear operator.

That ought to be cleared up. Does he cite sections?

(Indisc)

I think we've already cleared some of that up in this other re-draft (Indisc)

I didn't know there was any ambiguity.

No, I thought it was pretty clear even in this one.

Well, we can, that can be left out.

Well, he has difficulty with, reasonable average economic rate of determining. Determining the optimum number eventually healthy, he had difficulty with that.

suggested changing it to economically healthy. Is there any particular reason to put financially healthy.

I don't see any reason why we couldn't use economically. Economically, I guess is a little broader word.

The main attribute is financial.

Your talking about fishery vs. fishery resource.

Yes, types of gear and

Incidentally, I was rather fond of my other standard (ph) in there about setting the optimum number. It's worked in the opposite direction.

Let the biologists get working too.

That is to say that there seems to be more of these things that the Commission is going to consider, is how far to spread the work around.

That's (ph) terms of the economical term too.

No. Time vested is a kind of a negative from that.

Make work (indisc)

Yes, that's right.

(Indisc)

Well I agree with you, but you're not going to carry it to the point of putting a net across the mouth of every river, you see.

Yes, but that's left to the Board of Fish & Game and broader policy making

It seems to me that that's a highly critical factor that this Commission is going to consider too.

They're not going to change the type

That's an integral part of it. They can't make the other decisions without making that one.

Well, it seemed to me that was

That's right, Don.

If you don't want them to think about it you can tell them.

Well, what I can't see is in reaching this optimum they're going to be guided solely by the biologists and the economists. Those two guys are going to tell them to cut this down to the bare bone.

All that (indisc) to say is that they're going to accept as givens a certain established type of gear in fisheries and not try at the outset

Now wait, that's at the outset. Are you talking about optimum?

That's I mean. They're going to be setting an optimum for an established fishery and if there's a proposition to phase out the driftnet fishery and go 100% to electro shocking (ph) the mouths of streams, that's something that the legislature or the board's going to have to do.

I agree. (indisc) you've told them so far, is you don't crank this other one in tells them, gee, that's great, let's do it.

No it doesn't. It says they've got to start with administrative areas in existing fisheries and they have to be compatible with the regulations of the Fish and Game Board. As far as gear conflict, that's still the jurisdiction of the Fish and Game Board.

Well, maybe, I

Because, you know, there are feudal wars fought up here.

(Indisc)

From our public reception at some of the meetings we've been at.

I felt (ph) this is something that these fellows are going to be thinking about and they will take into account. It's something they should be told, there's a legitimate concern. I don't think it's a bad thing to decide that you want to be inefficient.

A good many civilizations that we know that are deliberately inefficient and they get along alright.

We still want to make it a role of the Commission to make recommendations on it.

No, I think they should. (Indisc.)

Did we retain most of your language in this copy that you've got

I think so.

And was one of them the number of entry permits sufficient to avoid serious curtailment of the economic opportunities available to all persons.

Yes.

Resident or nonresident, considering the other economic opportunities reasonably available to them. Is that what you're talking about now?

Yes.

I vote strongly against that. It is going off in another direction. I think it's completely irrelevant to the point of economic efficiency and avoiding economic waste.

That is true. It works in the opposite direction.

Well, I just don't think it belongs in this bill for that reason. Because we've got too focal points, management of resource and prevention of economic waste through overcapitalization, and they're both really conservation standards. One's a conservation of social wealth, don't waste, you know, don't invest \$100,000,000 when you could do the job for \$25,000,000, and the other is conservation of the resource, to limit gear where it can be conserved, where the resource itself can be managed.

And that goes off in a third, different direction, you know.

Well, what I'm saying is, if I were a legislator I would say that those two things taken alone would lead me to a conclusion I don't want to come to.

Well the thing is if you've already got built-in limits up here, because the Board of Fish & Game has already defined what kind of fishery we're going to have when they say you're going to fish gillnets there and purseseines there setnets there, and there is a make work scheme, natural make work scheme going

No, there isn't, there's a natural make work scheme only because it came about and exists and you're trying to get away from it,

and you're setting an optimum, and then you're going to work toward the optimum, but you're optimum is something which you are getting there because you want to get away from the (indisc.)

One step at a time.

Yes, fine, but to say what your optimum should be determined upon, I'm just saying that I know a good many legislators who would say, Well we ought to have at least several thousand people fishing. O.K., so we're going to have several thousand fishing.

I think what you're suggesting is if you wanted to ask what should the fishery look like 20 years from now, should it move in the direction of more efficiency or should it move in the direction of more labor intensive fishery, or something like that.

Those are policy assumptions that this bill. I mean, these are givens (ph) for the purpose of this regulation. They assume a type of gear and a given administrative area as adopted by the Fish & Game Board. They don't have any authority to change that or make any recommendations.

Well, suppose you, that if you considered only the two factors and given the present limitations on gear it would be much better if you had a fishery in a particular area that had only a tenth as many fishermen as there are there now, but you went up and looked at that fishery and decided, no, we can't do

that, we ought not to do it, let's cut it in half instead of a tenth.

You don't want the Commission to be able to stop at a half. You want them to set a

Well, of course they can, but that's a

How can they. They're told to

No. The criteria is number 1 and number 2 (indisc) to go down to a hundred.

Alright, in the initial bill there were other kind of general fudge factors in there but economic return to the fisherman assumes that you've got a certain type of gear being fished and economic return. You're going to balance those factors in considering the economically healthy fishery. You don't have to automatically cut down to the only, only the number of units that would give you, it doesn't say to give you maximum economic return, it says reasonable rates of economic return.

If this is all within the word reasonable, why, you've won your argument. I just felt that you should spell it out.

The policy, and I don't see anything wrong with it. I don't see that you hurt your bill.

Could you spell it out. I'm not sure that I understand your argument.

Read it to me.

Page 5.

This is one of the factors that enter into determining the optimum.

Well, alright.

This is what Dave was talking about. The number of units of gear sufficient to maintain a financially healthy fishery, or economically healthy fishery that will result in a reasonable average rate of economic return to the fishermen participating in that fishery. No. 2. The number of gear units necessary to fully harvest the average personal take of the fishery resource in an orderly efficient manner based upon sound management techniques, and perhaps during the five years immediately preceding. No. 3 The number of entry permits (and this is what (indisc) talk about adding), the number of entry permits sufficient to avoid serious curtailment of the economic opportunities available to all persons, resident or nonresident, considering other economic opportunities reasonably available to them.

Let me read you what Rogers said about this. He talks about our changing the word maximum to optimum. Because the three stands are related to different purposes the number of units of gear (indisc) will differ, the best, not highest, results being the optimum to be used as a basis of issuing permits. The determination, at best, will be on simple arithmetic exercises which

this analysis left at Number 1. The first standard is that the number of units of gear be sufficient to maintain a financially healthy fishery, and "result in a reasonable average rate of economic return" to participating fishermen. Fisheries is defined in terms of species, type of gear and area, (e.g. Bristol Bay salmon drift gillnet fisheries). There is some ambiguity, however, as to the meaning of participating fishermen as used in the ISGER [(indisc) thing I was talking about a moment ago]

Yes.

Then he goes ahead, for present analysis, the last meaning gear or vessel owner is accepted for the first two standards, and the first meaning all persons including crewmen is employed by the third standard. It should be noted that the conclusion arrived at however would be significantly different if the broader definition were used in all standards. A financially healthy fishery is one, if found, in which the participating operators are financially able to maintain and improve their gear and vessels and are free from economic pressure to violate laws and regulations. The first element of this definition can be established by the Commission on the basis of surveys of participants or a sample of participants in each fishery to determine the actual cost of maintaining and replacing their vessel and gear and their judgment as to how much more would be required to afford a margin to cover the risk of experimentation with new and possibly more efficient gear. The resistance to

the temptation to violate law and regulations would be approximately the total economic wellbeing of the participants in the subject fishery. A basis for this could be provided by the Department of Revenue and form a compilation (ph) of each fishery of pertinent data extracted from state income tax filings made by all persons holding entry permits or gear licenses. It is assumed that in reference to "reasonable average rate of economic deterrent" (ph) means adjustment up or down of average actual net income received by all gear operators in each fishery required to equal the combination of a reasonable rate of return on investment in vessels and gear, and determined by the current commercial interest rates or similar measure, and a reasonable return for labor expanded as determined by current wage rates in comparable employment. The Commission will be exercising an element of subjective judgment as determination of what is reasonable. Once appropriate interest and wage rates are selected the remaining calculation can be made and daily compiled to meet the other standards of this section.

What does he say, Don?

Well, he's really saying the very same thing that the professor just said, that is that ultimately a redundancy in the fishery may be a socially desirable thing, and that a maximization of gear and conservation are not the only two things involved.

Well this is from the assumption

Is that really what he's saying?

Is that a subjective analysis for the Commission? And you're suggesting that we recognize that, state it in here that they have that subjective right to make that analysis in order to at some point close off the argument for efficiency.

But what people have not seen is that the whole program was never directed just to efficiency and the thing that scares me in this is that it becomes an excuse for tinkering around every year with complex calculations and really socializing the fishery, you know, and trying to decide governmentally exactly what people will make in a given fishery and exactly how many people do we want employed in the fishery, and it becomes a pretext for all that kind of thing. And I think it's a totally different program. The idea is just to kind of get it down to something like a rule of thumb sensible level and then let it all even out and not to come back in all the time and make, you know, which is what you do if you want kind of the crutch feel (ph) approach, to be pure economic efficiency or the social welfare approach of Rogers is, let's see how many people we want to employ. I think they're both equally bad because you're making, you're trying to fine tune the thing.

It seems to me you force yourself into that position the moment you decide to establish an optimum.

There is (ph) a reason for doing this

Isn't that the definition of optimum is?

I don't think so. I think the only reason for doing this to get, it's sort of like we're away up here where everything is totally distorted, management, economic return. Let's get back down in the ballpark and then leave it alone, and issue the entry permits and let them become like property, and not just because all of a sudden you discover 50% of the purse-seiners in Southeastern making \$25,000 a year don't come in decide they only make an average of \$23,500 and rechange the system around, you know.

That's why when the revisions of optimum numbers we didn't provide for annual review and (indisc), but said an established longterm change in the condition of the fishery resource, and what that is meant to imply is only when things get really out of kilter again do you come back in and readjust.

Here's a problem. Let's take a Bristol Bay guy who lives upriver and wants to come down and catch \$2,000 worth of fish and then go back upriver.

Well, now, an average rate of return on his investment, time, what are we going to talk about. Are we going to try to weed that guy out.

No.

FOUR STAR BOND

Because he has an operation there.

No.

That's exactly what we are not going to do. In other words you're going to look at the fishery and you're going to say, we're providing for a thousand units of gear and we know that if a guy wants to work one week he/ ^{can} take 500 bucks back upriver. If he wants to work three times as hard he'll be able to make more.

If he's an inefficient fisherman and using inefficient gear.

But not necessarily

We've stated in here our purpose

If you drive it to the extreme but I don't think it's phrased that way and I don't think it's intended that way. I know that's not, you know, what the Governor wanted us to work on.

Well, because, that may be your intent. But without something like No. 3 in here it's not the intent of the law, even though we may be thinking this way but it's not being established. Now if you include 3 then you give it the legal basis for considering this other aspect. Otherwise, I think you are right back to the point that John's talking about. This guy is inefficient and he's in excess of what the optimum would be

would be there.

O.K. Then (indisc)

Alright, I won't fight 'em up here.

Right.

'Cause I agreed wholeheartedly, you know, with the objective but not to say to everybody that you have to be a superefficient fisherman to say in the fishery. Just to get it to manageable levels (indisc)

I think you could get (indisc) by what you prescribe by way of review and what you say by way of

O.K. (indisc)

I quarreled a little bit with some of the faces upon which the change could be made because I felt they weren't exactly dovetailed with the standards that you'd set up for determining the optimum number, because you had something about market in it or something (ph) and there was part of it that I

Rate of return fits in with

Well I felt. Wouldn't you feel that it would be better,

perhaps only from a mechanical standpoint to say simply that, if, because of the factors that entered into the initial determination of optimum there were changes perceived of a long term nature.

(Indisc) have change

What I didn't want to happen. What scared me about that third standard is it seems like when we get in court with this thing one of the big things we're going to be arguing is that we have a legitimate state purpose to prevent economic waste and make the fishery more efficient. And if we work in another standard that seems to be going in the other direction of sort of spread the wealth, lots of economic opportunity, make work scheme, why wouldn't the court look at us and say, what you're just trying to do is replace the, you know, just have different people in there, but wind up with the same thing you have now. You're not really making a conscious good faith effort to move in the direction of economic efficiency. You're just muddling everything up.

That would be true if you didn't set any optimums less than what you already had.

You know, Dave, I think, I'm thinking about my own attitude on this bill, and I really don't know what my attitude is, but I think if we write a bill here that doesn't within it contain the standards for administrative decision making which will absolutely go in the face of efficiency and everything

else in favor of the Bristol Bay fishermen, or let's take the guy who lives in Kenai and, frankly, doesn't want to fish very much but he wants \$2,000 worth of fish, that's all he wants, but he wants it in any g__ d__ way he wants to and he's done it for a long, long time. He could head for someplace else, you know. I really think that's an essential part of this, and if we're really going to ignore that in terms of economic efficiency then, b.s., the way to do this is to build fishtraps and the state take them over and hire a few guys to run them. That's the way to do it.

I think the conservative, I think where you've protected that is by not giving the Commission the power to change the nature of our fisheries, the types of gear, the fishing areas, that's the very conservative pull in our fisheries. As long as you fish with drift gillnet boats and setnets in Bristol Bay you're going to have that kind of a fishery.

But here's the problem, really. This is really more their problem than the Fish & Game Board. You're talking about the relief of economic distress of fishermen, so we have to decide what is economic distress.

But, all I'm suggesting is we, I admit we copped out of that by narrowing the purview of what the Commission does to give, accepting the rather conservative, inefficient nature of the fishery where the fishing would, you know, instead of having fish traps and trolls and all sorts of more efficient technique

you're locked into a fishery with drift gillnet boats and setnets and Alaska limit seiners and all those limitations and that those should be enough to protect, you know, the character of the fishery. And, you know, if a decision's to be made to move away from that that it ought to be done by the legislature in a separate bill by the Fish & Game Board or certainly not by the Commission, because the Commission can't come in and say, all of a sudden we're going to let entry permittees put in fish traps or, you know, electoshock fish, or go off in this select economic efficiency direction that far.

(Indisc) in what you do with it, but I have suggested that you change your Fish & Game authorization clause that would authorize commercial experimentations with other types of gear (Indisc)

Yes, good, because it does seem to me that that lends more credence to the proposition you are indeed interested in cutting down and then if you want more efficient operation , maybe this is collateral to what you're talking abo now, but I do think that would incorporate (indisc.)

There's another variance on this efficiency factor you ought to be aware of, I don't know whether it doesn't cloud the issue a little further but one of the assumptions is that, you know, bigger gear, bigger and better boats and what have you automatically improves efficiency and yet through your regulations you can vastly increase the efficiency of say

a setnet or a skiff with 50 fathoms, you can make that skiff with 50 fathoms much more efficient than the best boat going if you give him much more time and let him fish in areas where, one of the worst things that really happen I think in the Bay is that a bunch of residents got involved in big expensive boats and therefore now they have to pay for them with seasons that are large, and if they'd stuck with little skiffs, and maybe if they'd put a limit say 50 fathoms and a skiff is all that you can use in Bristol Bay, and we're going to fish them right up to the river mouth and we're going to enhance the setnet by allowing certain things to happen. Shoot, you could harvest that whole run on paper far less efficient gear, and it's just another variable in this screwy

It's an important one, though, because that was something that came out in the first meetings we had out in Bristol Bay, the most efficient, economically efficient type of gear might be the skiff because, you know, it represents very little capital investment but it can harvest just as many fish.

Yes.

And there's an awkwardness I take it that's almost insolvable here and that is that the sort of divided functions among your departments of the state, too.

Yes. I don't know how you'll

That really doesn't make any sense. That ought to be straightened out.

Yes, with regional boards and (indisc.)

(Indisc)

This really scares me because, you know, it is a socialization one way with your fishery. Here I thought that you could even do this. Take the Bristol Bay situation. Maybe the best way to make certain that your residents of Bristol Bay get a part of the fishery is to let the state go out there and harvest it through fish traps and hire the people to can it, and make the people employees. Maybe that's the way to do it.

I think it can stop

Is they're going to lose out anyway

I think it can stop short of socialization if what you're doing is just trying to rationalize some of the objectives of where you're trying to go and creating small businessmen out of the fishermen, which is sort of what you're doing, you're just saying, we're going to have this size of harvesting units, you know, and that that somehow makes sense in Alaska to have, you know.

I tell you what we're really going to do out there. We're taking,

in the long run, I think, we're going to make small businessmen out of the fishery and it's going to add stability to it but I really think that who's going to benefit. You're going to be the well financed, educated small businessman who's going to be successful and the marginal one is going to go, and we're going to end up with the people in Bristol Bay standing there on the beach and watching one of the greatest resources in the world harvested right there in their back yard and they're not going to participate in it. That's where we're heading today.

Why do you think that is going to happen?

Because I think that they're going to lose their permits.

How are they going to lose them?

The same way they lost their land in Kansas and every place else.

The permits finally gravitate to those who can make the highest and best use of them.

O.K. But they've already lost them in that case. Because what do they do when they harvested \$30 worth of fish this past season. (indisc) this same type of thing.

That's the problem. If those people are on welfare they might

be just as well off to have a \$1,000 season and break the welfare chain. They're not doing anything anyway, so the fact that you have an inefficient resource doesn't mean anything to them. Again that's part of the Rogers argument, is that if the result of this is that your marginal fisherman is put out of business doing absolutely nothing, you haven't really saved human, or your other resources at all. What you've done is you've let certain types of people who end up on the top of the resource.

But he's out of business now for all intents and purposes for the next few years.

You're going to license him out with this, though, finally.

But the other side of that coin is that if in some of the other areas you let fishing become so much of an avocation so much as something the people are willing to subsidize themselves at by coming rich people that already have money, doctors and lawyers and so forth, coming into the fishery and not having to make a decent return off of it and crowding the fishery to such a point so that the people that have to make a living off fishing can't make a living off fishing. At that point it's just a hobby to the other folks, you know, they're just writing it off. They don't have to show a profit. And by the same token, you know, without limiting entry that's what you're going to get in other areas.

But then you get down to a real basic argument and that is, if people enjoy doing this so much that they're willing to do it for nothing, the people who really can't make a living at it could go into something else, and the fishermen you're talking about are mobile.

But you're driving them out.

They can go to Anchorage and get a job. They're not really in such tough shape.

But all I'm suggesting is it's the same point Rogers makes. It's true that if worse came to worse at least there's a theoretic possibility the people in Bristol Bay losing those permits, although I think the state could do a lot of things to make sure they held on to them or help them get them back. But by the same token if you let the other fisheries be taken over increasingly by part-timers and hobby fishermen you're driving the same kind of people out of the fishery without limited entry in some areas of the state as you claim you may be in Bristol Bay with limited entry. The people that don't have the alternative, that need to make money off fishing, you know, that are kind of locked into a local type economy. They'll all wind up selling their setnet sites to rich vacationing people from the lower 48 or something who want to come up here and fish on a lark.

Well, let's see if we can have it summarized where we can only go

so far.

We talked about initial entry. Did we kind of reach a conclusion that it would be reasonable to set some numbers as maximum? I'm not sure how we came through that as far as you're concerned about how these numbers would be established, but anyway the thing about setting numbers as maximum, say no less than this many.

Nor more than.

Well, we've got it worked out. We don't need any (indisc) on terms of this.

O.K. Then I'm happy with this (indisc)

Well, are you going to say, or no more, except that?

Yeah, yeah, except and except for your hardship

No less than and no more than except that

Now, wait a minute. We're going to have no less than and no more than except in the fisheries that are not above the optimum, and then they can do

We're going to have an initial sort of seat of the pants determination by the Commission of those fisheries as to which

the expected optimum number to be set will be fewer than this formula that we come up with. And the formula we haven't specified will have something to do with total number of permit holders in a certain area. As to those in which there will be that discrepancy, which you want to work down, then that number will be the maximum as to that fishery as to limited entry permits unless having looked at all the applicants you find some, you've filled up the maximum, who still would suffer significant hardship by not being let into it, they will be let in. Otherwise it is a maximum and it's by ranking people you haven't yet used up your maximum, I suppose you'll let anybody come in and vie^{for} an entry permit in that fishery, although I would want us to have arrived at a figure at which the chance of doing that is relatively small.

Now wait, would there be any harm

Just a minute. One big issue is the handtroll fleet here in Southeastern, you know,

Well, as to the one in which your optimum is not going to be less than you, and I suggested having some kind of a top limit, but at least it would be very top.

But if you set the maximum for a fishery and you can let in as many people as you want even if it's some people that suffer no hardship, it's only to make sure that you don't kick anybody out that would suffer significant hardship. You know, as long

as you don't go above the maximum, I mean except in those hardship cases. I think that all could be put together.

O.K. We're more or less in agreement.

Go to transferability and then we're generally saying that then under this any party that comes in would have the same kind of transfer rights that the, in order to reduce gear down to our optimum level then it would be by means of the Commission going into the open market and buying out permits. Buying out as many as it saw fit, perhaps under a formula necessary to reduce down to optimum levels within ten years, or some such approximate.

Within a period to be fixed for each fishery, not to exceed ten

(Indisc)

O.K. And so it could simply determine its rate, its aggressiveness in the market place would be determined by the number of units it had to buy out within that period of ten years. And it could be more aggressive in some areas than in others because it had been reduced further in the same length of time, and we make no provision then for new entries other than these are freely transferable and that everybody has an equal opportunity to get in. This is what we're saying basically.

That's right. And the only worry I have is whether in fact

the operation is such that there's no real opportunity for new entrants. But I can't see the state's going in and bidding so much but that there wouldn't be a realistic opportunity. I don't know for that.

Well we could write it, put a clause in here saying that they shall not go into the market to such an extent that they destroy the free marketability of it.

Of course on the other hand that might, there may be so few available that in order to even approximate your 10% reduction each year you wiped out all those who want to sell, therefore there is no real opportunity for anybody else to get in.

Shall purchase no more than 10% a year

(Indisc)

The economic distress of fishermen if nobody wants to sell

It's impossible to relieve the economic distress of fishermen if nobody's got a permit, nobody wants to sell it. It's not going to (indisc) very good shape.

But when you do you (indisc.)

You can't conceive of the buy back working unless there is a

market price, and a market price implies that there's going to be other transactions than transactions just with the Commission.

Well, now wait. When you say you can't conceive of it working that's the very thing we're worrying about isn't it, as to whether it's going to work.

Precisely. And I don't know whether it's going to work or not. John has one impression and Bob has the other. I don't know whether it's going to work. What if it doesn't work. Suppose you sit around for two years and there isn't the slightest indication that anybody wants to sell and yet the Commission's got a target laid down there for (indisc) the fishery five years from now. Something better happen darn quick.

You better report a need for new legislation. (Indisc)

Well, that's the thing that's long concerned me, that you will never rote, or for a long time, from maximum to optimum. And if you do have this type of a, you might say, contrasting bid, he wants to buy my permit and I go to the state and say, what are you going to pay me, and they'll give me, well we'll give you five grand. Then you say, Dave, I got 5 from the state, how about 6 from you, and you're going back and forth and ultimately if there's somebody wants to come in he's got to beat the state, or the state, conversely, has got to pull him out.

Yes, that's exactly what's being designed here, but. I don't disagree that, nobody knows exactly how it's going to work, but it's conceivable that it will work, you know, that you will have

That's going to continue to increase in value and unless I have to sell it I'm not going to do it because it's going to be worth that much more as prices build in subsequent years. That's the thing that worries me because really

If not many people sell there won't be very much assessment, therefore the cost of holding won't be very great before there's even more.

No, if not very many people sell. But what Jay suggests will happen, the first thing that'll happen is the price will start to go up because you'll have not very many permits available, and the price will go up and that will raise assessments, and that should.

It won't raise it that significantly I don't think because you're going to have fewer of them to buy and more people to spread it among.

I suppose that if the Commission takes this seriously and says, now look, we've got to there within X years, and the only way to do that is to buy, the price that they're willing to pay

will go up, and pretty soon they'll be paying \$10,000 for a permit. They'll say, well we can afford it. We'll assess everybody else around here enough to bring us \$10,000, so we'll buy 5 at 10, or 100 at 10.

I suppose this is one of those things that we're not going to be able to answer until we've had it in operation for a year or two and, as you say, come back and change it as we see necessary.

It did in one of these versions have a requirement that the Commission report to the legislation and be specific

We still have it

on that one, particularly as to the progress of reduction.

In fact, I guess that's the way the thing is worded now.

It would seem to me that if you were going to create a standard for the rate at which the Commission should move toward the optimum it really would be that level of buy back which will not result in the Commission's purchases materially inflating the market price of permits in a given area. You know, you could see the Commission buying, you know, 5 to 20% of the transactions and not materially inflating the price of permits, but that's the standard you'd want to set up because if you set an unreasonably accelerated rate of a buy back program that you in-

flate the price of the permits, all you're really doing is putting a tremendous additional burden on the people in there to get down to the optimum within your ten year limit.

Are you sure you want to exclude that. In other words, if the permits are all that valuable that people aren't going to sell then those who decide not to sell ought to be willing to finance the state's purchase on a few of them.

No, I agree. It just seems to me that the buy back doesn't need to be quite that frantic a type of thing, if it's going to be a voluntary buy back instead of a

I don't think it ought to be wholly voluntary if it doesn't get you there.

Well, I think you've got to get there. I don't care how you get there, but I think you've got to get there. I'm just worried deeply about the tack if you're not serious about it.

Then we're back to varigated degrees of transferability.

You're not happy with it (indisc)

Well, do you want to just leave it on plain open market?

What if you had, well--you couldn't have it a variegated assessment relating to whether you wished, let anybody have an option on whether or not he wants to sell back or not, and if I don't want to transfer, of course this in inherit in one of these bills. If I don't want to have free transferability I pay no assessment, but the guy who wants it pays a fat one and maybe have a--what would you be into now?

You mean particular fisheries make up their minds collectively, or each individual permit holder.

I think you'd find each individual permit holder would somehow declare himself. I suspect that way the guy who really wants to transfer to his kid, transfer to somebody who's the pot of gold (indisc) why not pay for the privilege. The guy that doesn't care about that's going to be out of the fisheries as soon as he quits, or

That's going to make the price a lot steeper on those that have to pay, and a lot of those people that are going to pass it on are the natives or of the poorer people in the fisheries. They really want to hold on to it and be able to transfer it.

That's right. But you're going to put assessment on them anyhow.

Yeah, but not as high a one because it would be spread out over a larger number of people.

They would pay according to their catch.

Well now wait a minute, what would we need an excess (indisc)
open to one limit (ph).

Yes. You have to, otherwise everybody would like to do it.

They'll be selling on the open market. You wouldn't have a buy back then would you.

You wouldn't have any reduction either.

But you can try the buy back and if it doesn't work you can always come back in

Yes, I think you've got a year or two of grace. (Indisc)
assessed every year or every two years.

Sure you'd have a reduction.

(Indisc.)

You'd have a reduction. It would be slow but your normal attrition, you've got the lid on and anything you do after that is going to reduce gear. When you do nothing you're going to gradually

gradually reduce gear.

Well not if all the licenses are sold to new people.

No, no. I'm not going to allow that certain category that's been paying assessments sell to anybody. Or maybe a reduced

That's one of the problems that come up assessing the person who doesn't want to sell is the permit is not getting much more, his permit is increasing in value.

To himself.

To himself, and maybe he ought at least pay something

Certainly catching more fish.

You could have variations in that easy enough under modest payments and inspections (ph). And then maybe put a fixed value on it that the guy who will sell back to the state pays a midway assessment that he's assured of the next fixed (ph) value.

That's where we were when we came in.

Oh, O.K.

We had a nice system all worked out. Somebody sat on it pretty

pretty hard.

Well then, let me ask you this, are we agreed that basically the transferability of this thing is going to have to be free transferability to work.

(Indisc.)

I think you could set up a defensible system and have almost no transferability to it.

Describe how to do that.

That was one of the initial versions of this thing that the (indisc.) permit was personal to the individual recipient and was good as long as he himself could fish, and that was the end of it. No transfer by Will, no transfer by gift, no transfer by sale other than back. We didn't quite make it that but we strongly encouraged it by this differential tax. I think you could go whole hog on it. Simply have all new licenses issued by the Commission.

How would they issue the new licenses?

On the basis of (indisc) of application, bids,

The applicant pool.

The applicant pool couldn't create classifications that work.

No.

Discriminatory.

That's right.

It would have to be completely neutral about it. I think you could insist on qualifications in the sense of being able to fish but not do anything more than that. I think you could do that. The only

This would be an awful lot easier in terms of getting down to your optimum number, that would work pretty rapidly. Incident to that I would have a fairly substantial issue of new permits going on all the time because your others, particularly after a few years, would start feeding in fairly rapidly as your fishing got older.

One implication of not letting it survive death, even though you can encumber the permit itself, if a fisherman dies, you know, somebody who's lending money even to his boat to better his equipment and so forth, you're going to want to know that his estate is going to be worth something. The minute he dies whether by accident or natural causes or anything else. The permit the minute he dies evaporates, and there is all that gear with no

permit attached to it

We ought to have a provision the personal representative had
a year within which to (indisc)

But that assumes transferability.

Well, transferability only to the state.

To the state,

The state has to pay but

Alright, that's still not, that's not the pure nontransferability

No, that's not the pure expiration

That's what I was talking about.

That has a modest aspect of transferability to it, but transfer-
ability only to the state.

That's, 50% of those who die (indisc)

Of course, the big objection there is the guy who doesn't know
whether he can pass it to his son. The woman is likely to
die or her husband die and leaves her a \$250,000 crab boat. Of
course she's out from the standpoint of selling her out back to

the state if you have the type of thing you were modifying to do there. But if you went into the future like John was talking about, that guy could cover his debts to the state by, hey, I'll buy one for my son right now. I'll get one this year. You know, if you gave him advance notice that this was the end of the line as of January what this next year.

But these permits, I think all the way through now they have to be used. You can't buy off and put your

Well, how are you going to ever check that out?

Its fair (ph) to take it that the Commission's going to do that. I hope so.

Well (indisc)

No, but there was a grace period of one year, two years.

That was only on licenses. Because of this problem in Bristol Bay when even though you have an optimum number in bad years the optimum number is far and above, away far above the amount of gear that you really want there and if you didn't require this

Didn't we require actual use?

No I guess the problem was solved by not letting (indsic)

Was that it.

Right. I take it all back.

That's our big problem for excessive gear in a place like Bristol Bay. The concern this guy's going to lose his Brownie points. We don't want to force him to fish. In fact, I'd just as soon not force him to fish ever as long as he pays his assessment.

Let's talk about that optimum level again. I think there was a basic difference in our approaches there. (Indisc) how to approach the optimum, whether the amount needed to harvest the peak run in a cycle.

All runs (ph).

Well, alright, which would be the peak.

In our proposal we said the average, only enough to harvest the average run, and then in order to take care of that peak we'll issue temporary permits, so that we have enough to harvest the peak run when it comes.

There isn't any place where you need that. The average people, you know, you can take the, a thousand boats can take the average run and the peak run. Right? Or even 800 or 700 out in Bristol Bay. That's what they've been telling us. On the management people are adamant that you look clear back to the golden age when there was only 500 or 600 and they could harvest those huge monstrous runs and its the processing capacity that's the

limiting factor.

But there is a difference to this extent. A thousand boats are probably required for the maximum year at Bristol Bay, but three or four hundred could do it during the normal year. Now are you better off to license 1,000 across the board, or are you better off to license 300 or 400 right now and then allow temporary transfers.

One of the big conservation arguments towards conservation and economics that the fishermen like is what they've hated in the past is they tighten their belts during the lean years and then when the big runs come the outsiders come in and skim the cream. They want to know that the 300 or the thousand people in the fishery are going to be the same thousand people in the lean years as they are in the fat years, and not to see the cream get skimmed by the special condition entrants. And I think that has real conservation implications because it makes them conservationists all the time.

But 300 can't do it see.

No, but the thousand can.

That's right.

A thousand's much too much in the other years.

The other 300's still coming in on the peak years, Dave, they could. You would have the same situation where, you could have the same situation

(Indisc) I think the difference is this, on the house plan it's all except the peak years that would be on skim milk and maybe one out of five years they'd have some cream. Under our plan they'd be on whole milk all the time, and whole plus a little cream added to it perhaps in the big year.

Well isn't it true that the long term projective is to rehabilitate the Bristol Bay fishery so that they're. In the 30's there were four out of five good years instead of one out of five, and that's a very peculiar fishery, the only one in the state that varies that much. The other vary every other year, you know, the pink salmon fishery, Southeastern and Prince William Sound. Kodiak you don't have that phenomena to the same extent.

Not to the same extent, no.

So Bristol Bay, you know, you can make a special, and even though it's true that it's still lean pickings for a thousand boats it's not nearly as bad as two thousand, and, you know, we've been talking about how long it's going to take and that the optimum level is going to be set. I can't conceive of an optimum level being set for 300, to buy out three fourths of the boats in that fishery.

Well, I think you're right, particularly in view of this correction (ph) 3 relating to that economic system. You're going to keep it at 1,000, you're right, but, mechanically, biologically, and what have you, 300 could do it most of the time. But you're right, they're not going to go to that so probably. I think Dave's correct.

We have some questions about this language on page 14 of the last version of our bill, transfer of entry permits and the

Transferable through and by the Commission only (indisc)
not be voluntarily or involuntarily transferred by any other means, including but not limited to, sale of any kind, conditional or absolute, (indisc.) all the details here.
These are in our bill. They're not in the house version though the intent I believe is probably the same.

This was tailored towards their being more restrictions upon transferability than we're presently talking about, so that this would be an effective mechanism to make sure that those restrictions were observed, but it does seem to me that all you've said even if you keep this one section that you're talking about is that, you're still saying that transfers must go through the Commission even though going through it will in some instances be an ordinary sale, or in another instance a purchase by the Commission, or I shouldn't say, well in the third type of circumstance it would be (indisc.)

But I think even all of those ought to go through your Commission
(indisc)

Read you're language, would you?

Well, in terms of transfer.

Yes, in terms of the condition of transfer

(Indisc)

Yes, that's the only place that page 10 has any

(Indisc)

10, Let's turn to the conditions in it.

Oh, wait a minute. I'm sorry I'm

The conditions upon which entry permits survive the death of
the permittee (g)

Yes, that's right. The Commission shall establish terms and
conditions upon which the entry permits survive the death of
the permittee.

Here it says they cannot / ^{succeed.} In our bill it says they cannot

succeed at or upon death whether by Will, intestacy, or whatever it is, or otherwise.

How about intestacy.

Intestacy. Very good. Thank you.

Now what's the difference. On one hand the Commission shall establish and on the other hand we're saying that they cannot succeed.

(Indisc)

The scheme that Bob has before him now is one which guarantees that any change at all goes through the Commission. That's all it does. It's specific in listing all of the things that are not to be done outside the Commission.

But isn't it much easier just to require to go through the Commission and not list the things that aren't to be done.

It's a matter of legislative policy. I don't know whether it's wise or not. If you have a provision which you know will work which says, any transfer of any sort must be made through the Commission, that's fine. (ph)

We also wanted to make sure the thing couldn't be mortgaged.

That's in here.

That's the part I want to compare with this.

O.K. In the mortgaged pledged part, I don't know that they differ very much, I included gifts and other sales just to make sure that there wasn't any transfer of any sort outside the Commission.

Well it seems that you want a transfer section that require application to the Commission to transfer which, you know, was melded together in this modified version based on the house bill and what we had before. But then in the terms of the entry permit you've got two explicit conditions that it shall survive death of the permit holder and that it can be pledged, hypothecated, you know, subject to

That's not what you're saying, Dave, you say, except as provided by the Commission, and that is the problem.

Alright, except as provided by the Commission an entry permit may not be pledged or hypothecated and is not subject to attachment, restraint or sale on execution of judgment.

Do you want the Commission to be able to do that, to allow it?

I think it's wise, but I don't think they'd exercise it for a long time, but I think ultimately some fishery in certain types of situations that would be a very desirable thing, but

that's something I think can be taken up later.

(Indisc)

six months. People that are coming in here and saying, well the Bank will loan me money to buy a boat if they can attach the permit (indisc) And the banks will say the same thing, that, you know, they can loan money on a boat as long as they've got a permit tied with it. If they foreclose it they can sell to another fisherman, boat and permit.

Well, I come out two ways on that.

I could too, I

I think that there's, in a sense and I think it raises too many dangers in people's mind, but in a sense the ability to borrow money on that permit is going to help the little man more than the big man.

You're absolutely right.

And it's the real thing in there that could save the little man in this fishery because all of a sudden he's got a valuable right as long as he's borrowing money from the right people.

What are you going to do when the lender forecloses on a permit. What's he got then.

That's the whole point.

Well you can't borrow money unless you've got the permit too, so that's why

You come in and you mortgage your permit and then you don't make the payments and the lender forecloses on it, bids it in and are you going to recognize the bank now?

What had been suggested was that like in real estate would be a, let's see, a foreclosure - what is the procedure - foreclosure sale so that you know that the guy is going to get credit for the real value so that you don't have the thing happening that used to have where a guy'd get down to the last payment on his house and he'd default and the bank would take the whole thing and give him no credit for it, where you had a judicially monitored process of sale, foreclosure sale on the permit.

(Indisc.) inadequate to raise money. You never get anything out of them. The lender will be in for the amount of the debt and nobody's really willing to come up with the total of that unless by chance these things have established a very substantial value, but if they're in that kind of a condition I doubt if they will have.

Leaving this in there would mean a general provision

My problem is, O.K., so you've got one lender in a particular

vicinity that's got loans out on 500 permits and you get a very bad couple of years and so they foreclose and now they end up with the bank of so and so owning 500 permits. Is that what you want?

No, they wouldn't own them. What they'd do

(Indisc)

They'd be glad to hold them.

They'd have to be reissued. I mean you know that you could have the transaction taking place where the bank would foreclose, but what it would do, you'd have a judicial sale which would sell the permit to another qualified transferee.

And you'd prescribe at that sale that only qualified purchasers could bid?

Well, only, there's not many qualifications. Only

Well, they'd have to be able to fish. Which banks can't do. So the bank would never be the holder of the permit, but you could set up

The bank would be the lender. The lender can never bid in unless he himself is a qualified purchaser.

But, boy, they'd sure gravitate (indisc.)

Well that's the evil that everybody has been afraid of. That's why the prohibition's in here. What would let the Commission do on down the line people get established is selectively take it off. It seems to me that what people object to in the canneries isn't so much the fact the canneries lend people money on good interest rates but the fact that the canneries ultimately in some areas control the fishery.

I think we have something of an economic value and it's freely transferable, that that economic value, to wit, the permit is going to gravitate to the person who can make the most out of it, which is probably going to be in some sort of a vertical (ph) integration of the cannery, either a group of fishermen banding together in a coop, or some form of organization that's going to be tied in, and the canneries desperately have to have the fishermen, the fishermen desperately need the financing and the staying capacity that the canneries have got, and that's where we're heading here. I think that's the price of limited entry. I wish I could avoid that, but I don't see how

Alright. Why can't you. It seems to me the fishery's been in transition away from the fishermen being employees of the cannery and toward more independent fishermen who at least have the option of selling to someone else even though it is a matter of economy that they continue to sell to a given cannery, and if you get to that point you could solve that problem by, I mean

it's an antitrust problem more than anything else. If there gets to be vertical integration in a given area, I mean, this is certainly a step in the direction of creating independent intreprenuers, that kind of a model of what fishermen should be, rather than employees

Why antitrust? Right now they have their own boats and that's not antitrust.

Well it's probably only antitrust because we don't have, we really don't have any antitrust legislation, number 1, and number 2, it's sort of an existing state of affairs. They're not monopolizing any more than just kind of it's the status quo.

I don't know whether they're vulnerable (indisc.)

I read that a some point it's something you could attach with good antitrust legislation if

Yeah, in Bristol Bay, I don't know, Flavin (ph) indicates that they're vertically integrated now (indisc) his grounds for antitrust out there.

But it's going to

Vertical integration isn't the reason for necessary antitrust (ph) is it.

No, not unless there's a monopolizing act of what's happened.

They were totally vertically integrated, weren't they, where the fishermen were really employees of the canneries. And the movement has been for more independence.

Having the Commission in that language or leaving it out is not a constitutional matter anyway. It's a policy matter on our part and I would have more faith in a legislature giving the future Commission that power (indisc.) show that was necessary than I would of a legislature taking it away when somebody tries to show it's being abused or when it is being abused, but anyway we don't need to

(Indisc.)

Let's stop at this point then and consider where we go from here.

Well, given what you've covered here now just by way of recital I think it's time somebody sat down with pencil and paper and tried to put together a cohesive statement of it in the form of a draft statute.

Like, could you suggest perhaps we could just sit down with both copies of the two drafts we have before us and start through page by page.

If I had my druthers about it, I find myself more productive if I work alone with my own thoughts for a while.