

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86/2
885 SCOMM31 : SPECIAL COMM. FISHERIES (LIMITED ENTRY) 1973

Dave--Now at that point all the entry permits are issued and you're under way. This next phase of programming in Article 5 is reduction to optimum number of entry permits. Before it can reduce present level to optimum level the commission has to make a determination as to what the optimum level is. Now this is the second major kind of judgemental determination that the commission has to make. They're going into each fishery and determine the number of optimum number of permits on a balance of three standards which start on the bottom of page 13 and continue on the top of page 14. Basically the first standard is number of entry permit sufficient to more than economically help the fishery that will result in a reasonable return of the fisherman. The second standard is the number permits capable of harvesting all the fish during all the years in an orderly manner consistent with sound fishery management techniques. It's more of a conservation-oriented standard — a number that's reasonable in terms of conservation. And the third is the number of entry permits sufficient to avoid serious economic hardship to those currently engaged in the fishery. Considering other economic opportunities recently available to them. That is an important factor put in there so the commission can balance the human needs and the human circumstances in a given fishery in with the others so it doesn't become some sort of an overly mechanical computation. Look at the particular economy you're dealing with, the particular fishery you're dealing with. Once that optimum level is set, it can only be revised in two instances. Revisions in Section 300, if there is a long term change in the biological condition of the

fishery, such as if the Bristol Bay fishery were all of a sudden to be built up to its 1930's level, twice or three times what the present runs are, that would be the kind of change which would enable you to come back in and increase the number of units of gear that could fish. The second instance establish long term change in market conditions, that's I suppose if the price of fish over ten years tripled, again the fishery would be that much more profitable and you could send a lot more people in again, but the restriction is a long-term change, so the commission is not instructed to come back into each fishery and tinker with the levels every year. They are only to change them if an established change requires it. There is an additional restriction if the commission decreases the optimum number of entry permits. The only way they can reduce the level is through the buy-back provision; that's to make it clear that nobody is ever to have an entry permit taken from him against his will involuntarily. If reduction is necessary, can come only by the buy-back provision which is taken up in the next section.

Buy-back funds are established (they start at the bottom of page 14) for each fishery for the purpose of reducing the entry permits to optimum within no more than 10 years. In some fisheries the reduction might be much more rapid than that, in others it might take a full ten years. Assessments on the fishermen themselves would fund the buy-back funds. The assessments would be based upon no more than 7% of the gross value of the total annual catch. Now that's very much an outside limit. In many fisheries the assessment would probably be 1 to 2 to 3 per cent.

Someone who doesn't fish that year would pay the average assessment for his average and again the assessments go back into the buy-back fund for that area. The buy-back program would be administered by the commission to provide for the purchase of entry permits, vessels and gear at fair market value until you get back down to optimum level. I think that's pretty straightforward. There would be three circumstances in which you would have new permits to issue. Section 330 on the bottom of page 15. If you'd increase the optimum, as discussed before in terms of revising the optimum, if permits are forfeited back to the commission for non-payment of fees, then there's one other instance that slips my mind. Under the penalty section, you'd have more permits becoming available. Or if you put a lid on a fishery one of these fisheries that's not in trouble yet and then when you get around to setting the optimum you realize that you can still allow for some growth, then you might have new permits to issue. Section 330 instructs the commission to issue those permits to fishermen, people who are ready to fish in that fishery, according to any equitable method of issuance. Now in some situations priority of application or lottery might be appropriate, in other instances competitive bid might be more appropriate. It would depend very much on whether you had 2 permits and 500 applicants or whether you had 300 permits and 400 applicants. You know, that's going to vary from situation to situation. The general provisions, Section 350, the applications of the Board makes it clear that the jurisdiction of the Board of Fish and Game is not affected by this act. They continue to be the ones that decide on specific regulations on gear, length of nets, size and mesh size, where you can fish what net. The

commission and Board will clearly have to work together, both their basic jurisdiction is unaffected. The penalty section has three parts. The first part talks in terms of violation of the chapter. Upon third conviction of the violation of the chapter or regulation under the chapter, that would be like failure to have permit in possession while fishing, a person would forfeit all interim-use and entry permits and lose eligibility for permits. The second part of the penalties has to do with fraudulent statements in qualifying for an entry permit or assisting another in making a fraudulent statement on another's behalf in qualifying for a permit. Again a person who is found guilty of that in addition to being guilty of a misdemeanor would forfeit all and any permits which he held and would forfeit his eligibility for permits for a period of five years. The last section deals with someone who violates the tax laws in relation to fishing. He would lose his permits and lose eligibility for permits for five years.

Section 370 requires the commission to submit an annual report to the legislature to include a progress report on the reduction of gear at optimum levels, recommendations for additional legislation relating to the regulation of entry.

Section 380 are the definitions. I don't think they need to be covered in too much detail.

Section 2 and 3 merely make some technical amendments to other parts of Title 16.

Just to comment briefly, the most basic difference between this bill and the House bill is the fact that the House bill would have permitted an initial cut in the three enumerated distressed fisheries rather than letting people in at the present level, the highest of the last four years, the commission could have made an initial cut in Bristol Bay, Cook Inlet, and Prince William Sound not more than 25%, in other words that they issue at least up to 75%. I think that about covers it.

Chairman: Is there any doubt in your mind that this language in which we say that constitutes a use privilege can be modified or revoked without compensation, does give us all the authority we need to come back next year and make whatever changes need be made regardless of what they may be, whether it's transferral, whether it's the ownership of the thing, the so-called pot of gold at the end of the rainbow or regardless of what it is, that language does allow us to come back next year and there would be no vested or right that would be permanent and could not be changed?

Dave: That's correct, I have no doubt in my mind. Also, might point out that the terms and conditions, some of the other terms and conditions have been changed also. The word "right" I don't think appears at all. It authorizes a person to operate a unit of gear in a given area, you can renew it annually, but the legislature can do anything in terms of restricting transfer, in terms of abolishing the system, in terms of changing the ground rules without being subject to compensation. [SK]

Chairman: Can you explain how this would work as far as the trollers down here, the hand trollers, where there are so many involved and yet their take is very limited.

Jackman: Under this bill that fishery would not be designated, I doubt that that fishery would be designated a distressed fishery. Probably the lid would not be put on it at the present level because if they take such a small percentage of the fish and may not be indeed be above the optimum. In addition to that the sport commercial fishermen in the handtroll fleet so called must be treated separately from the power-troll fleet. That is one thing I should have covered in the definitions. Type of gear, definition number 7 on page 18; The customary and identifiable classification of gear shall include A) those classifications for which separate regulations are adopted by the Board of Fish and Game and for which separate gear licenses are required. B) shall include distinct sub-classifications of gear such as power troll, and troll gear. That means that entry permits for hand troll gear will be separate from entry permits for power troll gear. I think that takes care of the problem in Southeast.

Chairman: Before you go to questions then, would you summarize one more time what will happen this year and next year as you see it. The free access year, interim-use next year, when final entry permits become available and so on.

Jackman: The bill does not affect the '73 fishing season. The permit requirement starts January 1, 1974. Clearly the interim-use permit provisions will allow anybody who presently wants to fish to get an interim-use permit except in three fisheries in 1974;

Those three fisheries are Bristol Bay, Cook Inlet and Prince William Sound drift net fisheries. And in those fisheries in '74, only someone who has fished there before can get a permit, someone who has fished prior to '73. In the other interim-use permit fisheries you're not going to cut anybody off until you get the point of issuing entry permits, but the point to be remembered is holding an interim-use permit in '74 does not count at all in terms of qualifying for an entry permit eventually. It's just so the fishery is not closed arbitrarily, so that people who have already made investments in vessels and gear or for one reason or another have to change areas or something like that aren't told no until you actually get around to issuing those entry permits.

Chairman: Realistically we have two years to modify this statute before the first of the permanent entry permits are issued in most cases.

Jackman: In most cases. It would be possible for the commission to issue permanent entry permits in some fisheries, again probably those most distressed fisheries like Bristol Bay in '74. I doubt that they would accomplish that if for any fishery for more than a few in '74. So again you have at least one year in most cases, two years to modify the act.

Female speaker: If someone had a small boat and they related to salmon gear.... this is after they get to the regular permits, could he sell that permit whose be

(Others involved in question, unintelligible)

Jackman: Permits are issued in terms of type of gear, purse seine in Kodiak, let's say now; you're talking about a very small

Several conversations

Jackman : It's like hand troll and power troll, the commission has the authority in this bill to deal with those separately if it makes good sense to do so. They can create sub-classifications of types of gear; but as Roy pointed out as a practical matter you can't press it too far because of the difficulty you have in drawing those lines. Hand troll and power troll is fairly easy.

Unidentified speaker: There's no worry about constitutionality?

Jackman: There's always worry, but I think this bill can be constitutionally defended.

Unidentified speaker: I notice we referred to income taxes in the penalty clause. Will they be considered in the issuance of permits? If people are deficit in their Alaska income tax.

Jackman: Yes, as was pointed out I think in the study, one of the most important types of evidence of economic dependence on the fishery is probably going to be income tax records. So in the regulations, in the mechanics of taking applications, a person who's come up here and not filed income tax for one reason or another, number one either isn't going to apply at all, or number two if he does apply and at that instance going to subject himself to the penalties of the law for avoiding income tax, and

I think that there will be a sizable number of those people excluded from the whole process on that basis.

Unidentified speaker: Dave, are you all satisfied that this is going to meet the conservation goal of the legislation sufficiently? It appears to move a little too slow in addressing that aspect.

Jackman: Well, I suppose all of us wish we could move a little bit faster to solve a problem that has become so serious, but I think this will clearly put a lid on things and turn things around and start from the right direction, and put a handle on it where there has never been a handle before, and I think it will have big consequences in terms of conservation of this resource.

Unidentified speaker: One thing more.....

When people die and what not, this can be passed on?

Jackman: That's right.

Unidentified speaker: So there is no... attrition in that regard?

Jackman: That's right.

Unidentified speaker: That aspect is not here.

Unidentified speaker: There is no attrition through death.

Recording ends.

J 1/20/79

(Side 2 of tape)

UNIDENTIFIED SPEAKER: I was hoping that someone would explain the transferability form, and I can ask somebody after the meeting so that he doesn't have to repeat it (indisc.)

UNIDENTIFIED SPEAKER II: (Indisc.) related to Resources and he'll me available. He can explain it (indisc.--simultaneous speech).

UNIDENTIFIED SPEAKER III: Where's John Radar?

CHAIRMAN: He's not going to be here today.

UNIDENTIFIED SPEAKER III: How about Petrovich?

CHAIRMAN: Well, he's at a big conference, so I assume...

UNIDENTIFIED SPEAKER III: Okay, he won't be here either.

CHAIRMAN: Do we have the Resources here on the map? Any other questions of Committee members or of the Legislators? Okay, for those in the audience that want to ask questions at this point will do so. Phil.

PHIL DANIELS: I was just curious about the violations--it's on page seven (indisc.). ...income tax chapter having to do with income tax clause, and I was just curious about that. What type of violation would that be?

MR. JACKMAN: Well, it'd be a knowing failure to report income or-- I'm not an income tax expert. I think it's a criminal, it's a felony violation. It's quite serious (indisc.--simultaneous speech).

MR. DANIELS: My worry was we wouldn't want to have (indisc.) violations (indisc.).

CHAIRMAN: Yeah. Well, I think that if that were the case, Phil, and correct me if I'm wrong, but the history of the courts has been where the violation--the penalty is so strenuous for a minor violation then the conviction simply doesn't come. Isn't that what happens so much of the time where we...?

MR. JACKMAN: Yes, although--and I think that it would work out fine, because as I understand it, that's the felony tax evasion section which is a pretty serious crime, but I think you're correct in asking the question, because this is

a pretty serious penalty and it shouldn't be imposed, like what you're thinking, for dropping (indisc.) on or something (indisc.).

MR. DANIELS: I had one other question.

CHAIRMAN: Go ahead.

MR. DANIELS: Is it likely that the money for the buy-back program, which is agreed is up to seven percent of a person's gross income, would be used for some kind of revolving loan fund or something of this type, or do you contemplate that money being used directly in a one-to-one ratio?

CHAIRMAN: No. We're saying that it's a revolving thing and that the assessments need not match the purchases of each day--each year, and they could go on, but they will continue until all that has been expended from the fund is repaid.

MR. DANIELS: Would it be, then, likely that before the assessments, as I have understood previous conversations, before the assessments are arrived at by the commission they would hold hearings in an area and ask the fishermen how fast they would like to get the out of that area, or--is this a likely way that it will go, or...?

MR. JACKMAN: I think that it is. There's a statutory limit of ten years, but in terms of arrangement in that, and in terms of how fast you want to get down...

CHAIRMAN: Well, wait a minute. That's for buying back, it's not for paying off. We said specifically that the assessments would continue--could continue after that ten years, and the earlier of that--didn't we leave this in there? Just a minute. Line, page one?

UNIDENTIFIED SPEAKER: (Indisc.) 15, line 12. It's still in there.

CHAIRMAN: Line 12. Assessments need not equal annual buy-back from expenditures within a particular fishery. It shall be continued until the buy-back fund for that fishery has been reimbursed, so even when your buy-back stops within ten years your assessments can go on until the whole thing's been paid back, which allows the fishermen to spread it out.

UNIDENTIFIED SPEAKER: Even more flexibility in terms of spreading out the... That's correct.

CHAIRMAN: Jim.

JIM: I had a legal question I wanted to ask Mr. Jackman pertaining to this evasion thing here. I--it's been banted around in various fisheries groups this thing about pie-in-the-sky type operations that we're going to eliminate a lot of Seattle or state fishermen who have not paid this Alaska income tax. Well, I myself, have already checked into where Federal District Court had ruled that a person residing out of the State of Alaska does not have to pay Alaska State income taxes upon fishing income derived thereof. Well, essentially, from a legal standpoint you would have to reverse this decision by the Federal Court before you could ever come down on them for not paying Alaska State income taxes, isn't that correct?

MR. JACKMAN: You're correct in your memory of that decision. I thought that income gained while fishing within Alaska waters was still subject to tax. Now if I'm incorrect on that, go back and read those decisions. In terms of off-shore, outside the three-mile limit, fishing up here in that sense, I'm sure you're a hundred percent correct. Fishing in territorial

waters of Alaska, I'd be very surprised if there was not still a requirement on paying income taxes on that.

JIM: What do they do, pay part (indisc.)?

MR. JACKMAN: That depends... You're right. That depends on tax law, but (indisc.) fishermen have evaded and they will know there's been a sizeable--there's been a lot of that in terms of just sheer evasion of paying taxes on fishing, fish caught in Alaska and fishing in Alaska, then they're not going to be...

JIM: You don't really know what this stipulation is, then, on just flat not paying Alaska State income tax because they say they don't have to pay it? There's a lot of Seattle based fishermen that do this.

MR. JACKMAN: I'm sure if I could see the article you're referring to because I'm just not up on that case. Do you know Roy?

MR. RICKEY: You know, in 19--two years ago Congressman Kelly got a bill through (indisc.) congress to bar withholding of the tax, but I'm certain it has to be paid.

CHAIRMAN: It's just withholding?

MR. RICKEY: Withholding the tax. It need not be subject...

CHAIRMAN: Let's make sure we check that out. Joe, do you know anything more on that?

JOE: No, I don't know (indisc.).

CHAIRMAN: Okay. Allen.

MR. ADASIAK: The director of the Audit Division in Revenue would be responsible for collecting taxes. He was very interested whether or not we had a provision like this in the bill, because he knows he can get a lot of money off of people

that would pay their taxes, and according to him, yes, they can collect on income earned from fishing for a living in territorial waters.

CHAIRMAN: Would you do this for me? Would you go back to him and get a statement in writing from him to answer Jim's question on this point? Okay. Alright, I believe you... Would you identify yourself first, please, for the tape.

ARCHIE LATHROP (sp.): I'm Archie Lathrop (sp).

CHAIRMAN: Archie? Okay.

MR. LATHROP: What constitutes (indisc.) putting a monetary value on (indisc.)

MR. JACKMAN: Property, in short, is what the State Legislature says it is, and here they've been quite clear in saying that this is a use privilege which can be modified in any way.

MR. LATHROP: Another question. (Indisc.) gear in each area, is it necessary for (indisc.) buy-back program. In other words, if I had a permit in Bristol Bay and I had not used it for two consecutive years, what (indisc.) money for something I haven't used?

MR. JACKMAN: Well, this goes a long way back, really, in terms of the work and drafting through the various bills that have been before the Legislature. I think you're correct. The Legislature could deny entry permits on almost any basis as long as the standards were fairly applied to everyone, and as long as they denied the permits fairly and squarely across the board, but the decision which was reached long ago was that initially it was wrong to deny permits to people that had some basic dependence instead of participation in the

fishery, and that rather than being that harsh and making an initial cut and just saying you guys are out, I think what the House, in terms of this bill, the Senate preferred a buy-back program which was just less disruptive to the individuals involved.

MR. LATHROP: I was wondering. (Indisc.) residents who do fish (indisc.) year after year, and the people in the lower forty-eight were (indisc.).

MR. JACKMAN: Well, I point out that the standards in this bill would do that (indisc.) thing. Instead of past participation it's going to result in placing a man in fisheries every year in a higher priority classification than a man who fishes only the high years. So the standards in this bill will accomplish that, and if for that very reason some people don't qualify at the outset, then you'll have accomplished what you suggest, to favor those people who've fished more consistently in the past.

CHAIRMAN: I think it can also be said that for those who do get entry permits, as long as they pay their fees they can keep their permit valid, or after two years--I guess we let them go two years without paying, the second year they're able to revalidate it. To require to fish it every year would really be working against the best interests of the residents in the fishery. It would be far better, I think, if they're once in, to allow them to go ahead and pay their fees, but not make them come in and fish on the poor years. That way for those residents who are there fishing, there simply is a larger pie, or the same pie to be divided up between a smaller number of people than if we force them to come and

fish every year to keep their permit intact. Are there other questions? Dave.

DAVE: I have two. The first one is, Senator Polland asked the question whether you could differentiate between permits for a small purse seine and a big purse seine boat, and if I understood the answer, why, it was really pertinent. I wondered if in this bill it allows the commission to differentiate permits between small crab boats and big ones, or fishing the same kind of gear. In other words, fishing a six-by-six or seven-by-seven crab pots and similar things which (indisc.). In other words, if we take the maximum number of (indisc.) previous years and say that becomes the optimum number, then small boats could become big boats and we could end up eventually, possibly, the optimum number being a very small handful of large boats, and--well, I just don't know...

MR. JACKMAN: Well, to begin with, I think my answer to Senator Polland was that the commission clearly has the authority to make those sub-classifications and distinctions between sub-units of types of gear as long as it can practically accomplish anything--as long as you can tell, you know, that's a different kind of crab boat from that. The difficulty comes if you're trying, as Lloyd pointed out, to make it--to draw a line between a type of gear, purse seine or whatever, you know, that isn't that different. In terms of the crab boats the commission has the flexibility to decide on what basis they want to define those units of gear and they do have the authority to distinguish--you know, to crank the vessel component into it, and make distinctions of that kind. That's

same kind of a distinction as the distinction between hand troll and power troll, because you've got, you know, completely different kinds of economic operations. The commission has that flexibility in the bill.

CHAIRMAN: And I think that's one of the reasons, too, that we left that third criteria in as far as setting optimum limits, so that the commission is not required to go strictly on the basis of efficiency and gear. The third criteria speaks to the point of maintaining a larger number of people in the fishery for the overall benefit of a larger number of people. In other words, we may find it highly desirable to keep a large number of part-time timers, small participants, in, and with that third criteria for setting optimum numbers that's what we've accomplished. Without that, you could carry it to an extreme of, if we're really for efficiency we wind up with only traps in the mouths of rivers, which is of course, an extreme, but with this third criteria, why, that's not possible.

UNIDENTIFIED SPEAKER: (Indisc.) unclassified. I don't fully understand the answers to it if the commission can't--did the commission--partly the commission does have the authority then to differentiate between a (indisc.) seiner and a (indisc.) fishing the same type of gear for the same gear permit. Is that right? It will have the power to say a permit may not be transferred from a (indisc.) to a seiner, is that--does the commission have the power to deny that type of rule?

MR. JACKMAN: They do.

DAVE: That as from a (indisc.) seiner to a 100 footer as far as a crab boat... Okay, my other question is in getting a permit for a fishery which hasn't reached the optimum level yet. Let's say, for instance, a (indisc.) fishery in Kodiak. If a person buys a permit before it comes to the level, and maybe just fishes it one but then he doesn't fish it, the maximum--let's say the fishery could support 20 boats, but only 15 people were fishing, but 40 people have permits. Do you see what I mean, there's no requirement--is there any (indisc.) requiring that person to use that permit. Do you understand the problem? I'm not explaining it very well. If there is a problem I might go out and buy, (indisc.) permit and not use it just waiting for the day, whereas...

SENATOR RADAR: Could I respond to that? In terms of these developing fisheries, the commission--true, everybody's going to have to have an interim use permit. It'll be able to monitor not only who's fishing and how many people, but the rate of turnover, and in terms of setting the maximum, it might watch a fishery and watch the rate of turnover and say, well, we know that the optimum may be up around 40 somewhere, even though we only have 25 in this year, we know in the past in terms of turnover, we'd better put the lid on it now, or we're going to have to design somebody who's bidding the permit--the permanent permit, so it's got a lot of flexibility in terms of an emerging or new fishery, to monitor and actually put the lid on it before it gets into that kind of trouble so that it doesn't happen to take over some who, you know--

and on the other hand, it can deny a permit to someone who buys an interim use permit and doesn't fish it, because there's still the requirement of actually fishing in terms of qualifying, see? The mere paper licensing isn't going to count.

CHAIRMAN: Okay. This one and then that's the end of it. Alright, I'll let Don, too. He's hasn't had a chance to speak. Go ahead.

UNIDENTIFIED SPEAKER: (indisc.) open up in Bristol Bay, let's say bottomfishermen, other than salmon. There is no fisheries relating to the bottomfish in Bristol Bay right now. How would you allow fisher permits to come in and utilize right now (indisc.).

SENATOR RADAR: Alright, this is exactly the mechanism we've been talking about. As long as it's a legal type of gear in terms of what the Board of Fish and Game does, anybody that wants to can get an interim use permit and fish it, and there's even a special provision in this bill providing for experimental and issuing some interim use permits for experimental fisheries authorized by the commission, so there's absolutely no preclusion on that kind of thing taking place. As a matter of fact, it's encouraged because you know that if you come in and you develop it, and as an interim use permit holder have fished it, you know that it isn't going to be one of these boom and bust things. If you develop a good fishery it can be stabilized before it gets in trouble.

UNIDENTIFIED SPEAKER: In other words, (indisc.) commission (indisc.)

SENATOR RADAR: The people in this commission have no authority to preclude you from going out and starting--I mean, that's

entirely the Board's purview. They have to issue you an interim use permit if you, you know, if that's a legal type of gear and you have the proper permission from the department and the board.

CHAIRMAN: They have to issue the permit, then?

SENATOR RADAR: The only thing they can do, the only authority this board has is to stop things before they get out of hand and put a lid on a fishery when it begins to reach maximum or optimum levels, not to make any decisions that would retard the growth of the fishery.

CHAIRMAN: Doc.

DOC: I have a question for Tom. If a person prior to January 1, '73 has (indisc.) qualifications for putting in a top priority classification and the four permits were issued, the--for instance, his rich uncle died and he got a million dollars or so, or--anyway, the prime example is a school teacher. Would this (indisc.) before January 1, '73?

SENATOR RADAR: It would not. You've got to apply that equally. If you're going to say qualifications prior to '73, that's what you say.

CHAIRMAN: Okay. Are there any objections from the Fishery Committee members, then, in sending this bill out onto Resources, and then Resources is going to be meeting here as soon as we adjourn this, and we're 30 minutes late already, so-- Resources does have a lot to do. I ask unanimous consent. Is there any objection. If not, so ordered, and in that case we'll adjourn the meeting and just let John take over here

and... Well, that's what I asked you to bring over. I've got the Committee's...

UNIDENTIFIED SPEAKER: No, I've got the...

CHAIRMAN: ... and we'll change chairs and go on with Resources.

(End of tape)

SCOMM

#31:26

IN THE SUPREME COURT FOR THE STATE OF ALASKA

STATE OF ALASKA,

Appellant,

vs.

No. 6336

LORI L. OSTROSKY, JULIANNE
OSTROSKY and HAROLD C.
OSTROSKY,

Appellees.

LORI OSTROSKY and JULIANNE
OSTROSKY,

Cross-Appellants,

vs.

No. 6373

STATE OF ALASKA,

Cross-Appellee.

APPENDICES TO APPELLANT'S BRIEF

Eric - I need one copy
of all of this (by
end of tomorrow)

Thanks,

Margot

APPENDIX A

EXCERPTS OF THE HEARING
TRANSCRIPTS OF THE SENATE
SPECIAL COMMITTEE ON FISHERIES,
EIGHTH LEGISLATURE, FIRST SESSION,
1973

AFFIDAVIT OF JOHN B. GAGUINE

STATE OF ALASKA

FIRST JUDICIAL DISTRICT

88

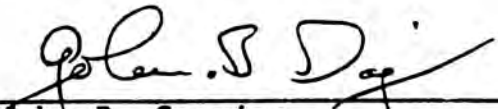
JOHN B. GAGUINE, being first duly sworn, deposes and
says:

1. I am an Assistant Attorney General for the State of Alaska, and am counsel for the appellant in this action.

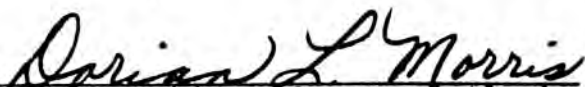
2. In preparing Appendix A to this brief, I have reviewed transcripts of nearly all, if not all, the committee hearings of the 1973 legislature on the Limited Entry Act. The excerpts of those transcripts comprising Appendix A represent the portions of those committee hearings that in my opinion deal most directly with the question of transferability of permits. These excerpts are decidedly not a complete collection of all the references in the hearings to transferability; there are far too many such references to make that practical.

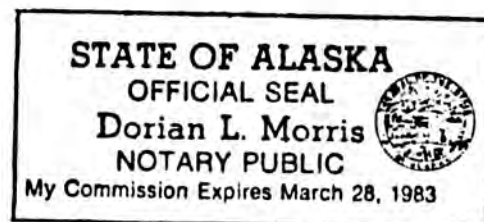
3. Either I or Dorian Morris, a legal secretary with the Department of Law, have compared the transcript excerpts included in Appendix A against the tapes of the hearings. We have made corrections by hand when the typed transcript did not correspond to the tape as we heard it. Thus the transcripts in Appendix A, as revised by us, reflect to the best of our capabilities the contents of the hearing tapes.

Because of the length of Appendix A, I felt it was impractical to have the previously prepared transcripts retyped to incorporate the changes Mrs. Morris and I made.


John B. Gaguine
Assistant Attorney General

SUBSCRIBED and SWORN before me this 22nd day of
January, 1982 at Juneau, Alaska.


Notary Public, State of Alaska
My Commission Expires: 3/28/83



HEARING OF THE SENATE SPECIAL
COMMITTEE ON FISHERIES 1/24/73

UNIDENTIFIED SENATOR II. I don't know if you've considered this,
Mr. Chairman. Did you go into the question of why--I mean,
what was the theory in making these transferable through sale?

You know, I'm a lawyer. I've been a lawyer for 20 years. I've got a license to practice law. I can't sell that license.

MR. JACKMAN: Mr. Chairman. Our reason for doing that is because our objective was to stabilize the fishery, not close the fishery, not create^e an exclusive class of fishermen as individuals, but stabilize the fishery at that level. We see that as the real purpose of the bill, not to decide--and secondarily, one of the real legal weaknesses in any effort to limit entry is when you start to close the fishery for a substantial period of time, so a person on the outside has no way of getting in and there isn't any movement in and out of the fishery, there isn't--a person can't shift from one area to another easily, and we felt that the only way to accomplish this without creating insurmountable administrative burdens was, once this right is conferred, it's not really property and it may be quasi-property of sorts, ^{to let} ~~unless~~ the individuals transfer or sell these permits.

UNIDENTIFIED SENATOR II: In the British Columbia experience, what do they sell for nowadays?

MR. JACKMAN: Well, you can pick up the Fishermen's News that's published in British Columbia, and usually the permits are sold, or ^{their} ~~the~~ what they call A licenses, in their system they're attached to the boats, in our system they wouldn't be attached to the vessels, but clearly they'd usually be sold with the vessels, and it seems to have increased the price of getting into the fishery maybe 20, 30, 40 percent. I mean, you can run down and there'll be, you know, gillnetter with X equipment, and an A license, \$16,000 or \$10,000, or maybe a much better boat \$30,000. So, we haven't analyzed it as closely as we should,

but it appears that the ~~various-type~~ entry will rise somewhat, but not--you know, not anything unreasonable. They aren't going to go out of sight.

SENATOR GROVE: Mr. Chairman, when I first came to Anchorage you could buy a liquor license, you know, for \$3,000. The last time that anybody inquired ^{about} it, that I'm aware of, they're selling for \$20,000, and that's over a period of time, and they become terribly valuable assets. I'm ^{just} wondering what, you know, what range we're talking about here. Are we talking about \$300, \$500, \$1,000, \$5,000?

MR. JACKMAN: Clearly we're talking about many, many ranges, because each type of gear in each area and each fishery is going to be very peculiar. An entry permit to fish a hand troll boat in Southeastern won't be worth nearly as much as an entry permit to fish a purse seiner or a--because the entry permit represents nothing more than the right to participate in the fishery, and the projected discounted income from that fishery will establish the market value of the permits.

UNIDENTIFIED SENATOR: Well, Mr. Chairman, it seems like you really got around to something here. I know it's been talked about. What about a moratorium on the people, and not let any more in and just let those who are there slowly die off or move away until that alone reduced the number of people and the number of gear and the amount of gear to the right level?

MR. JACKMAN: Mr. Chairman, if I might respond to that. We considered that and rejected it primarily because it's on extremely weak legal grounds, we think. Any attempt to really close the class

of fishermen for a substantial period of time, to wait and let attrition take effect, has the real practical effect of saying to anyone on the outside that there is absolutely no way that you can get in, and it does amount, if I can borrow words from the constitution, to a sort of exclusive right, whereas we're talking about a stabilized level, but not a closed class, and I think--I'm not--you know, you can't predict what the courts will do in a particular situation, but we felt that kind of an approach would be on extremely weak legal grounds. The courts have--you may remember the language from some of the decisions on previous limited entry programs, they've spoken of medieval guild systems and apprenticeship systems and there's been a reluctance to go along with programs like that.

CHAIRMAN: While we've gone that far into it, we might mention some other proposals then that we may be coming up with. We have discussed informally these things, and one of them is this, this moratorium on any additional numbers of gear licenses, first, perhaps, reducing somewhat by those licenses that have not been fished at all, et cetera. But then, giving this a property right right from the beginning and allowing a fisherman to sell it when he desires and trying to arrange things so that the State will be the purchaser in as many of these as possible, so that in this method we do reduce amounts of gear without forcing anybody out that's really been in the fishery fishing. Now, you might want to carry further on that if you want to elaborate, Dave.

MR. JACKMAN: Well, this would essentially amount to a voluntary buy-back program which, depending on what the starting level

was and how far you had to move to get back down to your optimums, world be more or less expensive. It certainly is compatible with the basic structure of the administration bill, although it's not a feature of it. In other words, as you explained it, we'd still be stabilizing numbers and creating the property right at the outset, not closing the class, but we'd be moving back to the optimum by buying out--by offering market value plus five dollars or whatever it took to get people to sell their entry permits back to the State.

CHAIRMAN: One extreme advantage that this has, as I can see, is that we do not, at that point, we do not period force out who ^{really} has [^] been in the fishery. If we allow him in for one reason or another and he wishes to get out, ^{then} [^] his license is bought, and hopefully by the State, and we reduce numbers that way. There's ^{a lot} [^] of thinking and a lot of work to be done on the proposal and it's not in finished form at all, but it's one of the things we--we've met a couple of times, some of us, with the A.G.'s office and so on, trying to work these things out, so... ~~Other~~

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WHITEHEAD : No, let's take buy back. The applicant pool is language that we recieved from legal services. They feel that there is a real problem in the transferability of the permit. We can change that.

 : Yes. The legal services ~~went, one~~^{one} has that one problem, which probably could be controlled . I for instance wouldn't care if you went for a straight buy back where the property became, where the license, once you qualified, became a property right and you could just sell it for whatever you could get for it. This would mean that your buy-back funds would have to assess the other fishermen fairly high to buy this man out. Or

whether you want to use an attrition method where the man can sell his,... One of the methods that they asked for was that no man could sell his license at all. Not being able to fish, the license lapses to the state. And this has a terrific hardship on somebody who has invested \$60,000 or \$100,000 worth of boat and then suddenly the old man dies and that's the end of the license. I prefer the buy back system but legal services has some arguments in here. What it is, a good argument on their part, was when a person wants to sell his license, let him. But he may only sell it to a person who meets the apprenticeship qualifications. In other words, it is not on an open market itself, the state keeps a list of apprenticeship people and a person who has served so many years on it, or graduated from one of the maritime fishing schools, is on this list and when you say, I want to sell it, the state established an assessed valuation price and this person on the list picks up the license.

_____: Bob, do you anticipate that we will have an opportunity to hear from Legal Services on.....?

_____: Yes.

_____: Now, getting back to the same thing, this transfer of entry permit. They have two proposals, legal services does, just basically, they deal with real problems because these are going to be property items ^{that} are going to be valuable and that come a lean, long winter, people will be selling them and giving up their rights to the Fishery.

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Is there -- is there any objection to that as a -- as a philosophy that we want to build into this thing? That we do not require a guy to fish every year or any certain number of years, even, as

long -- as long as he continues to pay his license fee for that area, his entry permit and his assessments. Then, if he doesn't want to go fish, well, that's up to him.

I would say that would depend on ^{transferability.} ~~a transfer of (rights)~~ If it's going to be freely transferable permits, they're going to get a value on them. Then I would say that you want to encourage people. You would want to discourage, you know, speculation on the permits. So you'd want to have some sort of encouragement to actively participate, perhaps with waivers possible through the Commission when there is a bad situation. But if there's not going to be free transfer of permits, and the permits are not going to get a high value, then you don't have to discourage that type of speculation, I don't believe.

If you work out a -- an apprenticeship program to get your young in, and a person may only sell out to a fisherman approved on the apprenticeship program for the area, you're going to still allow free transferability in ownership. In other words, he can -- he can decide which one of these candidates he's going to sell his license to. But it has to come from the State master list.

Right. That -- that

That would take care of that problem, wouldn't it?

Right. But I wasn't sure we had reached that determination yet,

that it was that far along.

No. Well, what I am worried about is the fact that you could have in a depressed -- right now in Cook Inlet we don't want to make anybody fish that doesn't have to when you're at two twelve-hour periods. Because he's just going to take the food right out of somebody else's mouth when he does it.

Well, does the -- the combination of having -- of having a number of years limit plus the Commission may waive it if it looks like it's going to be a real bad year, or something like that; maybe that -- some kind of combination would work then.

I think you can do both. I think you can discourage -- you can discourage speculation and you can also -- you can also not force people to fish, ^{I think it is just} ~~which is~~ a mechanical-type thing that can be done.

This -- this would be one of the major oversight responsibilities of the Commission as we -- as originally set up, because it could adopt regulations to protect against the speculative kind of abuse. And, number one, any transfer has to be to a fisherman, not somebody else. And, I would assume, if ^{it} observed in a certain area, that permits were just dropping out and being held by people, thing like that. That there's, though, there's authority in there now where it's solved by regulation. I suppose you could elevate it to the statute itself, if you wanted to.

You could -- you could also have that the Commission may charge double assessments for people holding licenses and not fishing. You know, if you wanted to.

Okay. Then, will you guys all work that kind of language out? I think that may be the good approach so that you have a combination of these things. Basically, we do not want to require the people to fish in any specific year. That gives the Commission ^{some} ~~the~~ flexibility there, too, so that they can ^{make it better than} ~~(indicate -- noise)~~ based on what the -- what the picture looks^{ed} like for any one area in any one year.

I'd have problems with double assessments. I don't know.

All right. All right. I wouldn't drop that idea, then. Let's take a look at another one. I'm looking at some of my villages in the South there. Could we work in a -- poverty levels? Like at \$6,500 your gross family income was under \$6,000? The Commission may allow this category to renew with an assessment of only twenty-five percent or fifty percent of the standard assessment? Or is that getting into trouble?

I think -- I think one thing that we've got to make up our minds is what kind of a right are we creating. Are we creating something that's like a license right, which isn't a right at all in perpetuity, or are we creating something that's like a property right,

which is something that, once issued, you can't tamper with too much? You can have the annual assessments and all those kinds of things, but, really, you've given the guy something of value and you can't take it away from him if he decides not to fish for five years. And I think that we keep shifting back and forth and, on the one hand, we sort of think like in license terms and in the next, on the other hand -- and -- and I think that's a basic decision that has to be made.

Well, I would opt for the property right because of the fact that you want to encourage these people also to be conservation-minded. You know, if a fellow thinks that his property right is going to come up because he has taken good care, or because the fishermen have organized ~~them~~ and they're going into stream protection on their own, why, you encourage him to be a conservationist. With a property right, well, you don't encourage him to be a conservationist with a license right. In fact, when he -- when he's ready to cash out, he can be pretty brutal about it.

And what I was suggesting in terms of the Commission's oversight control, is that they notice that in a certain area, because these things are like property rights even though there's a requirement that they only be transferred and sold to fishermen, that that has sort of been abused and that fishermen are not really acting like fishermen. And they're holding out, and there's ^{maybe} ~~nearly~~ twenty ^{or} ~~to~~ thirty percent of your fishery that's not participating. Then they can really tighten up and when each -- you know, the trans-

fers that come along in the future, they'll get tighter and more -- and scrutinize them more carefully and make sure they are going to active fishermen, and they can kind of adjust their actions, depending on what's really happening in the fishery. But I think, as to a guy who's really got a permit that's been transferred to him, I don't see how you can come back five years later and say, I just don't think you should be able to hold that, if you decide not to fish three out of five years.

I agree. And to the fishermen that are left in the fishery, you know, except for the fact that this guy's license is going up in value, to the fishermen left in the fishery it's an asset when he doesn't fish. They've got more fish.

The only real abuse I could see is if some one person bought up so many permits that they could sort of control the number of people that were left in the fishery to some disadvantage. But I think that can be forestalled.

How does that happen?

Well, I suppose -- I don't think it could happen, quite frankly, because the Commission would stop it about the third time he showed up as a transferee.

Don't you think we could very well just say that

Limit it one to a customer?

Limit it one to a customer.

I think that's really the way it is here. I interpret it part -- you know, I can't imagine how it would happen.

A fellow should be able to hold a gill net permit in Bristol Bay, Prince William Sound, down here if he wants to. But he shouldn't be able to hold two in the same registration area.

I don't think you'll have any problem with speculation at that point. There's no way that a guy -- it's a valuable thing. If he's not able -- if he's not working, he might as well sell it to somebody that can work. It's worth more money to him sold than it is to hold, you know.

Dave?

In discussing the difference between whether a license right or a property right, well, my tendencies are usually for the license right and not a property right. I know people say that -- that a fisherman is going to take better care of his resources if his license is going to be of value. In my -- in my experience and the people -- some people that I have talked with recently about creek robbers, are the type of people who might wipe out the run

of the creek. It's my guess that the mentality of the creek robber is such that he's the kind of guy who just can't stand not to give it a try when he sees those fish jumping behind the line, or he's a guy who's not thinking ahead anyway. And I really don't think the fact that ~~he~~ he -- ~~even if~~ ^{in 20 years is going to} he's going to be able to sell his license ~~(indicated laughter)~~ change his mind. And -- and I think it's going to take more education, and things like that, rather than -- rather than giving a property rate -- right to dissuade the creek robber.

Excuse me for my -- for my laughter, but I'm reminding him -- reminded of how many times this guy in front of us has said that, and I'm sure it's true, you'll never be the first one into a creek. You'll never be the third one, either. (Laughter)

When I did the first stream transplants for the State, why the Cook Inlet Courier's headlines were, "State Hires Red Tillion (ph) To Show Them How To Rob A Creek." (Laughter)

Well, even though the individuals doing the creek-robbing might not have no more mentality than that, the rest of the fishermen that see him doing it will have more mentality than that. And I think that's where he gets hauled to court. And, again, they're going to be much more concerned about it.

If it's my fish that he's taking, I'll stop him. If it's your fish he's taking, forget it, mother, I'll look the other way.

And it's just that simple. I've got to gain from stopping him before I'll stop him. And don't talk about leaving something for the future, and all of that, right now. There's no reason to stop a creek-robber 'cause there's going to be ten more fishermen fishing in the area next time. There's no reason to. People say that your natives aren't conservationists. Hey, they'd be conservationists if they stood to gain and there wasn't going to be double the gear there next round.

* * *

Oh, all right. The thing is that I don't even care about it becoming a real ironclad property right until you get down near optimum numbers. But I say that you're never going make real conservationists out of the fishermen 'til it becomes a property right to where a guy can see if the fish go up, his retirement is in his license. If the fish go down, he's shot his retirement. You know, then you start getting some interest in conservation.

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Okay. Let's go to transfer of entry permits, then. The position of the Governor was the holder of an entry permit may apply to the Commission to transfer his permit to another person. If the proposed transferee can establish his present ability and intent to participate and the proposed transfer is otherwise consistent with the purposes of this chapter, the Commission shall approve the transfer application. And otherwise consistent with the purposes of this chapter, the Commission adopt regulations providing for the transfer and re-issuance of entry permits within

a given administrative area from one type of gear to another type of gear. Regulations shall reflect the relative difference and the average efficiency of different types of gear and shall establish transfer ratios between types of gear which will maintain a stable level of fishing within that administrative area. What did you mean, Dave, when you were talking of the first line on page eleven? The proposed transfer is otherwise consistent with the purposes of the chapter.

Well, we wanted to try to give the Commission some authority to look into the nature of the transaction before and make sure it wasn't kind of a ruse for speculative purposes, or something like that. And I admit we were pretty vague. Maybe we should have been more specific on that point. But we -- the idea was that the Commission would exercise kind of an oversight function in making sure the transfers were on the up-and-up and going from fishermen to fishermen.

Yeah. But, of course, you have to allow somewhere for the fellow, without screening it through the Commission, for a man who wants to transfer a license to his son. In other words, he would have to transfer the license to his son, but then the son might very well transfer it back at the end of the season.

Well, those transfers would still go through the Commission but, on a case like that, of course, that would be perfectly consistent with the purposes of the chapter. So, presumably, there would be

no problem. We did have all transfers going through the Commission so the Commission would know what was happening and who held permits at what point in time.

Yeah. At this point you could work in your apprenticeship, if you really wanted to, so that the transfer could only come within that area, if you wanted to do it.

Well, we've got two other alternatives. Let's look at them. One of them would appear on page five of this proposed ^{Committee substitute.} ~~notice~~
~~notice~~

Let's see. Where is that?

Here entry permits are non-transferable except that the holder of an entry permit may apply to the Commission to transfer his permit to a spouse or child if the old transferee can establish present ability and intent to participate actively and that the proposed transfer is otherwise consistent.

Where are you, Bob?

It's this one here.

I might have a suggestion on here. Instead of spouse or child, you went to the one within the second degree of kindred. This will give you a bit of an advantage in the villages; that you'll

find that, regardless of what they're paying, quite often an uncle -- say, like the man that has two sons, but his brother doesn't have any, this would allow the brother to transfer his gear to one within the second degree of kindred. And it would give you a little bit of a built-in edge, especially in an area in which there are lots of relatives in the village, you know, and some of them are bachelors.

Okay. That's one alternative. Then Dave has one on page three of what we've been reading before; add ten. You would suggest leaving the permit transferable, but establish a five-year moratorium on any transfer or sale? You mean, except when necessary to death or disability, the Commission would process no transfers for five years; partially justified on administrative grounds because the Commission will be too busy with this initial work the first few years to administer transfers?

I think many of the objections raised last night by giving fishermen a few years to improve their economic situation and get used to the limited entry program before they would have the opportunity of selling out, or the others faced with the necessity of buying them out, which I think is a real good idea.

Again, I would suggest that we work in transfers within the second degree of kindred through the old man who might very well -- not -- his health might not be shot, but he might hold a permit in two areas and just not be up to it anymore. And he should

be able to transfer to his son as long as the same piece of equipment is then going on, you know. And that wouldn't open it very wide. But I like your five-year moratorium on no sales.

I think that -(indisc. - simultaneous conversation) this transferability thing is where we're in the greatest danger of getting this thing thrown out in the courts. I think ninety-five percent of the possibility that they're going to say it's unconstitutional is going to come by not doing the right thing here. Because you're really directing yourself toward a different legislative purpose. You're directing yourself away from the purpose of just stabilizing gear levels toward the purpose of deciding who ought to be in the fishery. And that second purpose is a very questionable purpose, on down the line, to think that the State has any business deciding who among its citizens should be in the fishery.

It's already determined that it will makes its cuts.

Only at the initial outset, and there there's justification for it. Because those classifications are reasonable (end of tape).

TAPE I - SIDE 2

NEW OPPORT:

.... the program work. You'll have a lot smaller group that's willing to part with their license is, I'm sure, what you're looking at.

NEW YORK:

How do they get around -- let me see -- it's basically somewhat like the restricted status of (indisc. - noise) or something, if you're going to sell it for ten years, or something.

But that won't work.

I mean, I think that the five-year moratorium approach could easily affect the political acceptability of the bill. Because I think the strongest argument against it, coming from fishermen, the people apt to be most vocal, is their argument that it stands in the way of free enterprise. And if you point to them and say it's not standing in the way of free enterprise, that anybody that wants a license can get one, you've got a way of keeping this people a little more contented than if you say, okay, we're going to have a five-year moratorium, and then we're going to have anybody be able to get into it.

I don't think you'll defend your five-year moratorium. I think it's worthwhile to contemplate, but I don't think

Then let me suggest a couple of alternative approaches to it. Number one, leaving it to the Commission, which could delay or make -- I mean, just in terms of getting geared up and so forth, we're probably looking practically at a one- or two-year moratorium before they'll be geared up to process transfers. There may be some flexibility there. Maybe it's making it a little bit

less precise. I don't know. These are just -- it was just an idea. I'm very nervous of any non-transferability.

About the Commission, how about in this we request the Commission to come back with recommendations of the legislature next year as far as the process of transferability?

This is the basic problem of the thing here. You've got to treat it like a free enterprise thing. It's going to have to be transferable; there are going to have to be new people to be able to buy their way into the industry; other people sell their gear and their license; and it becomes sort of a property right; and they all have an interest in a particular fishery. And, once you destroy that, then you're turning it into something else. And then if you don't think that free enterprise is the way to do this, because some people are going to lose their right to fish, and, believe me, they're going to lose their right to fish just like they'll lose their land or anything else they have that's valuable, but if you don't think it's going to work with the free enterprise system, then you'd better look to what you're doing. And if you're afraid to let it work in the first five years, I don't any assurance that -- I think we're away from that now, but what makes you think it's going to work in the second five years?

Because we'll find a reason.

Really -- really, what I've been thinking in the back of my mind is your native corporations will get on their feet in the next few years to where when one comes up they'll grab a hold of it.

Can corporations buy these?

Well, the corporations will stake a fisherman to -- stake a fisherman in competition to the canneries, you know. This is what -- they probably are good enough along to do it right now.

Dean?

I was going to suggest that I think possibly this problem can be taken care of outside of the scope of this bill. If not just exactly the way that Clem suggested, certainly there's a way. And, actually, what this is doing is perhaps buying time. Once this thing gets started, you'll be able to define the extent of the problem -- or rather the Commission should be able to define the extent of the problem, I would hope. And, maybe within fiducial limits, you can say, okay, it's going to cost (indisc. - noise) bucks to prevent this certain segment of the fishery from losing this privilege before they know what it's all about. And perhaps the corporations can cooperate. Perhaps the State itself could take a hand through legislation. Apart from this, establish loan funds, or something like this, like we already do for

fishermen.

Well, you have to be a resident for a loan fund. If that will stand up under court, you could probably give ^{your} ~~these~~ people an advantage.

There's a third alternative to ^{that was} ~~this~~ offer ^{ed} and that was that apprenticeship program where you get rid of that. You determine who's going to get the permits. You allow sale, but you only allow sale to people within the apprenticeship pool. I know that was in ^{Bozarnick} (indisc.), or however you pronounce it; it was ruled unconstitutional. But there you had very sound reasons for it. And that's because the only way to get into the apprenticeship pool was to have fished with one of the fishermen in Bristol Bay, so it went into the control of completely private hands. But if you set it up so that you could get -- and this provides another favorable thing to the fishermen in general. It provides a means whereby your subsistence fishermen that want ^{to} get into commercial fishing ^{has} ~~have~~ an opportunity. And a crew members that's been on a boat for a number of years has an opportunity to have a little less competition than he normally would have which is (indisc.) system. ^{And} ~~Now~~, like your three categories could be: past participation in the area fishery; and, two, to make it constitutionally acceptable to non-residents, non-academics fisheries training; and, three, perhaps participation in like fisheries. And this participation in like fish-

eries would also help out non-residents from different areas. Like, if there's permits opening up in Bristol Bay, some guy that's been fishing in the Kuskokwim, or some guy that's been doing some amount of subsistence fishing, could have that same similar type of participation in another fishery and could get into that apprenticeship pool. And then you'd be selling -- you'd be transferring your permits, but you'd only be transferring them into an area of qualified people. I admit you're determining who the fishermen are going to be, but you've already made some sort of threshold determination already.

Let me ask you. If you transfer a permit to a non-qualified person, he's going to catch fewer fish. Now what the hell does that hurt anybody?

It would (indisc. - too faint).

I mean, as a matter of fact, you ought to hope that a whole lot of non-qualified people that don't use these things buy the permits. Let the fish be caught by the people that are out there catching them. It seems to me like the test of qualifications is that the guys are qualified to fish who'll learn how to fish and catch fish. If the guys aren't; they aren't going to hurt the fishery any.

Suppose you turn that argument around, though, and say, Hey, in the first case, you've only allowed him this business - people

who are already dependent on it for a sizeable chunk of their income. But, once you've established -- once you've reached the -- once you've put the lid on, now you're letting in anybody that's got the money to buy a license, anybody that thinks that they want to try to become a I don't think you're going to be able to take a ^{billions dollar} ~~phase-out~~ industry and keep it within those who are presently using it forever. I think you're going to have new entries in it. There has to be.

There should be.

Yeah. Which means that people who don't know nothing about the business start in and get into it. They want to become a fisherman like they want to become a lawyer, or a legislator, or something else.

Or a farmer.

This is fine. But

How does it hurt this system by saying, if you want to try to be a fisherman, be a fisherman?

It raises the value of the license.

All right. Now who does that help? That helps a fisherman who's

selling out his license; who's trying to sell his gear.

Yeah. Actually, I was more inclined to go with ^{the} apprenticeship pools yesterday. I'm more inclined to go with John today, because I've been thinking about this meeting (indisc.), and I have a deep suspicion that they'll be a lot more prepared to pay higher to get the licenses in their category.

Well, I'm concerned about the constitutional point of it. And this is what I want you to consider.

Well, if it's absolutely negotiable, there's no constitutional problem.

Well, I know. But what does it do to the basic concept of the bill if, in the first place, we're saying one and two only in Bristol Bay? These are the people that are the professional, or career, fishermen there. And, yet, as soon as there's a license to sell, it's open to anybody that can raise the bucks. Now, I don't know, but

You have to assume that the man who'd buy in would have to be pretty professional to buy into a professional business. And the thing is that you don't worry about it with a farm. You got your original homestead by clearing and patenting, which is the way nearly all the farm land in the central United States was acquired. And you had requirements for the first settler.

There was no requirements on the second settler. All he had to was buy out the first settler. Wouldn't it be the same thing?

The basic justification, and the only justification, for those priority classifications, as I see it, is because you've got too many people and you've got to cut down, and you've got to say what's the fairest way -- what's the fairest way to determine who should come out first. And I think ^{that} it'll all hang on that. If you've used a reasonable set of classifications calculated, you know, toward that end, to getting back down to that level. But, once you're there, I don't think you've got any business in the classification business anymore. You know, once you're down to that level, you've accomplished your legislative goal. And the priority classifications have nothing to do with it anymore. And that's the way I see it as working.

About the apprenticeship, I don't see the problem. You say if anybody wants to go fishing, they can go fishing. There's nothing keeping anybody from participating as a crew member or anything else. I mean, a guy could still get into it. I mean, you don't get a law degree because you can buy it. You get a law degree by going through certain requirements. So, if you want a professional fishery, you can set up those requirements. And if a guy wants to hack it as a crew member, he's got an equal chance with anybody else to be a crew member.

11:11 3/11/62

That's a good idea.

If you let it with outside these schools, that have the fishing school, as long as you have that route, you'd probably be able to

Or participation in like fisheries elsewhere.

Well, remember I started out in ^{the} halibut fishery. And it was just by pure luck, because you had to have two Norwegian uncles on the same boat to normally get on. It just was absolutely closed otherwise. But I don't know that this

By trolling in Southeast, if you were a troller in ^{Neah} (indisc.) Bay, or someplace, then you should be able to qualify as a troller in Southeast.

Well, basically, we're coming around to the point.

Well, I don't know whether

If it'll stand up in court, fine. If you don't lose the bill over it it's easier to just let them go like John talks about and just let them go for sale rather than lose the bill.

Here's the problem to me. You know, you don't buy a lawyer's

license, but, presumably, if I go out and have a fishing license and don't catch any fish, I haven't hurt anybody.

Well, John, on the other hand

But if I'm holding myself out to be a lawyer, and I'm a sham and a fraud, I can hurt somebody. Now, I can't see how in the world you destroy the legislative purpose of this by restricting entry into the resource if you, first of all, you decide who gets it on the basis of who's used it. But once you establish that level of fishery and the permits are free, then I don't even see any legislative purpose in trying to restrict who gets to use the permits after that. Unless you were to restrict it to corporate ownership, or something like that.

If you go out to Bristol Bay and fish and you don't catch any fish, you are hurting somebody. You're catching that guy's who might have that entry permit in Bristol Bay that would catch some fish and would

If that's the case, you might catch more fish, then; or there's a better harvest; or they

Well, now if fifty percent of the fishermen are incompetent, the other fifty percent could fish twice as long

Well, let's get on here.

John, I'd see the first one you are hurting comparable to the incompetent attorney to be the State of Alaska with its resource. We're working for an industry, a fishing industry, which has those qualifications of being effective, efficient, and something that you could have -- for example, qualified people going into it who ^Cwould have better methods of fishing, bringing (indisc.) to the whole method of fishing in the State of Alaska. This would be the effect of having competent people going into it.

Let's look at it from another standpoint, though, John. Our purpose here apparently is to do two things; first of all, to protect the rights of those that are really dependent on it at the present time --right? -- and to reduce gear so that they have a decent livelihood in the future. All right. Once we've done those things

Hey, you've forgotten the third purpose. The fishery.

Conserve the fishery.

The fish.

The fish. All right.

I mean, that's one of the most important

I thought that that was really what was

Well, right. But, then, that's irrelevant to this discussion right now, I think.

Well, they're all in the same package.

All right. But now, my point is, once you have protected the rights of that individual, say you're one of them -- okay, so we now have reduced gear down to four hundred units as the optimum level, you're on of those people -- we've protected the resource because we've limited gear. Now, once you have your right protected and you've got a stake, a four-hundredth out of that, what you do with your share ought to be up to you, though. And if you choose to sell it to A over here who is going to be multi-fisherman and is only going to catch one-tenth of the fish, then the other three hundred ninety-nine guys are going to profit by it, the fishery resource has not been hurt, you still are keeping your gear level, and the individuals, all four hundred, who we depended on, their rights have been protected. *In fact if he sells* (Indisc.)
Which is what John is saying.

I don't see what's wrong with including another reason for this bill, and that's to make the fishing industry a resource industry where you can get the maximum ^{deal out of it} (indisc. - noise) through all different methods; one being lower gear and less people, and,

also, an increased method of fishing, or a better efficient method of fishing.

(Indisc. - simultaneous conversation)

You can put that as another privilege and you can give it to people who are (indisc. - simultaneous conversation).

If you wind up with two hundred incompetents, though, then the bill's going to increase the kinds of gear, or pool the kinds of gear (indisc. - simultaneous conversation) the two hundred that are left are good fishermen can catch the fish^{that are left}.

But, again, you said one of the basic purposes is to protect the people who depended on the resource, but if you allow free transferability, then that's an illusory-type thing.

Now, wait

There are overriding reasons, too, that we haven't mentioned. There is the fact that there are more native people ^{and} in Alaskans who are trained (indisc. - simultaneous conversation) than are outsiders. Can we put them in a special category of an apprenticeship that would be able to qualify much easier than

That's what I thought until I started figuring that the bulk of

our San Francisco gill netters work the whole coast right on up, you know. And they've got more hours of gill netting in a year than most of the Alaskans pick up in ten years.

Well, okay.

Dependent upon the regulations for qualifying.
(Indisc. - too faint)

I would hope that we can shoot for a deadline of this week in getting something out of here. And, obviously, this is going to be a question that we're going to have long and hard on. Equally, obviously, we're not going to be able to settle it today, I don't think, as far as this matter of transferability. So, let's go ahead and keep that in the back of our minds and see where we can go on it.

Mr. Chairman, it seems to me really that it's up to the attorneys now. I mean, I think everybody has the right idea and basically the same idea, but it's just how do you do it so that it holds up in court and it's constitutional.

The transferability

I can't help very much when it comes to that.

Yeah, I'm sure.

Ownership will accomplish the same thing it does in agriculture.

Because this is what
(Indisc. - too faint) on the conservation and, on an average,
that a sharecropper doesn't take as good a care of his land as
the owner. And there's no doubt that if you're going to be
able to sell your license when you retire, you're going to
have a much longer-range view.

You might be familiar with this, too. Although you object to
the speculative nature of the license, you have to recognize
that the more market there is for a license the better off a
fisherman's going to be at a time when he decides he wants to
cease fishing so he can sell his boat and his license. And
you have to recognize *that in the event that* to the extent that we recognize holders
of land, holders of stock, since we recognize *at a* the stock exchange
as being a valid way of transferring ownership and equities,
that we do that to enhance the value. The only reason people
go to the stock exchange with their corporate petitions is be-
cause they can get more money that way. And the reason they
can get more money is because they have trained people to look
at it. But if you restrict the salability, not only do you have
very serious constitutional problems, and not only do you have
to create false, basically false, arguments if the premise of
the bill is correct to do it - *and that is a* ~~in other words~~, apprenticeship
competent
and things like that - the (indisc.) fishermen, that's not the
problem; but the problem here is that this isn't a fishing
school that we're trying to conduct here, we're trying to con-

serve a resource. And if you keep your analysis clear on the thing, it ~~would~~ almost ~~have to~~ be freely transferable. But, myself, when I get to that thing, I have no doubt as to where the licenses are going to end up. And that is where I get *really* hung up with the limited entry permits.

Well, where do you think they're going to end up?

They're going to end up, just like the land does, by the guys who are the smartest and have the money and the economic (indisc.) and they can pay the assessments that come in annually. What are you going to do with these guys that can't pay their assessments because they've had a bad year, or they consistently have bad years, that they've relied on all their lives? Are you going to foreclose them out when they can't pay their assessments?

Well, I tried working something in, and I didn't know (indisc. - simultaneous conversation). if your gross family income is under a certain amount, you can pick it up for a quarter of your assessment. But I agree with you, John, the way to -- if you want to conserve the resource so that you have people administering it who really want to take care of it, such as your farmers -- in other words, if you want to turn it like the farming is, the farmer of the United States can feed not only the United States but two other nations as big as us -- if you want your fisherman that kind of a person, just let it go private entry, and that's what it'll become. And instead of importing

seventy percent of our fish, we'll start exporting fish.

I'd like to suggest that there's sort of a natural apprenticeship tendency in the fishery. I would think that a crewman that had worked on given vessel for ten years knew the fishery and knew how to fish it would probably be able to make more money off that boat and would be in a better position to buy it. I mean, he would be a better credit risk, he would be a better operator, a more efficient operator. And that works that way in a lot of other trades, and I don't think there's any reason to expect it wouldn't work in this.

wouldn't
(Indisc. - simultaneous conversation), loan a city slicker a lot of money to go out and buy a wheat farm.

Yeah, that's my point.

But wait a second, John. The one thing that you have to -- you can take your fish tickets in, and I've done it. I can take my fish tickets in to Elmer *Rasmussen* (indisc.) and get a loan.

Yeah, you can, but no one from Bristol Bay does.

Very few residents (indisc. - simultaneous conversation).

Very few residents -- they're so depressed. But it wasn't too many years ago before -- you know, you're looking at a fishery

there that's been completely depressed. But it wasn't too many years ago that a high-liner didn't have any trouble getting financing.

If you give the people in Bristol Bay four years, I think the credit would loosen up. But the way it is now they're so far in hock that they couldn't get -- they'd be a fool to loan anybody money out there.

Well, with seven bad year predictions, yes, you're going to have a little trouble.

Yeah, but I'm worried about that initial four years, because the guys that have the clout behind them, financial clout, at this stage of the game, and the guys that are fishing on contract for somebody else I don't have to name any names. We know who they are, you know. And those are the guys that have the financial clout right now. If they want to guarantee their market the way they have been, with limited entry coming in they're going to get as much control as they possibly can.

I tell you that They won't be able to hold (indisc. - cough). *can* I see you're worried. And I can see that some of your local residents could get hurt unless the corporations picked it up. They could

No, don't think that corporations are a way of solving everything now.

I don't say that, but I'd say just automatically it's going to be a source. And I don't think that it would be a bad idea to, you know, take a look at some State loans on it. But --- yeah, go ahead.

I think the more complex the formulas get, by way of building an apprenticeship clause, and whatever else, the more difficult it's going to be to get the fisherman to understand what's happening to him. And the more difficult it's going to get for him to vote for it.

Well, suppose we say this. Suppose we say that the gear licenses may be transferred but they need approval of the Commission? Just that much.

Under regulations set up by the Commission.

All right. Then, the situation that you envision, the Commission would have the opportunity -- the Commission would have the opportunity to talk and convince the guy in the Bay, who's in hock to the cannery, and so on, to hold on to the thing; perhaps even arrange for additional financing, and this is where the corporations might come in, or the State under their own program, and so on, to give him the financing so that the cannery can't hold this kind of power over him. I know that's difficult, but

all I'm saying is that it's freely transferable and, yet, it does give the Commission an opportunity to persuade the fellow not to do it if it's really in his best interest and he's just on a spur-of-the-moment type deal.

Yeah, but the only trouble with that is that it's a three-man Commission for the next two or three years, and it's just going to be up to its ears in promulgating rules and regulations and optimum levels. And unless you're going to allow some sub-delegation of quasi-judicial powers, you're going to have to have a kind of watchdog.

All right. What's the law? He's talking about counseling people in a business venture is what he's talking about; saying, Look, son, you're making a bad mistake by selling your permit here. Maybe it's a good move for him to sell a permit, too, you know. How are you going to counsel these people in their business decisions? And, again, you get down to it, I don't think you can do that.

You can't do it.

And I don't think that neither can we write a law that does it, nor do I think the Commission can pass regulations that counsels.

There's one thing that the Commission could do. And that is by

merely administering transfers, they could collect some basic information about what the economic basis of transactions are just for an information sense. I mean, there will be information available as to what's happening out there. And if a problem grows up, the legislature can take cognizance of it on down the line.

The problem was not just administering their ideas or statistics-gathering. The question is, is there some way to protect if a person gets a foolish transaction.

I don't know.

We can't figure out a way to devise it, and I don't think the Commission can either.

If they can, we ought to be able to do it, too. Now, maybe we can, but I don't know what it is.

I don't think you really can. I think it's better to just have them freely transferable than lose the bill. If you can work in a few safeguards that you know don't endanger the bill in any way, fine. But the free transferability in the end will bring you a healthy fishery. You know this. What you're looking for is will the people stay in it. The loans have one drawback. It costs just like the Fish & Wildlife Service Loan

they had.
Program ~~may have~~. The only person that ever utilized it was the -- for the most part, the incompetent. I mean, the real competent guy just went down and got his loan. You know, he could go to the bank or usually to the cannery and get an interest-free loan if he'd caught enough fish.

It would get to the position where we're slitting our throats, and we're saying, well, we're slitting our throats, but at least we're doing it constitutionally. That's

I don't see where you're slitting your throat. You're going to have a small (*fishery* indisc. cough) with high production and a high standard of living of those engaged in it. You're going to be able to produce fish at a competitive world-market price which is going to be beneficial to the United States. You're bound to come out of it ahead. Now, if you can come out and reach that point with less injury to the unsophisticated members of the community today, fine. Let's do it. But this is the end result that you want to reach, isn't it?

What we're trying to do in this thing is to -- in this transfer thing, the question we have before us, is to try to protect people from themselves, is it not, basically?

Well, not necessarily just from themselves. *From making bad mistakes*

Well, that and your economic coercion, too. I mean, that's the

basic thing. I think that protecting people from themselves is a lot easier to handle than trying to keep them from

Protect them from themselves with our eighteen percent interest on our conditional sales contracts and other stuff like that. You can't really protect people completely from themselves.

We have a very difficult problem here. If you have these assessments -- and I'm sorry I missed the other meeting -- but if you have these assessments, and if they're going to be buying people out and buying boats and defunct gear, and all sorts of things, there's going to be some tremendous assessments needed. If a guy's not successful, he's not going to have enough out of his season. A marginal fisherman is going to be taken out of this thing by the assessments it looks to me like.

The problem is that the guy who's marginally competent, either because he doesn't have gear or because he doesn't have energy, or he doesn't have know-how, or he's just unlucky -- but I think that that guy it looks to me like he's going to retire anyway.

One of the concerns you run into in talking to the fishermen individually is they all want to know how is a crewman -- you know, a guy that's not making a lot of money, especially with the situation the way it is now, how is he going to get a boat of his own, how is he going to get a permit. How's a guy's second or third son going to get a permit? And I would hazard a guess that if it's on a free-market system, that those guys are substantially going to be priced out in the business unless they can hitch their wagon to somebody's financial star, which may be possible. But I would think that if they -- if there was some sort of apprenticeship program, they would have a lot better chance of being in that program and getting the type of financing and things they need. So, we need to tell them, you know.

That's the so-called professional fisherman.

Sociological determination. All I can say is -- you know, all of the king crab boats out of Seldovia are basically native (indisc. - cough), wouldn't you say? Or mixtures?

Yeah, absolutely.

Out of Seldovia. Well, they're -- in your Kodiak area now.

Yeah, but the Adak area has this

They've got those damned Norwegians.

And tremendous Seattle fleet.

Yeah, they're valid when they hire their crew from Norway. But, I mean, our local fleet down here, the natives ended up in control of it because they just happened to be the toughest. You know, they were year-round fishermen. But a lot of them fell by the way.

That's what's finally going to happen here if you create a semi-property right here to fish a portion of the ocean and limit it. It's going to end up to where the most competent and the hardest-working and those who have the greatest ability

are going to end up with the financial ability of one of them.

That's partly because it's a business, and it's an expensive business. But I don't know how you could change that. If you're going to go to this whole system, see. I think that's what -- I think that's the price we pay by limited entry, frankly. And that's what really bothers me about it, because I've thought for years that this is the way to do it. And then I suddenly began to realize what the price is. The price is that the strong man is going to have the fishery. That's going to be the open price in this.

And the alternative is that no one has the fishery.

I don't think there's (indisc.) around to make it where the marginal fisherman, or the guy that can't afford the boat, or the guy who's a crewman, or a guy who lives in the area, is going to necessarily end up with the resource ^{at all}.

Well, I think that the guys in the local area will stand an equal chance with anybody else.

It will only be because they have -- well, what we have to do is have a loan program and things like that for them, you know, so they can compete. But you're going to have to make them where they're competitive. Because you can't legislate the industry into their hands and custody. You're going to have

to be able to equip them by apprenticeship programs and by economic clout and loans, and stuff like that, so that they can compete with the guys from Seattle, or wherever.

Well, I would agree that you can't legislate them into it, but the problem is will we legislate them out of it.

Well, I don't think you can. I think that the legislative apprentice program is attempting to legislate them in. I think you could have an apprentice program so that they can fairly compete and hold their own.

That's all that an apprenticeship program does if you (indisc. - simultaneous conversation).

But then you're going to hook a license right to that apprenticeship program. And that's where I think you fall down, see. And I think that that was the point you were making, is that the moment you try to hook this to where it is a limited entry type of thing, a special class or a special group, or a guild, I think it'll fall.

The other balance that's struck in this is that it should increase the overall economic position of the fishermen vis-a-vis the processing industry. But, clearly, it is going to have that other effect. It's going to be the efficient fishermen, the people that are

NEW SPAN:

And they're not going to be too easily controlled by the cannery. The big problem that you have is the initial. You know, I can see that.

And during that initial two or three-year period.....

But the fishermen -- you know, the Fishermen's Association will become a pretty powerful bargaining organization where there are X number of licenses and the cannery can't say, the hell with you, I'll bring in a bunch of Finns from Astoria, you know. They're not going to be available.

HEARING OF THE SENATE SPECIAL
COMMITTEE ON FISHERIES 2/9/73

Okay, should we go on down to the idea of the
transfer of ^{the permits} ~~as~~ itself?

We have three proposals for a transfer covered on
this sheet here and there's a kind of summary. Before
we get into detail though we can take a look and
consider each one. The first sheet is a summary.

The one that says proposals?

— 21

Right.

Well, let's try one real simply and see what troubles we run into with ~~that~~ ^{it}. Suppose we simply say from the beginning that any holder of an entry permit after he has received approval from the Commission to sell his permit, ^{can} ~~and~~ then sell it to ^{any} ~~a~~ qualified purchaser on a negotiated sale basis, one-to-one basis with the guy that's going to buy it, and when we talk about qualified purchaser, we simply say anyone who either through past experience in the fishery or well a person becomes qualified either because of past participation in ^{the} fishery or through training in some approved course of training. ~~Now,~~ Therefore you have an applicant pool of people that the Commission has certified then as being approved to buy and any of those may negotiate with a seller for his license. All right, can this meet the requirements that we were talking about the other day? Gives some protection to the fellow in Bristol Bay that may not be very sophisticated. The Commission can give him ^{out for} some protection there. We have an ~~(indisc)~~ ^{the} son, or the relative, or the non-relative even who has worked on a boat for a period of years and he now wants to have a gear license himself or we've left it open for the guy who's had no experience in the fishery but is willing to go ^{ahead} ~~in~~ and take a course of training so he becomes eligible. And yet it's still not completely wide open and will not necessarily (indisc) so quickly gravitate

to the money source.

Dave, are you suggesting a course of training by itself would qualify a person?

Very much like ^{as} ~~that~~ you see in some of these applications for jobs now, where it can be a certain number of years in the field or so many years in college, makes you eligible for a job. It would be somewhat the same.

I've ^{had lots of both} ~~test (indirect)~~ kinds of training on the courses of training I had in school wasn't in fishing, but I just can't see how any amount of training would make a man capable of being an efficient purse seine skipper in Kodiak. He doesn't know the fish.

All right. (simultaneous speech)

He doesn't know the ground.

That's one thing that he can learn after he gets the permit and goes ahead and does it through experience. But at least you've left it open to anyone that's willing to make that sacrifice. There's nobody that can keep him from doing so, going through the course of training. If you have it only through a matter of experience then you may have a situation ^{which the court} ~~where (indirect)~~ addressed itself

to in '68 saying well, hey you're relying on the friendship or the whatever you want.....

Yeah.

.... of the skipper to agree to let the guy come aboard the vessel to work for him.

I can see training being worth so many years of fishing experience, ^{but} the training by itself as a prerequisite....

I don't think we have to get into discussion just what qualifications there are, as long as your initial standards are fair ^{on their face.} ~~(indisc)~~ If you say a fair and reasonable balance of those standards, and the Commission does not, the Commission can -- if you want to leave some discretion to the Commission (interrupted)

MR. CLEM TILLION:

(Simultaneous speech - indisc)

..... that 2 years college doesn't qualify you but a reasonable standard would be 2 years of college plus some participation. Of course, if the Court says well that's unreasonable, they can't come back and say these standards that you put here on the four basic broad standards are unreasonable, they say the Commissions usage of those four broad standards is unconstitutional

applied on something and
as ~~(indisc) would be going to~~ throw out the regulations.

But your statute would still be broad enough and reasonable enough on its face that -- to stand up. Of course, *in these proposals* (indisc) there's also a little kick back if something does happen. you go back and retransfer, but you've bought yourself a couple of years.

MR. CLEM TILLION:

Yeah, and the thing is though, some of those David, wouldn't you say like on your crab and shrimp fleet, *we* would require that a man has met the requirements necessary to have picked up a Coast Guard license for tonnage in that area. You're going to have to go to that sooner or later anyway, and it's the Coast Guard requires that you be 2 years in that area aboardship before you can sit for the exam, and you haven't stipulated that he has to be apprentice 2 years, but the Coast Guard says, you know, you can't just walk in and get a ticket for the *(?) Arctic* (indisc). You've got to been there 2 years before you can get an operator's permit.

I thought the (Simultaneous speech) requirements for *this were from* 100 ton and over to be (interrupted)

MR. CLEM TILLION:

Yeah, but just have an operator's license, no you have to have an operator's license -- well you don't have -- they don't make you have an operator's license till you're over 100 tons, but you could -- they issue them for any

documented tonnage now of any size. So just meet the Coast Guard requirements for that tonnage plus some of the -- I mean you know, you can get a 25 ton license if you want to, you know.

Dave, do you want (interrupted)

Then this alternative number three, ³the paragraph there, do you feel that that's an adequate note? ¹cland

No, I think I can make my position known on transfers in only about 30 seconds. Basically, that in any limitation on a class of people for whom permits can be transferred is probably unconstitutional and it seems like every time you get into this business you're trying to decide to create a local privilege

No.

.... and that's whether the 2 years before you can sit for ^{an} exam, all these kinds of things are aimed at one thing, create a privilege for Alaskans and it's unconstitutional, I think, so I, you know, I don't think ^{about transferability--} (interrupted - simultaneous speech)

MR. CLEM TILLION:

If you (simultaneous speech)

.... cause I can't buy it, contrast for ability.

Dave, under these criteria, one, two and three, and alternate of three, you think that's going to discriminate against non-residents?

Sure, because fewer non-residence^{ts} will wind up in that category. I mean, I just -- all I'm saying is, I think that what people are aiming at is trying to make sure that certain kinds of people wind up with permits and I think that is an unjustifiable purpose, because it has to be based on discrimination and the only reason you can classify people is if you've got a justifiable purpose. Now I don't see (interrupted)

Is not the justifiable purpose in an apprenticeship program like this to encourage an economically efficient fishery?

I don't see it. I don't think it's to encourage ^{that} (interrupted)

You think that ^{Free} ~~per~~ transferability is guaranteed on the market place to encourage an economically efficient fishery?

You crossed over between unconstitutional, ^{on its face} (indisc) and unconstitutional ^{as applied} ~~supply~~. If you have standards that are

reasonable on their face, no Court is going to throw them out. If they're applied unreasonably by administrative body, they'll get tossed out. So we've lost objectives, we're looking at something ^{it's sure} ~~that's~~ (indisc) free transferability ^{is} ~~is~~ absolutely constitutional, but that doesn't solve any of the other problems ^{we} ~~you~~ want to look at. We have a common resource that used to be open to anybody who wanted to get into it, ^{it's} ~~that's~~ a common resource. Now we're taking that common resource and locking it into a limited number of participants. And I think it's a valid legislative objective when they're locking up a common resource that's supported by all the taxpayers is a valid objective to make sure that those participants that have that lesser competition and have that property right in that resource are qualified. And if you have standards that are fair on their ⁱⁿ ~~the~~ face, no Courts going to throw them out. But if they're applied unfairly, they can throw them out because it's ^{effect the session.} not going (interrupted)

I'm continuing to study the thing, but my -- I mean -- and so I won't make any more comments, but I just can't conceive of a non-transferability or this kind of a participant pool that wouldn't be very, very vulnerable to all sorts of legal attacks. Now, (interrupted)

applied *for*
As a ~~buyer~~ or on the ~~fish~~?

Well, sure you could say (interrupted)

Plus you have a kickback provision that if it is
tossed out you can go right back to ^{free} pre-transferability.
So I don't really see the -- I don't really see the
problem.

I think both, I think either, I think that when you look
at giving the Commission and those standards because
you're coming in at a separate point. You've already
got your gear level stabilized and you can say that
well we've come up with a fair set of standards we're
going to apply them fairly to non-residen^{ts} and people
that were on the East Coast and everything else. But
the point is, the very thresh~~h~~old question is, does the
state have any business monkeying around after it gets
gear levels stabilized?

(Simultaneous speech) that's not a Court determination.
If the state decides to have an interest, they can.

Well, I'm just saying that you're just on a lot weaker
grounds. Because there's so many ways that power can
be abused and there's so -- the justifications for it
are so minimal. Experience ^{and} efficiency, they just
aren't the same.