

109 HRES S B 39 : FLETCHER - S B 39 : TRANSFERABILITY

Sec. 16.43.180 [PERMIT REQUIRED;] ELIGIBLE HOLDERS FOR PERMITS.

(a) After January 1, 1974 no person may operate gear engaged in the commercial taking of a fishery resource designated under section 145 of this chapter without a currently renewed entry permit, temporary or permanent, issued by the commission. A crewman or other person assisting the holder of [such] an entry permit in the operation of a unit of gear need not [himself] personally hold an entry permit.

(b) A person may hold more than one entry permit issued [pursuant to] under this chapter [only] for any one or more of the following purposes:

- (1) fishing more than one type of gear;
- (2) fishing in more than one administrative area;
- (3) fishing for species for which separate entry perm. are issued.

(c) A partnership may apply for and beneficially hold an entry permit, or more than one entry permit under [subsection (b) hereof] (b) of this section, if in a writing submitted to the commission and signed by all partners, one of the partners is designated as the principal operator. [Such person] The principal operator shall be considered the applicant for and the holder of the entry permit for all purposes of this chapter.

Sec. 16.43.180 (continued)

(d) A corporation may apply for and beneficially hold an entry permit, or more than one entry permit under [subsection] (b) [hereof] of this section, if there is one person who beneficially owns and is entitled to vote 50% or more of the voting stock of that corporation and if in a writing submitted to the commission and signed by and on behalf of the corporation by its president and secretary, that person is designated as the principal operator. [Such person shall be] The principal operator is considered the applicant for and the holder of the entry permit for all purposes of this chapter.

Sec. 16.43.190 INTERIM-USE PERMITS. Pending the initial issue of entry permits for a particular fishery [pursuant to] under section 220 of this chapter, the commission shall issue interim-use permits for that fishery to all qualified applicants who are presently able and who presently intend to participate actively [therein] in the fishery. The commission shall adopt regulations specifying the dates and places of application, the standards for determining the qualification of applicants [as herein specified] and their qualification upon [such] renewal, the renewal dates, the fees to be charged for [such] the application or for [such] the permit, the procedures to be followed in renewal [thereof] of the permit including the time, place and fees incident [thereto] to its renewal , and for any other purpose incident to the administration of the interim-use period for that fishery. [All such] Interim-use permits for [any particular] a specific fishery [shall] expire [upon] when replaced by initial issue of entry permits for that fishery under sec.[tion] 220 of this chapter, [except as may be] unless extended [pursuant to] under sec.[tion] 225(b) of this chapter.

Sec. 16.43.200 [ENTRY PERMITS;] STANDARDS FOR INITIAL ISSUE OF ENTRY PERMITS. (a) Following the establishment of the [desired] maximum number of entry permits for a particular fishery [pursuant to] under sec.[tion] 160 of this chapter, the commission shall adopt regulations for the selection from among qualified applicants who are presently able and who presently intend to participate actively in the fishery those who would suffer hardship [should] if they [be] are excluded from the fishery by the imposition of the limited entry system prescribed by this chapter, using the following standards:

(1) the extent to which this fishery constitutes an income source to the applicant, in decreasing order of importance as follows:

(A) consistent participation in this fishery as a gear license holder has provided the primary income source during all or substantially all of [the three years] at least two of three years immediately prior to January 1, 1973;

(B) consistent participation in this fishery as a gear license holder, together with participation in other fisheries, has constituted the primary income source during all or substantially all of [the three] at least two of three years immediately prior to January 1, 1973;

(C) participation in this fishery as a gear license holder has provided a substantial income supplement to income from sources other than fishing during all or substantially all of [the three] at least two of three years immediately prior to January 1, 1973;

16.43.200 (continued)

(D) irregular participation in this fishery as a gear license holder [over] during all or substantially all of [the three] at least two of three years immediately prior to January 1, 1973 has provided a variable minor income source;

(E) little or no participation in this fishery as a gear license holder;

(2) the extent to which alternative livelihoods are realistically available to the applicant, either presently or following a realistically available and reasonable course of training;

(3) the extent of the applicant's investment in vessel and gear.

(b) The regulations shall establish five categories of decreasing severity of hardship for grouping similarly situated applicants, based upon application of the foregoing standards, as follows:

- (1) extreme hardship making continuance [is] essential;
- (2) hardship making continuance [is] strongly needed;
- (3) some hardship making continuance [is] desirable but not strongly needed;
- (4) minor or slight hardship making continuance [is] mildly desirable but not needed;
- (5) no hardship.

(c) The commission may adopt regulations establishing sub-classifications of the priority classifications in (b) of this section when it considers it necessary [in] for the application of the standards stated in (a) of this section in order to produce

16.43.200 (continued)

groups of applicants similarly situated for each administrative area and each type of gear.

(d) The commission [may] shall adopt regulations for [obtaining information upon which to make a determination] determining whether [the] an applicant is presently able and presently intends to participate actively in the fishery.

Sec. 16.43.210 [ENTRY PERMITS;] PROCEDURE FOR APPLICATION FOR INITIAL ISSUE OF ENTRY PERMITS. (a) The commission shall establish the opening and closing dates, and the places and form of application for initial issue of entry permits for each type of gear and each administrative area. The commission may, as part of the application form, [or as attachments thereto,] require the submission of evidence relevant to the applicant's qualification and to the determination of the appropriate priority classification to which his application should be assigned under [the] regulations adopted [pursuant to] under sec.[tion] 200 of this chapter.

(b) The commission may require that [certain] a portion of the evidence [to be] submitted by the applicant be verified by him or by others. When an applicant is unable to submit any or all of the verified evidence required, he may request and obtain an administrative adjudication of his application according to the procedures established in sections 130- 140 of this chapter. At the hearing he may present alternative evidence of his qualifications or of hardship pertinent to the determination of the priority classification to which his application should be assigned.

Sec. 16.43.220 [ENTRY PERMITS;] INITIAL ISSUE OF ENTRY PERMITS.

(a) After the closing date for applications established by the commission under section 210 of this chapter, the commission shall assign the application of each qualified applicant to the appropriate priority classification as determined under section 200 of this chapter based upon the evidence established [pursuant to] under section 210 of this chapter and promptly notify each applicant by mail or posting at the applicant's place of application whether he has been found qualified and, if so, the priority classification to which his application has been assigned.

(b) The commission shall issue entry permits, for each administrative area and each type of gear, to all qualified applicants in the three highest [and next-highest] priority classifications, whether or not the total number of permits [so] issued exceeds the [desired] maximum number of entry permits established [pursuant to] under section 160 of this chapter for each administrative area and each type of gear. If for any administrative area and any type of gear the total number of permits [so] issued does not exceed the [desired] maximum number of entry permits established pursuant to section 160 of this chapter, the commission shall [also] issue entry permits to persons ^e successively in the next-lower priority classification or classifications until the total number of entry permits issued equals the [desired] maximum number established for the particular area and the particular type of gear.

16.43.220 (continued)

(c) If, within the lowest priority classification of qualified applicants to which [some] entry permits are to be issued, there are more applicants than there are entry permits to be issued, the allocation of entry permits within that priority classification shall be by lot.

(d) If, at the time entry permits are issued, some applicants are [still] in the process of appealing the finding of an administrative adjudication [pursuant to] under sec. 210 of this chapter, a sufficient number of entry permits shall be reserved out of the permits to be issued, to protect the rights of those applicants who are appealing, assuming all the appeals will be resolved in favor of the applicants. In the event that all appeals are not resolved in favor of the applicants, the remaining entry permits shall be allocated to the next most qualified applicants as[provided in (a), (b) and (c) of] appropriate under the procedure specified in this section.

Sec. 16.43.225 [DENIAL OF INITIAL ISSUE;] RIGHT TO COMPENSATION
[IN CERTAIN CASES] FOR DENIAL OF INITIAL ENTRY PERMIT ISSUE.

(a) If an entry permit is denied to a qualified applicant whose application is assigned to priority classification [(3)] (4) as established in section 200 (b) (3) of this chapter, [full and] reasonable compensation [must] shall be made to the applicant [based upon the economic value of an initial entry permit for the area and type of gear for which his application was denied, and including compensation for direct economic loss resulting from a drop in the marked value of the applicant's vessel and gear which is attributable to regulation under this chapter.] for direct economic loss resulting from loss of value for the applicant's vessel and gear.

(b) [Until full compensation is made by the commission, any applicant entitled to compensation under (a) of this section shall be permitted to continue fishing under an interim-use permit.] Compensation shall be made under (a) of this section within two years from the effective date of this Act.

Sec. 16.43.227 [ENTRY PERMITS;] SUBSEQUENT ISSUE OF ENTRY PERMITS.

(a) For [any] a given administrative area and type of gear, [therein] after initial issue of entry permits and for as long [thereafter] as the number of entry permits outstanding exceeds the [desired] maximum number in that administrative area and for that type of gear, the commission shall, upon each annual renewal of outstanding entry permits, also issue new entry permits to qualified applicants upon a ratio of one new entry permit for every [two] ten entry permits that have been retired or forfeited under sections 290 and 320 of this chapter since the last previous annual renewal date.

(b) If, at the time of annual renewal, the number of outstanding entry permits is fewer than the desired maximum number for the particular administrative area and type of gear, the commission shall issue new entry permits to qualified applicants [up to] until the desired maximum number is reached.

(c) New entry permits shall be issued first to those applicants who have submitted a notice of intended surrender under section 300 of this chapter. If there[be] are more [such] applicants who have submitted a notice of intended surrender than there are new permits to be issued, applicants shall be issued permits in order of their respective date of filing [such] the notice of intended surrender. If, after issuing permits to all applicants who have submitted [such] the notice, additional permits

16.43.227 (continued)

are to be issued to other applicants but there are more [such] applicants than there are new permits to be issued, the new permits shall be allocated among [such] those applicants [by lot.] in order of their respective application.

Sec. 16.43.229 [ENTRY PERMITS;] PRICE UPON NEW ISSUE OF ENTRY PERMITS. The applicant to whom a new entry permit is to be issued [pursuant to] under section 227 (c) of this chapter shall, [prior to the receipt of the] as a condition of receiving the permit, pay to the commission [for the use of the state] the fair market value of the permit as determined under section 310 of this chapter.

Sec. 16.43.230 TERMS AND CONDITIONS OF ENTRY PERMIT; ANNUAL RENEWAL. (a) Except as [hereinafter] provided in this subsection, the holder of a currently renewed entry permit must himself be at all time present and actively engaged in the operation of [a unit of] the gear for which the permit [was] is issued. The commission shall adopt regulations for alleviation of hardship caused by illness, incapacity, or death of a permit holder prior to or during a fishing season [whereby] so that another person may be issued a temporary entry permit to operate the gear for the remainder of the season, or in the case of illness or incapacity, for the duration [thereof] of the illness or incapacity if that [be] is shorter than the remainder of the season. [The commission may adopt regulations whereby in extraordinary circumstances the holder of a currently renewed entry permit may act as crewman or other assistant in the operation of gear by another permit holder in order to alleviate hardship upon that other permit holder.]

(b) To the extent that the commissioner of [the Department of] fish and game authorizes it in individual cases [pursuant to (15) of AS 16.05.250] under 16.05.050(11), the holder of an entry permit for any type of gear and for any administrative area may on an experimental basis engage in commercial taking from any fishery resource of the state.

(c) The holder of a currently renewed entry permit must have the permit in his possession at all time when engaged in [the] commercial fishing [taking from] for a fishery resource designated under section 120 of this chapter.

16.43.230 (continu.

(d) Each entry permit is issued for a term of one year and [confers upon the] entitles its holder to a right of renewal as long as he remains qualified. A permit holder may fail for one year to renew the entry permit but upon renewal the year [thereafter] after he shall pay all accrued fees.

(e) Failure to renew an entry permit for a period of two years from the date of last renewal shall result in a forfeiture except as waived by the commission for good cause [shown]. The commission may adopt regulations, consistent with the purpose of this chapter delineating the circumstances constituting [such] good cause and prescribing terms of renewal.

[(f) Transferability, both voluntary and involuntary, of entry permits is governed by the provisions of sections .250-.280 of this chapter. Surrender and retirement of entry permits is governed by section .290 of this chapter. Forfeiture of entry permits is governed by section .320 of this chapter.]

Sec. 16.43.240 ANNUAL FEE. There is an annual fee of \$50 for the issuance and annual renewal of entry permits [or temporary entry permits]. However, this may be reduced in the discretion of the commission, when the applicant has a net family income falling within the Federal Social Security Administration poverty guidelines for the year preceeding application. The commission may adopt regulations revising the amount of this annual fee to reflect the costs of administering this chapter [including those incurred under section 290 hereof]. Fees collected under this section shall be paid into the general fund.

Sec. 16.43.250 [ENTRY PERMITS;] TRANSFER OF ENTRY PERMITS.

Entry permits are transferable through and by the commission [pursuant] under sections 260, 270, and 280 of this chapter, and [except as so transferable are not capable of] unless transferred under sec. 260, 270 and 280 of this chapter, may not be voluntarily or involuntarily transferred by any other means [whatsoever], including, [without limitation] but not limited to:

- (1) sale of any kind, conditional or absolute;
- (2) pledge, mortgage, or other encumbrance of any kind;
- (3) lease, rental, or other transfer of rights of user or enjoyment, whether temporary or permanent;
- (4) gift of the entire interest or of any part, whether complete or into any form of co-ownership;
- (5) succession at or upon death, whether by will, intestacy, or otherwise;
- (6) attachment, distraint, execution, or seizure [pursuant to] under any other process of any kind of any court or other body.

[This provision of] Nothing in this section [shall not, however] prevents or [otherwise] restricts forfeiture [brought about by] as a result of the violation of [the] a provision[s] of this chapter [as elsewhere specified herein] or by violation of fish and game laws or regulations [pertaining to or issuing from the Department of Fish and Game] or by violation of any other state law or regulation.

Sec. 16.43.260 [ENTRY PERMITS;] ELIBIBLE TRANSFERORS OF ENTRY PERMITS. (a) The holder of [any] an entry permit whether currently renewed or not may apply for transfer [pursuant to] under section 280 of this chapter. [In addition, if at the time of the death of a permit holder he was eligible] If the holder of an entry permit dies and was eligible to transfer his permit at the time of his death, [and if application be made within one year of the death of such permit holder] his personal representative may [likewise] apply for a transfer, if application for the transfer is made within one year of the death of the permit holder. The personal representaive, unless qualified under sec. 270 of this chapter, may not transfer the permit to himself under this section. The commission may adopt regulations for the determination of [the] other persons entitled [as the holder's successor in interest] to apply as the holder's successor in interest, for [such] post-death transfers in [the stead of the personal representative if none has been appointed] cases where no personal representative has been appointed. [The term "transferor permit holder" as used in section 280 of this chapter includes all eligible transferors described in this section.]

Sec. 16.43.270 [ENTRY PERMITS;] ELIGIBLE TRANSFEREES FOR ENTRY PERMITS. [Any] A qualified person, including those persons specified in sec. 180(b), (c) and (d) of this chapter, who is presently able and who presently intends to engage actively in [the fishery] a fishery resource subject to this chapter is an eligible transferee.

Sec. 16.43.280 COST [THE TRANSFEREE; PAYMENT TO THE COMMISSION FOR THE BENEFIT OF THE STATE AND TO THE TRANSFEROR PERMIT HOLDER; ISSUANCE OF NEW PERMIT] AND PROCEDURES FOR TRANSFERS OF ENTRY PERMITS. (a) The transferee shall pay for [such transfer the] the entry permit transferred at fair market value, [thereof,] except that the transferor permit holder may, as a gift to the transferee, waive the payment of [any] a part or all of his share of the transfer price, as provided in [subsections] (b) and (c) [hereof] of this section. In all cases except those in which the transferor permit holder waives the payment of [any] a part or all of his share of the transfer price, the fair market value shall be [determined by and be] equal to the total amount paid to the commission incident to the transfer [pursuant to subsection (b) hereof.] under (b) of this section. In [any] a transfer in which the transferor permit holder waives the payment of [any] a part or all of his share of the transfer price the fair market value shall be [as] determined by the commission [pursuant to] under section 310 of this chapter.

(b) The total transfer price [in its entirety] shall be paid to the commission at the time of transfer. After deducting the share for the benefit of the state as determined in [subsection] (c) [hereof] of this section, the balance shall be paid to the transferor permit holder.

(c) In all transfers the share of the transferor permit holder shall be determined as [follows] specified in this subsection and the share for the benefit of the state, retained by

16.43.280 (continued)

the commission at the time of transfer, shall be the [balance] difference between the percentages specified in (1)-(2) of this subsection and 100 per cent.

- (1) For the transfer of an initial issue entry permit the share of the transferor permit holder is 100% of the fair market value if the transfer application is submitted within one year of the issue of the permit. If the transfer application is submitted during the next succeeding year, the share of the transferor permit holder is 90%. [if during the next, 80%; then] The share of the transferor permit holder continues to [continuing to] decline by 10% per year thereafter until reaching 10% of the fair market value at the beginning of the tenth year. [then continuing thereafter at] After that time, the share of the transferor permit holder is 10% of the fair market value;
- (2) for the transfer of all other entry permits the share of the transferor permit holder is 10% of the fair market value.

(d) After payment to the commission [pursuant to subsection (b) hereof] under (b) of this section, the commission shall issue an entry permit to the transferee. [Such entry permit shall, for all purposes of this chapter, be] After issuance to the transferee, the entry permit is considered to be a new entry permit.

16.43.280 (continued)

(e) The commission shall adopt regulations prescribing procedures to be followed in applying for and effectuating transfer [pursuant to] under this section.

(f) The term, "transferor permit holder", as used in sec. 280 of this chapter includes all transferors described in sec. 280 of this chapter.

Sec. 16.43.290 RETIREMENT OF ENTRY PERMITS. [PRICE PAID BY THE COMMISSION.] (a) The holder of an entry permit whether currently renewed or not may surrender the entry permit to the commission for retirement at any time. In addition, [if at the time of the death or a permit holder he was eligible to surrender his permit, and if surrendered within one year of the death of such permit holder, his] a deceased permit holder's personal representative may [likewise] surrender the permit for retirement if he surrenders it within one year of the death of the permit holder. The commission may adopt regulations for the determination of the person entitled, as the holder's successor in interest, to [effect such] make the post-death surrender [in the stead] instead of the personal representative if none has been appointed.

(b) Upon [such] the surrender [for] of an entry permit for retirement the commission shall pay [the surrenderor] the person who surrenders the permit that portion of its fair market value determined as follows:

(1) for the surrender of an initial issue entry permit and if during the first three years after issue: 100%; if surrendered during the next succeeding three years: 75%; if surrendered during the next succeeding three years: 50%; if surrendered thereafter: 25%;

(2) for the surrender of all other entry permits: 25%.

Sec. 16.43.300 INTERFISHERY CHANGE BY PERMIT HOLDERS. The holder of an entry permit whether currently renewed or not may, by submitting to the commission a notice of intended surrender and retirement of his permit [pursuant to] under section 290 of this chapter, become a preferred applicant for the issuance of a new entry permit with respect to any other fishery or fisheries he may designate in his notice. Such notice, unless renewed, [shall] ceases to be effective one year after its submission. Upon [or coincident with] the issue of a new entry permit [pursuant to such] under this application, the surrender and retirement of the applicant's former entry permit shall [be effectuated pursuant to] occur as prescribed under section 290 of this chapter.

16.43.310 [ENTRY PERMITS;] ESTABLISHMENT OF FAIR MARKET VALUE
OF ENTRY PERMITS. The commission shall adopt regulations for
determining the fair market value of entry permits for purposes
of sections 229, 280 and 290 of this chapter.

Sec. 16.43.320 PENALTIES. (a) A person who violates sec.[tion] 180 of this chapter or a regulation promulgated under this chapter, upon conviction, is guilty of a misdemeanor and [, upon conviction] is punishable by a fine of not more than \$5,000 for a first conviction; a fine of not more than \$10,000 for a second conviction; and, for a third conviction, a fine of not more than \$10,000 and, in addition, shall [suffer forfeiture of any and] forfeit all interim-use permits and entry permits held by him and [permanent loss of] shall permanently lose eligibility for an interim-use permit [and] or for an entry permit, either temporary or permanent.

(b) A person who knowingly makes a false statement as to a material fact in the application for an entry permit, or in the application for a temporary permit under sec.[tion] 230 of this chapter, or, either as a transferor or transferee, in the application for a transfer under sec.[tion] 280 of this chapter, or a person who assists another by knowingly making a false statement as to a material fact or in support of the other person's application for issuance or transfer of an entry permit, either temporary or permanent, upon conviction is guilty of a misdemeanor [and, upon conviction,] and shall [suffer forfeiture of any and] forfeit all interim-use permits and entry permits held by him, either temporary or permanent, and shall [permanent loss of] permanently lose eligibility for an interim-use permit and for an entry permit, either temporary or permanent.

Sec. 16.43.330 APPLICATIONS OF REGULATIONS OF BOARD OF FISH AND GAME. Nothing in this chapter limits the powers of the board of fish and game, including the power to determine legal types of gear, and the power to establish size limitations or other uniform restrictions applying to a certain type of gear. Holders of entry permits issued [pursuant to] under this chapter are subject to all [va, id] regulations adopted by the board of fish and game.

Sec. 16.43.340 DEFINITIONS. In this chapter

(1) "allowable commercial take" means the approximate size range of the anticipated commercial harvest of a species under sustained yield management implemented by regulations adopted by the Board of Fish and Game and emergency regulations adopted by the commissioner of fish and game;

(2) "commission" means Alaska Commercial Fisheries Entry Commission;

(3) "financially healthy fishery" means [one] a fishery that returns to the fishermen [therein a] participating in it sufficient income so that: a) they are financially able to keep their vessels and gear in good and safe operation condition; b) they are financially able and encouraged to improve their vessels, gear, and techniques including, [under permission of the Department of Fish and Game if necessary] when permissible experimentation with new vessels, new gear, and new techniques; and c) they are sufficiently free of economic pressure that they can and will operate faithfully within [the letter and spirit of regulations and] laws [respecting] relating to the operation of the fishery.

(4) "fishery" means the fishery resource of a particular administrative area and the commercial taking of fish [therefrom by] from it with a particular type of gear.

(5) "gear" means the specific apparatus used in the commercial harvest of a species, [and includes by way of example] including but not limited to, purse seines, drift gill nets, set gill nets, and troll gear;

16.43.340 (continued)

(6) "priority classification" means the allocation of potential permit applicants into reasonable grouping of similarly situated applicants and the priority ranking of those groupings according to the extent to which they satisfy the statutory standards of preference;

(7) "qualified applicant" means that the person described is presently able and presently intends to participate actively in the fishery and is not ineligible under section 320 of this chapter;

(8) "type of gear" means a customary and identifiable classification of gear including those classifications for which separate regulations are adopted by the Board of Fish and Game and for which separate gear licenses are required by AS 16.05.550-16.15.630;

(9) "unit of gear" means the maximum amount of a specific type of gear which can be fished under a single gear license subject to [all valid] regulations established by the Board of Fish and Game defining the legal requirements for that type of gear;

(10) "vested interest" means a present or fixed interest or right of present or future enjoyment of something of value, the nature of which could considering secs. 010 - 290 of this chapter, reasonably be considered to conflict with the public interest.

* Sec. 2. AS 16.05.050 is amended by adding a new paragraph to to read:

(11) [authorizing any] authorize the holder of a currently [renewed] validated entry permit under chapter [16.43] 43 of this

16.43.340 (continued)

title to engage upon an experimental basis in commercial taking of a fishery resource with vessel, gear, and techniques not presently suitable for or qualifying for licensing under any of the licenses specified in this chapter [setting standards therein for the commissioner to follow in determining which entry permit holders are so to be authorized in pursuance of the objective to develop a better fishery, both biologically and economically; and limiting the issuance of such authorizations to such number and duration that there are no more than ___ entry permit holders so engaged in any one fishing season.] in conformity with standards established by the commission.

* Sec. 3. AS 16.05.250(14) is amended to read:

(14) establishment of the times and dates during which the issuance of fish and game licenses, permits, and registrations and the transfer of permits and registrations between registration areas, game management units or subunits, is allowed. However, this paragraph does not apply to permits issued or transferred under ch. 43 of this title.

* Sec. 4. This Act takes effect on the day after its passage and approval or on the day after it becomes law without approval.

File
Crank Enslay

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March 9, 1973

School of Law
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Mr. Michael Whitehead
Staff Assistant to Sen. W. I. Palmer
Alaska State Legislature
Pouch "V"
Juneau, Alaska 99801

Dear Mike:

Since our conversation this morning I have been worrying the proposal to modify § .200 to include a reference to the applicant's cost of living as one measure of economic dependence upon the fishery. Contrary to my reaction this morning, I am coming to the conclusion that such inclusion would be quite risky.

My premise is that the only legitimate reason for having a preference for persons previously involved in a fishery is the avoidance of hardship upon them if, by the new system, they should be excluded. The present draft of section .200 lists three measures of that hardship, the economic dependency upon the fishery, the availability of alternate sources of income, and the investment in vessel and gear. These, I believe, are clearly pertinent.

But is there any difference in hardship between two fishermen applicants for each of whom the fishery constitutes the same percentage of his total income, e.g., each is wholly dependent thereon? If for example we look at the two of them and perceive that for one the cost of living is higher because of delivery costs of essential goods and services, as obtains generally in Alaska, does that mean it would be harder on him to be cut out of the fishery than it would for the other person? I am doubtful. Perhaps, however, for two otherwise comparable fishermen who derive only part of their income from the fishery, how hard it would be on each of them to be reduced to those other sources as his sole income would in fact vary depending on how much the remaining income would buy for him. (But, of course, he can move to a place where the cost of living is not so high, and thus the differential in hardship would at least be lessened.)

Even if we assume the accuracy of the observation that in the partial dependency situation the cost-of-living differential is related to hardship, we must recognize the enormous vulnerability that inheres in the stark result: to take the factor into account will surely favor Alaska residents.

It seems to me that the three factors now chosen are, broadly speaking, of a different sort from that suggested by the cost-of-living differential. That

Mr. Michael Whitehead
March 9, 1973
page two

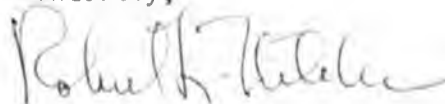
is, they measure directly and singly the existence of hardship; they apply equally well and logically to all applicants in their measure of hardship; and only in one factor, the availability of other livelihoods, do they measure something that is determined by widely variant factors as you move from one applicant to another.

If, different from what is proposed (and, indeed, as seems highly impracticable), we were to make a highly individualized inquiry, covering all facets of each applicant's life, family, etc., in ranking applicants in relative degrees of hardship, we might be justified in considering the cost-of-living differential as one of many detailed factors, even though it would be relevant in only some of the applicant-situations. But, to choose this one and only this one of these somewhat detailed additional possible factors would but support the charge upon which the proposal is most vulnerable -- that both its purpose and its operative effect are to prefer Alaska residents over non-residents.

Reasoning thus, I fear the proposal really brings us back to a point we left some days ago, when we considered and rejected the proposition that permits be issued preferentially to those for whom the fishery would, as in the past, furnish a minimum level of subsistence. As I said then, that proposition flies in the face of a tenet basic to many Supreme Court decisions -- that the people of the country as a whole are one economic unit, and no state may confine economic benefits to certain persons determined either geographically or, indeed, by any means not related to and wholly incidental to the accomplishment of some other objective. Only as a state may promote the overall welfare may it, as incident to that promotion, produce results that happen to benefit some persons, as, for example, the state may benefit those persons who pass the bar examination.

My recommendation is thus not to make the modification, for to do so surely would incur great risk.

Sincerely,



Robert L. Fletcher
Professor of Law

RLF:mc

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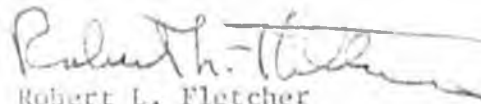
March 2, 1973

Mr. Michael Whitehead
Staff Assistant to Sen. W. I. Palmer
Alaska State Legislature
Pouch "V"
Juneau, Alaska 99801

Dear Mike:

On re-reading this morning I discovered two mistakes
(I'm sure there are more). I enclose two replacement
pages.

Sincerely,


Robert L. Fletcher
Professor of Law

RLF:mc

enclosure

.270 ENTRY PERMITS; ELIGIBLE TRANSFEREES

Any ^{qualified} person who is presently able and who presently intends to engage actively in the fishery is an eligible transferee, including one described in section .180, subsections (b), (c) and (d).

.280 (continued)

of the fair market value if the transfer application is submitted within one year of the issue of the permit; if during the next succeeding year, 90%; if during the next, 80%; then continuing to decline by 10% per year until reaching 10% of the fair market value at the beginning of the tenth year; then continuing thereafter at 10% of the fair market value;

(2) for transfer of all other entry permits, 10% of the fair market value.

(d) After payment to the commission pursuant to subsection (b) hereof, the commission shall issue an entry permit to the transferee. Such entry permit shall, for all purposes of this chapter, be considered a new entry permit.

(e) The commission shall adopt regulations prescribing procedures to be followed in applying for and effectuating transfer pursuant to this section.

130 ADMINISTRATIVE PRACTICES ^{and} HEARING
PROCEDURES

(a) The commission shall adopt regulations, consistent with due process of law, which govern practice and procedure and the conduct of all investigations, hearings and proceedings which it holds.

(b) Common law and statutory rules of evidence apply to investigations, hearings and proceedings before the commission, except when the commission determines that their application is not required in order to assure fair treatment of all parties and that the evidence is relevant and of the sort on which responsible persons are accustomed to rely in the conduct of serious matters.

(c) The commission, each commissioner or an employee authorized by the commission may administer oaths, certify to all official acts, and issue subpoenas and other process to compel the attendance of witnesses and the production of testimony, records, papers, accounts and documents in an inquiry, investigation, hearings, or proceeding before the commission in any part of the state. The commission may petition a court of this state to enforce its subpoenas or other process.

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Sec. 16.43.140. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a)
The administrative adjudication procedures of the Administrative Procedure Act (AS 44.62) do not apply to adjudicatory proceedings of the commission except that final administrative determinations by the commission are subject to judicial review as provided in AS 44.62.560 - 44.62.570.

(b) AS 44.62.10 - 44.62.320, 44.62.640 and 44.62.650 apply to regulations adopted by the commission.

Sec. 16.43.150. ADMINISTRATIVE AREAS. (a) The commission shall establish administrative areas suitable for regulating and controlling entry into the commercial fisheries. The commission shall make the administrative areas reasonably compatible with the geographic areas for which specific commercial fishing regulations are written and according to which the legality of types of gear is defined by the Board of Fish and Game.

(b) The commission may modify or change the boundaries of administrative areas when necessary and consistent with the purposes of this chapter.

DETERMINATION; can be made by... desired maximum entry permits, etc.

Sec. 16.43.020. ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION.

(a) There is established the Alaska Commercial Fisheries Entry Commission as a regulatory and quasi-judicial agency of the state. The commission consists of three members appointed by the governor and confirmed by the legislature in joint session.

(b) The governor shall designate one member of the commission as chairman of the commission. The member designated shall serve as chairman for a term of two years, and may be designated chairman for successive two-year terms.

CSSB 39

"An Act relating to the regulation of entry into Alaska commercial fisheries and providing for an effective date."

COMMITTEE REPORT

JUDICIARY
FINANCE

7-21-72

HOUSE

Mr. Speaker:

Date March 1972

The Committee on FINANCIAL has had HS 426

under consideration. A Majority of the members of the Committee

- recommends it DO PASS
- recommends it DO NOT PASS
- recommends it DO PASS WITH ATTACHED AMENDMENT(S)
- recommends it BE REPLACED WITH CS FOR _____ AND THAT
CS FOR _____ DO PASS
- "and" recommends it BE REFERRED TO THE _____
COMMITTEE
- reports it back WITHOUT RECOMMENDATION
- "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

*File
Hammond proposal*

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ELIGIBILITY FOR GEAR LICENSE. (a) A person who held a gear license for any two of the seven years prior to the effective date of this Act is eligible to purchase a gear license for any district. However, he may fish for only one species per district.

(b) After initial eligibility is established under (a) of this section, a person may renew his gear license for each year he pays the appropriate license fee. If the person fails to pay the required license fee before April 15 in any one year the person is prohibited from repurchasing a gear license at any time.

LOTTERY FROM LICENSE POOL. Five per cent of the number of licenses which are forfeited or otherwise released each year shall be available to new applicants for a drawing by lot, under regulations established by the department.

DETERMINATION OF OPTIMUM LEVELS OF GEAR. (a) The department shall determine the optimum levels of gear for each district and each type of gear based on the number of fish harvested over the four-year period immediately preceding the effective date of this Act.

(b) This level may be changed temporarily when, in the determination of the department, peak runs necessitate the change.

LICENSE FEE. For a permit holder who does not actively participate in commercial fishing under this chapter, the license fee is \$100 for a resident and \$300 for a nonresident. A permit holder who actively participates in commercial fishing under this chapter shall pay as a fee an amount equal to one per cent of the gross value of his catch during the last season actively fished.

NOTES

In 1973 anyone would be eligible to buy a license for any district and he may buy as many licenses as he desires. There would be no commission.

As long as the individual pays his license fee each year, then he would be eligible to fish or to purchase a license the next year. Actual fishing of the license would neither be required nor encouraged.

Retain a low license fee so that there would be no undue cost on a parent who wished to license his children for many years until they were able to involve themselves in the fishery. This would (1) keep license revenue up and (2) provide no pressure to actually fish the license in order to make up for the license cost.

When a license was not repurchased in any one year, then eligibility would be lost and the individual would not be able to purchase a license the following year or any future year.

Ten percent of the number of licenses lost in each year would be available to the public under a lottery system. In other words, in each year then if for each hundred licenses that were lost because of non-payment, then ten people would be able to enter the fishery, (From an applicant pool).

Board (and Department?) would estimate the optimum amount of gear for each area and each type of gear based on the number of fish harvested over the last four years.

After optimum level had been reached as indicated above, then the number of new entrants into the fishery each year would be equal to the number of licenses that had not been revalidated. Again, the licenses would be available to the general public, perhaps through an applicant pool, on a lottery basis.

Department would have the authority to issue an increased number of licenses on a temporary basis for peak year runs when necessary (shift from other areas?).

Licenses would be available for purchase any time of the year. However, if an individual expects to actually fish the license, then the license must be purchased prior to April 15th of any given year.

Consider \$100 resident fee, \$300 non-resident fee if an individual does not actively participate.

Information Points:

Senator Hammond is convinced that utilizing the sliding gear theory as they are in Bristol Bay this year and the Borough's taxing authority can quite effectively decrease the amount of gear over a short period of time to reach desired levels.

Question - If the Borough can accomplish their goal this way,
can the State also?

Question - If Bristol Bay Borough can work this out effectively,
can the Kenai Peninsula Borough also?

For an act entitled: 'An act relating to salmon gill net gear licenses.'

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

Section 1. LEGISLATIVE FINDINGS. (a) The legislature finds that uninhibited entry into certain Alaska salmon fishing areas or districts has resulted in massive accumulations of salmon fishing gear with attendant ever increasing difficulty and expense in providing for sound conservation and management of the resource.

(b) The legislature further finds that excessive entry requires increased expenditures by the state to provide for the health and welfare of those most dependent upon fishing for livelihood. Such increased expenditures diminish the amount of revenue which could be used for improved management and rehabilitation of the fisheries.

Section 2. LICENSES FROZEN. The Department of Revenue may not issue a greater number of salmon gill net gear licenses than the greatest number of such gear licenses issued during the previous year for a given fishing area, or district. Licenses shall be first issued upon application to those licensed for the given area or district the previous year. If by the registration date deadline there remain some unclaimed gear licenses, the Department of Revenue shall determine by drawing those new applicants who shall be issued one-half the number of licenses unclaimed. Fees accompanying applications shall not be refundable.

Section 3. SPECIAL SALMON GEAR LICENSE FEES. (a) Should the best available evidence indicate that the anticipated catch for a given salmon fishing area or district not be sufficient to provide incomes equal to or exceeding the national poverty level to each of as many fishermen as were registered in the given area during the previous year, the Board of Fish and Game, unless opposed by the local advisory board representing the given area or district, shall designate such as a Distressed Fishery.

(b) In areas or districts so designated a special salmon gear license fee shall be levied. This fee shall be in addition to the regular gear and license fees and shall be equal to one percent (1%) of the value of salmon sold by a resident fisherman and equal to three percent (3%) of the value of the salmon sold by non-resident fishermen except that this fee shall be refunded to fisherman, resident or non-resident, who can upon demand furnish satisfactory evidence to the Department of Revenue that at least seventy-five percent (75%) of their earned gross income during the previous year was derived from ~~salmon~~ fishing in the given area or that his gross income during the previous year was less than Five Thousand Dollars (\$5,000.00). A fee collected under this section is computed, filed, enforced and dispensed in the same manner as prescribed in the Raw Fish Tax law for salmon canneries. Such fees shall be withheld from the purchase price of salmon and remanded to the Department of Revenue by the purchaser.

Section 4. LEGISLATIVE INTENT. It is the intent of the legislature that an amount at least equal to the general fund revenues accumulating as a result of the above shall be appropriated for improved management and rehabilitation of the fisheries resources of the state.

SB

39

The Legislature of the State of Alaska
FISCAL NOTE
First Session - Eighth Legislature

I. REQUEST

Bill Identification: SB 39
 Title: Limited Entry
 Requested by: Senate Fisheries Committee Date: 2/15/73
 Return Date Requested: 3/15/73
 Agency: Department of Law Program: _____

II. FISCAL DETAIL

Budget Request Unit(s) Affected: \$400,000

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 73	FY 74	FY 75	FY 76	FY 77	FY 78
100 PERSONAL SERVICES	-0-	206.3				
200 TRAVEL	-0-	40.0				
300 CONTRACTUAL	-0-	88.7				
400 COMMODITIES	-0-	5.0				
500 EQUIPMENT	-0-	10.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
300 Cont. Services Dept of Law		50.0				
TOTAL.		400.0				

B. FUNDING: (Thousands of dollars)

GENERAL FUND	-0-	400.0				
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	81 / 2	/	/	/	/
MAN MONTHS (P./T.)	/	96 / 2	/	/	/	/

III. ANALYSTS (See Fiscal Note Preparation Instructions, Section III)

Please see attached sheet.

IV. ATTACHMENTS

Attachment A: Organization and Staffing Chart

V. DATE: March 15, 1973 PREPARED BY: Allan B. Adasick

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislature Named)

A. Assumptions:

The cost of the limited entry program will be paid for from entry permit revenues, which will go into the general fund. Interim entry permits must be issued by January 1, 1974. The appropriation for the commission will be an advance against anticipated revenues to the general fund.

B. Program Summary:

The Alaska Commercial Fisheries Entry Commission is a new body that will implement a new and complex program limiting and stabilizing the amount of gear in the State's commercial fisheries. This program, accomplished through the issuance of entry permits, will benefit Alaska's fisheries resources and alleviate the economic distress of her fisherman. The \$50,000 appropriation to the Department of Law for contractual services would allow the Limited Entry Study Group to continue its work for another year. The governor's program deals only with the salmon fishery at the outset, and the study group would analyze the need to add other species to the limited entry program.

PERSONNEL SERVICES

<u>Permanent Employees</u>	Range	Salary
3 Commissioners	28-B (29,460)	88,380
1 Executive Director	24-A	23,628
1 Executive Secretary	14-A	11,316
1 Clerk Typist III	9-A	7,824
1 Research Analyst IV	21	21,150
1 Research Analyst II	16	13,104
	Sub-total	165,402
	Benefits - 20%	33,080
	Personnel Svc.	
	Sub-total	198,482

Temporary Employees

2 Temporary for 6 months		7,272
	Benefits - 7%	509
	Sub-total Temporary	7,781

TOTAL PERSONNEL SERVICES	206,263
TRAVEL	40,000

CONTRACTUAL SERVICES

Phone	8,000	
Postage	11,250	
Printing	6,000	
Moving Expenses	4,500	
Rent	12,000	
Rental Equipment	27,000	
Professional Services	20,000	
	Sub-total	88,750
Professional Services - Department of Law	50,000	

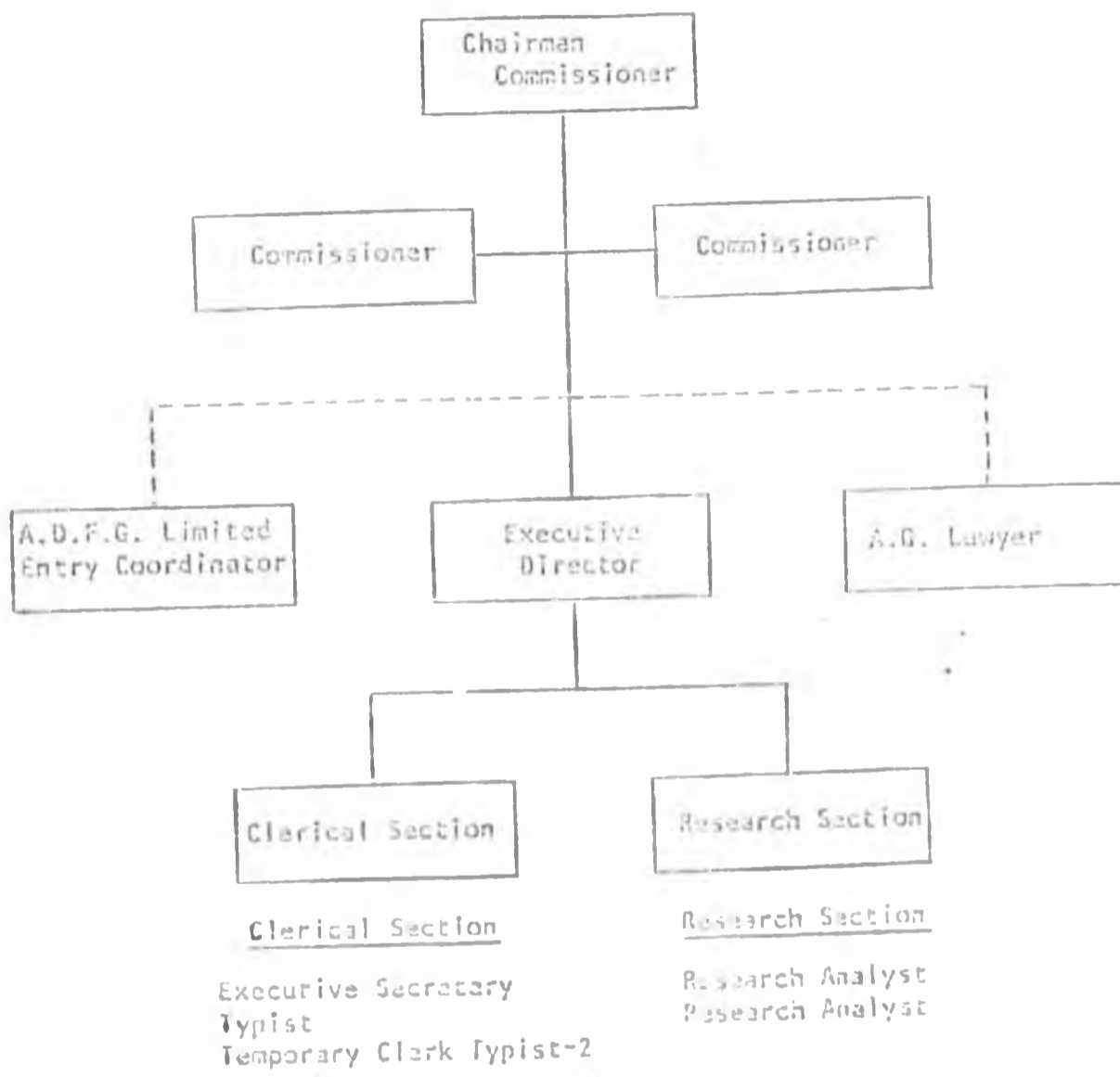
TOTAL CONTRACTUAL SERVICES	138,750
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Commodities	5,000
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Equipment	16,000
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TOTAL	400,013
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ATTACHMENT A: ORGANIZATION AND STAFFING CHART
SB 39



SB 39

TRANSFERABILITY - ONE ASPECT OF
WHAT ALL THE FUSS IS ABOUT.

Section 250. S. B. 39, the proposed limited entry program for Alaska's fisheries, holds the key to the identity and character of future participants in Alaska's fisheries. While the interests of Alaskan fishermen depend^{ent} on the fishery, who have been actively participating therein, are adequately protected in establishing the initial level of participation in our fishery, there are grave apprehensions concerning future participation as controlled through Section 250.

There are three transferability basis for determining participation in the State's fishery resources:

1. Luck.
2. Money
3. Participation and skill.

Free transferability as established in Section 250 adopts solely the monetary standard. In order to obtain entry into our fishery in the future, most fishermen will have to buy their way in. This standard presupposes a freely competitive marketing and financing system that exist, if at all, in very few locations in Alaska.

Free transferability based on a monetary standard will strike a severe blow to crew members and fishermen from economically depressed areas who depend upon processing interests for credit. It is these same processing interests who have a vested interest in seeing that a substantial number of non-resident "high-liners" receive permits at the expense of local fishermen who presently have inferior equipment, and who cannot obtain credit from governmental or other private financial institutions. While the Study Group on Limited

Entry has thoroughly documented and analyzed many aspects of the fishery, the credit financing system remains a largely unknown factor. Yet, it is this very information that should, indeed must, determine decisions on transferability.

While under the limited entry proposal a processor cannot own a permit, it is safe to assume that he will financially back those fishermen that he needs to maintain his superior bargaining edge. The problem of "industry control" and "vertical integration" when dealing with a transferability system based on monetary standards has been documented in recent works on limited entry.

Crutchfield and Pontecorvo (see attached article) point out that the limited entry proposals set forth for Puget Sound (free transferability of permits) might lead to integration by the processing interests. While they did find that a "hard core of independent fishermen" would still control a "marginal increment of each year's supply of fish" that "hard core" is very much diminished, or absent, in many areas of Alaska. Further, whereas the author's find vertical integration somewhat desirable, such a system may not be acceptable to the Alaskan fishermen on the beach.

Morehouse (Morehouse, T. A., Limited entry in the British Columbia salmon fisheries, in Alaskan Fisheries Policy, I.S.E.G.R., University of Alaska, 1972) found that the monetary standard in the Davis plan of vessel license and control would be disadvantageous to the poorer and smaller independent fishermen:

"The prospective winners under the Davis plan of vessel license control are the more prosperous fishermen owners, including companies, because access to fishery will depend upon the ability to pay for licenses and vessels, which are expected to increase in value. Staying in the fishery requires paying for a license or maintaining a place on a smaller number of boats,

and a license in a smaller number of places in the fishery. Thus, the losers will clearly include poorer fishermen and future fishermen.

* * *

Because some will win and others will lose, there is no single 'fishermen interest' in the fishery under the limited licensing scheme. However, to the extent that a smaller number of companies may acquire greater control of the fishery through consolidation and the use of their superior financial resources, there is a greater unity of interest among fishermen and their various organizations vis-a-vis the companies. (Ed., pp. 411 - 412)."

It is submitted that the present limited entry proposal will work a hardship similar to that described by Morehouse in those areas of the State characterized by present company domination through credit financing of not only vessels and gear, but food and clothing as well.

There is precedent for a non-transferable permit system. The Japanese coastal fishery which has a limited entry program has limitations on permit transfers:

"The rights fishery gives the operator exclusive right to carry out a particular body of water. This fishery right is granted by the Prefectural Government (almost always to a cooperative). The granted fishery right stipulates the type of fishery, the location, and the boundaries of the area included. It may also establish limitations on fishing seasons, etc.

The Prefectural Government prohibits the holder from leasing or mortgaging granted fishery rights. Also, transfer by the holder to other operators is strictly limited. (Herrington, W. C., Operation of the Japanese Fishery Management System, in Alaska Fishery Policy, I.S.E.G.R., University of Alaska, 1972, p. 22-423)."

Who should participate in Alaska's fisheries? Should it be those who are able to gain company financing? Should it be those who are the most skilled in the financing and credit system? Or, should it be those persons who are fishermen and who are willing

to invest their time and energy as fishermen?

We should consider not only those fishermen, and those areas, that presently competitive financially, but also those areas and fishermen dominated by financial institutions over which they have had little control. Further, we must not lock out of the future those individuals who are presently crew members, or subsistence fishermen, who cannot now, or in the foreseeable future, compete within the established credit-financing system.

Frank Flavin

SB 39 Transferability 1973 Don Calk
H. Resources



JUNEAU, ALASKA

Alaska State Legislature

Senate

SPECIAL COMMITTEE ON FISHERIES

As you are aware, one of the major problem areas of the Limited Entry legislation is that of transferability of entry permits. Attached are the various proposals under consideration by the Committee. It would be appreciated if you would, as objectively as possible, indicate what you feel are the favorable aspects and the drawbacks of each and which approach to transferability you favor. Please return your comments to room 105, Assembly Apts. at your earliest convenience. Thank you.

Common to all proposals under consideration are the following:

1. Transfer only to individuals with the present ability and intent to actively participate in the fishery.
2. The ability to transfer from one type of gear to another within an administrative area based on a transfer ratio to be established by the commission.
3. Emergency transfer provision in the event of the death, sickness, or injury of the permit holder.

Do you have any comments on the above?

Additional provisions which you feel are necessary regardless of the type of transferability:

Options which could be used in conjunction with any of the free or restricted transferability proposals:

1. Moratorium period
2. Substantial tax on entry permit sales as follows:
 - a. 75% tax on the fair market value of an entry permit when sold to the commission. The commission would be authorized to purchase permits only until the optimum number of gear units for each type of gear in each administrative area were reached.
 - b. 90% tax on the fair market value of an entry permit when sold to an individual.
3. State loan program to provide financial assistance to entry permit holders or purchasers in cases of hardship.

Do you have any comment on the options ?

PROPOSALS

I. Free transferability thru the commission.

A. Favorable aspects:

B. Undesirable aspects:

II. Restricted transferability thru the commission to an applicant pool by priority classification based on a reasonable balance of:

1. extent of past and present participation in the area fishery or in similar fisheries (experience factor).
2. training pertaining to commercial fishing.

A. Favorable aspects:

B. Undesirable aspects:

III. Restricted transferability thru the commission by lottery.

A. Favorable aspects:

B. Undesirable aspects:

IV. Restricted transferability thru the commission to an applicant pool by lottery with the same applicant pool criteria as proposal II.

A. Favorable aspects:

B. Undesirable aspects:

V. Non-transferability of permits (no value to an entry permit).
New entry emanates from the commission on the basis of
permits returned or forfeited

A. thru applicant pool.

Favorable aspects:

Undesirable aspects:

B. by lottery.

Favorable aspects:

Undesirable aspects:

C. thru applicant pool by lottery.

Favorable aspects:

Undesirable aspects:

VI. Is there another combination of the proposals, or a proposal and option which you favor ?

A. Favorable aspects:

B. Undesirable aspects:

Any additional comment:

File

TRANSFERABILITY

In dealing with this subject, we must work within the framework of the following legislative purpose:

"to promote the economic health and stability of commercial fishing in Alaska by regulating and controlling entry into the commercial fisheries in the public interest and without unjust discrimination."

In defining the objectives to be accomplished in transferability, the following constitutional guidelines must be met:

- 1) Legitimate legislative objectives
- 2) Rational means to effect the objectives
- 3) Classification of persons upon a basis reasonably conceivable as relating to the objectives.

There are three basic objectives which the committee should consider in exploring the alternatives.

- 1) Limit the initial entry level into the fishery in a fair and equitable manner. The method of transferability may effect the initial entry level.
- 2) Retain as much freedom of enterprise as possible.
- 3) Accomplish the objectives through voluntary action of the fisherman.

Assuming that unrestricted transferability will result in speculation and higher initial entry levels, a dichotomy exists in the first two objectives. To solve this, the speculative nature of permits could be limited by taxation or by control of transferability, or both. It should be noted that the ability to fish is neither a right nor a privilege but is in a grey area between, and therefore is susceptible to regulation according to Fletcher's legal analysis of salmon gear limitation.

It would seem that consideration should now be given to the collateral objectives.

- 1) Limit the cost to the second generation of fishermen for utilizing a common resource.
- 2) Limit the ability of financial power blocks to economically coerce the unsophisticated fisherman.
- 3) Allow transfer within the family unit.

LIMITED ENTRY

OBJECTIVES:

- (1) put a lid on
- (2) provide for increased economic efficiencies and returns
- (3) give Alaskans an equal or preferred opportunity
- (4) improve the position and outlook of the fishermen

PROBLEMS WITH A COMMISSION:

- (1) too much cutting authority
- (2) too much initial upheaval and hassles

PROBLEMS WITH FREE TRANSFERRABILITY:

- (1) state loses property right for a common resource
- (2) extreme financial hindrance for future fishermen
- (3) discourages natural attrition
- (4) encourages speculation
- (5) forces processor competition in financing permits
- (6) required paper capital creates economic waste

PROBLEMS WITH A LOTTERY:

- (1) gives participants no assurance of eventual entry
- (2) no assurance offspring may fish
- (3) with minimal or no experience requirements, encourages inefficient, and possibly dangerous, operators

PROBLEMS WITH APPRENTICESHIP POINT SYSTEM:

- (1) tends to create a closed class
- (2) rewards longevity at possible expense of ability
- (3) too narrow classifications possibly unjustifiable

PROBLEMS WITH COMPETITIVE OR SEALED BIDDING:

- (1) favors those with money
- (2) no assurance

POSSIBLE SOLUTIONS:

- (1) Our fisheries are so varied that no one solution would likely to be applicable for all areas equitably. Therefore we should consider combinations of the ingredients (luck, skill and money) in finding solutions tailor-made for each area and type of gear.
- (2) relieve commission of strong initial cutting authority, thereby removing many objections. Have simple initial requirement, like maybe those having actively fished a gear license one of the past two years. Gives many a chance to continue fishing.
- (3) require permits to revert back to the state, disallowing transferrability. Eliminates speculation, encourages inefficient operators to drop out rather than hang on. causes fishermen to fade away at a natural pace or rate.
- (4) Allow for a commission to issue new permits at a fluctuating percentage of those returned to the state. All new permits could be non-transferrable, but they could be issued under a combination of methods.
 - (a) one group could be issued on a point system, rewarding longevity, economic dependence--giving assurance to those actively waiting that some day a permit

- will be attainable.
 - (b) one group could be issued by lottery from a group of not so highly qualified applicants
 - (c) one group of NON-TRANSFERRABLE permits could be issued by competitive or sealed bidding among highly and/or moderately qualified applicants.
 - (d) one group of non-transferrable permits could be issued by competitive and/or sealed bidding among all applicants.
 - (e) the above system of issuance could be on a time-staggered basis.
 - (f) the percentage of mix among the above systems could be varied for different areas and types of gear.
- (5) Preferences of some type could be given to active permit-holders for issuance of permits for additional, complementary areas and types of gear. These could be issued on a short-term or long term basis by lottery, point system, and/or bidding. This would provide for more efficient use of the existing fleets, and would not lock a permit-holder to one area and/or type of gear forever.
 - (6) The commission could study the makeup and economic picture of the different areas and type of gear, in order to consider possible recommendations to the legislature for granting free or restricted transferrability of permits for specific type of gear and areas. This could be dangerous insofar as it might encourage some to continue to hang on in hopes of a future windfall.
 - (7) Emergency or temporary transfers could be allowed for limited situations where relief skippers are necessary, or death, illness, or extreme hardships make it desirable.
 - (8) A compensation program could be set up for a limited period of time for those suffering real financial losses from boat, gear or site purchases that would be adversely affected by limited entry. A further program could be set up for a limited length of time whereby the state could purchase boats, gear and sites from those wishing to retire from commercial fishing and who would otherwise have difficulty recouping their investments. Those fearful or unable to 'swim' in the natural competition ahead would have an out other than sinking.

This entire proposal is by no means without problems. It will not result in a drastic, immediate reduction of gear. It would not force out some whom many would like to see forced out. It would require the human hand of a commission, that could not be infallible, and is not without dangers, but would be required to operate with facts, figures and purposes that would be tested by the courts and could be changed by the legislature at any time. In fact, any part of the above proposal could be changed by the legislature, for we would be locked into nothing, and we would not be giving away a property right for a common resource. The proposal could definitely start a limited moratorium, it could set up a commission to rationally set up a system of regulations for new entry, and legislative review could be required. We would be getting the show sanely on the road.

Dave Herrmstein

TRANSFERABILITY OF PERMITS - A few thoughts

We appear to be between a rock and a hard spot on this issue. There are three basic interest groups to be served here: 1) adequately financed vessel owners, 2) low income and heavily indebted fishermen, 3) crew members and "second" sons.

The transferability problems are extremely complex and diverse- unfortunately complex and diverse problems do not usually admit to simple formulas and easy solutions. Legal and paper solutions, while necessary, do not always solve the real problem. Free transferability is one of these solutions. Basically drafting and constitutionality questions are legal problems that are susceptible to legal solutions - economic coercion and the economic viability of crew members and low income fishermen are practical problems that may not admit to the legal solutions that we have found to handle our drafting problems. Further, any hard line we take now from a legalistic standpoint may eventually preclude an option that affords a practical solution to the economic problems that have been a major concern before the committee.

While we cannot, and should not, serve every vested interest group, neither should we ignore or bypass serious problems affecting a substantial number of our fishermen. AMEN

With these points in mind I suggest the following lines of inquiry.

OVERALL OBJECTIVE: What are our basic objectives?

GIVEN: 1) finite resource 2) common resource 3) limited participation

I. What kind of right are we establishing?

1. Exclusive property right - ie. farm
2. Use permit - ie. grazing permit
3. Cert. of public convenience - (competitive break) public utility
4. Mere license

II. What type of qualifications should permittees have to harvest this common resource?

III. What kind of transfer should we allow?

1. free
2. partially restricted
3. none - except in the family

Frank
Flower

SUMMARY OF COMMENTS ON TRANSFERABILITY

Free Transferability thru the commission

1. Meets the committee objective of retaining as much freedom of enterprise as possible.
2. Will increase the speculative nature of permits and the costs of compensation and/or a buy-back program.
3. By granting a transferable privilege, the State will loose the ability to control who utilizes a common resource.
4. Will encourage a greater adherence to conservation considerations on the part of those utilizing the resource.
5. If the State has a vested interest in keeping as many permits as possible in resident hands, free transferability may result in the flow of permits to non-residents with a more rapid rate among low income groups.
6. Vests the ability to utilize a common resource in private hands placing a monetary qualification on those who wish entry to the fishery.
7. Passes the cost for the privilege to use a common resource on to the second generation of fishermen.

Moratorium period prior to free transferability

1. May allow for the unsophisticated and those most dependent on the fishery an opportunity to improve economic condition. Their ability to withstand economic pressures could be substantially improved by a State loan program and/or the involvement of the Native Regional Corporations.

Free Transferability thru the commission with a substantial tax on entry permits sales.

- A. 75% tax on the fair market value of an entry permit when sold to the commission. The commission would purchase permits in an area until the optimum gear levels were reached.
- B. 90% tax on the sale of an entry permit to another individual.
1. Would decrease the speculative nature of the permits and the costs of compensation and/or a buy-back program.
2. Does not pass the cost for utilizing a common resource on to the second generation of fishermen. The major portion of appreciation in value reverts to the State in the form of taxes.

3. Would encourage "under-the-table" schemes which would substantially increase the administrative policing required.
4. Offers an incentive to sell to the commission in over-gearred areas.
5. Could allow for transfer within the family unit at minimal costs.

Restricted Transferability thru the commission to an applicant pool

1. Would allow those who have been dependent on the fishery as non-gear operators an improved chance of entry.
2. Would allow for State control of individual utilizing a common resource.
3. Depending on qualifications, could create a closed class and if not, may favor non-residents.
4. Depending on the right-privilege dichotomy, could be considered discriminatory to those with no experience or training, but who wish to utilize a common resource.
5. Would increase an individuals ability to obtain financing (as opposed to lottery).

Restricted Transferability thru the commission by lottery

1. Would be unquestionably fair.
2. Would make financial planning very difficult for those in lottery.
3. Would not allow any advantage to those non-gear operators dependent on the fishery.

Restricted Transferability thru the commission only to family members, with forfeited permits issued by lottery or applicant pool.

1. Grants an individual the privilege to utilize a common resource on the basis of a family members use of the resource.

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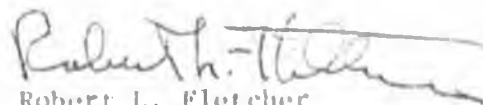
March 2, 1973

Mr. Michael Whitehead
Staff Assistant to Sen. W. I. Palmer
Alaska State Legislature
Pouch "V"
Juneau, Alaska 99801

Dear Mike:

On re-reading this morning I discovered two mistakes
(I'm sure there are more). I enclose two replacement
pages.

Sincerely,


Robert L. Fletcher
Professor of Law

RLF:mc

Enclosure

.270 ENTRY PERMITS; ELIGIBLE TRANSFEREES

Any ^{qualified} person who is presently able and who presently intends to engage actively in the fishery is an eligible transferee, including one described in section .180, subsections (b), (c) and (d).

.280 (continued)

of the fair market value if the transfer application is submitted within one year of the issue of the permit; if during the next succeeding year, 90%; if during the next, 80%; then continuing to decline by 10% per year until reaching 10% of the fair market value at the beginning of the tenth year; then continuing thereafter at 10% of the fair market value;

(2) for transfer of all other entry permits, 10% of the fair market value.

(d) After payment to the commission pursuant to subsection (b) hereof, the commission shall issue an entry permit to the transferee. Such entry permit shall, for all purposes of this chapter, be considered a new entry permit.

(e) The commission shall adopt regulations prescribing procedures to be followed in applying for and effectuating transfer pursuant to this section.

WORK DRAFT

Pg. 11, Sec. 16.43.250 Transfer of Entry Permits

(a) Following the issuance of entry permits under sec. 220 of this chapter, the commission shall adopt regulations setting forth the qualifications for applicants for permit transfers or any new entry. The regulations shall define reasonable priority classifications of similarly situated potential applicants based upon a reasonable balance of the following standards of preference:

- (1) Extent of past and present participation in the area fishery or in similar fisheries.
- (2) Approved training program pertaining to commercial fishing.
- (3) Ability and intent to participate actively in the fishery.

(b) Transfers under (a) of this section may be made only within the highest priority classification as determined by the commission.

(c) There is a ninety per cent tax payable to the commission under regulations established by it on the appreciated value of an entry permit when the permit is transferred by sale to another person. For the purposes of this subsection, appreciated value means the difference between the purchase price and the sale price at fair market value. When a transfer by sale is made to the commission, the tax required

to be paid under this section is seventy-five per cent of the appreciated value of an entry permit. However, the commission is authorized to purchase permits only until the time the optimum gear level is reached for a specific type of gear in a specific administrative area. The commission shall establish procedures for the collection and administration of the taxes imposed by this section.

(d) The holder of an entry permit may, at any time, place his permit with the commission in trust, under regulations established by the commission. Upon request, the entry permit shall be returned to the trustee providing all fees are paid by the holder and all other requirements of law under this chapter are met. No permit while held in trust by the commission may be sold, transferred, limited, canceled or otherwise restricted.

(e) When otherwise consistent with the purposes of this chapter, the commission may adopt regulations providing for the transfer and reissuance of entry permits within a given administrative area from one type of gear to another type of gear. The regulations shall reflect the relative differences in 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.

PROPOSALS

The following proposals attempt to deal with two problems:

1. economic coercion by financial power blocks
2. qualifications for permits - experience or money (or both)

The first proposal merely buys time to explain the Act to people who do not have a academic or cultural background to appreciate its impact and perhaps to economically assist areas of impacted poverty.

The second and third proposals deal with qualification standards that could assist crew members and "second" sons in having a fighting chance to get permits. The second proposal leaves broad discretion in the Commission and the third provides more legislative guidance. If, under the second proposal, an unconstitutional regulation were adopted, it could be changed without legislative involvement.

Both the second and third proposals have an "out" in case there is detrimental court action.

The fourth proposal is presented in concept as it essentially eliminates transfers entirely. There is much to be said against excessive windfall gains from a common and "public" resource.

16.43.30 TRANSFER OF ENTRY PERMITS

(b) Except for emergency transfers pursuant to Sec. _____ of this chapter there shall be a two-year moratorium on all entry permit transfers pursuant to this section.

16.43.30 TRANSFER OF ENTRY PERMITS

(a) The holder of an entry permit may apply to the Commission to transfer his permit to another person. The Commission may adopt regulations setting forth fair and reasonable qualifications for permit transferees pursuant to this section. [can add standards and options -- i.e., commercial sale, lottery, other controls]

(b) If after due consideration, including public hearings in each administrative area, the Commission determines that a system of qualifications pursuant to (a) of this section is not feasible, the Commission shall approve permit transfer applications if the proposed transferee can establish present ability and intent to participate actively in the fishery, and the proposed transfer is otherwise consistent with the purposes of this chapter.

(c) Except for emergency transfers pursuant to Sec. _____ of this chapter, there shall be a two-year moratorium on all entry permit transfers pursuant to this section. [can add reasons]

III

16.43.30 TRANSFER OF ENTRY PERMITS

(a) The holder of an entry permit may apply to the Commission to transfer his permit to another person. The Commission may adopt regulations setting fourth the qualifications for permit transferees. Any regulations pursuant to this section shall define reasonable priority classifications of similarly situated potential applicants based upon a fair and reasonable balance of all the following standards of preference:

- (1) Extent of past and present participation in the fishery,
- (2) Extent of past and present participation in similar fisheries,
- (3) Training pertaining to commercial fishing.

The Commission may restrict permit transfers to persons in the highest priority classification pursuant to this section.

(b) If after due consideration, including public hearings in each administrative area, the Commission determines that a system of qualification pursuant to (a) of this section is not feasible, the Commission shall approve permit transfer applications if the proposed transferee can establish present ability and intent to participate actively in the fishery, and the proposed transfer is otherwise consistent with the purposed of this chapter.

(c) Except for emergency transfers pursuant to Sec. _____ of this chapter there shall be a two-year moratorium on all entry permit transfers pursuant to this section. [can add ref.]