

13. The following Permit Fee Schedule is proposed:

	<u>RESIDENT</u>	<u>NON-RESIDENT</u>
SEINE	\$150.00	\$300.00
GILLNET	75.00	150.00
TROLL	75.00	150.00
SPORT-COMMERCIAL	25.00	50.00

14. Advantages of a Gradual Attrition Program:

- a. The people who leave the fishery do so voluntarily without suing the State or having financial hardship forced upon them by the State.
- b. The fishermen have an opportunity to sell their investment in an active market which is not depressed by a large quantity of excess vessels and equipment.
- c. The support of more fishermen is available to increase the salmon runs through an aggressive salmon propagation program.

15. Reasons why Natural Attrition will occur up to (26% per year) (13% after 1/2 permits re-issued).

- a. Age. Most fishermen probably are within ages 30 to 60 years with an expectancy of a maximum of 30 years as a permit holder. Each year 3% of the fishermen will leave the fishery for reasons of age.
- b. Accidents and poor health.
- c. Fishing is a "way of life" as much as a lucrative profession. Some people will become disillusioned by the severity of the life.
- d. Some fishermen have short range goals in mind, such as a college education or a quick stake to invest in another livelihood.
- e. Many residents of Alaska are transients. Some of these will initially qualify for permits but will move away because they or their families would rather live elsewhere.
- f. Other part-timers will advance in their primary profession and will not be able to spare the time for fishing.
- g. Some will give up fishing because they will not improve fast enough to justify their continued efforts.
- h. Because the salmon fishery has poor years as well as banner years, some

fishermen will give up and sell out after a poor year.

- i. Some will meet hardship such as vessels being lost by storms, groundings or overloadings and will be unable to recover.
- j. Other reasons not listed.

16. Page 5 of the Governor's letter of January 10, 1973 shows a table of optimum units of gear or permit quotas and total of approximately 9000 (8917) gear units issued in 1971. A 12% per year gradual attrition rate could reduce the fishery to 66% of its present level in four years. It would reduce the critical areas by 50% in six years. By this time the runs should have recovered sufficiently by natural escapement and fishermen funded salmon propagation programs to support gear permits equal to at least 75% of the 1971 level.

17. Induced attrition may be accomplished as follows:

- a. The State may make some fishermen "an offer which they cannot refuse". \$\$\$ This buy back program will be financed with revenue from permit fees and the sale by sealed bid of entry permits. The permit fee shall be increased by 100% if necessary. It is estimated that \$2,400,000.00 would be generated annually for this program and would retire about 3% of the Net Gear @ \$10,000.00 each per year or 6% @ \$5,000.00 per year.
- b. The amount of gear which each permit holder is allowed to fish may be reduced in critical areas to maintain a sustained yield.
- c. The amount of time fishermen may fish a type of gear may be reduced in critical areas to maintain a sustained yield.

*place burden
on common fishermen*

18. An aggressive salmon propagation program financed by a bond issue and retired by

a raw fish tax shall be started simultaneously with the Limited Entry Program. An annual report shall be issued by the Department of Fish and Game including the amount of funds collected, funds expended the previous season, planned expenditures for the next year, results of the program to date and future objectives. The annual revenue for this program is estimated at approximately \$500,000.00. This salmon propagation program is considered to be essential to the legality and constitutionality of the Limited Entry Program because it proves good faith on the part of the State and the fishermen who are protected by the program to work toward improving the fishery. A larger catch would directly lead to an increase in the permit quota and thereby opening

the fishery by requiring the issuance of more permits. A larger catch and the issuance of more permits would also generate an increase in revenue to invest in salmon propagation to further develop the fishery.

19. A positive approach toward improving the fishery would be supported by both sport and commercial fishermen as well as the rest of the State because it would generate more tax revenue and business for fishery related industries such as suppliers, vessel repair facilities and tourism. A positive provision for salmon propagation would greatly improve the attractiveness of a Limited Entry Program to all concerned.

February 21 1973
Statement by J. S. Gaud

POSITION OF THE ASSOCIATION OF PACIFIC FISHERIES ON S.B. NO. 39

The Association of Pacific Fisheries membership consists of salmon processors who purchase and process some 90% of the salmon harvested in Alaskan waters. These companies have a tremendous investment in processing plants, repair facilities, tenders, vessels, supplies, and accounts receivable which are vital to the catching and processing of salmon in Alaska. To our knowledge no authoritative estimate of the investment of Association members in Alaska has been compiled but it is safe to say it runs to hundred of millions of dollars. We are currently in the process of compiling authoritative data on this matter.

Therefore, the Association is vitally concerned with any legislation which would substantially affect the basic, established economics of the salmon fishing and processing industries in Alaska and the investments of our members.

We will not argue the point that in certain fishing areas with some types of gear there are at times more units of gear registered and fishing than are necessary to harvest the run with optimum economic or managerial efficiency. This situation, however, varies markedly from year to year and area to area, and to merely define the extent of the problem becomes tremendously complex as evidenced by the magnitude of the report of the Governor's Study Group on Limited Entry, which we have not had the opportunity to analyze in detail (since it has not been made available to us), but which describes itself as "just a beginning of the analysis that will be required to put a limited entry program to work".

As evidenced by past attempts at legislation and regulation to deal with the problem of limiting entry and reducing the number of participants

in the salmon fisheries, any single piece of legislation raises a large number of questions and problems which are very complex and which are not clearly dealt with in the legislation. Senate Bill No. 39 is no exception in this regard. While the bill raises many complex issues which we have been unable at this point to fully evaluate, we would like to comment on some of the general areas of the bill which appear to be problem areas:

1. The bill makes no provision for compensation of fishermen, vessels and gear which are initially eliminated from the fisheries by the Commission's action and makes no provision for compensation for vessels and other investments which may be eliminated by later actions of the Commission. To put the matter into perspective the following purely hypothetical example might be used:

a. If the level of gear in Alaska were reduced from the 1971 levels registered, to the optimum units required, as set forth in Governor Egan's letter of transmittal for S.B. No. 39, there would be 519 purse seine, 2327 drift gillnets and 1306 set gillnet units eliminated from the fisheries.

b. If the average value of these vessels and gear were: \$40,000 for purse seines; \$15,000 for drift nets; and \$3,000 for set nets, the value eliminated would be \$20,460,000 of purse seine vessels and gear; \$34,905,000 of drift net gear and vessels; and \$3,918,000 of set net gear, for a total elimination of \$59,583,000 from the salmon fisheries of Alaska and rendered virtually worthless by the initial action of the Commission.

c. The above example does not include the value of troll, beach seine, etc., gear which could be eliminated. We do not pretend

to say that this would be the result of enactment of S.B. No. 39 or that the values assigned are accurate, but we do say that it presents a multi-million dollar problem which is not given consideration for reasonable compensation for the investments of those eliminated from the fisheries by the actions of the Commission

2. Salmon processors own a significant number of fishing vessels, but more importantly because of the nature of the industry they provide financing to independent fishermen for boats, gear, operating capital, supplies, etc., to enable fishermen to participate in the fisheries when they cannot find other means of financing. Such financial arrangements to fishermen are not limited to processors but involve banks, suppliers of all types from marine supply houses to the local grocery store, insurance brokers, repair yards and the whole range of commercial activity.

The point is that regardless of who has a financial stake in an Alaskan commercial fisherman, his investment is placed in jeopardy by the passage of S.B. No. 39 in its present form unless the person in whom he has an investment is the recipient of an entry permit by action of the Commission. It makes little difference if the investment is secured by a mortgage on a vessel and/or gear, the collateral would be rendered worthless unless the fisherman were given an entry permit. S.B. No. 39 fails to take into account the protection of the interests of legitimate and necessary investors in fishermen and their operations, and we advise that this is another multi-million dollar problem.

3. The fisheries industries of Alaska cannot exist and generate substantial revenues for Alaskans and the State of Alaska without the principal processing facilities being located in Alaska, employing Alaskans and making a basic contribution to the economy of Alaska. The members of the Association of Pacific Fisheries and other processors fill this function by maintaining processing capacity in Alaska sufficient, and often in excess, of that required to process the salmon harvest. As mentioned earlier, these processors have tremendous investments in Alaskan facilities. These investments are difficult to justify except on the basis of maintaining them to be able to process on a profitable basis what can be reasonably expected to be harvested from the fisheries over the time periods of cyclic abundance and shortage from the resources.

The risk involved in maintaining these facilities is seldom appreciated or understood by non-processors. Nor are the economic and political facts of life necessary to maintain this investment often popular in Alaska. However, we submit that few can argue that Alaska is not better off in having a strong processing capacity located in Alaska than to be without this resident processing capacity. Yet the interests of the processing industry are not represented at all in S.B. No. 39. There follow a few of the facts which need be considered in any program to limit entry into Alaska's salmon fisheries:

- a. There exists in Alaska a surplus of processing capacity to handle the "average" salmon run of recent years but capable of handling a maximum reasonable expectation of catch.
- b. This capacity is maintained at a very high risk and cost to the processors but we submit it is in the best interests of Alaska that it be maintained.

c. Each processing operation is based on an availability of fish which will on the average provide it with supplies of raw fish which will allow it to process a level of production which will realize a profit to its owners.

In order to maintain a processing facility each processor must be able to convince himself that he has sufficient supplies of raw fish to justify his operation and which will allow him to recover the costs which he has invested in pre-season commitments which are not recoverable unless he obtains a supply of raw fish which is in proportion to his capacity and in relation to the similar circumstances of his competition.

d. Such a "relative position" between processors has evolved through competition among these processors which is constantly changing. The processor who loses production to his competitor must recover it, reduce his investment, or not survive in the business.

The point of all this is that in order to retain needed processing facilities in Alaska, processors must have some assurance that their operations will not be arbitrarily stripped of raw fish supplies due to the inability of one company's fishermen to obtain entry permits while his competitor maintains or increases his availability of fish supplies.

The factor of "relative position" is not considered in S.B. No. 39 and we contend it is of vital importance to maintaining adequate processing capacity in Alaska's salmon industries and that the economic facts of life of the processing industry must be recognized in any piece of legislation being considered by the Legislature in order for a workable program to be developed.

4. No consideration has yet been given to the effect that the passage of S.B. No. 39 will have on the investment of the processing industry in plants, tenders and a complex of other facilities. We urge that these matters be given consideration before legislation is enacted. We are compiling the basic information necessary to the evaluation of processors' investments and will be pleased to work with the State in analysis of this additional multi-million dollar program.

5. There are a large number of other factors left unanswered by S.B. No. 39 which are beyond the possibility of detailed discussion here but are worthy of mention as problem areas:

a. The economic and social impact of creating an exclusive group of entry permittees with a free market to charge "what the traffic will bear" for permits is not well understood but deserves greater consideration. Numerous examples of problems arising from such systems can be cited and should be examined before such a course of action is adopted by Alaska.

b. The Commission proposed by S.B. No. 39 has such broad discretionary powers that no fisherman, processor, investor, etc., can determine how his fortunes might be affected by the passage of the bill or the actions of the Commission.

c. Creation of a three-man Commission at this point in time, even with a large staff provision, to cope with the tremendous complexities of limited entry and expect them to produce equitable solutions could produce more problems than it will solve.

d. There are other detailed questions raised by S.B. No. 39 which need clarification but which are too numerous to mention here but which will undoubtedly be part of public discussion of the measure.

6. The Association of Pacific Fisheries summarizes its position as follows:

a. We do not believe S.B. No. 39 provides reasonable solutions to many of the problems associated with the formulation of a limited entry program in Alaska's salmon fisheries which will achieve optimum levels of fishing and processing capacity in the best interests of Alaska.

b. The general approach suggested in S.B. No. 39 probably advances toward a system of limiting entry on a more objective basis than has been proposed before in Alaska. Yet we believe that this problem is so complex that it requires additional concerted efforts by all parties concerned in order for a viable, reasonable and equitable program to be developed before legislation is enacted.

c. The Association recognizes that the problem exists and that it needs greater effort to bring to resolution. We have active plans to analyze and document the facts associated with limitation of entry in our segment of the industry in the context of the general framework and concept of S.B. No. 39. We will welcome the opportunity to work with the Legislature, the State Administration, fishermen's groups and any other interested parties in order to gather the basic facts and form the framework for a workable system.

In other words, we recommend that the work of the Governor's Study Group be carried further toward completion before legislation is enacted. We note that the work of this group to date presents a good starting point prepared from State government statistics by State government people. However, we believe that fishermen, processors and other interested parties should have an opportunity to develop and present essential information for incorporation into a framework of law which will provide the greatest opportunity for Alaska's fisheries to provide the greatest benefits to all of the necessary factors which are involved.

A COMPARATIVE EXAMINATION OF LIMITED
ENTRY REGULATIONS IN THE FISHERIES
OF SOUTH AFRICA, JAPAN AND CANADA

Walter B. Parker
3724 Campbell Airstrip Road
Anchorage, Alaska 99504

As Alaska approaches implementation of some form of limited entry program to its fisheries, a brief survey of how limited entry has worked in other fisheries may prove instructive. Unfortunately, the literature on the subject is brief with only the Japanese system receiving any extensive documentation as yet. The South African limited entry system has operated long enough so that definite trends have been established but little has been written about it. The Canadian efforts to regulate salmon on their West Coast and lobster in the east are still too new to define definite trends, but some rudimentary observations have been made.

The net effect of all limited entry programs has been to reduce the number of boats in a fleet while increasing their size and fishing capability. This has made it necessary to regulate hold capacity and equipment efficiency in some cases in order to maintain a previously established level of employment in the fishery.

There has been a drastic increase in the ownership of boats by factories in the South African situation, with factory ownership increasing from 33 percent of the fleet in 1955 to 70 percent in 1960. This trend has been accompanied by a reduction in employment in the limited entry fisheries. (Jertenbach, 1973)

As Japanese fisheries in this century have evolved from coastal to off-shore to deep-sea, the regulatory process and limited entry program have evolved with them. Tonnage supplements have been regarded as insuring competition among entrepreneurs and encouraging technological advancement. This has also led to larger and more expensive vessels and thus made it increasingly more difficult to gain the financial backing to enter a fishery. This does not apply to those coastal fisheries where fishing rights exist and where harvest can be undertaken with inexpensive boats and equipment.

The fishing rights are the prime means of protecting local fishermen from the incursions of outside capital. The system of fishermen's associations and cooperatives has been a vital element in the successful implementation of limited entry programs in the coastal fisheries. (Herrington, 1972)

Where the control of pressure on the fishery is tied to the number of boats, it has been necessary to set regulations on gear and size to prevent over-fishing and to maintain equity among the participants in the fishery. Setting vessel size limits inevitably restricts efficiency or causes dangerous situations as owners enlarge fish holds beyond the boat capacity or overload it with equipment. Tonnage supplement systems which control the size of the fleet tonnage but allows individual boats to adjust sizes to take advantage of advances in fishing technology have proven effective in both Japanese and South African systems. (Asada, 1973; Gertenbach, 1973)

In all limited entry fisheries, the effect of the limits has been to increase profits to license holders either in the form of catch increase or an increase in value of the boat. In the Japanese fisheries experience, consideration of license fees as a means of controlling excessive profits has received some scrutiny. An equitable levying of fees can insure equity among different fisheries and help insure that the limited entry system itself does not unduly restrict one segment of the fishing industry while enabling another segment to garner profits in excess of those inherent in the fishery.

Suggestions have been made for both the Japanese system (Asada, 1973) and the Canadian (Sinclair, 1960): that a bid system should be implemented as the most rational means of setting the fee permit price. Once issued under the bid system, the licenses would be transferable among fishermen. Though this system would permit new entrants at every bid period, it was felt that those in the fishery usually would be in a favorable financial position.

In South Africa, where fees are fixed at a fairly high level, the first recession in the pilchard fishery caused a massive revision of licenses from the hands of individual owners to the processing plants. It is likely that under any bid system processors could control the process to a large degree unless bidders were limited to certain groups and individuals.

Of the three nations compared, the Japanese system with its complex system of regulations at every level and its large numbers of cooperatives is probably too different

from Alaskan fisheries to make any particular comparisons. At least, none were apparent in the literature that was reviewed during this study.

The South African fishery, on the other hand, follows the same general economic pattern as Alaskan fisheries and the effect of limited entry in that area might well follow on in Alaska unless steps were taken to inhibit any of the South African results that were considered undesirable for Alaska.

The British Columbian salmon fishery certainly offers many parallels to the Alaskan fishery, but as stated before, limited entry has not been in effect long enough to discern major long range trends. There is a fear that the license limitations on vessels is working to increasing company domination of the fishing fleets, however.

In summary, there is little doubt that limited entry programs make entry into a fishery more difficult financially. Thus, those controlling large aggregates of capital can soon own the greater part of the fishing fleet if no institutional barriers are erected to such development.

It is also apparent that restriction of licenses increases the economic rent of those participants remaining in the fishery. Since the state, by its action, is the creator of this windfall, the question must be answered as to the degree that the state should participate in these increased profits and the method of that participation - whether it should be through bids or increased fees or an additional tax.

There seems to be little doubt that unless institutional

barriers are erected that limited entry programs make entry to a fishery more difficult financially, but that rewards to those individuals who do secure entry increase appreciably over those in the open system.

A COMPARISON OF SEVERAL FACTORS OF THE LIMITED
ENTRY PROGRAMS OF SOUTH AFRICA, JAPAN, AND CANADA

Factor	South Africa	Japan	Canada
Limits no. boats	Yes	Yes	Yes
Limits size of boats	Yes	Yes	Indirectly
Limits no. processing plants	Yes	No	No
Buy back provision	No	No	Yes
License property of holder	No	Yes	No
Limits no. fishermen/owners	No	Yes	No
Species regulated	Pilchard Maasbanker Mackerel	45% all fisheries	Salmon Lobster
In effect since	1953*	1901**	1968
Free transferability	Yes	No	No

Results

Reduced no. of boats	Yes	Yes	Yes
Increased size of boats	Yes	Yes+	Yes
Increase equipment quality	Yes	Yes	Yes
Increased factory ownership of vessels	Yes	No	No trend; yet
Increase value processing licenses	Yes	N.A.	N.A.

*Limits were set on processors in 1950

** Old Fisheries Law was replaced by present law in 1949 but
there was a great deal of carryover between the two laws.

+ Size is now regulated

SOURCES

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January 30, 1973

Box 217
Kenai, Alaska 99611

Sen. C. R. Lewis
Sen. Terry Miller
Sen. Keith Miller
Sen. Ron Rettig
Sen. Lowell Thomas, Jr.
Sen. Don Young
State Capitol
Juneau, Alaska 99801

Gentlemen:

Enclosed is a possible plan that I would like to humbly offer which would, I believe, alleviate the overcrowding in the salmon fisheries without causing injury or financial loss to anyone. This would be in place of Governor Egan's bill and would be far less restrictive and political. (I have been intimately associated with fishing for 20 years; have fished boats and sites; have been U. S. Commissioner and am now Borough Mayor of a fishing area.)

Thank you for your indulgence and hope you will consider this plan.

Sincerely,

Stan Thompson

Stan Thompson

ST/tb
Enc.

STAN'S PLAN.

To help solve the "limited fisheries" problem, to alleviate the extreme hardships designed into the Governor's bill, to keep the state from stealing from some fishermen to give to others (as is in the present proposed bill) I would like to present the following plan - please note - no one gets hurt nor is "forced" to do anything.

- I. STATE OFFERS TO BUY FISH BOATS AND SITES:
 - (a) At 2 or 3 times appraised value
 - (1) to cover loss of income, plus value;
 - (2) fishermen agree not to fish for 5 + years;
 - (b) Willing sales only
 - (1) no one must sell.
- II. STATE ISSUE LIMITED NUMBER OF NEW LICENSES:
 - (a) 2 + years experience or apprentice;
 - (b) Resident and veterans preference;
 - (c) Children of fishermen preference.
- III. STATE INCREASE LICENSE COSTS:
 - (a) Difference in costs to go to special fund to pay for gear, sites, purchases;
 - (b) Fishermen remaining should gain and benefit and thus be willing to pay higher licenses;
 - (c) In long run should not cost state anything.
- IV. EVERYONE GAINS

- (a) Fishermen remaining get more fish and less competition;
- (b) Fishermen who sell gain as get cash to use elsewhere;
- (c) State gains - no long run costs - better fish returns and less problems.

Addendum:

As canneries would be less likely to enter into above program and as some of them have huge fleets of fishing boats they will be required to reduce their fleets by 20% and be reimbursed for this loss.

John Wiese

2140 SUNRISE DRIVE
ANCHORAGE, ALASKA
99504

January 31 1973

The Committee on Resources
Alaska State Senate
Juneau, Alaska 99801

Gentlemen:

This is sent to your committee because you are, presumably, considering SB 39. If it is another committee, please convey it there.

The next issue of ALASKA INDUSTRY includes the article attached. It is in "proof" form. The subject matter bears directly but not exclusively on SB 39 and the matter of limiting entry into the Alaska fisheries.

I am sending you this advance copy for the dual purpose of informing you of the views expressed in it and also to invite your comments for future publication.

There are several points directly concerned with "limited entry" that I did not press in the attached article because of current space requirements but I intend to treat on them in future writings. Like:

* More consideration should be given to simultaneously arranging entry limitation in other (than salmon) species harvestings. Has consideration been directed toward the possible encouragement of utilizing potentially valuable stocks through conditions that might be imposed with entry limitation? An incentive, for example, such as "Get into a new pollock fishing deal and you'll get extra consideration in permission for salmon fishing."

* As long as fish are "common property" and there is a need to restrict their being harvested (for social and/or biological reasons) can a "right" (as different from "privilege") to harvest be handed out, especially if it resembles a "property right" of enduring characteristics? Isn't a ban against this still in the Constitution? Also, how consistent is it to regard commercial fishing as a "right" whereas using the public roads for vehicular traffic is a "privilege" as distinct from a right in Alaska law?

* Is it entirely reasonable to be concerned exclusively with the harvesting sector of fisheries enterprises without, as a minimum, taking cognizance of effects it is certain to exert in the processor-marketer sector which will require at least regulatory attention?

* As a totally practical political consideration ("political" in this sense not intended to reflect "party" partisanship exclusively) will it be wise to restrict membership on the Entry Commission as narrowly as proposed? It's my conviction that this will be really asking for future troubles, considering, especially that radical changes are in process in all fisheries affairs as well as in all natural resource (publicly owned) utilizations.

Sincerely,



By JOHN WIESE

It is fundamental that competent state authority enunciate this over-all policy which means either a legislative enactment or a statement from the administration with legislative acquiescence.

One feature in Governor William Egan's entry limiting proposal presently before the state Legislature (Senate Bill 39) adds a special urgency for a policy declaration. That feature concerns the proposed functions of a projected Alaska Commercial Fisheries Entry Commission.

It would be endowed with powers of exceptional magnitude. Their exercise would effect the economic well-being of literally thousands and the flow of literally tens of millions of dollars annually.

The guidelines for the commission's operations are so broad and, in some places, subject to differing interpretations that they imply a practical delegation of policy-making powers. The proposed legislation describes its intended function as "regulatory and quasi-judicial," but there would also have to be substantial "quasi-legislating" or policy-making by the commission as an initial step to "regulating" or to "quasi-adjudicating" in order to obtain an effective limitation of entry into fisheries.

Even if this is a politically acceptable situation it still leaves opportunity for a challenge of its legal validity. An adequate policy statement could remedy this.

An instance of the vagueness of SB 39's policy intentions concerns its prescribed "standard" (as set forth in Section 16.43.160) "to sustain a professional fishery."

Definition of this term, which is not contained in SB 39, will require a hefty measure of policy-making, especially considering that variants will obviously be needed in order to fit the vastly differing fishing regions of Alaska and the several "species" fisheries of the state.

Consider this:

SB 39 is to apply exclusively in salmon fishing. Problems in other harvesting enterprises - king crab, herring, etc. and maybe halibut if international controls do not intervene - could receive only limiting attention in subsequent legislation but this isn't man-

ACQUIESCENCE'

ALASKA
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ANNUALLY' AN-

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ADEQUATE ADE-

PRESCRIBED PRE-
SECTION SEC-
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INTERNATIONAL

SUBSEQUENT SUB
MANDATORY' MA

THE STATE of Alaska's objectives relating to its fisheries management are obscure.

Or, if they are clear to any governing element, they have not been adequately communicated so that they are intelligible beyond the restricted circle gifted with an appreciation of their intent.

Something that is urgently needed - and needed at this time especially - is an over-all fisheries policy declaration that will effectively clear the air.

Actually, this has been needed for a long time. But, with state lawmakers currently processing a proposal to limit entry into the utilization of Alaska fish and related marine stocks, it has become imperative that some forthright answers be provided as a preliminary to legislative action.

Answers to questions like these are needed in a policy declaration:

• Precisely what goal or goals are intended from utilization of marine fish stocks in the state?

• From the state standpoint, what is meant by or implied in the term "common property" that is associated with fish stocks? (or, in similar words of the state Constitution, "...Fish...reserved to the people for common use?")

• What are the priorities (or, as the Constitution says, "preferential uses") that govern state management of marine stocks; and by what processes can priorities be changed?

• Are there, or should there be, policy differences between management purposes in different regions of the state? Between the various marine species? Between marine stocks and upland wildlife management?

The policy statement should also deal with programs inherent with policy implementation.

Recently Elmer Rasmuson, sole member of the International North Pacific Fisheries Commission from Alaska, urged that a specific policy position be formulated by the state as it would concern foreign fishing and boundaries off the state's coasts.

Other marine stock utilization issues are also in need of solutions that a policy-declaration could serve. For example, recreationalists' campaigns for "fairer shares" of salmon fishing; conflicts provoked by non-marine resource utilization or by pollution threats, etc.

INTELLIGIBLE INTEL

LEGISLATIVE LEGIS-

"COMMON "COM-

"FISH" RESERVE)

PRIORITIES PRI-

SPECIES -

MEMBER
PACIFIC
ALASKA'

BOUNDARIES

EXAMPLE: EX-

CONFLICTS CON-

Of course, an alternative might be for the "professional" salmon fisherman to take his boat and his status to salmon harvesting on Puget Sound, or on the Columbia River, or on the coasts of Oregon or California when Alaska fishing isn't available. In that case he'd be better off making his headquarters in the more southerly extremity of his annual migration because there'd be improved creature comforts there for himself and his family.

This recital about moving Alaska fishermen Outside isn't an Alaskan goal, obviously. And it isn't very likely to be promoted wittingly by any state agency. Nevertheless the recital serves to demonstrate that the subject of limiting entry into Alaskan fisheries is very much concerned with precise identities of items of state policies. And, if a commission to limit entry is going to function like SB 39 projects, it will either need an intelligible set of guidelines defining state fisheries policy — that is, a fisheries policy declaration in principle as a minimum — or the commission will have to devise law as it proceeds and as its convenience dictates.

Such a procedure will necessitate the commission's assumption of "quasi-legislative" powers as well as the "regulatory and quasi-judicial" authorities assigned to it in SB 39.

The problems that impelled a movement toward limiting entry in Alaska's fisheries come in two categories.

The first group arises from strictly economic situations. They relate to the widespread human urge to "get a piece of the action" and to profit from seemingly abundant but often diminishing stocks of high-valued species like salmon, crabs, scallops, halibut, shrimp.

This attraction is complicated with secondary factors that fringe on the economic but which are actually spin-offs with a cultural coloration. Occurring mostly with salmon harvesting in Alaska, a major instance (but not the only one) are the large numbers of individuals fishing to enjoy a diversion or escape from the confining humdrum of an "eight-to-five" routine of another occupation or sometimes seeking contentment in a living standard that is nowadays regarded as sub-standard.

The second category of problems

FISHING FISH-

DEMON)STRATE

GUIDELINES G)

COMMISSION C

"QUASI-LEGI)SL
"REGULATORY
AS)SIGNED

MOVEMENT MC

DIMINISH)NG I

SPIN-O)FFS SPI
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DIVERSION) DIV
HUM)DRUM HU)

SEEK)NG SEEK

SUBSTANDARD)

datory, according to Governor Egan's dissertation that accompanied the bill when it was dropped in the legislative hopper.

"Other important fisheries," the message said, "... may require their own limited entry programs."

This and other language in the governor's message and in the text of SB 39 speaks to the concept that the harvesting of each Alaskan fish species constitutes "a fishery." Does this mean that, as a matter of policy, the state regards it as a valid goal that each such activity shall be an independent "fishery" to be treated without co-ordination with other marine harvests? Has the idea of working to attain diversified industry in fisheries as a means of securing broader employment with a wider spread of operating costs for improved stability been abandoned by the state? If so, how does this shift fit with the pattern of many of the state's best fishing communities and with the trend in the processor-marketer segments of fisheries?

Also, might it not be actual retrogression to "promote" a "professional" fishery in salmon because this tends toward fishermen's personal earnings as well as costs recovery for equipment deriving independently and exclusively from short-termed annual salmon availability?

If it is to be a "professional fishery" it must certainly then be one that yields ample returns from these short-lived salmon seasons to meet operating costs on a stabilized basis plus personal earnings sufficient for a year's living expenses, presumably at a "professional" level.

(An annual "professional" income is usually regarded as \$14,000-\$15,000 a year and up; a recent study of Alaskan fishing returns showed individual returns — not net incomes but gross returns from fish — to have averaged only about \$3,300 a year!)

The typical Alaska region's salmon harvesting time lasts for only about six weeks a year. In some localities it exists for as long as four months with marginal-volumed fishing preceeding and following peak intensities in July and early August; but for practical purposes only a very few "professionals" would find periods for profitable fishing for seasons longer than six or eight weeks.

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What is needed is a statement that makes it clear what it is the state intends to derive from its fish resources and from the regulation of the harvests of its resources. It is no longer sufficient for popular or political purposes to take refuge in the broad and lofty terms of the state Constitution; their specifically applied intents and purposes are needed.

broad

The message that accompanied SB 39 to the Legislature attributed the major menace of the excess of salmon harvesters to the fishery being "taken over increasingly by moonlighters, sports-commercial, and part-time hobby fishermen." In this recitation is a direct implication of an onus contained in such less-than-"professional" motivations for fishing, as though the individuals involved are guilty of actions that are immoral or at least socially unsavory.

But, without a specific policy commitment in law against "moonlighting" - and especially considering that state actions constantly invite or induce use of wildlife resources for diversions from other occupations - the tone of this presentation is contradictory.

There should be no question that moonlighting and hobby-fishing have added serious complexities to the economics as well as the biological management of salmon fisheries. Nor should there be serious doubt about needs for limiting entry.

However, the appropriateness of delegating the making or altering the state policy that frequently is synonymous with law to a three-man commission without ample guidelines is something else. It wants careful examination before it is accepted as fully proper.

Senate Bill 39's purposes are recited as "to promote the economic health...of commercial fishing" and "the conservation and sustained yield management of Alaska's fishery resources," as well as "to prevent economic distress among fishermen." The terms are from portions of the state Constitution.

Other parts of that document dictate that "it is the policy of the state to encourage...the development...of its resources by making them available for maximum use consistent with the public interest..."

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bolstering a drive for limited entry is really political in the sense that economic and related complexities of fishing have generated excessive difficulties for a bureaucracy charged with regulating the harvests of publicly-owned resources, or, "common property." It does not simplify this obligation that the dominating principle for this assignment has been accepted, as a matter of priority, as having been "sustained yield" in a rigid formula that disregarded human foibles.

The efforts of government conservationists to regulate the harvesting activities of constantly increasing fishermen types and also trying to maintain their equilibrium in spite of parochial pressures that are often vicious and erupt with accelerating frequency is now regarded as no longer feasible. The traditional "management tools" like restricting harvesting to smaller boats, shorter nets, catch quotas and other efficiency-curtailing devices have not been enough to get the job done.

Remedial alternatives in the Alaska salmon scene concentrate on either the view that "there are too many fishermen for the salmon" or the view that "there are not enough salmon for all would-be fishermen," depending on what partisan element is doing the analyzing.

The "not-enough salmon" enthusiasts urge remedy by embarking on programs they hope will make more salmon. The others call for limited entry which means activating one scheme or another for discriminating between actual or potential fishermen. And some elements advocate a mixture of the two.

However, there is an almost total lack of co-ordination between various proposals which is the obvious product of the absence of an over-all fisheries policy in the state.

It is really not quite true that Alaska has no fisheries policy. There has been a "de facto" policy that is based on tradition, on fragmented legal pronouncements, and too often on partisan political convenience. Even this "de facto" policy has never been intelligently set forth in necessary definitive terms and, besides being obscure, it is constantly being "interpreted" in conflicting and contradictory ways.

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FISHERIES 8-8-8-8

This entry-limiting will be the function of its proposed Entry Commission. The bill described the mechanics for commission workings and how the agency will be established in rather elaborate details, including the requirement that the three commissioners shall have qualifications like, one a commercial fisherman (or ex-fisherman) from Alaska, one a "fisheries management specialist" (presumably a Fish & Game staffer), and one an "attorney licensed to practice in Alaska." More legal expertise is assured with provision that the Alaska attorney general shall be legal counsel for the tribunal.

Powers of the Entry Commission would be the establishment of maximum fishing gear volumes for the various regions of Alaska, the establishment of fishing gear permit qualifications for individuals, permit issuance including collection of annual fees of \$50 for each permit, arrangements for interim permits and for transfers as well as prescribing regulations and procedures for administration of commission functions.

One section of SB 39 prescribes that the commission shall set fishing gear volumes of effort so that 1) the "income to fishermen . . . is adequate . . . to sustain a professional fishery;" 2) the volume of gear in use does not pose "a substantial risk of impairing sustained yield;" 3) there is enough gear in operation "to fully harvest . . . the fishery resources;" and, 4) so that the volume of fishing gear "is reasonable and consistent with purposes" of SB 39.

Provision is also included in the bill for commission to cut or to raise fishing efforts in case of changes in fish stocks, or if market conditions warrant, or if Fish and Game Board regulations induce altered over-all volumes of effort. The bill expresses the idea that if permit holders are required to surrender their fishing "rights" they should be compensated for the losses.

742
 Holders of permanent permits are recognized as having "a personal right" in their status as exclusive fishermen - or, as one of the cadre of fishermen with exclusive status within prescribed areas - and also "a permanent right of renewal."

Employe fishermen would be a different status because they are not required to hold permits.

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"The Legislature shall provide for the utilization, development and conservation . . . for the maximum benefit of its people. . .

"...fish...are reserved to the people for common use.

"Fish . . . belonging to the state shall be utilized, developed and maintained on the sustained yield principle subject to preferences among beneficial uses. . .

"No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the state. This section does not restrict the power of the state to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the state of Alaska."

Also applicable to resource management is, "Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation." And there are other "equal rights" and "due process" parts that also bear on doctrines the effect fisheries policy.

When statehood was accorded to Alaska by Congress there was a proviso that forbade the transfer of management controls from federal to state authorities until assurances were obtained that legislation "has made adequate provision for the administration, management, and conservation of resources in the broad national interest." This might be construed to be a virtual amendment to the state Constitution, especially since it was accepted as a condition of statehood by a referendum of Alaska voters.

What all of these things, plus an added body of national and international law, obviously do is provide constraints on actions by Alaska in its fisheries policy notions, including on notions advanced as proposals by individuals. But they do not provide an answer to state or individual goals as such. Generally they spell out what must not be permitted but they do not help much with determining what will be done.

SB 39 sets forth that it will be "stabilizing the levels of participation" of fishermen. In other words it will limit entry into fisheries, starting with salmon harvesting.

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Arrangements for transferring permits through the commission are also included in the proposal. There is, however, a requirement that permit holders must be working fishermen who are active in operating the gear they have been permitted. This should provide a ban against accumulation of permits that might perpetuate fishing rights into property rights or their equivalent in massive amounts.

SB 39's Section 16.43.200 sets up what guidelines there are for the Entry Commission's discriminating between permit applicants responsibilities. The commission is to frame its own regulations for this function "for each administrative area and for each type of gear."

Such regulations are to define "reasonable priority classifications . . . based on a reasonable balance of . . . 1) degree of economic dependence upon the fishery, 2) extent of past participation in the fishery, and 3) present ability and intent to participate actively in the fishery."

"Priority classification . . . means the allocation of potential or actual permit applicants into reasonable groupings of similarly situated applicants and the priority ranking of those groupings according to the extent to which they satisfy the statutory standards of preference."

More questions are raised by provisions like this (and others in SB 39) than are answered. They emphasize the need for a realistic declaration of Alaska fisheries policy from the state's position. It is needed as a minimal prelude for enacting the substance of SB 39 into statutory law, and it is needed just about everywhere else in the Alaska fisheries resource management scene.

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Qualifications of limited gear entry into Alaska commercial fisheries.

1. Person who held a gear license and fished that gear license in a designated area once in past 3 years in Alaska.
- (Or)-2. Person who ever owned a gear license and fished that gear license in past 4 years and has a ten thousand dollar investment (mortgaged or not) in commercial fishery of license or licenses owned and fished in designated areas.

Reasoning: Any person whom does not meet above criteria could reasonably be determined already out of the fishery. Such criteria as having fished 3 out of past 10 years and absent past 7 years would be considered less dependent and less intent than a person having fished commercially during past 1, 2, or 3 yrs.

3. A fisherman's outside interest should not concern above criteria. Whether he is a trapper that fished or a fisherman that trapped.

4. Any new entry not qualified on above criteria must purchase from a license holder his license and pay to State tax office the appraised value of the license less 10 percent. Assuming the seller gains 10 percent of the license value. This 10 percent encourages the seller to sell out when he has a boat to sell as he can let the permit go to get the boat sold. Or the seller can sell to the tax office for 90 percent the assessed license. He can keep his equipment or sell privately.

5. The seller is taxed when he sells a license even when selling to tax office in graduations of degree of years he fished the license. The graduation in degrees spread over 20 years fishing. For each year fished $1/20$ th deducted off sellers tax.

Reasoning: The heaviest burden of tax upon new entry. Those that fish longest have lesser taxes. Impossible for a ghost license to make any money. Present holder can't make a fast buck on a license. Gives a short timer invested the opportunity to prove his full intent to be a fisherman. Gives the old timer the incentive to sell out and give the new blood opportunity to fish. Gives the opportunity for a new investor to sell his equipment to a new buyer as this may include his license if he chooses. Encourages people in the industry long time with old slab of a boat to sell out to tax office and this in turn is financed by the change over in the industry mostly by new entries. The seller does not pay tax unless selling to tax office in the graduation scale of $1/20$ th stated above.

6. Fisherman are taxed according to assessed value of gear license in designated areas annually. This fund is also used for buy back in this designated area. When optimum level reached this tax can be used to further enhancement of the fishery in designated area.

7. After 3 yrs fishing the sellers tax automatically is reduced to $3/5$ th of assessed value of gear license. (Gains $2/5$ th assessed value as incentive to sell out.

Reasoning: Allows man in now with investments and recent participation to prove his intent & retrieve his investment. This method prevents short timer gaining return on license value if intent and participation inactive.

8. Sport fishing gear as rod & reel holding a commercial license is based only on attrition rate decrease. Not included on buy-back program. License not transferable. Person must have held commercial license once in past 3 yrs.

reasoning: Allows small income fisherman presently in small resident villages to retain his interest during lifetime. Short time residents leaving state will have higher attrition rate. Allows qualified holders to retrieve their investment without taking away their rights accepted in past. License has no monetary value.

9. Apprenticeship program to add incentive for some:
Person holding apprentice permit has buy in tax reduction of 1/10 gear license assessed value per 5 yrs apprentice. Based proportion per annum for participation weekly for weeks of season open. (example: 16 weeks of season and fishes 12 weeks would get credit for 3/4 participation that particular season). This is based on particular gear in particular areas as designated. (Areas to be set forth by law). Apprentice ship is based upon participation within past 4 years. (Eliminates credit for participation beyond 4 years for ones who did not actually enter fishery with full gear license participation).

Ray Mathews
Fisherman

LIMITED
ENTRY
CORRESPOND-
ENCE

File

3-12-73

Mike

Box 825
Ketchikan, Alaska 99901
March 8, 1973

Senator John Sackett
Pouch V
Alaska Office Building
Juneau, Alaska 99801

Dear Sir:

Re: My thoughts on Limited Entry

The Alaska State Legislature is fast approaching passage of Limited Entry to the Alaska Fisheries and, since I am involved in the fisheries as an Alaska resident troller, I feel it is my duty to express my views on the subject.

So that you may further judge my qualifications to speak on this subject, I am further describing myself as:

1. A resident of the State of Alaska since 1965,
2. A college graduate with Bachelor of Science degrees in both economics and business administration, and
3. A power commercial troller. For the past three years, I have fished five months and worked approximately five months at various accounting jobs each year.

In addition, I have reviewed the Governor's Study in depth and have attended all meetings held on Limited Entry in Ketchikan.

Generally, I feel that Limited Entry as provided in the OS House Bill 126 is a must for Alaska in 1973. I base this opinion on the following observations 1.) the general economic condition of Alaska and 2.) the economic development of the fisheries.

(1) General economic condition of Alaska.

Since receipt of the oil lease monies, the State of Alaska has overextended its revenue generating abilities. The State expected oil royalties to cover this deficit but we now know that this money is not forthcoming. Because of this the State is looking at the probability of being bankrupt within a few years unless additional revenues can be generated from existing state resources. Generally speaking, timber, fishing, and tourism are the major state resources where this revenue can possibly be generated. Without going into a lengthy discussion of each resource, let me just say that my observations tend to substantiate the feeling that the fisheries holds the greatest potential for increased revenue for the State.

Since the fisheries is in a generally depressed condition (a subject that I will discuss in greater detail later) the State of Alaska is faced with the job of developing this resource to its fullest potential for all the people of Alaska, thereby increasing State revenues and, in general, the economic well being of the residents of this state.

(2) Economic development of the fisheries.

As has been the history of almost every fishery in the world, the Alaska fishery has experienced a boom and depression period. Our present position is that we now have an over-capitalized fishing fleet and processing system. The State is just now starting the long hard job of rebuilding the depleted fisheries resource, but there are certain factors that, if not changed, will prolong this rebuilding job indefinitely if not dealt with now. These factors are:

- a.) Overcapitalization of the fishery which in effect creates and perpetuates a run-down, inefficient, non-revenue generating segment of Alaska's economy, and
- b.) Depressed incomes of the individuals who are working in the industry. No income means no income tax revenue to the State or the Federal government and, in many cases, adds to an already strained welfare situation.

There are other factors which will make the job of rebuilding the Alaska fisheries difficult (such as exploitation by foreign fleets and natural predation effects on specific fisheries) and these factors will also have to be dealt with. However, we cannot afford to stand back and say that just because these other problems exist, Limited Entry is not needed also.

The old adage that "It takes money to make money" is no truer in private business than it is for the State. It is further true that the State of Alaska cannot in good conscience, for the benefit of all the people of Alaska, expend state funds into hatchery and rehabilitation programs without expecting a fair return on their investment. Present conditions in the fisheries

has proven that this return on investment is not great enough under present conditions to warrant large expenditures by either the Federal government or the State, and I, as a fisherman, do not wish to become a part of another welfare program.

There are, as I see it, two alternatives available to the State to insure that a fair return on its investment is attained.

- a.) Initiate a royalty tax on all fish landed in Alaska. This would guarantee a return to the State, but would, as I am sure you realize, compound the present problems of over-capitalization and low income to those who are participating in the fishery. Even after fish production is increased, there would probably be little effect on income levels or capitalization levels because past history has proven that economic return has had little effect on new entry into the fishery. Turnover rates in the fisheries does indicate,, however, that ultimately, economic return does play a substantial role in the professionalism of the industry.
- b.) The second alternative, that of a limited entry program with a subsequent royalty tax on a portion of each fisherman's increased production, would benefit the State, the people of the State, and fishermen equally. Not only would the individual benefit through a higher income, and the people of Alaska benefit through a more modern, more efficient industry paying taxes, but those who wish to enter the fishery will have a greater opportunity to do so. This is because the fisheries, after it is built to its real potential, would allow a much higher number of participants than a continually depressed fishery that will economically not allow expansion of participation without loss of income.

OS House Bill 126, I feel, is generally close to a workable Limited Entry Law that will be one step in the long hard job of redevelopment of the fisheries for Alaskans. There are some areas of this bill that I feel need additional work. These are:

(1) The Entry Commission.

I would prefer a larger commission (five or seven members) with fisherman representation and appointed approval by the legislature,

(2) Troll fishery.

I would prefer a division of the troll fishery written into the law, dividing power trollers and other trollers.. In addition, I would prefer that power trollers be removed from the special exemption provided trollers in general (Sec. 16.43.205) and treated equal to the net fishery. This is because I am of the firm belief that if trollers are going to be subjected to the same costs of rehabilitation as discussed earlier, they must be afforded the same protection from over entry as the net fishery.

The troll fishery suffers from a great amount of pressure from two sources. First, there are other fishermen from the net fishery who troll in the spring before their seasons begin, creating an overabundance of gear during April, May, and part of June. Presently this is helping these fishermen survive and is probably economically a good thing, although it is hard on trollers who cannot shift gear as easily. Secondly, it is the troll fishery that is economically easiest to enter by newcomers who have neither the finances or experience to enter on an economically sound basis. Like many others, I started trolling with a small investment in boat and gear, but found out quickly that the investment in the industry had a direct proportional bearing on my rate of income. Without having been able to increase substantially the size of my boat and investment with money acquired outside of the fishing industry, I would have been bankrupt or out of the business this year.

Possibility of entry into the fishery is a necessity but the State should use Limited Entry to maintain and improve standards of quality in the fishery for all concerned and the Troll Fishery Exemption would defeat this purpose.

I appreciate your indulgence in reading this long winded letter and hope to hear from you concerning any comments which you might have.

Sincerely,



Edward L. Linkous
Box 825
Ketchikan, Alaska 99901

File

February 28, 1973

Senator Bill Ray
Pouch V
Juneau, Alaska 99801

Dear Senator Ray:

In reference to House Bill No. 126, the fisheries limited entry bill, we the undersigned Hoonah Public School teachers, and other citizens of Hoonah would like to be heard.

First of all we do agree that it is time for the state to do more to promote conservation and sustained yield of Alaska's fishery resource. But we believe our state's efforts should be directed more toward saving Alaska fish for Alaskans; thus more in the interest of all citizens. We strongly question the ability of this bill to prevent economic distress among fishermen and to provide a livelihood for certain fishermen without unjust discrimination. This bill would discriminate against those ambitious enough to work in the winter as well as in the summer.

As for the bill's first priority for entry, the degree of economic dependency we would like to point out that in the outlying communities fishing is about the only summer employment available to certain classes of people. Some of these people, while most of their income may come from winter employment, are very dependent upon the summer fishing supplement.

Another thing that may be a laughing matter to some may be a threat to the very mental health of others. That is the recreational value of all fishing, including commercial, to many Alaskans.

Also, are we to expect other legislation to be forthcoming restricting entry into other fields?

Many of us in Southeast Alaska's small towns and villages are so damned tired of being discriminated against because of our cultural heritage, and economic efficiency, we shudder at the thought of our state "justly" discriminating against us!

Sincerely,

Hoonah High School Teachers
Box 8
Hoonah, Alaska 99829

SIGNATURES IN OPPOSITION TO FISHERIES LIMITED ENTRY BILL

- | | |
|--------------------------|-------------------------------|
| 1. Daniel R. Wagner | 13. Larry Kay |
| 2. James Hembree | 14. Kenneth Richards |
| 3. Frank Lital | 15. Wendy Teuscher |
| 4. John G. McConnell | 16. Linda M. Wagner |
| 5. Michael Carey Wilhous | 17. Mary L. Audio |
| 6. Robert Macaulay | 18. Georgia A Kirkpatrick |
| 7. Don Cary | 19. Kelly Macaulay |
| 8. James Erickson | 20. Aaron D. Clair |
| 9. Ed Kirkpatrick | 21. Carol Williams |
| 10. James Erickson Jr. | 22. Jodie Williams |
| 11. A.L. Macaulay Jr. | 23. Kathleen R. Kay |
| 12. Tom Fidd | 24. Carol A. Hembree |

File

3-9-73
SB39

Michael Kelley
Box 976
Hoonah, Alaska
March 5th, 1973

Governor William A. Egan
Touch A
Juneau, Alaska 99801

Dear Governor Egan:

It has been brought to my attention that the lunatic fringe of the local teacher's association drafted and sent to various representatives a rather shrill, nonsensical, and noninformed manifesto, portraying the abuse and deprivation teachers will suffer should Limited Entry as embodied in S.B. No. 39, become a reality.

A brief perusal indicated no mention or concern with the deplorable state of the resource, nor the economic plight of the professional fisherman. The colossal creed of this group of teachers, which blinds them to a reasonable consideration of the entire fisheries picture, and permits them only a myopic view of their own peripheral, parasitic attachment to the fishery, is indeed revolting. It leads one to speculate that if this group spent their time worrying about education rather than fisheries problems, we might have some much needed improvement in the classroom.

My purpose here is not to demean this small local group of teachers--their own actions take care of that adequately--but rather to point out that peripheral, unnecessary segments of the fishery often have the loudest voices. I wish to make it quite clear that in Hoonah, the opposition to S.B. No. 39 is very minor. The local A & E, Hoonah Fisherman's Association, and the Hoonah Advisory Committee, are solidly in support of a very strong bill. I am authorized to speak for the professional fishermen of Hoonah, and workers in the industry, and our position is that we want the strongest possible bill at the earliest possible date.

Sincerely,


Michael Kelley

cc to:
James Brooks, Commissioner Fish & Game
Representatives Tom Fink, Joe McGill
Terry Gardiner, & Dick
ElGason
Senators Terry Miller & John Sackett

BRISTOL BAY

AREA DEVELOPMENT

CORPORATION, INC.

File

3-14-73
SB 39



March 10, 1973

Mr. David S. Jackman, Assistant Attorney General
Project Director
LIMITED ENTRY PROGRAM
Juneau, Alaska 99801

Dear Mr. Jackman:

The intent of the limited entry program is to protect 1) the salmon resource by limiting gear 2) the resident fisherman by allowing him to fish before non-residents.

The present bill does protect these interests:
These are several bad points:

1. Permits can be bought and sold.
2. Canned salmon industry can finance non-residents to buy permits.
3. Canned salmon industry and non-residents have more access to money and credit than residents.
4. Difficult for residents to compete with non-residents when the residents are in debt to the canned salmon industry.
5. Most residents, especially in Bristol Bay, have not developed any credit.
6. Although residents will have permits at the outset it is conceivable that the canned salmon industry will control permits in the future.
7. Many of the residents have children who will be eliminated by this act. If no provisions are made to allow children to participate in the fishery, there will be some serious problems.

There are certain studies that have to be made:

1. We must study the credit and finance system, that the canned salmon industry controls.

BRISTOL BAY

AREA DEVELOPMENT CORPORATION, INC.



Mr. David S. Jackman, Assistant Attorney General
Project Director
LIMITED ENTRY PROGRAM
March 10, 1973

page 2

2. We must study other types of transfer - we may want an apprenticeship or point system instead of a money system

The state must study and make available money and credit to Bristol Bay before a buy and sell system.

Sincerely,

BRISTOL BAY AREA DEVELOPMENT CORPORATION

Nick D. Gregory
Nick D. Gregory
President

NDG:ck
CC:
Governor Egan
Richard F. Listowski, Chief of Statistical Research
Allan Adasiak, Executive Assistant to the Attorney
General, Project Coordinator-Editor
Representative Joe McGill
Senator John Sacket
Senator Terry Miller

file

TLINGIT & HAIDA INDIANS OF ALASKA

We believe that the concept of a Limited Entry Bill is a must in order to implement a rehabilitation program and to allow the bona fide fishermen to make a decent living, however certain questions and problem areas must be resolved.

Points to be Considered

1. We believe that a 3 man commission appointed by the Governor is inadequate. We also recommend that there should be a minimum number of 5 members serving on the fisheries commission.

The fisheries commission, we believe should consist of bona fide commercial fishermen.

2. A major concern we have is:

What happens in the event that a cannery wishes to take back a boat from an individual, the cannery could not afford to take back a boat because the skipper would own the permit.

3. Native canneries would be tied down competitively with regard to other canneries.

Our native canneries are financed with federal funds and are not permitted to raise salmon prices over private industry.

This would also apply to competitive bargaining for entry permits to gain additional boats.

4. Another major concern is the "Buy Back Plan". It seems that the major cutbacks will be in your western areas at the present time. Southeastern will in all probability remain at the same level.

The proposed assessment of 7% of the gross income of all fishermen we believe is excessive. We feel that any buy back program should be part of the rehabilitation program and financed in part by the State.

We do not agree that Southeastern should be buying out Bristol Bay boats. This program should be on an area basis.



UNIVERSITY OF ALASKA
FAIRBANKS, ALASKA 99701

February 2, 1973

TO: Those concerned with legislation regulating participation in the Alaska commercial fisheries.

When the writers of the U.S. Constitution were designing the national government, James Madison said, "if men were virtuous, there would be no need of government at all". Well, obviously, we find ourselves in need of government, and in this case concerning participation in our fisheries of Alaska, I have found that the people who have seriously tried to consider the immediate, total, and long-range effects of Senate Bill No. 39 on the people of all of Alaska can agree on two things. One, there is a real and critical problem concerning excess participation in many of Alaska's commercial fisheries, and two, this legislation is the most far-reaching and important bill to ever come before any State of Alaska Legislature since Statehood itself. These are honest opinions; the first is obvious; the second must not be underestimated!

Most people associated with the Alaska commercial fisheries recognize the problems stated in the purposes and findings of fact; they recognize the problems, but there are many, perhaps a majority, who feel that the lure of the Alaskan way of life, and the heartfelt rights of men are more important than the economic health and stability of any commercial fishery. It is most likely that a student of economics could persuade these people to accept the fact that the real value to society in dollars and cents rendered by some of our fishery resources is pitifully low when compared with its potential value to society because of the dissipation of that value through the excess use of other resources, namely capital and labor. However, being persuaded of this would not convince them that such economic sense is nearly so vital as what they feel to be the rights of men. In this state and time, there are many different standards for right and wrong, we can all express feelings, idealism, and findings of fault, but these expressions usually represent the very human bias of self-preservation. There is nothing wrong with this but it makes the job of men designing laws governing men critically difficult as James Madison realized so many years ago. The answer may well be that what many people have so long felt to be a right was never really a right of man at all, but a trust to him.

Many people have expressed an interest in seeing this legislation cover more species than just salmon. This is partly because of the fear that a fisherman eliminated from the salmon fishery will transfer his effort to another fishery and create a hardship there. In a few cases this may well be true, but truly I believe that a real salmon fisherman who would be likely to transfer his efforts to another species will not be eliminated from the salmon fishery by the Governor's established criteria.

it seems that our over-exploited fisheries other than salmon lack the vacation aspect and are too expensive to get into efficiently on the basis of speculation. Another reason for wanting to see species other than salmon included is that many other species are in need of fishing participation regulation in all or part of their range; I am not arguing with this but I believe that considering the magnitude of the diverse salmon over-fishing problem, trying to include all species is really an unreasonably large task without precedent. It seems to me that setting up a workable program dealing with salmon is most critical at this time and will lay the groundwork for dealing with other species in the future, and it would really be sad if in your efforts to deal with participation in all fisheries you rendered this legislation ineffective for any fishery.

Now, let's look to the heart of the issue allowing that we accept and remember the original purposes of the bill. There is considerable fear among the people, with whom I have discussed this bill, that the authority of the Commission is too great. I agree, but considering the diversity of Alaska's fisheries, we should realize that the Commission must have broad and flexible authority with some additional constraints. The heart of the bill is in the idea of the Commission making decisions as to who will participate in Alaska's fisheries based upon three criteria. Now, we get into the problem which nearly all of us have when we consider the fisheries of Alaska, that of having a limited area of experience prejudicing our point of view and biasing our decisions. St. Mathew made the profound observation that "to them that hath shall be given and from them that hath not shall be taken away". It has been called the St. Mathew effect, and while we must realize its validity, we must believe that we can temper and control it. The criteria which the Commission is to use are set up to provide for an equitable professional fishery; while they frighten people who probably need not be frightened the criteria are well-founded and will work with perhaps certain qualifications to achieve the original purposes of the bill and yet quell the worries of many of the professional fishermen. I suggest that we consider the concept of professionalism. What is a professional fisherman? What is a professional salmon fisherman? He is a fisherman who fishes. He is a fisherman who catches salmon, and he catches them to sell for economic gain from his salmon catching enterprise!

Now, if we take each of the three criteria individually and examine them with regard to equity and professionalism we are going to hurt many people who enjoy salmon fishing on a large or small scale, but to be effective, this bill must hurt, it might even hurt me and I don't know if it's worth it. The first of the three criteria is: "Degree of economic dependence upon the fishery". This frightens many people who feel that it would possibly unfairly penalize a person who, realizing the short duration of our salmon season, has had the motivation and drive to find other income

LEG. INTENT
TO PUT SALMON
ON PRIORITY
BASIS

sources. To take the extreme I know several fishermen who went teaching as well as teachers who went fishing. Some of the other sources of income for fishermen have been arrived at only after years of dedication, work, and sacrifice. Therefore, obviously this criteria cannot be singularly applied, and to be morally applicable must be qualified. Let's now consider the second of the three criteria which is: "Extent of past participation in the fishery". It is obvious that this must be considered heavily; however, a straight grandfather clause would really destroy the effectiveness of the legislation by cutting out no one and encouraging many who have been in the fishery and are out of it to re-enter when they might not have otherwise; perhaps this would be for the sake of speculation or insurance or self-assertion. Most assuredly, the idea that all people who have, or in the last few years have had a license, which they have fished, be given another in the reliance that attrition will reduce the fleet over next few years is totally absurd. This is because there is a backlog of eligible fishermen who could qualify and would get hold of an old slab or some boat and be ready to go. While perhaps a more politically popular way of limiting new entry into the fishery, that is all that it would do and it would definitely fail to achieve what I perceive to be the intent of the Governor. Past participation must be considered, but to be equitable, it seems wise to qualify it too, relative to the concept of professionalism. The third criteria is: "Present ability and intent to participate actively in the fishery". There will be some problems here where a boat sinks or a gear shed burns or a man is ill, but allowances will undoubtedly be made by the Commission because its members are to be human beings. I would suggest however, to again alleviate worry, that a specific hardship allowance be incorporated in a qualification to this third criteria.

Okey, now I've qualified and qualified and qualified these criteria without putting forth anything concrete. I'll do that here; noting that parenthetical additions are by way of example indicating ball-park figures, not dictating specifics. Hopefully we can here foil the harshness of the St. Mathews effect, at least a little bit:

- (1) Degree of economic dependence upon the fishery: A person who has in the years of his past participation in the fishery derived at least 20% (or 25%) of his total earned income from the fishery will satisfy this standard, however the Commission may determine that a lower percentage is acceptable, particularly, but not only, with respect to the fish which were available.
- (2) Extent of past participation in the fishery: A person who has in 2 (or 3) of the last 7 (or 10) years actually fished on a day-to-day basis during each of those fishing years for at least 2/3

(or 3/4) of the available fishing days will satisfy this standard, however the Commission may determine that a lower fraction is acceptable, particularly, but not only, with respect to evidence an individual presents relative to weather layups, mechanical breakdowns, and the overlap of two fisheries which the individual participates in.

- (3) Present ability and intent to participate actively in the fishery. The Commission will make allowances for hardship cases where the ability and intent were genuine but inadvertently curtailed.

These criteria will be easier for the professional salmon fisherman to live with and yet allow the Commission to perform its function adequately. They probably won't make me any friends, though perhaps that's life.

Remember, I said that I wasn't sure that this legislation was worth the hurt involved; I am glad someone else is responsible, yet some avenues are open to us to help lessen the hurt and prevent unnecessary problems. Perhaps, to begin with, the members of the Commission should all be social scientists or psychologists with a staff of people satisfying the various other qualifications deemed necessary. If the fleet reduction is accomplished on a 20% a year basis it may be more acceptable, however you don't want to be in the position of the little boy who wanted to dock his dog's tail but not wanting to hurt him, cut off only one inch at a time. This Commission will always leave an air of uncertainty for some fishermen; it does seem advisable that this be minimized. The problem of fisheries paying their own way must be incorporated in any program of compensation for those who are eliminated from the fishery, and realistically some people will be eliminated and should be compensated. Considerable care must be taken to insure that the abuse of such a compensation program is held to a minimum. Another point is that there must be procedures for temporary emergency transfers of permits. It takes a lot of pure guts to recognize that "there comes a time in each man's life when he must take the bull by the tail and face the situation", this is certainly the case in this situation with its imperative urgency. As a person thoroughly immersed in the commercial fishing industry through experience gained in nine years of commercial fishing for salmon, five years of formal training in fisheries biology and wildlife management, some time with the fisheries extension program in Southeast and South Central Alaska, and as a student of marine and fishery economics, I have undoubtedly introduced considerable bias into this note. That I cannot change, but I remain quite willing to discuss this further if I can be of help.

Respectfully,



Donald B. Kalk
Marine Advisory Agent

Mike Whitehead

Anchorage, Alaska
January 27, 1973

Fisheries Committee

SB-39

Senator Bob Palmer, Chairman

Senators, John Buckell, Lowell Thomas,
Kay Poland, John Carter, George Holman

Dear Senator,

It's a small year for a limited
entry fish in the salmon fishery this
year.

The salmon industry does not
subsidize the subsidies they claim they
have invested in Alaska. How many
thousands are there that are "lost" in
the industry's custom packed salmon.

In Bristol Bay and Prince William
Sound in recent years there are over
a billion salmon used for the coast
and coast of the valuable resources.
A common practice for them for the
last several years.

The salmon industry does not
have the facilities to pack a large
salmon run. Their concern is
packing a number of cases, and of

there is a large sum, to sell
with it, dump the skins. They
want skins, furs and gas
to meet the X number of cases
they must pack.

With our resources, we have
the power as a sovereign State
to protect us from their want and
waste.

Check out the tape they pay
the deal on the million they
claim they have invested. You
will be surprised.

How is a form of limited
entry in transportation, communication
etc. etc. etc. or no reason in the
world to limit the entry in to the salmon
fishery? I am limited when I can
pack, they should check out what
be limited in their want and
waste of our valuable resources?

Could a Supreme Court decision change
this for me?

Between the foreign fleet and
the salmon industry of the lower
48, we can have a fishery in
3 years, you the law makes
condone the want and waste of

our salmon fishing. Read the
book reports from 1930 to date.
It alone is enough to pass SB-39.
It is a sure bet the salmon fishing
will be financed more within
the state, starting in 1974, than you
demanding more protection of these
fishery.

You people can go off as
Alaskans. Let us see you clearly
demonstrate that by full protection
of Alaskan resources and Alaskan
I am sure your vote for limited
entry will be appreciated by all the
Alaskan fishermen who are concerned
in utilizing the fisheries on a
sustainable yield basis.

I thank you, in advance,
for your able action on SSB-39,
our protecting our resources and fishing.

Sincerely,
Phil Spitzer

*Mike
Whitehead*

Reid 2-18-73

SB 39

February 16, 1973

Chairman
Resources Committee
Alaska State Senate
State Capitol Building
Juneau, Alaska 99801

Dear Sir:

As a means of introduction, I am a fisherman's wife as well as a fisherwoman. I have been attending meetings all over Juneau area regarding limited entry. I have also been in round-table discussions, often heated, with my friends and neighbors. In general, I support the idea of limited entry. However, I depart in thoughts with Senate Bill 39 and House Bill 126. I understand that they are being revised, and I would like to add to the mayhem myself.

I cannot support the idea of a Commission. The State of Alaska is trying to cut expenses, so cut them. The Commission is going to get a large salary. The State Department of Fish and Game and the State Department of Internal Revenue should be able to handle this. True, I don't understand the entire structure of the State's Administration, but I can see no reason why two Department can't cooperate. It would not cost nearly as much to give them more clerical support. (Even the Commission is going to have clerical help which will do most of the paperwork). The permits could then be issued with the licenses. This method might help dispense with the fisherman's fear of "politics" taking over selection, which may be a justified fear.

I do not agree with the lottery system at all. Selection should be based upon first issuance to the first fisherman who is qualified. Fishing is an occupation and should be treated as such. Like other job positions, updated applications should be screened and the best qualified applicant who is there first should be considered and given the job. It's unfair to drop a qualified applicant's name, who applied four years ago, into a "hat" with a qualified applicant's name, who applied two weeks prior, and give them an equal "chance". Heavens, fishing is a chancy occupation anyway. And I certainly hope you don't fill other State positions by the lottery system.

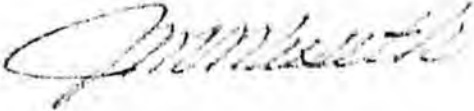
It annoys me to hear the statement "...but I have a right to go fishing". Of course, anyone does. An individual can enjoy himself sports fishing and probably catch more than required to feed his family. He has a right to apply for position as a Commerical Fisherman when there is an opening, just as the Commerical Fisherman has a right to apply for a position as school teacher, secretary, executive, or whatever--if he's qualified.

TO: Chairman, Resources Committee

Another thought is there should be some provision for the Vietnam veteran. This man may have entered service right after high school. He's been gone from two to four years and, naturally, could not fish then. When he returns home, he hasn't any money. The Armed Forces are not famous for their wages. He may have to work for two years or more to be able to buy a fishing vessel. I personally don't believe this man should be penalized just because he had to help "Uncle Sam".

For what they're worth, these are just a few of my thoughts on the subject. I have more, but don't want to make this so lengthy it's not read. Thank you for your time and any consideration.

Sincerely yours,



Jeri Museth
(Mrs. Henry A. Museth)
P.O. Box 754
Juneau, Alaska 99801

cc: Chairman, Resources Committee
Alaska State House
cc: United Fishermen of Alaska
cc: SEATA

WRANGELL VESSEL OWNERS ASS'N.

Wrangell, Alaska 99929

Secretary UFA
Kathy Schenker
1747 Glacier Ave.
Juneau Alaska

Dear Ms. Schenker:

The Wrangell Vessel Owners have
decided to oppose gear limitation of
any kind.

We favor instead stream improvement
and additional fisheries plus we would
like to see money spent for fruitful
fisheries research.

Sincerely,

Bill Dunlap

Secretary

Wrangell Vessel Owners



Environment Canada
Environnement Canada
Fisheries Pêches

your file votre dossier

our file Notre dossier

41-5-2

1090 West Pender Street,
Vancouver 1, B. C.

VIA AIR MAIL

January 31, 1973.

Mr. Mike Whitehead,
Senate Special Committee on Fisheries,
Pouch V,
JUNEAU, Alaska. 99801

Dear Mr. Whitehead:

In response to your telephone inquiry of last week I am sending along the following documents:

- (1) The Fisheries Act.
- (2) Pertinent sections of the British Columbia Fishery Regulations pertaining to vessel licencing.
- (3) Problems of Over-Expansion in the Salmon Fleet in British Columbia.
- (4) Limited Entry in the Salmon Fishery: The British Columbia Experience.
- (5) Rationalization of Canada's West Coast Salmon Fishery: An Economic Evaluation.
- (6) A Review of the Licenced Fishing Fleet - 1969-1972.

If I can be of any further assistance, please do not hesitate to give me a phone call.

Yours truly,

R. Roberts,
Manager,
Special Economic Programs
and Intelligence Branch

Encl.

LIMITED
ENTRY
LEGAL
ANALYSIS

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 185.--OCTOBER TERM, 1969

Augie Reetz, Commissioner of Fish
and Game for Alaska, et al.,

Appellants,

v.

John Bozanich et al.

On Appeal From the
United States Dis-
trict Court for the
District of Alaska.

[February 25, 1970]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This is an appeal from a three-judge District Court, convened under 28 U. S. C. §§ 2281, 2284, declaring certain fishing laws of Alaska and regulations under them unconstitutional and enjoining their enforcement. 297 F. Supp. 300. We noted probable jurisdiction. 396 U. S. 811.

The laws in question, passed in 1968, concern salmon net gear licenses for commercial fishing, not licenses for other types of salmon fishing. They are challenged because they limit licensees to a defined group of persons. The Act in material part provides:¹

"Persons eligible for gear licenses. (a) Except in cases of extreme hardship as defined by the Board of Fish and Game, a salmon net gear license for a specific salmon registration area may be issued only to a person who

¹ Alaska Stat., § 16.05.536 (1968). Subd. (b) of that section specifies the data to be supplied in applications for a gear license.

Section 16.05.540 provides that the licensee shall "personally operate or assist in the operation of the licensed fishing gear"; that he shall "personally own or lease the licensed fishing gear"; and that the licensee is "non-transferable."

"(1) has previously held a salmon net gear license for that specific salmon registration area; or
"(2) has, for any three years, held a commercial fishing license and while so licensed actively engaged in commercial fishing in that specific area."

The regulations² provide that except in cases of "extreme hardship" . . . a salmon net gear license for a specific salmon registration area may be issued only to a person who:

"(A) has held in 1965 or subsequent years a salmon net gear license for that specific salmon registration area; or

"(B) has, for any three years since January 1, 1960, held a commercial fishing license and while so licensed actively engaged in commercial fishing in that specific area."

Appellees are nonresidents who applied for commercial salmon net gear licenses. They apparently are experienced net gear salmon fishermen but they cannot qualify for a salmon net gear license to fish in any of the 12 regions or areas described in the Act and the regulations.¹

Appellees filed a motion for summary judgment on the grounds that the Act and regulation deprived them of their rights under the Equal Protection Clause of the Fourteenth Amendment and also their rights under the Alaska Constitution. That constitution provides in Art. VIII, § 3:

"Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

² Alaska Commercial Fishing Regulations § 102.09 (a) (1969).

¹ As defined in the regulations, *id.*, § 102.09 (a) (2).

¹ While the original complaint challenged the 1968 regulations, it was amended to challenge the 1968 Act and the 1969 regulations under it, which regulated the 1969 fishing season.

And it provides in Art. VIII, § 15:

"No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State."

Appellants filed a motion to dismiss or alternatively to stay the proceedings in the District Court pending the determination of the Alaska constitutional question by an Alaskan court.

Appellants' motion to dismiss or to stay was denied. Appellee's motion for summary judgment was granted, the three-judge District Court holding that the Act and regulations in question were unconstitutional both under the Equal Protection Clause of the Fourteenth Amendment and under the Constitution of Alaska. 297 F. Supp. 304-307.

This case is virtually on all fours with *City of Meridian v. Southern Bell Tel. & Tel. Co.*, 358 U. S. 639, where a single district judge in construing a Mississippi statute held that it violated both the Federal and the State Constitutions. The Court of Appeals affirmed and we vacated its judgment and remanded to the District Court with directions to hold the case while the parties repaired to a state tribunal "for an authoritative declaration of applicable state law." *Id.*, at 640.

We said:

"Proper exercise of federal jurisdiction requires that controversies involving unsettled questions of state law be decided in the state tribunals preliminary to a federal court's consideration of the underlying federal constitutional questions. . . . That is especially desirable where the questions of state law are enmeshed with the federal questions. . . . Here, the state law problems are delicate ones, the resolution of which is not without substantial difficulty—certainly for a federal court. . . . In such a case, when the state court's interpretation of the

statute or evaluation of its validity under the state constitution may obviate any need to consider its validity under the Federal Constitution, the federal court should hold its hand, lest it render a constitutional decision unnecessarily." *Id.*, at 640-641.

We are advised that the provisions of the Alaska Constitution at issue have never been interpreted by an Alaska court. The District Court, feeling sure of its grounds on the merits, held, however, that this was not a proper case for abstention, saying that "if the question had been presented to an Alaska court, it would have shared our conviction that the challenged gear licensing scheme is not supportable." 297 F. Supp., at 304. The three-judge panel was a distinguished one, two being former Alaska lawyers. And they felt that prompt decision was necessary to avoid the "grave and irreparable" injury to the "economic livelihood" of the appellees which would result, if they could not engage in their occupation "during this year's forthcoming fishing season." *Ibid.*

It is, of course, true that abstention is not necessary whenever a federal court is faced with a question of local law, the classic case being *Meredith v. Winter Haven*, 320 U. S. 228, where federal jurisdiction was based on diversity only. Abstention certainly involves duplication of effort and expense and an attendant delay. See *England v. Louisiana State Board*, 375 U. S. 411. That is why we have said that this judicially created rule which stems from *Railroad Commission v. Pullman Co.*, 312 U. S. 496, should be applied only where "the issue of state law is uncertain." *Harman v. Forssenius*, 380 U. S. 528, 534. Moreover, we said in *Zwickler v. Koota*, 389 U. S. 241, 248, that abstention was applicable "only in narrowly limited 'special circumstances,'" citing *Propper v. Clark*, 337 U. S. 472, 492. In *Zwickler*, a state statute was attacked on the ground that on its face it was repugnant to the First Amendment; and it was con-

ceded that state court construction could not render unnecessary a decision of the First Amendment question. 389 U. S., at 250. A state court decision here, however, could conceivably avoid any decision under the Fourteenth Amendment and would avoid any possible irritant in the federal-state relationship.

The *Pullman* doctrine was based on "the avoidance of needless friction" between federal pronouncements and state policies. 312 U. S., at 500. The instant case is the classic case in that tradition, for here the nub of the whole controversy may be the state constitution. The constitutional provision relates to fish resources, an asset unique in its abundance in Alaska. The statute and regulations relate to that same unique resource, the management of which is a matter of great state concern. We appreciate why the District Court felt concern over the effect of further delay on these plaintiffs, the appellees here; but we have concluded that the first judicial application of these constitutional provisions should properly be by an Alaska court.

We think the federal court should have stayed its hand while the parties repaired to the state courts for a resolution of their state constitutional questions. We accordingly vacate the judgment of the District Court and remand the case for proceedings consistent with this opinion.

It is so ordered.

Robert W. Johnson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JOHN BOZANICH, et al.,)
Plaintiffs,)
v.)
AUGIE REETZ, Commissioner)
of Fish and Game for the)
State of Alaska, et al.,)
Defendants.)

No. J-5-68

OPINION

Robert W. Johnson
FILED

FEB 26 1969

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
..... Deputy

Before: WALTER ELY, Circuit Judge, and
RAYMOND E. PLUMMER and JAMES A. VON DER HEYDT,
District Judges.

ELY, Circuit Judge:

Plaintiffs are nonresidents of Alaska. The defendants are those authorities of the State of Alaska charged with the enforcement of Alaska regulations pertaining to fishing rights. The plaintiffs are experienced salmon fishermen, and each has pursued his occupation in certain, although not all, of the coastal waters of Alaska. Those waters are generally divided into twelve fishing regions. In 1968, Alaska adopted a certain statute under which fishing rights in the different regions were thereafter to be regulated by gear licensing requirements.^{1/} The word "gear," in its pertinent meaning here, refers to the operating nets employed in the commercial harvesting of salmon. The statute undertook to confer upon the Board of Fish and Game the right to adopt additional regulations pursuant to the statute. The most recent of the regulations, those which are pertinent here,

^{1/} Attached as footnote 1/ is chapter 186, S.L.A. 1968.

1 became effective on February 12, 1959^{2/}. From an examination
2 of the germane provisions of the statute, quoted in the mar-
3 gin, it is apparent that none of the plaintiffs could qualify
4 for a salmon net gear license to fish in some of the twelve
5 regions. In fact, their applications for the 1968 fishing
6 season were denied under regulations less restrictive than
7 those most recently issued.

8 The plaintiffs have argued that the licensing re-
9 quirements are invalid as violative of both the Constitutions
10 of the United States and the State of Alaska. There is no
11 jurisdictional problem with the amount in controversy, and in
12 light of the substantial federal question, our jurisdiction
13 is initially founded on 28 U.S.C. § 1331(a). Since plaintiffs
14

15 2/ We quote here the relevant extract from the 1959 Commercial
16 Fishing Regulations for the State of Alaska:

17 "Section 102.09 Salmon Net Gear Licenses.

18 (a) Persons eligible for salmon net gear licenses.

19 (1) Except in cases of extreme hardship as
20 defined in Sec. 102.09(a)(2), a salmon
21 net gear license for a specific salmon
22 registration area may be issued only to
23 a person who:

24 (A) has held in 1955 or subsequent years
25 a salmon net gear license for that
26 specific salmon registration area;
27 or

28 (B) has, for any three years since Jan-
29 uary 1, 1960, held a commercial
30 fishing license and while so
31 licensed actively engaged in commer-
32 cial fishing in that specific area.

(2) Exceptions for extreme hardship:

Upon approval by a Hardship Panel con-
sisting of the Commissioner, the Deputy
Commissioner for Commercial Fisheries,
and the Director of the Commercial
Fisheries Division of the Department of
Fish and Game, a salmon net gear license
shall be issued as follows:

(A) Serious injury, sickness, or death;

1 seek a declaration of the unconstitutionality of state laws
2 and an injunction against their enforcement, our three-
3 judge District Court was convened pursuant to 28 U.S.C. §§
4 2281, 2284. On February 14, 1969, we conducted a hearing on
5 the defendants' motion to dismiss and motion for summary
6 judgment and the plaintiffs' motions for injunctive relief
7 and for summary judgment. We took the cause under advise-
8 ment, and our review of the authorities has convinced us
9 that we must deny the defendants' motions and enter summary
10 judgment in favor of the plaintiffs. Our reasons follow.

11 In their motion to dismiss, the defendants sug-
12 gested that there is no case or controversy because the is-
13 sues are moot. This contention is valid in its application
14 to the plaintiffs' original complaint, which challenged the
15 now-expired 1968 regulations under which they were denied
16 licenses for that season. The plaintiffs' amended complaint,
17

18 2/ Continued

19 If the head of a household who held a
20 1968 Alaska salmon net gear license
21 will be prevented from commercial
22 fishing in 1969 because of serious
23 injury, or sickness as certified by a
24 physician, or death, a member of his
25 family, or other individual selected
26 by the family, shall be issued a 1969
27 salmon net gear license for the same
28 registration area.

29 (B) Other cases of extreme hardship, in-
30 cluding new fisheries, certain military
31 service situations and prolonged ill-
32 nesses as approved by the Hardship Panel.

A new fishery is a fishery that has
developed in a new location where
eligible fishermen are insufficient to
adequately harvest the resource."

1 however, deals squarely with the 1969 regulations and statute
2 now in effect and under which they would clearly be prevented
3 from obtaining the gear licenses necessary for utilizing their
4 salmon-catching equipment in certain coastal regions that
5 they desire. Another three-judge court of this District over-
6 ruled a similar suggestion of mootness and explained its
7 reasoning at length in Brown v. Anderson, 202 F. Supp. 96
8 (D. Alaska 1962).

9 The defendants also urge that we abstain from con-
10 sideration of the issues in light of the questions of state
11 law involved in the case. It is perfectly clear to us that
12 the plaintiffs should not be penalized by our adopting the
13 position that we should abstain from meeting the important
14 constitutional issues presented until the Alaska state courts
15 may at some future time be called upon to analyze the questions.
16 Our abstention would surely deprive the plaintiffs of sub-
17 stantial engagement in their occupation during this year's
18 forthcoming fishing season. This prospective injury to
19 their economic livelihood looms too grave and irreparable to
20 permit delay in the adjudication of their constitutional
21 rights. Moreover, the legal issues presented do not consti-
22 tute a proper case for application of the doctrine of absten-
23 tion. The proper disposition of the case on the merits is too
24 clear, and we have absolutely no doubt that, if the question
25 had been presented to an Alaska court, it would have shared our
26 conviction that the challenged gear licensing scheme is not
27 supportable. See the analysis of authorities in Zwickler v.
28 Koota, 389 U.S. 241, 250-51, 88 S. Ct. 391, 19 L. Ed. 2d 444
29 (1967). In Zwickler, the Supreme Court stated, "We have
30 frequently emphasized that abstention is not to be ordered
31 unless the state statute is of an uncertain nature, and is
32 obviously susceptible of a limiting construction." [Cita-

1 tions omitted.] 389 U.S. at 251, note 14.

2 As we interpret the licensing scheme, it violates
3 the equal protection clause of the Fourteenth Amendment of
4 the Constitution of the United States. The only persons
5 that can presently qualify for net-gear licenses are those
6 already vested with the local privilege. To receive a
7 license for a particular fishery, one must have held a
8 gear license in the same region in a year since 1965 or
9 have held a commercial fishing license in that region for
10 any three years since 1960.^{3/} An aspiring commercial licensee
11 wishing to participate in salmon fishing may work for a
12 locally licensed employer for three years or may fish for
13 himself but without the necessary net-gear to catch salmon.
14 Thus, if an outsider wishes to fish for salmon in a given
15 year, and in three years to qualify for his own gear license,
16 his chances are wholly dependant upon obtaining employment
17 under a member of that closed class of fishermen who, in the
18 specified past years, possessed the right to fish in the
19 area. Although a state may enact fishing regulations in
20 the legitimate interests of conservation and safety, it may
21 not, to achieve those ends, employ arbitrary and irrational
22 means which create or protect local, monopolistic interests.
23 Under the scheme, entry into the salmon fishing industry is
24 controlled not by the state, but by local fishermen in each

25
26 ^{3/} Commercial Fishing Regulations, section 102.09(a)(1)
27 (A), (B)(1969), note 2, supra. No other entries into the
28 salmon fishing industry in any coastal region are permitted
29 except the narrowly prescribed class of extreme hardship
30 cases as limited in section 102.09(a)(2)(1969), also quoted in
31 note 2, supra. Under this "hardship" provision, a licensee
32 would be empowered to assign his license to anyone, regardless
of whether or not the assignee had any fishing experience
whatsoever.

1 area who are eligible for gear licenses and can choose among
2 the commercial fishermen, if any, that they might wish to hire.
3 The power to permit competition cannot be vested in private
4 interests whose own benefit would ordinarily not be served by
5 assisting potential competitors to qualify.

6 We are convinced that the Alaska scheme cannot
7 meet the equal protection requirements set forth in Morey v.
8 Doud,^{4/} wherein the Supreme Court struck down another invidious
9 classification in legislation concerning economic regulation.
10 There, the Supreme Court announced:

11 "In determining the constitutionality of the
12 Act's application . . . we start with the
13 established proposition that the 'prohibition
14 of the Equal Protection Clause goes no further
15 than the invidious discrimination.' Williamson
v. Lee Optical Co., 348 U.S. 483, 489. The
16 rules for testing a discrimination have been
17 summarized as follows:

- 18 1. The equal protection clause of the
19 Fourteenth Amendment does not take from
20 the State the power to classify in the
21 adoption of police laws, but admits of
22 the exercise of a wide scope of discretion
23 in that regard, and avoids what is done
24 only when it is without any reasonable
25 basis and therefore is purely arbitrary.
26 2. A classification having some reasonable
27 basis does not offend against that clause
28 merely because it is not made with mathematical
29 nicety or because in practice it results in
30 some inequality. 3. When the classifica-
31 tion in such a law is called in question, if
32 any state of facts reasonably can be con-
ceived that would sustain it, the existence
of that state of facts at the time the law
was enacted must be assumed. 4. One who
assails the classification in such a law must
carry the burden of showing that it does
not rest upon any reasonable basis, but is
essentially arbitrary.' Lindsley v. Natural
Carbonic Gas Co., 220 U.S. 01, 70-79.

"To these rules we add the caution that 'Discrimina-
tions of an unusual character especially suggest
careful consideration to determine whether they
are obnoxious to the constitutional provision.'
[Citations omitted.]

354 U.S. at 453-54, citing other controlling authorities;

4/ 354 U.S. 457, 77 S. Ct. 1344, 1 L. Ed. 2d 1485 (1957).

1 see Mayhue v. City of Plantation, 375 F.2d 447, 450-51
2 (5th Cir. 1967); cf. Levy v. Louisiana, 391 U.S. 68, 71,
3 88 S. Ct. 1509, 20 L. Ed. 2d 435 (1968). We can reasonably
4 conceive of no hypothetical state of facts which would
5 justify discrimination in favor of salmon fishers who
6 happened to have held commercial licenses in three years
7 since 1960 or gear licenses in a year since 1965. The
8 defendants suggest that prior experience might be necessary
9 in the interests of safety and conservation management;
10 nevertheless, we perceive no rational basis for the state's
11 placing of selection of the outsiders allowed to gain the
12 necessary "prior experience" in the industry in the hands of
13 private citizens now eligible for the required licenses. The
14 defendants suggest that the necessary experience may be gained
15 by an outsider if he fishes commercially in the area for three
16 years, even though such fishing is not with the net-gear
17 necessary to catch salmon. We cannot understand how the
18 "experience" necessary to fish for salmon might be promoted
19 by requiring the plaintiffs, who are experienced in salmon
20 fishing, or others with no such experience to employ the
21 different techniques incident to fishing for herring or
22 other forms of non-salmon sea life.

23 Although we would have preferred that the Alaska
24 courts should have had the first opportunity to so hold, we
25 must also now declare that the licensing scheme violates
26 the Alaska Constitution, which, in its Article VIII, provides:

27 "Section 3. Common Use. Wherever occurring
28 in their natural state, fish, wildlife, and
29 waters are reserved to the people for common
30 use.

31 "Section 15. No Exclusive Right of Fishery.
32 No exclusive right or special privilege of
fishery shall be created or authorized in
the natural waters of the State."

The Attorney General of Alaska, in an Opinion directed to the

1 Commissioner of the Department of Fish and Game, dated
2 February 9, 1968, emphasized the unconstitutionality of
3 a proposed and ... essentially similar licensing require-
4 ment which would have restricted area licenses to those
5 license-holders within the same area in the past two years.
6 The Attorney General relied on State ex rel. Bacich v. Huse,
7 187 Wash. 75, 59 P.2d 1101 (1936), in which 1933 salmon gear
8 licenses were issued only to those who had held licenses in
9 1931 or 1932. He set forth the legislative history of
10 section 15, supra, demonstrating that the provision was
11 based on section 1 of the White Act of June 6, 1924, 43
12 Stat. 464, under which Alaska fisheries were regulated
13 prior to Alaska's statehood. The leading case considering
14 the White Act is Hynes v. Grimes Packing Co., 337 U.S. 86,
15 69 S. Ct. 968, 93 L. Ed. 1231 (1949). The Secretary of the
16 Interior had ordered certain Alaska waters closed to fishing
17 by all except those of the Karluk Indian Reservation and
18 their licensees. The Supreme Court in Hynes held that the
19 White Act prohibited fishing grants to special groups or
20 numbers of people. We read, at 120-22:

21 "Congress did not propose that these rich
22 fishing grounds should be monopolized by
23 this defined group. The legislative history
24 of the White Act only emphasizes what the
25 statute clearly says, that is, no special
26 privileges in Alaskan fishing preserves. . . .

27 "For the conservation of the fisheries, it
28 was recognized that administrative flexibility
29 must be permitted. . . . [W]e are of the
30 opinion that licenses for fishing may be re-
31 quired in areas regulated under the White
32 Act. We think, however, these licenses
33 may be only regulatory in character

34 "We find nothing in the White Act that
35 authorizes the Secretary of the Interior to
36 grant reservation occupants the privilege
37 of exclusive or special fishing rights."

38 The Attorney General of Alaska also ruled that the Board of
39 Fish and Game could not be given the delegated authority,

1 in the absence of guiding standards prescribed by other pro-
2 visions of law, to specify certain prior years as the test
3 for whether salmon gear licenses would be issued. Here,
4 the Board has set specific years in the 1960's, although no
5 guidelines are included in the 1969 statutory scheme. In
6 this connection, it is pertinent to note that the Attorney
7 General's Opinion was explicitly made applicable to section
8 102.09, the forerunner of the section 102.09 regulations
9 set out in footnote 2, supra.

10 The Alaska legislature apparently attempted to
11 avoid the impact of Attorney General Boyko's Opinion by
12 ostensibly providing an avenue by which a commercial licensee
13 might, after three years with such an area license, obtain
14 a salmon gear license in the particular area. The fact that
15 he might do so, even though he could never, without the aid
16 of an established net-gear licensee, have previously gained
17 experience in the area with gear essential to commercial
18 salmon fishing does not harmonize with the defendants'
19 argument that the challenged scheme is designed to promote
20 safe operations by experienced fishermen. It appears to us
21 that the "escape" avenue offers nothing beyond an illusory
22 hope to non-established salmon fishermen seeking to ply
23 their trade in a new area.

24 There is no saving difference between the present
25 licensing scheme and that to which the Attorney General
26 directed his objection. Both would tend to establish mo-
27 nopolistic trade guilds not thought desirable by the framers
28 of Alaska's Constitution. As a properly constituted three-
29 judge court, we have jurisdiction to consider all legal
30 attacks upon the statute. Florida E. & S. Co. v. Jacksonville
31 Inc. v. Jacobsen, 352 U.S. 73, 80-81, 80 S. Ct. 568, 4 L.
32 Ed. 2d 568 (1969). We therefore conclude that the 1969

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salmon net-gear licensing statute and its consequent regulations cannot survive the requirements of the equal protection clause of the Constitution of the United States or those of the Constitution of Alaska.

1 In oral argument the defendants argued that
2 summary judgment for the plaintiffs would be improper be-
3 cause the decision of the court might rest upon facts to be
4 proved in plenary proceedings. Pressed for a definition of
5 such anticipated proof, defendants' counsel was unable to
6 specify, with any reasonable precision, any genuine issue
7 of fact. Moreover, any genuine issue of fact, the resolu-
8 tion of which might control the disposition of the contro-
9 versy, is required by Rule 5(H)(2)^{5/} of this court to be
10 disclosed by written statement not later than three days
11 prior to the hearing on a motion for summary judgment. The
12 defendants did not, within the time allowed by this rule,
13 or ever, file the required statement. This corroborates
14 our conclusion that no genuine disputed issue of fact re-
15 mains. Counsel did orally suggest that the defendants
16 might offer proof that overriding considerations of con-
17 servation inspired the adoption of this challenged regula-
18 tory scheme. Such proof, whatever it might be, could not
19 alter the result. However worthy or desirable they may have
20 been the motives behind the legislation, they cannot cure the
21 obvious constitutional infirmities.

22 Accordingly, we deny the defendants' motions to
23 dismiss and for summary judgment. We grant the plaintiffs'
24 motion for summary judgment. The enforcement of the 1969

25
26 5/ This rule, as amended March 1, 1967, reads as follows:

27 "(2) Any party opposing the motion [for
28 summary judgment] shall, not later than three
29 (3) days prior to the hearing, serve and file
30 a concise 'statement of genuine issues'
31 setting forth all material facts as to which
32 it is contended there exists a genuine issue
necessitating to be litigated."

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statute and the regulations in question is permanently enjoined. Plaintiffs' counsel will prepare and submit a proposed form of judgment.^{6/}

Dated this 26th day of February, 1969.

5/ Walter Ellis
United States Circuit Judge

5/ Raymond E. Plummer
United States District Judge

5/ James H. von der Heydt
United States District Judge

Certified to be a true and correct copy of original filed in my office.
Dated 2/26/69
J. M. Krohn, Jr., Clerk
By [Signature] Deputy

^{6/} Findings of fact and conclusions of law are not required when a disposition is made, such as here, by summary judgment. Fed. R. Civ. P. 52(a). Our opinion recites the essential factual and legal considerations which bear upon the result to which we have been impelled.

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Footnote 1/

(Reference page 1)

We set forth here the pertinent statute,
chapter 186, S.L.A. 1968.

AN ACT

Relating to persons eligible to obtain gear licenses; and providing for an effective date.

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

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

(b) The legislature further finds that the uninhibited issuance of gear licenses to anyone despite total lack of experience in the particular area has not only been the prime factor tending toward accumulation of excessive gear but also has posed additional management, enforcement, and public safety problems through the lack of familiarity with regulations, waters, and procedures peculiar to the individual area.

(c) In view of the findings in (a) and (b) of this section, it is considered necessary by the legislature to impose experience requirements before issuance of salmon gear licenses to applicants.

* Sec. 2. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.635. PERSONS ELIGIBLE FOR GEAR LICENSES.
(a) Except in cases of extreme hardship as defined by the Board of Fish and Game, a salmon net gear license for a specific salmon registration area may be issued only to a person who

(1) has previously held a salmon net gear license for that specific salmon registration area; or

(1) and for any three years with a composite rating lower than the lowest rating shown in the composite rating in any of those years.

(c) An employee who claims that he is entitled for a year bonus under (a)(2) of this section shall submit to the Department of Revenue

(1) an affidavit of the employee stating that he purchased the stock during the year in which he claims the bonus, and during that year, or during the year in which he claims the bonus, he was employed by the employer for the entire year and the employee's services were not terminated during the year in which he claims the bonus.

(2) other evidence from the period ending ordinarily with the close of the year in which the bonus is claimed and the period ending with the close of the year in which the bonus is claimed, and the employee has taken the required steps to obtain the bonus for those years as required by the affidavit, and to the employee's knowledge, the employee has not been employed by the employer for the entire year in which he claims the bonus, or the employee has not been employed by the employer for the entire year in which he claims the bonus, or the employee has not been employed by the employer for the entire year in which he claims the bonus.

(c) A person who makes a claim under this section is entitled to a refund of the tax paid on the bonus if the employee has taken the steps required by (1) and (2) of this section.

* Sec. 5. AS 15.05.10 is amended to read:

Sec. 15.05.10. (1) An employee who claims that he is entitled for a year bonus under (a)(2) of this section shall submit to the Department of Revenue (1) an affidavit of the employee stating that he purchased the stock during the year in which he claims the bonus, and during that year, or during the year in which he claims the bonus, he was employed by the employer for the entire year and the employee's services were not terminated during the year in which he claims the bonus.

* Sec. 5. AS 15.05.10 is amended to read: (1) An employee who claims that he is entitled for a year bonus under (a)(2) of this section shall submit to the Department of Revenue

(1) an affidavit of the employee stating that he purchased the stock during the year in which he claims the bonus, and during that year, or during the year in which he claims the bonus, he was employed by the employer for the entire year and the employee's services were not terminated during the year in which he claims the bonus.

* Sec. 5. AS 15.05.10 is amended to read: (1) An employee who claims that he is entitled for a year bonus under (a)(2) of this section shall submit to the Department of Revenue (1) an affidavit of the employee stating that he purchased the stock during the year in which he claims the bonus, and during that year, or during the year in which he claims the bonus, he was employed by the employer for the entire year and the employee's services were not terminated during the year in which he claims the bonus.

THE PRECEDING DOCUMENT(S) MAY NOT FILM
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ORIGINAL.

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT, AT JUNEAU

3
4 JOHN BOZANICH, et al,)
5 Plaintiffs,)
6 vs.)
7 WALLACE H. HOEPENBERG, et al.,)
8 Defendants.)

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No. 70-389 Civil

9
10 MEMORANDUM SUPPLEMENTING THE DECISION

11 The court having heard arguments of counsel, considered the
12 briefs, and rendered its decision in open court declaring Chapter
13 136, Session Laws of Alaska 1963 to be in violation of the Con-
14 stitution of Alaska, hereby supplements its oral decision.

15 The plaintiffs challenge the constitutionality of Chapter
16 136, Session Laws of Alaska 1963, which amends AS 16.05.250, 536
17 and 540 in an action for a declaratory judgment and for a perman-
18 ent injunction against the enforcement of the session law. The
19 plaintiffs base their challenge to the law on Sections 1 and 7,
20 Article I, and Sections 3, 15, and 17, Article VIII, Constitution
21 of Alaska.

22 Some of the plaintiffs challenged Ch. 136, S.L.A. 1963 in the
23 Federal District Court and a three judge panel ruled the act was
24 unconstitutional as being in violation of the United States
25 Constitution and the Constitution of Alaska. Bozanich v. Rootz,
26 397 F. Supp. 390 (D. Alaska 1969). The three judge Federal
27 District Court decision was set aside as violating the doctrine
28 of abstention by the United States Supreme Court. Rootz v. Bozanich,
29 397 U.S. 62, 25 L. Ed. 2d 68 (1970). The Supreme Court did not
30 consider the merits of the case but remanded the case to the
31 District Court staying proceedings in order for the parties to
32 litigate the Alaska Constitutional questions in the Alaska courts.

1 The plaintiffs' motion for summary judgment was granted
2 March 3, 1971, for the reasons set forth in this opinion. The
3 defendants challenged summary judgment being granted for the
4 plaintiffs and moved during the course of the argument on the
5 motion for summary judgment in favor of the defendants.

6 Ch. 135, SLA 1963 provides:

7 Section 1. LEGISLATIVE FINDINGS. (a) The
8 legislature finds that excessive entry into
9 Alaska fishing areas has resulted in massive
10 accumulations of salmon fishing gear with
11 attendant ever-increasing difficulty in providing
12 for sound conservation and management of the
13 resource.

14 (b) The legislature further finds that the
15 uninhibited issuance of gear licenses to anyone
16 despite total lack of experience in the particu-
17 lar area has not only been the prime factor tending
18 toward accumulation of excessive gear but also
19 has posed additional management, enforcement,
20 and public safety problems through the lack of
21 familiarity with regulations, waters, and
22 procedures peculiar to the individual area.

23 (c) In view of the findings in (a) and (b)
24 of this section, it is considered necessary by the
25 legislature to impose experience requirements
26 before issuance of salmon gear licenses to appli-
27 cants.

28 Sec. 2. AS 16.05 is amended by adding a new
29 section to read:

30 Sec. 16.05.536. PERSONS ELIGIBLE FOR GEAR
31 LICENSES. (a) Except in cases of extreme hard-
32 ship as defined by the Board of Fish and Game,
33 a salmon net gear license for a specific salmon
34 registration area may be issued only to a person
35 who

36 (1) has previously held a salmon net gear
37 license for that specific salmon registration
38 area; or

39 (2) has, for any three years, held a commercial
40 fishing license and while so licensed actively
41 engaged in commercial fishing in that specific
42 area.

43 (b) An applicant who claims that he is
44 qualified for a gear license under (a)(2) of this
45 section shall submit to the Department of Revenue

46 (1) an affidavit by the applicant stating
47 that he purchased Alaska commercial fishing
48 licenses for the required three years, and during
49 those years, commercially fished in the specific
50 salmon registration area; the specific years the
51 applicant purchased commercial fishing licenses

1 shall be named in the affidavit; and

2 (2) either affidavits from two persons
3 holding currently valid gear licenses in the area
4 where the applicant desires to fish stating
5 that the applicant has fished the required time
6 in that area, or for each of three years state-
7 ments prepared by the applicant, subsequent to the
8 effective date of this section, signed by employees
9 of the Department of Fish and Game evidencing
10 that the applicant did report in at a Department
11 of Fish and Game office within the required area
12 during the required three years.

13 (c) A person who makes a false statement in
14 the affidavits required by (b)(1) and (2) of this
15 section is guilty of a misdemeanor.

16 4 Sec. 3. AS 16.05.540 is amended to read:

17 Sec. 16.05.540. LIMITATION ON ISSUANCE OF
18 FISHING GEAR LICENSES. The fishing gear licenses
19 mentioned in secs. 550 - 550 of this chapter shall
20 be issued one to the applicant and only for the
21 area in which the applicant qualifies under
22 sec. 536 of this chapter. Each applicant shall
23 personally operate or assist in the operation of
24 the licenses fishing gear. Each applicant for the
25 fishing gear licenses mentioned in secs. 570
26 and 580 of this chapter shall also personally own
27 or lease the licenses fishing gear. The license
28 is transferable as provided under sec. 670 of
29 this chapter.

30 Sec. 4. AS 16.05.250 is amended by adding a new
31 subsection to read:

32 (12) establish additional qualifications
relating to the eligibility requirements for gear
licenses.

Sec. 5. This Act becomes effective on January 1,
1969, unless all or any part of sec. 102.09 of the
1963 Alaska Commercial Fishing Regulations is
struck down by the courts, at which time this Act
will become effective immediately.

The findings of the Legislature concerning the desirability
of reducing the amount of fishing gear to promote the conservation
and management of the fishery is accepted. Further, the court
appreciates the fact that a presumption in favor of constitution-
ality exists.

The court found no genuine issues of material fact existed.
Further, the court determined that the statute violated the constitutional
protection guaranteed of Sec. 1, Art. I; the common law provision

1 of Sec. 3, Art. VIII and the prohibition of an exclusive right
2 or special privilege of the fishery provision of Sec. 15, Art.
3 VIII, Constitution of Alaska.

4 None of the plaintiffs and persons similarly situated could
5 qualify for a salmon net gear license in some of the salmon
6 registration areas and therefore, they were deprived of a valuable
7 right.

8 The classification between those who could receive a license
9 for a single salmon registration area and those who could not was
10 arbitrary and constituted an unreasonable classification. The
11 common calling of fishing is a fundamental right and cannot be
12 limited arbitrarily. State ex. rel. Racich v. Muse, 59 P.2d 1101
13 (Wash. 1936). The defendants' assertion that one not now eligible
14 for a net gear license may qualify by engaging in commercial
15 fishing for three years in the salmon registration area appears
16 illusory when the facts of commercial fishing in Alaska are con-
17 sidered. See briefs of the parties for a description of the
18 salmon fishery.

19 The case, Kotch v. Board of River Pilot Commissioners for
20 the Port of New Orleans, 330 U.S. 552, 91 L.Ed. 1093 (1947)
21 upholding the right of the river pilots at New Orleans to limit
22 their number is not controlling in the case at issue. Being a
23 river pilot is more nearly like being a physician or lawyer than
24 is being a fisherman which compares with being a farmer, sailor,
25 teamster, or artisan as the Supreme Court analyzed the facts. In
26 addition, the Supreme Court emphasized that river pilots were
27 in effect, state officials and the State of Louisiana had an anti-
28 nepotism statute.

29 The history of the United States and the growth of commerce
30 included within its boundaries exemplify the vision the founding
31 fathers of our country had in making the republic a free trade
32 area. Those Alaskans privileged to draft the constitution for

1 the inchoate state understood the wisdom of insuring equal pro-
2 tection of the laws to each person and preventing limitations on
3 the free exercise of an individual's legitimate initiative. Sec.
4 1, Art. I, Constitution of Alaska.

5 Sec. 3, Art. VIII, Constitution of Alaska provides:

6 COMMON USE. Wherever occurring in their natural
7 state, fish, wildlife, and waters are reserved
8 to the people for common use.

9 Sec. 15, Art. VIII, Constitution of Alaska provides:

10 NO EXCLUSIVE RIGHT OF FISHERY. No exclusive right
11 or special privilege of fishery shall be created or
12 authorized in the natural waters of the State.

13 It is conceded that the above-quoted constitutional provision was
14 an embodiment of the effect of Section 1 of the White Act of
15 June 6, 1924, 43 Stat. 464 and carried with it the meaning given
16 by the courts. The right to fish commercially is sought to be
17 restricted by the Act and this would in effect grant an exclusive
18 right of fishery which is prohibited. Times v. Griggs Packing Co.
19 337 U.S. 80, 93 L.Ed. 1231, 63 S.Ct. 968 (1948).

20 The general meaning of the words of the constitutional pro-
21 vision require that no distinction between persons equally
22 situated is to be made with regard to fish in their natural state.

23 Ch. 136, S.L.A. 1968 has never been enforced because its effect
24 was suspended during the pendency of the proceedings in the
25 United States Courts and the enactment of Ch. 77, S.L.A. 1970.

26 The court did not have to decide the question of the appro-
27 priateness of registration areas nor the due process argument
28 raised by plaintiffs.

29 The decision of the three judge federal district court was
30 given great weight but was not considered controlling in this case.
31 DATED this 15th day of March, 1971, at Seward, Alaska.

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Victor J. DeLoe
Superior Court Judge

LIMITED
ENTRY
GOVERNOR'S
TRANSMITTAL
LETTER TO
LEGISLATURE

WILLIAM A. EGAN
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 10, 1973

The Honorable Terry Miller
President of the Senate
Alaska State Legislature
Juneau, Alaska

Dear Mr. President:

Pursuant to the Uniform Rules of the Legislature, I am transmitting a bill to regulate entry into Alaska Commercial Fisheries.

The limited entry study that I requested and the Legislature established last summer has more work yet ahead of it, but sufficient research has been completed to recommend a sound basic regulatory program, and to apply that program to the species that need it most -- salmon.

Alaska's salmon resources cannot produce a livelihood for an unlimited number of fishermen, nor can they be successfully managed for maximum sustained yield if utilized by an unlimited number of fishermen. The only alternative to the continuing loss of a healthy professional fishery is the stabilization of entry into the fishery at reasonable levels.

The makeup and traditions of the salmon fishery vary greatly from area to area, but two basic generalizations apply to the whole state:

- 1) Excessive numbers of fishermen participating in the harvest of salmon have reached acute proportions in almost every area.
- 2) Without entry limitation the commercial salmon fishery will be taken over increasingly by moonlighters, sport-commercial, and part-time hobby fishermen.

Most past efforts to limit entry have failed because they were stop-gap efforts designed to postpone the problem by creating special licensing preferences, or to offer a

The Honorable Terry Miller - 2 - January 10, 1973

solution applicable to the special problems of only one area. The results were unconstitutional programs that did not satisfy the unique conditions of different fisheries.

Our basic objective has been to develop a constitutional and practical program which can be applied flexibly with fairness to the varied needs and special problems of each fishing area throughout the State, while at the same time offering a permanent solution benefiting the entire State. I believe that this bill does so.

Its overall objective is to stabilize the number of commercial fishermen within each salmon fishing area at a level commensurate with the ability of the resource to provide an adequate livelihood for the fishermen. Its long-range goal is an economically and biologically healthy professional fishery.

The Initial Scope of a Limited Entry Program

Early in the study the decision was made to focus attention on the Alaska salmon fisheries, rather than to deal immediately with the problem of open access in all Alaska fisheries. This was done for several reasons, although it is acknowledged that other important Alaska fisheries, such as king crab and shrimp, are already suffering from too much fishing effort and may require their own limited entry programs in the near future.

It is the State's salmon fisheries that are the main focus of public attention. In terms of income and employment they rank far above any other fishery. Because of their complexity and the growth of fishing pressure on them, the salmon fisheries present the most urgent need for limited entry regulation. Because salmon fishing practices vary greatly from area to area, a limited entry program for salmon will require a fairly general and flexible statewide regulatory framework. Such a broad-based approach will be capable of encompassing other species later when the need arises.

The Problem of Growing Fishing Pressure

Even with substantially improved biological management since Statehood, the salmon fisheries are not as healthy as they can be because a steadily increasing number of fishermen are participating in the harvest. These new