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HRES

LIMITED

ENTRY;

MISCELLANEOUS

MATERIALS

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entrants into the fishery have driven the profitability of fishing down to marginal levels for those professional fishermen who must depend upon fishing for a major share of their livelihood.

A disturbing aspect of this general trend is that a substantial number of these new entrants can afford to participate at marginal economic levels because they rely upon other employment for the major source of their livelihood. The character of these new entrants varies. In Bristol Bay it may be the school teacher from Anchorage or the Boeing worker from Seattle; in Southeastern the sport-commercial troller with a well-paid government job; in Cook Inlet, the vacationing set-netter from the lower 48. However, in almost every area these moonlighters are adding substantially to the economic distress of the vocational fishermen who must derive their primary livelihood from fishing.

The main problem with these part-time, avocational fishermen is not their multiple employment. It is that they can afford to participate in the fishery even when it is not profitable, with the effect that average incomes for all fishermen are driven to submarginal levels. If this open entry pattern is allowed to continue, it will mean the eventual economic destruction of Alaska's professional fisheries.

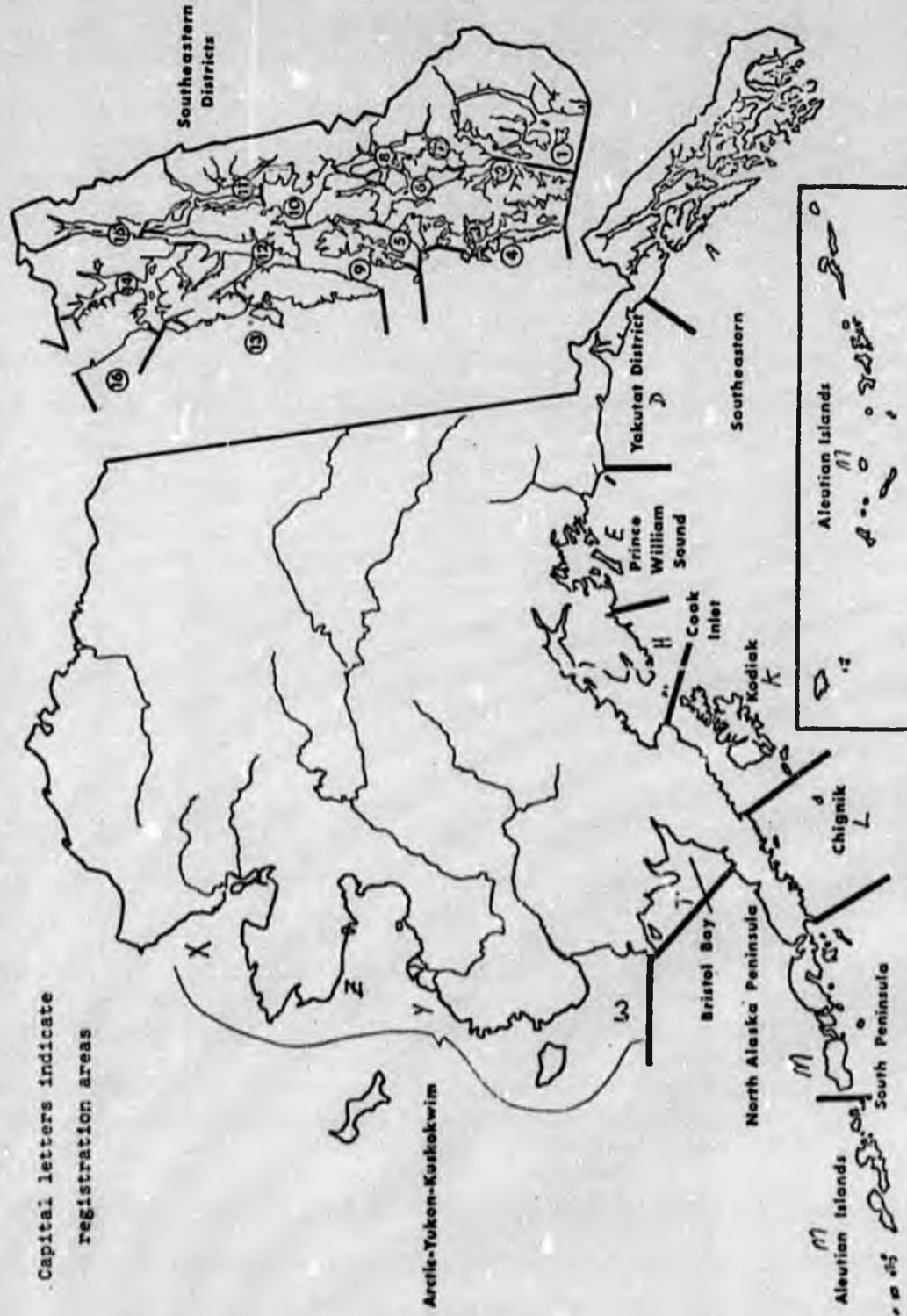
#### A Brief Survey of the Commercial Salmon Fishery

Alaska's salmon fisheries are divided into geographic regions for management purposes, as the accompanying map shows. The salmon net fisheries (purse seine vessels, drift gill net vessels, and set gill nets), are further tied to registration areas. Every fisherman desiring to fish salmon net gear must register to fish in only one registration area in any given year. The troll fishery is limited almost exclusively to southeastern Alaska, and takes primarily king and silver salmon for the fresh and frozen fish markets.

From the dual perspective of adequate economic return to the fishermen and adequate ability to fully harvest the resource, there are presently too many units of gear in almost every salmon management area in the State. As an indication of where we stand today, the Department of Fish

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**FIGURE I. Alaska Salmon Management Areas**



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and Game has prepared the following table which compares the numbers of units of gear registered in each area with the optimum numbers required to fully harvest the resource. These are rough estimates based on only one factor, but they fairly reflect the general magnitude of the problem. Only net gear is included in these tables; troll gear has not yet been similarly analyzed. If existing levels of gear are substantially above the optimum levels necessary for an economically healthy fishery, as this table indicates, then merely halting any further increase in gear levels will not achieve the basic objectives of a limited entry program -- a moratorium alone will not work.

ALASKA SALMON NET GEAR REGISTRATION  
CURRENT AND OPTIMUM LEVELS

	UNITS REGISTERED IN 1970			UNITS REGISTERED IN 1971			OPTIMUM UNITS REQUIRED		
	Purse Seines	Drift Gillnets	Set Gillnets	Purse Seines	Drift Gillnets	Set Gillnets	Purse Seines	Drift Gillnets	Set Gillnets
SOUTHEASTERN	422	420	11	358	475	7	300	250	10
YAKUTAT	-	-	173	-	-	175	-	-	100
PRINCE WILLIAM SOUND	221	556	39	266	652	14	150	250	15
COOK INLET	98	761	769	98	710	731	75	300	475
KODIAK	403	-	226	343	-	152	100	-	50
CHIGNIK	69	-	-	73	-	-	40	-	-
PENINSULA- ALEUTIAN	118	172	130	141	166	130	95	45	50
BRISTOL BAY	-	1913	924	-	1888	859	-	1015	345
KUSKOKWIM	-	446	76	-	501	71	-	375	50
KOTZEBUE	-	-	82	-	-	91	-	-	90
YUKON	-	254	490	-	295	571	-	125	330
HORTON SOUND	-	-	128	-	-	150	-	-	130

There are also a growing number of instances where too much concentrated fishing pressure makes sound management of the fishery impossible. This happens in the following way. The salmon net fisheries typically occur near the mouths of the spawning streams where salmon concentrate just prior to their spawning runs upstream. In such situations, allowing for adequate escapement is critical. If excessive amounts of gear are concentrated in the fishing areas, a mistake of only a few hours in the length of a fishing period could make the optimum escapement needed

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for an entire run of fish unobtainable and perhaps even wipe out the run. With too much gear in the fishery, fisheries managers have no margin for error in setting their field regulations. This has sometimes resulted in total closures where a manageable harvest by a reasonable number of vessels would otherwise have been acceptable.

Recent figures on license growth and catch data give a general picture of the excessive amount of gear and its distribution throughout the State. An analysis of average annual gross earnings per vessel by registration area and gear type for two recent years gives an approximate idea of income to fishermen. This and other statistical information is still being developed and refined by the limited entry study group.

There are three kinds of license issued for the salmon fishery: First, every person who intends to fish commercially must obtain a personal commercial fishing license; even crewmen must obtain these. Second, all vessels must be licensed by their operators. Third, a gear license must be purchased for every type of gear to be fished (e.g., drift net, purse seine, troll set net, long line, shellfish pots, trawl, etc.)

The following table shows the increase in all types of licenses used in the salmon fishery from 1961-1971:

	<u>1961</u>	<u>1971</u>
Commercial (personal)	15,697	20,564
Vessel	7,926	10,710
Drift Net	3,022	4,779
Set Net	2,064	3,062
Purse Seine	1,182	1,323
Troll	1,497	2,353

Here is a resident, non-resident breakout on commercial licenses:

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	<u>total</u>	<u>resident</u>	<u>non-resident</u>
1961	15,697	10,106	5,591
1971	20,564	14,276	6,388

It is worth noting that the percentage increase in resident licenses is greater than that for non-resident.

Here is a summary breakdown of catch and gear registration information by management area for the last four years. These tables include a resident, non-resident breakout for each type of gear and also show the percentage of the total salmon catch for each area which was taken by each type of gear.

<u>Southeastern</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch* (millions of fish)	30.2	6.9	14.7	12.9
purse seines (total units registered)	498	407	422	358
- resident	241	223	216	192
- non-resident	257	184	206	166
- Percentage of total catch	90%	74%	83%	81%
drift gill nets (units registered)	527	395	420	475
- resident	286	251	266	320
- non-resident	241	134	154	155
- Percentage of total catch	5%	15%	12%	12%
troll gear registered**	2,103	2,303	2,567	2,353
- Percentage of catch***	4%	10%	4%	6%

\*A majority of salmon caught in southeastern are pink salmon which fluctuate widely on a two year cycle.

\*\*These troll figures are totals statewide and include the nominal troll fishery in Yakutat and Price William Sound.

\*\*\*The value of troll catch is much higher than this figure would indicate. In 1971, value to fishermen of troll caught fish was \$5.8 million, value to fishermen of all other fish was only \$25.6 million.

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<u>Yakutat</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (million of fish)	.22	.26	.17	.26
set gill nets (units registered)	184	182	173	175
- Percentage of total catch	85%	88%	90%	96%
troll (units Regis- tered)	?	?	?	?
- Percentage of total catch	15%	12%	10%	4%

<u>Prince William Sound*</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	3.8	6.3	4.5	8.9
purse seines (units registered)	182	217	221	270
- resident	?	170	178	211
- non-resident	?	47	43	59
- %age of total catch	74%	84%	67%	87%
drift gill nets (units registered)	423	510	556	654
- resident	?	384	420	481
- non-resident	?	126	136	173
- %age of total catch	25%	15%	32%	11%

\*There is a negligible troll and set net fishery.

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<u>Cook Inlet</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	5.7	1.5	3.4	1.7
purse seines (units registered)	92	80	99	54
- resident	?	76	95	81
- non-resident	?	4	4	3
- %age of total catch	12%	18%	24%	32%
drift gill nets (units registered)	575	695	761	706
- resident	?	483	537	515
- non-resident	?	212	224	191
- %age of total catch	47%	50%	46%	44%
set gill nets (units registered)	655	736	769	729
- resident	?	683	704	686
- non-resident	?	53	65	43
- %age of total catch	41	32%	30%	24%
<u>Kodiak*</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	10.3	13.7	13.9	6.4
purse seines (units registered)	326	319	365	385
- resident	?	225	253	277
- non-resident	?	94	112	108
- %age of total catch	90%	95%	92%	92%
set gill nets (units registered)	192	202	226	193
- resident	?	152	166	142
- non-resident	?	50	60	51
- %age of total catch	8%	5%	7%	7%

\*There is a negligible beach seine fishery.

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<u>Chignik</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	2.4	2.2	3.1	2.0
purse seines (units registered)	68	70	69	76
- resident	?	57	57	62
- non-resident	?	13	12	14
- %age of total catch	100%	100%	100%	100%
<u>Alaska Peninsula Aleutians*</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	3.6	3.2	5.5	4.0
purse seines (units registered)	107	112	118	143
- residents	?	105	102	126
- non-residents	?	7	16	17
- %age of total	76%	60%	71%	66%
drift gill nets (units registered)	123	136	172	169
- residents	?	102	105	116
- non-residents	?	34	67	53
- %age of total catch	17%	35%	25%	30%
set gill nets (units registered)	<u>1968</u> 120	<u>1969</u> 134	<u>1970</u> 130	<u>1971</u> 132
- residents	?	124	108	117
- non-residents	?	10	22	15
- %age of total catch	7%	4%	4%	4%

\*There is a negligible beach seine fishery.

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<u>Bristol Bay</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	5.3	7.2	22.1	10.4
drift gill nets (units registered)	1,684	1,751	1,913	1,938
- residents	973	1,005	1,083	1,073
- non-residents	711	746	830	865
- %age of total catch	90%	88%	33%	90%
set gill nets (units registered)	839	924	924	891
- residents	722	759	765	745
- non-residents	117	165	159	146
- %age of total catch	10%	12%	7%	10%
 <u>Artic-Yukon-Kuskokwim*</u>	 <u>1968</u>	 <u>1969</u>	 <u>1970</u>	 <u>1971</u>
total salmon catch (millions of fish)	.6	.8	1.0	.9
drift gill nets (units registered)	572	702	708	810
- residents	?	699	706	797
- non-residents	?	3	2	13
- %age of total catch	54%	34%	30%	29%
set gill nets (units registered)	598	727	783	902
- residents	?	721	781	889
- non-residents	?	6	2	13
- %age of total catch	45%	65%	69%	70%

\*There is a negligible commercial take from fishwheels.

The following table gives some indication of the magnitude of depressed fishermen incomes in different areas of the State. This table shows average gross earnings per boat for two recent years. These figures represent gross earnings before expenses and must provide income for the entire crew required to operate a certain type of gear.

VALUE TO FISHERMEN OF 1970 SALMON CATCH  
BY REGISTRATION AREA AND GEAR

<u>SOUTHEASTERN</u>	<u>VALUE (a)</u>	<u>VESSELS FISHING (b)</u>	<u>AVERAGE EARNING PER VESSEL</u>
Trap	\$ 70,842	4	\$17,710
Purse Seine	7,706,866	405	19,029
Drift Gillnet	2,526,472	336	7,519
Set Gillnet	19,844	10	1,984
Troll	4,465,162	1,894	2,358
TOTAL	\$14,789,186	2,649	\$5,583
(c) Using 1971 per- centages where 50% of the Trollers caught only 4% of the total pounds of troll fish in Yakutat and S.E. This adjustment would also in- crease the S.E. total, average earnings per vessel to about \$9,000.			
	\$4,383,786	961	\$4,562
<u>YAKUTAT</u>			
Set Gillnet	\$ 250,074	(d) 143	\$1,749
Troll	108,019	27	4,000
TOTAL	\$358,193	170	\$2,107
<u>PRINCE WILLIAM S.</u>			
Purse Seine	\$2,106,223	(e) 221	\$9,530
Drift Gillnet	2,998,957	(e) 556	5,393
Set Gillnet	68,298	(e) 39	1,751
Troll	18,871	10	1,309
TOTAL	\$5,186,571	826	\$6,279
<u>COOK INLET</u>			
Purse Seine	\$ 529,860	(e) 99	\$5,352
Drift Gillnet	1,764,014	637	2,769
Set Gillnet	1,176,444	522	2,254
Troll	2,574	7	368
TOTAL	\$3,472,892	1265	\$2,745
<u>KODIAK</u>			
Purse Seine	\$7,106,563	(e) 365	\$19,470
Beach Seine	74,420	13	5,725
Set Gillnet	575,275	147	3,913
TOTAL	\$7,756,258	525	\$14,774
<u>CHIGNIK</u>			
Purse Seine	\$3,228,966	(e) 69	\$46,797
TOTAL	\$3,228,966	69	\$46,797
<u>PENINSULA-ALEUTIANS</u>			
Purse Seine	\$2,707,351	(e) 118	\$22,944
Drift Gillnet	1,526,979	(e) 172	8,878
Set Gillnet	258,270	(e) 130	1,987
TOTAL	\$4,492,600	420	\$10,697
<u>BRISTOL BAY</u>			
Drift Gillnet	\$25,225,894	(e) 1,913	\$13,187
Set Gillnet	1,802,591	924	1,951
TOTAL	\$27,028,485	2,837	\$ 9,527
<u>ARCTIC-YUKON- KUSKOKWIM</u>			
Drift Gillnet	\$ 497,656	672	\$ 741
Set Gillnet	656,036	783	838
Fish Wheel	1,534	9	170
TOTAL	\$ 1,155,226	1,464	\$ 769

FOOTNOTES

- (a) The value figures generally omit bonuses paid to skipper after pack is sold. However, Prince William Sound and Chignik values include bonuses.
- (b) Vessels or traps or set net sites.
- (c) Estimated
- (d) Units of gear licensed. Number of units actually fished according to ADF&G records appears too high, so licensing figures were used. In the case of Bristol Bay and Aleutians-Peninsula, the units fished were not yet available from fish ticket printouts. In other words we do not yet have a truly reliable count of the number of vessels fishing each type of gear in each area.
- (e) Total average earning per vessel column is the number of vessels fishing divided into the value column.

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VALUE TO FISHERMEN OF 1971 SALMON CATCH  
BY REGISTRATION AREA AND GEAR

SOUTHEASTERN	VALUE (a)	VESSELS FISHING (b)	AVERAGE EARNING PER VESSEL
Purse Seine	\$7,210,450	306	\$23,564
Drift Gillnet	2,568,286	347	7,401
Set Gillnet	8,560		951
Troll	2,737,581	1,640	2,279
TOTAL	<u>\$13,524,877</u>	<u>2,302</u>	<u>\$ 5,875</u>
Sport-Commercial Fishery removed from totals.			
Includes Southeastern and Yakutat catches and vessels.			
In 1971, 50% of the trollers caught only 4% of the total pounds of troll fish.			
This adjustment also increases the Southeastern total, average earnings per vessel, to about \$9000			
	\$3,656,878	831	\$ 4,401
<u>YAKUTAT</u>			
Set Gillnet	\$ 361,900	131	\$ 2,762
Troll	71,667	22	3,258
TOTAL	<u>\$ 433,567</u>	<u>153</u>	<u>\$ 2,834</u>
<u>PRINCE WILLIAM S.</u>			
Purse Seine	\$5,183,683	251	\$20,652
Drift Gillnet	2,233,711	551	4,054
Troll	17,259	7	2,466
TOTAL	<u>\$7,434,653</u>	<u>809</u>	<u>\$ 9,190</u>
<u>COOK INLET</u>			
Purse Seine	\$ 420,513	49	\$ 8,582
Drift Gillnet	1,090,545	463	2,355
Set Gillnet	762,142	439	1,736
Troll	11,518	4	1,150
TOTAL	<u>\$2,277,802</u>	<u>955</u>	<u>\$ 2,385</u>
<u>KODIAK</u>			
Purse Seine	\$4,654,488	417	\$11,162
Hand Purse Seine	47,943	16	2,996
Set Gillnet	390,240	132	2,956
TOTAL	<u>\$5,092,671</u>	<u>565</u>	<u>\$ 9,014</u>
<u>CHIGNIK</u>			
Purse Seine	\$2,169,205	77	\$28,171
TOTAL	<u>\$2,169,205</u>	<u>77</u>	<u>\$28,171</u>
<u>PENINSULA-ALEUTIAN</u>			
Purse Seine	\$1,656,176	125	\$13,249
Drift Gillnet	1,285,918	141	\$ 9,120
Set Gillnet	176,349	52	3,391
TOTAL	<u>\$3,118,443</u>	<u>318</u>	<u>\$ 9,806</u>
<u>BRISTOL BAY</u>			
Drift Gillnet	\$14,557,610	(c)1,938	\$ 7,512
Set Gillnet	1,577,210	618	2,552
TOTAL	<u>\$16,134,820</u>	<u>2,556</u>	<u>\$ 6,313</u>
<u>ARCTIC-YUKON-KUSKOKWIM</u>			
Drift Gillnet	\$ 447,874	709	\$ 632
Set Gillnet	935,053	790	1,184
Fish Wheel	4,594	15	306
TOTAL	<u>\$1,387,521</u>	<u>1,514</u>	<u>\$ 916</u>

FOOTNOTES

- (a) Same as 1970 table.  
 (b) Same as 1970 table.  
 (c) Units of gear licensed. The number of units of gear actually fished, according to ADF&G records appears too high, so licensing figures are used.

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Our conclusions from this and other data are that the State's salmon fisheries have too much gear, resulting in depressed and sometimes sub-marginal income for professional fishermen and in impositions on sound management practices. In addition, this and other data suggest strongly that a limited entry program aimed primarily at eliminating "moonlighters" and other part-time fishermen from the salmon fisheries can result in a level of fishing pressure that allows improved management and the development of a professional fishery. Such a program, properly established and implemented, will also work constitutionally to reduce the number of outside participants in the fishery.

#### Legal and Constitutional Constraints

Neither the State nor the Federal Constitution prohibits a state statutory program regulating access to the commercial fishery, so long as the regulatory classifications established to permit some people to fish and to exclude others are reasonably related to a valid legislative purpose and are fairly applied. The recently adopted amendment to Article VIII, Section 17 of the Alaska Constitution, clearly establishes as a valid legislative purpose the regulation of entry to "prevent economic distress among fishermen."

The Alaska Constitution does not confer on its citizens a constitutional right to fish commercially for salmon. Article VIII, Section 3 reserves the "fish, wildlife and waters" to the people for "common use", but this in no way prohibits legislative regulation of that use. Limiting entry to the salmon fishery is no different in principle than the State's regulation through a permit system of the private appropriation of State waters.

The Federal Constitution will not permit a regulatory program which discriminates unreasonably against non-residents. Particular attention must be paid to the constraint imposed by the commerce clause of the Federal Constitution, under which a legally sound limited entry program cannot unreasonably burden or discriminate against interstate commerce. Any regulatory program which disqualifies non-residents from the fishery solely because they are non-residents, merely to secure an economic advantage for residents, will almost certainly fail in

the courts, as will any clear discrimination in favor of local (intrastate) economic interests at the expense of outside (interstate) economic interests.

The interpretation of the commerce clause in a given situation is primarily a matter of degree and of sufficient justification, in which the courts will be guided by the notion of reasonableness. The prevention of economic distress among fishermen is almost certainly a valid legislative purpose in this situation, and if the same standards for qualification, (for example, degree of dependence on the fishery or past participation in the fishery) are applied equally to resident and non-resident alike, they stand an excellent chance of being upheld in the courts, even though in some instances they may fall more harshly on the non-resident.

The courts will also look unfavorably upon any regulatory system which creates a completely closed class of fishermen. Some new entry must be permitted. Therefore, I am proposing the administratively controlled transfer or sale of entry rights, which will permit new entry while allowing fishing effort to be held at constant levels.

#### Other Limited Entry Proposals

Before discussing the reasoning that underlies this bill, it may be useful to outline some of the other types of limited entry proposals that concerned Alaskans have been considering. The State's limited entry study group has examined these and other ideas, and it has concluded that most of these approaches bear some of the marks of unsuccessful past efforts in that they seek an immediate solution for just one area rather than a permanent solution for the entire State. In addition, most of these proposals contain serious constitutional defects.

Here are the basic elements of one type of proposal:

- 1) Freeze the issuance of new gear licenses.
- 2) Establish optimum amounts of gear for each area necessary to harvest all species (salmon, king crab, halibut, etc.)
- 3) Allow everyone who ever owned a gear license in under the freeze.

4) Rely on attrition of license holders to eventually reach optimum levels.

5) When optimum levels are reached, make gear license a property right with a 12% royalty to the State.

6) Levy a buy-back assessment on gear licenses to encourage attrition.

There are some sound concepts in this proposal, but also some basic practical and legal defects. Any license freeze will probably be struck down in the courts because the effect is to create a completely closed class of fishermen for a substantial period of time. Letting anyone who had ever held a gear license in at the outset while excluding all new entry is probably constitutionally unacceptable, and also will considerably worsen the very problem it is designed to solve. Creating "grandfather rights" for paper registrants who have never actually fished and for those who have already dropped out of the fishery or are no longer dependent upon it, would greatly inflate participation in the already seriously overcrowded fishery. It would have the effect of penalizing the professional fishermen at the outset. Finally, the notion of a royalty is defective since the State does not own its salmon resource in the same way that it owns its oil or timber.

Another type of proposal is for a sliding scale gear quota in Bristol Bay. By its nature it is aimed at solving the problem for one area only, and in all likelihood, the solution would only be partial and temporary. Here are its basic features:

1) The Fish and Game Board would establish a total gear quota for the area in terms of total fathoms of net required to adequately and safely harvest the resource.

2) Following the close of area registration for a given year, the Board would apportion the total quota among the actual registrants with the effect that larger numbers of registrants will mean each registrant can fish fewer fathoms of net.

- 3) Local families would be specially benefitted by a provision that gear registrants may jointly operate their individual quotas of gear.

This proposal would improve fishermen incomes only if low net length quotas for a given year discouraged outsiders from coming to Bristol Bay. This is an uncertain assumption for two reasons. First, many of the outsiders are moonlighters who might continue to fish Bristol Bay even without the prospect of high income in a given year. Second, if everyone was operating with the same handicap, the number of fish caught and the efficiency of the fishing effort may not be that well controlled by merely varying the length of the nets. The result may still be too many participants in the fishery. While solutions such as this are of questionable long-term value for Bristol Bay and would be unworkable on a Statewide basis, they are not inconsistent with this bill's goals for the fishery and they may provide a degree of short-term relief for the serious problem of over-fishing in the Bay.

Another limited entry proposal for Bristol Bay contains the following basic provisions:

- 1) A permanent gear license freeze for Bristol Bay at the level of the previous year.
- 2) If fishermen's incomes are anticipated to be below the national poverty level for a given year, the Fish and Game Board shall designate such an area a "distressed fishery."
- 3) In a "distressed fishery" special gear license fees would be levied on the basis of 1% of the value of the salmon sold by a resident, and 3% of the value of the salmon sold by a non-resident.
- 4) A fisherman who derived more than 75% of his gross income from fishing during the previous year, or who had a gross income of less than \$5,000 during the previous year, would be exempted from the special fees.

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This proposal has the constitutional liabilities of any license freeze as discussed above. Furthermore, a freeze at the present level would not offer much of a practical solution for Bristol Bay, because that area, particularly, suffers presently from a great excess of gear. The proposed license fees almost certainly would be held by the courts to discriminate unconstitutionally against interstate commerce.

One final type of proposal which has been discussed recently would create a gear licensing preference for watershed or registration area residents. Even though such a preference would not discriminate directly against non-residents of the State, the overall effect would be the total exclusion of non-residents of the State from the fishery. Such a regulation would have virtually no chance of survival in the courts. Furthermore, such a proposal would not really solve the limited entry problem. There might soon be too many fishermen drawn solely from residents of the watershed or area, particularly in areas like Cook Inlet and Southeastern. Even more important, this approach does not address the problem of the moonlighters and part-time fishermen who threaten the future of the professional fishery.

I am heartened by the strong spirit of good faith and concern that has prompted various Alaskans to bend their efforts toward thinking of limited entry programs for our State's fisheries. My motive in noting shortcomings in some of these proposals is simply to indicate pitfalls that must be avoided in developing a legally sound, workable limited entry program for all the fisheries of our State. To do so, we must work together, and these proposals for limited entry indicate that Alaskans are in important agreement on the basic objectives.

#### Proposal for Limited Entry Program

The bill I am submitting today embodies my recommendation for a limited entry program. The reasoning behind the basic features of it is as follows:

The bill establishes a regulatory and quasi-judicial commission which would administer an entry permit system for the State's salmon fisheries. The basic problem of

too much gear varies widely in its dimensions and particulars from area to area. Trying to decide directly in the language of a statute which particular individuals will be permitted to fish, and which individuals will be excluded, is hopelessly inadequate, both legally and practically. A full-time regulatory commission is the only way to apply general legislative standards to each area and type of gear with fairness to all areas.

The commission approach has the added advantage of being easier to defend legally. As long as the statutory purpose and standards are valid, the point of legal attack would be a particular regulation or application of a statutory standard by the commission. Such specific points are far easier to defend and a loss on a particular commission action would not jeopardize the validity of the basic regulatory program, even though it may initially require minor readjustments in regulatory strategy.

The bill's legislative standards of preference for entry permits will require findings of fact regarding an applicant's degree of economic dependence upon the fishery and his extent of past participation in the fishery. Such facts must be established fairly and sufficiently in order to avoid abuses of the system that would be unfair to all fishermen. Provisions concerning hearings and appeals will safeguard the rights of individual applicants for entry permits.

The commission approach also has the advantage of permitting the Legislature to add other species such as king crab or shrimp to the entry limitation program when the need is shown.

The commission will be made up of a fisheries management specialist, a lawyer, a commercial fisherman, plus the staff for necessary research and for the implementation of the program as it applies to salmon. Because of the complexity of the fishery and the potential economic impacts of various decisions, I feel this would require an initial appropriation of approximately \$400,000. Provision has been made for the work of the commission to be self-supporting, through the assessment of permit fees, once the permit system is functioning. After limited entry programs are established in the State's principal fisheries, some of the permit revenue would then go to the general fund.

This bill does not require a license freeze or license moratorium. Such a feature would be on extremely weak legal grounds and there is no practical necessity for it. The commission is charged with issuing a limited number of entry permits according to preferences among applicants based primarily upon past participation and economic dependence. No new entrant would be able to put himself in a more preferred position than a presently established fisherman under such standards. Therefore, pending the issuance of permanent entry permits the commission is authorized to issue interim entry permits to any bona fide applicant. Such interim permits will confer no special claim on a permanent entry permit; they will not amount to a "grandfather right." For this reason, the rush of speculative applicants wanting to be "grandfathered in" should be avoided. The standard that applicants be ready, willing and able to fish will also help to quell any rush of applicants, and it will eliminate the holders of "paper licenses."

There are several reasons for not implementing an entry permit program through the existing licensing system. To begin with, the commercial fishing license system serves all species, not just salmon. Certain types of gear licenses are peculiar to salmon, but using gear licenses as a basis for entry limitation would mean breaking part of the licensing system away from the whole, and would be cumbersome to administer. Furthermore, licensing is an annual event for revenue purposes, and the legal assumptions underlying a license differ substantially from the entry permit, which carries with it the permanent right of renewal.

The desire to protect any "grandfather rights" which might be subsequently conferred by the Legislature has made a bad situation worse in many areas by encouraging some people to fish who might otherwise sit a season out or fish for different species during low run years. The entry permit program will alleviate this particular problem. It does not require a permit holder to fish every year in order to maintain his right to fish, although after five years of abstention his permit would revert to the commission. The result will be a benefit to those actually fishing during low run years.

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The bill also allows a fisherman to hold more than one entry permit so that he may fish different types of gear and different species. However, it imposes a practical limit on the holding of multiple permits since a fisherman may fish only one legal unit of gear at any given time, and he may not delegate his right to fish a unit of gear to another person.

One last feature of the bill which requires explanation is the transferability of entry permits. Initially, entry permits to a given fishery will not "cost" anything other than the permit fee, but since the number of permits will be limited, they will acquire a value. Transferability allows entry permits to be bought and sold on the market, but it will not permit a speculative market to develop. An entry permit will confer upon the holder a personal right to operate a unit of gear in the salmon fishery. Individuals may sell and transfer permits, but a permit would have no real value to one not using it to fish. Transferability will allow some individuals to change location or fish more types of gear by acquiring more than one permit. This feature is aimed at encouraging a flexible growth and professionalization of the fishery and will have more application as additional species come under the jurisdiction of the commission. A permit-holder cannot hire an agent to fish his permit, therefore the processors cannot control the fishery through such a permit system and monopoly tendencies by processors or fishermen are avoided. Transferability will also allow permits to be passed on within a family, and can be used to allow a fisherman to sell out of one area and move into another without upsetting the total amount of gear in each area.

The bill calls for a January 1, 1974 deadline by which the commission must issue interim entry permits. Since these are available to anyone ready, willing and able to fish, this step in the permit procedure should cause no significant disturbance to the 1974 commercial fishing season. It simply allows the commission to establish a system for issuing permits, and it eliminates "paper license" holders prior to the 1974 fishing season. The commission's principal work for some time will be to gather and analyze the data necessary for establishing regulations to determine priority categories for the

reissuance of permanent entry permits. After that it must receive applications, and gather and evaluate evidence of qualifications before actually issuing permanent entry permits. Recognizing the size and complexity of the salmon fishery, it is my optimistic hope that, at the soonest, the commission may be able to make final decisions regarding the issuance of permanent entry permits for at least some areas in early 1975.

Effect Upon the Fishermen and the Processing Industry

The proposal presented here would result in the exclusion over a few years time of some resident and non-resident fishermen presently fishing in some areas of the State. The individuals excluded would be those least dependent upon the fishery for their livelihood, and those with the shortest history of participation in the fishery, as determined by the commission. The commission's task would be complex and difficult, but the only alternative is the economic destitution of a much larger number of fishermen. The burden of exclusion should fall mostly upon the part-time fishermen with alternative primary sources of livelihood.

Another class of fishermen who would probably fail to qualify for entry permits are those who have not paid State income tax during recent years. Income tax records will be a prime source of evidence for use in the commission's determination of an applicant's qualifications. Tax records should accurately reflect one measure of economic dependence, and verify active participation in the fishery. Preliminary research indicates that in 1969 almost 30% of those individuals holding vessel operators licenses for that year either failed to file a tax return at all (more than 20%) or failed to report any income (profit and loss statement) from fishing. It seems reasonable to expect that individuals in present violation of State tax laws will either fail to make application for an entry permit, or if applying will have great difficulty in qualifying for one.

A statewide entry limitation program for the salmon fishery will also have a noticeable impact upon the salmon processing industry. The primary reason for this is that the bargaining position of fishermen, both individually and collectively, will be greatly improved in the long run. However, there is no reason why this

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limited entry program should disrupt the established patterns for the 1973 and 1974 fishing seasons. Canneries will continue to stake individual fishermen in return for their share of the catch. Once permanent entry permits are issued, though, the processors will be limited to those fishermen holding permits, plus their crews, and since an entry permit can only be held by a fisherman, it cannot fall under the legal control of a processing company or its agents.

Report to the Legislature

The limited entry study group is now preparing a comprehensive report to be presented to the Legislature in the next few weeks on the results of its work so far. The group will also continue over the next six months to develop and refine the proposals and analysis discussed here, building on the sound concepts already established. One example of work underway is an extensive survey of the present and potential involvement of Alaska natives in the commercial salmon fishery. This study will take until late spring to complete and is important to any sound evaluation of the human impacts of limited entry.

In addition to the establishment of the commission, I recommend continuing the work of this limited entry study group beyond fiscal 1973. The work regarding salmon which has been started should be completed; there is much basic information that has never been collected and organized regarding this fishery that would be extremely important for the implementation of any limited entry program. There is also a longer-range need to study the desirability of limited entry in other Alaskan fisheries, such as king crab and shrimp, where a pattern of excessive participation has developed.

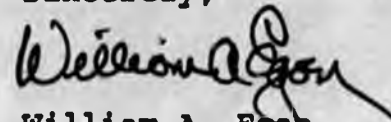
To summarize, this bill provides a means for regulating entry into Alaska's commercial fisheries. While it has been designed to have broad applicability, it is directed initially at limiting entry into the State's salmon fisheries because the need for effective action there is greatest. Implementation of the bill will allow better management of the fisheries, and it will allow the opportunity for growth, diversification and modernization of

WILLIAM A. EGAN  
GOVERNOR

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the fishing fleet. Most important, it will improve the lot of the fisherman, allowing him stable livelihood from commercial fishing.

Sincerely,



William A. Egan  
Governor

Misc.

3/26-27/73 I final draft

Side 1

000 - 44 INTKO

45 - Dave Jackman, recap and summary  
of Bill

144 - Use rights - has no obligation to compensate  
in property

270 - cut off date description by Jackman

613 - 73 season discussion

74 season, unpaired fishery

621 - in time use permit was so fishery  
would not be closed arbitrarily during  
74 season

683 - Beach Line / Kurac Seine - Richey

Side 2

000 - discussion of income tax law

050 - Bayback

756 - End

III - 26-7/73 Final Draft

000 - Property + taxation

154 - Optimum numbers

185 - Fletcher insists on availability of alternative occupations

282 - rate of return for "reasonable" similar to wage and other

422 - discussion of economic efficiency  
Hammond - Palmer - Fletcher - Sackman  
(in relation to optimum numbers)

687 Hammond on bidding in buy back program

## SIDE II

000 - Buy-back

51 - discussion of issue more permits

74 - transfers

275 - transfer of permits - mortgage and annuities

650 - Hammond on Transfers  
transfers only for those below optimum #

IV 26-27/73

side 1

IV 200 - Tillion on a means of guide  
reduction to optimum numbers by  
means of transfers  
A+B permit

91 - Types of commissions that would be  
allowed

139 - economic vested interest and permit holders  
Clear that this would apply to opening a permit

235 - entry permit, commissions, cannot hold

300's - designate ~~fish~~ species (p. 3 #5 of  
bill)

417 - designate interim - use

480 - transfer - gear to gear transfers

side 2

110 - discussion of cut-off date relevant to fisheries  
140 - having limited entry in later years - ADASIAK  
JACKMAN, PALMER and others (Fletcher)  
prevent last year and  
Fletcher - as to have a little retroactivity  
as a lot of tax law does

245 - Hardship standards and exceeding may No.

400's

priority classification  
and maximum number - grandfather's rights

VI 26-27

(Soni)

SIDE 1

000 - Buy Back

083

- back to interim - use permit question -  
leaving open during time ~~to~~ before  
interim permits are issued - confine to those  
that actually want to go fishing

↓

↓

End

hardship standards

Side 2 - interim use permits and "severely injured"  
fisheries. Letter on legislative

129 - discussion of gear license holders  
vs. commercial license

200 - military service

↓

gear license holder only may apply  
300<sup>13</sup> + transfer of permits from those  
that suffer minor econ. hardship

650 - fair mkt value for such transfers

YEAR 1973

Page

Misc. Information: CSSB39 Limited Entry: Special Committee on Fisheries

TAPE #	DATE	BILL NUMBER/SIGNIFICANT INFORMATION
1	1/24	Public Hearing
2	1/30	Work Session
3-4	2/5	Work Session
5	2/6	Work Session
6-7	2/9	Work Session
8-9	2/13	Work Session
10	2/16	Work Session
11	2/21	Public Hearing; Industry Testimony
12-15	2/22	Work Session, Prof. Fletcher
16	3/2	Work Session
17	3/6	Work Session
18	3/9	Work Session, Fletcher proposal
19-20	3/13	Public Hearing - UFA Testimony
21-22	3/20	Public Hearing
23-28	3/26-27	Work Session - Final Draft
29	3/30	Final Committee Meeting
30-32	1/29	House Resources Hearing HB126

TAPE V II/6 CSSB 39: Final Draft Meetings 3/26-27/73

Side 1:

This side was primarily involved with discussing the buy-back program.

85-100  
090 Some reference is made to putting a lid on the gear now.

105-210 Primarily John Radars comments on the improbability of completing a program within the year other than to allow a grandfathering type provision. He also felt that any other program would be hampered with trying to define hardship. Radar wanted to give everyone a permit this year and than work down. Responses were made that most fishermen oppose this type of proposal.

Side 2:

270-295  
202 Some feeling that the Commission would have to pay for all those who did not get in.

275 Some mention is made over the concern for a flooding in of applicants this year. A large concern.

350 It was implied that maximum numbers were to be set as soon as the Commission was established. Also that the Commission would have the discretion to set maximum numbers immediately for those fisheries that are in need of it.

Ray Pastorino

TAPE I 3/2/73 Work Session:

Side 1:

023 Standards for establishing optimum units of gear.

Discussion on expanding the powers of the Commission to raise or lower optimum numbers on other than a long range basis.

378 Inference that the primary and immediate concern was for the Salmon fisheries.

423 Specific qualifications of applicants - Discussion of availability of alternative occupations and the cost of living index.

Side 2:

The content of this side is primarily aimed at the question of availability of alternative occupations, transferability of permits and the Hammond proposal to let everybody in for the coming year. There is also a great deal of discussion about how best to exclude non-residents in a legal manner. I would not recommend using this tape for anything.

TAPE II 3/6/73 Work Session:

Side 1:

This side begins with a reading of House changes and recommendations on the original bill. Included therein was a proposal to establish a separate program for the troll fishery. Said program would distinguish between hand and power troll and would award permits to any power troller who had fished at least one out of the last three years.

X  
281 - 207  
281-305 Question alluded to of whether or not to allow full entry in 1973, and to establish controls subsequent to the time at which hard data would be available to determine what the impact of gear levels would be. It was felt at the time that there was no way that they could calculate those applicants who would transfer their permits and which would hold on to them for speculative purposes. At 322 a request is made to contact the ADF&G to find out what statistics were available. These results were read to the committee subsequently, and shortly thereafter it appears that the meeting broke up.

Side 2: Blank

TAPE III 3/9/73 Work Session - Fletcher P. Proposal

Side 1:

070 A question arose in reference to establishing maximum numbers for the fisheries. It was felt that maximum numbers would be established by the commission as they considered each fishery. No final decision was made, it was shelved.

135 Expiration of interim-use permits, considered at this time to be left to the discretion of the Commission.

165-400 General discussion on the standards for initial issuance of entry permits.

525 Reference is made to those individuals who just bought gear licenses in 1972 who had crewed in all years prior to that time, and to what category of hardship they would be classified.

565-625 If an entry permit is denied to an eligible applicant full compensation will be made for the loss in economic value of his investment. Reasonable compensation for direct economic loss was discussed for perhaps 15 minutes. It was felt that the Commission should make said compensation within a two year period of time.

Side 2:

100 Reference is made to those circumstances when one gear operator may operate the gear of a vessel other than his own, to alleviate hard circumstances.

TAPE IV 3/26-27/73 Final Draft Meetings I/6

Side 1:

This tape was primarily directed at discussing the ramifications of transferability and re-issuance of permits under the Jackman proposal and an earlier version which would place applicants into one or another of several categories based upon hardship. These programs were contrasted with a possible moratorium.

Side 2:

065 Discussion about who will be cut by the hardship classifications, especially those in categories 1, 2, and 3.

315 A brief reference was made to imposing a non-transferable permit to those fisherman who have never held a gear license before who are just now getting into the fishing effort.

450-600 Free transferability of permits is discussed along with the Buy Back program.

Owers

IV 26-27 Final draft

Side 1 Palmer / Fletcher / Sachman / ADK/SHK

000 - continued discussion of hardship

200's - optimum numbers

336 Closing - never have a closed period  
suggested putting notice on the  
360 interim-use permit

380 propaganda to stop inflow of gear

400's continued discussion of allowing interim-  
use permit in fisheries in relation to  
cut-off date

Fletcher maintains these are non-legal  
measures

500's continued discussion of qualification date.

several points on legal attach. - qualification  
date

SIDE 2

000 Maximum number - discussion

100's Fisheries that will have L.E. in the  
20's future

350's Buy-Back

450's Burchell - whether to purchase boat or

500's not

↓ Give salvage value only - Sachman

END Buy Back

A PERFORMANCE REVIEW  
OF THE  
OFFICE OF THE GOVERNOR  
COMMERCIAL FISHERIES ENTRY COMMISSION  
(and related aspects of)  
THE DEPARTMENT OF FISH AND GAME  
AND  
THE DEPARTMENT OF PUBLIC SAFETY

May 15, 1979

*Referenced 37 (e)*

Governor, State of Alaska

Jay S. Hammond

Commercial Fisheries Entry Commission

Commissioner  
Commissioner  
Commissioner

Robert J. Simon  
John Williams  
(Vacant)

Commissioner, Department of  
Fish and Game

Ronald O. Skoog

Commissioner, Department of  
Public Safety

William R. Nix

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

A PERFORMANCE REVIEW  
OF THE  
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THE DEPARTMENT OF FISH AND GAME  
AND  
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Commissioner, Department of  
Public Safety

William R. Nix

Cook Inlet areas. The Board of Fisheries has decided to retain the prohibition against fishing more than one salmon registration area per year until such time as the number of units of gear in the salmon net fisheries has been reduced to an optimum number. During the past six years there have been only four public proposals to delete the single area requirement. The user groups were evenly divided on the issue and the Board rejected the proposals.

A buy-back program that allows a fisherman to retain only single area permits may not be in his best interest. It would lock him into that fishery, whereas under existing regulations he has the flexibility of deciding what area he wants to fish for that year.

#### Recommendation No. 11

The Board of Fisheries should avoid establishing regulations and policies for which the major purpose is to allocate fisheries resources between different commercial fisheries.

In Recommendation No. 11 the Division of Legislative Audit suggests that the Board of Fisheries should avoid establishing regulations and policies for which the major purpose is to allocate fisheries resources between different commercial fisheries. An opinion from the Division of Legal Services, Legislative Affairs, goes even further. It suggests that the Board's authority is confined to biological development and conservation issues. The purpose of this reply is to dissent from the Division of Legislative Audit's formal recommendation and to refute the legal conclusion upon which it rests.

The organic statutes for the Board of Fisheries (AS 16.05.221, .251) state that the Board is established for two purposes: "the conservation and development of the fishery resources of the state." To accomplish those purposes, the Board is granted the power to make regulations (AS 16.05.251). At least twice annually, the Board of Fisheries goes through extensive public hearings in order to promulgate the regulations it considers advisable to effectuate the purposes for which the Legislature created the Board (AS 44.62.010 et. seq.). The powers which the Legislature granted to the Board of Fisheries are far-reaching (AS 16.05.251). A comprehensive and detailed review of those powers is beyond the scope of this response.

The Board of Fisheries is the primary regulatory agency for the conservation and development of the State's fishery resources. The Commissioner, Alaska Department of Fish and Game, also enjoys certain regulatory powers (AS 16.05.010, .020(2), (3), 16.05.050, .060, .270) but his role is generally that of the chief executive officer of the Department of Fish and Game. The Board of Fisheries may properly be seen as the regulatory arm of the Executive Branch for fishery resources.

In their exercise of rule-making authority, the Board of Fisheries is obligated to follow applicable Alaska Statutes and the Alaska Constitution. The statutes most germane to the role of the Board have been mentioned above. The discussion which follows will concern itself exclusively with the mandates of the Alaska Constitution.

## LIMITED ENTRY

- ① H. Resources Committee <sup>1973</sup> - papers on file: CSHB126 - 3 folders  
CSSB39 - 15 folders
- ② Cassette tapes <sup>"Work session"</sup> CSSB39 Limited Entry: Spec. Comm. on Fisheries  
(Att'y General's office/ Archives have some tapes on this)  
29 cassettes in library under general topic.
- ③ Limited Entry - Joint Interim Committee 1978-1979
- ④ LAA file:  
Report on the meetings of the House Interim Committee on  
Fisheries and the Senate Special Comm. on Fisheries  
Sept. - Dec. 1973 LAA.

1977 amendments - look up

2-9-73 Side 1 254 → 333 teacher on cutoff date  
Numbers are for some digital counter

2-9-73

Side 1 ~~300~~ 300? to 333

Palmer Try to enter in BB only  
Tillson  
Palmer discussed it that what you  
Gardner  
Flavin just talked about it in 68 + 9. of  
year skyrocketed.

→ 254 - Gardner, what would be the matter with...  
~~254~~ through

290 - DSI, not by year, hand troll separate.

640? → 021  
of side 2

Separately sport com - hand troll  
from power troll -  
(65) Palmer - were going  
to do that anyway  
(confusion betw. sport com + hand troll)

to end - Tillson - you have to have  
a power troll and a ...  
gap betw. sides but

Flip to side 2  
~~side 1~~

Tillson later - make sure that  
when they sell that license  
it can only go to another hand  
operation.

Reiker - almost impossible to pull  
out hand troll...? (wagner)

1200 Tillson - the hand troll facility  
shall not be considered part of the  
rail net or power troll facility,  
+ long surrounding on both sides

(2)

~~2-10-73~~

I side 2

Nthp. (discussion on transferability)

~~2-11-73~~

II side 1

000  
017

more transfer discussion  
DST can be designed to cut in favor of need, in hope constitutionally.

170-191

?

Always have some peo who feel by way of, fakey not now.

2-13-73

I side 1

000

Transferability + alternatives discussion.

lottery, Flavin push for mingling together into lottery.

375-Daniel; weyback accounts effect initial windfall gain. (what about non-weyback futures)

410 - Peter - windfall gain to lot generators of future. 2nd gen ~~gets~~ has to pay for resale.

2-13-73

I side 2

000

→ transferability, lottery, skills.

3

2-13-73 Inside 2

265 → transitory + other

285 Plans explaining how gear will be reduced. some red in initial phase. (the 2 subty.) (maybe he tly in ref to experience other or something from earlier discussion)

2-13-73 Inside 1

nothing Public testimony on various aspects of bill.

Tapes: date

✓ I/1 1/30/73 ✓ Side 2: 510ff inferred need for date; no specific discussion

✓ I/2 2/5/73 - 0 -

✓ II/2 2/5/73 Side 1: 135ff specific discussion of date

Side 2: blank

Side 1: - 0 -

Side 2: - 0 -

ft I/1 1/30/73

Side 1 start species

Commissioners: appointment & removal, qualifications

Limiting units of gear

end 765

Side 2

000

Applications & appeals

Tax delinquencies

Level of gear & reductions - buyback

510- Recent boat buyers problem if they don't get permits, mention of fishing 2/10 prior years & years prior to enactment & qualification date inferred.

648 end side 2

I/2 2/5/73

Side 1 000 start

Elon dep & past particip - & Categories

762 end

Side 2

000 start

buyback & assessments; economics -

425 "species" included; <sup>thru bill</sup> Commissioners;

770 end

Side 1 II/2 2/5/73

000 135 Qualifs as of 1972, Not 72, etc. Effective date req. Debate on closing class. When date should be [349 blank - 755]

Side 2 000 - 760

blank

Side 1  
000 -

I/1 2/6/73

Jackman  
Prader  
Joel (Bennett)  
Dean Paddock  
Flamin

750 end ~~103~~ Compensation, Classification  
transfers (725-750 end)

Side 2  
000

transfers (000 - ) & 5 year moratorium  
assessments

667 end

667 - 760 blank

