

ALASKA LEGISLATURE COMMITTEE FILES 1901-1902

1664 SJ SB 49. - SB 57

State officials long had been interested in trying to boost the incomes of resident commercial fishermen by restricting non-Alaskans. The now-infamous loathing of Outsiders by Alaskans was particularly strong in the Seattle-dominated commercial fisheries before Alaska became flushed with oil riches.

Consider this statistic offered to lawmakers during the debate over limited entry: in 1970 non-residents had 40 percent of the salmon fishing income with an average gross share of \$15,169, compared to \$7,283 for each Alaska-based gear operator.

By 1973 the courts made it clear that any system discriminating against non-residents would be slapped down. The emphasis was shifted to pressuring the growing number of part-time fishermen and trying to at least preserve the foothold in the fisheries Alaskans had gained with the abolition of company-owned fish traps and the manpower-short years of World War II.

Supporters argued limited entry would protect Alaskans to the best extent allowed under law by favoring long-time fishermen and rural residents through a complex point system.

Another major goal of lawmakers in limiting the fisheries had been lost in the current debate: to unchain fishermen from the Company Store. In the days before Big Oil, the canned salmon industry was the dominant economic and political force in Alaska.

A 1939 government study reported that of the 2,810 Western Alaska commercial fishermen 96.7 percent were 'cannery fishermen,' considered company employees; only 94 fishermen were independents.

Alan Adasiak, former chairman of the Alaska Commercial Fisheries Entry Commission, explained in a 1978 paper the control canneries had over the lives of individual fishermen:

"If, for example, a man had made himself unpopular during price negotiations, he might find himself without a vessel or a market for his fish that following year. The ability to 'import' non-resident fishermen was also used in connection with price negotiations. And there was control through the classic arrangement of the 'company store,' which made easy credit available, and employed payment-on-demand notes.

"In 1973, when the Alaskan legislature was considering the current limited entry law, there was a general belief that salmon processors still maintained a significant hold over individual fishermen, both through credit and financing arrangements and through the untrammled power to decide whether a fisherman would fish for a particular company. The decision to issue permits to individuals was made primarily because people believed that it would strengthen the individual fisherman's bargaining power vis-a-vis fish buyers and processors. With only a fixed number of permits to go around, and with the requirement that a unit of gear may be operated only by a permit holder, the need that the processor had for the individual fisherman was increased."

The debate over limited entry split many fishing communities and caused still-open rifts in the ranks of fishermen. Supporters far outnumbered opponents, however, as attested by the formation of the state's largest fishermen's organization -- The United Fishermen of Alaska -- around the issue of limited entry.

When an initiative to repeal the limited entry act was placed



on the 1976 statewide ballot, the UFA raised \$170,000 to wage a campaign to keep the restrictions. Endorsements supporting the program were gathered from the state Boards of Fisheries and Game, Alaska Federation of Natives, Rural Alaska Community Action Program and the Alaska Chapter of the American Fisheries Society.

The initiative was defeated by a resounding vote of 75,125 to 44,304.

The margin of victory can be partially attributed to the extremely depressed condition of the salmon fisheries at the time of the election. Observers speculate a similar vote in the 1980s would be too close to call.



the legal story



THE LEGAL STORY: The constitution and the right to fish

It was no small coincidence that the state Attorney General spearheaded the group putting together Egan's limited entry proposal. The first step in the process, in fact, was to place a proposed constitutional amendment for limited entry: "No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State."

The amendment, which gained strong voter support, added: "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."

There have been few quarrels over the issues of resource conservation and aquaculture; the battle lines over limited entry always have been drawn around the right to fish. And, despite the care taken in constructing a legally defensible program, limited entry from its beginning has been under constant attack in the courts over who is eligible to harvest the valuable salmon resource.

The Commercial Fisheries Entry Commission, created to oversee the program, was given quasi-judicial powers to hear administrative appeals of decisions on individual applications for a permit. Of the hundreds of appeals filed, scores resulted in lawsuits, creating a huge backlog of contested permits and throwing the entire program into limbo.

The state lost the first major legal challenge to limited entry and that decision became the basis for many following lawsuits. In Isakson vs. Rickey, a group of fishermen who

first held gear licenses in 1973 and 1974 went to court over a provision in the law restricting permit eligibility to those who held gear licenses before January 1, 1973.

The Alaska Supreme Court eventually agreed with the fishermen and a new application period was ordered. The ruling, however, had much broader impact than the awarding of a few more permits to the later-coming fishermen.

In early 1979, a Superior Court judge used the Isakson decision to strike down a requirement that applicants for permits must have held a gear license. State officials said the ruling would have the effect of invalidating limited entry.

But after a year of deliberation, the Supreme Court backtracked and "superseded" the Isakson language. The gear license requirement does have a "rational connection" to the "legitimate purpose" of the limited entry act, the court said.

"Admittedly, individual cases will arise in which those barred may be able to show extreme hardship," the court said. "The legislature in its wisdom could conceivably have better provided for such instances. But equal protection, even under Alaska's stricter standard, does not demand perfection in classification."

There still were more than 100 court cases pending against the Alaska Commercial Fisheries Entry Commission in late 1980.



ACCESSIBILITY: Rural residents and \$130,000 permits

The most emotionally charged debate over restricting access to Alaska's fisheries centers on the skyrocketing cost of entry permits.

Perhaps the most crucial, fundamental decision lawmakers made in 1973 was to treat permits essentially as property. This was done primarily to allow fishing rights to be transferred within families and communities, give fishermen the mobility to change fisheries, and avoid constitutional problems caused by creating a special closed class of fishermen.

No restrictions were put on the market price of permits as it was assumed there would be natural limitations to what someone would pay. In his proposal to the legislature, Governor Egan speculated:

"New people will be able to get into a fishery for whatever the fair market price of permits happens to be. Naturally, this will vary. The quality and size of fish runs, and other things, may cause more people to want to get out, or in, at a particular time. There is likely to be a limit, however, to how high the price of a permit will go since the bill requires that only the holder can fish it.

"One person may not hold a permit and have another person at his net site or in a boat working it for him as his agent. This means that the person buying a permit will have to work it, and he will have to expect to make enough money commercial fishing to cover the cost of the permit, as well as his other expenses and profits. Otherwise, it would not make sense for him to buy in. Consequently, there will be some practical limits on the price of entry permits."

Obviously unforeseen in this analysis was the dramatic rise in fish prices and biological recovery of Alaska's salmon fisheries during the late 1970s. As predicted, the price of permits has risen with the profitability of the particular fishery. Consider, for instance, that Bristol Bay drift gillnet permits shot up from a mere \$2,000 in 1976 to as high as \$130,000 prior to the 1980 season.

Understandably, these trends have created great concern among officials from rural areas over the ability of future generations to buy their way into the fisheries. Many Native leaders fear the high prices are bringing an exodus of permits from villages heavily dependent upon fishing.

The validity of those fears is open to debate. The Commercial Fisheries Entry Commission says statistics don't show any significant trends of permits flowing out of rural areas. With the exception of a single Southeast village troubled with an unusual set of circumstances, records show the distribution of permits in rural areas has been remarkably stable.

A study of the same statistics by a University of Alaska researcher in 1979, however, concluded there is some cause for concern. While Alaska residents in general have actually gained a handful of permits since they originally were doled out, the analysis by Dr. Steve Langdon showed rural residents have lost a significant number.

Residents of rural Alaska communities lost 145 permits, while urban Alaskans gained 170. Significantly, Alaskans who live in rural communities near the fishing grounds lost 3.5 percent of their initial holding of 3,897 licenses.

Langdon concluded that the "outflow of permits that has occurred and that potentially can occur must be regarded as



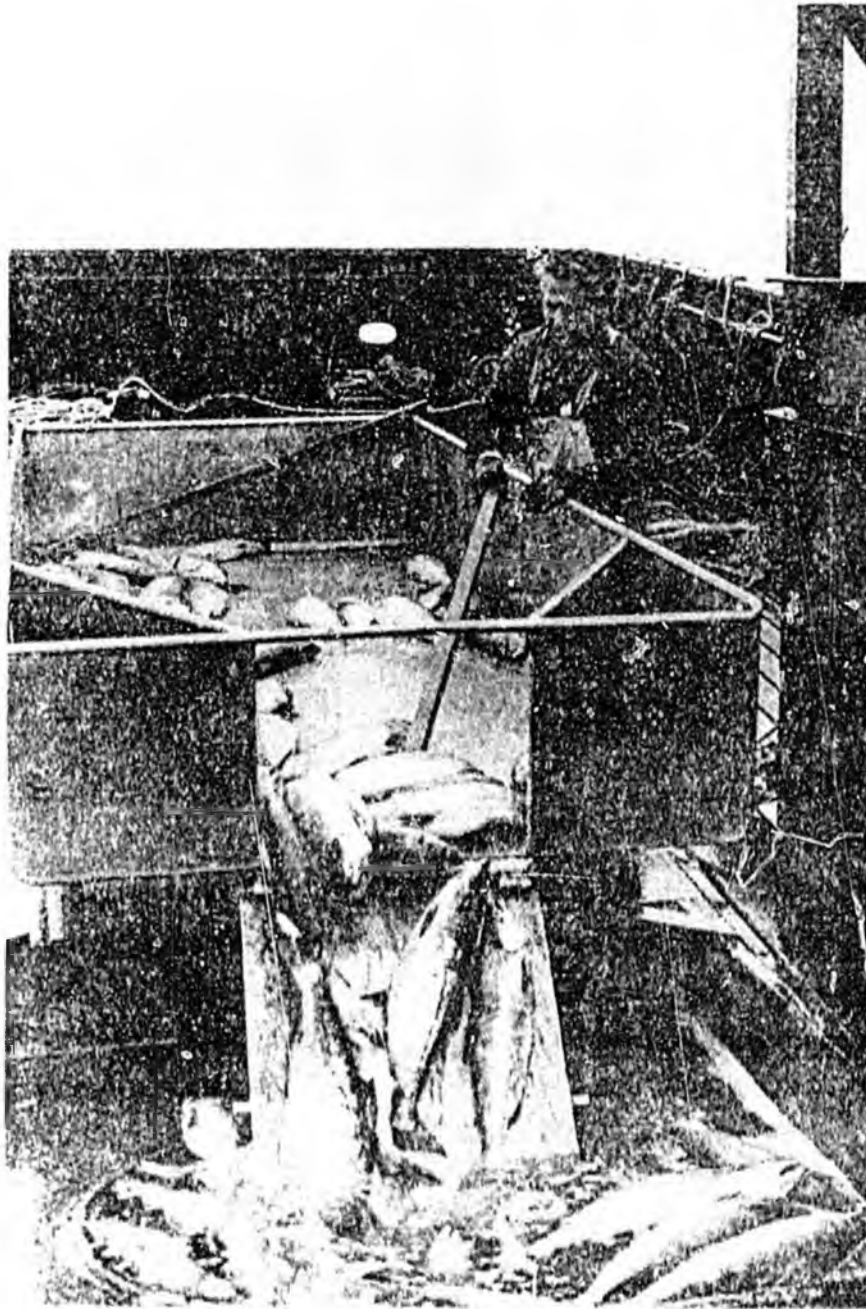
a significant threat to the rural Alaska economic base and the well-being of rural Alaskans."

The high cost of permits alarmed not only rural officials, though, as opposition to limited entry in urban and non-fishing areas seemed to grow in direct proportion to the cost of getting into the fisheries. When the legislature created the Limited Entry Study Group in 1979 the price of permits was the primary motivating force.

The question of how to deal with \$130,000 permits presented a tough dilemma to the legislative committee. Every alternative to freely transferable permits investigated by the study group was fraught with legal, financial, administrative or political problems.

In the end, the committee backed away from supporting any major changes in the program, concluding that the medicine was worse than the ailment. The only recommendation of the committee culminated in the 1980 creation of a special loan program designed to help rural residents enter the fisheries. (This so-called "targeted loan program" is described in a later section.)

problems



OTHER PROBLEMS: Efficiency, spinoffs and a ponderous process

When studying Alaska's system of limiting entry into the fisheries, one can reach radically different conclusions about its relative merits and evils. If there is one thing all sides can agree upon, it is that the 1973 act has spawned a tremendously complex system.

The goal of lawmakers creating the system was clear enough, as demonstrated in the straight-forward approach of the first attempt at limited entry in 1962:

"Whenever the Board (of Fish and Game) determines that the year run of salmon in any one registration area will be substantially less than the optimum run, and that under anticipated fishing conditions Alaska residents licensed by the area or district will not catch sufficient fish to sustain them for the year, the Board may, with the consent of the local advisory board or boards, promulgate regulations temporarily closing the area or district to fishing by all non-residents of Alaska."

Before the law was ever used a federal judge declared it unconstitutional.

To get by the constitutional barriers, a program was built around economic and social considerations with a keen eye for protecting residents as much as law would allow. The result is an extremely complicated system that defies easy explanation.

Consider these factors:

-- The "optimum" number of permits issued in a fishery is to be sufficient to provide a "reasonable rate of economic return to the fishermen participating in that fishery," and

the allowable catch "in an orderly, efficient manner and consistent with sound fishery management techniques," and "avoid serious economic hardship to those currently engaged in the fishery, considering the other economic opportunities available to them."

Permits then are handed out to applicants ranked by their past participation in the particular fishery and their degree of economic dependence, such as their percentage of income derived from fishing, reliance on alternative occupations, and availability of alternative occupations and investments.

The complex requirements involve careful crafting of regulations and point systems, and extensive public hearings and application periods. The process takes anywhere from one to three years before permits are issued.

Administrative review of appeals of point allocations throw contested permits into limbo for months or even years. Some appealed permit applications for fisheries limited in 1975 still were pending in 1980.

-- The initial number of permits issued in the limited fisheries was equal to the largest number of units of gear fishing in any of the four years preceding 1973. Those maximum permit numbers later were to be whittled down to "optimum" figures through a buy-back program under which the state would buy boats, gear and permits at going market rates.

Work on setting optimum numbers was delayed by the more pressing needs of issuing permits, then stalled for years by lack of funding for economists to study long-range trends in the fisheries. The buy-back program eventually was suspended indefinitely. By 1980 the optimum numbers of permits

still hadn't been issued for the 19 salmon fisheries originally brought under limited entry.

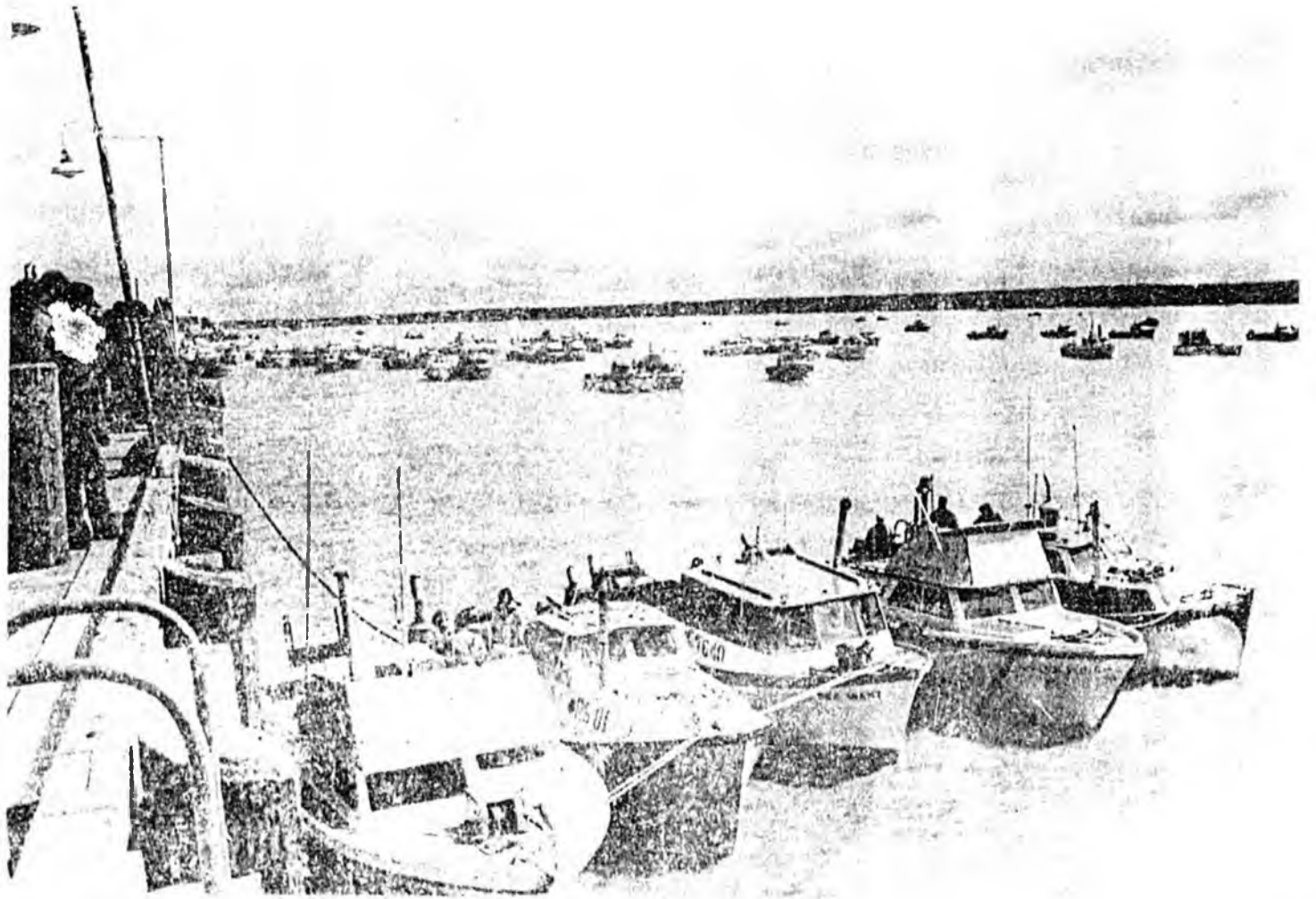
-- Whenever there is even a distant possibility of a developing fishery being brought under limited entry, it seems to create a flurry of activity by fishermen trying to put themselves in the position of earning a permit, should they eventually be issued. This phenomenon, in turn, creates pressure to impose the restrictions from fishermen nervously eyeing new competitors on the fishing grounds.

The high cost of permits also has served to increase fishing pressure in the limited fisheries, as fishermen who have to pay \$130,000 for a permit can scarcely afford to sit out poor seasons just because income is marginal. Loan payments won't wait for a better salmon run.

If limited entry has met any of the original goals of its creators it has been the evolution of the salmon fisheries into "professional" fisheries. With the lid on numbers fishermen have poured increased earnings into building expensive, highly efficient fleets of fishing vessels. Long-time fishermen say competition in the limited fisheries is much fiercer than it has ever been.



conclusion



CONCLUSION: A necessary evil?

In considering whether limited entry has worked, it is important to strip the equation of the cumbersome clothing of right or wrong. Does it violate the spirit of the free enterprise system? Did it create an exclusive rich man's club? Is it an unconstitutional allocation of natural resources belonging to all citizens of the state?

Emotions run so strongly on these issues that it is essential to narrow the question to how well the program has met its original goals. To this end, the answer can be a conditional "yes".

Statistics show limited entry has been remarkably successful in stabilizing the balance of fishing effort between Alaskans and non-residents. The only identifiable shift has been the loss of permits by rural Alaskans to urban residents.

Trends before limited entry were toward non-resident gains in the salmon fisheries, but when original permits were handed out Alaskans controlled a few more units of gear than they had before 1973. Since then, residents have gained another handful of permits.

Showing the exact degree of success limited entry has had in accomplishing another major goal of lawmakers in 1977 -- increasing the power of fishermen in dealing with processors -- is impossible. The lot of individual fishermen has increased dramatically since the early 1970s, but it's unclear how much of that was caused by limiting the number of fishermen.

Unquestionably, limited entry has given fishermen a powerful tool in negotiating fish prices, since the system has given permit holders the exclusive right to harvest Alaska's valuable

salmon resources. Processors can no longer simply hire another skipper willing to fish for lower prices.

A case in point is price negotiations in Bristol Bay where fish prices were increased by nearly 50 percent in 1979 after a virtual shutdown of the fisheries by boycotting fishermen. Although fish prices tumbled the next season following collapse of major Japanese markets, fishermen held out during the peak of the largest salmon run in history. About 21 million harvestable sockeye salmon passed by the fishing grounds because of the long price dispute.

By restricting the number of people allowed to fish salmon, lawmakers also hoped to increase the incomes of individual fishermen. While average gross incomes of gear operators have risen dramatically since 1977, the improved economic outlook mostly is due to spectacularly increased fish prices. There can be little doubt, though, that the allowable harvest would be split among a much larger group of fishermen if the salmon fisheries were open to all interested.

When all is said and done, the essential question regarding limited entry probably is:

"What's the alternative?"

Perhaps there wasn't justification to limit entry to Alaska's salmon fisheries. Maybe a better method of protecting residents could have been devised. But it's too late to debate those issues; the important point now is what would happen if the system were abolished.

With the current high level of interest in Alaska's salmon fisheries, the lifting of limited entry would invite a gear rush rivaling the Klondike gold rush. Examples of the interest in the state's fisheries are easy to find, as a glance at the

crowded halibut, crab, cod and open herring fisheries will show. Particularly troublesome is the large fleet of Washington State vessels squeezed out by the "Boldt decision" which allocated half the natural and hatchery salmon runs of that area to treaty Indian tribes.

Despite development of other fisheries and the emergence of the oil industry, salmon continues to be the economic mainstay of most of the communities spread out along Alaska's 34,000-mile coastline. Hundreds of millions of dollars have been invested on the assumption limited entry is here to stay. Abolition of the system would disrupt the economies of much of rural Alaska.

Although the cost of buying a permit adds a big barrier to entering the salmon fisheries for rural Alaskans, state loan programs can give an edge to residents. The programs will cover 90 percent of the market value of permits, and the recent "targeted loans" designed to help rural residents may carry 100 percent of the cost. Permits can be used as collateral only under state loan programs.

The threat of a gear stampede trampling long-time fishermen is responsible for the continuing support of limited entry by many harsh critics. Notably absent from the legislature's 1979-80 evaluation of limited entry was the possibility of removing the restrictions altogether.

Since limited entry is widely seen as an evil made necessary by the lack of alternatives, continuing support of the program by lawmakers appears likely. Equally likely are continuing opposition from a host of critics and pressure to substantially modify the present system.

FINANCING: The state and CFAB

When it comes to finding financing for limited entry permits, Alaska residents have a decided advantage. Under state law, permits can be owned only by individuals. Banks cannot take possession of permits in the event a borrower defaults on a loan. Thus, permits may not be used as collateral, except under the state loan program which is open only to five-year residents. The Alaska Commercial Fishing and Agriculture Bank (CFAB) also is able to hold permits as collateral since the state initially funded the bank and remains a major stockholder. CFAB uses the same requirements as the state for permit loans.

Through the state's Commercial Fishing and Revolving Loan Fund, applications for permit loans are made directly to the Division of Business Loans in the Department of Commerce and Economic Development.

Permit loans require five years state residency immediately preceding the date of application, with one year of commercial fishing experience during that time. The interest rate is 9.5 percent, and the maximum loan term is fifteen years.

The state can lend up to 90 percent of the average resale value or the actual cost of the permit, whichever is less, when the permit itself is used as collateral. The Entry Commission computes this average resale value quarterly, based upon what prices were paid for permits during the preceding quarter. It is important to keep this in mind, as the amount of money you can get varies as permit prices go up or, more rarely, down.

The newly-created Fishermen's Revolving Mortgage and Note Fund, targeted to assist fishermen in rural areas of the state

who are not eligible for regular commercial fishing loans, also may be used for the purchase of limited entry permits.

Under this program, the state will buy mortgages and notes from banks or other financial institutions. The interest rate is 10.5 percent.

The state may buy a mortgage or note for up to 100 percent of the appraised value of the collateral if the loan is for the purchase of an entry permit and if the borrower has at least three years experience as a commercial fisherman under the direction of a permit holder in the fishery for which he is buying the permit.

To be eligible for this program, an applicant must have five years state residency immediately preceding the date of application, but he does not necessarily need to have had commercial fishing experience as long as the lender finds that he is reasonably likely to succeed as a fisherman and be able to repay the loan.

For further information on loans for limited entry permits, contact one of the regional offices of the Division of Business Loans, Department of Commerce and Economic Development:

Juneau	Pouch D Juneau, Alaska 99811 465-2510
Anchorage	201 East Ninth, Suite 103 Anchorage, Alaska 99501 274-6693
Fairbanks	675 Seventh Avenue, Station A Fairbanks, Alaska 99701 452-8182

or



Alaska Commercial Fishing and Agriculture Bank
Gary Anderson, President
P. O. Box 4-2070
2550 Denali Street, Suite 1201
Anchorage, Alaska 99509
278-4553

CFAB also has offices in Homer, Kodiak, Cordova, and Seattle.



MISCELLANEOUS: A checklist

Attempting to deal long distance with the many and complex limited entry regulations is a constant source of frustration to fishermen and the Entry Commission alike. Misunderstandings are often a cause of delay, which can be critical and costly when the fish are going by the fishing grounds.

The following checklist offers important points to keep in mind about limited entry and is offered to help keep the level of red tape frustration at a minimum:

- The permit holder must have his card in his possession and must be present while his gear is being fished;
- A permit cannot be lent to anyone, not even a relative;
- A permit holder and crew must be able to produce identification at the request of an enforcement officer;
- Emergency transfers are to be used in cases of unavoidable hardship; they are not for leasing a permit. Send an emergency transfer form to the Commission, including documentation and your permit card;
- There is a 60-day waiting period between the time an intent to transfer form is filed with the Commission and the permit can actually be transferred;
- Once a permit is transferred permanently, it's gone. The Commission strongly recommends using an escrow agent to hold the money (contact your local Legal Services Agent);
- If a permit holder dies, the spouse or heir should contact the local superior court clerk for instructions on having an administrator of the estate appointed; and contact the Commission;
- Permit holders should allow at least three weeks for processing renewals, and more if they live in an area where mail is slow;
- Decisions of the Commission are subject to review, and an applicant may request a hearing;
- When in doubt, contact the Commission.



The Fishermen's News

C-3 Building, Room 110 • Fishermen's Terminal • Seattle, WA 98119 • (206) 282-7545

February 19, 1981

State of Alaska
Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

RECEIVED

FEB 23 1981


Dear Sirs,

I am writing to request notification of any hearings concerning the State of Alaska Commercial Fisheries Entry Commission.

Specific issues include Senate bills 49 and 51, relating to entry permit renewals and revokation action. The Commission's investigation into false residency claims on permit applications is another specific issue.

If possible, I would like the minutes of any public hearings, and would, if necessary, pay reproduction costs.

Thank you



Andrew Mangan

WORKING DRAFT

IN THE LEGISLATURE OF THE STATE OF ALASKA

12th LEGISLATURE - FIRST SESSION

A BILL

For an Act Entitled: "An Act Relating to Limited Entry Permits."

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

* Sec. 1. - AS 16.43.150 is amended by adding a new sub-section to read:

(i) An entry permit shall be forfeited to the Commission upon failure of the permit holder to verify to the Commission active participation in the fishery each season, according to regulations adopted by the Commission.

rt 49

January 12, 1981

President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making several changes in the Limited Entry Act. The first section of the bill would increase from two to four the number of years that a permit-holder may fail to renew his entry permit before it is revoked by the commission, and makes it clear that all fees for years during which the permit was not renewed must be paid before the permit may be renewed. The two-year forfeiture under existing law works a substantial hardship on residents of the rural areas of the state. The commission has spent considerable time and effort to contact permittees who are in danger of forfeiting their entry permits. The section also would make it clear that a person is not required to renew his entry permit in a year in which there is an administrative closure for an entire season.

The Limited Entry Act provides that if the commission has some permits to issue to a priority classification, but not enough for all applicants in that classification, the entry permits will be issued by lottery. Section 2 of the bill would provide that the commission may issue entry permits to all applicants in the classification if the maximum number of permits established for the fishery would be exceeded by a very few permits. For example, if there were 100 entry permits available to issue, and there are 102 applicants in the classification, 102 permits would be issued. Section 3 of the bill would make it a ground for revocation to supply false information to obtain an interim-use entry permit and to supply false information in a request for renewal of an entry permit. Existing law applies only to entry permits, and applications for entry permits.

Sections 4 and 5 of the bill would protect a lending institution which holds an entry permit as security for a commercial fishing loan if the permit is revoked for any

reason specified in AS 16.43.355 or forfeited under AS
16.43.360.

Sincerely,

S/SSH

Jay S. Hammond
Governor



Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Senator Bennett
Senator Hohman
Senator Parr
Senator Ray

FROM: Senator Rodey

DATE: May 19, 1981

SUBJECT: SB 49 "An Act relating to limited entry to commercial fisheries; and providing for an effective date."

Please find attached a letter and draft language relating to SB 49, and the committee's interest in a "use it or lose it" limitation.

Mr. Simon raises some interesting points that I feel the committee should consider before adopting the proposed amendment.

PMR/ods
Attachment

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

COMMERCIAL FISHERIES ENTRY COMMISSION

POUCH KB
JUNEAU, ALASKA 99811

May 19, 1981

The Honorable Pat Rodey
Chairman, Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey:

Please find attached, draft language requested by your Committee amending AS 16.43. to provide a "use it or lose it" limitation on entry permits. Before the Committee decides whether to propose this limitation, the Commission suggests that serious attention be given to several considerations. The first and most important consideration is whether the requested amendment comports with the purpose of the Limited Entry Act.

As stated in AS 16.43.010(a) the limited entry legislation was enacted to promote resource conservation and economic health of Alaska's commercial fisheries. By mandating permit holders' participation, competition among fishermen for a given resource and impact upon that resource will be increased. This increased effort could result in lower economic returns to commercial fishermen and additional pressures on fishery stocks that are, in some instances, already at low levels. Two examples of this potential effect may be found in the statewide power troll and the Cook Inlet salmon fisheries.

In 1979 (the most recent year for which complete landing data is available from the Alaska Department of Fish and Game) 814 out of a possible 979 statewide power troll permits actually participated in the fishery. If the 165 non-participating fishermen had been forced to fish because of a "use it or lose it" statute, the economics and stock levels of the fishery would be more depressed than they are at present.

In 1979 Cook Inlet net fisheries, i.e., purse seine, drift gill net and set gill net, 1,277 permits were fished out of a total of 1,432 permits available. An additional 155 units of gear could drastically impact fish runs that are currently the subject of considerable contention by subsistence, commercial and sports fishermen.

A mandatory-use requirement on entry permits may also punish diversified fishermen, rural fishermen and holders of permits who voluntarily choose not to participate because of poor run predictions or other economic considerations. Fishermen who hold permits for more than

one salmon fishery are not always able to fish every permit in a given season. Those who hold salmon net permits in different administrative areas must designate before the season the area in which they intend to fish. 05 AAC 39.115 and 20 AAC 05.940. They are, therefore, precluded by regulation from fishing all their permits in one season and would, if the proposal were adopted, lose the permits they did not fish through no intentional disuse. In these cases, the proposal would actually defeat one of the stated legislative intentions of the original Limited Entry Act that professional fishermen be allowed to acquire more than one permit in order to have options available each season.

The proposed amendment could hurt rural fishermen who want to take advantage of high paying jobs whenever they are available and yet maintain their permits in order that they may fish in other years or eventually pass them on to their children. If a permit holder in the Upper Yukon net fishery, where the 1979 average gross earnings per permit were \$7,477, worked on the pipeline for a year rather than fish he could, under the proposed amendment, lose his permit. In essence, he would be punished for seeking to better his financial situation. Also, the amendment might encourage permit transfers away from villages.

The amendment could force people to fish in years when it is not profitable because of poor run predictions, low prices or better short-term opportunities elsewhere. The proposal ignores the fact that some fishermen minimize loss potential in certain years by simply not fishing. The proposal could force them to incur a financial loss to preserve their permit.

Implementation of the proposed amendment may require additional appropriations to properly address the effects of increased participation and to determine which permits are to be forfeited because they were not fished. In the years 1977 to 1979 the average statewide participation level in limited salmon fisheries was 82.9% of the available permits. The amendment would increase the participation level, thereby altering management policies and requiring additional enforcement efforts.

An administrative framework would have to be established to evaluate catch data, match the data to permits and determine which permits are to be forfeited. Procedural due process in the form of administrative hearings and judicial appeals would have to be afforded to non-participating permit holders prior to forfeiture. The actual forfeiture of a permit would probably not occur until a considerable period of time after the season in question.

May 19, 1981

Fish ticket landing data is not available to the Commission in useable form until at least a year after the particular fishing season. The Commission would, therefore, not begin to establish who did not participate in a given season until the following year. After a non-participant was identified he would have to be notified of the proposed action and given an opportunity through an administrative hearing to contest the proposed action. The case would then be adjudicated by the three Commissioners. If the adjudication were adverse to the permit holder's interest, he would have the right to a judicial appeal according to AS 44.62.560-44.62.570. The permit could not be forfeited until all administrative and judicial remedies had been exhausted.

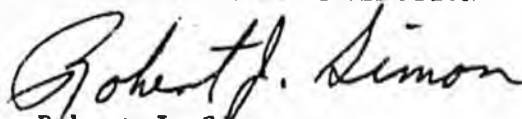
The potential impact upon current Commission workload is very significant. If the Commission were to review and act upon over 17% of the permits available (in 1979 that would have amounted to 1,857 of the 10,335 total salmon entry permits) considerable strain could be placed upon existing capabilities.*

Before the proposal is acted upon, it is suggested that the Committee consider the purpose to be served by the amendment. A "use it or lose it" clause in the Limited Entry Act may discourage voluntary non-participation in a fishery based upon consideration for the state of the resource and work unintended hardships upon fishermen.

Should further information be required of the Commission, please contact us at your earliest convenience.

* The Commission is currently working under an adjudication caseload of approximately 600 cases, some of which were begun in 1975.

By Direction of the
COMMERCIAL FISHERIES ENTRY COMMISSION



Robert J. Simon
Chairman

RJS:nlg

WORKING DRAFT

IN THE LEGISLATURE OF THE STATE OF ALASKA

12th LEGISLATURE - FIRST SESSION

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PATRICK RODEY
ANCHORAGE

601 W. 5TH AVE. SUITE 820
ANCHORAGE, ALASKA 99501

Alaska State Senate
JUNEAU, ALASKA 99811

DURING SESSION

POUCH V
JUNEAU, ALASKA 99811

February 18, 1981

Pamela L. Finley, Esq.
Robertson, Monagle, Eastaugh &
Bradley
Attorneys at Law
P. O. Box 1211
Juneau, Alaska 99802

Re: Senate Bill 49


Dear Ms. Finley:

Thank you for your letter regarding S.B. 49.

I certainly agree that permit holders should not be placed in jeopardy of losing their livelihood for "checking the wrong box," but I am as equally concerned that limited entry permits not be awarded based on false information.

The Bill is currently in Senate Resources, and I hope you will make your views known to Senator Fahrenkamp, the Committee Chair.

Sincerely,



Patrick M. Rodey

PMR/ods

OF COUNSEL
M E MOAGLE

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

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January 28, 1981

RESOLVED

~~JAN 28 1981~~
JAN 29 1981

The Honorable Patrick Rodey
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 49

Dear Senator Rodey:

I am writing in regard to Section 3 of the referenced bill which would allow the Limited Entry Commission to revoke an entry permit if a person knowingly supplies, assists in supplying, or fails to correct false information provided to the Commission for the purpose of, among other things, a permit renewal.

From my own practice, it appears that a majority of the revocation proceedings and investigations involve questions of residency. I know of at least one case where the Commission has used a claim of residency on a permit renewal as a basis for issuing a show cause order under AS 16.43.355, even though the statute at that time did not authorize the Commission's doing so. I urge the Legislature to consider the matter carefully before giving the Commission the authority it seeks, especially in light of the legislative history of AS 16.43.355 which indicates that at least one legislator, while generally supporting the Act, indicated that a person should not lose a permit (now valued at up to \$100,000 in some cases) for "checking the wrong box."

The renewal forms before 1980 had no definition of residency except a definition which was made for the purpose of determining whether the applicant was within federal poverty levels. The 1980 renewal forms did contain a definition of resident, which required a person claiming residency not to be registered to vote in another state and

The Honorable Patrick Rodey
January 28, 1981
Page Two

to have "maintained a permanent place of personal abode within the state" during the previous 12 months. Even this definition, while better than none, may be confusing to a person who has a permanent residence in Alaska but spends substantial time Outside fishing, travelling, outfitting his or her vessel or even taking a temporary job. It may also be confusing to the fisherman who lives on his boat and travels from place to place throughout the year, but also considers Alaska to be his home and is registered to vote here. The real problem in short is that "residency" is a rather slippery legal concept to begin with and becomes even slipperier when applied to people who travel in the off-season and are not, in general, particularly adept at dealing with bureaucracies.

Furthermore, what is at stake here is not simply a person's right to earn his or her livelihood. Even if the Commission does not ultimately revoke a permit, a person issued a show cause order has to hire an attorney, and cannot transfer the permit during the pendency of the hearing, which can be up to one year or more. (It is my understanding that the Commission has recently issued a directive that the hearing officer make a recommended decision within 45 days after the record closes; however, the time between the issuance of the show cause order and the closing of the record can be quite extensive in factually complex cases.) Furthermore, fishermen who are being investigated by the Commission, but who have not been issued show cause orders may be justifiably reluctant to make a contract to transfer their permits for fear that the Commission will issue a show cause order when the transfer is requested and the permit holder will not be able to fulfill his contract.

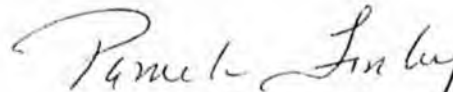
Given the difficulties a fisherman may have in deciding whether or not he or she is a "resident" and the consequences of a revocation, or even a hearing, or even an investigation, I would hope that the Legislature would not make information provided on a permit renewal form grounds for revoking an entry permit. It is certainly reasonable to require a person who doesn't pay a non-resident fee when he or she should, to pay back the amount plus a substantial amount to cover administrative costs. Forfeiture of a permit, however, is a serious penalty.

The Honorable Patrick Rodey
January 28, 1981
Page Three

If information provided on permit renewal forms is to be used as a basis for revoking a permit, it should be made very clear in the statute that no information given on a renewal form before the effective date of the amendment can be used as a basis for revoking a permit. Such an explicit statement by the Legislature should avoid any litigation concerning this issue, and will protect those people who filled out renewal forms when there was no definition of "residency" provided to them. The amendment should also require "resident" to be defined in such a way that the most unsophisticated person will be able to understand it. It could, for instance, require a person to be a registered voter in no other State at the time of renewal and physical presence within the State or State waters for a definite number of months within the year preceding application for renewal, if such a requirement would be constitutional. If the Commission is to revoke permits based on inaccurate claims of residency, the applicant should at least be given a very clear definition of "resident" and fair warning of the consequences of false information.

Thank you for your time.

Sincerely,



Pamela Finley

PLF:sd



UNITED FISHERMEN OF ALASKA

MAILING ADDRESS & OFFICE
197 SOUTH FRANKLIN ST
JUNEAU, ALASKA 99801
907 586-2820

Rodger Painter
Executive Director

May 21, 1981

Honorable Pat Rodey
Chairman, Senate Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Senator Rodey:

The United Fishermen of Alaska, which represents 17 local fishermen's groups and another 1,200 individual commercial fishermen, is strongly opposed to the suggested amendment to SB 49 adding a "use it or lose it" provision to limited entry permits.

An annual mandatory use requirement for entry permits is by no means a new concept, as it has been kicking around since the system was first proposed. The May 19, 1981 letter from the Commercial Fisheries Entry Commission provides solid logic for the past rejection of the proposal.

What must be kept firmly in mind when looking at limited entry is that the system was fashioned to provide the best protection possible under law for resident commercial fishermen. As a special joint legislative committee discovered when considering a wide range of potential changes to limited entry between the 1979 and 1980 legislative sessions, even relatively minor changes to the program would create ripple effects that can upset the economies of coastal communities dependent upon the crucial salmon fisheries.

The UFA believes that a "use it or lose it" requirement on limited entry permits would severely affect the earning power of local fishermen, particularly during fishing seasons with low projected salmon harvests when non-resident permit holders would be inclined to stay in the "lower 48." The 1980 Copper River drift gillnet fishery for king salmon provides a classic example.

Non-residents hold 141, or 27 percent, of the total 532 Prince William Sound drift gillnet salmon permits. Because of poor preseason forecasts for the early 1980 king salmon fishery in the Copper River by the Alaska Department of Fish and Game, however, only 200 permit holders showed up on the fishing grounds. Resident fishermen accounted for about 90 percent of the gillnet fleet, which harvest an estimated 10,000 king salmon, according to the president of the local fishermen's group.

If the proposed "use it or lose it" clause had been in effect in 1980,

it is likely that all 532 permit holders would have shown up for the fishery. The predominantly local fleet would have seen its share of the harvest reduced from marginal levels of 50 fish per vessel to the sure-fire loser of 19 king salmon per permit, if all qualified fishermen had been required to participate.

The trend of higher local participation in poor seasons holds true statewide. A mandatory use provision would result in a lower return to resident fishermen, consequently, reduce the benefits of commercial fisheries to local economies.

If intent of Senate Judiciary Committee members favoring the "use it or lose it" provision is to create better fishing opportunities for Alaskans, a better approach would be to bolster the state's loan program for limited entry permits. The most constitutionally sound method of giving residents an advantage in the salmon fisheries is through providing easily accessible, 100 percent financing to long time Alaskans for entry permits.

The UFA and other commercial fishermen respectfully request committee members to carefully consider the full ramifications of the "use it or lose it" provision. Upon close scrutiny, we are convinced that the committee can come to only one conclusion: rejection of the proposed amendment.

Sincerely,


Rodger Painter

RP/1a

Sec. 16.43.140. Permit required. (a) After January 1, 1974, no person may operate gear in the commercial taking of fishery resources without a valid entry permit or a valid interim-use permit issued by the commission.

(b) A permit is not required of a crewman or other person assisting in the operation of a unit of gear engaged in the commercial taking of fishery resources as long as the holder of the entry permit or the interim-use permit for that particular unit of gear is at all times present and actively engaged in the operation of the gear.

(c) A person may hold more than one interim-use or entry permit issued or transferred under this chapter only for the following purposes:

- (1) fishing more than one type of gear;
- (2) fishing in more than one administrative area;
- (3) harvesting particular species for which separate interim-use or entry permits are issued. (§ 1 ch 79 SLA 1973)

Applied in *Isakson v. Rickey*, Sup. Ct. Op. No. 1267 (File No. 2550), 550 P.2d 359 (1976).

Sec. 16.43.150. Terms and conditions of entry permit; annual renewal. (a) Each entry permit authorizes the permittee to operate a unit of gear within a specified administrative area.

(b) The holder of an entry permit shall have the permit in his possession at all times when engaged in the operation of gear for which it was issued.

(c) Each entry permit is issued for a term of one year and is renewable annually.

(d) Failure to renew an entry permit for a period of two years from the date of last renewal results in a forfeiture of the entry permit to the commission, except as waived by the commission for good cause.

(e) An entry permit constitutes a use privilege which may be modified or revoked by the legislature without compensation.

(f) An entry permit survives the death of the holder.

(g) An entry permit may not be:

- (1) pledged, mortgaged, leased, or encumbered in any way;
 - (2) transferred with any retained right of repossession or foreclosure;
- or

(3) attached, distrained, or sold on execution of judgment or under any other process or order of any court.

(h) Upon the death of an entry permit holder, the permanent permit shall be transferred by the commission directly to the surviving spouse by right of survivorship unless a contrary intent is manifested. When no spouse survives, the rights of the decedent pass as part of his estate. (§ 1 ch 79 SLA 1973; am §§ 1, 2 ch 73 SLA 1977)

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STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

COMMERCIAL FISHERIES ENTRY COMMISSION

POUCH KB
JUNEAU, ALASKA 99811

May 19, 1981

The Honorable Pat Rodey
Chairman, Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey:

Please find attached, draft language requested by your Committee amending AS 16.43. to provide a "use it or lose it" limitation on entry permits. Before the Committee decides whether to propose this limitation, the Commission suggests that serious attention be given to several considerations. The first and most important consideration is whether the requested amendment comports with the purpose of the Limited Entry Act.

As stated in AS 16.43.010(a) the limited entry legislation was enacted to promote resource conservation and economic health of Alaska's commercial fisheries. By mandating permit holders' participation, competition among fishermen for a given resource and impact upon that resource will be increased. This increased effort could result in lower economic returns to commercial fishermen and additional pressures on fishery stocks that are, in some instances, already at low levels. Two examples of this potential effect may be found in the statewide power troll and the Cook Inlet salmon fisheries.

In 1979 (the most recent year for which complete landing data is available from the Alaska Department of Fish and Game) 814 out of a possible 979 statewide power troll permits actually participated in the fishery. If the 165 non-participating fishermen had been forced to fish because of a "use it or lose it" statute, the economics and stock levels of the fishery would be more depressed than they are at present.

In 1979 Cook Inlet net fisheries, i.e., purse seine, drift gill net and set gill net, 1,277 permits were fished out of a total of 1,432 permits available. An additional 155 units of gear could drastically impact fish runs that are currently the subject of considerable contention by subsistence, commercial and sports fishermen.

A mandatory-use requirement on entry permits may also punish diversified fishermen, rural fishermen and holders of permits who voluntarily choose not to participate because of poor run predictions or other economic considerations. Fishermen who hold permits for more than

one salmon fishery are not always able to fish every permit in a given season. Those who hold salmon net permits in different administrative areas must designate before the season the area in which they intend to fish. 05 AAC 39.115 and 20 AAC 05.940. They are, therefore, precluded by regulation from fishing all their permits in one season and would, if the proposal were adopted, lose the permits they did not fish through no intentional disuse. In these cases, the proposal would actually defeat one of the stated legislative intentions of the original Limited Entry Act that professional fishermen be allowed to acquire more than one permit in order to have options available each season.

The proposed amendment could hurt rural fishermen who want to take advantage of high paying jobs whenever they are available and yet maintain their permits in order that they may fish in other years or eventually pass them on to their children. If a permit holder in the Upper Yukon net fishery, where the 1979 average gross earnings per permit were \$7,477, worked on the pipeline for a year rather than fish he could, under the proposed amendment, lose his permit. In essence, he would be punished for seeking to better his financial situation. Also, the amendment might encourage permit transfers away from villages.

The amendment could force people to fish in years when it is not profitable because of poor run predictions, low prices or better short-term opportunities elsewhere. The proposal ignores the fact that some fishermen minimize loss potential in certain years by simply not fishing. The proposal could force them to incur a financial loss to preserve their permit.

Implementation of the proposed amendment may require additional appropriations to properly address the effects of increased participation and to determine which permits are to be forfeited because they were not fished. In the years 1977 to 1979 the average statewide participation level in limited salmon fisheries was 82.9% of the available permits. The amendment would increase the participation level, thereby altering management policies and requiring additional enforcement efforts.

An administrative framework would have to be established to evaluate catch data, match the data to permits and determine which permits are to be forfeited. Procedural due process in the form of administrative hearings and judicial appeals would have to be afforded to non-participating permit holders prior to forfeiture. The actual forfeiture of a permit would probably not occur until a considerable period of time after the season in question.

May 19, 1981

Fish ticket landing data is not available to the Commission in useable form until at least a year after the particular fishing season. The Commission would, therefore, not begin to establish who did not participate in a given season until the following year. After a non-participant was identified he would have to be notified of the proposed action and given an opportunity through an administrative hearing to contest the proposed action. The case would then be adjudicated by the three Commissioners. If the adjudication were adverse to the permit holder's interest, he would have the right to a judicial appeal according to AS 44.62.560-44.62.570. The permit could not be forfeited until all administrative and judicial remedies had been exhausted.

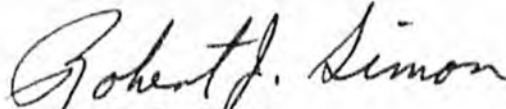
The potential impact upon current Commission workload is very significant. If the Commission were to review and act upon over 17% of the permits available (in 1979 that would have amounted to 1,857 of the 10,335 total salmon entry permits) considerable strain could be placed upon existing capabilities.*

Before the proposal is acted upon, it is suggested that the Committee consider the purpose to be served by the amendment. A "use it or lose it" clause in the Limited Entry Act may discourage voluntary non-participation in a fishery based upon consideration for the state of the resource and work unintended hardships upon fishermen.

Should further information be required of the Commission, please contact us at your earliest convenience.

* The Commission is currently working under an adjudication caseload of approximately 600 cases, some of which were begun in 1975.

By Direction of the
COMMERCIAL FISHERIES ENTRY COMMISSION


Robert J. Simon
Chairman

RJS:nlg

certain type of gear. Holders of interim-use permits or entry permits issued under this chapter are subject to all regulations adopted by the Board of Fisheries. (§ 1 ch 79 SLA 1973; am § 31 ch 206 SLA 1975)

Effect of amendment. — The 1975 Fisheries" for "Board of Fish and Game" amendment substituted "Board of in the first and second sentences.

Sec. 16.43.360. Penalties. (a) A person who violates a provision of this chapter or a regulation promulgated under this chapter, upon conviction, is guilty of a misdemeanor and is punishable by a fine of not more than \$5,000 for a first conviction; a fine of not more than \$10,000 for a second conviction; and, for a third conviction, a fine of not more than \$10,000 as well as forfeiture of all interim-use permits and entry permits held by him and permanent loss of eligibility for interim-use permits or for entry permits.

(b) A person who makes a false statement of a material fact in the application for an interim-use permit or an entry permit or in the application for a transfer under §§ 170 — 180 of this chapter, or a person who assists another by making a false statement of a material fact in support of the other person's application for issuance of an interim-use permit or an entry permit or transfer of an entry permit, upon conviction, is guilty of a misdemeanor and shall forfeit all interim-use permits and entry permits held by him and shall lose eligibility for interim-use permits and for entry permits for a period of five years.

(c) If a permit holder is convicted of a violation of AS 43.20.335 and the violation relates to income derived from commercial fishing under this title, he shall forfeit all interim-use permits and entry permits held by him and shall lose eligibility for interim-use permits and for entry permits for a period of five years.

(d) If a permit holder is charged by the state with violating a provision of this chapter or a regulation adopted under this chapter, he may not transfer, under § 170 of this chapter, any interim-use or entry permit he may hold, until after the final adjudication or dismissal of the charges. (§ 1 ch 79 SLA 1973; am § 7 ch 73 SLA 1977)

Effect of amendment. — The 1977 amendment added subsection (d).

Sec. 16.43.370. Recommendations to the legislature. (a) The commission shall submit an annual report to the legislature. The report shall include but not be limited to the following:

(1) a progress report on the reduction of entry permits to optimum levels;

(2) recommendations for additional legislation relating to the regulation of entry into Alaska commercial fisheries.

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UNITED FISHERMEN OF ALASKA

MAILING ADDRESS & OFFICE
197 SOUTH FRANKLIN ST
JUNEAU, ALASKA 99801
907 586-2820

Rodger Painter
Executive Director

April 10, 1981

TO: Kevin Bruce, Senate Judiciary Committee

FROM: Geron Bruce, Secretary-Treasurer, United Fishermen of Alaska

RE: Senate Bill 51, "An Act relating to penalties for commercial fishing violations".

Following up on our phone conversation of March 1981, I would hope the committee could clean up a problem that has existed in fisheries enforcement for a long time. That is, the fact that under the law (AS.16.05.710) and AS 16.05.720), a technical line violation, or jumping the starting gun of the opening, by even a minute, are both put in the same category of violation as creek robbing, "fishing in closed waters".

Senate Bill 51 intends to crack down on the habitual offenders and the fish bandits by revoking their license to fish for one year in the case of a second offense or permanently in the case of a third offense. That may be a laudable intention and the UFA supports strong measures against fish bandits, however as long as the distinction is not made between the "technical" violations that do not injure the resource and the "criminal" violations of those who sneak into areas during closed periods and take fish without consideration for the needs of the resource; there will be problems.

The highly competitive nature of present day fishing and the small and crowded areas into which the fishing effort is concentrated result in heavy effort at the edges of the area open to fishing. Particularly after the first 12 or 24 hours, the fish that have built up inside the area are mopped-up, the effort shifts to the lines to catch incoming fish. Many of these areas have strong and unpredictable tidal currents. These, plus the frequently adverse weather and fishing conditions, make line fishing among the most demanding places to fish.

What would seem appropriate would be to differentiate in severity of punishment for the different types of fishing violations. For example: someone who goes off and fishes the night before the opening should have his license revoked the first time; but the greenhorn that didn't know to watch out for the tide change at Point Arden and suddenly saw his net streaking at 5 knots across the line on the flood tide, just when the protection officer was passing, should not lose his license to fish or be fined for his entire catch on board. He should be forced to

forfeit the value of his catch in that net, plus some standard amount so there would be no possibility of an incentive to break the law.

We believe that not only would such a policy be more fair and appropriate to modern fishing conditions, but that it would also be more successfully enforced. If the punishment is not relative to the seriousness of the violation, the effectiveness of the law is lessened.

Thank you very much for your attention. If I can be of any more assistance, please feel free to call me here in Juneau at 586-3864.



UNITED FISHERMEN OF ALASKA

MAILING ADDRESS & OFFICE:
197 SOUTH FRANKLIN ST
JUNEAU, ALASKA 99801
907 586-2820

Rodger Painter
Executive Director

February 5, 1982

TO: Kevin Bruce
Senate Judiciary Committee
Re: Senate Bill 51

Here are the fishery-by-fishery comments you requested on enforcement of fisheries regulations. The purpose is to outline some of the enforcement concerns fishermen have and to point out some of the difficulties involved in adoption of the inflexible approach to sentencing proposed by the the Department of Public Safety.

Commercial fishermen strongly support the imposition of heavier penalties for serious fishing violations. Some regulations restrict fishing effort to protect the biological integrity of the fisheries resources; when these are broken the fulltime fishermen with a long-term committment to the fishery is hurt. Other regulations are designed to protect fishermen, those who follow the law are penalized when these restrictions are violated.

While we favor stronger penalties, the United Fishermen of Alaska vigorously objects to the mandatory sentencing approach suggested by the Department of Public Safety. Those fishermen who have the misfortune of committing one of the many minor offenses would be thrown in jail for three days, while those who made a big payday by cheating would not be subject to a much heavier penalty for their violation, under the Department's approach.

The violations targeted by this bill are economic crimes. The best deterrent is to hit the pocketbook of offenders, so that it no longer makes economic sense to break the law. Forcing a serious offender to sit out a fishing season might be the best deterrent possible.

After studying the problem for some time, it is apparent to the UFA that there are no easy answers. Public Safety's bill is a classic example of a simple answer to a complex problem that ends up creating more difficulties than it solves.

A better solution to the problem of creating an effective enforcement system might be the cautious development of a comprehensive approach. We think the effort now under way by the Alaska Judicial Council to develop sentencing guidelines for judges and magistrates to use in fishing and hunting cases might provide a good vehicle. We understand recommendations may be forthcoming from this group regarding fisheries violations. It would be wise to link efforts with the Council.

Salmon--Time, area and gear are all concerns in the salmon fisheries in terms of protection of the resource and equity with other users.

Time is important, since jumping the gun by even a few minutes can give a violator first crack at fish that schooled up during closed periods. This is particularly true of the seine fisheries. To trollers, however, a few minutes of extra fishing time before an opening or after a closure is relatively meaningless.

Fishing in closed waters is the most difficult of the three violations upon which judgement has to be passed. Many of the state's net fisheries take place directly on the edge of the boundaries and it is exceedingly easy to be charged with a "technical" violation of fishing in closed waters for having only a portion of your net over the line. Strong tides and sudden winds can kick a small vessel over the line.

Strong tides and sudden winds can kick a small vessel over a fishing boundary before the fisherman can react. In some cases there are boundaries established merely for the purpose of allocating fish between gear groups. In some areas, the exact location of fishing boundaries are very difficult to determine because marker buoys are pulled underwater or actually moved by strong tides, and the bays are so wide that the skipper has only one reference point to which he can align.

On the other side of the coin, fishing in closed waters can be the most serious of all fishing violations because of the depletion of critical spawning populations from "creek robbing." It also is the biggest enforcement problem.

Gear restrictions can result in the most harmless of all "technical" violations. Power trollers, for instance, are prohibited from having sport fishing poles aboard their vessels during open fishing periods. Do you really want to throw a troller in jail for three days for having a sport pole sitting in the galley?

But, fishing too many pieces of gear, using nets exceeding maximum lengths or depths, and putting power gear on hand trollers can give the violating fishermen substantial advantages over those who follow the law.

In our opinion, the mandatory three-day jail sentences and fines for first offenses requested by the Department of Public Safety would serve mainly to throw the book at minor violators rather than provide significant economic deterrents for those who deliberately break the law for financial gain. Some very honest fishermen get cited for fishing in closed waters two or three times in a season. Suspending a fishermen's limited entry permit for a couple of minor line violations can be compared to taking away someone's driving license for forgetting to turn their headlights on after dark.

The most effective deterrent for deliberate major violations in the salmon fisheries would be to suspend limited entry permits during

peak fishing periods. It's crucial that the suspension be for the entire season or be timed for the peak of the fishing seasons. Nearly all the fish are caught during two or three weeks in most salmon fisheries although it may be possible to fish over a three or four month period.

And, of course, if someone is breaking the law to fatten his wallet the most fitting punishment might be to hit him where it hurts-- the bank account. Civil lawsuits might provide a way of getting to much bigger fines than are possible under criminal act, and the burden of proof in civil suits is not as heavy.

Crab--The western Alaska crab fisheries undoubtedly provide the biggest economic incentives to break the law. This is especially true for the intense and highly competitive Bering Sea king crab fishery where fishing early can result in a vessel getting an extra trip worth tens of thousands of dollars during the month-long scramble to get a share of the quota.

Time is the only major consideration in enforcement in the Bering Sea crab fisheries, as there are no pot limits and the fishing area is immense. Illegal early fishing has been very widespread in the Bering Sea king crab fishery in recent years.

Early fishing is particularly difficult to police in the Bering Sea because of the sprawling area involved and the lack of enforcement capability in the vicinity. The problems are compounded by the fact that fishermen are allowed to store unbaited crab pots on the fishing grounds prior to the opening of the season.

Another rising enforcement concern in the Bering Sea crab fishery is the increasing trend toward catcher/processing vessels. Fishermen are allowed to keep only male crab over a certain size. Many fishermen believe that the catcher/processors are keeping undersized males and female crab. These concerns appear to be supported by statistics showing that catcher/processors vessels caught a disproportionate percentage of the 1981 Bering Sea king crab quota.

The size and sex restrictions are now enforced by state officials who periodically inspect the holds of crab vessels as they unload live crab at the major ports in the Bering Sea. Once the crab are split and cooked there is no way to accurately determine size or sex of the live crab, so these crucial conservation restrictions currently are not enforced on catcher/processors.

The only feasible way of enforcing the restrictions on catcher processors is through the stationing of observers on high seas operations. Unscheduled boardings at sea offer a less dependable enforcement option.

An enforcement concern in the Kodiak crab fishery is violations of the area's pot limit. Obviously, someone breaking the per vessel pot limit would have a significant economic advantage over

fellow fishermen.

The best deterrent in the crab fisheries is to tie up the offending vessel during the crab season, as it is difficult to locate a replacement vessel to lease during the crab season. Tying up the multimillion dollar crabbers during the race to get a share of the quota would be striking at the pocketbook.

Suspension of an interim use permit for the crab fisheries would have no deterrent effect, since several crew members on most crab vessels carry interim use permits which cost a couple hundred dollars each.

Herring--The shortest fishing periods occur in the herring seine fisheries, some of which last only a couple of hours and start with a radio announcement by the Department of Fish and Game. Time is of the utmost concern in these fisheries; a few minutes jump on the openings can mean the difference of a \$100,000 set or literally nothing.

For the sac roe herring gillnet fleet, gear is the most serious enforcement problem. There is little enforcement activity in the far-flung herring fisheries of Western Alaska and fishermen say many vessels use several times the legal amount of gear. Consequently, the local fishing in open skiffs are put at a severe competitive disadvantage.

The sac roe herring fisheries as far west as Kodiak all are under limited entry, so suspension of permits during the season can be a very effective enforcement tool. Stiff economic penalties appear to be the best way to get at violators in the remaining fisheries.

Halibut--The halibut seasons have dwindled down to a few days in recent years as the fleet expanded by leaps and bounds. Time now is of the essence. When the quota is taken in a few days, the temptations to set a few skates of gear early become strong.

Since the fishery is not limited, it would be difficult to prevent violating fishermen to sit out the crucial fishing periods as punishment. Economic penalties appear to be the most effective approach.

Shrimp--The biggest enforcement concern in the shrimp fisheries appear to be fishing in closed waters, since many traditional shrimping bays have been closed for conservation purposes in recent years.

Tying up shrimp vessels during the fishing periods could have some effect as they generally are mid-sized to large vessels and it is more difficult and expensive to find replacement vessels. Like other non-limited fisheries, shrimping penalties are probably best attacked by stiff fines.

c.c. Ed Heim, Division of Legal Services
Representative Eric Sutcliffe
Representative Joe Chuckwuk
Senator Bob Mulcahy

MEMORANDUM

State of Alaska

TO: Keith Specking
Legislative Assistant
Governor's Office

DATE: January 27, 1982

FILE NO: J77-029-82

TELEPHONE NO: 465-3600

FROM: Wilson L. Condon
Attorney General

SUBJECT: Attached revised bill
on fisheries violations
(SSSB 51)

By: Arthur H. Peterson
Assistant Attorney General

Attached is a revised bill relating to penalties for fisheries violations. The original House Bill version was submitted to the governor on December 9, 1981. Rebecca Engen requested that we consolidate, as a sponsor substitute, that original bill with SB 51 which was introduced by the governor last session.

Also attached are our December 9, 1981 memo to the governor which accompanied the original version of this year's bill, and a revised draft transmittal letter to the legislature.

WLC:ANP:BJL:eja

cc w/enc.: Col. Robert J. Stickle
Director
Fish & Wildlife Protection
Department of Public Safety
Anchorage

Honorable Ronald O. Skoog
Commissioner
Department of Fish & Game

Milstead C. Zahn
Executive Director
Boards of Fisheries & Game
Department of Fish and Game

John Gissberg
Assistant Attorney General
Anchorage

Nancy Stern
Assistant Attorney General
Anchorage

[Faint, illegible text and a checkmark are visible at the bottom of the page.]

DRAFT

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a sponsor substitute for Senate Bill 51, introduced at my request last session.

This substitute bill would make a major change from the original bill. The substitute calls for mandatory minimum jail sentences and minimum fines for persons convicted of commercial fishing in closed waters, commercial fishing during a closed period, or fishing with illegal gear, with the minimum sentences and fines increasing for the second and third convictions. The minimum sentences and fines may not be suspended. The original bill would have amended existing law to provide for larger mandatory fines for persons convicted of commercial fishing in closed waters or during a closed period, but did not prohibit suspension of those fines. It also did not require jail sentences. The provisions of the substitute should more effectively deter violations of the commercial fishing laws.

The substitute bill also makes a number of other changes. It broadens the court's authority to order forfeiture of fishing licenses and any or all entry permits when a person is convicted of commercial fishing infractions other than those mandating forfeiture. It increases the maximum fine for violations of the commercial fishing laws from \$5,000 to \$10,000. And it

adds a provision allowing peace officers finding unmarked crab pots to destroy them on the spot, without having to seek a judicial order authorizing the destruction.

I believe that this bill is necessary for effective enforcement of commercial fishing laws, and I urge your prompt passage of it.

Sincerely,

Jay S. Hammond
Governor

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUGH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

December 9, 1981

M E M O R A N D U M

To: Honorable Jay S. Hammond
Governor

From: Wilson L. Condon *WJ AKA*
Attorney General

Re: Attached bill increasing penalties for
fisheries violations.
Our file: J 77-029-82

Attached is a bill increasing the maximum penalties for violations of fisheries laws and regulations and providing mandatory minimum sentences, including jail terms, for violations involving fishing in closed waters, fishing out of season, or using illegal gear. The bill was drafted in response to your suggestion that such a bill was needed. Before drafting, we solicited suggestions from the Fish and Wildlife Protection Division, the Department of Fish and Game, the Board of Fisheries, and the Judicial Council (which has been studying sentencing of fishery law violators.) The bill attached is based largely on the suggestions of the Fish and Wildlife Protection Division.

A draft transmittal letter to the legislature is also attached.

WLC:cdd:JBG

cc w/enc.: Col. Robert J. Stickles
Director
Fish & Wildlife Protection
Department of Public Safety
Anchorage

Honorable Ronald O. Skoog
Commissioner
Department of Fish & Game

Milstead C. Zahn
Executive Director
Boards of Fisheries & Game
Department of Fish and Game



Official Business

Alaska State Legislature

Senate

601 ~~Committee on~~ **Judiciary**
Anchorage, Alaska 99501
274-1042

Pouch V
State Capitol
Juneau, Alaska 99811

September 22, 1981

Mr. Rodger Painter
United Fisherman of Alaska
197 South Franklin St.
Juneau, Alaska 99801

Dear Rodger:

I hope the summer finds you well and your members prosperous from the season.

Last session you and Geron Bruce asked the Judiciary Committee to postpone hearings on SB51, "An Act relating to penalties for commercial fishing violations", until the 1982 session. As I recall, your organization wanted time to develop some alternative language to the bill to insure that those convicted of "technical" violations would not be subject to the same penalties as fishermen convicted of intentional "criminal" acts.

I am interested in the progress of the amendments you are developing. Senator Rodey has expressed an interest in moving the bill from committee during the initial weeks of the Legislature and I would like to be ready with any necessary changes.

I will be in Juneau on business during the middle of October and would like to get together with you and Geron on this at that time. Let me know what your schedule is like.

Sincerely,

Kevin K. Bruce



The Fishermen's News

C-3 Building, Room 110 • Fishermen's Terminal • Seattle, WA 98119 • (206) 282-7545

February 19, 1981

State of Alaska
Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

RECEIVED
FEB 23 1981

Dear Sirs,

I am writing to request notification of any hearings concerning the State of Alaska Commercial Fisheries Entry Commission.

Specific issues include Senate bills 49 and 51, relating to entry permit renewals and revokation action. The Commission's investigation into false residency claims on permit applications is another specific issue.

If possible, I would like the minutes of any public hearings, and would, if necessary, pay reproduction costs.

Thank you,



Andrew Mangan

SENATE JUDICIARY COMMITTEE

Bill Number SB 51 Original Sponser(s) GOVERNOR

Title _____

Originally Recieved From KERTULA

Contact _____ Date _____

Committee Recommendation (MAJORITY) _____

Report Attached yes no) Supporters _____

MINORITY _____

Report Attached yes no) Supporters _____

Object of Bill _____

Committee Amendments _____

Fiscal Impact

LAA Legal/Research Contact

Research/Information

Concerned Parties:

Supporting

Opposing

FISCAL NOTE

I. REQUEST
 Bill Resolution No. SB 5 /
 Title "Act relating to penalties for commercial fishing violations"
 Requested by Governor Date _____

II. FISCAL DETAIL
 Agency Affected Department of Public Safety
 Program Category Affected NRWEL
 BRU Program, or Subprogram(s) Affected Fish and Wildlife Protection
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

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

The proposed legislation will have no fiscal impact, upon the Division of Fish and Wildlife Protection as it deals with persons already found to be in violation of State laws and regulations rather than the detection and apprehension thereof.

Lynn Bruce

Keith Specking, Special Assistant
Office of the Governor

December 30, 1980

Ronald O. Skoog

Ronald O. Skoog
Commissioner
Department of Fish and Game

Penalties for commercial
fishing violations

The Department of Fish and Game wholeheartedly supports the proposed legislation entitled "An Act relating to penalties for commercial fishing violations" requested by the Department of Public Safety. It has been our observation that present penalties for commercial fishing violations handed down by some of the courts have been excessively low. This, at times, makes it profitable for a person to violate commercial fishing regulations and places the State's fisheries resources in jeopardy of over harvest. Obviously this is not in the best interest of the State.

cc: Steve Pennoyer
William Nix
Robert Stickle

January 12, 1981

President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 13, of the Alaska Constitution, I am transmitting a bill pertaining to the penalties for commercial fishing violations. The bill makes two important amendments to the existing penalty scheme applicable to AS 16.05.440 -- 16.05.720 and the regulations adopted under those sections. The first requires a court to order the forfeiture of the commercial fishing license of the habitual offender convicted of a serious commercial fishing violation. The second increases the minimum fine that must be imposed upon conviction of specified offenses. Both provisions are necessary to provide an appropriate level of deterrence considering the substantial profits that can be made by the person who disregards state law for the protection of our fisheries.

The bill expands the existing section providing for discretionary license forfeitures by requiring a one year forfeiture of a commercial fishing license when a person is convicted of commercial fishing in closed waters or commercial fishing during a closed period or sea on and has previously been convicted of either offense. The bill provides that convictions may not be considered to increase the punishment of the defendant if three or more years have passed since the defendant completed all of the requirements of his prior sentence. If the defendant has two prior convictions, the court must permanently forfeit his commercial fishing license and must order that he is permanently ineligible for any future issuances or transfers.

To remove any ambiguity regarding the meaning of the term "commercial fishing license", the term is defined to include all interim-use and entry permits held by the defendant. Further, sec. 16.05.740 would prohibit the transfer of a permit while the criminal proceeding is pending.

In addition to strengthening the forfeiture provisions, the bill increases the minimum fine that can be imposed for a first or second conviction if the offense is commercial fishing in closed waters, commercial fishing during a closed period or season, or commercial fishing with unlawful gear. The minimum fine under existing law of not less than the gross value of the fish is increased to not less than twice the gross value. In determining which fish can be considered in arriving at the gross value, the bill includes fish "otherwise in the possession of the fisherman" at the time of the violation as well as the existing authorization for fish found on the vessel or at the fishing site. Consequently, a fisherman who commits an offense, sells his fish to a processor, and is then cited, will have the value of the fish sold to the processor included to determine gross value of the fish illegally taken.

Sincerely,

S/SEN
Jay S. Hammond
Governor

Commercial
Fishing
Violations

SENATE BILL NO. 51, by the Rules Committee by request of the Governor. Makes amendments to statutes regarding penalties for commercial fishing violations. Section 1 amends AS 16.05.710 (License Forfeiture) by adding: "(b) Upon a second conviction of commercial fishing in closed waters or commercial fishing during a closed period or season under AS 16.05.720(c), the court shall, in addition to other punishment imposed by law, forfeit the commercial fishing license held by the defendant for one year. Upon a third or subsequent conviction, the court shall, in addition to other punishment imposed by law, forfeit the commercial fishing license held by the defendant and shall order that the defendant is not eligible for the issuance or transfer of a commercial fishing license." Also adds definitions of "second conviction" and "third conviction" to section.

Sections 2-3 amend AS 16.05.720 (Penalties). Makes violation of AS 16.05.480-690 or violation of Fish & Game regulations pertaining to commercial fisheries a Class A misdemeanor rather than punishable by a fine of not more than \$5,000, imprisonment, or both. Increases fine to "twice the gross value to the fisherman of the fish found on the vessel, [OR] at the fishing site, or otherwise in the possession of the fisherman at the time of the violation."

page 26

Section 4 adds new sections to AS 16.05 relating to prior convictions and to license transfers. States that: ". . . a prior conviction may not be considered if a period of three or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense." Regarding license transfers: "If a person is charged with a violation of AS 16.05.440 - 16.05.720 or state law or regulation pertaining to commercial fisheries, he may not under AS 16.43.170 transfer any interim-use or entry permit he holds until after the final adjudication or dismissal of the charge." Sec. 4 also adds a definition of "commercial fishing license" to specifically include "all interim-use and entry permits held by the defendant." Does not provide for effective date.



LAWS OF ALASKA

1980

Source

Chapter No.

HCS CSSB 346 am H

66

AN ACT

Relating to reports and records of fishermen, fish buyers and fish processors, requiring the Department of Revenue to compute and report average wholesale prices for Alaska salmon, establishing procedures to secure information on the wholesale prices of Alaska salmon, and providing a penalty for failure to provide information on wholesale prices.

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

THE ACT FOLLOWS ON PAGE 1, LINE 14

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor. June 12, 1980
Actual Effective Date September 10, 1980

AN ACT

Relating to reports and records of fishermen, fish buyers and fish processors, requiring the Department of Revenue to compute and report average wholesale prices for Alaska salmon, establishing procedures to secure information on the wholesale prices of Alaska salmon, and providing a penalty for failure to provide information on wholesale prices.

Section 1. AS 16.05.815 is amended to read:

Sec. 16.05.815. CONFIDENTIAL NATURE OF CERTAIN REPORTS AND RECORDS.

(a) Except as provided in (b) of this section, records (REPORTS) required by regulations of the department concerning the landings of fish, shellfish or fishery products, and annual statistical reports of buyers and processors required by regulation of the department are confidential and may (SHALL) not be released (IN THE FORM OF INDIVIDUAL RECORDS) by the department except that the department may release

(1) any of its records and reports to the National Marine Fisheries Service as required for preparation and implementation of the fishery management plans of the North Pacific Fishery Management Council within the fishery conservation zone; however, information released to the National Marine Fisheries Service under this paragraph may not disclose the identity of individual fishermen or their vessels;

(2) any of its records and reports to the Department of Revenue and to the Commercial Fisheries Entry Commission to assist

Chapter 66

them in carrying out their statutory responsibilities; [, OR]

(3) records or reports of the total value purchased by each buyer to a municipality which levies and collects a tax on fish, shellfish, or fishery products if the municipality

(A) requires records of the landings of fish, shellfish, or fishery products to be submitted to it for purposes of verification of taxes payable; and

(B) maintains the confidentiality of reports and records which it receives under this paragraph;

(4) such records and reports as necessary to be in conformity with a court order; or

(5) on request, the report of a person to the person whose fishing activity is the subject of the report.

(b) Records or reports received by the department which do not identify individual fishermen, buyers, or processors or the specific locations where fish have been taken are public information.

* Sec. 2. AS 43.80 is amended by adding a new section to read:

Sec. 43.80.035. REPORTING OF SALMON PRICES. (a) Except when the requirement is suspended under (d) of this section, the commissioner shall compute and report to the legislature not later than the 60th day of each regular session the average wholesale prices obtained for canned salmon by Alaska salmon canneries during the months of August, September, October, November, and December for the previous five years. In computing and reporting prices, the commissioner may require canneries to provide information on wholesale price by species of salmon.

(b) The commissioner may

(1) issue subpoenas under AS 43.05.040 to compel the testimony of witnesses and the production of records and documents necessary to obtain and audit reports and information on wholesale prices of

salmon when required under (a) of this section;

(2) levy and collect a civil penalty for failure to report information on wholesale prices of salmon under (a) of this section.

(c) A person who fails to file a report containing information on the wholesale prices of salmon required by the commissioner under this section is liable for a civil penalty of \$5,000. The penalty shall be assessed and collected in the same manner as taxes are assessed and collected under this title.

(d) Computation and reporting of the average wholesale price of a species of salmon by the commissioner under (a) of this section is not required during a calendar year in which the commissioner does not receive at least one request jointly presented by a fish processor doing business in Alaska and an organization representing fishermen that they desire the report for a species of salmon under (a) of this section for purposes of price negotiation. If a joint request is not presented to the commissioner for a salmon species for a calendar year, information about the average wholesale price of that salmon species may not be collected by the commissioner for that calendar year, and the last report submitted by the commissioner under (a) of this section for that species is the final report of prices for that species required under this section.

(e) In this section,

(1) "commissioner" means the commissioner of revenue;

(2) "wholesale price" includes all receipts, whether in the form of money, credits or other consideration, received from the sale of the finished product without deduction for the cost of property sold, the cost of the material used, insurance costs, labor or service costs, label and labeling costs, transportation and storage cost, interest paid, taxes, losses, or any other expense except

Chapter 66

1 (A) cash discounts allowed on sales not to exceed one
2 and one-half percent;

3 (B) commissions actually paid to independent brokers not
4 to exceed five percent; and

5 (C) swell allowance not to exceed one-tenth of one
6 percent.

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JAN 20

SB 51

- MARY JABLONSKI (FISH + GAME) #4100

CONVERSATION WITH ^{DOT} RON MILLER OF
COMMERCIAL FISHERIES ENTRY COMMISSION #4081

SESSION LAWS 1980 CHAP. 66

✓ ALLOWS INDIVIDUAL FISHERMAN TO RECEIVE
INFORMATION ON OWN CATCH.

OTHERS WITH INFO ACCESS:

DEPT. OF REVENUE
COMM. FISH. ENTRY COMMISSION

LIMITED INFO: NATIONAL MARINE FISHERY SURVEY
(NOT IDENTITY OF INDIVIDUALS OR VESSEL)

TAXING MUNICIPALITIES
(TOTAL POUNDS OF BUYER ONLY)

PUBLIC INFO:

THAT WHICH DOES NOT
IDENTIFY INDIVIDUAL BUYERS, FISHERMEN,
PROCESSORS OR SPECIFIC FISHING
LOCATIONS

SEE SB 47 ATTACHED

MILLER FAMILY REQUEST?

FISHERMEN, FISH + GAME WOULD FIGHT
PUBLIC ACCESS TO INFO.

JUDICIAL COUNCIL

GERSON BRUCE
586-3864 OR
586 2820

COORDINATION OF OFFENSES

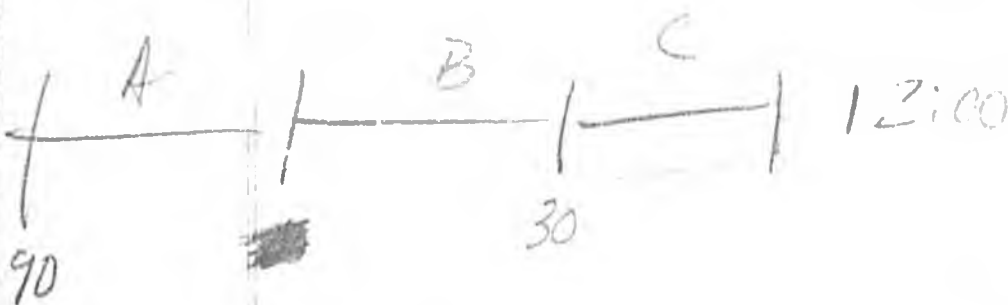
DISTANCE = DENSITY - ON LINE VIOLATIONS

1. BARE LINES
2. ALLOCATION PROBLEMS

CLASS OF VIOLATIONS

1. 700 HOURS (1/2 mile max/170 fishing)
- 2.

A. B. C. Time before or after = penalty.



DISTANCE FROM LINE IN CLOSED WATER

20-30 Day

LINE BOUNDARIES

TIME BOUNDARY LIMITS

GEAR - LENGTH OF NET - NUMBER OF TOTS

S

B

5

7

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 7, 1981

SUBJECT: Transportation safety
(SB 57)

TO: Senator Patrick M. Rodey

FROM: Richard A. Bradley
Legislative Counsel 

Kevin Bruce asked whether the reference in SB 57 at page 2, line 2: "AS 44.19.801" was correct.

It is not.

But the problem is somewhat worse than Kevin suggested.

AS 44.19.025, the section containing the false reference no longer exists. The revisors renumbered the section in the last printing of AS 44 as AS 44.99.001. Since the language of the section was not changed, I suggest the following:

1. Change AS 44.19.025 at line 18, page 1 to AS 44.-99.001;
2. Change AS 44.19.025 at line 19, page 1 to AS 44.-99.001;
3. Change AS 44.19.801 at line 2, page 2 to AS 44.-41.030;

These amendments will be made in a committee substitute form for the bill or in a sponsor substitute if Senator Ray requests it.

RAB:ljb

cc: Senator Bill Ray

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

ALASKAN REGION

701 C STREET BOX 14
ANCHORAGE, ALASKA 99513



FEB 5 1981

The Honorable Pat Rodey
Alaska Senate
Chairman, Judiciary Committee
Pouch V, State Capitol
Juneau, Alaska 99811

RECEIVED

FEB 09 1981

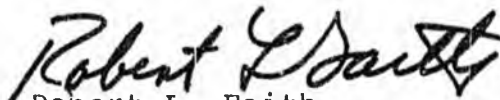
Dear Senator Rodey:

The Federal Aviation Administration wholeheartedly endorses
Sec. 09.65.092 of SB 57.

For your information, on December 15, 1980, the enclosed letter was sent to each member of the legislature urging passage of a bill similar to the one you are now considering. We have for some time encouraged a program of free aircraft maintenance inspection clinics. At these clinics, FAA-licensed aircraft and powerplant mechanics have performed "courtesy" inspections of general aviation aircraft. Possible liability from an act or omission creates reluctance on the part of mechanics to participate in the safety inspections. This bill would provide the needed relief from liability and allow this worthy program to continue.

If there is something further I can do to encourage passage of this legislation or assist you in any way, please call me at 271-5645.

Sincerely,


Robert L. Faith
Director

Enclosure

DEC 15 1980

Dear Sir:

In the past days of the 1980 legislature, an important Bill (CS for CS for SB 377--copy enclosed) designed to enhance aviation safety in Alaska was not enacted. It did, however, successfully pass the House, but never reached the Senate for their approval prior to the end of the legislative session.

Several years ago, a group of volunteers dedicated to the prevention of aviation accidents held free safety inspection clinics for aircraft and instruction sessions for pilots and owners. This group was sanctioned by the Federal Aviation Administration and in 1979 and the first part of 1980 the FAA provided air transportation and per diem for those volunteers when inspections and clinics were held outside the Anchorage area. In these sessions, aircraft were inspected and owners were instructed in finding hidden aircraft damage. During 1978 and 1979, an estimated 400 to 500 aircraft inspections per year were held. Between 50 and 60 of these aircraft were found to have structural damage which would have gone unnoticed without the help of trained observers. In some cases, the damage was so severe that the aircraft could have lost a vital component when subject to normal flight loads. One aircraft was found to have the vertical tailpost corroded all the way through. Here in the Anchorage area, there has been extremely high winds over the last two years which have caused a lot of minor to major damage to aircraft because of tiedown procedures, contact with other objects, and methods of control surface restraint.

These inspections were halted approximately a year ago because of the possible liability for volunteers growing out of a claim if an accident occurred following one of these inspections. To protect these volunteers, and better serve the cause of aviation safety, a Bill was introduced in the Alaska Legislature which provided a measure of "Good Samaritan" protection for the involved volunteers (SB 377). As we have mentioned above, this Bill did not get to the floor of the Senate for a vote before the end of the 1980 session. The importance of this Bill to all Alaskans is easily seen when one considers the state has a ratio of pilots to population some ten times that of the national ratio and some 85 percent of the state area is served by light aircraft for transportation and acquiring necessities. Only a small percentage of the state's aircraft operators have the service of an approved repair station close by. The adverse operating conditions in remote areas require these aircraft to need more, rather than less, attention to provide protection to the flying public. The volunteer inspection program does something concrete to reduce the accident risk by encouraging continued inspection of the aircraft and instruction of pilots in finding problems in critical areas before they cause mishaps.

We the undersigned, therefore, urgently request that this enabling legislation be enacted as soon as possible to get this program moving forward again. This action would not obligate the State to provide any funds for this activity. Because of the critical safety problems facing the Alaskan flying public, we urge your support in the introduction and early passage of this legislation. Your assistance is clearly appreciated.

Wayne Davis

SIGNED: Wayne Davis
President, Alaskan Aviation Safety Group

Orin D. Seybert

Orin D. Seybert
Chairman of the Board
Alaskan Air Carriers Association

Robert Sutherlin

Robert Sutherlin, President
Alaskan Airmen Association

Robert L. Faith

ENDORSED by: Robert L. Faith
Director, Federal Aviation
Administration

Bud Walters

Bud Walters
Alaska Repair Station
Representative

POSITION PAPER

SENATE BILL NO. 57

"An Act relating to transportation safety; and providing for an effective date."

This Act will establish in the Department of Public Safety a Transportation Safety Commission to investigate state and local transportation safety needs and seek financing for development of programs and techniques to:

- (1) alleviate and prevent all types of transportation accidents;
- (2) aid the court system in the adjudication of traffic cases;
- (3) aid peace officers in the enforcement of transportation laws;
- (4) rehabilitate and prevent recidivism of traffic offenders.

The Department of Health and Social Services strongly supports the concept of this bill. Automobile, aircraft and boating accidents are major contributors to the accidental death rate in Alaska. The proposed Transportation Safety Commission could assist in finding means to reduce transportation accidents and the associated death, disability and property loss.

Recommended by:

David Bruce
David Bruce, Deputy Director
Division of Public Health

Date:

January 22, 1980

Approved by:

Helen D. Beirne
Helen D. Beirne
Commissioner

Date:

2/2/81

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 57
 Title "An Act relating to transportation safety..."
 Requested by Commissioner's Office Date 01/21/81

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services
 Program Category Affected Health/Division of Public Health
 BRU, Program, or Subprogram(s) Affected Emergency Medical Services

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

IV. DATE 01/21/81 PREPARED BY Mark S. Johnson
 AGENCY Emergency Medical Services/Div. Public Health
 PHONE 465-3027
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named) Mark S. Johnson 1/23/81

"An Act relating to highway safety."

Senate Bill 377 provides for the creation of a Highway Safety Commission in the Office of the Governor to encourage coordination and joint planning among state agencies assigned responsibilities with regard to highway safety. The Commission would provide planning assistance, including research of needs and potential sources of funding for highway safety programs.

The Department of Health and Social Services recognizes the need for increased coordination of highway safety efforts, since many state agencies (Courts; Department of Public Safety; Department of Law; Department of Transportation and Public Facilities; and Department of Health and Social Services) are presently involved in the administration of such programs.

We were pleased to be included as a member of the Commission, in that the Department has many programs which have a special interest in highway safety and the prevention of traffic accidents. These programs include alcoholism and drug abuse, emergency medical services, public health education, and corrections.

Some areas of potential discussion are:

1. The Bill places the Highway Safety Commission in the Office of the Governor. The Governor has recently, by executive order, transferred many special offices and commissions directly from under his office to various departments of state government. That transfer was implemented as a result of the Governor's Management and Efficiency Study. Therefore, it may be appropriate to explore placement in another agency, such as the Department of Public Safety, rather than in the Office of the Governor.
2. There is no provision for coverage of a slot on the Commission if a member (such as a Commissioner) is traveling or otherwise unable to attend a meeting. It may be worthwhile to consider allowing members to designate persons to represent them in their absence.

Department Position

The Department of Health and Social Services recognizes the need for increased coordination of state programs and planning processes for highway safety. We therefore recommend passage of SB 377.

Approved by: Helen D. Beirne
Helen D. Beirne
Commissioner

Date: 2-25-80

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

Prepared by: Mary Deaver Date: 2/25/80
Division/Office: P.H. Admin. PH: 3090
Department of Health & Social Services

FISCAL NOTE

REQUEST
 Bill/Resolution No. SENATE BILL NO. 377
 Title "An Act relating to highway safety."
 Requested by Commissioner's Office Date 2/25/80

II. FISCAL DETAIL Department of Health and Social Services
 Agency Affected Department of Health and Social Services
 Program Category Affected Health/Division of Public Health
 BRU, Program, or Subprogram(s) Affected _____

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

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

Original: Legislative Finance Prepared by: Mary Deaver Date: 2/25/80
 cc: Budget and Management Division/Office: P.H. Admin. PH: 3090
 Prime Sponsor (First Legislator Named) Department of Health & Social Services

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

POUCH N - JUNEAU 99811

February 26, 1980

Honorable Bill Ray
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Ray:

Senate Bill 377 is intended to create a highway safety commission that will provide a central coordinating group for all highway safety related programs.

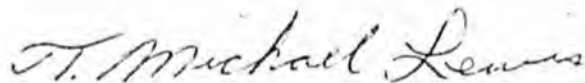
In the past various agencies have been conducting individual highway safety programs with little or no communication between agencies. This has caused repetition in some areas as well as being highly inefficient in statewide efforts towards the reduction of highway deaths.

This commission will provide coordination and communications with all agencies involved with highway safety and will allow the crossover of departmental lines in its efforts towards the improvement of highway safety programs. The commission should have the authority to establish policy in all areas of highway safety.

Senate Bill 377 establishes the responsibilities of the commission as providing planning and coordination assistance to concerned agencies and that these agencies will act in kind. It is intended to improve the highway safety programs by coordinating the efforts of all agencies involved.

Sincerely yours,

Charles A. Smith, Director
Highway Safety Planning Agency



T. Michael Lewis
Field Training Officer

PUBLIC PROTECTION

	FY 80 Actual	FY 81 Adjusted	FY 82 Governor's Operating Budget
TOTAL OPERATING BUDGET	\$30,445.3	\$38,894.1	\$43,203.5
Consumer Protection Program Area	\$10,237.1	\$12,472.4	\$12,934.4
Office of Consumer Protection	\$ 465.8	\$ 590.3	\$ 658.3
Alcoholic Beverage Control Board	485.1	456.9	605.9
Weights and Measures	630.0	762.8	972.6
Banking, Securities, Small Loans and Corporations	855.5	1,222.8	1,267.1
Insurance	1,473.4	783.1	857.4
Occupational Licensing	1,096.6	1,363.6	1,732.9
Administration and Support	718.6	845.5	849.4
Alaska Public Utilities Commission	1,596.1	2,037.6	2,110.2
Alaska Transportation Commission	1,329.7	1,415.9	1,557.9
Alaska Pipeline Commission	693.9	715.6	940.4
Commissioner's Office/Inspection Projects	887.4	2,228.4	1,382.4
Worker Protection Program Area	\$ 5,722.0	\$ 7,304.9	\$ 7,846.1
Occupational Safety and Health	\$ 2,187.4	\$ 2,540.5	\$ 2,538.6
Fisherman's Fund	482.3	991.4	1,040.6
Second Injury Fund	1,056.1	1,248.6	1,554.3
Workers' Compensation Administration	1,326.5	1,748.1	1,904.5
Wage and Hour Administration	667.7	776.3	816.6
Life and Property Protection Program Area	\$14,486.2	\$19,116.8	\$22,423.0
Mechanical Inspection	\$ 581.3	\$ 891.0	\$ 1,061.2
Search and Rescue	365.5	462.2	551.9
Disaster Planning and Control	870.9	1,084.7	1,114.4
Alaska National Guard	4,425.2	5,568.0	6,303.8
Fire Safety	696.4	967.1	1,062.0
Highway Safety Planning	808.6	1,215.0	1,553.1
Driver/Vehicle Services	5,208.0	6,277.2	6,732.8
Task Force on Fire Prevention and Control	---	100.0	157.2
Debt Service	1,530.5	2,248.6	4,887.5
FUNDING			
Federal Funds	\$ 3,953.0	\$ 5,613.4	\$ 5,698.1
State General Funds	24,369.9	29,117.4	33,902.2
Program Receipts	564.3	1,163.4	966.9
Interagency Receipts	17.7	57.9	40.4
Special Funds:			
Second Injury	1,058.1	1,248.6	1,554.3
Disabled Fishermen	482.3	991.4	1,040.6
TOTAL	\$30,445.3	\$38,894.1	\$43,203.5
Permanent Full Time Positions	577.6	620.0	615.0