

ALABAMA LEGISLATIVE COMMITTEES 1903-1904 0012

2846 SRES SB 279 - SB 280

2846



700 14TH STREET  
BELLINGHAM, WASHINGTON 98225  
(206) 734-1876

data must be collected for all species of salmon (REDS, CHUMS, PINKS, CCHO, KINGS). Further, for the purposes of the present price settlement the data must include one pound talls and one-half pound cans. Looking into the future, it would appear to be prudent to include the one-fourth pound cans as well.

Under the old system the discount allowed for promotion and brokerage (about 6.8%) should not be altered as they have already been accounted for in the completed settlement and changing them could disrupt this agreement.

An area that needs to be considered also is the frozen product. This product has grown rapidly in Bristol Bay and Alaska and now comprises near half of the total production. The market for frozen salmon is very volatile and numerous problems arise; but the State should have available the value of this product in its various forms. Given the inherent mistrust between fishermen and processors the area of the value of the frozen product desperately needs to be addressed.

For the sake of expediency the frozen reporting system should be dealt with in separate legislation.

AIFMA COOPERATIVE

*Karl R. Hellberg*

KARL R. HELLBERG  
PRESIDENT

KH:jk



# UNITED FISHERMEN OF ALASKA

Cass M. Parsons  
Executive Director

319 Seward Street Suite #205  
Juneau, Alaska 99601-1183  
(907) 586-2820

April 28, 1983

## ALASKA WHOLESALE AVERAGE

House Bill 381 and Senate Bill 279 are identical bills. They will repeal AS 43.80.035 and add a new section 43.80.050. The new section will add to or change the intent of the statute. Specifically, the new section:

- 1) requires average wholesale price reporting from processors for all species of canned salmon (now required only for pink salmon);
- 2) requires average wholesale price reporting <sup>semi-</sup>annually for each of the previous six months (now required annually for August through December only);
- 3) omits the necessity for a joint request for the department to require reporting from both a processor and a fishermen's organization;
- 4) changes the civil penalty clause for non-compliance from \$5,000.00 per report to \$50.00 per day;
- 5) adds that sales to affiliate companies will not be included in processor's wholesale price report but wholesale prices obtained by an affiliate shall be reported;
- 6) adds that the Department of Commerce and Economic Development in conjunction with the Commercial Fisheries Entry Commission will investigate developing a program to determine wholesale price averages for all product forms of seafood; investigation will include possible benefits, methodology, and cost estimates. The investigation will further include possible elimination of duplicative reporting requirements to state agencies by providing for information sharing.

### Background & Original Intent:

The original intent of revising AS 43.80.035 was to expand the statutory authority of the Department of Revenue to require processors to report monthly wholesale prices for all species of canned, fresh, frozen and cured salmon. The department would, in turn, compile and publish a statewide average wholesale price for each month for all species and all product forms.

Fishing groups, cooperatives and marketing associations have come forward to request this information for several reasons:

1. Fishermen would like to negotiate fish prices based on a figure which represents the true market value of the product and the current market situation and allows individuals and associations to "share the risk" with processors.
2. Fishermen feel that wholesale prices compiled by the department have proven to be the most credible information available short of an audit.
3. Canned salmon sales now comprise less than 50% of the total; other product form prices need to be considered to reflect the true scope of sales.
4. Fishermen want to develop a more sophisticated and less harmful (i.e., prolonged strikes) method of arriving at price settlements. Along with run forecasts, market projections and estimates of demand, the average wholesale value of fish sold during the previous 12, 6 or 3 months will assist fishermen and processors arriving at a price which truly reflects the market.

Present Legislative Intent:

The present legislation is a compromise bill from the above intent in that it doesn't compile an average wholesale price for frozen, fresh or cured salmon products, but this legislation will assist the industry this year for two reasons:

1. Contracts have been signed between fishermen and processors which requires wholesale average prices for sockeye salmon from August through March annually. This bill will fulfill that requirement and any other contract settlements based on wholesale canned salmon prices for any species.
2. Language included in the bill will allow the Department of Commerce and Economic Development and the Commercial Fisheries Entry Commission to investigate developing a program to include compilation of wholesale prices for all product forms of salmon, including fresh, frozen and cured. The two agencies will investigate the benefits and costs to the state of a program such as this and the most appropriate methodology for collecting the information.

A compromise was necessary due to opposition from the processors to the intent of the legislation; that is, to require processors to make available prices paid them for sales of salmon, and specifically, fresh and frozen prices. Major opposition to the bill would have killed its chance of passage this legislative session. The processors have agreed that this bill is the least troublesome for them at the present and have agreed not to mount opposition.

State Involvement:

The state is and should continue to be involved in this effort for several reasons:

1. The citizens of the state have a right to know the value of the fishing industry to the state's economy. Any industry subsidized in full or in part should be accountable to the public. Are state monies benefitting the citizens of the state?
2. The state has spent hundreds of thousands of dollars on market studies which were designed to assist fishermen and processors engaged in pre-season price negotiations and to assist all participants develop a better understanding of the marketplace. However, all of these studies have cited inadequate data as being the major hindrance to a conclusive market analysis.
3. The state acts as mediator in strike situations. Prolonged strikes cost the state money in terms of decreased revenues from ex-vessel based taxes and in direct state participation during strikes.



SEAFOODS, INC. DEXTER HORTON BLDG., SEATTLE, WASHINGTON 98104 • (206) 624-4344 • TWX 910-444-1638

February 22, 1983

Ms. Adelheid Herrmann, Chm.  
House Fisheries Subcommittee  
Pouch V  
Juneau, Alaska 99811

Dear Ms. Herrmann:

Peter Pan Seafoods, Inc. has recently signed a three year agreement with the Alaska Independent Fishermen's Marketing Association. This agreement provided for a base price on reds with an additional payment based on the net selling price.

The Alaska Department of Revenue figure would be used if it is available.

It is our understanding that there is no legislation on the books which would permit the Department to do this although such legislation is being considered.

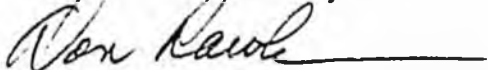
We are currently negotiating with the Western Alaska Cooperative Marketing Association and it is possible we will have a similar type of agreement with them. We would then have approximately 200 boats under such an agreement.

At the present time we know of one other company that has such an agreement, but it is likely that more agreements of this type are forthcoming.

We feel it would be a great service to the fishermen and processors in Bristol Bay if the Department of Revenue would compile such information for reds and we urgently request that you introduce and support the necessary legislation.

Very truly yours,

PETER PAN SEAFOODS, INC.

  
Don Rawlinson, Vice-President  
Bristol Bay Operations



P.O. BOX 1186

JUNEAU, ALASKA 99802

"DEDICATED TO THE PROFESSIONAL FISHERMAN"

May 6, 1983

Honorable Adelleid Herrmann  
Pouch V  
Juneau, Alaska 99811-3100

Dear Representative Herrmann:

Our association is in support of SSHB 381. Not only will this provide information for price settlements between processors and fishermen, but it will provide the public, including state officials, with more precise information about the value of the state's salmon resource. This information will be useful in aiding the development of an industry that is more profitable for the private sectors, and also extracting the highest value from the resource, building a broader and larger tax base, in the process.

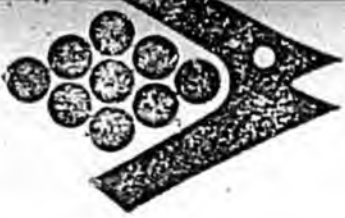
Wholesale values are also important to consider in land planning, and development, especially where conflicting uses call for judgments about what particular, or mix, of uses is the best overall use.

It seems very important to us to move ahead on the development of a methodology for collecting wholesale values for fresh, frozen, and cured product forms. The trend in the salmon industry is to a higher and higher percentage of the catch to be processed and sold in these forms. According to industry sources, the 1982 pack saw only 32% going to canned product. Further, the greatest potential for growth in sales and increases in value, probably lies in the non-canned market.

Thank you very much for your interest in this important matter.

Sincerely,

*Geron Bruce*  
Geron Bruce  
Executive Director



**WHITNEY-FIDALGO  
SEAFOODS, INC.**

2360 WEST COMMODORE WAY  
BOX C99308, SEATTLE, WA. 98199  
PHONE (206) 285-0300 TELEX 32-8886

APR 22 1983

April 20, 1983

The Honorable Mae Tischer  
House of Representatives  
State of Alaska  
Mail Stop 3100  
Pouch V  
Juneau, Alaska 99811

*Whisk Bell to this please.*

RE: Average Wholesale Prices

Dear Representative Tischer:

The Legislature of the State of Alaska is considering a bill to require salmon processors to provide the State with information as to the wholesale price of salmon sold. The information used to be reported to the Department of Revenue for taxation purposes because that is how the State of Alaska determined the tax it would charge the various seafood processors. This method of taxation was changed to a simpler cents per pound method which is now used for taxation purposes. The sole purpose for obtaining an average wholesale price for salmon is to allow some of the fishermen and some of the processors to utilize that as a basis for determining what price will be paid to fishermen.

I respectfully submit that this is not a valid purpose for requiring all salmon processors to submit reports in significant detail for the amount of money they receive for the salmon they processed and sold. I further submit that it is none of the State of Alaska's business for a capitalistic and competitive company to reveal how much it obtained for the products that were harvested in Alaska. Without a taxing purpose or some other compelling reason to know, the State is not entitled to actual wholesale prices. Whitney-Fidalgo Seafoods not only objects on the basis that it appears to be unconstitutional, we further object upon the basis that it will be extremely expensive to compile

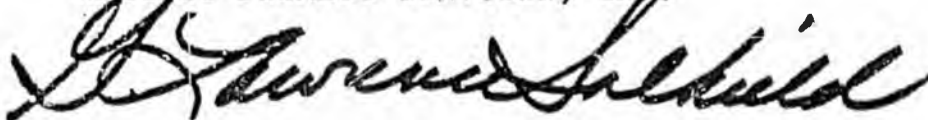
The Honorable Mae Tischer  
Page Two  
April 20, 1983

reports of the nature required by any of the acts being considered by the Legislature. One of the drafts submitted by the Honorable Jalmer Kerttula indicates that a particular processor should not be identified and the information "may be released only to the Commercial Fisheries Entry Commission for the purpose of carrying out the official business of the Commission." I cannot see anywhere in the Legislative Rules or Regulations indicating it is in the official business of the Commission to establish or assist in establishing fish prices between independent fishermen and processors. Any way you analyze the situation, you keep coming back to the sole issue that its purpose is to establish prices between some fishermen and some processors, which is not the business of the Commission nor the State Legislature, for that matter. The fishermen and processors are capable of establishing fish prices. It is not something for the State to legislate.

We would respectfully request you reconsider supporting this type of legislation and allow free enterprise to handle these problems in its own way.

Sincerely yours,

WHITNEY-FIDALGO SEAFOODS, INC.



G. LAWRENCE SALKIELD  
President

GLS:dmo

May 11, 1983

Ms. Adelheid Herrmann  
Representative  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Ms. Herrmann:

On behalf of Sealaska Corporation and its subsidiaries, I have had the opportunity to review proposed Senate Bill No. 279, "An Act relating to wholesale prices for canned salmon; and providing for an effective date." Sealaska Corporation agrees with the general intent of such legislation but it recommends the amendment of the following provisions:

Section 43.80.050. REPORTING OF WHOLESALE CANNED SALMON PRICES.

(a) "A fish processor engaged in the business of selling canned salmon products at wholesale shall submit to the department, on a form provided by the department, a semi-annual report of the prices received by the processor or an affiliate of the processor for the sale of canned salmon. Not later than April 30 of each year a processor shall submit a report for the period October 1 - March 31. Not later than October 31 of each year a processor shall submit a report for the period April 1 - September 30."

The aforementioned is recommended to be amended as the following:

(a) "A fish processor engaged in the business of selling canned salmon products at wholesale shall submit to the department, on a form provided by the department, an annual report of the prices received by the processor or an affiliate of the processor for the sale of canned salmon. Not later than April 30 of each year a processor shall submit a report for the period October 1 - march 31."

While as a matter of public policy we believe that this legislation would benefit all parties, the statutory

May 11, 1983

requirement of providing a report twice a year would be burdensome. Moreover, we do not see the necessity of providing such reports on a more than annual basis.

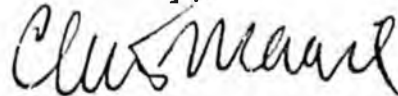
We recommend that Section 43.80.100 section (5) be amended to add a section "c."

(c) Promotional Discounts to Customers.

Promotional discounts are a regularly and ordinary part of sales to customers based upon supply and demand in the market place. These discounts vary from month-to-month and are generally characterized by a temporary reduction in price based upon a particular sales campaign. By accounting for the existence of promotional discounts the wholesale price under this Act would better reflect the actual receipts or other consideration received by fish processor during any given period.

I do hope that you will take these proposed amendments into serious consideration during your deliberations.

Sincerely,



Chris E. McNeil, Jr.  
Vice-President Counsel,  
Secretary

cc: Byron I. Mallott, Chairman & Chief Executive Officer  
John Peterson, President, Ocean Beauty Seafoods, Inc.  
Sam Kito, Kito & Associates

# NEIBRO PACKING COMPANY

WE ARE LOVED

4242 22ND AVENUE WEST

SEATTLE, WASHINGTON 98199

(206) 285-3941  
285-3941



March 22nd, 1983

The Honorable Adalheid Herrmann,  
Alaska State House of Representatives,  
Pouch V,  
Juneau, Alaska 99811.

Dear Adalheid:

I understand that legislation may be introduced providing for the accumulation and compilation of wholesale price information on Salmon.

I was alarmed at the scope of the proposed legislation and want to give you my views on it since I believe its genesis was brought about in part by the Bristol Bay Fishing Agreements which we have signed with the Alaska Independent Fishermens Marketing Association and other non-member fishermen.

Our Agreements call for the following information:

"the Industry average wholesale price, net of discounts, for sales of Canned Salmon between the dates of August 1 of the season involved, to March 15 of the year following the season involved."

This information applies to Tals and Halves cans only, and exactly parallels the information which the Department of Revenue compiled in previous years (and is still compiling on canned Pink Salmon) with the exception of the time period of sales, and we would respectfully request that provision be made to accumulate and report this limited amount of data.

My understanding of the proposed legislation is that it would require reporting every month - 12 months a year - for each of the following:

1. Sales by area of production,
2. Sales by species,
3. Sales of canned by four different can sizes,
4. Sales of fresh - in any number of different forms and differing markets,
5. Sales of frozen - in any number of different forms and differing markets,
6. Sales of cured,
7. Sales of any specialty pack by type of pack etc

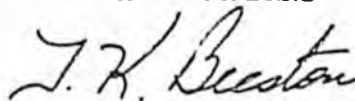
For Industry the cost and time required to accomplish this reporting would be both tremendous and impractical, and for the Department of Revenue it would most certainly involve a significant additional workload and expense to compile and report this vast amount of data.

At a time when this Industry is fighting for its economic survival, while the State also has serious financial concerns, it seems inappropriate to burden either of us with this ill-advised and costly, expanded requirement which doesn't appear to serve any useful purpose.

I thank you for your consideration of my comments.

Respectfully yours,

NELBRO PACKING COMPANY.



T. K. Beeston.

TKB:bb

c.c. Robert Heath,  
Commissioner of Revenue,  
Pouch S,  
Juneau, AK 99811.

# Alaska State Legislature

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POUCH V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

## Senate

### Committee on Resources

May 17, 1983

#### Memo

To: Senate Resources Committee Members

From: Senate Resources Committee Staff

Subject: <sup>SB 279</sup> ~~SSHB 387~~, Reporting of wholesale canned salmon prices

On Wednesday, May 18 the Committee will continue consideration of the bill which was first heard May 13.

At the May 13 hearing considerable discussion occurred regarding an amendment proposed by the seafood processors which would add a discount for promotional work to be subtracted from the wholesale price as reported by the Department of Revenue and seafood processors. The bill as currently drafted provides only for discounts for cash purchases (not to exceed 1½%) and for commissions paid to independent brokers (not to exceed 5%).

Existing law provides for a similar price reporting system for canned salmon if jointly requested by fishermen and processors. Currently prices are only compiled for canned pink salmon. These prices reflect only the discounts mentioned above.

Fishing organizations in Bristol Bay ("AIFMA") strongly oppose the amendment because it would potentially reduce prices paid to fishermen by processors because of specific contract agreements tying in prices paid to those reported by the state. If these state prices were reduced by some percentage to allow for promotional discounts (which were reportedly not assumed or considered by AIFMA in contract negotiations), it would reportedly result in lower prices paid to fishermen under the terms of the contract.

Processors endorse the amendment as a reflection of how they have always done business and have historically reported prices (especially when there was a tax based on net prices). They argue that without the discount they would be forced to lower their base prices which they report to take into account continued use of promotional discounts. However, by not actually specifying a discount for specific promotional work in a contract with retailers, enforcement of promotional actions for the advancement of fish sales could be difficult.

Furthermore, processors argue that state legislation should not be written for specific contracts already negotiated and that the required information may or may not be useful to many other processors and fishermen in price negotiations

due to the form and timing of the information to be provided by the Department of Revenue. Additionally, they cite the alternative pricing mechanism contained in all AIFMA contracts providing for prices to be based on the individual processor's actual average wholesale prices received subject to an independent audit. This pricing method available to fishermen would be subject to unspecified "discounts".

### AMENDMENTS

The attached CS contains several amendments which have all been agreed to by fishermen, processors and the Department of Revenue. Additionally, these amendments are all contained in the House version of the bill which passed House Resources Committee May 17. These amendments correspond to amendments number 1, 2 and 4 on the attached sheet which were discussed in Committee May 13, plus the following:

- #5: On page 2, line 17 and 18 delete the sentence "An annual average is for a calendar year."

#### Rationale

This amendment removes the ambiguity that the prices to be reported under certain time frames specified in the bill (not corresponding to calendar year) would have to conform to a calendar year.

- #6: On page 2, lines 27-29 insert a period after "confidential" and delete "and may be released only to the Commercial Fisheries Entry Commission for the purpose of carrying out the official business of the commission."

#### Rationale

This amendment removes a clause left over from a previous draft that is no longer considered necessary.

The amendment proposed by processors regarding promotional discounts is reflected in Amendment No. 3 on the attached list. In considering this amendment is the issue of whether or not a cap on an allowed percentage should be included (2% has been a commonly discussed figure) and whether such a discount would ultimately be desirable in state law after the expiration of the AIFMA contract (1986).

# Proposed Resources C.S.

1 IN THE SENATE

BY KERTTULA

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 279

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to wholesale prices for salmon; and  
7 providing for an effective date."

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

9 \* Section 1. AS 43.80 is amended by adding new sections to read:

10 Sec. 43.80.050. REPORTING OF WHOLESALE CANNED SALMON PRICES.

11 (a) A fish processor engaged in the business of selling canned salmon  
12 products at wholesale shall submit to the department, on a form pro-  
13 vided by the department, a semi-annual report of the prices received  
14 by the processor or an affiliate of the processor for the sale of  
15 canned salmon. Not later than April 30 of each year a processor shall  
16 submit a report for the period October 1 - March 31. Not later than  
17 October 31 of each year a processor shall submit a report for the  
18 period April 1 - September 30.

19 (b) A report submitte under this section shall, for sales to  
20 buyers that are not affiliates of the processor, include a description  
21 of the products and the quantity sold by species and unit-of-sale  
22 category and the wholesale prices received. If a processor sells no  
23 canned salmon products during a reporting period the report for that  
24 period shall include only a statement of that fact.

25 (c) A sale to an affiliate of the processor may not be included  
26 in a report submitted under this section by a processor. However, a  
27 processor shall report sales by an affiliate at wholesale of canned  
28 salmon that was obtained from the processor. The report shall include  
29 a description of the products and the quantity sold by the affiliate

1 by species and unit-of-sale category and the wholesale prices received  
2 by the affiliate.

3 (d) Information shall be reported for the following unit-of-sale  
4 categories:

- 5 (1) 48-pound case of one-pound cans (48 cans);  
6 (2) <sup>24</sup>~~48~~ pound case of one-half-pound cans <sup>48</sup>~~96~~ cans);  
7 (3) <sup>12</sup>~~48~~ pound case of one-quarter-pound cans <sup>48</sup>~~192~~ cans); and  
8 (4) 48-pound case of four-pound cans (12 cans).

9 (e) A person excluded from the fisheries business tax under  
10 AS 43.75.017 is exempt from the requirements of this section.

11 Sec. 43.80.055. WHOLESALE PRICE AVEPAGES. (a) Based on the  
12 information provided in reports submitted under AS 43.80.050, the  
13 department shall determine the statewide average wholesale prices paid  
14 to fish processors and their affiliates for the sale of canned salmon.

15 (b) The department shall determine under this section the month-  
16 ly and annual wholesale price averages for each species of canned  
17 salmon in each unit-of-sale category. [An annual average is for a  
18 calendar year.]

19 Sec. 43.80.060. REPORT TO LEGISLATURE. Not later than the <sup>15<sup>th</sup></sup>~~60<sup>th</sup>~~  
20 day of each regular legislative session the department shall submit to  
21 the legislature a report of statewide average wholesale canned salmon  
22 prices.

23 Sec. 43.80.065. CONFIDENTIALITY OF REPORTS. Information in  
24 reports submitted under AS 43.80.050, and price averages calculated by  
25 the department from the information in the reports, are public infor-  
26 mation, except that information that identifies or could be used to  
27 identify a particular fish processor is confidential. [and may be re-  
28 leased only to the Commercial Fisheries Entry Commission for the  
29 purpose of carrying out the official business of the commission.]

1           Sec. 43.80.095. PENALTY. The department may levy and collect a  
2 civil penalty of \$50 per day on a fish processor that fails to submit  
3 a report as required under AS 43.80.050.

4           Sec. 43.80.100. DEFINITIONS. In this chapter,

5           (1) "affiliate of the processor" means a person that di-  
6 rectly or indirectly, through one or more intermediaries, controls, is  
7 controlled by, or is under common control with, the processor;

8           (2) "control" means

9           (A) owning directly or indirectly, or having the power  
10 to vote, not less than 10 percent of any class of voting securi-  
11 ties of a corporation; or

12           (B) influencing or affecting in any substantive manner  
13 the election of a majority of the directors or trustees of a  
14 corporation;

15           (3) "department" means the Department of Revenue;

16           (4) "fish processor" means a person engaging or attempting  
17 to engage in a business for which a license is required under AS 43.-  
18 75.010 - 43.75.055;

19           (5) "wholesale price" includes all receipts, whether in the  
20 form of money, credits, or other consideration, from the sale of a  
21 finished canned salmon product at less than retail, without deduction  
22 for the costs of property sold, materials used, insurance, labor,  
23 services, labeling, transportation, storage, interest, taxes, losses,  
24 or any other expense except

25           (A) cash discounts allowed on sales, not to exceed one  
26 and one-half percent; and

27           (B) commissions actually paid to independent brokers,  
28 not to exceed five percent.

29           \* Sec. 2. AS 43.80.035 is repealed.

1 \* Sec. 3. Not later than the 30th day of the Second Session of the  
2 Thirteenth Alaska State Legislature, the Department of Commerce and  
3 Economic Development in conjunction with the Comm. Fish. Entry Commission + the Dept. of Revenue  
4 shall submit to the legislature a report on the possible [a plan for  
5 the] development of a program to determine wholesale price averages in the  
6 state for fresh, frozen, canned, and cured salmon products. The report  
7 shall include the department's findings and recommendations on

8 (1) the benefits and costs to the state and the commercial fish-  
9 ing and processing industry of reporting and collecting wholesale price  
10 information and determining price averages;

11 (2) the appropriate methodology and procedures that could [to] be used for  
12 reporting and collecting price information;

13 (3) the appropriate agency to determine wholesale price averages  
14 for salmon; and

15 (4) the need for and methods of eliminating duplication of  
16 reports required of fish processors and commercial fishermen by state  
17 agencies.

18 \* Sec. 4. This Act takes effect immediately in accordance with AS 01.-  
19 10.070(c).  
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Senator Faiks, the prime sponsor, has drafted a Resources Committee Substitute which would reduce the appropriation to Eklutna by \$10 million, the appropriation to Ship Creek by \$3 million, and add a Section 3 which would appropriate \$5 million for purchase by the municipality of Central Alaska Utility, a private utility currently providing water to South Anchorage, Sand Lake and Muldoon. This is based on the results of a study by the Corps of Engineers that for proper long term water planning the CAU and the municipal utility should be merged.

**SSSB 279 RELATING TO WHOLESALE PRICES FOR SALMON.**

SSSB 279 expands the statutory authority of the Department of Revenue to require processors to report monthly wholesale prices for all species of canned salmon (now required only for pink salmon) to provide for computing the statewide average wholesale price paid for canned salmon. The intent is to enable fishermen and processors to negotiate fish prices based on a figure which represents the true market value of the product and the current market situation. This is intended to aid in the early adoption of price settlements.

In addition, the bill provides that the Department of Commerce will investigate developing a program to determine wholesale price averages for fresh, frozen and cured salmon.

**CSHB 163 (Rules)am RELATING TO HARASSMENT OF PERSONS ENGAGED IN HUNTING, FISHING, CAMPING OR TRAPPING.**

This bill is intended to protect hunters, fishers, campers and trappers from harassment. Interfering with a person legally engaged in hunting, or disturbing wildlife or habitat with the intent to hinder a hunter, would be punishable by a fine of up to \$500 and/or 30 days in jail. Wildlife protection officers would be required to order a person to desist from a violation, with penalties for failure to desist. Civil remedies, including recovery of damages, are allowed.

This bill is patterned after legislation being adopted in other states where anti-hunting groups have "taken to the field" in attempts to "warn" wildlife of hunters or deter hunters from killing wildlife.

WHOLESALE PRICE OF CANNED SALMON.

A M E N D M E N T S

The identical bill was introduced in the House as HB 381. The House bill has been amended in Committee as follows:

- ① p. 2, l. 19 REPORT TO LEGISLATURE. Not later than the (60th) 15th day of each regular legislative session the department shall submit to the legislature a report of statewide average wholesale canned salmon prices.

Rationale: The processors must submit reports to the Department on April 30 and October 31 of each year, so the Department would have ample time to prepare its report to the legislature by mid-January.

- ② p. 4, Sec. 3 Not later than the 30th day of the Second Session of the Thirteenth Alaska State Legislature, the Department of Commerce and Economic Development in conjunction with the Commercial Fisheries Entry Commission and the Department of Revenue shall submit to the legislature a report on (a plan for the) th. possible development of a program to determine wholesale price averages in the state for fresh, frozen, canned, and cured salmon products. The report shall include the department's findings and recommendations on
- (1) (unchanged)
  - (2) the appropriate methodology and procedures (to) that could be used for reporting and collecting price information

Rationale: Com. Fish. Entry Commission was included in the original House bill; Department of Revenue requested to be included. The other two changes clarify that the Department is to determine feasibility of an expanded program.

- ③ The Processors Association plans to propose an amendment:  
p. 3, l. 29 add: (C) promotional allowance.

Rationale: This would exclude promotional "discounts" from the wholesale price.

- ④ The Department of Revenue has proposed an amendment regarding unit-of-sale categories on which information is to be reported. However, they are currently negotiating with the processors on just what the language should be.

**Sec. 43.76.040. Definition.** In AS 43.76.010 — 43.76.040, unless the context otherwise requires, "buyer" means a person who acquires possession of salmon from the person who caught the salmon regardless of whether there is an actual sale of the salmon but excluding a transfer to a person engaged solely in interstate transportation of goods for hire. (§ 19 ch 117 SLA 1981)

## Chapter 80. General Provisions.

### Section

20—30. [Repealed]

35. Reporting of salmon prices

### **Sec. 43.80.020. Prosecution for failure to secure license.**

Repealed by § 46 ch 113 SLA 1980.

**Cross references.** — For present provisions concerning carrying on a business without a required license, see AS 43.05.290(h).

**Editor's notes.** — The repealed section derived from § 35-1-41, ACLA 1949.

### **Sec. 43.80.030. Production of license.**

Repealed by § 45 ch 113 SLA 1980.

**Editor's notes.** — The section derived from § 35-1-42, ACLA 1949.

**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 summons 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

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

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

(C) swell allowance not to exceed one-tenth of one percent. (§ 2 ch 66 SLA 1980; am § 94 ch 59 SLA 1982)

**Cross references.** — As to confidential nature of certain reports and records concerning the landings of fish, see AS 16.05.815.

**Effect of amendments.** — The 1982 amendment, effective May 28, 1982, substituted "summons" for "subpoenas" in subsection (b)(1).

# MULTI-YEAR SALMON MARKETING AGREEMENT

--1983-1984-1985--

THIS AGREEMENT, date \_\_\_\_\_, 1983 between Alaska Independent Fishermen's Marketing Association, a California corporation and the AIFMA Cooperative, an Alaska Cooperative Corporation (hereinafter collectively referred to as "AIFMA") and Peter Pan Seafoods, Inc. a Corporation (hereinafter "PPSF").

## I

### DEFINITIONS

The following terms, when used in this Agreement, shall, unless the context otherwise requires, have the following meanings:

Fishing Periods. "Fishing periods" shall mean those periods of time established by the Alaska Department of Fish and Game during which it shall be legal for properly-licensed individuals to engage in commercial fishing for sockeye or chum salmon.

Fishermen. "Fishermen" shall mean the individual members of the Alaska Independent Fishermen's Marketing Association ("AIFMA") who have executed Individual Fishing Agreements with PPSF.

Individual Fishing Agreements. "Individual Fishing Agreements" shall mean individual written undertakings by Fishermen to fish and deliver exclusively to PPSF in accordance with the terms of this Agreement and shall be in the form attached hereto as Appendix A.

Other Persons Regularly Fishing for PPSF. "Other persons regularly fishing for PPSF" means persons other than those who are "Fishermen" under the terms of this Agreement, with whom PPSF has an agreement or understanding, express or implied, oral or written, that such persons will sell, and PPSF will buy, substantially all of such persons' catch or salmon during a fishing season in Bristol Bay.

## II

### WARRANTIES

A. AIFMA warrants that it is a marketing association authorized by the laws of the United States (Title 15 U.S.C. §§1521-22) and duly organized as a cooperative corporation under the laws of the State of Alaska, with members fishing as independent fishermen with their own or leased boats and gear or assisting in the operation of such independently owned or leased boats and gear on a share basis in the areas covered by this Agreement. (AIFMA further warrants that each of the

PRICE OF FISH

The parties recognize that both volume and rate of delivery contribute significantly to the efficiency of PPSF's operation. Accordingly, to encourage fishermen to fish during the entire fishing season, as defined below, and to deliver all of their catch to PPSF, PPSF will make an additional post-season incentive payments to Fishermen who qualify, which payment is described below as the "Formula Adjustment."

A. Base Price. PPSF shall pay Fishermen 25 cents per pound for chums, 58 cents per pound for redds and 50 cents per pound for kings during the 1983 fishing season.

The base price to be paid by PPSF to Fishermen for these species delivered during the 1984 season shall be 75% of the total of the 1983 base price plus the 1983 formula adjustment.

The base price to be paid by PPSF to Fishermen for these species delivered during the 1985 season shall be 75% of the total of the 1984 base price plus the 1984 formula adjustment.

B. Formula Adjustment.

1. Fishermen Eligible. All Fishermen who deliver all of their fish to PPSF during every Fishing Period of any of the Fishing Seasons for 1983, 1984, 1985 (exclusive of the exceptions specified below) shall receive a formula adjustment to fish price for that year calculated in accordance with this section, with respect to all fish delivered to PPSF by such Fishermen.

2. Fishing Season. For purpose of the formula adjustment the "Fishing Season" is the period of time from June 23 to July 18 (or earlier if PPSF elects to close) during which PPSF is accepting salmon for processing.

3. Exceptions. The following circumstances shall relieve Fishermen from the requirement to deliver all of their fish during each Fishing Period to PPSF in order to qualify for the formula adjustment:

a. A Fisherman elects to fish in a river system where PPSF has no receiving station of its own and PPSF has not made other arrangements for accepting deliveries.

b. An illness preventing a Fisherman's boat from fishing.

c. A death in the Fisherman's family which in the judgment of the Fisherman prevents the Fisherman's boat from fishing.

d. Weather conditions which in the Fisherman's judgment prevent his boat from fishing.

e. Mechanical breakdown or other emergencies preventing a Fisherman's boat from fishing.

f. Limits or suspensions as defined herein being in effect.

g. The mutual agreement of a Fisherman and PPSF.

h. If for any reason PPSF refuses to accept fish tendered by the fisherman.

In all cases the fisherman is responsible for notifying PPSF in the case of nondelivery. In order to be valid for purposes of excusing nondelivery the exception relied upon by the Fisherman must be confirmed by an appropriate entry in the Fisherman's fish book endorsed by a designated, authorized representative of PPSF. PPSF will give any Fisherman who fails to qualify for the formula adjustment, written notification of ineligibility by October 31st of the year in which the unexcused failure to deliver took place.

4. Calculation of Formula Adjustment. For purposes of calculating the post-season adjustment, the identification of product as "frozen" or "canned" shall be done with respect to the end-use of the product by PPSF and/or affiliated companies. Such end-use shall govern whether a particular poundage shall be considered frozen or canned for purposes of the price adjustment. The calculation of the post-season adjustment shall be on the basis of wholesale price as described in the following sub-paragraphs except that no consideration shall be given to PPSF's receipts for salmon roe. The wholesale price basis to be used is as follows:

a. FROZEN SALMON: PPSF's actual average price per pound received from nonaffiliated companies for Bristol Bay salmon frozen round and PPSF actual price per pound less .60 cents per pound for frozen salmon dressed. For the purpose of developing this average PPSF's sale records shall be subject to audit by a mutually agreed upon independent auditor, which access shall be under circumstances and conditions which will preserve the confidentiality of PPSF records. The cost of any such audit shall be borne equally by the parties. The receipts used shall be for frozen salmon prices FOB PPSF's owned or leased processing facilities.

1. It is further agreed that if less than 50% of the PPSF's Bristol Bay frozen salmon are sold to non-affiliated companies PPSF's overall average price shall be used.

2. If the average wholesale price as described above is less than the Nelbro Packing Co. average wholesale price then Nelbro's price will be used. In the event Nelbro does not freeze, or if Nelbro freezes less than \_\_\_\_\_ and if Nelbro changes ownership, PPSF's price will be used.

3. If any frozen salmon are produced as portions they shall be considered as round for the purpose of this agreement.

b. CANNED RED SALMON: The wholesale prices used shall be either (i) as reported by the Alaska Department of Revenue ("ADR") as the industry average wholesale price net of discounts for sales of canned salmon between the dates of August 1 of the season involved to March 30 of the year following, or (ii) PPSF's actual average wholesale prices received from non-affiliated companies, net of discounts, for sales of canned salmon between the dates of August 1 of the season involved to March 31 of the year following, whichever is the lower. For purposes of developing PPSF's average net wholesale price, PPSF's sales records shall be subject to audit by a mutually agreed upon independent auditor, which access shall be under circumstances and conditions which will preserve the confidentiality of PPSF's records. The cost of any such audit shall be borne equally by the parties. The final price shall be computed as follows:

(1) A weighted average case price shall be determined by combining a value equivalent to twenty-five percent (25%) of the average net price for a case of 96 one-half pound cans or equivalent and a value equivalent to seventy-five percent (75%) of the average net price for a case of 48 one pound tall cans, provided that in calculations using PPSF's actual receipts from sales to nonaffiliated companies, the actual average net wholesale price received for cases of 48 cans of tall shall be used or, alternatively, eighty percent (80%) of the average net wholesale price received for cans of 96 one-half pound cans or equivalent, whichever is greater.

(2) For those fish tendered outside of Bristol Bay for canning \$2.15 per case of 48 one pounds or 96 half pounds shall be deducted.

(3) The resulting weighted average shall be divided by 72 pounds; and

(4) The resulting price per pound shall be multiplied by forty-four percent (44%) which will produce the final price component for canned red salmon.

c. CHUM SALMON AND KING SALMON:

(1) The price per case shall be calculated as in (b) above except using values for cases of 48 can tall only; and

(2) The said average wholesale net case price shall be divided by 78 pounds for chums and 85 pounds for kings; and

(3) The resulting price per pound shall be multiplied by forty-four percent (44%) which will produce the final component for canned chums and kings.

d. PPSF's pack shall be apportioned between canned and frozen product as follows:

(1) Canned: PPSF's pack in full cases shall be multiplied by the agreed pounds per case (72 pounds for reds, 78 pounds for chum and 85 pounds for kings) and the result will be "agreed pounds canned."

(2) Frozen: The total poundage per PPSF's invoices for frozen round product plus the pounds frozen dressed divided by the actual recovery rate shall equal the "pounds frozen."

(3) Salmon which is frozen and subsequently canned shall be considered as "canned" for price determination purposes.

(4) The poundages of canned and frozen salmon shall be converted to percentages of the PPSF pack for purposes of calculation of final price.

e. There shall be a single fish price by species determined by using the canned and frozen fish prices from subparagraphs (a), (b) and (c) combined in proportion to the canned and frozen percentage of shares as determined in subparagraph (d) (4) above.

f. The final formula adjustment, to be paid by species, will be the amount per pound arrived at in accordance with the terms of this paragraph less the amount paid as the base price.

g. For purposes of calculating the formula adjustment, "affiliated companies" shall mean PPSF's parent corporation or any company in which either PPSF or its parent has more than ten percent (10%) ownership interest and "non-affiliated companies" shall mean all other.

5. Time of Final Settlement. The formula adjustment shall be paid by May 1, or, if the Alaska Department of Revenue net canned wholesale prices are not available by April 15 for the period specified, then PPSF will make the final payment within fifteen days after receipt of the Alaska Department of Revenue data. In the event the ADR data are not reasonably expected to be available at all, then the PPSF actual data are to be used and payment made on May 1 of the year following the season involved.

G. The amount owed the individual fisherman shall be reduced by any unpaid charges on the fisherman's account with PPSF. The balance shall earn interest from October 1st to the date of payment, calculated on a weekly basis, without compounding, at a rate equal to the effective annual return for three (3) month Treasury Bills sold that week at the Federal Reserve Bank's weekly auction, provided that, if the said rate is at any time higher than the Seattle-First National Bank Prime Rate for Seattle branches, less three percent (3%), then the latter rate

# Alaska State Legislature

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POUCH V  
STATE CAPITAL  
JUNEAU, ALASKA 99811  
(907) 485-3834  
(907) 485-3835

## Senate

### Committee on Resources

TO: Senate Resources Committee Members

FROM: Senate Resources Committee Staff

RE: Friday Hearing, 5/13/83

DATE: May 11, 1983

-----  
On Friday, May 11, at 3:00 p.m. in the Beltz Room, the following bills will be heard:

SB 272 MAKING A SPECIAL APPROPRIATION FOR PAYMENT AS A GRANT TO THE MUNICIPALITY OF ANCHORAGE FOR EXPANSION OF THE SHIP CREEK TREATMENT PLANT AND PHASE II DESIGN AND CONSTRUCTION OF THE EKLUTNA WATER PROJECT.

SB 272 would make the following appropriations from the general fund for grants to the Municipality of Anchorage:

Sec. 1 \$10.4 million for expansion of the Ship Creek Water Treatment Plant to 24 million gallons per day.

Sec. 2 \$35 million for phase II design of the Eklutna Water Project and construction of the Anchorage to Eagle River segment of the Eklutna project.

Anchorage is currently dependent upon groundwater and surface water from Ship Creek to meet most of its needs. Shortly after 1986 the demand for water is predicted to exceed the supply available from current sources. A study completed in 1982 determined that Eklutna Lake is the least expensive, most environmentally sound, long-term remedy for the Municipality's need for water. Preliminary planning has been completed for the project; final planning and design are currently underway.

Construction of the project is projected to occur from 1984 through 1988, with a total project cost of \$220 million. The municipality intends to request 50% of this amount from the legislature (\$13,684,000 was appropriated last year), and fund the other 50% through the sale of bonds in 1985 and 1986.

Senator Faiks, the prime sponsor, has drafted a Resources Committee Substitute which would reduce the appropriation to Eklutna by \$10 million, the appropriation to Ship Creek by \$3 million, and add a Section 3 which would appropriate \$5 million for purchase by the municipality of Central Alaska Utility, a private utility currently providing water to South Anchorage, Sand Lake and Muldoon. This is based on the results of a study by the Corps of Engineers that for proper long term water planning the CAU and the municipal utility should be merged.

SSSB 279 RELATING TO WHOLESALE PRICES FOR SALMON.

SSSB 279 expands the statutory authority of the Department of Revenue to require processors to report monthly wholesale prices for all species of canned salmon (now required only for pink salmon) to provide for computing the statewide average wholesale price paid for canned salmon. The intent is to enable fishermen and processors to negotiate fish prices based on a figure which represents the true market value of the product and the current market situation. This is intended to aid in the early adoption of price settlements.

In addition, the bill provides that the Department of Commerce will investigate developing a program to determine wholesale price averages for fresh, frozen and cured salmon.

CSHB 163 (Rules)am RELATING TO HARASSMENT OF PERSONS ENGAGED IN HUNTING, FISHING, CAMPING OR TRAPPING.

This bill is intended to protect hunters, fishers, campers and trappers from harassment. Interfering with a person legally engaged in hunting, or disturbing wildlife or habitat with the intent to hinder a hunter, would be punishable by a fine of up to \$500 and/or 30 days in jail. Wildlife protection officers would be required to order a person to desist from a violation, with penalties for failure to desist. Civil remedies, including recovery of damages, are allowed.

This bill is patterned after legislation being adopted in other states where anti-hunting groups have "taken to the field" in attempts to "warn" wildlife of hunters or deter hunters from killing wildlife.



Official Business

# Alaska State Legislature

Senate

Office of the President

MAY 10 1983

Pouch V  
State Capitol  
Juneau, Alaska 99811

## MEMORANDUM

DATE: May 9, 1983

TO: Senator Bettye Fahrenkamp  
Chairperson, Resources Committee

FROM: Senator Jay Kerttula  
Senate President

RE: Letter of support for SB 279.

The attached material was recently received in my office. I am forwarding it to you for your information and the perusal of your committee.

# Cordova Aquatic Marketing Association, Inc.

*Producers of Aquatic Products*

907) 424-3447  
(907) 424-7473

P. O. Box 359  
CORDOVA, ALASKA 99574

May 3, 1983

Senator Jalmar Kerttula, President  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

Dear ~~Senator Kerttula~~ *Jay*,

This letter is in support of Senate Bill 279 entitled "An Act relating to wholesale prices for salmon".

This proposed legislation is intended to improve the reporting of, quality and usefulness of wholesale canned salmon prices as they are reported now and in existing statutes. Presently by default, if you will, only canned pink salmon prices are reported and are available to only Prince William Sound processors and the Cordova Aquatic Marketing Association. This is because in order to compile the information, the Department of Revenue needed a request from a processor and a fishermen's group on an annual basis. Once a request for a particular species in a particular year was not submitted, the present statutes called for permanent abandonment of that area and species reporting.

Over a period of several years the majority of species and areas have been dropped, leaving only Prince William Sound pinks left to qualify for reporting upon annual request.

The compilation of this information has been the basis for settling ex-vessel prices in Prince William Sound for many years and is the accepted source for resolving final contract payments. With the recent past and current market problems, more and more processors and fishermen around the State are looking at the Department of Revenue to compile the Alaska Wholesale Average canned salmon prices to assist them in negotiating contracts and for the final payment resolution.

Since the "raw fish tax" from which the State derives revenue is presently based on a percentage of the "ex-vessel" price rather than the value of the finished product, it is imperative to the State that fishermen's groups have this acceptable and reliable information base to negotiate from as well as to actually determine the final price if a sliding scale or formula agreement is used.

The present reporting system required by existing law does not fit the needs of the industry or the State under today's conditions.

Senator Jay Kerttula  
May 3, 1983

Page 2

Already there are a number of 1983 "ex-vessel" salmon contracts that call for a utilization of the "Alaska Wholesale Average" in Bristol Bay, and there are "ex-vessel" contracts being negotiated in several other major fishing areas of the State which also call for this information.

Again, we state that it is very important to the fishermen, the processors and the State of Alaska that this proposed legislation be adopted this session. Therefore, we urge its expeditious passage.

Thank you for your consideration in this matter.

Sincerely,



Bob Blake  
President

cc: Cass Parsons, UFA

#### IV. Analysis

This bill rewrites AS 43.80.035 pertaining to the reporting of average wholesale prices of canned salmon. The impact on the operation of the division would be to hire a tax examiner to be responsible for the compiling of this information and to obtain a computer terminal on which to key punch the data for various report forms.

The Department would like to recommend one amendment to the bill, that Sec. 1(d) be amended to show a reporting size for half-pound cans and quarter-pound cans of a forty-eight can case (as opposed to a forty-eight pound case).

Testimony before the Senate Resources  
Committee concerning S.B. #279 by  
Dr. William H. Beardsley, Director,  
Division of Finance and Economics,  
Department of Commerce and Economic  
Development, State of Alaska, on  
May 13, 1983.

I would like to take this opportunity to briefly discuss what I see as the role of the Department of Commerce in implementing S.B.#279 if enacted. I would like to share with you how these activities would fit into the Department's overall economic development strategy and I am most interested in learning more about what the Senate hopes to see accomplished through this legislation in order that we can clearly reflect those interests in our efforts.

There are two key sections in S.B.#279. Section #1 discusses the reporting of wholesale canned salmon prices to the Department of Revenue. Section #3 requires the Department of Commerce, in conjunction with the Commercial Fisheries Entry Commission to report to legislature on a plan for the development of a program to determine wholesale price averages in the state for fresh, frozen, canned, and cured salmon products. Specifically, Commerce is asked to address the benefits and costs to the state and industry of such a program, to set forth methodologies for reporting and to propose an organizational structure. This report is due in February of 1984.

It is my understanding that there is no accurate source of wholesale fish prices either in terms of fish sold by fishermen to processors or by processors to wholesalers. The Department of Fish and Game's

"fish ticket" - the receipt of sale between fisherman and processor - does not mandate disclosure of price. The National Marine Fisheries' pink sheets are compilations of wholesale prices but are generally considered "list prices" rather than "actual prices." It is only when one gets to Japan and Europe that fish auction and commodity prices are reported publicly. In fact, only when one gets to the retail shelf can one establish a fish price and by that time the product has incorporated significant value added. All this is not to say that fish tickets, pink sheets, annual reports of processors and the like are not valuable, it is simply to say that verification of wholesale prices is impossible.

Why should there be wholesale price reporting. Certainly good wholesale price averages can assist processors in investment, operating and pricing decisions. It can be used for post season price settlements between fishermen and processors. And where regulation exists with the stated objective of promoting a healthy industry, as is the case with the Commercial Fisheries Entry Commission, wholesale price information can assist in the regulator's efforts to promote an optimal system. In the broadest sense, reduction of price uncertainty carries with it an implicit reduction in costs.

There are, however, costs associated with wholesale data collection, verification, inventoring and dissemination. There are significant costs to both processors and government. In the area of canned salmon, as the bill indicates, there are a discrete number of products, say 20, for which wholesale data can be averaged without

excessive administrative costs. But when one gets to fresh and frozen products one must consider method of catch, location, grade and other factors, easily over one hundred variations with all the implicit administrative costs and implications of confidentiality problems. In fact, we are dealing with a continuum of products and not clear differentiations. The challenge is to develop a method of collecting data in a manner that is simple, accurate, and yet in enough detail to be of value to the industry. In studying the issue and preparing a plan it will be critical for us to fully understand these benefits and costs and to address them objectively.

If enacted, the Department will bring together the skills of its Office of Commercial Fisheries and Division of Finance and Economics, working in close concert with the research division of the Commercial Fisheries Entry Commission and in cooperation with the Department of Fish and Game, the Department of Revenue, and the Alaska Seafood Marketing Institute, and certainly in close cooperation with the industry. Rather than one plan what we would like to do is clarify the issue and present optional approaches with the benefits and costs associated with each approach. We also hope to incorporate the findings of the Comprehensive Alaska Seafood Market Information System study under development within the Office of Commercial Fisheries, the expanded efforts in marketing by the Department, and the development of a fisheries strategic development plan by the Office of Commercial Fisheries and the Division of Finance and Economics.

In closing we are prepared to provide our part in carrying the requirements of S.B.#279 in a comprehensive and objective manner. We also welcome your guidance. Thank you.

CS SB 279, Salmon Pricing

PROPOSED AMENDMENT NO. 7:

On page 4, lines 10-11 make the following changes:

"(2) the appropriate methodology and procedures [to] that could be used for reporting and collecting price information [;] , including the consideration of various types and amounts of discounts allowed in the calculation of wholesale prices. "

Rationale

The amendment would include in the report by the Commerce Department to the Legislature due next session a discussion and recommendations of how discounts, such as promotional discounts, should be handled in the reporting of various wholesale salmon prices.

Based on this report and recommendations it may be possible and desirable to amend the current bill should it become law to include consideration of promotional discounts in the pricing reports. Existing contracts which are tied to these price reports could be adjusted or renegotiated next year to take into account any new pricing formula under the terms of these contracts.

SB 279

CS SS HB 381 SPEECH

Mr. Chairman, I am Adelheid Herrmann, Representative from District 26, the Bristol Bay, Aleutians, and Pribilof Area. I am Chairman of the Special Committee on Fisheries and am here to speak in support of CS SS HB 381.

The Special Committee on Fisheries spent a lot of time on this bill, both in receiving public input and reworking the bill. HB 381 is a very important piece of legislation. It is an attempt to ease decades of problems in our salmon industry.

In the past, price negotiations between salmon processors and fishermen have almost always been tense and costly. With the recent recovery of the salmon runs and the increase in the fresh & frozen marketing, these price negotiations have steadily worsened. In 1980 and again in 1982, the Bristol Bay salmon season was marred by prolonged "strikes" which hurt the industry statewide. The 1980 season is a prime example of how much these in-season price negotiations can hurt the industry and the state. The Alaska Department of Fish & Game estimates that approximately 21 million red salmon were lost to escapement. These could have been harvested. These fish had an ex-vessel value of over 80 million dollars and the state could have received almost 4 million dollars in raw fish taxes - but, they were not harvested. The impacts of not harvesting these fish were also felt throughout Alaska's transportation centers.

Fishermen and processors do not like to miss fish - yet the problems continued. Fishermen have always entered into price negotiations with processors with little or no information on what the markets are doing and have often had higher expectations than the current situations called for. Processors, of course, want to pay as little as possible for the product and information they cite is slanted because of that.

After two long strikes in only three years, one fishermen's association has negotiated a contract with the processors which has the possibility of easing negotiations. This contract which the Alaska Independent Fishermen's Marketing Association has initiated sets a base price to be paid in-season and the following spring, a final settlement will be made. This final settlement is based on the actual wholesale price the processors receive for their product. The key to the new contract is in the determination of the wholesale price.

Fishermen have requested legislative help from us which can benefit the whole industry. The initial drafts of this legislation set up a procedure under which the state would collect wholesale price information for all product forms of salmon and report it monthly. This information was to be used not only for contract final settlements, but also for initial base price negotiations. Fishermen wanted the whole picture with price trends and the more than 50% of salmon which is not canned included.

Needless to say, processors objected and with some good reasons. The different product forms of salmon total in the 100's when fresh & frozen are included and the costs of breaking out the information and reporting it to the state was cited as an expensive and time consuming task. The processors also indicated that they were not necessarily sure that any benefits would be connected with such detailed information.

Because of the importance to the contracts, the Special Committee on Fisheries worked towards a compromise bill. Representatives from processors, fishermen, and the State of Alaska sat together and attempted to make the legislation viable. The legislation you have before you is the result of those discussions. It's fair to say that no one is entirely satisfied with it. Fishermen do not get all the information they wanted and processors will still have some reporting requirements.

The compromise sets up a procedure for reporting of monthly canned salmon wholesale prices on a semi-annual basis by processors. The Department of Revenue will compile the information. The second part of the bill, section 3, sets up a feasibility study to be done by the Department of Commerce and Economic Development in conjunction with the Department of Revenue and the Commercial Fisheries Entry Commission. This study would look into the possibility of collecting wholesale information on all product forms of salmon, and what the costs and benefits will be to the state and the industry if it was collected.

There remains however, a few areas of conflict or concern in the bill. Probably most controversial is the definition of wholesale price, processors would like to see promotional discounts included. Personally, I see no problem with including this in the long run, but not in the current legislation. Fishermen negotiated their contracts with the understanding that promotional discounts were not to be deducted - if they had known that they were going to be deducted they would have negotiated a different final settlement to compensate for the deduction. I do believe that promotional discounts have as much merit as the other discounts currently included in this bill, but current contracts don't allow for them. Fishermen, as a general rule, are not familiar with the marketing of salmon and the use of discounts. Because of this they will naturally object to any deductions from the wholesale price, even if it will benefit them in the long run.

The two other areas of concern are less controversial and more technical in nature. First, the Department of Revenue and the processors are trying to resolve which unit of sale categories will be used in section 1, subsection (d). I believe the processors should decide what units are the most convenient for them, as they will be doing the reporting.

Finally, in an amendment before you, is a change in the wholesale price average section on page 2, lines 17 & 18. The sentence reading, "An annual average is for a calendar year", is deleted. This makes clear that the report to the legislature, due on the 15th day of the session, is for the period ending September 30th of the previous year.

CS SS HB 381 SPEECH (continued) - Page Five

That concludes my testimony - if you have any questions, I will be glad to answer them.

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AMENDMENT TO CS SS HB 381

Page 2, lines 17 & 18, delete:

[An annual average is for the calendar year.]

# MULTI-YEAR SALMON MARKETING AGREEMENT

--1983-1984-1985--

THIS AGREEMENT, date \_\_\_\_\_, 1983 between Alaska Independent Fishermen's Marketing Association, a California corporation and the AIFMA Cooperative, an Alaska Cooperative Corporation (hereinafter collectively referred to as "AIFMA") and Peter Pan Seafoods, Inc. a Corporation (hereinafter "PPSF").

## I

### DEFINITIONS

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Fishing Periods. "Fishing periods" shall mean those periods of time established by the Alaska Department of Fish and Game during which it shall be legal for properly-licensed individuals to engage in commercial fishing for sockeye or chum salmon.

Fishermen. "Fishermen" shall mean the individual members of the Alaska Independent Fishermen's Marketing Association ("AIFMA") who have executed Individual Fishing Agreements with PPSF.

Individual Fishing Agreements. "Individual Fishing Agreements" shall mean individual written undertakings by Fishermen to fish and deliver exclusively to PPSF in accordance with the terms of this Agreement and shall be in the form attached hereto as Appendix A.

Other Persons Regularly Fishing for PPSF. "Other persons regularly fishing for PPSF" means persons other than those who are "Fishermen" under the terms of this Agreement, with whom PPSF has an agreement or understanding, express or implied, oral or written, that such persons will sell, and PPSF will buy, substantially all of such persons' catch or salmon during a fishing season in Bristol Bay.

## II

### WARRANTIES

A. AIFMA warrants that it is a marketing association authorized by the laws of the United States (Title 15 U.S.C. SS1521-22) and duly organized as a cooperative corporation under the laws of the State of Alaska, with members fishing as independent fishermen with their own or leased boats and gear or assisting in the operation of such independently owned or leased boats and gear on a share basis in the areas covered by this Agreement. (AIFMA further warrants that each of the

individual members subject to this Agreement have agreed to sell all salmon caught by them in any of the fishing districts of Bristol Bay during the season or seasons covered hereby exclusively through AIFMA).

B. PPSF warrants that it is lawfully engaged in purchasing, processing, canning, marketing and distributing salmon and is desirous of contracting for the purchase of salmon caught by Fishermen in the salmon fisheries of Bristol Bay.

### III

#### AGREEMENT

A. This Agreement establishes the terms and conditions governing the sale of salmon caught by Fishermen and purchased by PPSF during the years covered hereby, in the areas and of the species as follows:

1. Area--all districts in Bristol Bay, except that in the case of chum salmon it shall apply only to those chums caught in the Naknek, Kvichak, Egegik and Ugashik districts.

2. Term--this Agreement shall apply to all sales between Fishermen and PPSF of the species covered hereby in the years 1983, 1984, 1985, EXCEPT that it may be sooner terminated by PPSF in the event of a major disruption of PPSF's markets or by either party in the event of a major change in PPSF's method of processing, upon written notice.

3. Species--this Agreement shall apply only to king, sockeye ("red") and chum salmon.

B. The acceptance or rejection of this agreement and any renewals hereof, by AIFMA membership shall be subject only to a vote of those members of AIFMA who regularly delivered to PPSF during the season next preceding the submittal for approval.

C. PPSF, by its execution of this Agreement, acknowledges that AIFMA is the sole agent of Fishermen authorized to negotiate, administer or enforce the provisions of this Agreement.

D. Fishermen shall, subject to the terms and conditions of this Agreement, tender delivery of all fish of the species covered by this Agreement to PPSF so long as PPSF is accepting delivery of fish.

E. PPSF will purchase, subject to the terms and conditions of this Agreement, all salmon of the covered species which are caught and delivered by any Fishermen, provided however, that if PPSF, pursuant to the terms and conditions of this Agreement, shall refuse to purchase some or all of the

fish tendered by any Fisherman to PPSF, then the Fisherman shall be free to sell or otherwise dispose of those fish which PPSF refused to purchase, in any manner whatsoever.

F. Contemporaneously with the execution of this Agreement, or before, AIFMA will deliver to PPSF a list of its members who are intended to be under this contract. It is expressly understood and agreed that the selection and identification of Fishermen with whom PPSF will do business shall be exclusively and without any limitation the sole right of PPSF, notwithstanding the fact that the terms under which said business is transacted shall be governed by this Agreement. Therefore, within ten (10) days after receipt of the said list of members from AIFMA, PPSF shall advise AIFMA in writing which, if any, of the members identified thereon it declines to accept within its fleet. The remaining members shall constitute the "agreed list." Thereafter, within sixty (60) days following the redelivery to AIFMA of the agreed list or on or before February 25, 1983, whichever is sooner, each member on the agreed list shall furnish PPSF with an executed Individual Fishing Agreement in the form attached hereto. Any member failing to deliver an Individual Fishing Agreement within the time specified may, at PPSF's exclusive option, be removed from the agreed list. AIFMA will also furnish to PPSF supplementary lists at a later date naming persons regularly delivering to PPSF and who have joined AIFMA after the execution of this Agreement. In the case of such supplemental lists, those members who are acceptable to PPSF shall be added to the said agreed list of Fishermen, subject to their providing PPSF with an executed Individual Fishing Agreement.

#### IV

#### WEIGHING THE FISH

A. King Salmon shall be weighed by species.

B. Chum salmon and red salmon delivered to floating receiving stations shall be weighed as "red salmon." That portion of the total poundage of fish delivered to PPSF by individual Fishermen and weighed as "red salmon" pursuant to this subsection, which are to be paid for by PPSF as chum salmon, shall be computed as follows: At the end of each one (1) week period (measured from 12:01 a.m. Sunday to 11:50 p.m. the following Saturday) or more frequently at PPSF's option, while it is accepting deliveries of fish, PPSF shall determine the total number of cases of chum salmon packed during that one (1) week period and the total number of cases of red salmon packed during that one (1) week period. The poundage of fish delivered to PPSF by individual drift Fishermen during that one (1) week period and weighed as "red salmon" pursuant to this subsection which are to be paid for as chum salmon shall be determined by multiplying the total poundage of fish delivered to PPSF by individual drift Fishermen and weighed as "red salmon" by a fraction, the numerator of which is the total of cases of chum

salmon packed by PPSF during that one (1) week period (multiplied by 78 pounds), plus the pounds of chum salmon frozen by PPSF, and the denominator of which is the total number of pounds of both red salmon and chum salmon canned or frozen by PPSF during that one (1) week period. The percentage figure which the above fraction represents plus the total number of cases of chum salmon packed, the total pounds of chum salmon frozen and the total pounds of red salmon canned or frozen by PPSF during that one (1) week period shall be posted at PPSF's cannery. PPSF further agrees to permit AIFMA, or its agent, free access to PPSF's fish books and pertinent fish records at convenient times for purposes of verifying the accuracy of the above-described computations by PPSF. Where practicable Fishermen's chum percentages shall be calculated separately for fish delivered by drift Fishermen at Nushagek, Naknek-Kvichak, Ugashik and Egegik. Each individual Fisherman's chum percentage shall be based only on the chum percentage determinations for the weeks during which he actually delivered fish to PPSF. All chum and red salmon caught and delivered by set net Fishermen shall be tallied and paid for as red salmon.

C. It is the responsibility of PPSF to weigh all fish on delivery or to employ a sample weighing technique which will comply with the provisions of AS 16.10.270.

D. If weighing on the grounds becomes impractical because of weather or mechanical breakdown, it may be temporarily suspended. Repairs or replacement of faulty mechanical equipment shall be taken care of as soon as possible.

E. Suspension of weighing because of necessity to deliver fish to the cannery on the tide is permissible under the following conditions: (a) Tidal conditions shall not be used for the purpose of avoiding the weighing of fish at the point of delivery; and (b) the scow must weigh as much fish as practicable before suspension is put into effect.

F. At any time that weighing is suspended, the balance of the fish not weighed shall be counted and credited on the basis of the average weight of fish weighed and delivered to that scow on that tide. Average weights shall be posted as soon as available.

G. All scales used to weigh fish must have a current approved weight and measure inspection seal from Alaska Weight and Measure.

H. Weighing scales shall be clearly visible to Fishermen during delivery. Each brailer weight may be verified by the Fisherman, if he so desires.

I. There shall be a brailer weight limit of 1,000 pounds.

PRICE OF FISH

The parties recognize that both volume and rate of delivery contribute significantly to the efficiency of PPSF's operation. Accordingly, to encourage fishermen to fish during the entire fishing season, as defined below, and to deliver all of their catch to PPSF, PPSF will make an additional post-season incentive payments to Fishermen who qualify, which payment is described below as the "Formula Adjustment."

A. Base Price. PPSF shall pay Fishermen 25 cents per pound for chums, 58 cents per pound for reds and 50 cents per pound for kings during the 1983 fishing season.

The base price to be paid by PPSF to Fishermen for these species delivered during the 1984 season shall be 75% of the total of the 1983 base price plus the 1983 formula adjustment.

The base price to be paid by PPSF to Fishermen for these species delivered during the 1985 season shall be 75% of the total of the 1984 base price plus the 1984 formula adjustment.

B. Formula Adjustment.

1. Fishermen Eligible. All Fishermen who deliver all of their fish to PPSF during every Fishing Period of any of the Fishing Seasons for 1983, 1984, 1985 (exclusive of the exceptions specified below) shall receive a formula adjustment to fish price for that year calculated in accordance with this section, with respect to all fish delivered to PPSF by such Fishermen.

2. Fishing Season. For purpose of the formula adjustment the "Fishing Season" is the period of time from June 23 to July 18 (or earlier if PPSF elects to close) during which PPSF is accepting salmon for processing.

3. Exceptions. The following circumstances shall relieve Fishermen from the requirement to deliver all of their fish during each Fishing Period to PPSF in order to qualify for the formula adjustment:

a. A Fisherman elects to fish in a river system where PPSF has no receiving station of its own and PPSF has not made other arrangements for accepting deliveries.

b. An illness preventing a Fisherman's boat from fishing.

c. A death in the Fisherman's family which in the judgment of the Fisherman prevents the Fisherman's boat from fishing.

d. Weather conditions which in the Fisherman's judgment prevent his boat from fishing.

e. Mechanical breakdown or other emergencies preventing a Fisherman's boat from fishing.

f. Limits or suspensions as defined herein being in effect.

g. The mutual agreement of a Fisherman and PPSF.

h. If for any reason PPSF refuses to accept fish tendered by the fisherman.

In all cases the fisherman is responsible for notifying PPSF in the case of nondelivery. In order to be valid for purposes of excusing nondelivery the exception relied upon by the Fisherman must be confirmed by an appropriate entry in the Fisherman's fish book endorsed by a designated, authorized representative of PPSF. PPSF will give any Fisherman who fails to qualify for the formula adjustment, written notification of ineligibility by October 31st of the year in which the unexcused failure to deliver took place.

4. Calculation of Formula Adjustment. For purposes of calculating the post-season adjustment, the identification of product as "frozen" or "canned" shall be done with respect to the end-use of the product by PPSF and/or affiliated companies. Such end-use shall govern whether a particular poundage shall be considered frozen or canned for purposes of the price adjustment. The calculation of the post-season adjustment shall be on the basis of wholesale prices as described in the following sub-paragraphs except that no consideration shall be given to PPSF's receipts for salmon roe. The wholesale price basis to be used is as follows:

a. FROZEN SALMON: PPSF's actual average price per pound received from nonaffiliated companies for Bristol Bay salmon frozen round and PPSF actual price per pound less .60 cents per pound for frozen salmon dressed. For the purpose of developing this average PPSF's sale records shall be subject to audit by a mutually agreed upon independent auditor, which access shall be under circumstances and conditions which will preserve the confidentiality of PPSF records. The cost of any such audit shall be borne equally by the parties. The receipts used shall be for frozen salmon prices FOB PPSF's owned or leased processing facilities.

1. It is further agreed that if less than 50% of the PPSF's Bristol Bay frozen salmon are sold to non-affiliated companies PPSF's overall average price shall be used.

2. If the average wholesale price as described above is less than the Nelbro Packing Co. average wholesale price then Nelbro's price will be used. In the event Nelbro does not freeze, or if Nelbro freezes less than \_\_\_\_\_ and if Nelbro changes ownership, PPSF's price will be used.

3. If any frozen salmon are produced as portions they shall be considered as round for the purpose of this agreement.

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b. CANNED RED SALMON: The wholesale prices used shall be either (i) as reported by the Alaska Department of Revenue ("ADR") as the industry average wholesale price net of discounts for sales of canned salmon between the dates of August 1 of the season involved to March 30 of the year following, or (ii) PPSF's actual average wholesale prices received from non-affiliated companies, net of discounts, for sales of canned salmon between the dates of August 1 of the season involved to March 31 of the year following, whichever is the lower. For purposes of developing PPSF's average net wholesale price, PPSF's sales records shall be subject to audit by a mutually agreed upon independent auditor, which access shall be under circumstances and conditions which will preserve the confidentiality of PPSF's records. The cost of any such audit shall be borne equally by the parties. The final price shall be computed as follows:

(1) A weighted average case price shall be determined by combining a value equivalent to twenty-five percent (25%) of the average net price for a case of 96 one-half pound cans or equivalent and a value equivalent to seventy-five percent (75%) of the average net price for a case of 48 one pound tall cans, provided that in calculations using PPSF's actual receipts from sales to nonaffiliated companies, the actual average net wholesale price received for cases of 48 cans of tall shall be used or, alternatively, eighty percent (80)% of the average net wholesale price received for cans of 96 one-half pound cans or equivalent, whichever is greater.

(2) For those fish tendered outside of Bristol Bay for canning \$2.16 per case of 48 one pounds or 96 half pounds shall be deducted.

(3) The resulting weighted average shall be divided by 72 pounds; and

(4) The resulting price per pound shall be multiplied by forty-four percent (44%) which will produce the final price component for canned red salmon.

c. CHUM SALMON AND KING SALMON:

(1) The price per case shall be calculated as in (b) above except using values for cases of 48 can tall only; and

(2) The said average wholesale net case price shall be divided by 78 pounds for chums and 85 pounds for kings; and

(3) The resulting price per pound shall be multiplied by forty-four percent (44%) which will produce the final component for canned chums and kings

d. PPSF's pack shall be apportioned between canned and frozen product as follows:

(1) Canned: PPSF's pack in full cases shall be multiplied by the agreed pounds per case (72 pounds for reds, 78 pounds for chum and 85 pounds for kings) and the result will be "agreed pounds canned."

(2) Frozen: The total poundage per PPSF's invoices for frozen round product plus the pounds frozen dressed divided by the actual recovery rate shall equal the "pounds frozen."

(3) Salmon which is frozen and subsequently canned shall be considered as "canned" for price determination purposes.

(4) The poundages of canned and frozen salmon shall be converted to percentages of the PPSF pack for purposes of calculation of final price.

e. There shall be a single fish price by species determined by using the canned and frozen fish prices from subparagraphs (a), (b) and (c) combined in proportion to the canned and frozen percentage of shares as determined in subparagraph (d)(4) above.

f. The final formula adjustment, to be paid by species, will be the amount per pound arrived at in accordance with the terms of this paragraph less the amount paid as the base price.

g. For purposes of calculating the formula adjustment, "affiliated companies" shall mean PPSF's parent corporation or any company in which either PPSF or its parent has more than a ten percent (10%) ownership interest and "non-affiliated companies" shall mean all other.

5. Time of Final Settlement. The formula adjustment shall be paid by May 1, or, if the Alaska Department of Revenue net canned wholesale prices are not available by April 15 for the period specified, then PPSF will make the final payment within fifteen days after receipt of the Alaska Department of Revenue data. In the event the ADR data are not reasonably expected to be available at all, then the PPSF actual data are to be used and payment made on May 1 of the year following the season involved.

G. The amount owed the individual fisherman shall be reduced by any unpaid charges on the fisherman's account with PPSF. The balance shall earn interest from October 1st to the date of payment, calculated on a weekly basis, without compounding, at a rate equal to the effective annual return for three (3) month Treasury Bills sold that week at the Federal Reserve Bank's weekly auction, provided that, if the said rate is at any time higher than the Seattle-First National Bank Prime Rate for Seattle branches, less three percent (3%), then the latter rate

calculated for the same week will be used. Interest after May 1 shall be based on the average interest rate during the October 1 through May 1 period.

## VI

### QUALITY OF FISH

All salmon offered for sale must be in good condition and of a quality suitable for processing in the judgment of PPSF or PPSF's agent-in-charge. Highly water-marked fish may be rejected. Fish with peugh or pick marks may be rejected by PPSF.

## VII

### ADVANCES AND DEDUCTION

A. PPSF shall withhold from any amounts due Fishermen and shall pay over on behalf of Fishermen, Bristol Bay Borough taxes.

B. PPSF also agrees to pay to the AIFMA for the account of all Fishermen who have actually commenced fishing and who have made a delivery to PPSF, the Fisherman's membership fees and assessments to the AIFMA for the then current year. Such payment shall be made only upon presentation to PPSF of a written request, (signed by the individual Fisherman), authorizing PPSF to pay said membership fees directly to the AIFMA. Such payment by Nelbro shall not take priority over current boat account charges including Borough taxes.

## VIII

### DELIVERY OF FISH

A. Buyer agrees to maintain receiving stations of a number and capacity to receive without undue delay the catches made by Fishermen. PPSF further agrees to take delivery at such stations of all fish whether caught by drift boats, drift skiffs, or by set net Fishermen who deliver by boat or skiff.

B. If a fishing period is twenty-four (24) hours or less, the final delivery from fish boats and gear shall be made immediately at the end of the fishing period. If a fishing period is more than twenty-four (24) hours in duration then during continuous fishing delivery of fish shall be made within eighteen (18) hours from the beginning of the period and within each eighteen (18) hour period thereafter. All boats shall be discharged clean at the receiving station in the presence of the tallyman; provided, however, that a boat shall be permitted to leave a receiving station with all over-limit fish aboard. In the event that a Fisherman shall elect to leave the receiving station with over-limit fish aboard, PPSF shall not be obligated to accept delivery of any additional fish from such Fishermen until such Fishermen shall have reported to one of PPSF's

receiving stations with his boat clean of all fish and had his fish book signed by one of the PPSF's agents. Any Fishermen making delivery later than the time period specified herein may be required to deliver their fish directly to PPSF's cannery and when required to do so pursuant to the terms of this section, the provisions of subsection E of Section VIII of this Agreement shall not apply.

C. At the close of each fishing period it shall be the responsibility of the Fishermen to report or deliver all salmon aboard the drift skiff or boat to a receiving station or to notify PPSF within four (4) hours after the close of the fishing period of the fish on board to be delivered. Failure of the Fisherman to so notify or deliver as provided above shall relieve PPSF from any liability for loss of fish; provided, however, there shall be one (1) receiving station on the fishing grounds on each river where fishing operations are conducted for four (4) hours after the close of fishing period.

D. Fishermen detained from delivery of salmon at PPSF's receiving station for five (5) hours after having reported their arrival shall be credited as follows for each additional hour's detention during an open fishing period:

1. Two-man drift gill net boats and one-man drift gillnet boats equipped with brailer -- 550 pounds of red salmon for each hour of detention time.

2. All other types of gear so detained shall be credited with 275 pounds of red salmon for each hour of detention time.

E. Detention shall commence five (5) hours from the time the boat reports to any of PPSF's receiving station with its nets cleared and shall continue until the fish are actually accepted at such receiving station.

F. Fishermen who are instructed by PPSF to deliver fish directly to PPSF's cannery shall receive, in addition to the base fish prices set forth herein, the sum of five cents (\$.05) per pound for the fish so delivered.

## IX

### LIMIT PERIODS

A. PPSF reserves the right to curtail the deliveries of Fishermen by putting them on limit, provided that PPSF places the same restriction upon deliveries of all other persons regularly fishing for and delivering fish to PPSF and, while limits are in effect, PPSF refrains from accepting fish from other persons except those with swamped boats or similar emergencies or conditions of distress. The limit for each twenty-four (24) hour period, or portion thereof, declared open for fishing by the Alaska Department of Fish and Game, shall be not less than 12,000 pounds.

B. Notice of limit shall be given by hoisting a large red flag at PPSF's cannery and at all receiving stations and by announcing over the radio the amount of the limit and the time at which the limit period is to commence. Notice of a limit period shall be given in the manner set forth above at least six (6) hours before the time period is to commence.

C. PPSF shall start the limit period with the commencement of the twenty-four (24) hour period within which it is to apply, or at six (6), twelve (12) or eighteen (18) hours thereafter. It shall be either:

1. Twenty-four (24) hours after starting; or
2. At the end of the fishing period as originally announced or as extended, whichever occurs first.

D. Successive limits and limit periods shall be established by successive notice, except that if the fishing period as originally announced, or as extended, continues beyond twenty-four (24) hours a new limit period with such limit as may be announced by PPSF shall then automatically commence and continue for twenty-four (24) hours and for successive twenty-four (24) hour periods until the fishing period ends with the limit to be announced by PPSF for each successive period.

E. When notice of limit has been given, all boats shall make delivery and clear their nets before the time fixed for the next limit period to start.

F. The limit in effect may be increased by raising a blue flag under the red one, or removed by taking all flags down. Radio announcements of increase or removal shall be made, and the change shall be effected immediately.

G. When a Fisherman has delivered his limit for the limit period, he shall not catch any more fish for delivery to PPSF until three (3) hours before the commencement of the next limit period. Fish caught during this three (3) hour period shall be counted against the next limit period.

H. PPSF shall have no obligation to purchase fish excess of the limit. If, however, PPSF accepts such fish and accepts delivery thereof, then those over the limit shall, as designated by the Fisherman making such delivery, be credited to a Fisherman who is short of the limit providing both Fishermen are at the same receiving station at the time of delivery, and if not so designated shall be credited to the AIFMA. PPSF shall maintain a register showing all over-limit deliveries accepted and the disposition thereof, and PPSF shall enter into the fish book of the Fisherman making the over-limit delivery the amount so delivered. A copy of the over-limit register shall be furnished to the AIFMA. All checks payable for over-limit fish credited to the AIFMA shall be made payable directly to the AIFMA Research and Welfare Fund.

PAYMENT FOR SALMON

A. If requested by Fisherman, payment for salmon purchased shall be made by check, payable to Fisherman. Any such payment shall, to the extent of such payment or payments, discharge PPSF's obligation to the AIFMA and to Fisherman.

B. Upon demand by the Fisherman, and before payment of the base price, PPSF agrees to advance up to seventy-five percent (75%) of the amount due to Fisherman for fish sales at the base price provided herein, net of the balance then currently due on the fisherman's boat account.

C. Interim settlement on the base price between a Fisherman and PPSF shall be made not later than four (4) weeks after the Fisherman stops fishing and gives notice to Buyer of such action. Final settlement for any adjusted amounts under the terms hereof shall be made not later than May 1st of the next following year, or fifteen days after the Alaska Department of Revenue price data are available. At the time of interim settlement, PPSF shall furnish each Fisherman with an itemized statement of account and sales slips.

D. PPSF shall retain no funds due Fisherman at final payment unless authorized to do so in writing by Fisherman. PPSF shall have no obligation for any purchase made by Fisherman unless authorized by a company purchase order.

## XI

ABANDONMENT OF OPERATION

A. In the event the PPSF's cannery is destroyed or so greatly damaged from any cause, or the laws, rules or regulations with reference to salmon fishing or canning are changed, or, in PPSF's judgment, because of strikes or any of the reasons set forth above, it would be impracticable or unprofitable to continue operation, PPSF may forthwith terminate its purchase of salmon from Fishermen provided that PPSF also terminate its purchase of salmon from all other sources. Should PPSF abandon operations for any reasons encompassed within the meaning of the above-specified conditions, PPSF may terminate its purchase of salmon from Fishermen by giving such Fishermen under this Agreement at least twelve (12) hours notice prior to the time set for the cessation of operation. Should PPSF not give said minimum notice, then PPSF shall credit the Fishermen affected with 550 pounds of red salmon for each hour less than the required twelve (12) hour minimum period that notice is not given.

B. In the event of circumstances beyond the control of PPSF, it is impractical to operate its cannery for a temporary period of time but PPSF does not want to abandon operations as above provided, then PPSF may temporarily suspend the purchase of salmon from Fishermen, provided:

1. That PPSF gives notice to AIFMA and to Fishermen of the action to be taken and the effective time and date of that action; and

2. That PPSF shall make every effort to find another market for fish caught by Fishermen during the period of suspension. Suspension of operations under this subsection shall not be deemed an abandonment of operations within the meaning of subsection A above.

C. In addition to the above, if a cannery or a consolidation is operating at maximum practicable capacity, the company, or consolidation may suspend its fishing effort even though such suspension takes place in periods open for fishing if such fishing would exceed the utilization possible by the company or consolidation. (Maximum capacity for the purpose of this section shall mean utilization of all lines which can be practically operated at the time at each of the canneries being operated by PPSF in Bristol Bay, if more than one, or being operated in a consolidation. In cases of a breakdown of a line in one or more operating canneries, such lines will not be counted in defining maximum capacity).

D. During periods of time when the anticipated supply of salmon is likely to near or exceed PPSF maximum practicable capacity, PPSF may impose limit periods of less than twenty-four (24) hours, provided that PPSF may impose limit periods of less than twenty-four (24) hours on not more than four (4) occasions during a deason.

## XII

### BOAT STORAGE

Except as provided in Article XV, hereinafter, PPSF agrees to provide free handling and storage of boats and gear for Fishermen during the entire winter following each of the subject season's operations. PPSF also agrees to provide, at no charge to Fishermen, haul-out and launching service for all boats in need of repair requiring such haul-out or launching service. PPSF agrees to transport Fishermen's gear to Bristol Bay without costs in accordance with space available on PPSF's tender.

## XIII

### ROOM AND BOARD

PPSF agrees to provide Fishermen Room and Board. The Room and Board shall be at the expense of the Fishermen and charged at the following rates during 1983 at \$20.00 per day and for 1984 and 1985, \$20.00 plus an adjustment equivalent to the change reported between June 1983 and June of the year in question, by the U.S. Department of Labor in the Consumer Price Index, all commodities for the State of Alaska.

PPSF agrees to furnish beds, springs mattresses and covers, pillows, pillow slips and sheets, clean linen and towels weekly, toilet paper, and also two (2) blankets for each Fisherman, if so requested.

For each thirty (30) boats regularly fishing at PPSF's cannery, there shall be a washing machine in good condition, available for use by the Fishermen.

#### XIV

##### PORT ENGINEER

PPSF agrees to provide mechanics for repairs and maintenance of boats of Fishermen and further agrees that said mechanics shall repair the boats of Fishermen and other persons regularly fishing for PPSF on a "first-come-first-serve" basis as reported to PPSF's superintendent upon arrival at PPSF's dock. Should a boat of a Fisherman be undergoing major repairs or about to undergo major repairs, PPSF's mechanic may pass over said boat and repair a boat taken out of turn. Major repairs are understood to be repairs which are estimated by PPSF's mechanic to require more than two (2) hours to complete. Fishermen shall pay \$35 per hour for the services of mechanics during the 1983 season, and for the 1984 and 1985 season the rate shall be \$35 per hour plus an adjustment based on the same rate used for adjusting the price of meal tickets.

#### XV

##### TERMINATION OF FISHERMAN

PPSF agrees that if it intends not to accept fish from a particular Fisherman for the next following Fishing Season, PPSF will notify AIFMA and the Fisherman in writing, not later than December 15th of the year prior to the affected season, except in those instances where the termination is for cause.

Fishermen agree to notify PPSF in writing, by December 15th if they do not intend to deliver to PPSF during the next following season.

The parties acknowledge the uncertainty and difficulty in estimating damages accruing to the other if notice of termination is not given in a timely manner as herein provided. To liquidate the amount of these damages, it is agreed that if either PPSF or a Fisherman should fail to notify the other of termination in a timely manner as herein provided, and thereafter fails or refuses to sell or buy fish, as the case may be, in accordance with the terms and conditions of this agreement, the party failing to give notice as herein provided shall be liable to the other in the amount of Three Thousand Five Hundred Dollars (\$3,500.00).

PPSF agrees that it will not discriminate against a Fisherman because of his activities on behalf of AIFMA.

XVI

POSTING

PPSF shall post copies of this Agreement in the lobby of its office at its cannery and the Fishermen's bunkhouse.

XVII

NO CHANGE -- SUBJECT TO LAW

Neither PPSF nor AIFMA, nor any agent of either, has any power to change or alter any of the provisions in this Agreement, and the same is entered into subject to all present and future laws and regulation which may be prescribed by state or federal authorities during the term of this Agreement, and if at any time it shall be established as a matter of law that any of the provisions of this Agreement are contrary to law, rules and regulation, then in that event the said provision so far as they may conflict shall be considered as not binding upon either of the parties hereto.

ALASKA INDEPENDENT FISHERMEN'S  
MARKETING ASSOCIATION

By \_\_\_\_\_

Its \_\_\_\_\_

AIFMA COOPERATIVE

By \_\_\_\_\_

Its \_\_\_\_\_

PETER PAN SEAFOODS, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

CS SB 279, Salmon Pricing

PROPOSED AMENDMENT NO. 7:

On page 4, lines 10-11 make the following changes:

"(2) the appropriate methodology and procedures [to] that could be used for reporting and collecting price information [;] including the consideration of various types and amounts of discounts allowed in the calculation of wholesale prices. "

Rationale

The amendment would include in the report by the Commerce Department to the Legislature due next session a discussion and recommendations of how discounts, such as promotional discounts, should be handled in the reporting of various wholesale salmon prices.

Based on this report and recommendations it may be possible and desirable to amend the current bill should it become law to include consideration of promotional discounts in the pricing reports. Existing contracts which are tied to these price reports could be adjusted or renegotiated next year to take into account any new pricing formula under the terms of these contracts.

STATE OF ALASKA  
FISCAL NOTE

Revision Date                     , 1983

I. REQUEST

Bill/Resolution No.: CSSB 279 (RES)  
Title: Wholesale Prices for Salmon  
Sponsor: Kerttula  
Requestor:                                     

II. FISCAL DETAIL

Agency Affected: Commerce & Econ. Develop.  
Program Category Affected:                                       
BRU, Program of Subprogram(s) Affected:                                     

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL		5.0				
300 CONTRACTUAL		55.0				
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		50.0				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)


GENERAL FUND		60.0				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard E. Reynolds Phone: 465-2018  
Division: Office of Commercial Fisheries Development Date:                       
Approved by Commissioner: Richard A. Ivon  Date: 10/1/83  
Department: Commerce & Economic Development

Distribution:

Original to Legislative Finance  
Copy to Office of Management and Budget (for Legislature introduced bills)  
Copy to Department (for Governor introduced bills)  
Copy to Sponsor  
Copy to Requestor (if different from Sponsor)

3/8/83

## CSSB 279 (RES) - Fiscal Note Analysis

The report requested of the Department of Commerce and Economic Development is an ambitious and complex undertaking. The fiscal note represents an estimate of the value of time and effort necessary to provide a useful level of accuracy and thoroughness. Major expenditures for Contractual Services are indicated, however, as much work as possible will be done in-house by employees of the DCED and CFEC.

S B

280

Introduced: 4/27/83  
Referred: Resources  
and Finance

1 IN THE SENATE

BY KFRTTULA

2 SENATE BILL NO. 280

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to discounts for land; and providing  
7 for an effective date."

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

9 \* Section 1. AS 38.05.055 is amended to read:

10 Sec. 38.05.055. AUCTION SALE PROCEDURES. Unless another method  
11 of sale is required under AS 38.05, under AS 38.07, or under AS 38.08,  
12 the sale of state land shall be made at public auction to the highest  
13 qualified bidder as determined by the director. A bidder must appear  
14 in person at the auction unless medical reasons, attendance at school,  
15 or military service outside the state prevent attendance. A bidder  
16 may be represented by an attorney or agent at the auction if the land  
17 offered for disposal is commercial, industrial, or agricultural land.  
18 An aggrieved bidder may appeal to the commissioner within five days  
19 after the sale for a review of the director's determination. The sale  
20 shall be conducted by the director [OR HIS REPRESENTATIVE,] and at the  
21 time of sale the successful bidder shall deposit an amount equal to  
22 five percent of the purchase price [, OR IF THE PURCHASER ELECTS TO  
23 USE LAND DISCOUNTS GRANTED UNDER AS 38.05.058, FIVE PERCENT OF THE  
24 AMOUNT BID AFTER DEDUCTION OF THE DISCOUNT]. The director [OR HIS  
25 REPRESENTATIVE] shall immediately issue a receipt containing a de-  
26 scription of the land or property purchased, the price bid, the amount  
27 deposited, and the amount of any discount allowed. The receipt shall  
28 be acknowledged in writing by the bidder.

29 \* Sec. 2. AS 38.05.057(a) is amended to read:

1           (a) The commissioner may dispose of land, including land limited  
2 to use for agricultural purposes, by lottery. The purchase price of  
3 land sold by lottery shall be the fair market value of the land as  
4 determined by the commissioner. The commissioner may sell land by  
5 lottery for less than the fair market value of the land on a deter-  
6 mination [IF HE DETERMINES] that scarcity of land for private use in  
7 the area of the land to be sold has resulted in unrealistic land  
8 values. The commissioner shall consult with the assessor of a munic-  
9 ipality before determining the purchase price for land that is located  
10 in the municipality and that is to be sold under this section. [BE-  
11 FORE THE COMMISSIONER DETERMINES THE PURCHASE PRICE FOR LAND WHICH IS  
12 LOCATED IN A MUNICIPALITY AND WHICH IS TO BE SOLD UNDER THIS SECTION,  
13 HE SHALL CONSULT WITH THE ASSESSOR OF THE MUNICIPALITY.] The lottery  
14 shall be conducted in public by the commissioner [OR HIS REPRESENTA-  
15 TIVE]. An applicant may not be selected to purchase land unless the  
16 applicant [HE] is present on the date and at the place that the lot-  
17 tery is conducted unless medical reasons, attendance at school, or  
18 military service outside the state prevent attendance. An applicant  
19 may be represented by an agent on the day of the lottery if the land  
20 offered for sale is commercial, industrial, or agricultural land. On  
21 the day of the lottery a purchaser selected by lot shall deposit an  
22 amount equal to five percent of the purchase price [, OR IF THE PUR-  
23 CHASER ELECTS TO USE LAND DISCOUNTS GRANTED UNDER AS 38.05.058, FIVE  
24 PERCENT OF THE PURCHASE PRICE AFTER DEDUCTION OF THE DISCOUNT.]

25 \* Sec. 3. AS 38.05.057(b) is amended to read:

26           (b) To qualify to participate in a lottery under (a) of this  
27 section, an applicant [A POTENTIAL PURCHASER] shall

28                   (1) at the time of application have attained the age of 18;

29                   (2) submit proof, as required by regulation, that the

1 applicant [HE] has been a resident of the state for not less than one  
2 year immediately preceding the date the [HIS] application was sub-  
3 mitted; and

4 (3) certify that the applicant [HE] has not purchased land  
5 at a sale by lottery in the state within eight years immediately  
6 preceding the sale date.

7 \* Sec. 4. AS 38.05.058(a) is repealed and reenacted to read:

8 (a) The commissioner shall grant an eligible person discounts on  
9 the purchase price of land sold under this chapter which is not class-  
10 ified for commercial or industrial use. To be eligible for a discount  
11 of 50 percent on each payment established by the commissioner, a  
12 person must be a resident of the state for the year preceding the  
13 payment. The portion of an annual payment that exceeds 10 percent of  
14 the purchase price of the land is eligible for discount only under (g)  
15 of this section. Discounts granted under this section may not exceed  
16 50 percent of the total purchase price of the land or \$25,000, which-  
17 ever amount is less. except that discounts granted to an eligible  
18 veteran under this section may not exceed 75 percent of the total  
19 purchase price of the land or \$37,500, whichever amount is less.  
20 Discounts may be used by an eligible veteran to purchase land offered  
21 at a restricted sale under AS 38.05.067.

22 \* Sec. 5. AS 38.05.058(b) is amended to read:

23 (b) To be eligible for [A] discounted payments [PURCHASE PRICE]  
24 under (a) of this section, a person shall

25 (1) have been physically present in the state for the  
26 12-month period before the date payment is due for the year [SALE],  
27 except for brief intervals, military service, attendance at an educa-  
28 tional or training institution or for absence for good cause;

29 (2) maintain a place of residence in the state;

*delete  
redundant*

1 [(3) BE REGISTERED TO VOTE IN THE STATE;]

2 (4) not have claimed residence in any other state for any  
3 purpose during the 12-month period immediately before the date payment  
4 is due for the year [SALE];

5 (5) show by all attending circumstance an intent to main-  
6 tain residence in the state [THAT HIS INTENT IS TO MAKE ALASKA HIS  
7 CONTINUOUS RESIDENCE]; and

8 (6) have attained the age of 18 at the date of sale.

9 \* Sec. 6. AS 38.05.058(c) is amended to read:

10 (c) A person seeking to establish and maintain eligibility for  
11 discounts [A DISCOUNT] under this section shall present proof meeting  
12 the criteria set out in (b) of this section to the director. A person  
13 who submits information to the director under this section knowing it  
14 to be false is guilty of a felony and, upon conviction, is punishable  
15 by imprisonment for not more than five years, or by a fine of not more  
16 than \$50,000, or by both.

17 \* Sec. 7. AS 38.05.058(d) is amended to read:

18 (d) A person is entitled to discounts on not more than one  
19 [DISCOUNT ON THE] purchase [PRICE] of land under this section in a  
20 [HIS] lifetime. Discounts [A DISCOUNT] granted under this section may  
21 be applied only to the acquisition of surface rights to state land.  
22 Discounts [A DISCOUNT] may not be applied to costs such as survey  
23 costs, road development costs, utility assessments, or other costs as  
24 determined by the director which are reimbursable to the state. In  
25 all cases, a cash down payment of at least five percent of the [DIS-  
26 COUNTED] purchase price of the land shall be made at the time of sale.

27 \* Sec. 8. AS 38.05.058 is amended by adding a new subsection to read:

28 (g) A purchaser may apply to the commissioner for a discount on  
29 the portion of an annual payment that exceeds 10 percent of the pur-

1        chase price of the land upon request by the purchaser within 11 years  
2        after the purchase. The commissioner shall grant the discount if the  
3        payment would have been eligible for the discount had it been made in  
4        amounts and at times that would have met the requirements of (a) of  
5        this section.

6        \* Sec. 9. This Act takes effect immediately in accordance with AS 01.-  
7        10.070(c).

③ Make effective date  
April 1, 1983 (date old  
program became ineffective).

④ Sec. 8 ~~would~~ (which would  
remove the disincentive for  
early pay-off of loans by  
applying for a discount <sup>as a refund</sup> after  
the normal 10-yr. repayment  
period has lapsed) may be  
a problem. Would the refunds  
need to be a legislative  
appropriation?

⑤ Veterans benefits are  
less in this program than  
in the original.

Note: most parcels range from \$10-30,000  
undiscounted.

~~Boyer~~ Sandra

## ① administrative burden on D.N.F

- <sup>would require</sup> readjusting current billings
- most people opt for quarterly payment
- want to avoid year-by-year accounting 'cause would have large fiscal impact.
- administering 20,000 contracts now

\* suggest: at time enter into contract fill out "intent to stay" form. Base 10<sup>(?)</sup> years of payments on resident status. At end of 10 years, have to prove were in state whole time, & pay back if weren't. Enforceable, 'cause DNR would still have title.

② be specific that allowed only 1 discount, under either this program or old program.

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

DON GILMAN, Kenai Peninsula Borough Mayor, FRANCIS BRYMER, Borough Clerk, PHILLIP WARING, Borough Planning Director, and ELROY BARTON, Finance Director, Appellants, v. HARRY V. MARTIN, LARRY C. ZERVOS, GARLAND DEAN THOMPSON and HARRY V. MARTIN, a Kenai Peninsula Borough Assemblymember, Appellees.

No. 5937

OPINION

[No. 2652 - April 1, 1983]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Kenai, Ralph E. Moody, Judge.

Appearances: Adrienne P. Fedor, Robert C. Erwin, Erwin, Smith & Garnett, Anchorage, and Andrew Sarisky, Kenai Borough Attorney, Soldotna, for Appellants. Carl A. Larson, Kenai, for Appellee. Robert M. Maynard, Assistant Attorney General, Wilson L. Condon, Attorney General, Juneau, for Amicus Curiae State of Alaska.

Before: Burke, Chief Justice, Rabinowitz, and Compton, Justices, and Johnstone, Superior Court Judge.\* [Connor and Matthe Justices, not participating.]

COMPTON, Justice. RABINOWITZ, Justice, dissenting in part.

\* Johnstone, Superior Court Judge, sitting by assignment made pursuant to Alaska R. App. P. 106(a).

This appeal concerns the validity of the land sale lottery ordinance enacted by the Kenai Peninsula Borough ("the Borough"). The superior court entered a declaratory judgment that the ordinance authorizing the lottery violates the equal protection clauses of the United States and Alaska Constitutions because it requires participants to have been residents of the Borough for one year preceding their applications and because participants may file an unlimited number of applications for any parcel of land upon payment of a nonrefundable \$10.00 fee for each application. The superior court further declared that the ordinance violates the statute prohibiting certain forms of gambling in the state.

We conclude that the ordinance does not violate the statute prohibiting unlawful gambling. We agree with the superior court, however, that the ordinance is unconstitutional insofar as it requires participants to have been residents of the Borough for one year preceding their applications. We also conclude that the ordinance is unconstitutional to the extent that it grants a five percent reduction in the sale price of a parcel for each year of residency in the Borough, up to a maximum reduction of fifty percent. This provision violates the equal protection clause of the United States Constitution for the same reasons that the initial distribution plan for the permanent fund dividend

program was held unconstitutional in Zobel v. Williams,  
\_\_\_\_ U.S. \_\_\_\_, 72 L. Ed. 2d 672 (1982) (Zobel III).

I. FACTUAL AND PROCEDURAL BACKGROUND

In September 1979, the Kenai Peninsula Borough Assembly enacted Ordinance 79-53, which is entitled, "Providing for the Disposal of Certain Parcels of Borough Selected Lands by Lottery Sale." This ordinance authorizes the sale by lottery of certain Borough lands at fair market value to persons who file applications within ten days of the lottery. Section 4(3) of the ordinance provides that, in order to be eligible for the lottery, the applicant must be a resident of the Borough for at least one year immediately prior to the sale. Section 3(7) provides that there shall be a five percent reduction in the sale price "for each full year of Borough residence up to a maximum credit of 50%." No limitation is placed on the number of applications that may be filed by a person for a particular parcel, so long as a nonrefundable \$10.00 fee is paid for each application.

The first lottery sale was scheduled to take place in Kenai, Alaska, on October 20, 1979. Harry Martin, a member of the Kenai Peninsula Borough Assembly, objected to the sale because he believed Ordinance 79-53 to be unconstitutional. On October 4, 1979, Martin filed a complaint in the superior court against the Mayor, Clerk, Planning

Director and Finance Director of Kenai Peninsula Borough (hereinafter collectively referred to as "the Borough"). Martin sought a declaratory judgment that the ordinance is invalid, as well as an injunction against the scheduled lottery sale. On October 19, 1973, Martin amended his complaint to include two additional plaintiffs, Larry Zervos and Garland Thompson, neither of whom was eligible to participate in the scheduled lottery sale under the provisions of the ordinance.

A preliminary injunction was issued, restraining the Borough from holding the lottery sale until the constitutional issues raised by the plaintiffs were adjudicated on the merits. The parties subsequently filed cross-motions for summary judgment. The only significant issue raised in these motions that has not already been referred to is the argument made by the Borough that none of the plaintiffs has standing to maintain this action.

The superior court determined that there were no material issues of fact in dispute and, therefore, the case could properly be resolved by summary judgment. The court concluded that the plaintiffs have standing to maintain the action. On the merits, the court concluded that the one-year residency requirement bears no rational relationship to the stated objectives of the ordinance and thus the residency requirement violates the equal protection clause of

the fourteenth amendment to the United States Constitution, as well as the equal protection clause of article I, section 1, of the Alaska Constitution. The court further concluded that the ordinance violates the statute prohibiting certain forms of gambling in Alaska because it establishes a lottery. The court accordingly enjoined the Borough from enforcing or implementing the ordinance.

The Borough appeals from this judgment. It contends that the superior court erred in determining that the plaintiffs have standing to maintain the action and further erred in determining that the ordinance is invalid in any respect.

## II. STANDING

We first consider the argument of the Borough that none of the plaintiffs has standing to maintain this action. Harry Martin has been a resident of Kenai for a substantial period of time and was a member of the Kenai Peninsula Borough Assembly at the time Ordinance 79-53 was enacted. Martin contends that he has standing both in his individual capacity and in his representative capacity as an elected official. The superior court concluded that Martin has no standing as an individual, presumably on the basis that Martin is eligible to participate in the lottery sale and thus has not sustained any "injury in fact" from the enactment of the allegedly unconstitutional ordinance. The court

concluded, however, that Martin does have standing as an elected official. The court stated, "Having taken an oath to uphold the Constitution of the State of Alaska and the Constitution of the United States, plaintiff Martin has a duty and ethical obligation to challenge any ordinance passed by the assembly of which he was a member and which he opposed."

We need not review the court's conclusion that Martin has standing as an elected official because we hold, contrary to the superior court, that he has standing as an individual. In Moore v. State, 553 P.2d 8 (Alaska 1976), we addressed the issue of standing:

[T]he concept of standing has been interpreted broadly in Alaska, favoring increased accessibility to judicial forums. In Coghill v. Boucher, 511 P.2d 1297, 1303 (Alaska 1973), we noted that "[i]n the past . . . this court has departed from a restrictive interpretation of the standing requirement."

Whether a party has standing to obtain judicial resolution of a controversy depends on whether the party has a sufficient personal stake in the outcome of the controversy. In our recent decision of Wagstaff v. Superior Court, Family Division, 535 P.2d 1220, 1225 (Alaska 1975), we described this requirement in terms of "injury-in-fact," and explained that its purpose is to assure the adversity which is fundamental to judicial proceedings.

553 P.2d at 23 (footnotes omitted).

Martin has been a resident and taxpayer of Kenai for many years. Prior to the issuance of the injunction

prohibiting the Borough from conducting the lottery sale, the Borough had spent over \$36,000.00 in administrative and publishing costs for the proposed lottery, at which approximately 825 acres were to be sold. Any resident or taxpayer of a municipality has a sufficient interest in the disposition of a significant number of acres of the municipality's land to seek a declaratory judgment as to the validity of the disposition. Thus, as a resident and taxpayer of Kenai, Martin has a sufficient personal stake in the outcome of this controversy to assure the adversity that is fundamental to judicial proceedings.

The standing of plaintiffs Larry Zervos and Garland Thompson is obvious. Garland Thompson has resided in the Kenai Peninsula Borough since August 20, 1979. He would have been ineligible to participate in the lottery sale scheduled for October 20, 1979, because at that time he had not resided in the Borough for one year. Thompson challenges the provision of the ordinance requiring one-year residence in the Borough. Thompson has sustained an "injury in fact" from this residency requirement and thus has a sufficient personal stake in the outcome of the controversy.

Larry Zervos has resided in Anchorage since December 4, 1978. He would have been ineligible to participate in the lottery sale scheduled for October 20, 1979, because he had not resided in the Kenai Peninsula Borough for one year at that time. Zervos challenged the provision in the

ordinance requiring residence in the Borough. As with Thompson, it is apparent that Zervos has sustained an "injury in fact" from this residency requirement and thus has a sufficient personal stake in the outcome of the controversy.

### III. CRIMINAL LOTTERY

We next address whether Ordinance 79-53 is invalid on the basis that it violates the statute prohibiting certain forms of gambling in the state. AS 11.66.200 states in part: "(a) A person commits the offense of gambling if he engages in unlawful gambling." (Emphasis added.) "Unlawful" is defined in AS 11.66.280(11) as "not specifically authorized by law." AS 11.66.280(2) defines gambling as follows:

"[G]ambling" means that a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome.

The superior court concluded that Ordinance 79-53 violated AS 11.60.010 because the ordinance set up a lottery. The court stated:

By payment of the consideration of \$10.00, an applicant may make unlimited filings on a particular parcel of property. Whether or not the particular applicant is selected is purely chance, and the prize that he or she gains by that selection is the right or option,

which is a valuable property right, to purchase property from the borough.

Even assuming that the superior court correctly decided that the land sale lottery constitutes a form of gambling,<sup>1</sup> we conclude that the lottery does not violate AS 11.60.010 because it is specifically authorized by law and is, thus, not "unlawful gambling." AS 29.48.260(d) specifically states, "The assembly or council [of a municipality] may by ordinance establish a formal procedure for the acquisition from the state of land or rights in land and the disposal of the land or rights in land, in which event the [other] provisions of . . . this section do not apply." The Kenai Peninsula Borough has, in the exercise of its statutory powers, authorized the sale by lottery of land acquired from the state in its enactment of Ordinance 79-53.

In accordance with article X, section 1, of the Alaska Constitution, AS 29.48.310 provides that "[a] liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title." AS 29.48.320 states that "[u]nless otherwise limited by law, boroughs and

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1. Arguably, the lottery does not constitute gambling as defined in AS 11.66.280(2). The statute only specifies that a person engages in gambling when he or she "stakes or risks something of value." (Emphasis added.) When a person pays a \$10.00 deposit, accompanying each application, to participate in the lottery, he or she does not "stake" or "risk" something of value; the person completely divests himself or herself of any interest in the fee paid. In the words of the Ordinance, the deposit is "nonrefundable" and therefore not at risk. Ordinance 79-53(4)(1).

cities have and may exercise all powers and functions necessary or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title." In view of the permissibility of sales of state land by lottery,<sup>2</sup> we conclude that the Kenai Peninsula Borough properly exercised its "fairly implied" power to authorize the sale by lottery of its lands acquired from the state.

We further conclude that Ordinance 79-53 is not invalid even though it arguably conflicts with AS 11.60.010. As we stated in Johnson v. State, 527 P.2d 37, 43 (Alaska 1974):

A municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with a state statute. The question rests on whether the exercise of authority has been prohibited to municipalities. The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantive effect if the other is to be accorded the weight of law.

Accord City of Kodiak v. Jackson, 584 P.2d 1130, 1132 (Alaska 1978); Johnson v. City of Fairbanks, 583 P.2d 181, 184 (Alaska 1978); Simpson v. Municipality of Anchorage, 635

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2. AS 38.05.057 specifically authorizes the state to dispose of land by lottery: "The commissioner may dispose of land, including land limited to use for agricultural purposes, by lottery."

P.2d 1197, 1200 (Alaska App. 1981). Municipalities have not been expressly prohibited from authorizing land sale lotteries and Ordinance 79-53 is not irreconcilable with AS 11.60.010; the statute only prohibits gambling not authorized by law and Ordinance 79-53 is a law authorizing land sale lotteries. We thus conclude that the Borough's land sale lottery does not violate Alaska's statute prohibiting unlawful gambling.

#### IV. RESIDENCY REQUIREMENT

Ordinance 79-53 provides that only residents of the Kenai Peninsula Borough are eligible to participate in the land lottery. The Borough contends that the superior court erred in concluding that this requirement violates the equal protection clauses of the United States and Alaska Constitutions.<sup>3</sup> We disagree.

The parties mistakenly address this issue in terms of whether or not the requirement of residency in the Borough impermissibly burdens the constitutional right to interstate or intrastate travel. The right to interstate or intrastate travel is impinged upon only when a governmental entity creates distinctions between residents based upon the

---

3. Section 1 of the fourteenth amendment to the United States Constitution provides, "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." Section 1 of article I of the Alaska Constitution states that "all persons are equal and entitled to equal rights, opportunities, and protection under the law."

duration of their residency, and not when distinctions are created between residents and nonresidents. In McCarthy v. Philadelphia Civil Service Commission, 424 U.S. 645, 47 L. Ed. 2d 366 (1976), the United States Supreme Court discussed its prior decisions concerning the right to interstate travel and stated:

Neither in those cases, nor in any others, have we questioned the validity of a condition placed upon municipal employment that a person be a resident at the time of his application. In this case, appellant claims a constitutional right to be employed by the city of Philadelphia while he is living elsewhere. There is no support in our cases for such a claim.

We have previously differentiated between a requirement of continuing residency and a requirement of prior residency of a given duration. Thus in Shapiro, [394 U.S. 618, 636, 22 L. Ed. 2d 600, 616 (1969)], we stated: "[T]he residence requirement and the one-year waiting-period requirement are distinct and independent prerequisites." And in Memorial Hospital, [415 U.S. 250, 255, 39 L. Ed. 2d 306, 313 (1974)], quoting Dunn, [405 U.S. 330, 342 n.13, 31 L. Ed. 2d 274, 284 n.13 (1972)], the Court explained that Shapiro and Dunn did not question the "'validity of appropriately defined and uniformly applied bona fide residence requirements.'"

424 U.S. at 646-47, 47 L. Ed. 2d at 368-69 (emphasis in original) (footnote omitted).

This does not mean that the residency requirement is free from scrutiny under the equal protection clauses of the United States and Alaska Constitutions; it only means

that the requirement is not subject to the strict scrutiny applied when a fundamental right, such as some aspects of the right to interstate travel, is at issue.<sup>4</sup> The appropriate standard by which to measure the constitutionality of the residency requirement is, at a minimum, that which we announced in Isakson v. Rickey, 550 P.2d 359 (Alaska 1976): "[T]he classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."" 550 P.2d at 362 (quoting State v. Wylie, 516 P.2d 142, 145 (Alaska 1973)). Article VIII, section 17, of the Alaska Constitution states, "Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation." This constitutional provision may require a more stringent review of the Borough's ordinance. We need not decide the issue, however, because it is apparent that the ordinance does not pass even the lower standard of review.

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4. Not all statutes burdening the right to interstate travel are measured by the strict scrutiny standard. Sosna v. Iowa, 419 U.S. 393, 42 L. Ed. 2d 532 (1975).

The stated purpose of the land lottery is to sell "certain parcels of Borough selected lands . . . to adjoining property owners or to leaseholders so as to resolve existing controversies regarding access and title." Kenai Peninsula Borough Ordinance 79-53. At the time of the scheduled lottery sale, fifty-six percent of the privately owned parcels of property located within the Borough were owned by persons who were not residents of the Borough. Accordingly, resident and nonresident landowners of the Borough are not treated equally, even though they are similarly situated with reference to the sale of Borough lands to "adjoining property owners or to leaseholders so as to resolve existing controversies regarding access and title." The plaintiffs correctly argue that denying nonresidents, who own the majority of property within the Borough, the right or opportunity to purchase contiguous parcels or other parcels of land offered for sale by the Borough does not bear a substantial relation to the purpose of the ordinance.

The Borough contends that its discrimination against nonresidents in Ordinance 79-53 is not unconstitutional. The land subject to sale under the ordinance is part of the 155,780 acres received from the state in fulfillment of the general grant land entitlement of the

Borough pursuant to AS 29.18.201.<sup>5</sup> 7 Borough states that one of the purposes of the state's grant of the land to it was to permit the Borough to sell the land to its residents. It concludes that all boroughs may limit the sale of land received from the state to residents of the boroughs.

The Borough's analysis might have been worthy of consideration if the Borough had stated in Ordinance 79-53 that the purpose of the lottery was to benefit its residents.<sup>6</sup> The ordinance, however, does not state this. Instead, it specifically indicates that the purpose of the lottery is to sell selected parcels of land to "adjoining property owners or to leaseholders so as to resolve existing controversies regarding access and title." Although governmental entities need not "deal alike with all . . . classes, or . . . strike at all evils at the same time or in the same

---

5. AS 29.18.201 provides, "The general grant land entitlement of each of the municipalities in this section is the amount set out opposite each: . . . (7) Kenai Peninsula Borough -- 155,780 acres."

6. We note, however, that "discrimination on the basis of residence must be supported by a valid . . . interest independent of the discrimination itself. Zobel III, \_\_\_ U.S. \_\_\_, \_\_\_, 72 L. Ed. 2d 672, 684 (Brennan, J., concurring). Furthermore, as we indicated in Lynden Transport, Inc. v. State, 532 P.2d 700, 711 (Alaska 1975), "Benefiting [the] economic interests of residents over nonresidents is not a purpose which may constitutionally vindicate discriminating legislation . . . ." We do not hold that residency requirements are per se invalid. At the least, however, when a purpose is stated for the requirement, the purpose must be a valid one that is substantially furthered by the classification.

way," Semler v. Oregon State Board of Dental Examiners, 294 U.S. 608, 610, 79 L. Ed. 1086, 1089 (1935), underinclusive classifications violate the equal protection clause if the classification is "clearly wrong, [and] a display of arbitrary power, [rather than] an exercise of judgment." Matthews v. De Castro, 429 U.S. 181, 185, 50 L. Ed. 2d 389, 394 (1976). Accord Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 466, 66 L. Ed. 2d 659, 670 (1981); McClain v. City of South Pasadena, 318 P.2d 199, 207 (Cal. App. 1957); L. Tribe, American Constitutional Law § 16-4, at 997 (1978). In view of the avowed purpose of the sale to "resolve existing controversies regarding access and title" to properties, the decision of the Borough to restrict the sale of its land to Borough residents -- and thereby assist only forty-four percent of the landowners in resolving existing controversies regarding access and title -- is a "display of arbitrary power," rather than "an exercise of judgment." The classification is unreasonable and does not "'rest upon some ground of difference having a fair and substantial relation to the [avowed] object of the legislation, so that all persons similarly circumstanced [are] treated alike.'" Isakson v. Rickey, 550 P.2d at 362 (quoting State v. Wylie, 516 P.2d at 145). We therefore agree with the superior court that Ordinance 79-53 is unconstitutional to the extent

it requires participants to have been residents of the Borough at the time of their applications.<sup>7</sup>

V. REDUCTION IN PRICE

The last issue we consider is the constitutionality of the provision in Ordinance 79-53 that provides for a five percent reduction in the sale price of a parcel for each year of residency in the Borough, up to a maximum

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7. Having determined that the requirement that participants be residents of the Borough is unconstitutional, we necessarily conclude that the one-year durational residency requirement, intended to assure bona fide residence, is also unconstitutional. We note that if a residency requirement is constitutional, "length of residence may . . . be used to test the bona fides of citizenship." Zobel III, \_\_\_ U.S. at \_\_\_, 72 L. Ed. 2d at 684 (Brennan, J., concurring). The duration of residence required, however, must be reasonable and bear a substantial relation to the governmental purpose sought to be achieved. Isakson v. Rickey, 550 P.2d 359, 362 (Alaska 1976).

reduction of fifty percent in the sale price.<sup>8</sup> This issue was not raised by the parties in their cross-motions for summary judgment, nor was it considered by the superior court when it rendered its decision. Under these circumstances, we normally would not consider it. E.g., Anchorage Asphalt Paving Co. v. Lewis, 629 P.2d 65, 70 (Alaska 1981); Hill v. Ames, 606 P.2d 388, 390 (Alaska 1980); Jeffries v. Glacier State Telephone Co., 604 P.2d 4, 7 (Alaska 1979). This is not, however, a typical case. Since the superior court entered its judgment, the United States Supreme Court

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8. We summarily reject the plaintiffs' argument that Ordinance 79-53 violates the equal protection clauses of the United States and Alaska Constitutions because participants may file an unlimited number of applications for any parcel of land upon payment of a nonrefundable \$10.00 fee for each application. The plaintiffs contend that this creates a classification based upon wealth. Assuming arguendo that this is so, it is only necessary that this aspect of the Ordinance be "reasonable, not arbitrary, and . . . rest upon some ground of difference having a fair and substantial relation to the object of the legislation." Isakson v. Rickey, 550 P.2d at 362 (quoting State v. Wiley, 516 P.2d at 145). The object of Ordinance 79-53 is to sell parcels of land by lottery. Permitting participants to file an unlimited number of applications upon payment of a \$10.00 fee for each application bears a fair and substantial relationship to this object. The Borough is entitled to defray the costs of the lottery by charging a fee for applications. It is within the discretion of the Borough whether to charge a greater fee and permit participants to file only one application or to charge only \$10.00 per application and permit participants to file an unlimited number of applications. The Borough's decision to do the latter does not violate any principle of equal protection.