

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86/2

2897 SRES HB 320 - HB 376 7/87

HB

320

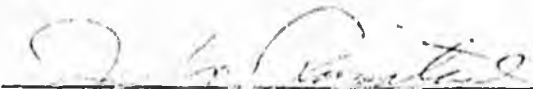
LETTER OF INTENT
FOR CSHB 320
January 19, 1984


The House Resources Committee has considered CSHB 320, providing for approval of the Agreement between the State of Alaska and Tesoro Alaska Petroleum Company for the sale of a portion of Alaska's royalty oil. This Agreement must be approved by the legislature under the provisions of AS 38.06.055(a) which provides that "the commissioner of natural resources may not enter into a sale, exchange, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas under AS 38.05.183 without the prior approval of the legislature."


Section 19.1 of the Agreement provides that the Agreement may be "supplemented, amended or modified at any time, but only by written instrument duly executed by the parties to this Agreement." In making any such changes to the Agreement pursuant to this section, the Commissioner would be acting on behalf of the State of Alaska as one of the parties to the Agreement.

The Committee recognizes that a supplement, amendment, or modification of the Agreement could be a further "sale, exchange, or other disposition" within the meaning of AS 38.06.055(a). The Committee is also cognizant that pursuant to Section 20.1 of the Agreement, the Commissioner has the right to "grant" (consent to) an assignment of the Agreement.

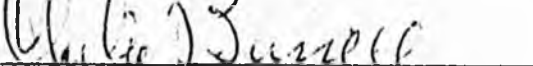
It is the intent of the Committee that it be understood that approval of CSHB 320 does not constitute prior approval of any supplement, amendment or modification or any assignment that would be a further "sale, disposition, exchange, or other disposition" within the meaning of AS 38.06.055(a) and that it is expected that any such action by the Commissioner must first be preceded by compliance with the procedures for obtaining the prior approval of the legislature.

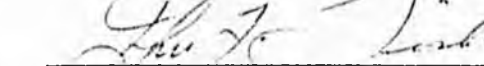

Representative John Ringstad
Co-Chairman, Resource Committee


Representative Dick Shultz
Co-Chairman, Resource Committee

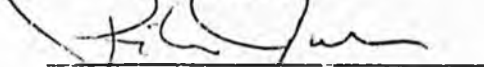
 (NO REC.)
Representative Rick Nehling
Vice-Chairman, Resource Committee

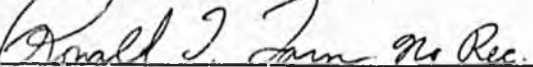
Representative John Cowdery
Member, Resource Committee


Representative Charlie Bussell
Member, Resource Committee


Representative John Liska
Member, Resource Committee

Representative Anthony Vaska
Member, Resource Committee


Representative Peter Goll
Member, Resource Committee


Representative Ronald Larson
Member, Resource Committee

adapted by Hansen 7/10/84

Resolution No.:
 Title:
 Sponsor: Rules Committee
 Requestor: Governor
 Date of Request: 4-4-83

FISCAL DETAIL
 Agency Affected: Natural Resources
 Program Category Affected: Management of Energy Resources
 BRU, Program or Subprogram(s) Affected: Oil and Gas Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Sharon L. Barton Phone: 465-2400
 Division: Commissioner's Office Date: 1-12-83

Approved by Commissioner: Wm J. Arnold, Deputy Date: 1/21/83
 Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 31, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which provides for legislative approval of a royalty oil contract between the state and Tesoro Alaska Petroleum Company for the sale of Cook Inlet royalty oil.

This contract is described in the findings entitled "Proposed Disposition of Royalty Oil, Tesoro Alaska Petroleum Company" issued by the Department of Natural Resources on February 22, 1983. Copies of these findings have been made available to the legislature and the public for review.


This contract is being submitted for legislative approval for two reasons. First, although this and the previous administration have consistently taken the position that the statutory requirement of legislative approval of royalty oil contracts is unconstitutional (AS 38.06.055), as a matter of comity I respect the legislature's desire to have a direct voice in major disposals of royalty oil. Therefore, this contract contains provisions requiring approval by the legislature before it becomes effective. Second, this bill would ratify the agreement for the sale of oil. This ratification would cure any procedural defect that may have occurred in the process of entering into this contract.

Although we believe that all necessary steps have been taken, the statutes and regulations governing the disposal of royalty oil represent often conflicting desires and goals, both procedural and substantive. For example, even if statutorily requiring legislative approval were constitutional, the present statutes provide, on the one hand, that the legislature is to approve the contract by enacting legislation (AS 38.06.055(a)), but, on the other hand, they also provide that a report of the Royalty Board

AGO 787137

"shall be submitted for legislative review at the time of [sic] resolution for legislative approval of a proposed disposition of royalty oil and gas is introduced in the legislature" (AS 38.06.070(c)). Since legislative approval is required anyway as a matter of contract, I believe it only prudent to present this contract for legislative approval and ratification at this time.

Sincerely,



Bill Sheffield
Governor

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LETTER OF INTENT
FOR CSHB 271
January 19, 1984

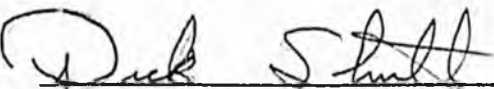
The House Resources Committee has considered CSHB 271, providing for approval of the Agreement between the State of Alaska and Tesoro Alaska Petroleum Company for the sale of a portion of Alaska's royalty oil. This Agreement must be approved by the legislature under the provisions of AS 38.06.055(a) which provides that "the commissioner of natural resources may not enter into a sale, exchange, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas under AS 38.05.183 without the prior approval of the legislature."


Section 19.1 of the Agreement provides that the Agreement may be "supplemented, amended or modified at any time, but only by written instrument duly executed by the parties to this Agreement." In making any such changes to the Agreement pursuant to this section, the Commissioner would be acting on behalf of the State of Alaska as one of the parties to the Agreement.

The Committee recognizes that a supplement, amendment, or modification of the Agreement could be a further "sale, exchange, or other disposition" within the meaning of AS 38.06.055(a). The Committee is also cognizant that pursuant to Section 20.1 of the Agreement, the Commissioner has the right to "grant" (consent to) an assignment of the Agreement.

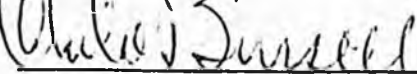
It is the intent of the Committee that it be understood that approval of CSHB 271 does not constitute prior approval of any supplement, amendment or modification or any assignment that would be a further "sale, disposition, exchange, or other disposition" within the meaning of AS 38.06.055(a) and that it is expected that any such action by the Commissioner must first be preceded by compliance with the procedures for obtaining the prior approval of the legislature.



Representative John Ringstad
Co-Chairman, Resource Committee


Representative Dick Shultz
Co-Chairman, Resource Committee

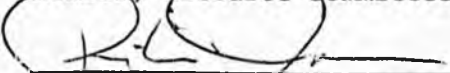

Representative Rick Uehling
Vice-Chairman, Resource Committee

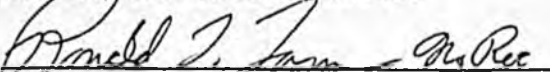
Representative John Cowdery
Member, Resource Committee


Representative Charlie Bussell
Member, Resource Committee


Representative John Liska
Member, Resource Committee

Representative Anthony Vaska
Member, Resource Committee


Representative Peter Goll
Member, Resource Committee


Representative Ronald Larson
Member, Resource Committee

adopted by House 2/16/84

REQUEST

Bill/Resolution No.: (S HB 371/F-18)
 Title: sale of Prudence Bay
royalty oil to Tesoro
 Sponsor: Rules Committee
 Requestor: Governor
 Date of Request: 4-19-83

FISCAL DETAIL

Agency Affected: Natural Resources
 Program Category Affected: Management of Energy Resources
 ERU, Program or Subprogram(s) Affected: Oil and Gas Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Sharon L. Barton Phone: 465-2400
 Division: Commissioner's Office Date: 1-12-84

Approved by Commissioner: Wm D Anna, Deputy Date: 1/12/84
 Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

April 14, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which provides for legislative approval of a royalty oil contract between the state and Tesoro Alaska Petroleum Company for the sale of Prudhoe Bay royalty oil.

This contract is described in the findings entitled "Proposed Disposition of Royalty Oil, Tesoro Alaska Petroleum Company" issued by the Department of Natural Resources on March 16, 1983. Copies of these findings have been made available to the legislature and the public for review.

This contract is being submitted for legislative approval for two reasons. First, although this and the previous administration have consistently taken the position that the statutory requirement of legislative approval of royalty oil contracts is unconstitutional (AS 38.06.055), as a matter of comity I respect the legislature's desire to have a direct voice in major disposals of royalty oil. Therefore, this contract contains provisions requiring approval by the legislature before it becomes effective. Second, this bill would ratify the agreement for the sale of oil. This ratification would cure any procedural defect that may have occurred in the process of entering into this contract.

Although we believe that all necessary steps have been taken, the statutes and regulations governing the disposal of royalty oil represent often conflicting desires and goals, both procedural and substantive. For example, even if statutorily requiring legislative approval were constitutional, the present statutes provide, on the one hand, that the legislature is to approve the contract by enacting legislation (AS 38.06.055(a)), but, on the other

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SENATE RESOURCES
STANDING COMMITTEE
Subcommittee on Fisheries
March 27, 1984
3:05 p.m.

Members Present: Senator Bob Mulcahy, Chairman
Senator Don Gilman
Senator Dick Eliason

COMMITTEE CALENDAR

SB 379 Amended Title: An Act establishing a
fisheries business tax credit.

HB 376 Amended Title: An Act amending the Limited
Entry Act; providing for landing permits;
and providing for an effective date.

WITNESS REGISTER

Rick Lauber
Pacific Seafood Processors
P.O. Box 1625, Juneau, Alaska
586-6366
Position Statement: Testified in favor of SB 379.

Sharman Haley
Commercial Fisheries Entry Commission
Department of Fish and Game
Pouch KB, Juneau, Alaska 99811
465-4081
Position Statement: Explained HB 376.

Norm Cohen, Special Assistant II
Alaska Department of Fish and Game
P.O. Box 3-2000, Juneau, Alaska 99802
465-4100
Position Statement: Testified in favor of CSHB 376.

Greg Baker, Director of Fisheries Enhancement
Department of Commerce and Economic Development
Pouch EE, Juneau, Alaska 99811
465-2162
Position Statement: Testified regarding SB 379.

Norm Staton, Special Assistant to the Commissioner
Department of Revenue
Pouch S, Juneau, Alaska 99811
465-2300
Position Statement: Commented on problems with SB 379.

Steve Kettel
Budget and Audit Division
Department of Revenue
Pouch S, Juneau, Alaska 99811
465-2300

Position Statement: Commented on problems with SB 379.

PREVIOUS ACTION

SB 379 No previous action to record.
HB 376 Please refer to House Resources Committee
action dated prior to 06/13/83.

ACTION NARRATIVE

TAPE#1 for 03/27/84, SIDE 1.

Recording
Number 004

The meeting of the Senate Resources Subcommittee on Fisheries was called to order at 3:05 p.m. by Senator Mulcahy, Chairman. All members were present.

Number 014

The first bill on the agenda was SB 379.

Number 015

Rick Lauber, Pacific Seafood Processors, spoke in favor of SB 379. He offered suggestions such as allowing capital construction as well as equipment to qualify for a credit. Also possibly include new product forms of fully utilized species as well as developing species. Developing species has a self limiting factor in that once it becomes developed there are no more credits available. Less than 5 years would not be appropriate.

Number 213

The next bill to be taken up by the Committee was CSHB 376 (RES) am.

Number 219

Sharman Haley, Commercial Fisheries Entry Commission, stated that the bill addresses two subjects: creation of Landing Permits and various amendments to the Limited Entry Act. She then went through the bill, section by section, for the committee and explained the reasons for them. She said that creation of Landing Permits will keep the state and the federal government from getting into a dispute over high seas trawlers. She also explained CFEC's proposed amendments and the amendment

proposed by David Snyder of Dillingham.

SIDE 2.

Number 119

Norm Cohen, Alaska Dept. of Fish and Game, spoke in favor of CSHB 376 (RES) am. He stated that the Federal Management plan allows 2 trollers to fish in the Federal Conservation Zone, but the state of Alaska will not allow the trollers to land their fish in Alaska. The Attorney General's office recommends this legislation to avoid problems with the Feds.

Number 254

Chairman Mulcahy brought up SB 379 again.

Number 257

Greg Baker, Director of Fisheries Enhancement, Dept. of Commerce and Economic Development, is generally in favor of a bill like this. There are two general categories of issues in this bill. One category is technical questions such as carry-backs, carry-forwards, sunset clause, etc. He has no problems with these, but feels that the legislation should state what it wants. The simpler the better. The other category is his main concern. This is clarification as to what the bill is trying to accomplish. Revenue predicts that there will be \$7 million available annually. Should there be definition as to what kinds of investments qualify, and should bottom-fish species not shell fish species be specified. Perhaps list the species.

Number 371

Norm Staton, Special Assistant to Commissioner Heath, Dept. of Revenue, and Steve Kettel, Budget and Audit Division, Dept. of Revenue, see problems in implementing what the intent is. They are unsure as to the intent and to adopt regulations the intent needs to be clear. They gave some statistics that showed that floaters are moving faster than shore based operations in the bottom-fish industry.

Number 466

Chairman Mulcahy recessed the hearing until 3:00 p.m. March 29, 1984. The hearing recessed at 4:32 p.m.

SENATE RESOURCES
STANDING COMMITTEE
Subcommittee on Fisheries
March 29, 1984
3:07 p.m.

Members Present: Senator Bob Mulcahy, Chairman
Senator Don Gilman
Senator Dick Eliason

COMMITTEE CALENDAR

SB 379 Amended Title: An Act establishing a
fisheries business tax credit.

SB 391 Amended Title: An Act relating to fees for,
sales of, and collection of fees for sport
fishing and hunting licenses and commercial
fishing crewmember licenses.

SB 422 Amended Title: An Act amending the Limited
Entry Act.

HB 376 Amended Title: An Act amending the Limited
Entry Act; providing for landing permits;
and providing for an effective date.

WITNESS REGISTER

Tom Koester, Assistant Attorney General
Department of Law
Pouch K, Juneau, Alaska 99811
465-3600
Position Statement: Testified regarding HB 376.

Sharman Haley
Commercial Fisheries Entry Commission
Department of Fish and Game
Pouch KB, Juneau, Alaska 99811
465-4081
Position Statement: Testified regarding HB 376 and SB 422.

Margot Knuth, Assistant Attorney General
Department of Law
Pouch K, Juneau, Alaska 99811
465-3600
Position Statement: Answered questions regarding HB 376.

Norm Staton, Special Assistant to the Commissioner
Department of Revenue
Pouch S, Juneau, Alaska 99811
465-2300

Position Statement: Testified regarding SB 379.

Steve Kettel
Budget and Audit Division
Department of Revenue
Pouch S, Juneau, Alaska 99811
465-2300

Position Statement: Testified regarding SB 379.

Rick Lauber
Pacific Seafood Processors
P.O. Box 1625, Juneau, Alaska
586-6350

Position Statement: Testified regarding SB 379.

Martin Richard, Director
Division of Public Services
Department of Revenue
Pouch SA, Juneau, Alaska 99811
465-2393

Position Statement: Testified regarding SB 391.

PREVIOUS ACTION

SB 379	Please refer to Senate Resources Subcommittee on Fisheries minutes dated 03/27/84.
SB 391	No previous action to record.
SB 422	No previous action to record.
HB 376	Please refer to Senate Resources Subcommittee on Fisheries minutes dated 03/27/84. Please refer to House Resources Committee action dated prior to 06/13/84.

ACTION NARRATIVE

TAPE#2 for 02/29/84, SIDE 1.
Recording
Number 004 Senator Mulcahy, Chairman of the Senate Resources Subcommittee on Fisheries called the hearing back to order at 3:07 p.m. after a recess. All members were present.

Number 012 The first bill on the agenda was CSHB 376 (RES) am.

Number 018 Tom Koester, Assistant Attorney General, explained the problem that brought about the Landing Permit legislation and how the crab

fishery relates.

Chairman Mulcahy called Sharman Haley of the Entry Commission to answer the Committee's questions on section 11.

Number 189

Sharman Haley of the Commercial Fisheries Entry Commission answered questions and explained the purpose of section 11.

Number 248

Margot Knuth, Assistant Attorney General, answered Senator Eliason's questions concerning lawsuits.

Senator Gilman moved the Commercial Fisheries Entry Commission's amendments. There was no objection.

Senator Eliason moved the amendment proposed by David Snyder of Dillingham. There was no objection.

Number 309

Senator Eliason moved to delete section 11. There was no objection.

Number 311

Senator Gilman moved that a Senate Committee Substitute be prepared and moved from the subcommittee with individual recommendations. There was no objection.

Number 313

The Committee then took up SB 422.

Number 319

Sharman Haley, Commercial Fisheries Entry Commission, stated that this bill is additional clean-up of the Limited Entry Act since HB 376 was introduced last year. She explained the sections of the bill and the amendment proposed by CFEC.

Senator Gilman moved CFEC's amendment. There was no objection.

Senator Mulcahy suggested combining CSHB 376 (RES) am and SB 422.

Senator Gilman moved the amendment proposed by the Attorney General's office. There was no objection.

Number 425

Senator Eliason moved that a Committee Substitute be prepared for SB 422 and be incorporated into the Senate Committee Substitute for CSHB 376 (RES) am and it be moved from the subcommittee with individual recommendations. There was no objection.

Number 430 The next bill taken up by the Committee was SB 379 (Draft CS).

Number 432 Norm Staton, Steve Kettel, Dept. of Revenue, have no problem implementing this bill except that they are still unclear of the intent. On line 14, the word "primarily" is subject to interpretation. Should be more specific. Specific language was offered for line 16. If no carry-backs or carry-forwards are wanted it should be specifically stated in the bill. "Expenditures" on line 28 should be clarified.

SIDE 2.

Chairman Mulcahy clarified the intent of the bill. Senator Gilman moved to adopt the language specified by Norm Staton. There was no objection.

Number 024 Rick Lauber, Pacific Seafood Processors, stated that on line 28, the word "expenditure" may need to be clarified. Also there might be a problem in the draft committee substitute in that something may have been left off the list of bottomfish that should be on it.

Number 095 Senator Gilman moved a Committee Substitute be prepared with the changes proposed by the Dept. of Revenue and it be moved from the subcommittee with individual recommendations. There was no objection.

Number 100 The last bill taken up by the Committee was SB 391.

Number 103 Martin Richard, Director, Division of Public Services, Department of Revenue, stated that the major thrust of this bill is collection authority for ADF&G's licensing program. This is an attempt to integrate a collection program with other collection programs so there should not be any costs associated with this bill. In 1983 the Dept. of Revenue experienced approximately \$62,000 in fee arrearages in the licensing program.

Senator Gilman moved to delete all language after "misdemeanor" in section 9 and state the type of misdemeanor that carries that penalty. There was no objection.

Senator Eliason asked for clarification of section 6.

Martin Richard clarified section 6.

Number 223

Senator Gilman moved SB 391 with the technical change in section 9 from the Subcommittee with individual recommendations. There was no objection.

Number 228

Chairman Mulcahy adjourned the meeting at 4:10 p.m.

SECTIONAL FOR SCS CSHB 376 (RES)

Section 1 is enabling legislation allowing the Commissioner of Fish and Game to authorize the issuance of landing permits in fisheries where the Commissioner finds such permits to be consistent with state resource and management goals. Landing permits could be issued to fishermen who are federally licensed to fish in the federal fisheries conservation zone off Alaska. These fishermen are currently prohibited by state law from landing their catch in Alaska.

Section 2 adds a new subsection to AS 16.05.680 that states that a person who violates (a)(2) of this section by purchasing fish from a fisherman who does not possess a permit issued under AS 16.43 and who could also be prosecuted as a processor under 16.10.265 for buying fish from a fisherman who doesn't possess a permit, must be prosecuted as a processor under 16.10.265.

Section 3 amends AS 16.10.265(a) to allow the holder of a landing permit issued under section 1 to sell fish in Alaska.

Section 4 changes the penalty provision for a processor's first conviction of buying fish from a fisherman who does not possess a permit from a class B misdemeanor to a class A misdemeanor.

Section 5 amends AS 16.10.267(a) to allow the holder of a landing permit issued under section 1 to sell fish in Alaska.

Section 6 grants the Commercial Fisheries Entry Commission the power to charge reasonable fees to defray the costs of services it renders to members of the public, such as processing permit transfer applications. Section 6 also authorizes the Commission to issue landing permits in compliance with Section 1, and to establish and collect fees for such permits.

Section 7 instructs the Commission to adopt regulations governing the correction of its administrative error, as, for example, where an applicant has been mistakenly credited with points for vessel ownership when the applicant did not own a vessel. This section will not allow the Commission to undo discretionary determinations made by previous members of the Commission. Nor will it require the Commission to reopen closed applications when a court determines that the Commission has misinterpreted a statute or regulation.

Section 8 is a technical change reflecting the fact that AS 16.43.990(3), which defines the term "fishery", was amended in 1981 to provide that a fishery may cover more than one administrative area.

Section 9 modifies existing AS 16.43.150(f), which states flatly that an entry permit survives the death of its holder. Revised section 150(f) would provide that non-transferable permits held by persons who qualified as "minor economic hardship" applicants -- persons with minimal ties to the fishery in which they hold permits -- cease to exist when their holders die. These permits are currently

non-transferrable under AS 16.43.170(e) before the Commission sets an optimum number under AS 16.43.290 in a fishery (unless the Commission estimates that the number of permits outstanding in that fishery does not exceed the optimum number); after the optimum number is set, if the optimum number is less than the number of outstanding permits, minor economic hardship permits would be non-transferable (except to the Commission) under AS 16.43.170(c).

Section 10 closes a loop hole in the leasing prohibition in the present statute. Presently a lessor can circumvent the law by transferring the permit to the lessee on condition that at the end of the season the permit be transferred not back to the lessor but to the lessor's designee. In this way the lessor has the permit transferred from one lessee to the next, while maintaining effective control over the permit and collecting lease payments. See Gilliland vs. State of Alaska, 1JU-81-838 Civ. (May 28, 1982).

Section 11 modifies the "contrary intent" language in the existing law to make clear that, if there is a surviving spouse, the permit of the deceased permit holder will go directly to that surviving spouse unless the holder has made other provision for the permit's disposition in a valid will that has been probated. Also, a permit is exempt from the claims of creditors of a deceased permit holder's estate.

Section 12 deletes reference to a federal agency which no longer exists.

Section 13 allows the Commission to collect interest on fees more than 60 days overdue. This would allow the Commission to collect interest from persons who have paid the resident fee but were determined to be nonresidents. Interest would also be assessed on bounced checks and persons who paid but were not eligible for the reduced poverty fee, but the impact on these latter two groups is expected to be quite small.

Section 14 is intended to end the possible ambiguity in the current language of AS 16.43.170(b) and make clear that the commission is not obligated to approve a permit transfer solely because the proposed transferee can show the present ability to actively participate. Under the amendments in this section even if a transferee demonstrates the ability to participate, the Commission will plainly be able to disapprove the transfer if it would be improper, as, for instance, if the transfer is a lease forbidden by AS 16.43.150(g).

Section 15 is in direct response to the recent Alaska Supreme Court decision in Rutter v. Commercial Fisheries Entry Commission, Opinion No. 2712 (August 26, 1983) in which the point system for the hand troll fishery was declared invalid for failure to include point categories for ownership of vessel and gear, reliance on alternative occupations, and for percentage of income derived from the fishery. The Commission had found that these indicators are not the best measure of economic dependence on the hand troll fishery, and adopted a point category for gross earnings in the fishery. Consistent with the advice of its attorney, the Commission believed that the "reasonable balance" language in the statute was sufficient authority to effectively weight the other indicators at zero points. The Supreme Court disagreed. Point systems

in other limited fisheries are similarly in jeopardy unless amendments are made granting the Commission some discretion in how to measure hardship.

Section 15 authorizes the Commission to issue to an educational institution one entry permit that will be valid for all of the gear types that the institution operates. Currently, it is necessary to issue a separate permit for each of the gear types.

Section 17 sets out various amendments to AS 16.43.960, relating to the civil penalties that may be imposed for knowingly providing false information to the Commission for the purpose of obtaining a permit. The section clarifies that the Commission may suspend or transfer to another person, as well as revoke, permits obtained by fraud. The section also clarifies that the Commission may take such action against any or all of the permits held by the person who attempts to defraud the Commission, and not just the permit for which false information was knowingly supplied. Next, the section clarifies that knowingly supplying false information for the purpose of obtaining a duplicate permit is also grounds for revocation, suspension, or transfer of the permit. The section also deletes unnecessary procedural detail that is duplicative of the hearing procedure provisions in AS 16.43.110(b). This section also authorizes the Commission to impose an administrative fine of not more than \$5,000 on a person or entity that knowingly supplies false information. This parallels the criminal fine that may be imposed under AS 16.43.970(b).

The need for the penalty revisions in AS 16.43.960 arises from the practical inability of the district attorney's office to prosecute violations under AS 16.43.970. The district attorney's caseload is so great that prosecuting crimes for which there are also civil penalties has become a relatively low priority. Expanding the type of penalties that the Commission may impose will enhance the Commission's ability to effectively deter and rectify fraud committed to obtain permits. It will enable the Commission to tailor penalties to fit particular offenses.

Finally, this section of the bill clarifies that the Commission can take action against a permit for any fraud occurring after January 1, 1973. This issue was recently decided favorably to the Commission by the Superior Court in Kjarstad v. State, 1JU-81-1484 Civ. (Nov. 4, 1983), and is presently on appeal to the Alaska Supreme Court.

Section 18 amends AS 16.43.970(b) to state that knowingly making a false statement of any kind to the Commission to obtain a benefit constitutes the crime of unsworn falsification, as set out in AS 11.56.210. Correspondingly, this section deletes the provision in AS 16.43.970(b) making it a separate crime to provide false information to the Commission. Finally, this section clarifies that it is also a violation of AS 11.56.210 to knowingly make a false statement of any kind to the Commission for the purpose of obtaining a duplicate permit. The other revisions to AS 16.43.970(b) merely simplify the language used; the deletion of the reference to a \$5,000 fine merely has the effect of relying on the relevant provisions of the Criminal Code (AS 11), thus helping to assure consistency.

Section 19 authorizes the Commission to provide that business records submitted to the Commission and individual responses to research questionnaires are not subject to public disclosure. This is a matter of especial importance to the Commission because it must have honest responses and disclosures from individuals, who in turn need the assurance of confidentiality. The Commission is presumably authorized to make this information confidential under the right to privacy recognized in Art. I, sec. 22, of the Alaska Constitution. Explicit statutory authority, however, would remove any uncertainty as to the matter.

Section 20 provides for an immediate effective date.

Mulcahy will carry

2 SENATE CS FOR CS FOR HOUSE BILL NO. 376 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

Rules C.S

4 THIRTEENTH LEGISLATURE - SECOND SESSION

corrects title plus 2

5 A BILL

clarifying amendments

6 For an Act entitled: "An Act amending the Limited Entry Act, providing for
7 landing permits; and providing for an effective
8 date."

suggested by A.G.

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

10 * Section 1. AS 16.05 is amended by adding a new section to read:

11 Sec. 16.05.675. LANDING PERMITS. (a) A person who does not
12 hold a limited entry permit or interim-use permit issued under AS 16.-
13 43 may not deliver or land fish in the state unless the person

14 (1) has harvested the fish under federal authority in the
15 fishery conservation zone; and

16 (2) has been issued a landing permit by the Commercial
17 Fisheries Entry Commission.

18 (b) The commissioner may by regulation establish eligibility
19 requirements for the issuance of a landing permit.

20 (c) The commissioner may authorize the Commercial Fisheries
21 Entry Commission to issue landing permits for a fishery if the commis-
22 sioner has made a written finding that the issuance of landing permits
23 for that fishery is consistent with state resource conservation and
24 management goals.

25 (d) A landing permit is not transferable.

26 * Sec. 2. AS 16.05.680 is amended by adding a new subsection to read:

27 (b) A person who violates (a)(2) of this section and who also
28 could be prosecuted for the same conduct under AS 16.10.265 is subject
29 to prosecution only under AS 16.10.265.

1 * Sec. 3. AS 16.10.265(a) is amended to read:

2 (a) While acting as a fish processor or primary fish buyer, or
3 as an agent, director, officer, member, or employee of a fish proces-
4 sor, of a primary fish buyer, or of a cooperative corporation or-
5 ganized under AS 10.15, an individual may not intentionally or know-
6 ingly make an original purchase of fish from a seller who does not
7 hold a [AN ENTRY PERMIT OR AN INTERIM-USE] permit issued under [OR
8 TRANSFERRED TO THE SELLER IN ACCORDANCE WITH] AS 16.43.

9 * Sec. 4. AS 16.10.265(b) is amended to read:

10 (b) An individual who violates (a) of this section is

11 (1) upon a first conviction, guilty of a class A [B] misde-
12 meanor and shall be sentenced to a fine of not less than \$1,000 nor
13 more than \$5,000, and may be sentenced to a definite term of imprison-
14 ment of not more than one year [90 DAYS];

15 (2) upon a second conviction, guilty of a class A misde-
16 meanor and shall be sentenced to a fine of not less than \$5,000 nor
17 more than \$10,000, and may be sentenced to a definite term of impris-
18 onment of not more than one year;

19 (3) upon a third or subsequent conviction, guilty of a
20 class A misdemeanor and shall be sentenced to a fine of not less than
21 \$10,000 nor more than \$25,000, and may be sentenced to a definite term
22 of imprisonment of not more than one year.

23 * Sec. 5. AS 16.10.267(a) is amended to read:

24 (a) When a fisherman sells fish, the fisherman shall possess

25 (1) a [AN ENTRY PERMIT OR INTERIM-USE] permit issued [OR
26 TRANSFERRED TO THE FISHERMAN] under AS 16.43, or other document au-
27 thorized by regulation to be used in place of a [AN ENTRY PERMIT OR
28 INTERIM-USE] permit; and

29 (2) an identification card that has been issued to the

1 fisherman by a state or federal agency and that bears a photograph of
2 the fisherman.

3 * Sec. 6. AS 16.43.100(a) is amended by adding new paragraphs to read:

4 (16) establish reasonable user fees for services;

5 (17) issue landing permits in accordance with AS 16.05.675
6 and regulations adopted under that section; and

7 (18) establish and collect annual fees for the issuance of
8 landing permits.

9 * Sec. 7. AS 16.43.110 is amended by adding a new subsection to read:

10 (e) The commission shall adopt regulations to provide for the
11 correction of administrative error...

12 * Sec. 8. AS 16.43.150(a) is amended to read:

13 (a) Each entry permit authorizes the permittee to operate a unit
14 of gear within a specified fishery [ADMINISTRATIVE AREA].

15 * Sec. 9. AS 16.43.150(f) is amended to read:

16 (f) Except for permits which are not transferable under AS 16.-
17 43.170(c) or (e), an [AN] entry permit survives the death of the
18 holder.

19 * Sec. 10. AS 16.43.150(g) is amended to read:

20 (g) Except as provided in AS 16.10.333 - 16.10.337, AS 44.81.-
21 210, and [IN] AS 44.81.230 - 44.81.250, an entry permit may not be [:]

22 (1) pledged, mortgaged, leased, or encumbered in any way;

23 (2) transferred with any retained right of repossession or
24 foreclosure, or on any condition requiring a subsequent transfer; or

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

27 * Sec. 11. AS 16.43.150(h) is amended to read:

28 (h) Upon the death of an entry permit holder, the permanent
29 permit shall be transferred by the commission directly to the

1 surviving spouse by right of survivorship unless the deceased holder
2 has expressed a contrary intent in a will that is probated [A CONTRARY
3 INTENT IS MANIFESTED]. When no spouse survives, the rights of the
4 decedent pass as part of the decedent's estate. Except as provided in
5 AS 16.10.333 - 16.10.337, AS 44.81.210, and 44.81.230 - 44.81.250, the
6 permit is exempt from the claims of creditors of the estate.

7 * Sec. 12. AS 16.43.160(c) is amended to read:

8 (c) The resident holder of an entry permit or interim-use permit
9 who has a net family income falling within the federal [FEDERAL COM-
10 MUNITY SERVICES ADMINISTRATION] poverty guidelines, adjusted by the
11 commission to reflect appropriate cost-of-living differentials, is
12 subject to a maximum annual fee of \$15.

13 * Sec. 13. AS 16.43.160 is amended by adding a new subsection to read:

14 (d) The commission may charge interest at a rate not to exceed
15 the legal rate of interest established in AS 45.45.010 on fees more
16 than 60 days overdue.

17 * Sec. 14. AS 16.43.170(b) is amended to read:

18 (b) Except as provided in (c) and (e) of this section, the
19 holder of an entry permit may transfer the permit to another person or
20 to the commission upon 60 days' notice of intent to transfer under
21 regulations adopted by the commission. No sooner than 60 days nor
22 later than 12 months from the date of notice to the commission, the
23 holder of an entry permit may transfer the permit. If the proposed
24 transferee, other than the commission, can demonstrate the [ESTABLISH]
25 present ability to participate actively in the fishery and the trans-
26 fer agreement does not violate any provision of AS 16.43 or regula-
27 tions adopted thereunder, the commission shall approve the transfer
28 and reissue the entry permit to the transferee provided that neither
29 party is prohibited by law from participating in the transfer.

1 * Sec. 15. AS 16.43.250(a) is amended to read:

2 (a) Following the establishment of the maximum number of units
3 of gear for a particular fishery under AS 16.43.240, the commission
4 shall adopt regulations establishing qualifications for ranking ap-
5 plicants for entry permits according to the degree of hardship which
6 they would suffer by exclusion from the fishery. The regulations
7 shall define priority classifications of similarly situated applicants
8 based upon a reasonable balance of the following hardship standards:

9 (1) degree of economic dependence upon the fishery, which
10 may include [INCLUDING] but is not limited to percentage of income
11 derived from the fishery, reliance on alternative occupations, avail-
12 ability of alternative occupations, investment in vessels and gear;

13 (2) extent of past participation in the fishery, which may
14 include [INCLUDING] but is not limited to the number of years of
15 participation in the fishery, and the consistency of participation
16 during each year.

17 * Sec. 16. AS 16.43.351(b) is amended to read:

18 (b) A recipient may be issued an educational entry permit valid
19 for designated fisheries [EACH FISHERY] in the administrative area the
20 commission determines to be appropriate, considering the nature of the
21 educational program and the location of the educational or vocational
22 institution. The recipient of an educational entry permit may not be
23 issued an educational entry permit [PERMITS] in more than one admini-
24 trative area except as issued by the commission in its discretion upon
25 good cause shown.

26 * Sec. 17. AS 16.43.960 is amended to read:

27 Sec. 16.43.960. COMMISSION REVOCATION OR SUSPENSION OF [ENTRY]
28 PERMITS. (a) The commission may revoke, suspend, or transfer all
29 [AN] entry [PERMIT] or interim-use permits held by [PERMIT IF] a

1 person who knowingly provides or [SUPPLIES,] assists in providing
2 false information [SUPPLYING], or fails to correct false information
3 provided, to the commission for the purpose of obtaining a benefit for
4 self or another, including the issuance, renewal, duplication, or
5 transfer of an entry or interim-use permit or vessel license. The
6 commission may suspend that person's eligibility to hold an entry or
7 interim-use permit for a period not to exceed three years, and may
8 impose an administrative fine of not more than \$5,000 on the person.
9 The commission may also impose an admini. fine of not more than
10 \$5,000 on an entity whose officers, employees, representatives, or
11 agents knowingly provide or assist in providing false information, or
12 fail to correct false information provided, to the commission for the
13 purpose of obtaining a benefit

14 [(1) PERMIT APPLICATION;

15 (2) PERMIT TRANSFER; OR

16 (3) PERMIT RENEWAL].

17 (†) The [BEFORE REVOCATION, THE] commission shall serve the
18 respondent [PERMIT HOLDER] personally or by certified or registered
19 mail with a notice to show cause why the proposed action should not
20 take place. The notice to show cause must

21 (1) be supported by an affidavit that [WHICH] may be made
22 on information or belief setting out the facts that [WHICH] are the
23 basis of the proposed action;

24 (2) provide for at least 30 days' notice of the place,
25 date, and time of the hearing where the respondent [PERMIT HOLDER] may
26 present evidence in opposition to the proposed action; unless waived
27 in writing by the respondent [PERMIT HOLDER], the hearing [PLACE]
28 shall be held within the judicial district in which the respondent
29 [PERMIT HOLDER] resides if the respondent [PERMIT HOLDER] resides in

1 the state; the hearing place shall be at the discretion of the commis-
2 sion for those respondents [PERMIT HOLDERS] residing outside the
3 state;

4 (3) specify the statutes or regulations violated;

5 (4) state with particularity the action proposed to be
6 taken;

7 (5) indicate to [THAT] the respondent [PERMIT HOLDER'S]
8 that the respondent's ability to permanently transfer the permits that
9 are [PERMIT WHICH IS] the subject of the show cause [REVOCATION]
10 proceedings has been suspended as of the date of the notice and will
11 continue to be suspended until the exhaustion of all administrative
12 and judicial remedies; and

13 (6) provide other information the commission considers
14 proper.

15 (c) A permit subject to show cause [REVOCATION] proceedings
16 under this section may not be transferred after the date of the notice
17 in (b) of this section pending exhaustion of all administrative and
18 judicial remedies arising from action taken under this section.

19 (d) The show cause [REVOCATION] hearing shall be conducted
20 before a quorum of commissioners and shall be presided over by a
21 hearing officer appointed by the commission who shall rule on the
22 presentation of evidence and other procedural matters. Hearings shall
23 be conducted in accordance with regulations adopted under AS 16.43.-
24 110(b). [WITHIN A REASONABLE TIME AFTER THE CONCLUSION OF THE HEAR-
25 ING, THE HEARING OFFICER SHALL SUBMIT TO THE ATTENDING COMMISSIONERS A
26 PROPOSED DECISION BASED ON THE RECORD OF THE HEARING AND CONTAINING
27 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ACTION. THE
28 ATTENDING COMMISSIONERS SHALL THEN REVIEW THE HEARING OFFICER'S PRO-
29 POSED DECISION AND ADOPT OR AMEND OR REJECT THE CONTENTS OF THE

1 PROPOSED DECISION IN THE WRITTEN DECISION OF THE COMMISSION. A COPY
2 OF THE COMMISSION DECISION SHALL BE MAILED TO EACH PARTY OR THE
3 PARTY'S ATTORNEY BY CERTIFIED OR REGISTERED MAIL.]

4 (e) The failure of a respondent [PERMIT HOLDER] properly served
5 under (b) of this section to appear at the hearing is not grounds for
6 setting aside any commission action taken. However, the commission
7 may in its discretion order a continuance or second hearing.

8 (f) [THE EFFECTIVE DATE OF THE COMMISSION DECISION UNDER THIS
9 SECTION IS THE DATE OF THE NOTICE TO SHOW CAUSE FIRST SERVED UPON THE
10 PERMIT HOLDER UNDER (b) OF THIS SECTION.]

11 (g) The provisions of this section [DO NOT] apply to conduct
12 occurring after January 1, 1973, but do not affect a [THE] permit held
13 by [OF] a person who is a bona fide purchaser. Failure to correct
14 false information is a continuing offense.

15 (h) Judicial review of commission determinations under this
16 section is in accordance with AS 44.62.60 - 44.62.570; however, if a
17 hearing de novo is granted under AS 44.62.570(d), the hearing may, in
18 the discretion of the court, be had with a jury sitting if application
19 for the jury hearing is filed with the court no later than 10 days
20 after service of the notice of appeal.

21 (i) An entry permit revoked by the commission under this section
22 that is pledged [TAKEN] as security for a loan under AS 16.10.333 or
23 AS 44.81.230 shall be reassigned or sold as provided in AS 16.10.337
24 or AS 44.81.250.

25 * Sec. 18. AS 16.43.970(b) is amended to read:

26 (b) A person who knowingly makes a false statement to the com-
27 mission for the purpose of obtaining a benefit, including the issu-
28 ance, renewal, duplication, or transfer of an entry or interim-use
29 permit or vessel license OF FACT IN THE APPLICATION FOR OR RENEWAL OF

1 AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR VESSEL LICENSE APPLICATION
2 OR RENEWAL OR IN THE APPLICATION FOR A TRANSFER UNDER AS 16.43.170 OR
3 16.43.180], or a person who assists another by knowingly making a
4 false statement to the commission for the purpose of obtaining a
5 benefit for another, [OF FACT IN SUPPORT OF THE OTHER PERSON'S APPLI-
6 CATION FOR ISSUANCE OR RENEWAL OF AN INTERIM-USE PERMIT OR AN ENTRY
7 PERMIT OR VESSEL LICENSE] is guilty of the crime of unsworn falsifica-
8 tion as set out in AS 11.56.210. Upon conviction, the person [A
9 MISDEMEANOR AND] (1) shall forfeit to the commission all interim-use
10 permits and entry permits [HELD BY THE PERSON MAKING THE FALSE STATE-
11 MENT] and (2) loses [SHALL LOSE] eligibility for interim-use permits
12 and for entry permits for a period of three years [AND IS PUNISHABLE
13 BY A FINE OF NOT MORE THAN \$5,000].

14 * Sec. 19. AS 16.43 is amended by adding a new section to read:

15 Sec. 16.43.975. PUBLIC DISCLOSURE. The commission may provide
16 by regulation that documents submitted to the commission containing
17 information relating to an individual's personal finances and informa-
18 tion supplied by individuals for research purposes, produced in re-
19 sponse to requests by the commission, are not subject to public dis-
20 closure.

21 * Sec. 20. This Act takes effect immediately in accordance with AS 01.-
22 10.070(c).



Official Business

Alaska State Legislature

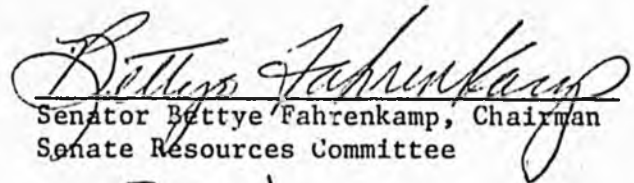
Senate

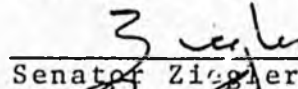
COMMITTEE ON RESOURCES
LETTER OF INTENT
FOR
SCS CSHB 376 (RESOURCES)

Pouch V
State Capitol
Juneau, Alaska 99811

The amendment to AS 16.43.250(a) in section 15 of Senate Committee Substitute for Committee Substitute for House Bill 376, is in response to the Alaska Supreme Court decision in Rutter vs. Commercial Fisheries Entry Commission, Opinion Number 2712, August 26, 1983. In that decision the Supreme Court invalidated a portion of the hand troll point system for failure to comply with the specific terms of the statute. However, the amendment is not intended to circumvent or change in any way the result of the Rutter decision. The Commercial Fisheries Entry Commission should implement (and we understand the Commission to be in the process of implementing) the Rutter decision through the adoption of supplemental point regulations in the handtroll fishery.

It is the intent of the legislature to protect other limited fisheries from similar court challenges, and thus preserve the status quo in those fisheries. The legislature recognizes that patterns of participation and extent of economic dependence vary from fishery to fishery and affirms that, in developing point systems for limited fisheries, the Commission may exercise some discretion in how to measure past participation and economic dependence. The effect of enacting this legislation would be to ratify and protect point systems already in place in the AYK salmon fisheries and the limited herring fisheries.

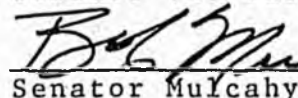

Senator Bettie Fahrenkamp, Chairman
Senate Resources Committee

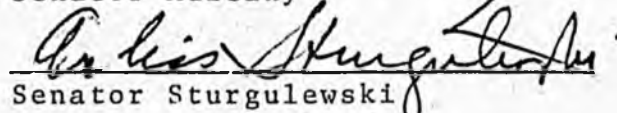

Senator Ziegler


Senator Eliason


Senator Paul Fischer


Senator Vic Fischer


Senator Mulcahy


Senator Sturgulewski

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 376
Title: "an act amending the Limited Entry Act;..."

Sponsor: Rules/governor
Requestor: Senate Resource Comm.
Date of Request: 4/19/84

FISCAL DETAIL

Agency Affected: Dept. of Fish and Game
Program Category Affected: Natural Resource Management

BRU, Program or Subprogram(s) Affected: Commercial Fisheries Entry Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-		
CAPITAL		0	0	0		
REVENUE		20.0	20.0	20.0		

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Christine Kelly, Licensing Admn.
Division: Commercial Fisheries Entry Comm.

Phone: 465-4081
Date: 4/23/84

Approved by Commissioner: [Signature]
Agency: Commercial Fisheries Entry Commission

Date: 4/24/84

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

The number of landing permits which would be issued under AS 16.05.675 cannot be determined at this time. Assuming that the initial number would be relatively low, the Entry Commission could implement issuance of landing permits with existing supplies and equipment.

However, if the commissioner finds that landing permits should be issued in several fisheries, and if a substantial number of fishermen wish to obtain landing permits, the Entry Commission's costs will be significantly higher. In this event, changes would have to be made to existing software, requiring approximately six months of a Programmer/Analyst V at a cost of 35.0 in Personal Services during the first year, and anticipated Contractual costs of 16.0 for lease of an additional permit card embosser and 5.0 for forms and plastic card stock, which would carry over in subsequent years.

While fees for landing permits have not been established, it is anticipated that they would be sufficiently high to offset administrative costs. The Revenue figures shown were estimated on the basis of 10 to 20 landing permits issued per year in the salmon troll and king crab fisheries, at a cost of \$1,000 to \$2,000 each.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



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

Senate

Committee on Resources

M E M O R A N D U M

TO: Senate Resources Committee Members

FROM: Senate Resource Committee Staff

RE: Committee Meeting, April 23, 1984

DATE: April 20, 1984

On Monday April 23, 1984 at 3:00pm in the Beltz Room, the Senate Resources Committee will hear the following bills:

SJR 44, Requesting the establishment of an Alaska National Interest Lands Act information and education center in Ketchikan.

Section 1305 of ANILCA authorizes the Secretary of Interior to plan for an information and education center for visitors to Alaska "at a site adjacent to the Alaska Highway, and to investigate and plan for similar centers in Anchorage and Fairbanks." The Secretary of Agriculture is authorized to plan for a similar center "in either Juneau, Ketchikan, or Sitka." A center has been established in Tok; centers will be established in the Federal Buildings in Fairbanks and Anchorage in August 1984 and May 1985 respectively. The Alaska Land Use Council will make a recommendation this spring to the Department of Agriculture on a site for the Southeast center. Services to be provided at the center will be addressed once a decision is made on a location.

A Resources Committee Substitute that more accurately reflects the status of the ANILCA centers is attached.

CSHB 376 (Resources), am, An Act amending the Limited Entry Act; providing for landing permits.

CSHB 376(Res) makes several clarifying amendments to the Limited Entry Act and creates a "landing permit". Under current statute, a person who does not hold a limited entry permit or interim-use permit may not sell fish in the state. This bill would authorize the Entry Commission to issue "landing permits" to people fishing under federal permit in the Fishery Conservation Zone; the landing permit would allow these fishermen to sell fish in the state.

HB 624

HB 624 amends the homesite program to conform with the homestead program by allowing transfer of a homesite entry permit in the case of an extreme emergency or illness that disables the applicant.

CSHJR 19 (Fish)

Section 201 of the Magnuson Fishery Conservation and Management Act provides for the stationing of U.S. observers aboard each foreign vessel fishing in the Fishery Conservation Zone, but allows the Secretary of Commerce to waive this requirement under certain circumstances. In 1982 only twenty percent of foreign vessels in the Fishery Conservation Zone had observers stationed aboard.

Stationing U.S. observers aboard foreign fishing vessels is intended to provide information about the degree of foreign interception of Pacific salmon and the migratory patterns of the Pacific salmon which would assist the State in establishing optimum salmon escapement and harvest levels.

CSHJR 19(Fish) requests the U.S. Congress to amend the Magnuson Act to:

- 1) Provide that U.S. observers be stationed aboard all catcher vessels, as well as mother ships, of foreign fleets fishing in the fishery conservation zone
- 2) Provide that the foreign vessels be required to provide adequate, safe, clean quarters for U.S. observers.
- 2) Provide that a vessel for which the observer requirement has been waived proceed to a U.S. port for a review of the vessel's logs and catch after fishing in the Fishery Conservation Zone.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



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STATE CAPITAL
JUNEAU, ALASKA 99811
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Senate

Committee on Resources

MINUTES

April 23, 1984
3:03 pm

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chairman
Senator Ziegler, Vice Chairman
Senator Eliason
Senator Paul Fischer
Senator Vic Fischer
Senator Mulcahy
Senator Sturgulewski

CALENDAR

CSHB 376, An Act amending the Limited Entry Act; providing for landing permits.

CSSB 624, An Act relating to qualifications for a homesite.

HJR 19, Relating to United States observers on foreign fishing vessels.

SJR 44, Requesting the establishment of an Alaska National Interest Lands Act information and education center in Ketchikan.

HJR 19

Representative Grussendorf, sponsor of the resolution, explained that CS HJR 19 requests the U.S. Congress to amend the Magnuson Act to ensure that U.S. observers be stationed aboard all foreign fishing boats in the Fishery Conservation Zone.

Senator Mulcahy moved CS HJR 19 from committee with individual recommendations. There was no objection.

CSHB 376

Christine Kelly, Licensing Administrator, Commercial Fisheries Entry Commission, explained that the fiscal note for HB 376 was to cover costs that would be incurred if the commissioner finds that landing permits should be issued in several fisheries in FY 85.

Senator Mulcahy moved that the fiscal note be eliminated and moved SCS CSHB 376 (Res) from committee with individual recommendations. There was no objection.

HB 624

Sandra Schubert, Aide to Senator Fahrenkamp, explained that CSHB 624 amends the homesite program to conform with the homestead program by allowing transfer of a homesite entry permit in the case of an extreme emergency or illness that disables the applicant.

Senator Mulcahy moved CSHB 624 from committee with individual recommendations. There was no objection.

SJR 44

Senator Ziegler spoke in support of the resolution.

Senator Eliason explained that Sitka is also a potential site for the center, and supported its location there.

Senator Ziegler moved CS SJR 44 from committee with individual recommendations. There was no objection.

The meeting adjourned at 3:23 pm.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 376
Title: "an act amending the Limited Entry Act:..."

Sponsor: Rules/Governor
Requestor: Senate Resource Comm.
Date of Request: 4/19/84

FISCAL DETAIL

Agency Affected: Dept. of Fish and Game
Program Category Affected: Natural Resource Management
BRU, Program or Subprogram(s) Affected: Commercial Fisheries Entry Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		3.0	3.0	3.0		
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		3.0 *	3.0 *	3.0 *		
* see narrative						
CAPITAL		0	0	0		
REVENUE		20.0	20.0	20.0		

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Christine Kelly, Licensing Admn. Phone: 465-4081
Division: Commercial Fisheries Entry Comm. Date: 4/23/84

Approved by Commissioner: [Signature] Date: 4/23/84
Agency: Commercial Fisheries Entry Commission

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

The number of landing permits which would be issued under AS 16.05.675 cannot be determined at this time. Assuming that the initial number would be relatively low, the Entry Commission could implement issuance of landing permits with expenditures of less than 3.0 in Contractual services for acquisition of forms, permit card stock, etc..

However, if the commissioner finds that landing permits should be issued in several fisheries, and if a substantial number of fishermen wish to obtain landing permits, the Entry Commission's costs will be significantly higher. In this event, changes would have to be made to existing software, requiring approximately six months of a Programmer/Analyst V at a cost of 35.0 in Personal Services during the first year, and anticipated Contractual costs of 16.0 for lease of an additional permit card embosser and 5.0 for forms and plastic card stock, which would carry over in subsequent years.

While fees for landing permits have not been established, it is anticipated that they would be sufficiently high to offset administrative costs. The Revenue figures shown were estimated on the basis of 10 to 20 landing permits issued per year, at a cost of \$1,000 to \$2,000 each.

Alaska State Legislature



Senate

Committee on Resources

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI

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

TO: Senator Mulcahy, Chairman
Resources Subcommittee

FROM: Senator Fahrenkamp, Chairman
Senate Resources Committee

DATE: February 28, 1984

RE: SB 422; HB 376

The following bills have been referred to the Resources Committee. I am assigning them to the Subcommittee on Fisheries for consideration by the Subcommittee.

SB 422 - An Act amending the Limited Entry Act

HB 376 - Amending the Limited Entry Act; providing for landing permits; effective date.

cc: Senate Resources Committee members

original bill

IV. ANALYSIS: HB 376 Page 2 of 2

Section 1 instructs the commission to adopt regulations providing for measures to be taken in instances where a tie vote occurs in the adjudication of a permit application.

Section 2 grants the commission the power to charge reasonable fees to defray the costs of service it renders to members of the public.

Section 3 instructs the commission to issue regulations governing the correction of its administrative error, as, for example, where an applicant has been mistakenly credited with points for vessel ownership when the applicant did not own a vessel.

Section 4 is a technical change reflecting the fact that AS 16.43.380(3), which defines the term "fishery", was amended in 1981 to provide that a fishery may cover more than one administrative area.

Section 5 is intended to clarify in AS 16.43.150(f) what is already apparent elsewhere in the Limited Entry Act, namely that the permit of "minor economic hardship" applicant under AS 16.43.250(c), which permits are expressly non-transferable does not survive the death of the holder, and cannot be transferred in any way after his death.

Section 6 tightens up the "contrary intent" language in the existing law such that a permit will go directly to the deceased permit holder's surviving spouse unless the permit holder made other provision for its disposition in a valid will.

Section 7 is intended to end the possible ambiguity in the current language of AS 16.43.170(b) and make clear that the commission is not obligated to approve a permit transfer whenever the proposed transferee can show the present ability to actively participate. Under the proposed language of Section 7, the commission will plainly be able to disapprove a transfer when it would be improper, as, for instance, if the transfer is a lease forbidden by AS 16.43.150(g).

Section 8 is intended to give the commission discretion in determining what years are to be considered in setting eligibility to apply in a newly limited fishery. Under the law as currently interpreted, anyone who has ever held an Alaska gear license (first issued in 1960) in a given fishery is eligible to apply if that fishery is limited. As 1960 becomes increasingly distant, and the character of the State's fisheries changes, it is increasingly inappropriate to allow eligibility based on participation that may be twenty-five years in the past. The proposed amendment to AS 16.43.260(a) will give the commission the necessary flexibility.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 13, 1984

The Honorable Bob Mulcahy
Chairman, Senate Resources
Subcommittee on Fisheries
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 422 (Limited Entry Act)

Dear Senator Mulcahy:

This letter is to bring to your attention a technical problem that exists in the Limited Entry Act, which could be taken care of by a simple amendment to SB 422, "An Act amending the Limited Entry Act." I am informed that this bill has been referred to you as Chairman of the Senate Resources Subcommittee on Fisheries.

AS 16.43.150(g) currently provides in part that "[e]xcept as provided in AS 16.10.333 -- 16.10.337 and in AS 44.81.230 -- 44.81.250, an entry permit may not be: (1) pledged, mortgaged, leased, or encumbered in any way" The noted statutory exceptions refer to loans made by the Department of Commerce and Economic Development (AS 16.10.333 -- 16.10.337), and loans made by CFAB (AS 44.81.230 -- 44.81.250). AS 44.81.230 through AS 44.81.250 specifically address loans made for the purchase of Alaska limited entry permits. In 1981, AS 44.81.210 was amended to grant CFAB the power to

accept the pledge of a limited entry permit as security for a loan made under AS 44.81.010 -- 44.81.350 for the repair, restoration, or improvement of a commercial fishing vessel or commercial fishing gear, or for the construction or purchase of a commercial fishing vessel, subject to the conditions set out in AS 44.81.230 -- 44.81.250 on pledges of limited entry permits.

A problem arises from the fact that this power is set out in section 210, rather than in sections 230 through 250, which are the sections referred to in AS 16.43.150(g). This problem can be resolved by amending AS 16.43.150(g) to refer to AS 44.81.210, as well as AS 44.81.230 -- 44.81.250. Otherwise, it is possible for a person to argue, as is now happening, that AS 16.43.150(g) prohibits an entry permit from being pledged for a loan made by CFAB

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

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

The Honorable Bob Mulcahy
Re: SB 422

March 13, 1984
Page 2

for the purchase of a vessel because section 210 is not specifically referred to in the Limited Entry Act.

SB 422 already contains one amendment to AS 16.43.-150(g) in section 1 of the bill. It is therefore only necessary to add this further amendment to the section. Section 1 of SB 422 would then provide as follows:

* Section 1. AS 16.43.150(g) is amended to read:

(g) Except as provided in AS 16.10.333 -- 16.10.337 and in AS 44.81.210 and AS 44.81.230 -- 44.81.250, an entry permit may not be[:]

(1) pledged, mortgaged, leased, or encumbered in any way;

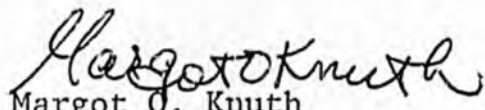
(2) transferred with any retained right of repossession or foreclosure, or on any condition requiring a subsequent transfer; or

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

If you have any questions regarding this, please do not hesitate to let me know.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Margot O. Knuth
Assistant Attorney General

MOK:dlm

cc: Bruce Twomley, Chairman
Commercial Fisheries Entry Commission

Arthur H. Peterson
Assistant Attorney General

LAW OFFICE
TORRISI & SNYDER

FREDERICK TORRISI
DAVID B. SNYDER

February 28, 1984

P.O. Box 10047
(OLD BANK BUILDING)
DILLINGHAM, ALASKA 99576
(907) 842-5808

Thomas Panamaroff
Office of Senator Bob Mulcahy
Pouch V
Capital Bldg., Rm 512
Juneau, Alaska 99811

Dear Tom:

I am forwarding a possible amendment to House Bill 376 which is now in the Senate Resources Committee. This amendment addresses the problem of a forced sale of a limited entry permit, by creditors of a deceased permit holder.

The law in this area has been left uncertain following the recent Alaska Supreme Court decision in Timperley v. Jeffries, No. 5483, January 11, 1984. There the Superior Court had ordered that a permit be sold to pay creditors of a deceased person's estate. The Supreme Court had first overturned this decision holding that a permit retained its exempt character under AS 16.43.150(a) after the permit holder's death. However, after a petition for rehearing and the disqualification of one of the justices who was in the majority, the court was evenly divided and the Superior Court decision was affirmed. Thus the son and only heir of the deceased permit holder was prevented from inheriting his father's fishing operation.

The law should be amended to clarify the fact that a permit cannot be attached and sold by creditors of the estate, as well as by creditors of the permit holder. The stated purpose of the Constitutional Amendment, Article VIII, Sec. 15, authorizing the Limited Entry Act makes it clear that a fisherman's family or dependents were to be beneficiaries of the law. The limited entry system made a permit exempt from forced sale so that a fisherman would not lose his only means of livelihood to pay off debts. As you know, many people in coastal Alaska have no other source of income to rely upon other than fishing. A family who loses their permit holder should not be doubly penalized by his or her death and forced to go on public assistance to support themselves.

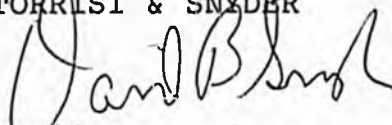
I had contemplated proposing a change to allow for a testamentary disposition of a permit in the same manner as land claims stock. After speaking with Matt Jamin,

an attorney in Kodiak with a particular expertise in estate matters, I am convinced that the problems associated with this proposal would outweigh the possible benefits. The major problem with this proposal would be the technical mistakes in filling out the permit transfer certificates and also in conflicting evidence of a permit holder's intent where wills and certificates had been completed at different points in time. Sharman Haley at the Commission had also suggested certain problems in the mechanics of providing for a testamentary disposition clause on the permit certificate, and I am convinced that a readily available form might lead to abuse or at best unnecessary confusion.

Please share these proposals with Senator Mulcahy and contact me with your thoughts. I am open to and would welcome suggestions on how to best implement these ideas.

Sincerely,

TORRISI & SNYDER



David B. Snyder
Attorney

DBS:ilk

cc: Representative Adelheid Herrmann

Sharman Haley

AS 16.43.150(h) is amended to read as follows:

Upon the death of an entry permit holder, the permanent permit shall be transferred by the commission directly to the surviving spouse by right of survivorship unless the deceased holder has expressed a contrary intent in a will that is probated. When no spouse survives, the rights of the decedent pass as part of the decedent's estate. In either case, the permit shall remain exempt from the claims of creditors of the estate. }

IN THE SUPREME COURT OF THE STATE OF ALASKA

PATSY TIMPERLEY, Personal)
Representative of the)
Estate of Robert Joseph)
Jeffries, Sr.,)
Appellant,)
vs.)
ROBERT JEFFRIES, JR.,)
et al.,)
Appellees.)

Supreme Court No. 5483

ORDER

Superior Court No. 3AN 78-897 P

Before: Burke, Chief Justice, Rabinowitz,
Matthews and Compton, Justices.
[Moore, Justice, not participating].

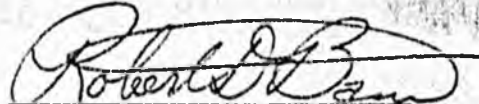
On consideration of the petition for rehearing and motion for disqualification of justice filed December 21, 1983 and the response filed December 29, 1983,

IT IS ORDERED:

1. The petition and motion are granted.
2. Opinion No. 2765, filed December 16, 1983, is withdrawn and shall not be published in the Pacific Reporter.
3. The court being evenly divided, the judgment of the Superior Court is AFFIRMED.

Entered by direction of the court at Anchorage, Alaska on January 11, 1984.

CLERK OF THE SUPREME COURT


ROBERT D. BACON

ccs: Justices
Counsel
The Honorable Victor D. Carlson
Appeals Deputy, Anchorage Trial Courts
Todd Communications, Inc.
All Opinion Subscribers

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

PATSY TIMPERLEY, Personal)
Representative of the Estate)
of Robert Joseph Jeffries,)
Sr.)

Appellant,)

v.)

ROBERT JEFFRIES, JR., GEORGE)
THIELE, SR., and SHAN RENEE)
JOHNSON, Personal Representa-)
tive of the Estate of Fanny)
Beatrice Hahn,)

Appellees.)

File No. 5483

O P I N I O N

[No. 2765 - December 16, 1983]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Victor D. Carlson, Judge.

Appearances: Paul F. Robison, Robison & McCaskey, and Michael Moxness, Delaney, Wiles, Moore, Hayes & Brubaker, Inc., Anchorage, for Appellant. M. Gregory Oczkus, Kay, Christie, Fuld, Saville & Coffey, Anchorage, for Appellee Jeffries. William G. Azar, Kennelly, Azar & Donohue, P.C., and Denis R. Lazarus, Anchorage, for Appellees Thiele and Johnson. Theresa L. Hillhouse, Assistant Attorney General, and Wilson L. Condon, Attorney General, Juneau, for Amicus Curiae State of Alaska.

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton, and Moore, Justices.

BURKE, Justice.
MATTHEWS, Justice, with whom RABINOWITZ, Justice, joins, dissenting.

Patsy Timperley, personal representative of the estate of Robert Joseph Jeffries, Sr., appeals from an order of the superior court requiring her to secure the transfer of a limited entry fishing permit to the decedent's estate, and to effectuate the sale of the permit to satisfy creditors' claims. We hold that the court's order violates AS 16.43.150(g) and reverse.¹

Robert Jeffries, Sr., died on October 31, 1978, and Patsy Timperley was appointed his personal representative on November 14. His sole heir was his son, Robert Jeffries, Jr. At the time of his death, Jeffries, Sr. held an Alaska limited entry fishing permit. Timperley filed a notice of intent to make a permanent transfer of the permit on December 8, and sought to permanently transfer the permit to Robert Jeffries, Jr., on February 28, 1979. The Commercial Fisheries Entry Commission (CFEC) approved the transfer shortly thereafter and the younger Jeffries has utilized the permit since that time.

During this same period of time, two creditors filed claims against the estate. George Thiele, Sr., advanced a claim of \$13,200, and reduced the claim to a

1. Our decision in this case was deferred pending our determination of the constitutional issues raised in *State v. Ostrosky*, 667 F.2d 1184 (Alaska 1983).

judgment obtained by default. Shan Renee Johnson, acting as the personal representative of the estate of Fanny Hahn, made a claim for wrongful death against the estate, and obtained a default judgment of \$110,698.92. These creditors thereupon moved the court to (1) invalidate the transfer to Robert Jeffries, Jr., (2) return the permit to the estate, and (3) order it sold to satisfy their claims.

Jeffries, Jr., then entered a special appearance, claiming the court lacked jurisdiction to make an order binding him,² and the matter was referred to the probate master for recommendation. Pursuant to that recommendation, the superior court entered an order requiring the CFEC, Jeffries, Jr., and Timperley to transfer the permit back to the estate, and to sell it with the approval of the master.

We begin our analysis by noting that the legislature has provided that "[a]n entry permit survives the death of the holder." AS 16.43.150(f). The next two subsections of this statute, added at different times, have brought about this dispute. AS 16.43.150(g) provides in relevant part:

2. Jeffries, Jr., has filed a brief in this court as an appellee, objecting to the superior court's order on the ground that he was not properly made a party to the proceedings, and on the same substantive grounds urged by Timperley. Given our disposition of the merits, we do not reach the procedural objection.

[A]n entry permit may not be:

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

Subsection (h) provides:

Upon the death of an entry permit holder, the permanent permit shall be transferred by the commission directly to the surviving spouse by right of survivorship unless a contrary intent is manifested. When no spouse survives, the rights of the decedent pass as part of his estate.

Since Jeffries, Sr., was not married at the time of his death, we must decide whether subsection (g) (3) is applicable when "the rights of the decedent pass as part of his estate." Our task is to construe "each part or section . . . with every other part or section so as to produce a harmonious whole." City of Anchorage v. Scavenius, 539 P.2d 1169, 1174 (Alaska 1975), quoting 2 J. Sutherland, Statutes and Statutory Construction § 4703, at 336-37 (3d ed. Horvack 1943).

Application of this principle here convinces us that subsection (g) (3) is as applicable after a permit holder's death as before. There is no question but that as long as Jeffries, Sr., was alive, his creditors had no recourse to the value of the limited entry permit in executing any judgment against him. This was one of his "rights"

while he was alive, and pursuant to subsection (h), that right passed to his estate when he died.

We do agree with the creditors that the permit was part of the estate. Indeed, Timperley does not argue to the contrary. However, even though included in the estate, the permit retained its special status under subsection (g) (3), and could not be treated merely under the general provisions of the probate code. }

We think our interpretation of these statutes not only accords with their language, but furthers the purpose of the Limited Entry Act as well. The Act was directed at regulating entry into the fisheries to promote conservation. AS 16.43.010(a). The legislature also sought to avoid subjecting fishermen to "economic coercion" as a result of holding a valuable license to participate in the fishery. See 1973 House Journal 504. Subsection (g) resulted from this aim; its effect is to allow fishermen to take advantage of the value of their permits if they no longer wish to participate in the fishery, but to prevent the forced loss of livelihood that would result from court-ordered sales of permits.

In the factual situation presented here, these purposes continue to have vitality after the permit holder's death. The permit holder's son, and heir, Robert Jeffries, Jr., seeks to continue fishing with the permit. Thus, where

no sale of the permit by the estate is contemplated, the need to preserve the ability to participate in the fishery continues unabated. We think this approach properly recognizes that the deceased permit holder's heirs frequently have fished with the decedent, or are capable of participating in the fishery if in possession of a permit. We find this situation distinguishable from that presented by an estate's decision to sell the limited entry permit. Such a decision by the personal representative is akin to the voluntary sale of the permit by a living permit holder. Just as creditors would be able to reach the proceeds of a voluntary sale by a permit holder, so too would the proceeds accruing to a permit holder's estate be subject to creditor's claims. We note that anyone to whom an estate seeks to transfer the permit must "establish present ability to participate actively in the fishery."³ AS 16.43.170(b).

The creditors here raise constitutional objections to our construction of the statutes involved, contending that exempting this piece of estate property from forced

3. The statute and the CFEC's regulations define the quoted phrase as meaning "the person is physically able to harvest fish in the fishery and has reasonable access to commercial fishing gear of the type utilized in that fishery." AS 16.43.380(6), 20 AAC 05.770(5). The regulations require the applicant and proposed transferee to certify to these facts, and on request to produce documentation of them. 20 AAC 05.720(b). See also 20 AAC 05.730, 05.750.

sale is within the proscription against creation of "exclusive right or special privilege of fishery," contained in Article VIII, section 15 of the Alaska Constitution. We find no merit in this argument. We likewise are not persuaded that allowing a transfer to a single heir free of creditors' claims denies equal protection either to multiple heirs of a deceased permit holder, or to estates not possessing a limited entry permit.⁴

In conclusion, we hold that the permit here became part of Jeffries, Sr.'s estate. The superior court had jurisdiction to ensure that the personal representative complied with AS 16.43 and the regulations applicable to permit transfers, but the court could not order the permit sold to satisfy creditors' claims.

REVERSED.

4. See State v. Ostrosky, 667 P.2d 1184 (Alaska 1983), where similar constitutional objections to the Limited Entry Act transferability provisions, AS 16.43.150(h), 16.43.170(b) were raised and rejected.

MATTHEWS, Justice, joined by RABINOWITZ, Justice, dissenting.

I would affirm the decision of the superior court. I believe AS 16.43.150(g)(3), which provides that an entry permit may not be attached, distrained, or sold, does not apply to estate property. Moreover, the "rights" language in AS 16.43.150(h) does not indicate a legislative intent to insulate an entry permit which is part of a decedent's estate from the estate's creditors.

I

AS 16.43.180(b) provides:

The commission shall adopt regulations providing for the temporary transfer of an entry permit upon the death of the permittee pending final disposition of the permit as a part of the permittee's estate.

(Emphasis added). In my opinion the emphasized language is so clear and unambiguous as to leave room for only one interpretation: a limited entry permit is to be disposed of as estate property. The majority holds that while a limited entry permit is part of the estate, another section of the Limited Entry Act, AS 16.43.150(g)(3), operates to exempt permits which are estate property from the claims of creditors. This section provides in relevant part:

[A]n entry permit may not be:

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

I believe section 150(g)(3) does not apply to proceedings concerning final disposition of a permit owned by an estate.

First, the initial phrase of section 150(g)(3), "attached, distrained, or sold on execution of judgment or any other process," does not use terms relevant to estate administration. Estate property is property in custodia legis and is not subject to creditor's remedies such as attachment, levy or execution.¹ If the legislature had intended to insulate limited entry permits owned by estates from claims against estates, language of exemption would have been used, as it was with respect to the homestead and family allowances. AS 13.11.125; AS 13.11.140. Creditors' claims against estates may be satisfied from any estate property which is not exempt, AS 13.11.140, and must be paid by the personal representative pursuant to the mandatory command of the probate code.² The creditors' remedies

1. AS 13.16.505 provides in relevant part:

No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative.

...

2. AS 13.16.480(a) provides in relevant part:

Upon the expiration of four months from the date of first publication of the notice to creditors, the personal

(Footnote Continued)

mentioned in § 150(g)(3) have nothing to do with this process.

Second, the remaining language of 150(g)(3) prohibiting sale of any entry permit under an "order of any court" cannot be read as prohibiting a court in a probate action from ordering a personal representative to do what the law requires. For example, in any case in which there are several children and insufficient estate assets, other than the permit, to make an equal distribution; the personal representative may not lawfully prefer the oldest child over the others by giving that child the permit. If the personal representative takes such an action, no reasonable argument could be made that the probate court lacks the power to order the return, and sale, of the permit. Likewise, if there are no heirs, but there are creditors, and the personal representative turns the permit over to a trusted associate of the deceased, there is no doubt that the probate court would have the power to order the return and sale of the permit.

(Footnote Continued)

representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family and support allowances. . . .

(Emphasis added).

II

The majority's emphasis of the "rights" language of the second sentence of § 150(h) is misconceived.³ The majority reasons that the word "rights", as used in that provision, operates to pass the protection from claims of creditors which the permit holder enjoys when he is alive, by virtue of § 150(g)(3), to his estate when he dies.

The first problem with the majority's analysis is that it focuses on section 150(h), rather than section 180(b) which does not contain the word "rights." Section 150(g)(3) and section 180(b), directing final disposition of a permit as a part of the permittee's estate, were passed as a part of the original Limited Entry Act. Ch. 79, § 1, SLA 1973. Section 150(h) was added in 1977. Ch. 73, § 2, SLA 1977. The question posed by this case, whether a permit owned by a permittee's estate is subject to creditors' claims, would be the same whether or not subsection (h) had ever been passed.

3. Subsection 150(h) provides:

Upon the death of an entry permit holder, the permanent permit shall be transferred by the commission directly to the surviving spouse by right of survivorship unless a contrary intent is manifested. When no spouse survives, the rights of the decedent pass a part of the decedent's estate.

Second, the tapes of the 1977 committee hearings concerning adoption of 150(h) make it clear that the purpose of section 150(h) was to transfer an entry permit upon the death of the permittee to his surviving spouse in order to avoid the delay and expenses of probate. Except in the case of a surviving spouse, there was no intention to change preexisting law. Thus, Representative Eliason who authored the committee substitute which became section 150(h), stated with respect to the second sentence of 150(h)⁴:

'when no spouse survives,' we need that for a single or death, or divorced or whatever it might be, 'the rights of the deceased pass on as a part of the estate', which means that goes into what we're doing at the present time to probate, and then up for sale or transfer . . . by the people who administer the estate . . .

(Emphasis added). It is therefore clear that the legislature by enacting the second sentence of 150(h) did not intend a change in existing law. The "rights" language means no more than what the language of 180(b) meant; that the permittee's permit passes to his estate upon his death.

For the reasons stated above, the superior court's conclusion that § 150(g)(3) does not govern disposition of an entry permit which has passed to an estate is correct.

4. Proceedings of the House Resources Committee regarding CSSB 83, tape 12, log 305 (Feb. 25, 1977).

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 21, 1983

SUBJECT: Constitutionality of penalties for illegal
 purchase of fish (CSHB 376 (Resources))

TO: Senator Bob Mulcahy

FROM: Edward H. Hein *EHA*
 Legislative Counsel

CSHB 376 (Resources) is scheduled for a Senate Resources committee hearing Tuesday, March 27th. The bill contains a substantial constitutional problem because it conflicts with penalty provisions already in statute for illegal purchases of fish.

Briefly, the problem is this: AS 16.10.265 makes it unlawful for someone in the business of buying fish (processors, fish buyers, or their agents, etc.) to buy from a seller who does not have the required permit. Punishment for this offense varies depending on whether it is a first, second, or third conviction. A first conviction is punishable as a class B misdemeanor, mandatory minimum fine of \$1,000, and a maximum fine of \$5,000 and a maximum 90 days imprisonment. Under AS 16.05.680(2) it is unlawful for any person, including processors and fish buyers, to purchase fish from a seller who does not have the required permit. This offense is punishable under AS 16.05.720 as a class A misdemeanor, maximum fine of \$5,000 and maximum sentence of one year imprisonment.

The problem is that a processor or fish buyer may be prosecuted under either section for the same criminal conduct. The elements of proof essential to conviction are exactly the same. Thus a prosecutor would have unbridled discretion to file charges under either statute, depending on which penalty the prosecutor wanted to subject a defendant to.

Unless a court were to determine that there is some substantial difference in the elements of proof essential to conviction under both statutes, the disparity of punishments is

Senator Bob Mulcahy
Page 2
March 23, 1984

likely to be found in violation of the equal protection and due process requirements of the Alaska and United States Constitutions. As the Alaska Supreme Court has said,

We have never held that statutes which allow differing punishments for the same criminal conduct are necessarily unconstitutional as giving prosecuting officials unwarranted charging discretion. However, we have recognized that a substantial question is thereby presented.

Holden v. State, 602 P.2d 452, 454 (Alaska 1979).

In addition to any possible constitutional problems, you may wish to consider whether the statutory punishment scheme frustrates the apparent legislative intent in enacting AS 16.10.265 last year. That statute was apparently intended to increase the penalty for those who profit financially from illegally purchasing fish. The result now is that we may be punishing the person who makes an occasional illegal purchase to put fresh fish on the dinner table more severely than we punish the commercial buyer who has a financial incentive to break the law.

If you have any questions or comments about the subject of this memorandum, feel free to contact me at your convenience.

EHH:ojb
J4/112

Sec. 16.05.670. Fishing gear license in general. [Repealed, § 19 ch 105 SLA 1977.]

Sec. 16.05.680. Unlawful purchases. A person, or the person's agent or representative, may not

(1) employ in harvesting, transporting, or purchasing of fish a fisherman who is neither licensed under AS 16.05.480 nor a holder of a permit issued under AS 16.43;

(2) purchase fish from a fisherman who is neither a holder of a permit issued under AS 16.43 nor exempt under AS 16.05.660; or

(3) purchase fish from an association other than one to which a permit has been issued under AS 16.05.662. (§ 10 art III ch 94 SLA 1959; am § 2 ch 96 SLA 1963; am § 2 ch 73 SLA 1970; am § 11 ch 105 SLA 1977)

Cross references. — For additional penalty provisions related to unlawful purchase of fish, see AS 16.10.265.

Sec. 16.05.685. Processing on commercial crab fishing vessels. (a) Crab of any species may not be processed on a commercial crab fishing vessel unless

(1) the vessel remains within one registration area from the time the crab is caught to the time of dock delivery;

(2) the operator of the vessel notifies the department of proposed changes in location before moving to another registration area; and

(3) the operator of the vessel provides quarters for inspectors of the department who may inspect the crab catch on the vessel at any time.

(b) The restrictions set out in (a) of this section do not apply to processing aboard the fishing vessel for and as donations to charity, for consumption aboard the vessel, or for dockside retail sales from the vessel.

(c) In this section,

(1) "process" means to butcher, cook, chill, or freeze crab for commercial use;

(2) "registration area" means a specific king crab registration area as designated by regulation of the Board of Fisheries and includes the Bering Sea shellfish area and the western Aleutian Islands king crab area. (§ 2 ch 70 SLA 1974; am § 12 ch 206 SLA 1975)

Sec. 16.05.690. Record of purchases. Each buyer of fish shall keep a record of each purchase showing the name or number of the vessel from which the catch involved is taken, the date of landing, vessel license number, pounds purchased of each species, number of each species, and where possible, statistical area in which the fish were taken, and other information the department requires. Records may be kept on forms provided by the department. Each person charged with keeping the records must report them to the department in accordance with regulations adopted by it. (§ 10 art III ch 94 SLA 1959)

Sec. 16 [Repealed]

Sec. 16 conviction of federal or fish of the law, forfeiture one year. penalty in period not ch 112 SL

Legislative report on ch. Journal, p. 8

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Sec. 16. tion, a pe- lations of 1 of a misde more than by both.

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(c) A per- commercial fishing with tackle, or cially, is imposed upon the gross value of the fishing a person for forfeiture of three times vessel or at the fishing 1959; am §

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§ 16.05.700

FISH AND GAME

§ 16.05.720

Sec. 16.05.700. Penalty for violation of AS 16.05.680 and 16.05.690. (Repealed, § 25 ch 127 SLA 1974. For current law, see AS 16.05.720.)

Sec. 16.05.710. License forfeiture. Upon a first or second conviction of a person for a violation of AS 16.05.440 — 16.05.720 or a federal or state law or regulation for the protection of the commercial fish of the state, the court may, in addition to the penalty imposed by law, forfeit the commercial fishing license of the person for a period of one year. Upon a third conviction, the court may, in addition to the penalty imposed by law, forfeit the commercial fishing license for a period not to exceed three years. (§ 11 art III ch 94 SLA 1959; am § 1 ch 112 SLA 1961; am § 1 ch 75 SLA 1966)

Legislative history reports. — For report on ch. 75, SLA 1966, see 1966 House Journal, p. 889.

Former provision held unconstitutional. — A former provision of this section requiring a forfeiture immediately upon conviction and no stay pending appeal was declared unconstitutional in

Leege v. Martin, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963).

Stated in *Rubino v. State*, Sup. Ct. Op. No. 215 (File No. 395), 391 P.2d 946 (1964).

Cited in *Love v. State*, Sup. Ct. Op. No. 570 (File No. 1028), 457 P.2d 622 (1969).

Sec. 16.05.720. Penalties. (a) Except as modified by (c) of this section, a person who violates AS 16.05.480 — 16.05.690 or the regulations of the department pertaining to commercial fisheries is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$5,000, or by imprisonment for not more than one year, or by both.

(b) The court shall transmit the proceeds from all fines to the proper state officer for deposit in the general fund of the state.

(c) A person who is convicted of commercial fishing in closed waters, commercial fishing during a closed period or season, or commercial fishing with unlawful gear including but not limited to nets, pots, tackle, or other devices designed or employed to take fish commercially, is guilty of a misdemeanor and in addition to the penalty imposed under (a) of this section is punishable by a fine of not less than the gross value to the fisherman of the fish found on the vessel or at the fishing site at the time of the violation. Upon a third conviction of a person for a violation under this subsection, and in addition to the forfeiture provision in AS 16.05.710, the fine shall be not less than three times the gross value to the fisherman of the fish found on the vessel or at the fishing site, or, if no fish are found on the vessel or at the fishing site, a fine of not more than \$10,000. (§ 12 art III ch 94 SLA 1959; am § 24 ch 131 SLA 1960; am §§ 1, 2 ch 124 SLA 1974)

Section governs fine for violation of commercial fishing regulation. — Where a violation is of a commercial fishing regulation, the fine imposed is governed by subsection (a) of this section.

Theodore v. State, Sup. Ct. Op. No. 305 (File No. 550), 407 P.2d 182 (1965), cert. denied, 384 U.S. 951, 86 S. Ct. 1570, 16 L. Ed. 2d 547 (1966).

Applied in *Leege v. Martin*, Sup. Ct.

(3) existing laws and regulations prohibiting the taking of salmon by means of nets on the high seas. (§ 6 ch 121 SLA 1960)

Article 5. Transportation of Fish and Shellfish.

Section

- 240. Transportation of King, Dungeness or Tanner crab
- 250. Penalty

Sec. 16.10.240. Transportation of King, Dungeness or Tanner crab. A person may not take out of, ship, transport, or send from this state any live King crab, species *Paralithodes camtschatica*, live Dungeness crab, species *Cancer magister*, or live Tanner crab, species *Chionoecetes bairdi*, except that all of these species may be shipped live via air freight after pre-packaging. (§ 1 ch 33 SLA 1962; am § 2 ch 5 SLA 1966; am § 1 ch 14 SLA 1969)

Legislative history reports. — For 1969 House Journal, p. 216.
 report on ch. 5, SLA 1966 (SB 182), see Collateral references. — 35 Am. Jur.
 1966 House Journal, pp. 50, 51. For report 2d, Fish & Game, § 49.
 on ch. 14, SLA 1969 (HB 172 am S), see

Sec. 16.10.250. Penalty. A person, association, or corporation violating AS 16.10.240 or contributing to or cooperating in the violation of AS 16.10.240 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$5,000, or by imprisonment for not more than one year, or by both. Each unlawful removal of live crab is a separate offense. Vessels and equipment used in or in aid of a violation of AS 16.10.240 may be seized and disposed of as provided in AS 16.05.190. Conviction under AS 16.10.240 is grounds for suspension of a fishing license or permit by the Department of Fish and Game. (§ 2 ch 33 SLA 1962)

Article 6. Purchase of Fish.

Section

- 265. Purchase of fish from permit holders
- 267. Possession of permit and identification by seller
- 268. Notice of liability
- 270. Purchase of fish by the pound
- 275. Regulations
- 280. Price disputes between fishermen and fish processors
- 290. Security for collection of wages and payment for raw fish

Section

- 291. Waiver of bonding requirement
- 292. Filing evidence of compliance
- 293. Exemptions from bonding requirement
- 294. Suspension and revocation of license
- 295. Penalty
- 296. Definitions

Sec. 16.10.265. Purchase of fish from permit holders. (a) While acting as a fish processor or primary fish buyer, or as an agent, direc-

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tor, officer, member, or employee of a fish processor, of a primary fish buyer, or of a cooperative corporation organized under AS 10.15, an individual may not intentionally or knowingly make an original purchase of fish from a seller who does not hold an entry permit or an interim-use permit issued or transferred to the seller in accordance with AS 16.43.

(b) An individual who violates (a) of this section is

(1) upon a first conviction, guilty of a class B misdemeanor and shall be sentenced to a fine of not less than \$1,000 nor more than \$5,000, and may be sentenced to a definite term of imprisonment of not more than 90 days;

(2) upon a second conviction, guilty of a class A misdemeanor and shall be sentenced to a fine of not less than \$5,000 nor more than \$10,000, and may be sentenced to a definite term of imprisonment of not more than one year;

(3) upon a third or subsequent conviction, guilty of a class A misdemeanor and shall be sentenced to a fine of not less than \$10,000 nor more than \$25,000, and may be sentenced to a definite term of imprisonment of not more than one year.

(c) The commissioner of revenue shall impose upon a fish processor, primary fish buyer, or cooperative corporation organized under AS 10.15, a civil fine equal to the value of fish purchased in violation of this section by (1) the fish processor or primary fish buyer if the fish processor or primary fish buyer is not a corporation; or (2) a director, officer, or employee in a policy-making position of the fish processor, of the primary fish buyer, or of the cooperative corporation. Value is based on the average price paid to fisherman at the time of the violation.

(d) The commissioner of revenue may suspend or revoke a business license issued under AS 43.70.020 or a license to engage in the business of processing or buying raw fish if the licensee or an officer, director or employee in a policy-making position of the licensee has been convicted of three offenses under this section. Proceedings to suspend or revoke a license are governed by the Administrative Procedure Act (AS 44.62).

(e) An organization may not be criminally prosecuted under (a) of this section.

(f) As used in this section, "individual" means a natural person. (§ 2 ch 94 SLA 1982)

Cross references. — For additional penalty provisions related to unlawful purchase of fish, see AS 16.05.680.

Sec. 16.10.267. Possession of permit and identification by seller. (a) When a fisherman sells fish, the fisherman shall possess

(1) an entry permit or interim-use permit issued or transferred to the fisherman under AS 16.43, or other document authorized by regu-

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 21, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill proposing technical amendments to the Limited Entry Act, AS 16.43. These amendments are necessary to assure the continued smooth functioning of the limited entry program.

Section 1 of the bill deals with the potential problem of deadlocks when only two members of the Commercial Fisheries Entry Commission are participating in an adjudication. It instructs the commission to adopt regulations providing for measures to be taken in this situation.

Section 2 of the bill grants the commission the power to charge reasonable fees to defray the costs of services it renders to members of the public, such as processing permit transfer applications.

Section 3 of the bill instructs the commission to adopt regulations governing the correction of its administrative errors, as, for example, where an applicant has been mistakenly credited with points for vessel ownership when the applicant did not own a vessel. This section will not allow the commission to undo discretionary determinations made by previous members of the commission. Nor will it require the commission to reopen closed applications when a court determines that the commission has misinterpreted a statute or regulation.

Section 4 of the bill is a technical change reflecting the fact that AS 16.43.380(3), which defines the term "fishery", was amended in 1981 to provide that a fishery may cover more than one administrative area.

Section 5 of the bill slightly modifies existing AS 16.43.150(f), which states flatly that an entry permit survives the death of its holder. Revised section 150(f) would provide that permits held by persons who qualified as "minor economic hardship" applicants under AS 16.43.250(c) -- persons with minimal ties to the fishery in which they hold permits -- cease to exist when their holders die. These permits are currently non-transferable under AS 16.43.170(e) before the commission sets an optimum number under AS 16.43.290 in a fishery (unless the commission estimates that the number of permits outstanding in that fishery does not exceed the optimum number); they are transferable after the optimum number is set, but only to the commission under AS 16.43.170(c).

Section 6 of the bill modifies the "contrary intent" language in the existing law to make clear that, if there is a surviving spouse, the permit of the deceased permit holder will go directly to that surviving spouse unless the holder has made other provision for the permit's disposition in a valid will that has been probated. This modification should assure that the Limited Entry Act is construed consistently with Alaska's probate code, and that questions of probate law are left to the courts rather than to the Commission.

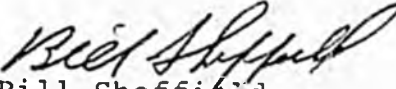
Section 7 of the bill is intended to end the possible ambiguity in the current language of AS 16.43.170(b) and make clear that the commission is not obligated to approve a permit transfer solely because the proposed transferee can show the present ability to actively participate. Under the amendments in sec. 7, even if a transferee demonstrates the ability to participate, the commission will plainly be able to disapprove the transfer if it would be improper, as, for instance, if the transfer is a lease forbidden by AS 16.43.150(g).

Section 8 of the bill is intended to give the commission discretion in determining what years are to be considered in setting eligibility to apply for an entry permit in a newly-limited fishery. Under the law as currently interpreted, anyone who has ever held an Alaska gear license (first issued in 1960) in a given fishery is eligible to apply if that fishery is then limited. This has not been a problem to date. But as 1960 becomes increasingly distant, and the character of the state's fisheries changes, it will be increasingly inappropriate to allow eligibility based on participation that may be 25

years in the past. The proposed amendment to AS 16.43.260(a) will give the commission necessary flexibility.

I urge your prompt action on this bill.

Sincerely,


Bill Sheffield
Governor

IV. ANALYSIS: HB 376 Page 2 of 2

of original bill

Section 1 instructs the commission to adopt regulations providing for measures to be taken in instances where a tie vote occurs in the adjudication of a permit application.

included in Sec 5

Section 2 grants the commission the power to charge reasonable fees to defray the costs of service it renders to members of the public.

Sec 6

Section 3 instructs the commission to issue regulations governing the correction of its administrative error, as, for example, where an applicant has been mistakenly credited with points for vessel ownership when the applicant did not own a vessel.

Sec 7

Section 4 is a technical change reflecting the fact that AS 16.43.380(3), which defines the term "fishery", was amended in 1981 to provide that a fishery may cover more than one administrative area.

Sec 8

Section 5 is intended to clarify in AS 16.43.150(f) what is already apparent elsewhere in the Limited Entry Act, namely that the permit of "minor economic hardship" applicant under AS 16.43.250(c), which permits are expressly non-transferable does not survive the death of the holder, and cannot be transferred in any way after his death.

Sec 9

Section 6 tightens up the "contrary intent" language in the existing law such that a permit will go directly to the deceased permit holder's surviving spouse unless the permit holder made other provision for its disposition in a valid will.

similar to Sec 10

Section 7 is intended to end the possible ambiguity in the current language of AS 16.43.170(b) and make clear that the commission is not obligated to approve a permit transfer whenever the proposed transferee can show the present ability to actively participate. Under the proposed language of Section 7, the commission will plainly be able to disapprove a transfer when it would be improper, as, for instance, if the transfer is a lease forbidden by AS 16.43.150(g).

Sec. 11

Section 8 is intended to give the commission discretion in determining what years are to be considered in setting eligibility to apply in a newly limited fishery. Under the law as currently interpreted, anyone who has ever held an Alaska gear license (first issued in 1960) in a given fishery is eligible to apply if that fishery is limited. As 1960 becomes increasingly distant, and the character of the State's fisheries changes, it is increasingly inappropriate to allow eligibility based on participation that may be twenty-five years in the past. The proposed amendment to AS 16.43.260(a) will give the commission the necessary flexibility.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 21, 1983

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Alaska State Legislature
Pouch V
Juneau, Alaska 99811

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Section 4 of the bill is a technical change reflecting the fact that AS 16.43.380(3), which defines the term "fishery", was amended in 1981 to provide that a fishery may cover more than one administrative area.

Section 5 of the bill slightly modifies existing AS 16.43.150(f), which states flatly that an entry permit survives the death of its holder. Revised section 150(f) would provide that permits held by persons who qualified as "minor economic hardship" applicants under AS 16.43.250(c) -- persons with minimal ties to the fishery in which they hold permits -- cease to exist when their holders die. These permits are currently non-transferable under AS 16.43.170(e) before the commission sets an optimum number under AS 16.43.290 in a fishery (unless the commission estimates that the number of permits outstanding in that fishery does not exceed the optimum number); they are transferable after the optimum number is set, but only to the commission under AS 16.43.170(c).

Section 6 of the bill modifies the "contrary intent" language in the existing law to make clear that, if there is a surviving spouse, the permit of the deceased permit holder will go directly to that surviving spouse unless the holder has made other provision for the permit's disposition in a valid will that has been probated. This modification should assure that the Limited Entry Act is construed consistently with Alaska's probate code, and that questions of probate law are left to the courts rather than to the Commission.


Section 7 of the bill is intended to end the possible ambiguity in the current language of AS 16.43.170(b) and make clear that the commission is not obligated to approve a permit transfer solely because the proposed transferee can show the present ability to actively participate. Under the amendments in sec. 7, even if a transferee demonstrates the ability to participate, the commission will plainly be able to disapprove the transfer if it would be improper, as, for instance, if the transfer is a lease forbidden by AS 16.43.150(g).

Section 8 of the bill is intended to give the commission discretion in determining what years are to be considered in setting eligibility to apply for an entry permit in a newly-limited fishery. Under the law as currently interpreted, anyone who has ever held an Alaska gear license (first issued in 1960) in a given fishery is eligible to apply if that fishery is then limited. This has not been a problem to date. But as 1960 becomes increasingly distant, and the character of the state's fisheries changes, it will be increasingly inappropriate to allow eligibility based on participation that may be 25

years in the past. The proposed amendment to AS 16.43.260(a) will give the commission necessary flexibility.

I urge your prompt action on this bill.

Sincerely,


Bill Sheffield
Governor

Landing permits not currently required. In-state fishermen eligible to land fish by holding an entry permit or interim-use permit.

1976 federal government assumed authority to issue fishing permits for the high seas (outside of 3 miles). Once fishermen within the 3-mile zone, subject to all state laws.

1978 federal government limited high seas salmon troll fishery - grandfathered in all state permit holders and any offshore fishers - there were only 2. Since these 2 didn't hold state entry permits, they froze their fish on board and landed it in Seattle.

Recently, one of these 2 guys approached the feds wanting to land fish in Alaska. Feds sided with him, saying that under federal supremacy, the federal permit should authorize landing anywhere in the U.S. Feds are now saying will take Alaska to court if the State doesn't allow this guy to land fish here. Could include hundreds of crab fishermen, ground fishermen.

Result would be a parallel, overlapping, uncoordinated licensing system. Will harm the state's reporting and management system, since the information on the state permits is the basis for management and enforcement of the resource.

Commitment from feds that they won't file suit as long as this bill is going forward. Williams feels if we adjourn out from under this bill, the feds will file suit - and they may anyway. Potentially major case involving federal pre-emption of state law.

If bill passes, state would issue landing permits to high seas fishermen. This would allow for continuation of reporting.

Is not agreement within administration on whether they feel the State would win or lose the case.

Williams has spoken to Mulcahy and Kerttula about this bill's urgency.

Sandra

Offered: 6/1/83
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE RESOURCES COMMITTEE
2 CS FOR HOUSE BILL NO. 376 (Resources) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act amending the Limited Entry Act; providing for
7 landing permits; and providing for an effective
8 date."

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

10 ✓* Section 1. AS 16.05 is amended by adding a new section to read:

11 *see* Sec. 16.05.675. LANDING PERMITS. (a) A person who does not
12 hold a limited entry permit or interim-use permit issued under
13 AS 16.43 may not deliver or land fish in the state unless the person

14 (1) holds a valid federal permit to operate commercial
15 fishing gear in the fishery conservation zone; and

16 (2) has been issued a landing permit by the Commercial
17 Fisheries Entry Commission.

18 (b) The commissioner may by regulation establish eligibility
19 requirements for the issuance of a landing permit.

20 (c) The commissioner may authorize the Commercial Fisheries
21 Entry Commission to issue landing permits for a fishery if the commis-
22 sioner has made a written finding that the issuance of landing permits
23 for that fishery is consistent with state resource conservation and
24 management goals.

25 *not in AS* Sec. 2. AS 16.05.680 is amended to read:

26 *because it* Sec. 16.05.680. UNLAWFUL PURCHASES. It is unlawful for a per-
27 *is already in* son, or an agent or representative of the person, [HIS AGENT, OR HIS
28 *state* REPRESENTATIVE]

29 (1) to [HAVE IN HIS] employ, in the harvesting,

1 transporting or purchasing of fish, a fisherman who neither is
2 licensed under AS 16.05.480 nor is the holder of a permit issued under
3 AS 16.43,

4 (2) to purchase fish from a fisherman who neither is the
5 holder of a limited entry, interim-use, or landing permit issued under
6 AS 16.43, nor is exempt under AS 16.05.660, or

7 (3) to purchase fish from an association other than one to
8 which a permit has been issued under AS 16.05.662.

9 ^{SEC 2} ✓ * Sec. 3. AS 16.10.265(a) is amended to read:

10 (a) It is unlawful for an individual while acting as a fish
11 processor or primary fish buyer, or as an agent, director, officer,
12 member, or employee of a fish processor, of a primary fish buyer, or
13 of a cooperative corporation organized under AS 10.15 to intentionally
14 or knowingly make an original purchase of fish from a seller who, in
15 violation of AS 16.43, does not hold a landing permit, an entry permit
16 or an interim-use permit [ISSUED OR TRANSFERRED TO THE SELLER IN
17 ACCORDANCE WITH AS 16.43].

18 ^{SEC 3} * Sec. 4. AS 16.10.267(a)(1) is amended to read:

19 (1) a landing permit, [AN] entry permit or interim-use
20 permit issued or transferred to the fisherman under AS 16.43, or other
21 document authorized by regulation to be used in place of an entry
22 permit or interim-use permit; and

23 ^{SEC 4} ✓ * Sec. 5. AS 16.43.100(a) is amended by adding new paragraphs to read:

24 (16) establish reasonable user fees for services;

25 (17) issue landing permits in accordance with AS 16.05.675
26 and regulations adopted under that section; and

27 (18) establish and collect annual fees for the issuance of
28 landing permits that reasonably reflect the costs incurred in the
29 administration and enforcement of provisions of law related to landing

1 permits.

2 ^{secs} * Sec. 6. AS 16.43.110 is amended to add a new subsection to read:

3 (e) The commission shall adopt regulations to provide for the
4 correction of administrative error.

5 ^{secs} * Sec. 7. AS 16.43.150(a) is amended to read:

6 (a) Each entry permit authorizes the permittee to operate a unit
7 of gear within a specified fishery [ADMINISTRATIVE AREA].

8 ^{secs} * Sec. 8. AS 16.43.150(f) is amended to read:

9 (f) Except for permits which are not transferable under AS 16.-
10 43.170(c) or (e), an [AN] entry permit survives the death of the
11 holder.

12 ^{secs} * Sec. 9. AS 16.43.150(h) is amended to read:

13 (h) Upon the death of an entry permit holder, the permanent
14 permit shall be transferred by the commission directly to the surviv-
15 ing spouse by right of survivorship unless the deceased holder has
16 expressed a contrary intent in a will that is probated [A CONTRARY
17 INTENT IS MANIFESTED]. When no spouse survives, the rights of the
18 decedent pass as part of the decedent's [HIS] estate.

19 ^{secs} * Sec. 10. AS 16.43.170(b) is amended to read:

20 (b) Except as provided in (c) and (e) of this section, the
21 holder of an entry permit may transfer the [HIS] permit to another
22 person or to the commission upon 60 days notice of intent to transfer
23 under regulations adopted by the commission. No sooner than 60 days
24 nor later than 12 months from the date of notice to the commission,
25 the holder of an entry permit may transfer the [HIS] permit. If the
26 proposed transferee, other than the commission, can demonstrate the
27 [ESTABLISH] present ability to participate actively in the fishery and
28 the transfer agreement does not violate any provision of AS 16.43 or
29 regulations adopted thereunder, the commission shall approve the

1 transfer and reissue the entry permit to the transferee provided that
2 neither party is prohibited by law from participating in the transfer.

3 * Sec. 11. AS 16.43.260(a) is amended to read:

4 (a) The commission shall accept applications for entry permits
5 only from applicants who have harvested fishery resources commercially
6 while participating in the fishery as holders of gear licenses issued
7 under AS 16.05.536 - 16.05.670 and interim-use permits under AS 16.-
8 43.210(a) before the qualification date established in (d) or (e) of
9 this section. The commission may specify by regulation the calendar
10 years of participation that will be considered for eligibility pur-
11 poses.

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by
SubComm*

J B

gol

* Sec. 12. This Act takes effect immediately in accordance with AS 01.-
13 10.070(c).

Proposed amendments to CSHB 376 (Res)am

- ✓ 1. Section 1 Sec. 16.05.675(a) (1) is rewritten to read:
 - (1) has harvested the fish under federal authority in the fishery conservation zone; and
- ✓ 2. Section 1 is amended by adding a new subsection (d) to read:
 - (d) A landing permit is nontransferable.
- ✓ 3. Section 3 AS 16.10.265(a) is rewritten to read:
 - (a) It is unlawful for an individual while acting as a fish processor or primary fish buyer, or as an agent, director, officer, member, or employee of a fish processor, of a primary fish buyer, or of a cooperative corporation organized under AS 10.15 to intentionally or knowingly make an original purchase of fish from a seller who does not hold a landing permit, an entry permit or an interim-use permit issued under [OR TRANSFERRED TO THE SELLER IN ACCORDANCE WITH] AS 16.43.
- ✓ 4. Section 4 AS 16.10.267(a)(1) is rewritten to read:
 - (1) a landing permit, [AN] entry permit or interim-use permit issued [OR TRANSFERRED TO THE FISHERMAN] under AS 16.43, or other document authorized by regulation to be used in place of a[n] landing permit, entry permit or interim-use permit; and
- ✓ 5. Section 5 AS 16.43.100(a) (18) is rewritten to read:
 - (18) establish and collect annual fees for the issuance of landing permits.

CFEC 3/21/84

Introduced: 2/8/84
Referred: Resources and
Judiciary

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 422 .

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act amending the Limited Entry Act."

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

8 ✓ * Section 1. AS 16.43.150(g) is amended to read:

9 ^{sec 8} (g) Except as provided in AS 16.10.333 -- 16.10.337 and in
10 AS 44.81.230 -- 44.81.250, an entry permit may not be[:]

11 (1) pledged, mortgaged, leased, or encumbered in any way;

12 (2) transferred with any retained right of repossession or
13 foreclosure, or on any condition requiring a subsequent transfer; or

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

16 * Sec. 2. AS 16.43.160(c) is amended to read:

17 ✓ ^{sec 10} (c) The resident holder of an entry permit or interim-use permit
18 who has a net family income falling within the federal [FEDERAL COM-
19 MUNITY SERVICES ADMINISTRATION] poverty guidelines, adjusted by the
20 commission to reflect appropriate cost-of-living differentials, is
21 subject to a maximum annual fee of \$15.

22 ✓ ^{sec 11} * Sec. 3. AS 16.43.160 is amended by adding a new subsection to read:

23 (d) The commission may charge interest at a rate not to exceed
24 the legal rate of interest established in AS 45.45.010 on fees more
25 than 60 days overdue.

26 ✓ * Sec. 4. AS 16.43.250(a) is amended to read:

27 ^{sec 13} (a) Following the establishment of the maximum number of units
28 of gear for a particular fishery under AS 16.43.240, the commission
29 shall adopt regulations establishing qualifications for ranking

1 applicants for entry permits according to the degree of hardship which
2 they would suffer by exclusion from the fishery. The regulations
3 shall define priority classifications of similarly situated applicants
4 based upon a reasonable balance of the following hardship standards:

5 (1) degree of economic dependence upon the fishery, which
6 may include [INCLUDING] but is not limited to percentage of income
7 derived from the fishery, reliance on alternative occupations, avail-
8 ability of alternative occupations, investment in vessels and gear;

9 (2) extent of past participation in the fishery, which may
10 include [INCLUDING] but is not limited to the number of years of
11 participation in the fishery, and the consistency of participation
12 during each year.

13 ✓ * Sec. 5. AS 16.43.351(b) is amended to read:

14 ^{5/2/14} (b) A recipient may be issued an educational entry permit valid
15 for designated fisheries [EACH FISHERY] in the administrative area the
16 commission determines to be appropriate, considering the nature of the
17 educational program and the location of the educational or vocational
18 institution. The recipient of an educational entry permit may not be
19 issued an educational entry permit [PERMITS] in more than one adminis-
20 trative area except as issued by the commission in its discretion upon
21 good cause shown.

22 ✓ * Sec. 6. AS 16.43.960 is amended to read:

23 ^{5/2/14} Sec. 16.43.960. COMMISSION REVOCATION OR SUSPENSION OF [ENTRY]
24 PERMITS. (a) The commission may revoke, suspend, or transfer all
25 [AN] entry [PERMIT] or interim-use permits held by [PERMIT IF] a
26 person who knowingly provides or [SUPPLIES,] assists in providing
27 false information [SUPPLYING], or fails to correct false information
28 provided, to the commission for the purpose of obtaining a benefit for
29 himself or another, including the issuance, renewal, duplication, or

1 transfer of an entry or interim-use permit or vessel license. The
2 commission may suspend that person's eligibility to hold an entry or
3 interim-use permit for a period not to exceed three years, and may
4 impose an administrative fine of not more than \$5,000 on the person.
5 The commission may also impose an administrative fine of not more than
6 \$5,000 on an entity whose officers, employees, representatives, or
7 agents knowingly provide or assist in providing false information, or
8 fail to correct false information provided, to the commission for the
9 purpose of obtaining a benefit

10 [(1) PERMIT APPLICATION;

11 (2) PERMIT TRANSFER; OR

12 (3) PERMIT RENEWAL].

13 (b) The [BEFORE REVOCATION, THE] commission shall serve the
14 respondent [PERMIT HOLDER] personally or by certified or registered
15 mail with a notice to show cause why the proposed action should not
16 take place. The notice to show cause must

17 (1) be supported by an affidavit which may be made on
18 information or belief setting out the facts which are the basis of the
19 proposed action;

20 (2) provide for at least 30 days' notice of the place,
21 date, and time of the hearing where the respondent [PERMIT HOLDER] may
22 present evidence in opposition to the proposed action; unless waived
23 in writing by the respondent [PERMIT HOLDER], the hearing [PLACE]
24 shall be held within the judicial district in which the respondent
25 [PERMIT HOLDER] resides if the respondent [PERMIT HOLDER] resides in
26 the state; the hearing place shall be at the discretion of the commis-
27 sion for those respondents [PERMIT HOLDERS] residing outside the
28 state;

29 (3) specify the statutes or regulations violated;

1 (4) state with particularity the action proposed to be
2 taken;

3 (5) indicate to THAT the respondent [PERMIT HOLDER'S]
4 that the respondent's ability to permanently transfer the permits
5 [PERMIT] which are [IS] the subject of the show cause [REVOCAATION]
6 proceedings has been suspended as of the date of the notice and will
7 continue to be suspended until the exhaustion of all administrative
8 and judicial remedies; and

9 (6) provide other information the commission considers
10 proper.

11 (c) A permit subject to show cause [REVOCAATION] proceedings
12 under this section may not be transferred after the date of the notice
13 in (b) of this section pending exhaustion of all administrative and
14 judicial remedies arising from action taken under this section.

15 (d) The show cause [REVOCAATION] hearing shall be conducted
16 before a quorum of commissioners and shall be presided over by a
17 hearing officer appointed by the commission who shall rule on the
18 presentation of evidence and other procedural matters. Hearings shall
19 be conducted in accordance with regulations adopted under AS 16.43.-
20 110(b). [WITHIN A REASONABLE TIME AFTER THE CONCLUSION OF THE HEAR-
21 ING, THE HEARING OFFICER SHALL SUBMIT TO THE ATTENDING COMMISSIONERS A
22 PROPOSED DECISION BASED ON THE RECORD OF THE HEARING AND CONTAINING
23 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ACTION. THE
24 ATTENDING COMMISSIONERS SHALL THEN REVIEW THE HEARING OFFICER'S PRO-
25 POSED DECISION AND ADOPT OR AMEND OR REJECT THE CONTENTS OF THE PRO-
26 POSED DECISION IN THE WRITTEN DECISION OF THE COMMISSION. A COPY OF
27 THE COMMISSION DECISION SHALL BE MAILED TO EACH PARTY OR THE PARTY'S
28 ATTORNEY BY CERTIFIED OR REGISTERED MAIL.]

29 (e) The failure of a respondent [PERMIT HOLDER] properly served

1 under (b) of this section to appear at the hearing is not grounds for
2 setting aside any commission action taken. However, the commission
3 may in its discretion order a continuance or second hearing.

4 (f) [THE EFFECTIVE DATE OF THE COMMISSION DECISION UNDER THIS
5 SECTION IS THE DATE OF THE NOTICE TO SHOW CAUSE FIRST SERVED UPON THE
6 PERMIT HOLDER UNDER (b) OF THIS SECTION.]

7 (g) The provisions of this section [DO NOT] apply to conduct
8 occurring after January 1, 1973, but do not affect a [THE] permit held
9 by [OF] a person who is a bona fide purchaser. Failure to correct
10 false information is a continuing offense.

11 (h) Judicial review of commission determinations under this
12 section is in accordance with AS 44.62.560 -- 44.62.570; however, if a
13 hearing de novo is granted under AS 44.62.570(d), the hearing may, in
14 the discretion of the court, be had with a jury sitting if application
15 for the jury hearing is filed with the court no later than 10 days
16 after service of the notice of appeal.

17 (i) An entry permit revoked by the commission under this section
18 that is pledged [TAKEN] as security for a loan under AS 16.10.333 or
19 AS 44.81.230 shall be reassigned as provided in AS 16.10.337 or
20 AS 44.81.250.

21 ✓ * Sec. 7. AS 16.43.970(b) is amended to read:

22 Sec 7 (b) A person who knowingly makes a false statement to the com-
23 mission for the purpose of obtaining a benefit, including the issu-
24 ance, renewal, duplication, or transfer of an entry or interim-use
25 permit or vessel license [OF FACT IN THE APPLICATION FOR OR RENEWAL OF
26 AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR VESSEL LICENSE APPLICATION
27 OR RENEWAL OR IN THE APPLICATION FOR A TRANSFER UNDER AS 16.43.170 OR
28 16.43.180], or a person who assists another by knowingly making a
29 false statement to the commission for the purpose of obtaining a bene-