ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990
6001 HOUSE RESOURCES 8672 405

HB

248

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 248
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act repealing the 25¢ resident hunting, ... license
Sponsor: House Finance
Requestor: Resources

Agency Affected: Fish and Game
BRU: Wildlife Conservation and Sport Fish
Components: Wildlife Conservation and Sport Fish

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE	4.4	62.9	210.6	223.1	223.1	223.1

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER Fish & Game		41.9	133.1	223.1	223.1	223.1
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Warren W. Wiley
Phone: 465-4100
Division: Commissioner's Office
Date: 4/25/89

Approved by Commissioner: Warren W. Wiley
Date: 4/25/89
Agency: Fish and Game

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Commissioner's Off.	HB 248	House Finance

SHORT TITLE OF BILL

An Act repealing the 25-cent resident hunting...and sport fishing license.

DEPARTMENT POSITION

Neutral

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Warren W. Wiley	4/25/89	Warren W. Wiley	4/25/89

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
None	Sport hunters, fishers, trappers
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Alaska Outdoor Council Other sporting groups	Unknown

FISCAL IMPACT: ☐ NONE ☒ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Repeal of the 25-cent license with attendent requirement that those wishing to sport fish, hunt, or trap would pay the full amount of the necessary license.

ANALYSIS OF BILL/PROGRAM EFFECTS

The change would increase funding available to the Divisions of Sport Fish and Wildlife Conservation for better management of resources.

The absence of the 25-cent license could negatively impact lower income residents of the state.

AMENDMENTS PROPOSED

None

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

HB

262

HOUSE COMMITTEE REPORT

(9)
Date Referred: April 26, 1989 FURTHER REFERRALS:

Date of Committee Action: 5-4-89

The RESOURCES Committee considered: HB 262

HOUSE BILL NO. 262 [HIGH SEAS INTERCEPTION OF SALMON]
"An Act relating to the high seas interception of salmon."

RECOMMENDATIONS:
[X] be replaced with CS HB 262 (Res) [X] the same title
[ ] a new title
[ ] have attached amendment(s)
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[ ] zero fiscal note _____
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) _____
[X] zero fiscal note(s) F+G 3/3/89
[X] zero fn/analysis Pub. Safety 3/22/89

SIGNING DO PASS:

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend

Chairman's Signature

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

MEMORANDUM

TO: House Resources Committee

FROM: Representative Cliff Davidson

DATE: May 4, 1989

SUBJECT: CSHB 262 (Resources) - High seas interception of salmon

Bill Report

CSHB 262 makes a number of findings concerning the negative effect that harvest of salmon on the high seas has on the fishery and the Alaskan economy and the difficulty of detecting and enforcing the ban on high seas harvest of salmon. CSHB 262 indicates that its purpose is to prevent resources, facilities, and expertise within the state from being available to promote or facilitate the high seas interception of salmon.

High seas interception of salmon means the unauthorized harvest of salmon for other than sport, subsistence, or personal use purposes throughout the migratory range of each species by vessels not registered in Alaska or beyond Alaska's territorial sea by a vessel registered in Alaska.

CSHB 262 creates the crime of trafficking in intercepted salmon, which is a class C felony. A person commits trafficking in intercepted salmon if the person

(1) buys, sells, trades, processes or possesses salmon, or attempts to do so, with reckless disregard that the salmon has been, or will be, obtained by high seas interception;

(2) knowingly provides financing, premises, equipment, supplies, services, power, or fuel used to purchase, sell, trade, process, or possess salmon that has been, or will be, obtained by high seas interception;

(3) acts as a middleman, or otherwise acts on behalf of another party, to arrange for or negotiate the purchase, sale, trade, processing, or possession of salmon, or attempts to do so, with reckless disregard that the salmon has been, or will be, obtained by high seas interception.

CSHB 262 creates the crime of falsification related to high seas interception of salmon, which is a class C felony. A person commits this crime if the person creates, utters, or possesses a written instrument related to salmon or makes an assertion for the purpose of having such an instrument created, uttered, or accepted, with reckless disregard that the salmon has been, or will be, obtained by high seas interception and that the instrument or assertion conveys misleading or untrue information about the ownership, origin, manner of taking, etc. of the salmon.

A class C felony is punishable by up to five years' imprisonment for a first offense and is subject to presumptive terms of 2 years and 3 years for subsequent offenses.

CSHB 262 creates the crime of assisting a vessel in high seas interception of salmon, which is a class A misdemeanor. A person commits the offense of assisting a vessel in high seas interception of salmon if, knowing that a vessel is in possession of salmon obtained by high seas interception or that the person in charge of the vessel intends to engage in the imminent interception of salmon, the person

(1) moves persons or cargo to or from the vessel,

(2) services or repairs the vessel or its equipment,

(3) provides the vessel with power, supplies, equipment, or fuel,

(4) provides the vessel with information, other than weather reports, capable of aiding the high seas interception of salmon or frustrating or avoiding detection, including communicating the movements, etc., of law enforcement officials or other fishing vessels; or

(5) is in charge of a docking facility and permits the vessel to dock or anchor.

It is an affirmative defense if the person honestly and reasonably believed that the assistance provided to the vessel was necessary for humanitarian or environmental purposes or to prevent a significant loss of property. The defense cannot be raised unless the person provided immediate notice to law enforcement authorities.

Class A misdemeanors are punishable by imprisonment of up to one year.

CSHB 262 provides that a fine may be imposed for any of these crimes that is up to $100,000, three times the pecuniary gain realized by the defendant as a result of the offense, or, if the defendant is convicted trafficking, two times the market value of the salmon involved or contemplated in the commission of the offense.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO

☑ CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

☐ OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

May 2, 1989

The Honorable Cliff Davidson, Co-Chair
The Honorable Curt Menard, Co-Chair
House Resources Committee
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

Re: CSHB 262 (Jud) (high seas interception)

Dear Representatives Davidson and Menard:

This letter is about CSHB 262 (Jud), relating to high seas interception of salmon, which I understand may soon be considered by the House Resources Committee. When the bill was passed out of the House Judiciary Committee, Rep. Gruenberg expressed some remaining concern, now also expressed by a member of your staff, over the distinction between registered and unregistered vessels.

Illegal fishing by unregistered vessels is labelled "high seas interception" under the bill and people who deal with or aid these unregistered vessels would be subject to prosecution. Illegal fishing by vessels registered in Alaska is not labelled as "high seas interception" under the committee substitute as it now is drafted. The question which has been raised is whether distinguishing between these two groups raises any constitutional issues based on theories involving improper reliance on durational residency, state citizenship or national origin.

As you know, in enacting new laws one of the primary responsibilities of a legislature is to make distinctions, create classifications, and identify exceptions that will achieve the legislature's goals. It is not the function of the equal protection clause, the right to travel clause, or any other section of the constitution, to prohibit legitimate line drawing, particularly in the area of commercial fishing, where the courts have traditionally accorded the legislature a large measure of latitude in protecting the state's fishery resources.

As long as distinctions are not made on a constitutionally impermissible basis such a race or national origin, or give improper advantages to Alaska residents over

residents from other states, the courts will give great deference to legislative decisionmaking.[1] In short, the distinction made in this bill between registered and unregistered vessels will be upheld because there is clearly a legitimate basis for the distinction.

This bill makes no mention of residency, citizenship, or status as an alien of persons who are labelled as engaging in high seas interception, nor does it make any reference at all to the identity of the persons who might be prosecuted for dealing in intercepted salmon or aiding that activity. Although the bill does not make distinctions between the individuals involved, it properly makes distinctions between vessels.

As I explained in a previous letter to Reps. Goll and Gruenberg, there are a number of reasons for excluding state-registered vessels from the provisions of this bill. Among those reasons are that registered vessels cannot so easily escape detection because of their ties to the state, that there is no evidence that registered vessels are a significant problem in the illegal taking of salmon beyond Alaska's territorial waters, and that the law would be far too broad and overly inclusive if the provisions of this bill were triggered every time a registered vessel violated any one of the many state fishing regulations. In addition, during my testimony in the House Judiciary Committee, I noted that there is already a detailed and comprehensive set of state laws and regulations to govern illegal fishing by registered vessels within the areas most frequented by those vessels.

There are thus valid, constitutionally permissible, reasons why the bill does not affect people who deal with state-registered vessels. The legislature may nonetheless decide that

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[1] The equal protection analysis is slightly different under the federal and state constitutions. Under federal law, "suspect" classifications based on race, for example, or laws affecting fundamental rights such as voting, for example, must withstand what is known as the "strict scrutiny" test, which requires that the law be based on a "compelling government interest". Everything else is constitutional if there exists a "rational basis" for the distinction being made in the law. The Alaska Supreme Court also uses the "compelling state interest" test in the same circumstances as under federal constitutional law, but has already held that commercial fishing is not a fundamental right. With all other classifications the requirement is that the distinction made in the law must bear "a fair and substantial relationship" to a legitimate governmental interest. Isakson v. Rickey, 550 P.2d 359 (Alaska 1976). This has been called a "sliding scale" analysis that balances the governmental need for the law with the individual rights involved.

it wants to more directly address the possibility that a registered vessel might illegally take salmon on the high seas. In order to accomplish this result, without at the same time creating a law that is too broad, it would be possible to include state-registered vessels under the definition of high seas interception when the fishing occurs beyond Alaska's territorial sea. Fishing by registered vessels within Alaska's jurisdiction would still not be considered high seas interception, although trafficking in salmon taken illegally by registered vessels in Alaska waters would continue to be punished by misdemeanor penalties under state law (AS 16.05.920 -- 925), and felony penalties under federal law (16 USC 3372 -- 3373).

To make this change, language should be added (page 6, line 2) to the definition of "high seas interception" so it would read:

> the unauthorized catching, taking, or harvesting of salmon for other than sport, subsistence, or personal use purposes, throughout the migratory range of each species by a vessel not registered under the laws of this state, or beyond Alaska's territorial sea by a vessel registered under the laws of this state

Two other changes were recommended by your staff, to which I have no objection. First, your staff pointed out that it may be inappropriate to prohibit someone from towing a vessel which is adrift to safety, or otherwise preventing significant loss of property, even if no human life or environmental damage is otherwise at stake. To accomplish this result in a way that avoids having the exception swallow the rule, language could be added (page 5, line 2) to proposed AS 16.10.780(b) so it would read:

> It is an affirmative defense, as defined in AS 11.81.900(b), to a violation of this section, if the person honestly and reasonably believed that the assistance provided to the vessel was necessary for humanitarian or environmental purposes, or to prevent a significant loss of property. To be entitled to raise an affirmative defense under this subsection, the person must provide immediate notice, by the quickest available means, to the United States Coast Guard or the Alaska Department of Public Safety, indicating the type of assistance being provided and the circumstances requiring the assistance.

Second, your staff indicated that the mental state for certain specific provisions in the bill would be more appropriate if it required proof of a knowing violation, rather than one committed with reckless disregard of the circumstances. To make this change the word "knowing" should be substituted for "with

reckless disregard" in two places: page 3, line 10 and also at page 4, line 11. A definition for "knowing" should then be provided so it is clear it has the same meaning as "knowingly" in AS 11.81.900(a).

If you have questions or comments, or if there is anything else I can do to assist in the speedy passage of this important legislation, please contact me.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: Dean J. Guaneli
Dean J. Guaneli
Assistant Attorney General

cc: The Honorable Peter Goll
The Honorable Max Gruenberg

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

CC
SB 262

March 31, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the high seas interception of salmon. These provisions are needed so that the State of Alaska can do everything within its authority to prevent persons within this state from furthering the illegal high seas taking of one of the state's most valuable renewable resources.

Although the federal Magnuson Act may preempt much of the field of high seas fishery regulation, the State of Alaska has broad latitude to prohibit conduct occurring wholly within its territorial jurisdiction. Therefore, this proposed bill is not in conflict with federal law. A section-by-section description of the bill follows.

Proposed AS 16.10.750 sets out legislative findings to establish a basis for legislation in this area. These findings adopt the position taken by the federal government, that the mobility of the high seas fishing fleets and the intermixing of salmon species make high seas interception an international concern, and that the salmon-producing countries in the North Pacific have a legitimate interest in the preservation of each other's salmon stocks. By making findings in this area, it relieves the state of having to prove which precise species has been taken in any specific instance.

Proposed AS 16.10.760 is intended to prohibit trafficking in intercepted salmon by covering a wide range of conduct engaged in by dealers in illegal salmon products and the persons who assist them. The phrase "will be obtained by high seas interception" is intended to cover those situations in which the salmon that is the subject of the trafficking has not yet been harvested but the circumstances cause the person to be aware of a risk that it will be taken by high seas interception.

The word "attempts" is used in this provision to prohibit conduct that constitutes a "substantial step" toward commission of the offense and to treat such a person as a principal. Thus, entering into a contract would constitute a completed offense, whether it is viewed as buying or selling, or merely an attempt to buy or sell. However, it is not intended that a completed, formal contract be proven in order to establish an "attempt," but only that a substantial step was taken. Offers to buy or to sell that do not rise to the level of a substantial step are adequately dealt with by the "solicitation" provisions in AS 11.16 and AS 11.31.110.

In situations in which the offense is actually completed or in which the deal goes far enough so that an attempt can be proven, class C felony penalties provide up to five years imprisonment. This is the same penalty that would be provided under current Alaska theft statutes for someone who steals more than $500 of salmon, and is also consistent with penalties under the Lacey Act, which governs federal fish and game violations. However, under current law, these tough federal felony penalties do not apply to much of the high seas interception of salmon.

Instead, lower penalties under the Magnuson Act (six months maximum imprisonment) currently apply to much of the conduct covered by this proposed bill. The reason for this is that the Lacey Act specifically does not apply to any activity regulated by a fishery management plan under the Magnuson Act. Thus, to the extent that these proposed state laws are violated because of a violation of Magnuson (see the proposed definition of "high seas interception"), the Lacey Act will not apply and the applicable felony penalties can only come from state law. This bill will help fill that gap.

Proposed AS 16.10.770 prohibits falsification of documents that makes it difficult to discover the true origin of illegally taken high seas salmon. This offense is comparable to forgery in many ways and in fact borrows the definitions of certain terms in the criminal forgery statutes. Like forgery of contracts or public records, it is also proposed to be a class C felony.

Proposed AS 16.10.780 is the final criminal statute in this bill. It prohibits the use of shore-based resources and facilities from being used to aid vessels that engage in the high seas interception of salmon, except in emergency circumstances. There is a potential overlap between this section and the "trafficking" provisions in proposed AS 16.10.750, since both would apply to a person who provides supplies or services to process or possess intercepted salmon. However this section is intended to specifically apply to those who provide services to vessels, even if the

vessel has also the capability to operate as a processing plant.

This section is consistent with the principle of necessity in AS 11.81.320 by providing an "affirmative defense" if the assistance was rendered for humanitarian or environmental purposes. An affirmative defense is one that must be proven by the defendant by a preponderance of the evidence. Without such a provision it would be extremely difficult for the state to prove that the defendant did not believe that the assistance was necessary, especially in cases in which the vessel has already left port.

Because shore-based service providers might be considered to be less "culpable," this offense is proposed to be a class A misdemeanor, which provides up to one year imprisonment.

Proposed AS 16.10.790 provides a special type of fine for offenses created under the bill so as to take the profit motive out of this type of activity. In general, the bill establishes a fine which is the greater of (1) $100,000, (2) triple the profit, or (3) with "trafficking" offenses under proposed AS 16.10.760, double the value of the salmon contemplated in the deal.

The standard criminal code provisions levy a fine of three times the pecuniary gain, but only if the defendant is an organization. This separate provision for fines is therefore proposed because the present $50,000 limit for individuals convicted of class C felonies and the $5,000 limit for class A misdemeanors will not provide a sufficient financial deterrent.

Proposed AS 16.10.800 provides needed definitions for terms used in this bill.

I urge your prompt and favorable action on this bill.

Sincerely,

Steve Cowper
Governor

CC

No. 1

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 262
PUBLISH DATE: HOUSE 3/31/89

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act relating to the high seas interception of salmon
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Fish and Game
BRU: Commercial Fisheries, Sport Fish, Subsistence
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: RC Robert C. Clasby
Division: Commercial Fisheries
Phone: 465-4210
Date: 3/22/89

Approved by Commissioner: Owen Gellenworth
Date: 3·22·89
Agency:

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

No. 2

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 262
PUBLISH DATE: HOUSE 3/31/89

FISCAL NOTE

REQUEST:

Revision Date:
Title: High seas interception of salmon
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Public Safety
BRU: Fish & Wildlife Protection
Component:

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Enforcement of these new provisions will be undertaken as part of the Division of Fish and Wildlife Protection's ongoing efforts to enforce regulations regarding Alaska's fishing industry. Greater resources would allow us to provide increased enforcement, but this bill would not itself have additional fiscal impact on the Division.

Prepared by: Gayle A. Horetski, Deputy Commissioner
Phone: 465-4322
Division: Office of the Commissioner
Date: 3/22/89

Approved by Commissioner: Arthur English
Date: 3/22/89
Agency: Department of Public Safety

HB

267

Alaska State Legislature

HOUSE RESOURCES COMMITTEE

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3715

MEMORANDUM

To: House Resources Committee

From: Rep. Curt Menard

Re: HB 267, Licensing of Sport Fish Guides

Date: February 16, 1990

In an effort to incorporate changes recommended by the Sport Fishing Community I have drafted a Committee Substitute for the Committee's consideration. The following are the substantive changes between the original bill and the Committee Substitute.

Section 1 Same

Section 2

Page 1, line 20 - Reduced age from 21 to 18 for Sport Fishing Guides.

Page 1, line 22 - Requires a Guide to have a current fishing license.

Page 2, line 4 - Allows a violation in the last 3 years to be raised from $100 to $300 for a guide.

Page 2, line 8 - Allows for proof of a Coast Guard License to meet the requirements of boating safety.

Page 2, line 21 - Requires an assistant guide to have a current sport fishing license.

Page 2, line 25 - Allows a violation in the last 3 years to be raised from $100 to $300 for an assistant guide.

Page 2, line 29 - If an assistant guide is carrying passengers for hire, the assistant guide must have a coast guard license or pass a boating safety test administered by the Department and pass a test including wilderness survival, fish identification, and sport fishing regulation.

Page 3, line 10 - The department shall administer a minimum proficiency test for guides and assistant guides at least 3

times a year and allow Fish and Game to administer the test through the local sport fish offices in Fish and Game.

Page 3, line 14 - Adds language explaining the duties of the licensee, specifically, in addition to the requirements already required by the U.S. Coast Guard, the licensee shall provide personal flotation devices, first aid supplies and provide an annual report to the Department of Fish and Game.

Page 4, line 14 - Adds language to set up grounds for imposition of disciplinary sanctions.

Page 5, line 3 - Adds language to provide for disciplinary sanctions.

Page 5, line 8 - Allows the department to draft regulations to implement the legislation.

Page 6, line 21 - Adds definitions for license and licensee.

Page 6 line 27 - Changes the definition for sport fish guiding so that persons who guide canoe trips or white water rafting trips are not considered fish guides unless they actually assist the fishing activity.

Section 6

Page 7, Line 16 - Deletes the authority of DNR to establish licensing requirements for sport fish guides on the Kenai River but still authorizes DNR Commissioner to control the activities and operations of sport fish guides on the Kenai River.

Section 7

Page 7, line 28 - Makes the Department of Commerce and Economic Development subject to the adjudicatory procedures set out in the administrative procedures act.

Section 8

Page 8, line 3 - Provides an affective date of April 1, 1991, giving almost 1 year, to implement the regulations and the legislation.

Section 9

Page 8, line 5 - Allows for effective date of section 6, dealing with the Kenai River, to take effect on January 1, 1992.

6-0804H ✓
Utermohle
1/31/90

Original sponsor(s): REP. MENARD, Larson, Hoffman, Goll, Foster, Swackhammer

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 267 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the licensing of sport fishing guides; and providing for an effective date."

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

* Section 1. FINDINGS. Sport fishing is an important part of a sound fisheries resource management system. The state realizes significant social and economic benefits by maintaining a viable sport fishing industry. The legislature finds that licensing of sport fishing guides will protect the fishery resources of the state, promote the continued viability of the sport fishing industry in the state, and ensure that consumers of sport fishing guide services have a positive recreational experience.

* Sec. 2. AS 08.54 is amended by adding new sections to read:

ARTICLE 8. SPORT FISHING GUIDES.

Sec. 08.54.600. SPORT FISHING GUIDE LICENSES. (a) The department shall issue a sport fishing guide license to a natural person who

(1) is 18 years of age or older;

(2) applies on a form provided by the department;

(3) has a current sport fishing license;

(4) has a business license to provide sport fishing guide services;

(5) provides certification, or other proof, satisfactory to the department, of a practical knowledge of first aid and cardiopulmonary resuscitation;

(6) provides proof of liability insurance in the amounts of at least $300,000 per occurrence and an aggregate of at least $500,000

per year from an insurance company holding a certificate of authority under AS 21.09 or listed as an eligible nonadmitted insurer under AS 21.34;

(7) has not been convicted during the preceding three years for a violation of a statute or regulation relating to fishing or hunting or to sport fishing guide services for which the person was fined $300 or more or was imprisoned for more than five days;

(8) possesses a license issued by the United States Coast Guard to carry passengers for hire or passes a minimum proficiency test in boating safety and boat handling skills developed by the department; and

(9) passes a minimum proficiency test developed by the department, in conjunction with the Department of Fish and Game, that includes

(A) wilderness survival;

(B) fish identification; and

(C) sport fishing regulations.

(b) The department shall issue an assistant sport fishing guide license to a natural person who

(1) applies on a form provided by the department;

(2) has a current sport fishing license;

(3) provides certification, or other proof, satisfactory to the department, of a practical knowledge of basic first aid and cardiopulmonary resuscitation;

(4) has not been convicted of violating a statute or regulation relating to fishing or hunting or to sport fishing guide services during the preceding three years for which the person was fined $300 or more or was imprisoned for more than five days;

(5) possesses a license issued by the United States Coast

Guard to carry passengers for hire or passes a minimum proficiency test in boating safety and boat handling skills developed by the department; and

(6) passes a minimum proficiency test developed by the department, in conjunction with the Department of Fish and Game, that includes

(A) wilderness survival;

(B) fish identification; and

(C) sport fishing regulations.

(c) The department shall administer minimum proficiency tests at least three times each year. The department may enter into agreements with the Department of Fish and Game to administer minimum proficiency tests at or through offices of the Department of Fish and Game.

Sec. 08.54.610. DUTIES OF LICENSEES. (a) A licensee shall have a current sport fishing license in actual possession while providing sport fishing guide services.

(b) A licensee shall obtain a license from the Coast Guard to carry passengers for hire, if the licensee transports sport fishermen by water and if licensure is required by the United States Coast Guard.

(c) A licensee shall provide safety equipment on board a vessel operated by the licensee to provide transportation or sport fishing guide services to sport fishermen, including

(1) United States Coast Guard approved personal flotation devices of the appropriate size for each person on board;

(2) first aid supplies; and

(3) other boating safety equipment required by law.

(d) A sport fishing guide shall supervise the conduct of sport fishing guide services by assistant sport fishing guides employed by

the sport fishing guide.

(e) A sport fishing guide shall provide annual reports as are required by the department. The department shall collect information requested by the Department of Fish and Game and shall provide that information to the Department of Fish and Game.

Sec. 08.54.620. FEES. The department shall set fees under AS 08.01.065 for licenses issued under AS 08.54.600 - 08.54.690; however, the maximum license fee for residents is $100. The license fee for nonresidents shall be three times the license fee for residents.

Sec. 08.54.630. REGISTER OF SPORT FISHING GUIDES. The department shall annually compile a register of licensed sport fishing guides and shall make the register available to the public.

Sec. 08.54.640. GROUNDS FOR IMPOSITION OF DISCIPLINARY SANCTIONS. The department may, after a hearing, impose a disciplinary sanction under AS 08.54.650 on a licensee when the department finds that the licensee

(1) secured a sport fishing guide license or an assistant sport fishing guide license through deceit, fraud, or intentional misrepresentation;

(2) engaged in deceit, fraud, or intentional misrepresentation in the course of providing professional services or engaging in professional activities subject to AS 08.54.600 - 08.54.690;

(3) advertised professional services subject to AS 08.54.600 - 08.54.690 in a false or misleading manner;

(4) has been convicted of a felony or other crime that affects the licensee's ability to continue to competently and safely provide professional services subject to AS 08.54.600 - 08.54.690;

(5) failed to comply with AS 08.54.600 - 08.54.690, with a

regulation adopted under AS 08.54.600 - 08.54.690, or with an order of the department.

Sec. 08.54.650. DISCIPLINARY SANCTIONS. (a) When the department finds that a person has violated AS 08.54.610, is subject to a disciplinary sanction under AS 08.54.640, or is guilty of an offense under AS 08.54.660, the department may impose the following sanctions singly or in combination:

(1) permanently revoke the person's license;

(2) suspend the license for a determinate period of time;

(3) deny the issuance or renewal of a license;

(4) issue a letter of reprimand to the licensee;

(5) place the licensee on probationary status and impose appropriate conditions on the licensee during the probationary period;

(6) impose limitations or conditions on the sport fishing guide services of the licensee.

(b) The department may withdraw probationary status of a licensee if it finds that the deficiencies that required the sanction have been remedied.

(c) The department may summarily suspend a license before final hearing or during the appeals process if the department finds that the licensee poses a clear and immediate danger to the public health and safety if the licensee continues to provide sport fishing guide services. A licensee whose license is suspended under this subsection is entitled to a hearing by the department within seven days after the effective date of the suspension. Following the hearing, the licensee may appeal an adverse decision of the department to the superior court.

Sec. 08.54.660. UNLAWFUL ACTS. (a) A person may not provide sport fishing guide services without holding a sport fishing guide

license issued under AS 08.54.600 - 08.54.690.

(b) A person may not assist, for compensation, in providing sport fishing guide services without holding an assistant sport fishing guide license issued under AS 08.54.600 - 08.54.690 and without being employed by a licensed sport fishing guide.

(c) A person who violates this section is guilty of a class B misdemeanor.

Sec. 08.54.685. REGULATIONS. The department may adopt regulations under the Administrative Procedure Act (AS 44.62) necessary to implement AS 08.54.600 - 08.54.690.

Sec. 08.54.690. DEFINITIONS. In AS 08.54.600 - 08.54.690

(1) "compensation" means payment for services including wages or other remuneration but not including reimbursement for actual expenses incurred;

(2) "department" means the Department of Commerce and Economic Development;

(3) "field" means an area outside of established year-round dwellings, businesses, or other developments usually associated with a city, town, or village; "field" does not include permanent hotels or roadhouses on the state road system;

(4) "license" means a sport fishing guide license or assistant sport fishing guide license issued under AS 08.54.600 - 08.-54.690, unless the context requires otherwise;

(5) "licensee" means a natural person who holds a sport fishing guide license or an assistant sport fishing guide license issued under AS 08.54.600 - 08.54.690;

(6) "sport fishing guide services" means accompanying or being present with and assisting or guiding the fishing activity of a sport fisherman in the field, personally or through an assistant, for

compensation or with the intent or agreement to receive compensation.

* Sec. 3. AS 08.01.010 is amended by adding a new paragraph to read:

(31) regulation of sport fishing guides under AS 08.54.

* Sec. 4. AS 08.01.050(a)(4) is amended to read:

(4) notify applicants of acceptance or rejection as determined by the board or as determined by the department under AS 08.11 for audiologists, under AS 08.45 for naturopaths, under AS 08.54 for sport fishing guides and assistant sport fishing guides, or under AS 08.55 for hearing aid dealers;

* Sec. 5. AS 08.01.050(a)(9) is amended to read:

(9) issue licenses or temporary licenses as authorized by the board or as authorized by the department under AS 08.11 for audiologists, under AS 08.45 for naturopaths, under AS 08.54 for sport fishing guides and assistant sport fishing guides, or under AS 08.55 for hearing aid dealers;

* Sec. 6. AS 41.21.506(b) is amended to read:

(b) The commissioner shall adopt regulations under the Administrative Procedure Act (AS 44.62) that are necessary to achieve the purposes of AS 41.21.500 - 41.21.514 and to implement the plan adopted under (a) of this section. The regulations must [SHALL]

(1) designate incompatible uses and prohibit or restrict them, and

(2) control the activities and operations of sport fishing guides licensed under AS 08.54 [ESTABLISH A REGISTRATION, LICENSING, OR COMPARABLE PROCEDURE FOR PROFESSIONAL FISHING GUIDES AND SUCH ADDITIONAL FISHING GUIDE CONTROLS] as the commissioner considers necessary.

* Sec. 7. AS 44.62.330(a) is amended by adding a new paragraph to read:

(55) Department of Commerce and Economic Development concerning

the licensing and regulation of sport fishing guides and assistant sport fishing guides under AS 08.54.600 - 08.54.690.

* Sec. 8. Except for sec. . of this Act, this Act takes effect April 1, 1991.

* Sec. 9. Section 6 of this Act takes effect January 1, 1992.

AMENDMENTS

To CSHB 267 (Re

On p.2, line 9 - 11, place a semicolon after "for hire", then delete "or passes a minimum proficiency test in boating safety and boat handling skills developed by the department".

On p.2, line 15, delete "wilderness survival", then add "boating safety and handling".

on p.3, line 1 - 3, place a semicolon after "for hire", then delete "or passes a minimum proficiency test in boating safety and boat handling skills developed by the department".

On p.3, line 7, delete "wilderness survival", then add "boating safety and handling".

On p.6, line 5, exchange the period after "fishing guide" for a comma, then add "unless that person is in the direct supervision and physical presence of a sport fishing guide at all times in the field".

6-0804Ha
Utermohle

A M E N D M E N T

OFFERED IN THE HOUSE BY REP. MENARD

TO: Draft CSHB 267 (Resources) dated 1/31/90

Page 2, line 3, after "AS 21.34":

Insert "or posts a bond in an amount determined to be sufficient by the department"

6-0804Hb
Utermohle

A M E N D M E N T

OFFERED IN THE HOUSE BY REP. MENARD

TO: Draft CSHB 267 (Resources) dated 1/31/90

Page 1, line 20, after "older":

Insert "and is a citizen of the United States or a resident alien"

Page 2, line 20, after "(1)":

Insert "is a citizen of the United States or a resident alien;

(2)"

Renumber the following paragraphs accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE BY REP. MENARD

TO: Draft CSHB 267 (Resources) dated 1/31/90

Page 4, line 8:

Delete "residents is $100"

Insert "a resident sport fishing guide license is $100 and for a resident assistant sport fishing guide license is $25"

6-0804Hd
Utermohle

A M E N D M E N T

OFFERED IN THE HOUSE BY REP. MENARD

TO: Draft CSHB 267 (Resources) dated 1/31/90

Page 1, line 26:

Delete "a practical knowledge of"

Insert "completion of training in"

Page 1, line 27, after "resuscitation":

Insert "within one year before the initial application for the sport fishing guide license"

Page 2, line 23:

Delete "a practical knowledge of"

Insert "completion of training in"

Page 2, line 24, after "resuscitation":

Insert "within one year before the initial application for the assistant sport fishing guide license"

6-0804He
Utermohle

A M E N D M E N T

OFFERED IN THE HOUSE BY REP. MENARD

TO: Draft CSHB 267 (Resources) dated 1/31/90

Page 2, line 9, after "hire":

Insert "on navigable water subject to jurisdiction of the United States Coast Guard"

Page 2, line 11, after "department":

Insert "for lakes and water subject to the jurisdiction of the state"

Page 3, line 1, after "hire":

Insert "on navigable water subject to jurisdiction of the United States Coast Guard"

Page 3, line 3, after "department":

Insert "for lakes and water subject to the jurisdiction of the state"

Page 3, line 18, after "hire":

Insert "on navigable water subject to jurisdiction of the United States Coast Guard"

6-0804Hf
Utermohle

A M E N D M E N T

OFFERED IN THE HOUSE BY REP. MENARD

TO: Draft CSHB 267 (Resources) dated 1/31/90

Page 4, line 5, after "Game.":

Insert "Aggregated data compiled from information collected under this section may be included in reports of the department and the Department of Fish and Game, but for all other purposes, the information collected under this section is confidential and is not subject to inspection or copying under AS 09.25.110 - 09.25.125."

6-0804Hg
Utermohle

A M E N D M E N T

OFFERED IN THE HOUSE BY REP. MENARD

TO: Draft CSHB 267 (Resources) dated 1/31/90

Page 6, line 10, after "08.54.690.":

Insert "The department shall consult with the Department of Fish and Game in developing regulations to be adopted under this section."

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

February 15, 1990

The Honorable Curt Menard
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Re: HB 267

Dear Representative Menard:

The Department of Natural Resources supports the bill with the following amendment. Insert the following language into Sec. 08.54.310 FEES:

> "Fees levied for licenses issued under AS 08.54.300 - 08.54.390 do not eliminate commercial use or access fees or other requirments levied by public or private land management agencies, including commercial use permits for utilizing state park or other state owned land and water."

The purpose of this suggested amendment is to make it clear to sport fish guides that they may still need to pay land or commercial use fees to a public or private landowner or manager.

My staff and I are available to provide you with any additional assistance that you may require on this bill.

Sincerely,

Lennie Gorsuch
Commissioner

cc: Commissioner Larry Merculieff
Department of Commerce and Economic Development
Commissioner Don Collinsworth
Department of Fish and Game

Enclosures

10-J9LH

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : HB 267
PUBLISH DATE :

FISCAL NOTE

REQUEST:
Revision Date: 14-Feb-90
Agency Affected: Natural Resources
Title: An Act relating to the licensing of sport fishing guides.
BRU: Parks Management
Sponsor: Menard
Components: Parks Management
Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky
Phone : 465-2400
Division: Commissioner's Office
Date : 14-Feb-90

Approved by Commissioner: Lennie Gorsuch
Date: 14-Feb-90
Agency: Department of Natural Resources

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Department of Commerce & Economic Development / POSITION PAPER

HB 267: An Act relating to the licensing of sport fishing guides.

HB 267 proposes to establish a new program for the licensing of sport fishing guides. The guides would be licensed in two categories: sport fishing guide, and assistant sport fishing guide. (Information on file indicates there may be in excess of 2,500 sport fishing guides presently doing business in Alaska.) The bill also proposes to ensure competency of sport fishing guides by establishing certain licensing requirements, including examination, proof of liability insurance, and a record free of fishing, hunting or sport fishing guide convictions in the last three years.

The bill places responsibility for licensing both classes of sport fishing guides under the department, not under a board. Because of significant problems that have occurred where the department -- not a board -- has had responsibility for licensing a profession or occupation but not had specific authority to adopt regulations, we recommend that the bill be amended to provide that the department have the authority to adopt regulations required by the chapter or which are reasonably necessary for its administration.

Section 2 of the bill requires a sport fishing guide to provide proof of liability insurance in the amount of at least $300,000 per occurrence and an aggregate of at least $500,000 per year. Information obtained from the Division of Insurance informs us that this fish guide requirement would not be overly burdensome ($700 - $1000 per year).

The department does not oppose the licensing of sport fishing guides but does request that the bill be amended to provide the department with the authority to adopt regulations.

S Merculieff

Larry Merculieff, Commissioner
Department of Commerce and Economic Development

Date: 4/19/89

LM/RPB/dgl3902D
041989a

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 267
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act relating to the licensing of sport fishing guides
Sponsor: Menard, Larson, Hoffman,
Requester: Goll, Foster and Swackhammer

Agency Affected: Commerce & Econ. Dev.
BRU: Occupational Licensing
Components: Admin.

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	25.5	25.5	25.5	25.5	25.5
TRAVEL	0	1.4	1.4	1.4	1.4	1.4
CONTRACTUAL	0	18.0	18.0	18.0	18.0	18.0
SUPPLIES	0	2.2	2.2	2.2	2.2	2.2
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	47.1	47.1	47.1	47.1	47.1
CAPITAL	0	0	0	0	0	0
REVENUE	0	375.0	18.8	393.8	19.7	413.4

FUNDING: (Thousands of dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER GF/PR	0	47.1	47.1	47.1	47.1	47.1
TOTAL	0	47.1	47.1	47.1	47.1	47.1

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

The bill establishes the licensing of sport fishing guides in two categories: sport fishing guide, and assistant sport fishing guide. The bill places the sport fishing guide act under AS 08.54; however, the bill also assigns the responsibility of licensing sport fishing guides to the department.

Prepared by: Jennifer Strickler, Administrative Officer
Phone: 465-2144
Division: Occupational Licensing
Date: April 11, 1989

Approved by Commissioner: Larry Merculieff
Phone: 465-2500
Agency: Department of Commerce & Economic Development
Date: 4/14/89

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

3810D-1/041189a

CONTINUATION of FISCAL NOTE ANALYSIS

For HB 267

Information on file indicates there may be in excess of 2,500 sport fishing guides doing business in Alaska. This figure, however, does not include individuals who may seek licensure as assistant sport fishing guides. Since there is no way of knowing the number of assistant sport fishing guides who may seek licensure under this bill, calculations in this fiscal note are based specifically on the 2,500 sport fishing guides. Expenditures are based on the following:

Personal Services: $25.5

60% of a Licensing Examiner position ($23.7)
2% of a Investigator position ($1.8)

(The percentages used are based on an occupation with similar number of licensees.)

Travel: $ 1.4

This will provide funding for examinations to be administered twice a year at sites other than Juneau; e.g., Kenai, where large numbers of sport fishing guides operate their services.

Contractual: $18.0

This funding will provide for examination development, communication expenses, public notices, and printing costs of applications, statutes, etc.

Supplies: $2.2

This will provide funds for necessary operating supplies, such as desk top material (pens, stationary, envelopes, etc.).

The expenditures identified in this fiscal note are based on new costs which are anticipated as a result of the new licensing program. Once the program is placed in occupational licensing, like all other occupations, sport fishing guides will be expected to cover a portion of the overall administrative costs based on the number of licensees. Based on 2,500 licensees, this will translate into 8.49% totalling approximately $130.0 in administrative overhead. In summary, the total program cost to be covered by licensing fees is $177.1:

$ 47.1	new costs
$130.0	administrative overhead based on 2,500 licensees
$177.1	

3810D

REVENUES:

The revenues were calculated based on 2,500 sport fishing guides seeking licensure in the first year, and paying a biennial license fee of $150.00. Since we are unable to identify the number of assistant sport fishing guides who may be eligible for licensure, revenues identified are based exclusively on the 2,500 sport fishing guides, not including assistant sport fishing guides.

FY 90:
2,500 x $150 (biennial) $375.0

FY 91: Based on 5% increase of new applicants over the 2,500
125 x $150 (biennial) $18.8

FY 92: Renewal year -
2,625 x $150 (biennial) $393.8

FY 93: Based on 5% increase of new applicants over the 2,625
131 x $150 (biennial) $19.7

FY 94: Renewal year -
2,756 x $150 (biennial) $413.4

Note that the average annual revenues are sufficient to cover the costs of the licensing program. During a nonrenewal year, like all other licensed occupations, costs of the sport fishing guide license program will be covered by other occupations renewing in that year.

1987-88

Oregon Wildlife And Commercial Fishing Codes

Includes amendments and new statutes passed by The Oregon Legislature through the 1987 session.

Oregon Dept. of Fish and Wildlife
PO Box 59
506 SW Mill St.
Portland, OR
97207

them by poisoning, trapping or other appropriate and effective means. [Amended by 1971 c.658 §30]

OUTFITTERS AND GUIDES

GENERALLY

704.010 Definitions. As used in this chapter:

(1) "Board" means the State Marine Board.

(2) "Employe" means an individual who, in exchange for compensation or other pecuniary gain, provides outfitting and guiding services exclusively under the direction, supervision and control of an outfitter and guide or an ocean guide.

(3) "Ocean guide" means any individual who carries passengers for hire for outdoor recreational activities only on the waters of the Pacific Ocean over which the State of Oregon has jurisdiction and who possesses therefor a valid United States Coast Guard vessel operator license.

(4) "Outdoor recreational activities" include, but are not limited to, boating, angling, hunting, jeep touring, backpacking, alpine mountain climbing, camping, trips utilizing pack animals, dog sled trips, helicopter skiing, whitewater float trips, rafting trips, drift boat trips, kayak trips, inflatable canoe trips and canoe trips. The duration of any outdoor recreational activities may be for a few hours or for several days or weeks.

(5)(a) "Outfitter and guide" means any person:

(A) Who provides, or who offers to provide, for compensation or other pecuniary gain:

(i) Outfitting and guiding services in Oregon; or

(ii) Outfitting and guiding services and either equipment, supplies, livestock or materials for use in Oregon; or

(B) Who holds one or more federal permits for commercial outfitting and guiding services for use in any forest or wilderness or on any river in Oregon.

(b) "Outfitter and guide" does not include:

(A) An ocean guide or an employe of an outfitter and guide or ocean guide; or

(B) An individual who, for compensation or other pecuniary gain, provides outfitting and guiding services for the conduct of outdoor recreational activities exclusively upon property owned or controlled by the individual.

(6) "Outfitting and guiding services" include, but are not limited to, leading, protecting, instructing, training, cooking, packing, guiding, transporting, supervising, interpreting or otherwise assisting any person in the conduct of outdoor recreational activities. The rental of equipment alone does not constitute outfitting and guiding services.

(7) Outfitting and guiding services are not offered or provided for compensation or pecuniary gain if:

(a) No individual receives any dues, fee, salary, commission, bonus, tip, compensation, equipment, materials, livestock, supplies, rental payment, amortization payment, depreciation payment or other financial gain; and

(b) No money or other remuneration is in any manner paid or collected except as a sharing by trip participants of the costs or expenses for the trip. [1983 c.655 §1]

704.020 Registration required; liability insurance; fees. (1) Any person who acts, or who offers to act, as an outfitter and guide must first register with the board. Each registration shall be submitted annually on a form provided by the board and shall include the following information:

(a) The name, residence address, and residence telephone number of the person providing outfitting and guiding services, and all business names, addresses and telephone numbers under which outfitting and guiding services are provided.

(b) If the outfitting and guiding services are to be performed in the business name of an individual, proof of possession of a current certificate issued to the individual:

(A) By the American Red Cross upon completion of its multimedia course; or

(B) Upon completion of any equivalent medical or American Red Cross training course approved by the board.

(c) If the outfitting and guiding services are to be performed in the business name of a person other than an individual, the outfitter and guide must provide the names of all employes, agents and parties in interest who physically provide, or who directly assist in physically providing, outfitting and guiding services in Oregon, together with the affidavit of the outfitter and guide that each such employe, agent or party in interest possesses a current certificate issued to the employe, agent or party in interest:

(A) By the American Red Cross upon completion of its multimedia course; or

(B) Upon completion of any equivalent medical or American Red Cross training course approved by the board.

(d) A description of:

(A) The outfitting and guiding services, and any equipment, supplies, livestock and materials provided by the outfitter and guide;

(B) The geographic area in which the outfitter and guide provides the outfitting and guiding services, and any equipment, supplies, livestock and materials; and

(C) The experience of the outfitter and guide in providing the outfitting and guiding services, and equipment, supplies, livestock and materials.

(e) Proof that the outfitter and guide has liability insurance covering occurrences by the outfitter and guide, and the employes of the outfitter and guide, which result in bodily injury or property damage. Such insurance shall be not less than the following amounts:

(A) $300,000 per occurrence general liability coverage; or

(B) Bodily injury liability coverage of at least $100,000 per person to a total of $300,000 per occurrence, and $10,000 property damage per occurrence.

(f) Certification by the outfitter and guide that the outfitter and guide will maintain the insurance required by paragraph (e) of this subsection continuously in full force and effect for a period of not less than one year from the date the certificate of registration described in subsection (3) of this section is issued by the board.

(g) The affidavit of the outfitter and guide stating that for a period of not less than 24 months immediately prior to making the registration application the outfitter and guide and each person who provides or assists in directly providing outfitting and guiding services:

(A) Have not been convicted of:

(i) Any violation of ORS 496.992 (2); or

(ii) Any violation of the wildlife laws which occurred while acting as an outfitter and guide and which resulted in court ordered revocation of the hunting or fishing license of the outfitter and guide;

(B) Have not had an outfitting and guiding license, permit or certificate revoked by another state or by an agency of the government of the United States; and

(C) Have not been denied the right to apply for an outfitting and guiding license, permit or certificate by another state.

(2) Each annual registration shall be accompanied by a fee of $50.

(3) Upon the submission to the board of the appropriate filing fee in subsection (2) of this section and the registration information required by this section, the board shall issue to the applicant an Oregon Outfitter and Guide certificate of registration. The board shall also issue to each registrant proof of compliance with the requirements of this section, which the registrant must have in possession and submit for examination by any person authorized to enforce this chapter while the registrant is engaged in providing outfitting and guiding services. [1983 c.655 §2; 1985 c.452 §1; 1987 c.400 §1]

704.030 False statements in registration application prohibited. No person shall make any false statement of material fact submitted pursuant to ORS 704.020. [1983 c.655 §5]

704.040 Revocation of registration; restriction on registration application after revocation. (1) When any person is convicted of any violation of ORS 704.020 or 704.030 or any rule promulgated pursuant to ORS 704.500, forfeits bail in connection with any such offense, or pleads nolo contendere to any such offense, the court having jurisdiction of the offense may order the board to revoke the certificate of registration issued to that person pursuant to ORS 704.020.

(2) When a court orders revocation of a certificate of registration pursuant to this section, the court shall take up the certificate of registration and forward it with a copy of the revocation order to the board. Upon receipt thereof, the board shall cause revocation of the certificate of registration in accordance with the court order.

(3) A person who has had a certificate of registration revoked pursuant to this section is ineligible to register under ORS 704.020 for a period of 24 months from the date the court ordered the revocation. [1983 c.655 §7]

704.050 Cancellation of liability insurance; notice to board; suspension of registration. (1) If an insurance company cancels or refuses to renew insurance for an outfitter and guide required by ORS 704.020, the insurance company, not less than 30 days prior to the effective date of termination of the coverage, shall notify the board in writing of the termination and its effective date.

(2) Upon receipt of an insurance coverage termination notice, the board shall send written notice to the outfitter and guide that on the effective date of the insurance coverage termina-

tion, the board will suspend the certificate of registration of the outfitter and guide unless proof of insurance required by ORS 704.020 is filed with the board prior to the effective date of the proposed insurance coverage termination.

(3) The board may suspend the certificate of registration issued to an outfitter and guide if the outfitter and guide fails to maintain in full force and effect the insurance required by ORS 704.020. A certificate of registration that has been suspended pursuant to this section may not be reinstated until proof of insurance required by ORS 704.020 has been filed with the board. [1983 c.655 §8]

ADMINISTRATION

704.500 Rules. In accordance with any applicable provisions of ORS 183.310 to 183.550, the board may promulgate rules to carry out the provisions of this chapter. [1983 c.655 §3]

704.510 Outfitters and Guides Account. The Outfitters and Guides Account is established in the General Fund of the State Treasury. Except as otherwise provided by law, all moneys received by the State Marine Board pursuant to ORS 704.020 shall be paid into the State Treasury and credited to the account. All moneys in the account are appropriated continuously to the board to carry out the provisions of this section, ORS 704.020 and 704.500. [1983 c.655 §4]

704.520 Board to submit list of registrants to tourism promotion agency. The board will submit annually to the state agency given the responsibility of state tourism promotion a registration list of outfitters and guides and the following information:

(a) The name, business names, addresses and telephone numbers under which outfitting and guiding services are provided;

(b) A description of the outfitting and guiding service;

(c) The geographic area in which the outfitting and guiding service is provided; and

(d) The experience of the outfitter and guide in providing the outfitting and guiding service. [1983 c.655 §9]

PENALTIES

704.990 Penalties. (1) Failure to comply with ORS 704.020 is a Class B misdemeanor.

(2) Violation of ORS 704.030 is a Class B misdemeanor. [1983 c.655 §6]

6-0804E
Utermohle
4/17/89

Original sponsors: Menard, Larson, Hoffman, et al.

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 267 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the licensing of sport fishing guides."

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

* Section 1. FINDINGS. Sport fishing is an important part of a sound fisheries resource management system. The state realizes significant social and economic benefits by maintaining a viable sport fishing industry. The legislature finds that licensing of sport fishing guides will protect the fishery resources of the state, ensure the continued viability of the sport fishing industry in the state, and ensure that consumers of sport fishing guide services have a positive recreational experience.

* Sec. 2. AS 08.54 is amended by adding new sections to read:

ARTICLE 4. SPORT FISHING GUIDES.

Sec. 08.54.300. QUALIFICATIONS FOR LICENSES. (a) The department shall issue a sport fishing guide license to a natural person who

(1) is 21 years of age or older;

(2) applies on a form provided by the department;

(3) has a business license to provide sport fishing guide services;

(4) provides proof, satisfactory to the department, of a practical knowledge of advanced first aid and advanced cardiopulmonary resuscitation;

(5) provides proof of liability insurance in the amounts of at least $300,000 per occurrence and an aggregate of at least $500,000 per year;

(6) has not been convicted of violating a statute or regulation relating to fishing or hunting or to sport fishing guide services during the preceding three years for which the person was fined $100 or more or was imprisoned; and

(7) passes a minimum proficiency test developed by the department, in conjunction with the Department of Fish and Game, that includes

(A) boating safety and boat handling skills;

(B) wilderness survival;

(C) fish identification; and

(D) sport fishing regulations.

(b) The department shall issue an assistant sport fishing guide license to a natural person who

(1) is 18 years of age or older;

(2) applies on a form provided by the department;

(3) provides proof, satisfactory to the department, of a practical knowledge of advanced first aid and advanced cardiopulmonary resuscitation; and

(4) has not been convicted of violating a statute or regulation relating to fishing or hunting or to sport fishing guide services during the preceding three years for which the person was fined $100 or more or was imprisoned.

Sec. 08.54.310. FEES. The department shall set fees under AS 08.01.065 for licenses issued under AS 08.54.300 - 08.54.390; however, the minimum license fee for residents is $100. The license fee for nonresidents shall be three times the license fee for residents.

Sec. 08.54.320. REGISTER OF SPORT FISHING GUIDES. The department shall annually compile a register of licensed sport fishing

1 guides and shall make the register available to the public.
2 Sec. 08.54.330. REGULATIONS. The department may adopt regula-
3 tions under the Administrative Procedure Act (AS 44.62) necessary to
4 implement AS 08.54.300 - 08.54.390.
5 Sec. 08.54.340. UNLAWFUL ACTS. (a) A person may not provide
6 sport fishing guide services without holding a sport fishing guide
7 license issued under AS 08.54.300 - 08.54.390.
8 (b) A person may not assist, for compensation, in providing
9 sport fishing guide services without holding an assistant sport fish-
10 ing guide license issued under AS 08.54.300 - 08.54.390 and without
11 being employed by a licensed sport fishing guide.
12 (c) A person who violates this section is guilty of a class B
13 misdemeanor.
14 Sec. 08.54.390. DEFINITIONS. In AS 08.54.300 - 08.54.390
15 (1) "compensation" means payment for services including
16 wages or other remuneration but not including reimbursement for actual
17 expenses incurred;
18 (2) "department" means the Department of Commerce and
19 Economic Development;
20 (3) "field" means an area outside of established year-round
21 dwellings, businesses, or other developments usually associated with a
22 city, town, or village; "field" does not include permanent hotels or
23 roadhouses on the state road system;
24 (4) "sport fishing guide services" means accompanying or
25 being present with a sport fisherman in the field, personally or
26 through an assistant, for compensation or with the intent or agreement
27 to receive compensation.
28 * Sec. 3. AS 08.01.010 is amended by adding a new paragraph to read:
29 (31) regulation of sport fishing guides under AS 08.54.

1 * Sec. 4. AS 08.01.050(a)(4) is amended to read:
2 (4) notify applicants of acceptance or rejection as de-
3 termined by the board or as determined by the department under
4 AS 08.11 for audiologists, under AS 08.45 for naturopaths, <u>under</u>
5 <u>AS 08.54 for sport fishing guides,</u> or under AS 08.55 for hearing aid
6 dealers;
7 * Sec. 5. AS 08.01.050(a)(9) is amended to read:
8 (9) issue licenses or temporary licenses as authorized by
9 the board or as authorized by the department under AS 08.11 for audi-
10 ologists, under AS 08.45 for naturopaths, <u>under AS 08.54 for sport</u>
11 <u>fishing guides,</u> or under AS 08.55 for hearing aid dealers;
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STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM April 8, 1989

SUBJECT: Constitutionality of residency requirements related to regulation of sport fishing guides and sport fishermen (Work Order No. 6-1147)

TO: Representative Curt Menard

FROM: George Utermohle GU
Legislative Counsel

This memorandum is in response to your request for information on the constitutionality of certain residency based requirements related to the regulation of sport fishing guides and sport fishermen.

State imposed residency requirements must be consistent with the privileges and immunities clause of the federal constitution and the equal protection clauses of the state and federal constitutions. Because these constitutional provisions are relevant to the questions that you have asked, they will be discussed briefly before answering your specific questions.

The privileges and immunities clause provides that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. Article IV, sec. 2, U.S. Constitution. This clause was intended to "fuse into one Nation a collection of independent, sovereign states." Toomer v. Witsell, 92 L.Ed 1460, 1471 (1948). In order for a state to violate the privileges and immunities clause, it must deny a nonresident equal treatment with respect to a fundamental right or privilege that is essential "to the promotion of interstate harmony." Supreme Court of New Hampshire v. Piper, 84 L.Ed2d 205, 210 (1985) One of the fundamental privileges that is protected by the clause is the privilege of doing business in other states on terms of substantial equality with residents of those states. States are not precluded from discriminating against nonresidents if (1) "there is a substantial reason for the difference in treatment" and (2) "the discrimination

practiced against nonresidents bears a substantial relationship to the State's objective." Id. at 213. In determining whether there is a substantial relationship to the states objective the court will consider the availability of less restrictive means. Id.

Under the equal protection clauses of the state and federal constitutions, the state must treat similarly situated individuals the same unless there is a valid reason for making the distinction. The state may not create distinctions based on suspect classifications or that impinge on fundamental constitutional rights. In examining a statute under equal protection, the court will first determine which individual rights are at stake and whether the distinction created relies on a suspect classification. State v. Erickson, 574 P.2d 1, 12 (Alaska 1978) If the court finds that a fundamental constitutional right, such as the right to vote or freedom of speech or religion, or a suspect classification, such as race, religion, or alienage, are involved the statute will be unconstitutional unless the statute directly fosters a compelling state interest and is narrowly tailored to protect that interest. Id. In analyzing an issue that does not involve fundamental rights or suspect classifications, the Alaska courts utilize a sliding scale of judicial review ranging from relaxed to strict scrutiny. State v. Ostrosky, 607 P.2d 1184, 1192 (Alaska 1984). The appropriate level of scrutiny is determined by the importance of the individual interests affected by the statute and the nature of the classification. Id. Having determined the level of scrutiny the court examines the goals of the statute and the relationship of the means chosen to achieve the goal and the goal itself. Id. at 1193. As the degree of scrutiny applied increases, the more compelling must be the governmental goal and the closer the relationship between the means and the goal of the statute must be. At the lowest level of scrutiny less important governmental goals will suffice and a greater degree of imprecision in the relationship between means and goals will be tolerated.

May the state limit licensure as sport fishing guides to Alaska residents?

Among the fundamental rights protected by the privileges and immunities clause is the right to engage in a livelihood or pursue a profession. Nonresidents who wish to engage in

the business or profession of sport fish guiding would be protected by the clause.

The state is not completely prevented from regulating the licensure of nonresidents as sport fishing guides, but the state must be able to show substantial justification for discrimination against nonresidents and that the discrimination is substantially related to a problem created by the nonresidents. Mere residency in another state and economic protection of residents are not acceptable justifications for discrimination. Toomer at 1471. To satisfy the first requirement the state must be able to show that allowing nonresidents to become sport fishing guides would create a problem for the state and that the problem is appropriately addressed by the residency requirement. To satisfy the second requirement the state must be able to show that the residency requirement is the least restrictive means available to alleviate the problem posed by nonresident sport fishing guides.

The Supreme Court of Wyoming addressed this issue in regard to hunting guides and found that the probability that residents were more familiar with the terrain, hunting conditions, and species to be hunted than were nonresidents was not sufficient justification for preventing nonresidents from becoming hunting guides and thus the Wyoming residency requirement violated the privileges and immunities clause. Powell v. Daily, 712 P.2d 356 (Wyo. 1986). Likewise the Alaska Attorney General has decided that a residency requirement for hunting guides could not be justified merely because a resident would be more likely to know and abide by the local laws and regulations than were nonresidents. (1986 Alaska A.G.Op. No. 2) As a result hunting guides in the state are no longer required to hold a resident hunting license.

Though the privileges and immunities clause does allow the possibility that the state could use residence as criteria in licensing sport fishing guides if sufficient justification exists and if an appropriate licensing scheme could be developed, it is difficult to hypothesize a fact situation in which the state could validly bar nonresidents from the sport fishing guide profession in the state.

A residency requirement for sport fishing guides would also be subject to challenge as a violation of the right to equal protection. Under equal protection the right to practice a

profession is considered to affect only the economic interests of a person and as a result receives a relatively low level of protection. In such a case the state need only to show that it is pursuing a valid governmental goal by prohibiting nonresidents from obtaining a sport fish guiding license and that prohibiting nonresidents from obtaining the license was a reasonable means to accomplish that goal. If a residency requirement was able to survive a challenge under the privileges and immunities clause, it is highly likely that it could survive a challenge on equal protection grounds.

May the state prohibit non-U.S. citizens from becoming sport fishing guides?

For all practical purposes the answer is no. Under the equal protection clauses of the state and federal constitution discrimination against a person because the person is an alien is viewed in the same light as discrimination against a person because of the person's religion or race. Under equal protection analysis, alienage is considered a suspect class. In order to validly discriminate against a member of a suspect class the state must have a compelling state interest to be protected and the means chosen to achieve that goal must specifically address that goal without being over inclusive or under inclusive.

Protection of the state's fish and game resources may well be a compelling state interest. Article VIII of the Alaska Constitution requires the legislature to do so. However it is very unlikely that the state can identify a risk to state sport fishing resources that arises solely from the fact that a person is an alien or that can be reasonably addressed by preventing aliens from becoming sport fishing guides.

The U.S. Supreme Court has held that a state may not deny a commercial fishing license to aliens; the state's interest in conserving its fishery resources was not sufficient to justify excluding aliens from making a living. Takahashi v. Fish and Game Commission, 92 L.Ed 1478 (1948).

May the state require that nonresidents pay a higher license fee for a sport fishing guide license and, if so, how much?

A state may charge substantially higher fees for nonresident sport hunters than for resident hunters, but the state's

interest in protecting its fish and wildlife resources does not permit it, without reason, to interfere with the right of a nonresident to pursue a profession in a state other than his own. Baldwin v. Montana Fish and Game Commission, 56 L.Ed2d 354, 366-67 (1978). Differential fees imposed on nonresidents are subject to review under the privileges and immunities clause under the same standards as were the residency requirements discussed above. A license fee imposed on nonresident commercial fishermen that was 100 times that imposed on resident commercial fishermen was invalid under the privileges and immunities clause. Toomer at 1476. The Toomer court found that the privileges and immunities clause prohibited discrimination against nonresidents where there was not a substantial reason for discrimination, but "it does not preclude disparity of treatment where there are perfectly valid independent reasons for it." Id. at 1471.

Thus the state may impose a higher license fee for nonresident sport fishing guides if it can establish that the higher fee would compensate the state for any additional enforcement cost attributable to nonresidents or for any conservation expenditures from taxes that only residents pay. Id. at 1473. Whether the state can justify a nonresident fee differential and the actual amount of the differential is a function of the evidence that the state can put forward in support of the fee differential.

The nonresident fee differential for commercial fishing limited entry permits is three times the fee paid by residents. AS 16.43.160(b). This fee differential has not been reviewed by the Alaska Supreme Court, but has survived challenges in two lower court decisions. Carlson v. State, Superior Court, Third Judicial District, Anchorage No. 3AN-84-5790 Civ; State v. Cameron, District Court, First Judicial District, Juneau No. 1JU- S82-1094 Cr. The success of the state in these cases may well be due to the ability of the state to show that residents pay more for the conservation of fishery resources than do nonresidents and thus a higher permit fee for nonresidents is valid.

May the state require nonresident sport fishermen to employ sport fishing guides?

Unlike preceding questions which related to regulation of the practice of a profession by nonresidents and which must be addressed under the privileges and immunities clause,

this question relates to regulation of the recreational activities of nonresidents and would involve the equal protection clauses of the state and federal constitutions. Baldwin at 362 - 370. Under equal protection the recreational activities of nonresidents are protected from unreasonable and arbitrary regulations. However in order to impose regulations on the recreational activities of nonresidents the state need only show that it is seeking to achieve a valid governmental goal and that the means chosen to achieve this goal is rationally related to the goal. Goals that the state could seek to achieve would include protection of sport fish resources, enforcement of sport fishing laws, and safety of nonresident sport fishermen, but the state must be able to show that there is reasonable basis for requiring that a nonresident sport fishermen be accompanied by a guide when a resident does not need a guide. The state must be able to show that nonresidents are more likely to violate sport fishing laws than residents or that nonresidents are more at risk of injury while sport fishing in the state than are residents. Given that nonresidents have to this date been able to fish in this state on the same basis as residents the state must be prepared to justify the change.

A guide requirement for nonresident hunters in state and federal wilderness areas was upheld by the Supreme Court of Wyoming because the purpose of the requirement was to promote proper game management, protection of hunter welfare and safety, and better enforcement of game and fish laws and, in the opinion of the court, the guide requirement was sufficiently related to these purposes so as to be constitutional. O'Brien v. State, 711 P.2d 1144 (Wyo. 1986). A dissenting opinion in this case questioned whether the guide requirement was rationally related to the stated purposes because (1) there was no evidence that nonresidents were more likely to violate the law than were residents, (2) the law did not require guides for small game hunters and fishermen who were just as likely to be injured in the field or to violate the law as were big game hunters, and (3) nonresidents could be guided by an uncompensated resident who did not have to meet the training and experience requirements of licensed guides. Id. at 1154-1155.

If I may be of further assistance, please advise.

GU:kb
wkk3/081

ALASKA STATE LEGISLATURE

REPRESENTATIVE CURT MENARD

165 E. Parks Hwy.
Wasilla, Alaska 99687
(907) 373-2878

P.O. Box V
Juneau, Alaska 99811
(907) 465-2679

MEMORANDUM

To: House Resources Committee

From: Rep. Menard

Date: April 20, 1989

Re: Bill to require licensing of Sport Fish Guides

I have been working with fish guides statewide to develop legislation to license sport fish guides. Licensing sport fish guides will protect the fishery resources of the state, ensure the continued viability of the sport fishing guide industry and ensure that consumers of sport fishing guide services have a positive recreational experience.

HB 267 sets up certain requirements that fish guides have to meet in order to receive a sport fish guide license. Some of these include: first aid, knowledge of sport fish regulations and boating safety. Sport fish guide licenses would have to be renewed every two years. Fish guides would also be required to pay a small fee and obtain minimal liability insurance. It is the intent of the bill to have the fees be used for implementing the fish guide licensing program.

HB 267 is supported by sport fishing guides throughout the state as well as the Alaska Department of Fish and Game.

Representing the
Matanuska-Susitna Borough

Co-Chair
House Resources Committee
Member
State Affair Committee
Budget Subcommittee

HB
285

6-0527J
Utermohle
2/14/90

BY REP. JACKO, Foster, M.Davis, Menard, Goll, Grussendorf, Hoffman

IN THE HOUSE

CS FOR HOUSE BILL NO. 285 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to qualifications for transferees of commercial fishery limited entry permits."

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

* Section 1. AS 16.10.337(b) is amended to read:

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 - 16.43.330, the department shall promptly advertise and sell the permit <u>to a person who qualifies as a transferee for the permit under AS 16.43.170 and the regulations adopted by the commission</u>. If the proceeds of the sale of a permit exceed the amount necessary to pay the note in full, plus penalties, costs of administration of the note, and attorney fees, the excess will be transferred by the commissioner to the debtor. At any time until the permit has been sold under this subsection the debtor may repurchase the permit by paying the department the amount necessary to pay the note in full, plus penalties, costs of administration of the note, and attorney fees, as determined by the commissioner.

* Sec. 2. AS 16.43.150(h) is amended to read:

(h) Unless an entry permit holder has expressed a contrary intent in a will that is probated, the commission shall, upon the death of the permit holder, transfer the permanent permit by right of survivorship directly to the surviving spouse or, if no spouse survives, to a natural person designated by the permit holder on a form

provided by the commission. If no spouse survives and if the person designated on the form, if any, does not survive, the permit passes as part of the permit holder's estate. The transferee of a permit under this subsection, who is the spouse of the deceased permit holder or who is related to the deceased permit holder by blood within three degrees of kinship, does not have to demonstrate a prior history of active participation in the fishery under AS 16.43.170(b). A designation under this subsection must be acknowledged before a person authorized to administer an oath under AS 09.63.010 or must be witnessed by two persons who are qualified under AS 13.11.170 to witness the will of the permit holder. Except as provided in AS 16.10.333 - 16.10.337, AS 44.81.210, and 44.81.230 - 44.81.250, the permit is exempt from the claims of creditors of the estate.

* Sec. 3. AS 16.43.170(b) is amended to read:

(b) Except as provided in (c) and (e) of this section, the holder of an entry permit may transfer the permit to another person or to the commission upon 60 days notice of intent to transfer under regulations adopted by the commission. No sooner than 60 days nor later than 12 months from the date of notice to the commission, the holder of an entry permit may transfer the permit. If the proposed transferee, other than the commission, can demonstrate to the satisfaction of the commission a history of active participation in the fishery during three years and the present ability to participate actively in the fishery and if the transfer agreement does not violate any provision of this chapter [AS 16.43] or regulations adopted under this chapter [THEREUNDER], the commission shall approve the transfer and reissue the entry permit to the transferee pr ded that neither party is prohibited by law from participating in the transfer. In this subsection "active participation" means physical participation in

fishing activities under a crewmember fishing license, interim-use permit, or entry permit.

House of Representatives

While in Session:
Box V
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(907) 465-4942

P.O. Box 47001
Pedro Bay, Alaska 99647
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Chair
Special Committee on Foreign Trac
Vice Chair
Resources Committee
Member
Health, Education &
Social Services Committee

Rep. George Jacko, Jr.

MEMORANDUM

TO: Resources Committee Members

FROM: Representative George Jacko Jr.

DATE: February 15, 1990

SUBJECT: House Bill 285

House Bill 285 will serve to change the free transferability requirements of limited entry permits. Three years prior experience will be required before a limited entry permit can be purchased. In other words, if one wanted to buy a limited entry permit in a fisheries district he/she must demonstrate three year's active participation in that fisheries.

The primary reason for this legislation is to slow down limited entry permits leaving Alaska. Especially in the rural areas, permits have been declining at a steady rate. The economic impact is felt strongly in the smaller communitites where there is no alternative source of employment.

Permit prices have skyrocketed in recent years fueled by speculators who are eager to become involved in Alaska's lucrative fisheries. Prices have risen so high that in many districts local fishermen are not able to obtain financing to purchase limited entry permits and are being effectively excluded from participating in their fisheries.

Safety and enforcement measures will also be addressed as fishermen will need to prove past participation before investing in a fisheries.

In closing, I believe that the problem of limited entry permits being transferred through the market process has served to discriminate against many fishermen in the state. House Bill 285 will allow for those who have demonstrated prior experience to be allowed to continue their livelihood.

Thank you for your consideration on this matter.

Sectional Analysis of HBCS 285

A definition of "active participation" on the last three lines of the bill is the sole difference between the committee substitute and the original draft.

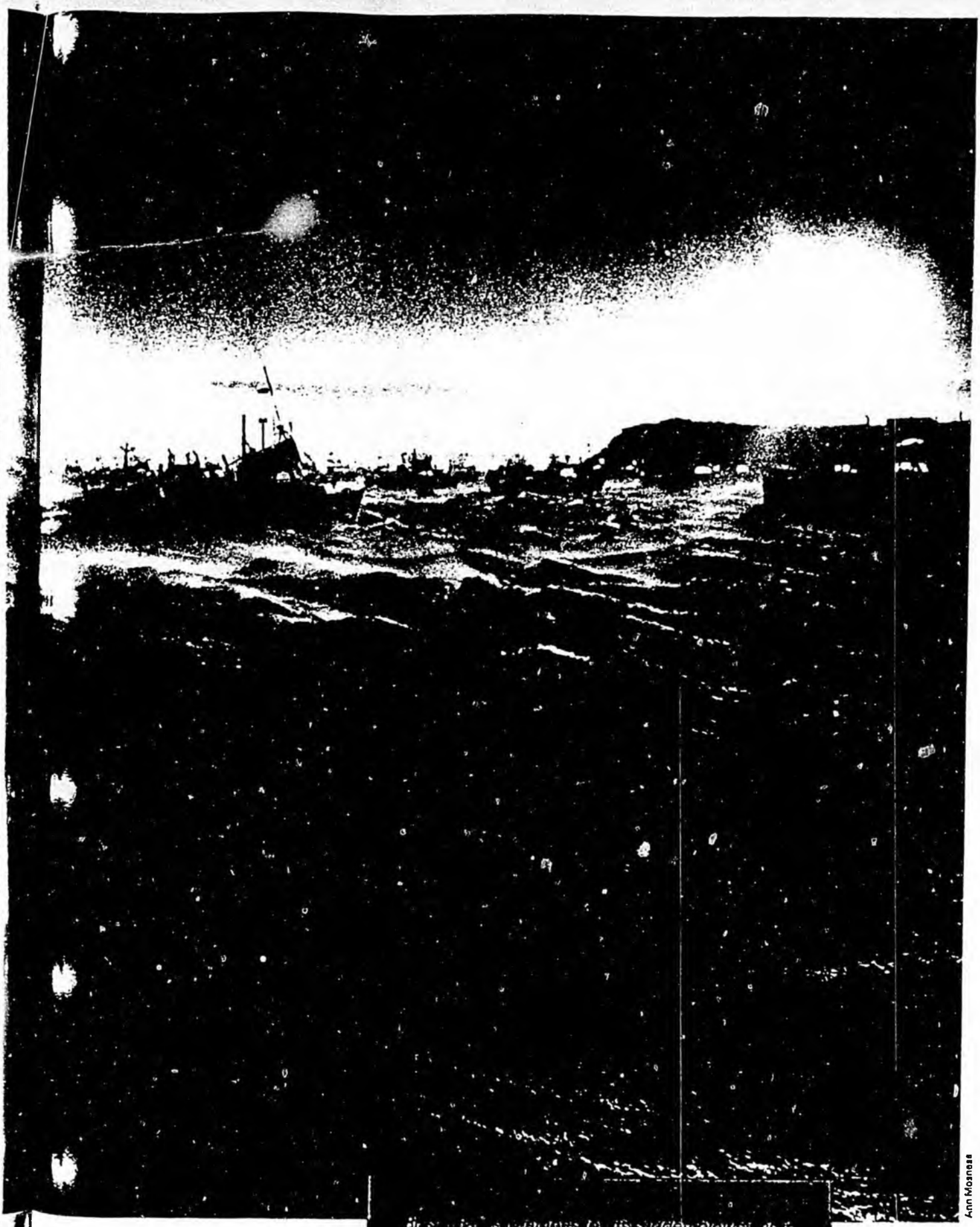
Active participation is defined as means of physical participation in fishing activities under crewmember license, interim-use permit, or entry permit.

Perhaps no single salmon fishery has produced more money or shattered more dreams than Bristol Bay, Alaska. A bad year's catch is two million salmon, an average year is 14 million and a good year can be worth half the value of the entire Alaska salmon harvest: one bay, one week, one species, *Oncorhynchus nerka*. In a great year (such as 1989), enough red salmon enter the bay to stretch end-on-end to the tip of South America.

Located in southwest Alaska in the armpit of the Alaska Peninsula, Bristol Bay is about the size of Ohio, although it's misleading to think of the fishery as conducted over that large an area. Rather, it is conducted in five districts (each district associated with a river system), only one or two of which might be open at a given time. Districts range from 35 to 100 square miles, but actual fishing is gridlocked along the boundary lines in areas more the size of Times Square. (Imagine one-thousand-dollar bills raining down on Times Square at rush hour, and you have an idea of a Bristol Bay opening.)

As each district (or river system) is unique, with its own set of environmental conditions, fishing can vary greatly from one district to another. In recent years, the Egegik District (the other districts are Nushagak, Togiak, Ugashik and Naknek-Kvichak) has been the dominant producer, with a record harvest this year of 8.6 million red salmon (raising a hot interception issue, with as much as one-third of the catch consisting of sockeye bound for other districts).

When escapement is reached (the number



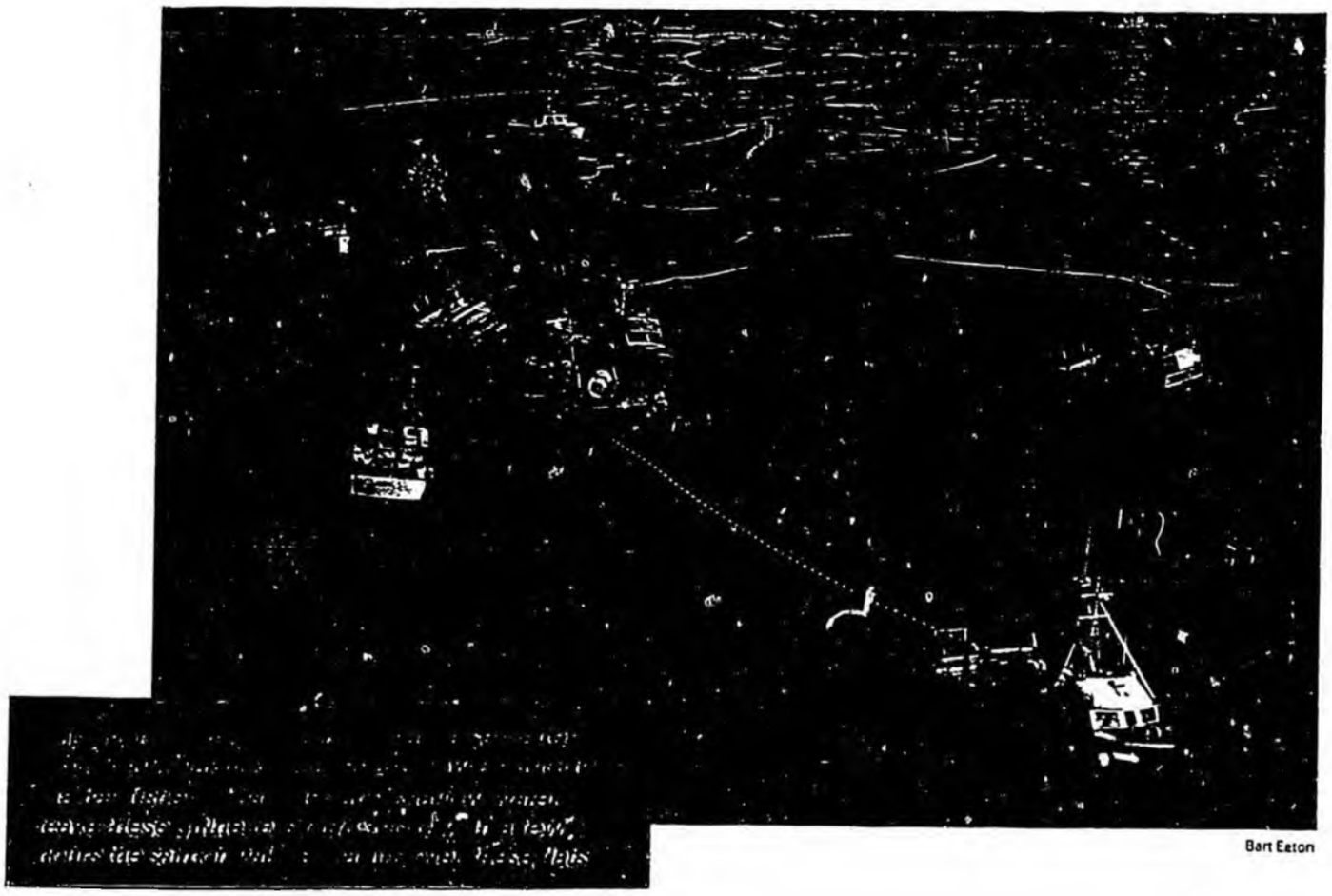
Ann Mosness

of salmon allowed to swim freely upstream to spawn), the district opens. If the escapement isn't reached, the district doesn't open. Meanwhile, everyone waits.

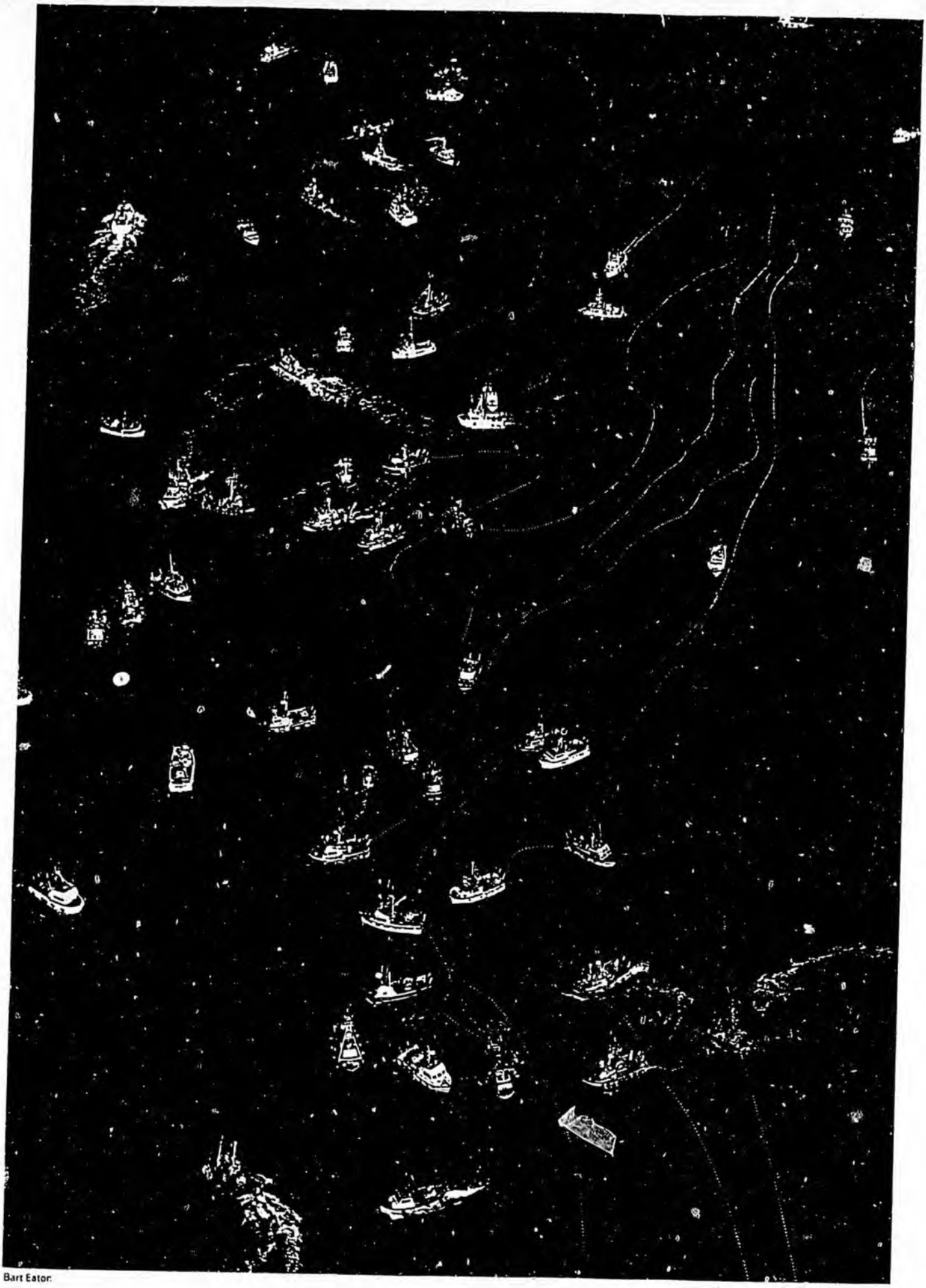
Waiting, not fishing, is the main activity of Bristol Bay. Thousands of transients—fishermen, cannery workers, mechanics, spotter pilots, enforcement officers; fleets of vessels—trampers, tenders, processors, cash buyers, enforcement boats, fishing boats of every description—all descend on the bay's tiny villages to *wait*. The normal peak is July 4, but you never know when until they arrive, or how many until they hit the river. Meanwhile, the tension builds.

All the instruments of prediction are applied, of course, but the ocean is a murky crystal ball. Returns to Bristol Bay have been hard to forecast and subject to great fluctuations. The projected harvest for 1989, for example, was 16 million reds; the actual harvest was 28 million.

Roger Fitzgerald



Bart Eaton



Bart Eator

The big surprise this year was the Kvichak River. It was the big surprise last year, too, only this year it came in strong. Once synonymous with Bristol Bay (producing up to 60 percent of the bay's entire red harvest—33 percent of the U.S. harvest and 16 percent of the world catch), the Kvichak has yielded only a trickle of her historical production in recent years. But she made up for it this year: 14 million reds, for half the bay's production. Where were all those salmon last year?

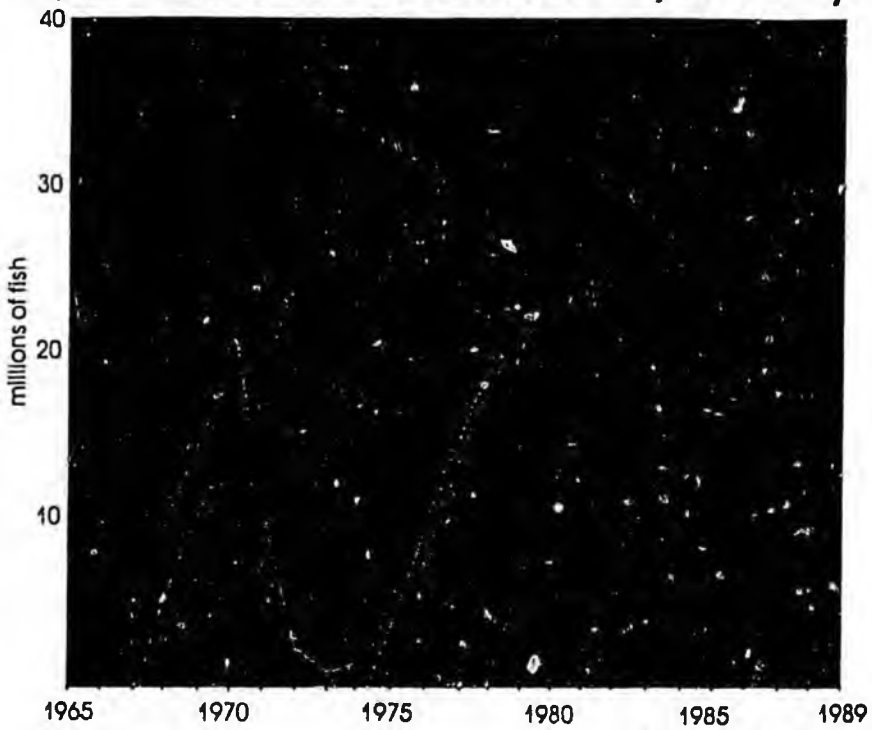
No one really knows, but there are plenty of theories. One of them is that *pirates* got them. The so called high-seas "squid" fishery (conducted by Japan, Taiwan and Korea) intercepts some of the bay's salmon (even a murky crystal ball is clear on that point), but just how many isn't clear. Because Kvichak salmon are smaller, they could be more susceptible to the huge driftnets. "They use 4-inch mesh, which is just the right size for that salmon," says Mitch Kink, general manager for the Alaska Independent Fishermen's Marketing Association (AIFMA).

Indeed, high-seas salmon interception—called the "AIDS of the North Pacific" by Alaska Senator Ted Stevens—is a shadow hanging over the bay. In the last two years, the National Marine Fisheries Service has seized more than 2 million pounds of "laundered salmon," illegally shipped to the U.S., relabeled, and shipped to Japan for sale. No doubt some of these salmon were bound for Bristol Bay. What's the magnitude of the problem? No one knows. Jolene Unsoeld (D-Wash.) estimates the salmon booty at 10,000 tons annually—the equivalent of 20 percent of an average Bristol Bay harvest.

Wait and wait . . . then it explodes! A million salmon can shoot up the river in a single tide; a fortune can be made (or lost) in a few hours—as in 1983, when 1.6 million salmon were captured on the Kvichak in one 12-hour opening. The bay is not only the biggest sockeye fishery in the world, but the *fastest*.

The nearest metaphor to Bristol Bay is war. An invasionary force lands on the tundra, the sky dotted with planes and helicopters, the rivers clogged with boats that resemble tanks; armies of processing workers wait on shore on 24-hour alert. Then the salmon charge the river in a wild rush. In 10 days, 90 percent of the catch is in—most of it frozen and on its way to Japan—and fishermen are already heading home.

Ups and Downs of Bristol Bay Sockeye



(Through Sept. 2, 1989)

Source: ADF&G

The annual purse for Bristol Bay is about $160 million divided among some 1,700 active fishermen. The size of the pie, of course, varies from year to year. This year the price averaged $1 a pound for a harvest of 165 million pounds; last year it was $2.10/lb. for a harvest of 80 million.

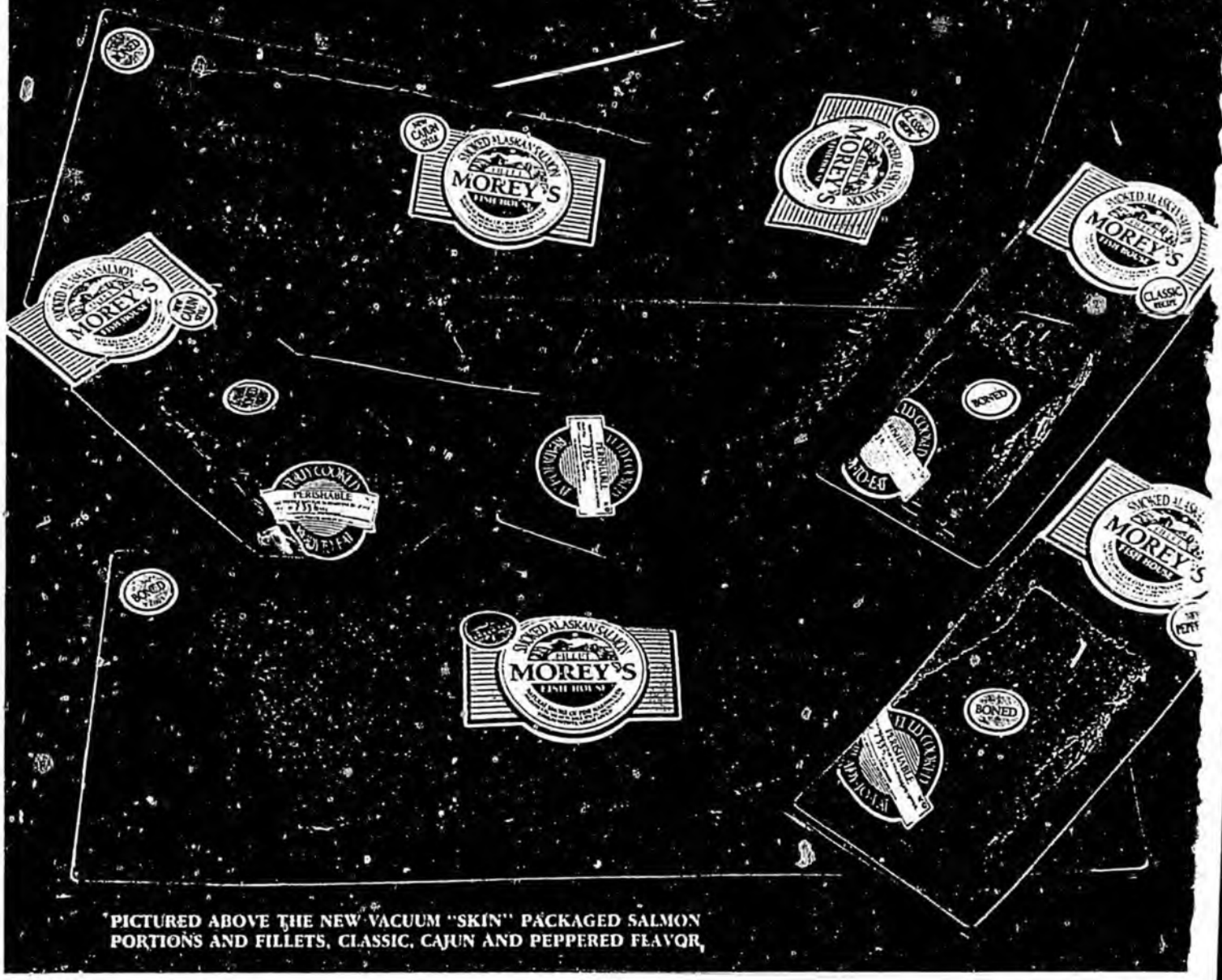
In some years as much as 90 percent of the harvest is frozen, almost all of it bound for Japan. No surprise (but interesting) is that so much of this year's production went into the can—upwards of a half-million cases (compared to 200,000 cases last year). "No surprise" because big production means more canned sockeye (and 1989 is the second-biggest production year on record). Certainly, a more diversified market would be welcome to U.S. companies in the bay, notably Trident Seafoods, the bay's single largest buyer (about 20 percent of the pack) and, along with Icicle Seafoods, one of the few entirely U.S.-owned companies in the bay.

Everywhere on the bay are Japanese: from the trampers anchored out in the bay that carry the salmon back to Japan (where it's held in cold storage while U.S. companies try to negotiate a final price!), to the technicians on the processing vessels and in the shoreside plants. Plus, a substantial part of the onshore and offshore investment is Japanese (one reliable source estimates it at 40 percent).

So who owns Bristol Bay?

For years the cannery barons did, ruling the bay with a monopolistic fist that gave no quarter to "outside competition" (although they themselves were outsiders from Seattle and San Francisco). From the formation of the Arctic Packing Co. in Nushagak in 1884, to the late 1970s, cannery bosses called the shots on Bristol Bay—or "Brindle's Bay" as it was known by many in the days of Wynn Brindle, boss at Wards Cove Packing Co. The Alaska Packers' Association, which transported thousands of workers from San Francisco to the bay every year on its famous square riggers, put up packs of more than a million cases

SET YOUR SALES *SMOKIN'* WITH MOREY'S



PICTURED ABOVE THE NEW VACUUM "SKIN" PACKAGED SALMON PORTIONS AND FILLETS, CLASSIC, CAJUN AND PEPPERED FLAVOR.

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a season.

Fishermen, who never owned the bay, were owned by the canneries. They were told when to fish, where to fish and how to fish. No such thing as an independent white fisherman existed then. When power boats came into existence, the cannery bosses, fearing they would lose their grip on the fishermen, pushed through a law in 1922 banning fishing in the bay in anything but sailboats. (Their concern, they said, was "conservation.")

Thus began the "colorful era" of the Bristol Bay sailing fleet, lasting 30 years. It was more colorful to historians than to those who had to sail the skiffs, as the story of Deadman's Sands . clearly illustrates. As the story goes, in 1939, 39 fishermen drowned in 39 minutes as their 32-foot sailboats broke up against a bar in a sudden blow. Unable to tack against the incoming tide, the doomed fishermen waved good bye to their comrades, who watched them helplessly from outside the breakers.

In 1951, the cannery barons went too far. They started using power boats to tow their sailing fleets to the grounds, and the U.S. Fish & Wildlife Service called an end to the farce, opening the bay to the modern era. Fishermen bought their own boats and organized into marketing groups. The days of the "company store" were over.

By the late 1970s, the market had shifted from canned to frozen, brought on by a strong demand in Japan. Floating processors appeared on the bay in growing numbers, buying from independent fishermen and delivering the product over the rail to Japanese trampers. In 1978, 10.5 million pounds of sockeye were frozen; in 1982, 70 million pounds. The canners were still kicking, but they were no longer "kicking ass."

So who owns Bristol Bay?

The Japanese housewife. The fortunes of the fishery rise and fall with what she's willing to pay—and, thus, with the rise and fall of the dollar against the yen. Or so goes the moderate view. Other views vary from Japanese cartels to "The Evil Empire." The danger of a one-market fishery, of course, is collusion, but Mitch Kink of AIFMA thinks the competition is "too heated" for that—"too many players," he says.

If the Japanese housewife "owns" Bristol Bay, chance rules it. The fishery is a roll of the dice, and every year it's a new game. Last year the return was half of what it was this year. What will it be next year? Rattle the dice! A half-million will get you in the game if you're a fisherman, more if you're a processor. You could be a big winner—or a big loser. The difference is almost always a slight twist of chance: You're in the right place at the right time, or you're not—a millionaire or a pauper. So it goes on Bristol Bay: the world's greatest crap shoot.

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KOTZEBUE FISHERMANS ASSOCIATION

RESOLUTION NO. 90-01

A RESOLUTION SUPPORTING THE PASSAGE OF HOUSE BILL NO. 285 FOR AN ACT ENTITLED "AN ACT RELATING TO QUALIFICATIONS FOR TRANSFEREES OF COMMERCIAL FISHERY LIMITED ENTRY PERMITS."

WHEREAS, the Kotzebue Fishermans Association is within the Kotzebue Commercial Salmon Fishery; and

WHEREAS, the Kotzebue Sound Commercial Salmon Fishery is a limited entry fishery; and

WHEREAS, a qualification period to purchase a permit would allow for a more stable economic base for the fishery and the NANA Region; and

WHEREAS, a qualification period allows for new potential permit holders to gain necessary experience within the Kotzebue Sound fishery before purchase of limited entry permits.

NOW, THEREFORE, BE IT RESOLVED that the Kotzebue Fishermans Association supports the passage of House Bill No. 285 of the Sixteenth Legislature.

PASSED AND APPROVED THIS 6TH DAY OF FEBRUARY, 1990.

KOTZEBUE FISHERMANS ASSOCIATION:

Gordon W. Ito, President

ATTEST:

Sally McClellan, Secretary

Alaska State Legislature

Legislative Research Agency

P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 465-3991
Fax: (907) 463-3351

JAN 05 1990

December 29, 1989

MEMORANDUM

TO: Representative George Jacko, Jr.

FROM: Maria Gladziszewski
Legislative Analyst

RE: Experience Requirement for Limited Entry Permits
Research Request 90.131

You wanted to know if other states require that limited entry fishing permits be transferred only to individuals who can demonstrate experience in the fishery. You had heard that California and Hawaii have implemented experience requirements in their limited entry fisheries programs.

California, Oregon, Washington and Alaska are the only states that operate limited entry programs. The only limited entry programs in federal waters are for the quahog/surf clam fishery off the mid-Atlantic states and the bottomfish fishery in some waters of the Hawaiian Islands. The only limited entry fisheries in the nation that require experience of those receiving transferred permits are in California. California officials have instituted an experience requirement for the recipients of transferred general gill and trammel net permits, drift gill net shark and swordfish permits and herring permits. Federal authorities use experience points to issue new permits for the bottomfish fishery off the Northwestern Hawaiian Islands.

At the beginning of limited entry programs, permits are generally issued to those with previous experience in the fishery. Provisions on transferability of permits, however, vary from state to state and fishery to fishery. This memorandum outlines the permit transferability provisions for the limited entry programs in California, Washington, and Oregon, the federal program in the Northwestern Hawaiian Islands, and the limited entry program in British Columbia.

JOSEPH R. BLUM
Director

STATE OF WASHINGTON

DEPARTMENT OF FISHERIES

115 General Administration Building • Olympia, Washington 98504 • (206) 753-6600 • (SCAN) 234-6600

December 8, 1989

Ms. Maria Gladziszewski
Legislative Research Agency
P.O. Box Y
Juneau, Alaska 99811-3100

Re: Limited Entry

Dear Ms. Gladziszewski,

Enclosed please find a copy of the Washington Fisheries Code. The limited entry fisheries are in Chapter 30. As you can see, there are several quite different limited entry fisheries. The reason why they are different is that we were on a learning curve (and, frankly, still are).

Our first efforts at limited entry involved herring and salmon, with a license limitation but no limitation on transferability. This resulted in a highly spirited trade in licenses, with current market value for a Willapa Harbor-Columbia River gill net license being in excess of $40,000. This has a destablizing effect on the fishery, so the next limitation program, Dungeness crab, contained a six-year no-transferability provision. This delayed the problem, but did not solve it. The third try was whiting, in which we prohibit any transfer, except within a family. This attempt is apparently impermissible as it creates an hereditament, unconstitutional under the Washington State Constitution.

Our last limited entry, in 1989, limits the entry into the sea urchin fishery; We are currently in court over this issue. I have enclosed a copy of Chapter 37, Laws of 1989, which created the sea urchin endorsement. The thrust of the petitioner's argument is that there is no rational basis to limit the qualifying period to April 1, 1986 through March 31, 1988, and that fishers who entered the fishery after March 31, 1988 should be allowed to participate. We believe we will prevail in this suit, but the outcome is unclear.

If I can be of any assistance, please give me a call.

Sincerely,

Evan S. Jacoby, Counsel
Fisheries Legal Services

Bering Sea
Fishermen's Association
725 Christensen Drive
Anchorage, Alaska 99501
(907) 279-6519

February 12, 1990

Representative George Jacko, Vice Chairman
House Resources Committee
Box V
Juneau, Alaska 99811

Dear Representative Jacko:

The Bering Sea Fishermen's Association supports the underlying intent of HB 285; to stop the outmigration of limited entry fishing permits from coastal communities and the State. But according to the fishermen we surveyed, the language included in the proposed bill is too vague and possibly restrictive for local fishermen.

I talked with members of WACMA and BBHMC in Dillingham, the Y/K Fisheries Task Force in Bethel, Qaluyaat Fishermen's Association on Nelson Island, Norton Sound fishermen in Unalakleet, and Kotzebue Fishermen's Association in Kotzebue. There was unanimous support for the concept of the bill to implement a system for keeping permits for fishermen within the State and the communities that depend on fishing for a prime source of local income.

However, the reaction as to whether or not this bill would do that was mixed. Some fishermen think the details can be worked administratively, others feel that this legislation needs to be changed to deal with some specific questions.

Some of the comments I got are as follows: as the bill is now written, a permit holder can transfer a permit to a spouse or blood relative (within three degrees of kinship) without demonstrating three years of active participation only if that permit holder is deceased. What happens if a permit holder is disabled or not able to continue fishing for one reason or another and wants to transfer the permit to his son or relative who does not have the needed three years participation? Can the permit be transfered to family members without proof of participation and without the permit holder being deceased?

Can a local Unalakleet fisherman who has say 20 years of experience gillnetting for salmon in Norton Sound buy a salmon permit on the Yukon or in Bristol Bay without showing three years participation in that fishery? What about a subsistence fisherman from Toksook Bay or Chevak who has never fished on the Kuskokwim but saved enough money to buy a permit there? How is active participation defined? And lastly, there was some concern that the bill would reduce the the value of the permits

I hope this information is useful to you in the structuring of the bill.

Sincerely,

Jon C. Zuck
Extension Specialist

END

STEVE COWPER, GOVERNOR

COMMERCIAL FISHERIES ENTRY COMMISSION

P.O. BOX KB
JUNEAU, ALASKA 99811-0302
PHONE: (907) 465-4081

February 13, 1990

Bryce E. Edgmon
Aide to:
The Honorable George G. Jacko
House of Representatives
P.O. Box V
Juneau, Ak. 99811

Mail Stop: 3100

Dear Mr. Edgmon:

Enclosed are the line graphs which you requested. For each fishery there are two graphs. The first represents time series data on permit prices in the fishery. The second represents time series data on the percentage of permanent permits in the fishery owned by Alaska residents.

Attached is a memorandum from Al Tingley, who prepared the graphs. Al's memo explains the graphs and data in more detail. Also enclosed is a copy of the 1988 Annual Report of The Commercial Fisheries Entry Commission. Table 1 in the Appendices of this report provide the raw data upon which the graphs are based.

If you have any questions about the graphs or the data, please give me or Al a call.

Sincerely,

Kurt O. Schelle
Manager of Research
and Planning

11-K28LH

MEMORANDUM **STATE OF ALASKA**

TO: File

DATE: February 12, 1990

FILE NO:

FROM: Al Tingley

TELEPHONE NO:

SUBJECT: Graphics of Table 1. of 1988 Annual Report

Graphical Supplement to CFEC 1988 Annual Report
Appendix Table 1.

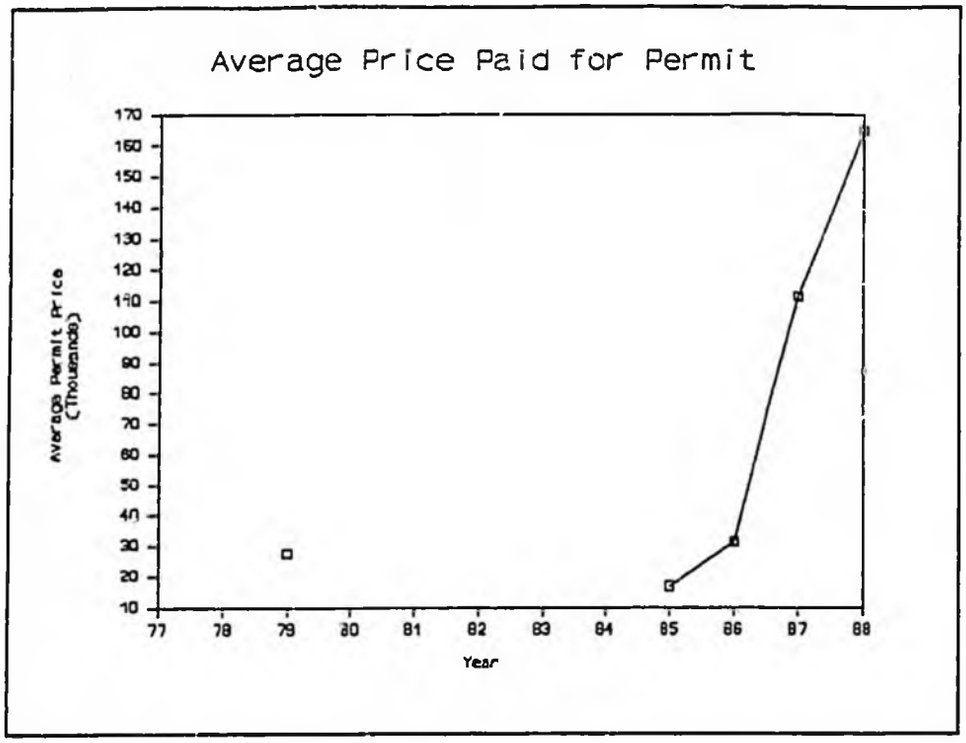
The attached Lotus graphics are a supplement to Table 1 - Permit and Permit Transfer Statistics, 1975-1988 in the Appendix of the CFEC 1988 Annual Report. The user should be aware of "Notes for Table" at the end of the table.

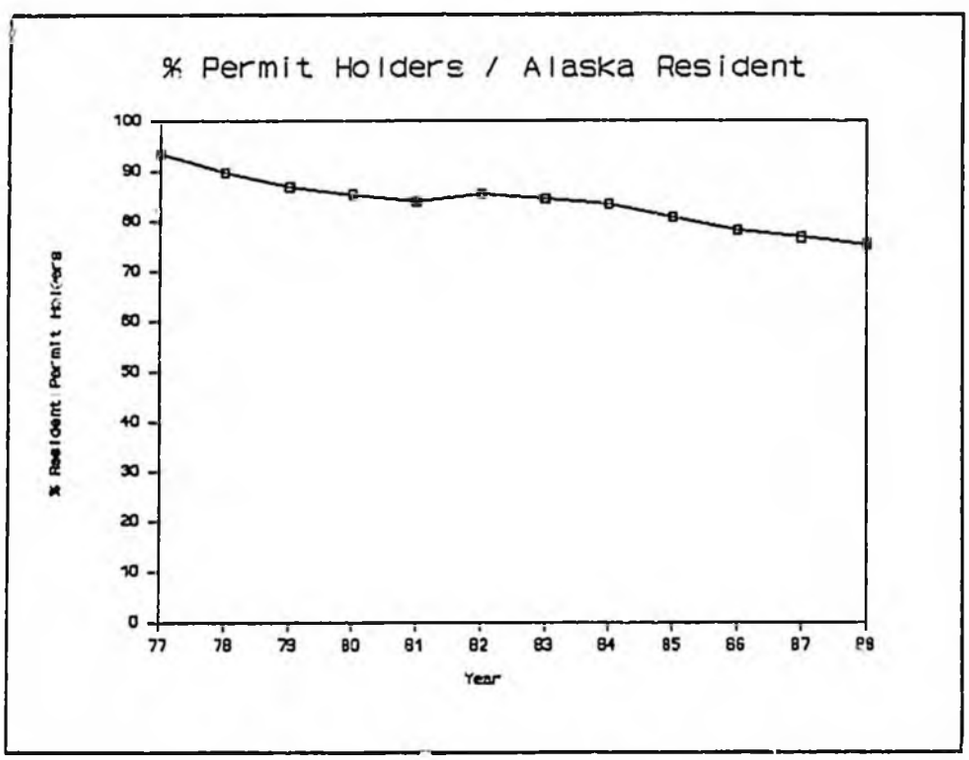
Each fishery is represented on a separate page. Graphics were not generated for the sablefish longline and pot fisheries in Southeast and the herring pound fishery in Prince Wm Sound since information is only available for a single year (1988).

Each page shows two graphs. The first graph illustrates the yearly average price paid for the fishery. The scale for the permit value varies, depending on the value range for each fishery. Where there were no monetary transfers or information is confidential because fewer than four surveys exist there are no points plotted on the graph.

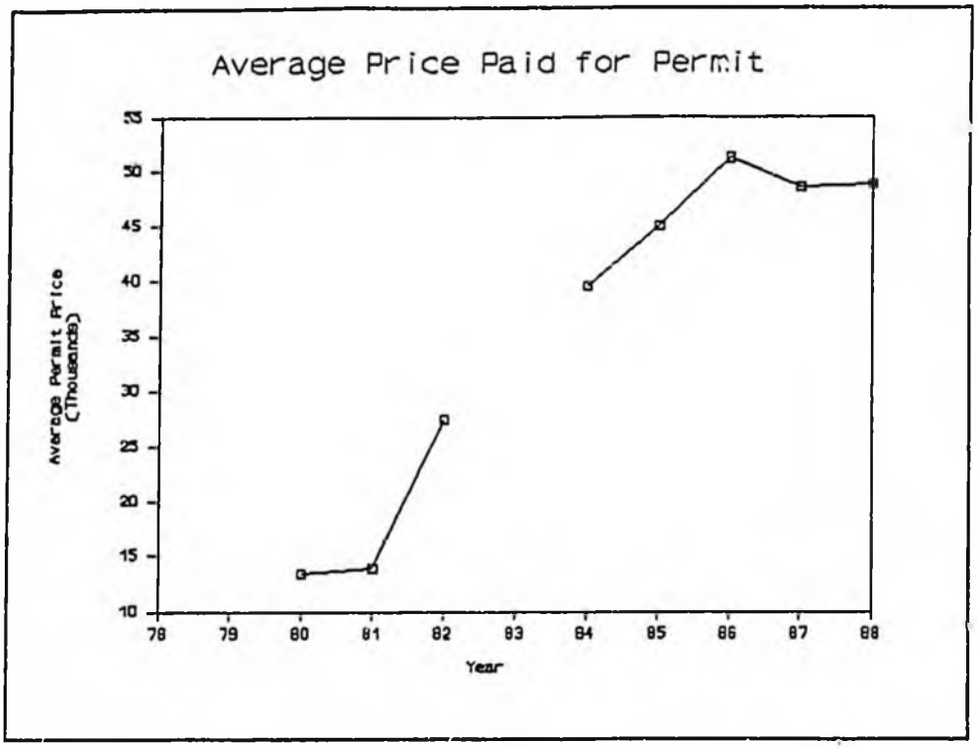
The second graph on each page illustrates the percentage of the permit holders in the fishery who are Alaska residents. The scale remains the same for this graph for all fisheries.

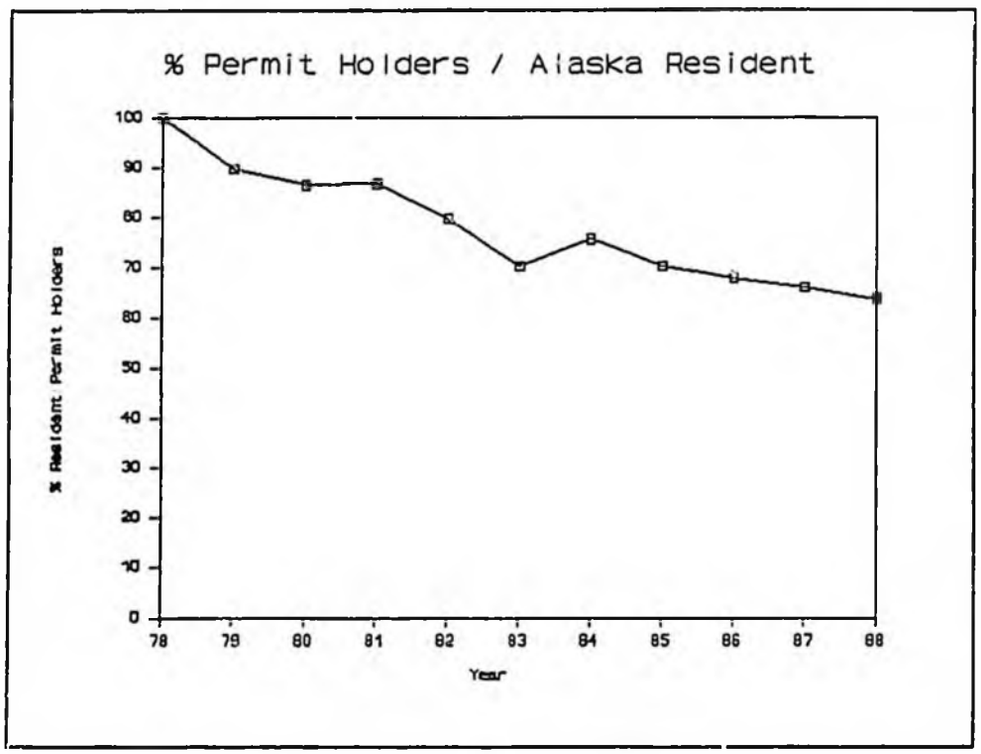
G01H HERRING PURSE SEINE COOK INLET



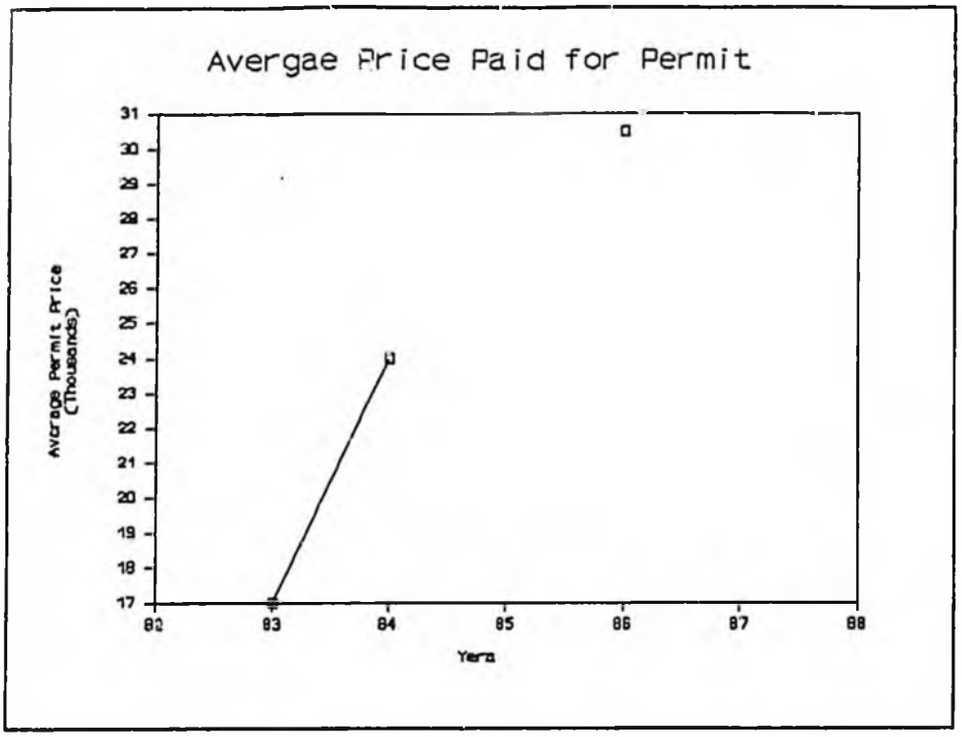


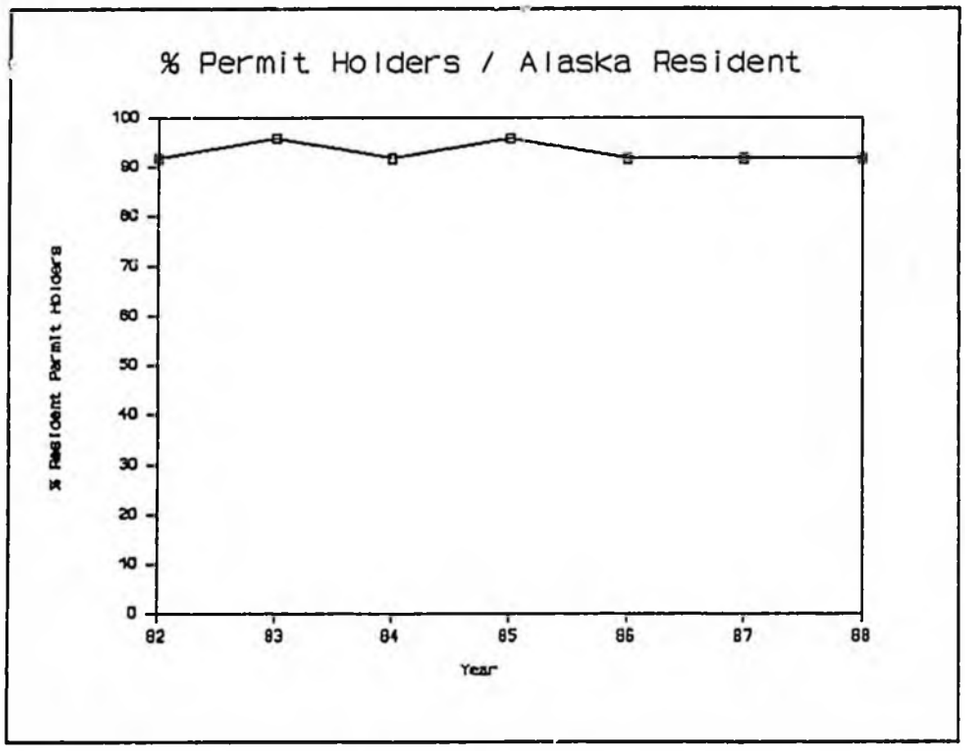
G34A Herring Gill Net Southeast





G34E HERRING GILL NET PRINCE WM SOUND





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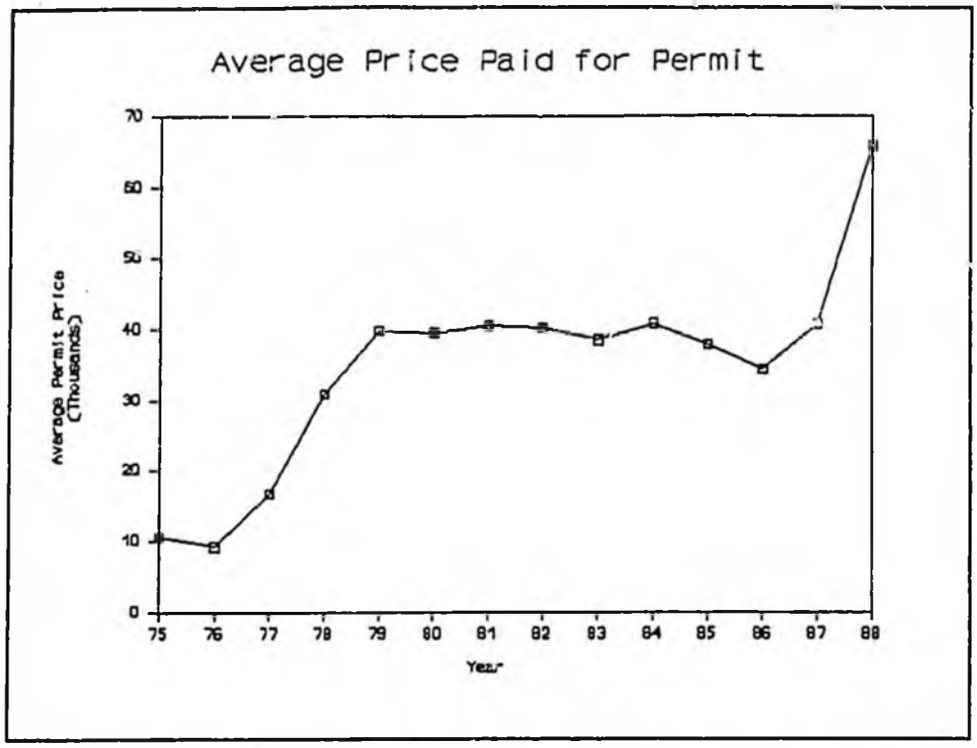

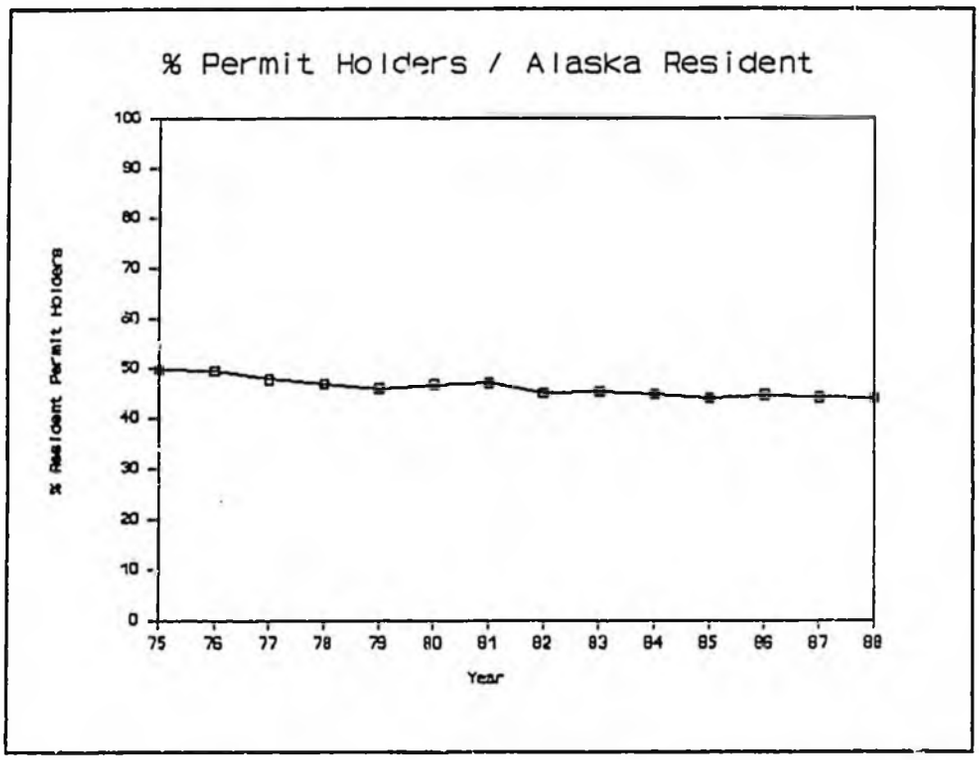

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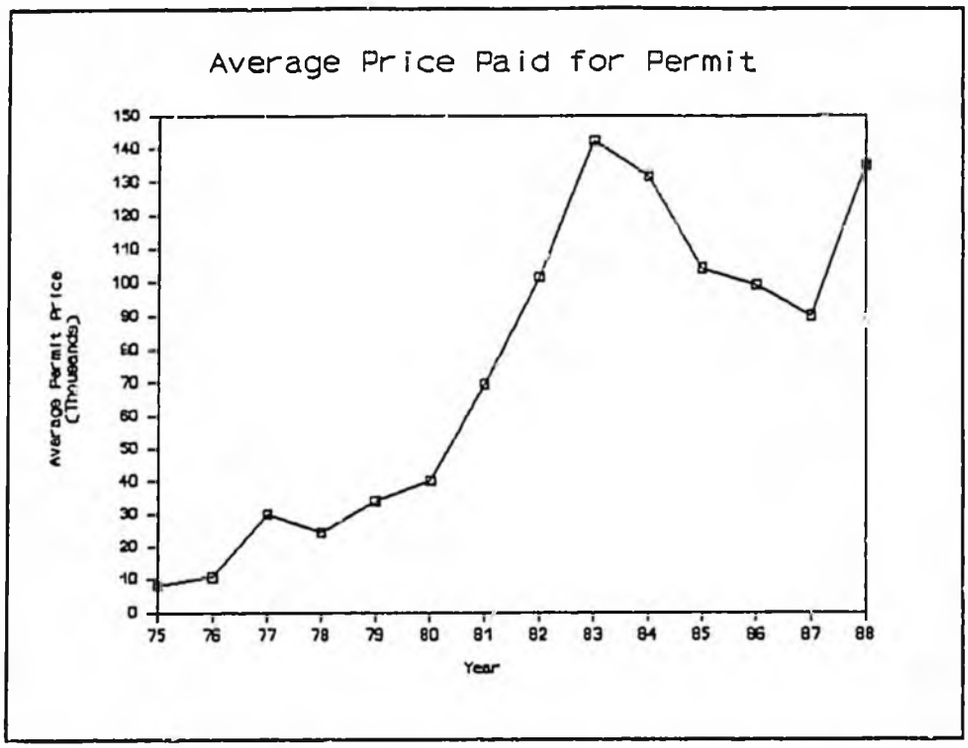
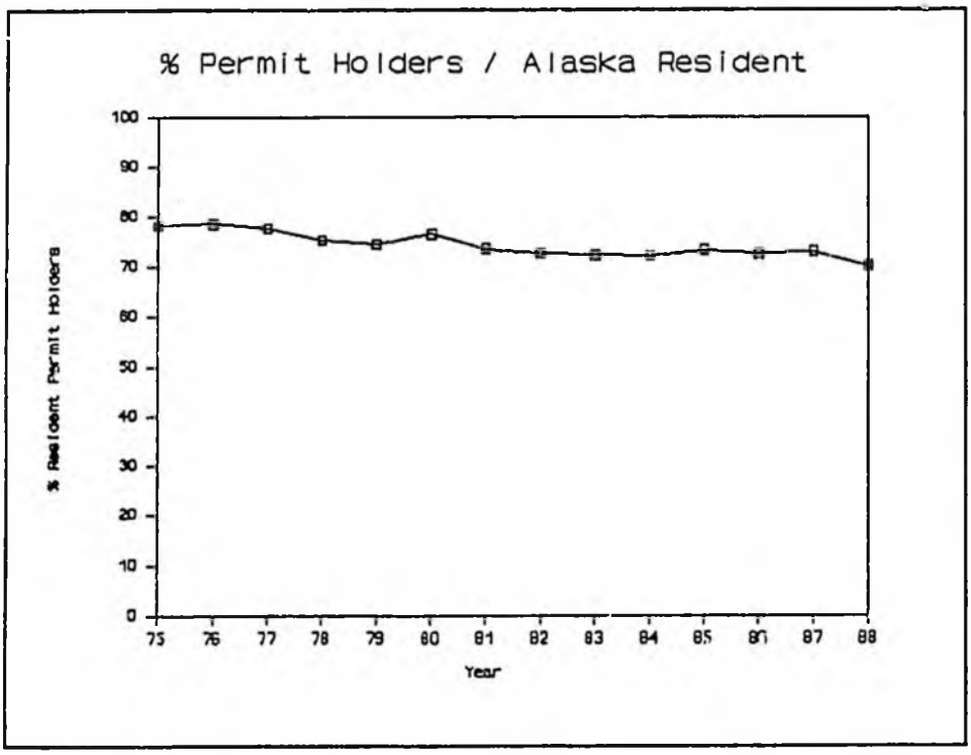
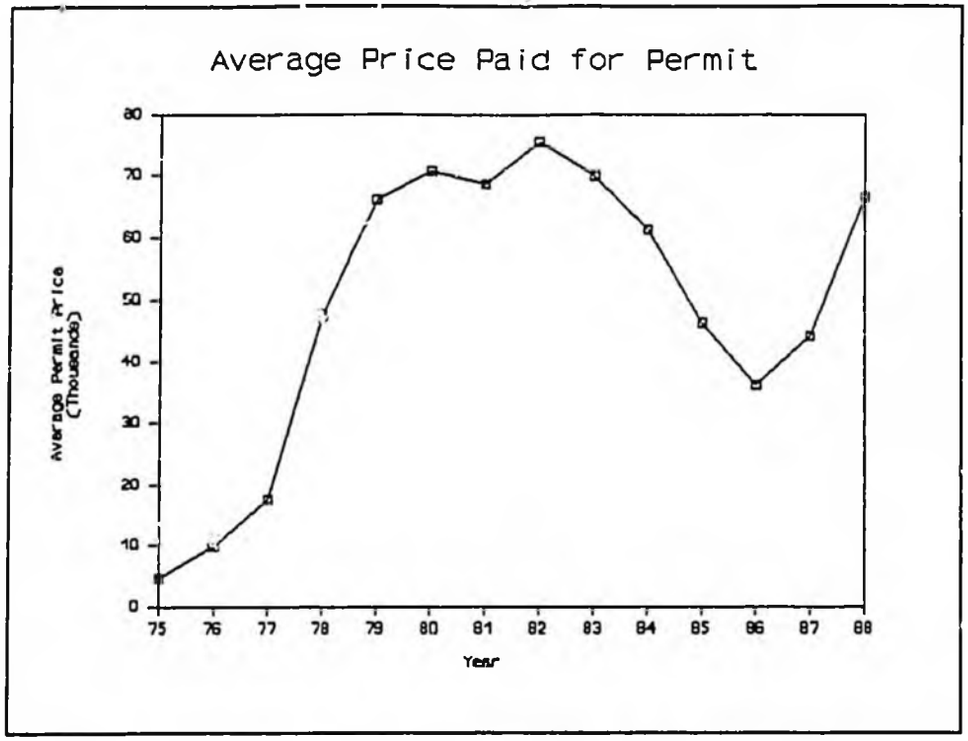
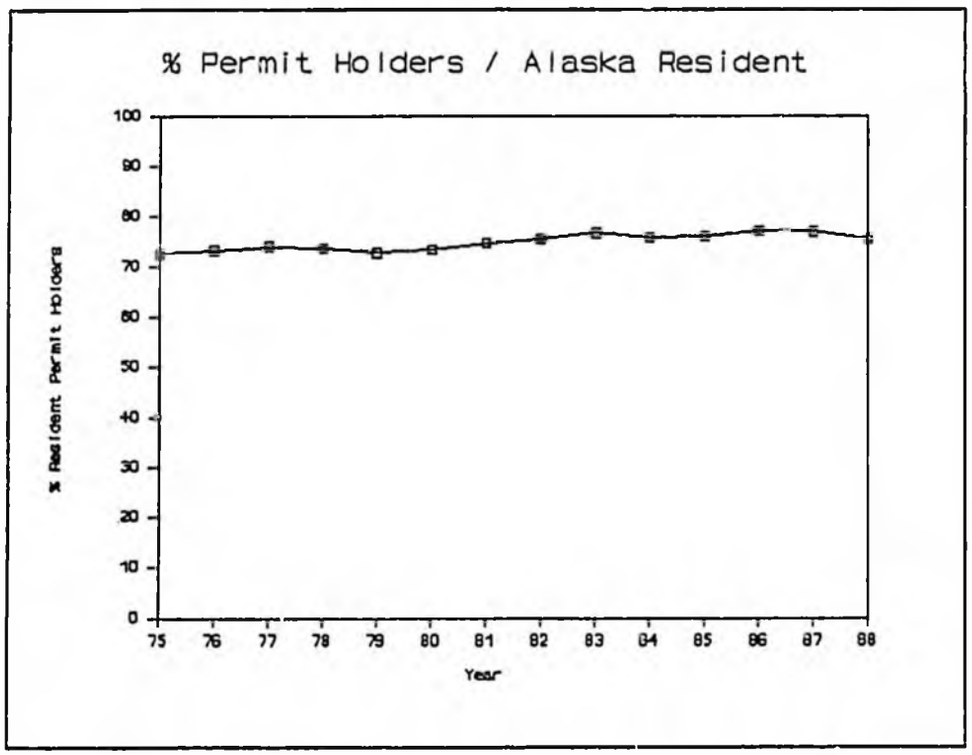


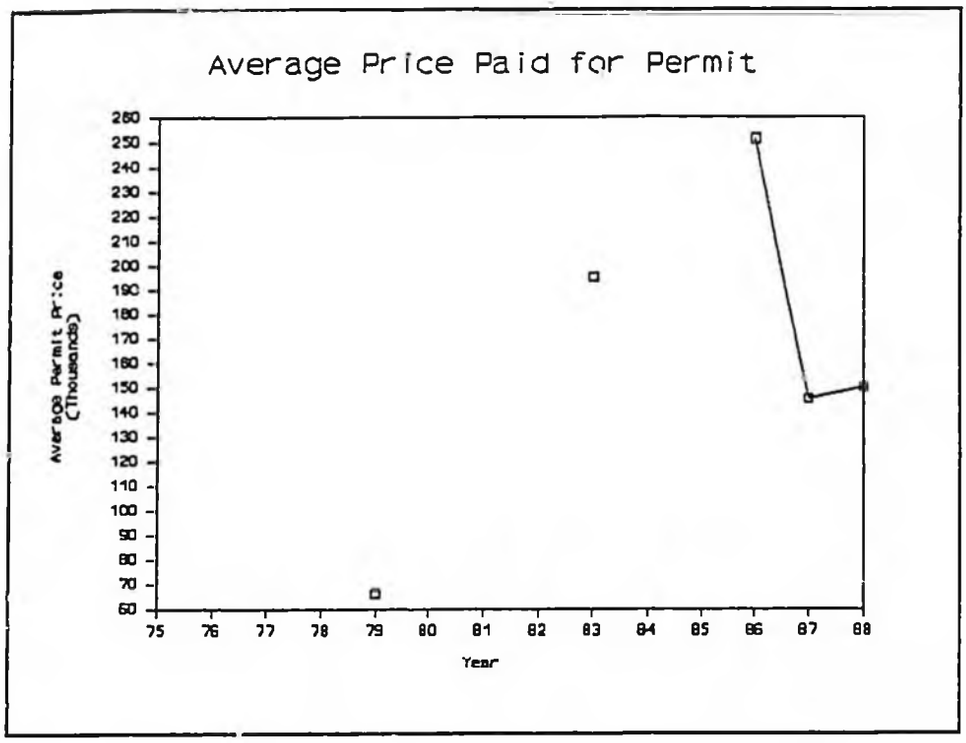


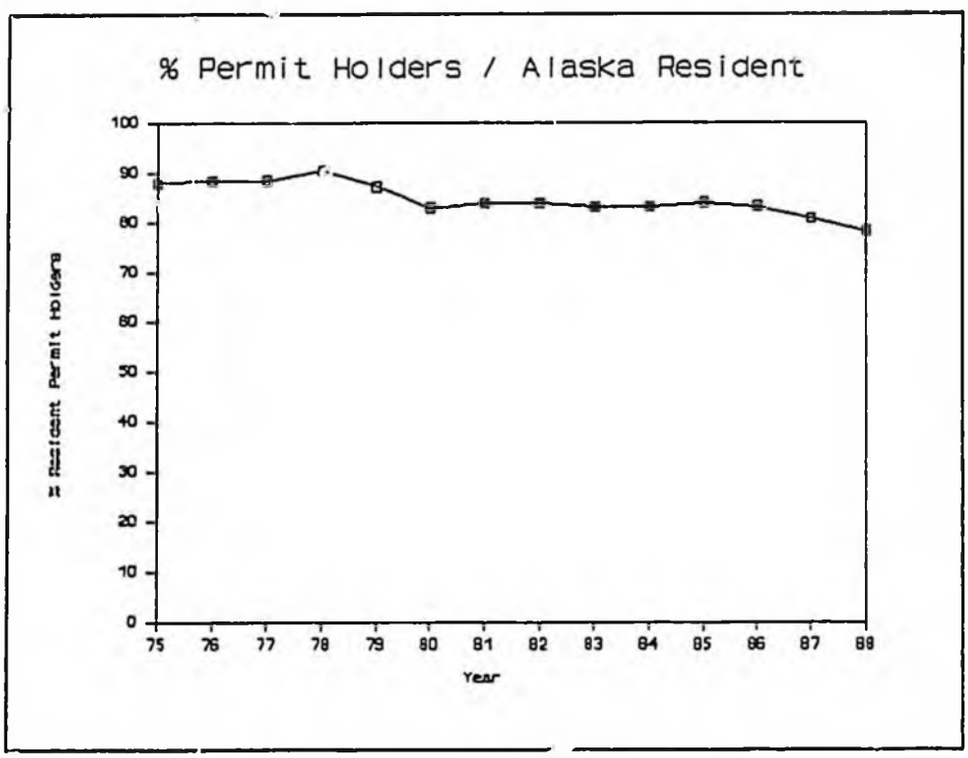
S01K SALMON PURSE SEINE KODIAK





S01M SALMON PURSE SEINE ALASKA PENINSULA





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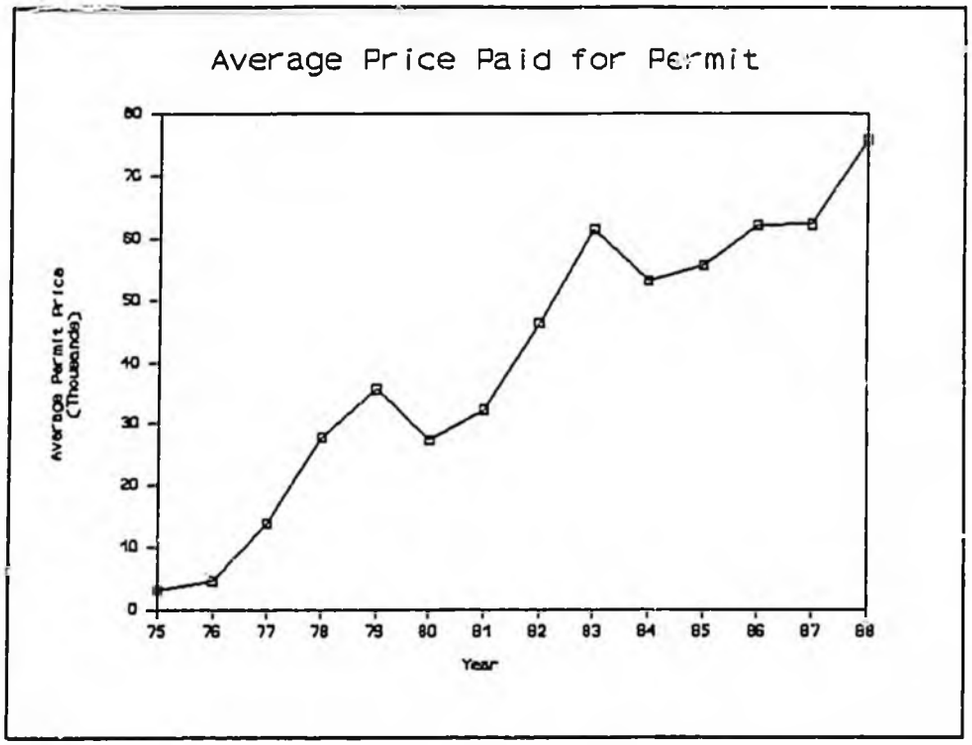

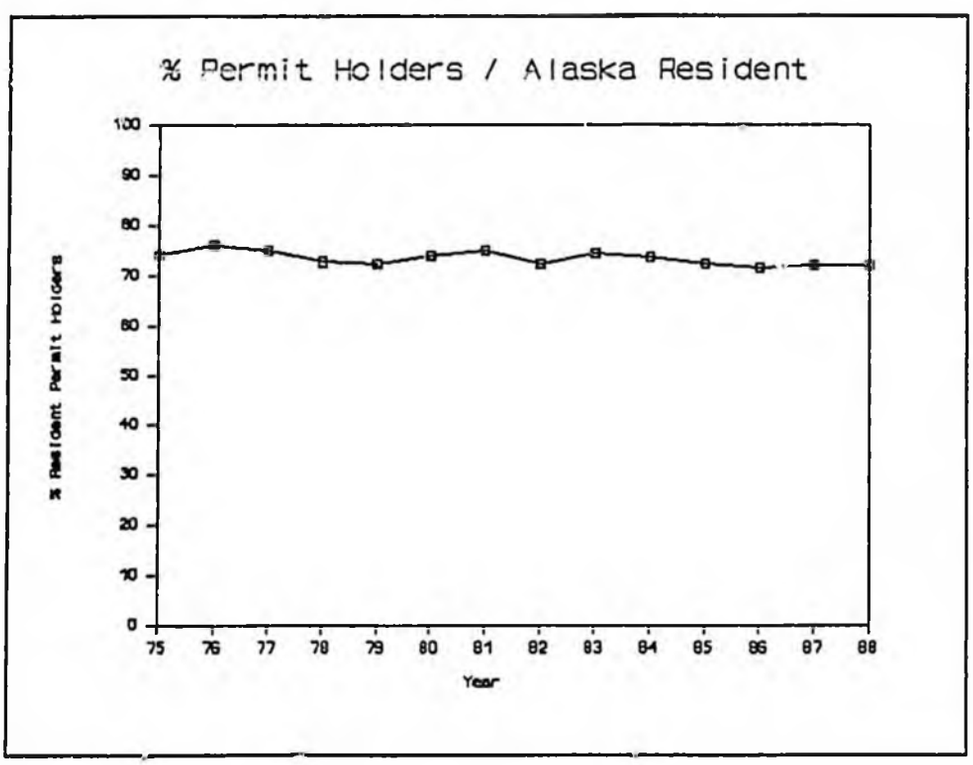

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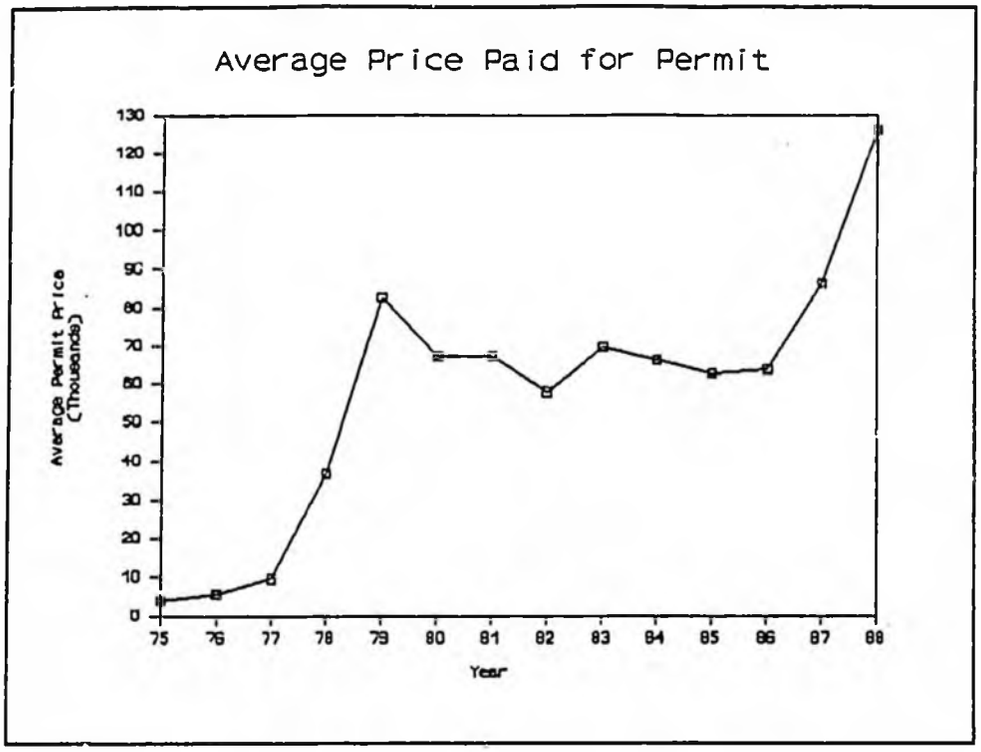

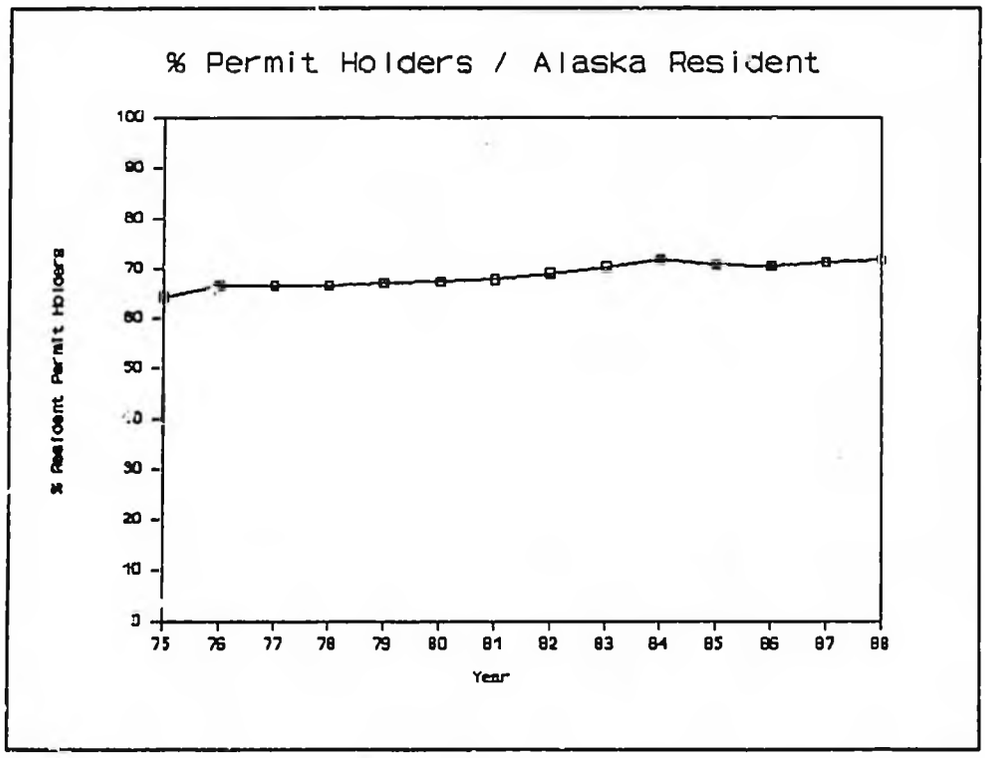

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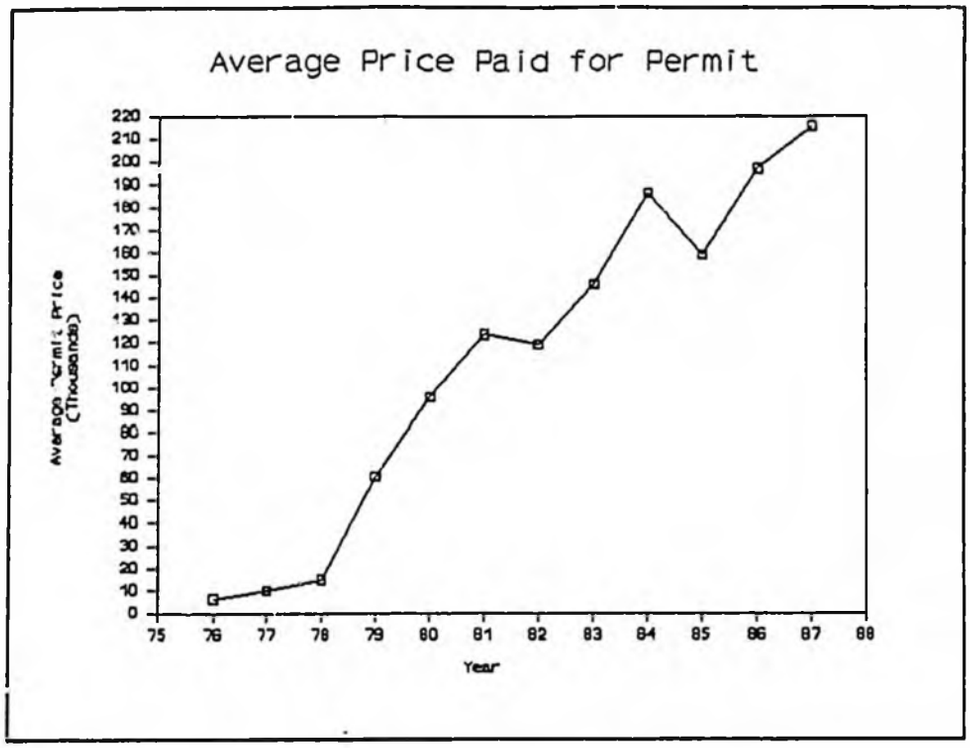

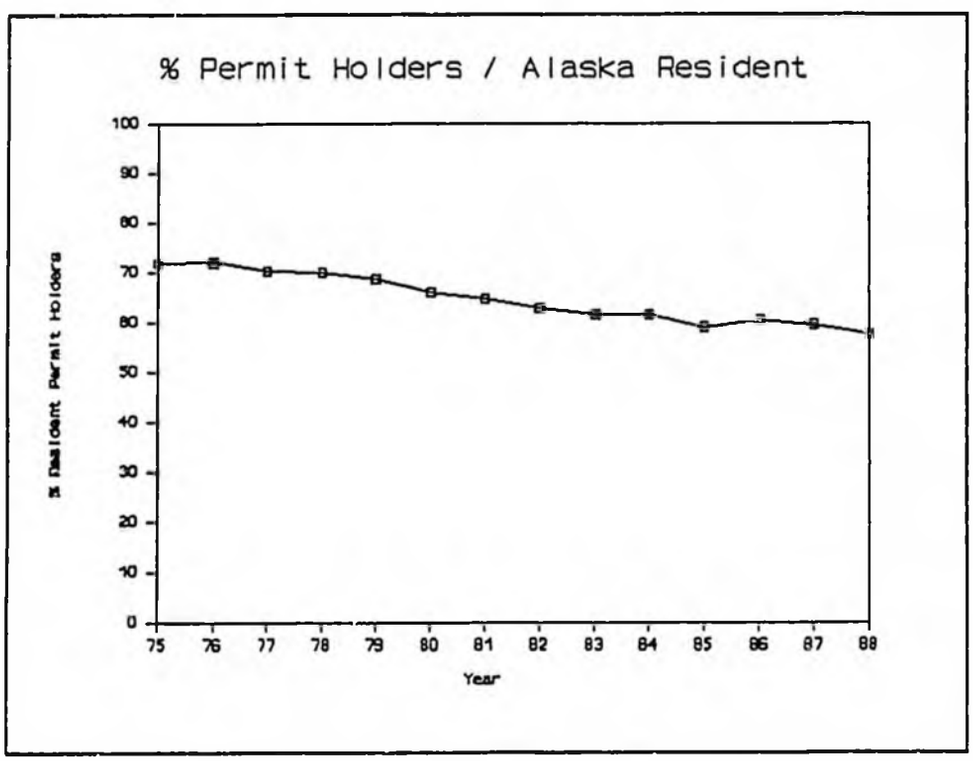

S03T SALMON DRIFT GILL NET BRISTOL BAY