

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

6500 SENATE RESOURCES

904

• Akiachak faces vote in November

(Continued from Page One)

residents want to dissolve the city government is to avoid state and tribal conflicts.

"What we wanted to achieve was to have one responsible village government instead of two," Kasayulie said.

But the process of getting the state to allow the election has been long and difficult.

It began in 1985 when the Akiachak City Council members jointly resigned.

The village IRA council tried to abolish the city government once before by a popular vote from the residents, he said, but state law and the Local Boundary Commission only allowed that in rare circumstances.

Before the 1988 session of the Legislature, cities could dissolve only if they had become ghost towns. If a city grew out of the exploitation of a resource which had dried up, the state and boundary commission would allow it to dissolve.

But last year, legislators passed a dissolution statute which says a city can be dissolved if:

- A petition is signed by at least 50 percent of the residents who voted in the last election.

- The city owes no debts.

The commissioner of the Department of Community and Regional Affairs must also believe that residents will be better off before the city can be dissolved.

Marty Rutherford, director of the department's Municipal and Regional

Assistance Division, said the state supports the dissolution. The department is assisting the village, she said.

Akiachak has also met the first two parts of the statute, and the Local Boundary Commission recently set the date for the election for Nov. 7.

"I had hoped that the vote would take place in March or April," Kasayulie said.

One of the conflicts which arises between the two forms of government is criminal procedures, Kasayulie said.

"One of our concerns was that whenever one of our tribal members or community residents broke a law, they were taken out of the village without the council or anyone hearing about it," he said.

Bart Garber, an attorney with the Native American Rights Fund, said the November election will definitely dissolve the city government.

"Not a problem," he said.

The petition for an election was signed by 99 residents. This equals 72.8 percent of the number of votes cast in the last general election in the city — well over the statutory 50 percent needed for the city to be dissolved.

According to the state's schedule, the Department of Community and Regional Affairs will release its decision about the dissolution June 5. The boundary commission will conduct a hearing in Akiachak June 26.

Dan Bockhorst, supervisor of the boundary commission under the community affairs department, said

'What we wanted to achieve was to have one responsible village government instead of two.'

—Willie Kasayulie

Akiachak's election may affect other villages on the Yukon-Kuskokwim Delta.

"There are other communities that are potentially interested in dissolu-

tion," he said.

The five other communities seeking dissolution, according to the boundary commission, are Atmoutluak, Cheforak, Kasigluk, Tununak and Newtok.

ATTENTION

Former Food Stamp Recipients

Some Alaskans were not given enough food stamps during the May 1985 through July 1987 period if they received Alaska Native Claims Settlement Act (ANCSA) dividend payments or land from Native corporations. Households participating in the Food Stamp Program which received ANCSA dividends or land during this period may be eligible for restored food stamp benefits. This advertisement seeks to find affected households which are no longer receiving food stamps.

To be considered eligible for these food stamp benefits, you must send your name, Social Security Number, and current address no later than May 30, 1989 to: Department of Health and Social Services, Division of Public Assistance, Claims Unit, 130 Seward Street, Suite 314, Juneau, Alaska 99801, Attn: ANCSA Project.

NOTE: If you are now receiving food stamps or other Public Assistance benefits DO NOT write to the address above. Any additional food stamps to which you are entitled will be sent directly to you.

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

MUNICIPAL LANDS TRUSTEE PROGRAM

FEBRUARY 1989

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS MUNICIPAL LANDS TRUSTEE PROGRAM

FEBRUARY 1989

SUMMARY

Section 14(c)(3) of the Alaska Native Claims Settlement Act (ANCSA) provides that after Native village corporations receive their land conveyances from the federal government, the corporations must turn over a certain amount of land for community use and expansion to the local municipal corporation (city). If there is no city in the Native village, the land is reconveyed to the State of Alaska to hold in trust for a future city.

The responsibility for administering land reconveyed to the State in trust was assigned to the Commissioner of the Department of Community and Regional Affairs by the State Legislature in 1975 with the enactment of Alaska Statute 44.47.150.

The Municipal Lands Trustee (MLT) Program was created to carry out the trust responsibilities of the State. The MLT Program is within the Municipal and Regional Assistance Division. The Director of the Municipal and Regional Assistance Division is the "Municipal Land Trust Officer" and is principally responsible, under delegation and general direction of the Commissioner, for carrying out the State's trust responsibilities. There are currently 88 unincorporated ANCSA villages which must be dealt with in regard to Section 14(c)(3) reconvevances.

CURRENT STATUS

A review of the MLT staff monthly reports shows that from July 1, 1988 to January 31, 1989, MLT staff have traveled to 10 communities to work on 14(c)(3) land conveyances or management issues. MLT staff assisted communities or took trust actions in 41 villages during this period. Many communities were assisted several times during this period (see the MLT PROGRAM ACTIVITY AND TRAVEL SUMMARY TABLE). Travel to 15 additional villages is planned during the remainder of FY 89.

Forty-seven village corporations have completed, or are in the process of completing, reconvevances into trust. In past years, a number of "site specific" conveyances for community projects were accomplished. The MLT Program is now encouraging village corporations to plan for their total 14(c) reconvevances. The ultimate product of the 14(c) planning is a map of boundaries which identifies the location of the 14(c) claims on an aerial photograph. The village corporations submit the map to the Bureau of Land Management (BLM) for surveying.

The MLT program has worked closely with 22 villages to prepare 14(c) maps of boundaries. Eleven maps of boundaries have been submitted to the BLM. Seven have been surveyed on the ground, two are scheduled for survey by BLM and two are awaiting BLM approval. It is anticipated that five additional maps of boundaries will be submitted before the end of the fiscal year (see ANCSA 14(c) MAPS OF BOUNDARIES SUMMARY TABLE).

The MLT Program is presently holding approximately 7,530 acres of land in trust for future cities.

In addition to assistance in preparing 14(c) maps of boundaries and the acceptance of land into trust, the MLT Program must manage the land after it is accepted. The MLT Program has made land available for a number of community purposes such as schools, community halls, airports and other public facilities. Land has also been made available for public housing projects and for residential expansion.

Local control is an important aspect of the MLT Program. No disposal actions are taken without the approval of the village residents through a recognized "appropriate village entity" (AVE) or a meeting of village residents. The AVE serves as the "eyes and ears" for the MLT Program and plays a very important role in ensuring that the views of the village residents are considered.

When a village incorporates as a city, the MLT Program transfers all trust land to the city and accounts for revenues generated from the land. During this fiscal year, Atka incorporated as a city. The MLT Program recently transferred approximately 140 acres to the newly formed city. Additionally, the City will be entitled to over \$30,000 in revenues which have been generated from the land.

MLT PROGRAM CONCEPT

It has been the policy of the MLT Program to encourage 14(c) planning through an education process. The Program strives to build working relationships and a degree of trust with our clients which we believe is more effective than trying to force a village corporation to address its 14(c) obligation.

The Program also encourages and seeks a high level of local input in planning for 14(c)(3) reconveyances. The philosophy of the Program is that the local residents best know the land and what their community land needs are.

MLI PROGRAM ACTIVITY AND TRAVEL
(JULY 1, 1988 THROUGH JANUARY 31, 1989)

SUMMARY TABLE

<u>Community</u>	<u>MLI Travel</u>	<u>Reported Incidents of Technical Assistance or Trust Action</u>
Atka		5
Belkotski		1
Chignik Lake		2
Circle	1	4
Council	1	6
Crooked Creek		4
Dot Lake	1	4
Eagle		1
Egegik	1	4
Ekuk	1	1
English Bay	1	3
False Pass		4
Igiugig		1
Ivanof Bay		5
Kipnuk		2
Klukwan		1
Kokhanok	1	2
Koliganek		3
Kongiganak		4
Kwigillingok		2
Manley Hot Springs		2
Minto		4
Nikolski		2
Pedro Bay	1	1
Perryville		1
Pilot Point		5
Pitkas Point		3
Port Graham	1	3
Portage Creek		3

<u>Community</u>	<u>MLT Travel</u>	<u>Reported Incidents of Technical Assistance or Trust Action</u>
Rampart		1
Red Devil		2
Sleetmute		5
Solomon		1
South Naknek		4
Stony River		2
Takotna	1	6
Tatitlek		1
Telida		1
Tyonek		1
Ugashik		1
Uyak		1
TOTALS	41	112

ANCSA 14(c) MAPS OF BOUNDARIES
SUMMARY TABLE

<u>Community</u>	<u>Approximate Acreage</u>
1. Kokhanok	1,280
2. Pedro Bay	405
3. South Naknek	1,100
4. Takotna	1,069
5. Ugashik	1,149
6. Dot Lake	149
7. Nelson Lagoon	235
8. False Pass	374
9. Council	234
10. Tatitlek	469
11. Telida	193
12. Portage Creek	225

14(c) MAPS OF BOUNDARIES
EXPECTED TO BE COMPLETED WITHIN
THE NEXT FOUR MONTHS

<u>Community</u>	<u>Approximate Acreage</u>
1. Ivanof Bay	199
2. Pilot Point	800
3. Ekuk	40
4. Egegik	650
5. Koliyanek	50

Department of Community & Regional Affairs

ANCSA PROGRAM

February 1989

SUMMARY

The ANCSA program is established to assist communities with land issues which arose after the passage of the Alaska Native Claims Settlement Act (ANCSA). The focus of this program is to work with communities to help them establish proper site control for projects, understand and implement ANCSA 14(c), and to help them complete the documents required for land conveyance including ordinances, resolutions, deeds and leases.

Assistance is delivered through the Fairbanks, Nome, Bethel, Anchorage, and Southeast regional office with technical support from the central office in Anchorage. In addition, the department administers a grant to the Alaska Native Foundation who work with village corporations.

Communities benefit from this assistance in the following ways:

1. Projects involving land are properly sited; this protects the public resource and alleviates extra time and money needed to resolve improperly sited projects;
2. Programs which make land available to individuals and businessmen are facilitated;
3. Land is made available to cities for their public service needs through ANCSA 14(c)(3);
4. The community can more efficiently institute economic and community development projects when the land status is determined and known.
5. Alaskans receive special training which will help them in supporting their communities.

IMPORTANCE OF SECTION 14(C), ALASKA NATIVE CLAIMS SETTLEMENT ACT

Under the provisions of Section 14(c)(3), cities and future cities are entitled to receive land under existing improvements as well as title to land necessary for foreseeable community needs and rights-of-way. Many communities rely upon the entitlement under this section to acquire land for existing and foreseeable capital improvement projects such as clinics, community halls, sewer and water systems and roads. Financing for economic development projects may be stalled until land title questions are resolved through ANCSA 14(c) land conveyances. Individuals and nonprofit organizations are also entitled to receive land which was occupied as of December, 1971, as a primary place of residence or business. Under 14(c)(1), many Alaskans will finally receive title to the land on which they have built houses or businesses. ANCSA places the responsibility for settling these land entitlements on the village corporations.

CURRENT STATUS OF ANCSA 14(C) ACTIVITY

211 village corporations have received interim conveyances or patents containing 14(c) settlement requirements. One of the last steps in the process of settling 14(c) land entitlements is the submission of a Map or Boundaries. This map shows the proposed boundaries of the land which the village corporation will convey to individuals, the city or the Municipal Lands Trustee and the airport operator. To date, 33 village corporations have substantially completed 14(c) land conveyances. We estimate about 65 (31%) of the village corporations or communities are working on some aspect of 14(c) land settlements. This level of activity is expected to continue for some time since it takes at least three years to complete 14(c) conveyances.

STATE FUNDED ANCSA 14(C) ASSISTANCE PROGRAMS

Through the Department there are two 14(c) assistance programs which are not duplicated elsewhere in the State. Both are funded under the ANCSA Plan of Survey Component of the Rural Development Budget Request Unit. One in-house program (initiated in FY 81) concentrates on assisting communities accomplish 14(c)(3) land settlements.

The second program is the Alaska Native Foundation 14(c) Assistance Program funded with a grant through DCRA. This program concentrates on assisting village corporations develop policies and procedures to complete 14(c) land settlements.

The reason for two programs is that the settlement of 14(c)(3) land entitlements involves negotiations between a city (or the Municipal Lands Trustee) and a village corporation. Because of the different goals and responsibilities of the parties involved, village corporations may feel uncomfortable receiving assistance from DCRA. Local governments would feel equally compromised if only village corporations had access to assistance. Also, since Village corporations must resolve 14(c)(1) and (2) claims before making final decisions on 14(c)(3) settlements, ANF's program on development of the policies, procedures and documents to complete 14(c)(1) and (2) claims accelerates the whole process.

Both ANF and DCRA provide training, workshops, maps, handbooks, and other training material, and provide research and technical assistance on ANCSA related jobs which the average American could not do without special training. To increase the effective of DCRA assistance, we have developed two land management/ANCSA 14(c) training courses which are being offered in regions through the community colleges or as independent DCRA efforts. As a result of our profiles contract, we also provide some communities with an accurate base map which will make it easier to work on 14(c). ANF provides a quarterly newsletter and has other grants which support Alaskans.

Major Benefits of ANCSA 14(c) Assistance Programs.

1. Projects involving land are properly sited; this protects the public resource and alleviates extra time and money needed to resolve improperly sited projects;
2. Programs which make land available to individuals and businessmen are facilitated. Settling land title questions are essential to promote economic and residential development in rural Alaska;
3. Land is made available to Cities for their public service needs through ANCSA 14(c)(3);
4. The community can more efficiently institute economic and community development projects when the land status is known.
5. The training provided on land management, planning and State or Federal laws increases the capability of community and village corporation staff to serve residents of this State. Under the provisions of ANCSA, responsibility for the ownership and management of land in and around over 200 communities has shifted from the Federal Government to local residents who serve on the councils or village corporation boards. In less than 20 years, many local residents have gone from a situation of not worrying about who owns the land to a situation where they must determine property boundaries between neighbors, prepare deeds and deal with trespassers.

ATTACHMENT ONE

TABLE 11(-) PLAN OF SURVEY ACTIVITY
(One Year ended February 1989)

Villages with Interim Conveyances or Patents Containing 14(c) Obligations.....	211
Completed 14(c) Maps or Boundaries submitted to BLM as of February 1989	43
Communities actively working on 14(c).....	52
DCRA ANCSA Travel (No. of Trips)	13
DCRA Land Travel (No. of Trips)	6
ANF ANCSA Travel (No. of Trips)	18
DCRA ANCSA Contact with Communities (Maps, Information, Technical Assistance, Training ect, No. of Contacts)	121
ANF ANCSA Contact with Communities (Maps, Information, Technical Assistance, Training ect, No. of Contacts)	141
Total Communities contacted by ANF.....	62

Note - Does not include community travel and contacts made by MET and does not include regional 14(c) workshop travel and contacts excepts for contacts made in Southeastern Alaska. The 52 communities actively working on 14(c) includes mergers; the 65 communities or village corporations working on 14(c) in the next includes all communities.

ALASKA FEDERATION OF NATIVES, INC.



411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611

April 26, 1989

The Honorable Bettye M. Fahrenkamp
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

MAY
1 1989

Dear Senator Fahrenkamp:

Please accept this letter as written testimony on Senate Bill 241 which has now been referred to the Senate Resources Committee.

Copies of previous correspondence on the bill from the Alaska Federation of Natives to Senator Adams, the sponsor of the bill, was forwarded to your office via telecopy. The correspondence I refer to provides background information as to why the legislation is needed.

The version of Senate Bill 241 which passed out of Senate CRA is, in my opinion, in need of two amendments. The recommended amendments are as follows:

1. Section 1, (2) line 23 - the term "recognized" village entity should be amended to read "appropriate" village entity. The term appropriate village entity is consistent with language used throughout the Municipal Lands Trust Program (policy and regulations). Retaining the term "recognized" may imply that an entity other than an appropriate village entity is being created.

I believe the term "recognized" is a drafting error generated from legislative counsel.

2. Section 4, (f) lines 16 through 21 - the Committee amendment should be redrafted to read "notwithstanding any other section of this act, and in the case of municipal dissolution, municipal land acquired pursuant to a municipal entitlement grant and undeveloped on the date of dissolution shall succeed directly to the Department of Natural Resources".

The intent of this recommended language is to convey only the undeveloped portion of an entitlement grant to the DNR with the portion developed for public use being conveyed directly to the DCRA and entered into the Municipal Lands Trust Program.

Secondly, land succeeding to the DNR would do so directly to avoid the administrative cost of an additional transfer step, ie, from DCRA to DNR.

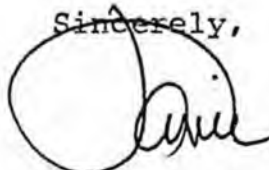
(A copy of Senate Bill 241 with reference to lines of suggested amendments is enclosed.)

I would appreciate your entering these comments into the Resource Committee record. I further request that you consider scheduling the bill for committee hearings this session. There are two rural municipalities that have initiated proceeding toward dissolution. It would be beneficial to these communities and the State if DCRA's authority to accept and administer the land assets was in place when dissolution occurs.

Thank you.

*Thanks
Betty!*

Sincerely,



Janie Leask
President

cc: Tom Hawkins, DNR

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 7, 1989

SUBJECT: Conveyance to the commissioner of natural
resources (CSSB 241(C&RA))

TO: Senator Al Adams
Chair, Senate Community and Regional Affairs
Committee

FROM: Richard A. Bradley 
Legislative Counsel

Martha Stewart has requested a final on the 4/7/89 version of CSSB 241(Community and Regional Affairs). It is enclosed.

In my view, the draft should have been amended to include the word "unimproved" before "land" on page 2, line 18. My reason for saying this is simply that it is clear that the only land that should be returned to DNR is land that is unimproved. Improved land remains with DC&RA. The draft that I provided to you should have had that idea incorporated.

I suggest that the next committee of reference consider this question.

If I may be of further assistance, please advise.

RAB:lmb
L7/053

Enclosure

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and improve living
and diversify the
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paragraphs (7) and (8).
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§ 1 ch 114 SLA
381)

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Sec. 44.47.145. Bulk fuel storage facilities grant fund. (a) There is established in the department the bulk fuel storage facilities grant fund. Grants may be made by the department from this fund to a community to acquire and install community bulk storage facilities.

(b) Grants made under this section for the acquisition and installation of a bulk fuel storage facility may not exceed \$100,000 per community.

(c) If the governing body of two or more communities determine that their fuel requirements may be served by a single bulk fuel storage facility, the communities may jointly apply for grants to acquire and install a single bulk fuel storage facility. When communities apply jointly under this subsection, the limitation in (b) of this section is multiplied by the number of communities which submit the joint application.

(d) Before a grant is made under this section, the city council or, if the community is not incorporated, a reasonable representative body in the community shall agree in writing to maintain and operate the bulk storage facility to be constructed with the proceeds of the grant. (§ 40 ch 83 SLA 1980; am § 2 ch 46 SLA 1981)

Effect of amendments. — The 1981 amendment substituted "\$100,000" for "\$60,000" in subsection (b).

Sec. 44.47.150. Village land conveyed in trust. (a) The commissioner is designated to accept, administer, and dispose of land conveyed to the state in trust by village corporations under 43 U.S.C. 1613(c)(3) of the Alaska Native Claims Settlement Act for the purposes specified in that section.

(b) Transfer of land by sale, lease, right-of-way, easement, or permit, including transfer of surface resources, may be made by the commissioner only after approval of an appropriate village entity such as the traditional council, a village meeting, or a village referendum. This approval shall be by resolution filed with the department.

(c) Within one complete state fiscal year after the incorporation of a municipality in the village or of a municipality which includes all or part of the village, land acquired under this section shall be conveyed without cost to the municipality, and the municipality shall succeed to all the entrusted interest in the land.

(d) Separate accounts shall be maintained in the name of each village for the land, including the revenues from the land, acquired from each village corporation under this section, and within 90 days of the close of each state fiscal year a statement of the account for each municipality shall be prepared by the commissioner and be made available to the village and to the public upon request.

(e) Upon the conveyance of land to a municipality under this section, the commissioner shall account to the municipality for all profits

including interest from the land, and the municipality may then request that the governor submit a request to the legislature for an appropriation for the amount due it.

(f) A title or interest to lands acquired by the Department under this section may not be acquired by adverse possession or prescription.

(g) For the purposes of this section, the term municipality includes only first and second class cities incorporated under the laws of the state. (§ 1 ch 119 SLA 1975; am § 47 ch 94 SLA 1980)

Effect of amendments. — The 1980 "chapter" near the beginning of subsection amendment substituted "section" for (g).

Sec. 44.47.155. Loan information officers. (a) The department may provide itinerant loan information officers to serve persons who reside outside the major population centers of the state.

(b) The loan information officers shall be trained, to the extent that the department considers necessary, in a program administered by the department and approved by the Alaska Housing Finance Corporation, the Alaska Industrial Development Authority, and the principal departments of the executive branch that administer loan programs.

(c) A majority of the loan information officers shall be persons who are conversant in Alaska Native languages that are spoken by a significant number of Alaska Natives. The department shall provide brochures and other printed materials, written in easily understandable English and in the Alaska Native languages that are spoken by a significant number of Alaska Natives, for distribution by the loan information officers. The brochures and printed materials shall explain the purposes of the various state loan programs, the minimum qualifications under the programs, the method for obtaining assistance in the completion of applications for the programs, and other information the department determines will improve the access of persons in rural areas to the state's loan programs.

(d) The department shall coordinate its efforts under this section with local financial institutions and community groups to determine the proper itinerary and travel schedule of the loan information officers and to provide adequate notice to persons in rural areas of the itinerary and travel schedule of the loan information officers.

(e) The department shall assign the loan information officers to rural areas based on the current and potential future demands for loans in those areas and shall establish offices for the loan information officers in rural areas if the department determines it is necessary to provide familiarity with the area served by the loan information officers and to reduce travel costs. (§ 37 ch 106 SLA 1980)

Section

160. Council e-
165. Executive
170. Policy and
175. Meetings

Editor's note:
1980 amendment:

Sec. 44.47
the department
of

(1) a person
of the council
(2) a member
presiding officer
(3) the council
public facilities,
and regional
budget;

(4) six representatives
nor who are

(5) the Alaska
the United States
the Secretary
Alaska, and
Development
may attend a
vote.

(b) The member
the pleasure of

(c) The council
agencies, local
to participate
appropriate.

(d) The council
governor as chair

(e) Member
elected to per die
boards and committees
1983)

Interior Delegation Capital

GOVERNORS

	GF	OTHER	TOTAL
Elliot Highway-MP 7 to 26 Rehabilitation	0.0	4,350.0	4,350.0
Central Runway Widening and Apron Construction	0.0	900.0	900.0
Loftus Road Improvements (was Corrections)	500.0	0.0	500.0
Fairbanks- Sewer and Water/Techite (was EM Jones)	1,000.0	0.0	1,000.0
FNSB School On-Base Fire, Life..	750.0	0.0	750.0
South Cushman Widening	0.0	4,200.0	4,200.0
Johansen Expressway- University to Peger	0.0	2,000.0	2,000.0
University Avenue Widening	0.0	1,710.0	1,710.0
Airport Way Frontsge Road Exten	0.0	700.0	700.0
FMATS Traffic System Improvements	0.0	575.0	575.0
FIA Annual Improvements	0.0	300.0	300.0
FIA Northwest Apron and Taxiway Extension	0.0	1,400.0	1,400.0
FIA Computerized Access Control System	0.0	500.0	500.0
FIA Terminal Building Repairs	0.0	400.0	400.0
FIA EPA Approved Fire Training Area	0.0	550.0	550.0
UAF FAI Elvey Bldg Code Corrections	1,000.0	1,000.0	2,000.0
UAF/FAI PCB Removal FAI Campus	250.0	250.0	500.0
sub total	3,500.0	18,835.0	22,335.0

INTERIOR DELEGATION

0.0

City of Fairbanks_Techite	1,000.0		1,000.0
City of Fairbanks-city-wide Improvements	150.0		150.0
Fairbanks North Star Borough(FNSB)-Ester Lump Phase I,II,III	330.0		330.0
FNSB-Steese VFD Station #2/High Voltage Power Line	120.0		120.0
FNSB- General Fire Dist Repair Block Grant	50.0		50.0
FNSB School District Major Repair and Maint	500.0		500.0
University of Alaska Fairbanks(UAF)	400.0		400.0
- Institute of Arctic Biology/Greenhouse			0.0
UAF - Major repair and renovation	347.5		347.5
UAF - KUAC Transmitter	56.0		56.0
Dept. of Admin through FNSB - Fairbanks Historical Preservation Foundation	200.0		200.0
Restoration Project/Riverboat Nenana			0.0
Dept of Admin - Interior Region Emergency Medical Services Council, Inc.	16.5		16.5
Training Equipment and Supplied			0.0
Dept of Admin - Fairbanks Community Food Bank Service Facility Acquisition	75.0		75.0
Dept of Admin - Farthest North Gil Scout Council Facility Acquisitions	150.0		150.0
Dep' of Admin - Greater Fairbanks Community Hospital Foundation	500.0		500.0
Roof Repair/Replacement			0.0
Dept of Natural Resources - Tanana Valley Fair Association Road Paving	30.0		30.0
DOE - Literacy Council of Alaska Complete Acquisition and Repair of Facility	60.0		60.0
DPS - Women In Crisis Counseling and Assistance Window Replacement	15.0		15.0

Total

7,500.0	18,835.0	26,335.0
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Alaska State Legislature

Al Adams
District L

WHILE IN SESSION
P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3707

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3245

3111 C Street
Anchorage, Alaska 99503
(907) 561-7622

APR 10 1989

Official Business

TO: Bettye Fahrenkamp, Chair
Resources Committee

FROM: Al Adams, Chair
Community and Regional Affairs

RE: SB 241, "An Act authorizing the Department of Community and Regional Affairs to accept land conveyed by a state or federal agency and to receive land from dissolved municipalities."

DATE: April 8, 1989

This is to request scheduling of the aforementioned legislation in the Senate Resources Committee. Attached to this memo are back-up materials for committee use.

This bill gives the Department of Community and Regional Affairs the authority to accept land conveyed in trust by a state agency, federal agency and/or a dissolved municipality. In the latter case, the only agency with statutory authority to accept land is the Department of Natural Resources. Land transferred under these circumstances would better fit into DCRA's Municipal Land Trust Program. Both DNR and DCRA agree with this.

DNR's position paper noted the need to amend the bill so that in the case of municipal dissolution, land obtained through the municipal entitlement program would return to the state. This was agreed upon in the C&RA Committee meeting and the bill so amended.

Not discussed during committee was the differentiation between the transfer of improved versus unimproved entitlement lands. Although legal counsel drafting the amendment recognized the need for this, it was not added to the bill since no substantive discussion regarding this occurred during committee. I would propose that the bill be amended during Resources Committee to add the word "unimproved" before the word "land" in the amended portion of section 4 of the bill.

I appreciate your consideration of rapid scheduling of this legislation.



Official Business

Alaska State Legislature

Al Adams
District L

WHILE IN SESSION:
P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3707

OUT OF SESSION:
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3245

3111 C Street
Anchorage, Alaska 99503
(907) 561-7622

TO: MEMBERS OF THE SENATE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

FROM: AL ADAMS, CHAIR *AAA*
COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

DATE: APRIL 8, 1989

RE: COMMITTEE SUBSTITUTE FOR SB 241

ATTACHED IS A COPY OF THE COMMUNITY AND REGIONAL AFFAIRS
COMMITTEE SUBSTITUTE FOR SENATE BILL 241. THE CHANGE ADDED CAN
BE FOUND ON PAGE 2, LINES 16 TO 21.

ALSO ATTACHED IS A MEMORANDUM FROM LEGISLATIVE COUNSEL
RICHARD BRADLEY THAT SAYS THE WORD "UNIMPROVED" SHOULD HAVE
BEEN ADDED BEFORE "LAND" IN THE ADDED LANGUAGE.

THE ISSUE OF THE TRANSFER OF "UNIMPROVED" LAND WAS AN
UNRESOLVED ITEM OF DISCUSSION PRIOR TO OUR COMMITTEE HEARING.
AS THIS ASPECT OF LAND TRANSFER WAS NOT DISCUSSED DURING
COMMITTEE, I ADVISED MR. BRADLEY TO OMIT THIS WORD FROM THE
COMMITTEE SUBSTITUTE. ALTHOUGH I AM SUPPORTIVE OF ADDING THIS
TO THIS BILL, I WILL WORK TO HAVE THIS ISSUE ON THE TABLE DURING
SENATE RESOURCES COMMITTEE HEARING.

THANK YOU AND PLEASE CONTACT ME IF YOU HAVE PROBLEMS WITH THE
ADDED LANGUAGE AS IT NOW EXISTS.

CC: LARRY OSTROVSKY, DNR
JIM PLASMAN, C&RA

Original sponsor: Adams

1 IN THE SENATE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2 (S FOR SENATE BILL NO. 24) (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing the commissioner of community and
7 regional affairs to accept land conveyed by a state
8 or federal agency and to receive land from dissolved
9 municipalities; requiring the commissioner of commu-
10 nity and regional affairs to transfer land to the
11 commissioner of natural resources; and providing for
12 an effective date."

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

14 * Section 1. AS 44.47.150(a) is amended to read:

15 Sec. 44.47.150. [VILLAGE] LAND CONVEYED IN TRUST. (a) The
16 commissioner

17 (1) shall [IS DESIGNATED TO] accept, administer, and dis-
18 pose of land conveyed to the state in trust by village corporations
19 under 43 U.S.C. 1613(c)(3) (sec. 14(c)(3)) of the Alaska Native Claims
20 Settlement Act) for the purposes specified in that section;

21 (2) may, with the concurrence of a village entity recog-
22 nized by the commissioner under (b) of this section or, in the absence
23 of a recognized village entity, under procedures prescribed by regu-
24 lations of the commissioner, accept, administer, and dispose of land
25 conveyed in trust by a state or federal agency and by the dissolution
26 of a municipality under AS 29.06.450 - 29.06.530.

27 * Sec. 2. AS 44.47.150(d) is amended to read:

28 (d) Separate accounts shall be maintained in the name of each
29 village for the land, including [THE] revenues generated from the

1 land, acquired [FROM EACH VILLAGE CORPORATION] under this section, and
2 within 90 days after [OF] the close of each state fiscal year a state-
3 ment of the account for each village [MUNICIPALITY] shall be prepared
4 by the commissioner and be made available to the village and to the
5 public upon request.

6 * Sec. 3. AS 44.47.150(e) is amended to read:

7 (e) Upon the conveyance of land to a municipality under this
8 section, the commissioner shall account to the municipality for all
9 profits including interest generated from the land. The [, AND THE]
10 municipality may then request [THAT] the governor to submit a request
11 to the legislature for an appropriation for the amount due the munic-
12 ipality [IT].

13 * Sec. 4. AS 44.47.150(f) is amended to read:

14 (f) Title to [.. TITLE] or an interest in land [TO LANDS] acquir-
15 ed by the department under this section may not be acquired by adverse
16 possession or prescription. Notwithstanding (a) - (e) of this sec-
17 tion, on the dissolution of a municipality under AS 29.06.450 - 29.-
18 06.530, land owned by the municipality that was received by the munic-
19 ipality from the state under a municipal land grant entitlement pro-
20 gram shall be transferred by the commissioner to the commissioner of
21 natural resources.

22 * Sec. 5. AS 44.47.150(g) is amended to read:

23 (g) For the purposes of this section, "municipality" [THE TERM
24 MUNICIPALITY] includes only first and second class cities incorporated
25 under the laws of the state.

26 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).
27
28
29

S B

243

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 4-20-89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

FIN

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 5/4/89

3/29/89

Mr. President:

Resources

Committee considered

SB 243

loans under the Commerical Fishing Loan Act and to limited entry permits pledged as security for those loans; efd

and recommended:

replace with CS SB 243 (Res) same title
 attached amendment(s) and new title

_____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) attached ^{DCE D.} zero
 appropriation no FN attached

fiscal impact
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signatures]

[Handwritten signature] Do Pass
Chair signature and recommendation

Committee backup attached



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

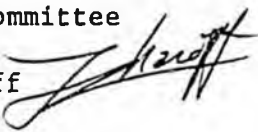
P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Sen. Bettye Fahrenkamp
Chair
Senate Resources Committee

FROM: Sen. Fred F. Zharoff 

DATE: April 19, 1989

RE: Senate Bill 243 - "An Act relating to loans under the Commercial Fishing Loan Act and to limited entry permits pledged as security for those loans; and providing for an effective date."

SB 243 amends the statutes governing the state's Commercial Fishing Loan Program, managed by the Division of Investments in the Department of Commerce and Economic Development.

The purpose of the amendments ^{are} ~~is~~ to solve some of the problems commercial fishermen have experienced with the loan program. The main problem is that it is too easy for fishermen to lose their limited entry permits. By the time some fishermen realize they have problems with their loans and that they must take action to correct the problems, current statutes create a situation where a solution is difficult or impossible to implement. Often, the only options left are to pay off the loan in full or to let the permit be repossessed.

The loss of limited entry permits -- in rural areas, in particular -- is a serious problem in Alaska. Many rural loan recipients have a poor understanding of the meanings of collateral, accrued interest, and foreclosure. When their permits are repossessed, the former permit holders and their crews are deprived of their main source of income.

SB 243 attempts to solve this problem by writing more flexibility into the Commercial Fishing Loan Program. At the same time, I recognize the solvency of the program and its ability to make loans must be protected.

The Department of Commerce recently provided you with a position paper on SB 243. I will work with your staff to prepare a committee substitute that addresses at least some of the concerns raised by the department.

The following backup information is attached:

1. Resolution from the Bristol Bay Native Convention. ✓
2. Excerpt from the Division of Legislative Audit's "Special Report on the Department of Commerce and Economic Development" ✓

Commercial Fisheries Loan Programs' Procedures", released March 14, 1988.

3. Letter from Commerce Commissioner Larry Mercurieff, responding to a series of questions about the loan program, dated Dec. 2, 1988. ✓
4. Letter from Mr. Jerry Liboff of Dillingham, outlining problems with the loan program and describing possible solutions, dated Dec. 30, 1988. ✓
5. Letter from Ms. Paula Cullenberg of Dillingham, analyzing the program and describing possible changes, dated Jan. 27, 1989. ✓
6. Commercial Fishing Loan Act statutes.

Original sponsor: Zharoff

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 CS FOR SENATE BILL NO. 243 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION
5 A BILL
6 For an Act entitled: "An Act relating to loans under the Commercial Fish-
7 ing Loan Act and to limited entry permits pledged as
8 security for those loans; and providing for an effec-
9 tive date."
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
11 * Section 1. AS 16.10.335(a) is amended to read:
12 (a) If the debtor defaults upon a note for which a limited entry
13 permit has been pledged as security under AS 16.10.333 or 16.10.338,
14 the commissioner shall provide the debtor, by both certified and first
15 class mail sent to the debtor's last known address on file with the
16 commissioner, with a notice of default that includes
17 (1) a description of the security given for the note in-
18 cluding the number assigned to the pledged permit by the commission;
19 (2) the date upon which the default occurred;
20 (3) the amount of the debtor's outstanding principal and
21 interest [ARREARAGES] as of the date of the default notice, the total
22 amount remaining on the note less unearned interest, and the amount of
23 daily interest;
24 (4) a statement that the debtor may, within 15 days after
25 the postmark date of the notice, request a hearing to submit evidence
26 showing the debtor has not defaulted;
27 (5) a statement that the note may be reinstated if it is
28 brought current within 120 [60] days after the postmark date of the
29 notice;

*States in general terms that the debtor submitting
may reinstate the note by submitting
a repayment plan that is accepted
by the commissioner language
required a 15%
payment of outstanding
P + I.*

1 (6) a statement that, under AS 16.10.310(a)(4), the debtor
2 may reinstate the note by submitting to the commissioner a plan of
3 repayment if the commissioner accepts the debtor's plan of repayment
4 [NOTE MAY BE PAID IN FULL LESS UNEARNED INTEREST WITHIN 120 DAYS AFTER
5 THE POSTMARK DATE OF THE NOTICE];

6 (7) the place where reinstatement of the note or payment in
7 full may be made; and

8 (8) a notice in at least 10-point bold type stating: "IM-
9 PORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE
10 DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT
11 AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

12 * Sec. 2. AS 16.10.335(d) is repealed and reenacted to read:

13 (d) If requested by the debtor, the commissioner may waive any
14 of the time limits in (a) of this section if the debtor shows good
15 cause.

16 * Sec. 3. AS 16.10.335(e) is amended to read:

17 (e) Except as otherwise provided in (c) and (d) of this section,
18 if the debtor fails [UPON THE DEBTOR'S FAILURE] to reinstate or sat-
19 isfy the note within the time specified in (a)(5) [(a)(6)] of this
20 section, the debtor's interest in the permit is terminated by opera-
21 tion of law without further notice. [ANY ENTRY PERMIT CARDS ISSUED TO
22 THE DEBTOR UNDER THE PERMIT MUST BE CANCELLED IMMEDIATELY UPON RECEIPT
23 BY THE COMMISSION OF A CERTIFICATE OF TERMINATION CONTAINING A COPY OF
24 THE NOTICE REQUIRED BY (a) OF THIS SECTION ISSUED BY THE COMMISSION-
25 ER.]

26 * Sec. 4. AS 16.10.335 is amended by adding a new subsection to read:

27 (f) Notwithstanding (a) of this section, when a debtor files
28 bankruptcy, the debtor's interest in the limited entry permit is
29 terminated by operation of law without further notice as of the date

1 that the automatic stay issued in the bankruptcy is no longer in
2 effect, unless the debtor has reaffirmed the debt.

3 * Sec. 5. AS 16.10.338 is amended by adding a new subsection to read:

4 (b) If a limited entry permit is pledged for security for a loan
5 made under AS 16.10.310(a)(1)(B) for the repair, restoration, upgrad-
6 ing, construction, or purchase of a vessel and the borrower thereafter
7 fails to make a payment or defaults, the commissioner shall, in addi-
8 tion to the notice provided under AS 16.10.335(a), notify the borrower
9 that subject to the commissioner's acceptance the borrower may sell
10 the vessel, apply the sales proceeds to the debt, and renegotiate pay-
11 ment of the balance due on the loan to avoid the immediate loss of the
12 limited entry permit that has been pledged for security for the loan.

13 * Sec. 6. AS 16.10 is amended by adding a new section to read:

14 Sec. 16.10.353. WAIVER OF CONFIDENTIALITY. (a) The commis-
15 sioner may release information about a borrower's loan to any indi-
16 vidual when release of the information has been authorized by the
17 borrower.

18 (b) A person obtaining a loan under AS 16.10.300 - 16.10.370
19 after the effective date of this Act may, by signing a form prepared
20 for the purpose, designate the names of persons and organizations to
21 whom a copy of the notice required by AS 16.10.335 must be sent.

22 * Sec. 7. AS 16.43.960 is amended by adding a new subsection to read:

23 (j) The commission shall immediately cancel a limited entry
24 permit card issued to a debtor under a loan made under AS 16.10.300 -
25 16.10.370 when the commission receives a certificate of loan termina-
26 tion containing a copy of the

27 (1) notice required by AS 16.10.335(a); or

28 (2) notice that the automatic stay issued if the debtor has
29 filed bankruptcy is no longer in effect.

*Revised
this language
to clarify
the waiver
of confidentiality
sets up a
form to designate
the person to
be notified
if the loan
gets into
a default
status*

1 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CS SB 243 (Res)
PUBLISH DATE: 5/4/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to loans under
the Commercial Fishing Loan Act

Agency Affected: Commerce & Economic Dev.
BRU: Investments

Sponsor: Zharoff
Requester: Resources

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
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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
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Martin J. Richard, Director
Division: Investments

Phone: 465-2510
Date: 4/17/89

Approved by Commissioner: Larry Mercurieff
Agency: Department of Commerce & Economic Development

Phone: 465-2500
Date: 5/18/89

Distribution (by preparer):

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

page ____ of ____

38680-1/041789a

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 243
PUBLISH DATE: 5/4/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to loans under
the Commercial Fishing Loan Act
Sponsor: Zharoff
Requester: Resources

Agency Affected: Commerce & Economic Dev.
BRU: Investments
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
---------	---	---	---	---	---	---

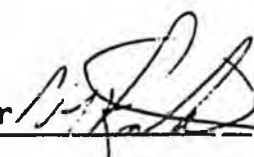
FUNDING: (Thousands of dollars)

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

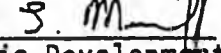
POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Martin J. Richard, Director 
Division: Investments

Phone: 465-2510
Date: 4/17/89

Approved by Commissioner: Larry Mercurieff 
Agency: Department of Commerce & Economic Development

Phone: 465-2500
Date: 4/18/89

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
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- Impacted Agency(ies)

page _____ of _____

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SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

SECTIONAL ANALYSIS

CS For Senate Bill 243 - "An Act relating to loans under the Commercial Fishing Loan Act and to limited entry permits pledged as security for those loans; and providing for an effective date."

SECTION 1 Amendment to 16.10.320(d).

Raises the amount that may be loaned under the 16.10.310(a)(1)(B) program from \$100,000 to \$250,000. This figure more closely reflects current permit, vessel and gear prices.

SECTION 2 Amendment to 16.10.335(a).

(3) Clarifies existing language by changing "arrearages" to "the debtor's outstanding principal and interest".

(5) Provides debtors with 120 days, rather than 60 days, to bring their loans current. This gives the debtors an opportunity to bring their loans current right up until the day the limited entry permit is repossessed. The extension will help rural fishermen, in particular, who do not start trying to solve their loan problems until the 60 day time limit has passed and, under current law, the only recourse they have is to pay the note in full.

(6) New paragraph. Provides the debtor with the option of submitting a new plan of repayment. The plan is subject to the commissioner's approval.

(7) Clarifies existing language.

SECTION 3 Repeal and reenact 16.10.335(d).

Allows the commissioner of the Department of Commerce to waive any of the time limits in the previous section for good cause. Good cause would be left to the discretion of the commissioner.

SECTION 4 Amendment to 16.10.335(e).

Makes existing statute consistent with other amendments.

SECTION 5 Amendment to 16.10.335. New subsection (f).

- (f) Eliminates the existing conflict between state statutes -- which require a demand be issued in all cases -- and the superseding federal bankruptcy statutes which prohibit enforcement action -- such as issuing a demand -- after a debtor files bankruptcy.

SECTION 6 Amendment to 16.10.337(b). New paragraphs (2) and (3).

Provides the debtor with additional options to exercise after the department has foreclosed on the loan and repossessed the permit.

- (2) Allows the debtor to submit a new plan of repayment, subject to the commissioner's approval.
- (3) Allows the debtor to nominate a person to assume the debt under the loan. This would allow Alaskan fishermen who are in default to turn their loans over to other Alaskan fishermen.

SECTION 7 Amendment to 16.10.338. New subsections (b), (c) and (d).

- (b) In the case of a missed payment or default on a boat loan where a limited entry permit has been pledged as collateral, the commissioner of commerce shall notify the borrower that he has the option of selling the vessel and renegotiating the balance due. Selling the vessel is a possibility under present law, but official notification is needed in order to encourage people to do it. The department also does not now have authority to renegotiate the remaining payments.
- (c) In cases where the borrower is in default on a boat loan and a limited entry permit was pledged as collateral, the commissioner of commerce must repossess and sell the boat first. Exceptions are made in cases where the borrower requests the commissioner to foreclose on the permit first and where the commissioner is outbid at the first foreclosure sale.
- (d) After a repossessed vessel is sold under (c), the commissioner shall renegotiate the payment of the remaining outstanding balance.

SECTION 8 Amendment to 16.30. New section, 16.10.353. WAIVER OF CONFIDENTIALITY.

- (a) Makes clear that information about a borrower's loan can be released at any time to any individual authorized by the borrower.
- (b) Establishes a confidentiality waiver form to be made available to each borrower. The borrower can designate organizations (native non-profit association, business development center, etc.) and individuals (attorney, accountant, business

consultant, trusted friend, etc.) that can be automatically contacted should the loan get into trouble.

SECTION 9 Amendment to 16.43.960. New subsection (j).

Makes the Commercial Fisheries Entry Commission statutes in Title 16 consistent with the amendment in Section 5.

SECTION 11

Immediate effective date.

SB 243: "An Act relating to loans under the Commercial Fishing Loan Act and to limited entry permits pledged as security for those loans; and providing for an effective date."

SB 243 makes a number of changes to the Commercial Fishing loan program, most dealing with limited entry permits and the foreclosure process. The department recognizes the important role that limited entry permits play in the economies of communities throughout the state and supports legislative efforts to provide additional flexibility to work with delinquent borrowers. The following changes contained in SB 243 will greatly assist the department in these efforts:

- A. allowing the department to waive the foreclosure time limits under AS 16.10.335(a) when a borrower demonstrates good cause as provided for under Section 3 of the bill. This affords the greatest opportunity for providing assistance to delinquent borrowers that have used a limited entry permit as collateral on a loan;
- B. increasing the bring current period from 60 to 120 days as provided for under Section 2 of the bill; and
- C. allowing a borrower to sell a vessel and renegotiate payment of the balance of the loan without loss of the limited entry permit as provided for under Section 7, subparagraph (b).

Passage of these three measures will enable the department to strike a good balance between assisting borrowers who are having difficulties while, at the same time, protecting the assets of the Commercial Fishing Revolving Loan Fund for future loans.

Some of the changes in SB 243, however, are not considered necessary and may actually restrict the department's ability to work with borrowers. The department opposes the following changes, as presently worded:

- A. allowing a borrower to reinstate a Promissory Note or nominate someone to assume a Promissory Note prior to completion of foreclosure as provided for in Section 2. The department already has the ability to allow an assumption and would typically approve an extension under existing statute in cases where a borrower submitted a 15% payment,
- B. allowing a borrower to reinstate a Promissory Note or nominate someone to assume a Promissory Note after a foreclosure action has been completed as provided for in Section 6. The department prefers that these actions take place prior to foreclosure,
- C. requiring the department to foreclose on and sell a vessel before proceeding against a limited entry permit as provided for under Section 7. This would prevent the department from selling a permit first even if requested by the borrower; and

- D. allowing release of loan file information in cases where a borrower is in default or has requested two extensions as provided for under Section 8. This would further restrict the department's ability to release information even when requested by the borrower.

Below are the major changes that this bill will make to the Commercial Fishing loan program and our comments on each. The parenthetical notations at the end of each provision references the appropriate section of SB 243.

1. The loan limits under AS 16.10.310(a)(1)(B) are increased from \$100,000 to \$250,000 (Section 1).

The cost of boats and permits has risen significantly in recent years. Increasing the limit, however, will, to some degree, impact the number of loans that can be made if the amount available to lend remains constant.

2. The time period during which a delinquent borrower can bring a loan current after the postmark date of the default notice is increased from 60 to 120 days (Section 2). ✓

The department supports this change as it allows additional time for a delinquent borrower to respond.

- 3. A provision is added that allows a delinquent borrower to reinstate the Promissory Note by submitting an acceptable refinancing plan to the commissioner that includes a payment of at least 15% of the outstanding principal and interest of the loan. This may occur during the 120-day bring current period (Section 2) or at any time after foreclosure until the permit is actually sold by the department (Section 6). ✓

The department opposes this provision because it may unintentionally limit the ability to grant extensions under AS 16.10.310(a)(4) in cases where a debtor is unable to come up with the required 15%. Historically, the department has granted numerous extensions that did not include a tender of payment of 15% of the outstanding principal and interest of the loan.

Also, it would be extremely unusual for the department to deny an extension request under existing statute (AS 16.10.310(a)(4)) if the borrower was able to tender a 15% payment. As a result, this language would actually further restrict our ability to work with delinquent borrowers.

In addition, extensions, workouts, reinstatements, or other such arrangements should take place prior to completion of foreclosure so as to avoid the difficulties associated with advertising and accepting offers for permits that are subsequently reinstated.

It is not clear from the legislation what is meant by a "plan of refinancing." Refinancing generally means to pay off existing debts with funds secured from new debt. Currently, the Commercial Fishing statutes do not provide for refinancing. If this provision is retained in the bill, the reference to "refinancing" should be changed to "repayment" to clarify what the debtor may propose.

4. A provision is added that allows a delinquent borrower to nominate a person to assume the debt. This may occur during the 120-day bring current period (Section 2), or at any time after foreclosure until the permit is actually sold by the department (Section 6).

This provision is unnecessary in Section 2 because existing statute AS 16.10.310 (a)(7) already provides for assumption of a commercial fishing loan.

The department opposes the provision in Section 6 believing that assumptions or other workout arrangements should take place prior to completion of foreclosure so as to avoid the difficulties associated with advertising and accepting offers for permits that are subsequently reinstated.

5. A provision is added that allows the department to waive the 120-day time limit under AS 16.10.335(a) if the debtor shows good cause (Section 3).

The department strongly supports this provision because it will provide additional flexibility to work with delinquent borrowers that show good cause even in cases where the 120-day time limit has not been met. For example, if a borrower fails to contact us prior to the 120th day and later requests an extension or finds someone to assume the loan, the department would be able to work with the borrower to resolve the delinquency. This is not possible under existing statute. The department already has the ability to negotiate beyond the expiration of a demand notice for vessels, real estate, and gear and strongly supports the ability to do so for permits as well.

This change is viewed by the department as having the greatest potential for resolving delinquency problems experienced by commercial fishing borrowers that have resulted in foreclosed permits. There have been a number of instances in the past where borrowers could have prevented foreclosure of their loans if the flexibility afforded by this provision would have been available to the department.

6. Section 7 of the bill adds two new provisions that address the situation where a borrower has pledged a limited entry permit for a loan that was used toward a vessel. The new provisions essentially require the boat to be sold, proceeds applied to the loan, and the loan terms renegotiated to pay the balance due rather than proceeding with foreclosure on the permit.

Subsection (b) applies to loans that are currently in place. It provides that, subject to the commissioner's acceptance, the borrower may sell the vessel and renegotiate the balance due on the loan without loss of the pledged permit.

Subsection (c) applies to loans made after the effective date of the act and places a mandatory duty upon the commissioner to obtain possession of the vessel through foreclosure, dispose of the vessel, and then renegotiate with the borrower the outstanding balance remaining due on the loan.

The department currently encourages delinquent borrowers to find a buyer for their vessel before foreclosure to maximize the amount received for the vessel. However, the department does not renegotiate the remaining balance due. The department supports subsection (b) because it provides more flexibility to deal with delinquent borrowers who find themselves in the position of wanting to sell a vessel that is worth less than the outstanding loan balance. The department, however, opposes the approach taken in subsection (c). The proposed language takes a rigid approach which does not allow the commissioner the flexibility to work to the benefit of the borrower and the department. There are situations when the borrower has requested that the department foreclose on the permit to pay the debt in full and allow the borrower to keep the vessel free and clear. The mandatory language in subsection (c) would prohibit complying with the borrower's request.

Another perhaps unintended effect of the proposed language requires that the department acquire the vessel at the foreclosure sale. Currently, the department bids at the foreclosure sale to ensure that the boat does not go for an unreasonable price. However, if a responsive bidder is present, the department will not outbid that purchaser. If the department can avoid the subsequent costs of moorage, insurance, custodial and maintenance fees, advertising costs, and personnel time involved with the above sale, a savings will result to the borrower.

7. A provision is added to terminate a debtor's interest in a limited entry permit when a debtor has filed bankruptcy and the automatic stay is no longer in effect (Section 5). This only applies in cases where the debtor has not reaffirmed the debt.

The department supports this provision as it eliminates the existing conflict between the state statutes which requires that a demand be issued in all cases and the superseding federal bankruptcy statutes which prohibit enforcement action, such as issuing a demand after a debtor has filed bankruptcy. Since the department appears before the bankruptcy court in numerous cases, it is advantageous to eliminate conflicts such as these whenever possible.

8. A provision is added that allows a borrower to designate a person to whom the department can release loan file information. This only applies in cases where the borrower has requested two extensions or defaults on the note (Section 8).

The department considers this provision to be unnecessary because existing policy allows for the release of loan file information if authorized by the borrower regardless of the payment history of the loan. As written, this provision requires a borrower to default or request two extensions in order to get loan file information released. The department's policy currently is to release information whenever requested by the borrower. If the Legislature wishes to include a statutory basis for releasing loan file information, it is recommended that the following wording from lines 6 and 7 on page 5 be eliminated: "and thereafter requests two extensions of payments or defaults on the note."

In summary, the department recognizes the ripple effect that can take place when a limited entry permit is repossessed and has always considered repossession a last resort. The department, however, also has an obligation to protect the assets of the loan fund. Providing the department with additional flexibility in its collection efforts will enable the department to strike a good balance between assisting borrowers who are experiencing difficulties while, at the same time, protecting the assets of the Commercial Fishing Revolving Loan Fund for future loans.



Larry Mercurieff, Commissioner

Date: 4/18/89

BRISTOL BAY NATIVE CONVENTION
Resolution 86-22

WHEREAS: commercial fishing within the Bristol Bay watershed has had poor harvest records for some of the Bristol Bay Fishermen; and

WHEREAS: the 1986 projected harvest forecast for Bristol Bay is also low; and

WHEREAS: fishermen from Bristol Bay have no other alternative source of income; and

WHEREAS: many fishermen have obtained from the State of Alaska loans to purchase new boats and permits to enhance their fishing efforts; and

WHEREAS: many fishermen put up their commercial fishing entry permit as collateral to obtain their state loans; and

WHEREAS: many of these commercial fishing entry permits are now at risk due to poor salmon harvests; and

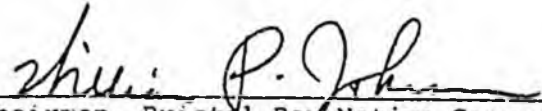
WHEREAS: the State set up the loan program to help local fishermen become more self sufficient, efficient and competitive and not to take boats and permits from the local residents.

NOW THEREFORE BE IT RESOLVED that the Bristol Bay Native Convention and delegates assembled requests the State Loan Program and Governor of the State of Alaska see and implement ways so that local fishermen do not lose their boats and permits.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the resolution adopted by the delegates to the 1986 Bristol Bay Native Convention, February 23, 24, 25, & 26, Dillingham, Alaska, at which a quorum was present.

WITNESS My hand and seal this 26th day of February, 1986.


Chairman, Bristol Bay Native Convention

WITNESSED:


Chairperson, Resolutions Committee

Except from:

"A Special Report on the Dept. of Commerce and Economic Development Commercial Fisheries Loan Programs' Procedures", March 14, 1988.

PUBLIC POLICY CONSIDERATIONS

Though no conclusive evidence exists that correlates a reduction of permit flow out of rural areas with the degree of lenient lending practices, the Legislature may want to consider additional forms of subsidization specifically for those rural areas that have become economically distressed due to an outflow of fishing permits. Action such as HB 509 which increases the maximum loan terms on permit loans to 30 years should ease the debt service burden for those finding it difficult to afford purchasing a fishing permit.

It should be noted, however, that the inherent quality of state lending programs creates a two-edged sword. On the one hand, the fiduciary responsibility of protecting the public's assets must be maintained; while at the same time, the socioeconomic aspects of meeting the public need must be considered. Policy decisions are necessary to establish at what point an appropriate balance occurs. If legislative or executive policy is willing to accept a higher risk situation and deems that increased emphasis should be placed on the societal aspects, such direction needs to be expressed. As a result, however, increased delinquencies, foreclosures, and losses may occur.

Consideration may also be given to changing the Commercial Fishing Loan Act to require all repossessed permits be returned to CFEC, who in turn could make the permits available to persons who meet the standards for initial issuance (AS 16.43.250). Areas where commercial fishing provides the primary economic base which can be determined to be economically distressed could be so designated. Applicants residing within these areas who meet CFEC criteria could be chosen, perhaps on a lottery based system, to be given the right of first refusal on the purchase of an available limited entry permit. (Currently, the Commercial Fishing Loan Act requires CFRLP to offer CFEC a right of first refusal at a price equal to the amount outstanding on the foreclosed note plus any costs CFRLP directly incurred in administering the loan. This provision is related to the CFEC's inactive buy-back program under AS 16.43.310 which, in the opinion of the Attorney General, offends the constitutional prohibition against dedication of funds.)

* Consideration may be given to amending the Commercial Fishing Loan Act (AS 16.10.335) to provide more flexibility to CFRLP in allowing borrowers in default who have pledged permits as security, greater opportunities to bring their loans current. Presently, the law establishes a definite timetable in foreclosing on defaulted loans of this nature. DCED feels they have less workout capability in these cases in order to avoid repossession of the permits.

Though we did not review the effectiveness of CFRLP's rural outreach programs, we are aware of efforts made by DCED in disseminating loan information throughout the State by utilizing other state agency offices located in the rural areas. Outreach efforts currently used to inform rural Alaska about the commercial fishing loan programs may wish to be reviewed to determine if enhancements could be made to improve program access in rural areas.

STEVE COWPER, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

P. O. BOX D
JUNEAU, ALASKA 99811-0600
PHONE: (907) 465-2500

OFFICE OF THE COMMISSIONER

December 2, 1988

The Honorable Fred F. Zharoff
Senator
Alaska State Legislature
P.O. Box 405
Kodiak, AK 99615

Dear Fred,

Thank you for your letter of October 24. I understand your concern over the loss of limited entry permits in the Bristol Bay area and appreciate the opportunity to work with you on this issue.

The Division of Investments has put together the following information which I hope adequately answers your questions:

- 1. How many loans have been given to Bristol Bay drift or set net permit holders? What is the dollar value of these loans?

Information on paid off loans is not retained in our data base. Attachment A contains information on outstanding loans as of November 16, 1988.

- 2. How many loans were for boats, and how many for permits?

See Attachment A

- 3. How many of these loans were to Bristol Bay residents (by gear type, and loan type and dollar value?)

See Attachment B

- 4. How many of the loans used permits as collateral?

See Attachment B

- 5. How many Bristol Bay permits have been foreclosed on?

Nine (9) Bristol Bay drift gill net permits have been repossessed. This represented nine different loans, of which three borrowers repurchased their permits.

Three (3) Bristol Bay set net permits have been repossessed. This represented two different loans, of which one borrower repurchased the two permits securing the loan.

6. What happened to those permits? Were they auctioned off? How many were purchased by state residents, out-of-state residents, or Bristol Bay residents?

Of the 12 repossessed permits, five have been repurchased by the borrowers. Five permits were advertised for sale throughout the state and were sold to state residents, one of which was a Bristol Bay resident. We presently have two repossessed Bristol Bay permits on hold.

7. Does the state have any procedures for foreclosing on a loan that expand on what is specified in statute? If so, what are they?

Our division's policy is that a demand is generally issued when the loan becomes 90 days delinquent. A demand may be issued sooner if the loan is in default for any other violation of the loan documents which places our collateral in jeopardy. An example of this would be lack of insurance, or nonrenewal of a vessel document with the Coast Guard.

We must follow procedures set out by the statutes and courts when actually foreclosing. These procedures vary depending on whether they involve a vessel, real estate, or a limited entry permit.

Permit Foreclosure

The procedures for foreclosing on a permit statutorily require that when we issue a final demand for payment, the borrower is allowed 60 days to bring the loan current and a total of 120 days to pay the loan in full. If the borrower does not fulfill either of these requirements, the permit automatically becomes the property of the state on the 121st day. The state is then required to advertise and sell the permit to satisfy the loan. However, the borrower may repurchase the permit at any time before an offer is accepted.

Vessel Foreclosure

If a borrower does not satisfy a final demand, the case is forwarded to the Attorney General's Office for the preparation of the legal documents which must be filed with the court. A hearing is set to approve the order arresting the vessel, and the borrower has the opportunity to convince the judge that the vessel should not be arrested. If the order arresting the vessel is issued, the U.S. Marshall will arrest the vessel, and an outcry auction is held after the required advertising has been completed by the marshal.

Real Estate Foreclosure

If a borrower does not satisfy a final demand, the case is forwarded to the Attorney General's Office. The Attorney General's Office prepares the appropriate legal documents and a sale date is established; the sale is held.

8. What is the state's rationale for using a permit as collateral versus selling off the vessel itself?

When deciding what collateral to foreclose against, the division considers many factors. The state legally has the ability to foreclose on any of the collateral held; however, one of the major considerations is the value of the collateral and whether foreclosure of one piece of collateral would satisfy the loan. If the value of a vessel is insufficient to pay the loan in full, then we would foreclose on the permit first to prevent the borrower from losing both vessel and permit. As you are aware, when the state sells a permit and obtains more for the permit than is due on the loan, the excess is returned to the borrower. This is not the case with any other type of foreclosure.

9. What changes would you suggest be made in statute to allow a borrower to rectify a default situation and resume regular payments?

We would recommend that the division be given more discretion to work with borrowers in cases that involve limited entry permits. In most other types of foreclosures, the borrower has the opportunity to bring the loan current up until the actual foreclosure. The statute governing permit foreclosures, however, only allows the borrower 60 days from the date of the demand to bring the loan current. After the 60th day the borrower can no longer bring the loan current but instead must pay the loan in full within 120 days. This limits the Division's ability to work with a borrower who fails to contact us until after the 60th day. Although we believe that the 120-day time frame is reasonable, consideration could be given to extending the period during which the borrower can bring the loan current.

10. Would a direct payment method be feasible, where the processors deduct the loan payment from what they owe the fishermen and send it directly to the state?

Cannery assignments have been utilized in the past and are still used from time to time in certain cases. They are not always reliable, however, because fishermen can choose to sell their product to buyers not covered by the assignment, and we have had little success at enforcing collection in cases where the cannery failed to comply with the terms of the assignment.

December 2, 1988

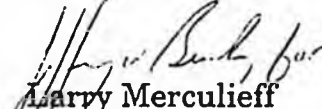
It should also be kept in mind that one of the factors involved in the creation of the Commercial Fishing loan program a number of years ago was to free fishermen from their dependence on the canneries. Also, relying on the cannery to handle the borrowers' financial obligations could make it more difficult for them to learn the financial responsibility and planning that goes along with obtaining a loan.

As stated in John William's letter of September 24th, the Department is currently holding off on the sale of all limited entry permits that have been repossessed until after the upcoming legislative session. I am sure you are aware that the selling price of the Bristol Bay drift gill net permits has been rapidly escalating. We are concerned about the state's liability in holding these permits should the market decline before their sale.

For those borrowers who are having difficulty meeting their loan obligations due to poor budget management, the Small Business Assistance Centers, (SBAC's) and the Small Business Development Centers (SBDC's) may be helpful. Gary Selk, with the SBAC in Anchorage, currently offers an outreach program in the Bristol Bay area to assist borrowers with their budgetary problems on a case-by-case basis; he can be contacted for further information. Also, the SBDC's associated with the university could potentially offer similar services, although I do not know if a program is currently in place.

I hope that this information is helpful. Please let me know if there is any other information that I can provide you.

Sincerely,


Gary Merculieff
Acting Commissioner

LM/GW/mm0375t
120288a

cc: Senator John Binkley
Representative Mike Davis
Representative Adelheid Herrmann
Paula Cullenberg, Marine Advisory Program
Deborah Tennyson, BBNA
George Nelson, Sr.
Jerry Liboff

Attachment A

Original Purpose of Commercial Fishing Loans
Secured by Bristol Bay Permits
Based on Loans Outstanding as of November 16, 1988

<u>Purpose of Loan</u>	<u># of Loans</u>	<u>Original Loan Amounts</u>
Purchase of Permit	218	\$17,960.4
Purchase of Vessel	70	\$ 4,310.6
Vessel Upgrade	3	\$ 95.6
Vessel Construction	75	\$ 4,965.3
Purchase of Gear	1	\$ 25.0
Purchase of Permit and Vessel	8	\$ 955.2
Purchase of Permit and Gear	7	\$ 165.2
Purchase of Permit, Vessel & Gear	1	\$ 44.2
Purchase of Vessel and Gear	<u>8</u>	<u>\$ 512.8</u>
	391	\$29,034.3

Prepared by: Division of Investments
December 2, 1988

Attachment B

Original Purpose of Commercial Fishing Loans
 Secured by Bristol Bay Permits
 To Bristol Bay Residents
 Based on Loans Outstanding as of November 16, 1988

<u>Purpose of Loan</u>	<u># of Loans</u>	<u>Original Loan Amounts</u>
Purchase of Permit	46	\$ 3,841.8
Purchase of Vessel	46	\$ 2,672.3
Vessel Upgrade	1	\$ 22.0
Vessel Construction	49	\$ 3,022.0
Purchase of Gear	1	\$ 25.0
Purchase of Permit and Vessel	1	\$ 106.0
Purchase of Vessel and Gear	<u>5</u>	<u>\$ 208.6</u>
	149	\$ 9,897.7

Note: As of 11/16/88, 75 loans are currently outstanding to Bristol Bay residents for which permits were not used as collateral to secure the loans. The total original amounts of these loans is \$5,640.3. Loan files have not been researched to identify the purpose of the loans; however, it would be fair to assume that the purchase of permits was not the purpose of any of these loans.

Prepared by: Division of Investments
 December 2, 1988

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Dec. 30, 1988

Dear Karl,

342-2512

I Apologize for taking so long to write you concerning George Nelson's permit problem. I have given it some thought and talked to a lot of people around here in order to get some perspective on it. And it always comes back in my mind, to the belief that the STATE should NOT involuntarily repossess permits if the borrower has been trying (even unsuccessfully) to repay his loan. IT is troubling to see a boat loan program designed to help ^{make} primary rural fishermen competitive, instead put many of them out of business and perhaps onto the STATE's welfare rolls.

I read both Larry Merculief's Dec. 2 letter to Fred, and Bhu Williams' Sept. 14 letter to Adelheid. And instead of picking errors and mistakes out of their letters, I think we should be offering constructive changes both in the legislative mandate and in the operations of the program in order to make unnecessary permit for closures. Every time a permit is foreclosed upon in a village,

*

Every time a permit is sold in a village, the effects go far beyond the individual losing the permit and reverberates thru the entire community. This is because not only is the permit holder put out of business, but also his crew usually from the same town is put out of business. The stores in town and the air taxis serving the town are affected, and often the state is left with the burden of supporting these families thru food stamps, welfare payments, etc.

In the light, with the underlying belief that in a state boat loan program, no permit should be involuntarily repossessed, I offer the following ideas:

Before a borrower gets into trouble the program should include the following:

- (1) when the person is applying for the loan, he should be made fully aware of the annual payments including interest, length of the loan, and possible repercussions of not making his payments. In so many cases around here, the village borrowers really didn't understand those things even though they were outlined in letter form by the Department.
- (2) Give the borrower the option of signing a release from authorizing and permitting the Division of Loans

to discuss with outside people the individuals' loan and permit these outside people to work as intermediaries with the borrower to solve his loan problem. This is not now done except in unusual circumstances by the division of loans.

Such outside people could include agencies like the regional non-profits, (BBNA, AVCP, etc) the regional profits (BBNC, Koniag, etc), village corporations, and interested bank people or individuals. (Like Liboff).

(3) Assignment of proceeds thru carriers can and should be used when it looks feasible. In some cases, this will work, especially if it is set as a percent of catch -

What can be done with individuals who are already in trouble with their boat loans.

(1) Instead of arresting boats, which are time consuming and expensive, let the borrower voluntarily turn ownership of the boat over to the state to be sold. The balance of the loan can then be refinanced. OR let the individual sell the boat apply the proceeds to his loan, and refinance the balance.

(2) Permit the division to have a low income interest rate in the years when the Borrower has a below-poverty-line income. This will help the borrower from getting even deeper in debt in really poor income years. For example assume Family of 4 interest rate schedule for this year on the best loan could be as follows:

Total Annual Income	This year's loan interest rate
below 10,000	1%
10 - 12,000	2%
12 - 15,000	4%
15 - 18,000	6%
18 - 20,000	8%
Above 20,000	10.5%

(3) IF after the Agencies try a number of different things and the borrower still can't make a dent in his loan balance give the borrower the option of NOT permanently losing his permit but losing it for a specified # of years, e.g. 3 years. During these years, the STATE would be permitted to lease the permit out to the highest bidder and the money received would be used to pay off the loan.

AT the end of this period of the loan still has NOT been fully paid, the permit would be returned to the borrower and the STATE would write off the balance of the loan.

There are just my thoughts. I'm sure other learned minds will have other creative ideas toward the goals outlined above. Sh bottom line should be no one should lose their permits in order to pay off a STATE boat loan if they are willing and anxious to work with the division of loans to solve their problem. If the borrower prefers to have his permit sold or if he shows no interest in working with the division, then the above bottom line should NOT apply. B.T many of the trouble loans, like George Nelson's, are with people who would like to pay off their loans but because of circumstances, or misunderstandings, or poor fishing abilities are NOT able to. George is just the tip of the iceberg, there are many more. A step or two behind George and we need to address and solve the problem. Now, before we have a flood of George Nelsons.

I hope you can encourage the legislators,
and the division people, and the interested public
into a discussion, a constructive discussion on solutions.

Thanks for your support,

Sincerely

Jerry Liboff

BX 646

Dillingham, AK 99576

842-2512

c.c. - Rep. Mike Davis

Debb, Tenison - Bristol Bay Native Assoc.

Rep. George ACKO

Don Nielsen - Bristol Bay Native Corp.

RECEIVED FEB 4 1989



COOPERATIVE EXTENSION SERVICE, UNIVERSITY OF ALASKA, USDA & SEA GRANT COOPERATING

Marine Advisory Program, P. O. Box 1549, Dillingham, Alaska 99576

January 27, 1989

Karl Ohls, Legislative Assistant
Senator Fred Zharoff
Alaska State Legislature
Pouch Y
Juneau, Ak 99811

Dear Karl,

Here are some thoughts on potential improvements to the State Fisheries Loan Program after discussions with you, Debby Tennyson, and Jerry Liboff.

First, it seems that the Legislature needs to give the State some idea of what they intend the loan program to be. Is the loan program designed to give low interest loans to fishermen who are unable to qualify for loans elsewhere? Is it also intended to help resident fishermen purchase limited entry permits? If both of these questions are true, it seems logical that the State should expect a higher percentage of people that are not very experienced with finances and therefore may run into trouble making their loan payments. If the State's response to financial difficulties is to repossess a permit and auction it off to the general public (in or out of the State), then they have defeated their purpose and in fact, may have caused a financially inexperienced person to now lose their livelihood.

If the State's goals are to help resident fishermen become permit holders and improve their earnings in the fishery, then the loan program needs to be adjusted in a number of ways. It should be very clear to the loan personnel that taking a permit is the last resort. By using the permit as collateral the State is protecting itself, but calling in that collateral should be a final, drastic measure. The following are some ideas that may help accomplish this:

Statutory changes -

1. As Commerce suggested, change the statute to provide more flexibility by loan personnel for the foreclosure process.

Rationale: more flexibility would prevent automatic foreclosure and allow loan personnel more discretion in working with fishermen.

2. Include in the language that loan personnel must give the fishermen the choice to foreclose on either the boat or the permit first. If the fishermen chooses the boat, and the foreclosure does not pay off the loan, the remaining balance should be refinanced. After an established time period (year or two), if there has been no payment, the permit would be foreclosed on.

Rationale: If the State's goal is to keep state residents fishing, then every effort must be made before the permit is taken. Once the boat is foreclosed on, it is likely that a fishermen, faced with the loss of the permit, will continue payments. It is much easier for a fishermen with a permit and no boat to continue fishing, than visa versa. Continued fishing means continued income and payment of the loan. A fishermen with a boat but no permit is not likely to make any income.

Many fishermen have no other collateral than the boat itself and their fishing permit. There needs to be a middle ground in the process before the State seizes a permit that is worth 5-6 times the outstanding debt. The likelihood that a fishermen losing his permit will ever be able to purchase another is slim.

3. If a permit must be foreclosed on, the State should create a set of criteria determining which state residents would benefit the most economically by having that permit. A lottery would be used to choose a fishermen meeting that criteria. That individual would be given right of first refusal to purchase that permit at fair market value. If he refuses, the offer will go to the next from the lottery.

Rationale: Even though the State cannot offer the permit to only state residents, by following a set of criteria, they may be able to ensure that those most economically affected would be most likely to purchase it. I believe that the State has the authority to do that under permit buy-back provisions in the law.

Regulatory changes:

1. Establish and fund an outreach program. The goal of outreach is to publicize the program, ensure that those getting loans understand them and can afford them and to provide assistance to fishermen having trouble making their payments. Perhaps for high-risk fishermen (defined as those having no other source of income in their family), a more in-depth analysis of their financial strength would be in order.

Another important aspect of outreach is to assist a fishermen who is having trouble meeting his payment schedule. Perhaps when a borrower requests his second extension, he should be required to work with a financial counselor in detail to assess the problem and work out a solution. This counselor's time could be compensated by the fisherman as an addition to his loan amount.

This outreach could possibly be provided by a contracted individual familiar with the fishing industry, as opposed to a State employee.

2. As Jerry Liboff suggested, perhaps borrowers should be given the chance to agree on their loan application, that the State can seek assistance from outside sources if the loan becomes overdue. Perhaps the fisherman could name someone or some entity that should be notified if they are having trouble meeting their payments.

These ideas may sound overly burdensome to the State. However, if the Fisheries Loan Program is more than a source of low interest loans to Alaskan fishermen, special effort must be made to prevent loss of permits. The State must be careful to loan money to fishermen who are serious about improving their economic situation, but it must also be able to respond to financial problems with flexibility and discretion.

I think that most fishermen would support the use of their permits as collateral on loans. I believe that the State should realize that often these fishermen have no choice but to use their permits and should bend over backward to prevent the foreclosure on a fishermen's livelihood.

I hope some of these suggestions are helpful, Karl. I look forward to a draft of your legislation.

Sincerely,

Paula Cullenberg

Paula Cullenberg
Marine Advisory Program, Bristol Bay

cc: Representative George Jacko
Senator John Binkley
Representative Mike Davis
Commissioner Larry Merculieff

an officer, director, or employee in a policy-making position of the licensee has been convicted of three offenses under this section. Proceedings to suspend or revoke a license are governed by the Administrative Procedure Act (AS 44.62).

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

(f) In this section, "individual" means a natural person. (§ 2 ch 94 SLA 1982; am § 3 ch 145 SLA 1984; am E.O. No. 68, § 2 (1988))

Effect of amendments. — The 1988 amendment, effective July 1, 1988, in the first sentence in subsection (d), substituted "commerce and economic development" for "revenue" and "and the commissioner of revenue may suspend or revoke" for "or," and made a minor punctuation change.

Sec. 16.10.269. Limitations. AS 16.10.265 — 16.10.267 do not apply to the purchase or sale of aquatic farm products from a holder of a permit issued under AS 16.40.100 or stock from a holder of a permit issued under AS 16.40.120. (§ 10 ch 145 SLA 1988)

Effective dates. — Section 22, ch. 145, June 9, 1988, in accordance with AS SLA 1988, makes this section effective 01.10.070(c).

Article 7. Commercial Fishing Loan Act.

Section 310. Powers of the department

Sec. 16.10.310. Powers of the department. (a) The department may

(1) make loans to

(A) individual commercial fishermen who have been state residents for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 — 16.10.370 and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for the year immediately preceding the date of application and any other two of the past five years, and who actively participated in the fishery during those periods, for the purchase of entry permits;

(B) an individual for the repair, restoration, or upgrading of existing vessels and gear, for the purchase of entry permits and gear, and for the construction and purchase of vessels, if the individual has been a state resident for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 — 16.10.370, and either

(i) because of lack of training or lack of employment opportunities in the area of residence does not have occupational opportunities available other than commercial fishing; or

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(ii) is economically dependent on commercial fishing for a livelihood and for whom commercial fishing has been a traditional way of life in Alaska;

(2) designate agents and delegate its powers to them as necessary;

(3) adopt regulations necessary to carry out its functions;

(4) establish amortization plans for repayment of loans, which may include extensions for poor fishing seasons or for adverse market conditions for Alaskan products;

(5) enter into agreements with private lending intuitions, other state agencies, or agencies of the federal government, to carry out the purposes of AS 16.10.300 — 16.10.370;

(6) enter into agreements with other agencies or organizations to create an outreach program to make loans under AS 16.10.300 — 16.10.370 in rural areas of the state;

(7) allow an assumption of a loan if

(A) the applicant has been a state resident for a continuous period of two years immediately preceding the date of the request for an assumptior; and

(B) approval of the assumption would be consistent with the purposes of AS 16.10.300; an applicant for a loan assumption may not be disqualified because the applicant does not meet the loan eligibility requirements of (1) of this subsection;

(8) prequalify loan applicants for a limited entry permit loan and charge a fee not to exceed \$200 for prequalification.

(b) *[Repealed, § 34 ch 79 SLA 1985.]*

(c) In determining whether an individual commercial fisherman is reasonably likely to be able to repay a loan made under AS 16.10.300 — 16.10.370, the commissioner shall consider the individual commercial fisherman's income from commercial fishing and from all other sources. (§ 1 ch 134 SLA 1972; am § 3 ch 54 SLA 1973; am § 3 ch 128 SLA 1975; am § 1 ch 154 SLA 1977; am § 3 ch 83 SLA 1978; am §§ 2 — 7 ch 72 SLA 1979; am § 7 ch 113 SLA 1982; am § 1 ch 7 SLA 1983; am §§ 1, 2, 34 ch 79 SLA 1985)

Editor's notes. — This section is set out above to correct a typographical error in the main pamphlet.

Article 8. Salmon Hatcheries.

Section

- 100. Permits for salmon hatcheries
- 110. Hearings before permit issuance
- 150. Sale of salmon and salmon eggs by hatchery

Section

- 150. Contracts for the operation of state hatcheries

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Sec. 16.10.296. Definitions. In AS 16.10.265 — 16.10.296, unless the context otherwise requires,

- (1) "commissioner" means the commissioner of labor;
- (2) "fish" means any species of aquatic fish, invertebrates and amphibians, shellfish, or any other raw fishery resource, in any stage of its life cycle, found in or introduced into the state, and includes fish eggs except fish eggs sold for stock enhancement purposes;
- (3) "fish processor" means a person engaging or attempting to engage in a business for which a license is required under AS 43.75;
- (4) "primary fish buyer" means a person, other than a cooperative corporation organized under AS 10.15, engaging or attempting to engage in the business of originally purchasing or buying any fishery resource in intrastate, interstate, or foreign commerce. (§ 2 ch 102 SLA 1977; am § 3 ch 94 SLA 1982)

Cross references. — For further definitions, see AS 16.05.940.

Article 7. Commercial Fishing Loan Act.

Section	Section
300. Declaration of policy	338. Entry permits as collateral
310. Powers of the department	339. Regulations
315. Allocation of loans	340. Creation of fund
320. Limitations on loans	342. Special account established
325. Guarantors	350. Administration of fund
333. Loans for purchase of Alaska limited entry permits	355. Disposal of property acquired by default or foreclosure
335. Default and foreclosure	360. Definitions
337. Deficiencies and transfer of entry permits after foreclosure	370. Short title

Legislative history reports. — For House Resources Committee report in connection with ch. 134, SLA 1972 (SCS CSHB 102 am FCC), see 1971 House Journal, p. 399; for House Finance Committee report, see 1972 House Journal, p. 554; for legislative letter of intent in connection with the amendments to this article made by ch. 7, SLA 1983 (SCS CSHB 15(Fin)), see 1983 House Journal, p. 432, or 1983 Senate Journal, p. 621.

Sec. 16.10.300. Declaration of policy. It is the policy of the state, under AS 16.10.300 — 16.10.370, to promote the rehabilitation of the state's fisheries, the development of a predominantly resident fishery, and the continued maintenance of commercial fishing gear and vessels throughout the state by means of long-term low interest loans. (§ 1 ch 134 SLA 1972; am § 1 ch 54 SLA 1973; am § 1 ch 128 SLA 1975)

Sec. 16.10.310. Powers of the department. (a) The department may

(1) make loans to

(A) individual commercial fishermen who have been state residents for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 — 16.10.370 and have had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for the year immediately preceding the date of application and any other two of the past five years, and who actively participated in the fishery during those periods, for the purchase of entry permits;

(B) an individual for the repair, restoration, or upgrading of existing vessels and gear, for the purchase of entry permits and gear, and for the construction and purchase of vessels, if the individual has been a state resident for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 — 16.10.370, and either

(i) because of lack of training or lack of employment opportunities in the area of residence does not have occupational opportunities available other than commercial fishing; or

(ii) is economically dependent on commercial fishing for a livelihood and for whom commercial fishing has been a traditional way of life in Alaska;

(2) designate agents and delegate its powers to them as necessary;

(3) adopt regulations necessary to carry out its functions;

(4) establish amortization plans for repayment of loans, which may include extensions for poor fishing seasons or for adverse market conditions for Alaskan products;

(5) enter into agreements with private lending institutions, other state agencies, or agencies of the federal government, to carry out the purposes of AS 16.10.300 — 16.10.370;

(6) enter into agreements with other agencies or organizations to create an outreach program to make loans under AS 16.10.300 — 16.10.370 in rural areas of the state;

(7) allow an assumption of a loan if

(A) the applicant has been a state resident for a continuous period of two years immediately preceding the date of the request for an assumption; and

(B) approval of the assumption would be consistent with the purposes of AS 16.10.300; an applicant for a loan assumption may not be disqualified because the applicant does not meet the loan eligibility requirements of (1) of this subsection;

(8) prequalify loan applicants for a limited entry permit loan and charge a fee not to exceed \$200 for prequalification.

b) [Repealed. § 34 ch 79 SLA 1985.]

(c) In determining whether an individual commercial fisherman is reasonably likely to be able to repay a loan made under AS 16.10.300 — 16.10.370, the commissioner shall consider the individual commercial fisherman's income from commercial fishing and from all other sources. (§ 1 ch 134 SLA 1972; am § 3 ch 54 SLA 1973; am § 3 ch 128 SLA 1975; am § 1 ch 154 SLA 1977; am § 3 ch 83 SLA 1978; am §§ 2 — 7 ch 72 SLA 1979; am § 7 ch 113 SLA 1982; am § 1 ch 7 SLA 1983; am §§ 1, 2, 34 ch 79 SLA 1985)

Effect of amendments. — The 1983 amendment in (a)(1)(A) substituted "two years" for "five years", substituted "the year immediately preceding the date of application and any other two of the past five years" for "any one of the past five years" and made a conforming tense change; in (a)(1)(B), in the introductory language substituted "two years" for "five years" and in (ii) inserted "for whom" preceding "commercial fishing;" and in (a)(1)(C) substituted "two years" for "five years" and substituted "the year immediately preceding the date of application and any other two of the past five years" for "any one of the past five years."

The 1985 amendment, in subsection (a) in paragraph (1), rewrote subparagraph (B) and deleted subparagraph (C), and added paragraphs (7) and (8); repealed subsection (b), concerning consultation with the Department of Fish and Game; and added subsection (c).

Editor's notes. — Section 71, ch. 106, SLA 1980 provides that after July 1, 1981, "no further loans may be made under AS 16.10.310 and 16.10.320(a) except for loans authorized under AS 16.10.333 pursuant to AS 16.10.310 and 16.10.320(a)."

Section 64, ch. 113, SLA 1982, provides: "A borrower who receives a loan before June 25, 1982 under AS 16.10.650 — 16.10.720 [now repealed] may receive a loan under

(1) AS 16.10.310(a)(1)(A) after June 25, 1982 if the total of the loans received by the borrower under AS 16.10.650 — 16.10.720 and AS 16.10.310(a)(1)(A) does not exceed \$300,000;

(2) AS 16.10.310(a)(1)(B) or (C) [now repealed] if the total of the loans received by the borrower under AS 16.10.650 — 16.10.720 and AS 16.10.310(a)(1)(B) or (C) [now repealed] does not exceed \$100,000."

Section 65 of ch. 113, provides: "A borrower who receives a loan under AS 16.10.310 before June 25, 1982 may receive a loan under

(1) AS 16.10.310(a)(1)(B) or (C) [now re-

pealed] after June 25, 1982 if the total of the loans received by the borrower under AS 16.10.310 before June 25, 1982 and AS 16.10.310(a)(1)(B) or (C) [now repealed] after June 25, 1982 does not exceed \$100,000;

(2) AS 16.10.310(a)(1)(A) after June 25, 1982 if the total of the loans received under AS 16.10.310 before June 25, 1982 and AS 16.10.310(a)(1)(A) after June 25, 1982 does not exceed \$300,000."

Section 66 of ch. 113 provides: "Notwithstanding AS 16.10.320(i) and §§ 64 and 65 of this Act the total of all loans that a borrower receives under (1) AS 16.10.650 — 16.10.720; (2) AS 16.10.310 before June 25, 1982; and (3) AS 16.10.310 after June 25, 1982, may not exceed \$300,000."

Section 67 of ch. 113 provides: "In §§ 64-66 of this Act a loan to an associate of a borrower is considered to be a loan to the borrower. In this section 'associate of a borrower' has the same meaning set out under AS 16.10.320(d)."

Opinions of attorney general. — Five-year residency requirements provided for in AS 16.10.310(a)(1)(A), (a)(1)(B), and (a)(1)(C) are unconstitutional, since the state's interest in ensuring that only bona fide resident commercial fishermen qualify for the commercial fishing loan program does not outweigh the infringement on the right of less-than-five-year residents to share in the economic benefits of the program. November 26, 1982 Op. Atty Gen. opinion issued prior to 1983 amendment.)

A five-year durational residency requirement for eligibility to participate in a state program is clearly unconstitutional and cannot be defended in the absence of a compelling state interest. November 26, 1982 Op. Atty Gen. opinion issued prior to 1983 amendment.)

The five-year residency requirements of subparagraphs (a)(1)(A), (a)(1)(B), and (a)(1)(C) of this section are severable from the remainder of the commercial fishing

loan law, since the law can be given legal effect in the absence of the residency requirements and since all legitimate legislative purposes underlying the loan program as a whole and the residency re-

quirements in particular can be satisfied without the five-year provisions. December 6, 1982 Op. Att'y Gen. (opinion issued prior to 1983 amendment.)

Sec. 16.10.315. Allocation of loans. The department shall allocate at least 10 percent of the money that is appropriated for a state fiscal year to make loans under AS 16.10.310 for loans of \$35,000 or less made under AS 16.10.310(a)(1)(B). An allocation made under this section terminates on April 15 of the state fiscal year for which the allocation is made. (§ 2 ch 7 SLA 1983; am § 3 ch 79 SLA 1985)

Effect of amendments. — The 1985 amendment deleted "and (C)" at the end of the first sentence.

Sec. 16.10.320. Limitations on loans. (a) Except as permitted in (h) of this section, a loan under AS 16.10.300 — 16.10.370

(1) may not exceed a term of 15 years, except for extensions under AS 16.10.310(a)(4);

(2) may not bear interest exceeding 10½ percent;

(3) must be secured by a first priority lien and appropriate security agreement;

(4) may not exceed 90 percent of the appraised value of the collateral used to secure the loan; and

(5) may not be made to a person who has a past due child support obligation established by court order or by the child support enforcement division under AS 47.23.160 — 47.23.220 at the time of application.

(b) A lien in favor of the state is not required for loans guaranteed fully by the federal government under 46 U.S.C. 1271 — 1279b (Federal Ship Financing Act of 1972), as amended. In the case of a security agreement given to secure a loan made under AS 16.10.300 — 16.10.370 and covering a vessel documented under the laws of the United States and so long as 46 U.S.C. 911-984 (Ship Mortgage Act, 1920) as amended, and 46 U.S.C. 801-842 (Shipping Act, 1916), as amended, remain ambiguous with respect to whether or not a state or state agency qualifies as a citizen of the United States for purposes of those Acts, the first lien requirement of this section may be satisfied by the recordation and endorsement of a first preferred ship mortgage under 46 U.S.C. 911-984, and by perfection of a security interest under AS 45.09 (Uniform Commercial Code — Secured Transactions), if the approval of the Secretary of Transportation is obtained under 46 U.S.C. 839 for the transfer to the department of the interest in a vessel documented under the laws of the United States. In the case of a security agreement given to secure a loan made under AS 16.10.300 — 16.10.370 and covering a vessel documented under the laws of the

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United States, the first lien requirement of this section may also be satisfied by use of a trust deed and bond issued under it, if the trustee is a citizen of the United States and obtains a first preferred ship mortgage on the vessel under 46 U.S.C. 911-984, and the approval of the Secretary of Transportation is obtained under 46 U.S.C. 839 and 961 for the transfer of the bond or bonds to the department if the trustee is not a trustee approved by the Secretary of Transportation under 46 U.S.C. 808, 835 and 961.

(c) *[Repealed, § 72 ch 113 SLA 1982.]*

(d) The total of balances outstanding on loans made to a borrower under AS 16.10.310(a)(1)(A) may not exceed \$300,000. The total of balances outstanding on loans made to a borrower under AS 16.10.310(a)(1)(B) may not exceed \$100,000.

(e) Two or more individual commercial fishermen who each satisfy the requirements specified in AS 16.10.310(a)(1)(B) may jointly, whether operating as a corporation, partnership, joint venture, or otherwise, obtain a commercial fishing loan for the repair, restoration, or upgrading of an existing vessel and gear, for the purchase of gear, and for the construction or the purchase of a fishing vessel. Loans granted under this subsection may not exceed the amount specified in (d) of this section multiplied by the number of qualified commercial fishermen applying for the loan.

(f) *[Repealed, § 34 ch 79 SLA 1985.]*

(g) *[Repealed, § 72 ch 113 SLA 1982.]*

(h) A loan for an entry permit under AS 16.10.310(a)(1)(B) may be made for up to 100 percent of the appraised value of the collateral used to secure the loan if the borrower demonstrates that (1) the borrower has at least three years of experience as a commercial fisherman in the fishery to which the entry permit applies; and (2) the borrower has not owned an Alaska limited entry permit in the year immediately preceding the application for the loan. In this subsection "three years of experience as a commercial fisherman in the fishery" means that for an accumulated total of three fishing seasons in the same fishery the borrower has actively participated in the commercial harvest of fish under the direction of a limited entry permit holder.

(i) If a loan is made to borrower under AS 16.10.310(a)(1)(A), a subsequent loan may not be made to the borrower under AS 16.10.310(a)(1)(B). If a loan is made to a borrower under AS 16.10.310(a)(1)(B), a subsequent loan may be made to the borrower under AS 16.10.310(a)(1)(A) if the total of the balance outstanding on loans received by the borrower under AS 16.10.310 does not exceed \$300,000. (§ 1 ch 134 SLA 1972; am § 3 ch 54 SLA 1973; am § 3 ch 128 SLA 1975; am § 1 ch 154 SLA 1977; am § 3 ch 83 SLA 1978; am §§ 2 — 7 ch 72 SLA 1979; am §§ 8 — 12, 72 ch 113 SLA 1982; am §§ 4 — 7, 34 ch 79 SLA 1985; am § 4 ch 116 SLA 1986)

Revisor's notes. — In 1987, "Secretary of Transportation" was substituted for "Secretary of Commerce" by the revisor in three places in subsection (b) to reflect a change in federal law.

Effect of amendments. — The 1985 amendment rewrote subsections (a), (d), (e), and (i), and repealed subsection (f), concerning departmental loans for purchase of limited entry permits.

The 1986 amendment added paragraph (5) of subsection (a) and made related technical changes.

Editor's notes. — Section 71, ch. 106, SLA 1980 provides that after July 1, 1981, "no further loans may be made under AS 16.10.310 and 16.10.320(a) except for loans authorized under AS 16.10.333 pursuant to AS 16.10.310 and 16.10.320(a)."

For limitation on loans received under repealed AS 16.10.650 — 16.10.720; AS 16.10.310 before June 25, 1982; and AS 16.10.310 after June 25, 1982, see editor's note to AS 16.10.310.

Sec. 16.10.325. Guarantors. A person may act as guarantor if the borrower has insufficient collateral to secure a loan for the purposes described in AS 16.10.310(a)(1)(B). The loan agreement shall specifically describe the property of the guarantor to be used as collateral by the borrower and shall be signed by the guarantor and the borrower. The department shall provide the guarantor with a copy of all notices sent to the borrower by the department. If the loan is for the purchase of an entry permit, the guaranty by the guarantor may not constitute a lien, mortgage, or encumbrance on or pledge of the entry permit. (§ 13 ch 113 SLA 1982)

Sec. 16.10.330. Sale or transfer of mortgages, bonds and notes. [Repealed. § 14 ch 122 SLA 1980.]

Sec. 16.10.333. Loans for purchase of Alaska limited entry permits. (a) Loans under AS 16.10.310(a) may be made to an individual commercial fisherman for the purchase of a limited entry permit upon certification by the commission that the fisherman is a person who qualifies as a transferee for the permit under AS 16.43 and the regulations adopted by the commission.

(b) Upon approval by the commissioner, the permit to be purchased may be pledged as security for a loan under (a) of this section, if

(1) the certificate for the pledged permit lists the commissioner as the legal owner of the permit;

(2) the certificate for the pledged permit lists the debtor as the equitable owner of the permit;

(3) all annual permit cards issued under the pledged permit list the name of the debtor;

(4) all obligations and responsibilities of a permit owner are assumed by the debtor;

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit and their obligation is limited to satisfaction of the note and payment of costs directly incurred by the department in administering the loan.

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(c) The commissioner is not liable for any act or omission resulting from permit ownership nor will that act or omission affect the commissioner's title to the permit or the commissioner's rights under it.

(d) Upon satisfaction of the note by the debtor, the commissioner shall certify to the commission that the note has been satisfied.

(e) Upon certification as provided in (d) of this section, the commission shall amend the permit certificate to list the debtor as the legal owner.

(f) [Repealed, § 34 ch 79 SLA 1985.] (§ 4 ch 83 SLA 1978; am § 1 ch 106 SLA 1980; am §§ 8, 34 ch 79 SLA 1985)

Cross references. — For the reassignment of entry permits taken as security for loans after such permits are revoked, see AS 16.43.960(i).

Effect of amendments. — The 1985 amendment substituted "AS 16.10.310(a)"

for "AS 16.10.320(a)" at the beginning of subsection (a) and repealed subsection (f), concerning determination of the likelihood of loan repayment by an individual commercial fishman.

NOTES TO DECISIONS

Cited in *Anderson v. Anderson*, Sup. Ct. Op. No. 3172 (File No. S-1320), P.2d (1987).

Sec. 16.10.335. Default and foreclosure. (a) If the debtor defaults upon a note for which a limited entry permit has been pledged as security under AS 16.10.333 or 16.10.338, the commissioner shall provide the debtor, by both certified and first class mail sent to the debtor's last known address on file with the commissioner, with a notice of default that includes

(1) a description of the security given for the note including the number assigned to the pledged permit by the commission;

(2) the date upon which the default occurred;

(3) the amount of arrearages as of the date of the notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;

(4) a statement that the debtor may, within 15 days after the postmark date of the notice, request a hearing to submit evidence showing the debtor has not defaulted;

(5) a statement that the note may be reinstated if brought current within 60 days after the postmark date of the notice;

(6) a statement that the note may be paid in full less unearned interest within 120 days after the postmark date of the notice;

(7) the place where reinstatement or payment in full may be made; and

(8) a notice in at least 10-point bold type stating: "IMPORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE SPECIFIED WILL RESULT IN A FORFEITURE OF

ALL RIGHTS TO THE PERMIT AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

(b) In each case of a limited entry permit being pledged as security under AS 16.10.333 or 16.10.338, the debtor shall maintain on file with the department an address where notice of default is to be sent, if necessary, and where that notice will be timely received by the debtor.

(c) Upon presentation of evidence of mailing in accordance with (a) of this section, the receipt of the notice of default by the debtor will be presumed for all purposes. This presumption is rebuttable by presentation of evidence sufficient to demonstrate lack of receipt of notice through no fault of the debtor. Upon presentation of evidence sufficient to prove lack of receipt of notice through no fault of the debtor, the notice is a nullity.

(d) Upon good cause shown, the commissioner may waive any of the time limits in (a) of this section, if the department receives from the debtor or the debtor's representative a request for the waiver before the expiration of the time limit for which the waiver is sought.

(e) Except as otherwise provided in (c) and (d) of this section, upon the debtor's failure to satisfy the note within the time specified in (a)(6) of this section, the debtor's interest in the permit is terminated by operation of law without further notice. Any entry permit cards issued to the debtor under the permit must be cancelled immediately upon receipt by the commission of a certificate of termination containing a copy of the notice required by (a) of this section issued by the commissioner. (§ 4 ch 83 SLA 1978; am § 9 ch 72 SLA 1979; am §§ 3, 4 ch 7 SLA 1983; am § 9 ch 79 SLA 1985)

Effect of amendments. — The 1983 amendment substituted "120" for "90" in paragraph (a)(6) and in subsection (b) deleted "reinstate or" following "failure to" in the first sentence and made other minor word changes.

The 1985 amendment, in subsection (a), deleted "under AS" preceding "16.10.338,"

substituted "both" for "registered or" and inserted "and first class" in the introductory language and made other minor word changes throughout the subsection, added subsections (b), (c), and (d), and in subsection (e) inserted "Except as otherwise provided in (c) and (d) of this section" and made other minor word changes.

Sec. 16.10.337. Deficiencies and transfer of entry permits after foreclosure. (a) Upon a foreclosure on an entry permit as provided in AS 16.10.335, the commissioner shall offer the commission a right of first refusal if the permit is subject to a buy-back program under AS 16.43.290 — 16.43.330 at a price equal to the amount outstanding on the note plus any costs the department directly incurred in administering the loan.

(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. If the proceeds of the sale of a permit exceed the amount necessary to pay the note in

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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.

(c) [Repealed, § 72 ch 113 SLA 1982.]

(d) Nothing in this section affects the right of the commissioner to institute legal action for a deficiency resulting from a default on a note given under AS 16.10.333. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees. (§ 4 ch 83 SLA 1978; am § 72 ch 113 SLA 1982; am § 5 ch 7 SLA 1983)

Cross references. — For the reassignment of entry permits taken as security for loans after such permits are revoked, see AS 16.43.960(i).

Effect of amendments. — The 1983

amendment in subsection (b) substituted "advertise and sell the permit" for "notify the debtor of this fact" at the end of the first sentence and rewrote the remainder of the subsection.

Sec. 16.10.338. Entry permits as collateral. Alaska limited entry permits may be used as security for loans under AS 16.10.310(a). The provisions of AS 16.10.335 and 16.10.337 apply to Alaska limited entry permits pledged as security for loans in accordance with this section. (§ 10 ch 72 SLA 1979)

Sec. 16.10.339. Regulations. The department shall adopt regulations to implement AS 16.10.333 — 16.10.337. (§ 4 ch 83 SLA 1978; am § 10 ch 79 SLA 1985)

Effect of amendments. — The 1985 amendment deleted "commission, with the approval of the" preceding "department."

Sec. 16.10.340. Creation of fund. There is a commercial fishing revolving loan fund to carry out the purpose of AS 16.10.300 — 16.10.370. (§ 1 ch 134 SLA 1972; am § 2 ch 177 SLA 1976)

Editor's notes. — Section 63, ch. 113, SLA 1982, provides: "All assets of the fishermen's mortgage and note fund (AS 16.10.650) are transferred to the commercial fishing revolving loan fund (AS 16.10.340). Repayments of principal and

interest on loans made from the fishermen's mortgage and note fund shall be deposited into the commercial fishing revolving loan fund by the commissioner of the Department of Commerce and Economic Development as they are received."

Sec. 16.10.342. Special account established. (a) There is established as a special account within the commercial fishing revolving loan fund the foreclosure expense account.

(b) *[Repealed. § 72 ch 113 SLA 1982.]*

(c) The commissioner may expend money credited to the foreclosure expense account when necessary to protect the state's security interest in collateral on loans granted under AS 16.10.300 — 16.10.370 or to defray expenses incurred during foreclosure proceedings after a default by an obligor. (§ 4 ch 83 SLA 1978; am § 72 ch 113 SLA 1982)

Sec. 16.10.350. Administration of fund. The commissioner shall administer the loan fund. (§ 1 ch 134 SLA 1972)

Sec. 16.10.355. Disposal of property acquired by default or foreclosure. The department shall dispose of property acquired through default or foreclosure of a loan made under AS 16.10.300 — 16.10.370 or former AS 16.10.650 — 16.10.720. Disposal shall be made in a manner that serves the best interests of the state, and may include the amortization of payments over a period of years, but may not be by lease. (§ 11 ch 79 SLA 1985)

Sec. 16.10.360. Definitions. In AS 16.10.300 — 16.10.370

(1) "commission" means the Alaska Commercial Fisheries Entry Commission;

(2) "commissioner" means the commissioner of commerce and economic development;

(3) "debtor" means an individual commercial fisherman who either initially contracts for a loan under AS 16.10.333 — 16.10.337 or assumes a loan as provided in those sections;

(4) "department" means the Department of Commerce and Economic Development. (§ 1 ch 134 SLA 1972; am § 5 ch 83 SLA 1978)

Revisor's notes. — Reorganized in 1983 to alphabetize the defined terms.

Cross references. — For further definitions, see AS 16.05.940.

Sec. 16.10.370. Short title. AS 16.10.300 — 16.10.370 may be cited as the Commercial Fishing Loan Act. (§ 1 ch 134 SLA 1972)

Article 8. Salmon Hatcheries.

Section	Section
375. Regional salmon plan	443. Department assistance and cooperation
380. Regional associations	445. Egg sources
400. Permits for salmon hatcheries	450. Sale of salmon and salmon eggs by hatchery
410. Hearings before permit issuance	460. Inspection of hatchery
420. Conditions of a permit	470. Annual report
430. Alteration, suspension or revocation of permit	
440. Regulation	



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

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SECTIONAL ANALYSIS

CS For Senate Bill 243 - "An Act relating to loans under the Commercial Fishing Loan Act and to limited entry permits pledged as security for those loans; and providing for an effective date."

~~SECTION 1~~

~~Amendment to 16.10.320(d).~~

Deleted

~~Raises the amount that may be loaned under the 16.10.310(a)(1)(B) program from \$100,000 to \$250,000. This figure more closely reflects current permit, vessel and gear prices.~~

SECTION 2

Amendment to 16.10.335(a).

(3)

Clarifies existing language by changing "arrearages" to "the debtor's outstanding principal and interest".

(5)

Provides debtors with 120 days, rather than 60 days, to bring their loans current. This gives the debtors an opportunity to bring their loans current right up until the day the limited entry permit is repossessed. The extension will help rural fishermen, in particular, who do not start trying to solve their loan problems until the 60 day time limit has passed and, under current law, the only recourse they have is to pay the note in full.

(6)

Amended

New paragraph. Provides the debtor with the option of submitting a new plan of repayment. The plan is subject to the commissioner's approval. ~~Debtor must submit a plan within 30 days of the date of the order.~~

may not be provided with notice of (2) in Section 5.

(7)

Clarifies existing language.

SECTION 3

Repeal and reenact 16.10.335(d).

Allows the commissioner of the Department of Commerce to waive any of the time limits in the previous section for good cause. Good cause would be left to the discretion of the commissioner.

SECTION 4

Amendment to 16.10.335(e).

Makes existing statute consistent with other amendments.

SECTION 5⁴ Amendment to 16.10.335. New subsection (f).

(f) Eliminates the existing conflict between state statutes -- which require a demand be issued in all cases -- and the superseding federal bankruptcy statutes which prohibit enforcement action -- such as issuing a demand -- after a debtor files bankruptcy.

SECTION 6⁵ Amendment to 16.10.337(b). New paragraphs (2) and (3).

Provides the debtor with additional options to exercise after the department has foreclosed on the loan and repossessed the permit.

Amended — (2) Allows the debtor to submit a new plan of repayment, subject to the commissioner's approval. *Not possible if a previous plan accepted.*

(3) Allows the debtor to nominate a person to assume the debt under the loan. This would allow Alaskan fishermen who are in default to turn their loans over to other Alaskan fishermen.

SECTION 7⁶ Amendment to 16.10.338. New subsections (b), (c) and (d).

(b) In the case of a missed payment or default on a boat loan where a limited entry permit has been pledged as collateral, the commissioner of commerce shall notify the borrower that he has the option of selling the vessel and renegotiating the balance due. Selling the vessel is a possibility under present law, but official notification is needed in order to encourage people to do it. The department also does not now have authority to renegotiate the remaining payments.

Amended — (c) In cases where the borrower is in default on a boat loan and a limited entry permit was pledged as collateral, the commissioner of commerce must repossess and sell the boat first. Exceptions are made in cases where the borrower requests the commissioner to foreclose on the permit first and where the ~~commissioner is outbid at the first foreclosure sale.~~ *sale vessel price does not exceed twice the foreclosure costs.*

(d) After a repossessed vessel is sold under (c), the commissioner shall renegotiate the payment of the remaining outstanding balance.

SECTION 8⁷ Amendment to 16.30. New section, 16.10.353. WAIVER OF CONFIDENTIALITY.

(a) Makes clear that information about a borrower's loan can be released at any time to any individual authorized by the borrower.

Amended — (b) Establishes a confidentiality waiver form to be made available to each borrower. The borrower can designate organizations (native non-profit association, business development center, etc.) and individuals (attorney, accountant, business ~~representative~~ *Requires notice of default be sent not automatically to designated individuals & organizations.*

consultant, trusted friend, etc.) that can be automatically contacted should the loan get into trouble.

SECTION 9⁸

Amendment to 16.43.960. New subsection (j).

Makes the Commercial Fisheries Entry Commission statutes in Title 16 consistent with the amendment in Section 5.

SECTION 11¹⁰

Immediate effective date.

Original sponsor: Zharoff

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 243 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to loans under the Commercial Fish-
7 ing Loan Act and to limited entry permits pledged as
8 security for those loans; and providing for an effec-
9 tive date."

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

11 ~~* Section 1. AS 16.10.320(d) is amended to read:~~

12 Deleted (d) The total of balances outstanding on loans made to a borrow-
13 er under AS 16.10.310(a)(1)(A) may not exceed \$300,000. The total of
14 balances outstanding on loans made to a borrower under AS 16.10.-
15 310(a)(1)(B) may not exceed \$250,000 [\$100,000].

16 * Sec. 2.1 AS 16.10.335(a) is amended to read:

17 (a) If the debtor defaults upon a note for which a limited entry
18 permit has been pledged as security under AS 16.10.333 or 16.10.338,
19 the commissioner shall provide the debtor, by both certified and first
20 class mail sent to the debtor's last known address on file with the
21 commissioner, with a notice of default that includes

22 (1) a description of the security given for the note in-
23 cluding the number assigned to the pledged permit by the commission;

24 (2) the date upon which the default occurred;

25 (3) the amount of the debtor's outstanding principal and
26 interest [ARREARAGES] as of the date of the default notice, the total
27 amount remaining on the note less unearned interest, and the amount of
28 daily interest;

29 (4) a statement that the debtor may, within 15 days after

1 the postmark date of the notice, request a hearing to submit evidence
2 showing the debtor has not defaulted;

3 (5) a statement that the note may be reinstated if it is
4 brought current within 120 [60] days after the postmark date of the
5 notice;

6 (6) a statement that the debtor may reinstate the note by
7 submitting to the commissioner a plan of repayment if the commissioner
8 accepts the debtor's plan of repayment; [NOTE MAY BE PAID IN FULL LESS
9 UNEARNED INTEREST WITHIN 120 DAYS AFTER THE POSTMARK DATE OF THE
10 NOTICE];

11 (7) the place where reinstatement of the note [OR PAYMENT
12 IN FULL] may be made; and

13 (8) a notice in at least 10-point bold type stating: "IM-
14 PORTANT: YOUR FAILURE TO REINSTATE [OR PAY] THIS NOTE [IN FULL] BY THE
15 DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT
16 AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

17 * Sec. ^{3.2} AS 16.10.335(d) is repealed and reenacted to read:

18 (d) If requested by the debtor, the commissioner may waive any
19 of the time limits in (a) of this section if the debtor shows good
20 cause.

21 * Sec. ^{4.3} AS 16.10.335(e) is amended to read:

22 (e) Except as otherwise provided in (c) and (d) of this section,
23 if the debtor fails [UPON THE DEBTOR'S FAILURE] to reinstate [SATISFY]
24 the note within the time specified in (a)(5) [(a)(6)] of this section,
25 the debtor's interest in the permit is terminated by operation of law
26 without further notice. [ANY ENTRY PERMIT CARDS ISSUED TO THE DEBTOR
27 UNDER THE PERMIT MUST BE CANCELLED IMMEDIATELY UPON RECEIPT BY THE
28 COMMISSION OF A CERTIFICATE OF TERMINATION CONTAINING A COPY OF THE
29 NOTICE REQUIRED BY (a) OF THIS SECTION ISSUED BY THE COMMISSIONER.]

1 * Sec. ⁴ 5. AS 16.10.335 is amended by adding a new subsection to read:

2 (f) Notwithstanding (a) of this section, when a debtor files
3 bankruptcy, the debtor's interest in the limited entry permit is
4 terminated by operation of law without further notice as of the date
5 that the automatic stay issued in the bankruptcy is no longer in
6 effect, unless the debtor has reaffirmed the debt.

7 * Sec. ⁵ 6. AS 16.10.337(b) is amended to read:

8 (b) If the commission does not exercise its right of first
9 refusal within 30 days after it receives the offer, or if the permit
10 is not subject to a buy-back program under AS 16.43.290 - 16.43.330,
11 the department shall promptly advertise and sell the permit. If the
12 proceeds of the sale of a permit exceed the amount necessary to pay
13 the note in full, plus penalties, costs of administration of the note,
14 and attorney fees, the excess will be transferred by the commissioner
15 to the debtor. At any time after the department forecloses on a
16 permit under AS 16.10.335 and until the permit has been sold under
17 this subsection the debtor may

18 (1) repurchase the permit by paying the department the
19 amount necessary to pay the note in full, plus penalties, costs of
20 administration of the note, and attorney fees, as determined by the
21 commissioner;

22 (2) reinstate the note by submitting to the commissioner a
23 plan of repayment if the commissioner accepts the debtor's plan of
24 repayment;

25 (3) nominate a person to assume the debt under the loan
26 and, if the assumption of the debt is approved by the commissioner,
27 transfer the debt and note to that person.

28 * Sec. ⁶ 7. AS 16.10.338 is amended by adding new subsections to read:

29 (b) If a limited entry permit is pledged for security for a loan

1 made under AS 16.10.310(a)(1)(B) for the repair, restoration, upgrad-
2 ing, construction, or purchase of a vessel and the borrower thereafter
3 fails to make a payment or defaults, the commissioner shall, in addi-
4 tion to the notice provided under AS 16.10.335(a), notify the borrower
5 Amended that subject to the commissioner's acceptance the borrower may sell
6 ^{apply the sales proceeds to the debt} the vessel, and renegotiate payment of the balance due on the loan
7 ^{to avoid the immediate} ~~without~~ loss of the limited entry permit that has been pledged for
8 security for the loan.

9 X (c) Unless the borrower explicitly requests the commissioner to
10 foreclose on the limited entry permit, when a limited entry permit is
11 ^{Deleted} pledged for security for a loan made under AS 16.10.310(a)(1)(B) after
12 ^{and replaced with new language.} the effective date of this Act for the repair, restoration, upgrading,
13 construction, or purchase of a vessel and it is possible for the
14 commissioner to foreclose on the vessel, the commissioner may not
15 ^{same intent.} foreclose on the permit unless the vessel is

- 16 (1) sold to a responsible bidder through foreclosure; or
- 17 (2) disposed of as required by AS 16.10.355.

18 (d) After sale of a vessel under (c) of this section, the com-
19 missioner shall renegotiate with the borrower whose vessel has been
20 sold the repayment of the outstanding balance that remains on the
21 loan.

22 * Sec. 8. AS 16.10 is amended by adding a new section to read:

23 Sec. 16.10.353. WAIVER OF CONFIDENTIALITY. (a) The commis-
24 sioner may release information about a borrower's loan to any indi-
25 vidual when release of the information has been authorized by the
26 borrower. ^{Deleted} ~~A release authorized by the borrower under this subsection~~
27 ~~need not be in writing.~~

28 ^{Amended to include new language} (b) A person obtaining a loan under AS 16.10.300 - 16.10.370
29 after the effective date of this Act may agree, by signing a form

*Amended to include new
language. Same intent.*

1 prepared for the purpose, to waive the confidential treatment of
2 information about the borrower's loan. The borrower shall designate
3 on the form the names of persons and organizations to whom information
4 about the loan may be released. If the person agrees to a waiver
5 under this section and thereafter requests two extensions of payments
6 or defaults on the note, the commissioner may release information
7 about the loan to the persons and organizations specified by the
8 debtor.

9 * Sec. 9.⁸ AS 16.43.960 is amended by adding a new subsection to read:

10 (j) The commission shall immediately cancel a limited entry
11 permit card issued to a debtor under a loan made under AS 16.10.300 -
12 16.10.370 when the commission receives a certificate of loan termina-
13 tion containing a copy of the

14 (1) notice required by AS 16.10.335(a); or

15 (2) notice that the automatic stay issued if the debtor has
16 filed bankruptcy is no longer in effect.

17 * Sec. 10.⁹ This Act takes effect immediately under AS 01.10.070(c).
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Original sponsor: Zharoff

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 243 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to loans under the Commercial Fish-
7 ing Loan Act and to limited entry permits pledged as
8 security for those loans; and providing for an effec-
9 tive date."

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

11 * Section 1. AS 16.10.335(a) is amended to read:

12 (a) If the debtor defaults upon a note for which a limited entry
13 permit has been pledged as security under AS 16.10.333 or 16.10.338,
14 the commissioner shall provide the debtor, by both certified and first
15 class mail sent to the debtor's last known address on file with the
16 commissioner, with a notice of default that includes

17 (1) a description of the security given for the note in-
18 cluding the number assigned to the pledged permit by the commission;

19 (2) the date upon which the default occurred;

20 (3) the amount of the debtor's outstanding principal and
21 interest [ARREARAGES] as of the date of the default notice, the total
22 amount remaining on the note less unearned interest, and the amount of
23 daily interest;

24 (4) a statement that the debtor may, within 15 days after
25 the postmark date of the notice, request a hearing to submit evidence
26 showing the debtor has not defaulted;

27 (5) a statement that the note may be reinstated if it is
28 brought current within 120 [60] days after the postmark date of the
29 notice;

1 (6) a statement that the debtor may reinstate the note by
2 submitting to the commissioner a plan of repayment if the commissioner
3 accepts the debtor's plan of repayment, but that the commissioner,
4 after commencing a foreclosure proceeding, may accept a plan of repay-
5 ment submitted by the debtor only if the commissioner has not previ-
6 ously approved a plan of repayment for the debtor [NOTE MAY BE PAID IN
7 FULL LESS UNEARNED INTEREST WITHIN 120 DAYS AFTER THE POSTMARK DATE OF
8 THE NOTICE];

9 (7) the place where reinstatement of the note [OR PAYMENT
10 IN FULL] may be made; and

11 (8) a notice in at least 10-point bold type stating: "IM-
12 PORTANT: YOUR FAILURE TO REINSTATE [OR PAY] THIS NOTE [IN FULL] BY THE
13 DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT
14 AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

15 * Sec. 2. AS 16.10.335(d) is repealed and reenacted to read:

16 (d) If requested by the debtor, the commissioner may waive any
17 of the time limits in (a) of this section if the debtor shows good
18 cause.

19 * Sec. 3. AS 16.10.335(e) is amended to read:

20 (e) Except as otherwise provided in (c) and (d) of this section,
21 if the debtor fails [UPON THE DEBTOR'S FAILURE] to reinstate [SATISFY]
22 the note within the time specified in (a)(5) [(a)(6)] of this section,
23 the debtor's interest in the permit is terminated by operation of law
24 without further notice. [ANY ENTRY PERMIT CARDS ISSUED TO THE DEBTOR
25 UNDER THE PERMIT MUST BE CANCELLED IMMEDIATELY UPON RECEIPT BY THE
26 COMMISSION OF A CERTIFICATE OF TERMINATION CONTAINING A COPY OF THE
27 NOTICE REQUIRED BY (a) OF THIS SECTION ISSUED BY THE COMMISSIONER.]

28 * Sec. 4. AS 16.10.335 is amended by adding a new subsection to read:

29 (f) Notwithstanding (a) of this section, when a debtor files

1 bankruptcy, the debtor's interest in the limited entry permit is
2 terminated by operation of law without further notice as of the date
3 that the automatic stay issued in the bankruptcy is no longer in
4 effect, unless the debtor has reaffirmed the debt.

5 * Sec. 5. AS 16.10.337(b) is amended to read:

6 *Eliminate* (b) If the commission does not exercise its right of first
7 refusal within 30 days after it receives the offer, or if the permit
8 is not subject to a buy-back program under AS 16.43.290 - 16.43.330,
9 the department shall promptly advertise and sell the permit. If the
10 proceeds of the sale of a permit exceed the amount necessary to pay
11 the note in full, plus penalties, costs of administration of the note,
12 and attorney fees, the excess will be transferred by the commissioner
13 to the debtor. At any time after the department forecloses on a
14 permit under AS 16.10.335 and until the permit has been sold under
15 this subsection the debtor may

16 (1) repurchase the permit by paying the department the
17 amount necessary to pay the note in full, plus penalties, costs of
18 administration of the note, and attorney fees, as determined by the
19 commissioner;

20 (2) reinstate the note by submitting to the commissioner a
21 plan of repayment if the commissioner accepts the debtor's plan of
22 repayment, but the commissioner may not approve a plan of repayment
23 under this paragraph if the commissioner has previously approved a
24 plan of repayment submitted by the debtor;

25 (3) nominate a person to assume the debt under the loan
26 and, if the assumption of the debt is approved by the commissioner,
27 transfer the debt and note to that person.

28 * Sec. 6. AS 16.10.338 is amended by adding new subsections to read:

29 (b) If a limited entry permit is pledged for security for a loan

1 made under AS 16.10.310(a)(1)(B) for the repair, restoration, upgrad-
2 ing, construction, or purchase of a vessel and the borrower thereafter
3 fails to make a payment or defaults, the commissioner shall, in addi-
4 tion to the notice provided under AS 16.10.335(a), notify the borrower
5 that subject to the commissioner's acceptance the borrower may sell
6 the vessel, apply the sales proceeds to the debt, and renegotiate pay-
7 ment of the balance due on the loan to avoid the immediate loss of the
8 limited entry permit that has been pledged for security for the loan.

9 (c) When a limited entry permit is pledged for security for a
10 loan made under AS 16.10.310(a)(1)(B) after the effective date of this
11 Act for the repair, restoration, upgrading, construction, or purchase
12 of a vessel, the commissioner may not foreclose on the permit without
13 first foreclosing on the vessel and applying the sales proceeds to the
14 debt unless

15 (1) the borrower explicitly requests the commissioner to
16 foreclose on the permit first; or

17 (2) the commissioner estimates that the amount that would
18 be received for sale of the vessel would not exceed twice the estimat-
19 ed cost of foreclosing on the vessel.

20 (d) After sale of a vessel under (c) of this section, the com-
21 missioner shall renegotiate with the borrower whose vessel has been
22 sold the repayment of the outstanding balance that remains on the
23 loan.

24 * Sec. 7. AS 16.10 is amended by adding a new section to read:

25 Sec. 16.10.353. WAIVER OF CONFIDENTIALITY. (a) The commis-
26 sioner may release information about a borrower's loan to any indi-
27 vidual when release of the information has been authorized by the
28 borrower.

29 (b) A person obtaining a loan under AS 16.10.300 - 16.10.370

1 after the effective date of this Act may, by signing a form prepared
2 for the purpose, designate the names of persons and organizations to
3 whom a copy of the notice required by AS 16.10.335 must be sent.

4 * Sec. 8. AS 16.43.960 is amended by adding a new subsection to read:

5 (j) The commission shall immediately cancel a limited entry
6 permit card issued to a debtor under a loan made under AS 16.10.300 -
7 16.10.370 when the commission receives a certificate of loan termina-
8 tion containing a copy of the

9 (1) notice required by AS 16.10.335(a); or

10 (2) notice that the automatic stay issued if the debtor has
11 filed bankruptcy is no longer in effect.

12 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).
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Original sponsor: Zharoff

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 243 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to loans under the Commercial Fish-
7 ing Loan Act and to limited entry permits pledged as
8 security for those loans; and providing for an effec-
9 tive date."

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

11 * Section 1. AS 16.10.320(d) is amended to read:

12 (d) The total of balances outstanding on loans made to a borrow-
13 er under AS 16.10.310(a)(1)(A) ^{Permit} may not exceed \$300,000. The total of
14 balances outstanding on loans made to a borrower under AS 16.10.-
15 310(a)(1)(B) may not exceed \$250,000 ^{Permit, vessel, gear} [\$100,000].

16 * Sec. 2. AS 16.10.335(a) is amended to read:

17 (a) If the debtor defaults upon a note for which a limited entry
18 permit has been pledged as security under AS 16.10.333 or 16.10.338,
19 the commissioner shall provide the debtor, by both certified and first
20 class mail sent to the debtor's last known address on file with the
21 commissioner, with a notice of default that includes

22 (1) a description of the security given for the note in-
23 cluding the number assigned to the pledged permit by the commission;

24 (2) the date upon which the default occurred;

25 (3) the amount of the debtor's outstanding principal and
26 interest [ARREARAGES] as of the date of the default notice, the total
27 amount remaining on the note less unearned interest, and the amount of
28 daily interest;

29 (4) a statement that the debtor may, within 15 days after

1 the postmark date of the notice, request a hearing to submit evidence
2 showing the debtor has not defaulted;

3 (5) a statement that the note ~~may~~ be reinstated if it is
4 brought current within 120 [60] days after the postmark date of the
5 notice;

6 (6) a statement that the debtor may reinstate the note by
7 submitting to the commissioner a plan of repayment if the commissioner
8 accepts the debtor's plan of repayment; [NOTE MAY BE PAID IN FULL LESS
9 UNEARNED INTEREST WITHIN 120 DAYS AFTER THE POSTMARK DATE OF THE
10 NOTICE];

11 (7) the place where reinstatement of the note [OR PAYMENT
12 IN FULL] may be made; and

13 (8) a notice in at least 10-point bold type stating: "IM-
14 PORTANT: YOUR FAILURE TO REINSTATE [OR PAY] THIS NOTE [IN FULL] BY THE
15 DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT
16 AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

17 * Sec. 3. AS 16.10.335(d) is repealed and reenacted to read:

18 (d) If requested by the debtor, the commissioner may waive any
19 of the time limits in (a) of this section if the debtor shows good
20 cause.

21 * Sec. 4. AS 16.10.335(e) is amended to read:

22 (e) Except as otherwise provided in (c) and (d) of this section,
23 if the debtor fails [UPON THE DEBTOR'S FAILURE] to reinstate [SATISFY]
24 the note within the time specified in (a)(5) [(a)(6)] of this section,
25 the debtor's interest in the permit is terminated by operation of law
26 without further notice. [ANY ENTRY PERMIT CARDS ISSUED TO THE DEBTOR
27 UNDER THE PERMIT MUST BE CANCELLED IMMEDIATELY UPON RECEIPT BY THE
28 COMMISSION OF A CERTIFICATE OF TERMINATION CONTAINING A COPY OF THE
29 NOTICE REQUIRED BY (a) OF THIS SECTION ISSUED BY THE COMMISSIONER.]

1 * Sec. 5. AS 16.10.335 is amended by adding a new subsection to read:

2 (f) Notwithstanding (a) of this section, when a debtor files
3 bankruptcy, the debtor's interest in the limited entry permit is
4 terminated by operation of law without further notice as of the date
5 that the automatic stay issued in the bankruptcy is no longer in
6 effect, unless the debtor has reaffirmed the debt.

7 * Sec. 6. AS 16.10.337(b) is amended to read:

8 (b) If the commission does not exercise its right of first
9 refusal within 30 days after it receives the offer, or if the permit
10 is not subject to a buy-back program under AS 16.43.290 - 16.43.330,
11 the department shall promptly advertise and sell the permit. If the
12 proceeds of the sale of a permit exceed the amount necessary to pay
13 the note in full, plus penalties, costs of administration of the note,
14 and attorney fees, the excess will be transferred by the commissioner
15 to the debtor. At any time after the department forecloses on a
16 permit under AS 16.10.335 and until the permit has been sold under
17 this subsection the debtor may

18 (1) repurchase the permit by paying the department the
19 amount necessary to pay the note in full, plus penalties, costs of
20 administration of the note, and attorney fees, as determined by the
21 commissioner;

22 (2) reinstate the note by submitting to the commissioner a
23 plan of repayment if the commissioner accepts the debtor's plan of
24 repavment;

25 (3) nominate a person to assume the debt under the loan
26 and, if the assumption of the debt is approved by the commissioner,
27 transfer the debt and note to that person.

28 * Sec. 7. AS 16.10.338 is amended by adding new subsections to read:

29 (b) If a limited entry permit is pledged for security for a loan

1 made under AS 16.10.310(a)(1)(B) for the repair, restoration, upgrad-
2 ing, construction, or purchase of a vessel and the borrower thereafter
3 fails to make a payment or defaults, the commissioner shall, in addi-
4 tion to the notice provided under AS 16.10.335(a), notify the borrower
5 that subject to the commissioner's acceptance the borrower may sell
6 the vessel and renegotiate payment of the balance due on the loan
7 without loss of the limited entry permit that has been pledged for
8 security for the loan.

9 (c) Unless the borrower explicitly requests the commissioner to
10 foreclose on the limited entry permit, when a limited entry permit is
11 pledged for security for a loan made under AS 16.10.310(a)(1)(B) after
12 the effective date of this Act for the repair, restoration, upgrading,
13 construction, or purchase of a vessel and it is possible for the
14 commissioner to foreclose on the vessel, the commissioner may not
15 foreclose on the permit unless the vessel is

16 (1) sold to a responsible bidder through foreclosure; or

17 (2) disposed of as required by AS 16.10.355.

18 (d) After sale of a vessel under (c) of this section, the com-
19 missioner shall renegotiate with the borrower whose vessel has been
20 sold the repayment of the outstanding balance that remains on the
21 loan.

22 * Sec. 8. AS 16.10 is amended by adding a new section to read:

23 Sec. 16.10.353. WAIVER OF CONFIDENTIALITY. (a) The commis-
24 sioner may release information about a borrower's loan to any indi-
25 vidual when release of the information has been authorized by the
26 borrower. A release authorized by the borrower under this subsection
27 need not be in writing.

28 (b) A person obtaining a loan under AS 16.10.300 - 16.10.370
29 after the effective date of this Act may agree, by signing a form