

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 86/2

8957 SENATE RESOURCES

Note 3—Continued

er of the state. Examining the means used to accomplish the legislative objective and the reasons advanced therefor, the court must then determine whether the means chosen substantially further the goals of the enactment. Finally, the state interest in the chosen means must be balanced against the nature of the constitutional right involved. 574 P.2d at 12.

Article VIII, sec. 15 is the declaration by the people that the purpose of limiting entry into the fisheries is within the police power of the state, provided no exclusive right of fishery is created. The real question presented is whether the means by which the state limits entry bears a fair and substantial relation to the Act's purposes.

The nature of the right involved has been addressed by the court in *Apokedak* as an important right to engage in economic endeavor, which in some cases may involve the right to employment in the industry. 606 P.2d 1255 at 1266 (footnote omitted).

The purposes of the Act identified by the Supreme Court in *Apokedak* are: (1) enhancing the economic benefit to fishermen since too many involved in the industry prevented those relying on fishing for a livelihood from securing adequate remuneration, (2) conserving the fishery; (3) avoiding unjust discrimination in the allocation of a limited number of entry permits, and (4) administrative convenience. 606 P.2d at 1255. Does allocation of entry permits by the market and inheritance bear a fair and substantial relation to these legislative purposes?

The particular means of allocating permits is irrelevant to conservation of the fishery. That purpose is accomplished by controlling the catch. The allocation system is, therefore, irrelevant to achievement of this purpose.

The inheritance and transferability provisions of the Act clearly serve the purpose of promoting administrative convenience. Allowing the market and rules of descent and distribution to allocate permits avoids the necessity of a case by case ransing which was required for the initial award of permits. However, the purpose of promoting administrative convenience cannot alone outweigh the important right impinged by the statutory classification. 606 P.2d at 1266, footnote 45.

Allocation of permits by the market does not serve the purpose of avoiding unjust discrimination among those seeking permits. On the contrary, this system of allocation results in an unjust discrimination. Assuming a willing seller, the availability of permits is based solely on ability to pay. As noted by Justice Diamond in his concurring opinion in *Apokedak*:

This situation has the effect of creating another classification: on the one hand, the person with abundant financial resources, and on the other, a person of considerably

more modest means. It seems to me that the Act is having the effect of favoring the well-to-do over the poor. In my opinion, this discrimination is basically unfair or unjust, and does not conform to the principle in article I, section 1 of our Constitution which requires equality of treatment of persons in the state. 606 P.2d at 1266-69.

In the initial ranking an applicant was awarded points by demonstrating the economic hardship which would result from exclusion from the fishery. AS 16.43.250. As the system now operates, wealth is the sole determinative factor. The provisions to avoid unjust discrimination in the initial award of permits have been stood on their head. Clearly, the market allocation of permits bears no relation, substantial or otherwise, to the just allocation of permits.

The state analogizes the market allocation of permits to the sale of alcoholic beverage licenses and subsequent sales of homestead lands. I find neither analogy compelling. Of principal importance is the fact that the people enjoy access to the state's fisheries which does not pertain in the case of alcohol. See Art. VIII, secs. 3 and 15, Constitution of Alaska. Since the "right" to hold a liquor license does not occupy a privileged constitutional position, the equal protection analysis is quite different. In regard to land sales, it is true that there are some superficial similarities, since subsequent allocations are by the market and inheritance. The analogy breaks down, however, because of two important differences. First, land, as property, has some intrinsic worth, and the allocation process bears a direct relation to this intrinsic value. The limited entry permit is a license, not property, AS 16.43.150, and has no intrinsic value. The market for limited entry permits is an entirely artificial creation of the allocation process. Second, the law regarding ownership and transfer of land is the product of historical conditions antedating the creation of the United States of America. The Constitutions of the United States and Alaska recognize this historical legacy and have been interpreted with reference to it. The Act is of recent vintage and the legislature explicitly avoided endowing the permit with the attributes of a property right. AS 16.43.150(e).

It may be argued that the allocation of permits by the market is necessary to allow the permit holder to recoup his investment in vessels and gear. However, market allocation bears only a tenuous relation to this purpose. First, the market price of the permit is dependent on the type of permit and the location of the fishery, and is not directly dependent on the vessel and gear owned by the transferee. Second, investment in vessels and gear is, or should be, a factor in the permit holder's decision to leave the fishery. The capital investment can be amortized over

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The state appealed to the court of appeals which certified the appeal as appropriate for transfer to this court pursuant to AS 22.05.015(b) and Alaska R.App.P. 408(b). We accepted the certificate.

II. CONSTITUTIONALITY OF ENTRY RESTRICTIONS

Although the superior court struck down the Limited Entry Act on the grounds that its transferability provisions violate the Alaska Constitution, the Ostroskys have offered additional grounds for holding the Act unconstitutional. We consider these because a judgment may be affirmed on grounds different from those relied on by the trial court. *Moore v. State*, 553 P.2d 8, 21 (Alaska 1976); *Ransom v. Haner*, 362 P.2d 282, 285 (Alaska 1961).

We will first consider Harold Ostrosky's contentions concerning the validity of the entry restrictions of the Act. Those restrictions, in general, provide that no one can be the primary operator of commercial fishing gear without an entry permit. There are only a limited number of entry permits for each particular fishery. Following the implementation of the Act in 1973, entry permits were issued to those who had previously held gear licenses on a grandfather rights basis subject to detailed statutory and regulatory guidelines. See generally *Commercial Fisheries Entry Commission v.*

Apokedak, 606 P.2d 1255 (Alaska 1980). Commercial fishermen who had been crew members but not gear license holders were not eligible to receive entry permits in the initial allocation. AS 16.43.260(a). Under the Act, crew members need not have an entry permit as long as the holder of the entry permit is present when gear is operated. AS 16.43.140(b).

A. Article VIII, Section 3.

Article VIII, section 3 of the Alaska Constitution provides:

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Until it was amended in 1972, article VIII, section 15 provided:

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State.

In 1972 an additional sentence was added to section 15:

This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Harold Ostrosky argues (a) that section 3 of article VIII prohibits entry limitations

Note 3—Continued

the life of the permit, the length of which is dependent on the holder. Provision for emergency transfer of the permit mitigate any harshness due to illness or death of the holder.

The Act has as a purpose prevention of economic distress among fishermen and their dependents. A sizable capital investment is required to engage in commercial fishing. This investment was recognized in the initial ranking of applicants for free entry permits. AS 16.43.250(a)(1). See *Younger v. Alaska Commercial Fisheries Entry Commission*, 500 P.2d 917 (Alaska 1979). Vessels and gear unaccompanied by a permit to operate them are of relatively little value. The state limitation on entry to the fishery, also limited the market for vessels and gear. The Act recognizes the tie between permits and capital in AS 16.43.170(c) and AS 16.43.310-320. Under the buy back programs both the permits and vessels and gear are purchased by the state.

Applying the [State v.] *Enckson* [574 P.2d 1 (Alaska 1978)] test and considering the goal to be obtained, protection of the investment, and the means selected, allocation by the market, and in light of the important right impinged, I find the Act does not bear a fair and substantial relation to the statutory purposes. I further find that the inheritance and transferability provisions of the Act have the effect of causing, rather than avoiding, unjust discrimination among those seeking permits. I find the Act unconstitutional under Art. I, sec. 1 of the Alaska Constitution, and hold that the defendants cannot be penalized for failure to possess the required permits, therefore necessitating a reversal of their convictions.

Ostrosky v. State, No. 3 AN-80-7632 Criminal (Alaska Super., August 14, 1981) (footnote omitted)

and (b) that the prohibition of section 3 has not been affected by the 1972 amendment to section 15. The first part of this argument is supported by judicial authority. In *Bozanich v. Reetz*, 297 F.Supp. 300, 308 (D.Alaska 1969), a three judge federal court held that a precursor of the present limited entry system, chapter 186, SLA 1968, was unconstitutional under both section 3 and section 15 of article VIII. This decision was vacated by the United States Supreme Court on abstention grounds, *Reetz v. Bozanich*, 397 U.S. 82, 90 S.Ct. 788, 25 L.Ed.2d 68 (1970). The parties then litigated the same question in state superior court, which held that section 3 and section 15 of article VIII, as well as section 1 of article I, prohibit limited entry.⁴

Like the courts in the *Bozanich* cases, we have difficulty squaring the section 3 reservation of fish to the people for common use with a system which grants an exclusive right to fish to a select few who may continue to exercise that right season after season. We accept, therefore, at least for the purposes of this case, the proposition that limited entry is inconsistent with the command of article VIII, section 3.

We proceed to an examination of the second part of Harold Ostrosky's argument, namely that the amendment to article VIII, section 15 did not eliminate the prohibition on limited entry implicit in article VIII, section 3. This argument is textually correct, for the language of the amendment only refers to section 15. However, the conclusion is inescapable that the purpose of the amendment was to authorize, so far as the state constitution is concerned, a limited entry system. No other purpose seems reasonably possible.

Our conclusion is supported by the history of the 1972 amendment. As introduced by the Governor and as passed by the Senate, the language of the proposed amendment was stated in the affirmative: "The state may restrict entry to any fishery."⁵ As so written, there would be no question

but that limited entry would be constitutional as a matter of state constitutional law, despite any contrary provisions of the state constitution. The House Resources Committee changed the language to its present negative form. The Committee report explaining this action makes it clear, however, that the Committee did not intend to constrict in any way the sweep of the amendment. Thus, the report states with approval the purpose of the amendment: to "give the state the power to restrict entry into a fishery for certain public purposes." The report continues:

In his testimony to the committee the Attorney General, Mr. Havelock, suggested that an amendment of this nature is essential if Alaska is to ever have an economically healthy fishing industry. For more than a decade fisheries economists have been calling for such an institutional change, and over the past few years the fishermen themselves have come to recognize that this amendment, though no panacea, is an essential first step to revitalization of the fishing industry in Alaska.

After so endorsing limited entry the report proceeded to explain the Committee's substituted language:

After carefully studying the new language proposed in the Senate Resolution, your committee has adopted a substitute which alters the wording of the amendment in three small but significant ways.

Only the first change concerns the change from a positive to a negative form of expression. The report continues:

In the case of *Reetz v. Bozanich*, the U.S. Supreme Court held that a statute limiting entry into a fishery creates an exclusive right of fishery. As a consequence, the meaning of the new language, which the Senate proposes to add as a second sentence in Section 15, is not as clear as it could be. In order to eliminate any confusion or ambiguity we have altered this

4. *Bozanich v. Normberg*, No. 70-389 Civil (Alaska Super. Ct. Div. Juneau, March 9, 1971) per Judge Carlson.

5. 1971 Senate Joint Resolution No. 10.

new language to show that the state's power to limit entry is a specific exception to the "exclusive right" prohibition.

2 House Journal 760-61 (1971).

Thus, the purpose of the House Committee in altering the affirmative language of the Senate Joint Resolution to the negative form which found its way into the amendment was to clarify perceived ambiguities, not to restrict the meaning of the Senate Joint Resolution.

[1.2] We conclude that the purpose of the amendment to article VIII, section 15 was to grant the state the power to impose a limited entry system in any fishery, notwithstanding any state constitutional provisions otherwise prohibiting such a system. Therefore, Harold Ostrosky's argument that the entry provisions of the Act violate article VIII, section 3 of the Alaska Constitution must fail.

B. Article I, Section 1.

[3] Article I, section 1 of the Alaska Constitution states the principle that "all persons are equal and entitled to equal rights, opportunities, and protection under the law . . ." Harold Ostrosky's argument that the entry restrictions of the Act violate this clause is similar to his argument relating to article VIII, section 3. He argues that the superior court in the second *Bozanic* case held that the 1968 precursor to t^he

6. Harold Ostrosky raises two other points. (1) He argues that even if a limited entry program is constitutionally permissible, the current act does not further the purposes expressed in the amendment to article VIII, section 15 and is therefore invalid. However, the role of the judiciary is not to invalidate acts of the legislature because in retrospect the acts have arguably failed to achieve the purposes for which they were enacted. Rather, our role is to examine whether the legislature could reasonably have expected that the Limited Entry Act would advance the purposes of article VIII, section 15. See *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464, 101 S.Ct. 715, 723, 66 L.Ed.2d 639, 648-49, reh'g denied, 450 U.S. 1027, 101 S.Ct. 1735, 68 L.Ed.2d 322 (1981); *Vance v. Bradley*, 440 U.S. 93, 111-12, 99 S.Ct. 329, 949, 59 L.Ed.2d 171, 184-85 (1979). No argument has been made that this

present Act violated article I, section 1, that this conclusion was correct, and that article I, section 1 was not amended by implication by the 1972 amendment to article VIII, section 15. For the reasons we have expressed above with respect to the argument concerning article VIII, section 3, this argument is rejected. The authority to impose some limited entry system became in 1972 a part of Alaska's constitution. The amendment granting that authority cannot, in turn, be challenged as unconstitutional under preexisting clauses in the same document.⁶

III. CONSTITUTIONALITY OF TRANSFERABILITY PROVISIONS

AS 16.43.170(b) provides in pertinent part:

[T]he holder of an entry permit may transfer his permit to another person or to the [Commercial Fisheries Entry Commission] upon 60 days notice of intent to transfer under regulations adopted by the commission. No sooner than 60 days nor later than 12 months from the date of notice to the commission, the holder of an entry permit may transfer his permit. If the proposed transferee, other than the commission, can establish present ability to participate actively in the fishery, the commission shall approve the transfer

test is not satisfied, nor do we believe that any such argument would be reasonable. As we stated in *Commercial Fisheries Entry Comm'n v. Apokinak*, 606 P.2d 1255, 1263 (Alaska 1980):

The overall economic and conservation goals of the Act [which are the same as the constitutional goals] are met by limiting the numbers of permits.

(2) He argues that the Limited Entry Act is a burden on interstate commerce in violation of the commerce clause of the United States Constitution. The argument is so cursory that it is incomprehensible to us. Accordingly, we do not consider it. See *State v. O'Neil Investigations, Inc.*, 609 P.2d 520, 528 (Alaska 1980); *Lewis v. State*, 400 P.2d 689, 691 n. 2 (Alaska 1970); *Anderson v. State*, 420 P.2d 327, 330 nn. 4-5 (Alaska 1966).

and reissue the entry permit to the transferee.⁷

AS 16.43.150(h) provides:

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

Lori and Julianne Ostrosky do not attack the entry restriction aspect of limited entry. Instead, they contend the above transferability provisions are unconstitutional. Their argument is that these provisions exclude those who do not have sufficient assets to purchase an entry permit and who have not inherited one. This, they contend, amounts to an unconstitutional classification based on wealth and lineage. They also argue that the transferability provisions themselves create an exclusive right or special privilege of fishery barred by the first sentence of article VIII, section 15 and by the common use clause, article VIII, section 3. They suggest that a transfer system meeting the requirements of the constitution would be one in which a permit would revert to the state when the permit holder dies or is no longer using it. Reissuance could be accomplished either under a type of apprenticeship system, emphasizing past participation in commercial fishing as a crewmember, or a lottery, or a combination of both. For convenience we will refer to the existing system as "free transferability" and to the type of system proposed by Lori and Julianne Ostrosky as a "reversion-reissuance" system.

A. Article VIII, Sections 3 and 15—The Least Exclusive Alternative Contention

One interesting argument made by Lori and Julianne Ostrosky is based on the tension between article VIII, section 3 and the

first sentence of article VIII section 15 on the one hand, and the amendment to section 15 on the other. This argument concedes that some limited entry system is constitutionally permissible because of the amendment. However, since the common use clause of section 3 and the no exclusive right of fishery clause of section 15 remain in the constitution, the premise of the argument is that whatever system of limited entry is imposed must be one which, consistent with a feasible limited entry system, entails the least possible impingement on the common use reservation and on the no exclusive right of fishery clause. The argument concludes that free transferability does not entail the least possible impingement on the anti-exclusionist values which these provisions reflect.

Since "[i]t is a well accepted principle of judicial construction that, whenever reasonably possible, every provision of the Constitution should be given meaning and effect, and related provisions should be harmonized," *Park v. State*, 528 P.2d 785, 786-87 (Alaska 1974), the premise of this argument is logical. However, the conclusion that free transferability is more exclusive than a reversion-reissuance system has not been demonstrated.

[4] Given a finite number of permits for each of the several fisheries subject to the Act, it is not evident that free transferability constitutes a greater impingement on the nonexclusive, common use goals of article VIII than a system of reversion and reissuance. In a system of free transferability there will be those who are unable to afford a permit.⁸ However, in a reversion and reissuance system where reissuance is by lottery there will be those who are excluded by chance. Similarly, if reissuance is based

7. The present ability requirement is not a stringent one. It requires only that "the person is physically able to harvest fish in the fishery and has reasonable access to commercial fishing gear of the type utilized in that fishery." 20 AAC 05.770(15).

8. For the last quarter of 1981 the average price for a permit was approximately \$50,000. For some fisheries average prices were much high-

er, ranging upwards to \$100,000. Commercial Fisheries Entry Comm'n. 1981 Quarterly Permit Price Information (1982). Permits are, however, often transferred. In each of the years 1980 and 1981 about 1,000, or 10% of the existing permits, were transferred, primarily by sale. Commercial Fisheries Entry Comm'n. Commercial Fisheries Entry Permit Transfers, 1980 and 1981 (1982).

on an apprenticeship system there will be those who are excluded because, while they may be fit enough to fish, they are not hired by existing permit holders as crew members because stronger and younger help is available, or for other reasons. Exclusion from participation as a gear license holder in a fishery is not more violative of the common use or the no exclusive right of fishery clauses because it is based on one's financial rather than physical standing, or on the laws of chance.⁹ We thus reject the Ostrofskys' contentions that free transferability violates article VIII, sections 3 and 15.

B. Equal Protection.

[5] Three standards of review are commonly utilized in cases involving the equal protection clause of the fourteenth amendment to the United States Constitution. First, where suspect classifications (i.e., those based on race, national origin, or alienage) or fundamental rights (e.g., voting, litigating, or the exercise of intimate personal choices)¹⁰ are involved, differential treatment will be upheld only when the purpose of the enactment furthers a "compelling state interest" and the enactment itself is "necessary" to the achievement of that interest. This is often called the strict scrutiny standard.¹¹ Second, where classifications are based on gender or illegitimacy, the purpose of the enactment must be "im-

portant," and the means used to accomplish that purpose must be "fairly and substantially" related to its accomplishment. *Craig v. Boren*, 429 U.S. 190, 197-98, 97 S.Ct. 451, 456-57, 50 L.Ed.2d 397, 407 (1976), *reh'g denied*, 429 U.S. 1124, 97 S.Ct. 1161, 51 L.Ed.2d 574 (1977); see also *Lalli v. Lalli*, 439 U.S. 259, 265, 99 S.Ct. 518, 523, 58 L.Ed.2d 503, 509 (1978). This is regarded as an intermediate level of review. Third, in cases not involving suspect classifications, the infringement of fundamental rights, or classifications based on gender or illegitimacy, differential treatment must be based on a governmental interest which is "legitimate," and the enactment must be "rationally" related to its achievement.¹² In our discussion of federal equal protection we have called this the rational basis test. *Isakson v. Rickey*, 550 F.2d 359, 362 (Alaska 1976).

[6] The approach we have taken under the state equal protection clause is somewhat different. In contrast to the rigid tiers of federal equal protection analysis, we have postulated a single sliding scale of review ranging from relaxed scrutiny to strict scrutiny. The applicable standard of review for a given case is to be determined by the importance of the individual rights asserted and by the degree of suspicion with which we view the resulting classifica-

9. The system of termination of permits after a specified term of years during which the holder "may be expected to recoup his investment in gear and vessel and realize a reasonable return," suggested by the dissent entails permit reissuance, probably on the basis of a lottery. The reissuance aspect of such a system, if based on a lottery, would be subject to the comments which we have made above. Likewise, if reissuance were based on a type of apprenticeship system, our comments above would also be applicable. Additionally, such a system would be of questionable feasibility. For most fishermen commercial fishing is a career choice. It would work an obvious hardship on a gear license holder whose permit expired after, for example, ten years, to then force him out of his chosen career. This would be similar to restricting a license to practice law or medicine to a limited period after which the practitioner would have to make way for others and embark upon a second career. Fur-

ther, the system suggested by the dissent would tend to lock a fisherman into owning only one vessel during his fishing career. It would be difficult for a fisherman having only three or four years left on his license to finance the acquisition of a new vessel. Moreover, the fixed termination aspect of such a system would tend to foster exploitation, rather than conservation, of the fisheries.

10. L. Tribe, *American Constitutional Law* § 187 (1978).

11. See, e.g., *Kramer v. Union Free School Dist. No. 15*, 395 U.S. 621, 626-27, 89 S.Ct. 1846, 1849, 23 L.Ed.2d 383, 389 (1969).

12. *Harris v. McRae*, 448 U.S. 297, 324, 100 S.Ct. 2671, 2692, 65 L.Ed.2d 784, 809, *reh'g denied*, 444 U.S. 917, 101 S.Ct. 38, 65 L.Ed.2d 1180 (1980).

tion scheme.¹³ As legislation burdens more fundamental rights, such as rights to speak and travel freely, it is subjected to more rigorous scrutiny at a more elevated position on our sliding scale. Likewise, laws which embody classification schemes that are more constitutionally suspect, such as laws discriminating against racial or ethnic minorities, are more strictly scrutinized. This approach was first announced in *State v. Erickson*, 574 P.2d 1, 11-12 (Alaska 1978), where we stated:

In applying the Alaska Constitution, however, there is no reason why we cannot use a single test. Such a test will be flexible and dependent upon the importance of the rights involved. Based on the nature of the right, a greater or lesser burden will be placed on the state to show that the classification has a fair and substantial relation to a legitimate governmental objective. Where fundamental rights or suspect categories are involved, the results of this test will be essentially the same as requiring a "compelling state interest"; but, by avoiding outright categorization of fundamental and nonfundamental rights, a more flexible, less result-oriented analysis may be made.

(Footnote omitted).

[7] Having selected a standard of review on the *Erickson* sliding scale, we then apply it to the challenged legislation. This is done by scrutinizing the importance of the governmental interests which it is as-

serted that the legislation is designed to serve and the closeness of the means-to-ends fit between the legislation and those interests. As the level of scrutiny selected is higher on the *Erickson* scale, we require that the asserted governmental interests be relatively more compelling and that the legislation's means-to-ends fit be correspondingly closer. On the other hand, if relaxed scrutiny is indicated, less important governmental objectives will suffice and a greater degree of over/or underinclusiveness in the means-to-ends fit will be tolerated.¹⁴ Compare *Vogler v. Miller*, 660 P.2d 1192 (Alaska 1983) with *Rose v. Commercial Fisheries Entry Commission*, 647 P.2d 154 (Alaska 1982). As a minimum, we require that the legislation be based on a legitimate public purpose and that the classification "be reasonable, not arbitrary, and . . . rest upon some ground of difference having a fair and substantial relation to the object of the legislation . . ." *Isakson v. Rickey*, 550 P.2d at 362 (quoting *State v. Wylie*, 516 P.2d 142, 145 (Alaska 1973)).

The individual interest asserted in Ostroskys' challenge to the transferability provisions of the Act is not of a high order. The interest is that of obtaining the right to fish as a gear license holder by lottery or apprenticeship rather than by purchase or inheritance. The system advocated by the Ostroskys would exclude on the basis of one's ability to be hired as a crewman, a matter on which age and strength are often determinative factors, or on the basis of

13. The flexible scale we use resembles the "spectrum of standards" of which Justices Marshall and White have written with respect to federal equal protection. *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 98-99, 93 S.Ct. 1278, 1329-30, 38 L.Ed.2d 16, 81 (Marshall, J., dissenting), reh'g denied, 411 U.S. 959, 93 S.Ct. 1919, 38 L.Ed.2d 418 (1973); *Wandell v. Kline*, 412 U.S. 441, 454-59, 93 S.Ct. 2230, 2239-40, 37 L.Ed.2d 63, 75 (1973) (White, J., concurring). As Justice White has put it "[i]t must now be obvious, or has been all along, that, as the Court's assessment of the weight and value of the individual interest escalates, the less likely it is that mere administrative convenience and avoidance of hearings or investigations will be sufficient to justify what otherwise would appear to be irrational discriminations." *Id.*

14. Other language in *Erickson* suggests that a balancing of the individual rights asserted against the state's objective is to take place as a process separate from the identification and application of the appropriate standard of review. *Id.* at 12. Such a process is neither useful nor necessary because the selection of the standard of review on the sliding scale reflects an assessment of the importance of the individual rights and the standard when selected posits the degree of importance which the government objective must have and the required closeness of fit between the means used to achieve that objective and its achievement. Thus, balancing is inherent in the process of selection and application of the standard of review and is not itself a separate step.

pure chance, while the present system excludes those who are unable to afford a permit and those who do not inherit one.

While the current system may thus discriminate on the basis of wealth, it does so only in the manner that any price does. As Professor Tribe has observed: "Judicial intervention to redress poverty on the basis of equal protection is therefore in constant danger of becoming either wholesale or unprincipled. . . ." ¹⁵ This may be the reason why cases striking down fees for government supplied services or privileges as discriminating against the poor have been limited to instances where fundamental rights such as access to the courts,¹⁶ and ballots¹⁷ have been burdened.

[8] An entry permit is a government license having value issued to a limited number of people. As such it resembles a liquor license, or a permit to operate a trucking firm over a given route, or a utility franchise, or a broadcast license. While these privileges are both purchasable and inheritable, the fact that the poor cannot buy them is wealth discrimination only in the general sense that all prices discriminate in a society where wealth is distributed unequally. Further, the fact that the poor seldom inherit such privileges is lineage discrimination only in the sense that laws permitting inheritance of anything of value are discriminatory. Since the wealth and lineage classifications presented here are not different from those which pervade our system of private property, we do not place the interest asserted by the Ostroskys—redistribution of entry permits based on a system free of these classifications—in an elevated position on the *Erickson* sliding scale. It follows, of course, that the rational basis test is the appropriate standard for this federal constitutional claim.

The state argues that free transferability serves the following objectives:

15. L. Tribe, *American Constitutional Law* § 16-42 (1978).

16. *Griffin v. Indiana*, 351 U.S. 12, 78 S.Ct. 543, 100 L.Ed. 891 (1956).

—By making permits inheritable and transferable among family members, the Act ensures that a fishing family will be able to continue to fish if the permit holder dies or is disabled, thus protecting the family's source of income and its investment in vessel and gear. This prevents economic distress among fishermen and those dependent upon them for a livelihood.

—By making it possible for a person who has fished one permit to purchase a different one, the Act allows fishermen to move to more profitable gear types (from hand troll to purse seine, for instance) and to fish a different area when their usual area has bad runs. This prevents economic distress among fishermen, and retains the traditional mobility. . . .

—By making permits salable, the Act creates a market for them. Price depends largely on the state of the fishery. . . . Thus, in order to keep the fisheries healthy, fishermen will obey conservation laws, assist in the apprehension of violators of those laws, and willingly contribute to aquaculture programs.

—By giving permit holders an incentive—money—to transfer their permits, the Act prevents the creation of a closed class of fishermen. . . . [T]he number of transfers to date has been very large.

—By making the acquisition of a permit certain by payment of the purchase price, the Act allows fishermen to plan where they will fish, what type of gear they will use and what investments in vessel and gear they can prudently make.

—By not setting up any complex eligibility formulas for new entrants, the Act makes the transfer system readily understandable to those it will affect.

—By not requiring the Commission to get involved in transfers to an extent beyond the simple processing of transfer applications and the certification that the proposed transferee has the present ability

17. *Bullock v. Carter*, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972).

to fish, the Act eases the Commission's administrative burden, and allows it to focus its attention on other necessary duties, such as the setting of optimum numbers for limited fisheries and the decision whether presently open fisheries should be limited.

Free transferability, in other words, is meant to prevent hardship when a permit holder dies or becomes disabled; allow gear license holders to move from one fishery or type of gear to another; advance the causes of conservation, aquaculture, and adherence to fish and game laws by giving gear license holders a stake in the resource; increase the number of permits that are transferred; and ease administrative burdens on the state.

The opinion of the superior court, and the arguments of the Ostroskys, focus not on the foregoing purposes but on those identified in *Commercial Fisheries Entry Commission v. Apokedak*, 606 P.2d 1255, 1265 (Alaska 1980), namely, (1) enhancing the economic benefit to fishermen; (2) conserving the fishery; (3) avoiding unjust discrimination in the allocation of a limited number of entry permits; and (4) administrative convenience. While the objectives identified by the state are by no means unrelated to those expressed in *Apokedak*, the latter should be understood to be the overall objectives of a limited entry system.

Once the decision to institute a limited entry system is made, the question of how entry permits are to be transferred necessarily must be answered. The purposes of the transfer method will not necessarily be identical to the general purposes of limited entry. As we noted in *Apokedak*, 606 P.2d at 1264 & n. 39:

Seldom, if ever, will a statutory scheme, especially one as complicated as the Limited Entry Act, have a single monolithic purpose. The legislature usually acts with a variety of purposes in mind and each of these purposes deserves judicial recognition.²⁹

²⁹ This is not to say that the judiciary is required to hypothesize or invent purposes, something Jackson's intensified scrutiny test

specifically rejects. Close examination of the statutory scheme will usually yield several concrete legislative purposes having a substantial basis in reality, even if these purposes are not specifically identified in a statutory purpose clause.

[9] Each of the objectives identified by the state as purposes of free transferability was discussed in the extensive legislative hearings preceding passage of the Act. Thus, they may not be regarded as after the fact hypotheses. Further, the objectives are legitimate and they are fairly and substantially furthered by free transferability. We hold, therefore, that the equal protection clause of the state constitution is not violated by the transfer provisions of the Act.

The same analysis is applicable, and yields the same conclusion as to federal equal protection.

The judgment of the superior court is REVERSED.

RABINOWITZ, Justice, dissenting.

I.

I agree with the majority's suggestion that the conflict in constitutional provisions in this case is properly resolved by allowing the legislature to adopt a system of limited entry, but only through the means which are least restrictive upon other rights guaranteed in the constitution. Beyond the statement of this principle, however, I cannot agree with the application given the less restrictive alternative test to the "free transferability" system implemented by AS 16.43.170(h) and 16.43.150(h).

Free transferability impairs rights guaranteed by three separate clauses of the Alaska Constitution. The "common use" clause in Article VIII, section 3 provides:

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

The first sentence of Article VIII, section 15 states:

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State.

Finally, Article I, section 1 provides that "all persons are equal and entitled to equal rights, opportunities, and protection under the law."¹

In the absence of legislation pursuant to the second sentence of Article VIII, section 15,² the "resource" of the gear fisheries is reserved to the people for common use. The common use clause necessarily contemplates that resources will remain in the public domain, and will not be ceded to private ownership. Since the right of common use is guaranteed expressly by the constitution, it must be viewed as a highly important interest running to each person within the state.³

The enabling language of Article VIII, section 15 makes some inroads upon the application of the common use clause to the gear fisheries. Any system of limited entry, no matter how it is effectuated, will at any one time exclude a portion of the population from the resource. This observation, however, does not warrant the further conclusion that the common use clause is rendered a nullity with respect to entry legislation. In my view, Article VIII, section 3 still mandates that limited entry be achieved through the least possible "privatization" of the common resource.

Examined in these terms, free transferability makes the Limited Entry Act the most restrictive scheme possible under the common use clause. The ability to use and derive value from the gear fishery resource is dependent upon possession of a gear license, and these licenses are designed to operate as private property. The initial "grantees" enjoy the ability to sell, assign,

or pass on to their heirs their share of the gear fishery resource. Most importantly, the holder's right to the license never expires; the holder's heirs may hold it forever. Alternatively, they may sell it and realize a return based upon its value as an asset held in perpetuity. Under the free transferability system, none of the value of the resource is retained or ever returns to the state and the people.

In addition, I conclude that AS 16.43.170(b) and 16.43.150(h) create an "exclusive" right or "special privilege" within the meaning of Article VIII, section 15. Initial grantees were presented with a windfall at the expense of all other persons in the state. Public rights were extinguished in order to create exclusive private interests of sometimes enormous value. Under the equal protection clause, the populace was divided into two categories: those who would receive this great boon from the state, and those who would forever lose their share in the resource unless they someday "bought it back" through the purchase of a gear license.

Given the infringements upon the constitutional interests which I have described, free transferability would still be permissible under Article VIII, section 15 if it were necessary to a feasible system of limited entry. I believe, however, that the Ostroskys have presented a substantially less restrictive alternative that furthers all of the purposes which underlie free transferability.

The Ostroskys' principal objection to free transferability is that licenses never expire.

1. See also the "natural resources equal protection clause" in Article VIII, section 17.

2. Article VIII section 15 provides in relevant part:

This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

As noted by the majority, without this enabling language the entire limited entry statute would likely be unconstitutional.

3. I would hold that the state bears a high burden of showing the substantiality of its interests throughout our equal protection examination. Thus, I specifically disagree with the majority's conclusion that "[t]he individual interest asserted in appellants' challenge to the transferability provisions of the Act is not of a high order." In addition to the common use clause, see *Commercial Fisheries Entry Comm'n v. Apokedak*, 606 P.2d 1258, 1268 (Alaska 1980) ("important right to engage in economic endeavor"). See also *Hilbers v. Municipality of Anchorage*, 611 P.2d 31, 40 (Alaska 1980).

One alternative they suggest is that licenses should be issued only for a term of years, reverting to the state for redistribution upon expiration. In this way, the state would recapture control of the resource periodically and reassign it to the legislatively-determined appropriate recipients. Thus, the common resource would not be transferred forever to a discrete private class. The state and the people would have the recurring ability to allocate use rights.⁴

Under the proposed alternative, the length of the license term would be a matter for the discretion of the legislature, within constitutional limits. Article VIII, section 15 authorizes the state to create a limited entry scheme designed "to prevent economic distress among fishermen and those dependent upon them for a livelihood." This authorizes the state to define licenses in a way that makes it economically practical for license holders to fish. Given this authorization, the constitution recognizes that licenses may be granted for a sufficiently long period that the holder may be expected to recoup his investment in gear and vessel, and realize a reasonable return. Any license which goes beyond the level of reasonable economic attractiveness, and does so at the expense of the constitutional rights of others, is prohibited.

Similarly, the method of redistribution following expiration is also a matter of legislative choice, to be exercised within constitutional bounds. One proposal made by the Ostroskys is that reissuance should be made by lottery. This would prevent any danger of the licenses remaining in the

hands of a closed class. Any plan which effectively guaranteed renewal would be subject to the same criticisms leveled at the current free transferability plan.

The Ostroskys' suggestion does not actually require any change in the existing transferability scheme. Licenses may still be sold and inherited. The crucial difference is in the nature of the thing transferred. Licenses would resemble a lease interest in the resource as opposed to an outright ownership interest. They would still have value—possibly considerable value—and that value would be privately held. The distinguishing feature of free transferability with expiration is that something of the people's common use rights are still held by the state. Privatization of the common use interest is not effected to a degree well beyond what is necessary to implement an economically feasible limited entry system.

Because the Ostroskys have proposed an alternative for a feasible entry system which is less restrictive of the public's rights in the gear fishery resource, I would hold that the present statute is invalid under Alaska's Constitution.⁵

II.

I further disagree with the majority's discussion of the state's interest in the goals furthered by AS 16.43.170(b) and 16.43.150(h). The court's opinion appears to dismiss the importance of the overall objectives of the limited entry statute to the equal protection scrutiny of transferability

prudent investment by making the acquisition of a permit certain by the payment of the purchase price. It does not unduly complicate the transfer scheme. It retains the feature of limited involvement in transfers on the part of the CFEC. The commission's burden is increased only in that it must periodically reissue the licenses. In my opinion, free transferability plus expiration advances all of the above state goals equally as well as does the existing scheme of free transferability minus expiration.

3. Alternatively, I would order supplemental briefing in the case to allow the state to address the alternative of free transferability plus expiration.

4. The Ostroskys' "free transferability plus expiration" alternative serves all of the purposes advanced in support of the existing scheme. The alternative "prevents economic distress among fishermen and those dependent upon them" by protecting the family's source of income during the life of the permit even if the original holder dies or is disabled. It retains the "traditional mobility" of fishermen by allowing for the sale of limited-term permits. It encourages conservation of the fisheries by license-holders, who still have a direct economic stake in the health of their fishery. It discourages the creation of a closed class of fishermen by making this impossible; transfers of permits are still encouraged by the possibility of sale for money. It allows for planning and

provisions. It is true that specific sections within a complex statute will be designed to serve narrow purposes subsidiary to the statute's larger goals. It is also true that these narrow purposes may properly be asserted by the state in attempting to meet its burden under the state equal protection clause. The legitimacy of these subsidiary purposes, however, is seriously undermined if they are found to conflict with the greater goals of the statutory scheme as a whole.

Under AS 1643.010, the legislature has declared that "[i]t is the purpose of this chapter to promote the conservation and the sustained yield management of Alaska's fishery resource and the economic health and stability of commercial fishing in Alaska by regulating and controlling entry into the commercial fisheries in the public interest and without unjust discrimination." This statement of legislative intent does more than provide that one goal of the Limited Entry Act is to comport with the constitution. Decisions of this court have made it clear that the statute's policy of avoiding unjust discrimination extends further than to classifications forbidden by the constitution. *Commercial Fisheries Entry Commission v. Apokedak*, 606 P.2d 1255, 1268 (Alaska 1980).

In evaluating the strength of the state's interest in the goals behind the system of free transferability, it is incumbent upon this court to weigh the Ostroskys' argument that the legislatively-created "free market" for gear licenses discriminates on the basis of wealth.⁶ I would hold that the broad statutory anti-discrimination purpose of the Limited Entry Act militates against any system of transferability which makes gear licenses available only to the extremely wealthy. Certainly the state's interest in the current transferability provisions is diminished by the provisions' tendency to create such a classification.

6. I am also in disagreement with the court's observations that the Limited Entry Act discriminates on the basis of wealth only in the manner that any price does and I further disagree that liquor licenses and utility franchises furnish appropriate analogues. These assump-

David GLOVER and Dale Fett,
Appellants.

v.

Hubert SAGER & Hubert Sager, Jr.,
d/b/a Sager Trucking, Appellees.

No. 6659.

Supreme Court of Alaska.

July 22, 1983.

Action was brought for breach of employment contract. The Superior Court, Third Judicial District, Brian C. Shortell, J., granted defendants' motion for involuntary dismissal with prejudice at the conclusion of plaintiffs' case-in-chief, and plaintiffs appealed. The Supreme Court, Rabinowitz, J., held that: (1) breach of contract under ordinary principles of contract law and theory of promissory estoppel was established, and (2) trial court did not abuse its discretion by failing to impose sufficient sanctions for defendants' failure to make relevant documents available for discovery.

Reversed and Remanded.

1. Trial \Rightarrow 165

In considering motion for involuntary dismissal at close of plaintiff's case-in-chief in action tried by court without jury, trial court is required to view plaintiff's evidence in its most favorable light. Rules Civ. Proc., Rule 41(b).

2. Estoppel \Rightarrow 85

Promise which promisor should reasonably expect to induce action or forbearance on part of promisee or third person and which does induce such action or forbear-

ance overlooks the constitutional status of the right allocated by the Limited Entry Act and the fact that here the relevant "free market" is one which was created legislatively and one which perpetuates and aggravates economic disparities.

ance is binding only by the adopting statute of Contract

3. Estoppel

Evidence re trucks, re promises of employment, enable own on their trip, expenses, deli to trucking based on se of employ question of promissory

4. Master

Evidence re trucks, re promises of employment, enable own on their trip, expenses, deli to trucking based on se of employ question of promissory

5. Master

Evidence re trucks, re promises of employment, enable own on their trip, expenses, deli to trucking based on se of employ question of promissory

6. Contract

Evidence re trucks, re promises of employment, enable own on their trip, expenses, deli to trucking based on se of employ question of promissory

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
DIVISION OF PUBLIC SERVICES

PETERSBURG LEGISLATIVE INFORMATION OFFICE

PHONE: 772-3741 FAX: 772-3779

FAX TRANSMISSION

465-2832

TO:

FAX #: DATE:

MESSAGE:

Sen Resources

Senator Loren

1 page + summary to
follow from Troy Curtis
Psg

CHAIRPERSON, SENATOR LOREN LEMAN

I Am for A limited entry of some kind. I don't agree with the tiered pot system. IF anything I would like to see a pot limit.

The tiered system will be fine for the larger boats but smaller boats will be hurt. Just because a boat is small and doesn't fish as many pots doesn't mean it is a small part of his income. Many times it is just the opposite it could be the main source were as a bigger boat could have a number of other sources of income

THANK YOU

TROY CURTISS

P.O. Box 1532
Petersburg AK

99833

FAX TRANSMISSION

Date: 2/6/95

TO: Sen Reschler **FAX #:** 465-2832

MESSAGE:

2 page testimony to
follow — to given on
Feb 10 or during
SB 42 Teleconference

THANK YOU, CHAIRMAN LEMAN

WE URGE YOU TO SUPPORT THIS LEGISLATION.

SINCE 1984 WE'VE BEEN TRYING TO ACHIEVE SOME PROTECTION FOR THE CRAB RESOURCE THROUGH LIMITED ACCESS TO THE COMMERCIAL USERS.

BECAUSE OF THE NATURE OF THE FISHERY WHICH USES MULTIPLE UNITS OF GEAR AND CAN BE FISHED VERY PASSIVELY, A TRADITIONAL LIMITED ENTRY (OF THE TYPE DEVELOPED FOR SALMON & HERRING IN 1974) PRESENTS MANY PROBLEMS

FOR
INSTANCE

A PERSON CAN FISH VERY MINIMALLY BY USING VERY FEW POTS AND PARTICIPATE WITH LITTLE ACTIVITY, THEY CAN SOAK WHILE ANOTHER JOB IS PURSUED - SO, WHEN CFEC CONSIDERS LIMITED ENTRY THEY MUST ALSO

INCLUDE THESE PEOPLE AS WELL (I BELIEVE THIS WAS STIPULATED IN COURT CASE *JOHN'S VS STATE OF AK*) THEREFORE THE POTENTIAL FOR THE ACTUAL # OF POTS IN THE WATER APPRECIATES SIGNIFICANTLY ~~THE~~ THE RESOURCE SUFFERS ~~CONSIDERABLY~~ AND THE MANAGERS HAVE NO REAL WAY OF KNOWING THE ACTUAL EFFORT FISHING.

SO FINALLY, IN 1991, THE LEGISLATURE PASSED A BILL IMPOSING A MORATORIUM ON NEW ENTRANTS INTO THE DUNGENESS FISHERY SO THAT WE COULD STUDY VARIOUS POSSIBILITIES FOR CONSERVING THE RESOURCE. SB #2 IS A DIRECT CONTINUATION OF THIS PROCESS.

- IN SEPT 94 CFEC HELD HEARINGS THROUGHOUT S.E., AND THE CRAB INDUSTRY WAS UNITED IN TRYING TO DEVELOPE A INCLUSIVE TIERED ACCESS SYSTEM WHERE FISHERMAN WOULD BE GIVEN PERMITS TIED TO GEAR

LEVELS CONSISTENT WITH THEIR PART
PARTICIPATION. THIS IS IMMINENTLY
FAIR BECAUSE ALL PARTICIPANTS
ARE INCLUDED BUT IT ALSO GIVES
THE MANAGERS SOLID CONTROL OVER
THE TOTAL NUMBER OF POTS ACTUALLY
FISHING.

Bill Flor

PRESIDENT

S. E. DUNGENESS CRAB ASSOC

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
DIVISION OF PUBLIC SERVICES

PETERSBURG LEGISLATIVE INFORMATION OFFICE

PHONE: 772-3741

FAX: 772-3779

FAX TRANSMISSION

TO: Sen Res. 465-2832
FAX #: DATE:

MESSAGE: An Chairman Loren Lemmon
2 Page Testimony to Follow
Prior to the Comm.

Re: S.B. 42
2-6-95 teleconference

To Senator Loren Leman
about Senate Bill 42

I am against limiting entry into the
Dungeness crab fishery. I feel it is unnecessary
and that the people trying to push this through
are in effect attempting to deny other people
the same opportunities they received. There are
very few fisheries left a person can participate
in without having to invest in a permit. It
has become almost impossible for a person to
buy a boat and make a living fishing without
some major financial backing. I would like
to be able to supplement what fishing I've
been able to afford to do with dungeness fishing.
I feel anyone should be able to make a living
at fishing by participating in any fishery he
wants to try to make a go of.

I believe this fishery would conserve itself
due to size limits, and I believe most
legal crab get caught, and it would be a
shame for a limited amount of people to
shut the door for those looking for the same
opportunities they had received.

I also feel most people who participate in
this fishery are involved with numerous other
businesses and will not endure any more financial

hardship and probably less than those of
us who would lose the option to become
involved in this fishery.

Thank you,

Chris Ceris

Chris Ceris

Box 145

Petersburg, Ak 99833

(907) 772 4602

342

February 7, 1995

FEB 7 1995

Senate Resource Committee
Senator Loren Leman, Chariman
Senator Robin Taylor
Senator Drue Pearce
Senator Lyman Hoffman
Senator Georgianna Lincoln
Senator Rick Halford
Senator Steve Frank

Dear Senators;

I would like to say a few things about the Southeast Dungeness Crab Fishery and the proposed tiered system. I am a member of a dungeness crab fishing family.

The "Crab Coalition" was formed several years ago by a few local fishermen who had originally entered the dungeness fishery because there were no other unlimited fisheries for them to get into. They learned very quickly that the dungeness fishery was wide open with very few people knowing how lucrative it was. They have made a lot of money over the last 10 or so years with dungeness and thus have all been able to buy into other fisheries that are limited entry fisheries. They formed the "Coalition" because they simply do not want to share their wealth with their neighbors and friends who got into the fishery a few years after them.

If there is a dungeness crab stock problem then shouldn't ADFG shorten the dungeness season?

If there really are too many pots in the water shouldn't we lower the pot limit for everybody?

I believe the "Crab Coalition" got their heads together and agreed on the tiered system which would "look" as if it is being fair to the other fishermen but which in fact would eliminate many of those others as competition for dungeness crab.

I view dungeness pots and corresponding incomes as follows:

300 pots - A very good income
200 pots - A reasonable living
100 pots - Unable to make expenses

The "Coalition" would like you to believe that fishermen who qualify for 100 pots or less would be able to buy into being able

to fish more. I do not believe that anybody fishing a 100 or less pots will be able to make expenses let alone be able to buy into being able to fish more. 100 pots or less would probably eliminate those fishermen from the fishery. The "Coalition" is not interested in the "stocks", they are simply interested in eliminating their competition. If they are successful at this tiered system it will adversely affect many Southeast commercial fishermen and their families.

Please be very careful when deciding the fate of the Southeast Dungeness Fishery. The "Coalition" has made very, very good money with this fishery and are speaking very loudly to control this fishery for themselves alone. There is no reason that this fishery shouldn't be able to support equal effort from everybody who has been involved. If this means lowering pot limit slightly or shortening the season so be it. If we need limited entry then please consider equal treatment for all those fishermen who invested time and money in the fishery from the moratorium year back.

Thank you for your time and consideration.

Sincerely,



Vicki Curtiss

**STATE OF ALASKA
THE LEGISLATURE**

LEGISLATIVE AFFAIRS AGENCY
DIVISION OF PUBLIC SERVICES

PETERSBURG LEGISLATIVE INFORMATION OFFICE

PHONE: 772-3741 FAX: 772-3779

F A X T R A N S M I S S I O N

Date Feb.8,1995

To: Senate Resource Committee

Fax: #907-465-3810

**Message: One page Letter to follow, written
testimony for 2/10/95 House Resources Committee
meeting, and 2/8/95 House fisheries Committee
meeting**

RE: HB 107 / SB 42

**From Thomas O. Drennan
Petersburg Fisherman
P.O. Box 823
Petersburg, Ak. 99833**

TO: SENATOR TAYLOR
 REPRESENTATIVE GRUSSENDORF
 SENATE RESOURCE COMMITTEE
 HOUSE FISHERIES COMMITTEE

RE: SENATE BILL 42
 HOUSE BILL 107

1-8-95

DEAR LEGISLATORS,

I OPPOSE THE TIER SYSTEM FOR DUNGENESS CRAB. I FEEL THAT ENFORCEMENT WOULD BE NEXT TO IMPOSSIBLE DUE TO VARIOUS AMOUNTS OF POTS. THE ADFG POT REGISTRATION IS A LOCAL JOKE. I WAS LAUGHED AT BY OTHER CRABBERS WHEN I TOLD THEM I ONLY HAD REGISTERED 60 POTS IN 1988 WHEN I FIRST STARTED. THEY SAID I SHOULD HAVE CLAIMED 300 POTS LIKE EVERYONE ELSE.

I SUPPORT TRADITIONAL LIMITED ENTRY. IF THERE ARE TOO MANY POTS LET THE CFEC / ADFG REDUCE THE LIMIT TO 200 OR EVEN 150 POTS PER BOAT.

THE TIER SYSTEM IS NOT DESIGNED TO SAVE THE FISHERY. IT IS DESIGNED TO SAVE THE INCOME OF THE ELETE "300" POT CLB. LET EVERYONE CONTRIBUTE IN REDUCING POT EFFORT. PLEASE DON'T LET THE GREED OF A FEW RUIN THIS FISHERY FOR THE SMALL INDEPENDENT FISHERMAN.

THOMAS O. DRENNAN
 BOX 823 PETERSBURG, AK 99877

THANK YOU
 Thomas O. Drennan

**STATE OF ALASKA
THE LEGISLATURE**

LEGISLATIVE AFFAIRS AGENCY
DIVISION OF PUBLIC SERVICES

PETERSBURG LEGISLATIVE INFORMATION OFFICE

PHONE: 772-3741 FAX: 772-3779

FAX TRANSMISSION

To: Senate Resources Committee

Fax: #907-465-3810

Date: 3-20-95

Message: 2 pages to follow

March 20, 1995

Senate Resource Committee

Regards to: HB 107;SB 42

A fishing permit in the State of Alaska, constitutes a privilege to fish. One person should not be more privileged than another, just because of his level of fishing during a selected couple years.

The privilege should create an equal opportunity for all those participating, and future participants.

House Bill 107 and Senate Bill 42 is addressed to allow a select group of fishermen to participate at maximum historic levels of the past, while saddling the remaining group of those participating in the same fishery with the burden of resource conservation through reduced levels of effort and competition.

The State, when constructing a new type of limited entry program, should avoid repeating the malady and inequity created by the Federal IFQ program for longline fisheries, which benefitted and tremendously rewarded so few, and left the majority of others with very little or nothing.

This legislation, in regards to the S.E. Dungeness Crab Fishery, might not be necessary through the use of existing management tools. The current Limited Entry Program could be used, and action by the Board of Fish and Game, reducing the maximum allowable pots fished per permit, would contain the level of effort, protect the resource, and maintain a viable and equitable fishery.

Another option that addresses the needs of the S.E. Dungeness Crab Fishery would require amending the current bills or adopting new ones to conform to the "Fractional Licensing Limited Entry Proposal", as outlined in the attached CFEC document.

Thank you,

Dennis K. Rogers
P.O. Box 542
Petersburg, Ak 99833

Alternative Limited Entry Programs Suggested By Fishermen

2. Fractional Licensing Limited Entry Proposal

Fractional licensing ideas have recently been discussed in the economics literature and in NPFMC documents. Again, there could be many different versions of such a proposal.

Under a version of a fractional licensing proposal described to CFEC, the commission would initially issue permits for the same number of pots. For example, the commission might decide that everyone who receives a limited entry permit would receive a permit that would allow them to fish up to 150 pots.

This proposal would also allow for "stacking" of permits. For example, if a person with a 150 pot permit wanted to fish 300 pots, the person would have to purchase another permit and then have the commission combine them into a single permit for 300 pots. The "stacking provision" in this fractional licensing proposal could lead to a reduction in the number of operations after limited entry through voluntary contracting among fishermen.

Again, any Board of Fisheries regulations on the maximum number of pots which could be utilized also would need to be followed. This proposal would also require substantial changes to the limited entry law.

Pros:

- Might better control the growth in fishing capacity after limited entry than would the current LE program. To the extent the program is enforceable, the number of pots fished would not increase after initial allocation.
- Would provide a natural market mechanism for fleet reductions.

Cons:

- Would need changes in the limited entry law to allow for program
- Pot limits per permit may be difficult to enforce
- Some persons would initially be forced to take a reduction in the number of pots which they could fish.

Alaska State Legislature

Chairman
Judiciary Committee

Vice Chairman
Transportation Committee

Member
Resources Committee
Western Legislative Districts Task Force



State Capitol
Juneau, Alaska 99801-4182
907-465-3973
Fax: 907-465-3922

182 Front Street
Ketchikan, Alaska 99801
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Fax: 907-225-0713

Senator Robin L. Taylor

Sponsor Statement

Senate Bill 42

Relating to restrictions attached to certain commercial fisheries limited entry permits

This legislation would allow the Commercial Fisheries Entry Commission to implement a permit system for the Southeast Alaska Dungeness crab fishery.

The amount of effort already concentrated in this region has required some new methods for limiting the fishery. Unfortunately, this effort has induced a requirement for a tiered system of permits -- there are simply too many dungeness crab pots in the water.

This legislation would allow the CFEC to implement a tiered level of permits. One that has been suggested calls for three permits levels; one-hundred, two-hundred and three-hundred pot gear cards. Qualifications for would be based upon historic gear use.

The Southeast Alaska Dungeness fishery moratorium expires in 1996. Consequently, it is important that this legislation be passed this session so that it can be implemented in a timely fashion to avoid additional effort on this fishery.

MEMORANDUM

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

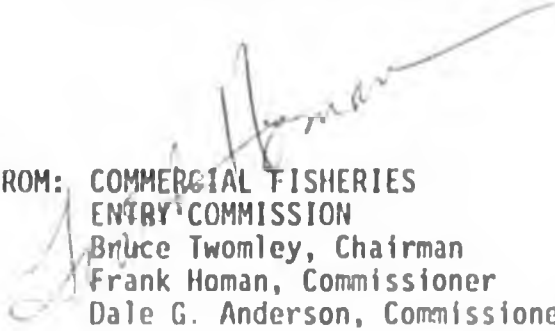
TO: Senator Loren Leman, Chair
Senate Resources Committee

DATE: February 3, 1995

FAX NO: 789-6170

TELEPHONE NO: 789-6160

SUBJECT: Position Statement for
SB 42


FROM: COMMERCIAL FISHERIES
ENTRY COMMISSION
Bruce Twomley, Chairman
Frank Homan, Commissioner
Dale G. Anderson, Commissioner

CFEC POSITION STATEMENT

CFEC supports Senate Bill Number 42. Under Alaska's current limited entry program, CFEC can limit the number of persons (permit holders) in a fishery but does not have the explicit authority to limit the fishing capacity of similarly situated classes of entry permit holders within a fishery. The legislation is forward oriented and only applies to fisheries limited in the future after completion of the public hearing process. It will have no impact on established limited fisheries. This legislation does not alter or limit the powers of the Board of Fisheries to impose additional restrictions of fishing capacity. SB 42 would provide CFEC with improved resource conservation tools.

The impetus for this legislation was generated by the Southeast Alaska Dungeness crab fishers after public hearings and research during the current moratorium. The need for immediate action is in the impending expiration of the CFEC moratorium on new entrants into the fishery. By law (AS 16.43.227), this moratorium will expire on January 2, 1996. A majority of participants at the public hearings favored a limited entry program for this fishery. If CFEC does not move to limit the fishery before January 2, 1996 it will return to open access.

Background

The current limited entry program has proven effective in limiting the growth in fishing capacity and effort when administered in salmon and herring fisheries when utilization is already maximized. However, the existing program thwarts the Commission's efforts to achieve effective resource conservation goals in Alaska's fisheries that employ a broad spectrum of vessel size and quantity of gear. Simply limiting the number of participants will fail to contain growth in fishing capacity and effort.

In such fisheries, smaller more part-time operations would tend to sell out to larger more full-time operations after limited entry. For example, this is true of the Southeast Alaska Dungeness crab fishery where many small boat participants currently fish a small number of pots on a part-time basis. This is also true in many of the state's other crab fisheries and state managed groundfish fisheries. By setting the fishing capacity of entry permits roughly at pre-limitation levels, entry limitation would do a better job of resource conservation by controlling the growth of excessive fishing capacity and effort.

This legislation would also help preserve the diverse nature of the fleet in such fisheries and help ensure that some of the entry permits in limited fisheries will be available and more affordable to smaller part-time and entry level operations.

Many of Alaska's valuable fisheries that coastal communities depend on may soon be facing an influx of new fishermen because of recent limitation programs and closures in other jurisdictions. In some of these fisheries, access restrictions may be needed in the near future to help conserve stocks and preserve the benefits of development for Alaska. This legislation would allow limitation programs better designed to fit the diverse nature of Alaska's fisheries.

SOUTHEAST DUNGENESS CRAB ASSOCIATION
P.O. Box 262
Petersburg, Alaska 99833
907-772-9248

DEC 27 1994
COMMERCIAL FISHERIES
ENTRY COMMISSION

December 21, 1994

Commercial Fisheries Entry Commission

Dear Mr. Twomley and staff:

Enclosed is a copy of our letter requesting Rep. Grussendorf and Senator Taylor to introduce and support a tiered pot system bill. As we talked this fall we are counting upon you to draft a bill which will include the major ideas discussed in your hearings and embrace a sufficient simplicity so as to increase our chances of passage.

Our financial status this time around is such that we won't be able to hire a lobbyist to track the bill, therefore we are also counting heavily upon your help in this area.

We are optimistic about this effort but hope you realize that if it fails a traditional limited access, even if it requires serious pot reductions, must be imposed before the moratorium expires as this fishery will never be able to withstand the certain flood of new participants.

Looking forward to hearing from you!

Sincerely,



Bill Flor, SEDCA

Background

SOUTHEAST DUNGENESS CRAB ASSOCIATION
P.O. BOX 262
PETERSBURG, ALASKA 99833
907-772-9248
December 22, 1994

DEC 27 1994
SERIES
ED

Dear Representative Grussendorf:

It's been almost four years since we passed the moratorium legislation which placed our S.E. Dungeness fishery in it's current moratorium status. This will expire Jan. 2, 1996.

At the request of the S.E. crab fleet the Commercial Fisheries Entry Commission held hearings this fall to try and work out a solution for a more permanent limited access scheme. Four main ideas were discussed: traditional limited entry, IFQ, tiered pot system, and fractional licensing. CFEC is reluctant to impose a traditional limited entry because of a possible increase in effort. (We currently fish a 300 pot limit but average 150 pots, hence the possibility to double the gear in the water.)

The other three ideas discussed required some type of legislative work. Both IFQ and fractional licensing were seen as too contentious and complicated with little possibility of success.

The tiered pot system was embraced by CFEC and the fleet both for it's fairness and possibility of achievement. Simply stated it places a crabber within a gear strata (i.e. 300/200/100) depending upon past effort. The fairness of this idea lies in that no one is excluded. There are many variations but our hope is that a sufficiently simple bill can be worked out that could achieve passage.

We have contacted CFEC to draft a proposed tiered system bill which we hope you would introduce and support.

Timing is critical. Our moratorium expires after this year and without further protection the S.E. Dungeness fishery will be in serious trouble (Ca., Or., and Wa. limited their dungeness fisheries this year.) We're counting on you to continue your support and looking forward to working with you.

Sincerely,

Bill Flor, SEDCA

c.c. Senator Robin Taylor,
C.F.E.C.

03/27/96

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

15:41:47

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:PSG

TCN:60608 SCHEDULED FOR:03/27/96 15:30 TO 17:00

FOR:PSG

PUBLIC HEARING

SENATE RESOURCES

LOCATION: BRANGELL LTC

SB 42

MR. STEVE

THOMASSEN

TESTIFY

SB 42

MR. OTTO

FLORSCHUTZ

TESTIFY

03/27/96

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

16:16:57

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:PSG

TCN:60608

SCHEDULED FOR:03/27/96 15:30 TO 17:00

FOR:PSG

PUBLIC HEARING

SENATE RESOURCES

LOCATION: **PETERSBURG**

SB 42

MR.

MARK

JENSEN

TESTIFY

SB 42

MR.

JOHN

JENSEN

TESTIFY

SB 42

MR.

BOB

GRANIE

TESTIFY

SB 42

MR.

BOCKY

LITTLETON

TESTIFY

SB

49

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 3, 1995

SUBJECT: Sectional Summary of SB 49, An Act relating to the Board of Fisheries

TO: Senator Drue Pearce

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of SB 49, An Act relating to the Board of Fisheries.

As a preliminary matter, note that a sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends AS 16 05 221(a) by changing the membership of the Board of Fisheries from seven to three members, providing that the governor appoint a chair of the board to serve a term of two years, and prohibiting members of the board from having a vested economic interest in fishing permits or fishing businesses.

Section 2 of the bill amends AS 16 05 221(c) by providing that the members of the Board of Fisheries shall serve four year terms.

Sections 3 and 4 of the bill amend AS 16 05 290 to provide that members of the Board of Fisheries shall receive a salary equal to step C, range 26 for Juneau. The effect of these provisions is to make the Board of Fisheries into a full time board and the members of the board into full time state employees.

Section 5 of the bill amends AS 16 05 320 by making technical amendments to the quorum requirements for the Board of Fisheries and the Board of Game.

Section 6 of the bill amends AS 39 25 110(11) to provide that the officers and employees of the Board of Fisheries are in the exempt state service.

Section 7 of the bill provides that the governor shall appoint, subject to confirmation by the legislature, three persons to serve on the Board of Fisheries and provides for initial terms.

Sectional Analysis

Senator Druce Pearce

February 3, 1995

Page 2

Section 8 of the bill provides for the transition from the current Board of Fisheries to the new Board of Fisheries in the event that the effective date of the bill is not passed by the legislature

Section 9 of the bill provides that secs. 1 - 6 of the bill take effect on July 1 following confirmation of at least two persons to serve on the new Board of Fisheries.

GEM klb
95-031 klb

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB 49

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to the Board of Fisheries; and BRU: Legal Services
providing for an effective date." Component: Operations
 Sponsor: Senator Pearce
 Requester: Senator Pearce COMPONENT SERIAL NO. 0093

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 00

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 16.05 and AS 39.25 to replace the existing seven-member Board of Fisheries, who are members of the public with a three-member professional board, who would be full-time state employees in the exempt service. This proposed change in the composition of the Fisheries Board represents a major departure in how the Board's activities will be conducted, and is properly a policy decision for the legislature and the administration. Nevertheless, the Department of Law provides extensive legal services assisting the Board of Fisheries in carrying out its responsibilities. This level of service is not expected to change, whatever the composition of the Board.

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Bateino, Attorney General
 Agency: _____

Phone: 485-3672
 Date: 2/6/95
 Date: 2/6/95

PREPARER TO PROVIDE
For further details

JR'S LEGISLATIVE OFFICE
same Office

Fiscal Note

9-LS0307F
Utermohle
3/6/95

CS FOR SENATE BILL NO. 49()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR PEARCE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Board of Fisheries and to joint meetings of the Board
2 of Fisheries and the Board of Game."

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

4 • Section 1. AS 16.05.221(a) is amended to read:

5 (a) For purposes of the conservation and development of the fishery resources
6 of the state, there is created the Board of Fisheries composed of seven members
7 appointed by the governor, subject to confirmation by a majority of the members of
8 the legislature in joint session. The governor shall appoint each member on the basis
9 of interest in public affairs, good judgment, knowledge, and ability in the field of
10 action of the board, and with a view to providing diversity of interest and points of
11 view in the membership. The appointed members shall be residents of the state and
12 shall be appointed without regard to political affiliation or geographical location of
13 residence. The members of the board shall elect one member of the board to
14 serve as chair of the board for a one-year term. The member who serves as chair

1 of the board may be reelected to successive terms as chair. The commissioner is
2 not a member of the Board of Fisheries, but shall be ex officio secretary.

3 * S.c. 2. AS 16.05.221(c) is amended to read:

4 (c) Members of the Board of Fisheries serve staggered terms of four years
5 and until a successor is appointed and confirmed by the legislature. Members of
6 the [BOARD OF FISHERIES OR] Board of Game serve staggered terms of three years
7 and until a successor is appointed. An appointment to fill a vacancy in the membership
8 of the Board of Fisheries or Board of Game shall be made in the same manner as the
9 original appointment and for the balance of the unexpired term.

10 * Sec. 3. AS 16.05.251 is amended by adding a new subsection to read:

11 (i) In deliberating on a matter before the board, the board shall consider
12 existing management plans adopted by the board regarding that matter. The board
13 may not consider matters that are beyond the scope of authority of the board.

14 * Sec. 4. AS 16.05.320 is amended to read:

15 Sec. 16.05.320. QUORUM. A majority of the members of a board constitutes
16 a quorum for the transaction of business, for the performance of any duty, and for the
17 exercise of any power. However, a majority of the full board membership is required
18 to carry all motions, regulations, and resolutions. A majority of the members of each
19 of the boards of fisheries and game constitute a quorum for the transaction of business
20 in a joint board meeting. A majority of the membership of each of the boards is
21 required to carry all joint motions, regulations, and resolutions of the boards.

22 * Sec. 5. AS 39.52.120(c) is amended to read:

23 (c) In addition to other provisions of this section, a public officer who is a
24 member of the Board of Fisheries or the Board of Game may not act on a matter
25 before the board if the public officer has not disclosed in the manner set out in
26 AS 39.52.220 all personal or financial interests in a business or organization relating
27 to fish or game resources and has not disclosed all ex parte contacts and
28 information received through those contacts concerning a matter before the
29 board. If it is determined under AS 39.52.220 that the public officer's
30 involvement in a matter violates AS 39.52.120(b)(4), the public officer shall
31 refrain from voting, deliberating, or participating in the matter. However,

1 notwithstanding AS 39.52.220, if a majority of the members of the board,
2 excluding the involved public officer, vote to require the public officer to vote,
3 deliberate, or participate in the matter, the public officer shall do so.



sent
10am

Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

MEMO

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

TO: George Utermohle, Attorney
Legal Services
VIA FAX: 2029 this page only

FROM: Annette E. Kreitzer, Aide
Senate Resources Committee

DATE: March 6, 1995

RE: LS0307C SB 49: Board of Fisheries

1) Sorry, I wasn't clear enough on one point:
DELETE: Page 2, lines 1 -4: ...[A MEMBER OF THE BOARD
MAY NOT HAVE A VESTED ECONOMIC INTEREST IN AN
INTERIM-USE PERMIT, ENTRY PERMIT, COMMERCIAL
FISHING VESSEL OR GEAR, OR IN ANY FISHERY RESOURCE
PROCESSING OR MARKETING BUSINESS.]

2) Section 2 AS 16.05.221(c) should read that the Legislature
must confirm a Board of Fisheries appointment, within 30 days of
the appointment. *(The Committee hasn't yet decided how to treat
the Board of Game, so I'm leaving that language as it is.)*

9-LS0307C
U:ermohle
3/4/95

CS FOR SENATE BILL NO. 49()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR PEARCE

A BILL

FOR AN ACT ENTITLED

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7 appointed by the governor, subject to confirmation by a majority of the members of
8 the legislature in joint session. The governor shall appoint each member on the basis
9 of interest in public affairs, good judgment, knowledge, and ability in the field of
10 action of the board, and with a view to providing diversity of interest and points of
11 view in the membership. The appointed members shall be residents of the state and
12 shall be appointed without regard to political affiliation or geographical location of
13 residence. The members of the board shall elect one member of the board to
14 serve as chair of the board for a one-year term. The member who serves as chair

WORK DRAFT

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WORK DRAFT

1 of the board may be reelected to successive terms as chair. A member of the
2 board may not have a vested economic interest in an interim-use permit, entry
3 permit, commercial fishing vessel or gear, or in any fishery resource processing
4 or marketing business. The commissioner is not a member of the Board of Fisheries,
5 but shall be ex officio secretary.

6 * Sec. 2. AS 16.05.221(c) is amended to read:

7 (c) Members of the Board of Fisheries serve staggered terms of four years
8 and until a successor is appointed and confirmed by the legislature. Members of
9 the [BOARD OF FISHERIES OR] Board of Game serve staggered terms of three years
10 and until a successor is appointed. An appointment to fill a vacancy in the membership
11 of the Board of Fisheries or Board of Game shall be made in the same manner as the
12 original appointment and for the balance of the unexpired term.

13 * Sec. 3. AS 16.05.251 is amended by adding a new subsection to read:

14 (i) In deliberating on a matter before the board, the board shall consider
15 existing management plans adopted by the board regarding that matter. The board
16 may not consider matters that are beyond the scope of authority of the board.

17 * Sec. 4. AS 16.05.320 is amended to read:

18 Sec. 16.05.320. QUORUM. A majority of the members of a board constitutes
19 a quorum for the transaction of business, for the performance of any duty, and for the
20 exercise of any power. However, a majority of the full board membership is required
21 to carry all motions, regulations, and resolutions. A majority of the members of each
22 of the boards of fisheries and game constitute a quorum for the transaction of business
23 in a joint board meeting. A majority of the membership of each of the boards is
24 required to carry all joint motions, regulations, and resolutions of the boards.

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26 (c) In addition to other provisions of this section, a public officer who is a
27 member of the Board of Fisheries or the Board of Game may not act on a matter
28 before the board if the public officer has not disclosed in the manner set out in
29 AS 39.52.220 all personal or financial interests in a business or organization relating
30 to fish or game resources and has not disclosed all ex parte contacts and
31 information received through those contacts concerning a matter before the

WORK DRAFT

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1 board. If it is determined under AS 39.52.220 that the public officer's
 2 involvement in a matter violates AS 39.52.120(b)(4), the public officer shall
 3 refrain from voting, deliberating, or participating in the matter. However,
 4 notwithstanding AS 39.52.220, if a majority of the members of the board,
 5 excluding the involved public officer, vote to require the public officer to vote,
 6 deliberate, or participate in the matter, the public officer shall do so.



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

MEMO

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

TO: George Utermohle, Attorney
Legislative Legal Services *2 COPIES VIA FAX 2021*

FROM: Annette E. Kreitzer *(AKC)*
Senate Resources Committee Aide

DATE: March 3, 1995

RE: Blank CS for SB 49: Board of Fisheries

Please draft a blank CS for SB 49 incorporating the following provisions:

- 1) Beginning with Section 1: AS 16.05.221(a) :Leave the board at seven members.
- 2) Board members elect, by simple majority, a chairman to serve for one year. Board members may be re-elected as chairman for successive terms.
- 3) Each board member must declare any possible conflict of interest in a public meeting prior to voting on the issue, for which a conflict may exist, before the Board. The board member may abstain from voting unless compelled to vote by the other board members. (Make this provision the same as the Legislative provisions for conflicts of interest.)
- 4) Keep the language in Section 2: AS 16.05.221(c) that Board of Fisheries members serve staggered terms of four years and until a successor is appointed and confirmed by the Legislature.
- 5) Delete Section 3.
- 6) Delete Section 4.
- 7) Keep Section 5 as is.

(1)

- 8) Delete Section 6.
- 9) Disclose ex parte information prior to voting on an issue which the information affects.
- 10) In considering proposals which come before the board, the board must consider management plans in areas where management plans exist. Do not consider proposals which the Board doesn't have authority to consider. (Currently, in its regulatory proposals, the board publishes ALL proposals even those over which it has no jurisdiction.)

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. 5049

Revision Date:	1/25/95	Dept. Affected:	Fish and Game
Title:	An Act relating to the	BRU:	Boards F&G
Board of Fisheries		Component:	Board Service
Sponsor:	Sen. Pearce	COMPONENT SERIAL NO.	#482
Requester:	Senate Resources		

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	278.6	278.6	278.6	278.6	278.6	278.6
TRAVEL	(65.0)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
CONTRACTUAL	(15.0)	(10.0)	(10.0)	(10.0)	(10.0)	(10.0)
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	198.6	218.6	218.6	218.6	218.6	218.6

CAPITAL EXPENDITURES	
CHANGE IN REVENUES ()	

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF	198.6	218.6	218.6	218.6	218.6	218.6
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	198.6	218.6	218.6	218.6	218.6	218.6

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	3	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This analysis assumes that the Board of Fisheries will go to a two year cycle and that hearings will be held throughout the state by one board member. The total number of hearing and regulatory meeting days will be about the same as the board now meets in regulatory session. Space costs will be slightly reduced, however printing, mailing and advertising will be approximately the same. Also, it is assumed that advisory committees will remain as is for the present time.

There are some questions about process that could increase the cost. For example, all regulatory meetings are now taped. Will hearings be taped? Having a complete record is important for legal challenges. Taping will require staff as well as board member at hearings. It may be difficult for the board to confine public testimony to hearings and not allow during regulatory meetings. This could increase time and expense.

See page two for a comparison of costs.

Prepared by:	Beverly Reaume <i>BR</i>	Phone:	465-6095
Division:	Administration Boards Support Section	Date:	2/14/95
Approved by Commissioner:	<i>[Signature]</i>	Date:	2.14.95
Agency:	Fish and Game		

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

January 17, 1995 Ethics Statement

Presented by Larry Engel, Chairman, Alaska Board of Fisheries
Developed in Conjunction with the Alaska Department of Law

Members of the Board of Fisheries are appointed on the basis of their interest in public affairs, good judgment, and knowledge of fisheries and with a view toward providing diversity of interest and points of view. They are appointed without regard to political affiliation or location of residence.

Board Members should be motivated to act for the best interest of the state as a whole. They should not act as a representative of any particular fishing group or as a representative of any particular area of the state.

Board members are governed by the Executive Branch Ethics Act. Among other things, the Ethics Act prohibits a member from deliberating and voting on a proposal that creates a significant conflict of interest for that member. A conflict of interest can either be a financial interest or a personal interest that is held by a member or by someone in the member's immediate family or household.

An example of a financial interest is when a Board member, or someone in the member's immediate family or household, owns a limited entry permit for a commercial fishery. An example of a personal interest is when a Board member, or someone in the member's immediate family or household, has a position of authority in an organization that urges the Board to allocate fish to a certain group. Whether a financial or personal interest should prevent a member from deliberating and voting on a proposal can only be determined by examining the probable effect of Board action on that proposal.

If a proposal would likely cause a significant benefit to a Board member through his or her personal or financial interest, then the member should not deliberate or vote. If a member does vote in that situation, the Board's action could be voided by a court because of the conflict of interest, not because of the merits of the Board's actions.

In order to decide whether a proposal will result in a significant benefit to Board members, I will be considering several factors. These factors include:

1. The number of persons who participate in a fishery where a member, or a member's immediate family or household, owns a limited entry permit.
2. The current value of the limited entry permits owned by the

Board member and the member's immediate family or household.

3. The likelihood that a proposal will result in a significant increase or decrease in fish returning to the permit holder's fishery.

4. The total value of that increased or decreased amount of fish.

5. The permit holder's proportion of that fish if divided equally among participating permit holders.

6. The value of that proportion relative to the other income of the permit holder.

7. The likelihood that a proposal will significantly benefit members of a group in which a Board member, immediate family, or household member holds a position of authority.

8. Whether this benefit also be enjoyed by persons outside of the group.

9. How a proposal would personally benefit a Board member, family, or household member who has a position of authority in that group.

10. Whether the Board member's personal benefit would be significant.

There may not be enough information to answer all of these questions. If the benefit to a Board member's financial or personal interest is conjectural or uncertain, it is unlikely that the proposal will create an improper conflict of interest. In some instances, it may not be possible to determine the effect of a proposal on a Board members' interests until the proposal is actually considered by the Board, after members have given Ethics Act disclosures and after the staff of Fish and Game has given its reports. I will generally make my decisions about conflicts of interest for each proposal after receiving the benefit of staff reports and prior to the time that proposal is brought up for deliberation. If a Board member disagrees with my decision, the member may ask the full Board to vote on the issue.

If a Board member is excluded from deliberating or voting on a proposal, they may still provide the Board with the benefit of their expertise in that fishery. During the public comment period, a Board member who has a conflict of interest, may, as a member of the public, furnish information and be questioned by other Board members.

Senate Resource committee
February 21st, 1995

First, I would like to thank the Senate resource committee for inviting me here today.

My name is Michael Martin, I am a third generation Alaskan, and someone who has participated in Alaska's fisheries for the past 27 years, and participated in the regulatory process as a Board of Fish and Joint Boards Chairman. I'm here to speak to you about current B.O.F. problems and possible solutions.

I am not here to pit one user group against the other, but hopefully to instill upon you the need for change in the way this great State solves its problems.

It is clear that sportfishing, tourism, and commercial fishing ^{ARE} ~~is~~ crucial to the present and future of Alaska's economic diversification. I would also make the point that anyone who has ever traveled to outlying villages would understand how important subsistence is to this State.

The problem:

With so many diverse needs and wants, how do we balance our natural resources to the "maximum benefit" to Alaska and Alaskan's?

With so many opinions, depending on what biases you have, how do we get diverse groups to come together on issues?

With Federal "take-over" pressure and a declining State budget, how do we ensure there is enough sound biological data and enforcement for our State regulations.

With the Subsistence issue still unresolved, how do we break the wedge that is in place for splitting this state apart?

It starts with good planning. Any good businessman knows you won't stay in business for very long without short, medium, and long term goals, and being able to look ahead for the glitch that's going to cost your business money. I feel State management of our renewable resources should take the same direction.

The State has two main issues that have still not been resolved to the public's satisfaction. False Pass interception of chums, and Cook Inlet Sports fish/Commercial fish allocations. These two issues have polarized the appointments to the Board. The polarization has also effected how the public perceives the Board process. The process is in jeopardy if these two issues are not resolved.

People who are opposed to the Board process, have deep concerns over the way the Board has allocated in the past. They feel the Board has been dominated by commercial fishermen, or Boardmembers have not been responsive enough to the needs of Western Alaska. I understand these concerns.

I will first address the conception that commercial dominated Boards is the reason we have a difficult time with the allocation between sport fisheries and commercial fisheries.

Boards have been dominated with commercial fishermen. The main reason was that more than 90% of the allocation issues were between commercial fisherman. Commercial fishermen and sports fishermen have some main philosophical traits. You are either a terminal comm. fisherman/terminal sportman or a mixed stock comm. fishermen/mixed stock sportsman or the mixture of both..

If we (the Board) were dealing with a commercial verses commercial fisheries allocation, one of the main tools the Board would use is historical catches as a base for an allocation decision. But if we take historical catches of commercial harvest and compared it with historical sportfish harvests, sport fisheries would normally not have a significant allocation.

Without long term planning, I think this State will tear itself apart if we keep trying to deal with sport fisheries growth in a reactionary forum. I also believe additional tools are needed when addressing allocation between sport fisheries and commercial fisheries. The current allocation criteria the Board uses is not sufficient in dealing with the complexities involved with the current growth trends of Sport fisheries.

As a past Boardmember, we had the False Pass issue before us three times during my tenure. The most difficult part of the issue was the lack of information. I do not believe any Alaskan should have his livelihood taken away, unless there is just reason. No Boardmember

should make decisions based on public perception, emotion, or whether it gets the current Governor re-elected. A Boardmember has a responsibility to completely understand the issue before making a vote that will effect fellow Alaskans. If you're going to change someone's life, you better understand and have confidence in your vote. If you don't have enough information, or evidence to make a sound decision, leave the regulation the way it was.

I do not think it's in the best interest of this State to pit Alaskans against Alaskans. Nor do I feel that this is what this State is all about. This is Alaska. What they do in other States may not be what's best for us. We should create our own way of dealing with our fish & game management, unique to Alaska, not copying other States.

I propose the following:

- The Governor appoint qualified, ~~high integrity~~ people from diverse regions, who will accept the position without an agenda. With no focus on how they might vote on main issues.

- The legislator confirms appointees with the same considerations.

- The Board goes back to a two year cycle.

- Change the ethics law, in regards to how it applies to the B.O.F. and B.O.G.

- The Governor puts together a working group of past chairmen and vice-chairmen. The group would be asked to come up with creative alternative solutions/suggestions for current difficult issues that face the State.

In conclusion, this State's management, like a retirement portfolio, needs diversification. We need our commercial, sport, subsistence and personal-use fisheries. We need new innovative direction on solving these very difficult issues. We need to plan for the future needs of the State, and we need to stop dealing with difficult issues in a reactionary forum.

Thank you for your time.

Michael R. Martin
13300 Venus Way
Anchorage, Ak. 99515

Governor's Working Group

ALASKA'S FISHERIES 2000

A active, not reactive approach to:

- Sport fisheries/Tourism
- Commercial fisheries
- Personal use

SUGGESTED TOPICS (but not limited to):

- Finite resources - unlimited users
- Maximize utilization of the resource to benefit the State.
- Commercial regional allocations vs. other regions
- Sport/Commercial public relations.
- Sport/Commercial current allocation and growth problems.
- Sport/Commercial future allocation and growth problems.
- Habitat (high impact areas).
- Non-resident CFEC permits back to the State of Alaska.
- Commercial management programs to put more money into state coffers for resource management, projects, and studies.
- Management strategies to address current "hot spot" issues.
- Personal use management alternatives.
- Limited entry for guides.

WORKING GROUP MEMBERS:

- Tom Elias (past B.O.F. Chairman, Taxidermist).
- Irv Carlile (past B.O.F. Vice-Chair, Sportsman).
- Bud Hodson (past B.O.F. Chairman, Lodge owner).
- Michael Chihuly (past B.O.F. Vice-Chair, Charter boat).
- Gary Slaven (past B.O.F. Chairman, Commercial Fisherman).
- Robin Samulson (past B.O.F. Vice-Chair, Commercial Fisherman).
- Michael Martin (past B.O.F. Chairman, Commercial Fisherman).

SUPPORT TEAMS:

- ADF&G, Department of Law, CFEC, Department of Commerce,
- Department of Public Safety, Governors office.

Projected expenses:

Travel - Five meetings in Anchorage.

Robin Samulson

\$1,750.00

Gary Slaven	\$1,750.00
Michael Chihuly	\$ 600.00

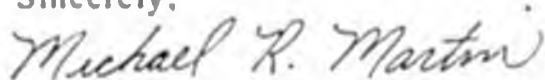
Information:	\$2,000.00
Teleconferences:	\$1,250.00
Communications: (Fax & Tel.)	\$1,300.00
Misc. exp.	\$2,000.00
Total estimated expenses:	\$9,500.00

It would probably be in the best interest of the State, to have someone who has more experience in this kind of financial venture, to go over my estimates. I do not want to start this group under false financial pretences.

At the request of the Governor, this group would be asked to come up with creative alternative solutions/suggestions for current difficult issues that face this State. This group would bring a statewide perspective, with a wealth of experience. I believe the group would not be prone to political pressures, because of the high integrity of these past board members..

In conclusion, this group would provide a new creative approach to resolving on-going, and future Statewide fisheries management problems.

Sincerely,



Michael R. Martin

Past Chairmen and Vice-Chairmen of the Board of Fisheries.

Gary Slaven (past chairman)
P.O. Box 205
Petersburg, Ak. 99833
(907)772-3675

Bud Hodson (past chairman)
Tikchik Narrows Lodge
4852 Hunter Dr.
Anchorage, AK. 99502
(907)243-8450

Michael Martin (past chairman)
13300 Venus Way
Anchorage. 99515
(907)345-0345

Tom Elias (past chairman)
Hunter Fisher Taxidermy
Anchorage, Ak. 99518
(907)561-1466

Michael Chihuly (past vice chairman)
Chihuly Charters
Ninilchik, Ak.
(907)567-3374

Robin Salmelson (past vice-chairman)
Box 412
Dillingham, Ak 99576
(907)842-5335

Irv Carlile (past vice-chairman)
P.O. Box 2349
Soldotna, Ak. 99669
(907)262-5389

FAX COVER SHEET

BRUCE SCHAETLER
P.O. BOX 2254
KODIAK, ALASKA 99615
Phone 907/486-4686 Fax 907/486-7655

TO: Senator Loren Leman
Chairman, Senate Resources Committee
FAX # 465-3810

PAGES, Incl. cover: 4

FROM: Bruce Schactler

DATE: February 15, 1995

Dear Senator Leman:

Please copy the following letter for each member of the Senate Resources Committee for their meeting today. (Senators Pearce, Frank, Halford, Taylor, Lincoln, and Hoffman)

Please call me if you have any questions.

Thank you for your help.

Sincerely,



P.S. Loren - I believe most of this letter is
pertinent to your discussion today.

Thankyou

February 15, 1995

TO: Senate Resources Committee Members

Senator Leman

Senator Pearce

Senator Frank

Senator Lincoln

Senator Halford

Senator Taylor

Senator Hoffman

FAXED to Chairman Senator Loren Leman 465-3810

I testified on Friday, February 10th to the Senate Resources Committee regarding Virgil Umphenour and his appointment to the BOF. In case you don't place my name, you may remember my use of the phrase "ignorant board members". After a question from you about a professional board, I qualified my use of ignorant as not being negative or hostile.

This whole Board business is the single most important subject of the political scene! The Board of Fish makes decisions that will affect every aspect of my life for the rest of the duration of commercial fishing. It isn't a weekend here or there in the summer, it isn't a hobby, or even fun most of the time. It is my whole life. I am 42, married with children. I came here when I was 18 and have been here since. I pay state taxes, city taxes, borough taxes, property taxes, ASMI taxes, and aquaculture taxes. I'm a member of the Elk's and Chamber of Commerce. I'm an average, although maybe more active and vocal, commercial fisherman. I'm not a millionaire. I've been fishing since 1976 and I'm still \$150,000 in debt. My wife works to make house payments and buy groceries.

The "Southcentral Legislators" that signed the letter to Commissioner Rue and who are referred to by Bob Penney in his threat letter, are so hung up on their obsession with the Upper Cook Inlet, that the entire industry is suffering because of it. Please isolate the Upper Cook Inlet problem and support the only industry in Alaska that is a bright star with a renewable resource.

Why hold hostage or harm the setnet fishermen catching pink salmon on the Alaska Peninsula or Atka Island just because you are all upset over Cook Inlet Management? Why not increase the ADF&G budget, build up and enforce the industry as much as possible? You have the votes and the power to do it and all of the incentives in the world; income to the state and jobs for its citizens. You also seem to have the votes and power to take care of this Cook Inlet problem as a separate issue. So why not do it without dragging down the whole Board process with it?

I encourage you to go to a Board of Fish meeting some time. In fact, take a day and go to the meeting in February - if the Conflict of Interest issues can be taken care of by then so the meeting can take place.

Decisions made at these various meetings involve use of technical fishing gear, allocation between gear types, management decisions (both local and statewide) and species of every kind from sea cucumbers to codfish to crab in the off-shore seamount fishery. Many of these subjects are controversial and complicated and a Board Member, or some Board Member, must be able to at least relate to as to what's being discussed. This is where the word ignorant comes in.

How can Virgil, or anyone for that matter, intelligently discuss management of the Bairdi Crab fishery concerning a pot limit overlap period as it relates to bad winter weather when he's never been out of the Tanana River? How can he discuss dynamics of the Kodiak seine fishery when the only fish he's ever saw migrate were doing so in a river past a fish wheel?

I do not use the word "ignorant" derogatorily. I have seen Board Members make decisions based on information received from testimony and ADF&G staff reports that was only half right, but very well presented so that it appeared to be 100% iron-clad correct. Why? Because they didn't have the broad-based fisheries experience to understand and determine the difference between fact and fantasy.

The idea of Bob Penney's South-central coalition to only confirm those that think as they do will continue to ruin the Board of Fish. If indeed you have the votes and can find some justification to not confirm someone not of your choosing, then what is left for the Board? You say a professional board!

So what is a professional board? Three retired "non-commercial" fishermen? If they're not commercial fishermen, then are they sport fish? Would they put a man's business and family in the street to catch four more sport salmon?

If the BOF must "change the way it votes", then you must have people on the Board that will vote the way they're told or the way a new law tells them to vote. Now what? Change the law to your special view? Would the members of a professional board be retired ADF&G employees that don't know much more than what statistics tell them?

Time and again at meetings, it's proven that ADF&G know very little of the fishery outside their office. Larry Engle, a retired ADF&G employee and chairman of the present BOF, was put on the Board specifically to champion the sport fish cause. When he was appointed, he was employed by the Mat-Su Borough as a consultant/lobbyist. In that capacity, he testified against the Kodiak salmon fishery. Six months later, he was appointed to the BOF where he was allowed to deliberate and vote on the very same issue. He tried to drag another subject of his own, or his previous employer's agenda, into the discussion and was denied by the Attorney General's office. Now he sits as chairman on the same subject.

It isn't a secure feeling to see all of this happening. We all hope that Mr. Engle will vote the facts and do what is right, whether or not we agree. He has changed with his educational process and is becoming a better Board member each meeting because he is better educated. Some of the BOF proposals are so involved and complicated that it takes Board members several years to understand them. For example, the subject of discussion in Kodiak involves fisheries migration and its implication for allocation based on 100 years of development! Much of the education has to come from implication, personal testimony and supposition from records kept before statehood or more recently before modern computer analysis. We're getting through it, however, and the fishermen and Board members are doing it together. A retired lawyer confirmed by only the South-central coalition for his "proper" views might not have the patience needed to take on such a proposal as this and many others like it.

Previous to Larry Engle and Dick Bower, two others were appointed to push the sport fish cause. After three years of education regarding the state's fisheries, they were removed by the sport fish lobby because they weren't voting the right way anymore. They voted what they felt was right for the state and for the fish - biologically and economically. They weren't put there for that and were replaced even though they asked to be reappointed.

This type of potential special interest bias and the lack of fishing experience is what worries me about the professional board idea. Hickle began the process and the South-central coalition's pressure on Governor Knowles is continuing and maybe finishing the process of destroying the present BOF by placing people with very limited knowledge of the state's many diverse fisheries, history and changing dynamics. They're there to vote for the "party line". Bob Penney and the Cook Inlet Sport fishing Caucus claim complete support from the Southcentral legislators to make sure the sport fish

line or "their" line is the only one acceptable. This does not sound like democracy. Do some research on the Coastal and In-River Fisheries Alliance and you will see that commercial fishing in Area M and Kodiak, and numerous legislators are on their published list of enemies. Yes! They call them their enemies! This group call their allies such groups as the Yukon River Drainage Fishermen Assoc., U.S./Canada Delegation Processors, Seattle/Alaska Subsistence Commission and on and on. Please ask Mr. Umphenour about hi involvement in these groups..


I've never asked for a seat from Kodiak on the BOF or from anywhere in particular. Only for honorable people, without special interests and with an open mind. Listen to Virgil Umphenour. He already believes what is wrong with particular fisheries, and how they should be changed. He already believes where fish should be harvested, without even looking at the facts or dynamics of the fishery involved. I certainly hope that his voting record on the Board will be a surprise, but I'm afraid it's quite predictable.

This Board process has worked well for a long time - until the last four years or so. Why not insure that balanced, knowledgeable members are appointed and then tune the process up with the Knowles Transition Team recommendations? With good appointments, the Conflict of Interest laws can be rewritten where the present type of interpretation is not needed. 95% of the deliberation would not make any noticeable financial gain to a Board member, except in the opinion of some lawyers to keep a reasonable man from voting with the resource and common sense.

Eventually, a special interest board will cause many more problems than it will solve. Don't deny the data that points in a different direction than you wish it did. For example, the Deshka River problem. Sport fish and ADF&G admit that it's a problem of poor management and over-fishing by sport fishermen. ADF&G Sport fish biologists have been lying to the Board and to you for several years. Now it's so bad that they're caught and must admit it. As the data shows, there are no missing fish. They just all got caught by sport fishermen. We commercial fishermen are constantly closing and conserving areas and systems when there's a problem. Kodiak Management Area closed the whole west side of Kodiak Island to fishing in June and August to rebuild the Karluk red system. We didn't blame it on Chignik or Cook Inlet or subsistence or the bears. We swallowed our medicine and fixed the problem where it started.

We're all in this together in the long run. Please do what is right for the resource first and take care of the coalitions and one-way interests a different way. You can deal with your interests without destroying Alaska's commercial fisheries in the process.

Sincerely,



Bruce Schactler
P.O. Box 2254
Kodiak, AK 99615
907/486-4686

cc: Governor Knowles
Senator Zharoff
Representative Austerman
Representative Moses
Representative Green
United Fishermen of Alaska

AN ALASKAN ADVENTURE

CHINOOK CHARTERS

TOM RAMISKEY

428 Tower • Ketchikan, Alaska 99901 • 907-225-9225

FEB 3 1995

February 2, 1995

Senator Drue Pearce
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801 1182

Dear Senator Pearce,

I have long been an advocate for a professional Board of Fisheries or at least statutory revision of the Board membership criteria in a manner such that no single user group can have a majority position.

Established in 1975 "for purposes of the conservation and development of the fishery resources", the Board of Fisheries served the purpose of development well. Alaska's fishery resources are for the most part fully developed. The composition of the Board of Fisheries was, until recently, entirely commercial fishermen. And, it was the collective "expertise in the fishery" of the individual commercial fishermen appointed to the Board that was instrumental in the development of Alaska's fishery resources.

As fishery resources have become fully developed, conflicts within the commercial fishery user group, between regional commercial fishery user groups, sport and commercial, subsistence and commercial and sport have escalated annually Statewide. Competition among and between various user groups for the use of a finite resource will most likely continue and become more divisive.

In the midst of the fray is a Board of Fisheries that still has a commercial use bias and which is not representative of the multiplicity of regional commercial uses let alone sport, subsistence, and personal uses. Compounding the problem, is the political appointment of persons who have a direct financial or personal interest in fishery resource use.

The Board of Fisheries served it's purpose but is ill suited to address the issues of allocation in a fair and reasonable manner that is consistent with the Constitutional mandates of common property resource use for the maximum common benefit consistent with the public interest. It is ludicrous to believe that a Board appointee with a direct interest in a fishery resource will vote against his interest.

Page 2

The Board of Fisheries has accomplished it's purpose and should be restructured for the purposes of conservation and allocation of fishery resources. An impartial Board is essential in matters of conservation and allocation to ensure fair and reasonable decisions. I believe that a professional Board would afford the greatest opportunity for impartiality in matters of conservation and allocation. And, I would recommend that you consider increasing the number of members to five or seven in order to reflect the unique "regionalism" that exists in Alaska.

The local advisory committee system that seems to be ignored by the Board system should be revitalized and afforded some position of consequence if a professional Board is established. The local advisory committee forum is democratic, responsive, and functions as a liaison between the public and technical experts. And, it is a forum that can and does benefit from knowledge and expertise in the fishery. Expertise in the fishery can be related to a professional Board in the form of public comment and will not be lost with the establishment of a professional Board.

Obviously, I have a personal and financial interest in fishery resource use. I have owned and operated a charter fishing service for the past nineteen years. I have been involved in the Board process since 1985. It has been frustrating and in my opinion unfair at times. But most of all, it has been the feeling of absolute futility and the realization that a lay Board comprised of a majority of commercial fishermen regulate themselves and can regulate me out of business that irritates me the most.

A professional Board may not be the most democratic according to some opinions. But, I certainly would rather take my chances with a Board that does not have a direct financial interest in fishery resource use rather than continue to get beat up in the present Board system!

Sincerely,



Tom Ramiskey

cc: Senate Resources Committee,
Senator Loren Leman, Chairman
Senator Robin Taylor
Representative Bill Williams



Alaska Trollers Association

130 Seward St., No. 505
Juneau, Alaska 99801
(907) 586-9400
(907) 586-4473 Fax

February 15, 1995

Senator Loren Leman, Chairman
Senate Resources Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99811

Dear Senator Leman:

The Alaska Trollers Association (ATA) opposes SB 49, which seeks to change the Board of Fisheries (Board) from a lay board to a professional board.

The state's practice of appointing Board of Fisheries members with experience in Alaska's fisheries has produced a superior fishery management program recognized coastwide. Importantly, the lay board process fosters an atmosphere of cooperation between those with a vested interest in the resource, fishermen and the state.

We stress that there is no substitute for personal experience when it comes to the development of industry regulations. However, we also acknowledge the Board of Fisheries process could be improved with some relatively minor adjustments. For instance:

- The Governor could make a greater attempt to balance Board appointments according to the statutory references "knowledge and ability in the field of action"; and, "providing diversity of interest and points of view". Alaska's fisheries are complex and diverse, and, while each fishery can't be represented, past experience has shown that a complementary mix of gears and regions can be achieved. Broad knowledge amongst Board members produces better deliberation of the issues at hand.

February 15, 1995

SB 49

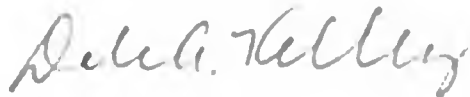
Page 2

- Board confirmations should take place prior to members serving, to reduce constituent pressure on the legislature to remove appointees based on votes relative to one or two high profile issues.
- Criteria must be established under the Ethics Act to fairly define "significant" conflict of interest, to allow individuals with a working knowledge of Alaska's fisheries to continue to fully participate in the Board process. The expected financial gain or loss of an individual in a fishery of 1500 permit holders would be quite different than another in a fishery of 50 permit holders. The current recusal process identifies each member's personal interests. Past chairmen have generally been good at excusing members from questionable votes, often at the request of the member themselves.

Finally, SB 49, as written, does not appear to consider the economic interest of the guided sportfishing industry. The State of Alaska has failed to develop a limited entry program for the guided sportfishing industry, and we question whether it currently fits the sponsor's description of "vested economic interest".

ATA believes a lay-Board of Fisheries process helps to ensure conservation of the resource and reasonable regulations for small business operators. We encourage you to vote no on SB 49.

Sincerely,



Dale A. Kelley
Executive Director

TESTIMONY

Box 1241 Cordova AK

Chairmen

Senator Hoffman

Other Sub Committee Members

Good afternoon Senator Lehman, ~~Amodeo~~, Hoffman, and ~~other sub-committee members~~. I thank you for the opportunity to address you today on Senate Bill 49.

My name is James Mykland and I reside in the city of Cordova. I have been a commercial fisherman for the last twenty years in and around Prince William Sound. During that time I have participated in the Alaska board of fisheries process as a representative of the ~~the Alaska Board of Fisheries~~ and as a member of the public. different commercial fishing organizations

I strongly oppose SB 49

First of all I would like to address the aspect of Commercial Fishing in Alaska.

In Alaska fish are among our foremost assets. Our fisheries resources are put to use in sport, subsistence, and commercial fisheries. The annual commercial harvest of close to three million tons places Alaska first in fisheries production for the entire fifty states.

The Alaska commercial fishing industry is the states largest private employer, providing jobs for 75,000 people during the peak of the season.

Concerning Salmon fisheries, Alaskan residents hold nearly 78% of the limited entry permits that are regulated by the Commercial Fisheries Entry Commission.

Presently the Alaskan Department of Fish and Game receives 2% of the statewide general fund budget. The commercial fishing industry currently pays about \$65 million in license fees and various taxes. This amounts to more than it costs to manage the fisheries. These dollars go into the state general fund and are not necessarily directed toward fisheries management.

In my opinion we need to allocate more funds for fisheries management. I know I would be willing to contribute more in revenue if I could be assured that those dollars collected would be dedicated toward management of our fisheries.

This brings me to SB 49. The present structure of the Alaska board of fisheries, with a public lay board, seems to be working. How else can we explain record harvests of salmon in Alaska during the last five years. In 1994 the salmon harvest even set a new record for the amount of salmon harvested. Since the board of fisheries oversees the management of the fisheries I would expect them to take some of the credit. Alaskan

This is not to say that there are not some problems. I would like to see a higher funding level for the staff and for the local advisory boards which help identify the specific problems each area is having.

I do support the premise behind house bill 141 which would help depoliticise the confirmation process. It's certainly very apparent the last couple years that seating someone on the board and then waiting for confirmation does not work in these highly political times. their by the Legislature

I would also agree with the Knowles/Ulmer fisheries policy transition team's recommendation to create regional and species management panels to help with the management of our fisheries.

I believe changes need to be made to the Alaska Board of Fisheries. The changes SB 49 proposes are not the ones. Positive and proactive changes can and will be made to make the Alaska board of fisheries an important tool in this management process.

Unfortunately SB 49 is negative and reactive. Prohibiting a member of a user group, that is intimately involved in the management of the Alaskan fisheries resource, is not a positive change.

SB 49b claims the current lay board are often far too effectively lobbied by outside big money interest. Is SB 49 claiming that once the board is made up of paid professionals that they are immune to lobbying. I wonder what the committee investigating the United States Secretary of Commerce Ron Brown would say about that. No one is immune to any outside pressure. The answer to that is to appoint good honest and upstanding members of our communities to serve on the board. There are plenty of them out there. Another way is that the conflict of interest needs to be corrected. Change the ethics law.

I strongly oppose SB 49 as written. I agree it is time to take the politics out of the board of fisheries. The only problem is that SB 49 will not do that. We need long term planning in our fisheries management not reactionary short time fixes.

I thank you for the opportunity to speak today.



UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax: 907/463-2545

**Testimony on SB 49
Restructure of the Board of Fisheries
before the
Senate Resources Subcommittee Meeting**

February 24, 1995

All 22 member groups of United Fishermen of Alaska oppose SB 49 on the grounds that we would like to maintain a Board of Fish comprised of lay citizens.

Currently, the Board of Fish is comprised of seven members appointed by the Governor and are subject to confirmation by the Alaska State Legislature. This structure is the envy of many other states. However, as with any other Board, the system is not perfect. Therefore, we would like to make the following suggestions to improve the Board of Fisheries process.

House Bill 141, just recently introduced, would change the dates and terms of Board of Fish members and would allow for confirmation of a Board member prior to serving on the Board. In our opinion, this would bring forth many more candidate applications of persons interested in serving on the Board of Fish. The present system of confirmation encourages many possible candidates not to apply because serving before being confirmed causes too many problems.

In the past, Local Advisory Committees played a large role in the Board of Fish. They settled some issues before the Board of Fish met and provided a local knowledge of their region for the Board of Fish. Advisory chairs should be at the Board of Fish meetings to give the local feeling on issues when asked for by the Board of Fish.

Conflict of interest needs to be discussed by the State and solved as applied by the Department of Law to the Board of Fish. United Fishermen of Alaska would like to have an investigation on an amendment to the Ethics Act to insure that Board of Fish members can take part on issues in fisheries they are involved in but where no significant conflict exist.

If the State of Alaska is willing to spend money on a Board of Fish professional board, there should be monies available to provide more staff and research dollars to the Board of Fish.

There will always be allocation battles but, some day, we have to realize even Alaska holds only so much resource pie for everyone to split up.

Respectfully submitted,


Jerry McCune, President
United Fishermen of Alaska

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Longline Fishermen's Association • Alaska Trollers Association • Area K Seiners Association
Bering Sea Fishermen's Association • Bristol Bay Driftnetters Association • Concerned Area "M" Fishermen
Cook Inlet Aquaculture Association • Cordova District Fishermen United • Kona Peninsula Fishermen's Association
North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Peninsula Marketing Association
Peterburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association
Seafood Producers Cooperative • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Cook Inlet Drift Association • Western Alaska Cooperative Marketing Association



Alaska State Legislature

Please enter into the record my testimony to the SRES
committee name

committee on SB 496 50, dated 1/20/95
bill/subject

WOULD LIKE TO SIZE OF EACH BOARD MADE
FIVE, TWO BEING PUBLIC WITH NO COMMERCIAL/
GUIDE/TOURISM RELATED TIES.

SUGGESTIONS

- BOARD OF GAME:
- 2 PUBLIC
 - 1 SUBSTANCE
 - 1 GUIDE
 - 1 PROFESSIONAL GAME BIOLOGIST

- BOARD OF FISH:
- 2 PUBLIC
 - 1 COMMERCIAL FISHER.
 - 1 GUIDE/CHARTER CREATOR
 - 1 PROFESSIONAL FISH BIOLOGIST

Signed:

Jack J. H. Hinton
Testifier
SELF

Representing (Optional)

PO BOX 2376 SARDONA 99669

Address

262-5455

Phone No.

Mr. Donald K Johnson
PO Box 876

262-7893
000-0000

SB49 #
SB50

Date POM Sent	Constituency	Bill Number	Response	Subject	Distribution	Affiliation	Reg Voter
02/09/95	N	HB 149	Amond		60	self	U

I THANK THE LEGISLATURE FOR THEIR ATTEMPTS TO CORRECT THE CONFLICT OF INTEREST PROBLEMS ON THE CURRENT BOARDS OF FISH AND GAME; IT'S LONG OVERDUE. I DO OBJECT TO REDUCING THE NUMBER OF PERSONS ON THE BOARD TO THREE. THIS IS FAR TOO IMPORTANT A SUBJECT FOR THREE PEOPLE. PLEASE KEEP THE NUMBER OF PERSONS ON THE BOARD AT SEVEN, WITH NO VESTED COMMERCIAL INTEREST. (SB 49 RESTRUCTURE B OF F; HB 148 & SB 50 RESTRUCTURE THE BOARD OF GAME)

Mr. Donald K Johnson
PO Box 876

262-7893

SB49

Date POM Sent	Constituency	Bill Number	Response	Subject	Distribution	Affiliation	Reg Voter
02/09/95	N	HB 149	Amond		16	self	U

PLEASE INITIATE PUBLIC HEARINGS AND TELECONFERENCES FOR SB 49 AND HB 149 IMMEDIATELY TO ALLOW FOR PUBLIC INPUT ON THIS ISSUE (RESTRUCTURE BOARDS OF FISHERIES)

Mr. Herbert
PO Box 1167

Upton

000-0000

Kasilof

AK

99610

Distribution Affiliation

Reg Voter

09

Y

Date POM Sent

Constituency

Bill Number

Response

Subject

02/17/95

N

SB 49

Opposes

THE STATE FISH AND GAME BOARDS SHOULD STAY THE WAY THEY ARE. AT LEAST WE HAVE A CHANCE TO PARTICIPATE IN THINGS. THEY DONT ALWAYS TURN OUT THE SAME AS PEOPLE LIKE BUT THEY HAVE A CHANCE TO CHANGE THEM THE NEXT TIME. THE

BOARDS' DECISIONS SHOULD BE FINAL. STOP ALL THE LAWSUITS. THE LAWYERS ARE DRAINING THE STATE'S FUNDS WITH ALL THESE LAWSUITS (PERTAINS TO SB50 AS WELL)

**KODIAK LONGLINE
VESSEL OWNERS' ASSOCIATION**



326 CENTER AVENUE, P.O. BOX 135
KODIAK, ALASKA 99615
(907) 486-3781 FAX (907) 486-2470

HALIBUT • SABLEFISH • PACIFIC COD • CRAB

February 22, 1995

Senator Loren Leman,
Chairman Senate Resources Committee
State Capitol
Juneau, AK 99801
Fax #: (907) 465-3810

RE: SB 49 Restructure Board of Fisheries

Dear Senator Leman:

The members of the Kodiak Longline Vessel Owners' Association would like to comment on SB49 regarding a restructure of the Board of Fisheries.

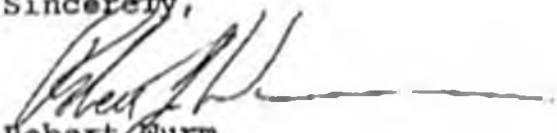
We have been working within the board process on issues dealing with crab in Alaska for several years and have often been both concerned and frustrated by the amount of time and energy the board has been able to invest in these issues. While we feel that there is a need for modification to the board process, we disagree with the manner in which this legislation proposes to do so.

We strongly oppose the creation of a professional board. Such efforts will not be in the best interests of the resource or Alaska and will become highly political. It is very important that the board continue to be composed of laypersons so that their decision making process will be tempered by experience within and knowledge of the industry.

Our proposal to the Knowles transition team supported the creation of a separate board for management of groundfish and shellfish. We believe the creation of a separate board would allow board members to devote more attention to the issues.

Our association will continue to participate in any discussions and comment on any proposed legislation regarding a restructure of the Board of Fisheries. This is an issue of concern to us and we would appreciate being notified of any revisions to SB49. We appreciate your consideration of our comments and look forward to continuing dialogue concerning this issue.

Sincerely,



Robert Wurm
President

cc:

- Drue Pearce
- Steve Frank
- Rick Halford
- Robin Taylor
- Georgianna Lincoln
- Lyman Hoffman



Alaska State Legislature

Sen. Leman

Please enter into the record my testimony to the Senate Resources Committee
committee name

committee on SB 49 / restructure brd fish dated 2/24/95
bill/subject

Testimony presented at teleconference but committee ask for copy to be sent to them.

See attached-

Signed: Chris Berns
Testifier
self
Representing (Optional)
Box 26 - Kodiak, AK 99615
Address
486-5091
Phone No.

Box 26
Kodiak 99615
425-5091

Good Afternoon.

I'm Chris Berns, I've been involved in the commercial fishing and processing industry in Alaska since 1968. *Living in Kodiak*

This bill's attack on commercial fishing by members of the Legislature is the same kind of attack that the Sierra Club and other environmental organizations wage against the oil and timber industries.

To suggest that the Board of Fish. have people with no commercial fishing experience on it is irresponsible. Ask yourself, is this good for the State of Alaska? The Board of Fish. sets policy for an industry that primarily consists of salmon, by volume and dollars.

An industry that has been a primary contributor to Alaska's economy for more than 100 years. \$400 million ex-vessel value annually, and double that after processing. The amount of equity in combined boats, gear, and salmon permits is staggering.

These resources are now one of the few remaining fisheries, solely controlled by the State and should be managed in a responsible way.

This Bill suggests a "professional" board is an avenue to a less contentious process. This is not so. A professional board carries all the pitfalls of a lay board. It would be appointed, it would be confirmed, and it would know nothing at all about commercial fishing, under SB 49.

The problem with the present board, is that it has become a pawn in a political game. This game, and all its not-so-hidden agenda, will end up hamstringing one of the oldest and most viable industries in Alaska.

Looking at this in the longterm, food production will be of greater importance in the future than it is now. ^{FAIRLY} In 1991, if all the food produced on earth were distributed equally among ^{ALL} people, people still would have starved to death. Salmon is food, and a valuable resource that Alaska holds ownership to.

I suggest that a lot of the problems with the current Board have been created by the same body, that is looking at solving these problems by restructuring--which gives me very little comfort that a professional board is the solution.

A Board should be made up of a group of peers, who have in-depth knowledge of the industry. A Board member should be more a fisherman, than a dentist, or lawyer. To suggest that it be any other way, would be irresponsible. Keep the Board as it is. Appoint fair-minded and intelligent industry members that have this renewable resource's best interest in their heart. Confirm them, and quit playing games with an industry that very few of you have have any knowledge of, beyond your own self-serving interest, or your constituents's political agenda.

I would like to point out the contradiction under Section 1 of Senate Bill 49, lines 7-9 and lines 1 and 2 on page 2:

First:

...The governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the board

~~SECT 1~~ Page 2 line 1 and 2

"A member of the board may not have a vested economic interest in an interim-use permit, entry permit, commercial fishing vessel or gear, or in any fishery resource processing or marketing business,....."

How can you have any ability in the quote "field of action of the Board' unquote, WITHOUT HAVING PARTICIPATED IN THE COMMERCIAL FISHING INDUSTRY ??????

Lines one and two on page two show, proof of a sportfish agenda, at the expense of over a one hundred year old Alaskan industry.

~~WAKE UP BEFORE YOU SET ANCHORS~~

~~THREAT~~ THIS SIERRA CLUB mentality is not in the best INTEREST OF THE STATE, AND SHOULD BE KEPT OUT OF STATE POLITICS. Thank you

Legislative Research Agency

Alaska State Legislature



130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Phone: (907) 463-3991
Fax: (907) 463-3351

June 23, 1994

MEMORANDUM

TO: Senator Drue Pearce

FROM: Maria Gladziszewski
Legislative Analyst *MG*

RE: Professional Fish & Game Boards in Other States
Research Request 94.215

You asked if other states operated fish and game boards with full-time, paid board members. Experts with whom we spoke were unable to confirm the existence of any full-time professional boards in other states or Canada. Most states operate fish and wildlife commissions or boards similarly to Alaska with part-time commissioners appointed by the governor. Attached are a few pages from the *State Wildlife Law Handbook* regarding the appointment procedures and qualifications for state wildlife commissioners.

Fish and wildlife experts at the National Conference of State Legislatures report that no state operates full-time professional fish or game boards. According to Sandra Wolfe, the Secretary/Treasurer of the Western Association of Fish and Wildlife Agencies, none of their member states (Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, North Dakota, New Mexico, Oregon, South Dakota, Utah, Washington, Wyoming) operate a full-time professional board. In addition, Ruth Musgrave, author of a 50-state survey of state wildlife laws, *State Wildlife Law Handbook* published by the Center for Wildlife Law at the University of New Mexico, did not find any full-time professional boards during her research.

I hope this information is useful for your purposes. Please do not hesitate to contact us if you have additional questions.

We spoke with representatives from the National Conference of State Legislatures, the Western Association of Fish and Wildlife Agencies, and the Center for Wildlife Law at the University of New Mexico.

Background

State Wildlife Laws Handbook



Center for Wildlife Law

at the

Institute of Public Law
University of New Mexico
Albuquerque, New Mexico

(505)

Ruth S. Musgrave, J.D. *and* Mary Anne Stein, Ph.D., J.D.

with contributions from

Karen Cantrell, Ph.D., J.D.; Sara Parker, J.D.; *and* Miriam Wolok, J.D.



Government Institutes, Inc.

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Introduction

Tables 1-3. Director, Commissioner and Commission: Appointments and Qualifications

There is considerable variation in how the fish and wildlife director, commission, commissioners, and various agency advisory board members are chosen. We recommend that qualification requirements such as various types of examinations, qualifications by experience or training, representation from various state interest groups (sportsmen, farmers, ranchers, commercial fishermen, conservation groups, geographic location, etc.), and mixing members by age, sex, and ethnicity in commission and advisory board composition be imposed by all states. Limitations on the number of members allowed to be from the same political party may be desirable. Ideally, appointments would not be tied to one political party by Governor appointments. Criteria such as written exams, physical exams and interviews for hiring department leaders and conservation officers are a good idea (see New Mexico, South Carolina and others).

Some states provide that although the Governor appoints Commission members, they must be selected from a list of eligible candidates, so that at least some expertise can be guaranteed in those who are appointed. Other states expressly set up commissions and advisory boards to allow input from competing interests, and thus are able to mediate and discuss the concerns of such interests. Examples include Colorado's Habitat Partnership Council which consists of representatives of agriculture, wildlife and rangeland management interests, designed to resolve rangeland forage issues; the Hawaii Natural Area Reserves System Commission, whose members have academic degrees in wildlife or marine biology, botany, forestry, ecology, resource management, biogeography, zoology, or geology; the Indiana Heritage Trust Program committees, whose membership include various organized hunting and fishing, environmental and other groups; and the New Mexico Fish and Game Commission, which must have one farmer/rancher member whose land contains at least two species for which the state requires a license to hunt or fish, and one member with demonstrated involvement in wildlife and habitat protection.

Every state has experts in many relevant areas, and such expertise should be utilized to the benefit of fish and wildlife agencies. There are many excellent examples in the state summaries of required qualifications, representation of different state interests, and inclusion of persons with widely differing backgrounds. Maine mandates that the Commissioner shall review other states' provisions for developing good relationships between hunters and landowners and implement similar programs with emphasis on courtesy and responsibility for private lands.

Tables 1-3 give a rough outline of appointment qualifications of the director, commissioner and commission members. In states with no director, but rather a "secretary" of a natural resources department, such secretary was treated as a director for purposes of this table.

Table 1. Director of Agency: Appointment and Qualifications

State	Governor Appointed	Appointed by Commission or Other	Submitted from List	Legislative Approval	Gubernatorial Approval	Serves at Pleasure of Commission	Academic/ Experience Qualification	Knowledge/ Interest Qualification	Other Qualification
AK	Not applicable								
AL		*			*				
AR	No statute information								
AZ		*					*		
CA	*				*				
CO		*							*
CT	Not applicable								
DE	*								
FL		*							
GA	Not applicable								
HI		*							
IA	*			*			*	*	
IL							*	*	
IN		*							*
KS	*			*			*		*
KY	Not applicable								
LA	*				*				
MA		*				*	*	*	
MD	Not applicable								
ME	Not applicable								
MI		*							
MN	Not applicable								
MO		*							
MS	*		*	*			*		
MT	*			*					

* Commission establishes qualifications
 * Director serves at the pleasure of the governor
 * Director shall be appointed as provided by law

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Table 1. Director of Agency: Appointment and Qualifications (continued)

State	Governor Appointed	Appointed by Commission or Other	Submitted from List	Legislative Approval	Gubernatorial Approval	Series of Hearings of Commission	Academic/ Experience Qualification	Knowledge/ Interest Qualification	Other Qualification
NC							*		
ND	*				*				*
NE	Not applicable								
NH	*						*	*	
NJ	*				*		*		
NM	No statute information								
NV	*		*					*	
NY	Not applicable								
OH	No statute information								
OK		*							
OR		*							
PA		*							
RI				*					
SC		*							
SD	Not available								
TN		*	*				*		
TX		*							
UT	Not available								
VA		*							
VT	Not available								
WA	*						*	*	*
WI	Not applicable								
WV	*						*	*	*
WY	*				*				

* Governor and Council jointly appoint Director

* Governor shall seek recommendations from the Commission on the qualifications, skills and experience necessary for the position

* Must be at least age 30

Table 2. Commissioner: Appointments and Qualifications

State	Governor Appointed	Legislative Approval	Appointed from Within Commission	Secretal Pleasure of the Governor	Academic or Experience Qualification	Knowledge or Interest Qualification	Other Qualification
AK						•	
AL	•						
AR	Not applicable						
AZ	Not applicable						
CA							•
CO	Not applicable						
CT	•	•			•		
DE	• ¹						
FL	•	•	•				
GA	Not applicable						
HI	Not applicable						
IA	•	•			•	•	
IL	•		•			•	
IN	Not applicable						
IN	•						
KY	•	•		•	•		
KY					•	•	•
LA	Not applicable						
MA	No statute information						
MD	•	•		•	•		
ME	•	•			•		
MI	Not applicable						
MN	•						
MO	Not applicable						
MS	•		•		•		

¹ The president of the Commission may be a member or officer of the Migratory Bird Commission created by the Federal Migratory Bird Conservation Act.

² Secretary appointed, but Governor appointed.

³ Commissioner - 105 Commissioner.

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Table 2. Commissioner: Appointments and Qualifications (continued)

State	Governor Appointed	Legislative Approval	Appointed from Within Commission	Server at Pleasure of the Governor	Academic or Experience Qualification	Knowledge or Interest Qualification	Other Qualification
ME	Not applicable						
NC					•		
NH	Not applicable						
NE	•		•		•	•	
NH	Not applicable						
NI	•	•		•	•		
NM	Not applicable						
NV	•		•		•		
NY	•	•		•			
OH	The state constitution						
OK	Not applicable						
OH	•		•				•
PA	The applicable						
RI	Not applicable						
SC	•	•					
SD	Not applicable						
TN	Not applicable						
TX	•	•					
UT	Not applicable						
VA	The applicable						
VT	•						
WA	Not applicable						
WI	Not applicable						
WV	Not applicable						
WY	Not applicable						

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* May not include the applicant or commercial fishing organization or have ownership or direct interest in a commercial fishing business

* Appointed pursuant to the provisions of 10 2531

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Table 3. Commission Members: Appointments and Qualifications

State	Government Appointed	Geographic Selection	Legislative Approval	Must be Mixed Party	Academic or Experience Qualification	Knowledge or Interest Qualification	Other Qualification
AK	Not applicable						
AL	Not applicable						
AR	No statute submission						
AZ	*	*		*	*		
CA	Not applicable						
CO	*	*		*			
CT	Not applicable						
DE	Not applicable						
FL	*		*				
GA	*	*	*				
HI	*		*				
IA				*		*	*
ID	*	*		*		*	
IL	Not applicable						
IN	* ²				*		
KS	*	*		*	*		
KY	*	*		*		*	*
LA	*	*	*				
MA	*	*					*
MD	Not applicable						
ME	Not applicable						
MI	*	*	*		*		
MN							
MO	*		*	*		*	

* Cannot hold any other state or federal office

² Government appoints 3 of 12 positions

³ Vacancies are filled by appointment by the Governor from a list of five names submitted by the اسپرتمن of each wildlife district

⁴ The Governor appoints one member from 3 candidates submitted by the Massachusetts Audubon Society, Sierra Club, Appalachian Mountain Club and Trustees of Reservations

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Table 3. Commission Members: Appointments and Qualifications (continued)

State	Government Appointed	Geographic Selection	Legislative Approval	Must be Affiliated Party	Academic or Experience Qualification	Knowledge or Interest Qualification	Other Qualification
AK	•	•			•		
AL	•	•	•				• ¹
NC	Not applicable						
ND	Not applicable						
NE	•	•		•	•	•	
NH	• ²	•		•	•	•	
NJ	•		•			•	• ³
NM	•	•	•	•	•		
NV	•	•			•		
NY	Not applicable						
OH	•		•	•		•	• ⁴
OK	•	•	•				
OR	•	•	•				• ⁵
PA	•	•	•				
RI	Not applicable						
SC	•		•				
SD	•	•	•	•	•		
TN	•	•	•			•	• ⁶
TX	•		•				• ⁶
UT	•	•	•	•		•	

¹ At least one member must be experienced in the handling and management of domestic livestock.

² Appointed and approved by the Governor and Council.

³ See former and see experience, use of minor services as Chairman.

⁴ At least two shall be engaged or forming or their principal means of support.

⁵ May not hold office in any of environmental lobbying organization or have ownership or direct interest in a commercial fish processing business.

⁶ Includes Commissioners of Environment and Conservation and Agriculture, should include one person at least 60 years old and at least one person of a racial minority.

⁷ All non-industry members shall be from the general public; members of industry may not be employed by a business entity regulated by the Department or possess funds investment, may not own or control more than a 10% interest in such business entity, or otherwise a substantial amount of tangible goods or services or funds from the Department, and may not be registered lobbyist or in behalf of a profession related to the operation of the Commission, nor be employees or paid consultants of a state or local agency in the field of conservation or wildlife management.